

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

In re:

Case No. 05-17373-PMG  
Chapter 7

KEVIN MUCHLER,

Debtor.

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JOHN KALLSTROM and  
BARBARA KALLSTROM

Plaintiffs,

v.

Adv. No. 06-00095

KEVIN MUCHLER,

Defendant.

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**ORDER ON MOTION FOR SUMMARY  
JUDGMENT ON COMPLAINT SEEKING  
EXCEPTION TO DISCHARGE AND FOR  
ENTRY OF MONEY JUDGMENT**

**THIS ADVERSARY PROCEEDING** came before the Court for hearing to consider the Plaintiffs' Motion for Summary Judgment on Complaint Seeking Exception to Discharge and for Entry of Money Judgment.

The plaintiffs, John and Barbara Kallstrom, commenced this proceeding by filing their Complaint Seeking Exception to Discharge and for Entry of Money Judgment against Kevin Muchler, the debtor in this case. (The Kallstroms are referred to herein as the "Plaintiffs" and Mr. Muchler is referred to herein as the "Debtor.") The Debtor filed his Answer to the complaint and the Plaintiffs have filed their Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment. The Debtor filed an Affidavit in Opposition to Motion for Summary Judgment with the Court.

**Background**

The Debtor filed a Chapter 13 bankruptcy petition on August 31, 2005, and converted his case to a Chapter 7 on

October 21, 2005. He did not list the Plaintiffs as creditors in his petition or in any subsequent amendment. The Plaintiffs filed a proof of claim on April 30, 2006, in the amount of \$28,114.47 as an unsecured claim.

On February 14, 2006, the Plaintiffs filed a Complaint Seeking Exception to Discharge and for Entry of Money Judgment pursuant to 11 U.S.C. §523(a)(6) requesting a determination of nondischargeability of a debt established by a Final Judgment entered against the Debtor in favor of the Plaintiffs in the Civil Division of the Circuit Court for Pinellas County, Florida on January 7, 1999.

The first paragraph of the Final Judgment contains the following statements: "Based upon the Defendants' failure to appear for the pre-trial conference and trial, the Court granted Plaintiffs' Motion for Default against Defendants, the case proceeded to trial before a jury for purposes of deciding the issue of damages. At the conclusion of the evidence, the Court granted Plaintiffs' motion for directed verdict, and accordingly finds that on February 29, 1996, Defendant, KEITH MUCHLER, individually and while acting in the course and scope of his employment by Fast Trak Auto Transport, Inc., a Florida corporation, willfully and maliciously committed a battery on the Plaintiff, JOHN KALLSTROM."

**Plaintiffs' Motion for Summary Judgment**

In their Motion for Summary Judgment, the Plaintiffs are seeking the determination of the Court that, with regard to the complaint, there is no genuine issue as to any material fact set forth in the complaint that could possibly result in a judgment against them, and therefore the Plaintiffs are entitled to judgment as a matter of law.

Bankruptcy Rule 7056 is applicable to this determination:

The judgment sought shall be rendered forthwith 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 a judgment as a matter of law.

As the party moving for summary judgment, the Plaintiffs have the burden of demonstrating that there is no genuine issue as to any material fact. If there is a genuine dispute over a material fact, summary judgment may not be granted. As the Court makes this determination, the non-moving party is to be given the benefit of the doubt on all credibility issues and the

benefit of any inferences that reasonably might be inferred from the evidence. In re Diagnostic Instrument Group, Inc., 283 B.R. 87, 94 (Bankr. M.D. Fla. 2002), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986).

As the basis for their complaint, the Plaintiffs seek to have the debt evidenced by the Final Judgment that they have previously obtained against the Debtor determined to be nondischargeable pursuant to 11 U.S.C. §523(a)(6). In their Motion for Summary Judgment, the Plaintiffs seek to have the Final Judgment be given preclusive effect as to all the elements of a 523(a)(6) nondischargeability determination.

"Collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to §523(a)." Grogan v. Garner, 498 U.S. 279, 285, f.n. 11 (1991). The collateral estoppel law of Florida applies to the prior Florida civil judgment entered against the Debtor. Johnson v. Keene (In re Keene), 135 B.R. 162, 165 (Bankr. S.D. Fla. 1991). Under Florida law, to give the state court judgment preclusive effect, three elements must be present: (1) the parties must be identical; (2) the issues must be identical; and (3) the matter must have been fully litigated in a court of competent jurisdiction. Id. at 166. A final judgment, such as the one entered against the Debtor, must meet the "fully litigated" requirement of collateral estoppel. In this situation, the Debtor, as the defendant in the civil litigation did not appear for trial, and the Court granted the Plaintiffs' Motion for Default against him. "In sum, under Florida law, even a pure default judgment, which arose from no participation of the defendant, is sufficient to meet the 'fully litigated' element of collateral estoppel." See In re Itzler, 247 B.R. 546, 555 (Bankr. S.D. Fla. 2000); In re Hartnett, 330 B.R. 823, 829-30 (Bankr. S.D. Fla. 2005); In re Greene, 262 B.R. 557, 562 (Bankr. M.D. Fla. 2001). Two requirements, that the parties are the same, and that the matter must have been fully litigated in a court of competent jurisdiction, have been met with regard to the Plaintiffs' Final Judgment.

The question for the Court is whether the requirement that the "issues are identical" is satisfied with regard to the Final Judgment submitted by the Plaintiffs. Section 523(a)(6) of the Bankruptcy Code is the sole basis of the complaint filed by the Plaintiffs against the Debtor. Section 523(a)(6) reads as follows:

**11 USC §523. Exceptions to discharge**

- (a) A discharge under section 727, 1141, 1228(a) 1228(b), or 1328(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;

...

In a proceeding to determine the nondischargeability of a debt pursuant to 11 U.S.C. §523(a)(6), the Plaintiffs must establish (1) willful conduct, (2) malice, and (3) causation by a preponderance of the evidence. See New Buffalo Savings Bank v. McClung (In re McClung), 355 B.R. 466, 472 (Bankr. M.D. Fla. 2005) and the cases cited therein. In 1998, the Supreme Court, in Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998), held that "[t]he word 'willful' in (a)(6) modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury." (Emphasis in original). In other words, there must be a proven intent to injure. McClung at 474. Recklessly or negligently inflicted injuries do not fall within the 11 U.S.C. §523(a)(6) exception. Kawaauhau at 64. 1

Under Florida law, "[a] battery consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent." Paul v. Holbrook, 696 So.2d 1311, 1312 (Fla. 5th Dist. Ct. App. 1997). The definition of a battery, therefore, under Florida law, does not encompass the intent to injure required by the Supreme Court in Kawaauhau for a nondischargeability determination pursuant to 11 U.S.C. §523(a)(6).

The terms "willful" and "malicious" describe the word "battery" in the Final Judgment. "Willful" means voluntary or intentional, and "malicious" means without cause or excuse. USAA Casualty Insurance Company v. Auffant (In re Auffant), 268 B.R. 689, 694 (Bankr. M.D. Fla. 2001). These words describe an intent to commit a battery, but not an intent to injure. An essential element of the §523(a)(6) exception is not satisfied, despite the words "willful" and "malicious" in the Plaintiffs' Final Judgment. With only the Final Judgment to support the Plaintiffs' Motion for Summary Judgment as to the nondischargeability of this debt, the Court cannot conclude that the essential requirement of 11 U.S.C. §523(a)(6), an intent to injure, is present in this proceeding. Therefore, a genuine question of fact remains to be decided as to the Debtor's intent in these circumstances.

In addition, the Debtor has filed an Affidavit in Opposition to Motion for Summary Judgment with the Court which puts the element of "intent to injure" at issue. In Paragraph 8 of the Affidavit the Debtor, duly sworn, states, "I had no intention of harming Mr. Kallstrom or causing any injury to him."

Accordingly, it is appropriate to deny the Plaintiffs' Motion for Summary Judgment. An essential element of 11 U.S.C. §523(a)(6), an intent to injure, is not encompassed in the Final Judgment submitted by the Plaintiffs in support of their Motion for Summary Judgment. The Court finds that this intent is a question of fact that must be determined.

### **Conclusion**

The Plaintiffs must establish the lack of any genuine material triable issue of fact. In determining whether the Plaintiffs have accomplished this task, the Court must resolve all ambiguities and draw all reasonable inferences in favor of the party against whom summary judgment is sought. In re O.P.M. Leasing Services, Inc., 28 B.R. 740, 746-7 (Bankr. S.D.N.Y. 1983). Of course, objections to discharge are to be strictly construed against the creditor and liberally in favor of the debtor. Avis Rent A Car Systems, Inc. v. Maxwell (In re Maxwell), 334 B.R. 736, 741 (Bankr. M.D. Fla. 2005), *citing* In re Hunter, 780 F.2d 1577, 1579 (11th Cir. 1986). The record in this proceeding does not establish that the Debtor had the intent to injure the Plaintiffs, which is a necessary element in the determination of nondischargeability of the debt to the Plaintiffs pursuant to 11 U.S.C. §523(a)(6). Therefore, it is appropriate to deny the Plaintiffs' Motion for Summary Judgment with regard to the complaint.

Accordingly:

**IT IS ORDERED** that the Motion for Summary Judgment is denied.

**DATED** this 14<sup>th</sup> day of March, 2007.

**BY THE COURT**  
/s/ Paul M. Glenn  
PAUL M. GLENN  
Chief Bankruptcy Judge