UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: JAMES DANIEL EATON
KATHY REBECCA EATON — CASE NO. 05-11888

NORTH MISSISSIPPI MEDICAL CENTER — PLAINTIFF

VERSUS — ADV. PROC. NO. 05-1163

JAMES DANIEL EATON and
KATHY REBECCA EATON — DEFENDANTS

ORDER

On consideration before the court is a motion for summary judgment filed by the plaintiff, North Mississippi Medical Center, ("NMMC"); a response to said motion having been filed by the debtors/defendants, James Daniel Eaton and Kathy Rebecca Eaton; and the court, having considered same, hereby finds, orders, and adjudicates 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)(A), (I), and (O).

II.

On July 29, 2004, the defendant, Kathy Rebecca Eaton, executed for the benefit of NMMC a Consent for Treatment, Admission, and Release of Health Information Agreement. On January 26, 2005, she executed an identical agreement on behalf of the defendant, James Daniel Eaton. Pursuant to the terms of these agreements, both defendants effectively assigned to

NMMC "all rights, benefits, and interests under any insurance policy, health plan, workers compensation or other third party payor liable to [defendants], in consideration for services rendered by the hospital." The defendants also authorized direct payments to NMMC of any benefits payable by any applicable insurance policy or health plan for treatment rendered by NMMC.

Effective December 1, 2003, Blue Cross/Blue Shield of Mississippi ("Blue Cross"), an insurance provider, terminated its contract with NMMC. Payments made by Blue Cross for services rendered after December 1, 2003, were paid directly to the insured, and the insured was responsible to remit the payments to NMMC.

On July 29, 2004, NMMC provided Kathy Rebecca Eaton medical care and facilities totaling $1,603.00, and on January 26, 2005, NMMC provided James Daniel Eaton medical care and facilities totaling $1,615.00, a total amount of $3,218.00. NMMC has alleged that Blue Cross paid the Eatons $2,571.40, as reimbursement for the aforementioned claims. The Eatons admit that payments were made by Blue Cross for the aforesaid services through two checks, one in the amount of $1,292.00, which was deposited in their bank account on February 15, 2005, and the second in the sum of $1,282.40, which was deposited in their account on August 30, 2004. Both checks total $2,574.40. (The court notes that there is a $3.00 difference in the total amount paid to the Eatons from that alleged by NMMC.) Notwithstanding the pre-petition assignments of the insurance claim proceeds to NMMC, the Eatons acknowledge that they have not remitted any of the funds to the hospital.

While the Eatons have candidly admitted the aforementioned facts, they indicate in separate affidavits that when they received the insurance benefits from Blue Cross that they

believed the benefits to be their own and they deposited them into their joint checking account to pay necessary living expenses. They both asserted that the use of the insurance proceeds was not done with the intent to cause injury or harm to NMMC.

III.

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.

The court notes that it has the discretion to deny motions for summary judgment and allow parties to proceed to trial so that the record might be more fully developed for the trier of fact. Kunin v. Feofanov, 69 F.3d 59, 61 (5th Cir. 1995); Black v. J.I. Case Co., 22 F.3d 568, 572 (5th Cir. 1994); Veillon v. Exploration Services, Inc., 876 F.2d 1197, 1200 (5th Cir. 1989).

IV.

NMMC alleges in its complaint that the debts owed by defendants are non-dischargeable pursuant to 11 U.S.C. §523(a)(6) which provides that "a discharge under §727...of this title does not discharge an individual debtor from any debt for willful and malicious injury by the debtor to another entity or to the property of another entity."

In the case of Raspanti v. Keaty (Matter of Keaty), 397 F.3d 264 (5th Cir. 2005), Chief Judge Carolyn King discussed the Fifth Circuit standard for maintaining a cause of action under §523(a)(6) of the Bankruptcy Code, as follows:

> Section 523(a)(6) of the Bankruptcy Code excepts from discharge any debt incurred for willful and malicious injury by the debtor to another entity. 11 U.S.C. §523(a)(6)(2004). Section 523(a)(6) of the Bankruptcy Code specifically provides:
>
> > §523. Exceptions to discharge
> > (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt...
> > (6) for willful and malicious injury by the debtor to another entity or to the property of another entity....
>
> *Id.* The Supreme Court, in Kawaauhau v. Geiger, 523 U.S. 57, 61, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998), stated that "[t]he word 'willful' in (a)(6) modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury." The Fifth Circuit extended *Kawaauhau*'s reasoning in Miller v. J.D. Abrams, Inc. (In re Miller), 156 F.3d 598, 603 (5th Cir. 1998), and stated that "either objective substantial certainty [of injury] or subjective motive [to injure] meets the Supreme Court's definition of 'willful ... injury' in §523(a)(6)." The court in *Miller* went on to define the word "malicious" and specifically

> rejected that it meant an act without just cause or excuse. *Id.* at 605. Instead, the court defined "malicious" as an act done with the actual intent to cause injury. *Id.* at 606. The court noted that this definition is synonymous with the definition of "willful" and thus aggregated "willful and malicious" into a unitary concept. Thus, the court held that "an injury is 'willful and malicious' where there is either an objective substantial certainty of harm or a subjective motive to cause harm." *Id.* at 606; *see also* Williams v. IBEW Local 520 (In re Williams), 337 F.3d 504, 509 (5th Cir. 2003).

397 F.3d at 269-70.

This court has previously applied the objective substantial certainty of harm standard in the case of In re Smith, 302 B.R. 530 (Bankr. N.D. Miss. 2003), an adversary proceeding involving the debtor's wrongful conversion of annuity payments which had been pledged to a creditor.

As noted hereinabove, both defendants stated under oath in their affidavits that they had no intent to cause injury or harm to NMMC. At the present time, these statements are uncontradicted. As such, the affidavits create a genuine issue of material fact as to the defendants' intent to cause a willful and malicious injury to NMMC as contemplated by §523(a)(6). For this reason, NMMC is not entitled to judgment as a matter of law.

It Is, Therefore, Ordered and Adjudged that NMMC's motion for summary judgment is hereby overruled.

ORDERED and ADJUDGED this the 2nd day of May, 2006.

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