

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

IN RE:)	In Proceedings
)	Under Chapter 7
GLENN DOUGLAS HOBBS and)	
DRINDA SUE HOBBS,)	
)	No. BK 87-40103
Debtor(s).)	
FRUIT BELT SERVICE COMPANY,)	
a Cooperative Association,)	ADVERSARY NO.
and a Corporation,)	87-0088
)	
Plaintiff(s),)	
)	
v.)	
)	
GLENN DOUGLAS HOBBS and)	
DRINDA SUE HOBBS,)	
)	
Defendant(s).)	

O R D E R

This matter is before the Court on a complaint to determine dischargeability of a debt filed by Fruit Belt Service Company ("plaintiff") against debtors Glenn and Drinda Sue Hobbs ("debtors"). The relevant facts are as follows:

Plaintiff is a creditor of defendants. Until 1984, debtors purchased supplies from plaintiff on account. In 1984, plaintiff filed a lawsuit against debtors in the Circuit Court of Johnson County, Illinois for the amount debtors then owed plaintiff on account. On December 3, 1984, the parties entered into a consent judgment whereby debtors agreed to pay plaintiff \$23,549.04 plus nine (9%) percent interest within one year of the date of judgment. After debtors failed to make the required payment, plaintiff filed a citation to discover assets in the Johnson County Circuit Court on July 18, 1986.

A hearing on the citation was held on September 29, 1986, and on October 1, 1986, the court entered an order requiring debtors to pay plaintiff \$5,000.00 out of the proceeds of an approximately \$20,000.00 Conservation Reserve Program ("CRP") payment debtors were to receive in October, 1986. The order also required payment to plaintiff within fourteen days of debtors' receipt of the CRP payment.

In October of 1986, debtors received a CRP payment of \$20,070.00. The payment was in the form of commodity receipts which plaintiff was willing to accept in lieu of cash.

Instead of turning \$5,000.00 of the CRP payment over to plaintiff, debtors used the money for living expenses, to pay off bills and to repay some unsecured loans. Debtor Glenn Hobbs told plaintiff's general manager, Rex Wright, that he had exchanged the commodity receipts for "corn standing in the field" and that he would pay plaintiff the \$5,000.00 after the corn was harvested and marketed.

Debtors made one payment to plaintiff of \$362.50 on December 11, 1986. Included with the payment was a note from Glenn Hobbs which stated: "We will send payments as soon as corn is received." Plaintiff never received any other payments from debtors. On February 17, 1987, debtors filed their petition under Chapter 7 of the Bankruptcy Code.

The present adversary complaint to determine dischargeability of a debt was filed on May 8, 1987. In it, plaintiff claims that debtors' failure to turn over the \$5,000.00 as ordered by the state court was willful and malicious conversion of plaintiff's property and that, as

a result, the \$5,000.00 debt should be found to be nondischargeable pursuant to §523(a)(6). At the hearing, plaintiff modified the amount of its nondischargeability request to \$4,637.50 to take into account debtors' December 11, 1986 payment of \$362.50.

In response, debtors argue they did not cause a "willful and malicious injury" to plaintiff because plaintiff did not have an ownership interest in the CRP payment when debtors failed to pay \$5,000.00 of the payment to plaintiff as ordered by the state court. Debtors further argue that even if the Court were to find plaintiff did have an ownership interest, debtors' actions were not willful and malicious so as to make the debt nondischargeable under §523(a)(6).

Section 523(a)(6) of the Bankruptcy Code provides, in pertinent part:

(a) A discharge under section 727...of this title does not discharge an individual debtor from any debt -

(b) for willful and malicious injury by the debtor to another entity or to the property of another entity.

The phrase "willful and malicious injury" as used in this section also applies to willful and malicious conversion. First National Bank of Red Bud v. Kimzey, 761 F.2d 421, 424 (7th Cir. 1985); In re Hopkins, 65 B.R. 967, 970 (Bankr. N.D. Ill. 1986); In re Meyer, 7 B.R. 932, 933 (Bankr. N.D. Ill. 1981). In the present case, this Court must determine whether debtors' failure to pay \$5,000.00 of the CRP payment to plaintiff amounted to conversion and, if so, whether their actions were willful and malicious.

A citation to discover assets under Ill.Rev.Stat., ch. 110, ¶2-

1402 creates a lien which attaches to any personal property discovered pursuant to the citation. In re Dean, 80 B.R. 932, 934 (Bankr. C.D. Ill. 1987); In re Foluke, 38 B.R. 298, 301 (Bankr. N.D. Ill. 1984); In re Stoner Investments, Inc., 7 B.R. 240, 241 (Bankr. N.D. Ill. 1980).

In the present case, not only was there the issuance and service of a citation proceeding, there was also a turnover order, i.e., the order of October 1, 1986, ordering debtors to pay \$5,000.00 of their CRP payment to plaintiff. Once the turnover order was entered, debtors lost all interest in that \$5,000.00. In re Dean, supra, 80 B.R. at 934. Debtors' use of that money to pay bills and other expenses rather than turning it over to plaintiff amounted to a conversion. The only remaining question, then, is whether debtors' actions were willful and malicious, thereby rendering the debt nondischargeable under §523(a)(6).

In the case of In re Nelson, 35 B.R. 766 (N.D. Ill. 1983), the court held that a "willful and malicious injury" under §523(a)(6) "means a deliberate or intentional act in which the debtor knows his act would harm the creditor's interest and proceeds in the fact of the knowledge." Id. at 776. See also, In re Krause, 44 B.R. 159 (Bankr. N.D. Ill. 1984). There is no need to show specific malice on the part of the debtor under §523(a)(6). "Implied malice, which may be shown by the acts and conduct of the debtor in the context of their surrounding circumstances, is sufficient under ...§523(a)(6)." St. Paul Fire & Marine Insurance v. Vaughn, 779 F.2d 1003, 1010 (4th cir. 1985), citing In re Nelson, supra. See also, In re Hopkins, supra, 65 B.R. at 972.

In the present case, debtor Glenn Hobbs admitted that he used all

the proceeds of the CRP payment to pay bills rather than pay \$5,000.00 of the payment to plaintiff. Thus, Hobbs' actions were willful as defined in §523(a)(6). See, In re Hopkins, supra at 972. That Hobbs' actions were also malicious is evidenced by the fact that when he failed to pay \$5,000.00 of the CRP payment to plaintiff, he injured plaintiff by depriving it of its funds. Furthermore, the fact that Hobbs lied to plaintiff's manager, Rex Wright, by telling Wright that he had exchanged the CRP payment for "corn standing in the field" when he had in fact spent the money shows that he was aware that his actions were wrong.

Upon review of the facts herein, the Court concludes that debtors willfully and maliciously converted plaintiff's property within the meaning of §523(a)(6).

IT IS THEREFORE ORDERED that the debt of debtors Glenn and Drinda Sue Hobbs is nondischargeable in the amount of \$4,637.50.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: April 8, 1988