

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

FILED
JAMES J. WALDRON, CLERK

May 10, 2006

U.S. BANKRUPTCY COURT
CAMDEN, N.J.
BY: s/Elizabeth Grassia, Deputy

IN RE:

DOMINIC W. ANDREWS

Debtor.

CHAPTER 7

CASE NO. 03-16226 (GMB)

WILLIAM JOEL ASHLEY,

Plaintiff,

ADVERSARY NO. 03-1931 (GMB)

v.

MEMORANDUM OPINION

DOMINIC W. ANDREWS,

Defendant.

APPEARANCES:

Jeffery S. Walters, Esquire
Robert A. Gleaner, P.C.
415 S. White Horse Pike
Audubon, NJ 08106
Attorney for Plaintiff, William Joel Ashley

Mark G. Schwartz, Esquire
Cooper Levenson
1125 Atlantic Ave.
Atlantic City, NJ 08401
Attorney for Defendant, Dominick Andrews

Before the Court is Plaintiff-Creditor William Joel Ashley's ("Plaintiff" or "Creditor")
Complaint Objecting to Discharge of Defendant-Debtor Dominick Andrews ("Defendant" or
"Debtor") under 11 U.S.C. § 523 (a)(6), which was filed on May 27, 2003. A trial was held in

this matter on October 20, 2005. For the reasons stated below, the Court finds for Plaintiff-Creditor Ashley and holds the debt to be non-dischargeable.

I. JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(a) and 157(a), and the Standing Order of the United States District Court for the District of New Jersey dated July 23, 1984, referring all bankruptcy cases to the Bankruptcy Court. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I) regarding the dischargeability of a particular debt. Venue of this case is proper in the District of New Jersey pursuant to 28 U.S.C. §§ 1408 and 1409.

II. FINDINGS OF FACT

This debt arises out of a jury verdict, stemming from a 7-day trial in April and May 2002, which held that Debtor defamed Plaintiff. On March 20, 1998, Debtor filed a lawsuit in the Superior Court of New Jersey alleging that Plaintiff, his uncle, had sexually abused him from the time he was a minor until the age of 20. Before filing the lawsuit, Debtor filed complaints in both New Jersey and California, alleging the same. Plaintiff filed counterclaims for defamation. Debtor's claims were dismissed at the conclusion of a Lopez hearing, where the court found that the statute of limitations on Debtor's cause of action had run. Plaintiff's counterclaim for defamation proceeded to trial ("the defamation case"), at which time, a jury found that Debtor defamed Plaintiff and awarded damages. On May 29, 2002, a judgment of \$50,000, plus interest of \$10,210.40 was entered in favor of Plaintiff as compensation for defamation. On September 23, 2002, a judgment of \$41,323.70 was entered in favor of Plaintiff for counsel fees and costs.

On February 18, 2003, Debtor filed for bankruptcy protection under chapter 7.

A. The Defamation Case

The jury in the defamation case specifically found that Debtor made a defamatory statement of fact concerning Plaintiff. (P-1, Qs #1 and 2). The statement made by Debtor was false. (P-1, Q #3). Debtor had actual knowledge of the statement's falsity. (P-3, Q #5a). Plaintiff proved by clear and convincing evidence that Debtor's primary motive in making the statements was not to advance the interests of another person or persons, but was ill will or spite directed at Plaintiff. (P-3, Q #4a). Plaintiff failed to show by clear and convincing evidence that Debtor's conduct was malicious, but did prove that Debtor acted in wanton and willful disregard of Plaintiff's rights. (P-2, Q #1). No punitive damages were awarded. (P-2, Q #2). Compensatory damages of \$50,000 were awarded as reasonable compensation for defamation. (P-1, Q #6). Plaintiff was also awarded counsel fees and costs of \$41,323.70 under the Frivolous Complaint Statute because the court found that Debtor intended to injure Plaintiff. N.J.S.A. 2A:15-59.1 (2005). (P-5 and P-6).

B. The Parties' Arguments

Plaintiff seeks a finding of non-dischargeability of both the \$60,210.40 judgment and the \$41,323.70 awarded by the court in the defamation case under the Frivolous Complaint Statute.

Plaintiff asserts the following arguments to support his complaint:

1. Debtor willfully acted to injury Plaintiff.
2. Debtor acted with malice to injure Plaintiff.
3. Collateral estoppel applies and this Court must find that Plaintiff suffered a "willful and malicious" injury caused by Debtor.

Debtor offers the following arguments in opposition:

1. Collateral estoppel allows, at most, a finding that Debtor intended to make his defamatory statements, not that he intended the resulting injury.
 2. Collateral estoppel does not permit a finding that Debtor acted with malice because the jury did not find that Debtor acted with malice and failed to award punitive damages in the defamation trial.
- C. Trial Testimony

On October 20, 2005, the Court heard testimony on the issue of dischargeability, specifically on whether Debtor acted to wilfully injure Plaintiff. Below is a summary of the relevant testimony and facts from trial:

1. Plaintiff is Debtor's uncle.
2. Debtor previously lived with Plaintiff in California.
3. Sometime in 1994, Plaintiff indicated that he wished to no longer have contact with Debtor. On October 27, 1994, Plaintiff's lawyer sent Debtor a letter stating that Debtor should stay away from Plaintiff and his property. On June 15, 1995, Debtor received another letter from Plaintiff's lawyer requesting him to stay away from Plaintiff. The second letter was written to address a dispute occurring between Debtor and Plaintiff at a garage sale in May of 1995.
4. Sometime in 1995, Debtor wrote an 8-page letter to himself describing the abuse he alleged against Plaintiff. Debtor later shared the letter with his family and police. Debtor testified that his motivation in writing the letter was to help himself.
5. Debtor admitted that he went to the police in two jurisdictions and made public declarations about Plaintiff. Debtor specifically stated that he told police that Plaintiff raped him and was a pedophile. Debtor contacted the Los Angeles, California Police Department to file a complaint against Plaintiff. Debtor stated to Los Angeles Police that Plaintiff was a pedophile that molested children. Debtor later contacted the police in Ventnor, New Jersey to file a complaint against Plaintiff. Debtor told Ventnor Police that Plaintiff was a pedophile that molested children.

6. Debtor visited Plaintiff in California in 1996 at age 26, after the claims of sexual assault that lead to the defamation trial.
7. Debtor admitted telling “people” that Plaintiff molested him from the time he was a minor until age 20. Debtor did not testify as to exactly how many people he publicized his allegations to, however, he did testify that he shared his story with his family, police officers and detectives, New Jersey Senators and acquaintances.
8. Debtor was aware that the jury in the defamation case concluded that his statements were false.
9. Debtor claimed that his lawsuit and allegations against Plaintiff were for his benefit and were not motivated by an intent to injure Plaintiff or his property. Debtor testified that his intent was to have someone in authority acknowledge that his story was true and that the accusations were in an effort to heal Debtor himself and to protect others, but that the last motive was developed after the defamation case.
10. Debtor was aware of the burden his allegations would put on Plaintiff. Debtor acknowledged that the public would view Plaintiff in a negative manner because of his allegations. Debtor was aware of the costs of litigation and knew that Plaintiff was incurring legal fees.

III. LEGAL DISCUSSION

Section 523(a)(6) excepts from discharge any debt “for willful and malicious injury by the debtor to another entity or to the property of another entity. . . .” 11 U.S.C. § 523(a)(6) (2005). To be non-dischargeable under § 523(a)(6), a debtor must deliberately or intentionally injure the plaintiff; a deliberate or intentional act leading to injury is insufficient. Kawaauhau v. Geiger, 523 U.S. 57, 62 (1998).

Courts applying this test, before and after the Supreme Court’s decision, have unanimously held that there must be a desire to cause injury or a substantial certainty that it would occur. See In re Conte, 33 F.3d 303, 309 (3d Cir.1994)(explaining pre-petition jury

finding that debtor's actions in legal malpractice case had high probability of producing harm to creditors did not establish that debtor's conduct was substantially certain to produce such injury).

An action is malicious if it is done without privilege or excuse. In re Braen, 900 F.2d 621, 626 (3d Cir. 1990)(citing P 523.12 Collier on Bankruptcy (15th ed. rev. 2005)). Ill will or spite is not necessary to prove that an action was malicious. Id.

A preponderance standard governs questions of dischargeability. Grogan v. Garner, 498 U.S. 279, 288 (U.S. 1991). The burden is on the creditor to show, by a preponderance of the evidence, a willful and malicious injury for a debt to be deemed non-dischargeable. In re Braen, 900 F.2d 621, 626 (3d Cir. 1990).

The doctrine of collateral estoppel or issue preclusion precludes re-litigation of an issue that has been decided in a previous case. Under New Jersey law, for the doctrine of collateral estoppel to apply, the moving party asserting must show that:

- (1) the issue to be precluded is identical to the issue decided in the prior proceeding;
- (2) the issue was actually litigated in the prior proceeding;
- (3) the court in the prior proceeding issued a final judgment on the merits;
- (4) the determination of the issue was essential to the prior judgment; and
- (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

Sacharow v. Sacharow, 177 N.J. 62, 76; 826 A.2d 710, 719 (N.J. 2003).

The Rooker-Feldman doctrine prohibits bankruptcy courts from reviewing the final determinations of a state court, "even those that are erroneous." Grey v. State of New Jersey,

2003 U.S. App. LEXIS 26660, **6 (3d Cir. 2003); In re Kelly, 262 B.R. 307, 311 (Bankr. E.D. Pa. 2001). Although the Rooker-Feldman doctrine applies to decisions of a states' highest court, it has been applied to final decisions of lower state courts as well. Walker v. Horn, 385 F.3d 321, 329 (3d Cir. 2004).

This Court holds that the maliciousness element of 11 U.S.C. § 523(a)(6) has been satisfied by the jury holding in the state court defamation case because the jury determinations establish that Debtor acted maliciously, despite the fact that it did not award Plaintiff punitive damages. The jury found that Plaintiff proved by clear and convincing evidence, a heightened standard, that Defendant acted in wanton and willful disregard of Plaintiff's rights and that Defendant's primary motive in making the statements was not to advance the interests of another person or persons, but was instead, ill will or spite directed at Plaintiff. By proving that Defendant acted with ill will or spite, Plaintiff has established that Defendant acted maliciously. It is implicit in the jury's finding that Defendant acted with malice and that Defendant's actions were intended to lead to Plaintiff's injury, satisfying the standard set forth in Kawaauhau v. Geiger. Collateral estoppel bars this issue from being re-litigated in this forum. The Rooker-Feldman doctrine also applies to bar this Court from reviewing the previous determinations made in the defamation case.

The Court finds that Debtor knew the likely consequences of his accusations would be injurious to Plaintiff and by still intentionally publicizing extensively a false story, with knowledge of its falsity, was motivated by an intent to injure Plaintiff. Debtor knew the likely consequences of his actions would have a negative effect on Plaintiff and intended to injure him and/or his reputation. Debtor testified to being aware of the possible and likely stigma attached

to being accused of a sex crime. Debtor was also aware of the mounting financial burden and legal fees being incurred by Plaintiff. Thus, the Court finds that Debtor acted willfully and intentionally to injure Plaintiff and holds the judgment for defamation in the amount of \$50,000, plus interest of \$10,210.40 to be non-dischargeable.

This Court must also consider whether the judgment for counsel fees and costs are non-dischargeable. The Frivolous Complaint Statute permits reasonable litigation costs and attorney fees to be awarded to the prevailing party if the Court finds that the complaint, counterclaim, cross-claim or defense of the non-prevailing party is frivolous. N.J.S.A. 2A:15-59.1 (2005). Superior Court Judge Drozdowski decided this issue at the conclusion of the defamation case. Judge Drozdowski made a specific finding of fact that the Debtor's complaint was filed in bad faith and solely to harass and/or injure Ashley, and therefore, entered an order awarding attorney fees and costs to Ashley. (P-6).

Counsel fees and costs have been included as part of the non-dischargeable debt where provided for by statute. In re Cohen, 185 B.R. 180, 190 (Bankr. D.N.J. 1995), *aff'd*, 106 F.3d 52 (3d Cir. 1997). Debt is defined broadly under the Bankruptcy Code as "liability under a claim." 11 U.S.C. § 101 (12) (2005). In keeping with the Code's broad definition of debt, non-compensatory damages, including reasonable counsel fees and costs, are to be considered part of the non-dischargeable debt under 11 U.S.C. § 523(a)(6). In re Cohen, 185 B.R. at 189. Thus, the Court holds that award of counsel fees and costs in the amount of \$41,323.70 is non-dischargeable.

IV. CONCLUSION

For the foregoing reasons the Court finds that both the judgment for defamation (\$60,210.40) and the counsel fees and costs (\$41,323.70) are non-dischargeable under 11 U.S.C. § 523(a)(6).

BY THE COURT:

A handwritten signature in black ink, appearing to read 'G. Burns', is written over a horizontal line. The signature is fluid and cursive.

GLORIA M. BURNS
United States Bankruptcy Judge