In the United States Bankruptcy Court

for the Northern District of Iowa

TED C. MAUSSER DEB F. MAUSSER *Debtor(s).*	Bankruptcy No. 98-01548-D Chapter 7
UNITED STATES OF AMERICA *Plaintiff(s)* vs. TED C. MAUSSER DEB F. MAUSSER *Defendant(s)*	Adversary No. 98-9184-D

ORDER

This matter came on for trial before the undersigned on February 3, 2000 on Plaintiff's Complaint Objecting to Dischargeability of Debt. Plaintiff Farm Service Agency (FSA) was represented by Attorney Martin J. McClaughlin. Debtors Ted C. and Deb R. Mausser were represented by Attorney Brian W. Peters. After the presentation of evidence and argument, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

FINDINGS OF FACT

Debtors Ted C. and Deb R. Mausser borrowed money from Plaintiff Farm Service Agency (FSA) in June and July of 1996 to purchase cattle, pay bills, and plant crops. FSA retained a security interest in Debtors' farm machinery and crops.

In December 1997, Debtors sold that year's corn crop. They used the proceeds to pay bills and expenses incident to their farm operation. Specifically, Debtors hired someone to drain a sludge pit on their farm that threatened to overflow. They also used the proceeds to offset a debt owed to another creditor. None of the proceeds, which totaled $11,768.79 in value, went to pay FSA.

FSA filed a complaint objecting to discharge of a portion of its claim against Debtors, arguing that the sale of the 1997 corn crop and subsequent conversion of the proceeds gave rise to a nondischargeable debt for "willful and malicious injury" under 11 U.S.C. § 523(a)(6). Debtors admit that they sold approximately 4,850 bushels of corn covered by FSA's security interest. They argue that their actions do not rise to the level of "willful and malicious injury" as defined in § 523(a)(6). FSA seeks an exception from discharge equal to the amount in proceeds converted by Debtors ($11,768.69).

DISCUSSION

Exceptions to discharge are listed in 11 U.S.C. § 523, which provides in part:

> (a) 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.

The analysis of dischargeability under § 523(a)(6) is guided by the principle that exceptions to discharge must be "narrowly construed against the creditor and liberally construed against the debtor." In re Van Horne, 823 F.2d 1285, 1287 (8th Cir. 1987). Because FSA seeks a finding of nondischargeability under § 523(a)(6), it bears the burden of proving each of the elements of its claim by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991).

A successful claim under § 523(a)(6) requires proof of an actual intent to cause injury, not merely an intentional act that causes injury. Kawaauhau v. Geiger, 118 S. Ct. 974, 977 (1998). Conversion may be an "injury" under § 523(a)(6) if it is proven to be willful and malicious. In re Wolfson, 56 F.3d 52, 54 (11th Cir. 1995); In re Holtz, 62 B.R. 782, 785 (Bankr. N.D. Iowa 1986). The elements of willfulness and malice must be analyzed separately under § 523(a)(6). In re Long, 774 F.2d 875, 880-81 (8th Cir. 1985).

First, the conversion must have been willful; it must have been committed deliberately and intentionally. In re Madsen, 195 F.3d 988, 989 (8th Cir. 1999). Debtors deliberately and intentionally sold their 1997 corn crop, knowing that FSA had a security interest in the proceeds. Debtors then converted the proceeds by using them to pay bills and farm maintenance expenses rather than FSA. Because Debtors deliberately sold corn that they knew FSA had a security interest in, Debtors acted "willfully" within the meaning of § 523(a)(6). Id.

Second, FSA must prove that Debtors acted with malice when converting the collateral. Long, 774 F.2d at 880-81. Proof of malice requires proof of a "heightened level of culpability... going beyond recklessness and beyond intentional violation of a security interest." Id. at 881. In order for a conversion to be malicious, it must be "targeted at the creditor," with an actual intent to cause financial harm. Madsen, 195 F.3d at 989. A mere technical conversion does not meet the requirements for nondischargeability under § 523(a)(6): "Knowledge that legal rights are being violated is insufficient to establish malice, absent some additional aggravated circumstances." Long, 774 F.2d at 881; see In re McClean, Adv. No. 96-1214-C, slip op. at 4 (Bankr. N.D. Iowa Aug. 5, 1997).

Malice may be inferred after considering all of the circumstances surrounding a conversion. In re Jansma, Adv. No. 95-5047-XS, slip op. at 17 (Bankr. N.D. Iowa July 30, 1996). Acts of concealment support the inference. Id. at 15. The purposes served by the conversion also bear on whether it was malicious. Id. at 17. An inference of malice may turn on the credibility of witnesses. Id.

The circumstances surrounding Debtors' conversion of FSA's collateral do not support an inference of malice in this case. Debtors did not conceal the conversion. Nor did Debtors use the proceeds from the sale of FSA's collateral for personal enrichment. Instead, the proceeds were used to keep farm operations running by paying off creditors and maintaining farm facilities. Such purposes are not "malicious" within the meaning of § 523(a)(6). See In re Page, Adv. No. 98-9013-S, slip op. at 17 (Bankr. N.D. Iowa June 1, 1999).

SUMMARY AND CONCLUSION

In order for FSA's claim to be excepted from discharge under § 523(a)(6), FSA must prove that Debtors converted its collateral with the intention of causing FSA financial harm. Proof that Debtors acted intentionally coupled with proof that FSA suffered harm is not enough absent additional circumstances that support an inference of malice on the part of Debtors.

No circumstances exist that support an inference of malice in this case. Debtors admit to converting the collateral and have not attempted to conceal that fact from FSA or the Court. Debtors testified that their purpose in converting the collateral was to keep their farm operation running, not to harm FSA. While Debtors did act willfully, they did not act maliciously. FSA has not met its burden of proving a "willful and malicious injury" under § 523(a)(6), and its claim is subject to discharge.

WHEREFORE, FSA's claim is not excepted from discharge under 11 U.S.C. § 523(a)(6).

FURTHER, judgment shall enter for Defendants Ted C. and Deb R. Mausser and against Plaintiff Farm Service Agency.

SO ORDERED this 23rd day of February, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge