In the United States Bankruptcy Court

for the Northern District of Iowa

BRUCE EDWARD ALCORN LEAH SHANNON ALCORN *Debtor(s).*	Bankruptcy No. 00-01881-C Chapter 7
LINDA BECKER *Plaintiff(s)* vs. BRUCE EDWARD ALCORN LEAH SHANNON ALCORN *Defendant(s)*	Adversary No.00-9179-C

ORDER

On January 25, 2001 the above-captioned matter came on for hearing pursuant to assignment. Plaintiff Linda Becker appeared in person with her attorney, Greg Epping. Defendants/Debtors appeared in person with their attorney, Michael Mollman. Evidence was presented after which the Court took the matter under advisement. The time for filing briefs has now passed and the matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

STATEMENT OF THE CASE

This adversary proceeding is brought pursuant to 11 U.S.C. § 523(a)(6). Plaintiff entered into a rental agreement with Debtors in which Debtors rented a residential property. Plaintiff asserts that during their occupation of the house, Debtors willfully and maliciously injured Plaintiff's property. She argues the debt should be excepted from discharge.

FINDINGS OF FACT

Debtors Bruce and Leah Alcorn, husband and wife, filed a joint Chapter 7 petition on July 26, 2000. Prior to filing, Debtors rented a house from Plaintiff Linda Becker located at 1120 Lindale Drive, Marion, Iowa. Debtors moved into the rental property in November of 1994. They lived there for approximately five years. Mr. Alcorn was the only lessee to sign the rental agreement.

In August of 1999, Debtors began to experience marital difficulties. Mr. Alcorn stopped automatic withdrawal of rental payments from his personal checking account in anticipation of a breakup. Though Debtors reassured Plaintiff that payment was forthcoming, rent was not paid for the months of September, October, or November 1999. Soon after, Plaintiff sent Debtors a notice of default.

Debtors decided to move at the beginning of November, 1999. They failed to adequately notify Plaintiff of their decision to vacate as required by the terms of the rental agreement. When Plaintiff

was finally notified that Debtors had moved out, she promptly came from Kansas to examine the property. When Plaintiff arrived, she found the residence apparently abandoned and in a shambles. The house smelled of animal urine. There was significant damage beyond what would be considered ordinary wear and tear that a rental property would typically experience.

The nature and extent of the damage to the property was in dispute during the course of the trial. Debtors attribute some of the damage to the carpets and the smell to flooding that occurred in the basement of the house. They claim that they were forced to deal with the flood damage themselves and offset rental payments. Debtors contend that Plaintiff waived the pet deposit and she had knowledge of the pets that were on the premises.

Other disputed damage to the property consisted of a broken garage door that did not work properly because it had come off the rollers. A door inside the house had been kicked in and had to be replaced. Plaintiff claims that the walls of the house had to be repainted and the entire inside of the house had to be cleaned. Debtors insist that the majority of the damage was the result of ordinary wear and tear that occurred because they were allowed to have pets on the premises.

It is clear that both parties attribute the damage to a failed duty under the lease by the other party to properly care for the property. Debtors claim either the damage was in existence before they moved in, or the damage was not intentional but rather the result of ordinary wear and tear. Plaintiff is seeking a judgment of $5,165.43 for the damage to her property caused by Debtors and is asking that the debt be excepted from discharge under § 523(a)(6).

CONCLUSIONS OF LAW

Section 523(a)(6) provides that debts for "willful and malicious injury by the debtor to another entity" can be excepted from discharge. 11 U.S.C. § 523(a)(6). In order to attain an exception to discharge under § 523, Plaintiff must prove the elements of the claim by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 286-87 (1991).

Willful and malicious are two distinct elements and each must be proven by the plaintiff in order to receive an exception to discharge. In re Scarborough, 171 F.3d 638, 641 (8th Cir.), cert. denied 528 U.S. 931 (1999); In re Nangle, 257 B.R. 276, 282 (B.A.P. 8th Cir. 2001). The "willful" element of §523(a)(6) requires Plaintiff to show that Debtor intended the injury. Kawaauhau v. Geiger, 523 U.S. 57, 61-62 (1998); Nangle, 257 B.R. at 282. "[N]ondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." Geiger, 523 U.S. at 61; In re Madsen, 195 F.3d 988, 989 (8th Cir. 1999). Reckless or negligent conduct is not sufficient. Geiger, 523 U.S. at 62; Nangle, 257 B.R. at 282.

The "malicious" element of §523(a)(6), on the other hand, requires Plaintiff to show that Debtors' conduct was targeted at her, at least in the sense that the conduct was certain or almost certain to cause her harm. Madsen, 195 F.3d at 989; Nangle, 257 B.R. at 282. The Court may look at the likelihood of harm in an objective sense to evaluate Debtors' intent in finding malice. In re Long, 774 F.2d 875, 881 (8th Cir. 1985).

Somewhat analogous facts occurred in In re Lively, Adv. No. 96-2009KD, slip op. at 3 (Bankr. N.D. Iowa June 7, 1996). In Lively, the debtor rented residential property from the plaintiff. Id. While in the process of installing a T.V. antenna, the debtor damaged the siding of the house. Id. This Court found that the "willful" element had been satisfied but the plaintiff had failed to prove that the debtor

injured the property with the intent to cause the plaintiff financial harm, therefore failing to prove the "malicious" intent element. Id.

Plaintiff rented the premises to Defendant Bruce Alcorn in 1994. At that time, the home was in good habitable condition. Plaintiff did not view the premises from that time until she returned in November of 1999. While Defendants dispute Plaintiff's allegations, the Court is satisfied that, during that period of time, substantial damage above and beyond ordinary wear and tear was done to the property.

When Debtors vacated the premises, the garage door was off its tracks; the lawn appeared to be completely denuded of grass; external fixtures which had been in the yard at the time of the commencement of the rental were now missing or damaged; the exterior surface of the house had damage to the siding; and the interior of the house was in complete disarray. Defendants had cats. The photographs clearly establish significant damage to doors caused by the cats scratching the doors in an apparent attempt to get out. The Court is convinced that the home smelled strongly of pet urine when it came back into the possession of Plaintiff.

Photographic evidence establishes that the walls had writing on them, apparently by children. Doors were sprung from their hinges and, in at least one instance, it appears that a door jam was shattered through the use of substantial force. It is obvious that Defendants took no pride in the rental premises and did not respect the property rights of Plaintiff. They clearly committed or allowed substantial damage to occur to the property. It is the ultimate conclusion of this Court that Plaintiff has established that the conduct of Defendants was willful as that term is defined under Eighth Circuit law.

Plaintiff must also establish that the damage constitutes a malicious injury. Proving the element of malicious injury is difficult under existing law. Plaintiff must establish that the conduct precipitating the damage was targeted at the creditor. In other words, Plaintiff must show that the destruction was done for the purpose of causing her damage and was not based on an overall lack of cleanliness by Defendants or a careless lack of respect for the property by them.

Plaintiff did not personally inspect the house for almost five years. She did not and could not testify as to the times when the various items of damage occurred. Nevertheless, the evidence establishes that much of the damage done is of a type which occurs gradually over an extended period of time. Clearly, the damage done by the animals occurred over a long period of time. The extensive scratching to doors, as well as the pervasive urine damage, was caused slowly over months or years.

Until the very end of the lease period, there is no indication of problems between Plaintiff and Defendants. At the end of the lease, the relationship between the parties deteriorated. It was only at that time that Defendants would have any reason to target destructive behavior at Plaintiff. However, none of the damage done to the premises could be identified as this type of behavior with the possible exception of the door which appears to have been kicked in. Even this damage, absent time parameters, does not establish conduct which was targeted at Plaintiff.

In summary, it is the conclusion of this Court that the damage done to this house was willful. However, the evidentiary record fails to establish conduct which rises to the level of maliciousness. There is a lack of evidence establishing that any of the damage was done because it was targeted at Plaintiff. As Plaintiff has failed to establish the requisite element of §523(a)(6) of "malicious" injury, her complaint seeking an exception to discharge must be denied.

WHEREFORE, Plaintiff Linda Becker has failed to establish by a preponderance of evidence the necessary elements of §523(a)(6).

FURTHER, for the reasons set forth herein, the complaint of Plaintiff Linda Becker is DENIED.

FURTHER, the damages, which are the subject of this complaint, are dischargeable.

SO ORDERED this 22nd day of February, 2001.

Paul J. Kilburg
Chief Bankruptcy Judge