United States Bankruptcy Court
Western District of Wisconsin

Cite as: [Unpublished]

Integrity Group Insurance Company, Plaintiff, v.
Scott M. Stelzer, Defendant
(In re Scott M. Stelzer, Debtor)
Bankruptcy Case No. 92-12852-7, Adv. Case. No. A92-1234-7

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

June 10, 1993

Stephanie L. Finn, for the plaintiff.
Lawrence J. Kaiser, for the defendant.

Thomas S. Utschig, United States Bankruptcy Judge.

MEMORANDUM OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

This matter is before the Court on an adversary proceeding filed by the plaintiff, the Integrity Group Insurance Company. The plaintiff seeks a determination that the debtor-defendant's debt to it is nondischargeable. The debtor is Scott M. Stelzer and he is represented by Lawrence J. Kaiser; Stephanie L. Finn is representing the plaintiff.

The plaintiff's claim against the debtor stems from an automobile accident which occurred at the corner of Osborne and North Second Streets in Cornell, Wisconsin, on August 28, 1991. The debtor was traveling at a high rate of speed and was being pursued by a squad car of the Cornell police. The debtor -- intoxicated at the time -- lost control of his vehicle, causing it to jump the curb and leave the street, and collide with the northeast corner of a house located at 220 North Second Street. Integrity Group Insurance Company insured the house and paid $638.36 to repair it.

On November 27, 1991, the debtor was found guilty of operating a motor vehicle while intoxicated, a violation of § 346.63 of the Wisconsin Statutes. As part of its judgment, the Chippewa County Circuit Court ordered that fair and reasonable damages should be awarded to the parties involved. The court ordered judgment against the debtor in the amount of $638.36 plus costs, fees and disbursements in favor of the plaintiff.

The debtor filed a petition under Chapter 7 of the Bankruptcy Code on September 3, 1992. He seeks to discharge his debt to the plaintiff in the bankruptcy.

The plaintiff posits two provisions of the Bankruptcy Code as grounds for a nondischargeability determination by this Court -- 11 U.S.C. §§ 523(a)(6) and 523(a)

(7). Those provisions provide in relevant part:

> § 523. Exceptions to discharge
>
> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt --
>
> . . .
>
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity;
>
> (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, . . .

See 11 U.S.C. §§ 523(a)(6), (a)(7) (West 1993).

In its initial brief and its reply brief, the plaintiff raises several persuasive arguments in support of its contention that the debt at issue is nondischargeable on the basis of 11 U.S.C. § 523(a)(7). One such argument is based on the case of Kelly v. Robinson, 479 U.S. 93 (1986). In that case the U.S. Supreme Court held that restitution obligations, imposed as conditions of probation in state criminal proceedings, are not dischargeable in Chapter 7 bankruptcy proceedings. 497 U.S. at 53. As the debtor correctly points out, however, this matter involved a civil action in the state court. Although the state court action had many of the trademarks of a criminal proceeding, a first-time offense under WIS. STAT. § 346.63 is technically not a criminal act. See State v. Albright, 298 N.W.2d 196, 98 Wis. 2d 663 (Ct. App. 1980). The Kelly court's broad interpretation of § 523(a)(7) as applied to criminal restitution obligations is therefore inapplicable to the present facts. The state court judgment cannot therefore be found to be "[p]ayable to or for the benefit of a government unit . . ." pursuant to 11 U.S.C. § 523(a)(7), given that this was a civil matter with judgment in favor of the plaintiff-insurance company. § 523(a)(7), therefore, does not provide a basis for a finding of nondischargeability in this case.

As its second basis for relief, the plaintiff cites 11 U.S.C. § 523(a)(6) and asserts that its damages were the result of willful and malicious injury by the debtor to the insured homeowner. If true, the debt would be nondischargeable pursuant to § 523(a)(6).

In support of this argument the plaintiff cites several Eastern District of Wisconsin cases which interpret the meaning of "willful and malicious" for purposes of § 523(a)(6). The plaintiff cites In re Kaufmann, 57 B.R. 644 (Bankr. E.D. Wis. 1986), for the proposition that "willful" does not require hatred or ill will, but merely that the debtor knew that injury would result and proceeded in the face of that knowledge. Id. at 647. The plaintiff then cites In re Grace, 22 B.R. 653 (Bankr. E.D. Wis. 1982), for the proposition "malicious" is to be defined as a wrongful act without just cause or excuse, rather than the more rigid standard requiring intent to do harm. Id. at 656.

The debtor responds in his brief by citing two Wisconsin bankruptcy courts which have held that the "willful and malicious" standard requires more than reckless conduct or reckless disregard for another's rights. See Cooper v. Noller (In re Noller), 56 B.R. 36, 38 (Bankr. E.D. Wis. 1985); Heritage Mutual Ins. Co. v. Naser (In re Naser), 7 B.R. 116, 118 (Bankr. W.D. Wis. 1980).

The plaintiff in its reply brief acknowledges that more than reckless conduct is required for a finding of "willful and malicious" action under § 523(a)(6). It notes that the aforementioned Noller decision, while stating that drunk driving is not per se "willful and malicious," held that there may be fact scenarios which would warrant a finding of intent to injure and thus an actionable claim under § 523(a)(6). See Noller, 56 B.R. at 37. Applying this case law to the present matter, the plaintiff asserts that this case involves just such a fact scenario -- fleeing a police officer while driving while intoxicated. These facts are sufficiently egregious, contends the plaintiff, to warrant a finding of nondischargeability under § 523(a)(6).

The Court has considered the arguments and authority cited by the parties and concludes that the facts of this case do not warrant a finding of nondischargeability on the basis of § 523(a)(6). As an initial proposition, the Court notes that there exists a large amount of divergent judicial precedent addressing claims under § 523(a)(6) involving injuries or damages sustained from drunk driving incidents. See generally Note, Accidental "Willful and Malicious Injury": The Intoxicated Driver and Section 523(a)(6), 1 Bankr. Dev. J. 135 (1984). The parties in their written memoranda have accurately summarized the position of Wisconsin bankruptcy courts on the proper standards to be applied under § 523(a)(6).

Addressing the "willful" requirement, this Court has followed those courts which interpret "willful" to mean "deliberate" or "intentional." See, e.g., State Nat'l Bank of Platteville v. Cullen (In re Cullen), 71 B.R. 274, 281 (Bankr. W.D. Wis. 1987), citing with approval Wisconsin Fin. Corp. v. Ries (In re Ries), 22 B.R. 343, 346 (Bankr. W.D. Wis. 1982). As for the "malicious" requirement, this Court has consistently followed those courts which have applied what has come to be known as a variation of the implied malice standard. Under this approach, a creditor is required to show that the debtor knew, or was substantially certain, that his actions would result in injury to the creditor or its property, but acted in disregard of this knowledge. See, e.g., Austin Mut. Ins. Co. v. Schultz (In re Schultz), 89 B.R. 28, 29 (Bankr. E.D. Wis. 1988); Victor Fed. Sav. & Loan Ass'n v. Robison (In re Robison), 86 B.R. 182, 185 (Bankr. W.D. Mo. 1988); State Nat'l Bank of Platteville v. Cullen (In re Cullen), 71 B.R. 274, 282 (Bankr. W.D. Wis. 1987).

Addressing § 523(a)(6) actions involving incidents of driving while intoxicated, this Court disagrees with those jurisdictions which hold that such incidents are per se "willful and malicious."[(1)] This Court is more inclined to agree with the In re Kuepper[(2)] decision, cited earlier. As noted by the plaintiff, that court stated that there could be fact situations involving driving while intoxicated which are so egregious as to constitute "willful and malicious" behavior for purposes of § 523(a)(6). Kuepper, 36 B.R. at 683.

Applying this precedent to the facts presented here is problematic but leads the Court to its conclusion that relief under § 523(a)(6) is not warranted. The Court finds that the debtor's actions here were not "willful" in the sense that he did not intentionally or deliberately damage the house of the plaintiff's insured. Likewise, he did not knowingly cause the damage to the house insured by plaintiff. The Court finds it would be stretching the parameters of § 523(a)(6) too far to adjudge the debtor's conduct here to have been "willful and malicious" for purposes of that provision.

One final consideration is worthy of note. As posited by the debtor, Congress recently amended the Bankruptcy Code to add § 523(a)(9). That provision provides:

§ 523. Exceptions to discharge

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--
>
> . . .
>
> (9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

11 U.S.C. §523(a)(9) (West 1993). After citing this provision, the debtor argues that Congress, in enacting § 523(a)(9), chose not to except debts for property damage caused by intoxicated drivers from a bankrupt's discharge. To do so here, the argument concludes, would thus be an inappropriate extension of § 523(a)(6). The Court finds that the debtor's argument involving § 523(a)(9) is worthy of mention given that this case did involve only damage to property. This consideration provides further support to the Court's refusal to stretch the boundaries of § 523(a)(6) to include the fact scenario presented here.

In summary, § 523(a)(7) does not apply because a criminal violation is technically not at issue. Similarly, § 523(a)(9) is inapplicable since this case involves minor property damage, not personal injury. Plaintiff must therefore rely on § 523(a)(6). As noted, however, it seems inappropriate to stretch the parameters of statutory construction to hold that the debtor acted willfully and maliciously within the meaning of that provision by finding that he intentionally and knowingly caused the $638.36 in property damage involved here. Under the facts of this case, § 523(a)(6) just does not work without violating normal rules of statutory construction. Although this may lead to a rather unsavory result in this particular case, the Court notes that §§ 523(a)(7) and (9) in most cases explicitly protect the interests of those injured by drunk drivers who subsequently file bankruptcy.

Accordingly, the debt of $638.36 to the plaintiff Integrity Group Insurance Company is discharged in the debtor's bankruptcy.

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.

END NOTES:

1. See, e.g., Moraes v. Adams (In re Adams), 761 F.2d 1422, 1427 (9th Cir. 1985); Hoffman v. Ustaszewski, 71 B.R. 282, 285 (Bankr. N.D. Ohio 1987).

2. 36 B.R. 680 (Bankr. E.D. Wis. 1983).