

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

IN RE:	JEFFREY JOE TROUT)	
)	Chapter 7
)	Case No. 05-70246
	DEBTOR)	
<hr/>			
)	
DENNIS RAY MYERS)	
Plaintiff)	Adversary Proceeding
v.)	No. 05-07054
)	
JEFFREY JOE TROUT)	
Defendant)	

DECISION AND ORDER

At Roanoke in said District this 1st day of July, 2008:

This matter is before the court on the Plaintiff’s complaint to determine the dischargeability of debt under 11 U.S.C. § 523(a)(6). The Defendant in the above-captioned proceeding, Jeffrey Joe Trout (“Trout”), filed a motion for summary judgment arguing that the issue on which the dischargeability question hinges has already been litigated in state court; and, therefore, the Plaintiff is collaterally estopped from arguing the issue again in the bankruptcy court. The court has reviewed the arguments of both parties and for the reasons stated below, the court will grant summary judgment to the Defendant as to dischargeability of the debt under 11 U.S.C. § 523(a)(6).

BACKGROUND

On January 26, 2005, Trout filed a Chapter 7 petition for relief under the United States Bankruptcy Code. The Plaintiff, Dennis Ray Myers (“Myers”), filed this adversary

proceeding on April 21, 2005, to determine dischargeability of debt pursuant to 11 U.S.C. § 523(a)(6). The debt was the result of a \$20,000 jury verdict entered by the Circuit Court of Pulaski County, Virginia.¹

The jury verdict awarded to Myers resulted from Trout's entry into Myers' and his fiancée's, Robin Elaine Slate ("Slate"), home and physical detention of Myers while in the house. At the time of the incident, Trout was a bounty hunter for a bail bonding company in Dublin, Virginia. Trout had been sent to Myers' and Slate's address to pick up a client named Terry Draper who had failed to appear at a court date. Trout knocked on Myer's and Slate's front door at around 12:45 a.m. on September 17, 2003. When Myers opened the door, Trout forcibly entered the residence and grabbed and physically detained Myers. Trout detained Myers for several minutes before realizing that he had seized the wrong person. Slate was in the room throughout the ordeal.

During the trial and before jury deliberations, the circuit court granted Trout's motion to strike Myers' claim for punitive damages. (Def.'s Ex. 7 at 42.) Specifically, the circuit court found that Trout's actions did not rise to the level of punitive damages because Trout mistakenly went to the wrong house and mistakenly apprehended the wrong person. (Def. Ex. 7 at 42.)

¹ This proceeding has been under advisement with this court since January 11, 2006, awaiting the outcome of an appeal to the Supreme Court of Virginia of the judgment entered in the Circuit Court of Pulaski County. The supreme court refused the Defendant's petition for appeal on April 9, 2008.

DISCUSSION

Bankruptcy courts share concurrent jurisdiction with state courts over several of the exceptions to discharge enumerated in 11 U.S.C. § 523(a). Fed. R. Bankr. P. 4007 advisory committee's note. However, pursuant to section 523(c), bankruptcy courts have exclusive jurisdiction to decide exceptions to discharge that arise under sections 523(a)(2), (4), (6), and (15). Id. Because the Plaintiff has moved for non-dischargeability under section 523(a)(6), this court has proper, exclusive jurisdiction to decide the dischargeability of Trout's jury verdict debt.

Trout has moved for summary judgment pursuant to Bankruptcy Rule 7056 and Federal Rule of Civil Procedure 56, under which the movant has the burden of showing that in light of the facts most favorable to the non-moving party, there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The movant is not entitled to summary judgment if a reasonable jury could return a verdict for the non-moving party. Id. at 248.

In his motion for summary judgment, Trout argues that the Myers' requested relief in this adversary proceeding should be summarily denied as a result of the state court's decision regarding punitive damages during the trial from which the debt at issue arose. Specifically, Trout contends that the standard applied by the state court in striking Myers' prayer for punitive damages at trial is the same as the standard applied in determining the dischargeability of a debt under section 523(a)(6). Therefore, pursuant to full faith and credit requirements, Trout argues that Myers is collaterally estopped from rearguing the issue already decided in state court.

This court is required to give full faith and credit to judicial proceedings in state courts pursuant to 28 U.S.C. § 1738.² Only in rare instances are bankruptcy courts permitted to avoid recognition of prior judgments in state court proceedings. See Meindl v. Genesys Pac. Techs, Inc. (In re Genesys Data Techs.), 204 F.3d 124 (4th Cir. 2000). Federal courts must follow a two-step process to determine whether section 1738 applies in a particular situation. Id. at 128. First, the federal court must look to the state law in the original forum to determine whether further litigation of the matter is precluded. Id. If further litigation is not precluded under state law, then a federal court will not give the state court judgment preclusive effect either. Id. If the state law precludes further litigation of the decided matter, then the second step requires the federal court to determine if Congress created an exception to section 1738. Id.

Under Virginia law, further litigation of a matter is precluded if four requirements have been met:

- (1) the parties to the two proceedings must be the same, (2) the issue of fact sought to be litigated must have been actually litigated in the prior proceeding, (3) the issue of fact must have been essential to the prior judgment, and (4) the prior proceeding must have resulted in a valid, final judgment against the party against

² 28 U.S.C. § 1738:

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. § 1738 (2006).

whom the doctrine is sought to be applied.

Glasco v. Ballard, 249 Va. 61, 64, 452 S.E.2d 854, 855 (1995). In the case before the court, all four requirements have been met because the same parties represented in this proceeding actually litigated the issue of maliciousness and wilfulness, which was essential to the state court's decision in striking Myers' claim for punitive damages.

The question of fact at issue before this court was actually litigated in state court because a determination of nondischargeability pursuant to section 523(a)(6) depends on the same issues of fact that the state court concluded was not present: whether Trout's trespass and physical detention of Myers in his home and in Slate's presence constituted wilful and wanton, or malicious conduct. Section 523(a)(6) denies a debtor the discharge of any debt resulting from "wilful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6) (2006). The granting of punitive damages under Virginia law requires a finding of either malicious conduct or wilful or wanton conduct which evinces a conscious disregard of the rights of others.³ Booth v. Robertson, 236 Va. 269, 273, 374 S.E.2d 1, 3 (1988) ("Friedman, however, is not authority for the proposition that only malicious conduct will support an award of punitive damages. Like Baker, Friedman recognizes that an award of punitive damages may also be based on a showing of wilful or wanton conduct which evinces a conscious disregard of the rights of others.").

The standards applied in determining what constitutes wilful and malicious

³ A finding of non-dischargeability pursuant to section 523(a)(6) requires the presence of both malicious and wilful injury, while Virginia law requires either malicious or wilful injury for the application of punitive damages. The state court judge struck the punitive damages claim, requiring a finding that the injuries caused by Trout were neither wilful nor malicious.

conduct in the application of punitive damages under Virginia law are equivalent to the standards applied in the denial of a debtor's discharge under section 523(a)(6) of the Bankruptcy Code. With regard to the malicious requirement, both jurisdictions require a finding of either actual malevolence or ill will, or a finding of "aggravated, socially reprehensible conduct sufficient to justify an imputation of malice" to the wrongdoer. Bundy Am. Corp. v. Blankfort (In re Blankfort), 217 B.R. 138, 146 (Bankr. S.D.N.Y. 1998); see Baker v. Marcus, 201 Va. 905, 909, 114 S.E.2d 617, 621 (1960).

As to the wilful requirement, Virginia state law has a slightly less stringent requirement to support a finding that an injury was "wilful" for purposes of punitive damages than the standard applied by federal courts in the application of section 523(a)(6) of the Bankruptcy Code. Under Virginia law of punitive damages, wilful and wanton negligence is defined as "acting consciously in disregard of another person's rights or acting with reckless indifference to the consequences, with the defendant aware, from his knowledge of existing circumstances and conditions, that his conduct probably would cause injury to another." Owens-Corning Fiberglas Corp. v. Watson, 243 Va. 128, 144, 413 S.E.2d 630, 640 (1992). The "wilful" standard applied by federal courts for a determination of non-dischargeability pursuant to section 523(a)(6) requires "a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998). By granting Trout's motion to strike Myers' punitive damages claim in state court, the state court judge necessarily found that Trout did not act consciously in disregard of another person's rights or with reckless indifference to the consequences. Inherent in the state court's finding is that Trout did not deliberately or intentionally injure Myers, the necessary "wilful" element of non-dischargeability

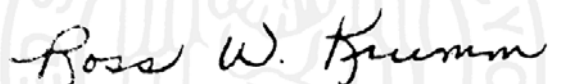
pursuant to section 523(a)(6) of the Bankruptcy Code.

Because Myers is precluded from relitigating the wilful and malicious issues under Virginia state law and because there are no relevant exceptions to 28 U.S.C. 1738, this court is bound by the Circuit Court of Pulaski County's finding that Trout's actions were not wilful or malicious, an essential element for a determination of non-dischargeability pursuant to Bankruptcy Code section 523(a)(6). Because this court must recognize the state court's determination as to the wilful and malicious nature of Trout's actions that resulted in the debt at issue, there is no genuine issue of material fact and Trout is entitled to judgment as a matter of law. Accordingly, it is:

ORDERED:

That the Defendant's motion for summary judgment is GRANTED.

Copies of this order are directed to be sent to the Plaintiff, Dennis Ray Myers, P.O. Box 1945, Pulaski, VA 24301; and to Counsel for the Defendant, Byron R. Shankman, Esquire, P.O. Box 1859, Dublin, VA 24084.



Ross W. Krumm
U.S. Bankruptcy Judge