Bankruptcy Newsletter
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In this issue we will examine wrongful death and personal injury suits as they interact with 11 U.S.C.A. 523(a)(6) and third party liability. Section 523(a)(6) code excepts all debt from discharge that is caused by "[a] willful and malicious injury by the debtor to another entity or to the property of another entity".

The following case law examination will allow personal injury lawyers and wrongful death attorneys to better forecast how personal liability will affect subsequent bankruptcy filings by a defendant debtor.

Code section 11 U.S.C.A. (a)(6) states that debt arising from willful and malicious injury caused by the debtor is excepted from discharge. The analysis of willful and malicious is a two part test. It is the responsibility of the creditor to prove that both parts of the test are met.

The case of *In re Ormsby*, 591 F.3d 1199 (9th Cir. 2010), involved the conversion and misappropriation of private proprietary data by Mr. Ormsby, the owner of a title company, from one of his competitors. Mr. Ormsby hired an employee away from his competitor, discussed with this employee the importance of obtaining data held by his former employer, and convinced the employee to steal the proprietary information. Ultimately, these illegal acts caught up with Mr. Ormsby. His competitor won $300k in damages, fees and costs. Subsequently, Mr. Ormsby and his wife filed for bankruptcy. The competitor disputed the dischargeability of this debt under 11 U.S.C.A. (a)(4) and (a)(6).

The 9th Cir. Court held that the damages, fees, and costs were not dischargeable because Mr. Ormsby's conduct constituted larceny under (a)(4), and for purposes of discussion his conduct was both willful and malicious under (a)(6). Relying on the Supreme Court's analysis in *Kawaauhau v. Geiger*, 523 U.S. 57 (1998), "for section 523 (a)(6) to apply, the actor must intend the consequences of the act, not simply the act itself". This analysis requires an examination of both willfulness and maliciousness.

Willfulness

The 9th Circuit adheres to the following, "the willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that the injury is substantially certain to result from his own conduct". *In re Ormsby*, citing to *Carrillo v. Su*, 290 F.3d 1140 (9th Cir. 2002).

Malicious Injury

While addressing the second part of the test under 11 U.S.C.A 523(a)(6), the *Ormsby* court cites to the following cases: “[a] malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1209 (9th Cir.2001) (internal citations omitted). Malice may be inferred based on the nature of the wrongful act. See Transamerica Commercial Fin. Corp. v. Littleton (In re Littleton), 942 F.2d 551, 554(9th Cir.1991).7 To infer malice, however, it must first be established that the conversion was willful. See Thiara, 285 B.R. at 434.

Practical Application

In Re Weingarten, (Bankr. N.D. Ohio 1985)

A doctor was found liable for malpractice after a botched surgery. The plaintiff was awarded $80,000 in damages. However, the doctor’s conduct did not cause a willful and malicious injury to the plaintiff. Consequently, the debt was discharged and the doctor debtor was given a fresh start.

In Re Stanfield, 14 B.R. 180 (1981)

A driver was found guilty of negligent vehicular homicide. However, the acts of the driver were not found to be willful or malicious. As a result, the monetary damages were dischargeable. A criminal conviction, alone, was not enough to render the debt nondischargeable.

In Re Whitacre, 93 B.R. 584 (1988)

The court held the following, “[in] conclusion, we find no basis upon which the Court might deny the Debtors a discharge by imputing the minor child's conduct to the parents. Even where there was intentional willful and malicious injury caused by a minor child, the debt arising out of third party parental liability would not render this debt nondischargeable under 523 (a)(6).

Conclusion

Personal Injury Attorneys should always consider the nature of the insurance coverage when taking on a case. The debtor’s potential bankruptcy should be the next consideration.

Sincerely,

Roger E. Luring

D. Andrew Venters