

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re

DENISE KAY HARRISON,

Debtor.

Chapter 7

Case No. 96-28304-MDM

**MEMORANDUM DECISION ON DEBTOR'S MOTION FOR CONTEMPT
AGAINST DISCOVER FINANCIAL SERVICES CARD**

INTRODUCTION

The debtor filed a motion for finding of contempt against Discover Financial Services Card (Discover) for violating the permanent injunction under 11 U.S.C. § 524(a)(2) by continuing collection activities with respect to a prepetition debt. Discover opposed the motion and claimed that it was seeking to collect a postpetition debt. No adversary proceeding was ever commenced to determine whether the debt was otherwise nondischargeable. The relevant facts were either stipulated to or part of the official court record.

The debtor and her attorney signed a completed chapter 7 petition and schedules on October 8, 1996, and filed them on October 9, 1996, at 9:57 a.m. Also on October 9th, the debtor endorsed and deposited a Discover "For Deposit Only" cash advance check for \$750 at First Financial Bank. The check, which was dated October 7th, was honored by Greenwood Trust Company, the Discover Card issuer, on October 11th.

The debtor contends that because she borrowed the money before her

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bankruptcy was filed, Discover violated the permanent injunction by continuing to seek payment of the debt. She apparently considers writing the cash advance check to herself, and possibly the delivery of the check to her own bank, the event of borrowing. She points out that any other interpretation of when the debt was incurred would allow creditors to hold checks until after a bankruptcy to move their position from a prepetition to a postpetition debt.

Discover, on the other hand, argues that the date a check is honored by the drawee determines whether it is a prepetition or postpetition debt. Thus, because the check was honored on October 11, 1996, two days after the debtor filed her bankruptcy petition, it is a postpetition debt and subject to full recovery without limitation by the discharge.

DISCUSSION

When a debtor is granted a discharge of debt, he or she is protected from creditors' efforts to collect the debt from them personally by 11 U.S.C. § 524(a)(2). Under that provision, the discharge "operates as an injunction against the commencement or continuation of an action . . . or an act, to collect, recover or offset any such debt as a personal liability of the debtor" Willful violation of the injunction warrants the finding of contempt. *In re Torres*, 117 B.R. 379, 382 (N.D. Ill. 1990). Discover will only be found in contempt if it has continued to seek collection of a *prepetition* debt after it has knowledge that the debt is discharged.

The Supreme Court held in *Barnhill v. Johnson*, 503 U.S. 393, 399, 112 S.Ct. 1386, 1390 (1992), that a transfer within the meaning of § 547(b) did not occur until the

bank on which the check was drawn honored the check. The Court reasoned that “myriad events can intervene between delivery and presentment of the check that would result in the check being dishonored.” *Id.* The rationale applied to determine whether a transfer occurred within the preference period will be applied to the instant fact situation to determine whether a transfer occurred, and whether the debt arose, prepetition or postpetition.

The debtor’s concern that the creditor of a cash advance could convert a prepetition debt into a postpetition debt is not well founded. Discover has no way of knowing whether its customers will use their cash advance offers and when they might do so. It has no way of knowing when a bankruptcy might occur, and there is no evidence that it can or did alter regular commercial banking channels. The customer accepts Discover’s offer of additional credit by depositing a check, a highly regulated procedure. The check was honored by Discover’s bank two days after the debtor deposited it to her bank, well within normal standards.

Because the drawee bank, Greenwood Trust Company, did not honor the Discover check until October 11th, the transfer was postpetition. Therefore, pursuant to the *Barnhill* analysis, Discover did not violate the discharge injunction by seeking to collect the debt.

The debtor’s schedules may also shed some light on whether the cash advance was intended by the debtor to be a prepetition or postpetition debt. On Schedule F, Creditors Holding Unsecured Nonpriority Claims, the debtor lists a “Discover” claim amount of \$5,411. The consideration for the claim is noted as “credit card purchases,” and the date the claim was incurred is “91-95.” Schedule F, Claim no. 2. There are no

other Discover Card claims listed in the debtor's schedules. Clearly, the debtor did not include the October 9th cash advance, which is not a "credit card purchase," on her schedules since the debt was incurred after 1995.

The parties have stipulated that the Discover check was deposited by the debtor in her bank account. Although the parties did not stipulate regarding which bank she deposited the check with, the court can only assume that it was at First Financial Bank, since that was the bank that posted the "For Deposit Only" check. The only bank account listed on the debtor's schedules is \$200 with Firststar Bank. Schedule B, Property no. 2. This account is claimed exempt. Schedule C. To be consistent with her current argument that she borrowed the money prepetition, she might alternatively have listed the check as a right to loan proceeds under Schedule B, Property no. 20, and likewise claimed it exempt. However, the debtor did not list the Discover cash advance as a debt, and she did not list the proceeds deposited to her account (but not collected from the drawee bank) as an asset. Amended schedules have never been filed.

Consequently, the court finds that Discover's continued collection activities with respect to its postpetition debt did not violate the permanent injunction. The debtor's motion for contempt is denied. A separate order will be entered.

Dated at Milwaukee, Wisconsin, January 28, 1998.

BY THE COURT:

Honorable Margaret Dee McGarity
United States Bankruptcy Judge