Dated: April 27 2005

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	)	Case No.: 04-36511
Christina M. Belair,	)	Chapter 7
Debtor.	)	Adv. Pro. No. 04-3460
Sandra S. Rendle,	)	Hon. Mary Ann Whipple
Plaintiff,	)	
v.	)	
Christina M. Belair,	)	
Defendant.	)	

MEMORANDUM OF DECISION

This adversary proceeding is before the court for decision after trial on Plaintiff Sandra Rendle's complaint to determine dischargeability of a debt owed to her by Defendant/Debtor Christina Belair.

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 are

core proceedings that the court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(I). 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 the debt owed by Defendant to Plaintiff is dischargeable.

FINDINGS OF FACT

Plaintiff, proceeding pro se, offered the testimony of three witness, including herself, as well as documentary evidence, in her orderly presentation of the facts to the court. The court finds the witnesses' testimony to be credible. On October 24, 2002, Plaintiff was shopping at a Big Lots store in Toledo. While Plaintiff's car was parked in the parking lot of the store, Cindy Rice testified that she observed a car moving in the parking lot and colliding with the side of Plaintiff's vehicle. As the driver of the car left the scene of the accident, Ms. Rice wrote down her license number and provided this information to Plaintiff. Plaintiff then called the Toledo Police Department and a police investigation was completed. The police report indicated that the vehicle that struck Plaintiff's car was owned by Defendant. [Plaintiff's Ex. 1]. Although initially Defendant denied striking Plaintiff's vehicle, after a Hit Skip investigation, she apparently admitted her involvement in the accident and was cited by the police. [*Id.*, p. 2; Plaintiff's Ex. 4].

Although the police report indicates that Defendant had insurance, on Plaintiff's further investigation, the insurance company reported that Defendant's insurance had been canceled on September 27, 2002, approximately one month before the collision occurred. [Plaintiff's Ex. 2]. Thus, Defendant was uninsured at the time of the accident and, as a result, her license was suspended. Approximately one year later, in order to have her license reinstated, she signed an Agreement of Restitution wherein she agreed to pay Plaintiff $3,581 for damages to her vehicle, payable in monthly installments of $100 until paid in full. [Plaintiff's Ex. 3]. However, Defendant has made no payments on this debt.

Although Plaintiff and her husband continue to drive her car on a regular basis, it remains unrepaired. A recent estimate to repair the damages was obtained in the amount of $4,030. [Plaintiff's Ex. 5]. Plaintiff

contends that Defendant owes her a debt in this amount together with the cost of a car rental while her vehicle is being repaired and seeks a determination that the debt is nondischargeable in Defendant's bankruptcy case.

LAW AND ANALYSIS

A primary goal of the Bankruptcy Code is to provide a "fresh start" to the honest but unfortunate debtor by relieving her from the weight of oppressive indebtedness. *In re Krohn*, 886 F.2d 123, 125 (6th Cir.1989) (citing *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934)). A fresh start is accomplished in a Chapter 7 bankruptcy through a discharge of debts in exchange for liquidation of the debtor's assets for the benefit of her creditors. *Id.* Nevertheless, Congress excepted certain categories of debts from discharge. Section 727 of the Bankruptcy Code provides for a discharge under Chapter 7 of all debts incurred prior to the filing of a petition for bankruptcy, except those categories of debts specifically enumerated in 11 U.S.C. § 523(a). 11 U.S.C. § 727(b). The various exceptions to discharge found in § 523 "reflect Congress' conclusion that the creditors' interest in recovering full payment of debts in these categories outweighs the debtors' interest in a complete fresh start." *Cohen v. de la Cruz,* 523 U.S. 213, 214 (1998). The party seeking the exception to discharge bears the burden of proof on each element of her claim by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 291 (1991).

At trial Plaintiff proved three acts by Defendant that raise potential dischargeability issues: (1) colliding with Plaintiff's vehicle in the parking lot; (2) driving uninsured; and (3) signing an agreement for restitution without paying a dime to Plaintiff. Plaintiff does not identify a specific subsection of § 523 of the Bankruptcy Code upon which she bases her complaint. As correctly argued by Defendant's counsel, however, a debt for damages to a vehicle caused by an uninsured driver does not fall in any category of non-dischargeable debts enumerated in § 523(a) absent proof that the damage was caused willfully and maliciously.

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).

Addressing the "willful" requirement of § 523(a)(6), the Supreme Court specifically held in *Kawaauhau v. Geiger*, 523 U.S. 57 (1998), that "debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 526(a)(6)." *Id.* at 63. In *Kawaauhau*, the debtor was a doctor whose medical malpractice resulted in the amputation of plaintiff's leg below her knee. He filed for bankruptcy seeking to discharge the ensuing malpractice judgment against him. Similar to Defendant in this case, the physician-debtor had no malpractice insurance. In finding in favor of the doctor and allowing the malpractice judgment debt to be discharged as outside the scope of § 523(a)(6), the Supreme Court explained that nondischargeability requires "a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury." *Id.* at 61. Noting that the Restatement of Torts defines intentional torts as those motivated by a desire to inflict injury or those substantially certain to result in injury, the Sixth Circuit further refined the holding in *Kawaauhau* by incorporating the definition into the § 523(a)(6) analysis. *In re Markowitz*, 190 F.3d at 464. The Sixth Circuit held that "unless 'the actor desires to cause consequences of his act, or . . . believes that the consequences are substantially certain to result from it,' . . . he has not committed a 'willful and malicious injury' as defined under § 523(a)(6). *Id.*

In addition to proving a "willful" injury, Plaintiff must also demonstrate that Defendant acted maliciously. A person will be found to have acted maliciously when that person acts in conscious disregard of his or her duties or without just cause or excuse. *Monsanto Co. v. Trantham (In re Trantham)*, 304 B.R. 298, 308 (B.A.P. 6th Cir. 2004) (quoting *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986).

In this case, there is no evidence that Defendant intentionally collided with Plaintiff's vehicle. In fact, the only witness at trial that observed the collision testified that it did not appear that Defendant purposefully hit Plaintiff's car. Although Defendant's knowing and intentional operation of her vehicle while being uninsured was negligent and perhaps even reckless, such conduct does not rise to the requisite level of intent to cause injury. *See DeBlasio v. Groff (In re Groff)*, 301 B.R. 644, 650 (Bankr. D.N.J. 2003) (finding debtor's illegal operation of a vehicle does not equate with intent to cause injury). Agreeing with the majority viewpoint that the act of driving without liability insurance is not willful behavior within the meaning of § 523(a)(6) , one court explained:

> [the defendant's] nonfeasance would subject others to economic loss only if his car became involved in an accident. Such an accident is certainly foreseeable– indeed, that is the whole point of purchasing insurance. But of course, it is not inevitable.

Westfall v. Glass (In re Glass), 207 B.R. 850, 853-54 (Bankr. E.D. Mich. 1997) (collecting cases). Likewise, in this case Plaintiff has not proven by a preponderance of the evidence that Defendant intended to cause damage to Plaintiff's vehicle. Defendant's actions were thus not "willful" under § 523(a)(6) as interpreted by the Supreme Court and the Sixth Circuit.

In concluding that the debt owed by Defendant does not fall within any of the discharge exceptions enumerated in § 523(a), the court has also considered whether the debt falls within the exception set forth in § 523(a)(2)(A) for a debt obtained by false pretenses, a false representation, or actual fraud. But in order to except a debt under this section, a plaintiff must prove the following elements by a preponderance of the evidence: (1) the debtor obtained money, property or services through a material misrepresentation that, at the time, the debtor knew was false or made with gross recklessness as to its truth; (2) the debtor intended to deceive the creditor; (3) the creditor justifiably relied on the false representation; and (4) its reliance was the proximate cause of loss. *Rembert v. AT Universal Card Services, Inc. (In re Rembert)*, 141 F.3d 277, 280-81 (6th Cir. 1998).

In this case, it is more likely than not that Defendant misrepresented her intention to pay Plaintiff the $3,581 when she entered into the Agreement of Restitution ("Agreement") with Plaintiff. No payments were ever made by Defendant. She simply used the Agreement as a vehicle permitting her to have her driver's license reinstated. While the court finds such a maneuver reprehensible, the debt for $3,581 was nevertheless not incurred as a result of Defendant's fraud because the damage had already been done. Nor was any reliance by Plaintiff on the misrepresentation the proximate cause of Plaintiff's loss. Rather, the debt arose as a result, and at the time, of the collision. The Agreement simply represents a liquidation of the damages caused by the collision.

The court is well aware of the extreme frustration and sense of unfairness that creditors experience when a debt owed to them is discharged, especially under circumstances such as this where Defendant was driving without the insurance required by state law. However, "the judiciary's job is to enforce the law Congress enacted, not to write a different one that judges think superior." *Rittenhouse v. Eisen*, – F.3d –, 2005 WL 774306 (6th Cir. April 7, 2005).

CONCLUSION

Having found that Plaintiff failed to meet her burden of proving that the debt owed to her by Defendant falls within one of the categories enumerated in 11 U.S.C. § 523(a), judgment on the complaint will be entered in favor of Defendant. A separate judgment in accordance with this Memorandum of Decision will be entered.