

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
Kenya Nigeria Andrews,) Case No. 24-12442
)
)
Debtor(s).)

ORDER LIFTING STAY IN PART

This chapter 7 case is before the court sua sponte following status conferences held in two related adversary proceedings: *Manzerine Jackson v. Kenya Nigeria Andrews*, adversary proceeding no. 24-1040; and *Melissa Pope v. Kenya Nigeria Andrews*, adversary proceeding no. 24-1041. In the adversary proceedings, the plaintiffs allege that the debtor's alleged debts to them is nondischargeable under Bankruptcy Code § 523(a)(2).

Prior to this bankruptcy filing, the plaintiffs had initiated state court cases (civil action no. 2023-901702.00 for Ms. Jackson and civil action no. 2023-900169.00 for Ms. Pope) in the Circuit Court of Mobile County, Alabama against the debtor Kenya Nigeria Andrews and others. The state court cases include claims for breach of contract and fraud. The circuit court stayed those cases when the debtor filed for bankruptcy.

The nondischargeability adversary proceedings will be moot if the state court decides in favor of the debtor on the fraud claims. If the state court rules against the debtor on those claims, its findings are likely to have preclusive effect in the nondischargeability case and will at least greatly simplify the issues. *See generally Grogan v. Garner*, 498 U.S. 279 (1991). Allowing the state court cases to proceed to judgment on all claims before moving forward with the nondischargeability adversary proceedings would be a more efficient use of judicial resources.

Thus, this court finds that it is appropriate to lift the automatic stay to allow the adversary proceeding plaintiffs to litigate to a final judgment in state court the civil action nos. identified above.¹ But while this bankruptcy is pending, collection of any money judgment must be through this court unless ordered otherwise; the stay remains in effect as to any money judgment collection against the debtor, her assets, or assets of the bankruptcy estate. The court further orders that the 14-day stay of Bankruptcy Rule 4001(a)(3) shall not apply. This court will send a copy of this order to the state court judge.

If possible, the court requests that any judgment entered by the circuit court include findings on the elements of Code § 523(a)(2). The plaintiffs must prove the elements of § 523(a)(2) by a preponderance of the evidence. *See, e.g., In re Harris*, 3 F.4th 1339, 1344-45 (11th Cir. 2021). This section bars the discharge of any debt “for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition”

Under applicable Eleventh Circuit case law, to except a particular debt from discharge under § 523(a)(2)(A), a creditor must prove that (1) the debtor made a false representation with the intention of deceiving the creditor, (2) the creditor relied on the false representation, (3) the reliance was justified, and (4) the creditor sustained a loss as a result of the false representation.

See In re Ball, No. 23-31153-CLH, 2024 WL 974422, at *2 (Bankr. M.D. Ala. Mar. 6, 2024) (citation and quotation marks omitted).

“[U]nder § 523(a)(2)(A), fraud may be established by either an intentional misrepresentation or representations made with reckless disregard for the truth.” *See id.*, at *4

¹ This lifting of the stay applies retroactively and encompasses the filing of the amended complaint in Melissa Pope’s civil action against the debtor and others to include a claim for fraud.

(emphasis added). “The essence of a claim under § 523(a)(2)(A) is the intent to deceive.” *In re Jewell*, 554 B.R. 169, 171 (Bankr. N.D. Ind. 2016). “It is this actual intent that distinguishes the fraud condemned by § 523(a)(2)(A) from negligence, imprudence, stupidity, or some other innocent error.” *Id.*; *see also, e.g., In re Conkle*, No. 23-12292-SAH, 2024 WL 1460286, at *6 (Bankr. W.D. Okla. Apr. 3, 2024) (negligence or mistake does not rise “to the level of fraudulent intent required for a Section 523(a)(2)(A) claim”). Intent is a subjective issue and a review of the totality of the circumstances is relevant in determining a debtor’s intent. *See, e.g., In re Chamblee*, 510 B.R. 370, 381 (Bankr. N.D. Ala. 2014).

The debtor in this case received a discharge on March 12, 2025. Ms. Jackson and Ms. Pope are the only creditors who filed § 523 nondischargeability actions against the debtor. Thus, to the extent that creditors other than Ms. Jackson and Ms. Pope have pending state court cases against the debtor, the court lifts the stay for the sole purpose of allowing the other creditors to dismiss any state court claims against the debtor as barred by the bankruptcy discharge injunction.

Dated: March 12, 2025


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE