ORDERED.

Dated: March 24, 2020

Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re	)	
	)	
SUSAN KAY MILLER,	)	Case No. 6:19-bk-02485-KJ
	)	Chapter 7
Debtor.	)	
	)	
	)	
	)	
CHARLES J. MILLER,	)	
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Adversary No. 6:19-ap-00247-KJ
	)	
	)	
SUSAN KAY MILLER,	)	
	)	
Defendant.	)	
	)	

SUMMARY FINAL JUDGMENT

Plaintiff, Charles J. Miller, is the former spouse of the Debtor, Susan Miller ("Debtor" or "Defendant"). After a long and acrimonious divorce, the Debtor sought bankruptcy relief.[1]

[1] Case No. 6:19-bk-2485-KJ, Doc. No. 1. Debtor filed this Chapter 7 bankruptcy case on April 16, 2019; she received a discharge on July 23, 2019. Case No. 6:19-bk-2485-KJ, Doc. No. 8.

Plaintiff now requests a ruling[2] that charges, totaling $77,106.43,[3] assessed against the Debtor during their divorce are non-dischargeable under §§ 523(a)(6) and (15) of the Bankruptcy Code.[4] Because no factual issues exist, the Court *sua sponte* will enter this Summary Final Judgment finding the entire award is non-dischargeable under § 523(a)(15) of the Bankruptcy Code but that only $29,337 also is non-dischargeable under § 523(a)(6) of the Bankruptcy Code.

The divorce litigation between the parties started in 2011.[5] After years of extensive litigation and a full trial, a Final Judgment of Dissolution of Marriage was entered in 2016 ("Final Judgment").[6] In Paragraph Z, the Trial Judge specifically found that the Defendant's specific conduct "caused excessive, unreasonable, and unnecessary litigation (Paragraph Z4); contributed to a diminution in the value as well as unreasonable costs to the [Plaintiff] (Paragraph Z5); has been spurious and was brought with the sole intent and purpose to harass and punish the [Plaintiff] (Paragraph Z6); has caused excessive and unnecessary litigation without any reasonable likelihood of success (Paragraph Z7); and has caused an inequitable diminution in the [Plaintiff's] share of the parties' assets. (Paragraph Z8)." The Trial Judge then awarded Plaintiff $29,337 (the "Vexatious Fee Award"), to repay him for "vexatious" attorneys' fees he incurred because of the Defendant's willful and malicious behavior during the divorce.[7]

[2] Amended Complaint is Doc. No. 7. Defendant filed an Answer. Doc. No. 10.
[3] *See* Claim No. 2 in Case No. 6:19-bk-2495-KJ.
[4] All references to the Bankruptcy Code refer to 11 U.S.C. § 101 *et. seq.*
[5] *In re: The Marriage of Charles J. Miller and Susan K. Miller*, Case No: 2011-DR-4150-02D-K, pending before the Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida.
[6] Doc. No. 30. Affidavit of Plaintiff, attaching three key orders, including the Final Judgment of Dissolution of Marriage, which was entered on October 25, 2016, but made *nunc pro tunc* to June 15, 2016.
[7] Doc. No. 30, pgs. 21-23. The Trial Judge in his order awarding these fees, which was entered September 7, 2018, but made *nunc pro tunc* to November 7, 2017, makes additional specific factual findings of the Defendant's willful and malicious conduct in paragraph 3.

Later, the Trial Judge awarded Plaintiff an additional $47,769.43, for costs Plaintiff incurred associated with the parties' real property in South Ponce Inlet, Florida.[8] The Final Judgment directed the parties to sell this asset but only Plaintiff paid the ongoing property expenses until the sale. To equalize the distribution of the sale proceeds between the parties, the Trial Judge awarded Plaintiff $21,229.48 to reimburse him for Defendant's 50% share of the property expenses she failed to pay,[9] required each party to bear equal portions of the closing costs ($23,040 each),[10] and awarded a routine amount of attorney's fees ($3,500) for the Plaintiff and against the Defendant.[11] The total award against the Defendant from the sale of this property was $47,769.43 ("Sale Expenses"). Nothing in this order indicates that the award was attributable to the Defendant's misconduct; rather the award simply allocates expenses between the parties to ensure they receive similar net distributions from the sale.

In this adversary proceeding, Plaintiff asserts both the Vexatious Fee Award and the Sale Expenses are non-dischargeable under §§ 523(a)(6) and (15).[12] Defendant filed an Answer but raises no valid legal defense.[13] She does not dispute the Trial Judge entered these final orders and awards; she just does not like the rulings.[14] With this litigious conduct as a background and seeing no material disputed factual issues, on January 9, 2020, I asked the parties to submit the three relevant state court orders for consideration whether judgment should issue as a matter of law.

[8] Doc. No. 30, pgs. 24-27. The Order on Former Husband's Fourth Motion for Execution/ Enforcement and Civil Judgment against Former Wife was entered on January 16, 2019. In the Final Judgment, the parties were directed to sell the real property located at 9 Mar Azul, South Ponce Inlet, FL 32127.
[9] Doc. No. 30, pg. 24.
[10] Doc. No. 30, pg. 25.
[11] Doc. No. 30, pg. 26.
[12] Doc. No. 7.
[13] Doc. No. 10.
[14] *See Atwater v. Charles (In re Charles),* Adversary No. 6:12–ap–00011–KSJ, 2014 WL 2930973 at *6 (Bankr. M.D. Fla. June 27, 2014). This Court does not have jurisdiction to review or second guess the state court rulings.

Plaintiff then filed an affidavit which attached certified copies of three state court orders.[15] Defendant did not file any other papers after the hearing.

Rule 56(a) provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[16] A "material" fact is one that "might affect the outcome of the suit under the governing law."[17] A "genuine" dispute means that "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[18] Once shown, the nonmovant must set forth specific facts showing there is a genuine issue for trial.[19] Summary judgment allows the Court to review evidence and papers outside of the four corners of the complaint. Courts may *sua sponte* grant summary judgment under certain circumstances.[20]

Summary judgment is appropriate under these circumstances. The Trial Judge awarded Plaintiff $77,106.43—$29,337 for the Vexatious Fee Award and $47,769.43 for the Sale Expenses—in the parties' divorce and in its Final Judgment.[21] Section 523(a)(15) of the Bankruptcy Code governs the dischargeability of claims incident to a divorce and excepts from discharge a debt owed to a spouse, former spouse, or child incurred in a divorce or under a divorce

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[15] Doc. No. 30. The three state court orders are: Final Judgment of Dissolution of Marriage dated October 25, 2016; Order from November 7, 2017 Hearing and Civil Judgment dated September 7, 2018; and Order on Former Husband's Fourth Motion for Execution/Enforcement and Civil Judgment against Former Wife dated January 16, 2019.

[16] Fed. R. Civ. P. 56(a),which is made applicable to this proceeding by Fed. R. Bankr. P. 7056.

[17] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986); *Find What Investor Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011).

[18] *Anderson*, 477 U.S. at 248, 106 S. Ct. at 2510.

[19] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 10 S. Ct. 1348 (1986).

[20] *See Artistic Entertainment, Inc., v. City of Warner Robins*, 331 F.3d 1196, 1201-02 (11th Cir. 2003); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1203-04 (11th Cir. 2003). Summary judgment *sua sponte* is appropriate when "(1) purely legal issues are involved; (2) the evidentiary record is complete; and (3) the parties have been given the opportunity to respond to such a motion." *In re Ables*, 302 B.R. 917, 921 (Bankr. M.D. Fla. 2003).

[21] Collateral estoppel prevents the relitigation of issues previously determined by a competent court. Under Florida law, "collateral estoppel applies if (1) an identical issue, (2) has been fully litigated, (3) by the same parties or their privies, and (4) a final decision has been rendered by a court of competent jurisdiction." *Winn–Dixie Stores, Inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1036–37 (11th Cir. 2014) (internal citations omitted). Having reviewed the detailed findings made by the Trial Judge in the Final Judgment and two subsequent orders, this Court has no doubt the Final Judgment and two orders are entitled to collateral estoppel effect for the Section 523 claims asserted by Plaintiff.

decree.[22] Section 523(a)(15) is broadly and liberally construed to encourage payment of familial obligations rather than to give a debtor a fresh financial start.[23] The entire claim sought by the Plaintiff ($77,106.43) was awarded to the Plaintiff and against the Defendant in their divorce and, under § 523 (a)(15) of the Bankruptcy Code, is not dischargeable as a matter of law. No material factual issues exist that preclude summary judgment as a matter of law.

In addition, the Vexatious Fee Award is not dischargeable as a matter of law under §523(a)(6) of the Bankruptcy Code that excepts debts for "willful and malicious injury by the debtor to another entity or to the property of another entity." To prevail on such a claim, "a plaintiff must prove by a preponderance of evidence that a debtor: (1) deliberately and intentionally; (2) injured the plaintiff or the plaintiff's property; (3) by a willful and malicious act."[24]

Willfulness and malice are separate and distinct. "Willfulness" implies intentional behavior; "malice" connotes a malevolent purpose for the debtor's action.[25] A debtor commits a willful injury when he commits an intentional act to cause injury or which he knows is substantially certain to cause injury.[26] "Substantial certainty exists if a debtor knew and appreciated the substantial likelihood of injury to the party objecting to discharge."[27] A malicious act is "wrongful and without just cause or excessive even in the absence of personal hatred, spite or ill-will."[28]

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[22] 11 U.S.C. 523(a)(15).
[23] *Reynolds v. Reynolds* (*In re Reynolds)*, 546 B.R. 232, 236-37 (Bankr. M.D. Fla. 2016); *see also Adam v. Dobin (In re Adam)*, BAP No. CC-14-1416-PaKiTa, 2015 WL 1530086, at *6 (B.A.P. 9th Cir. April 6, 2015) ("[T]he trend in recent case law is to construe § 523(a)(15) expansively to cover a broader array of claims related to domestic relations within the discharge exception.").
[24] *Conseco v. Howard (In re Howard)*, 261 B.R. 513, 520 (Bankr. M.D. Fla. 2001)(citing *Hope v. Walker (In re Walker*), 48 F.3d 1161, 1163-65 (11th Cir. 1995)).
[25] *In re Howard*, 261 B.R. at 520.
[26] *Id. See also Davis v. Vestal (In re Vestal)*, 256 B.R. 326, 329 (Bankr. M.D. Fla. 2000) ("[P]arty objecting to discharge must show that a debtor's act or omission was substantially certain to cause injury.").
[27] *In re Vestal*, 256 B.R. at 329; *see In re Howard*, 261 B.R. at 521 (discussing the substantial certainty test).
[28] *In re Walker*, 48 F.3d at 1164 (quoting *Lee v. Ikner (In re Ikner)*, 883 F.2d 986, 991 (11th Cir. 1989) (quoting *Sunco Sales, Inc. v. Latch (In re Latch)*, 820 F.2d 1163, 1166 n. 4 (11th Cir. 1987))) (internal quotation marks omitted).

"[F]or the purposes of § 523(a)(6), '[m]alice can be implied.'"[29] "It is [the] knowledge of wrongdoing that is the key to malicious injury under [§] 523(a)(6)."[30]

The findings of the Trial Judge amply support a conclusion that Defendant willfully and maliciously harmed the Plaintiff by requiring him to expend almost $30,000 for unnecessary attorney fees with the deliberate intent of causing him harm. As the Trial Judge stated, "[Defendant] has caused or engaged in excessive litigation, harassment, and/or bad faith" during the divorce litigation.[31] The Trial Judge then compiled an extensive list of examples of her willful and malicious conduct.[32] In the Final Judgment, the Trial Court separately noted, "[Defendant's] specific conduct in this case has been spurious and was brought with the sole intent and purpose to harass and punish the [Plaintiff]."[33] The Vexatious Fee Award was entered specifically to reimburse Plaintiff for the Defendant's deliberate and intentional misconduct.

In conclusion, summary final judgment will enter for the Plaintiff and against the Defendant. The entire claim of $77,106.43 is non-dischargeable under §523(a)(15) of the Bankruptcy Code. In addition, the Vexatious Fee Award is non-dischargeable under §523(a)(6). Accordingly, it is

ORDERED:

1. Claim 2 filed by the Plaintiff for $77,106.43 is not discharged under §523(a)(15) of the Bankruptcy Code.

2. The Vexatious Fee Award of $29,337, additionally is not discharged under §523(a)(6) of the Bankruptcy Code.

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[29] *Kane v. Stewart Tilghman Fox & Bianchi Pa (In re Kane)*, 755 F.3d 1285, 1294 (11th Cir. 2014) (internal quotation omitted).
[30] *Smith & Greene, P.A., v. Luca (In re Luca)*, 422 B.R. 772, 776 (Bankr. M.D. Fla. 2010) (citing *New Buffalo Savings Bank v. McClung (In re McClung)*, 335 B.R. 466, 475 (Bankr. M.D. Fla. 2005)).
[31] Doc. No. 30, pg. 22.
[32] *Id*.
[33] Doc. No. 30, pg. 12, par. 6.

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The Clerk is directed to serve a copy of this Order on all interested parties.