

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	CASE NO. BK02-82163
	)	A02-8092
DONALD R. MOHLMAN,	)	CH. 7
	)	
Debtor(s).	)	
<hr/>	)	
KATHRYN J. DERR, Receiver for Rambo	)	
Associates Project Management, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Filings 66, 71, 72, 76
	)	
DONALD R. MOHLMAN, JR.,	)	
	)	
Defendant.	)	

ORDER

Hearing was held August 5, 2004, in Omaha, Nebraska, regarding Filing No. 66, Motion to Approve Stipulation for Settlement, filed by Donald R. Mohlman, Jr.; Filing No. 71, Resistance, filed by Rambo Associates, Inc.; Filing No. 72, Motion Concerning Disposition of Claim and Motion to Substitute Party, filed by Rambo Associates, Inc.; and Filing No. 76, Resistance to Motion Concerning Disposition of Claim and Substitution of Plaintiff, filed by Donald Mohlman, Jr. Kathryn Derr appeared as receiver, W. Eric Wood appeared for defendant, and Tom Ashby appeared for Rambo Associates.

The plaintiff in this adversary proceeding is a state-court-appointed receiver for a corporate entity, Rambo Associates Project Management, Inc. That entity obtained a judgment for more than \$600,000 against the debtor. The debtor and/or an entity owned by the debtor has an interest in the plaintiff corporation. The judgment was entered as a result of arbitration entered into by the debtor, another entity called Rambo Associates ("RA"), and Merle Rambo ("Rambo") to resolve the rights of the parties with regard to amounts owed to Rambo Associates Project Management, Inc., by any of the other parties.

The judgment caused Mr. Mohlman to file this Chapter 7 bankruptcy case. Following the filing of the bankruptcy case, the receiver filed this adversary proceeding asserting that the obligation represented by the judgment was non-dischargeable under various provisions of 11 U.S.C. § 523. Separately, RA and Rambo, plus another entity owned by Rambo, filed claims in the underlying bankruptcy case. The debtor objected to the claims and the court has sustained the objection with regard to Rambo and the other entity owned by Rambo. However, the objection to the claim of RA is still pending.

In addition to the pending claim of RA, RA has filed an adversary proceeding under 11 U.S.C. § 727 requesting a denial of discharge.

In this adversary proceeding, the plaintiff/receiver has entered into a settlement stipulation with the debtor. The settlement provides for a payment to the plaintiff/receiver in the amount of \$50,000 in consideration for an assignment of all of the non-dischargeability claims for relief now pending and any other claims for relief which the plaintiff/receiver may now hold. The settlement further provides that the plaintiff/receiver is not assigning its right to distribution from the bankruptcy estate on its proof of claim filed in the case.

The plaintiff/receiver and Mr. Mohlman brought the proposed settlement before the state court judge in the receivership action. Rambo and RA objected to the settlement and offered the receiver \$55,000 for an assignment of the causes of action held by the receiver. The state court declined to approve either offer pending an opportunity for this court to determine whether the plaintiff/receiver's claims for relief under 11 U.S.C. § 523 could be sold to Rambo and/or RA and whether the \$50,000 offer from the debtor would be approved by the bankruptcy court.

There does not appear to be any provision of the Bankruptcy Code which requires the parties to a dischargeability adversary proceeding under 11 U.S.C. § 523 to obtain approval of the bankruptcy court for a settlement. Therefore, although the parties have requested this court to make a determination with regard to whether the settlement originally proposed should be approved, this court declines to do so.

The settlement agreement itself does not, by its own terms, contemplate submission to the bankruptcy court for approval. The statute does not direct this court to be involved in approval of settlements of Section 523 actions. This court shall not rule on the appropriateness of the settlement proposed.

In response to the request for approval of the settlement, Rambo and RA filed a resistance, mentioning their proposal to pay the plaintiff/receiver \$55,000 to purchase the receiver's claims for relief. In addition, RA and Rambo have now filed a notice with this court that they will offer \$100,000 to purchase the interest of the receiver under some terms that appear to be somewhat different from the original proposal.

The issue before the court is whether the claims for relief under 11 U.S.C. § 523 are assignable. Rambo and RA have cited two bankruptcy court opinions that suggest that assignment is allowable. Griffiths v. Peterson (In re Peterson), 96 B.R. 314 (Bankr. D. Colo. 1988); Westbank v. Grossman (In re Grossman), 174 B.R. 972 (Bankr. N.D. Ill. 1994). The debtor, on the other hand, relies on authority from the Ninth Circuit which came to the opposite conclusion. The Bankruptcy Appellate Panel of the Ninth Circuit, in a case which has been affirmed by the Ninth Circuit Court of Appeals, has determined that assignment of such claims is not appropriate. Young v. Beugen (In re Beugen), 99 B.R. 961 (B.A.P. 9<sup>th</sup> Cir. 1989), aff'd, 930 F.2d 26 (9<sup>th</sup> Cir. 1991). The bankruptcy court had dismissed an adversary proceeding which concerned an objection to discharge under section 727 of the Code and a request to deny the discharge of a specific debt. The plaintiff had purchased the claims post-petition. The Bankruptcy Appellate Panel's opinion specifically held that "the right to object to a debtor's discharge is not a marketable commodity which may be purchased by one party from another in order to inflict further punishment and discomfort upon the debtor." 99 B.R. at 965.

The facts in Beugen are not exactly the same as in this case. However, the reasoning and the conclusion of the bankruptcy court and the B.A.P. appear to be sound.

The statute itself seems to contemplate that Section 523 actions are limited to the creditor who has actually been harmed by the actions of the debtor. Section 523(c)(1) provides that a debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), (6), or (15) of subsection (a) of this section, unless, on request of the creditor **to whom such debt is owed**, and after notice and a hearing, the court determines such debt to be excepted from discharge . . . .

(emphasis added). Neither Rambo nor RA could have filed a Section 523 action. They should not now be allowed to purchase the interest of the plaintiff for purposes of continuing the litigation.

In addition to the above, it has not yet been determined that RA has a claim, and it has been determined that Rambo does not. Therefore, but for their potential interest in the liquidation of the assets of the receivership in state court, at this point in time neither have standing in the bankruptcy court to complain about the manner in which the plaintiff/receiver resolves the adversary proceeding brought by the plaintiff/receiver.

In conclusion, this court will not rule upon the appropriateness of the settlement entered into between the debtor and the plaintiff/receiver. The claims for relief asserted by the plaintiff/receiver in this adversary proceeding are not assignable.

SO ORDERED.

DATED this 1<sup>st</sup> day of October, 2004.

BY THE COURT:

/s/ Timothy J. Mahoney  
Chief Judge

Notice given by the Court to:  
Kathryn Derr  
\*W. Eric Wood  
\*Tom Ashby  
U.S. Trustee

\*Movant is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.