

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

EDWARD J. ONUFER,	:	Case No. 04-24869T
<i>Debtor(s)</i>	:	

EDWARD J. ONUFER,	:	
<i>Plaintiff(s)</i>	:	
v.	:	Adv. No. 04-2392

PPL ELECTRIC UTILITIES,	:	
<i>Defendant(s)</i>	:	

ORDER

AND NOW, this 15th day of December, 2004, it is ORDERED that Defendant's motion to dismiss this adversary complaint is GRANTED and this adversary complaint is hereby DISMISSED as the court finds that: (1) we lack subject matter jurisdiction over the portion of the complaint which seeks injunctive relief against Defendant in the form of restoration of electric service since electric service has been restored to the properties in question by Defendant and therefore, Plaintiff's request for restoration of electric service is moot, Brown v. Philadelphia Housing Auth., 350 F.3d 338, 343 (3rd Cir. 2003); Wal-Mart Real Estate Business Trust v. Bedford Square Assoc., LP, 259 B.R. 831, 838 (Bankr. E.D. Pa. 2001); Fed. R. Civ. P. 12(b)(1), which is made applicable to adversary proceedings in bankruptcy cases by Fed. R. Bankr. P. 7012(b); and (2) the portion of the complaint which seeks damages against Defendant for alleged violations of

11 U.S.C. §366 must be dismissed for failure to state a claim upon which relief can be granted, see Fed. R. Civ. P. 12(b)(6), which is made applicable to adversary proceedings in bankruptcy cases by Fed. R. Bankr. P. 7012(b), since Defendant did not refuse to provide electric service to the properties in question solely because Plaintiff filed a bankruptcy petition or failed to pay a pre-petition debt owed to Defendant¹, Webb v. Phila. Gas Works, 38 B.R. 541 (Bankr. E.D. Pa. 1984)(section 366 prohibits a utility from altering, refusing or discontinuing service to a debtor solely because the debtor filed a bankruptcy petition or because a pre-petition debt owed to the utility was not paid by the debtor when due; however a utility may refuse service to a debtor for any reason which would validly constitute grounds for refusal if that debtor were not in bankruptcy); and (3) the portion of the complaint which seeks to hold Defendant in contempt of court must be dismissed for failure to state a claim upon which relief may be granted, see Fed. R. Civ. P. 12(b)(6), which is made applicable to adversary proceedings in bankruptcy cases by Fed. R. Bankr. P. 7012(b), since Defendant did not violate 11 U.S.C. §366, see paragraph 2 of this Order, supra, and note 1, supra, and even if a violation of section 366 occurred, a violation of section 366 is not conduct which constitutes contempt of court, Whitakker v. Phila. Elec. Co., 92 B.R. 110, 117 (E.D. Pa. 1988), aff'd, 882 F.2d 791 (3rd Cir. 1989); and (4) the portion of the complaint which seeks damages for Defendant's alleged violation of the automatic stay, 11 U.S.C. §362(h), must be dismissed for failure to state a claim upon which relief may be granted, see Fed. R. Civ. P. 12(b)(6), which is made applicable to adversary proceedings in bankruptcy cases by Fed. R. Bankr. P. 7012(b), since

1. To explain, at the hearing held in this proceeding on September 23, 2004, Defendant established that electric service was refused to the properties in question due to Plaintiff's repeated failure, over a fifteen month period, to respond to Defendant's request that Plaintiff contact Defendant to arrange safe access to the Bethlehem property for the purpose of meter replacement and because the City of Allentown had not issued a favorable electrical inspection report for the Allentown property.

Defendant did not violate 11 U.S.C. §362, see paragraph 2 of this Order, supra, and note 1, supra, see One Stop Realtor Place, Inc. v. Allegiance Telecom, Inc. (In re One Stop Realtour Place, Inc.), 268 B.R. 430, 440 (Bankr. E.D. Pa.2001).²

Reading, PA

THOMAS M. TWARDOWSKI
United States Bankruptcy Judge

2. As we stated in paragraph 1 of this Order and in note 1, supra, electric service was not refused to Plaintiff due to Plaintiff's failure to pay a pre-petition debt owed to Defendant or due to Plaintiff's filing of a chapter 13 petition. Rather, electric service was refused to Plaintiff due to Plaintiff's repeated failure, over a fifteen month period, to respond to Defendant's request that Plaintiff contact Defendant to arrange safe access to the Bethlehem property for the purpose of meter replacement and because the City of Allentown had not issued a favorable electrical inspection report for the Allentown property.

Moreover, even if Defendant had violated section 366, which we specifically find it did not, a utility's refusal to restore service in violation of section 366 does not automatically equate to a section 362 violation. One Stop Realtour, 268 B.R. at 440.