

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: Chapter 7 Case
Douglas Duane Rhode, BKY Case No. 3-90-88
Debtor. ADV. No. 3-90-621
Billie J. Kantor,
Plaintiff, ORDER
v.
Douglas Duane Rhode,
Defendant.

This matter came before the Court for a scheduling conference on July 31, 1990 on Plaintiff's complaint seeking to except her default judgment obtained in state court from discharge under 11 U.S.C. Section 523(a)(6) and 11 U.S.C. Section 727(b).(FN1) Russell Norum appeared for the Plaintiff. John T. Krezowski appeared for the Defendant. This is a core proceeding under 28 U.S.C. Sections 1334 and 157(a), and Local Rule 103(b). The Court has jurisdiction to determine this matter under 28 U.S.C. Section 157(b)(2)(I). At the scheduling conference, the parties were directed to file cross motions for summary judgment: Plaintiff within 30 days of the

(FN1) The complaint was brought under both 11 U.S.C. Section 523(a)(6) and 11 U.S.C. Section 727(b), but the allegations in the pleadings frame the cause of action under 11 U.S.C. Section 523(a)(6) only.

scheduling conference, and Defendant's responsive motion 20 days thereafter. Plaintiff filed her motion on August 13, 1990. Defendant's response was due September 4, 1990, but none was filed. Based upon all the files and records in this case, being fully advised in the premises, the Court now makes the following Order pursuant to the Federal and Local Rules of Bankruptcy.

I.

FACTS

The Debtor filed his petition for Chapter 7 relief on February 9, 1990. Prior to filing, on September 25, 1986, he and Ms. Kantor were involved in a traffic accident. According to the stipulated facts submitted by the parties, the Debtor's car struck Ms. Kantor's car from the rear, damaging her car and injuring her. At

the time of the accident, the Debtor was without insurance coverage as required by Minn. Stat. 65B.41 et seq. Ms. Kantor sued her insurer, Allied Mutual Insurance Company, but settled for \$9,000, in return for which she released and discharged all her claims for consequential and exemplary damages, interest, costs, disbursements, attorney's fees, uninsured motorist benefits, and economic loss benefits, and dismissed her complaint with prejudice on March 29, 1988. On May 19, 1988, Ms. Kantor obtained a default judgment against the Debtor in Hennepin County District Court in which she was awarded \$1,200 for damage to her car, \$100 for medical losses, \$5,885.81 for economic losses, and \$49,911.19 for past and future pain and suffering, for a total award of \$57,097. She now seeks to except from the Debtor's discharge under 11 U.S.C. Section 523(a)(6)(FN2) the sum of \$48,097, the difference between her judgment award and her settlement with Allied Mutual.

II.

ISSUES

1. Is the Plaintiff entitled to summary judgment?
2. Should the Court except Ms. Kantor's judgment from discharge under 11 U.S.C. Section 523(a)(6)?

III.

DISCUSSION

1. Summary Judgment. Under Bankruptcy Rule 7056 which incorporates Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate if the moving party demonstrates that there are no genuine issues of material fact, and therefore is entitled to judgment as a matter of law. *Foster v. Johns-Manville Sales Corp.*, 787 F.2d 390, 391 (8th Cir. 1986). The Court must view the facts, and all reasonable inferences to be drawn from those facts, in the light most favorable to the opposing party. *Foster*, 787 F.2d at 392. *Stokes v. Locken*, 644 F.2d 779, 782 (8th Cir. 1981). The Plaintiff argues that she is entitled to summary judgment because the Debtor admits that he was without insurance coverage in violation of Minn. Stat. Section 65B.48 at the time of their accident. She further argues that the Debtor, by failing to purchase insurance to compensate accident victims, injured her

(FN2) 11 U.S.C. 523(a)(6) reads as follows: "...A discharge under section 727...of this title does not discharge an individual debtor from any debt...for willful and malicious injury by the debtor to another entity or to the property of another entity...."

willfully and maliciously. Therefore, since her debt arose from a willful and malicious injury within the meaning of 11 U.S.C. Section 523(a)(6), it is nondischargeable. The Plaintiff also argues that the court, under the doctrine of collateral estoppel, should find the Debtor's admission he lacked insurance bars him from relitigating that issue in this proceeding.

The Debtor denies that his lack of insurance was a willful, malicious act by which he purposefully injured Ms. Kantor. He

maintains in his answer that his lack of insurance coverage at the time of their collision was at most a mistake or oversight.

The Debtor's intent is material to a finding that a debt should be excepted from discharge under 11 U.S.C. Section 523(a)(6). Therefore, construing the available evidence in the light most favorable to the Debtor, he is entitled to present evidence regarding his lack of insurance before dischargeability is determined. Under these circumstances, the Plaintiff is not entitled to summary judgment.

2. Collateral estoppel. The Plaintiff's argument in favor of collateral estoppel also fails because she ignores the second of its well-established requirements: the issue must have been actually litigated. In re LaCasse, 28 B.R. 214, 216 (Bankr. D.Minn. 1983). In re Supple, 14 B.R. 898, 903 (Bankr. D.Conn. 1981).

3. Exception to discharge. A debt is excepted from discharge under 11 U.S.C. 523(a)(6) if it arose from "a wrongful act producing harm done intentionally without just cause or excuse." In re LaCasse, 28 B.R. 214, 217 (Bankr. D.Minn. 1983). The Eighth Circuit later defined the elements of willfulness as "headstrong and knowing" and malicious as "targeted at the creditor...at least in the sense that the conduct is certain or almost certain to cause harm." Barclays American/Business Credit, Inc. v. Long (In re Long), 774 F.2d 875, 881 (8th Cir. 1985). The Defendant's conduct must fall within both definitions if the debt is to be excepted from discharge. Long, 774 F.2d at 881. And see Lee v. Ikner, (In re Ikner), 883 F.2d 986 (11th Cir. 1989). Furthermore, before the court can determine the debt is nondischargeable, the creditor must present clear and convincing evidence of the Debtor's willful and malicious conduct. In re Carothers, 22 B.R. 114, 120 (Bankr. D.Minn. 1982). In re Ickner, 883 F.2d 986, 991 (11th Cir. 1989). In this case, there is no evidence, let alone clear and convincing evidence, that the Debtor knew Ms. Kantor prior to their accident, no evidence that he bore her any ill will, and no evidence that he targeted her, intending to cause her harm. Accordingly, her judgment debt is not excepted from the Debtor's discharge.

NOW, THEREFORE, IT IS ORDERED:

1. Plaintiff's motion for summary judgment is denied.
2. Defendant's motion for summary judgment is granted, and Plaintiff's debt is discharged with the Debtor's other unsecured debts under 11 U.S.C. Section 727.(FN3)

LET JUDGMENT BE ENTERED ACCORDINGLY.

(FN3) In his answer, Defendant sought attorney's fees and costs in defending this action. However, since he did not comply with the briefing schedule, or otherwise participate in the prosecution of his case after the July 31, 1990 scheduling conference, his request for fees and costs is denied.

Dated:

Dennis D. O'Brien
U.S. Bankruptcy Judge