

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
DIANE MINNIS, ) CASE NO. 05-63206-jpk  
 ) Chapter 7  
Debtor. )

ORDER REGARDING MOTION TO REOPEN CASE ("MOTION")

\_\_\_\_\_The Motion was filed April 14, 2008, by the Debtor, proceeding without representation by counsel. Contemporaneously with the filing of the motion, the Debtor filed the document designated as "Verified Motion for Temporary Injunction". Both the Motion and the Verified Motion allege that creditors of the debtor have violated the post-discharge injunction effected by 11 U.S.C. § 524(a)(2).

The course pursued by the motion is a procedurally complicated path. The sole focus of the Court's concern in this order is the proper mechanism by which the proceeding sought to be initiated by the motion is to be presented to the Court: whether that proceeding may be commenced as a contested matter under B.R. 9014, or whether it must proceed as an adversary proceeding under B.R. 7001, *et seq.* The Court concludes that the remedies sought by the debtor must be pursued by means of an adversary proceeding.

The Court concurs with the reasoning of *In re Rimsat, Ltd*, 208 B.R. 910 (Bankr. N.D.Ind., Ft. Wayne Div. 1997), in which it was held that under applicable Seventh Circuit cases, the remedy of contempt may only be utilized for the violation of a court order.<sup>1</sup> In *Rimsat*, the precise issue was the procedural mechanism by which an action for violation of the

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<sup>1</sup>As stated in *United States v. Dowell*, 257 F.3d 694, 699 (7<sup>th</sup> Cir. 2001):  
"A court's civil contempt power rests in its inherent limited authority to enforce compliance with court orders and ensure judicial proceedings are conducted in an orderly manner." *Jones v. Lincoln Electric Co.*, 188 F.3d 709, 737 (7<sup>th</sup> Cir. 1999). For Morano to be held in civil contempt, he must have violated an order that sets forth in specific detail an unequivocal command from the court. *See id.* (quotations omitted).

automatic stay of 11 U.S.C. § 362(a) could be pursued; the court concluded that because that statute does not implicate a court order, an adversary proceeding under B.R. 7001(1) and (7) was the proper mechanism for pursuing the remedies sought by the debtor.<sup>2</sup> In *Cox v. Zale Delaware, Inc.*, 939 F.3d 910 (7<sup>th</sup> Cir. 2001), the United States Court of Appeals for the Seventh Circuit stated that “a suit for violation of section 524©) can be brought only as a contempt action under section 524(a)(2)”. The case does not address the procedural mechanism by which the “contempt action” is to be pursued, and the facts of the case indicate that in all probability the underlying action in the bankruptcy court was an adversary proceeding rather than a contested matter initiated by a motion. The true issue in *Cox* was whether the action sought by the debtor in that case was properly the subject of a proceeding before the bankruptcy court, or more properly the subject of a suit for rescission of a contract in a court other than the bankruptcy court. Thus, *Cox* really has no relevance to the issue addressed by this order.<sup>3</sup>

The essential remedies sought by the above-designated motions are an injunction prohibiting further collection action by the putative defendants and sanctions, which appear to include the recovery of money obtained from the debtor following the entry of the order of discharge. These types of remedies are specifically those provided for by B.R. 7001(1) and (7), and thus those remedies must be sought by an adversary proceeding.

IT IS ORDERED that the Clerk shall reopen Case No. 05-63206, and that no trustee

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<sup>2</sup>The nature of the remedies for violation of 11 U.S.C. § 362(a) are specifically provided by 11 U.S.C. § 362(k). It should be noted that there is no counterpart to § 362(k) in 11 U.S.C. § 524; however, the extent of available remedies for an established violation of 11 U.S.C. § 524(a)(2) is not necessary to the determination made by this order as to the procedural mechanism by which any such possible remedies may be sought.

<sup>3</sup>It should also be noted that there is language in *Cox* to the effect that the bankruptcy court has the power of civil contempt to enforce its order by which the debtor’s discharge is granted. However, the order of July 12, 2003 by which the debtor’s discharge in this case was granted is strictly an order granting the discharge: there is no portion of this order that implements the provisions of 11 U.S.C. § 524(a) by means of a direct order from the Court. Rather, the reverse side of the July 12, 2003 order merely references the effect of granting the debtor’s discharge as that effect is dictated by applicable statutes and rules.

shall be appointed at this time with respect to further administration in relation to this case.

IT IS FURTHER ORDERED that any relief sought by the Debtor other than reopening of the case in the Motion, and all relief sought by the debtor in the Verified Motion for Temporary Injunction filed on April 14, 2008, is Denied, without prejudice to the Debtor's initiating an adversary proceeding with respect to the remedies sought by those motions, in accordance with applicable law and rules.

Dated at Hammond, Indiana on April 25, 2008.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor  
Trustee, US Trustee