

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

IN RE: )  
)  
HARRY HOLLINGSWORTH, ) Bankruptcy Case No. 94-30889  
)  
Debtor. )  
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)  
ROBIN JETT, )  
)  
Plaintiff, )  
)  
vs. ) Adversary Case No. 94-3121  
)  
HARRY HOLLINGSWORTH, )  
)  
Defendant. )

OPINION

This matter having come before the Court for trial on a Complaint Objecting to Discharge; the Court, having heard arguments of counsel and being otherwise 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.

On or about March 30, 1994, a jury in the Circuit Court of St. Clair County, Illinois, Case No. 92 L 522, found that the Debtor/Defendant had committed the tort of battery against the Plaintiff, Robin Jett, and that the Defendant had intentionally struck the Plaintiff in the head and eye with a pistol causing injury to the Plaintiff. The St. Clair County jury awarded the Plaintiff damages in the amount of \$5,556.73. Said award was overturned by the Circuit Court Judge, and a new trial was scheduled upon the issue of damages only. The Defendant appealed the Judge's ruling on damages. However,

said appeal was denied, and the case in the Circuit Court of St. Clair County is presently awaiting the results of this proceeding pending further action.

The Plaintiff herein requests that this Court determine that whatever damages can be proven as a result of the Defendant's battery upon her be determined non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(6). The Court finds that the Defendant is collaterally estopped from litigating the issues under § 523(a)(6) as a result of the St. Clair County jury verdict. As such, the Defendant's debt for whatever damages are proven by the Plaintiff is held to be non-dischargeable.

In order for collateral estoppel to apply, the Court must consider four factors and find in favor of the Plaintiff on each of the factors. The requirements for the application of the Doctrine of Collateral Estoppel as recognized under Illinois law are: (1) that the issue decided in the prior adjudication be identical to that in the present action; (2) that the resolution of that issue was necessary to the Court's judgment in the prior action; (3) that the party against whom the estoppel was asserted was a party or in privity with a party to the prior litigation; and (4) that the issue was actually litigated and decided on the merits in the prior suit. See: County of Cook v. MidCon Corp., 773 F.2d 892 (7th Cir. 1985) (applying Illinois law); Klingman v. Levenson, 831 F.2d 1292 (7th Cir. 1987); and In re Seaton, 98 B.R. 419 (Bankr. C.D. Ill. 1989). In the instant case, there can be no dispute that in the State Court proceeding in St. Clair County the jury determined that the Debtor/Defendant was guilty of the tort of battery in that the jury found that the Defendant had intentionally

struck the Plaintiff causing her injury without any contribution on the part of the Plaintiff. 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. Under this section, a plaintiff must prove by a preponderance of the evidence that there was a willful and malicious act on the part of the debtor done without just cause or excuse which led to harm to the plaintiff. See: In re Hallahan, 78 B.R. 547, at 550 (Bankr. C.D. Ill. 1987); In re Thirtyacre, 36 F.3d 697 (7th Cir. 1994). Willful and malicious conduct has been defined as a deliberate or intentional act of a debtor with knowledge that the act will harm another. In re Roemer, 76 B.R. 126 (Bankr. S.D. Ill.). The term "malicious conduct" is defined as a wrongful act done consciously and knowingly in the absence of just cause or excuse. In re Condict, 71 B.R. 485 (Bankr. N.D. Ill. 1987). It is not necessary for the debtor to have had an ill will or malevolent purpose toward the plaintiff. See: Hallahan, supra, at 550; and Wheeler v. Laudani, 783 F.2d 610 (6th Cir. 1986) (cited with approval in Thirtyacre, at 700). Courts which have examined the issue have determined that debts which are based on traditional intentional torts, such as assault and battery, are non-dischargeable under § 523(a)(6). See: In re Cunningham, 59 B.R. 743 (Bankr. N.D. Ill. 1986); In re Czanik, 51 B.R. 637 (Bankr. S.D. Ohio); In re Wagner, 79 B.R. 1016 (Bankr. W.D. Wisc. 1987); and In re Seaton, 98 B.R. 419 (Bankr. C.D. Ill. 1989).

In the instant case, the Court finds that clearly all of the elements necessary for collateral estoppel to apply to the issue of non-dischargeability in this case are present. The elements necessary

to determine non-dischargeability under § 523(a)(6) and the elements necessary for the jury to have found in favor of the Plaintiff on the tort of battery in the State Court are identical. It is clear that the issues in the State Court were actually litigated, that those issues were essential to the judgment in the State Court, and that there was a final valid judgment on the issue of the Defendant's conduct in the State Court action. Thus, the Court finds that the Defendant is collaterally estopped from re-litigating the issue of non-dischargeability under § 523(a)(6).

The only thing remaining to be determined as between the Plaintiff and Defendant is the amount of damages which have arisen as a result of the Defendant's intentional conduct. In considering this issue, the Court finds that the matter was previously re-set before the State Court for a new trial and the Defendant has demanded a jury on the issues of damages. Given the posture of the matter in State Court, this Court finds that, in the interest of judicial economy and fairness to the parties, this matter is best returned to the State Court for a determination of the Plaintiff's proper amount of damages. As such, this Court finds that the automatic stay under 11 U.S.C. § 362 in the Debtor's case should be modified to the extent that the Plaintiff be allowed to return to State Court to pursue litigation on the issue of her damages to a conclusion.

ENTERED: June 20, 1995.

/s/ GERALD D. FINES  
United States Bankruptcy Judge