

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

|                |   |                               |
|----------------|---|-------------------------------|
| In Re:         | ) |                               |
|                | ) | <b>JUDGE RICHARD L. SPEER</b> |
| Brenda Crump   | ) |                               |
|                | ) | Case No. 04-3001              |
| Debtor(s)      | ) |                               |
|                | ) | (Related Case: 03-37046)      |
| Anthony Sigler | ) |                               |
|                | ) |                               |
| Plaintiff(s)   | ) |                               |
|                | ) |                               |
| v.             | ) |                               |
|                | ) |                               |
| Brenda Crump   | ) |                               |
|                | ) |                               |
| Defendant(s)   | ) |                               |

**DECISION AND ORDER**

This cause comes before the Court after a Trial on the Plaintiff's Complaint to Determine Dischargeability. The Plaintiff brings her Complaint pursuant to two statutory exceptions to dischargeability: § 523(a)(4), debts arising from defalcation while acting in a fiduciary capacity, embezzlement or larceny; and § 523(a)(6), debts arising from the willful and malicious conduct of the debtor. After having had the opportunity to review the evidence in this case, the Court, for the reasons set forth below, finds that the Plaintiff is not entitled to a finding of nondischargeability.

The Plaintiff is the holder of a judgment against the Defendant in the amount of \$13,537.63. (Pl. Ex. D). While the Parties disagreed on the validity of this judgment – the Defendant having raised a lack

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of proper notice regarding the underlying action – the Parties did agree, at least implicitly, that the meritoriousness of the Plaintiff's complaint to determine dischargeability hinged on the resolution of one issue: whether the Defendant wrongfully misappropriated the Plaintiff's property as awarded to him in the Parties' divorce.

On this matter, the evidence in this case shows that the marriage between the Parties was terminated by an entry of divorce, dated June 18, 1997. (Pl. Ex. B). In this entry of divorce, certain allocations of property were made between the Parties. Based upon this allocation, the Defendant thereafter went to the marital home, now the Plaintiff's home, to remove those items of property which had been awarded to her in the divorce.

At the time the Defendant entered the Parties' former marital home, the Plaintiff was incarcerated, and thus was unable to personally confirm whether the Defendant limited her appropriation of items to solely that property awarded to her in the Parties' divorce. Family members of the Plaintiff, however, acted in his stead, entering the premise shortly after the Defendant's departure. During the course of their investigation, one of the Plaintiff's family members made a video tape showing, among other things, those items of property remaining at the residence. This video tape was admitted into evidence, and formed the backbone of the Plaintiff's case-in-chief.

During the Defendant's case-in-chief, however, the Defendant, while viewing the video tape, was able to identify for the Court a significant portion of the property which the Plaintiff alleged had been misappropriated. Yet, in rebuttal, the Plaintiff was unable to offer any substantive evidence to show that the Defendant had misidentified those items of property; nor was any credible evidence introduced to show that, subsequent to the making of the video tape, the Defendant had again entered the Parties'

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former marital home. As such, this Court must take the Defendant's testimony at face value and assume that no misappropriation took place of those items identified by her from the video tape.

Moreover, the fact that the Plaintiff was greatly mistaken with respect to a large portion of those items of property allegedly misappropriated, also calls into question the legitimacy of his claim regarding those remaining items of property not specifically identified by the Defendant in the video tape. Under either § 523(a)(4) or § 523(a)(6), the movant carries the overall burden of persuasion to establish their entitlement to a finding of nondischargeability. *Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). Consequently, as no explanation was provided, and there exist self-evident explanations as to why the remaining property was not identified by the Defendant from the video tape – e.g., it was simply not filmed or was not physically at the residence – it cannot be found that the Plaintiff has met his evidentiary burden.

In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

**ORDERED** that the Complaint of the Plaintiff, Anthony Sigler, to determine dischargeability, be, and is hereby, **DISMISSED**.

Dated:

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Richard L. Speer  
United States  
Bankruptcy Judge