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

In Re:

CHRISTOPHER KENT RILEY, Case No. 16-03076

Debtor.

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WELLS FARGO BANK,

Plaintiff,

v.

CHRISTOPHER KENT RILEY, Adversary Case No. 16-00066

Defendant.

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This adversary proceeding is before the Court on cross-motions for summary judgment filed by plaintiff Wells Fargo Bank, N.A. ("Wells Fargo")[1] and defendant/debtor Christopher Kent Riley ("Riley"). [Docs. 24, 33.] Wells Fargo filed this action under Bankruptcy Code § 523 to seek a portion of Riley's debt to it declared nondischargeable pursuant to a court-approved settlement in Riley's previous bankruptcy case in Florida. Riley contends that the agreement is unenforceable because the order approving the stipulated settlement was not contained in the order dismissing his prior case and because he did not fully understand the consequences of his agreement. For the reasons set forth below, the Court grants Wells Fargo's motion for summary judgment and denies Riley's motion for summary judgment.

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[1] Wells Fargo's predecessor-in-interest was Matsco, a division of Greater Bay Bank, N.A.; the creditor will be referred to interchangeably as Wells Fargo or Matsco throughout this order.

The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the order of reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and the Court has authority to enter a final judgment. The parties have also stipulated that the bankruptcy court can enter a final judgment. [Doc. 12.]

The relevant facts are not in dispute. Riley is a dentist who incurred a large debt to Wells Fargo pursuant to a financing agreement for dental equipment. He filed a Chapter 7 bankruptcy in the Southern District of Florida, Case No. 08-23049, in September 2008. Riley's bankruptcy was turbulent; his initial attorney withdrew and he was pro se for a time, although he later obtained replacement counsel and was represented at the time of the agreement made the subject of this suit. Riley's Chapter 7 trustee filed an adversary proceeding to deny his discharge pursuant to 11 U.S.C. § 727 for failure to reveal certain assets and transfers in his bankruptcy schedules; the trustee then filed a motion for summary judgment. [Doc. 44, Exhibs. 1, 3.] Riley moved to dismiss his Chapter 7 case, and Wells Fargo objected. [Doc. 23, Monceaux Aff., Exhibs. 3, 4.]

Riley and Wells Fargo ultimately entered into a settlement agreement. In October 2009, Riley's attorney filed a "motion for entry of an order approving stipulation of settlement" and a copy of the settlement agreement. [Doc. 23, Monceaux Aff., Exhibs. G, H.] The settlement agreement stipulated to the amount of Riley's debt to Wells Fargo ($849,874.24) and provided for a payment schedule which matured in 2015. The agreement further provided that a portion of Riley's debt to Wells Fargo would be nondischargeable in a later bankruptcy on a "step-down" basis over time:

> 10. Nondischargeability. Notwithstanding anything to the contrary herein, if Riley files another bankruptcy under any chapter of the Bankruptcy Code or an involuntary bankruptcy case is commended against Riley within: (a) the first twelve (12) months after the entry of the Order approving this Settlement Agreement, the sum of $500,000 shall be nondischargeable as to Matsco in any such bankruptcy case; (b) the second twelve (12) month period after the entry of the Order approving this Settlement Agreement, the sum of $400,000 shall be nondischargeable as to Matsco; (c) the third twelve (12) month period after the entry of the Order approving this Settlement Agreement, the sum of $300,000 shall be nondischargeable as to Matsco in any such bankruptcy case; (d) the fourth twelve (12) month period after the entry of the Order approving this Settlement Agreement or at any time thereafter (until the Indebtedness is paid in full), the sum of $200,000 (from the outstanding Indebtedness or Judgment, as the case may be) is nondischargeable as to Matsco in any such bankruptcy case. Payments made either by Riley or on account of Riley, including net proceeds from any sale of the Collateral, shall be credited against any amounts reflected in this paragraph.

On November 10, 2009, the U.S. Bankruptcy Court for the Southern District of Florida conducted a hearing in both the Chapter 7 case and the adversary proceeding on the debtor's motion to approve the settlement and debtor's motion to dismiss the Chapter 7. [Doc. 43, Exhib. A.] The Chapter 7 trustee, Riley's counsel, and Riley attended the hearing in person, and Wells Fargo's counsel participated telephonically. Riley's counsel, although blaming debtor's prior counsel, explained to the court how problems with debtor's schedules put him at risk of not receiving a discharge. [Id., pp. 5-9.] Riley's lawyer and the court then discussed at length how the settlement provided for the nondischargeability of Wells Fargo's debt on a "step down" basis:

> MR. MERRILL (Riley's counsel):
>
> I think we, as counsel, and certainly I know the Court is aware, would look at the lack of full disclosure on the part of the debtor as something that I think would cause him to have been in real peril of losing that discharge.
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> So in this case he is opting, because of those errors, to dismiss the case. And he believes that --

Well, one of the things that I did notice in the case is that it needs to be measured in the context of, what's the best interest not only of the debtor, but of the creditors in the estate. And so the omnibus picture here is, the debtor has an opportunity in several years to obtain a discharge, because he's not going to be able to file a bankruptcy for two years.

The largest creditor in this case is Matsco [Wells Fargo's predecessor-in-interest]. Matsco is actually receiving something extraordinary. They're getting a nondischargeability element as a part of their -- as a part of the settlement. Now that's something that tiers down over the years and payments that Dr. Riley would be making to Matsco, has already begun making to Matsco, in fact, will all credit towards the nondischargeable piece. I believe that they may have sold some security that was at issue here, and he's going to be credited for that.

But eventually, you know, they still will, even in the event he has to file bankruptcy in the future, they will still have this extraordinary relief. And so to the extent that creditors are benefited by the dismissal, in fact, they're obtaining extraordinary relief, at least the primary creditor is.

With respect to other creditors, I notice that no one is here. Just in terms of the history of this case, I know that only one creditor has appeared, and we would, the debtor would submit that she's not actually a creditor at this point, has no claim against him.

….

I think that also based on the result, we're providing something that is in the best interest of the debtor, based on the peril of not being able to receive a discharge in this case, and also with respect to the benefit of creditors actually receiving more than they would otherwise be entitled to, at least in our opinion, with respect to the fact that they're leading this case with a nondischargeable element for any future case. We think that we have met the burden of being permitted to dismiss the case.

All of that argument being said, we probably need to start with the – with whether the Court will approve the settlement agreement between Matsco and Riley.

THE COURT: I think it's all of one piece.

MR. MERRILL (Riley's counsel): Of course.

THE COURT: Let's hear from other parties. But before we do that, part of your representation, Mr. Merrill, was a proffer with regard to potential testimony from Mr. Riley. Is there anybody that has an objection to me accepting that as his testimony in this case?

MS. WHITE-BOYD (Chapter 7 trustee): No objection, Your Honor.

THE COURT: Very good. On the telephone, you're still there?

MR. DOSHI (Wells Fargo counsel): I'm still here. No objection to the proffer, Your Honor.

….

THE COURT: And so I think this is the right outcome in this case. I will find, based on the proffered testimony of Mr. Riley, that there is cause for dismissal of the case. I think that the settlement is appropriate under the circumstances.

I'll approve the settlement in both the adversary proceeding and the main case. You can submit an order on that immediately in each of those, and we'll enter those in the ordinary course.

Then on the dismissal, if you wish to submit an order, I think that would be useful. You'll have to come up with some language to make it effective at a later time, and I'm not sure exactly how we're going to do that, I have to think about that a little bit. I think it might be best to have a short interim order with regard to how it will be handled, and then I'll enter another order at the end of that period, which actually dismisses the case and the adversary proceeding. That way jurisdiction is retained in the meantime.

Oh, going back to the settlement. You may say that I retain jurisdiction to enforce the settlement, obviously.

I'm a little uncomfortable with the provision in the settlement, I should let you know, that effectively makes a future determination with regard to the nondischargeability of a particular debt in a bankruptcy which doesn't exist right now.

I'm going to approve it primarily because my interpretation of that provision is that Mr. Riley would not challenge a discharge complaint under 523 with regard to the claims of Matsco. Now obviously, that is not in front of me.

I'll let you know that in situations involving similar matters, such as automatic relief from stay in a cash collateral order, I literally cross it out. But I

think given the delicate nature of the settlement with Matsco, I'm not going to do that in this case.

Anything else?

MS. WHITE-BOYD (the Chapter 7 trustee): No, Your Honor.

MR. MERRILL (Riley's counsel): No, Your Honor.

THE COURT: Very good. Thank you very much. Good morning all. Good luck, Mr. Riley.

MR. RILEY (debtor): Thank you, Your Honor.

[Id., pp. 7-9, 10-11, 23-25.] The bankruptcy court then entered an order on December 15, 2009 approving the settlement with a copy of the settlement agreement attached:

ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING STIPULATION OF SETTLEMENT

THIS CAUSE came before the Court on Debtor's Motion for Entry of An Order Approving Stipulation of Settlement and the Court having reviewed the file and the Stipulation of Settlement, and being otherwise fully advised in the premises, does hereby, and based on said Stipulation, it is hereby

ORDERED and ADJUDGED as follows:

1. The Motion for Entry of An Order Approving Stipulation of Settlement is hereby granted.

2. The Stipulation is approved and the parties are hereby ordered to comply with the terms of Settlement Agreement. The Settlement Agreement is attached hereto as Exhibit "A".

3. This Court reserves jurisdiction to enforce the terms of this settlement. However, this proceeding is hereby dismissed.

[Doc. 23, Exhib. 7.] The court also entered an order dismissing the Chapter 7 trustee's § 727 adversary proceeding based on the settlement. [Doc. 44, Exhib. 8.]

On February 8, 2009, the Florida bankruptcy court entered a separate order dismissing the Chapter 7 case which again specifically incorporated the settlement agreement:

> ORDER DISMISSING CASE
>
> THIS MATTER came before the Court for hearing on November 10, 2009 upon the *Defendant's Amended Motion to Dismiss with Prejudice* [DE 86] (the "Motion") filed by Christopher Riley (the "Debtor") and upon the *Affidavit* [DE 102] filed by Deborah Menotte (the "Trustee"). For the reasons stated on the record, and with the Court having considered the Motion and the representations made in the Affidavit, and being otherwise fully advised in the premises, it is ORDERED as follows:
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> 1. The Motion [DE 86] is GRANTED.
>
> 2. The Trustee is hereby authorized to disburse any funds received by her in accordance with the settlement agreement authorized by the Court in the December 15, 2009 *Order Granting Debtor's Motion for Entry of an Order Approving Stipulation of Settlement* [DE 97].
>
> 3. The above-captioned bankruptcy case is dismissed with prejudice to the filing of any bankruptcy petition by the Debtor in any United States Bankruptcy Court for a period of two year after the date of entry of this order.

[Doc. 23, Exhib. 8.]

Riley subsequently defaulted on the payment schedule, and Wells Fargo sued him in the U.S. District Court for the Southern District of Alabama. Riley then filed a Chapter 7 in this court, Case No. 16-3076. Wells Fargo filed this adversary proceeding to determine a portion of the debt ($200,000 minus payments and credits) nondischargeable pursuant to the court-approved agreement in the prior Chapter 7. Both sides have moved for summary judgment. [Docs. 24, 33.]

Riley contends that the Florida court's approval of the partial nondischargeability of Wells Fargo's debt is not enforceable under Bankruptcy Code § 349(a) because the stipulation was not contained in the order of dismissal itself. As described above, the Florida court entered

three separate orders based on approval of the settlement -- one approving the settlement, one dismissing the adversary proceeding, and another dismissing the main Chapter 7 case. Bankruptcy Code § 349(a) provides: "Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed …." The Code language does not require the nondischargeability order to be contained in the dismissal order, and Riley has not submitted any cases to that effect. Further, Bankruptcy Code § 727(a)(10) expressly provides for court approval of a debtor's written waiver of discharge, which can apply to either the debtor's discharge or dischargeability of a particular debt. See Lichtenstein v. Barbanel, 161 F.Appx. 461 (6th Cir. 2005).

Debtor complains that Wells Fargo in essence obtained a judgment that its debt was nondischargeable without filing a § 523 action, but debtor has not cited any cases which impose such a requirement. See, e.g., Laing v. Johnson, 31 F.3d 1050 (10th Cir. 1994) (court-approved stipulation of nondischargeability in prior Chapter 11 was binding in subsequent Chapter 7 even though no § 523 action filed in first case).

Riley also contends in affidavit (doc. 24) that he was "overwhelmed, fatigued, depressed, suicidal, and apathetic" at the time of the agreement and "scarcely reviewed" the agreement before signing it. However, Riley has taken no action under Bankruptcy Rule 9024 to set aside the Florida bankruptcy court's order approving the settlement and its orders dismissing his earlier Chapter 7 case and the trustee's § 727 adversary proceeding based upon that settlement. Those orders are res judicata unless set aside; this Court cannot simply ignore another court's orders based upon a party's later argument that the orders (here, granting the party's own

motions) should not have been entered. Norfolk Southern Corp. v. Chevron U.S.A., Inc., 371 F.3d 1285, 1289 (11th Cir. 2004) (order of dismissal incorporating settlement has res judicata effect). Riley further complains that the settlement allowed Wells Fargo to gain an unfair advantage over other unsecured creditors. Riley could have made that argument to the Florida court in 2009, but at that time he wanted the settlement approved and the § 727 action dismissed. If Dr. Riley believes the Florida court's three orders should be invalidated, his remedy is to file a Rule 9024 motion for relief -- not collaterally attack them in this court.

Debtor's affidavit also fails to establish the elements to avoid a signed agreement under Florida law. Debtor does not contend that Wells Fargo or anyone else misled him. His alleged failure to scrutinize the settlement agreement is not a legal excuse under Florida law:

> It has long been held in Florida that one is bound by his contract. Unless one can show facts and circumstances to demonstrate that he was prevented from reading the contract, or that he was induced by statements of the other party to refrain from reading the contract, it is binding. No party to a written contract in this state can defend against its enforcement on the sole ground that he signed it without reading it.

Allied Van Lines v. Bratton, 351 So. 2d 344, 347-48 (Fla. 1977). Debtor here was represented when he signed the settlement agreement, was present in court a month later when his lawyer and the judge discussed the nondischargeability aspect of the agreement, and does not contend he did not have an opportunity to read the agreement.

Wells Fargo has set out in a detailed affidavit with supporting documentation how the figure of $133,078.68 it contends is nondischargeable was calculated. [Doc. 23, Monceaux Aff., pp. 7-9, Exhibs. K-O.] Riley has not submitted any evidentiary material to rebut those calculations. At oral argument, the parties disagreed as to whether Riley is entitled to credit for any future distribution Wells Fargo may receive in Riley's current

Chapter 7. The settlement agreement provides credit for "[p]ayments made either by Riley or on account of Riley …." [Emphasis added.] The broad "on account of Riley" language includes any distribution from his current Chapter 7, so the Court concludes that any such amounts should be credited against the $133,078.68 which is currently nondischargeable.

Under Bankruptcy Code § 523(a)(10), a Chapter 7 debtor is not entitled to a discharge from a debt as to which he waived discharge in a prior Chapter 7. As discussed above, that waiver can be either of a particular debt or all debts. The Court thus finds that there is no dispute as to any material fact and that Riley's court-approved partial waiver of dischargeability as to Wells Fargo's debt bars that debt's dischargeability as a matter of law in this subsequent Chapter 7. The Court grants Wells Fargo's motion for summary judgment pursuant to Bankruptcy Rule 7056 and denies Riley's motion for summary judgment. This Court is not going to enter a money judgment, which Wells Fargo can pursue in U.S. District Court, out of concern over subject matter jurisdiction and because the District Court is better equipped to handle postjudgment collection issues than the bankruptcy court. The Court will enter a judgment of nondischargeability by separate order.

Dated: September 7, 2017

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE