

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK03-42189
)
APRIL MICHELLE ALDERSON,) A03-4059
) CH. 7

Debtor(s).)
)
NANCY L. SELZER,)
)
Plaintiff,)
)
vs.)
)
APRIL M. ALDERSON,)
)
Defendant.)

MEMORANDUM

Trial was held in this matter in Lincoln, Nebraska, before a United States Bankruptcy Judge for the District of Nebraska on December 12, 2003. Nancy L. Selzer appeared pro se, and April M. Alderson appeared pro se. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I).

This adversary proceeding was brought by plaintiff Nancy L. Selzer, the prior landlord of debtor/defendant April Alderson. The plaintiff requests that a judgment debt owed to her by the debtor be deemed non-dischargeable under 11 U.S.C. § 523(a)(6) because the obligation was incurred as a result of malicious injury to plaintiff's property.

In the case at bar, after the debtor was evicted and the damage discovered, the plaintiff sued the debtor for \$1,815 in back rent and \$4,961.22 in damages. She obtained a judgment for those amounts, less a \$400 security deposit. The judgment was for \$6,376.22. Thereafter, she garnished the wages of the debtor and received \$550, which she has applied to the back rent.

The plaintiff acknowledges that the rent issue is simply a breach of contract problem and does not fit within the definition of malicious injury to property under the Bankruptcy Code. Therefore, she is not asking for the remaining rent to be determined non-dischargeable, but is asking that the judgment for damages in the amount of \$4,961.22 be deemed non-dischargeable.

Plaintiff testified at length concerning the history of the relationship between the parties, the conditions of the house when it was rented to the debtor, and the condition of the house when the debtor was evicted. Photographs of the house and its remaining contents after the debtor was evicted were admitted into evidence.

It is clear from the evidence, both testimonial and photographic, that there was serious damage done to the house while the debtor was a tenant. Various fixtures were missing. Electrical wiring was damaged. Personal property, such as a couch, was ruined by the dog owned by the debtor. The debtor apparently permitted the dog to damage doors and walls in the facility. The basement was filled with trash, shelving was dismantled and other shelving was nailed into the walls. The refrigerator in the basement was spray-painted, paneling was painted, drywall was left with screws in the wall, and

adhesive stickers were left on the walls, woodwork and floors. Light bulbs were removed, holes were pounded in the walls, an electrical plug was pulled from the wall. Wallpaper was torn off the wall, window latches were broken, a toilet flush handle was broken, and a rug around the toilet was urine-soaked and mildewed. The electric stove was pulled out from the wall and in an unworkable condition. Food was left in the refrigerator to rot. Cupboards were damaged. A built-in hutch had a corner chunk missing. The kitchen sink was damaged. Part of a countertop end was sawed off. Curtains were missing. There were numerous instances of damages caused to woodwork by weatherstripping. A closet door was missing, and there was spray paint on the furnace.

Although it is not unusual for a landlord and a tenant to have a difference of opinion concerning what is "ordinary wear and tear," and there certainly is such a difference of opinion represented by the testimony of the parties in this case, the damages to the property are far in excess of "ordinary wear and tear." Much of the damage can only be characterized as intentional.

To except a debt from discharge under 11 U.S.C. § 523(a)(6), the plaintiff must establish by a preponderance of the evidence that the debt arises from an injury which is both willful and malicious. Johnson v. Logue (In re Logue), 294 B.R. 59, 63 (B.A.P. 8th Cir. 2003).

Under section 523(a)(6), a debtor is not discharged from any debt for "willful and malicious injury" to another. For purposes of this section, the term willful means deliberate or intentional. See Kawaauhau v. Geiger, 523 U.S. 57, 61, 118 S. Ct. 974, 140 L. Ed. 2d 90 (1998) (§ 523(a)(6) requires deliberate or intentional injury); In re Long, 774 F.2d 875, 881 (8th Cir. 1985) (to meet willfulness component of § 523(a)(6), debtor's actions creating liability must have been "headstrong and knowing"). To qualify as "malicious," the debtor's actions must be "targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause financial harm." In re Long, 774 F.2d at 881.

Hobson Mould Works, Inc. v. Madsen (In re Madsen), 195 F.3d 988, 989 (8th Cir. 1999). See also Logue, 294 B.R. at 62-63 ("[T]he term willful means deliberate or intentional. . . . The injury, and not merely the act leading to the injury, must be deliberate or intentional. . . . Malice requires conduct which is targeted at the creditor, at least in the sense that the conduct is certain or almost certain to cause financial harm.")

A finding of "willful and malicious injury" depends heavily on the facts of each case. Of the small number of reported cases applying § 523(a)(6) to landlord-tenant disputes, the rulings go either way depending on the evidence.

In Lilledahl v. Kibbee (In re Kibbee), 287 B.R. 239 (Bankr. E.D. Mo. 2002), the court questioned the landlord's credibility, and ruled that he failed to establish that the house contained all the appliances and other property that he said had been removed by the debtors when they left, or that smaller, unaccounted-for items were actually missing, given the amount of junk left behind. The court noted that the house was left in poor condition, but the costs of repairing and cleaning the premises were not the types of injuries contemplated by § 523(a)(6).

In Cutler v. Lazzara (In re Lazzara), 287 B.R. 714 (Bankr. N.D. Ill. 2002), the court ruled that the debtor's failure to properly maintain the apartment he rented by, among other things, allowing his six-year-old child to color with crayons on the walls and allowing family pets to make messes on the carpet, all of which required nearly \$5,000 of repair work after the debtor and his fiancée moved out, did not constitute "willful and malicious injury." The court noted that "[a]llowing the apartment to fall into disrepair may be considered an intentional act, but the testimony at trial did not establish the intent to

inflict injury on a creditor or a creditor's property that is part of the definition of willfulness under Geiger."

In Sparks v. King (In re King), 258 B.R. 786 (Bankr. D. Mont. 2001), the court found that some of the damage to the residence may have existed when the debtors moved in, but even if the debtor caused additional damage in the form of punching holes in the walls while angry at his spouse, or allowing his children to damage the front door, there was no evidence the damage was directed at causing harm to the landlord, and therefore was merely negligent and not willful and malicious.

However, in O'Brien v. Sintobin (In re Sintobin), 253 B.R. 826 (Bankr. N.D. Ohio 2000), the debt was excepted from discharge. The court found that the debtors allowed their children and the children's friends to vandalize the residence — spray-painting walls, knocking doors off hinges, and otherwise committing waste — which amounted to willful and malicious actions on the part of the debtors because they did nothing to discourage the behavior, repair the damage, notify the landlord, or ban the children's friends from the home, nor did they even seem to think the damage and the behavior that caused it was anything to be concerned about.

Spencer v. Hatton (In re Hatton), 204 B.R. 470 (Bankr. E.D. Va. 1996), is another case in which the debt was excepted from discharge, on the basis that the debtors' "slovenly living habits" constituted willful and malicious injury to the property. The decision was based on a state court jury award of damages and attorneys' fees. The court noted that in the state court case, "the conduct of the defendants so outraged the jury that they awarded attorney's fees in excess of those sought" by the landlord. The bankruptcy court ruled that it was precluded by the jury verdict from relitigating the issues of willfulness and maliciousness.

In the present case, the debtor admits that her child, her pet, and her boyfriend caused at least some of the damage to the residence. There also was testimony about the difficult relationship between the parties during the entire term of the tenancy, including a false reference on the debtor's rental application, late or unpaid rent each month that the debtor lived there, a physical injury to the plaintiff when she visited the apartment in February 2003, and a drawn-out eviction process because of the debtor's unwillingness to vacate the premises. While some of the damage of which the plaintiff complains may have been ordinary wear and tear or a foreseeable result of a family with a young child and a pet residing there, other damage appears to have been deliberately done when the debtor was moving out solely to cause the plaintiff to expend time and money to repair and clean the apartment before it could be rented again. I find that the damages caused to the premises while the debtor was a tenant there were willful and malicious and the judgment debt should be excepted from discharge.

Separate judgment will be entered.

DATED this 11th day of February, 2004.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
Nancy L. Selzer
April M. Alderson
U.S. Trustee

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JUDGMENT

Trial was held in this matter in Lincoln, Nebraska, before a United States Bankruptcy Judge for the District of Nebraska on December 12, 2003. Nancy L. Selzer appeared pro se, and April M. Alderson appeared pro se.

IT IS ORDERED: The judgment debt of \$4,961.22 owed by the defendant to the plaintiff is excepted from discharge pursuant to 11 U.S.C. § 523(a)(6). See the Memorandum filed this date.

DATED this 11th day of February, 2004.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
Nancy L. Selzer
April M. Alderson
U.S. Trustee