UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:	Case No. 22-40301
Jeremy Thomas Broomfield,	
Debtor.	Chapter 7

Chad Lee Grunewaldt,	
Plaintiff,	Adv. Proc. No. 22-04003
v.	
Jeremy Thomas Broomfield,	
Defendant.	

MEMORANDUM DECISION AND ORDER

This matter came before the Bankruptcy Court upon Defendant's Motion for Summary Judgment (the "Motion") and Plaintiff's timely objection. [ECF 20, 22.] In this adversary proceeding, Plaintiff asserts that Defendant's prepetition conviction for "reckless burning" and the resulting destruction of his business constitutes a "willful and malicious injury" under 11 U.S.C. §523(a)(6). The Motion aims to dismiss the proceeding. Defendant admits his conduct was reckless but argues it cannot constitute a willful and malicious injury as a matter of law. For the reasons stated herein, Defendant's Motion is denied, and Plaintiff is granted partial summary judgment under § 523(a)(6).

BACKGROUND

Several important facts are not in dispute here: Plaintiff owned a business called the Pressbox Bar & Grill (the "Pressbox"). [ECF 1 at ¶3.] In 2008, the Pressbox burned to the ground. [Id. at ¶4.] Defendant admits he started a fire that ultimately destroyed the Pressbox. He plead guilty to "reckless burning," a Class 4 Felony under S.D.C.L. § 22-33-9.3, and he was ordered to pay restitution to Plaintiff. [ECF 1 and 20.] In 2017, the unpaid criminal restitution was converted to a civil judgment in the amount of $133,119.72 (the "Judgment") in a prepetition civil action (the "Civil Case"), [1] as permitted by S.D.C.L. § 23A-27-25.6. Defendant filed for bankruptcy on September 27, 2022 (the "Petition Date"). [Case No. 22-40301, ECF 1.] Defendant listed the Judgment as an undisputed, noncontingent, non-priority general unsecured claim on Schedule E/F. [Case No. 22-40301, ECF 1 and 12.] Plaintiff timely commenced this adversary proceeding and asserted the Judgment is nondischargeable under § 523(a)(6). [ECF 1]. Defendant answered and subsequently filed this Motion, seeking to dismiss the complaint as a matter of law.

By listing the Judgment on his bankruptcy schedules, Debtor conceded he is indebted to Plaintiff for the full amount. He is not disputing the validity of the Judgment, nor is he retracting any prior admission with respect to the fire. Critically, however, the parties dispute why he started the fire. This is a material fact for the purpose of determining whether Defendant's conduct constitutes a

[1] The Bankruptcy Court takes judicial notice of the Judgment and Order Granting Plaintiff a Monetary Judgment for Restitution entered on June 6, 2017 in Chad Grunewaldt v. Jeremy T. Broomfield, Clay County CIV. 17-52, as permitted by Federal Rule of Evidence 201.

"willful and malicious injury" under §523(a)(6), and it precludes this court from granting summary judgment in favor of Defendant.

DISCUSSION

I. JURISDICTION

"Determinations as to the dischargeability of particular debts" are "core proceedings." 28 U.S.C. § 157(b)(2)(I). The Bankruptcy Court may hear and determine all core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. In the Civil Case, a South Dakota state court judge ordered the Judgment "is non-dischargeable in bankruptcy in accordance with § 523(a)(6)." This statement is not binding upon this bankruptcy court, and it has no impact on the outcome of the Motion. Federal courts have exclusive jurisdiction to hear and determine disputes regarding the nondischargeability of debts pursuant to 11 U.S.C. § 523(a)(2),(4), or (6). Brown v. Felsen, 442 U.S. 127, 136 (1979); In re Everly, 346 B.R. 791, 796 (B.A.P. 8th Cir., 2006). This court must make an independent determination about the applicability of § 523(a)(6) to the Judgment.

II. THE STANDARD FOR SUMMARY JUDGMENT

Rule 56(c) permits this court to grant summary judgment on a claim or defense if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Acton v. City of Columbia, 436 F.3d 969, 975 (8th Cir. 2006). A fact is "material" if resolving it might affect the outcome of a suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S.

242, 248 (1986). A factual dispute is "genuine" only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. A party opposing a motion for summary judgment "must set forth specific facts showing that there is a genuine issue for trial," and may not rest on mere allegations or denials of the pleadings. Id.

Rule 56(f) permits the Bankruptcy Court to grant summary judgment in favor of a non-movant, or on grounds not raised by either party, after giving notice and a reasonable time to respond. The parties were given such notice and neither party supplemented its briefing. [ECF 30.] Therefore, this court has discretion to grant summary judgment in favor of either party, or on grounds not raised by either party. See Acton, 436 F.3d 969, 975 n.5 (8th Cir. 2006) (citing Burlington N. R.R. Co. v. Omaha Pub. Power Dist., 888 F.2d 1228, 1231 n.3 (8th Cir. 1989)).

III. DEFENDANT'S PREPETITION PLEA AGREEMENT

Prior to the Petition Date, Defendant was permitted to plead guilty to "reckless burning" under SDCL 22-33-9.3 in exchange for testifying against his former friend, Nathaniel Thomas. State v. Thomas, 796 N.W.2d 706, 710 (S.D. 2011). S.D.C.L. 22-33-9.3, the statute for reckless burning, states:

> Any person who intentionally starts a fire or causes an explosion, whether on his or her own property or another's, and thereby recklessly:
>
> (1) Places another person in danger of death or serious bodily injury; or
>
> (2) Places a building or occupied structure of another in danger of damage or destruction;

> is guilty of reckless burning or exploding. Reckless burning or exploding is a Class 4 felony."

By contrast, "second-degree arson" requires all the elements of reckless burning, plus a finding of "intent to destroy" a structure belonging to another person. S.D.C.L. 22-33-9.2. If such structure is occupied at the time of the fire, then it constitutes "first-degree arson." S.D.C.L. 22-33-9.1

As a general matter, collateral estoppel can be invoked in the context of nondischargeability litigation under § 523(a). Grogan v. Garner, 498 U.S. 279, 284 n.11 (1991); In re Luebbert, 987 F.3d 771, 779 (8th Cir. 2021). Collateral estoppel can bar re-litigation of an essential fact or issue if it was fully adjudicated by the parties in an earlier suit. Hamilton v. Sommers, 855 N.W.2d 855, 866 (S.D. 2014). Here, Defendant pled guilty to a Class 4 felony in South Dakota, therefore, the collateral-estoppel doctrine of South Dakota applies. Life Invs. Ins. Co. of Am. v. Corrado, 804 F.3d 908, 913 (8th Cir. 2015); 28 U.S.C.A. § 1738. Under South Dakota law, collateral estoppel applies if: (1) the issue decided in the prior adjudication is identical with the one presented in the subsequent proceeding; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom the plea is asserted had a full and fair opportunity to litigate the issue in the prior adjudication. Hamilton, 855 N.W.2d 855, 866 (S.D. 2014) (quoting Estes v. Millea, 464 N.W.2d 616, 618 (S.D. 1990)).

Defendant's prepetition guilty plea is binding upon him in this proceeding, and it is relevant for determining whether his conduct constitutes a "willful and

malicious injury." As a practical matter, Defendant may not relitigate the fact that he started a fire "intentionally," the fire burned the Pressbox, and he was ordered to pay criminal restitution of approximately $133,000 to Plaintiff. But the guilty plea is not a full adjudication of all facts and circumstance related to the fire, so it neither proves nor disproves that Defendant started the fire with the specific intention to injure Plaintiff or his business.

IV. WILLFUL AND MALICIOUS INJURY UNDER 11 U.S.C. 523(a)(6).

For the Judgment to be excepted from the general discharge in Defendant's bankruptcy case, Plaintiff must demonstrate that he caused a "willful and malicious injury" under § 523(a)(6). Plaintiff bears the burden of proving, by a preponderance of the evidence: (1) an injury; (2) "willful" infliction of such injury; and (3) that Defendant's conduct was "malicious." Luebbert v. Glob. Control Sys. (In re Luebbert), 987 F.3d 771, 778 (8th Cir. 2021). The "willful" and "malicious" elements are distinct: a debtor's conduct must be both "(1) headstrong and knowing ('willful'), and (2) targeted at the creditor ('malicious'), at least in the sense that the conduct is certain or almost certain to cause financial harm." Barclays American/Business Credit, Inc. v. Long (In re Long), 774 F.2d 875, 881 (8th Cir. 1985).

First, an injury refers to the "invasion of the legal rights of another, because the word 'injury' usually connotes legal injury (injuria) in the technical sense, not simply harm to a person." Geiger v. Kawaauhau (In re Geiger), 113 F.3d 848, 852 (8th Cir. 1997) (en banc), aff'd by Kawaauhau v. Geiger, 523 U.S. 57 (1998). Here, Defendant was ordered to pay restitution to Plaintiff. State of South Dakota v.

Jeremy Broomfield, Clay County CRI. 09-214 (the "Criminal Case"). There is no genuine dispute as to the existence of an "injury" here. In fact, the Judgment is a measure of the extent of such injury. Plaintiff is entitled to summary judgment on the "injury" element of § 523(a)(6).

Second, a "willful" injury under § 523(a)(6) must be a deliberate or intentional injury, not just a negligent act that leads to an injury. Kawaauhau, 523 U.S. at 61. In Kawaauhau, the debtor was a physician who committed malpractice, resulting in the amputation of his patient's leg. Although the physician's conduct had severe consequences, the Kawaauhau court held medical malpractice claims and other "negligently inflicted injuries do not fall within the compass of Section 523(a)(6)." Kawaauhau, at 64.

Defendant is eager to concede his conduct was "careless, young and even stupid," presumably to characterize his conduct as negligence and thereby discharge his obligation to Plaintiff for the destruction of his business. [ECF 8.] But the proper application of Kawaauhau is more nuanced than Defendant avers. "The debtor need not desire the consequences for the willful injury element to be satisfied." In re Thoms, 505 F. App'x 603, 605 (8th Cir. 2013). If the debtor knows "the consequences are certain, or reasonably certain, to result from his conduct, the debtor is treated as if he had, in fact, desired to produce those consequences." Blocker v. Patch (In re Patch), 526 F.3d 1176, 1180 (8th Cir. 2008). Thus, a creditor's burden on willfulness may be satisfied if there is proof that the debtor was "substantially certain that his

conduct would result in the injury that occurred." In re Luebbert, 987 F.3d at 778, 781.

Here, Defendant's guilty plea and prior state court testimony confirm the Pressbox fire was started knowingly and intentionally. Defendant testified he took "empty Coors Light bottles and filled them with gasoline…and paper towels from Thomas's home to help light the fire." State v. Thomas, 796 N.W.2d 706, 708 (S.D. 2011). "Investigators found a Coors Light bottle with a cloth sticking out of it on the northeast side of the building. A police officer described it as a 'Molotov cocktail'" Id. Defendant characterizes this as youthful indiscretion and Kawaahua-type negligence. But the Pressbox fire was not caused by a backyard bonfire that got out of control. There is no safe way to intentionally ignite gasoline or an improvised incendiary device next to a business or home. Any adult, even a young adult, would know or be substantially certain that a serious fire would result. There is no genuine dispute the injury was "willful," as such term is used in § 523(a)(6). Plaintiff is entitled to summary judgment on the "willful" element of § 523(a)(6).

The third and final element required by § 523(a)(6) is "maliciousness." Luebbert, at 780-81. A mere violation of legal rights does not imply malice absent additional aggravated circumstances. Id. Malice requires conduct that is more culpable than reckless disregard of a creditor's economic interests. Long, 774 F.2d at 882; Johnson v. Logue (In re Logue), 294 B.R. 59, 63 (B.A.P. 8th Cir. 2003). A debtor's actions are malicious if they are "targeted at the creditor." Long, 774 F.2d at 881; Osborne v. Stage (In re Stage), 321 B.R. 486, 493 (B.A.P. 8th Cir. 2005);

Hearing Associates, Inc. v. Gervais, 579 B.R. 516, 523 (D. Minn. 2016). At this time, it is unclear why Defendant started the fire. Plaintiff alleges that Defendant was denied entry to the Pressbox and started the fire to harm Plaintiff and the Pressbox, implying it was a form of retaliation. [ECF 22.] Defendant denies he knew Plaintiff at the time of the fire or had any reason to target the Pressbox. [ECF 20.] On the "maliciousness" element, the Court cannot grant summary judgment for either party.

CONCLUSION

Accordingly, Defendant's Motion is denied. Plaintiff is granted partial summary judgment on the willful injury elements of § 523(a)(6). Plaintiff still bears the burden of proving the maliciousness element of § 523(a)(6) in this proceeding.

IT IS ORDERED.

DATED: *April 26, 2024*

Kesha L. Tanabe
United States Bankruptcy Judge