

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

KATHY L. HARTWIG

Case No. 99-15810 K

Debtor

This is a Chapter 13 case in which the Debtor, Kathy Hartwig, proposes to pay all creditors in full. However, one of the persons she scheduled as holding an unsecured non-priority claim is one Williams H. Williams, III, who she schedules in the amount of \$1.00. In fact, after the Chapter 13 plan was confirmed, and indeed several weeks after the bar date for the filing of claims in the case, William H. Williams, III filed a proof of claim against the Chapter 13 estate of Kathy Hartwig in the amount of \$1 million. That has been assigned claim number 18.

The Debtor, through counsel, filed a motion objecting to the claim “on the grounds that the claim was not timely filed, has not been liquidated yet, is a dismissed personal injury action which the creditor has not yet appealed, and is thus not due and payable.” (Motion Objecting to Claim dated April 18, 2000, signed by Mark C. Laudisio).

In a different case, this Court recently held that merely declaring a claim to be a late-filed claim in a Chapter 13 does not necessarily mean that the Debtor has no obligation to that claimant. Rather, the “good faith” requirement or other requirements of Chapter 13 may require that some provision be made for the late-filed claim. See *In re Degeest*, No. 99-15664 K (Bankr. W.D.N.Y. Oct. 6, 2000).

Moreover, this Court was advised that Williams’ claim against the Debtor is in

connection with a civil lawsuit Williams filed against the Debtor and others arising out of what counsel informed the Court was a “personal injury” to Williams. Though dismissed as against the Debtor, Williams had appealed. The Court advised counsel that this Court can neither determine nor even estimate a “personal injury” cause of action. See 28 U.S.C. § 157(5).

Thus, the Court ordered on August 3, 2000 that the state court entertain the appeal of the claimant as the “most expedient way of determining the merits of the claim.”

Perhaps no one told the state court of that Order, because on January 5, 2001 this Court was advised that the appellate state court might still be honoring an order that court entered on May 3, 2000 extending the time to perfect the appeal pending this Court’s resolution of Williams’ claim against the Debtor or this Court’s lift of stay to permit the action to proceed against the Debtor.

Thus, on January 9, 2001, this Court again lifted stay to permit the appeal to proceed in the appellate court, stating that by separate order this Court would direct the method of determination of the size, if any, of Williams’ claim in this case.

The Court directed counsel to obtain and provide to this Court copies of all documents upon which the state trial court had dismissed the claim against this Debtor.

The parties have stipulated, and this Court agrees, that this matter does not present a “personal injury” claim as that phrase is used in 28 U.S.C. § 157. The only cause of action in the complaint against this Debtor is premised on an allegation that she “advanced a knowingly false claim of sexual harassment involving conduct which, if true, would not constitute sexual harassment.” [¶ 53 of the Complaint signed by William H. Williams, III on October 22, 1998]

Thus, only the third cause of action in that complaint is against Kathy Hartwig and it alleges only “intentional interference with employment/business relationship.”

Consequently, this Court believes that it is not prohibited from estimating this claim. This Court further finds that the record in the state court proceedings is more than adequate as a basis upon which this Court may make an independent determination, and estimation, of the value of the Williams’ claim against this Debtor, under 11 U.S.C. § 502(c)(1).

This Court has examined the Order of the Hon. Edward A. Rath, Jr., Justice of the Supreme Court, County of Genesee, dated July 1, 1999, dismissing “plaintiff’s causes of action against . . . Kathy L. Hartwig . . . based on defamation and intentional interference with any contract between Plaintiff and Genesee County” and has examined all of the materials upon which that Order was based.¹

These began as two separate civil proceedings, one an Article 78 proceeding against Genesee County, and the other a civil complaint against the Civil Service Employees Association, Inc., the president of the local unit of the CSEA, and a number of County

¹ This Court has examined all of the following: the Complaint by William H. Williams III filed October 23, 1998 and assigned a State Supreme Court Index Number 46360; the Verified Answer of Kathy Hartwig and others dated December 18, 1998, the Notice of Motion to Dismiss, dated December 18, 1998, on behalf of the CSEA and Nancy J. Smith; the Memorandum of Law, dated December 18, 1998, in support of that Motion; the Answering Affidavit of Eric T. Dadd, dated January 14, 1999, with regard to that Motion, and also the “Authority Establishing Sufficiency of Allegations . . .” signed by Eric Dadd on that date; the Reply Affirmation in further support of Motion to Dismiss, dated January 20, 1999; the Motion dated February 11, 1999 by Kathy Hartwig and others seeking to dismiss the Complaint; the February 11, 1999 Affirmation of Jane A. Conrad, as attorney for Kathy Hartwig and others; the Memorandum of Law dated February 11, 1999 in support of that Motion to Dismiss; the February 23, 1998 “Reply Affidavit of Jay A. Gsell”; the April 16, 1999 “Answering Affidavit of Eric T. Dadd”; the April 16, 1999 Cross Notice of Motion by Dadd seeking to disqualify the law firm of Harter, Secrest & Emery from representing any of the defendants in the action; the April 22, 1999 Affidavit of William H. Williams III; the April 22, 1999 Memorandum of Law in opposition to defendant’s Motion for Summary Judgment; and the brief for Petitioner/Appellant filed in the Appellate Division Fourth Department on behalf of William H. Williams, III.

employees, including Kathy Hartwig. The state court consolidated the two actions in the same decision in which it dismissed the Complaint as against Kathy Hartwig.

Although the state court did not set forth its reasons for dismissing the Complaint as against Kathy Hartwig, there can be no doubt but that William H. Williams, III was capably represented, and fully availed himself of a number of opportunities provided to him by the state court to argue his case, stating his version of the facts, and arguing the law. These were all rejected by the state court with regard to Kathy Hartwig, and this Court believes that the state court acted appropriately in doing so. The motion on her behalf dated February 11, 1999 asserted a number of bases upon which it was argued that the Complaint should be dismissed as to Kathy Hartwig and certain others. Because the state court did not dismiss Williams' claims against Genesee County and certain others, this Court will not presume that the state court's decision to dismiss the case as to Kathy Hartwig was based on any theories that were dependent on a finding that Genesee County was not liable. Moreover, this Court will not presume that the Complaint was dismissed as against Kathy Hartwig on the basis of some type of implied finding that the statements that Kathy Hartwig made about William H. Williams, III were true. Rather, in light of the procedural posture at the time of dismissal (particularly the fact that Williams was still seeking an opportunity to conduct discovery), this Court presumes that it was dismissed because of the authorities cited at "Point" IV.a. of the Memorandum accompanying the Motion, regarding qualified privilege and the necessity of demonstrating something more than "surmise, conjecture, and suspicion" of actual malice.

The Answering Affidavit of Eric Dadd simply argued, in these regards, that

factual determinations needed to be made before it could be determined whether the alleged slanderous or libelous statements were immunized. The State Court obviously disagreed, in light of the authorities cited by counsel for the defendants. This Court agrees.

As stated in open Court on March 13, when this writer had not yet quite completed examination of the submitted materials, Williams' claim against Hartwig has only nuisance value. The claim will be allowed in the estimated amount of \$500.00. The balance of any liability of Hartwig to Williams will be discharged if Hartwig completes this Chapter 13 Plan and receives a discharge.

SO ORDERED.

Dated: Buffalo, New York
March 26, 2001

/s/ Michael J. Kaplan

U.S.B.J.