

Ashley v Red Lobster Hospitality, LLC

2025 NY Slip Op 32517(U)

July 15, 2025

Supreme Court, New York County

Docket Number: Index No. 160442/2018

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

-----X

DWAYNE ASHLEY,

Plaintiff,

- v -

RED LOBSTER HOSPITALITY, LLC, and GOLDEN GATE
CAPITAL, INC.,

Defendants.

-----X

INDEX NO. 160442/2018
MOTION DATE 07/19/2024
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 113, 116

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

This is an action to recover damages for personal injuries arising from a slip-and-fall accident at a restaurant owned and operated by the defendant Red Lobster Hospitality, LLC (Red Lobster). The plaintiff moves pursuant to CPLR 2221(d) and (e) for leave to reargue and renew his opposition to Red Lobster’s motion for summary judgment dismissing the complaint insofar as asserted against it, which had been granted in an order dated November 21, 2023 (MOT SEQ 002). Red Lobster opposes the motion. The court vacates the stay of proceedings memorialized by this court in an interim order dated October 4, 2024, and the plaintiff’s motion is thereupon denied. By letter application dated July 14, 2025, Red Lobster cross-applies pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against it as barred by discharge in bankruptcy. That cross application is denied.

In an order dated April 26, 2019, this court granted the motion of the defendant holding company Golden Gate Capital, Inc., to dismiss the complaint insofar as asserted against it for lack of in personam long-arm jurisdiction (MOT SEQ 001). In an order dated November 21, 2023, this court granted Red Lobster’s motion for summary judgment dismissing the complaint

insofar as asserted against it (MOT SEQ 002). On December 21, 2023, the plaintiff made the instant motion pursuant to CPLR 2221(d) and (e) for leave to reargue and renew its opposition to Red Lobster's summary judgment motion (MOT SEQ 003); he also then served and filed a notice of appeal from the November 21, 2023 order. On May 19, 2024, and thus during the pendency of the motion, Red Lobster filed a petition in voluntary bankruptcy under title 11 of the United States Bankruptcy Code (11 USC §§ 101, *et seq.*) in the United States Bankruptcy Court for the Middle District of Florida, under Case No. 6:24-bk-02486-GER. In an interim order dated October 4, 2024, this court memorialized the automatic stay of all proceedings in this action imposed by operation of law upon the filing of the bankruptcy petition (*see* 11 USC § 362; *Howell v New York Post Co.*, 81 NY2d 115 [1993]).¹ On May 19, 2024, creditors' claims against Red Lobster were discharged by the Bankruptcy Court, and that court finalized the bankruptcy plan in an order dated September 16, 2024. That order provided that Red Lobster was deemed to have received a discharge under the Bankruptcy Code, and to have been released from any and all claims and any other obligations, suits, judgments, damages, debts, rights, remedies, causes of action, or liabilities, including, without limitation, liabilities that arose not only before the effective date of the plan, but also prior to the filing of the petition in bankruptcy.

As relevant to the instant dispute, the September 16, 2024 order released Red Lobster from any debt enumerated in sections 502(g), 502(h), and 502(i) of the United States Bankruptcy Code, "whether or not a Proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code." Moreover, the Bankruptcy Court's order provided that such discharge shall void and extinguish any judgment obtained against Red Lobster and any of its assets, property, and estates at any time, to the extent that such judgment was related to a discharged claim, cause of action, debt, liability, or interest of any

¹ Inasmuch as the attorneys for Red Lobster in this action erroneously indicated, in their Notice of Bankruptcy Filing and Imposition of Automatic Stay, that the bankruptcy petition was filed in the United States Bankruptcy Court for the Southern District of New York, this court, in that order, erroneously identified the Southern District of New York as the venue of the subject bankruptcy proceeding.

kind in Red Lobster. Inasmuch as the bankruptcy proceeding has been terminated, there is no further ground for continuing the stay in this action. Hence, the stay is dissolved, lifted, and vacated, and the court may now proceed to determine the plaintiff's motion.

With respect to the plaintiff's pending motion, as the Appellate Division, First Department, has explained,

“[a] motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing ‘that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision’”

(*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992], quoting *Schneider v Solowey*, 141 AD2d 813, 813 [2d Dept 1988]; see *Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 4492 [1st Dept 2016]). This court concludes that it did not overlook or misapprehend any facts or law submitted to it in connection with Red Lobster's summary judgment motion. A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination” (*McLaughlin v Snowlift, Inc.*, 214 AD3d 720, 721 [2d Dept 2023], quoting CPLR 2221[e][2]; see *Melcher v Apollo Med. Fund Mgt., LLC*, 105 AD3d 15, 23 [1st Dept 2013]; *Dinallo v DAL Elec.*, 60 AD3d 620, 621 [2d Dept 2009]; *American Audio Serv. Bur. Inc. v. AT & T Corp.*, 33 AD3d 473, 476 [1st Dept 2006]). Here, the plaintiff did not allege any new facts or a change in law that would require a change in the outcome of Red Lobster's motion. Hence, the plaintiff's motion must be denied.

As to whether the discharge of the claim in bankruptcy constituted an alternative ground for dismissal of the complaint, 11 USC § 524(a) provides, in pertinent part, that

“[a] discharge in a case under this title . . .

“(1) voids 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 . . . ;

“(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor.”

The relief accorded to the debtor by these provisions, however, does not extend to other parties and, in fact, the Bankruptcy Code further provides that, “[e]xcept as provided in subsection (a)(3) of this section, *discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt*” (11 USC § 524[e] [emphasis added]; see *Green v Welsh*, 956 F2d 30, 33 [2d Cir 1992]). This limited protection furthers one of the purposes of the Bankruptcy Code, which is to afford the debtor a “financial ‘fresh start’” (*Green v Welsh*, 956 F2d at 33, citing *Matter of Jet Florida Systems, Inc.*, 883 F2d 970, 972 [11th Cir 1989]). Thus, claimants who seek to proceed against a discharged debtor only for the purpose of recovering against an insurer are not barred by 11 USC §§ 524(a) and 524(e), and the “fresh start” policy articulated therein (see *Green v Welsh*, 956 F2d at 33).

In accordance with 11 USC § 524, Insurance Law § 3420(a)(1) provides “that the insolvency or bankruptcy of the person insured, or the insolvency of his estate, shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the life of and within the coverage of such policy or contract.” In *Lang v Hanover Ins. Co.* (3 NY3d 350, 355 [2004]), the Court of Appeals had the opportunity to address the confluence of the Bankruptcy Code and Insurance Law § 3420(a)(1). There, an injured person commenced an action against a tortfeasor who had committed the tortious act while a guest at another’s home. The tortfeasor thereafter filed a petition in bankruptcy. The Court of Appeals affirmed the dismissal of the plaintiff’s declaratory judgment action against the homeowner’s insurer, concluding that Insurance Law § 3420 was only available after the plaintiff had secured a judgment against the tortfeasor. Nonetheless, as the Court of Appeals explained it,

“[t]he statute makes clear that bankruptcy does not relieve the insurance company of its obligation to pay damages for injuries or losses covered under an existing policy (Insurance Law § 3420[a][1]). Where there has been a discharge in bankruptcy, federal courts have held that the permanent injunction that follows *does not bar a plaintiff in a personal injury action from obtaining a judgment*

against the bankrupt defendant for the limited purpose of pursuing payment from defendant's insurance carrier (see e.g. Green v Welsh, 956 F2d 30 [2d Cir 1992]). Even if we were to assume that the potential personal liability judgment was listed in [the tortfeasor's] bankruptcy petition, the discharge would not prevent plaintiff from obtaining a judgment against [the tortfeasor], thereby satisfying the section 3420 condition precedent to suit against [the tortfeasor's insurer]"

(*id.*) (emphasis added). Consequently, the plaintiff here is permitted to proceed against Red Lobster in this action for the limited purpose of securing payment directly from its insurers, notwithstanding any discharge in bankruptcy or the dismissal of the bankruptcy petition in the Chapter 11 proceeding (see *Pomerantz v In-Stride, Inc.*, 39 AD3d 522, 523-524 [2d Dept 2007] [action against bankrupt tortfeasor should not have been dismissed, despite discharge in bankruptcy, where it was "clear from both the plaintiff's opposition papers and his brief that the plaintiff is seeking to pursue this action solely for the purpose of obtaining a judgment or settlement so as to be able to proceed directly against [the tortfeasor's] liability insurer" under the Insurance Law]; *Roman v Hudson Tel. Assocs.*, 11 AD3d 346, 347 [1st Dept 2004] [same]; *Lumbermens Mut. Cas. Co. v Morse Shoe Co.*, 218 AD2d 624, 625 [1st Dept 1995] [same]).

The court's review of the docket entries in the bankruptcy proceeding revealed that the plaintiff was not enumerated as one of the more than 600 creditors of Red Lobster that had been identified in that proceeding, which suggests that he never filed a proof of claim.

Nonetheless,

"[a]lthough plaintiff failed to file a proof of claim in Bankruptcy Court after defendant filed for reorganization pursuant to chapter 11 of the Bankruptcy Code (11 USC), the discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt. Because plaintiff [is seeking] to proceed against a discharged debtor only for the purpose of recovering against [defendant's] insurer, the indemnification cause of action is not barred by the discharge injunction of the Bankruptcy Code"

(*Carrols Corp. v Candy Candy, Inc.*, 241 AD2d 955, 955 [4th Dept 1997] [citations and internal quotation marks omitted]; see *Lumbermens Mut. Cas. Co. v Morse Shoe Co.*, 218 AD2d at 625; *Matter of Edgeworth*, 993 F2d 51, 54, n 6 [5th Cir 1993]; *Green v Welsh*, 956 F2d at 33]).

Consequently, Red Lobster’s cross application to dismiss the complaint insofar as asserted against it on the alternative ground of discharge in bankruptcy must be denied. The court thus concludes that such discharge should not bar the plaintiff from pursuing his appeal.

Accordingly, it is,


ORDERED that, on the court’s own motion, the stay of proceedings imposed by operation of law upon the filing of a petition in bankruptcy by the defendant Red Lobster Hospitality, LLC, on May 19, 2024, as memorialized in this court’s interim order dated October 4, 2024, be, and hereby is, dissolved, lifted, and vacated; and it is further,

ORDERED that the plaintiff’s motion for leave to reargue and renew his opposition to the motion of the defendant Red Lobster Hospitality, LLC, for summary judgment dismissing the complaint insofar as asserted against it is denied; and it is further,

ORDERED that the cross-application of the defendant Red Lobster Hospitality, LLC, to dismiss the complaint insofar as asserted against it, on the alternative ground that the plaintiff’s claims against it had been discharged in bankruptcy, is denied.

This constitutes the Decision and Order of the court.

7/15/2025
DATE


JOHN J. KELLEY, J.S.C.

MOTION:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	OTHER
CROSS APPLICATION:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	OTHER