

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

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Jay C. Stephenson

BRUCE DAVID AILION,)
)
 Plaintiff,)
)
 v.)
)
 MARLA SUSAN AILION,)
)
 Defendant.)

CIVIL ACTION

FILE NO. 04-1-05290-42

**NOTICE OF BANKRUPTCY DISCHARGE
AND MOTION TO STRIKE JUDGMENT ENTERED
FOR LACK OF SUBJECT MATTER JURISDICTION**

COMES NOW MARLA SUSAN AILION, a/k/a Marla Susan Wright, Defendant in the above styled action files this notice of bankruptcy discharge and motion to strike judgment entered for lack of subject matter jurisdiction and in support thereof shows as follows:

1.

Marla Ailion filed a petition for relief under Chapter 7 of Title 11 of the United States Bankruptcy Code on September 18, 2003.

2.

Debtor received her discharge order on January 27, 2004. The case was closed on May 16, 2005. A true and correct copy of the discharge order is attached hereto as Exhibit "A" and by this reference is incorporated herein.

3.

Ms. Ailion was divorced pre-petition from Bruce A. Ailion, an attorney.

Jay C. Stephenson
Clerk of Superior Court Cobb County

J.C. Stephenson

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4.

The marital residence of the parties was 448 Doral Circle, Marietta, GA 30067 (the "Property").

5.

On October 1, 2004, after the entry of the discharge order but before the case was closed, Mr. Ailion file a Motion for Contempt being *Bruce David Ailion v. Marla Susan Ailion*, Case No. 04-1-05290-42 in the Superior Court of Cobb County (the "Contempt Motion").

6.

During the course of the proceedings in this Court, Mr. Ailion presented evidence of alleged fraud in the pre-bankruptcy filing sale of marital property seeking a judgment from the Court for such alleged fraud.

7.

Upon conclusion of the hearing on October 1, 2004, this Court entered an order finding Marla Ailion liable for fraud regarding the sale of the marital property and awarding Bruce Ailion the sum of \$132,500.00.

8.

To the extent this Court has entered a judgment on a pre-petition claim, that claim has been discharged by the discharge order entered January 27, 2004. 11 U.S.C. § 524(a).

9.

To the extent the claim may be non-dischargeable for fraud, the United States Bankruptcy Court has exclusive jurisdiction on the issue. See 11 U.S.C. §§ 523(a), (4), and (6) unless Mr. Ailion can prove he had no actual knowledge of the bankruptcy filing.

No order of non-dischargeability was issued by the United States Bankruptcy Court. The debt is therefore discharged until otherwise ordered by the Bankruptcy Court.

10.

The debt is discharged and this honorable Court had no subject matter jurisdiction to give life to a claim discharged in a no-asset Chapter 7 case.

WHEREFORE, Marla Ailion gives notice that this honorable Court had no subject matter jurisdiction to violate the discharge order entered by the United States Bankruptcy Court on January 27, 2004. The judgment of the Court to the extent it awarded a post discharge judgment on a pre-petition claim is void *ab initio* and of no force or effect due to the lack of subject matter jurisdiction. The Court must strike that portion of its judgment that it had no subject matter jurisdiction to grant which is void *ab initio*. If the Court desires a hearing, one should be set down by the Court. Otherwise, an order striking the post discharge judgment on a pre-petition claim.

Respectfully submitted by,

David L. Miller
Ga. Bar No. 506550

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing pleading by depositing same in the United States Mail with adequate postage thereon and addressed as follows:

David E. Stahl
Suite 200, Building 11
1640 Powers Ferry Road, SE
Marietta, GA 30067

This 5th day of September, 2006.

David L. Miller
Ga. Bar No. 506550
Bankruptcy Attorney for Debtor Marla Ailion