

#S-3

signed 4-12-04

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In Re:**

**WILLIAM ZELLARS GADDY, III,  
  
DEBTOR.**

**CASE NO. 02-16042-7  
CHAPTER 7**

**J. MICHAEL MORRIS, Trustee,  
  
PLAINTIFF,**

**ADV. NO. 03-5299**

**v.**

**WILLIAM ZELLARS GADDY III,  
  
DEFENDANT.**

**MELINDA HAZELTON,**

**PLAINTIFF,**

**ADV. NO. 03-5004**

**v.**

**WILLIAM ZELLARS GADDY III,  
  
DEFENDANT.**

**ORDER DENYING RELIEF FROM DEFAULT JUDGMENT  
IN ADV. NO. 03-5299, AND DISMISSING ADV. NO. 03-5004 AS MOOT**

These proceedings are before the Court as a result of a letter received from the defendant in both proceedings, Debtor William Zellars Gaddy, III, attempting to invoke protections afforded by the Soldiers and Sailors Civil Relief Act of 1940 (the SSCRA). The Court issued a show cause order in Adv. No. 03-5299, and scheduled a status conference in Adv. No. 03-5004. Sarah L. Newell appeared at the show cause hearing on behalf of Plaintiff-Trustee J. Michael Morris, and indicated the Trustee would not be

submitting a brief on the question of the Debtor's ability to invoke the SSCRA. Broc E. Whitehead appeared at the status conference as counsel for plaintiff Melinda Hazelton, and has submitted a brief opposing the Debtor's ability to invoke the SSCRA. The Court has considered all the relevant materials in both proceedings and in the main bankruptcy case, and is now ready to rule.

## **I. Facts**

In 2001, the Debtor sued Melinda Hazelton in a Kansas state court in Wichita, and Hazelton asserted a counterclaim for damages for the tort of outrage. The suit came on for trial on December 3, 2002, but the Debtor did not appear. The court found the Debtor in default and granted Hazelton a judgment for about \$245,700. That same day, the Debtor filed a voluntary Chapter 7 bankruptcy petition, listing Hazelton as an unsecured creditor with a disputed tort claim for \$284,000. The Debtor indicated he was then living in Wichita. Hazelton filed Adv. No. 03-5004 in January 2003, seeking a determination that her judgment was excepted from discharge by 11 U.S.C.A. §523(a)(6).

J. Michael Morris was appointed as the trustee for the Debtor's case. He sought certain information from the Debtor, and eventually obtained an order compelling the Debtor to provide the information. In April 2003, shortly after the order to compel was entered, the Debtor's attorney moved to withdraw from representing him in both the main case and Adv. No. 03-5004 because the Debtor had not maintained contact with him. The attorney served the motions by certified mail to an address in Georgia. The mail receipt shows that the Debtor received them there.

The Trustee later asked the Court to find the Debtor in contempt and impose sanctions for failing to supply the information as ordered. In July 2003, the Court issued an order directing the Debtor to appear and show cause why he should not be held in contempt. In that order, the Court noted that a Georgia attorney had communicated with the Trustee, indicating that the Debtor was working for a private contractor doing work for the Department of Defense under a government contract and might be deployed overseas. When the Debtor failed to appear as ordered, the Court found him in contempt and granted sanctions against him.

In September 2003, the Trustee filed the complaint that was assigned Adv. No. 03-5299, seeking turnover of tax refunds, and revocation or denial of the Debtor's discharge for failure to obey a court order. A summons and copy of the complaint were served on the Debtor by mail sent to the same Georgia address where his attorney had sent his April motions to withdraw. The Debtor filed no answer. Toward the end of October, the Trustee filed a motion for default judgment.

Also in October, in Adv. No. 03-5004, Hazelton filed a motion for summary judgment, serving the Debtor at the Georgia address where the motions to withdraw and the summons in Adv. No. 03-5299 had been mailed. In November, the Clerk sent a letter to the Debtor at the Georgia address, notifying him that he had 10 days to respond to the motion. The Debtor responded with a letter from that Georgia address, saying, "I deny any and all allegations" in the motion.

On December 5, 2003, the Clerk received a letter from the Debtor in which he asserted that he had “been deployed as a civilian serving with the U.S. Army in [Baghdad], Iraq and expect[ed] to be there for a period of 18 to 24 months.” He sought to invoke the SSCRA, and asked that all proceedings be stayed until he returned to the United States and could hire an attorney here in Kansas. A few days later, unaware of the Debtor’s letter to the Clerk, the Court signed an order submitted by the Trustee that granted his motion for default judgment in Adv. No. 03-5299. Among other things, the judgment revoked or denied the Debtor’s discharge under 11 U.S.C.A. § 727 because he had failed to obey a lawful order of the Court. It appears no discharge has ever been entered in the main bankruptcy case, so the judgment effectively denied, rather than revoked, the discharge.

Later, the Clerk brought the Debtor’s December 5 letter to the Court’s attention. The Court then issued an order to show cause why the judgment in Adv. No. 03-5299 should not be set aside because the Debtor had invoked the SSCRA. The Court scheduled a status conference in Adv. No. 03-5004 to be held at the same time. At the hearing on those matters, the Court was informed that the Trustee would not be doing any legal research about the SSCRA. Initially, the Court decided to set aside the default judgment, but reconsidered because Ms. Hazelton’s attorney has submitted a brief on the question.

## II. Discussion

The Debtor's December 5, 2003, letter was submitted after he had already defaulted in Adv. No. 03-5299 by failing to file an answer to the complaint and failing to respond to the Trustee's motion for default judgment. However, the Clerk received it before the judgment was actually entered, and the Court believes it must be construed to ask for relief from the Debtor's defaults, and be treated as a timely motion for new trial under Federal Rule of Bankruptcy Procedure 9023, which makes Civil Rule 59 apply to essentially all matters and proceedings in bankruptcy cases. If the Debtor was entitled to a stay in Adv. No. 03-5299, the Court believes it would have to set aside the default and grant him a new trial.

A timely motion under Rule 9023 prevents a judgment from becoming a final, appealable order.<sup>1</sup> In December 2003, Congress amended the SSCRA, renaming it the "Servicemembers Civil Relief Act."<sup>2</sup> The new SSCRA took effect on December 19 and applies "to any case that is not final" before that date.<sup>3</sup> Because the judgment in Adv. No. 03-5299 is not yet final, the SSCRA controls the Debtor's right to claim protection under it.

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<sup>1</sup>Fed. R. Bankr. P. 8002(a) & (b).

<sup>2</sup>Servicemembers Civil Relief Act of 2003, Pub. L. No. 108-189, 117 Stat. 2835.

<sup>3</sup>Pub. L. No. 108-189, § 3.

SSCRA § 201(g) authorizes a “servicemember” to have a default judgment set aside under certain circumstances,<sup>4</sup> and SSCRA § 202(a) and (b) authorize him or her to obtain a stay under certain circumstances of a civil action of which the servicemember has notice,<sup>5</sup> so the Act could provide relief for the Debtor in these proceedings if it applies to him. The question is whether the Debtor qualifies as a “servicemember” under these provisions. SSCRA § 101(1)<sup>6</sup> provides that for purposes of the Act, “servicemember” means a member of the “uniformed services” as defined in 10 U.S.C.A. § 101(a)(5). Actually, subsection (a)(4) defines one of the terms used in (a)(5), so the Court will quote them both here:

- (4) The term “armed forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.
- (5) The term “uniformed services” means —
  - (A) the armed forces;
  - (B) the commissioned corps of the National Oceanic and Atmospheric Administration; and
  - (C) the commissioned corps of the Public Health Service.<sup>7</sup>

Clearly, none of these groups includes a civilian employee of a private contractor, even one engaged in work supporting the uniformed services, and that is all the Debtor claims to be.

Section 104 of the SSCRA has carried forward the only specific provision of the SSCRA that the Debtor and his Georgia attorney appear ever to have cited in any of their letters to the Trustee and the Clerk.<sup>8</sup> Section 104 extends the Act’s protections to a U.S.

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<sup>4</sup>To be codified at 50 App. U.S.C.A. § 521(g).

<sup>5</sup>To be codified at 50 App. U.S.C.A. § 522(a) & (b).

<sup>6</sup>To be codified at 50 App. U.S.C.A. § 511(1).

<sup>7</sup>10 U.S.C.A. § 101(a)(4) & (5) (West 2004).

<sup>8</sup>See 50 App. U.S.C.A. § 514 (amended by SSCRA § 104).

citizen serving in a foreign country's military if certain conditions are met. It provides, in relevant part:

A citizen of the United States who is serving with the forces of a nation with which the United States is allied in the prosecution of a war or military action is entitled to the relief and protections provided under this Act if that service with the allied force is similar to military service as defined in this Act.<sup>9</sup>

The Debtor has not asserted that he is serving in any foreign country's military. This provision clearly does not apply to someone who is simply a civilian employee of a private contractor doing work for the uniformed services of the United States.

Besides SSCRA § 104, some other provisions make the protections of the Act available under limited circumstances to someone who is not a member of the uniformed services as defined in 10 U.S.C.A. § 101(a)(5). Section 103 authorizes a court that has granted a stay under the Act to extend the stay to another person who is also liable or obligated on the stayed matter.<sup>10</sup> Section 106(a) extends the protections to a member of a reserve component who is ordered to report for military service,<sup>11</sup> and §106(b)<sup>12</sup> extends them to a person ordered to report for induction under the Military Selective Service Act.<sup>13</sup> In addition, § 109 provides that when the term "servicemember" is used in the SSCRA, it includes an attorney acting on behalf of a servicemember and an individual with a power of

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<sup>9</sup>To be codified at 50 App. U.S.C.A. § 514.

<sup>10</sup>To be codified at 50 App. U.S.C.A. § 513.

<sup>11</sup>To be codified at 50 App. U.S.C.A. § 516(a).

<sup>12</sup>To be codified at 50 App. U.S.C.A. § 516(b).

<sup>13</sup>50 App. U.S.C.A. § 451, *et seq.*

attorney for a servicemember.<sup>14</sup> But none of these provisions would apply to the Debtor as a civilian employee of a private contractor doing work for the uniformed services of the United States.

Under the circumstances, the Court concludes that the Debtor is not entitled to the protections of the SSCRA. Consequently, the Debtor is not entitled to have the default judgment set aside in Adv. No. 03-5299, and is not entitled to a stay in Adv. No. 03-5004. Because the judgment in Adv. No. 03-5299 denied the Debtor a discharge of any debts under 11 U.S.C.A. § 727 for failing to obey a lawful order of the Court, the dischargeability complaint in Adv. No. 03-5004 is now moot. There is no need to except one particular debt from discharge since the Debtor will not receive a discharge of any debts in his bankruptcy case.

IT IS SO ORDERED.

Dated this \_\_\_\_\_ day of April, 2004.

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DALE L. SOMERS  
BANKRUPTCY JUDGE

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<sup>14</sup>To be codified at 50 App. U.S.C.A. § 519.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the above **ORDER DENYING RELIEF FROM DEFAULT JUDGMENT IN ADV. NO. 03-5299, AND DISMISSING ADV. NO. 03-5004 AS MOOT** were mailed via regular U.S. mail, postage prepaid, on the \_\_\_\_\_ day of April, 2004, to the following:

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Vicki D. Jacobsen, Judicial Assistant to The Honorable  
Dale L. Somers, United States Bankruptcy Judge