

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

In re)	
JANICE K. JENNINGS,)	
)	Case No. 03-04937-3F7
Debtor.)	
_____)	
BRANDON JAMES MAXFIELD,)	
)	Adversary No. 07-308
Plaintiff.)	
v.)	
JANICE K. JENNINGS,)	
)	
Defendant.)	
_____)	

**ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
AND GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

This proceeding came before the Court upon Plaintiff’s Motion for Summary Judgment, Defendant’s Motion for Summary Judgment, and Defendant’s Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment and in Support of Defendant’s Motion for Summary Judgment. Upon a review of the pleadings, the Court finds there is no genuine issue as to any material fact and Defendant is entitled to judgment in her favor as a matter of law. The Court will deny Plaintiff’s Motion for Summary Judgment and grant Defendant’s Motion for Summary Judgment.

Undisputed Facts¹

Plaintiff is an individual who was injured when a handgun designed by Bruce Jennings, manufactured by Bryco Arms, Inc. (“Bryco”), a firearms manufacturer, and distributed by B.L. Jennings, Inc. (“B.L. Jennings”), a firearms distributor, accidentally discharged and injured him. Defendant is Bruce Jennings’ former wife (whom he divorced in 1984) and the mother of two of Bruce Jennings’ children, Kimberly Jennings and Bradley Jennings. Bruce Jennings and Defendant were co-trustees of three trusts established for the benefit of their two children and Rhonda Jennings, Bruce Jennings’ daughter from a previous marriage (the “California Trusts”). The California Trusts in turn owned the partnership interests in RKB Investments (“RKB”), a partnership, which was the record owner of a home in Newport Beach, California known as the “Shoreview Property.”² Although Bruce Jennings and Defendant testified that they “managed” RKB together as “co-trustees”, Bruce Jennings managed RKB and Defendant’s management of RKB was limited to Bruce Jennings’ instruction.

In 1986 Bruce Jennings married Anna Leah Jennings. The parties divorced in 1995. The divorce agreement between the parties did not mention any property by name and provided no specification as to what belonged to Bruce Jennings and what belonged to Anna Leah Jennings.

¹ The majority of the following facts were set forth in the Court’s June 12, 2007 Findings of Fact and Conclusions of Law, In re Jennings, 373 B.R. 742 (Bankr. M.D. Fla. 2007) issued after a five day trial of a Declaratory Relief Action (the “Dec. Relief Action”) which the Court will discuss infra.

² Using his personal funds, Bruce Jennings purchased a lot in 1991 for \$950,000 and took title in the name of RKB. Construction of a residence on the lot began in 1994 or 1995, with the certificate of occupancy for the Shoreview Property issuing in 1998.

In May 2001 Plaintiff commenced an action in California Superior Court against Bryco, and B.L. Jennings to recover for the personal injuries he suffered (the “Maxfield personal injury case”). Bruce Jennings was joined as a defendant in September 2001 for his role in designing, manufacturing and distributing the firearm, which injured Plaintiff.

An amended complaint was filed in the Maxfield personal injury case in December of 2001. The amended complaint added RKB, the California Trusts and Defendant as parties, and sought to impose liability upon them under a variety of legal theories, including joint enterprise, fraudulent transfer, and alter ego. RKB was served with the amended complaint in December of 2001.

On February 4, 2002, upon the advice of an attorney, Bruce Jennings ordered an appraisal of the Shoreview Property. The Shoreview Property was appraised at \$3.9 million. On February 23, 2002 Bruce Jennings sent the deed to the Shoreview Property to Defendant in Texas. Acting on instructions from Bruce Jennings, Defendant, on behalf of RKB, executed a deed transferring the Shoreview Property from RKB to Anna Leah Jennings. On February 27, 2002 Bruce Jennings recorded the deed. The deed recited that it replaced a deed purportedly issued in May of 1995 in connection with the Anna Leah Jennings divorce, although no one produced a copy of the prior deed.

In June of 2000 Bruce Jennings and Defendant testified in unrelated litigation that the Shoreview Property was owned by RKB, that it was strictly a profit-making investment, that Anna Leah Jennings had no financial interest in the property, and that she was permitted to stay there because she took care of the property. From its purchase in 1991 through February, 2002 RKB alone held title to the Shoreview Property, paid all of the property taxes, paid the homeowner’s association dues, paid for all the

construction, and carried the property as an asset on its income tax returns even though Anna Leah Jennings purportedly owned it since 1995.

Bryco, B.L. Jennings and Bruce Jennings were sued several times for serious injuries resulting from accidental shootings prior to the filing of the complaint in the Maxfield personal injury case. In two of those lawsuits, the respective plaintiffs, who were rendered quadriplegic and paraplegic, alleged that the guns were defectively designed and sought large damages. Bruce Jennings, Bryco and B.L. Jennings prevailed in one of the lawsuits and the other one was not being actively pursued at the time of the transfer of the Shoreview Property. Bryco and B.L. Jennings, Inc. had also been sued numerous times for non-serious injuries. Only one of those lawsuits resulted in a judgment and that judgment was satisfied. At the time Defendant signed the deed transferring the Shoreview Property from RKB to Anna Leah Jennings there were no outstanding judgments against Bruce Jennings, Bryco or B.L. Jennings. No judgments were ever entered against RKB.

On May 13, 2003 the court in the Maxfield personal injury case entered a judgment in favor of Maxfield and against Bruce Jennings, Bryco, and B.L. Jennings in the amount of \$21,250,650.31. On May 14, 2003 Bruce Jennings, Defendant, Bryco, B.L. Jennings, RKB, and the California Trusts filed Chapter 11 bankruptcy petitions. Within weeks of the Chapter 11 filings, the pending California litigation, including the claims against Defendant, was removed to this Court and was consolidated with the Dec. Relief Action in which RKB and the California Trusts sought a determination that they were not liable to creditors such as Plaintiff for any of the debts owed by Bruce Jennings, Bryco or B.L. Jennings. A third adversary proceeding initiated by Defendant sought

similar declaratory relief as to her liability and was likewise consolidated for trial with the Dec. Relief Action.²

In a Declaration in Support of Petition for Attorney's Fees dated July 8, 2003 Richard Ruggieri, Plaintiff's attorney in the Maxfield personal injury case, made the following declaration:

This was an extremely risky case to prosecute. The case was rejected by one of the Bay Area's top plaintiff's firms, the Boccardo Firm, in 1995, and plaintiff was unable to find other counsel willing to take his case. Prior to the trial of this action, I am informed and believe that no plaintiff had successfully tried a products liability claim against a gun manufacturer. Finally, the risk was increased by Congressional action promising a retroactive immunity for gun manufacturers, which is pending and may still affect plaintiff's recovery from non-settling defendants.

(Defendant's Notice of Filing Petition for Withdrawal of Funds from Blocked Account and Declaration of Richard Ruggieri in Support of Petition for Attorney's Fees).

In its June 12, 2007 Findings of Fact and Conclusions of Law in the Dec. Relief Action the Court found that RKB, through Bruce Jennings, transferred the Shoreview Property to Anna Leah Jennings with the actual intent to hinder, delay, or defraud creditors. Additionally, the Court found that the circumstantial evidence established that Defendant knew that RKB, through Bruce Jennings, intended to transfer the Shoreview Property to keep it out of the hands of creditors, and that by signing the deed on behalf of RKB to transfer the Shoreview Property in exchange for no consideration, Defendant

² The adversary proceeding initiated by Defendant is styled as *Janice K. Jennings v. Brandon James Maxfield, et al.*; Adversary No. 03-345.

aided in the transfer. The Court found that Defendant participated in a conspiracy with Bruce Jennings/RKB to fraudulently transfer the Shoreview Property to Anna Leah Jennings in order to keep it out of the hands of Bruce Jennings' creditors and was therefore jointly and severally liable to the creditors of Bruce Jennings' bankruptcy estate for the value of the Shoreview Property. The Court also found in the Dec. Relief Action that Defendant was a participant in a joint venture with Bruce Jennings, Bryco, and B.L. Jennings and was therefore jointly and severally liable for the injuries resulting in Plaintiff's judgment.

On September 27, 2007 Defendant's bankruptcy case was converted to Chapter 7. On December 19, 2007 Plaintiff instituted this adversary proceeding seeking to have the judgment against Defendant for her participation in the conspiracy to fraudulently transfer the Shoreview Property excepted from her discharge pursuant to 11 U.S.C. § 523(a)(2)(A) or alternatively, under 11 U.S.C. § 523(a)(6) as a "willful and malicious injury." On March 12, 2008, the Court entered its Order Granting Motion to Dismiss Complaint (the "Dismissal Order"), holding that with respect to Count I Plaintiff had failed to allege and could not allege facts establishing the elements of a claim of actual fraud. With respect to Count II, the Court held that "a conspiracy claim [is] not the sort of intentional tort, which is required to render a debt nondischargeable under § 523(a)(6)." (Dismissal Order, p. 5). Plaintiff appealed the Dismissal Order to the District Court. On June 11, 2009, the District Court entered its order (the "District Court Order"), in which it affirmed dismissal of Count I of the Complaint but reversed this Court's dismissal of Count II and remanded for further proceedings. The District Court held that the "Eleventh Circuit has never created a broad rule that a conspiracy claim may

not qualify as the sort of intentional tort covered by Section 523(a)(6)” (Dist. Ct. Order at 7).

Summary Judgment Standard

Pursuant to Federal Rule of Civil Procedure 56, incorporated by Federal Rules of Bankruptcy Procedure 7056 and 9014, “summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Matsushita Electric Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). “Summary judgment must be granted if as here, the Court is satisfied that no real factual controversy is present, so that summary judgment can serve its salutary purpose in avoiding a useless, expensive and time consuming trial where there is no genuine, material issue to be tried.” In re Hoult, 243 B.R. 818, 823 (Bankr. M.D. Fla. 1999).

The Debt owed to Plaintiff did not result from the Transfer of the Shoreview Property and the Transfer of the Shoreview Property Injured Bruce Jennings’ Bankruptcy Estate, not Plaintiff or his Property

Count II of the complaint seeks an exception to discharge under § 523(a)(6) of the Bankruptcy Code. This statute provides:

§ 523 Exceptions to discharge.

(a) A discharge under Section 727 1141, 1228(a), 1228(b), or 12328(b) 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.³

11 U.S.C. § 523(a)(6).

The threshold requirement in § 523(a)(6) is that the debt sought to be excepted from discharge must have resulted from willful and malicious injury by the debtor. Plaintiff's injury resulted from the accidental discharge of a firearm. While the transfer of the Shoreview Property impeded the collection of the debt owed to Plaintiff resulting from the gunshot wound, it did not create a separate debt. The original nature of a debt determines its dischargeability. Section 523(a)(6) was not put in the Bankruptcy Code to transform an otherwise dischargeable debt into a non-dischargeable one. In the instant case neither the debt to Plaintiff nor the debts to Bruce Jennings' other creditors resulted from a willful and malicious injury.

Additionally, the debt sought to be excepted must be for an injury to another entity or to the property of another entity. The Court found in the Dec. Relief Action that as a result of her participation in the conspiracy to fraudulently transfer the Shoreview Property, Defendant was liable to the creditors of Bruce Jennings' bankruptcy estate, collectively, not Plaintiff individually for the value of the Shoreview Property. Because at the time of the transfer Plaintiff did not own, was not entitled to possession of, and did not have a judgment lien on the Shoreview Property, the transfer of the Shoreview Property did not injure Plaintiff or his property. Because the debt owed to Plaintiff did

³ An "entity" is defined in 11 U.S.C. § 101(15) to include "person, estate, trust, governmental unit, and United States Trustee." The estate to which § 101(15) refers is not the bankruptcy estate itself. In re Mid-City Parking, Inc., 332 B.R. 798, 819 (Bankr. N.D. Ill. 2005).

not result from the transfer of the Shoreview Property and the transfer of the Shoreview Property did not injure Plaintiff or his property, Defendant is entitled to judgment as a matter of law.³

Alternatively, Collateral Estoppel Does not Apply Because the Fraudulent Transfer Issues in the Declaratory Relief Action are not Identical to the Issues in this Proceeding

Plaintiff asserts that the Court's findings in the Dec. Relief Action that: (a) Defendant participated in a joint venture with Bruce Jennings, Brcyo, and B.L. Jennings and is thus jointly and severally liable for Plaintiff's judgment; (b) RKB, through Bruce Jennings, transferred the Shoreview Property to Anna Leah Jennings with the actual intent to hinder, delay, or defraud creditors; and (c) by signing the deed to transfer the Shoreview Property in exchange for no consideration, Defendant aided in the transfer and accordingly is liable to Bruce Jennings' creditors for the value of the Shoreview Property are sufficient to support a determination that the damages caused by the fraudulent transfer of the Shoreview Property are non-dischargeable in Defendant's Chapter 7 case pursuant to 11 U.S.C. § 523(a)(6). Plaintiff asserts that Defendant is barred from re-litigating these issues pursuant to the doctrine of collateral estoppel.

³ Plaintiff cites no case holding that a garden variety transfer of property to keep it out of the reach of creditors where the creditor has not obtained, at the time of the transfer, a judgment on the underlying debt or security interest in the property, is an injury to the creditor or property as required under § 523 (a)(6). Plaintiff's reliance on In re Bammer, 131 F.3d 788 (9th Cir. 1997) is misplaced. Bammer is distinguishable from the instant case. In Bammer the debtor's mother embezzled funds and at the time of the transfer was negotiating a plea agreement that contemplated restitution to avoid or minimize prison time. The debtor covertly obtained a loan, which he had no intention of repaying, on his mother's behalf. The debtor's mother then fraudulently conveyed to the debtor a third mortgage on her home depriving the victims of her crimes from obtaining restitution from the equity in her home. The conveyance of the third mortgage injured a victim's right to restitution for a crime covered by the Victim Witness Protection Act, 18 U.S.C. § 3663. Id. at 790. The issue in Bammer was whether there was "just cause or excuse" for the transfer – not whether it injured the plaintiff's person or property. Id. at 791-2.

The doctrine of collateral estoppel is designed to obviate the need to re-litigate specific issues, which were decided in a prior proceeding by a court of competent jurisdiction. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 336 n. 23 (1979). “Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.” Allen v. McCurry, 449 U.S. 90, 94 (1980). Additionally, “[i]t is well-established that the doctrine of collateral estoppel applies in a discharge exception proceeding in bankruptcy court.” In re Bilzerian, 100 F.3d 886, 892 (11th Cir. 1996); see also Grogan v. Garner, 498 U.S. 279, 284 n. 11 (1991).

Federal law requires the following elements to invoke collateral estoppel: (a) the issue at stake must be identical to the one decided in the prior action; (b) the issue must have been actually litigated in the prior proceeding; (c) the prior determination of the issue must have been a critical and necessary part of the earlier decision; and (d) the standard of proof in the current action must not be significantly more stringent than the standard in the prior action. Bush v. Balfour Beatty Bahamas, Ltd. (In re Bush), 62 F.3d 1319, 1322 (11th Cir. 1995).

The first issue before the Court is whether the issue at stake in this adversary proceeding is identical to the issue in the Dec. Relief Action. “The issues at stake are identical for collateral estoppel purposes if the elements of proof in [the present] proceeding closely mirror the elements of proof in the [proceeding] action.” In re Hill, 265 B.R. 270, 274 (Bankr. M.D. Fla. 2001). A transfer made by a debtor is fraudulent under the CA-UFTA if the debtor made the transfer with the “actual intent to hinder, delay, or defraud any creditor of the debtor.” Cal. Civil Code § 3439.04(a)(1). Whether

a conveyance was made with fraudulent intent is a question of fact, and proof often consists of inferences from the circumstances surrounding the transfer. Annod Corp. v. Hamilton & Samuels, 100 Cal.App.4th 1286, 1294 (Cal. Ct. App. 2002).

In re Walker, 48 F. 3d 1161, 1165 (11th Cir. 1995) the court addressed the issue of whether a deliberate and intentional act that results in injury may constitute a “willful and malicious injury” under § 523(a)(6), or whether the debtor must intend the actual injury before the resulting debt may be nondischargeable.” Id. at 1164. The court held that “in order to be ‘willful’ under § 523(a)(6), the debtor must have intended more than merely the act that results in injury.” Id. at 1164. The court further stated:

Mindful of our obligation to construe strictly exceptions to discharge in order to give effect to the fresh start policy of the Bankruptcy Code, Equitable Bank v. Miller (In re Miller), 39 F.3d 301, 304 (11th Cir.1994), we hold that section 523(a)(6) requires a deliberate or intentional injury.

Id. at 1164-65.

The court concluded that “a debtor is responsible for “willful” injury when he or she commits an intentional act the purpose of which is to cause injury or which is substantially certain to cause injury.” Id. at 1165. However, whether “willful and malicious injury” includes “substantially certain to cause injury” was not the central issue before the court and was not critical to its decision.

In Kawaauhau v. Geiger, 523 U.S. 57 (1998) the United States Supreme Court addressed the issue of what constitutes willful and malicious under § 523(a)(6). The Court held that nondischargeability pursuant to § 523(a)(6) requires an intentional tort where the actor intends the “consequences of an act.” Thus, the Court expressly limited

nondischargeable debts under § 523(a)(6) to intentional torts where the debtor acted with intent to cause injury.

This Court in In re Tomlinson, 220 B.R. 134 (Bankr. M.D. Fla 1998), examined the Supreme Court’s decision in Kawaauhau. In Tomlinson, this Court held “that Kawaauhau stands for the proposition that a complainant seeking an exception to discharge pursuant to § 523(a)(6) must show that the debtor acted with intent to cause injury.” Id. at 137. The Court noted that the Eleventh Circuit in Walker indicated that “willful and malicious injury” includes “substantially certain to cause injury.” The Court held that “[to] the extent that Walker may be inconsistent with Kawaauhau, this Court strictly interprets Kawaauhau as requiring a showing of intentional and deliberate injury for purposes of § 523(a)(6). Id. at 137-138.

Several courts within the Eleventh Circuit agree with the Court’s holding that Kawaauhau requires a plaintiff to show that the debtor acted with intent to cause injury. See In re McClung, 335 B.R. 466, 473 (Bankr. M.D. Fla. 2005) (“the *injury* must be intended – not predictably or “substantially” certain to result from a deliberate act.”); In re Jenkins, 258 B.R. 251, 267 (Bankr. N.D. Ala. 2001) (“However, after a careful reading of Kawaauhau, this Court concludes that the Supreme Court and § 523(a)(6) does not permit anything less than a debtor’s intent to cause an injury.”); In re Gelinas, 2007 WL 2965046 *9 (Bankr. S.D. Fla.) (“Plaintiff’s argument that Defendants necessarily knew or were substantially certain that their breach of contract would cause injury to Plaintiff may establish the “willful” prong but it does not establish malice.”)

Defendant did not Act Willfully and Maliciously as Required under § 523(a)(6)

Even if the debt owed to Plaintiff resulted from the transfer of the Shoreview Property and Defendant's participation in a conspiracy to transfer the Shoreview Property resulted in an injury to Plaintiff or his property, Defendant did not act willfully and maliciously as required under § 523(a)(6). Plaintiff asserts that "[p]lacing the Shoreview Property beyond the reach of [Plaintiff] was the intended result of Defendant's action, and was without any doubt certain to cause financial injury to [Plaintiff]. Accordingly, all the facts and issues necessary to support a determination that Defendant acted willfully with intent to harm [Plaintiff] were actually litigated and determined adversely to Defendant in the Dec. Relief Action." The Court did not find in the Dec. Relief Action that Defendant acted with the intent to harm or cause injury to Plaintiff. The Court found that Bruce Jennings managed RKB and that despite Defendant's purported role as co-manager and co-trustee of RKB, Defendant's management of RKB was limited to Bruce Jennings' instructions. The signing of the deed was no exception. While the Court found that Defendant aided in the transfer of the Shoreview Property by signing the deed on behalf of RKB and that she knew that Bruce Jennings intended to transfer the Shoreview Property to keep it out of the hands of creditors, it is undisputed that Defendant signed the deed because Bruce Jennings instructed her to do so. While the Court found that Defendant's knowledge and conduct was sufficient to extend liability to her on a fraudulent transfer conspiracy theory, the Court finds that such conduct and knowledge, standing alone, are insufficient as a matter of law to establish the intent to harm or cause injury to Plaintiff as required by § 523(a)(6). Based upon the undisputed facts before it, the Court finds that when Defendant signed the deed on behalf of RKB transferring the

Shoreview Property to Anna Leah Jennings, she did not do so with the intent to harm or cause injury to Plaintiff.⁴

Even if an intentional act substantially certain to cause injury is sufficient to support a claim under § 523(a)(6), Defendant's participation in such a conspiracy was not substantially certain to cause injury to Plaintiff. The transfer of the Shoreview Property could not have been substantially certain to cause injury to Plaintiff unless at the time of the transfer Plaintiff was substantially certain to obtain a judgment (i) against B.L. Jennings, Inc., Bryco, and Bruce Jennings, which none of them could pay and (ii) against RKB determining that it was an alter ego of Bruce Jennings. The entry of such judgments was not substantially certain to occur at the time of the transfer of the Shoreview Property.

The transfer of the Shoreview Property occurred about fourteen months prior to the entry of the jury verdict and judgment against B.L. Jennings, Inc., Bryco and Bruce Jennings and more than five years prior to the entry of this Court's judgment determining that RKB was an alter ego of Bruce Jennings. Neither Bryco, B.L. Jennings, Inc. nor Bruce Jennings had any judgments against them at the time of the transfer. Bruce Jennings, Bryco and B.L. Jennings, Inc. had been sued several times for serious injuries resulting from accidental shootings prior to the date Plaintiff filed his complaint in California against Bryco and B.L. Jennings, Inc. In two of these lawsuits, the plaintiffs

⁴ Ordinarily the issue of intent would not be the proper subject of a motion for summary judgment. However, as the Court noted, it presided over a five day trial in the Dec. Relief Action. Plaintiff's Motion for Summary Judgment relies solely upon the Court's findings in the Dec. Relief Action. Plaintiff did not submit an affidavit alleging any further facts. Defendant submitted an affidavit alleging, among other things, that by signing the deed she did not act with intent to cause injury to anyone, including Plaintiff. The Court finds that a trial on this matter would serve no useful purpose.

became a quadriplegic and paraplegic and were alleging that the guns were defectively designed and were seeking large damages. Bruce Jennings, Bryco and B.L. Jennings prevailed in one of the lawsuits and the other one was not being actively pursued at the time of the transfer. Bryco and B.L. Jennings, Inc. had also been sued numerous times for non-serious injuries. Only one of these past lawsuits resulted in a judgment and that judgment was satisfied. No judgments were ever entered against RKB Investments.

Plaintiff's own attorney in the California litigation, Richard Ruggieri, made the following declaration under penalty of perjury:

This was an extremely risky case to prosecute. The case was rejected by one of the Bay Area's top plaintiff's firms, the Boccardo Firm, in 1995, and plaintiff was unable to find other counsel willing to take his case. Prior to the trial of this action, I am informed and believe that no plaintiff had successfully tried a products liability claim against a gun manufacturer. Finally, the risk was increased by Congressional action promising a retroactive immunity for gun manufacturers, which is pending and may still affect plaintiff's recovery from non-settling defendants.

(Defendant's Notice of Filing Petition for
Withdrawal of Funds from Blocked Account
and Declaration of Richard Ruggeri in
Support of Petition for Attorney's Fees)

The Court finds that based upon the undisputed facts and as a matter of law, the transfer of the Shoreview Property was not substantially certain to cause injury to Plaintiff because at the time of the transfer Plaintiff was not substantially certain to obtain a judgment (i) against B.L. Jennings, Inc., Bryco and Bruce Jennings, which none of them could pay and (ii) against RKB determining that it was an alter ego of Bruce Jennings. Based upon the foregoing, the Court finds it appropriate to enter summary

judgment in favor of Defendant. The Court will enter a separate judgment in accordance with this Order.

DATED this 7 day of January, 2010 in Jacksonville, Florida.

/s/

JERRY A. FUNK
United States Bankruptcy Judge

Copies furnished to:

Richard R. Thames, Attorney for Plaintiff
Raymond R. Magley, Attorney for Defendant