UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: EDDIE G. AND GINGER DOBBINS CASE NO. 99-11061

NORWEST FINANCIAL PLAINTIFF

VERSUS ADV. PROC. NO. 99-1125

GINGER M. DOBBINS DEFENDANT

OPINION

This proceeding comes before the court on the motion for summary judgment filed by the plaintiff, Norwest Financial (hereinafter "Norwest"); and the court, having considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and the parties to this adversary proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(J).

II.

On or about July 6, 1999, Norwest's counsel caused to be served upon the attorney representing the debtor, Ginger M. Dobbins (hereinafter "Dobbins" or "defendant"), Norwest's first set of requests for admission. No responses to the requests for admission were filed by or on behalf of Dobbins; so, therefore, the following facts are deemed conclusively established pursuant to Rule 36 of

the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7036 of the Federal Rules of Bankruptcy Procedure:

1. Dobbins granted Norwest Financial a security interest in a motor vehicle described more particularly as a 1984 Lincoln VIN 1MRBP97F2EY714110 and various personal property.

2. Dobbins obtained a loan or other credit from Norwest Financial on April 8, 1998 in the total amount of $3,685.50.

3. Norwest Financial perfected its lien on the aforesaid property in accordance with the laws of the State of Mississippi.

4. Dobbins filed her bankruptcy petition on March 9, 1999.

5. Dobbins did not reaffirm the debt, redeem for value the collateral securing the indebtedness or abandon the collateral to the lien holder.

6. Dobbins admitted that she was required to take one of the three alternative actions outlined in the preceding paragraph no. 5.

7. Dobbins admitted that the debt to Norwest Financial is excepted from discharge pursuant to 11 U.S.C. §523.

8. Dobbins admitted that she sold the 1984 Lincoln pre-petition without the consent of Norwest.

9. Dobbins received valuable consideration from the sale of the 1984 Lincoln.

10. Dobbins paid no part of any proceeds from the sale of the 1984 Lincoln to Norwest.

11. The sale of the 1984 Lincoln constitutes actual fraud within the meaning of 11 U.S.C. §523.

12. The debt to Norwest Financial is non-dischargeable pursuant to 11 U.S.C. §523.

III.

In the complaint, Norwest seeks a non-dischargeable judgment against Dobbins in the sum of $2,665.34, based on the "willful and malicious injury" provisions of §523(a)(6). A willful and malicious injury includes a willful and malicious "conversion." 3 Collier on Bankruptcy ¶523.12[1] (15th ed. rev. 1999) (citing 124 Cong. Rec. H11,095-6 (daily ed. Sept. 28, 1978); S17,412-13 (daily ed. Oct. 6, 1978)). See also, In re Horowitz, 103 B.R. 786, 790 (Bankr. N.D. Miss. 1989), In re Hendry, 77 B.R. 85, 90 (Bankr. S.D. Miss. 1987).

The facts, deemed admitted in this action, provide that Norwest had a duly perfected lien on the 1984 Lincoln, that the debtor sold the 1984 Lincoln pre-petition without the consent of Norwest, and that she failed to pay any of the proceeds from the sale of the automobile to Norwest. As such, the admissions have established that the sale of the 1984 Lincoln by Dobbins constituted actual fraud through unlawful conversion within the meaning of 11 U.S.C. §523(a)(2)(A).

The admissions also established that Dobbins either converted the collateral with an intent to injure or with the knowledge that an injury was substantially certain to result, thereby causing the debt to be non-dischargeable pursuant to the dictates of §523(a)(6). See, Kawaauhau v. Geiger, 523 U.S. 57, 140 L.Ed.2d 90, 118 S.Ct. 974 (1998).

IV.

Summary judgment is properly granted when pleadings, depositions, answers to interrogatories, and admissions on file, together with 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. Bankruptcy Rule 7056; Uniform Local Bankruptcy Rule 18. The court must examine each issue in a light most favorable to the nonmoving party. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202

(1986); Phillips v. OKC Corp., 812 F.2d 265 (5th Cir. 1987); Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). The moving party must demonstrate to the court the basis on which it believes that summary judgment is justified. The nonmoving party must then show that a genuine issue of material fact arises as to that issue. Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.29 265 (1986); Leonard v. Dixie Well Service & Supply, Inc., 828 F.2d 291 (5th Cir. 1987), Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). An issue is genuine if "there is sufficient evidence favoring the nonmoving party for a fact finder to find for that party." Phillips, 812 F.2d at 273. A fact is material if it would "affect the outcome of the lawsuit under the governing substantive law." Phillips, 812 F.2d at 272.

V.

Based on the foregoing analysis, the court finds that there are no genuine issues of material fact remaining in dispute in this adversary proceeding, and that Norwest Financial is entitled to a judgment as a matter of law.

This the 6th day of April, 2000.

/S/ David W. Houston, III
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE