UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re, Taylor Nicole Kaufmann, Debtor(s).	C/A No. 24-00219-JD Adv. Pro. No. 24-80033-JD Chapter 7
It Works Marketing, Inc., Plaintiff(s), v. Taylor Nicole Kaufmann, Defendant(s).	**ORDER**

THIS MATTER is before the Court on the Motion to Dismiss filed by the Defendant, Taylor Nicole Kaufmann ("Defendant").[1] The Plaintiff, It Works Marketing, Inc., ("Plaintiff") filed its Complaint seeking exception to discharge under 11 U.S.C. § 523(a)(6) on May 28, 2024.[2] Defendant filed an Answer on June 27, 2024, and an Amended Answer on July 12, 2024.[3] Plaintiff filed an Amended Complaint on July 26, 2024 (the "Complaint:"),[4] which Defendant seeks to dismiss pursuant to Fed. R. Civ. P 12(b)(6), made applicable to this proceeding pursuant to Fed. R. Bankr. P. 7012. Plaintiff objected to the Motion to Dismiss on August 26, 2024,[5] and Defendant filed a Reply on September 1, 2024.[6]

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I). The Court has authority to enter a final order and

[1] ECF No. 12, filed Aug. 8, 2024.
[2] ECF No. 1.
[3] ECF Nos. 3 and 4.
[4] ECF No. 11.
[5] ECF No. 21.
[6] ECF No. 22.

judgment in this matter.[7] The Court has reviewed the pleadings and, for the reasons set forth below, denies the Motion to Dismiss. To the extent Defendant seeks Summary Judgment,[8] that Motion is also denied.

SUMMARY OF FACTS

A. Interim Arbitral Award

The Amended Complaint, summarized herein, is presented merely as an aid in the Court's analysis of the Motion to Dismiss, and nothing therein shall be construed as a finding of fact or conclusion of law.

Plaintiff is a direct sales company that markets health and beauty products through independent distributors. As a multi-level marketing company, Plaintiff's distributors are expected to recruit others to become customers and distributors, with the new recruits enrolling under the distributor's "downline." Distributors earn income through commissions generated from their sales and from the sales of their "downline." Defendant was an independent distributor for Plaintiff from 2015 to 2022. At the outset of the relationship, and at least annually thereafter, the parties entered into a "Distributor Agreement," allowing Defendant to market Plaintiff's products and setting forth terms and conditions, policies and procedures, and the compensation plan of their business relationship.[9]

In 2022, Defendant resigned from Plaintiff to work for a competitor, Quintessential Biosciences, Inc. ("QSciences"). At the time Defendant resigned, she was ranked in the top 0.21%

[7] Plaintiff alleges this matter is core and consents to the entry of a final judgment. ECF No. 1 at ¶ 1, as amended by ECF No. 11. at ¶1. Prior to Plaintiff amending the Complaint, Defendant admitted in her answer that this proceeding is core and consented to entry of a final judgment by this Court. ECF No. 4 at ¶2. To the extent this Court cannot issue a final judgment, it nevertheless has the authority to make proposed findings of fact and conclusions of law to the district court pursuant to the Standing Order Concerning Title 11 Proceedings Referred Under Local Civil Rule 83.IX.01.

[8] *See* Plaintiff's Motion to Dismiss, ECF No. 12, at n. 1 filed Aug. 8, 2024.

[9] *See* Exhibit 2 to ECF No. 11 at ¶ 12.

of distributors and earned commissions of $572,575.98. Defendant achieved this ranking in part due to her social media presence, which featured an online boutique and other content creation generating more than 63,000 followers on Facebook. As a result of Defendant's resignation, the relationship between the parties severed. On December 22, 2022, Plaintiff initiated an arbitration proceeding seeking injunctive relief and damages, alleging, *inter alia*, Defendant's breach of the Distributor Agreement, tortious interference with business relationships, and misappropriation of trade secrets under the Florida Uniform Trade Secrets Act ("FUTSA").

The arbitrator entered an Interim Arbitral Award on December 11, 2023 (the "Interim Award")[10] finding Defendant liable under all counts, imposing damages of $311,652.00, temporarily enjoining her from any further solicitation of Claimant's distributors and customers, and permanently enjoining her from using or disclosing Plaintiff's confidential information.

Defendant was found liable for breach of contract and tortious interference for enrolling nearly two hundred of Plaintiff's distributors in her new downline with QSciences in direct violation of the Distributor Agreement. The arbitrator determined that Defendant's actions in that regard were "knowing and willful."[11]

Defendant was also found liable for misappropriation of trade secrets and violation of the confidentiality obligations in the Distributor Agreement. The arbitrator found that Defendant downloaded and retained a confidential report which contained proprietary information for 18,000 of Plaintiff's distributors and customers. The Interim Award notes that following Defendant's resignation, Plaintiff demanded return of the report, but Defendant failed to respond to the request and instead sought legal cover with QSciences, which agreed to pay a portion of Defendant's attorney's fees in case of a legal dispute with Plaintiff.

[10] Exhibit 2 to ECF No. 1.
[11] *Id.* at Page 10.

The arbitrator awarded Plaintiff damages of $311,652.00 for two years lost profits resulting from 161 lost distributors who enrolled in Defendant's new downline with QSciences. The arbitrator reserved ruling on attorney's fees and costs, holding:

> Claimant may file an application for fees and costs, together with supporting evidence and argument, within twenty (20) days of the Interim Award. . . .Hearing on the issue of fees and costs may be held in the discretion of the Arbitrator. The Arbitrator will issue a Final Award that will embody the contents of this Interim Award, which provides for injunctive relief, an award of damages, and the Arbitrator's further determinations as to fees and costs. It is not intended that this Interim Award be subject to review, either pursuant to 9 U.S.C. §§ 9-10 or the Florida Arbitration Code.

In a footnote, the arbitrator further noted:

> Claimant may also be entitled to attorneys' fees and costs for Respondent's breach of her Agreement and willful misappropriation of trade secrets. See Fla. Stat. § 542.335 (authorizing fee awards for enforcing a restrictive covenant); Fla Stat. § 688.005 (authorizing fee awards for "willful and malicious misappropriation" of trade secrets).[12]

B. Bankruptcy Filing

Shortly after the arbitrator issued the Interim Award, on January 22, 2024, Defendant filed her Chapter 7 bankruptcy case. In the Chapter 7 schedules and statements, Defendant listed It Works Marketing, Inc. as an unsecured debt on Schedule F in the amount of $816,275.00, which was the total of the damages awarded ($311,652.00), attorney's fees ($414,548.61), costs ($75,566.48), and prejudgment interest ($14,509.84).[13] The deadline to file an objection to discharge was originally set for April 26, 2024. On March 28, 2024, the Court entered a Consent Order Extending the Time to File a Complaint Objecting to the Dischargeability of a Debt Under 11 U.S.C. § 523, wherein the parties agreed to extend the deadline to May 28, 2024.[14] The chapter

[12] Exhibit 2 to ECF No. 11 at n.1.
[13] The total of these figures is $816,276.93 but the amount shown on Schedule F is $816,275.00.
[14] ECF Nos. 12 and 13 of Case No. 24-00219-JD.

7 trustee filed a report of no distribution on April 9, 2024.[15]

On April 2, 2024, Plaintiff filed a Motion for Relief from Stay under 11 U.S.C. § 362(d)(1) to allow the arbitrator to issue the "Final Arbitral Award" and for Plaintiff to submit the Final Award to the United States District Court for the Middle District of Florida for confirmation.[16] Defendant responded, and the parties resolved the matter through a Consent Order Granting Motion for Relief from Automatic Stay entered April 26, 2024.[17] The Consent Order provides, in pertinent part:

> Debtor does not object to the Arbitration proceeding for the purpose of establishing the monetary amount of Movant's claim. Debtor's position is that determinations as to dischargeability, including determinations as to whether Movant's damages were the result of willful or malicious injury by Debtor, are properly brought before this Court by way of a nondischargeability proceeding under 11 U.S.C. § 523. *Movant agrees and stipulates that any determinations as to the effect of any arbitration award(s) or nondischargeability issues shall be decided by this Court by separate order.* Further, the parties and this Court agree that by granting Movant relief from the automatic stay, as set out below, the Court is not making any determinations at this time as to the nature of Debtor's conduct or the injuries Movant alleges it sustained (emphasis added).

C. Final Arbitral Award

The arbitrator entered the "Final Arbitral Award" on July 16, 2024 (the "Final Award").[18] The Final Award mirrors the Interim Award in all respects except that it additionally found Plaintiff was entitled to attorney's fees and costs. The fees were awarded pursuant to the Distributor Agreement and under Fla. Stat. 542.335, which authorizes fee awards for enforcing a restrictive covenant.[19] Based upon the parties' submissions, the arbitrator exercised his discretion

[15] ECF No. 16 of Case No. 24-00219-JD.
[16] ECF No. 15 of Case No. 24-00219-JD.
[17] ECF No. 21 of Case No. 24-00219-JD.
[18] Exhibit 3 to ECF No. 11.
[19] Fla. Stat. Ann. § 542.335 provides, in pertinent part:

> (k) In the absence of a contractual provision authorizing an award of attorney's fees and costs to the prevailing party, a court may award attorney's fees and costs to the prevailing party in any action seeking enforcement of, or challenging the enforceability of, a restrictive covenant. A court shall not enforce any contractual provision limiting the court's authority under this section.

and awarded attorney's fees in the amount of $310,000.00 and costs in the amount of $75,566.48.

D. Adversary Proceeding

Plaintiff timely filed the Complaint seeking the Court's determination that the Final Award due from Defendant is nondischargeable pursuant to 11 U.S.C. § 523(a)(6). The Complaint recites the findings of the Interim and Final Awards and alleges that Defendant's actions amount to a "willful and malicious injury" to Plaintiff, such that the debt owed to Plaintiff should not be discharged pursuant to 11 U.S.C. § 523(a)(6). Specifically, the Complaint alleges that Defendant knowingly and intentionally downloaded Plaintiff's proprietary reports to her phone and used it to access Plaintiff's confidential records, including contact information, sales information, and distributor ranks for 18,000 of Plaintiff's distributors. As set forth in the Complaint, Defendant then used the report to recruit Plaintiff's successful distributors to join her in working for a competitor. Plaintiff further alleges that Defendant used her vast social media presence to spread false and defamatory information about Plaintiff, including inferring that her time at Plaintiff was exhausting and that Plaintiff's distributors were stagnant, burnt out, and burdened by activities not required to be performed by its competitors.[20] As a result of Defendant's actions, Plaintiff alleges it suffered damages. Plaintiff also appears to argue the Final Award should have collateral estoppel effect on this proceeding.[21]

In the Motion to Dismiss, Defendant argues that the Complaint contains no plausible claim that the debt owed to Plaintiff was for a willful and malicious injury and/or that Defendant's intent was to harm Plaintiff. Under the heading "Misappropriation of Trade Secrets", Defendant relies

[20] *See* ¶ 36 of ECF No. 11.
[21] *See* ¶ 80 of ECF No. 11, which states "It Works and Debtor have already litigated the issues that are before this Court. Arbitral awards, like judgments, have collateral estoppel effect. Debtor had full and fair opportunity in the arbitration to assert counterclaims arising out of the transaction or occurrence that is the subject matter of It Works' claims (i.e., the contractual relationship between the parties, Debtor's acts in breaching the contract's terms, and post-resignation acts). Debtor does not get to relitigate this again."

on the arbitrator's award of attorney's fees and costs under Fla. Stat. § 542.335[22] (authorizing fee awards for enforcing a restrictive covenant) as opposed to Fla. Stat. § 688.005[23] (authorizing fee awards for "willful and malicious misappropriation" of trade secrets) and argues this selection amounts to a finding of no willful or malicious intent to injure. But under the heading "Collateral Estoppel/Breach of Contract Claims," Defendant argues that collateral estoppel does not prevent the relitigation of this issue, as the arbitrator did not undertake the analysis required under 11 U.S.C. § 523(a)(6) in its Interim or Final Award. She also requests that the Court treat the Motion to Dismiss as a Motion for Summary Judgment to the extent the Court needs to rely upon information outside of the Complaint.

Plaintiff's Objection to the Motion to Dismiss reiterates the specific actions leading up to the arbitrator's Interim and Final Awards, asserts that the Complaint is well-pled, and argues that Plaintiff would be entitled to relief under 11 U.S.C.§ 523(a)(6) based upon the facts presented. Plaintiff also addresses the collateral estoppel issue, seemingly agreeing that the issue of "willful and malicious" action was not reached or decided by the arbitrator, as it was not necessary to the ruling.[24] Plaintiff asserts that even if the arbitrator awarded attorney fees under the "willful and malicious" provision, it would not deprive this Court of its jurisdiction to determine questions of dischargeability.[25]

In Defendant's Reply to Plaintiff's Objection to the Motion to Dismiss, Defendant again asserts that Plaintiff has failed to show evidence of Defendant's intent to harm Plaintiff. Defendant further argues that the elements of 11 U.S.C. § 523(a)(6) have not been fully and fairly adjudicated

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[22] *See* n. 19.

[23] Fla. Stat. Ann. § 688.005 provides:

> If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.

[24] *See* ECF No. 21 at Page 13.

[25] *Id.* at Pages 13-14.

within the pre-bankruptcy arbitration process, and therefore should not be relied on by Plaintiff to argue that the Interim and Final Award have preclusive effect.

CONCLUSIONS OF LAW

I. Standard of Review

A motion filed under Federal Rule of Civil Procedure 12(b)(6) challenges the legal sufficiency of the complaint and provides that a party may move to dismiss for "failure to state a claim upon which relief can be granted."[26] The legal sufficiency of Plaintiff's Complaint is measured by whether it meets the standards for a pleading set forth in Rule 8,[27] which provides the general rules of pleading, and Rule 12(b)(6), which requires a complaint to state a claim upon which relief can be granted. *Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009). Rule 8 provides that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). A complaint meets the plausibility standard when it "articulate[s] facts, when accepted as true, that 'show' that the plaintiff has stated a claim entitling him to relief, *i.e.*, the 'plausibility of entitlement to relief.'" *Giacomelli*, 588 F.3d at 193 (quoting *Iqbal*, 556 U.S. at 678). The pleader must provide more than mere "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations omitted). In reviewing a complaint for failure to state a claim, a court must construe the allegations in the light most favorable to the plaintiff. *See E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011) (citations and

[26] Fed. R. Civ. P. 12(b)-(i) is made applicable to adversary proceedings by Fed. R. Bankr. P. 7012(b).
[27] Fed. R. Civ. P. 8 is made applicable to adversary proceedings by Fed. R. Bankr. P. 7008.

internal quotations omitted); *see also Nemet Chevrolet, Ltd. V. Consumeraffairs.com, Inc.*, 591 F.3d 250, 253 (4th Cir. 2009). Moreover, the court "must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

II. Elements of Cause of Action under 11 U.S.C. § 523(a)(6)

After careful review of the allegations of the Complaint and arguments in the pleadings, the Court finds that the factual allegations contained in the Complaint and the reasonable inferences drawn therefrom in favor of Plaintiff are adequate to defeat Defendant's Motion under the standards of Rule 12(b)(6).

11 U.S.C. § 523(a)(6) excepts from discharge debts resulting from a "willful and malicious injury by the debtor to another entity or to the property of another entity." "This requires not only that the debtor's act was intentional, but that the debtor engaged in the conduct with the 'intent to injure.'" *Haynsworth Sinkler Boyd v. Holmes (In re Holmes)*, 610 B.R. 541, 548 (Bankr. D.S.C. Jan. 7, 2020) (quoting *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998)).

> The Supreme Court and this court have decided that a debt arising from an injury attributable to mere negligent or reckless conduct does not satisfy the "willful and malicious requirement of (a)(6); in addition, it is not enough that the conduct underlying the injury was intentional. Rather, the debtor must have engaged in such conduct with the actual intent to cause injury.

Id. (quoting *TKC Aerospace, Inc. v. Muhs (In re Muhs)*, 923 F.3d 377, 385 (4th Cir. 2019), *cert. denied sub nom. TKS Aerospace Inc. v. Muhs*, 140 S. Ct. 607, 205 L. Ed. 2d 387 (2019) (citations omitted).

Injury, while not defined by the Bankruptcy Code, is generally understood to mean a "violation of another's legal right, for which the law provides a remedy." *In re Johnston*, 362 B.R.

730 (Bankr. W.D.Va. 2007) (quoting BLACK'S LAW DICTIONARY 801 (8th ed. 2004)). Plaintiff alleges it sustained lost profits over a three-year period due to the loss of distributors, caused by Defendant's actions.[28] Although harder to quantify, Plaintiff alleges injury to reputation through Defendant's comments on social media and in direct conversations, wherein Defendant described Plaintiff's distributors as overburdened and questioned the ongoing viability of the company. Moreover, Plaintiff has an actual award for an injury from the arbitration process.

Having adequately pled injury, Plaintiff must also allege facts that support a claim of a willful intent by Defendant to cause the injury to Plaintiff. In analyzing the standard on willfulness, the Supreme Court held that "nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional act that leads to injury." *Kawaauhau*, 523 U.S. at 61. Acts that are negligent, grossly negligent, or reckless do not necessarily satisfy the requirements of § 523(a)(6). *In re Duncan*, 448 F.3d 725, 729 (4th Cir. 2006). While this matter involves a breach of contract, among other alleged wrongs, a "[s]imple breach of contract…, even if intentional, would not give rise to a Section 523(a)(6) violation." *Tri-State Surgical Supply v. McKinnon (In re McKinnon*, 653 B.R. 821, 832 (Bankr. D.S.C. 2003) (*quoting Ocean Equity Grp, Inc. v. Wooten (In re Wooten),* 423 B.R. 108, 130 (Bankr. E.D.Va. 2010).

Construed in the light most favorable to Plaintiff, the Complaint has sufficiently pled an intent to injure by alleging specific actions that Defendant took with intent to cause harm to Plaintiff. Specifically, Plaintiff alleges Defendant knowingly downloaded a confidential report, exported it to her phone, and used the data to recruit other distributors to work for a competitor. Plaintiff further details how Defendant intended to injure it by moving to a competitor and making false and defamatory comments regarding Plaintiff in her social media posts. The allegations,

[28] ECF No. 11 at ¶ 24.

taken as true, are more than conclusory statements or recitations of the elements of a cause of action that would justify dismissal. *Suter v. Smith (In re Smith)*, C/A 19-3914-HB, Adv. Pro. 20-80004-HB (Bankr. D.S.C. Apr. 17, 2020) (Dismissing a complaint for lack of factual allegations supporting a nondischargeability action.). Plaintiff has pled specific instances of willful acts committed by Defendant and adequately alleged that Defendant took these acts to harm Plaintiff. The allegations of the Complaint indicate more than a mere breach of contract occurred, as Plaintiff has already been awarded damages for tortious interference and misappropriation of trade secrets.

Finally, the Complaint must allege facts indicating that Defendant acted with malice. Within the context of § 523(a)(6), a malicious act is one that is wrongful and done without just cause or that is excessive, even in the absence of personal hatred, spite, or ill will. *Twin City Fire Ins. Co. v. Estrin, (In re Estrin),* No. 14-04795, Adv. Pro. No. 15-80039, 2016 WL 691506, *15 (Bankr. D.S.C. Feb. 19, 2016). A debtor's state of mind is irrelevant, and malice can be inferred through the debtor's acts and conduct in the context of surrounding circumstances. *Id.* (citations omitted). The Complaint alleges several malicious acts, including Defendant retaining a confidential distributor list and syphoning off Plaintiff's distributors and customers.[29] Plaintiff has sufficiently pled that Defendant acted with malice.

III. Collateral Estoppel

The parties both raise collateral estoppel in their pleadings. It is unclear whether Defendant relies on collateral estoppel as a sword, to have the issues in this adversary proceeding dismissed because they were decided by the arbitrator, or as a shield, to defend against Plaintiff's statement in the Complaint and assert that the arbitrator's award is not tantamount to a finding under § 523(a)(6). Regardless, the Court finds that collateral estoppel does not apply to fully resolve the

[29] Including but not limited to Paragraphs 57-68, 85 of the Amended Complaint. ECF No. 11.

issue presently before the Court.

"[I]f a res judicata or collateral estoppel defense is established on the face of [a] complaint, it is a proper ground for dismissal" under Rule 12(b)(6). *Oyekwe v. Rsch. Now Grp., Inc.*, 542 F. Supp. 3d 496, 506 (N.D. Tex. 2021) (quoting *Rolls-Royce Corp v. Heros, Inc.*, 576 F. Supp. 2d 765, 774 (N.D. Tex. 2008)), *Brockington v. Boykins*, 637 F.3d 503, 506 (4th Cir. 2011). The arbitration matter was resolved under Florida law, so the Court relies on the same to evaluate collateral estoppel. *In re Muhs*, 923 F.3d 377, 385 (4th Cir. 2019) To collaterally estop Plaintiff, Defendant must show (1) the issue at stake must be identical to the one decided in the prior litigation; (2) the issue must have been actually litigated in the prior proceeding; (3) the prior determination of the issue must have been a critical and necessary part of the judgment in that earlier decision; and (4) the standard of proof in the prior action must have been at least as stringent as the standard of proof in the latter case. *St. Laurent v. Ambrose (In re St. Laurent)*, 991 F.2d 672, 676 (11th Cir. 1993) (decided under Florida law; citations omitted).[30]

As detailed above, the § 523(a)(6) analysis requires a finding that Defendant intended to injure Plaintiff. As such, the first element of collateral estoppel fails, and the issue will not be precluded, if the arbitrator did not make a specific finding as to Defendant's intent to injure Plaintiff. In this case, Defendant's intent was not actually determined, and the issue will not be collaterally estopped. *Muhs*, 923 F.3d at 385 (finding that even where state court analyzed and awarded attorney's fees under statute for "wilful [sic] and malicious" acts, the analysis was not sufficient to collaterally estop action under § 523(a)(6) given the requirement to prove not just a willful and malicious act, but rather a willful and malicious intent to injure); *see also In re Holmes*, 610 B.R. 541, 548 (Bankr. D.S.C. Jan. 7, 2020) (where the state court judgment made a specific

[30] To determine the preclusion principles appliable to an arbitration award, bankruptcy courts look to the laws of the state where the award was entered. *Matthews v. Nealon (In re Nealon)*, 532 B.R. 412, 419 (Bankr. D.Mass. 2015).

finding that Debtor had no intent to injure Plaintiff, and the Complaint was dismissed).

Here, Plaintiff cites the arbitration award and attaches the Interim Award and Final Award to the Complaint.[31] The awards referenced in the four corners of the Complaint, as amended, do not specifically make findings about Defendant's intent or lack thereof. The arbitrator issued an award for damages related to Defendant's breach of contract, tortious interference, and misappropriation of trade secrets and enjoined Defendant from violating her agreement with Plaintiff. The issue of intent does not appear to have entered the equation of the arbitrator's decision. *M & M Transmissions, Inc. v. Raynor (In re Raynor),* 922 F.2d 1146, 1148 (4th Cir.1991) (finding, in the context of a dischargeability action, the issues must have been actually litigated and determined for collateral estoppel to apply); *Norrell Health Care, Inc. v. Clayton (In re Clayton),* 168 B.R. 700, 707 (Bankr. N.D.Ca. 1994) (holding that the non-moving party would not be collaterally estopped where an arbitration did not lay out specific factual and legal determinations on an issue). Additionally, the Court recognizes the language of the Consent Order Granting Motion for Relief from Automatic Stay may have limited the arbitrator's consideration of the issues awarding of attorney's fees under Fla. Stat. § 542.335 (authorizing fee awards for enforcing a restrictive covenant) versus Fla. Stat. § 688.005 (authorizing fee awards for "willful and malicious misappropriation" of trade secrets).

Accordingly, to the extent the parties argue collateral estoppel should either preclude Plaintiff from pursuing this action, or preclude Defendant from defending the action, the Court finds that it does not apply. The Court further finds insufficient evidence showing the arbitrator made a finding as to Defendant's actual intent to injure or that a finding of any such intent was

[31] The court need not determine whether these attachments should be considered as a "written instrument" and thus part of the Complaint under Fed. R. Civ. P. 10(c) for purposes of a motion under Rule 12(b)(6) or whether the attachments should be considered as part of Defendant's alternative request under Rule 56 because the result is the same.

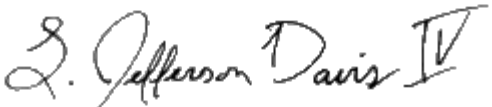
necessary in making the award. *Duncan*, 448 F.3d at 729-730 (holding a debtor was not estopped from defending an action under § 523(a)(6) because the state court judgment did not resolve whether the debtor acted with intent to injure). In this case, Plaintiff must prove that Defendant did more than commit a willful act that caused injury, but must show Defendant intended the consequences of the act. *Kawaauhau*, 523 U.S. at 61. The Final Award does not make that finding but Plaintiff may have an opportunity to prove it at trial.[32]

CONCLUSION

After careful review of the allegations of the Complaint and arguments in the briefs, the Court finds that the factual allegations contained in the Complaint and the reasonable inferences drawn therefore in favor of Plaintiff are adequate to defeat Defendant's Motion under the standards of Fed. R. Civ. P. 12(b)(6).

IT IS SO ORDERED.

FILED BY THE COURT
10/24/2024



US Bankruptcy Judge
District of South Carolina

Entered: 10/24/2024

[32] By footnote, Defendant requested that the Court construe her motion as one for summary judgment to the extent matters outside of the Amended Complaint were considered. At this juncture, summary judgment would also be denied. Defendant's reply in support of her motion attaches her affidavit from arbitration, a social media post, and various text messages. These attachments put at issue Defendant's state of mind and weigh against granting summary judgment. Whether Defendant intended to injure Plaintiff is material to the outcome of this case. At the summary judgment stage, it is not the role of the court to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). All justifiable inferences must be drawn in favor of the non-moving party. *Id.* At 255. Because a "debtor's state of mind is nearly impossible to obtain, the creditor may present evidence of the surrounding circumstances from which intent may be inferred." *In re Davis*, 494 B.R. 842, 868 (Bankr. D.S.C. 2013) (citations omitted). Reasonable inferences could be drawn as to Defendant's state of mind and intent to injure from the Final Arbitration Award, which contrasts with the attachments Defendant filed in support of her motion.