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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re
MONICA EMILIE JOHNSON.

Debtor.

Chapter 7
Case No. 2:08-bk-13937-SSC

(Not for Publication- Electronic Docketing
ONLY)

MEMORANDUM DECISION
CLARIFYING COURT’S RULING ON THE
RECORD

On April 29, 2009, this court conducted a hearing on whether Sherwood Park Homeowners Association (“Homeowners’ Association”), had violated the discharge injunction under 11 U.S.C. §524. Ms. Elise Saadi appeared on behalf of the Homeowners’ Association, and Ms. Johnson appeared telephonically.

After reviewing the letters sent to Ms. Johnson, the Court concludes that the Homeowners’ Association was requesting that Ms. Johnson remove debris or other items from the front of her condominium unit which might have caused a health and/or safety issue. To the extent that these actions were done prior to the entry of her discharge order, they are not a violation of the automatic stay. 11 U.S.C. § 362(b) (4). Section 524, after the entry of the discharge injunction, focuses on the prohibition by a creditor of collection on an obligation that is a personal liability of the debtor. However, the discharge injunction does not prohibit a creditor from stopping or prohibiting a health or safety violation. In re Price, 383 B.R. 411 (Bankr. N.D. Ohio 2007). Thus, the Court cannot conclude that any action by the Homeowners’

1 Association was a violation of the discharge injunction.

2 A separate issue arose as to the post-petition collection efforts of the
3 Homeowners' Association to recover fines or assessments due and owing by the debtor, and
4 whether those actions were a violation of the discharge injunction. Ms. Johnson stated that at the
5 Section 341 Meeting of Creditors, she notified her chapter 7 trustee that she would no longer
6 retain possession of her condominium unit. However, neither the Homeowners' Association nor
7 the creditor with the first lien on the condominium unit was present at the Meeting. The secured
8 creditor independently took action to foreclose its interest in the unit. The debtor stated that she
9 notified the Homeowners' Association by a letter dated February 17, 2009, that she had vacated
10 the condominium unit and that it should cease collection efforts against her. Counsel for the
11 Homeowners' Association advised the Court that the trustee's sale of the debtor's property
12 occurred on March 23, 2009, or the Trustee's deed upon sale was recorded on March 23, 2009,
13 but that she had no record of any letter received from the debtor as to the debtor's abandonment
14 of the unit.

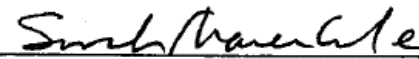
15 The Court advised the parties at the hearing that if a creditor has a valid, pre-
16 petition lien, that lien "carries through" the bankruptcy proceedings. Dewsnup v. Timm, 502
17 U.S. 410, 112 S. Ct. 773 (1992). The Court also stated that the anti-deficiency judgment statute
18 in Arizona prohibits a lien creditor from pursuing a personal liability against a debtor, if the
19 creditor is not paid in full after a foreclosure sale of the real property. A.R.S. § 33-729. The
20 Court also cited the parties to 11 U.S.C. §523(a)(16), which states that certain post-petition fines
21 and assessments from a homeowners' association shall not be discharged under Section 727 of
22 the Bankruptcy Code. Thus, the Court concluded that to the extent that the Homeowners'
23 Association was pursuing the debtor for any post-petition fines or assessments that arose prior to
24 the Trustee's Sale on the unit, the debtor would be responsible for those fines or assessments.
25 However, to the extent that those fines or assessments arose pre-petition, they would be

1 discharged.¹ Although the pre-petition fines and assessments may have been a lien against the
2 real property at the time of the Trustee's Sale, counsel for the Homeowners' Association
3 believes that the Association was not entitled to a lien priority under Arizona law and the pre-
4 petition liability would have been extinguished, as a lien, as result of the Trustee's Sale. That
5 pre-petition liability also would have been extinguished as a personal liability of the debtor. 11
6 U.S.C. §523(a)(16).

7 At the conclusion of the hearing, counsel for the Homeowners' Association stated
8 that approximately \$700 was due and owing by the debtor to the Association. The Court wishes
9 to clarify that counsel should advise the debtor solely of the liability for fines or assessments
10 which has accrued after the debtor filed her bankruptcy petition on October 9, 2008 up to the
11 date of the Trustee's Sale, which counsel believes to be March 23, 2009. Any other liability has
12 been discharged.

13 Based upon the foregoing, the Court concludes that Sherwood Park Homeowners
14 Association did not violate the discharge injunction of 11 U.S.C. §524.

15
16 DATED this 1st day of May, 2009

17 

18
19 Honorable Sarah Sharer Curley
20 United States Bankruptcy Judge

21 **Notice of this Decision Mailed To:**

22 Maxwell & Morgan
23 Elise V. Saggi
24 2500 S. Power Road, Suite 103
25 Mesa, Arizona 85209

26 **1.** The Court specifically read into the record the language that “nothing in this
27 paragraph [Section 523(a)(16)] shall except from discharge the debt of a debtor for a
28 membership association fee or assessment for a period arising before the entry of the order for
relief in a pending or subsequent bankruptcy case. . .”

1 *Attorneys for Respondent*

2 Sherwood Park Homeowners Association
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3 Mesa, AZ 85210
Respondent

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5 Monica Johnson
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Bath, ME 04530
6 *Debtor*

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