

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

KENNETH L. BINNS and
LORETTA M. BINNS,

Debtors.

CASE NUMBER 03-41058

JENNIFER L. PETERSON,

Plaintiff,

vs.

ADVERSARY NUMBER 03-4423

KENNETH L. BINNS,

Defendant.

M E M O R A N D U M O P I N I O N

This cause is before the Court on the motion for summary judgment filed by Plaintiff Jennifer L. Peterson ("Plaintiff") against Debtor/Defendant Kenneth L. Binns ("Defendant"). Defendant failed to file a response to the motion. This Court has juris-diction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

F A C T S

On September 8, 2003, Plaintiff instituted a complaint to determine dischargeability of a debt against Defendant. Plaintiff asserted that a debt in the amount of Nineteen Thousand Nine Hundred Sixty and 03/100 Dollars (\$19,960.03), plus interest at the rate of 10% per annum from October 9, 2002, was not dischargeable pursuant to 11 U.S.C. § 523(a)(4) and (6). Plaintiff alleged that the debt was based on the October 9, 2002 judgment in favor of Plaintiff against Defendant entered in the Ashtabula County Court of Common Pleas (the "Court of Common Pleas"), which found that Defendant's actions were willful and intentionally calculated to cause financial injury to Plaintiff. On October 23, 2003, Defendant filed an answer to the complaint in the instant case admitting all allegations except (1) that Defendant had ceased paying the real estate and manufactured home taxes and (2) that his actions constituted a willful and malicious injury to Plaintiff and that the debt was therefore nondischargeable. Defendant also stated that he had not been represented by legal counsel in the lawsuit before the Court of Common Pleas and that he "is filing" a motion to "relieve him of this judgment pursuant to Ohio Civil Rule 60 B, based upon mistakes of fact." (Answer, ¶ 13.)

Plaintiff filed a motion for summary judgment on July 5, 2004. The basis of the motion for summary judgment is that the Court of Common Pleas judgment, entered October 9, 2002,

contained findings that constitute willful and malicious injury, as set forth in 11 U.S.C. § 523(a)(6) and that, thus, the debt is nondischarge-able. The Court of Common Pleas judgment stated, "[i]t is apparent that the defendant's actions in allowing the mortgage and taxes to go into default were willfully and intentionally calculated to cause financial injury to the plaintiff." (Pl.'s Mot. for Summ. J., Ex. A.) Defendant has failed to respond to the motion for summary judgment. Despite the allegation in Defendant's answer that he was going to file a motion to be relieved of the Court of Common Pleas judgment, there is no evidence that any such action was taken.

S U M M A R Y J U D G M E N T

The procedure for granting summary judgment is found in FED. R. CIV. P. 56(c), made applicable to this proceeding through FED. R. BANKR. P. 7056, which provides in part:

[t]he judgment sought shall be rendered forth-with 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. BANKR. P. 7056(c). Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

Section 523(a)(6) provides that a debtor will not be

discharged from any debt, "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). The Court of Common Pleas explicitly found that the debt in question was created by Defendant's willful and intentional actions. The debt, therefore, is nondischargeable.

C O N C L U S I O N

Based upon the undisputed facts, Plaintiff's motion for summary judgment is well taken and is hereby granted. Judgment is rendered in favor of Plaintiff, and the debt of Defendant to Plaintiff in the amount of Nineteen Thousand Nine Hundred Sixty and 03/100 Dollars (\$19,960.03), plus interest at the rate of 10% per annum from October 9, 2002, is nondischargeable.

An appropriate order shall enter.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

KENNETH L. BINNS and
LORETTA M. BINNS,

Debtors.

CASE NUMBER 03-41058

JENNIFER L. PETERSON,

Plaintiff,

vs.

ADVERSARY NUMBER 03-4423

KENNETH L. BINNS,

Defendant.

O R D E R

For the reasons set forth in this Court's memorandum opinion entered this date, Plaintiff's motion for summary judgment against Defendant is well taken and is hereby granted. Judgment is rendered in favor of Plaintiff, and the debt of Defendant to Plaintiff in the amount of Nineteen Thousand Nine Hundred Sixty and 03/100 Dollars (\$19,960.03), plus interest at the rate of 10% per annum from October 9, 2002, is not discharged.

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Opinion and Order were placed in the United States

Mail this ____ day of October, 2004, addressed to:

JENNIFER L. PETERSON, 14290 View Drive,
Newbury, OH 44065.

KENNETH J. FREEMAN, ESQ., 515 Leader
Building, 526 Superior Avenue, Cleveland, OH
44114.

KENNETH L. and LORETTA M. BINNS, P. O. Box
112, Rock Creek, OH 44084.

JEROME A. LEMIRE, ESQ., 838 State Route 46
North, Jefferson, OH 44047.

MICHAEL D. BUZULENCIA, ESQ., 150 East Market
Street, Suite 300, Warren, OH 44481.

SAUL EISEN, United States Trustee, BP America
Building, 200 Public Square, 20th Floor,
Suite 3300, Cleveland, OH 44114.

JOANNA M. ARMSTRONG