

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
: **Chapter 11 Case No.**  
: **02-13533 (AJG)**  
: **(Jointly Administered)**  
: **Debtors**  
-----X

**ORDER ON MOTION OF REORGANIZED DEBTORS FOR AN ORDER  
ENFORCING THE PLAN AND THE CONFIRMATION ORDER TO BAR  
PROSECUTION OF AN ACTION TO COLLECT ON DISCHARGED CLAIMS  
INITIATED BY CARL BRUNSON AND NINA BRUNSON**

Upon consideration of the Motion of Reorganized Debtors for an Order Enforcing the Plan and the Confirmation Order to Bar Prosecution of an Action to Collect on Discharged Claim Initiated by Carl Brunson and Nina Brunson (the “Discharge Motion”) and the parties’ briefs and arguments on the Discharge Motion, and for the reasons stated in the Court’s March 14, 2006 decision on the Discharge Motion, which is attached hereto as Exhibit A, it is hereby

ORDERED that the Discharge Motion is granted, except to the extent that it seeks costs and attorneys’ fees which are denied; and it is further

ORDERED that the claims asserted against MCI, including it’s predecessors, subsidiaries and affiliates (collectively, the “Debtors”), by Carl and Nina Brunson (the “Brunsons”) were discharged upon confirmation of the Debtors’ plan of reorganization; and it is further

ORDERED that the Brunsons are barred from taking further action to prosecute their lawsuits to recover on such claims and are directed to cease any further acts to attempt to enforce their claims against the Debtors and to dismiss with prejudice

all claims and/or causes of action as against the Debtors to the extent they remain pending; and it is further

ORDERED that this Order does not bar the Brunsons from proceeding against non-Debtor parties in their civil action now pending in Jasper County, Illinois.

Dated: New York, New York  
March 28, 2006

**s/Arthur J. Gonzalez**  
HONORABLE ARTHUR J. GONZALEZ,  
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT A

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\* \* \* \*

Before the Court is a Motion by the Reorganized Debtor MCI WorldCom Network Services, Inc. ("Debtor"), for an Order Enforcing the Plan and the Confirmation Order ("Motion"). The Debtor seeks to bar the action brought by Carl and Nina Brunson (the "Brunsons") for injunctive relief in the Circuit Court of the Fourth Judicial Circuit, Jasper County, Illinois (the "Brunson Action"). The Brunsons seek a permanent injunction compelling the Debtor to remove its fiber optic cable from the easement the Debtor holds across the Brunsons' property. The Debtor argues that this claim for injunctive relief arose prepetition and was subsequently discharged on the effective date of its reorganization plan ("Effective

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

Date"). The Debtor also seeks recovery of the legal costs it incurred responding to the Brunson Action on the grounds that the Brunsons knowingly violated this Court's Order Confirming the Modified Second Amended Joint Plan of Reorganization ("Confirmation Order"). The Brunsons respond that the asserted claim for injunctive relief is not a "claim" as defined by the Bankruptcy Code and thus was not discharged by the Confirmation Order. The Brunsons also argue, in the alternative, that even if this Court finds the claim for injunctive relief to be a dischargeable claim, the asserted claim nonetheless arose postpetition and therefore was not discharged.

The Brunsons argue first that the asserted claim for injunctive relief is not a "claim" as defined by 11 U.S.C. section 101(5)(B) (previously codified as section 101(4)(B)). The Bankruptcy Code defines "claim" to include "an equitable remedy for breach of performance if such breach gives rise to a right of payment." Id. As the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

Supreme Court has recognized, there may be situations in which a claim for injunctive relief is not a claim within the language of section 101(5)(B) and thus is not discharged. Ohio v. Kovacs, 469 U.S. 274, 284-285 (1985).

Whether or not a particular remedy or relief sought against a debtor who has filed under the Bankruptcy Code is a "claim" involves interpretation of the Bankruptcy Code and is thus an issue of federal law. This Court notes that while Kovacs highlighted this issue, it did not set forth a standard for determining when a claim for injunctive relief is not a dischargeable claim. The controlling standard for this Court was provided by the Second Circuit in In re Chateaugay, 944 F.2d 997 (2d Cir. 1991) ("Chateaugay I"). In a thorough and detailed analysis of the issue, the Court held that "[a]n injunction that does no more than impose an obligation entirely as an alternative to a payment right is dischargeable." Id. at 1008. Only where the injunction is the only available relief, that

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

is, where the enjoining party has no authority to require damages or compensation in lieu of injunctive relief, is injunctive relief not a dischargeable claim. Id.

Here, the Brunsons have an available alternative payment right, and thus, the claim for injunctive relief is a "claim" under the Bankruptcy Code. The Brunsons argue that the asserted claim for injunctive relief is limited to any prospective injury and therefore, that they have no "right to payment." However, while it may be the case in some instances that future injury may only be adequately remedied through injunctive relief, this is not true here. As a "telecommunications carrier," the Debtor possesses the right of eminent domain under the Illinois Public Utilities Act. See 35 Ill. Comp. Stat. Ann. 635/10 (West 2005) (defining "telecommunications carrier"); 220 Ill. Comp. Stat. Ann. 65/4 (West 2005)(granting telecommunications carriers the right of eminent domain as defined in 220 Ill. Comp. Stat. Ann. 55/2 (West 2005)). As

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

act 55, section 2 states, a telecommunications carrier "may enter upon any lands ... and take and damage private property for the erection and maintenance" of its telecommunications system. While this statute does not provide the Brunsons with a direct payment right, it does provide an alternative remedy for monetary damages insofar as the Brunsons could seek an injunction forcing the Debtor to exercise its powers of eminent domain under the statute. Moreover, because the Debtor would exercise its power of eminent domain if this Court granted the Brunsons injunctive relief, such injunctive relief is the means through which to compel payment of monetary damages. Therefore, the Brunsons have the "option to accept payment in lieu of continued [injury]" as a result of the Illinois Public Utilities Act. Chateaugay I, 944 F.2d at 1008.

This Court's reasoning is analogous to the Supreme Court's holding in Johnson v. Home State Bank, 501 U.S. 78 (1991), where the Court held that the right to foreclose on



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

a mortgage was a claim under the Bankruptcy Code. The Supreme Court reasoned that although the creditor possessed only the equitable right of foreclosure and not an alternative right to payment, the right to foreclose gave rise to a corollary right to payment, either through sale of the property or by compelling the debtor to satisfy the debt in order to stop the foreclosure. Id. at 83-85. Here, the Brunsons' right to equitable relief similarly gives rise to a corollary right to payment through the operation of the Illinois Public Utilities Act. Similarly, the Seventh Circuit held in Udell v. Standard Carpetland, USA Inc., (In re Udell) 18 F.3d 403, 408 (7th Cir. 1994) that "a right to an equitable remedy is a 'claim' if the same breach also gives rise to a payment 'with respect to' the equitable remedy." The Court finds that the asserted right to injunctive relief and the right to payment vis-a-vis the Public Utilities Act are sufficiently related to justify the Court's conclusion that the Brunsons' claim

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

for injunctive relief is a "claim" under section 101(5)(B).

This conclusion is supported by consideration of the purposes of the Bankruptcy Code. The Brunsons are here seeking to evade the operation of the Code by limiting their demand for injunctive relief to prospective injury, cognizant of the fact that any claim for damages based on the Debtor's pre- and postpetition actions was discharged on the Effective Date. In essence, the demand for injunctive relief here is an alternative route through which to obtain the damages that were discharged by the Code, as the Brunsons can use the threat of an injunction to extract a settlement from the Debtor. The Brunsons had the opportunity preconfirmation to either obtain an injunction or file a proof of claim for damages, but failed to do so. They cannot therefore use the threat of an injunction to recoup a discharged debt now. To allow the Brunsons to do so would plainly frustrate the purposes of the Bankruptcy Code.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

That the Brunsons' claim for injunctive relief is a claim under the Bankruptcy Code does not end the inquiry, however. As only prepetition claims are discharged on the Effective Date, the Court must now determine whether the asserted claim is a prepetition claim. See 11 U.S.C. Section 1141(d)(1)(A). The Second Circuit in LTV Steel Co., Inc. v. Shalala (In re Chateaugay Corp.) ("Chateaugay II") set forth fairly exhaustively the standard for determining whether a claim is prepetition or postpetition. 53 F.3d 478, 496-498 (2d Cir. 1995). As an initial matter, the court noted that "Congress intend[ed] to invest the term 'claim' with the 'broadest possible' scope so that 'all legal obligations of the debtor [would] be able to be dealt with in a bankruptcy case." Id. at 496 (citing Pennsylvania Dep't of Pub. Welfare v. Davenport, 495 U.S. 552, 558 (1990)). With this in mind, the court held that a prepetition claim is one where "the relationship between the debtor and the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

creditor contained all of the elements necessary to give rise to a legal obligation -- 'a right to payment' -- under the relevant non-bankruptcy law" before the petition was filed. Id., at 497 (citation omitted.)

Under this standard, it is clear that the asserted claim for injunctive relief is a prepetition claim for purposes of the Bankruptcy Code. The Brunsons argue that their claim is not prepetition because it is limited in scope to the Debtor's postpetition use of the fiber optic cable. However, the "elements" of that claim and the "right to payment" on that basis were established in the prepetition period, as the Debtor began using the fiber optic cable prepetition and the relationship of the parties did not alter prepetition to postpetition. Any postpetition use of the cable is simply a continuation of the prepetition use, and in consequence, any postpetition debt incurred is simply an addition to the prepetition debt. The Brunsons cannot escape the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

discharge of their claim by simply stating that they seek relief only for the Debtor's activities in the postpetition period. They may so limit their claims as to the relevant injury for which they seek relief, but this limitation has no effect on the prepetition character of the claims for the purposes of the Bankruptcy Code. Therefore, the Court concludes that the asserted claim for injunctive relief is a prepetition claim and was thus discharged on the Effective Date.

The Debtor argues that it should be awarded compensation for the legal costs incurred responding to the Brunson Action in this Court on the theory that the Brunsons knowingly violated the Confirmation Order. As the Brunsons raised before this Court an issue as to the dischargeability of their claim for injunctive relief, this Court does not believe that the imposition of sanctions pursuant to Fed.R.Bankr.P. 9011 is proper.

In light of the foregoing, this Court grants the Debtor's Motion for an Order Enforcing the Plan and Confirmation Order,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Proceedings

except insofar as this Court denies the Debtor's request for legal costs.

The Debtor is to settle an order consistent with this Court's opinion, attaching thereto as Exhibit A a revised and modified transcript of the opinion as read by the Court today. Thank you.

\* \* \* \*