

Case Problem: What was Discharged?

After getting signed to the Tennessee Titans as a walk on and spending 3.3 years in NFL (the average career span for a NFL player), Paul Hewson takes a job working for the Chattanooga Fire Department. He left that job after another two (2) years since it was not what he was looking for. He then took a job as a police officer, where of course he developed a desire for honey glazed donuts.

Several years and 45 pounds later, Hewson decides to take up bee farming as a hobby since he is addicted to honey and can't imagine eating any meal, especially breakfast, without the sweetest thing on earth. He does so well and actually supplements his income by selling some of his excess honey to local supermarkets, food distributors and at the occasional flea market.

Unfortunately, one beautiful New Year's Day, a Sunday morning, while working on the elevated hives, Paul had a mysterious fall. As he was falling, a nail caused a big slash in his beekeeper uniform and arm. As he lay on the ground bleeding and waiting for help, he received numerous bee stings.

Paul spent several months in the hospital recovering from a broken back and numerous bee stings. He never completely recovered. In addition to a scar from receiving 360 stitches on his arm, one of the permanent results of his fall was that Paul developed vertigo. Although he was able to continue working for the Police Department, he was permanently assigned to a desk.

Paul owed numerous medical bills after being discharged from the hospital and returning to work. But, the income from his job and NFL pension were high enough that he is not eligible for Chapter 7. In addition, he was behind on his car loan and rent. Finally, like many former NFL players, Paul owed money to the IRS.

Paul visited the firm of Gordon Matthew Thomas Sumner to discuss his financial affairs. The attorney assigned to his case, Saul Hudson, quickly concluded that since less than 50% of Paul's income came from bee farming, Paul was not eligible to file a Chapter 12 case.

During the consultations with his attorney Saul, Paul revealed that he was solely obligated on a loan to Nationwide Mortgage ("Nationwide") for the house in which his sister lived. Although his name and signature did not appear on the warranty deed, only his name and signature appeared on the Note and Deed of Trust. This was a loan that Paul had taken out for his sister while he was making the NFL minimum salary of \$285,000.

Saul made the decision when completing Paul's schedules that since Paul didn't own any real property, to leave Schedule A blank. Furthermore, Saul scheduled the debt owed to Nationwide on Schedule F as unsecured.

Paul's Chapter 13 case was filed on March 30, 2012.

The plan included the following language in Section 6 of the Plan under the heading: **“Claims Secured by Real Property Which Debtor Intends to Retain:”**

Debtor will make all post-petition mortgage payments directly to each mortgage creditor as those payments ordinarily come due. These regular monthly mortgage payments, which may be adjusted up or down as provided for under the loan documents, are due beginning the first due date after the case is filed and continuing each month thereafter, unless this Plan provides otherwise. Trustee may pay each allowed arrearage claim at the monthly rate indicated below until paid in full. Trustee will pay interest on the mortgage arrearage if the creditor requests interest, unless an objection to the claim is filed and an order is entered disallowing the requested interest.

In addition, the plan provided for the payment of \$0.00 in prepetition arrears.

(a) Creditor	(b) Property description	(c) Estimated pre-petition arrearage	(d) Projected monthly arrearage payment
Nationwide Mortgage, LLC	1 Street With No Name City of Blinding Lights, TN	\$0.00	\$0.00

Section 7 of the Plan provided:

7. Unsecured Claims. Debtor estimates that the total of general unsecured debt not separately classified in Plan paragraph 10 is \$51,809.00. After all other classes have been paid, Trustee will pay to the creditors with allowed general unsecured claims a pro rata share of \$0.00 or 0% whichever is greater. Trustee is authorized to increase this dollar amount or percentage, if necessary, in order to comply with the applicable commitment period stated in paragraph 2 of this Plan.

Finally, Section 10 of the Plan provided:

10. Other Provisions:

A. Special classes of unsecured claims.

B. Other direct payments to creditors.

C. Other allowed secured claims: A proof of claim which is filed and allowed as a secured claim, but is not treated specifically under the plan, shall be funded as classified in the proof of claim as funds become available after satisfaction of the allowed secured claims which have been treated by the plan and prior to payment of allowed non-administrative priority claims (except domestic support obligation claims as set forth in

paragraph 5(A), above) and general unsecured claims. Notwithstanding the foregoing, the Debtor or any other party in interest may object to the allowance of the claim. Allowed claims in this class shall receive 5% interest.

The plan was confirmed on June 6, 2012.

Nationwide Mortgage filed its proof of claim as a secured claim in the bankruptcy case on April 19, 2012 (i.e., prior to confirmation), listing the total amount of the claim as \$24,775.18, with \$0.00 in arrears to be paid. The proof of claim specified the basis for perfection was "Recordation of Lien." As required by Fed. R. Bankr. P. 3001, the proof of claim included a copy of the Note, and the Deed of Trust. In addition, the proof of claim included a copy of an escrow analysis performed immediately after the filing of the bankruptcy case and consistent with RESPA.

Immediately after filing its proof of claim, Nationwide reported to the major credit reporting agencies with respect to Paul's consumer information report (i.e., credit report) that its loan was included in a Chapter 13 bankruptcy case.

No objection to Nationwide's proof of claim was ever filed by Paul, his attorneys, the trustee, or any other interested party.

The case was completed on March 25, 2015. The trustee did not file and serve a Notice of Final Cure pursuant to Fed. R. Bankr. P. 3002.1.

The court entered an order on May 6, 2015 granting Paul a discharge pursuant to 11 U.S.C. § 1328(a). Nationwide was served and received a copy of the discharge order.

Shortly after entry of the discharge, however, the loan was six (6) months delinquent. Nationwide referred the loan to its attorney, Mark Sinclair, to begin foreclosure proceedings. At the same time, Nationwide reported to the major credit reporting agencies with respect to Paul's consumer information report (i.e., credit report) that the loan was six (6) months delinquent with an open balance of \$18,007.

Mark arranged for a notice of sale to be published for the next four (4) consecutive weeks in the local newspaper and posted at the local courthouse. A copy of the notice was sent by certified mail to Paul, with the amount needed to reinstate the loan listed.

Paul, upset by the letter, and more by the fact that his sister has failed to pay the loan as promised, contacted Saul to see what his options were.

Saul immediately filed a motion to reopen Paul's bankruptcy case for the purpose of filing an adversary proceeding wherein he would seek damages for:

- Violating the discharge injunction (alleging that as to Paul Hewson, the debt to Nationwide was discharged);

- Violation of the Fair Debt Collection Practices Act (FDCPA), 15 USC § 1681, *et seq.*;
- Violation of the Fair Credit Reporting Act, 15 U.S.C. § 1692, *et seq.*;

To support the claims under the Fair Credit Reporting Act, Saul alleged that:

- a) Paul's credit reports with Equifax, Experian, and TransUnion contained erroneous information;
- b) The information described above was false and misleading;
- c) Nationwide provided false and misleading information to Experian, Equifax, and Trans Union in furtherance of its efforts to collect the debt;
- d) As a result of Nationwide's willful actions and omissions, Paul was eligible for statutory damages;
- e) Also as a result of Nationwide's actions and omissions, Paul suffered actual damages, including without limitation suppression of his credit score, out-of-pocket expenses in challenging Nationwide's wrongful representations, detriment to his credit rating and emotional distress.

To the support the claim under the FDCPA, Saul alleged (on behalf of Paul) that:

- a) The debt being collected by Nationwide was primarily for personal, family or household purposes and was therefore a "debt" as that term is defined by 15 U.S.C. § 1692a(5);
- b) Nationwide misrepresented the nature of the debt and amount owed, and used false and deceptive practices in collecting a debt that Paul did not own; and
- c) Nationwide violated the FDCPA by reporting false and misleading information to credit reporting agencies since any debt owed by Paul to Nationwide was discharged. 15 U.S.C. §§ 1692e, 1692e(2), 1692e(8), and 1692e(10).

Accordingly, Paul was entitled to attorney fees, statutory damages, and damages for emotional distress.

Questions:

- 1) Should the court reopen the case to hear any of Paul's claims? Which claims should the bankruptcy court hear?
- 2) Did Nationwide violate the discharge injunction? If so, were any actions taken by Nationwide post-discharge not in violation of the discharge injunction?
- 3) Assuming the bankruptcy court elects to consider Paul's FCRA claims:
 - a. Did Nationwide violate the FCRA prior to confirmation by reporting that Paul's debt to Nationwide was included in a Chapter 13 case?
 - b. Did Nationwide violate the FCRA post-discharge by reporting that the debt originally owed by Paul either had an open balance or was delinquent?
- 4) Assuming the bankruptcy court elects to consider Paul's FDCPA claims, did Nationwide violate the FDCPA?
- 5) What steps should Nationwide have taken prior to confirmation? Prior to discharge?
- 6) Are there any ethical issues presented by anything Saul did in this case?