

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

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
26
27

IN RE:

JAIME LEOPOLDO VAZQUEZ
BERNIER and CARMEN MERCEDES
PAGAN ORTIZ

Debtors

JAIME LEOPOLDO VAZQUEZ
BERNIER; CARMEN MERCEDES
PAGAN ORTIZ

Plaintiffs

vs.

TREASURY DEPARTMENT OF
PUERTO RICO, *ET. AL.*

Defendant

CASE NO. 17-03544 (ESL)

CHAPTER 13

ADV. PROC. 20-00134

OPINION AND ORDER

The instant adversary proceeding is before the court upon the *Notice of Injunction* filed by the defendant, the Treasury Department of the Commonwealth of Puerto Rico (“Treasury Department” or “Defendant”) (dkt. #101), the *Response and Opposition* filed by Plaintiffs (dkt. #108), Defendant’s *Reply to Plaintiff’s Response* (dkt. #117), and Plaintiffs’ *Sur-Reply* (dkt. #123).

Position of the Parties

The Treasury Department alleges that a permanent injunction is in full effect which enjoins Plaintiffs from prosecuting this case (dkt. #101, p. 5, ¶ 7). The injunction stems from the order and judgment entered on January 18, 2022, confirming the Joint Plan of Adjustment of the Commonwealth of Puerto Rico in the petition filed with the United States District Court for the District of Puerto Rico (“District Court”) under Title III of the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”), 48 U.S.C. §§ 2101 *et seq.*, on May 3, 2017 (Bankr. Case No. 17-3283, dkt. #19784, 19813). The confirmation order provides for an

1 injunction on claims and bars collection of untimely claims (Bankr. Case No. 17-3283, dkt.
2 19813, ¶¶ 56, 59). The effective date of the plan is March 15, 2022 (Bankr. Case No. 17-3283,
3 dkt. #20349).

4 The Treasury Department contends that “the Complaint was filed on November 25, 2020,
5 which is after the Commonwealth of Puerto Rico filed its Title III Case and before the
6 Confirmation Order was issued and became effective. Thus, the current controversy before this
7 Honorable Court falls squarely in the scope and extent of the Discharge Injunction included in
8 the Confirmation Order entered by the Court in the Commonwealth’s Title III case” (dkt. #101,
9 pp. 9-10, ¶ 15). Therefore, “Section 92.2 of the Confirmed Plan, clearly discharged and released
10 the Debtor/Commonwealth from “any and all Claims, Cause of action and any other debts that
11 arose, in whole or in part, prior to the Effective Date.” (*id.*, p. 10, ¶ 15, citing Confirmed Plan,
12 Bankr. Case No. 17-3283, dkt. #19784, §92.2(a), and Confirmation Order, Bankr. Case No. 17-
13 3283, dkt. 19813, ¶ 56).

14 Plaintiffs contest the applicability of the injunction claimed by the Treasury Department
15 on procedural and substantive grounds. Plaintiffs allege that this court is without subject matter
16 jurisdiction to adjudicate the injunction as the confirmed plan vests exclusive jurisdiction on the
17 Title III court to adjudicate matters related to the confirmed plan. Plaintiffs also allege that the
18 Treasury Department waived the personal jurisdiction defense as the same was not claimed as an
19 affirmative defense. Plaintiffs further allege that violation of the discharge injunction are
20 contempt proceedings to vindicate the dignity of the court, and have not been “discharged”
21 pursuant to 11 U.S.C. § 944(c)(2) (dkt. #108, p. 3).

22 Plaintiffs state that “[a]t no point since March 7, 2017, through today’s date, did the
23 PROMESA DEBTOR provide Plaintiffs with actual or constructive notice of the Title III Case”
24 (*id.*, p. 3, ¶ 3). Plaintiffs pray the court to find the Treasury Department in contempt pursuant to
25 11 U.S.C. § 105.

26 The Treasury Department counters Plaintiffs’ assertions and states that “[i]t is undeniable
27 and easily verifiable that when the Complaint was filed Defendant raised the defense of the
protection of the bankruptcy proceeding under the PROMESA Title III Case. *See* Answer to
Complaint at Docket No. 9, p. 8. Thus, the Defendant timely preserved the defense by pleading
it in the first opportunity.” (dkt. #117, p. 5, ¶ 8). Moreover, “[i]t is during the ongoing litigation
that the Discharge Order was adopted by the Title III Court. Thereafter, the Defendant respectfully

1 notified this Court that a permanent injunction was in full effect, barring Plaintiffs from
2 continuing recovery efforts against Defendant. The instant Adversary Proceeding is subject to the
3 Discharge Injunction and Plaintiffs are enjoined from prosecuting their claim.” (*id.*, p. 5, ¶ 10).
4 “Thus, Plaintiffs’ request to continue with the adversary proceeding for an alleged violation of
5 the discharge order against the Defendant is more akin to an attempt to collect alleged damages,
6 than to uphold the dignity of the court.” (*id.*, p. 7, ¶ 16).

7 The Treasury Department counters the lack of notice argument as follows:

8 18. Plaintiffs appear to argue that they did not receive notice nor actual knowledge
9 of the Title III Case nor notice of the Bar dates. However, according to the Title III
10 Court, this controversy was already before the court and resolved therein.

11 19. The Title III Court’s Order states:

12 The Notice of Automatic Stay provided Movant with notice of the
13 Title III Case in advance of the Bar Date (and several years in
14 advance of the Effective Date). Furthermore, the Debtors undertook
15 broad publication of notice of the Commonwealth’s Bar Date
16 pursuant to the Bar Dates Orders, including publishing of notice the
17 Bar Date in English and Spanish language publications circulating
18 in Puerto Rico and the mainland United States, as well as running
19 radio advertisements throughout Puerto Rico. Movant therefore
20 cannot meet the exception to discharge applicable to creditors who
21 “before confirmation of the plan, had neither notice nor actual
22 knowledge of the case.” 11 U.S.C.A. §944(c)(2) (Westlaw through
23 P.L. 117-262). Case No. 17-bk-3283 (LTS), ECF No. 23878.

24 *Id.*, p. 8, ¶¶ 18-19.

25 In conclusion, the Treasury Department states:

26 20. Accordingly, and to enforce the terms of the Confirmation Order as they apply
27 to this adversary proceeding, the Defendant respectfully requests that this Court
take notice of the discharge injunction and enter an Order that any and all claims
by Plaintiffs against the Treasury Department of the Commonwealth of Puerto Rico
are stayed by the injunction and eventually discharged by paragraph 59 of the
Confirmation Order and through section 92.2 of the Plan, if no administrative
expense claim was filed as per paragraph 44 of the Confirmation Order. Plaintiffs’
claims are not contemplated in the claims or causes of action exempted from the
requirement of having to file an administrative expense claim. See Case No. 17-
3283-LTS, ECF No. 22650 at 4, ¶5.

Id., pp. 8-9, ¶ 20.

1 Background

2 The background to the instant adversary proceeding is in this court’s opinion and order
3 entered on November 21, 2022, granting in part the motion for summary judgment filed by the
4 Treasury Department (dkt. #79). The Court concluded that Treasury did not violate the discharge
5 injunction by emailing the March 10, 2020, “DRAFT” Notice and Demand for Payment. Plaintiffs
6 remaining allegations of violation of the discharge injunction that constitute collection acts were
7 not be reviewed because the supporting documentation was not duly translated to the English
8 language. The case background is reproduced herein to again provide an overview of the basis for
9 the complaint.

10 The Debtor/Plaintiffs filed a bankruptcy petition under Chapter 13 of the Bankruptcy
11 Code on May 22, 2017 (Lead Case, dkt. #1). On August 25, 2017, Treasury filed proof of claim
12 #5-1 in the amount of \$96,732.47 of which \$71,873.41 was listed as unsecured and the remainder
13 \$24,859.06 was listed as a priority unsecured claim pursuant to 11 U.S.C. § 507(a)(8). On
14 December 11, 2018, the Debtors and the Treasury filed a *Stipulation* and the same was approved
15 on January 9, 2019 (Lead Case, dkt. #80 & 86). On April 25, 2019, the Chapter 13 reorganization
16 plan dated January 23, 2019, was confirmed. (Lead Case, dkt. #113). Thereafter, on September
17 16, 2019, a discharge was granted to the Debtors pursuant to 11 U.S.C. §1328(a). (Lead Case,
18 dkt. #116). Subsequently on October 30, 2020, the Debtors filed a *Motion to Reopen Case* under
19 11 U.S.C. §350(b) to file a complaint against Treasury for violation of the discharge order and
20 the same was granted on November 24, 2020. (Lead Case, dkt. #126 & 129).

21 On November 25, 2020, the Debtors/Plaintiffs filed the instant adversary proceeding
22 premised upon Treasury’s alleged violation of the discharge injunction. (dkt. #1). On February 25,
23 2021, Treasury filed its *Answer to Complaint* (dkt. #9). On May 11, 2022, Treasury filed its
24 *Statement of Uncontested Facts in Support of Motion for Summary Judgment* (dkt. #32). Also, on
25 said date, Treasury filed a *Motion Requesting Entry of Summary Judgment*. (Docket No. 33). On
26 June 16, 2022, the Plaintiffs filed a cross *Motion for Summary Judgment* and the *Statement of*
27 *Facts in Support of Motion for Summary Judgment* (dkt. #57 & 58). On June 29, 2022, the
Plaintiffs filed their *Opposition to Motion for Summary Judgment* and the *Opposition to Treasury*
Department’s Statement of Uncontested Facts in Support of Motion for Summary Judgment. (dkt.
#65 & 66). On June 30, 2022, Treasury filed a *Motion Submitting Exhibits Translated to the*
English Language. (dkt. #67). Thereafter, on August 22, 2022, Treasury filed its *Opposition to*

1 *Plaintiffs’ Statement of Uncontested Facts in Support of Motion for Summary Judgment (Docket*
2 *Entry No. 58) (dkt. #77). On August 22, 2022, the Defendant filed its Response in Opposition to*
3 *Plaintiffs’ Motion Requesting Entry for Summary Judgment (dkt. #78).*

4 The issue pending before the court is whether the Treasury Department violated the
5 Plaintiffs’ discharge injunction pursuant to 11 U.S.C. § 524(a)(2). The Plaintiffs allege that the
6 Treasury Department engaged in four (4) independent acts which constitute collection activities in
7 violation of the discharge injunction. The Plaintiffs contend that the alleged collection activities
8 were the following: (i) Defendant charged Plaintiffs \$800.00 as a penalty and/or sanction for the
9 alleged pre-petition obligation; (ii) Defendant sent Plaintiffs post-discharge collection letters; (iii)
10 post-discharge, Defendant continued to report and publish false and inaccurate Certificate of Debts
11 which alleged that Plaintiffs continue to owe the pre-petition debt to Defendant . Each successive
12 Certification of Debt that was issued by Defendant continued to accrue interest and increase the
13 amounts allegedly owed; and (4) post- discharge for over one year, Defendant continue to report
14 the discharged debt in the internal revenue unified system (“SURI”) (dkt. #57, pg. 2).

13 Discussion

14 The court first addresses the issue of due notice. The court agrees with the Treasury
15 Department’s position that due notice of the filing of the Title III petition under PROMESA was
16 given throughout Puerto Rico and the United States. Second, a simple reading of the affirmative
17 defenses claimed by the Treasury Department in its answer to the complaint shows that the
18 Treasury Department did raise the Title III affirmative defense. In fact, the first affirmative
19 defense reads as follows: “1. The Department of Treasury of the Commonwealth of Puerto Rico
20 (“Commonwealth”) is covered by the stay in the Tittle III case filed by the Financial Oversight
21 and [M]anagement Board for Puerto Rico as representative of the Commonwealth of Puerto Rico”
22 (dkt. #9, p. 8, ¶ 1). Thus, the affirmative defense of the automatic stay provisions of Title III
23 proceedings was duly presented.

24 The Title III petition was filed on May 3, 2017. On January 18, 2022, the District Court
25 entered the order and judgment confirming the plan. The plan was effective March 15, 2022. The
26 Debtor/Plaintiffs’ discharge order was entered in the bankruptcy case on September 16, 2020. The
27 bankruptcy case was closed on January 13, 2020, and reopened on November 24, 2020. The
present complaint was filed on November 25, 2020.

1 The allegations in the complaint do not plead with specificity the dates and actions which
2 constituted the violations of the discharge injunction. However, the factual allegations in the
3 motion for summary judgment filed by the Plaintiffs on June 16, 2022 (dkt. #57), do plead actions
4 ranging from October 7, 2019, to January 10, 2021. See Motion Requesting Entry of Summary
5 Judgment, dkt. #33, ¶¶ 17, 19, 21, 22, 24, and 27. Therefore, the alleged actions by the Treasury
6 Department were effectuated after the Title III petition was filed and before the Plan confirmation
7 order was entered.

8 The remedies requested by Plaintiffs against the Treasury Department in the present
9 adversary proceeding are claims against the Commonwealth of Puerto Rico as the Treasury
10 Department is united in identity with the Commonwealth. See In re Financial Oversight and
11 Management Board for Puerto Rico, 650 B.R. 286, 292 (D.P.R. 2022), citing Fin. Oversight &
12 Mgmt. Bd., Covered Entities (2016),
13 https://drive.google.com/file/d/1D37UiofV0T5s1Q4J54vs3xX_ArGF9532/view (proclaiming
14 that “covered entities” include “all departments, offices, programs, etc.” of the Primary
15 Government of the Commonwealth of Puerto Rico). The Treasury Department is an
16 instrumentality of the Commonwealth. See Pizarro-Correa v. Puerto Rico Internal Revenue
17 Department, 267 F. Supp. 3d 369, 375 (D.P.R. 2017). The Treasury Department is an executive
18 department of the Commonwealth established by Section 6 of Article IV of the Puerto Rico
19 Constitution, 1 L.P.R.A. Art IV, sec. 6. See Villanueva Correa v. Departamento de Hacienda,
20 KLAN201401844, 2015 WL 6513767 (PR Court of Appeals 2015) (no English translation
21 available), citing 1 L.P.R.A. Art IV, sec. 6 (Executive Departments).

22 The alleged actions constituting a violation of the discharge injunction were executed after
23 the Title III petition was filed and before the plan was confirmed. The confirmation order
24 terminated the stay with respect to the Commonwealth. Thus, the automatic stay provisions are
25 no longer in effect. However, the claims are permanently enjoined by the confirmation order as
26 the automatic stay has been superseded by the permanent injunction. In re Financial Oversight
27 and Management Board for Puerto Rico, 650 B.R. at 295-296 (finding that movant's claim against
the Commonwealth, which has not been filed in the Title III case, was discharged and, with respect
to such discharged claim, the automatic stay has been superseded by a permanent injunction that
has an effect similar to that of the automatic stay and does not expire, even upon dismissal of
the Commonwealth's Title III case); Vélez-Molina v. Rivera Schatz, 2023 WL 6536235 (D.P.R.

1 2023). Consequently, any action against the Treasury Department is an action against the
2 Commonwealth. Therefore, the continuation of an action, as is the case here, against the Treasury
3 Department is subject to the permanent injunction of the order confirming the plan in the
4 Commonwealth's Title III case.

4 Conclusion

5 In view of the foregoing, the court grants the Treasury Department's *Notice of Injunction*
6 (dkt. #101) pursuant to ¶ 59 of the Confirmation Order in the Commonwealth's Title III Case and
7 stays the instant adversary proceeding. Plaintiffs' claim must be addressed through the
8 Commonwealth's claims resolution process.

9 Furthermore, the court orders Plaintiffs to show cause why the adversary proceeding should
10 not be dismissed within twenty-one (21) days as there is no relief available on account of the
11 instant decision.

11 IT IS SO ORDERED.

12 In San Juan, Puerto Rico, this 12th day of April 2024.

13
14 
15 Enrique S. Lamotte
16 United States Bankruptcy Judge
17
18
19
20
21
22
23
24
25
26
27