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IT IS SO ORDERED.

Dated: April 11, 2024




Guy R. Humphrey
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re: :
 :
MICHAEL L. MOORE : Case No. 16-33444
 : Chapter 7
TONI R. MOORE, : Judge Humphrey
 :
Debtors. :

**DECISION (1) DENYING THE DEBTORS’ MOTION FOR CONTEMPT;
(2) DETERMINING THE LEASE TERMINATED PRE-PETITION UNDER INDIANA
LAW AND ANY DAMAGES RELATED TO THE LEASE IS A PRE-PETITION,
DISCHARGED DEBT; (3) DENYING CREDITOR CURTIS PEARMAN’S CROSS-
MOTION FOR SANCTIONS; AND (4) DENYING THE DEBTORS’ MOTION TO
STRIKE CERTAIN STATEMENTS OF PEARMAN (DOCS. 35, 37, 40)**

I. Procedural Background

On November 4, 2016 Michael L. Moore (“Michael”) and Toni R. Moore (“Toni”) (collectively, the “Moore’s”) filed a joint petition for relief under Chapter 7 of the Bankruptcy Code. Doc. 1. The petition listed the Moore’s as owning a sole proprietorship, DermaBella Spa & Skin Center, LLC (“DermaBella”), which was located at 2519 E. Main Street, Suite Lower Level, Richmond, Indiana. Doc. 1 at 8. The business operated from a leased parcel of real

property, and the lessor was Curtis Pearman (“Pearman”). See Stip. ¶ 4 (Doc. 49). On Schedule A/B, the Moores listed DermaBella but indicated that “[I]abilities exceed assets. Business is closed with no inventory.” Doc. 1 at 18. The Moores also listed a separate business, Kidz Korner, LLC, which was located in Eaton, Ohio. *Id.* Both of these businesses were also listed on the Statement of Financial Affairs. *Id.* at 57 (Q. 27). However, the lease with Pearman was not listed on Schedule G or F, or anywhere else in the Moores’ filings. Nor was Pearman listed as a creditor in the Moores’ matrix, schedules, or elsewhere in the case. Stip. ¶ 11. Pearman did not receive notice of the bankruptcy at that time. Stip. ¶ 17.

As is often the case in individual Chapter 7 filings, the Debtors estimated in their petition that there would be no funds available for unsecured creditors. Doc. 1 at 6 (Q. 17); Stip. ¶ 12 (agreeing that the Moores indicated in their petition “they did not own any non-exempt assets.”) Accordingly, the Clerk indicated in the *Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline* that there was no proof of claim bar date being set and creditors would be notified by the Clerk separately if a bar date was set later. Doc. 7 at 2 (Item 10). On January 17, 2017, a separate notice was sent setting a bar date of April 17, 2017. Doc. 16. This notice was served by the Bankruptcy Noticing Center to all parties in the creditor matrix on January 19, 2017. Doc. 17; Stip. ¶ 21. Toni testified that at that time, the Chapter 7 Trustee was interested in the DermaBella equipment, but the Trustee ultimately determined that the equipment was leased and had no value to the creditors of the Moores’ bankruptcy estate. Transcript of Hearing (Tr.) at 23, 45-46 (Doc. 77). Regardless of the specific reasons, the Chapter 7 Trustee docketed a Report of No Distribution on February 7, 2017. The claims register showed that ten (10) creditors filed proofs of claim in this case, but as the bankruptcy estate had no assets to distribute, none of those

creditors received any funds. The Debtors received their Chapter 7 discharges in an order entered on March 1, 2017. Doc. 20. The case was closed by a docket entry entered on May 3, 2017.

Fast forward five years, and the Moores, with new counsel, moved to reopen this case on November 17, 2022. Doc. 25. The Moores wanted to reopen the case to schedule additional omitted creditors. *Id.* The court gave the Moores until January 13, 2023 to file an amended motion to correct certain procedural issues, and also raised the substantive question of whether any purpose existed to add additional creditors to a no-asset case because, at least in the Sixth Circuit, and subject to the normal dischargeability exceptions, all pre-petition debts are discharged in a no-asset case whether those debts are scheduled or not. Doc. 28; *In re Madaj*, 149 F.3d 467 (6th Cir. 1998). On January 6, 2023, the Debtor filed an amended motion to reopen and indicated that the Debtors failed to schedule the debt of Pearman. Doc. 30. The court granted the motion on February 7, 2023. Doc. 31. The Debtors amended Schedule E/F, listing Pearman as a non-priority unsecured creditor with an “unknown” total amount of his claim. Although the Debtors did not amend Schedule G pertaining to leases and other executory contracts, they listed the Pearman debt as involving a “lease.” Doc. 33.

On February 22, 2023 the Debtors filed a motion seeking to find Pearman in contempt of the Debtors’ 2017 discharge order. Doc. 35. Pearman responded to the motion (Docs. 36, 37) and also filed a cross-motion for sanctions against the Moores. The court fixed a date for a response to the cross-motion (Doc. 38), and the Debtors responded on May 2, 2023 (Doc. 40).

Following a May 31, 2023 telephonic status conference [See Doc. 38 (scheduling order)], the court entered an order (Doc. 42) allowing the parties to brief whether Mr. Pearman’s previously unscheduled debt was discharged in the Debtors’ Chapter 7 case pursuant to the *Madaj* decision. The parties filed briefs and Stipulations of Fact. Docs. 44, 45, 49. The court

ruled that the fact that a bar date was set in this case was not relevant to the *Madaj* holding because it was ultimately determined by the Chapter 7 Trustee to be a no-asset estate. Doc. 53. However, the court raised other possible legal issues including the status of the lease between the Moores and Pearman on the petition date. *Id.* See *In re Moore*, No. 16-33444, 2023 Bankr. LEXIS 2181, at *11-13 (Bankr. S.D. Ohio Aug. 23, 2023).

An evidentiary hearing was conducted on March 12, 2024 on the Moores' contempt motion and Pearman's cross-motion for sanctions to determine the remaining issues. The only witnesses were Pearman and Toni, both of whom the court found credible. The Moores' exhibits 2 through 26 were admitted, as well as Pearman's exhibits A and C. The court took the matter under advisement and now renders its decision.

II. Jurisdiction

This court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order 05-02 of the United States District Court for the Southern District of Ohio. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(O). This court has constitutional authority to enter a final judgment. *Stern v. Marshall*, 564 U.S. 462 (2011).

III. Findings of Fact

Although the parties disagreed on certain points, the relevant facts of this case are relatively uncomplicated and largely undisputed. The Moores and Pearman entered into a commercial lease agreement on November 20, 2015. Stips. ¶¶ 3, 4; Doc. 36-2. Toni was aware of the lease negotiations, but Michael negotiated for the Moores. Tr. at 17. The term of the lease was from November 21, 2015 until February 1, 2021 with an option for a lease extension. Doc. 36-2, Lease Agreement at ¶¶ 2, 3. The lease provided for a monthly rent payment of \$400. *Id.* at ¶ 4. Additionally, Pearman loaned the Moores, as lessees, \$44,000 to build out the leased

property for DermaBella, which sum was to be paid to Pearman at \$1,000 each month. Tr. at 61, 94-95; Doc. 36-2, Lease Agreement at ¶ 26(e). Once the build-out costs were repaid, the lease payment was to increase to \$1,400 each month. Tr. at 108. Thus, the payment to Pearman was to remain at \$1,400 throughout the original term of the lease. *Id.* DermaBella could no longer operate when the physician working for DermaBella pulled out his participation Tr. at 18-19, 57-58. Toni recalled that the keys to the leased property were returned to Pearman around October 2016, but was not certain of the exact date. Tr. at 52. Toni did send an email to Pearman dated October 31, 2016 that stated, among other things, that the leased property was vacated as of October 29, 2016. Ex. A at 20. Various checks for the rent bounced prior to the October 31, 2016 email. Tr. at 117 Pearman did not dispute any of these points.

The lease does not specifically address licenses or the need for a third-party, such as a physician, to participate in the operations of DermaBella. Instead, the commercial lease has a garden-variety provision requiring that the Debtors' business on the leased premises be operated for a lawful purpose and in a lawful manner, and that the business comply with all relevant laws and regulations. Doc. 36-2, Lease Agreement at ¶ 10. Toni did not recall Pearman asking about licenses to run the business or the necessity of any third-party, including a physician, be involved in order for DermaBella to be in regulatory compliance. No credible evidence was presented that the Moores deceived Pearman about the operation of DermaBella. Instead, the evidence showed that DermaBella could not function without a physician and that this physician unexpectedly backed out.

On October 6, 2022 Pearman, lacking both notice and actual knowledge of the Moores' filing of their bankruptcy case in 2016 and of their 2017 discharge, filed a complaint against the Moores in the Wayne Superior Court in Indiana (the "State Court"), seeking to recover from the

Moore on account of their breach of the lease, Ex. A. Toni only looked at first page of the complaint and otherwise left it for Michael to address. Tr. at 25-26. On October 18, 2022 Michael filed a motion to dismiss the complaint, with prejudice. Ex. 3. He alleged that Pearman received notice of their bankruptcy from the bankruptcy court and argued that any debt related to the lease was discharged through the bankruptcy. *Id.* Included within that filing was a copy of the March 1, 2017 discharge order. Ex. 4. In response, on October 21, 2022, Pearman moved to deny the motion to dismiss and sought to strike the motion to dismiss from the record. Ex. 5. In essence, Pearman stated that he was never noticed of the 2016 bankruptcy case or the 2017 discharge, and that the pre-petition debt owed to him was therefore not discharged. See also Ex. 5-1 (exhibits attached to Pearman's response). The flurry of filings in the State Court continued with Michael's motion to strike Pearman's filing on October 27, 2022. Exs. 6, C. The State Court set a hearing on the pending motions for January 25, 2023. Exs. 7, 8. On November 22, 2022 Pearman moved for default judgment against Toni Moore, apparently based on the filings all being made by Michael, a non-attorney. See also Ex. 9-1 (exhibits attached to the motion for default judgment). The State Court included this further motion to be determined at the January 25, 2023 hearing. Ex. 10.

On January 19, 2023 the Moores moved for a continuance of the State Court hearing in order to re-open this bankruptcy case to add Mr. Pearman as a creditor. Exs. 11, 12. That same day, the Moores, through counsel not previously involved in the bankruptcy case, moved to reopen the Chapter 7 case. The State Court continued the hearing to April 6, 2023. Ex. 13. On February 28, 2023 the Moores again moved to dismiss the State Court case with prejudice. Ex. 15. That same day, Pearman filed a motion for striking this motion, and for findings of fraud and sanctions against the Moores. Ex. 16. Those motions were added to the April 6, 2023

hearing. Ex. 17. Toni testified that Michael had a stroke sometime in March 2023 and was continuing to receive medical treatment. Tr. at 34, 36.

Prior to the March 12, 2024 hearing, the parties stipulated that neither the lease nor any other debt with Mr. Pearman were properly scheduled or listed on the matrix of creditors in the “original bankruptcy proceedings.” Stip. ¶ 17. The reason the lease with Pearman or a claim arising from that lease was not scheduled is unclear from the evidence. One reason for this is that the former debtor counsel, John Paul Reiser, is no longer involved in this case and was not a witness. Second, Mr. Moore, who was more actively involved in the Moores’ financial decisions, was unavailable to testify. The only available information was from the two witnesses, and the documents filed of record in this case. Toni recalls discussing both DermaBella and the lease with the Moores’ prior bankruptcy counsel or his staff. It also appears possible the Moores incorrectly believed the lease with Pearman (and the separate unscheduled commercial lease of Kidz Corner) were obligations of those businesses and not scheduled in the Moores’ personal bankruptcy for that reason.

IV. Analysis

A. The Lease Terminated Pre-Petition Under State Law.

A lease cannot be assumed or rejected if it was terminated pre-petition under state law. See 11 U.S.C. §§ 365(a) (allowing an unexpired lease to be assumed or rejected); 365(c)(3) (providing that a trustee cannot assume a non-residential real property lease that terminated pre-petition); *Dellaway Villa Apts. v. Goodloe (In re Goodloe)*, 61 B.R. 1016 (Bankr. M.D. Tenn. 1986) (collecting cases). A lease that is terminated pre-petition becomes an unsecured claim of the debtor’s bankruptcy estate. *Broadfoot v. Jamestown Mgmt. Corp. (In re Biochemical Indus.,*

Inc.), 521 B.R. 395, 404 (Bankr. N.D. Ga. 2014) (pre-petition termination resulted in a non-priority unsecured claim for the lessor).

Whether the lease was terminated is governed by state law. *Robinson v. Chicago Housing Authority*, 54 F.3d 316, 320 (7th Cir. 1995); see also *In re Appalachian Oil Co.*, No. 09-50259, 2009 Bankr. LEXIS 2533, at *6, 2009 WL 2843371, at *2 (Bankr. E.D. Tenn. Aug. 31, 2009) (commenting that the applicable nonbankruptcy law to be considered in determining whether a lease of property has been terminated is the law of the state in which the property is located). Termination and breach of a contract are distinct concepts. See *Nickels Midway Pier, LLC v. Wild Waves, LLC (In re Nickels Midway Pier, LLC)*, 372 B.R. 218, 222-23 (D.N.J. 2007) (noting that a “material breach creates the right of termination”). In this instance, Indiana law governs. Doc. 36-2, Lease Agreement at ¶ 19. See also *In re Indiana Hotel Equities, LLC*, 589 B.R. 315 (Bankr. E.D. Mich. 2018) (state court determined lease terminated under Indiana law and bankruptcy court gave full faith and credit to that finding). Indiana law allows the termination of a lease prior to judicial determination. *In re Felix Invs., Inc.*, No. 22-00278-AJM-11, 2011 Bankr. LEXIS 3335, at *15, 2011 WL 3799776, at *6 (Bankr. S.D. Ind. Aug. 29, 2011). Lessors have a contractual right to terminate the lease if the lessee fails to pay rent. *Felix Invs., Inc.*, 2011 Bankr. LEXIS 3335, at *15-16, 2011 WL 3799776, at *6. Courts determine a lease termination “on a case by case basis.” *Felix Invs., Inc.*, 2011 Bankr. LEXIS 3335, at *15, 2011 WL 3799776, at *6 (citing *Gigax v. Boone Village Ltd. P’ship*, 656 N.E.2d 854, 857 (Ind. Ct. Ap. 1995)). The parties agreed that the Moores breached the lease. Various checks bounced, and Toni sent an email that indicated the property was vacated and returned the keys back to Pearman. In Pearman’s State Court complaint, he alleged that “[t]he October 30 e-mail was an unambiguous abandonment/repudiation and default of the Lease contract.” Ex. A at ¶ 12.

In this case, the court finds that the lease terminated pre-petition because the Moores, as tenant, surrendered their interest and Pearman accepted the keys to the leased property.¹ Of course, absent bankruptcy, Pearman would have been entitled to recover damages from the Moores on account of their breach of the lease, but the lease was terminated prepetition. See *Ralph E. Koressel Premier Elec., Inc. v. Forster*, 838 N.E.2d 1037, 1045 (Ind. Ct. App. 2005) (noting that “[r]epudiation of a contract must be positive, absolute, and unconditional in order that it may be treated as an anticipatory breach.”); *Switzer Farms v. Switzer*, 32 N.E. 3d 382, 2015 Ind. App. Unpub. LEXIS 457, at *8 (Ind. Ct. App. Apr. 22, 2015) (table decision) (similar). The Moores positively, absolutely, and unconditionally repudiated the lease on October 30, 2016 and Pearman recognized it as an “unambiguous/repudiation and default of the Lease contract.” Ex. A at ¶ 12.

B. The Pre-Petition Debt Arising Out of the Lease Termination Was Discharged in the Moores’ Chapter 7 Case.

1. The *Madaj* Holding Applies To All No-Asset Chapter 7 Cases.

As the court explained in detail in its prior memorandum order, the initial notice from the Clerk that assets were available is not relevant to the holding of *In re Madaj* if the case ultimately distributes no assets to creditors. Doc. 53. As Pearman raised that argument again at the hearing, the court incorporates that analysis in its entirety. The Sixth Circuit’s interpretation of 11 U.S.C. § 523(a)(3)(A) in *Madaj* applies to this case.

¹Although this court does not decide the question, if this non-residential real property lease had not terminated pre-petition, it may have been rejected under 11 U.S.C. § 365(d)(4)(A), regardless of the lack of notice to Pearman of the bankruptcy. See *RPD Holdings, L.L.C. v. Tech. Pharm Servs. (In re Provider Meds, L.L.C.)*, 907 F.3d 845, 857 (5th Cir. 2018) (collecting cases, and discussing when a lease a residential real property lease is “deemed rejected” under § 362(d)(1) despite a lack of notice to the trustee). Upon rejection, the rejection damages would constitute a prepetition claim. 11 U.S.C. § 365(g)(1). Since the Moores vacated the leased premises and turned over the keys to Pearman before their bankruptcy case was filed, Pearman would not have been entitled to a post-petition claim.

2. Pearman Did Not Prove He Held a Claim Under § 523(a)(2)(B) of the Bankruptcy Code.

Under the Bankruptcy Code, a debt that is non-dischargeable for fraud under section § 523(a)(2), (4) or (6) is not discharged when the creditor lacked “notice or actual knowledge” to timely file a dischargeability adversary proceeding. 11 U.S.C. § 523(a)(3)(B). The parties have stipulated that Pearman did not have notice or actual knowledge to timely file an adversary proceeding under § 523(a)(2), (4), or (6). See Fed. R. Bankr. P. 4007(b); 11 U.S.C. § 523(c)(1) (providing that an adversary proceeding under § 523(a)(2), (4), or (6) shall be filed not later than 60 days from the first date set for the meeting of creditors).

Some decisions require the creditor to establish a “colorable” claim under § 523(a)(2), (4), or (6) to establish a non-dischargeable claim under § 523(a)(3)(B). See *In re Haga*, 131 B.R. 320, 323-25 (Bankr. W.D. Tex. 1991) (discussing various lines of cases and adopting the “colorable” claim approach). Other decisions insist that the creditor successfully prosecute a non-dischargeability adversary proceeding under § 523(a)(3)(B). See *In re Jones*, 296 B.R. 447, 449-50 (Bankr. M.D. Tenn. 2003) (discussing *Haga* and reaching the opposite conclusion). The court declines to address the case law split on this procedural question because Pearman cannot prevail under either theory. Pearman has not taken the opportunity to file an adversary proceeding against the Moores under § 523(a)(3)(B). In addition, Pearman presented no credible evidence to establish a colorable claim. No evidence was provided as to the narrow standard to establish a willful or malicious injury under § 523(a)(6) or any of the possibilities enumerated in § 523(a)(4). Pearman also did not articulate a § 523(a)(2) claim either. Under § 523(a)(2)(B), no false written statement as to the Moores’ financial condition was introduced as evidence. Under § 523(a)(2)(A), Pearman would need to show actual fraud by the Moores such as a Ponzi scheme, or an action (false pretenses) or a statement (false representation) by the Moores that

induced Pearman to enter into the lease with the Moores. See *Husky Int'l Elecs., v. Ritz*, 578 U.S. 355, 364-66 (2016) (defining “actual fraud” for purposes of § 523(a)(2)(A)); *Bartenwerfer v. Buckley*, 598 U.S. 69, 81-83 (2023) (barring the dischargeability of fraudulent debts obtained by a debtor’s agent or partner); *Rembert v. AT&T Universal Card Servs. (In re Rembert)*, 141 F.3d 277, 280-81 (6th Cir. 1998) (providing the elements for false misrepresentation under § 523(a)(2)(A)). No such evidence was introduced.

The only argument which Pearman appeared to make as to the existence of a § 523(a)(2)(A) claim was that he would not have entered into the lease with the Moores had he known that the success of DermaBella was predicated upon the inclusion of a third-party physician in the business’ operations. However, the only clause of the lease that he pointed to was the general provision requiring that the Moores operate the business in conformance with all applicable laws and regulations. The evidence reflects that the Moores neither misled Pearman as to the need to include a physician in the operations, nor that Pearman relied upon any such alleged misrepresentation. The evidence merely shows that had he known that the use of a doctor would be important or essential to the success of the business, he would not have entered into the lease. At most, Pearman and the Moores agreed that a physician was needed for DermaBella to be in regulatory compliance. But nothing in the written lease required Pearman to approve any such third-party, nor did the record show the Moores were deceptive on this point. Instead, the only evidence was that a physician backed out of providing services to DermaBella which, in large part, contributed to the business’ demise.

3. Pearman’s Theory Concerning Pursuing Assets for the Bankruptcy Estate is Not Well-Taken.

At the time that the Moores filed their bankruptcy, they owned several different parcels of real property. Pearman argued that his debt should not be discharged because had he received

timely notice of the Moores' bankruptcy, he would have been able to establish that their real estate could have been liquidated for the benefit of their creditors. He argued that the Moores undervalued their real estate in their schedules and he could have assisted the trustee in pursuing those assets.

This court also addressed this issue in its prior order but will reiterate some of those points here. The court assumes for argument purposes only that there is a legal remedy for Pearman's concerns.

First, the Chapter 7 Trustee is charged with investigating all bankruptcy estate property and determining whether there is value for the creditors of the bankruptcy estate. Second, the Trustee has the ability to look beyond a scheduled value or an auditor's value to determine if property can be sold for a price above and beyond any valid lien on such property, and whether such a sale, after expenses, ultimately would create any material value for the estate. These decisions are entitled to deference from the court under the well-settled business judgment rule. *In re Moore*, No. 16-33444, 2023 Bankr. LEXIS 2181, at *11 (Bankr. S.D. Ohio Aug. 23, 2023) (citing *Church Joint Venture, L.P. v. Bedwell (In re Blasingame)*, 598 B.R. 864, 871 (B.A.P. 6th Cir. 2019)). Third, and related to the business judgment rule, it is far from clear any value ever existed in the Moores' real property. The 1409 East Avenue Property, Eaton, Ohio was the Moores' residence and any equity in it was covered by the Ohio homestead exemption. Ohio Rev. Code § 2329.66(A)(1)(b). A second property – 8950 Somers Street, Eaton, Ohio – was being sold to a third-party pursuant to land contract and appears to also have had no value. A third property at 840 Ashtree Drive, Eaton, Ohio was subject to a mortgage loan of \$61,000. Pearman's arguments appear premised on post-petition sales after the Trustee abandoned these assets. The court finds no basis to second-guess the Trustee's analysis of the Moores' bankruptcy

estate. As previously noted, the Trustee was entitled to the deference of the business judgment rule in making those determinations.

C. Pearman Was Not In Contempt Because There Was A “Fair Ground of Doubt” as to the Lawfulness of His Actions in the State Court.

Unlike violations of the automatic stay, the Bankruptcy Code does not provide a private right of action for individual debtors to pursue damages for a violation of a debtor’s discharge. However, a debtor can enforce the discharge injunction by pursuing a contempt proceeding for violation of the discharge order. *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 421 (6th Cir. 2000). First, contempt requires the violation of “a specific and definite order of the court.” *In re Dewitt*, 644 B.R. 385, 399 (Bankr. S.D. Ohio 2022). Second, the court may not find a creditor in contempt “where there is [] a ‘fair ground of doubt’ as to whether the creditor’s conduct might be lawful under the discharge order.” *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1804 (2019). The Court found that “[t]he proper standard is an objective one.” *Id.*

Under the specific and unusual facts of this case, the court finds that Pearman had a fair ground of doubt as to whether his actions were lawful despite the Moores’ 2017 discharge order. See, e.g. *Orlandi v. Leavitt Family Ltd. P’ship (In re Orlandi)*, 612 B.R. 372, 382-83 (B.A.P. 6th Cir. 2020) (determining that a case law split on when a pre-petition guaranty is discharged created a “fair ground of doubt” of whether the creditor had an objectively reasonable basis to conclude pursuing this debt in state court post-discharge was lawful). First, Pearman was not noticed of the bankruptcy case in 2016 and had no actual knowledge of it. Second, undetermined legal and factual issues existed as to whether the lease terminated pre-petition under Indiana law. Third, although the court does not assign a nefarious purpose or intent to these filings, Michael’s pro se filings in the State Court did not correctly state all the legal issues and misstated whether Pearman received proper notice of the 2016 bankruptcy case. Although Pearman became aware

of the 2016 bankruptcy after he filed the State Court action, he relied on his lack of notice of the 2016 bankruptcy and his attempt to distinguish *Madaj* under this unusual fact pattern in which at one point the Trustee did have the court notice a date for filing proofs of claim. *Moore*, 2023 Bankr. LEXIS 2181, at *3. In addition, further complicating the legal issues was the fact that Pearman's claim arose out of the breach of a lease. The issues arising out of the treatment of leases and executory contracts under § 365 of the Bankruptcy Code, layered on top of state law relating to leases, further clouded the rights of the parties. In the overall circumstances, *Taggart* precludes a finding of contempt.

That all said, the court would be remiss if it did not make clear that Pearman's actions in the Indiana State Court did indeed violate the discharge injunction. Pearman needs to dismiss that litigation with prejudice. Any further effort to prosecute the State Court litigation would represent a further violation of the Moore's discharge, and present a very different fact pattern under the *Taggart* standard.

D. Pearman's Cross-Motion for Sanctions and Other Requested Relief Against the Moores Lack Merit.

Finally, Pearman has requested that this court sanction the Debtors on account of various misstatements they made in the State Court litigation relating to the history and docket of the bankruptcy case and the impact of the bankruptcy on him, "for recklessly accusing this Bankruptcy Court of negligence," and for Michael's inartful titling and framing of certain filings in the State Court. Doc. 37 at 1; Tr. at 77. Even assuming the court would have subject matter jurisdiction for the relief Pearman seeks, this court finds that any misstatements of fact about the record in this court in another jurisdiction were not proven to be intentional misstatements. The evidence presented in this case established that Michael was a pro se litigant confused by the technicalities of legal doctrines and procedures with which he was not familiar and was not

proceeding in any malevolent or bad faith manner. The court also declines to shift fees to either party and each party shall bear its own fees and costs. See *Alyeska Pipeline Serv. Co. v. Wilderness Society*, 421 U.S. 240, 257-60 (1975) (absent very limited exceptions, parties bear their own costs and fees in litigation unless there is a statute or enforceable contract providing otherwise). There is also no basis whatsoever to revoke the Moores' discharges because Pearman never filed an adversary proceeding to do so as required by Federal Rule of Bankruptcy Procedure 7001(4), the claim processing deadlines in 11 U.S.C. § 727(e) have long since expired; and, perhaps more fundamentally, there is nothing in this record to support such an extreme remedy.²

V. Conclusion

For all these reasons, the court determines Pearman violated the discharge injunction, but concludes that Debtors' motion for contempt is **denied**. The cross-motion of Pearman for sanctions and the Moores' motion to strike are also **denied**. The court will contemporaneously enter a separate order consistent with this decision.

Copies to:

Default List

Curtis Pearman, 48 Meadowlark Circle South, Lake Placid, Florida 33852

² The court also, in its discretion, denies the Moores' motion to strike various "inflammatory and irrelevant" statements as failing to meet the Moores' burden. Doc. 40 at 6-7. See *In re Gordon Props., LLC*, 536 B.R. 703, 709-12 (Bankr. E.D. Va. 2015) (discussing the exacting standard for granting a motion under 11 U.S.C. § 107(b)(2) for scandalous or defamatory matter).