

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In Re)	In Bankruptcy
)	
RANDOLPH TRAVIS)	No. 95-30156
)	
Debtor.)	
)	
FORD MOTOR CREDIT COMPANY,)	
)	
Plaintiff,)	
)	
V.)	Adversary No. 95-3014
)	
RANDOLPH TRAVIS,)	
)	
Defendant.)	

O P I N I O N

Before the Court is Plaintiff's Complaint to Determine Dischargeability of Debt brought pursuant to 11 U.S.C. § 523(a)(6) and 11 U.S.C. § 727(a)(2).

Debtor purchased a used 1989 Ford Mustang on November 12, 1993, from Auffenberg Ford in Belleville, Illinois. Financing of \$6,418.84 was provided by Plaintiff, and a Retail Installment Contract and an Agreement to Provide Insurance were executed by Debtor. In addition to agreeing to repay the principal and interest over three years, Debtor also agreed to maintain continuous insurance coverage on the vehicle for the duration of the Retail Installment Contract.

In November, 1994, the insurance on the vehicle lapsed. Debtor testified that his net monthly income after paying his child support obligation was \$377 and that he simply lacked the funds with which to pay the premiums.

On January 12, 1995, Debtor loaned the 1989 Ford Mustang to his

distant cousin, Lamont Thornhill, so that Mr. Thornhill could run an errand. Unknown to Debtor was the fact that, after borrowing the car, Mr. Thornhill was involved in an accident which resulted in extensive front end damage to the vehicle. Several days passed with no sign of Mr. Thornhill or the car before Debtor contacted the University City Police Department. On January 16, 1995, the police informed Debtor that his vehicle had been towed to a City of St. Louis Department of Streets Towing Facility. Debtor was advised that in order to reclaim his vehicle, he would have to pay the retrieval fee of \$10 for each day the vehicle had been on the lot. Debtor was also advised that if the vehicle was not claimed within thirty days, it would be subject to sale at auction. Debtor claimed that he lacked the funds with which to reclaim the car so, on February 6, 1995, he removed his personal belongings and license plates from the vehicle. Debtor also claims that he called Plaintiff several times, the first being on February 10, 1995, in order to advise it that the vehicle had been towed and was subject to sale at auction. Plaintiff disputes Debtor's testimony and states that its first notice that the vehicle was impounded and subject to sale at auction came on February 22, 1995 at 4:14 p.m. The vehicle was subsequently sold on February 23, 1995 for \$425, before Plaintiff had an opportunity to contact the towing facility to claim the vehicle.

As stated above, Plaintiff objects to Debtor's discharge pursuant to 11 U.S.C. § 727(a)(2), and, in the alternative, asks that Debtor's debt to Plaintiff be held nondischargeable under 11 U.S.C. § 523(a)(6).

Section 727(a)(2)(A) of the Bankruptcy Code states as follows:

(a) The court shall grant the debtor a discharge, unless--

- (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed--
 - (A) property of the debtor, within one year before the date of the filing of the petition(.

In order to sustain an objection to discharge for acts intended to hinder, delay, or defraud creditors, a creditor must show that an act complained of was done with an actual intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under the Bankruptcy Code, that the act was that of the debtor or his duly authorized agent, and that the act consisted of transferring, removing, destroying or concealing any of debtor's property or permitting any of these acts to be done. In re Peters, 106 B.R. 1 (Bankr. D. Mass. 1989). Objections to discharge must be construed strictly against objectant and liberally in favor of debtor. In re Burgess, 955 F.2d 134 (1st Cir. 1992); In re Rice, 109 B.R. 405 (Bankr. E.D. Cal. 1989), aff'd 126 B.R. 822 (9th Cir. BAP 1991), aff'd Rice v. Creative Recreational Systems, Inc., 126 B.R. 822 (9th Cir. BAP 1991); In re Switzer, 55 B.R. 991 (Bankr. S.D. N.Y. 1986). An objection to discharge based upon a general charge of dishonest behavior is not sufficient to warrant a denial of discharge. In re Rowe, 81 B.R. 653 (Bankr. M.D. Fla. 1987).

In this case, Debtor did (or failed to do) three things which Plaintiff asserts merit scrutiny: (1) Debtor failed to maintain insurance on the vehicle, contrary to his contractual obligation; (2)

Debtor loaned the vehicle to Mr. Thornhill, knowing that the vehicle was uninsured at the time; and (3) Debtor allegedly failed to promptly advise Plaintiff that the vehicle had been impounded and was subject to resale. While each of these acts potentially place Plaintiff's collateral at risk in some way, there is no evidence that any of these acts constituted a violation of 11 U.S.C. § 727(a)(2)(A). None of these actions appears to have been taken with an intent to hinder, delay, or defraud Plaintiff, nor does there appear to be any act or scheme of destruction or concealment in which Debtor was a material participant. Accordingly, Plaintiff's objection to discharge is denied.

Section 523(a)(6) of the Bankruptcy Code states as follows:

- (a) A discharge ... does not discharge an individual debtor from any debt--
 - (6) for willful and malicious injury by the debtor to another entity or to the property of another entity(.

The term "willful" means deliberate or intentional and the term "malicious" means an act done deliberately, knowingly, and without just cause or excuse. In re Lampi, 152 B.R. 543, 545 (C.D. Ill. 1993); In re Cerar, 84 B.R. 524, 530 (Bankr. C.D. Ill. 1988) aff'd 97 B.R. 447 (C.D. Ill. 1989); In re Iaquina, 98 B.R. 919, 924 (Bankr. N.D. Ill. 1989). It is not necessary for a debtor to act with ill will or malevolent purpose toward the injured party in order for the debt to be nondischargeable under 11 U.S.C. § 523(a)(6). In re Rubitschung, 101 B.R. 28 (Bankr. C.D. Ill. 1988).

Debtor's failure to insure the vehicle against loss clearly constitutes a breach of contract; however, breaches of contract do not

necessarily constitute nondischargeable debts. Additionally, the fact that Debtor failed to insure the vehicle and subsequently loaned the vehicle to Mr. Thornhill produced only the potential for harm. While acknowledging a conflict in authority on this point, this Court has held in the past that the failure to maintain insurance by itself may be negligent, but does not, by itself, constitute a willful or malicious act within the purview of § 523(a)(6). In re Scott, 13 B.R. 25 (Bankr. C.D. Ill. 1981); In re Lombre, 102 B.R. 182 (Bankr. W.D. Mo. 1989), contra In re Ussery, 179 B.R. 737 (Bankr. S.D. Ga. 1995). Here, Debtor's failure to insure was plausibly explained - he simply lacked the funds with which to pay the premiums. Plaintiff asserts that in addition to his obligation to maintain insurance on the vehicle, Debtor was obligated to notify Plaintiff if and when such insurance coverage lapsed. However, according to Plaintiff's representative, lack of insurance is really not of primary concern to Plaintiff, so long as the customer is current in his payments. Plaintiff's policy does not necessarily require it to obtain possession of a vehicle if Plaintiff learns that the vehicle is uninsured. Accordingly, the Court finds no causal relationship between Debtor's failure to notify Plaintiff of the lapse in insurance coverage and the corresponding casualty loss to Plaintiff's collateral.

As for Debtor's alleged failure to notify Plaintiff of the vehicle's location and impending resale, a creditor has the burden to prove each element in a nondischargeability action by a preponderance of the evidence. Grogan v. Garner, 798 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). Because the testimony is contradictory, and because the Court finds the parties equally credible, the Court cannot

find that Debtor failed to give such notice. Even if it were able to conclude that no notice was given, the Court finds the failure to provide Plaintiff with that information constitutes neither a willful nor malicious act within the meaning of 11 U.S.C. 523(a)(6).

For the reasons set forth above, Debtor's obligation to Plaintiff is determined to be dischargeable in these proceedings. In addition, and as stated above, Plaintiff's objection to discharge is denied.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: OCT 19 1995

/s/ LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE