

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
ALLEN J. HARDIEK,) Bankruptcy Case No. 96-60155
)
Debtor.)
_____)
JAKE L. WINES,)
)
Plaintiff,)
)
vs.) Adversary Case No. 96-6013
)
ALLEN J. HARDIEK,)
)
Defendant.)
)
and

IN RE:)
)
PATRICK M. HARDIEK,) Bankruptcy Case No. 96-60156
)
Debtor.)
_____)
JAKE L. WINES,)
)
Plaintiff,)
)
vs.) Adversary Case No. 96-6012
)
PATRICK M. HARDIEK,)
)
Defendant.)

OPINION

This matter is before the Court on a Motion for Declaratory Judgment filed by the Plaintiff in the above-captioned adversary proceedings, which have been consolidated for the purpose of trial.

The Court noted on the record that it was treating the Plaintiff's Motion as a motion for summary judgment under Rule 7056 of the Federal Rules of Bankruptcy Procedure, and argument was held on said Motion at hearing on October 18, 1996. The Court, having been fully advised in the premises, makes the following

findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

In the instant Motion before the Court, the Plaintiff alleges that he is entitled to a finding of non-dischargeability of the debts in question as a matter of law, pursuant to 11 U.S.C. § 523(a)(6). In support of his allegations, the Plaintiff has provided the Court with certified copies of State Court criminal proceedings against both Defendants, Allen J. Hardiek and Patrick M. Hardiek. These State Court records indicate that, on May 12, 1994, a criminal Information was filed against both Allen J. Hardiek and Patrick Hardiek, charging that they were guilty of committing an aggravated battery against the person of Jake L. Wines, pursuant to 720 ILCS 5/12-4 (a Class III felony). Both Defendants were represented by counsel in their State Court criminal proceedings, and, on October 7, 1994, both Defendants pled guilty to a Class A misdemeanor of battery as that term is defined at 720 ILCS 5/12-3. The original criminal Information was amended to show a charge of a misdemeanor battery rather than the more serious charge of aggravated battery, given the plea agreement with the Defendants in the State Court criminal proceeding. A Judgment was entered by the State Court, on October 7, 1994, finding both Defendants guilty of battery, pursuant to 720 ILCS 5/12-3, in Case Nos. 94-CF-65 and 94-CF-66, all in the Circuit Court for the Fourth Judicial Circuit, Effingham County, Effingham, Illinois. The Defendants were ordered to serve 180 days of home confinement and two years of probation, and they were also ordered to pay restitution to Jake L. Wines.

The instant adversary proceedings were filed by the Plaintiff, Jake L. Wines, to have the debts arising out of the admitted battery by the Defendants to be declared non-dischargeable pursuant to 11 U.S.C. § 523(a)(6). In his Motion, the Plaintiff asserts that the Defendants in the instant adversary proceedings are collaterally estopped from arguing that the debt in question is non-dischargeable in that the issues necessary to prove a case under 11 U.S.C. § 523(a)(6) have already been fully litigated and proven in the criminal proceedings which resulted in judgments against both the Defendants.

In considering whether the Doctrine of Collateral Estoppel is applicable to the State Court criminal Judgments against the Defendants herein, the Court notes that the Seventh Circuit has found that collateral

estoppel is applicable in bankruptcy proceedings where dischargeability of debts are in question. Klingman v. Levinson, 831 F.2d 1292 (7th Cir. 1987). This Court has also applied the Doctrine of Collateral Estoppel in similar situations to the case at bar. See: In re Seaton, 98 B.R. 419 (Bankr. C.D. Ill. 1989); In re Overocker, Bankruptcy Case No. 92-90419, Adversary No. 92-9080 (Bankr. C.D. Ill. 1993).

In order for the principles of collateral estoppel to apply, the Court must find that: (1) the issues in the instant action are the same as those involved in the prior litigation; (2) the issues must have been actually litigated in the prior action; (3) the litigation of the issues in the prior action must have been essential to the prior judgment; and (4) there must have been a final valid judgment entered in the prior action. In reviewing these factors, the Court finds that, in the Defendants' State Court criminal cases, both pled guilty to an offense which involved the knowledge of their misconduct such that the issues in the present matter are the same as those in the State Court criminal action. The Court further finds that the issues in the prior criminal court action were actually litigated as that term is defined in the case law, and that litigation resulted in a plea of guilty being entered on behalf of both Defendants while they were fully represented by counsel and fully informed of their rights. The Court further finds that the issues in the State Court criminal action were essential to the guilty plea and the final Judgment that was entered thereon and that a valid final Judgment was entered in the State Court criminal action against both Defendants, on October 7, 1994.

Pursuant to 11 U.S.C. § 523(a)(6), a debtor will be denied a discharge as to debts which arise from willful and malicious injury caused by the debtor to another entity or to the property of another entity. The Plaintiff has the burden of proving by a preponderance of evidence that there was a willful and malicious act on the part of the Debtors done without just cause or excuse which led to harm to the Plaintiff. See: In re Hallahan, 78 B.R. 547, 550 (Bankr. C.D. Ill. 1987), and In re Rubitchung, 101 B.R. 28 (Bankr. C.D. Ill. 1988).

Pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure, summary judgment:

... shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In the instant proceedings, the Court finds that there is no genuine issue of material fact. The Defendants pled guilty to the crime of battery as that crime is defined at 720 ILCS 5/12-3, and the burden of proof in the State Court was the higher standard of "beyond a reasonable doubt." As such, the Court finds that the guilty pleas and the Judgments entered thereon against the Defendants in the State Court proceedings serve to bar them, under the principle of collateral estoppel, from relitigating the issue of whether their conduct amounted to a willful and malicious injury as that term is defined under 11 U.S.C. § 523(a)(6). Given this finding, the Court must enter Judgment in favor of the Plaintiff in both adversary proceedings and find that all compensatory damages which may be proven by the Plaintiff in his State Court civil case presently pending, in Effingham County, are non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).

ENTERED: October 23, 1996.

**/s/ GERALD D. FINES
United States Bankruptcy Judge**