

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

In re Sterling

In re Sterling, 933 F.3d 828 (7th Cir. 2019) · Decided August 13, 2019

SUMMARY

****Index Summary:**** The Seventh Circuit held a creditor liable for civil contempt under 11 U.S.C. § 524 when its law firm continued collection proceedings after the debtor’s discharge, even though the creditor did not directly participate in the post-discharge actions. Under agency principles, the law firm’s conduct is imputed to the principal, so the creditor’s actual knowledge of the discharge order combined with the agent’s violative actions satisfies the willfulness requirement. However, the law firm itself lacked knowledge of the discharge order—knowledge is not imputed from principal to agent—and therefore could not be held in contempt. The court emphasized that clients are bound by their counsel’s acts within the scope of authority, and that a debtor’s failure to notify the state court of the discharge (as required by local rule) does not excuse a creditor’s willful violation.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	St. Eve
JURISDICTION	Federal
DECIDED	August 13, 2019
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the United States District Court for the Northern District of Indiana, which affirmed the bankruptcy court's denial of contempt.
STANDARD OF REVIEW	Abuse of discretion for civil contempt ruling; de novo for legal errors; clear error for factual findings.
PRECEDENTIAL VALUE	published
PARTIES	Jacqueline Sterling v. Southlake Nautilus Health & Racquet Club, Inc., Austgen, Kuiper & Associates, P.C., and David Austgen

TOPICS

- bankruptcy
- discharge
- contempt
- standard of review
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Southlake committed a willful violation of the discharge order by continuing to pursue the debt through its counsel, Austgen.
2. Whether Austgen committed a willful violation of the discharge order given its lack of knowledge of the discharge.

HOLDINGS

1. Southlake is liable for civil contempt because it had actual knowledge of the discharge order and its agent, Austgen, took actions that violated the order. The agent's actions are imputed to the principal under agency law, and Southlake cannot avoid liability by remaining ignorant of its agent's actions.
2. Austgen cannot be held in contempt because it lacked actual knowledge of the discharge order. The bankruptcy court's finding that Austgen had no knowledge was not clearly erroneous, and the principal's knowledge is not imputed to the agent.

KEY QUOTATIONS

“We have repeatedly stated that clients are bound by their counsel's conduct.” (at 833)

“Southlake cannot now disclaim the results of its collection efforts. It had knowledge of the discharge yet turned a blind eye to the progress of Sterling's case.” (at 834)

“This puts Austgen in the inverse position of Southlake—Austgen was unaware of the bankruptcy court's discharge order but acted in violation of it. Unlike with Southlake, however, we do not impute the principal's knowledge to the agent.” (at 835)

FACTUAL BACKGROUND

In 2001, Southlake retained Austgen to collect approximately \$520 in unpaid membership fees from Jacqueline Sterling. A default judgment was entered in 2002. Austgen pursued collection through proceedings supplemental, and a bench warrant was issued in 2010. Sterling was arrested in 2011 and jailed for two days. Sterling had filed for bankruptcy in 2009, and her debt to Southlake was discharged in January 2010. Southlake received notice of the discharge but did not inform Austgen. Sterling also did not notify the state court or Austgen of the discharge. After her arrest, Sterling sued Southlake and Austgen in bankruptcy court for contempt for violating the discharge injunction.

PROCEDURAL HISTORY

Sterling filed adversary proceedings in bankruptcy court against Southlake, Austgen, and David Austgen, alleging violation of the discharge injunction. After a bench trial, the bankruptcy court granted judgment in favor of Southlake and Austgen on the contempt claim, finding no willful violation. The district court affirmed. Sterling appealed to the Seventh Circuit.

DISPOSITION

other

REMAND INSTRUCTIONS

We leave to the bankruptcy court's discretion whether to factor Sterling's compliance with local rule into the damages calculation. The case is remanded for further proceedings consistent with this opinion.

CASES CITED

- In re Taylor, 793 F.3d 814 (7th Cir. 2015)
- In re Chlad, 922 F.3d 856 (7th Cir. 2019)
- Stamat v. Neary, 635 F.3d 974 (7th Cir. 2011)
- Lardas v. Grcic, 847 F.3d 561 (7th Cir. 2017)
- Randolph v. IMBS, Inc., 368 F.3d 726 (7th Cir. 2004)
- In re Radcliffe, 563 F.3d 627 (7th Cir. 2009)
- Lightspeed Media Corp. v. Smith, 830 F.3d 500 (7th Cir. 2016)
- Smego v. Payne, 854 F.3d 387 (7th Cir. 2017)
- Bakery Mach. & Fabrication, Inc. v. Traditional Baking, Inc., 570 F.3d 845 (7th Cir. 2009)
- United States v. 7108 West Grand Avenue, 15 F.3d 632 (7th Cir. 1994)
- Irwin v. Dep't of Veterans Affairs, 498 U.S. 89 (1990)
- Link v. Wabash R. Co., 370 U.S. 626 (1962)
- Kmart Corp. v. Englebright, 719 N.E.2d 1249 (Ind. Ct. App. 1999)
- Meyer v. Holley, 537 U.S. 280 (2003)
- Dunphy v. McKee, 134 F.3d 1297 (7th Cir. 1998)
- Schmitt v. FMA All., 398 F.3d 995 (8th Cir. 2005)
- Moriarty v. Glueckert Funeral Home, Ltd., 155 F.3d 859 (7th Cir. 1998)
- Hargis v. United Farm Bureau Mut. Ins. Co., 388 N.E.2d 1175 (Ind. Ct. App. 1979)
- In re Kramer, 2005 WL 579721 (Bankr. N.D. Iowa Feb. 23, 2005)
- In re Gallo, 2007 WL 2463321 (Bankr. C.D. Ill. Aug. 29, 2007)

CITED IN

- In re Sterling, In re Sterling, 933 F.3d 828, 833