

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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RICHARD D. RAYMON

*Debtor(s).*

Bankruptcy No. 92-11849LC

Chapter 7

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MICHAEL C. WILLIAMS

*Plaintiff(s)*

Adversary No. 93-1004LC

vs.

RICHARD D. RAYMON

*Defendant(s)*

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### ORDER RE: MOTION FOR SUMMARY JUDGMENT

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On July 20, 1993, the above-captioned matter came on for hearing pursuant to assignment. Hearing was held by telephone conference call. Plaintiff appeared by Attorney Kevin Shea. Defendant appeared by Attorney Dan Childers. The matter before the Court is a Motion for Summary Judgment under Rule 7056 of the Bankruptcy Rules of Procedure. The matter was argued to the Court, after which the Court took the matter under advisement.

Plaintiff filed the pending complaint to bar discharge on January 15, 1993. Plaintiff asserts that he is a Creditor by virtue of a judgment entered against the Defendant obtained in the Iowa District Court in Linn County, Iowa in April of 1987 in the amount of \$1,346.98 plus costs and interest. Plaintiff asserts that the damage caused by the Defendant was willful and malicious and, therefore, excepted from discharge pursuant to 11 U.S.C. sec. 523(a)(6) and 11 U.S.C. sec. 523(c).

Plaintiff filed the pending Motion for Summary Judgment on June 10, 1993. This Motion alleges that the Iowa District Court action was based upon willful and malicious conduct by the Defendant, when he intentionally ran his car into that of the Plaintiff causing property damage to Plaintiff's vehicle. District Associate Judge John Siebenmann entered judgment in favor of the Plaintiff and against the Defendant. He entered judgment for actual damages in the amount of \$346.98. In addition, Judge Siebenmann found grounds for the award of punitive damages and entered judgment against the Defendant for punitive damages in the amount of \$500.00. Since the entry of the judgment in May of 1987, this award has collected statutory interest and costs. The total amount due, as of April 21, 1993, was computed to be \$1,355.18 plus court costs of \$51.00.

The Motion for Summary Judgment is premised on the doctrine of collateral estoppel. Plaintiff argues that the Iowa District Court based its findings upon willful and malicious injury caused by the Defendant. Plaintiff takes the position that discharge is denied to an individual debtor for any debt which is caused by willful and malicious intent under sec. 523(a)(6) of the Bankruptcy Code. The Plaintiff asserts that collateral estoppel is recognized under Bankruptcy Law and specifically recognized by the U.S. Supreme Court, the 8th Circuit Court of Appeals, and various courts within this circuit. Plaintiff claims that the requisite elements of collateral estoppel have been satisfied in this

case and therefore, the Defendant should not be allowed to relitigate those issues which have already been decided by the Iowa District Court. The Plaintiff argues that there are no material facts at issue, as they have already been decided by the Iowa District Court. The Plaintiff asserts that he is entitled to judgment as a matter of law based upon those facts and recognized legal principles.

Trial was held on May 20, 1987 in the Iowa District Court before District Associate Judge John Siebenmann. The matter was reported and Judge Siebenmann entered detailed minutes of testimony prior to the entry of his judgment in June of 1987. Both parties were present at trial. The Plaintiff appeared pro se. The Defendant appeared with counsel. The evidence establishes that the Plaintiff is a process server and President of Williams Investigations of Cedar Rapids. He was employed to serve certain documents upon the Defendant, who is a member of the Linn County Bar. Apparently, Mr. Williams attempted to serve Attorney Raymon at his office on April 19 of 1985. Mr. Williams waited in the lobby of Mr. Raymon's law office from 9:00 A.M. until after 2:00 P.M. He was unsuccessful in serving Mr. Raymon.

On April 22, 1985, Mr. Williams went to the Defendant's home early in the morning in an attempt to serve a subpoena upon Mr. Raymon. He found the Defendant's premises surrounded by a fence and a gate which was closed. He parked outside the gate and waited for the Defendant to leave his home. Eventually, he observed Mr. Raymon's Blazer come up the driveway. The gate opened, and at that time, the Plaintiff walked toward the opened gate. When Mr. Raymon saw the Plaintiff approach the gate, he raced the engine and instead of turning to the left to leave the area, he turned his vehicle to the right toward the Plaintiff. Plaintiff was required to jump out of the way and into a ditch to avoid being struck by the Blazer. Instead of leaving, the Defendant put his vehicle in reverse and in a half-circle manner, brought his Blazer around to a point where it came into contact with the passenger side of the Plaintiff's vehicle which remained alongside the roadway. Plaintiff again approached the vehicle in an attempt to serve the subpoena. Defendant again backed up the Blazer requiring the Plaintiff to jump out of the way, a second time, to avoid being struck. Exhibiting indomitability, the Plaintiff was able to throw the subpoena into the Blazer announcing "Here's your subpoena." The Defendant then drove off.

Judge Siebenmann specifically found, in his conclusions of law, that punitive damages may be awarded when it is determined, by a preponderance of evidence, that there has been an intentional causation of damage where the wrong done to a party was aggravated by, among other circumstances, malice, wanton, or willful conduct on the part of the Defendant. The Court made specific findings of fact, in relation to the Defendant's intent in this incident. He specifically found that the Plaintiff observed the Defendant operate his motor vehicle in an intentional manner to cause distress to the Plaintiff and place him in fear of being injured. He also found that the Defendant was liable for property damage to Plaintiff's vehicle caused by Defendant's intentionally striking Plaintiff's automobile. Based on that conduct, Judge Siebenmann found that Plaintiff was entitled to compensation for damages to his vehicle. Finally, Judge Siebenmann found that the Plaintiff was entitled to punitive damages in the amount of \$500, based upon application of the legal standard previously defined in this opinion. Iowa law provides that punitive damages may be awarded if the Plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence that the Defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damages to the Plaintiff. Iowa Code sec. 668A.1; Suss v. Schammel, 375 N.W.2d 252 (Iowa 1985); Nelson v. Restaurants of Iowa, Inc., 338 N.W.2d 881 (Iowa 1983).

In summary, Judge Siebenmann found that Defendant's conduct was intentional as to the actual damage caused to the vehicle. Secondly, he found that the Defendant's conduct was willful and wanton as it related to the award of actual and punitive damages in this case. Based upon these

considerations, Judge Siebenmann made his specific award of damages to the Plaintiff. The Defendant appealed this Small Claims decision to the Iowa District Court. The matter was ultimately heard by Judge Kristin Hibbs. The matter was fully argued, briefed and considered by Judge Hibbs. In a ruling, de novo, entered on March 30, 1988, Judge Hibbs found the same facts and conclusions of law as did Judge Siebenmann. The decision of Judge Siebenmann was affirmed in its entirety and the judgment became final. It is upon this factual and legal background that the present litigation is centered.

As indicated, the Plaintiff bases his Motion for Summary Judgment on 11 U.S.C. sec. 523(6). This code section states: "A discharge under sec. 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."

As applied in 11 U.S.C. sec. 523(a)(6), an injury which is caused by a Debtor must have been willful and malicious. Willfulness and maliciousness are deliberate or intentional acts which the Debtor knows would harm the creditor's interest, but nevertheless, proceeds in the face of that knowledge. In re Baker, 108 B.R. 663 (Bankr. S.D. Ill. 1990); In re Cunningham, 59 B.R. 743 (Bankr. N.D. Ill. 1986). Two elements must be satisfied before a court may determine that a debt is nondischargeable under this Code section. These elements are: 1) willfulness which is defined as a deliberate or intentional act; and 2) malicious injury which is satisfied if there is a showing of implied malice. In re McCown, 129 B.R. 432 (Bankr. D. Md. 1991).

The term willful and malicious conduct has been defined in the Northern District of Iowa. To be willful and malicious, an act must be wrongful, done intentionally, necessarily produce harm, and be without just cause or excuse. Hatred, spite, ill will or reckless disregard are not necessary for a finding of nondischargeability under sec. 523(a)(6). In re Simpson, 29 B.R. 202 (Bankr. N.D. Iowa 1983); In re Bothwell, 32 B.R. 617 (Bankr. N.D. Iowa 1983).

This Court must determine whether collateral estoppel will be applied in this case, and if so, whether the previous proceedings provide a sufficient factual basis to preclude further litigation. Collateral estoppel is generally applied when a particular issue is adjudicated and then put into issue in a subsequent case. The effect of collateral estoppel is to bind the parties in the second litigation. The purpose of collateral estoppel is to satisfy concepts of full faith and credit between federal and state courts as well as preserve judicial resources which are obviously conserved by avoiding duplicative relitigation of identical issues. In re Diaz, 120 B.R. 967 (Bankr. N.D. Ind. 1989); Combs v. Richardson, 838 F.2d 112 (4th Cir. 1988).

Collateral estoppel has been recognized by the United States Supreme Court as applicable in bankruptcy proceedings. The Court specifically held that collateral estoppel may be invoked in dischargeability proceedings under 11 U.S.C. sec. 523(a). Grogan v. Garner, 111 S. Ct. 654, 658 n11 (1991). The Court also determined in Grogan that the standard of proof to establish nondischargeability of debt is by a preponderance of evidence. The 8th Circuit Court of Appeals has similarly held the doctrine of collateral estoppel to be applicable in dischargeability proceedings in bankruptcy. Lovell v. Mixon, 719 F.2d 1373 (8th Cir. 1983). The Court held in Lovell at 1376 that:

"Under the doctrine of collateral estoppel,  
four criteria must be met before a determi-  
nation is conclusive in a subsequent proceed-

ings; (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) that issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment."

In addition to the four applicable criteria, the Court also held that collateral estoppel could only be applied against a party when it is clear that the party against whom the earlier decision is being asserted had a full and fair opportunity to litigate the issue in question. Id.

There is no serious dispute that in a proper case, Grogan v. Garner and Lovell v. Mixon, compel application of collateral estoppel. This Court must, therefore, determine whether the Lovell v. Mixon criteria have been met in this case. Initially, the Court notes that the state trial was reported. Judge Siebenmann submitted a full record of the minutes of the trial testimony. These procedures allow a full review of the proceedings which occurred in State Court in order to compare that Court's findings to the criteria of sec. 523(a)(6).

First, it is the finding of this Court that the issues sought to be precluded in the present case are the same as those which were involved in the prior litigation. The Plaintiff based his original lawsuit, for both actual and punitive damages, upon a theory of assault by intentional and outrageous conduct. Judge Siebenmann defined the legal principles involved using the terms of "malicious and willful". Judge Siebenmann found that Defendant's conduct complained of by the Plaintiff was intentional. It is the conclusion of this Court that the issues involved are identical. The issue involved in the State Court was that of a willful and malicious injury to the property of another. The issue of dischargeability under sec. 523(a)(6) is the dischargeability of a debt based upon willful and malicious injury by the debtor to another.

Second, it is the conclusion of this Court that the issue in question was actually litigated. Again, the matter was reported in State Court. Judge Siebenmann made detailed findings of fact based upon minutes of testimony which are incorporated in this record. Though the Plaintiff was not represented by counsel, Defendant was represented by counsel throughout the entire proceeding. It is obvious from the record that a full and vigorous presentation of all possible legal and factual issues was made at the time of trial. Additionally, this matter was appealed to the District Court after which additional argument and briefing was presented to the District Court Judge Hibbs. Unquestionably, the issue of the willfulness and maliciousness of the injury was fully presented at all levels in State Court.

Third, this Court has been presented with the State Court records. The matter was tried in Small Claims Court before Judge Siebenmann. The matter was appealed to the District Court where Judge Hibbs held a full and complete hearing de novo on all of the issues presented by the Defendant. Judge Hibbs affirmed the findings, both legal and factual, made by Judge Siebenmann. At that point, the judgment became final. The judgment was not appealed to the Iowa Supreme Court and the judgment of Judge Hibbs constitutes a valid and final judgment.

Fourth, this Court must determine whether the identical issues were essential to the judgment. The Plaintiff premised his action, both for actual damage and punitive damage, upon the willful and malicious conduct of the Defendant. Without such a finding, punitive damages could not have been awarded. It was possible that the trial judge could have made a determination of liability of actual damages under an alternative theory, however, Judge Siebenmann did not do so. He found that both the actual damages and the punitive damages were based upon intentional and willful conduct by the Defendant. It is the determination of this Court that these findings were essential to the entry of the judgment as entered and were not peripheral in any legal sense of the word.

The Court in Lovell v. Mixon added, in addition to the foregoing criteria, the requirement that this Court make a determination that the Defendant had a full and fair opportunity to litigate all of the issues in question. To a great extent, this Court's conclusion is encompassed in the prior four criteria. As previously noted, this Court has the benefit of Judge Siebenmann's full and complete minutes of testimony as well as all Court records which are incorporated into this file. This Court has at its disposal all of the material necessary to make a determination whether there was a full and fair opportunity of the Defendant to litigate the issues. It is apparent that this case was strenuously litigated at all levels. A full trial was held with the Defendant having the benefit of able counsel. Thereafter, the Defendant took advantage of his right to appeal and present additional evidence on other issues. The Defendant was provided the opportunity to make oral argument and present briefs to Judge Hibbs when this matter was on appeal to the District Court. There is nothing in this case to indicate that the Defendant was provided other than a completely full and fair opportunity to raise all of the issues which are again presented here. This Court must conclude that the Defendant has had every reasonable opportunity to litigate these issues to a final conclusion.

The only remaining issue is whether, as a result of Judge Siebenmann's findings, only the punitive damages would be nondischargeable or whether the actual damages would also be determined to be nondischargeable. It has been held, by various courts, that it is the nature of the act which gives rise to the liability. If a court determines that the nature of the act was willful and malicious, then all liability resulting from that conduct is nondischargeable whether it is determined to be actual compensation or punitive damages. In this case, the determination has been made very clearly by Judge Siebenmann in his findings that the nature of the act involved was willful and malicious. Therefore, the nondischargeability determination must be applicable, not only to the punitive damages, but also to the compensatory damages. Coen v. Zick, 458 F.2d 326 (9th Cir. 1972); In re Diaz, 120 B.R. 967 (Bankr. N.D. Ind. 1989).

By way of summary and in consideration of the foregoing, it is the determination of this Court that collateral estoppel is a doctrine recognized by the United States Supreme Court, the 8th Circuit Court of Appeals, and by the various other courts throughout the circuit. It is apparent that the facts of this case were fully and fairly litigated in State Court prior to the commencement of bankruptcy proceedings. The issues litigated are identical in both the State and Bankruptcy Court. The issues have been determined adversely to the Defendant and constitute grounds for denial of dischargeability under the bankruptcy laws.

**WHEREFORE**, it is the conclusion of this Court that collateral estoppel precludes relitigation of the issue of willful and malicious injury within the meaning of 11 U.S.C. sec. 523(a)(6).

**FURTHER**, as collateral estoppel precludes the relitigation of these issues, this matter is appropriate for summary judgment under Rule 7056 of the Rules of Bankruptcy as there are no material facts at issue and this matter may be decided as a matter of law.

**FURTHER**, applying the facts to the law in this case, it is the determination of this Court that the Plaintiff has satisfied his burden of proof by a preponderance of evidence that the conduct of the Defendant was willful and malicious within the meaning of 11 U.S.C. sec. 523(a)(6).

**FURTHER**, a determination of willful and malicious injury precludes dischargeability.

**FURTHER**, for the reasons set forth in this opinion, a determination of nondischargeability applies not only to punitive damages but also to actual or compensatory damages.

**FURTHER**, it is therefore the ultimate determination of this Court that the debt in issue in this case is held to be nondischargeable under 11 U.S.C. sec. 523(a)(6).

**FURTHER**, the judgment of State Court will not be included in the effect of the discharge which may be or has been granted in this case.

**SO ORDERED** this 11th day of August, 1993.

Paul J. Kilburg  
U.S. Bankruptcy Judge