

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

IN RE:)
)
JERRY LEE POOLE,) Bankruptcy Case No. 00-60800
)
Debtor.)
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)
FRED BURDINE,)
)
Plaintiff,)
)
vs.) Adversary Case No. 01-6000
)
JERRY LEE POOLE,)
)
Defendant.)

OPINION

This matter having come before the Court on for trial on a Complaint to determine dischargeability of debt; the Court, having heard sworn testimony and 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.

Findings of Fact

The parties have stipulated to the facts in this matter, and they are, in pertinent part, as follows:

The Plaintiff, Fred Burdine, was an employee of the Defendant, Jerry Lee Poole, and Spencer Harrell, d/b/a Harco Construction Company on August 9, 1996. The Plaintiff suffered a severe laceration to his

right wrist on that date, while operating a circular saw, resulting in the Plaintiff's need to seek medical treatment for the laceration. The injury which the Plaintiff sustained caused nerves and ligaments to be severed. As a result of the injury on August 9, 1996, the Plaintiff, Fred Burdine, filed a worker's compensation claim against the Defendant, Jerry Lee Poole, and Spencer Harrell, d/b/a Harco Construction Company.

On May 14, 1999, an award was entered in favor of the Plaintiff in Industrial Commission Case No. 96-WC-52053, as follows:

- a. \$25,727.07 for temporary disability, permanent partial disability, medical bills and penalties; and
- b. \$8,575.69 for attorney's fees pursuant to 820 ILCS 305/19(g).

Plaintiff was also awarded the sum of \$407.04 for interest on the award of the arbitrator of the Industrial Commission from the period of May 14, 1999, through September 20, 1999, at the interest rate of 4.51 percent per annum.

Neither the Defendant, Jerry Lee Poole, nor his business associate, Spencer Harrell, d/b/a Harco Construction Company, have paid the above stated award, either from their individual assets or through any workers' compensation carrier. In fact, it is admitted that there was no workers' compensation insurance for the injury at issue.

On September 20, 1999, a Judgment was entered in the Circuit Court of Clay County, Illinois, in Case No. 99-MR-17, in favor of the

Plaintiff and against the Defendant, Jerry Lee Poole, and Spencer Harrell, d/b/a Harco Construction Company. Judgment, in Case No. 99-MR-17, was in the amount of \$34,709.84, with interest accruing on said Judgment since September 20, 1999, at the rate of 9 percent per annum.

Conclusions of Law

The issue in this matter is whether the failure of the Defendant, Jerry Lee Poole, as the employer of the Plaintiff, Fred Burdine, to carry workers' compensation insurance is a willful and malicious injury pursuant to 11 U.S.C. § 523(a)(6), such that the Judgment entered in favor of the Plaintiff and against the Defendant in the Industrial Commission, and also in State Court, should be held non-dischargeable in the Defendant's underlying Chapter 7 bankruptcy proceeding.

There is no dispute that, under Illinois law, an employer is required to carry workers' compensation insurance pursuant to the provisions of 820 ILCS 305/4, *et seq.*. There is also no dispute that the injury at issue in this proceeding was a work-related injury and that the Plaintiff has received an award and State Court Judgment as a result of that injury.

The Plaintiff argues that an employer acts "maliciously" if it is foreseeable that an employee would be injured on the job and the employer's failure to obtain workers' compensation insurance coverage injures the employee's statutory right to insurance benefits. In support of this position, Plaintiff cites the case of In re Strauss v. Zielinski. 99 B.R. 396, (D.Ct. N.D. Ill. 1999). In ruling in favor of the Plaintiff in the Strauss case, the Court stated:

. . . Simply put, the debtor's failure to procure workman's compensation insurance immediately places all employees of the debtor at risk to the kind of loss suffered by Mr.

Zielinski and immediately deprives all employees of the statutorily mandated protection and security of workman's compensation insurance. Again, this risk is particularly egregious in the context of a construction business such as the appellant's. A debtor, who despite this knowledge of foreseeable injury, refuses to procure workman's compensation is acting "maliciously." In other words, a debtor possesses "knowledge" sufficient for finding "malice" when said debtor knows beforehand that if a workman's compensation claim does arise his or her actions preclude an injured employee from receiving compensation.

In considering the arguments of the parties in this matter, the Court has examined the issue of the failure to obtain workers' compensation insurance as being a non-dischargeable debt under 11 U.S.C. § 523(a)(6), and finds that the case cited by the Plaintiff (Strauss v. Zielinski) is clearly the minority view. The majority of cases that have addressed the exact issue in this proceeding have held that the failure to obtain workers' compensation insurance does not rise to the level of a willful and malicious injury as contemplated under 11 U.S.C. § 523(a)(6). In fact, there is even a split in authority in the Northern District of Illinois, where Strauss was decided, as evidenced by a later case decided in the same District, which found that the failure to procure workers' compensation insurance was not actionable under 11 U.S.C. § 523(a)(6). See: Szewczyk v. Wojtaszek, 164 B.R. 604 (D.Ct. N.D. Ill. 1994). This Court has located several other cases which hold that the failure to obtain workers' compensation insurance is not actionable under 11 U.S.C. § 523(a)(6). Those cases are: In re Scott, 13 B.R. 25 (Bankr. C.D. Ill. 1981); In

re Walker, 48 F.3d 1161 (8th Cir. 1995); and In re Gaylord, 1995 W.L. 376918 (Bankr. N.D. Ind. 1995). These cases all predate the decision handed down by the Supreme Court in the case of Kawaauhau v. Geiger, 118 S.Ct. 974 (1998), wherein the Supreme Court ruled that:

The word "willful" in (a)(6) modifies the word "injury," indicating that nondischargeability takes a deliberate or intentional injury, not merely, a deliberate or intentional act that leads to injury.

The Supreme Court further stated that:

As the Eighth Circuit observed, the (a)(6) formulation triggers in the lawyer's mind the category "intentional torts" as distinguished from negligent or reckless torts.

Based upon the rulings of the majority of Courts that have addressed the issue at bar and the Supreme Court's ruling in Geiger, this Court finds that the Plaintiff's Complaint in the instant matter must fail under 11 U.S.C. § 523(a)(6). There is no evidence in this matter that the Defendant's failure to procure workers' compensation insurance resulted from an intentional act or an intent to cause injury to the Plaintiff. Rather, the Defendant's failure to procure workers' compensation insurance falls into the category of negligent, reckless acts that do not rise to the level of a willful and malicious injury, as contemplated under 11 U.S.C. § 523(a)(6).

ENTERED: May 14, 2001.

/s/ GERALD D. FINES
United States Bankruptcy Judge