

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
THOMAS A. HOLT,)	CASE NO. BK96-82049
)	A98-8110
DEBTOR(S).)	
_____)	CH. 7
RICHARD J. HRUZA, JR.,)	Filing No. 38
Plaintiff(s),)	
vs.)	
)	
THOMAS A. HOLT,)	
)	
Defendant(s).)	

MEMORANDUM

Hearing was held on May 18, 2000, on Motion for Summary Judgment. Appearances: Gregory Jensen for the plaintiff and Joseph Badami for the defendant. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A).

Hearing was held on May 18, 2000, on a Motion for Summary Judgment filed by the plaintiff. By a Journal Entry and Memorandum filed on July 14, 2000, Filing No. 53 and 54, partial summary judgment was entered in favor of the plaintiff and against the defendant. That partial summary judgment determined that Mr. Holt, the defendant, had "willfully" converted property of the plaintiff, as the term "willfully" has been defined by case law interpreting 11 U.S.C. § 523(a)(6).

There remained, as of the entry of the partial summary judgment, a fact question concerning whether the activity by the defendant, in addition to being "willful", was "malicious" under 11 U.S.C. § 523(a)(6). The court gave the parties the opportunity to present live testimony at a trial on that limited issue, or submit all of the previously provided evidentiary materials and argument to the court, without additional live testimony, and permit the court to make the factual determination.

By joint stipulation, Filing No. 57, the parties stipulated that the Court may treat the materials submitted on the motions for summary judgment as substantive evidence and rule on the fact question "Was the act of taking Trailer not only 'willful', but 'malicious' in the sense that it was certain to cause financial harm to the plaintiff."

All of the documentary materials submitted by the parties for consideration on the motion for summary judgment have been reviewed. Those documents include, but are not limited to, the deposition of Thomas A. Holt taken on August 12, 1994, in the lawsuit filed in the District Court of Valley County, Nebraska, entitled Richard J. Hruza, Jr., plaintiff, versus Thomas A. Holt, Holt Farms, Inc., and Thomas A. Holt, d/b/a Holt Trucking, defendants, Case No. 6305; that portion of the Bill of Exception filed in the same case which is a transcript of the trial testimony of Thomas Holt in the hearings held before the Honorable Ronald D. Olberding, District Judge, on November 1, 1994, and February 6, 1995, at Ord, Nebraska; Journal Entry and Partial Summary Judgment entered on November 22, 1994, in the same case; Journal Entry and Judgment entered on March 6, 1995, in the same case; Opinion of the Nebraska Court of Appeals in the case of Hruza v. Holt, A95-246, filed June 4, 1996; Judgment on Mandate in the original case in the District Court of Valley County, Nebraska, which was filed on July 22, 1996; "Affidavit of Thomas A. Holt in support of his Objection to Motion for Summary Judgment filed by Plaintiff and his Cross Motion for Summary Judgment" filed in the United States Bankruptcy Court for the District of Nebraska in this bankruptcy case and adversary proceeding on May 12, 2000.

Decision

The initial willful act of Mr. Holt in authorizing his employees to take possession of the trailer owned by Mr. Hruza and his individual act in selling such trailer, although acts of conversion under Nebraska law, were not performed with "malice" as that term is currently understood under 11 U.S.C. § 523(a)(6). However, Mr. Holt's failure and refusal to turn over to Mr. Hruza \$9,500.00 of the sale proceeds, representing the difference between the sale price and the amount Mr. Holt acknowledges in his trial testimony was all that remained owing from Mr. Hruza to Mr. Holt, was "malicious" in the sense that it was certain to cause financial harm to Mr. Hruza. That amount, plus interest accruing thereon from the original

judgment date, plus costs assessed by the state courts, is nondischargeable under 11 U.S.C. § 523(a)(6).

Findings of Fact

1. Mr. Holt firmly believed that he leased two trailers to Mr. Hruza and that Mr. Hruza was to pay, under the terms of the lease, \$3,000.00 per trailer as a down payment and \$600.00 per month for twenty-four months, resulting in the total dollar amount to be paid by Mr. Hruza to Mr. Holt.

2. Mr. Holt believed that he had agreed to sell the trailer and convey title to the trailers to Mr. Hruza upon receiving the total dollar amount referred to above.

3. Notwithstanding the findings of the State District Court and the State Court of Appeals, that, as a matter of law, the transaction between Mr. Holt and Mr. Hruza was a sale, and not a lease, Mr. Hruza's contrary understanding was reasonable and firmly and consistently held.

4. Mr. Holt erroneously believed that he or his corporation had not received the full amount due from Mr. Hruza, even after an insurance payment was received for one of the trailers which was damaged beyond repair and final installment payments were received in the summer of 1992 from Mr. Hruza's agents.

5. Since he reasonably believed that he or his corporation retained an ownership interest in the trailers, even after the underlying debt on the trailers had been satisfied by insurance proceeds, he had a reasonable basis to believe that he had a right to sell the remaining trailer if Mr. Hruza refused to pay all of the payments arguably due under the lease.

6. In the fall of 1992, Mr. Holt firmly believed that Mr. Hruza still owed at least \$6,000.00 and agreed, in his testimony in the State Court, that had Mr. Hruza paid the \$6,000.00, he would have conveyed title to the remaining trailer to Mr. Hruza. ("Bill of Exceptions" page 42, lines 4 through 12).

7. After selling the trailer for \$15,500.00 in March of 1993, without informing Mr. Hruza that he intended to do so, Mr. Holt kept the proceeds and deposited the proceeds in the

Holt Farms account. He, through Holt Farms, used the proceeds for the benefit of Holt Farms.

8. Mr. Holt, after obtaining the proceeds from the sale of the trailer, intentionally refused to give Mr. Hruza the difference between the \$6,000.00 Mr. Holt claimed was still due and the \$15,500.00 sale proceeds because Mr. Hruza allegedly would not negotiate any further with Mr. Holt about the amount that was actually due. (Bill of Exceptions, page 48, lines 4 through 7).

9. Except for the \$9,500.00 difference between the sale price of the trailer and the amount Mr. Holt claimed Mr. Hruza owed, the damages found by the State Court were not caused by a malicious act. That is, those damages resulted from the act of Mr. Holt taking possession of the trailer and selling the trailer, both of which he reasonably believed he had a right to do under his interpretation of the agreement between Mr. Holt and Mr. Hruza.

10. The \$9,500.00 difference between the sale price and the amount Mr. Holt claimed was owed by Mr. Hruza, is an amount of damages that directly resulted from a malicious act. The refusal to pay that amount to Mr. Hruza, after netting out the maximum amount Mr. Holt believed Mr. Hruza owed, was certain to cause financial harm to Mr. Hruza. It was a malicious act as that term is understood under 11 U.S.C. § 523(a)(6).

Conclusions of Law

The Bankruptcy Code, at 11 U.S.C. § 523(a)(6), states that any debt for "willful and malicious injury by the debtor to another entity or to the property of another entity" shall be excepted from discharge. Malicious acts are those which "are targeted at a creditor at least in the sense that the conduct is certain or almost certain to cause financial harm." Hobson Mould Works, Inc., v. Lease (In re Lease), 195 F.3d 988, 989 (8th Cir. 1999). United States v. Foust (In re Foust), 52 F.3d 766, 768 (8th Cir. 1995); Barlays American Business Credit, Inc., v. Long (In re Long), 774 F.2d 875, 879 (8th Cir. 1985).

Conclusion

In the Memorandum filed on July 14, 2000, Filing No. 53, and its accompanying Journal Entry, Filing No. 54, it was determined that Mr. Holt's actions were willful. It was determined that Mr. Hruza was damaged and Mr. Holt's action causing the damage was willful. Now, it is determined, as a factual finding, that Mr. Holt's action in withholding \$9,500.00 from Mr. Hruza was malicious. The court costs that were incurred in the State Court proceedings directly flowed from the willful and malicious act of Mr. Holt. He kept the money and was sued, resulting in the judgment, part of which is now found to be nondischargeable. Therefore, the court costs assessed in the State Court are also nondischargeable. That portion of the State Court judgment representing \$9,500.00 in damages plus accruing interest from the entry of the judgment plus court costs assessed is nondischargeable under 11 U.S.C. § 523(a)(6).

Separate journal entry to be filed.

DATED: September 26, 2000.

BY THE COURT:

/s/Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:
30 BADAMI, JOSEPH

Copies mailed by the Court to:
Gregory Jensen, P.O. Box 310, Ord, NE 68862
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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IN THE MATTER OF:)
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THOMAS A. HOLT,) CASE NO. BK96-82049
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DEBTOR(S).)
_____) CH. 7
RICHARD J. HRUZA, JR.,) Filing No. 38
Plaintiff(s),)
vs.) JOURNAL ENTRY
)
THOMAS A. HOLT,)
) DATE: September 26, 2000
Defendant(s).) HEARING DATE: May 18, 2000

Before a United States Bankruptcy Judge for the District of
Nebraska regarding Motion for Summary Judgment.

APPEARANCES

Gregory Jensen, Attorney for plaintiff
Joseph Badami, Attorney for defendant

IT IS ORDERED:

Judgment is entered in favor of plaintiff and against
defendant. Nine thousand five hundred dollars plus accrued
interest on the state court judgment plus court costs is
nondischargeable under 11 U.S.C. § 523(a)(6). See Memorandum
entered this date.

BY THE COURT:

/s/Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

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