

IN RE:)
)
 THOMAS J. SOUKUP and)
 SHIRLEY A. SOUKUP,)
)
 Debtors.)
)
 ALLEN D. RAMSEY, SR.,)
)
 Plaintiff,)
)
 vs.)
)
 THOMAS J. SOUKUP and)
 SHIRLEY A. SOUKUP,)
)
 Defendants.)

BK 80-2000 DISTRICT OF NEBRASKA
 AT _____ M
 JUN 2 1983 4
 William L. Olson, Clerk-
 CV 82-0-465 Deputy

ORDER

This matter is before the Court on appeal from a decision of the Bankruptcy Court for the District of Nebraska overruling appellant's objection to discharge of a debt arising out of the parties' landlord-tenant relation. Appellant sought liquidated damages pursuant to Neb. Rev. Stat. § 76-1430 (Reissue 1981) for the actions of a corporation owned by appellee, Thomas Soukup, in evicting appellant from certain leased premises and removing appellant's property for failure to pay rent.

Under 11 U.S.C. § 523(a)(6), a debtor is not discharged "from any debt for willful and malicious injury by the debtor to another entity or to the property of another entity." The term "willful and malicious" is not defined in the Bankruptcy Code. However, in the context of conversion of property, it is held to mean an act "done deliberately and intentionally in knowing disregard of the rights of another," Callahan v. Norton, 21 B.R. 725, 729 (Bankr. W.D. Mo. 1982), or "wrongful and without just cause or excuse," First Nat. Bank of Neenah v. Grace, 22 B.R. 653, 656 (Bankr. E.D. Wis. 1982).

After a history of periodic nonpayment of rent, appellant, once again in arrears, received a notice to vacate or to pay the rent due within three days on February 12, 1980. By mid-April, 1980, the rent having remained unpaid, appellee or his agents entered, retook possession of the premises and removed appellant's personal property.

The Bankruptcy Court concluded that appellee landlord acted in the belief that the notice to vacate, properly given, entitled him to exclude appellant from the premises and exercise dominion and control over appellant's property in order to regain possession. The Court determined that the landlord perceived this method as the only means to obtain possession, and that appellee's acts of dominion and control, after waiting longer than the statutory period to exercise his rights, lacked the malice which is an essential element for nondischargeability under section 523(a)(6). This finding is not clearly erroneous.

IT IS THEREFORE ORDERED that the decision of the Bankruptcy Court in this matter is affirmed.

DATED this 2nd day of June, 1983.

BY THE COURT:



C. ARLEN BEAM
UNITED STATES DISTRICT JUDGE