IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

MELISSA JONES,	**CASE NO. 05-16726-NPO**
DEBTOR.	**CHAPTER 7**
DENISE DENTON	**PLAINTIFF**
VS.	**ADVERSARY NO. 05-01294**
MELISSA JONES	**DEFENDANT**

MEMORANDUM OPINION GRANTING
COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT

On November 28, 2006, there came on for trial (the "Trial) the Complaint to Determine Dischargeability of a Debt (Adv. Dk. No. 1) (the "Complaint") filed by Denise Denton (the "Plaintiff") and the Answer (Adv. Dk. No. 3) thereto filed by Melissa Jones (the "Debtor") in the above-styled adversary proceeding. David M. Holly represented the Plaintiff, and James K. Littleton represented the Debtor. The Court, having considered the pleadings and the testimony, exhibits and arguments of counsel presented at trial, finds that the Complaint is well taken and should be granted. Specifically, the Court finds as follows:[1]

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding. This matter is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I). Notice of the Complaint was

[1] The following constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

proper under the circumstances.

Facts

Most of the facts of this case are disputed by the parties. At the Trial, the Court found the Plaintiff's testimony to be more credible than the Debtor's. On August 24, 2003, the Plaintiff, her friend, Tori Denton ("T. Denton"), and T. Denton's mother, Cecilia Moorman ("Moorman"), spent the evening at a casino in Greenville, Mississippi. Upon their return to their hometown of Greenwood, Mississippi, at approximately 1:00 a.m., Moorman requested that they stop at a local tanning salon so that she could use a tanning bed.[2] While Moorman tanned, the Plaintiff and T. Denton sat outside the salon on the front steps.

According to both the Plaintiff and T. Denton, the following events occurred. The Plaintiff received two cell phone calls while she was sitting outside. The first call was from the Plaintiff's friend, John Walker Brooks ("Brooks"), who told the Plaintiff that he needed to see her. The Plaintiff told Brooks that she was at the tanning salon, but that she would be home in about thirty minutes and could see him then. Immediately upon finishing the call with Brooks, the Plaintiff answered a second phone call from an irate woman who would not identify herself and who repeatedly referred to the Plaintiff as "Liz." The Plaintiff testified that she told the caller that she was "Denise" and that "Liz" was her sister[3] and eventually hung up on the caller. T. Denton then went inside the salon to see if Moorman was ready to leave while the Plaintiff went to her truck to

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[2] T. Denton and Moorman were friends with the owner of the tanning salon, Barry Brewer ("Brewer").

[3] As discussed more fully below, the Plaintiff's sister, Liz Taylor ("L. Taylor"), and her husband, Mark Taylor ("M. Taylor"), were separated, during which time M. Taylor dated the Debtor.

wait for them.[4]

Shortly thereafter, the Debtor and Brooks arrived at the tanning salon. The Debtor's sister, S. Jones, whom the Debtor had called to meet her at the tanning salon, also arrived by separate vehicle. The weight of the testimony at Trial established that the Debtor and S. Jones approached the Plaintiff, who was beginning to exit her truck, calling her "Liz" and threatening her. The Plaintiff again stated that she was not "Liz" whereupon S. Jones grabbed the Plaintiff and threw her to the ground. S. Jones straddled the Plaintiff, hitting her repeatedly in the face as the Debtor stood over the Plaintiff, kicking her and punching her in the face, while Brooks stood by watching. T. Denton stated that she saw through the window of the tanning salon that the Plaintiff was being attacked, so she ran out and pulled the Debtor, kicking and screaming, off of the Plaintiff. T. Denton also maintained that she yelled at Brooks to pull S. Jones off of the Plaintiff, which he apparently did. The Debtor, Brooks, and S. Jones got in their vehicles and left. T. Denton called the Plaintiff's sister, L. Taylor, who is a nurse, for help.

L. Taylor took the Plaintiff to the hospital where she was treated for extensive facial injuries.[5] The Plaintiff asserted that as a result of the attack she incurred $4386 in medical bills, lost

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[4] The evidence established that prior to the phone calls, the Debtor, Brooks, and the Debtor's sister, Sharyn Jones ("S. Jones"), had been drinking at a number of area restaurants and nightclubs. The Debtor and Brooks were riding together in one vehicle while S. Jones was driving a different vehicle. Eventually, the Debtor and Brooks became separated from S. Jones, and they ended up in different locations prior to the altercation.

[5] The Debtor's version of events is quite different. She contended that while she and Brooks were together in their car, the Plaintiff called Brooks and the Debtor answered phone. The Debtor stated that she identified herself and that she was immediately threatened by the Plaintiff. According to the Debtor, the Plaintiff said she would teach the Debtor a lesson about dating a married man and "invited" the Debtor to the tanning salon to fight. The Debtor maintained that she did not go to the tanning salon to fight, but that she went to the tanning salon to inform the owner, Brewer, of the Plaintiff's "invitation" to fight on his premises. Moreover,

two weeks' wages in the estimated total amount of $2581, and has continuing medical problems related to her sinuses.

Subsequently, the Plaintiff obtained a state court default judgment against the Debtor and S. Jones based on the injuries she received as a result of the attack.[6] On September 27, 2005, the Debtor filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code. (Dk. No. 1). Thereafter, the Plaintiff initiated this adversary proceeding against the Debtor by filing the Complaint wherein she contends that the Debtor is precluded from discharging the debt established by the default judgment because she committed a willful and malicious injury against the Plaintiff in the context of 11 U.S.C. § 523(a)(6).[7]

Discussion

Section 523(a)(6) of the Bankruptcy Code provides:

> (a) A discharge under section 727, . . . of this title does not discharge an individual debtor from any debt - . . .
>
> > (6) 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). A creditor seeking to deny a debtor the discharge of a debt pursuant to § 523(a)(6) must prove by a preponderance of the evidence that the debt is non-dischargeable.

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the Debtor and S. Jones both contend that the Plaintiff taunted S. Jones and that the Plaintiff threw the first punch. All of the witnesses testified, however, that the Debtor quickly became involved in the fight and hit the Plaintiff.

[6] The Plaintiff's counsel acknowledged at trial that this Court should not give any preclusive effect to the state court default judgment in this instance. *See* Pancake v. Reliance Insurance Co. (In re Pancake), 106 F.3d 1242 (5th Cir. 1997) (default judgment not given preclusive effect where state court did not conduct hearing in which creditor met its evidentiary burden of proof).

[7] Hereinafter, all code sections refer to the United States Bankruptcy Code located at Title 11 of the United States Code, unless otherwise noted.

Grogan v. Garner, 498 U.S. 279, 284 n. 11, 111 S.Ct. 654, 658 n. 11, 112 L.Ed.2d 755 (1991); RecoverEdge L.P. v. Pentecost, 44 F.3d 1284, 1292 (5th Cir. 1995).

In Kawaauhau v. Geiger, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed.2d. 90 (1998), the United States Supreme Court concluded that "nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." Kawaauhau v. Geiger, 118 S.Ct. at 977. The Geiger court further held that "debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." Kawaauhau v. Geiger, 118 S.Ct. at 978.

The Court of Appeals for the Fifth Circuit subsequently determined in Miller v. J.D. Abrams, Inc. (In re Miller), 156 F.3d 598, 604 (5th Cir. 1998), that an injury is 'willful and malicious' where the debtor's conduct would cause injury according to an objective substantial certainty of harm standard or upon a showing that the debtor had a subjective motive to cause harm. Id. at 606; Structured Inv. Co. v. Smith (In re Smith), 302 B.R. 530, 534 (Bankr. N.D. Miss. 2003). Based on the Geiger and Miller cases, a willful and malicious injury under § 523(a)(6) cannot be one that is recklessly or negligently inflicted and must be one in which the debtor's conduct evinces either an objective substantial certainty of harm or a subjective motive to do harm.

Application of the law to the facts of this case leads the Court to conclude that the Debtor's conduct constitutes a willful and malicious injury pursuant to § 523(a)(6). In this case, the evidence established that the Debtor had a subjective motive to cause harm. That is, the evidence revealed that L. Taylor and her husband, M. Taylor, had separated. During their separation, the Debtor dated M. Taylor. The very week of the assault on the Plaintiff, L. Taylor and M. Taylor had reconciled. The

Debtor determined that the Plaintiff was at the tanning salon, called S. Jones to meet her there,[8] and then attacked the Plaintiff, apparently believing her to be L. Taylor.[9] The Debtor had a subjective motive to harm the woman she believed to be her "boyfriend's" wife.

Moreover, objectively, the Debtor's conduct was substantially certain to cause harm to the Plaintiff. Although the Debtor characterized her participation in the fight as a limited one, and as a result of being caught in the middle of an altercation between the Plaintiff and S. Jones, the Court does not find her testimony credible. At the Trial, the Debtor admitted hitting the Plaintiff, and S. Jones, in her statement to the police, stated that the Debtor hit the Plaintiff. Moreover, the Plaintiff and T. Denton testified adamantly that the Debtor repeatedly hit the Plaintiff and kicked her in the face while wearing a hard shoe. No matter who threw the first punch, from an objective view, the Debtor intended not only the act of hitting and kicking the Plaintiff, but also intended to cause her injuries.[10]

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[8] As noted, the Court does not find credible the Debtor's explanation that she went to the tanning salon at 1:00 a.m. to inform the owner of the business that she had been "invited" to fight on his premises. The Court discerns no reason for the Debtor nor her sister, S. Jones, to have been at the tanning salon other than to come together to confront the Plaintiff.

[9] Although he did not testify at the Trial, the evidence established that Brooks had been dating L. Taylor during her separation from M. Taylor. Given his involvement with L. Taylor, it is unclear why Brooks did not inform the Debtor or S. Jones that the Plaintiff was not L. Taylor.

[10] Compare with the actions of Mitchell (the debtor) in the Memorandum Opinion Denying Complaint to Determine Dischargeability of a Debt in Wilkes v. Mitchell, Adv. No. 05-1133 (Bankr. N.D. Miss. filed Dec. 5, 2006), issued contemporaneously with this Memorandum Opinion. In that case, Mitchell, a police officer, hit Wilkes with a flashlight while trying to prevent Wilkes from obtaining the Mitchell's weapon. The Court found, from the facts in that case, that Mitchell did not intend the injury, although one occurred. In the case at bar, the Court finds from the evidence presented that the Debtor fully intended to cause, and indeed did cause, harm to the Plaintiff.

Based on the foregoing, the Court finds that the Plaintiff has established by a preponderance of the evidence that the Debtor's conduct was borne of a subjective motive to cause harm and that objectively, the Debtor's conduct was substantially certain to cause harm. Accordingly, the Complaint is well taken and should be granted, and the judgment entered against the Debtor on January 19, 2005, by the Circuit Court of Leflore County, Missisippi, in Cause No. 2004-0088, in the amount of $30,000, should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).[11]

A separate final judgment consistent with this Memorandum Opinion will be entered by this Court in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

DATED this the 5th day of December, 2006.

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

[11] The Motion to Avoid Judicial Lien (Dk. No. 5) filed by the Debtor and the Response thereto (Dk. No. 8) filed by the Plaintiff in the main bankruptcy case, which also were set to be heard on November 28, 2006, will be reset to a later date for a separate trial.