

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

HENRY ROBERT LALIBERTE,

Debtor.

Case No. 6:09-bk-01684-ABB

Chapter 7

HARRY STILL,

Plaintiff,

Adv. Pro. No. 6:09-ap-00765-ABB

v.

HENRY ROBERT LALIBERTE,

Defendant.

ORDER

This matter came before the Court on the Motion to Dismiss or, in the Alternative, Motion for Judgment on the Pleadings (Doc. No. 5) filed by Henry Robert Laliberte, the Defendant and Debtor herein ("Debtor"), and the Objection thereto (Doc. No. 14) filed by the Plaintiff Harry Still ("Plaintiff"). The Debtor seeks dismissal of the Plaintiff's Complaint to Determine Non-Dischargeability of Debt (Doc. No. 1).

An evidentiary hearing was held on February 9, 2010 at which the parties and their respective counsel appeared. The Debtor's Motion is due to be granted and the Plaintiff's Complaint is due to be dismissed with leave to amend for the reasons set forth herein. The Court makes the following findings and conclusions ~~finds disgorgement proper in the sum of \$12,000.00~~after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

Background

The parties were involved in a same-sex relationship for over eight years and resided together at 609 Fruitwood Avenue, Winter Springs, Florida 32708 (the “Property”). The Debtor owns the Property individually and it is encumbered by a mortgage held by Wells Fargo. Plaintiff does not hold an ownership interest in the Property and did not co-sign the Mortgage or underlying Fixed Rate Note. They shared living expenses and acquired various items of personal property together. They made improvements to the Property.

Their relationship ended acrimoniously in 2006 and the Debtor allegedly barred Plaintiff’s access to the Property. Plaintiff instituted a civil action against the Debtor in the Florida State Courts in 2007 seeking recovery of his alleged contributions of money and personal property to the relationship pursuant to unjust enrichment, conversion, and replevin causes of action.

The Debtor filed a Chapter 7 petition on February 16, 2009 primarily due to the State Court litigation, which was stayed by the automatic stay of 11 U.S.C. Section 362(a). The Debtor moved from the Property approximately two years ago and resides in an apartment in Orlando, Florida. Wells Fargo obtained relief from the automatic stay and is conducting a foreclosure sale of the Property.

Plaintiff filed a Motion for Relief from Stay and the adversary proceeding Complaint against the Debtor in which he reiterates the allegations contained in his State Court pleadings. He withdrew the Motion for Relief prior to the scheduled evidentiary hearing.

Plaintiff asserts in his Complaint the Debtor failed to return to him his belongings including vehicles, appliances, furniture, collectibles, tools, music, and funds removed from Plaintiff's bank account. Plaintiff contends he made improvements to the Property with the expectation he would receive the benefits of the Property including appreciation in value. He considers the improvements to constitute fixtures. Plaintiff values his contributions of personal property, money, and improvements to be \$30,000.00.

The Complaint consists of twenty-five numbered paragraphs setting forth jurisdiction and venue, the parties, and background facts. The factual allegations mirror those contained in the Plaintiff's Third Amended Complaint filed in the State Court litigation. The Complaint contains one count, Count I, in which Plaintiff asserts:

27. Pursuant to Section 523(a)(6) a discharge under sections 727, 1141, 1228(a), 1228(b), or 1328(b) of this section does not discharge an individual debtor from any debt. . . . 'for willful and malicious injury by the debtor or another entity or to the property of another entity (entity can be a person).'
28. The debts owed by the Debtor/Defendant HENRY ROBERT LALIBERTE to Plaintiff HARRY STILL for money, property, and/or services obtained by willful and malicious injury by the Debtor to another entity or to the property of another entity should be excepted from the Debtor's discharge.

Complaint at p. 4.

The Debtor requests the Complaint be dismissed pursuant to Federal Rules of Civil Procedure 12 and 41 and Federal Rules of Bankruptcy Procedure 7012 and 7014:

- (i) Plaintiff has pled no facts indicating Debtor committed any willful and malicious injury to Plaintiff.
- (ii) The Complaint constitutes an attempt to obtain an exception to discharge for spousal support pursuant to 11 U.S.C. Section 523(a)(15).

- (iii) Plaintiff's attempt to create new laws regarding same-sex life partnerships is not a viable legal or factual basis for filing Plaintiff's Adversary Complaint.

Motion at pp. 3-4.

Analysis

Section 523(a)(6) of the Bankruptcy Code provides any debt “for willful and malicious injury by the debtor to another entity or to the property of another entity” is nondischargeable. 11 U.S.C. § 523(a)(6). The party objecting to the dischargeability of a debt carries the burden of proof and the standard of proof is preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991). Objections to discharge are to be strictly construed against the creditor and liberally in favor of the debtor. Schweig v. Hunter (In re Hunter), 780 F.2d 1577, 1579 (11th Cir. 1986).

The Debtor asserts the Complaint should be dismissed for failing to state any cognizable “willful and malicious” injury the Debtor committed against Plaintiff that could result in a nondischargeable debt pursuant to Section 523(a)(6). The Court must accept the allegations in the Complaint as true and construe them in the light most favorable to Plaintiff. Roberts v. Fla. Power & Light Co., 146 F.3d 1305, 1307 (11th Cir. 1998). “[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Plaintiff, to prevail in this adversary proceeding, must establish by a preponderance of the evidence the Debtor: (1) deliberately and intentionally; (2) injured Plaintiff or Plaintiff's property; by (3) a willful and malicious act. In re Nofziger, 361 B.R. 236, 242 (Bankr. M.D. Fla. 2006). Plaintiff must establish by a preponderance of

the evidence the injury was intentional—that the Debtor intended the consequences of his act. Kawaauhau v. Geiger, 523 U.S. 57, 61-62 (1998). “The established law is clear that a debtor must commit some type of intentional tort directed against the claimant or his property in order for a court to find that the resulting damages are nondischargeable.” In re Nofziger, 361 B.R. at 243.

No allegations in the Complaint establish an intentional tort committed by the Debtor against Plaintiff or his property sufficient to satisfy the Kawaauhau standard. Id. at 244. None of the allegations establish the Debtor deliberately and intentionally injured Plaintiff or his property by a willful and malicious act. The parties were involved in a domestic relationship whereby they shared expenses and jointly acquired personal property over an eight-year period. Plaintiff’s contributions to the relationship, including any improvements to the Property, were voluntary and not the result of any tortious coercion or malicious act by the Debtor.

Plaintiff’s Complaint does not set forth a claim upon which relief could be granted pursuant to 11 U.S.C. Section 523(a)(6). The Complaint is due to be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Motion (Doc. No. 5) is hereby **GRANTED** and the Complaint (Doc. No. 1) is hereby **DISMISSED** without prejudice; and it is

ORDERED, ADJUDGED and DECREED that Plaintiff, within fourteen (14) days of the date of entry of this Order, may file and serve an Amended Complaint.

Dated this 16th day of February, 2010.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge