

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

BKY 03-48625 NCD
Chapter 7

IN RE:

BRADLEY G. PIEPER,
Debtor.

Karen Kellogg,
Plaintiff,

vs.

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT**

Bradley Pieper,
Defendant.

Plaintiff, Karen Kellogg (hereafter "Kellogg") for its claim against Defendant, states and alleges as follows:

1. That Defendant Bradley Pieper (hereafter "Defendant"), is a resident of the State of Minnesota, and resides at 10333 Colorado Road, City of Bloomington, County of Hennepin.

2. Defendant Bradley Pieper is/was the President and Chief Executive Officer of Bradley Exterminating Co.

3. That on or about December 15, 2003, Defendant filed a Petition for relief under Chapter 7 of the United States Bankruptcy Code. The case is now pending in this Court. This Court has jurisdiction to determine this adversary proceeding pursuant to 28 U.S.C. Sections 157 and 1334. This adversary proceeding is a core proceeding under 28 U.S.C. Section 157(b)(2)(I), and is properly before the Court pursuant to Bankruptcy Rule 7001(6).

4. That prior to the commencement of this Chapter 7 case, Defendant's company, Bradley Exterminating Company commenced a Hennepin County District Court lawsuit against Plaintiff in the State of Minnesota, Court File Number 98-3816. Plaintiff Karen Kellogg interposed an Answer and Third Party Complaint against the Debtor, Bradley Pieper. Plaintiff Kellogg's cause of action against Bradley Pieper was based on defamatory statements made by Pieper against Kellogg. Debtor admitted sending documents to third parties wherein he stated that Kellogg embezzled money from Bradley Exterminating, she was a fugitive from the law, she conspired to steal money, and she filed a fraudulent bankruptcy petition. Debtors statements against Kellogg were false.

5. The matter came on for a jury trial on July 26 and 27, 1999 with the Honorable Philip D. Bush presiding. The jury returned a verdict in favor of Karen Kellogg against Bradley Exterminating and Bradley Pieper, jointly and severally. The jury awarded Kellogg \$81,038.00 for past economic loss, \$32,857.00 for past harm to reputation, mental distress, humiliation and embarrassment, \$36,178.00 for future economic loss, \$20,000 for future harm to reputation, mental distress, humiliation and embarrassment, and \$402,000.00 in punitive damages. A copy of the Order and Special Verdict form is attached hereto as Exhibit "A" and incorporated by reference.

6. As of the date of the filing of this bankruptcy petition, the outstanding balance of this judgment against Bradley Pieper and Bradley Exterminating, jointly and severally, in favor of Karen Kellogg was \$580,848.94.

7. Defendant's defamatory statements were targeted against the Plaintiff and were deliberate and intentional thereby resulting in willful and malicious injury to the Plaintiff. Debtor's malicious conduct included misrepresentations, intentional acts, and omission intended to injury and harm Kellogg. Plaintiff has been damaged as a direct result of Pieper's willful and malicious conduct.

8. That the conduct of the Defendant was taken with the deliberate disregard of the truth and was taken with the high probability that his conduct would injure Plaintiff. Defendant's false statements were made to prospective employers of Kellogg and financial institutions. Clearly, Pieper perpetrated the act of defamation, an intentional tort, against Kellogg with the intent to harm her specifically.

9. Any damages that result from Defendant's willful and malicious conduct is nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

10. The Eighth Circuit held that where the compensatory and punitive damages are based upon the same conduct, and the judgment for compensatory damages is nondischargeable because it is based on a willful and malicious injury to another, then the punitive damages award is likewise nondischargeable. Fischer v. Scarborough 171 F.3d 638, 644 (8th Cir. 1999).

11. Plaintiff has undertaken significant efforts to collect Defendant debt to them in connection therewith, as evidenced by, among other things, the filing of this adversary proceeding, and has further incurred attorney's fees in connection therewith.

WHEREFORE, Plaintiff ask that this Court to find that the indebtedness owed by Defendant to Plaintiff be declared nondischargeable pursuant to 11 U.S.C. §523(a)(6), allow Plaintiff to proceed with its collection efforts against Defendant and for Plaintiff's costs including reasonable attorney fees. Therefore, Plaintiff demands that the judgment against Defendant:

1. In the amount of Five-Hundred Eighty Thousand Eight Hundred Forty-Eight and 94/100 (\$580,848.94) Dollars, plus interest and reasonable attorney's fees, together with its costs and disbursements herein incurred, pursuant to 11 U.S.C. Section 523(a)(6) be found to be non-dischargeable and that Plaintiff may continue with collection efforts against the judgment; and,

2. For such other and further relief as the Court finds just and equitable in the premises.

Dated this 23rd day of March, 2004.

THE GURSTEL LAW FIRM, P.A.

BY: /e/ Jennifer M. Berquist

Jennifer M. Berquist (#266681)

Attorneys for Plaintiff

401 North Third Street, Suite 590

Minneapolis, Minnesota 55401

Telephone: 612 843 1080



EXHIBIT

"A"

tabbles

JAN 26 2000

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

00 JAN 20 PM 6:07

FOURTH JUDICIAL DISTRICT

BY _____ DEPUTY
Bradley Exterminating Co., Inc. HENN. CO. DISTRICT
COURT ADMINISTRATOR

Court File No. MC-98-003816
Case Type: Civil

Plaintiff,

v.

Karen Kellogg, a/k/a Kariey Heller,
Defendant,

ORDER

And

Karen Kellogg,

Third Party Plaintiff,

v.

Bradley Pieper, individually,

Third Party Defendant.

The above-entitled matter, having been placed upon the calendar of the above-named Court, came on for jury trial on July 26 and 27, 1999, the Honorable Philip D. Bush presiding. Defendant and Third-Party Plaintiff appeared in person and with her attorney, Kimberly B. Kozar. Plaintiff and Third-Party Defendant did not appear but were represented by their attorney, Gregg M. Fishbein.

FINDINGS

1. After taking oral testimony and receiving exhibits, the Court submitted the matter to the jury. On July 28, 1999, the jury returned a Special Verdict, which is attached hereto and adopted by the Court.

Based upon the findings, the Court makes the following:

CONCLUSIONS OF LAW

1. In accord with the attached Special Verdict, Defendant and Third-Party Plaintiff is entitled to recover \$572, 073.00 from Plaintiff and Third-Party Defendant, jointly and severally.

ORDER FOR JUDGMENT

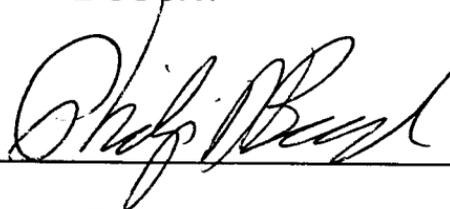
1. It is Ordered and Adjudged that Defendant and Third-Party Plaintiff recovers \$572,073.00 in damages from Plaintiff and Third-Party Defendant, jointly and severally.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED:

1/20/00

BY THE COURT

A handwritten signature in black ink, appearing to read "Philip D. Bush", written over a horizontal line.

PHILIP D. BUSH
Judge of District Court

FILED

99 JUL 23 AM 11:49

BY _____ DEPUTY

Bradley Exterminating Co., Inc.

HENRI J. DISTRICT
COURT CLERK

Civil File No. 98-003816

Plaintiff,

vs.

SPECIAL VERDICT

Karen Kellogg,

Defendants,

and

Karen Kellogg,

Third-Party Plaintiff,

vs.

Bradley G. Pieper, individually

Third-Party Defendant.

WE THE JURY in the above-entitled action, for our Special Verdict, answer the questions submitted as follows:

This Court has found that statements made by Bradley G. Pieper were defamation. What sum of money will fairly and adequately compensate Karen Kellogg for damages suffered as a result of the defamation up to the time of the verdict for?

a.. Economic loss?

\$ 81,038.⁰⁰

b. Harm to reputation, mental distress, humiliation and embarrassment?

\$ 32,857.⁰⁰

2. This Court has found that statements made by Bradley G. Pieper were defamation. What sum of money will fairly and adequately compensate Karen Kellogg for damages suffered as a result of the defamation as are reasonably certain to occur in the future?

a. Economic loss

\$ 36,178.⁰⁰

b. Harm to reputation, mental distress, humiliation and embarrassment?

\$ 20,000.⁰⁰

3. Has Karen Kellogg proven by clear and convincing evidence that the acts of Bradley G. Pieper showed a deliberate disregard for her rights?

Yes

No

IF YOU ANSWER YES, PROCEED TO QUESTION 4.

IF YOU ANSWER NO, DO NOT ANSWER QUESTION 4.

4. What amount of money will serve to punish Bradley G. Pieper and deter others from the commission of like acts?

\$ 402,000.⁰⁰

Dated: July 28, 1999


FOREPERSON

If six sevenths verdict, concurring jurors sign on the lines numbered below:

2. _____

3. _____

4. _____

5. _____

6. _____