SO ORDERED.

SIGNED this 19 day of May, 2005.

JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:	)	
STEVEN E. LEGGITT, SR. and	)	
CINDY ANN LEGGITT	)	**Case No. 01-40740**
	)	**Chapter 7**
Debtors.	)	
	)	

MEMORANDUM OPINION AND ORDER DENYING MOTION TO RECONSIDER, TO AMEND OR ALTER JUDGMENT AND TO MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter is before the Court on Margarito Garcia's, and his counsel's, Motion to Reconsider, to Amend or Alter Judgment, and to Make Specific Findings of Fact and Conclusions of Law.[1] Garcia and his attorneys (the "Movants") are seeking reconsideration of the Court's order entered April 20, 2005, which found that Movants had violated the terms of the Debtors' discharge order by pursuing a post-

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[1]Doc. 113.

discharge cause of action for money damages arising out of, at least in part, pre-petition actions of the Debtors.[2]

On February 22, 2005, the Court issued a bench ruling, finding that 11 U.S.C. § 524 prohibits the attempt to collect any debt that has been discharged pursuant to 11 U.S.C. § 727, and that Movants were violating the terms of the Debtors' discharge order by pursuing a cause of action in state court based, at least in part, on a debt or debts discharged in the Debtors' bankruptcy. The February 22, 2005 ruling was formalized in a written opinion on April 20, 2005,[3] finding the Movants in contempt for violating the Debtors' discharge order. The Movants now seek to alter the April 20, 2005 order finding them in contempt.

Standard of Review

The legal standard for granting a motion for reconsideration is narrow. "A motion for reconsideration should be granted only to correct manifest errors of law or to present newly discovered evidence."[4] "Such motions are not appropriate if the movant only wants the Court to revisit issues already addressed or to hear new arguments or supporting facts that could have been presented originally."[5]

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[2]Doc. 111.

[3]The parties were unable to agree on the contents of the order, which this Court directed Debtors' counsel draft, as the prevailing party, so the Court settled the disagreement and entered the order on April 20, 2005.

[4]*Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, n. 5 (10th Cir. 2000) (internal quotations omitted).

[5]*Zhou v. Pittsburg State Univ.*, 252 F. Supp. 2d 1194, 1199 (D. Kan. 2003) (citing *Van Skiver v. U.S.*, 952 F.2d 1241, 1243 (10th Cir. 1991).

Analysis

The motion for reconsideration first seeks reconsideration on the basis that there is no substantial competent evidence to support a finding that by prosecuting the Shawnee County District Court case against Debtors, Movants are in contempt of the discharge order. Movants also ask the Court to amend or alter the order by making several additional findings of fact and conclusions of law. As a preliminary matter, Movants have failed to describe, in any way, which portions of the Court's April 20, 2005 order were not supported by substantial competent evidence. The Court's order held that to the extent Garcia was seeking to collect any debt based upon pre-petition actions of the Debtors, other than the collection of the $1,451.71, plus interest, that was found non-dischargeable by Judge Pusateri in Adversary No. 01-7141, Movants were violating the Debtors' discharge order. The Court has again reviewed the record in this case and finds that its order is supported by substantial competent evidence, and that Movant's motion for reconsideration on that ground is denied.[6]

Movants have also asked the Court to make additional findings of fact and conclusions of law. First, the Movants have asked the court to find that "The Order of Non-Dischargeability of Judge Pusateri

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[6]Movants attached a copy of Garcia's state court petition as an exhibit to two separate pleadings filed in this bankruptcy, Doc. Nos. 78 and 96, and this Court has taken judicial notice of the contents of that petition, pursuant to Federal Rule of Civil Procedure 201. That pleading notes as its factual foundation the existence of the installment contract that was the subject of Garcia's Adversary Proceeding, the failure of Debtors to pay certain real estate taxes, and action taken by Debtors "December 3, 1998, June 11, 1999 and June 14, 2000," all of which occurred prior to the filing of Debtors' petition on March 27, 2001. The Petition specifically refers to the very conduct upon which the Adversary Proceeding was based, and then asks for in excess of $75,000 plus attorney fees as damages for conduct that the Petition specifically notes was taken prior to the filing of bankruptcy. Although this Court has not ruled that no part of the State court proceeding can continue, it has ruled that any action arising out of any pre-petition conduct cannot proceed, as barred by the discharge order and as coupled with the decision in the Adversary Proceeding.

subjects itself to more than one interpretation and there is no evidence that Margarito Garcia and his counsel intentionally violated the said Order." The issue before the Court in this matter was whether Movants were violating Debtors' discharge order by pursuing the state court action. Essentially, Debtors simply wanted the state court action to cease; they were not seeking sanctions.

The Court heard no evidence, and did not find, that Movants' actions were willful or intentional. This Court did note in its oral ruling, and reiterates herein, that a careful reading of Judge Pusateri's bench ruling dated October 10, 2002,[7] coupled with a solid understanding of the rules of claim preclusion and bankruptcy law, make it abundantly clear that Garcia raised, and Judge Pusateri decided, that only a small portion of the debt owed was nondischargeable, and that further litigation on the same issue would be barred. This Court did not need to, and did not, consider whether Movants simply did not understand bankruptcy law and principles of claim preclusion sufficiently to know that at least part of the action was barred, or whether their acts were intentionally violative of the discharge order. The only finding made by this Court was that a violation had occurred, and that any litigation over conduct arising pre-petition must cease. The Court made and makes no finding as to whether such a violation was intentional, or merely negligent.

The second, third, fourth, and fifth requested findings of fact and conclusions of law all deal with when Garcia either learned of Debtors' allegedly improper conduct, when Garcia incurred expenses related to Debtors' allegedly improper conduct, or when certain damages arose based upon Debtors' allegedly improper conduct. The Court denies the Movants' requests for these additional findings of fact and

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[7]Doc. 23, 24, and 25 in Case No. 01-7141, from proceedings held October 10, 2002.

conclusions of law on the basis that they are not necessary to the determination of the issue before the Court.

The issue before the Court was whether Garcia, and his attorneys, were seeking to collect on a debt, based upon pre-petition actions of the Debtors, that was discharged in Debtors' bankruptcy. The Court found then, as it does now, that any action to collect any debt based upon pre-petition actions by the Debtors (regardless of when the conduct was discovered or when the damages from that conduct became known), other than the collection of the $1,451.71, plus interest, that was found non-dischargeable by Judge Pusateri in Adversary No. 01-7141, violates Debtors' discharge order.

Finally, in the sixth and seventh requested findings of fact and conclusions of law, Movants ask the Court to find that Garcia sought his costs and attorney's fees related to his attempts to collect on the non-dischargeable debt in Adversary No. 01-7141, and that the request for costs and fees was not denied, and thus, impliedly, can be pursued again in state court. The Court agrees that Garcia did pray for an order finding his attorney fees and costs to be non-dischargeable in the Adversary Proceeding,[8] which means the issue was raised. However, such a claim was not granted by the Court in its final order, and thus was implicitly denied.[9] Garcia, nor counsel, have suggested, let alone proved, that they were denied the

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[8]Doc. 1, Case No. 01-7141 at page 3.

[9]*See Koch v. City of Hutchinson*, 814 F.2d 1489, 1493 (10th Cir. 1987) (holding that res judicata encompasses two distinct doctrines, issue preclusion and claim preclusion. For present purposes, issue preclusion prohibits the relitigation of facts and questions that were in issue in a previous action between the same parties, and which were actually litigated. Claim preclusion, on the other hand, prohibits a party from re-asserting a previously adjudicated cause of action. Claim preclusion, unlike issue preclusion, prohibits a party from asserting any matter that might have been asserted in the previous cause of action); *Carter v. City of Emporia, Kan.*, 815 F.2d 617, 620 (10th Cir.1987) *citing Wells v. Ross*, 204 Kan. 676, 678, 465 P.2d 966, 968 (1970) (holding that Kansas courts have invoked the doctrine of claims preclusion when the following four conditions are satisfied: (1) identity in

procedural, substantive, or evidentiary opportunity to be heard on the claim for attorney fees in the Adversary Proceeding litigation, and therefore further litigation on this issue is now barred.[10]

Additionally, and as this Court has previously noted, the Journal Entry in the Adversary Proceeding was drafted by counsel for Garcia, who now seeks the Court's reconsideration. If Movants truly believed they were entitled to an award of attorney fees and costs in the Adversary Proceeding, as a result of obtaining the $1,451.71 judgment, they should have expressly included that award in the Journal Entry presented to Judge Pusateri for approval. They failed to do so, and then they failed to appeal the final order, which essentially by its silence denied any requested relief other than that which was explicitly granted therein. The time for appeal has obviously long since expired, and this Court will not now impliedly sanction an end run around the final order in the Adversary Proceeding by letting Garcia again litigate in the state court proceeding the same issue raised in the Adversary Proceeding regarding attorney fees.[11] Garcia is precluded from again litigating his entitlement to attorney fees for bringing the Adversary Proceeding that sought the nondischarge of the a debt caused by Debtors' failure to pay real estate taxes that had been paid to him by Garcia, with the understanding Debtors would in turn pay those taxes.

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the things sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity in the quality of the persons for or against whom the claim is made).

[10]*Cf. Butler v. City of North Little Rock*, 980 F.2d 501, 503-504 (8th Cir. 1992).

[11]*See* 18B Charles Alan Wright, Arthur R. Miller & Edward Cooper, Fed. Prac. & Proc. Juris.2d § 4470.3 (noting that a judgment of the bankruptcy court in an adversary proceeding can preclude relitigation of the same issues in a subsequent civil proceeding).

Conclusion

For the reasons set forth above, the Court denies Movants' motion for reconsideration. Movants have not met their burden of showing the Court has made a manifest error of law, or that newly discovered evidence exists. The Court finds that its Order dated April 20, 2005, which incorporated by reference the rationale for the decision articulated in its bench ruling dated February 22, 2005, was supported by substantial competent evidence. The Court also denies Movants' request for the Court to make the additional findings of fact and conclusions of law requested by them.

IT IS, THEREFORE, BY THIS COURT ORDERED that Garcia's, and his counsel's, Motion to Reconsider, to Amend or Alter Judgment, and to Make Specific Findings of Fact and Conclusions of Law is denied.

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