

UNITED STATES BANKRUPTCY COURT
for the
DISTRICT OF NEW HAMPSHIRE

In re:

Bk. No. 00-12309-MWV
Chapter 7

Troy Wright,
Debtor

Laura Bustead,
Plaintiff

v.

Adv. No. 00-1145-MWV

Troy Wright,
Defendant

Charles W. Gallagher, Esq.
HAUGHEY, PHILPOT & LAURENT, P.A.
Attorney for the Plaintiff

David LeFevre, Esq.
BOSSIE, KELLY, HODES, BUCKLEY & WILSON, P.A.
Attorney for the Debtor/Defendant

MEMORANDUM OPINION

The Court has before it the Debtor/Defendant's motion for summary judgment on the Plaintiff's complaint seeking an exception to discharge of her judgment debt pursuant to § 523(a)(6) of the Bankruptcy Code. The motion for summary judgment is based on the premise that the judgment debt that the Plaintiff seeks to except from discharge was based in negligence, which, by definition, cannot be the grounds for an exception to discharge under § 523(a)(6). For the reasons below, the Court grants the motion for summary judgment.

JURISDICTION

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

Under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, a summary judgment motion should be granted only when “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 a judgment as a matter of law.” “Genuine,” in the context of Rule 56(c), “means that the evidence is such that a reasonable jury could resolve the point in favor of the nonmoving party.” Rodriquez-Pinto v. Tirado-Delgado, 982 F.2d 34, 38 (1st Cir. 1993)(quoting United States v. One Parcel of Real Property, 960 F.2d 200, 204 (1st Cir. 1992)). “Material,” in the context of Rule 56(c), means that the fact has “the potential to affect the outcome of the suit under applicable law.” Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Courts faced with a motion for summary judgment should read the record “in the light most flattering to the nonmovant and indulge all reasonable inferences in that party’s favor.” Maldonado-Denis v. Castillo-Rodriguez, 23 F.2d 576, 581 (1st Cir. 1994).

The basis for the claim that the Plaintiff seeks to have excepted from discharge is not in dispute. It is a default judgment for \$85,000 entered against the Defendant on November 19, 1990 by the Rockingham County Superior Court.¹ The complaint upon which judgment was entered consisted of two counts as follows.

¹Neither party has attached a copy of that judgment to their submissions in support or against this motion for summary judgment.

COUNT I

IN A PLEA OF THE CASE, for that, on May 5, 1989, in the evening, the Plaintiff was visiting the Defendant at his home in Milford, New Hampshire; that the Defendant was intoxicated at this time; that the Plaintiff and the Defendant were continuing a verbal argument that had started earlier in the evening; that, during the course of this argument the Defendant negligently grabbed the Plaintiff and pushed her head through the styrofoam [sic] ceiling of the room; that the Defendant then negligently threw the Plaintiff with great force onto the cement floor of the room; that, as a result of the Defendant's negligence, the Defendant caused the Plaintiff to be seriously injured, to suffer pain, mental anguish and mental distress, past, present and future, to suffer physical injuries, to suffer permanent injuries, to incur hospital and medical expenses, and to suffer lost wages and other losses; all to the damage of the Plaintiff, in an amount within the jurisdictional limitations of this Court.

COUNT II

IN A PLEA OF THE CASE, incorporating all of the elements of Count I as if set forth herein; for that, the Defendant acted with gross negligence, recklessness and in gross disregard of the Plaintiff's safety; that, as a result of the Defendant's gross negligence and recklessness, the Defendant caused the Plaintiff to be seriously injured, to suffer pain, mental anguish and mental distress, past, present and future, to suffer physical injuries, to suffer permanent injuries, to incur hospital and medical expenses, and to suffer lost wages and other losses; all to the damage of the Plaintiff, in an amount within the jurisdictional limitations of this Court.

See Pl.'s Memorandum of Law, Ex. A. Both counts plead negligence, gross negligence or recklessness on the part of the Defendant. Neither of the counts specifically allege that the Defendant acted willfully or maliciously. Nevertheless, the Plaintiff argues in opposition to the motion for summary judgment that, although the counts sounded in negligence, the underlying allegations support a finding of willful and malicious injury to the Plaintiff and that the Court should hold an evidentiary hearing on the nature of the events which took place over ten years ago.

The Defendant's motion for summary judgment cites the Supreme Court's decision in Kawaauhua v. Geiger, 523 U.S. 57 (1998), for support of his position that the judgment here does not establish a claim for an exception from discharge pursuant to § 523(a)(6). The Geiger case held that debts arising from recklessness or negligence do not fall within the exception from discharge provided by § 523(a)(6). Geiger, 523 U.S. at 64. The Defendant then compares the instant case with this Court's decision in Worster v. Howcraft (In re Howcraft), 223 B.R. 845 (Bankr.D.N.H.1998), decided shortly after Geiger, asserting that

the allegations here do not meet the Worster standard for excepting a judgment from discharge. In Worster, this Court invoked collateral estoppel in barring a debtor from relitigating the issue of willfulness following a state court judgment that specifically found the debtor's conduct willful and malicious.

Unfortunately, the Superior Court judgment is not included with the material submitted as part of the motion for summary judgment. Without the judgment itself, it would normally be impossible for this Court to make a determination that the judgment debt was based on negligence rather than willful and malicious conduct. However, counsel for the parties agreed at the hearing that the judgment was entered by default and was based solely on the Plaintiff's complaint. Neither the complaint nor the accompanying affidavit alleged any willful or malicious conduct. Rather, the Plaintiff alleged only that the Defendant acted negligently and recklessly. Therefore, the Superior Court's default judgment could only have been based in negligence and/or recklessness.

This case, therefore, falls squarely within the holding of Geiger. Because the judgment debt was admittedly based only on negligence and/or recklessness, the debt does not fall within the dischargeability exception provided by § 523(a)(6). Geiger, 523 U.S. at 64. The case of Sims v. Morris (In re Morris), 185 B.R. 939 (Bankr.N.D.Ga.1994), which the Plaintiff cites for the proposition that this Court should make an independent determination of willfulness and malice, is clearly distinguishable. In that case, also based on a default judgment, the Court found that the amount of the debt was conclusively determined by the state court judgment. However, because the pleadings, which were based on violations of the Fair Debt Collections Practices Act rather than negligence or recklessness, left open the question of whether the damages awarded to the plaintiff were based solely on willful and malicious conduct, the court denied the motion for summary judgment in favor of conducting its own determination. Id. at 944 ("This Court concludes . . . that the present record is not sufficient to permit an accurate and complete determination of the underlying grounds or basis for the state court's ruling as to Defendant's liability."). Such is not the case here, where, based on the pleadings, the default judgment could only have been founded upon negligence and/or recklessness.

Presumably for her own good reasons, the Plaintiff chose to seek a judgment based on negligence and recklessness in the state court action, and successfully obtained a judgment for \$85,000. Despite her pleadings in the state court action, she now takes the inconsistent position that the state court judgment was based on willful and malicious conduct. The First Circuit recognizes the doctrine of judicial estoppel to “preclude[] a party from asserting a position in one legal proceeding which is contrary to a position it has already asserted in another.” Lydon v. Boston Sand & Gravel Co., 175 F.3d 6, 12 (1st Cir. 1999)(internal citations omitted). The doctrine is applied when a party has succeeded in a previous action with a position that is directly inconsistent with the one currently espoused. Id. The Plaintiff has done precisely that here.

As the Court noted at the hearing on the motion for summary judgment, even if this Court denied the Defendant’s motion for summary judgment, other problems exist. First, the only liquidated debt (\$85,000) is based on a judgment of negligence. To try the entire claim again would give rise to a personal injury suit, which this Court cannot try. 28 U.S.C. 158(b)(5). Should a complaint be brought in another forum, the Defendant would have the defenses in the form of the statute of limitations or *res judicata*.

CONCLUSION

For the reasons set out above, the Defendant’s motion for summary judgment is granted. This opinion constitutes the Court’s findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate final judgment consistent with this opinion.

DATED this 23rd day of April, 2001, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge

