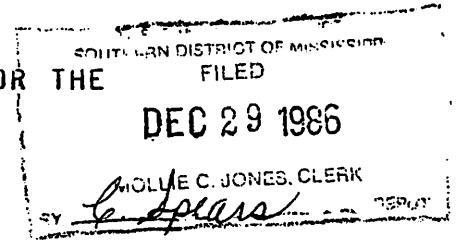


IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



IN RE:

CARL EDWARD MYERS

CASE NO. 8600010WC

ALLSTATE INSURANCE COMPANY

vs.

CARL EDWARD MYERS

ADVERSARY PROCEEDING NO. 860030WC

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Carl Edward Myers

Edward Ellington, Bankruptcy Judge

ORDER ON "COMPLAINT OBJECTING TO DISCHARGEABILITY
OF DEBT TO ALLSTATE INSURANCE COMPANY" FILED BY
ALLSTATE INSURANCE COMPANY

THIS MATTER came on for hearing on Allstate Insurance Company's Complaint Objecting to Dischargeability of a Debt. After hearing the facts and considering the same, the Court finds that the Objection is not well taken and should be overruled. Thus, the debt owed to Allstate Insurance Company by

Carl Edward Myers will be discharged pursuant to Section 1328(a) of the Bankruptcy Code when the Debtor completes payments under his Chapter 13 plan.

On January 2, 1986, Carl Edward Myers filed a petition under Chapter 7 of the Bankruptcy Code.

On February 24, 1986, Allstate Insurance Company (Allstate) timely filed an Objection to Dischargeability of its debt. Subsequent to the filing of the Objection to Dischargeability, the debtor converted his case to a Chapter 13 under the Bankruptcy Code on March 3, 1986. The Debtor then filed an Answer to Allstate's Objection and the matter was set before the Court for a pre-trial conference. As a result, an Agreed Pre-Trial Order was entered by the parties which primarily provided that:

(1) There was no dispute as to the factual situation involved in this debt in that the accident giving rise to the debt occurred when the Debtor was under the influence of alcohol; and

(2) The only issue to be decided by the Court is whether or not the debt is dischargeable under a Chapter 13 plan, pursuant to 11 U.S.C. 523(a)(9).

Thereafter, each party submitted briefs for the Court's consideration.

The general exceptions to discharge are located in Section 523 of the Bankruptcy Code and

specifically in this case, subsection 523(a)(9) which provides:

A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt--

(9) to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle was operated and within which such liability was incurred;

However, the most significant of all facts in this cases is that this is a Chapter 13 case under the Bankruptcy Code. The discharge of a Chapter 13 debtor is controlled by Section 1328.

Section 1328(a) provides:

As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order of relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 520 of this title, except any debt--

(1) provided for under section 1322(b)(5) of this title; or

(2) of the kind specified in section 523(a)(5) of this title.

The First Exception - Subsection 1322(b)(5)

provides:

Subject to subsections (a) and (c) of this section, the plan may--

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

The Second Exception - Subsection 523(a)(5)

provides:

A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt--

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of both spouse or child, in connection with a separation agreement, divorce decree, or property settlement agreement...

This Court has addressed the reach of the Section 1328(a) Chapter 13 discharge before In the Matter of Eichelberger, 6 B.R. 705, S.D.Miss.(1980), and with Judge Barney E. Eaton, III presiding, concluded that,

It is clear from a reading of the statute that subsection 1328(a) requires that, as soon as practicable after completion of payments under the plan, the court grant the debtor a discharge of all debts provided for by the plan or disallowed by the court, with two

exceptions: (1) long-term debts whose maturities exceed the term of the plan, and (2) debts for alimony, maintenance and child support. Thus, the statute indicates that it was the manifest intent of Congress to grant a greater scope of relief in Chapter 13 cases than that available to a Chapter 7 debtor. At 707.

In Eichelberger the Chapter 13 debtor sought discharge of a federally insured student loan debt. The creditor claimed the debt was nondischargeable pursuant to section 523(a)(8), but the Court found that section 523(a)(8) is not applicable when the debtor makes all payments provided for by his Chapter 13 plan pursuant to subsection 1328(a). Comparing the case at hand, subsection 523(a)(9), claimed by Allstate, is not one of the two exceptions listed under subsection 1328(a) and thus is not applicable when the debtor completes payments under his Chapter 13 plan. If the debtor completes his plan, Allstate's debt will be discharged. See also: In re DeSimone, 25 B.R. 728, D.C. E.D. Penn. (1982); In re Rose, 37 B.R. 876, Bkrtcy. N.D. Ga. (1984); In re Powell, 8 CBC 2d 506, 29 B.R. 346, Bkrtcy. D.Colo. (1983); In the Matter of Scher, 4 CBC 2d 784, 12 B.R. 258. Bkrtcy. S.D. N.Y. (1981); In re Graff, 3 CBC 2d 421, 7 B.R. 426, Bkrtcy. D.Kan. (1980); In re Lewis, 2 CBC 2d 1138, 5 B.R. 575, Bkrtcy. N.D. Ga. (1980); In re Keckler, 1 CBC 2d 574, 3 B.R. 155, Bkrtcy. N.D. Ohio (1980); In re Burrell,

1 CBC 2d, 2 B.R. 650 at 652, Bkrtcy. N.D. Col. (1980); Memphis Bank & Trust Company v. Whitman, 7 CBC 2d 727, 692 F.2d 427 (6th Cir. 1982); In the Matter of Esser, 7 CBC 2d 149, 22 B.R. 814, Bkrtcy. E.D. Mich. (1982); Triester, George M.; Trost, J. Ronald; Forman, Leon S.; Klee, Kenneth N. and Levin, Richard B. Fundamentals of Bankruptcy Law, Student Edition, Philadelphia, American Law Institute, 1986, at page 327.


It is important to note that there is a second type of discharge available under Chapter 13 which is found in subsection 1328(b). This subsection provides that a hardship discharge may be granted to a debtor who fails to complete the payments under the plan due to circumstances for which the debtor should not be held accountable. However, pursuant to subsection 1328(c)(2) and subsection 523(a), this hardship discharge granted by 1328(b) does not release the debtor from any of the categories of debts excepted from discharge under subsection 523(a).

After considering the facts and because the statutes are unambiguous, this Court finds that the Debtor has filed an application for discharge pursuant to subsection 1328(a), which is not one of the sections referred to by subsection 523(a). Thus, the Debtor should be discharged of all debts provided for by the plan if the debt does not fall within one of the two narrow exceptions. Allstate's claim pursuant to

subsection 523(a)(9) is not an exception to a Chapter 13 discharge and therefore should be discharged upon completion of the Chapter 13 plan pursuant to subsection 1328(a).

THEREFORE, IT IS ORDERED that Allstate Insurance Company's complaint objecting to dischargeability of debt is overruled and Allstate Insurance Company's debt be discharged pursuant to subsection 1328(a) of the Bankruptcy Code with the condition that Carl Edward Myers completes his payments under his Chapter 13 plan.

SO ORDERED, this the 29 day of December, 1986.


U. S. BANKRUPTCY JUDGE