United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re The Law Office of John P. Messina

Bankruptcy No. 99 B 29371

Adversary Caption: John Labatt Limited and American Citrus Products Corporation v. John Messina

Adversary No. 99 A 01573

Date of Issuance: March 27, 2000

Judge: John H. Squires

Appearance of Counsel:

Attorney for Plaintiff John Labatt Limited: Thomas D. Shakenshaft, McDermott, Will & Emery, 227 West Monroe Street, Chicago, IL 60606-5096

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Attorney for Defendant: Stuart D. Cohen, Esq., Cohen & Cohen, 4501 Fairfax Avenue, Palatine, IL 60067

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
	)	Chapter 11
THE LAW OFFICE OF	)	Bankruptcy No. 99 B 29371
JOHN P. MESSINA,	)	Judge John H. Squires
	)	
Debtor.	)	
	)	
JOHN LABATT LIMITED and	)	
AMERICAN CITRUS PRODUCTS	)	
CORPORATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adversary No. 99 A 01573
	)	
JOHN MESSINA,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

This matter comes before the Court on the cross motions of John Messina (the "Defendant") and John Labatt, Limited and American Citrus Products Corporation (collectively the "Plaintiffs") for summary judgment pursuant to Federal Rule of Bankruptcy Procedure 7056. For the reasons set forth herein, the Court denies the Defendant's motion, but grants the Plaintiffs' motion. The debt owed by the Defendant to the Plaintiffs is non-dischargeable under 11 U.S.C. § 523(a)(6).

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. It constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(I).

II. APPLICABLE STANDARDS

A. Summary Judgment

In order to prevail on a motion for summary judgment, the movant must meet the statutory criteria set forth in Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7056. Rule 56(c) reads in part:

> [T]he judgment sought shall be rendered forthwith 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 a judgment as a matter of law.

Fed. R. Civ. P. 56(c). See also Dugan v. Smerwick Sewerage Co., 142 F.3d 398, 402 (7th Cir. 1998). The primary purpose for granting a summary judgment motion is to avoid unnecessary trials when there is no genuine issue of material fact in dispute. Trautvetter v. Quick, 916 F.2d 1140, 1147 (7th Cir. 1990); Farries v. Stanadyne/Chicago Div., 832 F.2d 374, 378 (7th Cir. 1987) (quoting Wainwright Bank & Trust Co. v. Railroadmen's Federal Sav. & Loan Ass'n of Indianapolis, 806 F.2d 146, 149 (7th Cir. 1986)). Where the material facts are not in dispute, the sole issue is whether the moving party is entitled to a judgment as a matter of law. ANR Advance

Transp. Co. v. International Bhd. of Teamsters, Local 710, 153 F.3d 774, 777 (7th Cir. 1998). This latter point bears emphasis under the somewhat unusual facts and background of this matter.

All reasonable inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. Parkins v. Civil Constructors of Ill., Inc., 163 F.3d 1027, 1032 (7th Cir. 1998). The existence of a material factual dispute is sufficient only if the disputed fact is determinative of the outcome under applicable law. Anderson, 477 U.S. at 248; Frey v. Fraser Yachts, 29 F.3d 1153, 1156 (7th Cir. 1994). "Summary judgment is not an appropriate occasion for weighing the evidence; rather the inquiry is limited to determining if there is a genuine issue for trial." Lohorn v. Michal, 913 F.2d 327, 331 (7th Cir. 1990).

The parties have filed cross motions for summary judgment. Each motion must be ruled on independently and must be denied if there are genuine issues of material fact. ITT Indus. Credit Co. v. D.S. America, Inc., 674 F. Supp. 1330, 1331 (N.D. Ill. 1987). Cross motions for summary judgment do not require the Court to decide the case on those motions; the Court can deny the motions if both parties have failed to meet the burden of establishing any genuine issue of material fact exists and that they are entitled to judgment as a matter of law. Id.; Pettibone Corp. v. Ramirez (In re Pettibone Corp.), 90 B.R. 918, 922 (Bankr. N.D. Ill. 1988).

Local Rule 402.M of the Bankruptcy Rules adopted for the Northern District of Illinois requires the party moving for summary judgment to file a detailed statement ("402.M statement") of material facts that the movant believes are uncontested. Local Bankr. R. 402.M. Both parties

filed 402.M statements that substantially complied with the requirements of Rule 402.M. They contained numbered paragraphs setting out assertedly uncontested facts with specific reference to parts of the record. Additionally, the parties furnished other supporting materials relied upon.

The party opposing a summary judgment motion is required by Local Rule 402.N to respond ("402.N statement") to the movant's 402.M statement, paragraph by paragraph, and to set forth any material facts that would require denial of summary judgment, specifically referring to the record for support of each denial of fact. Local Bankr. R. 402.N. The parties filed the requisite 402.N statements and other supporting materials upon which they rely.

The Court notes that much of the Defendant's 402.M and 402.N statements relate to the inapposite factual underpinnings of his former client's claims asserted in the prior District Court litigation. Same will not be further discussed here as it is not relevant to the 11 U.S.C. § 523(a)(6) issues raised in this Court regarding the Plaintiffs' claims against the Defendant arising from his conduct in that litigation that led to the judgment entered against him there.

B. The Standards for Dischargeability in the Seventh Circuit

The party seeking to establish an exception to the discharge of a debt bears the burden of proof. Selfreliance Fed. Credit Union v. Harasymiw (In re Harasymiw), 895 F.2d 1170, 1172 (7th Cir. 1990); Banner Oil Co. v. Bryson (In re Bryson), 187 B.R. 939, 961 (Bankr. N.D. Ill. 1995). The United States Supreme Court has held that the burden of proof required to establish an exception to discharge is a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991); In re McFarland, 84 F.3d 943, 946 (7th Cir.), cert. denied, 519 U.S. 931 (1996); In re Thirtyacre, 36 F.3d 697, 700 (7th Cir. 1994). To further the policy of providing a debtor a

fresh start in bankruptcy, "exceptions to discharge are to be construed strictly against a creditor and liberally in favor of a debtor." Goldberg Secs., Inc. v. Scarlata (In re Scarlata), 979 F.2d 521, 524 (7th Cir. 1992) (quoting In re Zarzynski, 771 F.2d 304, 306 (7th Cir. 1985)). Accord In re Reines, 142 F.3d 970, 972-73 (7th Cir. 1998), cert. denied, 119 S. Ct. 797 (1999).

III. FACTS AND BACKGROUND

The following findings are drawn from the parties' Rule 402.M and 402.N statements. The Plaintiffs are corporations holding claims reduced to judgment against the Defendant. The Defendant is a practicing Illinois attorney. The parties were involved in substantial and protracted litigation which began over a decade ago in the United States District Court for the Northern District of Illinois. The Defendant was, at the beginning of that litigation, one of the attorneys for the party Grove Fresh Distributors, Inc. See Affidavit of Steven M. Kowal at ¶ 2. That case was settled and dismissed in April 1993. Id. at ¶ 3. In November 1993, the defendants in that case (who are the Plaintiffs here) petitioned the court for a finding of contempt and other sanctions, including violation of Federal Rule of Civil Procedure 11, against the Defendant because of his misconduct after the case had been settled. Id.

On February 3, 1995, a trial was held before the Honorable Judge James B. Zagel, wherein the Defendant testified in his own defense. Id. at ¶ 4. At the trial, the Defendant was represented by counsel. Id. at ¶ 5. On June 9, 1995, Judge Zagel issued a Memorandum Opinion and Order finding the Defendant in contempt of court for his violation of certain court orders, and found that he violated Rule 11. For his acts of civil contempt and violation of Rule 11, Judge Zagel

ordered the Defendant to compensate the Plaintiffs for the damage they suffered as a result of his contemptuous conduct (the "Contempt Order"). Id. at ¶ 6 and Exhibit No. 1 thereto; Grove Fresh Distribs., Inc. v. John Labatt, Ltd., 888 F. Supp. 1427 (N.D. Ill. 1995), aff'd, 134 F.3d 374 (7th Cir. 1998), cert. denied, 119 S. Ct. 180 (1998).

The Contempt Order found the Defendant in contempt for his actions in several instances and expressly found that the Defendant had willfully and intentionally violated court orders without justification for the purpose of harming the Plaintiffs. Id. at ¶ 7 and Exhibit No. 1 thereto. Judge Zagel concluded that the Defendant's actions were a "shamelessly willful subversion of this court's authority and business" and were "performed with such reckless abandon. . . ." See 888 F. Supp. at 1448. Specifically, Judge Zagel stated:

> The confidences Mr. Messina could not keep were protected by court orders of confidentiality. Mr. Messina's past behavior played a pivotal role in the granting of these orders, since it appeared that he would go to any lengths to try his case on the courthouse steps rather than in the courtroom itself. That Mr. Messina sincerely, even fervently, believed in the unremitting badness of the defendants in this case is beyond doubt, as was his willingness to hurt them by disseminating information for purposes of damaging them outside the walls of the courtroom. The orders of confidentiality were meant to prevent Mr. Messina's misuse of the litigation to pursue his own agenda. But the evil to be prevented by the orders was the evil that actually ensued.

Id. at 1430.

Judge Zagel sanctioned the Defendant for four instances of contempt of court and for Rule 11 violations. He stated that "[u]ndeterred by repeated court warnings, possible harm to his client's interests, and, apparently, his own fate, Mr. Messina continued to disclose protected

information." Id. Judge Zagel identified the Defendant's purpose to be "to beat the defendants into submission by disclosing materials previously designated as confidential to generate unfavorable publicity for them." Id. at 1431 (footnote omitted).

The Defendant testified at the contempt and sanctions hearing before Judge Zagel. After hearing his testimony, Judge Zagel noted that "[t]o listen to Mr. Messina on the scope of the orders is to hear a veritable potpourri of tortured constructions." Id. at 1439 n.12. Judge Zagel concluded with regard to the Defendant's violation of orders of confidentiality, the first contempt ground for which he was found liable by the District Court:

> The orders in this case were entered lawfully and were reasonably specific. Mr. Messina violated those orders, and the violation of those orders was willful. There are no valid defenses to his actions. The evidence of Mr. Messina's violation of the orders here is more than clear and convincing, it is beyond a reasonable doubt.

Id. at 1445. Judge Zagel ordered the Defendant to compensate the Plaintiffs for losses resulting from the Defendant's non-compliance, including attorneys' fees.

In finding the Defendant in contempt of court on a second ground for his conduct relating to disclosures of confidential information in correspondence with a third party, Judge Zagel stated: "Instead of consulting with me, as he was advised to do before making further disclosures, Mr. Messina–perhaps attempting to save this court the time and trouble of deciding the matter for itself–decided the legal issues on his own." Id. at 1446. Judge Zagel continued: "In doing so, he violated not only the orders of confidentiality, but also prejudiced the interest of his client by knowingly and willfully violating the terms of the confidential settlement agreement itself." Id.

(footnote omitted). Judge Zagel concluded: "Again, I find that Mr. Messina willfully violated reasonably specific orders beyond a reasonable doubt. Again, there are no valid defenses to Mr. Messina's actions. Again, both civil and criminal contempt sanctions are appropriate." Id. at 1447.[1]

Judge Zagel found the Defendant in contempt on a third ground for making disclosures of confidential information to a newspaper reporter which resulted in a front page story. Specifically, Judge Zagel noted: "Once again, I find that Mr. Messina willfully violated reasonably specific orders beyond a reasonable doubt; that no valid defenses exist to his actions; and that both civil and criminal contempt sanctions are appropriate." Id.

The fourth contempt charge assessed against the Defendant involved his failure to appear as ordered before the District Court. In finding the Defendant in contempt, Judge Zagel stated that, after watching the Defendant testify, "I am convinced beyond any doubt that Mr. Messina had proper notice, fully understood that his appearance was required, and knew the reasonable consequences of his actions. I find not only that Mr. Messina's choice not to appear was willful, but that it was made in bad faith." Id. at 1449. Judge Zagel found, "yet again that Mr. Messina willfully violated reasonably specific orders beyond a reasonable doubt; that no valid defenses exist to his actions; and that both civil and criminal sanctions are appropriate." Id.

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[1] The Defendant was found to be in both civil and criminal contempt. In July 1995, the District Court vacated the judgment of criminal contempt, finding that the Defendant had not been given notice of the potential of criminal sanctions. The Court finds that even though the criminal contempt judgment was vacated, that fact does not alter the finding of the District Court that the Defendant's conduct was willful beyond a reasonable doubt giving rise to the civil contempt findings and the Rule 11 violations.

Finally, Judge Zagel held that the Defendant had violated Rule 11 for misrepresenting his attorney status and standing to the Seventh Circuit Court of Appeals, finding that the Defendant "violated Rule 11 in three ways, each of which would be independently sanctionable." Id. at 1450. Judge Zagel found the Defendant's brief filed with the Seventh Circuit was "not well grounded in fact, was certified for an improper purpose, and was unwarranted by existing law. . . . " Id. at 1452. The Defendant was ordered to compensate the Plaintiffs for any expenses incurred in addressing the filing before the Seventh Circuit. Id.

Thereafter, on February 6, 1997, Judge Zagel entered judgment against the Defendant resulting from the Contempt Order in the amount of $69,069.08 in favor of John Labatt, Limited and in the sum of $80,485.37 in favor of American Citrus Products Corporation, all for their respective attorneys' fees and costs, plus post-judgment interest pursuant to 28 U.S.C. § 1961. See Affidavit of Steven M. Kowal at ¶ 8 and Exhibit No. 2 thereto.

The Defendant appealed the Contempt Order and judgment, and on February 5, 1998, the Seventh Circuit affirmed the Contempt Order. Id. at Exhibit No. 3. See also 134 F.3d 374 (7th Cir. 1998). The Defendant's writ of certiorari to the United States Supreme Court was subsequently denied. See Affidavit of Steven M. Kowal at ¶ 10. See also 119 S.Ct. 180 (1998).

Subsequent post-judgment enforcement proceedings by the Plaintiffs led to the Defendant filing a voluntary Chapter 11 petition with this Court on September 22, 1999. Thereafter, on December 23, 1999, the Plaintiffs filed this adversary proceeding seeking a determination that the debt owed them by the Defendant is non-dischargeable under 11 U.S.C. § 523(a)(6) because the debt arose from the Defendant's conduct which caused them willful and malicious injury, as

detailed in the Contempt Order. The Defendant, in his answer, affirmative defense, and counterclaim, details, at great length, his objections to what the Plaintiffs did in the prior litigation, as well as his dismay at his treatment by the District Court, the Seventh Circuit and his former counsel in those forums. He prays that this Court declare that those prior proceedings against him were so fundamentally unfair and violative of his right to due process of law that they should not be afforded any preclusive or collateral estoppel effect here; that the subject debt and the Plaintiffs' claims are dischargeable under the Bankruptcy Code; and that this Court should award him damages in excess of $50,000.00 for tortious interference allegedly perpetrated by the Plaintiffs with his claimed contractual relations with orange juice consumers.

On January 31, 2000, the Defendant filed his motion for summary judgment. On February 23, 2000, the Plaintiffs filed their cross motion for summary judgment. The Court will address each motion in turn.

IV. DISCUSSION

A. The Defendant's Motion for Summary Judgment

The real thrust of the Defendant's motion is to act as a preemptive strike to bar the Plaintiffs from use of the doctrine of collateral estoppel and relitigate the findings underlying the Contempt Order. Most of his papers are a patent collateral attack on the Contempt Order. The Defendant argues that he did not have an adequate opportunity to obtain a full and fair adjudication in the prior litigation in which he asserts his due process rights were violated by the District Court in various improper and biased ways, including sealing of the record there, not docketing orders

timely, alleged improper off-the-record and in camera actions resulting in a bar of the creation of an official record, and his appellate counsel's undisclosed conflict of interest. Thus, the focus of the Defendant's arguments are aimed at the allegedly wrongful conduct of the District Court directed at him and his client in that litigation. His arguments are misplaced and he is not entitled to summary judgment as a matter of law on the § 523(a)(6) claim against him.

None of the cases cited by the Defendant in his memorandum in support of his motion construe, apply or have anything to do with § 523(a)(6), much less support the proposition that as a matter of law an alleged erroneous final judgment by a higher court which has, notwithstanding such claims of error, been affirmed on appeal, and from which further appeal to the United States Supreme Court has been denied, is a viable affirmative defense to a dischargeability determination pursuant to § 523(a)(6). All of the cases and other authorities cited by the Defendant are inapposite and not controlling on the issue of whether the alleged wrongful acts visited as sanctions upon him serve as an affirmative defense under § 523(a)(6).

It is bootless to argue to this Court that the District Court was not impartial and the Contempt Order should be reversed. This Court knows its position in the federal court hierarchy, which is below that of the District Court, the Circuit Court of Appeals, and the United States Supreme Court, all of which exercise appellate jurisdiction over and review of this Court's judgments and orders. See 28 U.S.C. § 158(a) (confers jurisdiction to the district court to hear appeals from the bankruptcy court) and 28 U.S.C. § 158(d) (confers jurisdiction to courts of appeals from all final decisions by district courts under § 158(a)). The converse is not true as this bankruptcy court has no appellate jurisdiction whatsoever and cannot as a matter of law effectively

reverse or undue any final judgment entered by those higher federal courts. Under the principle of stare decisis, inferior or lower courts are bound to follow the decisions of superior courts. The lower court cannot alter the results of a prior final judgment even if that judgment was wrong. See Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981). This Court agrees with Judge Schwartz in Duplitronics, Inc. v. Concept Design Elecs. and Mfg., Inc. (In re Duplitronics, Inc.), 183 B.R. 1010 (Bankr. N.D. Ill. 1995) when he stated that "to even suggest that [a bankruptcy court] has the jurisdiction to effect a reversal of the final judgment of the District Court, affirmed by the Federal Circuit, borders on the ludicrous." Id. at 1018. "To suggest that a final judgment obtained prior to the commencement of a bankruptcy case can be reopened by [a bankruptcy] court and in effect retried makes no sense. . . . 'Bankruptcy proceedings may not be used to re-litigate issues already resolved in a court of competent jurisdiction.'" Id. (quoting Kelleran v. Andrijevic, 825 F.2d 692, 695 (2d Cir. 1987)). Thus, to the extent that the motion and the relief sought by the Defendant in his answer, affirmative defense and counterclaim seeks to collaterally attack the Contempt Order and judgment, same must fail as a matter of law.

Just as under 28 U.S.C. § 1738 the Court is obliged to give full faith and credit to state court final judgments, which it cannot undo or reverse under the Rooker-Feldman doctrine, see Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), the same considerations of comity and stare decisis apply to preclude this Court from effectively reversing the decisions of the higher federal courts.

Moreover, the real focus of this § 523(a)(6) action is whether the Defendant's intentional conduct as directed against the Plaintiffs was of the proscribed "willful" and "malicious" kind, not

whether the Defendant was wrongfully judged in the prior litigation between the parties and improperly sanctioned by another court. The ultimate question to be determined here is whether the Defendant's prior conduct resulting in the sanctions levied against him fits within the relevant statutory and case law requirements of § 523(a)(6) and Kawaauhau v. Geiger, 523 U.S. 57 (1998), not whether the higher federal courts in the prior litigation committed error in the judgment entered against him. Hence, the Court denies the Defendant's motion for summary judgment.

B. The Plaintiffs' Motion for Summary Judgment

The Plaintiffs contends that they are entitled to summary judgment because the Defendant is collaterally estopped from relitigating the issue of whether he willfully and maliciously injured the Plaintiffs based on the District Court's findings in its Contempt Order.

Section 523(a)(6) of the Bankruptcy Code provides:

> (a) A discharge under section 727 . . . 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.

11 U.S.C. § 523(a)(6).

In order to be entitled to a determination of non-dischargeability under § 523(a)(6), the Plaintiffs must prove three elements by a preponderance of the evidence: (1) that the Defendant caused an injury; (2) that the Defendant's actions were willful; and (3) that the Defendant's actions were malicious. French, Kezelis & Kominiarek, P.C. v. Carlson (In re Carlson), 224 B.R. 659, 662 (Bankr. N.D. Ill. 1998) (citation omitted), aff'd, No. 99 C 6020, 2000 WL 226706 (N.D. Ill. Feb. 22, 2000). "Willful" means intent to cause injury, not merely the commission of an

intentional act that leads to injury. Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998). Under Geiger, to satisfy the requirements of § 523(a)(6), a plaintiff must plead and prove that the defendant actually intended to harm him and not merely that the defendant acted intentionally and he was thus harmed. Id. at 61-62. The defendant must have intended the consequences of his act. Id. Injuries either negligently or recklessly inflicted do not come within the scope of § 523(a)(6). Id. at 64.

The Supreme Court did not define the scope of the term "intent" utilized to describe willful conduct. Recent decisions, however, have found that either a showing of subjective intent to injure the creditor or a showing of a debtor's subjective knowledge that injury is substantially certain to result from his acts can establish the requisite intent required in Geiger. See In re Markowitz, 190 F.3d 455 (6th Cir. 1999); Fidelity Fin. Servs. v. Cox (In re Cox), 243 B.R. 713, 719 (Bankr. N.D. Ill. 2000); Via Christi Reg'l Med. Ctr. v. Buding (In re Buding), 240 B.R. 397 (D. Kan. 1999); Avco Fin. Servs. of Billings v. Kidd (In re Kidd), 219 B. R. 278 (Bankr. D. Mont. 1998).

"Malicious" means "in conscious disregard of one's duties or without just cause or excuse. . . ." Thirtyacre, 36 F.3d at 700. See also McAlister v. Slosberg (In re Slosberg), 225 B.R. 9, 21 (Bankr. D. Me. 1998) ("A showing of malice requires a showing that the debtor's willful, injurious conduct was undertaken without just cause or excuse."). Whether an actor behaved willfully and maliciously is ultimately a question of fact reserved for the trier of fact. Thirtyacre, 36 F.3d at 700.

Collateral estoppel is an equitable doctrine. It applies when the following four requirements are met: (1) the issue sought to be precluded has been decided in a prior proceeding; (2) the issue

was actually litigated in the prior proceeding; (3) the determination of the issue was essential to the final judgment in the prior proceeding; and (4) the party against whom the doctrine is asserted was fully represented in the prior proceeding. Chicago Truck Drivers, Helpers and Warehouse Union (Independent) Pension Fund v. Century Motor Freight, Inc., 125 F.3d 526, 530 (7th Cir. 1997) (citation omitted); Klingman v. Levinson, 831 F.2d 1292, 1295 (7th Cir. 1987). In the Seventh Circuit, the doctrine of collateral estoppel applies to dischargeability proceedings. Meyer v. Rigdon, 36 F.3d 1375, 1378-79 (7th Cir. 1994) (citing Klingman, 831 F.2d at 1294-95; Grogan v. Garner, 498 U.S. 279, 285 n.11 (1991) ("[C]ollateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).")). Hence, "where a court of competent jurisdiction has previously ruled against a debtor upon specific issues of fact that independently comprise elements of a creditor's nondischargeability claim, the debtor may not seek to relitigate those underlying facts in bankruptcy court, provided that the issues involved had been 'actually litigated.'" Carlson, 224 B.R. at 663 (citation omitted).

Pursuant to the doctrine of collateral estoppel, the Court finds that the debt is non-dischargeable. Bankruptcy courts have given collateral estoppel effect to prior contempt judgments and except those judgments from discharge pursuant to § 523(a)(6). See, e.g., Buffalo Gyn Womenservices, Inc. v. Behn (In re Behn), 242 B.R. 229 (Bankr. W.D. N.Y. 1999); Shteysel v. Shteysel (In re Shteysel), 221 B.R. 486 (Bankr. E.D. Wis. 1998); Bundy Am. Corp. v. Blankfort (In re Blankfort), 217 B.R. 138 (Bankr. S.D. N.Y. 1998); Haeske v. Arlington (In re Arlington), 192 B.R. 494 (Bankr. N.D. Ill. 1996) (intentional failure to comply with court directives contained in an injunction order satisfies the definition of "willful and malicious" under § 523(a)(6)).

The court in Behn addressed the willful and malicious nature of violating court orders:

> Specifically, when a court of the United States (see 28 U.S.C. § 451) issues an injunction or other protective order telling a specific individual what actions will cross the line into injury to others, then damages resulting from an intentional violation of that order (as is proven either in the bankruptcy court or (so long as there was a full and fair opportunity to litigate the questions of volition and violation) in the issuing court) are *ispo facto* the result of a "willful and malicious injury."

242 B.R. at 238.

Further, in Blankfort, the court found that a debtor's persistent violations of district court orders were "blatant and willful" and fell with the exception of § 523(a)(6). The court noted:

> The District Court finding of "blatant and willful" contempt of court orders by the defendants, including the Debtor, which is binding upon this Court under the doctrine of collateral estoppel, constitutes the type of aggravated misconduct which warrants an imputation of malice within the meaning of section 523(a)(6). A person who persists unabated in unlawful conduct, after the entry of a court order specifically and unambiguously enjoining such conduct, and who continues her unlawful conduct in violation of further orders of the court, cannot be characterized as the "honest but unfortunate" debtor whom Congress intended to favor with the extraordinary relief of a discharge in bankruptcy.

217 B.R. at 146.

The first requirement for collateral estoppel, that the issue was decided in the prior litigation, has been met. The Defendant's conduct in violating the protective and seal orders entered by Judge Zagel, and the willfulness of his actions, were the issues decided in the prior litigation which this Court must consider to determine the dischargeability of the resulting debt owed to the Plaintiffs. The Contempt Order found the Defendant in contempt for his actions in the above

discussed separate instances and expressly found that the Defendant had willfully violated the District Court orders on repeated occasions for the purpose of harming the Plaintiffs. The same events which gave rise to the Plaintiffs filing the contempt motion before the District Court supply the underlying factual basis for the Plaintiffs' claim that the Defendant's debt is non-dischargeable under § 523(a)(6).

The second requirement, that the issue was actually litigated, has also been satisfied. The District Court held an evidentiary hearing and issued a lengthy opinion with detailed findings. A bankruptcy court usually reviews the entire record of an earlier proceeding when deciding whether a matter has been actually litigated for the purposes of collateral estoppel. Littlefield v. McGuffey (In re McGuffey), 145 B.R. 582, 587 (Bankr. N.D. Ill. 1992); Sylvester v. Martin (In re Martin), 130 B.R. 930, 943 (Bankr. N.D. Ill. 1991). However, it is not necessary for the Court to review the entire record from the District Court if it has been provided with a sufficient portion from that earlier proceeding. See Katahn Assocs., Inc. v. Wien (In re Wien), 155 B.R. 479, 486 (Bankr. N.D. Ill. 1993). The Court has closely and carefully reviewed Judge Zagel's opinion which contains a detailed discussion of his factual findings and legal conclusions. Thus, this element has been met.

The third requirement, that the issue must have been essential to the final judgment, has also been satisfied. In the present case, the factual issues which were decided and necessary for the District Court to find the Defendant in contempt are the same predicate facts which are necessary to support a finding by this Court for purposes of § 523(a)(6) that the Defendant willfully and maliciously injured the Plaintiffs. As noted above, Judge Zagel repeatedly found the Defendant's

conduct to be willful and without valid defense and sanctionable as contempt of that court. The Defendant had a duty to obey the protective and seal orders Judge Zagel entered and was sanctioned for the willful violation of same without justification.

Finally, the last element of collateral estoppel, that the party against whom the doctrine is asserted was fully represented in the prior proceeding, has been satisfied. The Contempt Order was issued following a hearing at which the Defendant was represented by counsel and had a full and fair opportunity to litigate the charges brought against him. Moreover, he appealed both to the Seventh Circuit and the United States Supreme Court and lost. He has had his day in court and lost on the issues of his conduct resulting in the civil contempt findings and Rule 11 sanctions entered against him. Same should not be relitigated in this Court. Thus, all of the elements of collateral estoppel are present. Therefore, the Court grants the Plaintiffs' motion for summary judgment and finds the debt owed by the Defendant to the Plaintiffs non-dischargeable under § 523(a)(6).

V. CONCLUSION

For the foregoing reasons, the Defendant's motion for summary judgment is denied, but the Plaintiffs' motion for summary judgment is granted. The Court finds the debt owed by the Defendant to the Plaintiffs non-dischargeable under § 523(a)(6).

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order shall be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

ENTERED:

DATE: _____ _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
	)	Chapter 11
THE LAW OFFICE OF	)	Bankruptcy No. 99 B 29371
JOHN P. MESSINA,	)	Judge John H. Squires
	)	
Debtor.	)	
	)	
JOHN LABATT LIMITED and	)	
AMERICAN CITRUS PRODUCTS	)	
CORPORATION,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adversary No. 99 A 01573
	)	
JOHN MESSINA,	)	
	)	
Defendant.	)	

O R D E R

For the reasons set forth in a Memorandum Opinion dated the 27th day of March, 2000, the Court denies the motion of John Messina for summary judgment, but grants the motion of John Labatt, Limited and American Citrus Products Corporation for summary judgment. The Court finds that the debt owed by John Messina to John Labatt, Limited and American Citrus Products Corporation is non-dischargeable under 11 U.S.C. § 523(a)(6).

ENTERED:

DATE: _____ _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List