

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

IN RE:)
MARLENE C. WOODS,)
Debtor.) Bankruptcy Case No. 04-32296
_____))
OLIN CORPORATION,)
Plaintiff,)
vs.) Adversary Case No. 04-03245
MARLENE WOODS,)
Defendant.)

OPINION

This matter having come before the Court on Olin Corporation's Motion for Summary Judgment Against Defendant Marlene Woods and Debtor's Response to Plaintiff's Motion for Summary Judgment; 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.

In order to prevail on a motion for summary judgment, the movant must meet the statutory criteria set forth in Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Federal Rule of Bankruptcy procedure 7056. Rule 56(c) reads in part:

(T)he judgment sought 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 judgment as a matter of law.

Fed.R.Civ.P. 56(c); See Donald v. Polk County, 836 F.2d 376, 378-379 (7th Cir. 1988).

The United States Supreme Court has issued a series of cases which encourage the use of summary judgment as a means of disposing of factually unsupported claims.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986). "The primary purpose for granting a summary judgment motion is to avoid unnecessary trials when there is no genuine issue of material fact in dispute." Farries v. Stanadyne/Chicago Div., 832 F.2d 374, 378 (7th Cir. 1987) (quoting Wainwright Bank & Trust Co. v. Railroadmens Federal Savings & Loan Ass'n, 806 F.2d 146, 149 (7th Cir. 1986)). The burden is on the moving party to show that no genuine issue of material fact is in dispute. Anderson, 477 U.S. at 256, 106 S.Ct. at 2514. There is no genuine issue for trial if the record, taken as a whole, does not lead a rational trier of fact to find for the non-moving party. Matsushita, 475 U.S. at 587, 106 S.Ct. at 1356. "If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." Anderson, 477 U.S. at 249-250, 106 S.Ct. at 2511.

In the instant adversary proceeding, the Plaintiff seeks to have declared non-dischargeable, pursuant to 11 U.S.C. §523(a)(6), a judgment for attorney's fees entered in its favor by the U. S. District Court for the Southern District of Illinois on March 17, 2003. The Plaintiff asserts that the Defendant should be collaterally estopped from relitigating the issue of non-dischargeability based upon Judge Herndon's clear and concise findings of fact and conclusions of law in his Memorandum and Order of March 17, 2003. This Court agrees with the Plaintiff's assertions.

The Doctrine of Collateral Estoppel is commonly applied to non-dischargeability proceedings in bankruptcy. In re Carlson, 224 B.R. 659 (Bankr. N.D. Ill. 1998); Meyer v. Rigdon, 36 F.3d 1375 (7th Cir. 1994). Collateral estoppel bars the relitigation of factual and legal issues that were determined in a prior court action. San Remo Hotel v. San Francisco City and County, 364 F.3d 1088, at 1094 (9th Cir. 2004). In order for collateral estoppel to apply, (1) the issue sought to be precluded must be the same as that involved in the prior action, (2) the issue must have been actually litigated, (3) the determination of the issue must

have been essential to the final judgment, and (4) the party against whom estoppel is invoked must be fully represented in the prior action. In re Grand Jury Proceedings of the Special April 2002 Grand Jury, 347 F.3d 197 (7th Cir. 2003).

The instant adversary proceeding is brought pursuant to 11 U.S.C. § 523(a)(6), which states:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title 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;

In Kauaauhau v. Geiger, 523 U.S. 57, 118 U.S. S.Ct. 974 (1998), the U. S. Supreme Court addressed a split in Circuit Courts regarding the proper interpretation of the term "willful" under § 523(a)(6). The Court found that debts caused by negligent reckless conduct are dischargeable, whereas debts arising from intentional torts are not dischargeable. In reaching this holding, the Supreme Court noted, "Intentional torts generally require that the actor intend 'the *consequences* of an act,' not simply 'the act itself.'" (emphasis in original). While the Supreme Court has addressed the definition of the term "willful," it did not define the intent necessary to constitute willful conduct. This Court finds that the intent necessary to constitute willful conduct was aptly defined in the case of In re Cox, 243 B.R. 713 (Bankr. N.D. Ill. 2000), in which the Court found that a debt would be non-dischargeable under § 523(a)(6), where a creditor demonstrated by a preponderance of the evidence either that the debtor desired to cause the injury complained of or that the debtor believed that harmful consequences were substantially certain to result from the debtor's acts. The Cox Court further went on to reiterate the long-standing definition of "malicious injury," as being one under which the debtor acts with a conscious disregard of one's duties or acts without just cause or excuse. See: In re Thirty Acre, 36 F.3d 697 (7th Cir. 1994).

A thorough review of the Memorandum and Order issued by Judge Herndon, in the U. S. District Court for the Southern District of Illinois, on March 17, 2003, leads this Court

to conclude that the debt in question in the instant adversary proceeding is non-dischargeable pursuant to 11 U.S.C. § 523(a)(6), by virtue of the application of the Doctrine of Collateral Estoppel. All four of the elements of collateral estoppel are present in this case, and this Court finds that the very strong language used by Judge Herndon in his Memorandum and Order clearly supports the finding that the Debtor's conduct giving rise to the judgment for attorney's fees was, in fact, willful and malicious as contemplated by 11 U.S.C. § 523(a)(6). Judge Herndon states that Olin Corporation was entitled to attorney's fees and costs because, "Plaintiff's claims were frivolous, vexatious, brought in bad faith, and lacked merit." Judge Herndon further found that Plaintiff repeatedly continued to pursue claims even after the Court had ruled that they were without merit. Additionally, Judge Herndon concluded that, "Plaintiff brought this suit in bad faith and for vindictive and vexatious reasons." See: Woods v. Olin Corporation, Case No. 00-CV-00962-DRH (U.S. Dist. Ct. S.D. Ill. 2003), *aff'd. on appeal* Case Nos. 03-1372 and 03-2093 (7th Cir. 2003). Based upon his findings, Judge Herndon ruled that Olin Corporation was entitled to a judgment in its favor against Marlene Woods in the sum of \$99,409.80, representing attorney's fees and expert witness related costs. It is that judgment that this Court finds as non-dischargeable pursuant to 11 U.S.C. § 523(a)(6).

ENTERED: February _7_, 2005.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge

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FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE:)
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MARLENE C. WOODS,) Bankruptcy Case No. 04-32296
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Debtor.)
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OLIN CORPORATION,)
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Plaintiff,)
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vs.) Adversary Case No. 04-03245
)
MARLENE WOODS,)
)
Defendant.)

JUDGMENT ORDER

For the reasons set forth in an Opinion entered on the 7th day of February 2005;

IT IS HEREBY ORDERED that:

- A. Olin Corporation's Motion for Summary Judgment Against Defendant Marlene Woods is ALLOWED;
- B. The debt of Defendant, Marlene Woods, owed to Plaintiff, Olin Corporation, in the amount of \$99,409.80, is found to be non-dischargeable pursuant to 11 U.S.C. § 523(a)(6); and,
- C. Judgment is entered in favor of Plaintiff, Olin Corporation, and against Defendant/Debtor, Marlene Woods, in the amount of \$99,409.80.

ENTERED: February 7, 2005.

/s/Gerald D. Fines
GERALD D. FINES
United States Bankruptcy Judge