

2025 No. 3 Norton Bankr. L. Adviser NL 1

Norton Bankruptcy Law Adviser | March 2025

Volume 2025, Issue 3

Norton Bankruptcy Law Adviser

Nathaniel R. Hull*

First Circuit

Sanctions

Escamilla v. Dyck-O’Neal, Inc., 661 B.R. 676 (D. Mass. 2024).

Issue: Were letters sent to the plaintiff after entry of the discharge improperly coercive or harassing under an objective standard such that the defendant violated 11 U.S.C.A. § 524(a)?

Holding: The First Circuit has not addressed §§ 524(a)(2) and 105(a) of the Code since the Supreme Court adopted a “fair ground of doubt” standard in *Taggart v. Lorenzen*, 587 U.S. 554 (2019). In this case, the court could not determine on a motion for judgment on the pleadings whether the defendants had an objectively reasonable view of the scope of the plaintiff’s discharge and thus the matter was remanded.

Summary: Plaintiff claimed that letters sent by the defendants violated 11 U.S.C.A. § 524(a) by attempting to collect a debt and enforce a lien, notwithstanding that the second mortgage was “stripped and discharged as an unsecured claim” in the plaintiff’s Chapter 13 case and, at the time of the discharge, the loan and lien were “extinguished.” Defendants moved for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c).

11 U.S.C.A. § 524(a)(2) states that a discharge order “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such [discharged] debt as a personal liability of the debtor, whether or not discharge of such debt is waived” In the First Circuit, a court may invoke 11 U.S.C.A. § 105(a) to enforce the discharge injunction and award actual and punitive damages and attorney’s fees.

The First Circuit has set forth a three-pronged test under 11 U.S.C.A. § 524(a)(2) to establish a violation of the discharge injunction, in which a debtor must demonstrate that a creditor: “(1) has notice of the debtor’s discharge; (2) intends the actions which constitute the violation; and (3) acts in a way that improperly coerces or harasses the debtor.” A court evaluates this latter prong

based on an objective standard, considering the facts and circumstances of each case, including the immediateness of any threatened action and the context in which a statement was made. With respect to the test in the First Circuit governing civil contempt, the elements concern whether “(1) the alleged contemnor had notice that it was covered by the order; (2) the order was clear and unambiguous; (3) the contemnor had the ability to comply with the order; and (4) the order was in fact violated.”

The First Circuit has not addressed §§ 524(a)(2) and 105(a) of the Code since the Supreme Court adopted a “fair ground of doubt” standard in *Taggart v. Lorenzen*, 587 U.S. 554 (2019), pursuant to which a finding of civil contempt “may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope.” *Taggart*, 587 U.S. at 562. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor’s conduct might be lawful. *Id.* at 557 (emphasis in original).

In this case, the court reflected on three letters that defendants sent concerning (1) their purported “lien rights” and requesting how plaintiff wished to proceed; (2) the amount of outstanding debt; and (3) plaintiff’s “Right to Cure” and potential foreclosure. With respect to the defendants’ argument that, under *Taggart*, they displayed an objectively reasonable view of the governing statutes, the court stated that it could find not as much on such a limited record. However, perhaps foreshadowing things to come, the court noted that the defendants “do not address the abundant authority in this circuit and the majority of circuits that, in Chapter 13 bankruptcy cases, a debtor has the ability to ‘strip off’ a mortgage lien that is found to have no value because the amount of a senior mortgage lien and encumbrances exceed the value of the residence.”

Chapter 13 Plan

In re Blumsack, 657 B.R. 505 (BAP 1st Cir. 2024).

Issue: Does the nature of a debtor’s employment in the cannabis industry by itself render the debtor categorically ineligible to file a Chapter 13 case?

Holding: The nature of the debtor’s employment in the cannabis industry, by itself, does not render him ineligible to file a Chapter 13 case. However, this debtor’s Chapter 13 plan would have funneled his income from the dispensary into the trustee’s office, and then to creditors, bringing the proceeds of illegal activity into the administration of the bankruptcy case. Therefore, the debtor’s plan did not satisfy § 1325(a)(3) and there was no error by the Bankruptcy Court dismissing the case and not providing the debtor leave to file an amended plan.

Summary: The Chapter 13 debtor worked as a “budtender” at a cannabis dispensary in Massachusetts, where state law permits the retail sale of marijuana. The debtor initially proposed

a Chapter 13 plan that would have been partially funded with earnings from his employment at the dispensary. The United States Trustee asked the Bankruptcy Court to deny confirmation of the debtor's plan and to dismiss his case, citing the good faith requirement of the Controlled Substances Act (the "CSA"). The Bankruptcy Court granted both requests, and the debtor appealed.

In the Trustee's view, the debtor's employment at the dispensary should: "(1) preclude a good faith finding regardless of whether the debtor's wages fund the plan; and (2) more generally bar the debtor from obtaining bankruptcy relief." In adopting a categorical rule that a debtor employed in the marijuana industry lacks good faith for purposes of § 1325(a)(7), the Bankruptcy Court established a bar to eligibility. On appeal, the BAP held that "Congress has not articulated a 'zero-tolerance' policy that requires dismissal of any bankruptcy case involving violation of the CSA." Therefore, the Bankruptcy Court erred in fashioning a rule of law that categorically prohibits an individual employed in the cannabis industry from seeking Chapter 13 relief. However, this particular debtor's case was properly dismissed for cause, and, although the BAP disagreed that the debtor's Chapter 13 petition was filed without the requisite good faith for purposes of § 1325(a)(7), it agreed that the plan was not proposed in good faith as required by § 1325(a)(3). The proposed plan would have been "directly funded by the proceeds of illegal activity," and thus "per se, proposed in bad faith." Although the BAP determined that the Bankruptcy Court properly denied confirmation and did not abuse its discretion in denying the debtor an opportunity to file a modified plan, it did not rule out the possibility that a future debtor may be able to benefit from a Chapter 13 bankruptcy filing under different circumstances.

Involuntary Petitions

In re HH Technology Corp., 659 B.R. 788 (BAP 1st Cir. 2024).

Issue: Does a creditor have an "absolute, unfettered right" to intervene as an involuntary petitioner?

Holding: Addressing a circuit split, the First Circuit BAP held that a creditor does not have an absolute, unfettered right to intervene as an involuntary petitioner and, instead, a bankruptcy court may set a deadline for creditors to intervene as involuntary petitioners.

Summary: A creditor held a foreign judgment against a corporation that operated in Massachusetts, which it domesticated, and the judgment debtor subsequently effected an assignment for the benefit of creditors (the "ABC"). Then, the judgment creditor, which had not consented to the ABC, filed an involuntary Chapter 7 petition against the debtor. After the Assignee moved to dismiss the petition (which the debtor joined) on the bases that a minimum of three petitioning creditors were required and the debtor had more than eleven creditors, the bankruptcy court established a deadline for other creditors to join as involuntary petitioners. A second creditor joined as an involuntary petitioner not long thereafter. About eight weeks after the deadline, a third

creditor moved to intervene as an involuntary petitioner (which had also previously consented to the ABC). However, the Bankruptcy Court did not allow this third creditor to join, given it had missed the previously-established deadline. The court subsequently held a trial and dismissed the involuntary petition, after determining that the debtor had fifteen creditors.

On appeal, the third creditor claimed “it had a statutory right under § 303(c) to join the involuntary petition,” which, in its view, was an “unfettered” one and stripped the Bankruptcy Court of “any discretion whatsoever to set the” deadline. Analyzing Section 303(c) and Rule 1003(b), the BAP homed in on the language in Rule 1003(b) providing that, where “it appears that there are 12 or more creditors as provided in § 303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.” The BAP also reviewed and acknowledged that other circuit courts are “divided on the question of whether the right to join an involuntary petition under § 303(c) is unrestricted.” Still, following the Sixth Circuit’s prior holding that “bankruptcy courts may set a deadline for creditors to join in an involuntary petition, notwithstanding the provisions of § 303(c),” the BAP reasoned that (1) setting and enforcing a deadline comported with the “inherent authority” of courts to “manage their dockets and courtrooms,” (2) motions to intervene have a “timeliness requirement” under Rule 24, and (3) it was appropriate for the court to consider other facts, such as the third creditor’s prior consent to the ABC.

*
— *Verrill Dana LLP, Portland, Maine.*

Westlaw. © 2025 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

End of Document

© 2026 Thomson Reuters. No claim to original U.S.
Government Works.