

THIS OPINION IS NOT INTENDED
FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
99 FEB 19 AM 10:19
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:)	Case No. 98-13414
)	
SHARON LYNN VINCENT,)	Chapter 7
a.k.a. SHARON LYNN WALKER,)	
)	Judge Pat E. Morgenstern-Clarren
Debtor.)	
_____)	
)	
TRACY STEIN,)	Adversary No. 98-1204
)	
Plaintiff,)	
)	
v.)	
)	
SHARON LYNN VINCENT,)	<u>MEMORANDUM OF OPINION</u>
)	
Defendant.)	

Plaintiff Tracy Stein filed this Complaint to determine whether a debt owed to her by Defendant-Debtor Sharon Vincent as a result of a stabbing is non-dischargeable under 11 U.S.C. § 523(a)(6). (Docket 6). Trial was held on February 17, 1999.

JURISDICTION

The Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

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FACTS¹

Sharon Vincent and Tracy Stein were both employed at Team America. Ms. Stein worked "on the line" operating dangerous machinery, while Ms. Vincent controlled the switches used to stop the line in an emergency. The incident underlying this lawsuit took place on December 17, 1993. Ms. Stein arrived at work first that day. Ms. Stein observed Ms. Vincent when she arrived; she saw that Ms. Vincent could not walk straight or talk or do her job, and concluded that Ms. Vincent was inebriated. Ms. Stein reported this to a supervisor because of the danger. Team America then fired Ms. Vincent.

Ms. Vincent came through the workplace yelling and screaming that she was looking for Ms. Stein and that she would kill her. The employer moved Ms. Stein from one line to another and ultimately removed Ms. Vincent from the premises.

When Ms. Stein left work at about 3:30 p.m., Ms. Vincent approached her and once again threatened her life. Two other people restrained Ms. Vincent. Ms. Stein got in her car; as she drove away she saw Ms. Vincent following her in another car. Ms. Stein went to a bar, apparently because she felt she would be safer in a public place, and sat down. Someone told her to move because Ms. Vincent was on her way in. Ms. Stein immediately went to a telephone and called "911." That operator answered and was talking to Ms. Stein when Ms. Vincent confronted her, called her a "bitch," and once again said she would kill her. Ms. Vincent then stabbed Ms. Stein 5-8 times with a knife. Ms. Stein was treated for her injuries.

Two state court proceedings followed. On the criminal side, Ms. Vincent pleaded guilty to felonious assault. On the civil side, a default judgment was entered in favor of Ms. Stein and

¹ Ms. Stein testified on her own behalf and also called as witnesses Ms. Vincent, as if on cross-examination, and medical records custodian Janet O'Neill. Ms. Vincent presented her case through the cross-examination of Ms. Stein and Ms. O'Neill.

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against Ms. Vincent in the amount of \$10,000 in Cuyahoga County Court of Common Pleas Case No. 282214 (the "Judgment"). Ms. Vincent later filed her Chapter 7 case in which she asks that this Judgment be discharged.

Additional facts are set forth below.

THE POSITIONS OF THE PARTIES

Ms. Stein argues that the Judgment is not dischargeable under 11 U.S.C. § 523(a)(6) because it stems from a willful and malicious injury inflicted by Ms. Vincent. Ms. Vincent raises two arguments: (1) she acted in self-defense; and (2) because the Judgment does not include a finding that the stabbing was willful and malicious, Ms. Stein is barred from pursuing this claim.

DISCUSSION

11 U.S.C. § 523(a)(6)

A discharge under 11 U.S.C. § 727 does not discharge a debtor from a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity[.]" The United States Supreme Court has held that such a debt must result from "a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57 (1998). See also *Salem Bend Condominium Assoc. v. Bullock-Williams (In re Bullock-Williams)*, 220 B.R. 345 (B.A.P. 6th Cir. 1998). The creditor has the burden of proving her case by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279 (1991).

Was the stabbing a willful and malicious injury?

At trial in this Adversary Proceeding, Ms. Vincent testified that she stabbed Ms. Stein in self-defense because Ms. Stein was beating her with a weapon. The alleged "weapon" was the telephone receiver attached to the phone being used by Ms. Stein to call "911." Although defense counsel did not make any direct argument about this, the Court interprets this as a claim

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that the injury was not willful and malicious because it was inflicted to protect Ms. Vincent from Ms. Stein. To put it simply, the Court does not believe this testimony in light of the threats made by Ms. Vincent against Ms. Stein throughout the day in question, the stalking by Ms. Vincent of Ms. Stein from the workplace to the bar, and the confrontation at the bar initiated by Ms. Vincent. Finally, even if Ms. Stein had struck out with the receiver--which the Court is not finding--a telephone receiver attached to a phone simply did not pose any threat to someone wielding a knife. Under these circumstances, there is no innocent explanation for the stabbing. Ms. Vincent intended to injure Ms. Stein when she stabbed her and she did so. As a result, the debt reflected in the Judgment is one for willful and malicious injury within the meaning of § 523(a)(6).

Is Ms. Stein barred from litigating this issue ?

A word of procedural history is in order. Ms. Stein moved for summary judgment in this case, a motion opposed by Ms. Vincent on the ground that the Judgment was not entitled to preclusive effect because it did not contain any findings of fact. Ms. Vincent's brief stated in part:

The bankruptcy court must hold an evidentiary hearing to determine dischargeability and if Vincent committed an intentional tort, as was done in Thirtyacre, since the default judgment in the present case is silent.

(Brief) (Docket 7). The Court denied the motion, agreeing that the default Judgment was not entitled to preclusive effect under Ohio law as to dischargeability² and setting the matter for trial. (Docket 9). Ms. Vincent now argues that Ms. Stein is barred from proving her case at this trial because the Judgment did not find that Ms. Vincent acted willfully and maliciously. The Court

² The Order did find that the Judgment conclusively determined the *amount* of the debt. The only issue left for trial was whether the debt was dischargeable.

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has already discussed the relevant law at length in the Opinion addressing the motion. Under that decision, Ms. Stein was required to prove her case under the applicable bankruptcy standards and could not rely on the Judgment to establish that this debt is non-dischargeable. Ms. Vincent does not cite any law to support the idea that the law works against Ms. Stein in two ways: first to prevent her from obtaining a non-dischargeability judgment based on the Judgment and second to prevent her from proving non-dischargeability in the Bankruptcy Court because the default Judgment did not include a finding of willful and malicious injury. Instead, the applicable law says that Ms. Vincent was entitled to require Ms. Stein to prove her case at trial. Ms. Stein did so.

CONCLUSION

For the reasons stated, judgment will be entered on the Complaint in favor of Plaintiff Tracy Stein, and against Defendant Sharon Vincent, finding the Judgment to be non-dischargeable.

Date: 19 Feb 1999

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Charles Ruiz-Bueno, Esq.
Herbert Adrine, Esq.

By: Joyce L. Gordon, Secretary

Date: 2/19/99

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TRACY STEIN,)	Adversary Proceeding No. 98-1204
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Plaintiff,)	
)	
v.)	
)	
SHARON LYNN VINCENT,)	
)	<u>JUDGMENT</u>
Defendant.)	

For the reasons stated in the Memorandum of Opinion filed this same date,

IT IS, THEREFORE, ORDERED that Judgment is entered in favor of Plaintiff on the
Complaint and her judgment debt is determined to be non-dischargeable under 11 U.S.C.
§ 523(a)(6).

Date: 19 Feb 1999

Pat E. Morgenstern-Clarren
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