

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WDH LLC,

Plaintiff,

OPINION AND ORDER

v.

10-cv-741-wmc

ROBERT SOBCZAK-SLOMCZEWSKI,

Defendant.

Plaintiff WDH LLC moves to reopen this case, which was closed on May 31, 2013, after defendant Robert Sobczak-Slomczewski filed a bankruptcy petition. (Dkt. #64.) Plaintiff also moves for enhanced damages, including treble damages, interest, costs and expenses of collection and attorneys' fees. (Dkt. #64.) The court will grant the motion to reopen, as well as the request for treble damages and interest. Plaintiff's request for attorneys' fees and resolution of nondischargeability questions, however, will be denied.

BACKGROUND

On March 20, 2013, this court granted plaintiff WDH LLC's motion for summary judgment against defendant Robert Sobczak-Slomczewski, concluding that he was liable for (1) breaching his indemnity agreement and guaranty on a commercial loan; and (2) conversion and theft. The court further found that defendant owed plaintiff at least \$677,000 in actual damages, and it ordered the parties to submit additional evidence and arguments regarding other damages, treble damages and attorneys' fees. (Dkt. #57.) On April 19, 2013, plaintiff submitted an affidavit specifying additional damages and proposing a judgment against defendant and in favor of plaintiff in the amount of

\$10,887,480.23. (Dkt. #58.) On April 22, before the court entered judgment, defendant filed a bankruptcy petition in the Northern District of Illinois. This court then administratively closed the case, subject to reopening upon completion of the bankruptcy proceedings. (Dkt. #63.)

Plaintiff then commenced an adversary pleading in defendant's bankruptcy case, seeking to determine the dischargeability of the \$677,000 debt owed by defendant under 11 U.S.C. §§ 523(a)(4) and (a)(6). *See In re Sobczak-Slomczewski*, No. ADV 13-A-972 (Bankr. N.D. Ill., filed July 16, 2013). The bankruptcy court ultimately granted summary judgment to plaintiff on the nondischargeability of its claims, specifically holding that \$677,000 of the debt owed to plaintiff by defendant is nondischargeable under 11 U.S.C. §§ 523(a)(4) and (a)(6). (*Id.*) (order dated Aug. 5, 2014). Plaintiff's adversary proceeding was closed two days later (August 7, 2014). The bankruptcy proceedings having concluded, plaintiff's remaining debts were discharged in August 2014.

Defendant did not move to stay the bankruptcy court's order under Fed. R. Bankr. P. 8007, although he did file an appeal of the bankruptcy court's order to the U.S. District Court for the Northern District of Illinois (Case No. 14CV7297). When the district court dismissed defendant's appeal for lack of jurisdiction, on the grounds that he did not file his notice of appeal within the 14-day period required by Fed. R. Bankr. 8002(a)(1), the defendant appealed to the Seventh Circuit. That court recently affirmed dismissal of defendant's appeal, concluding that the 14-day time limit to file notice of appeal of a bankruptcy court's judgment or order is jurisdictional. *See In re Sobczak-Slomczewski*, Case No. 15-1162, slip op. (7th Cir. June 13, 2016).

OPINION

Plaintiff requests that this case be reopened because the bankruptcy proceedings, including plaintiff's adversary proceeding, are complete. Defendant's only response to that request was that the court should delay reopening the case until the Seventh Circuit rules on his appeal. Now that the Seventh Circuit has affirmed, however, there appears to be no reason why this case should not be reopened. While this case was administratively closed, consistent with the automatic stay provisions of 11 U.S.C. § 362(a), the stay is now terminated because the bankruptcy case closed and plaintiff has been granted a discharge. 11 U.S.C. § 362(c). Accordingly, the court will grant plaintiff's motion to reopen the case.

The next question is what issues remain to be resolved in this case. This court concluded previously that plaintiff was entitled to at least \$677,000 in actual damages and that it appeared plaintiff could treble its actual damages without submitting additional proof, as well as collect reasonable attorneys' fees, but that defendant would be given an opportunity to argue otherwise. (Dkt. #57 at n.7.) Plaintiff now contends that this court should enter judgment in its favor in the amount of \$2,031,000.00 (\$677,000 plus treble damages), as well as post-judgment interest and attorneys' fees incurred in obtaining the nondischargeability judgment against defendant. The court addresses these issues below.

A. Actual and Treble Damages

Having already awarded actual damages of \$677,000, plaintiff again argues that those damages are subject to automatic trebling under Wis. Stat. §§ 895.446, which provides that any plaintiff who prevails in an action for civil theft is entitled to "actual

damages,” as well as “[e]xemplary damages of not more than 3 times” the actual damages, “with [n]o additional proof [] required . . . for an award of exemplary damages.” Wis. Stat. § 895.446(3)(a)-(c). Given this plain language calling for trebling as a matter of course, and defendant’s failure to offer a counter argument, the court will grant plaintiff’s request for treble damages.

This does not resolve the question, however, whether judgment for treble damages constitutes a nondischargeable debt. From a review of the bankruptcy court’s docket and decision on the dischargeability in the adversary proceeding, it does not appear that any party raised the issue of dischargeability of a potential treble damages award in the bankruptcy court. *See In re Sobczak-Slomczewski*, No. ADV 13-A-972 (Bankr. N.D. Ill. Aug. 5, 2014). Rather, the bankruptcy court found only that this court’s award \$677,000 in *actual* damages was dischargeable, without addressing (and apparently without being asked to address) the potential of an award of treble damages or attorneys’ fees. *Id.*

While plaintiff now asks that this court find the trebled debt nondischargeable under 11 U.S.C. § 523(a)(2) (relating to claims of false representations, false pretenses and actual fraud), because they flow from defendant’s liability for fraud, bankruptcy courts have exclusive jurisdiction over nondischargeability claims brought under § 523(a)(2), (4) and (6). *See* 11 U.S.C. § 523(c)(1). Obviously, this court has exercised jurisdiction in concluding that plaintiff is *entitled* to treble damages, but does not appear to have jurisdiction to consider, at least in the first instance, whether those treble damages are nondischargeable. Indeed, since there can be no question that WDH’s claim was pending when this matter was stayed for bankruptcy proceedings, its only avenue to

avoid discharge was in the bankruptcy proceedings themselves. *See In re Meyer*, 120 F.3d 66, 68 (7th Cir. 1997) (creditor “must request a determination of non-dischargeability from the bankruptcy court” no later than 60-days after the creditors’ meeting and, unless granted an extension from the bankruptcy court, “[t]ardiness [in seeking nondischargeability determination] is otherwise fatal”). Regardless, plaintiff cites no authority in support of this court now exercising jurisdiction over that question. Accordingly, to the extent plaintiff was seeking such an order from this court, that request is denied.

B. Attorneys’ Fees Related to the Adversary Proceeding

Plaintiff next requests that it be awarded \$158,881.82 in attorneys’ fees incurred in obtaining the nondischargeable judgment against defendant in the bankruptcy court, and also for a finding that the fee award is nondischargeable. Again, plaintiff has failed to identify any jurisdictional basis on which *this* court could conclude that plaintiff may obtain attorneys’ fees incurred in the *bankruptcy proceeding* or that such fees would be nondischargeable, rather than make that request in the bankruptcy court. Therefore, plaintiff’s request will be denied.¹

C. Postjudgment Interest

Finally, plaintiff requests postjudgment interest at a rate of 0.15% under 28 U.S.C. § 1916(a). Defendant makes no objection to postjudgment interest. Accordingly, plaintiff’s request will be granted.

¹ In fairness, this court previously stated that plaintiff *may* be entitled to attorneys’ fees under Wis. Stat. § 895.446(b) for fees incurred in proving defendant’s liability for theft in this lawsuit (dkt. #57, n.7), but plaintiff has not moved for such fees.

ORDER

IT IS ORDERED that:

1. Plaintiff WDH LLC's motion to reopen this case (dkt. #64) is GRANTED.
2. Plaintiff's motion for enhanced damages (dkt. #65) is GRANTED IN PART and DENIED IN PART. The motion is GRANTED with respect to WDH's request for actual damages in the amount of \$677,000 and treble damages, for a total damages award of \$2,031,000.00. The motion is also GRANTED with respect to WDH's request for postjudgment interest. The motion is DENIED in all other respects.
3. The clerk of court is directed to enter judgment accordingly and close this case.

Entered this 4th day of October, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge