

FEB 07 2012

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. WW-11-1056-PaJuWa
)
RYAN C. NASH,) Bk. No. 09-18806-MLB
)
Debtor.) Adv. No. 10-01289-MLB
)

RYAN C. NASH,)
)
Appellant,)

v.)

O P I N I O N

CLARK COUNTY DISTRICT)
ATTORNEY'S OFFICE, Bad Check)
Diversion Unit; HARD ROCK)
HOTEL/HARD ROCK CAFÉ & CASINO;))
HARD ROCK HOTEL HOLDINGS, LLC,))
Appellees.)

Argued and Submitted on October 21, 2011
at Seattle, Washington

Filed - February 7, 2012

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Marc L. Barreca, Bankruptcy Judge, Presiding

Appearances: Christina L. Henry argued for appellant Ryan C. Nash.

Before: PAPPAS, JURY and WALLACE,¹ Bankruptcy Judges.

¹ Hon. Mark S. Wallace, Bankruptcy Judge for the Central District of California, sitting by designation.

1 PAPPAS, Bankruptcy Judge:

2
3 Chapter 7² debtor Ryan C. Nash ("Nash") appeals the
4 bankruptcy court's judgment declaring that Nash's prepetition
5 debt to Hard Rock Café and Casino ("Hard Rock") was discharged in
6 his bankruptcy case, but denying sanctions against Hard Rock and
7 the Clark County, Nevada, District Attorney's Office ("the DA")
8 for violating the discharge injunction. We AFFIRM.

9 **FACTS**³

10 In 2007 and 2008, gambling was Nash's principal occupation
11 and source of income. He traveled from his home in Washington
12 State to Las Vegas approximately once per month for several days.
13 As a frequent customer at Hard Rock, Nash was approved for a
14 "marker account," essentially a line of credit on which he could
15 draw to gamble.⁴

16 In October and November 2008, Nash had insufficient funds in
17

18 ² Unless otherwise indicated, all chapter, section and rule
19 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

20 ³ Because the DA and Hard Rock did not participate in the
21 adversary proceeding or appear in this appeal, we rely solely on
22 the facts presented in Nash's brief that are supported in the
record.

23 ⁴ See Las Vegas Sands, LLC v. Nehme, 632 F.3d 526, 529 (9th
24 Cir. 2011) ("A marker is a gambling credit instrument that allows
25 a gambler to receive all or part of the credit line the casino
26 has approved for him, based on the gambler's prior credit
27 application with the casino. Once the gambler and a casino
28 representative sign the marker, the gambler may exchange the
marker for gambling tokens, or chips. If the gambler does not
pay the marker when he has finished gambling, the marker is
outstanding and the casino may later submit the marker, like a
check, to the gambler's bank for payment.").

1 his bank account to cover \$12,500 in markers owed to Hard Rock.
2 Hard Rock referred these debts to the Bad Check Diversion Unit of
3 the DA. The DA sent Nash a letter in January 2009, demanding
4 full payment of the markers, plus administrative fees, within ten
5 days. Nash contacted the DA and was informed that, to avoid
6 prosecution, he could repay the debt in six monthly payments
7 starting on February 26, 2009. At the time, Nash was working in
8 a restaurant earning \$200 per week and was unable to make the
9 first payment.

10 On March 26, 2009, the DA sent Nash a second letter,
11 informing him that a criminal complaint had been filed against
12 him in Las Vegas, and that a warrant for his arrest had been
13 issued. The letter indicated that a copy of the complaint was
14 attached, but Nash insists that he never saw the complaint.

15 Nash filed a petition under chapter 7 of the Bankruptcy Code
16 on August 27, 2009. In his Schedule F, he listed an undisputed
17 debt of \$13,876 owed to Hard Rock. Neither the DA nor Hard Rock
18 appeared in the bankruptcy case. Nash was granted a discharge in
19 the bankruptcy case on January 20, 2010.

20 On March 22, 2010, Nash was arrested by border police while
21 returning to the United States from Vancouver, B.C., based on the
22 outstanding warrant from Clark County.

23 Nash retained counsel, Ms. Huelsman, who moved to reopen the
24 bankruptcy case on April 1, 2010. The motion was granted on
25 April 9, 2010.

26 Huelsman contacted the DA on April 8. An attorney for the
27 DA informed Huelsman that the DA was aware of Nash's bankruptcy
28 case and discharge, but that the DA would be pursuing the matter

1 as a criminal proceeding. Huelsman later testified that the DA
2 lawyer told her "if you can work out something with the Hard
3 Rock, then we will postpone – and the word I do know he used was
4 'postpone' – the criminal case." Hr'g Tr. 16:7-10 (Dec. 14,
5 2010).

6 Huelsman contacted a manager at Hard Rock by phone later the
7 same day. In the telephone conversation, the Hard Rock manager
8 told Huelsman that Hard Rock was aware of Nash's bankruptcy case
9 and discharge, but that its position was not impacted by the
10 discharge because Hard Rock had originally acted in response to
11 Nash's criminal activity. The manager explained Hard Rock's
12 general policies concerning payment of past-due marker accounts
13 to Huelsman, but the manager made no demand for payment.
14 Instead, perhaps strategically, the manager suggested that Nash's
15 counsel "get back to me if you want to make us any kind of firm
16 offer." Hr'g Tr. 18:18-19 (Dec. 14, 2010).

17 On May 12, 2010, after voluntarily waiving extradition from
18 Washington to Nevada, Nash was arraigned in Clark County and
19 released on bail. He returned to Clark County on October 31,
20 2010, where he entered into a settlement agreement with the DA.
21 Under the terms of that agreement, Nash agreed to pay \$500 per
22 month until the full amount of the debt was paid off.

23 On May 26, 2010, Nash filed an adversary "Complaint for
24 Sanctions for Violation of the Discharge Injunction" against the
25 DA and Hard Rock in the bankruptcy court. The complaint sought a
26 declaratory judgment that his debt to Hard Rock was discharged,
27 an injunction against Hard Rock and the DA to prevent any further
28 collection activities, and the imposition of sanctions against

1 Hard Rock and the DA under § 105(a) for their intentional
2 violation of the discharge injunction.

3 Neither Hard Rock nor the DA responded to the complaint.
4 Nash filed a motion for entry of default on July 12, 2010. The
5 motion was not contested, and the bankruptcy court entered an
6 Order of Default on August 11, 2010. Nash then moved for entry
7 of a default judgment, which the bankruptcy court set for an
8 evidentiary hearing.

9 Only Nash and his counsel appeared at the hearing on
10 December 14, 2010. Although the hearing was uncontested, the
11 bankruptcy court directed Nash to present evidence in support of
12 his claims. The court cautioned Nash's attorney that, although a
13 declaratory judgment that his debt was discharged was likely to
14 be granted, the Ninth Circuit's decision in Gruntz v. County of
15 Los Angeles (In re Gruntz), 202 F.3d 1074 (9th Cir. 2000) (en
16 banc), suggested that sanctions against Hard Rock and the DA
17 would be very difficult to establish.

18 At the hearing, Nash presented two witnesses, Huelsman and
19 Nash. Huelsman testified about the phone conversations she had
20 with the DA's attorney and the Hard Rock manager on April 8,
21 2010. Nash then testified regarding his experiences, giving
22 particular attention to his time he spent in jail and his alleged
23 injuries he suffered during his ordeal. Because counsel for Nash
24 stated that she was not acquainted with In re Gruntz, at the
25 conclusion of the evidence, the bankruptcy court invited Nash to
26 file a supplemental brief, as well as proposed findings of fact
27 and conclusions of law. The court took the issues under
28 submission.

1 Nash filed a supplemental brief and proposed findings and
2 conclusions on December 23, 2010. Nash attempted to distinguish
3 In re Gruntz as applicable only to actions for automatic stay
4 violations under § 362, and not to discharge violations under
5 § 524(a).

6 The bankruptcy court convened a hearing on January 7, 2011,
7 at which it announced its decision. The court granted
8 declaratory relief that Nash's debt to Hard Rock had been
9 discharged in the chapter 7 case. However, the court declined to
10 grant any further relief against Hard Rock, finding that any
11 collection actions it took occurred before Nash's bankruptcy and,
12 therefore, did not violate the discharge injunction. As to the
13 alleged discharge violations by the DA, the court concluded that,
14 given the facts, there was no "meaningful distinction" between
15 Nash's § 524(a) discharge violation claims and the automatic stay
16 violation claims under § 362 alleged in In re Gruntz and,
17 therefore, no sanctions would be awarded against the DA.

18 The bankruptcy court entered a judgment on January 19, 2011,
19 providing that Nash's prepetition debt to Hard Rock had been
20 discharged, but that Nash "is entitled to no further relief for
21 his claims against the Defendants in this adversary proceeding."

22 Nash filed this timely appeal.

23 JURISDICTION

24 The bankruptcy court had jurisdiction under 28 U.S.C.
25 §§ 1334 and 157(b)(2)(A) and (I). We have jurisdiction under 28
26 U.S.C. § 158.

27 ISSUE

28 Whether the bankruptcy court abused its discretion in

1 rejecting Nash's claims for sanctions under § 105(a) against the
2 DA and Hard Rock for alleged violations of the § 524(a) discharge
3 injunction.

4 **STANDARD OF REVIEW**

5 An award or denial of sanctions under § 105(a) is reviewed
6 for abuse of discretion. Missoula Fed. Credit Union v.
7 Reinertson (In re Reinertson), 241 B.R. 451, 454 (9th Cir. BAP
8 1999).

9 In applying the abuse of discretion standard, we first
10 "determine de novo whether the [bankruptcy] court identified the
11 correct legal rule to apply to the relief requested." United
12 States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).
13 If the correct legal rule was applied, we then consider whether
14 its "application of the correct legal standard was (1) illogical,
15 (2) implausible, or (3) without support in inferences that may be
16 drawn from the facts in the record." Id. Only in the event that
17 one of these three apply are we then able to find that the
18 bankruptcy court abused its discretion. Id.

19 To the extent this appeal requires the Panel to review the
20 bankruptcy court's interpretation of § 524(a), its decision is
21 reviewed de novo. Smith v. Rojas (In re Smith), 435 B.R. 637,
22 642-43 (9th Cir. BAP 2010) (citing Mendez v. Salven (In re
23 Mendez), 367 B.R. 109, 113 (9th Cir. BAP 2007)).

24 **DISCUSSION**

25 **I.**

26 **Applicability of the Barrientos decision in this appeal.**

27 The bankruptcy court entered the judgment that is the
28 subject of this appeal in the adversary proceeding on January 19,

1 2011. About a month later, during the pendency of this appeal,
2 the Ninth Circuit published an Opinion in which it held that an
3 action "for contempt for violation of a discharge injunction
4 under § 524 must be brought via motion in the bankruptcy case,
5 not via an adversary proceeding." Barrientos v. Wells Fargo
6 Bank, N.A., 633 F.3d 1186, 1188 (9th Cir. 2011). Barrientos is
7 unclear, however, as to the proper procedure where, in addition
8 to contempt damages, a debtor seeks other or additional relief of
9 the sort that usually requires an adversary proceeding. See Rule
10 7001(6) and (9) (providing that an adversary proceeding is
11 required for a proceeding to determine dischargeability of a debt
12 or to obtain a declaratory judgment).

13 In this case, in addition to seeking monetary sanctions and
14 an injunction, Nash's adversary complaint prayed for a
15 declaratory judgment that his debt to Hard Rock was discharged in
16 his bankruptcy. An adversary proceeding targeting this type of
17 relief is proper under Rule 7001(6) and (9) (providing for an
18 adversary proceeding for a declaratory judgment or for a
19 determination of dischargeability of a debt).⁵

20 Since it was announced during this appeal, the Barrientos
21 decision was not briefed nor otherwise addressed by Nash.
22 However, because of the multiple forms of relief sought by Nash
23 in his complaint, the procedural history of this action, and the
24

25 ⁵ The bankruptcy court arguably blessed Nash's procedural
26 approach when it reopened the bankruptcy case so he could "file
27 an adversary proceeding for violation of the discharge injunction
28 against the parties." Bankr. dkt. no. 35. Presumably acting on
these instructions, Nash commenced the adversary proceeding and
litigated it to a conclusion after eight months.

1 position adopted by the Panel on the merits of the issues below,
2 we conclude it would not serve the interests of justice to remand
3 this matter to the bankruptcy court solely to allow it to rehear
4 Nash's request for relief as a contested matter rather than in an
5 adversary proceeding. See Rule 1001 ("These rules shall be
6 construed to secure the just, speedy, and inexpensive
7 determination of every case and proceeding."). Accordingly,
8 without deciding whether Barrientos is implicated in this appeal,
9 we will address the substance of Nash's arguments.

10 II.

11 **Neither the DA nor Hard Rock violated the discharge injunction.**

12 In his adversary complaint, Nash sought three forms of
13 relief: a declaratory judgment that his debt to Hard Rock had
14 been discharged in the bankruptcy case, injunctive relief to
15 prevent Hard Rock or the DA from future attempts to collect the
16 discharged debt, and the imposition of compensatory sanctions
17 pursuant to § 105(a) against Hard Rock and the DA. The
18 bankruptcy court granted the declaratory relief he sought, and
19 Nash withdrew the request for injunctive relief at the hearing on
20 December 14, 2010. Therefore, the sole issue raised in this
21 appeal is whether the bankruptcy court abused its discretion when
22 it denied Nash's request for monetary sanctions against Hard Rock
23 and the DA.

24 In a chapter 7 case, with exceptions not relevant here,
25 "[t]he [bankruptcy] court shall grant the debtor a discharge."
26 § 727(a). When entered, that order "discharges the debtor from
27 all debts that arose before the date of the [bankruptcy filing]."
28 § 727(b). To give the discharge teeth, § 524(a) prescribes the

1 legal effect of a discharge:

2 (a) A discharge in a case under this title-. . . (2)
3 operates as an injunction against the commencement or
4 continuation of an action, the employment of process,
5 or an act, to collect, recover or offset any such debt
6 as a personal liability of the debtor, whether or not
7 discharge of such debt is waived[.]

8 A party that knowingly violates the discharge injunction can
9 be held in contempt under § 105(a). Renwick v. Bennett (In re
10 Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002); Walls v. Wells
11 Fargo Bank, N.A., 276 F.3d 502, 507 (9th Cir. 2002). The party
12 seeking contempt sanctions for violation of the discharge
13 injunction has the burden of proving, by clear and convincing
14 evidence, that the sanctions are justified. Espinosa v. United
15 Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008),
16 aff'd 130 S. Ct. 1367 (2010). To prove that a sanctionable
17 violation of the discharge injunction has occurred, the debtor
18 must show that the creditor: "(1) knew the discharge injunction
19 was applicable and (2) intended the actions which violated the
20 injunction." Espinosa, 553 F.3d at 1205 n.7 (adopting the
21 standard articulated in Hardy v. United States (In re Hardy), 97
22 F.3d 1384, 1390 (11th Cir. 1996)). If a bankruptcy court finds
23 that a party has willfully violated the discharge injunction, the
24 court may award actual damages, punitive damages and attorney's
25 fees to the debtor. Espinosa, 553 F.3d at 1205 n.7.

26 The Ninth Circuit has held that the first prong of the Hardy
27 test requires that the bankruptcy court be shown that the target
28 creditor knew that the discharge injunction was applicable to its
claim. ZiLOG, Inc. v. Corning (In Re ZiLOG, Inc.), 450 F.3d 996,
1007-09 (9th Cir. 2006). But, as discussed below, the evidence

1 in this case shows that neither Hard Rock nor the DA acknowledged
2 that the discharge injunction in Nash's bankruptcy case was
3 applicable to collection of marker account debt. As they
4 explained to Nash's attorney, it was instead their view that,
5 because the matter was a criminal proceeding, it was not impacted
6 by the discharge.

7 Moreover, as to the second prong, requiring that Hard Rock
8 intend the actions which violated the discharge injunction, the
9 evidence shows that Hard Rock took no post-discharge actions that
10 violated the discharge injunction, and any actions taken by the
11 DA were not sanctionable under the prosecutorial immunity
12 exception to the discharge injunction acknowledged in In re
13 Gruntz. We therefore agree with the bankruptcy court that
14 sanctions were not justified against either Hard Rock or the DA.

15 **A.**

16 **Hard Rock did not violate the discharge injunction.**

17 The bankruptcy court found that Hard Rock had not taken any
18 collection actions against Nash after he filed his bankruptcy
19 petition. Consequently, the court concluded the Hard Rock could
20 not have violated the discharge injunction. We agree.

21 On appeal, Nash does not explicitly charge Hard Rock with
22 actions that violated the injunction. Rather, Nash apparently
23 argues, based upon an alleged alliance of Hard Rock with the DA,
24 that the DA's actions should somehow be imputed to Hard Rock.
25 The bankruptcy court correctly dismissed Nash's charges as
26 "hypothetical and irrelevant."

27 Nash points to two instances of post-discharge contact
28 between Nash and Hard Rock, without explaining how they violated

1 the injunction. First, through testimony of his former attorney,
2 Huelsman, Nash cites the telephone meeting between Huelsman and
3 the Hard Rock manager. However, it is undisputed that this
4 contact was suggested by the DA, and that the phone conversation
5 was initiated by Huelsman, not Hard Rock. The record is clear
6 that there were no post-discharge contacts between Nash and Hard
7 Rock initiated by Hard Rock.

8 Post-discharge contacts between a debtor and creditor
9 occurring at the debtor's initiative do not necessarily violate
10 the discharge injunction. Indeed, the Bankruptcy Code
11 acknowledges that some post-discharge contacts with creditors
12 initiated by the debtor are necessary. See, e.g., § 524(c)
13 (providing that a debtor may enter into a reaffirmation agreement
14 with a creditor under specified procedures). However, whether
15 initiated by the debtor or creditor, the creditor may not use a
16 contact to "coerce" or "harass" the debtor. Pratt v. General
17 Motors Acceptance Corp. (In re Pratt), 462 F.3d 14, 19 (1st Cir.
18 2006) ("In assessing violations of . . . the discharge
19 injunction, the core issue is whether the creditor acted in such
20 a way as to 'coerce' or 'harass' the debtor improperly."); Cox v.
21 Zale Del., Inc., 239 F.3d 910, 912 (7th Cir. 2001) (provided
22 there is no "coercion or harassment of the debtor," there is no
23 post-petition attempt to collect a debt). Whether a creditor has
24 "coerced" a debtor is determined by reference to the affirmative
25 acts the creditor took during the contact with the debtor, or
26 afterwards, to collect the debt. In re Dendy, 396 B.R. 171, 179
27 (Bankr. D.S.C. 2008) (noting that to show a § 524(a) violation
28 "require[s] some affirmative collection efforts on the part of

1 the creditor").

2 In this case, the contact between Nash and Hard Rock was
3 initiated by the debtor through his attorney, and at the
4 direction of the DA. Hard Rock merely responded to a phone
5 inquiry by Nash's lawyer and made no further attempts to collect
6 on the debt. Since there were no other contacts between Nash and
7 Hard Rock post-discharge, there is no basis to find that Hard
8 Rock acted to "harass" Nash. Under these facts, the bankruptcy
9 court properly found that Hard Rock took no post-discharge acts
10 that would violate the discharge injunction.

11 In his brief, Nash suggests that "[t]o avoid further
12 prosecution, Mr. Nash settled out of court with Clark County and
13 Hard Rock on October 31, 2011." Op. Br. at 9. The implication
14 of this statement is that Hard Rock was actively involved in the
15 settlement agreement negotiations concerning the criminal
16 prosecution, and that conduct violated the discharge injunction.
17 But, again, there is no evidence in the record that Hard Rock
18 participated in the settlement negotiations concerning the bad
19 check charges. Indeed, the record suggests the contrary. In his
20 testimony before the bankruptcy court, Nash described the
21 settlement he reached with the DA. At the end of that
22 description, Nash stated, "And the DA's office agreed to that."
23 Hr'g Tr. 52:12 (Dec. 14, 2010). Nash made no mention in his
24 testimony of Hard Rock's participation in the settlement
25 agreement.

26 Moreover, at the end of the hearing, the bankruptcy court
27 invited Nash's attorney to submit Proposed Findings of Fact and
28 Conclusions of Law. While the court declined to accept or

1 endorse them, Nash's proposed Finding of Fact 40 recites that,

2 Debtor returned to Clark County on October 31,
3 2010 for his second court appearance. . . . He
4 appeared [] in court and worked out an agreement with
5 Clark County DA's office to make monthly payments of
6 \$500 per month until the full amount of the debt is
7 paid off, starting in January 2011.

8 Again, there is no mention in Nash's proposed findings detailing
9 any participation by Hard Rock in negotiating the settlement
10 agreement.

11 In sum, as the bankruptcy court correctly determined, no
12 evidence was submitted by Nash to show that Hard Rock engaged in
13 post-discharge collection activity. Of the two incidents alleged
14 in the brief, the first was a contact initiated by Nash's lawyer
15 at the direction of the DA, and there is no evidence in the
16 record to support the existence of the second. As to the notion
17 that Hard Rock violated the discharge through collusion with the
18 DA, the bankruptcy court rejected these unsupported allegations
19 as "hypothetical and irrelevant."

20 The bankruptcy court did not abuse its discretion in
21 declining to award sanctions against Hard Rock.

22 **B.**

23 **Consistent with the Ninth Circuit's decision in In re Gruntz,**
24 **the DA Did Not Violate the Discharge Injunction.**

25 During the adversary proceeding, the bankruptcy court
26 cautioned Nash's attorney that the Ninth Circuit's opinion in In
27 re Gruntz might prove a formidable obstacle to Nash obtaining
28 sanctions against the DA. The bankruptcy court was correct in
this observation.

The Gruntz decision largely concerns "the proper role of

1 federal bankruptcy courts, if any, in state criminal
2 proceedings." In re Gruntz, 202 F.3d at 1084. This analysis is
3 of critical importance in this appeal.

4 The Ninth Circuit began its discussion by noting a strong
5 policy basis for its decision:

6 We maintain the "deep conviction that federal
7 bankruptcy courts should not invalidate the results of
8 state criminal proceedings." Kelly v. Robinson, 479
9 U.S. 36, 47, 93 L. Ed. 2d 216, 107 S. Ct. 353 (1986).
10 This rule reflects a "fundamental policy against
11 federal interference with state criminal prosecutions."
12 Younger v. Harris, 401 U.S. 37, 46, 27 L. Ed. 2d 669,
13 91 S. Ct. 746 (1971). It also recognizes that "the
14 right to formulate and enforce penal sanctions is an
15 important aspect of the sovereignty retained by the
16 States." Kelly, 479 U.S. at 47.

17 Id. The court emphasized the importance of this policy when it
18 described it as the "philosophy in mind" in its discussion of the
19 relationship of state court criminal proceedings to bankruptcy
20 cases and other civil proceedings. Id.

21 The Ninth Circuit then examined the debtor's argument that
22 the purpose of the criminal proceeding in state court was, at
23 bottom, to collect a debt. Gruntz suggested that the Ninth
24 Circuit's opinion in Hucke v. Oregon, 992 F.2d 950 (9th Cir.
25 1993), applied, which held that, if a criminal proceeding has the
26 collection of a debt as its underlying aim, then the automatic
27 stay imposed by § 362(a)(6)⁶ would enjoin the criminal action.

28 ⁶ **§ 362. Automatic stay**

(a) Except as provided in subsection (b) of this section, a
petition filed under section 301, 302, or 303 of this title . . .
operates as a stay, applicable to all entities, of- . . . (6) any
act to collect, assess, or recover a claim against the debtor
that arose before the commencement of the case under this

(continued...)

1 Id. at 953. The en banc court responded to this argument:

2 Not only does our notion of cooperative federalism
3 caution against interference with ongoing state
4 criminal proceedings, but the theory of bankruptcy law
5 does as well. "The purpose of bankruptcy is to protect
6 those in financial, not moral, difficulty." Barnette
7 v. Evans, 673 F.2d 1250, 1251 (11th Cir. 1982). . . .
8 . . . Congress has specifically subordinated the
9 goals of economic rehabilitation and equitable
10 distribution of assets to the states' interest in
11 prosecuting criminals. The State of California has
12 chosen to criminalize a parent's failure to support a
13 dependent child. See Cal. Penal Code § 270. That is a
14 judgment reserved to the state; it is not for the
15 bankruptcy court to disrupt that sovereign
16 determination because it discerns an economic motive
17 behind the criminal statute or its enforcement.

18 In re Gruntz, 202 F.3d at 1085-86.

19 As can be seen, the court explicitly rejected the Hucke rule
20 providing that if the "primary motivation" of the prosecution is
21 debt collection then the prosecution violates the stay. In place
22 of the primary motivation standard, the Gruntz court held that
23 prosecutorial discretion was the preeminent concern:

24 [A]ny criminal prosecution of the debtor is on behalf
25 of all the citizens of the state, not on behalf of the
26 creditor. See Davis v. Sheldon (In re Davis), 691 F.2d
27 176, 178-79 (3d Cir. 1982). Once the state has made an
28 independent decision to file criminal charges, the
prosecution belongs to the government, not to the
complaining witness. We cannot, and should not,
"require a prosecutor to conduct a searching inquiry
into the public spirit of the victim of a crime before
proceeding with what appears to be an otherwise valid
criminal prosecution." Id. at 179. "In our system, so
long as the prosecutor has probable cause to believe
that the accused committed an offense defined by
statute, the decision whether or not to prosecute, and
what charge to file or bring before a grand jury,
generally rests entirely in his discretion."
Bordenkircher v. Hayes, 434 U.S. 357, 364, 54 L. Ed. 2d
604, 98 S. Ct. 663 (1978). As the Supreme Court noted

29 ⁶(...continued)
30 title[.]

1 in Wayte v. United States, 470 U.S. 598, 607, 84 L. Ed.
2 2d 547, 105 S. Ct. 1524 (1985), "this broad discretion
3 rests largely on the recognition that the decision to
4 prosecute is particularly ill-suited to judicial
5 review." This admonition applies with special force to
6 federal enjoinder of state criminal actions, such as
7 that urged by Gruntz, because the stay would interdict
8 state prosecution at its inception, based upon a
9 bankruptcy court's surmise of the prosecutor's "true"
10 motives.

11 Id. at 1086.

12 The Gruntz court concluded its analysis with the following
13 observation:

14 The veneer of this case suggested jurisdictional
15 discord among the bankruptcy, federal habeas corpus and
16 state court criminal systems; in reality, there is
17 harmony. "Federalism in this nation relies in large
18 part on the proper functioning of two separate court
19 systems." Davis, 691 F.2d at 179. In turn, the
20 operation of each system depends on freedom from
21 unwarranted interference by the other. State criminal
22 prosecutions should commence and continue unimpeded by
23 the federal bankruptcy courts.

24 Id. at 1087-88.

25 Although In re Gruntz was decided in the context of an
26 alleged violation of the § 362(a) automatic stay, the opinion
27 represents a strong policy statement commanding noninterference
28 by the bankruptcy courts in matters of the state criminal justice
system. In this case, the bankruptcy court noted that, after
several readings of In re Gruntz, it could find no meaningful
difference between the § 362(a) stay and the § 524(a) discharge
regarding noninterference in a criminal proceeding by a
bankruptcy court. The bankruptcy court's view is supported by
two other bankruptcy court decisions with facts closely on point
with this case.

In In re Byrd, 256 B.R. 246 (Bankr. E.D.N.C. 2000), Byrd was

1 a gambler who traveled from his home in North Carolina to Las
2 Vegas. In April 1998, he presented a check for \$3,000 to Circus
3 Circus Las Vegas, and five checks in the amount of \$5,000 each to
4 Caesar's Palace Casino. All of the checks were returned unpaid
5 by Byrd's bank. The casinos notified the Clark County District
6 Attorney's Bad Check Diversion Unit, which sent notices and
7 warnings of prosecution to Byrd. Id. at 248. A warrant for
8 Byrd's arrest was issued, but Byrd was not aware of the warrant.

9 Byrd filed a petition for relief under Chapter 7, listing
10 the casinos as creditors. The casinos did not object to
11 discharge of their claims against Byrd, and on December 14, 1998,
12 Byrd received a discharge. Id.

13 On May 2, 2000, Byrd was involved in an automobile accident.
14 When local police discovered the outstanding warrant, he was
15 arrested. Byrd challenged the state criminal proceedings as a
16 violation of the discharge injunction.

17 Noting In re Gruntz, the bankruptcy court held that
18 "governmental prosecutors may initiate and continue criminal
19 prosecutions without violating the automatic stay even if, as in
20 this case, the primary purpose of the prosecution is to collect a
21 dischargeable debt."⁷ In re Byrd, 256 B.R. at 256.

22 _____
23 ⁷ There is one significant distinction between Byrd and
24 this case. Byrd paid full restitution of his debt to the Clark
25 County District Attorney's office, and that sum was paid to the
26 creditors in full satisfaction of Byrd's debts. The bankruptcy
27 court ruled that the creditors need not disgorge those payments,
28 because restitution awards are nondischargeable under
§ 523(a)(7).

In Nash's case, the criminal process had not yet been
completed when he commenced his adversary proceeding. In

(continued...)

1 In Fidler v. Donahue (In re Fidler) 442 B.R. 763 (Bankr. D.
2 Nev. 2010), Fidler borrowed money from two individuals and later
3 allegedly repaid the loans with bad checks. Fidler filed a
4 chapter 7 petition, listing the debts to the individuals. The
5 debtor was granted a discharge. Id. at 765.

6 In response to criminal complaints filed against him by the
7 Nye County, Nevada, Sheriff's office for allegedly writing bad
8 checks, Fidler commenced an adversary proceeding to enjoin the
9 county prosecutor from pursuing Fidler. Fidler argued that the
10 criminal prosecution amounted to debt collection action in
11 violation of the discharge injunction of § 524(a).

12 The bankruptcy court ruled that In re Gruntz was
13 controlling. As to the argument that In re Gruntz only applied
14 to § 362(k) claims for violation of the automatic stay, the court
15 observed that such was a "distinction without a difference." In
16 re Fidler, 442 B.R. at 766 n.3. "The fact that the action
17 requested invokes the injunction against collection of a debt
18 under § 524(a) (2) rather than the automatic stay under § 362 does
19 not change the fundamental relationship between the courts." Id.
20 at 767.

21 Simply put, we agree with the bankruptcy court in this case,
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23 _____
24 ⁷(...continued)

25 granting Nash's request for declaratory judgment that his debt to
26 Hard Rock was discharged, the court cautioned Nash that "I don't
27 know that it does you any good, because it doesn't affect the
28 prosecution or the deferred payments for deferred prosecution."
Hr'g Tr. 7:24-8:1 (Jan. 7, 2011). In other words, while Nash's
debt to Hard Rock has been discharged as a claim in the
bankruptcy case, any restitution awards in the criminal
proceedings would be legally distinct obligations.

1 and the other decisions cited, that the Gruntz analysis applies
2 not only in the context of a claim for violation of the automatic
3 stay, but also where the injury alleged is a discharge violation.
4 The strong public policy expressed in Gruntz advises against any
5 interference by the bankruptcy court in the decisions of state
6 prosecutors to pursue criminal charges and prevented the
7 bankruptcy court from granting sanctions against the DA.
8 Moreover, avoiding a bankruptcy conflict with criminal
9 prosecutions would seem to be even more influential in the
10 context of enforcement of the bankruptcy discharge, a permanent
11 injunction, as compared to the automatic stay, a temporary
12 injunction. Because enforcement of the Nash discharge under the
13 facts would interfere with the Nevada criminal proceedings, and
14 given In re Gruntz, we conclude that the bankruptcy court did not
15 abuse its discretion in denying sanctions against the DA.

16 **CONCLUSION**

17 We AFFIRM the judgment of the bankruptcy court.
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