UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

In re,

Mark Stanley Saville and Joanne Evelyn Saville,

Debtor(s).

PTOA, Inc.,

Plaintiff(s),

v.

Mark Stanley Saville,

Defendant(s).

C/A No. 08-07873-JW

Adv. Pro. No. 09-80028-JW

Chapter 11

JUDGMENT

Based on the Findings of Fact and Conclusions of Law set forth in the attached Order of the Court, the Plaintiff's Motion for Summary Judgment is denied.

John E. Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
7/28, 2009

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

In re, Mark Stanley Saville and Joanne Evelyn Saville, Debtor(s).	C/A No. 08-07873-JW Adv. Pro. No. 09-80028-JW Chapter 11 **ORDER**
PTOA, Inc., Plaintiff(s), v. Mark Stanley Saville, Defendant(s).	

THIS MATTER comes before the Court upon the Motion for Summary Judgment filed by PTOA, Inc. ("Plaintiff"). Mark Stanley Saville ("Debtor") timely filed an Objection to the Motion. This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and this is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Pursuant to Fed. R. Civ. P. 52, which is made applicable to this proceeding by Fed. R. Bankr. P. 7052, the Court makes the following Findings of Fact and Conclusions of Law.[1]

FINDINGS OF FACT

In 2006, Judge George C. Paine, II of the United States Bankruptcy Court for the Middle District of Tennessee issued an order ("Contempt Order") finding Debtor in

[1] To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such; and to the extent any of the Conclusions of Law constitute Findings of Fact, they are so adopted.

contempt of a previously issued injunction order ("Injunction").[2] The Contempt Order awarded damages to Protec International Limited ("PIL") in the amount of $85,000 for Debtor's violations of the Injunction. PIL subsequently assigned its right to collect the damages awarded by the Contempt Order to Plaintiff. The Contempt Order was domesticated in South Carolina on December 1, 2008. On December 5, 2008, Debtor filed the present bankruptcy proceeding. On March 3, 2009, Plaintiff filed this adversary proceeding requesting that the Contempt Order be declared non-dischargeable pursuant to 11 U.S.C. § 523(a)(6). On July 10, 2009, Plaintiff filed the Motion for Summary Judgment.

CONCLUSIONS OF LAW

Summary judgment shall be granted "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). When a motion for summary judgment is filed, the Court does not weigh the evidence but determines if there is a genuine issue for trial. Listak v. Centennial Life Insurance Company, 977 F.Supp. 739, 743 (D.S.C. 1997) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 2510, 91 L.ED. 2d 202 (1986)). The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. Bouchat v. Baltimore Ravens Football Club, 346 F.3d 514, 522 (4th Cir. 2003), cert. denied, 541 U.S. 1042 (2004). Once a moving party has made an initial showing that there is no genuine issue of material fact, the burden then shifts to the non-moving party to go beyond the pleadings and set forth affidavits,

[2] The Injunction enjoined and restrained Debtor, among others, from using, infringing or secreting the PROTEC trademark name and logo or in any way interfering with Protec International Limited's ("PIL") business or the business of its distributors or customers. PIL is in the business of manufacturing, marketing, selling and distributing automotive products throughout the world under the name "PROTEC."

depositions, answers to interrogatories or admissions to show specific facts indicating a genuine issue for trial. T 2 Green, LLC v. Abercrombie (In re T 2 Green, LLC), 363 B.R. 753, 763 (Bankr. D.S.C. 2006). In a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party. Anderson, 477 U.S. at 242. "Summary judgment will not lie if the dispute about a fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. at 248.

In a dischargeability proceeding, the creditor bears the burden of proof and must prove his case by the preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291, 111 S.Ct. 654, 112 L.E.2d 755 (1991). Plaintiff contends that it is entitled to judgment as a matter of law because the Debtor's violation of a court order resulting in an order of contempt, by its very nature, satisfies the "willful and malicious" requirement of 11 U.S.C. § 523(a)(6).[3] In support of this contention, Plaintiff cites In re Williams, in which the Fifth Circuit held that a debt arising from a contempt order was non-dischargeable under § 523(a)(6). 337 F.3d 504 (5th Cir. 2003).[4] The Fifth Circuit stated that "[c]ontempt *may* be characterized as an act resulting in intentional injury," and concluded that the debt arising from the debtor's defiance of a court order was non-dischargeable. Id. at 511 (emphasis

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[3] Section 523(a)(6) provides that an individual debtor will not be discharged from any debt "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). Further references to the Bankruptcy Code shall be by section number only.

[4] The Williams case cites PRP Wine Int'l v. Allison (In re Allison), 176 B.R. 60 (Bankr. S.D. Fla 1994), in support of the proposition that the failure to comply with a court order constitutes willful and malicious conduct as a matter of law; however, other courts have declined to adopt this *per se* rule and have instead examined whether the contempt order established that the debtor's failure to comply with a court order constituted "willful and malicious" conduct to determine whether the debt arising from the contempt order should be non-dischargeable. See In re Suarez, 400 B.R. 732, 737 (9th Cir. BAP 2009)(finding that a debt for contempt sanctions may be non-dischargeable when conduct leading to the contempt order is willful and malicious); Siemer v. Nangle (In re Nangle), 274 F.3d 481 (8th Cir. 2001)("The key question... is whether the contempt order established that [the debtor's] failure comply with a court order constituted 'willful and malicious' conduct.") This Court believes this the better reasoned approach.

added). Notably, the court issuing the contempt order had made specific findings that the debtor had purposefully and willfully violated its order.[5]

Plaintiff also cites additional cases for the general proposition that the violation of a court order constitutes willful and malicious injury; however, in each of the cited cases, a specific finding was made relating to the determination of whether the injury was "willful and malicious" under § 523(a)(6). See Siemer v. Nangle, 274 F.3d 481, 484-85 (8th Cir. 2001) (finding a general jury verdict, which included punitive damages and a civil contempt sanction based on a "willful" violation of a Court order, was non-dischargeable under § 523(a)(6)); In re Rosenberg, C/A No. 05-23111, Adv. Pro. 05-1587, 2007 WL 2156282 (Bankr. N.D. Ohio 2007) (finding a contempt sanction based on a willful and clear violation of the court's order, which resulted in irreparable injury, to be non-dischargeable under § 523(a)(6)); Heyne v. Heyne, 277 B.R. 364, 366-67, 369 (Bankr. N.D. Ohio 2002) (finding a contempt fine for the deliberate and intentional violation of an order, which constituted the tort of conversion, to be non-dischargeable under § 523(a)(6)).

The Contempt Order at issue does not include specific findings of willfulness or maliciousness. In the Contempt Order, Judge Paine found Debtor unquestionably and clearly violated his prior order; however, Judge Paine did not make a finding that Debtor's intent was either "willful" or "malicious" or the equivalent thereof. PROTEC Int'l Ltd. v. PRO-TEC USA, Inc. (In re Pro-Tec USA, Inc.), C/A No. 300-04532, Adv. Pro. 300-0356A, slip op. at 11, 14 (Bankr. M.D. Tenn. April 11, 2006). While Judge Paine found the other

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[5] Moreover, in support of its conclusion that a contempt judgment is immune from discharge under § 523(a)(6), the Fifth Circuit cites Buffalo Gyn Womenservices, Inc. v. Behn (In re Behn), 242 B.R. 229, 233, 238 (W.D.N.Y. 1999), which concerned a distinct issue and facts from those currently before the Court: whether a debt arising from a contempt proceeding for a debtor's intentional and repeated violations of a temporary restraining order that was designed to prevent protestors from physically blockading and "physically abusing or tortiously harassing anyone entering or leaving" an abortion clinic was nondischargeable under § 523(a)(6).

contemnors' violations to have been "egregious" and "flagrant," he made no such findings regarding Debtor. Id. at 12. Judge Paine concluded that "regardless of intent," the Debtor had violated the Court's Order. Id. at 10. Since the issue of willfulness and maliciousness was left undetermined by the Contempt Order, this Court cannot find as a matter of law that Debtor's actions, which resulted in Debtor being held in civil contempt and responsible for civil contempt sanctions, were "willful and malicious" for purposes of § 523(a)(6).[6]

CONCLUSION

Based upon the foregoing, the Plaintiff's Motion for Summary Judgment is denied.

AND IT IS SO ORDERED.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
July 28, 2009

[6] In light of these findings, the Court finds it unnecessary to further address Plaintiff's collateral estoppel argument at this time.