

# **In the United States Bankruptcy Court**

## **for the Northern District of Iowa**

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JAMES LOUIS BEAR

Debtor(s).

Bankruptcy No. 93-21585KD

Chapter 7

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RICHARD J. SULLIVAN

Plaintiff(s)

Adversary No. 93-2194KD

vs.

JAMES LOUIS BEAR

Defendant(s).

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### **ORDER**

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On April 11, 1994, the above-captioned matter came on for trial pursuant to assignment. Present was Richard J. Sullivan and his Attorney Francis Henkels. The Defendant did not appear nor anyone for him.

Trial proceeded pursuant to the record made. The first issue relates to a handwritten letter sent to the Court by Defendant and received on April 4, 1994. The letter indicates that Defendant would not be present for trial. However, the letter also contains a written narrative, by Mr. Bear, of his version of the facts. Mr. Henkels objected to any evidentiary weight being given to this letter on the basis that it is hearsay. The letter does constitute hearsay under the Rules of Evidence and was determined by the Court to be inadmissible for any evidentiary purpose.

Plaintiff, through his Attorney Mr. Henkels, first moved the Court to amend the Petition to reflect the true and correct name of the Plaintiff as Richard J. Sullivan. The pleadings, until this time, have been in the name of Robert Sullivan, Jr. Defendant has filed an appearance, an answer and has generally submitted to the jurisdiction of this Court. No objection was lodged to the Motion to Amend, and as such, the Complaint and all subsequent documents, including this Order, shall be amended to reflect the name of the Plaintiff as Richard J. Sullivan.

### **STATEMENT OF THE CASE**

This adversary arises as the result of an incident occurring on a Sunday morning in Dubuque, Iowa in which Plaintiff Richard J. Sullivan (Sullivan) was punched in the eye by Defendant James L. Bear (Bear). The issue for this Court's determination is whether the blow and subsequent injury inflicted on Sullivan by Bear constitute "willful and malicious injury" such that any related debt should be excepted from Bear's Chapter 7 discharge.

### **THE CODE**

Section 523 sets out the exceptions to discharge and 523(a)(6) states in relevant part:

A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt -

. . .

(6) 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).

### FINDINGS OF FACT

The facts establish that on February 20, 1993, both Bear and Sullivan were attempting to exit the parking lot of the Hy-Vee grocery store on the south side of Highway 20 in Dubuque, Iowa. The cars were located side by side at the stop light as they waited for the light to turn green at the intersection. Bear was located on the left in a lane which was designated for left turn only. Sullivan was in the right-hand lane which was designated for straight or right-hand turn. When the light turned green, both Bear and Sullivan proceeded to go straight ahead. The effect of this maneuver was that both Bear and Sullivan were attempting to enter a single lane. Sullivan honked his horn as Bear's car moved in front of him. This apparently angered Bear who brought his car to an abrupt stop immediately in front of Sullivan's car. The front bumper of Sullivan's car made slight contact with the rear bumper of Bear's car. Bear stopped his car, stepped from his vehicle and approached the driver's side window of Sullivan's car.

Sullivan remained in his car but rolled the window down. Words were exchanged and then Bear struck Sullivan in the eye through the open car window. Sullivan immediately went to the police station to report the events. Bear, unbeknownst to Sullivan, followed Sullivan to the police station. At the police station, Bear admitted that he had struck Sullivan and tried to apologize for the incident.

After leaving the police station, Sullivan went to the hospital emergency room for treatment of his eye. At first, it did not appear that there was any serious damage to Sullivan's eye. The doctor told Sullivan to return if his condition worsened. Sullivan later went back to the hospital where he was diagnosed with a "retinal trauma". Sullivan has since seen a specialist who has written a note explaining the nature of the injury.

As a result of the foregoing, Sullivan seeks to have his claim adjudicated nondischargeable, pursuant to the "willful and malicious injury" exception in 523(a)(6).

### ANALYSIS

If a debt arises as the result of a willful and malicious injury by debtor, it may be nondischargeable under Chapter 7 of the Bankruptcy Code. See In re LeMaire, 898 F.2d 1346, 1348 (8th Cir. 1990). As this Court stated in In re Simpson, 29 B.R. 202, 212 (Bankr. N.D. Iowa 1983):

Hatred, spite or ill-will is not required to support a finding of willful and malicious but the legislative history of the Bankruptcy Code makes it clear that "willful" means deliberate or intentional, and that reckless disregard cannot be the standard. To be willful and malicious, an act must be wrongful, done intentionally, necessarily produce harm, and without just cause or excuse.

See also In re Raymon, No. 92-11849LC, Adv. No. 93-1004LC, slip op. at 4 (Bankr. N.D. Iowa Aug. 11, 1993) (a prior state court finding of malicious injury may constitute collateral estoppel to a 523(a)(6) inquiry by the Bankruptcy Court).

This Court must determine if Sullivan has met the willful and malicious injury standard of 523(a)(6) as defined by the Eighth Circuit. Sullivan must establish that the injury occurred as a result of conduct which was more than mere recklessness. In Miera, the Eighth Circuit adopted the

Restatement (Second) of Torts definition of intent to assist the fact finder in determining whether a debt is nondischargeable under 523(a)(6). In re Miera, 926 F.2d 741, 744 (8th Cir. 1991). The Court stated that a "person acts intentionally if 'he knows that the consequences are certain, or substantially certain, to result from his act'." Id. (quoting Restatement Second of Torts section 8A comment b (1965)).

Sullivan must therefore establish that the conduct in question was certain or almost certain to cause harm, and that Bear's actions were targeted at him. Id. See also In re Long, 774 F.2d 875, 881 (8th Cir. 1985). The facts here fulfill the standard for willful and malicious injury under 523(a)(6). There is no doubt that when Bear left his car his attention and conduct were focused on Sullivan. After first engaging Sullivan verbally, Bear struck Sullivan. Bear intentionally hit Sullivan and the act produced the harm that resulted to Sullivan's eye. There was no accident or misadventure involved; it was an intentional blow. See In re Tuma, 111 B.R. 323 (Bankr. D. Mont. 1990) (debt nondischargeable under 523(a)(6) where debt arose from personal injuries inflicted when debtor struck plaintiff in the mouth with his fist after saying he was going to "blast" him; blow was intentional and malicious).

While Bear may have been frustrated with Sullivan, "such annoyance and frustration does not, however, rise to the level of justification." In re Bothwell, 32 B.R. 617, 619 (Bankr. N.D. Iowa 1983) (debtor's throwing keys at former boyfriend striking him in the right eye was "willful and malicious injury" rendering the judgment against her for the injury nondischargeable in her Chapter 7 Bankruptcy under 523(a)(6) despite debtor's frustration with her boyfriend's conduct.) The auto accident between Bear and Sullivan does not constitute justification for Bear's conduct.

In summary, 1) Bear's actions were deliberate; 2) they produced the harm that was caused to Sullivan; and 3) the actions were without just cause or excuse. To the extent that it is the responsibility of this Court to determine dischargeability issues under the Bankruptcy Code, the injury to Sullivan caused by Bear meets the standard of "willful and malicious injury". As such, claims arising out of that injury are nondischargeable in Bear's Chapter 7 Bankruptcy under 11 U.S.C. 523(a)(6). Issues of liability, damages or the entry of judgment are not before the Court and this Court's ruling makes no determination on those matters.

**WHEREFORE**, for the reasons stated herein, it is the determination of this Court that Plaintiff Richard J. Sullivan has established by a preponderance of evidence that any obligation arising out of the assault of February 20, 1993 by Defendant James L. Bear is nondischargeable in this Chapter 7 case pursuant to 11 U.S.C. 523(a)(6).

**SO ORDERED** this 19th day of April, 1994.

Paul J. Kilburg, Judge  
U.S. Bankruptcy Court