IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE:	*	
WILLIAM A. DeSANTIS,	*	**Chapter 7**
Debtor	*	
	*	**Case No.: 1-05-bk-03775MDF**
CLARENCE E. BRANDT,	*	
Plaintiff	*	
	*	
v.	*	**Adv. No.: 1-05-ap-00149**
	*	
WILLIAM A. DeSANTIS,	*	
Defendant	*	

OPINION

Procedural and Factual History

Before me is the adversary complaint filed by Clarence E. Brandt ("Brandt") against William A. DeSantis ("Debtor") to determine the dischargeability of a debt owed by Debtor to Brandt based on a civil judgment. The judgment arose from Brandt's state court complaint against Debtor filed on October 11, 2004 seeking monetary damages on various theories of tort liability, including malicious prosecution and defamation.[1] Debtor failed to answer the state court complaint, and Brandt obtained judgment by default on December 29, 2004. The amount of the judgment is not disclosed in the record.[2] In the state court complaint, Brandt alleged that false criminal charges of simple assault were filed against him based on Debtors' allegations that

[1]Brandt alleges in his adversary complaint that the state court lawsuit included a third cause of action – intentional infliction of emotional distress. The copy of the state court complaint that was attached as an exhibit to one of Brandt's pleadings in the adversary (the answer to Debtor's motion to dismiss) includes counts for malicious prosecution and defamation only. The existence or nonexistence of a third cause of action, however, is not determinative in this matter.

[2]Brandt is listed in Debtor's schedules as an unsecured creditor holding a claim in an "unknown" amount based on a "judgment." The amount of the judgment is not mentioned in any of the pleadings or briefs that have been filed in this adversary case.

on or about May 1, 2004 Brandt attempted to strike Debtor as he rode in a golf cart on a street near his home. In the matter before me, there is no dispute that Debtor lodged a complaint against Brandt with criminal authorities, that Brandt was charged with simple assault, that sufficient probable cause was found to bind the case over for trial, and that Brandt was acquitted of those charges by a jury. There also is no dispute that Brandt subsequently sued Debtor for civil damages related to the criminal charges and that Brandt obtained a judgment against Debtor by default.

On June 7, 2005, Debtor filed a petition in chapter 7. His debt to Brandt was listed as a non-priority, unsecured debt. On August 31, 2005, Brandt filed the instant complaint alleging that the debt should be found non-dischargeable pursuant to 11 U.S.C. § 523(a)(6) because it arose from a willful and malicious injury inflicted by Debtor upon Brandt. Debtor filed an answer to the complaint denying that the claim was nondischargeable. The case was tried on September 15, 2006. Briefs have been filed by both parties. The matter is ready for decision.[3]

Discussion

Section 523(a)(6) provides that a debt is nondischargeable if it is "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). The burden of proof in a case under§ 523(a)(6) rests on the creditor/plaintiff. Fed. R. Bankr. P. 4005*; In re Braen,* 900 F.2d 621 (3d Cir. 1990); *see also, Grogan v. Garner,* 498 U.S. 279, 290-91 (1991). The elements of "willfulness" and "maliciousness" are distinct, and each

[3]I have jurisdiction to hear this matter pursuant to 28 U.S.C. §§157 and 1334. This matter is core pursuant to 28 U.S.C. §157(b)(2)(A), (I) and (O). This Opinion constitutes the findings of fact and conclusions of law made under Fed. R. Bankr. P. 7052.

must be established by the plaintiff by a preponderance of the evidence. *Grogan*, 498 U.S. at 291; *In re Gagle*, 230 B.R. 174, 179 (Bankr. D. Utah 1999). Exceptions to discharge are strictly interpreted against creditors and liberally interpreted in favor of debtors. *In re Cohn*, 54 F.3d 1108, 1120 (3d Cir.1995).

In *Kawaauhau v. Geiger*, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998), the Supreme Court held that in order for an injury giving rise to a claim to be found to have been "willful," the harm resulting from the act, not just the act itself, must have been intended. In other words, a determination that the *act* causing the injury was intentional is not enough to find the claim nondischargeable. The *injury* itself must have been intended. *In re Lahiri*, 225 B.R. 582, 586-87 (Bankr. E.D. Pa. 1998), *citing Kawaauhau,* 523 U.S. at 61.[4]

Under *Kawaahau* and *Grogan* the issue in this case is whether Brandt has proven by a preponderance of evidence that Debtor willfully and maliciously filed false criminal charges against him which resulted in damages. More specifically, the issue is whether Brandt has carried his burden to prove that it is more likely than not that the criminal charges against him were false, that Debtor knew they were false, and that he intended to harm Brandt by filing charges against him. As described above, it is undisputed that Brandt was acquitted on the criminal charge, and that he later obtained a civil judgment by default against Debtor based on allegations that the criminal charges had caused him emotional distress and defamed him.

Brandt's acquittal on criminal charges is not sufficient to prove that Debtor's actions in

---

[4]In addition to situations in which a party actually intends to injure another party, in the Third Circuit an injury is willful for purposes of § 523(a)(6) if an actor knows that his actions are substantially certain to cause injury. *Conte v. Gautam (In re Conte),* 33 F.3d 303, 307 (3rd Cir. 1994).

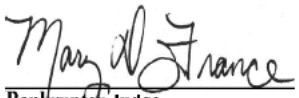
reporting the alleged crime were willful and malicious. It is well established that the standard of proof in a criminal case (beyond a reasonable doubt) is greater than the standard in a civil case (preponderance of evidence). Thus, an acquittal does not translate into a finding that the criminal charges were patently false. *See, e.g., Rufo et al v. Simpson,* 86 Cal.App. 4th 573, 103 Cal. Rptr.2d 492 (2001) (acquitted homicide defendant found liable for compensatory and punitive damages in wrongful death and survival actions). Similarly, the default judgment entered against Debtor in the civil case does not conclusively prove that Debtor willfully filed false criminal charges with intent to harm. *See In re Parker,* 250 B.R. 512 (M.D. Pa. 2000) (holding that "typical default situation where the defendant simply neglected or elected not to participate because of ... inconvenience ... or the expense [of] defending a lawsuit" does not give rise to collateral estoppel for purposes of nondischargeability under § 523). *But see In re Docteroff,* 133 F.3d 210 (3rd Cir. 1997) (collateral estoppel may apply if underlying default resulted from debtor's "efforts to frustrate orderly litigation by willfully obstructing discovery.") Accordingly, Brandt had to do more than prove that he was acquitted of the criminal charges and that he obtained a default judgment in the civil case to establish the willfulness and maliciousness of Debtor's actions.

Brandt testified about the events that lead to the filing of the criminal complaint. He forcefully denied having attempted to harm Debtor in any way. He explained that he pulled out of his driveway, remained within the driving lane and did not move his vehicle into the other lane or take any other action to threaten Debtor. Extensive testimony was provided by both parties about the events that lead to Brandt's earlier guilty plea that was entered after similar conduct was alleged by another resident of the neighborhood. Debtor simply reiterated the

allegations of his criminal complaint and expressed his conviction that Brandt intended either to hit him or to intimidate him. Both parties appeared to be testifying truthfully. Neither party's credibility was sufficiently impeached on the stand to tip the weight of the evidence one way or the other. Both accounts of the events that occurred on or about May 1, 2004 as related by each party may be true. Each party testified primarily about their respective states of mind at the time of the incident. The Court believes that it is quite possible that Brandt had no intention of driving his car into the golf cart in which Debtor was riding, but that Debtor, aware of Brandt's collision with another party and the surrounding events, believed that Brandt did intend to hit Debtor's cart with his car. Even if he were mistaken, if Debtor believed that Brandt intended to harm him, his actions in reporting the event to authorities were not willful and malicious. In any event, Brandt failed to tip the weight of the evidence, even slightly, in his own favor. Therefore, he failed to sustain a case for nondischargeability of his claim.

An order will be entered dismissing the adversary case.

By the Court,



Bankruptcy Judge

This document is electronically signed and filed on the same date.

Date: January 19, 2007