

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
ROBERT J. SHEARON,)	CASE NO. BK80-197
)	
DEBTOR)	
)	
INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL UNION)	A80-55
NO. 22, et al.,)	
)	
Plaintiffs)	
)	
vs.)	
)	
ROBERT J. SHEARON d/b/a SHEARON)	
CO., Bankrupt,)	
)	
Defendant)	

MEMORANDUM OPINION

This is essentially a declaratory judgment action in which the plaintiff seeks to determine whether certain items which might be assessed against the debtor in a proceeding pending in Federal District Court will be nondischargeable debts if assessed. In addition, the plaintiff requests relief from the stay so that the Federal District Court may proceed to determine the amount of the judgment.

The plaintiff represents employees of the debtor pursuant to a collective bargaining agreement. Plaintiff sued the debtor in Federal District Court to collect money which the debtor was required to contribute under the agreement and obtained a default judgment. Prior to any determination of the amount of the judgment, the debtor filed a petition in bankruptcy and the Federal District Court proceedings were placed in abeyance by the Honorable Robert V. Denney.

Plaintiff is seeking recovery under the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. §§48-1228 through 48-1232. Section 48-1231 of the Act permits an employee prevailing on a claim for unpaid wages to recover costs and attorney's fees. Section 48-1232 states:

"If an employee shall establish a claim and secure judgment on such claim under Section 48-1231, an amount equal to the judgment shall be recovered from the employer, if ordered by the Court, and shall be placed in a fund to be distributed to the common schools of this state."

Defendant argues that the plaintiff has no standing to seek recovery under the Nebraska Wage Payment and Collection

Act since plaintiff is not an "employee" of the debtor. I believe the determination of that issue should be left to the Federal District Court and will proceed to determine the dischargeability issues. This determination will, of course, be applicable only if the Federal District Court determines that the plaintiff is entitled to judgment under the Nebraska Wage Payment and Collection Act.

The only exception to discharge applicable to this proceeding is for a debt which is

"for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss. . . ."
11 U.S.C. §523(a)(7).

"Governmental unit" is defined by the Bankruptcy Code as

"United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;"
11 U.S.C. §101(21).

"Penalty" is nowhere defined in the Bankruptcy Code.

It is not necessary to determine whether costs and attorney's fees assessed under §48-1231 of the Nebraska Act are a penalty, since such sums would be payable to the plaintiff, and the plaintiff is not a governmental unit within the meaning of the Bankruptcy Code. See H. R. Rep. No. 95-595, 95th Cong., 1st Sess. 311 (1977); S. Rep. No. 95-989, 95th Cong., 2d. Sess. 24 (1978); 2 Collier on Bankruptcy, para. 101.21 at 101-35 (15th ed. 1979). Accordingly, any costs and attorney's fees assessed against the debtor under that statute will be dischargeable in the debtor's bankruptcy proceeding.

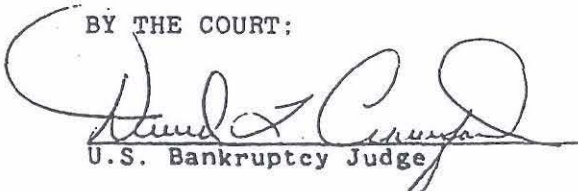
I can make no binding determination as to the dischargeability of any amounts assessed under §48-1232 of the Nebraska Act, as such sums would be payable to the State of Nebraska or a subdivision thereof, and the State has not been made a party to this proceeding. However, if the matter were properly before me, I would hold that such an assessment is a nondischargeable debt under 11 U.S.C. §523(a)(7).

As a final resolution of the Federal District Court proceedings would assist in the orderly administration of the debtor's estate, I will grant relief from the stay to the extent necessary to bring the Federal District Court proceeding to final judgment.

A separate order is entered in accordance with the foregoing.

DATED: September 11, 1980.

BY THE COURT:


U.S. Bankruptcy Judge