

DOCKET NUMBER: 98-13132

ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: Charlene Nguyen, Tiet Ngoc Nguyen, James King

CHAPTER: 7

ATTORNEYS: P. J. Palughi, Jr., E. A., Jr.

DATE: 5/26/99

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

CHARLENE NGUYEN
TIET NGOC NGUYEN

Case No. 98-13132-MAM-7

**ORDER AND JUDGMENT FINDING THAT JAMES KING HOLDS A
VALID MARITIME LIEN IN THE F/V LITTLE MICHELLE AND THAT
COMMENCEMENT OF AN ACTION *IN REM* TO ENFORCE THIS LIEN
IS NOT PRECLUDED BY THE DISCHARGE INJUNCTION**

Peter J. Palughi, Jr., Mobile, AL, Attorney for Debtor
Evan Austill, Jr., Mobile, AL, Attorney for James King

This matter is before the Court on the motion of James King to reopen this bankruptcy case filed by Charlene Nguyen and Tiet Ngoc Nguyen (debtors) and determine the validity of Mr. King's maritime lien or alternatively, for instruction. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the Court finds that Mr. King has a valid maritime lien in the F/V LITTLE MICHELLE and any action to enforce this maritime lien does not violate the discharge injunction granted in this case.

FACTS

1. On or about July 16, 1997, in the waters off the west coast of Dauphin Island, Alabama, a collision occurred between the F/V LITTLE MICHELLE, owned by the debtors, and the F/V MISS MARGUERITE, owned by Mr. King.
2. Mr. King filed suit in Mobile County District Court against debtors. He received a default judgment on February 12, 1998 in the amount of \$10,000.

3. On September 1, 1998, debtors filed for relief pursuant to chapter 7 of the Bankruptcy Code.

4. On December 2, 1998, debtors received a chapter 7 discharge. This enjoined any creditor whose debts were discharged from instituting or continuing any action to collect these debts.

5. A hearing on this matter was held May 4, 1999. At this hearing, the Court granted the motion to reopen debtors' chapter 7 case and took the remaining issues under advisement. The Court granted debtors and Mr. King the opportunity to file supporting briefs.

6. Debtors do not dispute the existence of Mr. King's *in rem* claim against their vessel.

LAW

A wrongful collision creates a maritime lien in the offending vessel. *Merchants National Bank v. Dredge General G.L. Gillispie, Etc.*, 663 F.2d 1338, 1347 (5th Cir. 1981). The lienor may proceed *in rem* against the offending vessel. *Id.* Debtors did not dispute that the July 16, 1997 collision gave rise to an *in rem* claim against their vessel in favor of the owner of the F/V MISS MARGUERITE, Mr. King. Upon consideration of the argument and briefs, the Court has identified three remaining issues. Each will be addressed below in turn.

A.

Debtors contend that Mr. King is precluded from proceeding *in rem* against their vessel because Mr. King already elected to pursue an *in personam* judgment against them. This is incorrect. The Federal Rules of Civil Procedure Supplemental Rule C(1)(b) (West 1999) provides that "a party who may proceed in rem may also, or in the alternative, proceed in personam against any person who may be liable." Accordingly, Mr. King's suit against the

debtors in state court does not preclude him from also proceeding *in rem* against the debtors' vessel.

B.

The discharge injunction prohibits creditors of the debtors from pursuing claims that were discharged in debtors' chapter 7 case. Notwithstanding this injunction, Mr. King's maritime lien in the F/V LITTLE MICHELLE survived debtors' bankruptcy case and remains in tact. *See, Dewsnup v. Timm*, 112 S. Ct. 773, 778, 116 L. Ed. 2d 903, 502 U.S. 410 (1992) ("Ordinarily, liens and other secured interests survive bankruptcy") (cites omitted). Any action taken by Mr. King to enforce his maritime lien is outside the scope of the discharge injunction. Therefore, commencement of an *in rem* proceeding against the F/V LITTLE MICHELLE by Mr. King will not violate the discharge injunction entered in this case.

C.

Debtors contend that, if granted permission to file for relief pursuant to chapter 13, any attempt by Mr. King to enforce his lien will be stayed. The Court will not address the propriety and effect of a chapter 13 petition unless and until debtors take the appropriate action.

THEREFORE, IT IS ORDERED:

1. James King has a maritime lien in the F/V LITTLE MICHELLE which may be enforced pursuant to a proceeding *in rem*;
2. Enforcement of this *in rem* claim is not subject to the discharge order in which creditors of Charlene Nguyen and Tiet Ngoc Nguyen were enjoined from pursuing discharged claims.

Dated: May 27, 1999

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE