

Thomas Lagos; the objection to bankruptcy determination and motion to strike filed by Vernon Jenkins and finds Plaintiff's claim in Case No. 92-CV-0502 was discharged by the U.S. Bankruptcy Court for the Southern District, Dayton, Ohio.

{¶ 3} "This is a final appealable order; there is no just cause for delay."

{¶ 4} We assume that the reference in the above-quoted order to Case No. 92-CV-0502 in the Clark County Common Pleas Court is a misnomer, and is really intended to refer to Jenkins's claim in Case No. 92-CV-0504, not 0502. We find that Jenkins has failed to demonstrate any error in the order from which this appeal is taken, or in the proceedings leading up to that order. Accordingly, the order from which this appeal is taken is Affirmed.

I

{¶ 5} The litigation between Jenkins and defendant-appellee Jerry Pullins is chronicled in two recent opinions from this court: *Jenkins v. Pullins*, Clark App. No. 05-CA-0051, 2006-Ohio-3371 (*Jenkins I*); and *Jenkins v. Pullins*, Clark App. No. 2007-CA-14, 2008-Ohio-6727 (*Jenkins II*). We see no need to repeat that history in full here. Suffice it to say that Jenkins filed an action for cancellation and rescission of a land installment contract in which he was the seller, and Pullins was the buyer. In *Jenkins I*, we reversed a summary judgment for Pullins that was based on res judicata grounds, finding that res judicata had been erroneously applied.

{¶ 6} In *Jenkins II*, Jenkins appealed from a judgment in his favor in the amount of \$150,000. We affirmed. Both *Jenkins I* and *Jenkins II*, were appeals

from judgments rendered in Case No. 92 CV 0504 in the trial court.

{¶ 7} While *Jenkins II* was pending in this court, Pullins filed a motion to dismiss or to stay the appeal, upon the ground that the debt having been reduced to the judgment from which the appeal was taken had been discharged in bankruptcy. We declined to do so, finding that the documents filed in this court were not sufficient to establish that the debt underlying the judgment had been discharged in bankruptcy.

{¶ 8} Pullins then filed supplemental documentation in this court. We entered an order in *Jenkins II* on December 19, 2008, which concludes as follows:

{¶ 9} “The trial court’s judgment that is on appeal awarded Jenkins \$150,000 in damages with respect to the matters raised in his complaint. We believe that the question of whether the claims asserted by Jenkins in his underlying case have been discharged in the context of Pullins’[s] bankruptcy are best resolved, in the first instance, by the trial court, particularly given the contested nature of the bankruptcy question and the possible need for evidentiary submissions to resolve that question. Accordingly, Jenkins’[s] motion to strike the bankruptcy documentation filed by Pullins is overruled.

{¶ 10} “By separate entry and opinion, we are affirming the trial court’s judgment awarding Jenkins damages of \$150,000. We further hereby remand this matter to the trial court to determine whether Jenkins’[s] claims against Pullins have been discharged in Pullins’[s] bankruptcy. The trial court is free to adopt whatever procedure it believes is appropriate to resolve that question; however, it would seem that at a minimum, attorney Lagos [representing Pullins] should refile under the trial

court case number the bankruptcy documentation he has filed with this Court. Further, if either party wishes to appeal the trial court's determination of the discharge in bankruptcy question, it will be necessary for that party to file a new notice of appeal.

{¶ 11} "SO ORDERED."

{¶ 12} In evident response to the above-quoted mandate from this court, the trial court entered the following order on January 5, 2009:

{¶ 13} "This matter having been remanded by the Second District Court of Appeals for the limited purpose for this Court to determine whether the Plaintiff's claims against defendant have been discharged by defendant's bankruptcy, the parties will take notice that they have until the 21st day of January, 2009 to file any pleadings they wish the Court to consider in making the determination of the discharge question. The matter will be deemed submitted for ruling on January 22, 2009, without a hearing."

{¶ 14} Jenkins's only response to the trial court's order of January 5, 2009, quoted in full above, was the following "Motion":

{¶ 15} "Now comes the Plaintiff in the above captioned case to move the Court to comply with R.C. 5313.09 and order the Clerk of Clark County to remove and cancel the Land Installment Contract from the record.

{¶ 16} "This action is necessary to complete this case and allow the Federal Court to rule on the defalcation in the United States Bankruptcy Court and this Court as well. The defalcation in the Bankruptcy Court makes the claim of this Creditor non-dischargeable. This Secured Creditor notified the Bankruptcy Court of the

defalcation just twenty-seven days after the closing, and this Court at the hearing on January 19, 2007, as embezzlement.

{¶ 17} “The Bankruptcy Court accepted this Creditors claim after the Closing, and had it not been lawful to proceed in this Court Judge Waldron would not advised [sic] me to proceed.

{¶ 18} “I’m sorry to be bothering this Court, but I don’t want to trip over a shoestring. This Contract must be canceled.” (Underlining in original.)

{¶ 19} There having been no other response by either party, the trial court then put on an order finding that the debt underlying the \$150,000 judgment previously rendered in the trial court had been discharged in the United States Bankruptcy Court. From that order, Jenkins appeals.

II

{¶ 20} Jenkins’s First and Third assignments of error are as follows:

{¶ 21} “THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF BY RULING CONTRA THE RULING OF THE UNITED STATES BANKRUPTCY RULES.

{¶ 22} “THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF BY RULING BASED ON A PRECEDENT CASE OF UNSECURED CREDITORS.”

{¶ 23} As best we can understand these assignments of error, they amount to contentions that the United States Bankruptcy Court erred in discharging Jenkins’s claims against Pullins, not that the Bankruptcy Court did not, in fact, discharge his claims. If the Bankruptcy Court erred in discharging Jenkins’s claims against Pullins, that is a matter he should take up with the United States District Court, the United

States Court of Appeals for the Sixth Circuit, or both. We have no appellate jurisdiction to review the propriety of orders entered by a United States Bankruptcy Court.

{¶ 24} Under Title 11, Section 524, of the United States Bankruptcy Code, a discharge in bankruptcy “[v]oids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title (11 USC section 727, 944, 1141, 1228 or 1328), whether or not discharge of such debt is waived.” Thus, if Pullins’s debt to Jenkins underlying the judgment rendered in the Clark County Common Pleas Court has been discharged, the judgment is voided, regardless whether Pullins ever asserted the discharge in the state court.

{¶ 25} The filings from the Bankruptcy court that were filed in the Clark County Common Pleas Court reflect an unsecured debt of Pullins, owed to Jenkins in an undetermined amount. No other debts to Jenkins were scheduled, although the debt schedules appear to be comprehensive. The debt owed to Jenkins was not reaffirmed; therefore, it was discharged by the general discharge in bankruptcy.

{¶ 26} We conclude that the record in the trial court at the time that it entered the order from which this appeal is taken supports a reasonable inference that the debt underlying the judgment was, in fact, discharged by the United States Bankruptcy Court, and it was therefore not error for the trial court to so find.

{¶ 27} In its order of January 5, 2009, the trial court determined that it would decide the issue of whether the judgment debt had been discharged in bankruptcy on paper, without a hearing. Jenkins did not object to this procedure; he did not ask for

a hearing; he did not ask for more time within which to file documents with the trial court.

{¶ 28} Jenkins argues that he was a secured creditor of Pullins. The only security interest that Jenkins arguably might have had to secure Pullins's debt, based upon the matters Jenkins has set forth in the record in the trial court, would be Jenkins's interest in the real property that was subject to the land installment contract in which Jenkins was the seller and Pullins was they buyer. Pullins asserts, and Jenkins does not dispute, that on March 6, 2009, the trial court directed the Clark County Clerk of Courts to cancel the land installment contract, which would presumably restore Jenkins to the position of the fee simple owner of the real property, unencumbered by any interest that Pullins, or persons claiming through Pullins, might assert to that property. Thus, the only security interest securing the judgment debt that Jenkins has arguably demonstrated, has not been adversely affected by the order finding that the judgment debt has been discharged in bankruptcy.

{¶ 29} In connection with Jenkins's Third Assignment of Error, he argues that the trial court was biased and prejudiced against him, but we have found nothing in the record to support that claim.

{¶ 30} We find no error in the trial court's order from which this appeal is taken, or in the proceedings leading up to that order. Jenkins's First and Third assignments of error are overruled.

III

{¶ 31} Jenkins's Second Assignment of Error is as follows:

{¶ 32} “THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF IN RULING CONTRA THE OPINION OF THE COURT OF APPEALS.”

{¶ 33} We have found nothing in either *Jenkins I* or *Jenkins II*, being decisions of this court in prior appeals, that is inconsistent with the order of the trial court from which this appeal is taken.

{¶ 34} Jenkins’s Second Assignment of Error is overruled.

IV

{¶ 35} All of Jenkins’s assignments of error having been overruled, the order of the trial court of February 6, 2009, from which this appeal is taken, is Affirmed.

.....

GRADY and FROELICH, JJ., concur.

Copies mailed to:

Vernon G. Jenkins
Thomas H. Lagos
Hon. Douglas M. Rastatter