In the United States Bankruptcy Court

for the Northern District of Iowa

Charles Leo Hayzlett Jessica Marie Bernacki *Debtor(s).*	Bankruptcy No. 97-92094-C Chapter 7
Shirley F. Drexler Keith R. Drexler *Plaintiff(s)* vs. Charles Leo Hayzlett Jessica Marie Bernacki *Defendant(s)*	Adversary No. 97-9205-C

ORDER

On December 18, 1997, the above-captioned matter came on for hearing pursuant to assignment. Plaintiffs appeared by Attorney Thomas Pence. Debtor/Defendant Charles Hayzlett appeared by Attorney David Nadler. The matter before the Court is Mr. Hayzlett's Motion to Dismiss. After argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

STATEMENT OF THE CASE

Debtors Charles Hayzlett (Hayzlett) and Jessica Bernacki (Bernacki) filed a voluntary Chapter 7 bankruptcy petition on July 9, 1997. Plaintiffs filed this adversary complaint on October 9, 1997, objecting to the dischargeability of a debt under 11 U.S.C. §523(a)(9). Debtor Hayzlett filed a Motion to Dismiss Plaintiffs' complaint on November 13, 1997 in which he asserts that the complaint fails to alleged facts which would except the debt from his discharge.

FINDINGS OF FACT

The debt in this case arises from a pre-petition settlement agreement between Plaintiffs and Debtors/Defendants. Pursuant to the parties' settlement agreement, Debtors agreed to pay Plaintiffs $40,000 plus interest. This sum was for damages, including personal injuries suffered by Plaintiff Shirley Drexler as a result of an automobile accident caused by Bernacki. Plaintiffs claim that Debtors' obligations under this settlement agreement are nondischargeable pursuant to 11 U.S.C. § 523(a)(9).

Hayzlett owned the motor vehicle driven by Bernacki on the evening of the collision. Bernacki operated said motor vehicle while intoxicated, causing the collision that injured Plaintiff Shirley Drexler. Hayzlett was not in the vehicle at the time of the accident.

CONCLUSIONS OF LAW

Debtor moves to dismiss under Fed. R. Civ. P. 12(b)(6), asserting that Plaintiffs' complaint fails to state a claim upon which relief can be granted. When considering a motion to dismiss, "the court must construe the complaint liberally and assume all factual allegations to be true." WMX Techs., Inc. v. Gasconade County, 105 F.3d 1195, 1198 (8th Cir. 1997). "Dismissal should not be granted unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts that would entitle relief." Id. (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

Plaintiffs rely on § 523(a)(9), which states:

> (a) A discharge under section 727 . . . does not
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> discharge an individual debtor from any debt--
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> . . .
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> (9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or
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> another substance.

11 U.S.C. §523(a)(9) (1993). Section 523 nondischargeability claims "must be liberally construed in favor of the debtor and strictly construed against the creditor." In re Mellott, 187 B.R. 578, 582 (Bankr. N.D. Ohio 1995). In order to successfully except a debt from discharge, a plaintiff proceeding under §523(a)(9) must prove by a preponderance of the evidence that (1) "the debtor was legally intoxicated under state law"; and (2) "liability resulted from the operation of a motor vehicle." In re Phalen, 145 B.R. 551, 554 (Bankr. N.D. Ohio 1992) (holding that the debt was nondischargeable as to debtor girlfriend under § 523(a)(9), who was driving debtor boyfriend's automobile at the time of the accident); see also Grogan v. Garner, 498 U.S. 279, 290 (1991) (holding that the preponderance-of-the-evidence standard of proof applies to all of § 523(a)'s exceptions to discharge).

Several courts have addressed whether owners of motor vehicles should be excepted from discharge under

§ 523(a)(9) if they were not driving the vehicle at the time of the accident. In In re Brown, 201 B.R. 411 (Bankr. W.D. Pa. 1996), one issue presented was whether the debt owed to a victim of an automobile accident was nondischargeable in a Chapter 7 bankruptcy when the debtor-wife owned the vehicle which caused the accident but was not driving the automobile at the time of the accident. See id. at 414. The court held that

§ 523(a)(9) does not apply to a person who did not operate the vehicle. See id.; see also In re Lewis, 77 B.R. 972, 973 (Bankr. S.D. Fla. 1987). The facts of Lewis are quite similar to the facts at issue here. Debtor Lewis filed a Chapter 7 bankruptcy petition and listed a $3,500,000 state court judgment entered against him in favor of the plaintiffs. See id. The state court litigation involved Lewis' liability as the owner of the motor vehicle driven by his daughter while legally intoxicated, which was

involved in an automobile accident. See id. The Lewis court refused to impute liability to Lewis because he was not the driver of the motor vehicle. See id. at 973.

As these cases properly hold, § 523(a)(9) is intended to except from discharge only debts of a debtor-driver. Bernacki was the driver of the motor vehicle at the time of the collision. Thus, the debt was not incurred as a result of Hayzlett's operation of a motor vehicle. See Lewis, 77 B.R. at 973. Hayzlett's only involvement was that he owned the motor vehicle Bernacki was driving at the time of the accident. See id. Accordingly, the facts presented do not satisfy the elements of a claim of nondischargeability under § 523(a)(9).

It is true that under Iowa law, the owner of a motor vehicle can be held vicariously liable for the negligent actions of another driver who was authorized to drive the owner's vehicle. Iowa motor vehicle law imputes liability for damages to the owner of the motor vehicle if the damages were caused by the driver's negligence and the driver was operating the motor vehicle with the consent of the owner. See Iowa Code § 321.493 (1995). However, vicarious liability and the provisions of section 321.493 of the Iowa Code do not apply in this context because of the specific language of §523(a)(9) which states that responsibility is based upon "the Debtor's operation of a motor vehicle," thereby precluding vicarious liability. If bankruptcy courts were to apply Iowa Code sec. 321.493 to § 523(a)(9) cases, "there is no telling at what point a debtor even remotely implicated in an automobile accident where alcohol was ingested by a driver could have his debt discharged." See Lewis, 77 B.R. at 973. Such a result would be contrary to the Bankruptcy Code's "fresh start" policy. See id. Congress intended bankruptcy courts to apply state law under § 523(a)(9) only when determining the standard of legal intoxication. See id. Principles of vicarious liability under state law have no role in a court's determination of dischargeability under § 523(a)(9).

The purpose of § 523(a)(9) is to "(1) deter drunk driving; (2) ensure that those who cause injury while driving while intoxicated do not escape civil liability through bankruptcy laws; and (3) protect victims of drunk driving." Mellott, 187 B.R. at 582. Section 523(a)(9) was not intended to place this responsibility upon owners. Under the Bankruptcy Code, the exception from discharge for drunk driving does not attach based on mere ownership of the motor vehicle. Nondischargeability of the debt terminates with the drunk driver.

In summary, Plaintiffs do not allege that Debtor was driving the motor vehicle when the accident occurred. Debtor's involvement is limited to ownership of the motor vehicle in question at the time of the accident. Therefore, construing the complaint liberally and assuming all allegations therein are true, the Court concludes that Plaintiffs can prove no set of facts which would entitle them to a finding that their claim is nondischargeable as to Debtor Charles Hayzlett under § 523(a)(9). Debtor's Motion to Dismiss must be granted.

WHEREFORE, Debtor Charles Hayzlett's Motion to Dismiss is GRANTED.

SO ORDERED this 10th day of February, 1998.

Paul J. Kilburg
U.S. Bankruptcy Judge