Dated: April 18 2005

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No.: 04-35486
Kellie A. Bayes,	)	Chapter 7
Debtor.	)	Adv. Pro. No. 04-3356
Daniel E. Weil,	)	Hon. Mary Ann Whipple
Plaintiff,	)	
v.	)	
Kellie Bayes,	)	
Defendants.	)	

MEMORANDUM OF DECISION

This adversary proceeding is before the court for decision after trial on Plaintiff Daniel Weil's complaint to determine dischargeability of a debt allegedly owed to him by Defendant Kellie Bayes and/or to deny discharge. Plaintiff alleges that the debt should be excepted from discharge under 11 U.S.C. § 523(a)(4) and (a)(6) and/or that Defendant is not entitled to a discharge under 11 U.S.C. § 727.

The court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §1334(b) and the general order of reference entered in this district. Proceedings to determine dischargeability of debts and objections to discharge are core proceedings that the court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(I) and (J). This Memorandum of Decision constitutes the court's findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52, made applicable to this adversary proceeding by Fed. R. Bankr. P. 7052. Regardless of whether specifically referred to in this Memorandum of Decision, the court has examined the submitted materials, weighed the credibility of the witnesses, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the reasons discussed below, the court finds that a debt owed by Defendant to Plaintiff in the amount of $4,500 is nondischargeable but that Defendant is otherwise entitled to a Chapter 7 discharge.

FINDINGS OF FACT

This dispute centers around Defendant's removal of property from a home she shared with Plaintiff. Plaintiff and Defendant lived together for approximately five years. During that time, they decided to purchase a home located at 638 Lotus Avenue, Toledo, Ohio. Notwithstanding the fact that Plaintiff earned $70,000 to $80,000 per year as an installer of floor coverings and Defendant earned only $23,000, because Plaintiff had poor credit, the home and the mortgage debt for the home were in Defendant's name only. In May, 2003, Defendant testified that she left Plaintiff and moved out of the home. According to Defendant, she gathered some but not all of her belongings when she left in order to be gone before Plaintiff returned home. She did, however, manage to remove her own collection of teddy bears.

In July, 2003, Defendant obtained a civil protection order against Plaintiff. The protection order prohibited him from being within 100 yards of Defendant and granted Plaintiff possession of the home at 638 Lotus Avenue for a period of sixty days, during which time Plaintiff was ordered to make mortgage payments and pay taxes, insurance and utilities for the home. But if Plaintiff did not purchase the property within that 60-day period, the order granted Defendant exclusive possession of the residence effective September 9, 2003. [Def. Ex. 1]. There is no dispute that Plaintiff failed to make the payments required of him under the protection order and failed to obtain financing to purchase the property.

On November 28, 2003, Defendant arrived at the Lotus Avenue home with the police and Plaintiff

was arrested for violation of the protection order. After Plaintiff was arrested, Defendant, with the help of her new boyfriend and another friend, proceeded to remove property from the home. The property was loaded onto a U-haul trailer that she had brought with her and was taken to a storage unit she shared with her friend. It is undisputed that Plaintiff never gave Defendant permission to remove any of his property from the home.

Plaintiff testified regarding, and Plaintiff's exhibit 1 itemizes, the numerous items he claims belonged to him that were taken by Defendant. With only a few exceptions noted below, Defendant admits taking the items listed. *See also* Plf. Ex. 4. Included on the list in Plaintiff's Exhibit 1 are surround sound speakers that he purchased during a prior marriage 8 or 9 years earlier, six guitars, a bass amplifier, a microphone stand, as well as items described as a Marshall Full Stack, Rocktron Hush, Alesis equalizer, power conditioner, and Gerwin Vega speakers, all items used by Plaintiff in a band that performed at various venues in Toledo and in which he played the guitar. Although Defendant did not remember how many guitars she removed, she did not dispute that these items were taken by her on November 28. Although many of the items were purchased during the time that the parties lived together, the court finds it more likely than not that the musical equipment belonged to Plaintiff for use in the band in which he played. Plaintiff valued these items at $11,347 which he testified represents the amount he paid for the equipment. However, with the exception of the surround sound speakers, there is no evidence regarding the age of the equipment or its condition.

Also included on the list of items removed by Defendant is a 61-inch big screen television. Plaintiff's testimony, that the court finds credible, indicates that he alone obtained the television in a bartered exchange for installation of carpeting in a friend's home. The court discounts Defendant's testimony that the carpeting that was installed was paid for either in cash or by check using her checking account. To the extent that this testimony is an attempt to show that she had some interest in the television, she later testified that she actually did not know the manner in which the carpeting was purchased.[1] Although Plaintiff valued his installation

[1] In concluding that Plaintiff alone acquired the big screen television, the court has not considered the testimony proffered by Plaintiff's rebuttal witness, Ricky Arnold. Under Fed. R. Civ. P. 26(a)(3)(A), Plaintiff was required to disclose the name of each witness, "separately identifying those whom the party expects to present and those whom the party may call if the need arises. . . ." The deadline set in the court's Adversary Proceeding Scheduling Order was March 23, 2005, by 4:00 p.m. [Doc. #14]. Arnold was not disclosed as a witness until the day of trial. Fed. R. Civ. P. 37(c)(1) provides that

services, and thus the television, at $3,500, he offered no testimony regarding the work involved in the carpet installation job or the rates reasonably charged for such work.

Defendant also removed a substantial collection of Hotwheels from the Lotus Avenue property. Plaintiff testified that he had a "few thousand" Hotwheels. This comports with Defendant's testimony that she could have removed as many as two thousand Hotwheels. Plaintiff testified that he collected the Hotwheels and attended many shows at which he would purchase them. At least some of the Hotwheels were displayed at the Lotus Avenue home in a ceramic case, which Defendant admits having removed from the home on November 28. Plaintiff also started an E-bay business in which he bought and sold Hotwheels. Because of his poor credit and the necessity of a bank card to register the business on E-bay, Defendant's credit was used and purchasers' payments were deposited into Defendant's bank account. Defendant does not dispute that Plaintiff ran the E-bay business.

Although she testified that she went to shows with Plaintiff and that she "helped him collect," the court does not find Defendant's testimony credible that the collection was hers, in whole or in part. She testified that she had bought Hotwheels for Plaintiff as gifts and that Plaintiff also purchased them when she was not with him. Defendant admitted that she is not a collector now. While she certainly assisted Plaintiff in his collection when she lived with him by allowing her bank account to be used for E-bay sales and purchases, and perhaps for occasional purchases, she testified that Plaintiff did periodically deposit money in her account. The court does not believe that the parties ever intended for Defendant to own any portion of the Hotwheels collection. The court finds Defendant's testimony is not credible on this issue. Although she remembered at least two specific Hotwheels that were at the Lotus Avenue property, when asked their value, she testified that she did not know the value of any "older" vehicles. She knew only that the newer Hotwheels could be purchased for approximately $1.00 at the store. Presumably, someone who is or was

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"a party that without substantial justification fails to disclose information required by Rule 26(a) . . . is not, unless such failure is harmless, permitted to use as evidence at a trial ... any ... witness or information not so disclosed." The sanction of exclusion is thus automatic and mandatory unless the party to be sanctioned can show that its violation of Rule 26(a) was either justified or harmless. *See Vance v. U.S.*, 182 F.3d 920 (Table), 1999 WL 455435, **4 (6th Cir. June 25, 1999) (citing *Salgado v. General Motors Corporation*, 150 F.3d 735, 742 n. 6 (7th Cir.1998). No such showing was made by Plaintiff. The fact that Plaintiff anticipated calling Arnold as a witness is evidenced by the fact that he was present at the beginning of the trial.

involved in collecting Hotwheels would have some idea of the value of the "older" models. Moreover, her testimony tends to put in question her later testimony that the only Hotwheels at the home on November 28 were new Hotwheels valued at $1.00, as does the fact that she specifically removed the ceramic display case of Hotwheels from the home.

Plaintiff valued the Hotwheels collection at $40,000. He testified that he used several different collector's guides for hotwheels in order to determine the fair market value of the collection. But those guides were not offered into evidence and Plaintiff offered no testimony regarding any specific Hotwheel in his collection that was worth any specific amount. Although Defendant did testify as to two specific "older" Hotwheels that were at the parties' home, she did not know, and Plaintiff did not offer any evidence of, the value of those vehicles.

Plaintiff also testified that Defendant removed other collectible toys, including Star Wars items and Barbie dolls. Defendant admits that she did not collect Barbie dolls but that she did take the collectible dolls. Defendant valued these toys at $3,000. He testified that his valuation is based on what he paid for them, E-bay sales, and magazines, but no other documentation of the value was offered. In addition, he offered no testimony regarding the number of collectible toys nor the specific values as to any specific toy. He simply listed them as "various miscellaneous toys" valued at a total of $3,000.

Defendant also admits removing a Hutch Trickstar bicycle that was built by Plaintiff from parts purchased on E-bay. Plaintiff testified that the bicycle was built for free-style bicycling, which was a longtime hobby of his. Defendant admitted that she did not participate in that hobby. He testified that the bicycle was worth $2,000, but, again, provided no documentation as to its value beyond his own testimony. Also, he provided no information about the parts purchased or their cost.

Plaintiff also testified that Defendant removed $4,500 in cash that he had in a guitar case. According to Plaintiff, he had received this money for two "jobs" he had recently completed. But he offered no evidence documenting the alleged jobs or the amount received from those jobs. Defendant denies having removed any cash from the home. The court finds Defendant's testimony to be more credible on this issue.

Although a computer valued at $1,500 and a scanner valued at $200 is also listed in Plaintiff's

Exhibit 1 as property removed by Defendant, Plaintiff testified at trial that both of those items were Defendant's own property. Also, he listed a keyboard valued at $200. But he testified that the keyboard belonged not to him but to his daughter.

The remaining items on the list, which are valued by Plaintiff in the total amount of $7,675, include a digital camera, a ceramic tile saw, various electronic devices, PlayStation games, approximately 100 CD's and 30 DVD's. He testified that he valued the CD's at $10 each and the DVD's at a total of $500. Plaintiff testified that he purchased each of the items listed and that his valuation, for the most part, is based on his purchase price. He concedes, however, that at least some of the items have decreased in value since they were purchased. The court finds credible Plaintiff's testimony that he purchased the items and that the items belonged to him.

Defendant did not testify that Plaintiff's funds were not used to purchase the items. Nevertheless, as evidence that she owned the property removed, Plaintiff testified that the items were accumulated during the parties' relationship and were either paid for with cash or by check from her account. She explained that Plaintiff was not able to obtain a checking account and that he periodically deposited money into her account. There is no indication, however, as to which items removed were paid for with cash and which items were paid by check from her account. She did not testify that her own cash was used for any purchase when cash was the method of payment and she admitted that Plaintiff deposited money into her checking account.

Plaintiff also testified that she believed that the language in the civil protection order giving her exclusive possession of the residence meant that everything in the home then belonged to her and that she was so advised by her attorney. The court does not find her testimony in this regard to be credible. The court does not believe that counsel advised her, nor would a reasonable person believe, that the protection order constituted a division of property accumulated during the parties' relationship or otherwise obtained by either party. At the time the property was removed, Defendant did not, nor did she even intend, to take possession of the residence. In fact, she knew that Plaintiff would be returning to the residence. She testified that her purpose in going to the residence on November 28 was to remove property that she could sell in order to pay some of her bills. After removing the property chosen by her to be removed, she left

a couple of "calling cards" for Plaintiff, namely, two stuffed latex gloves with the middle finger extended strategically placed where the big screen television had been located before its removal by Defendant. The court finds that her "calling cards" are evidence of her understanding that she had dispossessed Plaintiff of something of value belonging to him.

The court's credibility determination and ultimate finding that, with the exception of the computer, scanner and keyboard, the property removed from the home was Plaintiff's property, is buttressed by the fact that she failed to disclose in her original Statement of Financial Affairs that she had transferred any property within one year of filing bankruptcy, notwithstanding her testimony that she sold all of the property removed from the home at a flea market in late 2003 or early 2004 and the fact that her petition was filed June 30, 2004.[2] That is at least some evidence that Defendant did not consider the property to be property belonging to her. The fact that Plaintiff earned nearly four times the amount earned by Defendant during the relevant time period also weighs in favor of the court's credibility determination and findings of fact.

LAW AND ANALYSIS

Plaintiff alleges that Defendant owes him a debt that is nondischargeable under 11 U.S.C. § 523(a)(4) and (a)(6). Plaintiff also alleged that Defendant should be denied a Chapter 7 discharge under 11 U.S.C § 727(a)(2)(A) and (a)(5). While success on the § 523 claims is, in part, dependent on the court finding that the property belonged to Plaintiff, success on the § 727 claims is dependent on a finding that the property belonged to Defendant. Thus, at trial, Plaintiff presented the claims in the alternative. Because the court finds that Plaintiff is entitled to judgment on his § 523 claims, judgment will be entered in favor of Defendant on the § 727 claims.

I. 11 U.S.C. § 523(a)(4)

Under § 523(a)(4), a debtor is not discharged from any debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Embezzlement and larceny are defined and determined according to federal law. *Graffice v. Grim (In re Grim)*, 293 B.R. 156, 165-66 (Bankr. N.D. Ohio 2003). For purposes of § 523(a)(4), larceny is defined as "the fraudulent and wrongful taking and carrying

[2] Although Defendant has amended her Statement of Financial Affairs to include the disclosure, she did not do so until April 4, 2005, after she was deposed shortly before trial.

away of the property of another with intent to convert such property to the taker's use without the consent of the owner." *Id.* (citing *Schreibman v. Zanetti-Gierke (In re Zanetti-Gierke)*, 212 B.R. 375, 381 (Bankr. D. Kan. 1997).

In this case, as found by the court above, the property at issue was Plaintiff's property. The fact that most of the property was acquired during the parties' relationship does not impact the court's finding. Ohio courts have expressly declined to adopt the approach of dividing property based on non-marital cohabitation. *See Lauper v. Harold*, 23 Ohio App. 3d 168, 170 (1985) (stating there is no precedent in Ohio for dividing assets based on mere cohabitation without marriage and declining to follow such a trend); *Seward v. Mentrup*, 87 Ohio App. 3d 601, 603 (1993) (same). Thus, Defendant acquired no rights in the property simply because they were acquired during the time that she lived with Plaintiff. And there is no dispute that Defendant removed the property, to the extent indicated in the court's findings of fact, without Plaintiff's consent. Finally, Defendant admits that she took the property with the intention of converting it to her use, that is, with the intention of selling it in order to pay her creditors. Thus, Plaintiff has met his burden of proving that Defendant owes him a debt for larceny and, as such, the debt is not dischargeable under § 523(a)(4).

II. 11 U.S.C. § 523(a)(6)

Section 523(a)(6) provides that a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" is not dischargeable. 11 U.S.C. § 523(a)(6). In order to be entitled to a judgment that the debt is excepted from discharge, Plaintiff must prove by a preponderance of the evidence that the injury from which the debt arises was both willful and malicious. *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 463 (6th Cir. 1999); *J & A Brelage, Inc. v. Jones (In re Jones)*, 276 B.R. 797, 801-2 (Bankr. N.D. Ohio 2001). A willful injury occurs when "(i) the actor desired to cause the consequences of the act or (ii) the actor believed that the given consequences of his act were substantially certain to result from the act." *Monsanto Co. v. Trantham (In re Trantham)*, 304 B.R. 298, 307 (B.A.P. 6th Cir. 2004) (citing *Markowitz*, 190 F.3d at 464). Under § 523(a)(6), "'malicious' means in conscious disregard of one's duties or without just cause or excuse; it does not require ill-will or specific intent." *Id.* (citing *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986).

In this case, Defendant clearly intended to cause injury to Plaintiff (i.e. permanent deprivation of his personal property). By her own account, she took the property so that she could sell it and use the money to pay her bills because Plaintiff had not paid the utilities and had not made the mortgage payments on the Lotus Avenue property, thus clearly causing Defendant financial difficulties. Plaintiff's behavior in ignoring the court order to make the payments while he occupied the property, and then compounding the problem by moving his former girlfriend and children into Defendant's house essentially rent free, is inexcusable. Nevertheless, Plaintiff's bad behavior did not in turn justify or excuse the self-help measures to which Defendant resorted. Moreover, while a finding of malicious injury does not require ill-will or specific intent, the "calling cards" left by Defendant at the home at the time the property was removed is a strong indicator of not only her intent, but her malicious intent. On the facts before it, the court finds that the debt owed by Defendant to Plaintiff is a debt for willful and malicious injury and is another basis for finding that the debt is not dischargeable.

III. Damages

A. Debt Owed to Plaintiff

In his prayer for relief, Plaintiff not only seeks a determination that the debt owed him is nondischargeable but also a monetary award in the amount of $72,472. In *Longo v. McLaren (In re McLaren),* 3 F.3d 958, 965-66 (6th Cir. 1993), the Sixth Circuit recognized a Bankruptcy Court's authority to determine the validity and amount of a debt as well as the debt's dischargeability. Nevertheless, at trial, Plaintiff asked in the alternative that the court permit him to return to state court for a determination of damages. He filed an action against Defendant prepetition that has been stayed in light of Defendant's bankruptcy filing.[3] However, Plaintiff presented evidence on the issue of damages at trial in this court and Defendant presented a defense relating to that evidence. The issue having been already litigated, the court finds that both judicial economy and fairness to Defendant weigh in favor of the court exercising its authority to determine a monetary judgment in this case.

Once a party proves that he has been damaged, the amount of damages must be shown with

[3]This court does not have the state court complaint and related pleadings and does not know what claims and defenses have been asserted.

reasonable certainty. *In re Sumpter*, 171 B.R. 835, 844 (Bankr. N.D. Ill. 1994). But the existence of some uncertainty as to the amount of damages does not foreclose recovery. *In re John Richards Homes Building Co., L.L.C.,* 312 B.R. 849, 862 (E.D. Mich. 2004). "[O]nce the existence of damages has been shown, all that an award of damages requires is substantial evidence in the record to permit a factfinder to draw reasonable inferences and make a fair and reasonable assessment of the amount of damages." *Broan Mfg. Co., Inc. v. Associated Distributors, Inc.*, 923 F.2d 1232, 1236 (6th Cir. 1991) (quoting *Grantham and Mann, Inc. v. American Safety Products, Inc.*, 831 F.2d 596, 602 (6th Cir. 1987). Still, a damage award must not be based on mere speculation, guess or conjecture. *See Archer v. Macomb County Bank*, 853 F.2d 497, 499 (6th Cir. 1988), citing *John E. Green Plumbing & Heating Co. v. Turner Construction Co.*, 742 F.2d 965, 968 (6th Cir. 1984), *cert. denied* 471 U.S. 1102 (1985).

Plaintiff's damages include an amount equal to the value of the items of personal property owned by him that were removed from the Lotus Avenue home. A determination of Plaintiff's damages involves three issues: what property was removed from the home, to whom did it belong, and what was the value of Plaintiff's property that was removed.

As already found by the court, all of the property listed in Plaintiff's Exhibit 1, except for the $4,500 in cash, was removed from the home by Defendant on November 28, 2003. Also as indicated above, with the exception of the computer and scanner that belonged to Defendant and a keyboard that belonged to Plaintiff's daughter, all of the property removed was property belonging to Plaintiff.
It is the value of that property only that constitutes Plaintiff's loss.

Plaintiff testified that, based upon several different collector's guides, he valued his Hotwheels collection at $40,000. His testimony, however, falls short of demonstrating detail and accuracy in supporting his valuation. At trial, only two Hotwheel vehicles were identified as having been at the parties' home. Although admittedly "older" vehicles, no evidence of their specific value was offered such that the court might be assisted in reaching a determination that Plaintiff's lay opinion of value of the entire collection was credible and trustworthy. And no testimony or other evidence was offered regarding the general types of Hotwheels owned by Plaintiff or their values (i.e. the number of "older" vehicles and their average value). Although Plaintiff used collector's guides in valuing the collection, those guides were not offered as evidence.

See Fed. R. Bankr. P. 9017, F.R.E. 803(17). Nevertheless, Defendant concedes that she removed a "couple thousand" Hotwheels from the home and that they had a value of at least $1.00 each. Lacking any more specific evidence of the value of the Hotwheels, the court finds the evidence supports a determination of damages only in the amount of $2,000.

Plaintiff testified that the big screen television removed by Defendant had a value of $3,500. His valuation is based upon the fact that the television was obtained in a bartered exchange for installation of carpeting in his friends' home, a service he valued at $3,500. But he offered no testimony or other evidence that the carpet installation work was actually worth that amount. For example, he offered no testimony or documentary evidence regarding the square footage of carpeting installed or the rates he normally charged for such work. While clearly of some value, determining the fair value of his work and, thus, the value of the television, would involve pure speculation by the court. Nevertheless, the court recognizes that a 61-inch big screen television has at least some value and awards Plaintiff a nominal award of $250.

Plaintiff also testified regarding the value of the 100 CD's and 30 DVD's removed by Defendant. Plaintiff valued the CD's at $1,000, or $10 per CD, and the DVD's at $500, or approximately $16.66. The court finds Plaintiff's valuation to be a reasonable estimate of the CD's and DVD's taken by Defendant.

However, Plaintiff's testimony regarding the remaining items of personal property does not provide sufficient evidence of the value of the property removed from the home. All of the remaining items are valued at Plaintiff's purchase price. He admitted, however, that some of the property, although he did not specify which property, has decreased in value since it had been purchased. Once again, a determination of the fair market value of this property would require the court to engage in speculation that may not form the basis of an award of damages. Nevertheless, Defendant testified that she sold all of the property removed and, although she was uncertain as to the exact amount obtained, she estimated the amount received from the sale at $750. While the court does not find her testimony entirely credible to the extent that she received only $750 for all of the property removed, in light of the type of property at issue and the lack of any better evidence, and recognizing that the removal of this property caused Plaintiff a loss, the court finds $750 to be the best evidence of the value of the remaining property at issue.

In light of the foregoing, the court finds that Plaintiff's damages, to the extent proved at trial, total

$4,500.

B. Prejudgment Interest

In his prayer for relief, Plaintiff also seeks prejudgment interest. Damages in this case are awarded solely under federal bankruptcy law. As such, the award of prejudgment interest is governed by federal law and is a matter left to the sound discretion of the trial court. *See Friedkin v. Sternberg (In re Sternberg)*, 85 F.3d 1400, 1408 (9th Cir. 1996) (overruled on other grounds *Murray v. Bammer (In re Bammer)*, 131 F.3d 788 (9th Cir. 1997); *Payne v. Brace (In re Brace)*, 131 B.R. 612, 614 (Bankr. W.D. Mich. 1991). The award of prejudgment interest should be a function of "(i) the need to fully compensate the wronged party for actual damages suffered, (ii) considerations of fairness and the relative equities of the award, (iii) the remedial purpose of the statute involved, and/or (iv) such other general principles as are deemed relevant by the court." *Wickham Contracting Co., Inc. v. Local Union No. 3, Intern. Broth. of Elec. Workers, AFL--CIO,* 955 F.2d 831, 833-34 (2d Cir. 1992).

In this case the court declines to award prejudgment interest. The court does not find that prejudgment interest is necessary to fully compensate Plaintiff. It is not a substitute for lack of proof of additional damages at trial. Plaintiff's loss was not a monetary loss but a loss of personal property. There was no evidence that any of the property was subsequently replaced by Plaintiff requiring the expenditure of Plaintiff's funds. The court finds that the $4,500 award in this case fully compensates Plaintiff for the loss proven at trial. The court further finds that the equities in this case weigh against an award of prejudgment interest. Plaintiff continued to live in Defendant's house for at least five months beyond the date ordered by the state court for him to relinquish possession but still failed to make payments on the mortgage and utilities as ordered by the state court. Under these circumstances, the court concludes that awarding him prejudgment interest where such an award does not serve as compensation for his loss would be inequitable.

C. Attorney Fees

Generally, under the "American Rule," which applies to litigation in the bankruptcy courts, a prevailing litigant may not collect attorney's fee from his opponent unless authorized by federal statute or an enforceable contract between the parties. *In re Sheridan*, 105 F.3d 1164, 1166 (7th Cir. 1997). Plaintiff has identified no authority, and the court finds no basis, for an award of attorney fees in this case.

CONCLUSION

For the foregoing reasons, the court finds that Plaintiff is entitled to judgment on his claims brought under 11 U.S.C. § 523(a)(4) and (a)(6) in the amount of $4,500 and that such debt is nondischargeable under those provisions of the Bankrupcty Code. The court further finds that Defendant is entitled to judgment in her favor on Plaintiff's claims brought under 11 U.S.C. § 727. A separate judgment in accordance with this Memorandum of Decision will be entered by the court.