

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: MICHAEL R. ROSS

CASE NO. 05-18519

CATHY SUGGS

PLAINTIFF

VERSUS

ADV. PROC. NO. 06-1051

MICHAEL R. ROSS

DEFENDANT

ORDER

On consideration before the court is a motion for summary judgment filed by the defendant, Michael R. Ross (“debtor”); a response to said motion having been filed by the plaintiff, Cathy Suggs (“Suggs”); 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.

The debtor filed for bankruptcy relief on October 15, 2005, in the United States Bankruptcy Court for the Northern District of Mississippi. He listed Suggs as an unsecured creditor in his schedules. Suggs, appearing pro se, filed a letter with the court on January 26, 2006, which was treated by the clerk’s office as an adversary proceeding.

The debtor filed a motion for summary judgment on March 4, 2006. Suggs filed a response to said motion stating that the judgment she received against the debtor in the Desoto County Justice Court on March 1, 2004, in the amount of \$1,564.00, is non-dischargeable pursuant to 11 U.S.C. §523(a)(6). This judgment is predicated on an incident where the debtor's dogs attacked Suggs's show dog. In her response, Suggs asserts that the debtor was guilty of violating the City of Hernando's animal control ordinances on numerous occasions by failing to properly restrain his dogs which were knowingly dangerous.

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.2d 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.

As noted hereinabove, Suggs contends that the judgment debt owed by the debtor is 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’s 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, the plaintiff has raised allegations of numerous violations of the City of Hernando ordinances pertaining to animals. At the present time, these allegations are uncontradicted. As such, they create genuine issues of material fact as to the debtor's intent to cause a willful and malicious injury to Suggs' property as contemplated by §523(a)(6). For this reason, debtor is not entitled to judgment as a matter of law.

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

ORDERED and ADJUDGED this the 24th day of May, 2006.

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