



SO ORDERED,

A handwritten signature in blue ink that reads "Katharine M. Samson".

**Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: March 23, 2016**

The Order of the Court is set forth below. The docket reflects the date entered.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE: BENNY R. KNIGHT, SR.

CASE NO. 15-50011-KMS

DEBTOR

CHAPTER 7

E. HAROLD KNIGHT

CREDITOR/PLAINTIFF

V.

ADV. NO. 15-06011-KMS

BENNY R. KNIGHT, SR.

DEBTOR/DEFENDANT

SUMMARY JUDGMENT

Before the Court is the Plaintiff's Motion for Summary Judgment (Adv. Dkt. No. 26)¹ and Plaintiff's Brief in Support of Motion for Summary Judgment (Adv. Dkt. No. 27), filed by E. Harold Knight ("Harold"); the Defendant's Reply Brief in Opposition to Plaintiff's Motion for Summary Judgment (Adv. Dkt. No. 28) filed by Benny R. Knight, Sr. ("Benny"); and Plaintiff's Rebuttal Brief in Support of Motion for Summary Judgment (Adv. Dkt. No. 29) filed by Harold. Having considered the pleadings, exhibits attached thereto, and the record, the Court finds that the Motion for Summary Judgment should be granted in part and states the following:

¹ Unless stated otherwise, citations to the record are as follows: (1) citations to docket entries in the adversary proceeding, Adv. Proc. No. 15-06011-KMS, are cited as "Adv. Dkt. No. ____"; and (2) citations to docket entries in the main bankruptcy case, Case No. 15-50011-KMS, are cited as "Dkt. No. ____".

I. Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this Adversary Proceeding pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

II. Findings of Facts

Benny filed his petition for Chapter 7 relief on January 6, 2015. His brother Harold filed the only proof of claim on March 3, 2015, alleging a claim in the amount of \$1,775,223.75 secured by a judgment lien on Benny's real property. Claim 1-1. On March 31, 2015, Harold filed his complaint to have his debt declared nondischargeable under Section 523, to deny Benny's discharge under Section 727, or to have the petition dismissed under Section 727. Adv. Dkt. 1. Benny answered the complaint on June 2, 2015. Adv. Dkt. No. 7. The Court entered a scheduling order on June 3, 2015. Adv. Dkt. No. 8. On November 16, 2015, Harold moved for summary judgment on his nondischargeability claims and abandoned his claims for denial of discharge or dismissal of Benny's bankruptcy. Adv. Dkt. No. 26.

Several years prior to the bankruptcy, Benny and Harold had co-owned and operated Knights' Piping, Inc. ("Knights' Piping"). Benny controlled 51% of the corporation and served as president. Harold held the rest of the outstanding shares and served as vice president. *Knights' Piping, Inc. v. Knight*, 123 So. 3d 451, 454 (Miss. Ct. App. 2012). This arrangement continued until 1989, when Benny was indicted on an unrelated aggravated assault charge. Thereafter, Harold assumed the role of president and became the majority shareholder. Harold also executed an employment agreement with Knights' Piping on August 1, 1989. *Id.* Approximately eighteen months later, the criminal charges against Benny were dropped, and the brothers resumed their

prior working relationship and percentage control of Knights' Piping. *Id.* at 454-55. On August 31, 1999, Benny and Harold's sons were involved in a physical altercation after Harold's sons offered to buy out their uncle's shares in Knights' Piping. *Id.* On September 3, 1999, Benny fired Harold and his sons. *Id.* at 455, 457-58.

Harold filed suit against Benny and Knights' Piping in the Jackson County Chancery Court on February 24, 2000. *Id.* at 453. His "complaint requested a judicial dissolution of Knights' Piping, an appointment of a receiver/custodian for Knights' Piping, and a partition of certain real property." *Id.* at 453-54. Benny countersued Harold and filed counterclaims against Harold's sons and another company founded by Harold's sons. *Id.* at 454. After a decade of protracted litigation, the Chancery Court ultimately "found Benny personally liable for the breach of Harold's employment contract and awarded Harold [compensatory] damages totaling \$1,751,457. Additionally, the court awarded Harold punitive damages of \$25,000. . . ." ² *Id.* Benny and Knights' Piping appealed the Chancery Court's decision. The Chancery Court found that Benny had breached his fiduciary duty "when he used corporate funds for his personal use" and "when he terminated Harold." Adv. Dkt. No. 26-2 at 18. The Mississippi Court of Appeals affirmed in part, reversed in part, and remanded in part the lower court's ruling on December 11, 2012. *Knights' Piping*, 123 So. 3d at 461. Specifically, the Court of Appeals found that the Chancery Court "did not err in holding Benny personally liable for his intentional breach of Harold's employment contract." *Id.* at 459. But it did "not address Benny's challenge to the chancery court's factual findings regarding his use of corporate funds" because it affirmed the breach of fiduciary duty related to the breach of contract. *Id.* at 459 n.3. The Mississippi Supreme Court denied certiorari. 123 So. 3d 450 (Miss. 2013).

² The Chancery Court also awarded \$43,910.23 in attorneys' fees to Harold's sons. *Knights' Piping*, 123 So. 3d at 454; *see also* Claim 1-1 at 12-18. The Court of Appeals reversed this award. *Knights' Piping*, 123 So. 3d at 461 ("[T]he chancery court erred in awarding attorneys' fees to Harold's sons. . . .").

III. Conclusions of Law

A. Summary Judgment Standard

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also* Fed. R. Bankr. P. 7056 (applying Rule 56³ to adversary proceedings). “A fact is ‘material’ if its resolution in favor of one party might affect the outcome of the lawsuit under governing law. An issue is ‘genuine’ if the evidence is sufficient for a reasonable [fact-finder] to return a verdict for the non-moving party.” *Ginsberg 1985 Real Estate P'ship v. Cadle Co.*, 39 F.3d 528, 531 (5th Cir. 1994) (citations omitted). The moving party bears the initial responsibility of apprising the court of the basis for its motion and the parts of the record which indicate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

“Once the moving party presents the . . . court with a properly supported summary judgment motion, the burden shifts to the nonmoving party to show that summary judgment is inappropriate.” *Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir.1998). “The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). But the nonmovant must meet his burden with more than metaphysical doubt, conclusory allegations, unsubstantiated assertions, or a mere scintilla of evidence. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). A party asserting a fact is “genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials. . . .” Fed. R. Civ. P. 56(c)(1)(A).

³ For convenience, references to the Federal Rules of Civil Procedure are shortened to “Rule ____”.

Summary judgment must be rendered when the nonmovant “fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322.

B. Denial of Discharge

Harold expressly abandoned his claims seeking dismissal or denial of discharge under Section 727, and the Court will, therefore, not address them. Adv. Dkt. No. 27 at 1 (“Harold hereby abandons his claims seeking a denial of discharge and moves for summary judgment on his nondischargeability claims only.”)

C. Issue Preclusion/Collateral Estoppel

Harold argues that this Court should apply the findings of fact made by the Jackson County Chancery Court as affirmed by the Mississippi Court of Appeals. Adv. Dkt. No. 27 at 5. Benny argues Harold has “mischaracterize[d] the state court judgment.” Adv. Dkt. No. 28 at 1.

“The Supreme Court has explicitly stated that collateral estoppel, or issue preclusion, principles apply in bankruptcy dischargeability proceedings.” *Schwager v. Fallas (In re Schwager)*, 121 F.3d 177, 181 (5th Cir. 1997) (citing *Grogan v. Garner*, 498 U.S. 279, 285 n.11 (1991)).

For the purpose of nondischargeability, issue preclusion applies in bankruptcy court only if “the first court has made specific, subordinate, factual findings on the identical dischargeability issue in question—that is, an issue which encompasses the same *prima facie* elements as the bankruptcy issue—and the facts supporting the court's findings are discernible from that court's record.”

State Farm Mut. Auto. Ins. Co. v. Gatlin (In re Gatlin), Bankr. No. 1201647, Adv. No. 1200075, 2013 WL 2250304, at *6 (Bankr. S.D. Miss. May 22, 2013 (quoting *Dennis v. Dennis (In re Dennis)*, 25 F.3d 274, 278 (5th Cir. 1994)). Bankruptcy “court[s] must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State

in which the judgment was rendered.” *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). Because the decisions were rendered in Mississippi, the Court applies Mississippi’s doctrine of collateral estoppel.

Under Mississippi law, collateral estoppel precludes parties “from relitigating a specific issue which was: actually litigated in the former action; determined by the former action; and, essential to the judgment in the former action.” *Am. Cas. Co. v. United S. Bank*, 950 F.2d 250, 253 (5th Cir. 1992) (citing *Dunaway v. W.H. Hopper & Assocs., Inc.*, 422 So. 2d 749, 751 (Miss. 1982)). “Collateral estoppel precludes revisiting issues previously decided, and nothing in the rule limits its coverage to issues of fact.” *State ex rel. Moore v. Molpus*, 578 So. 2d 624, 640 (Miss. 1991) (citing *Montana v. U.S.*, 440 U.S. 147, 162-63 (1979)); *see also In re Gatlin*, 2013 WL 2250304, at *7 (quoting *Moore*). “The requirement that an issue be ‘actually litigated’ for collateral estoppel purposes simply requires that the issue is raised, contested by the parties, submitted for determination by the court, and determined.” *Raspanti v. Keaty (In re Keaty)*, 397 F.3d 264, 272 (5th Cir. 2005). But the state court need not have conducted a trial or evidentiary hearing to satisfy this requirement. *Id.* at 271-72. “An issue is essential to the judgment if the verdict could not have been rendered without a decision on the issue.” Donald Campbell, Jeffrey Jackson & Mary Miller, 2 Encyclopedia of Mississippi Law § 14:21 (2015) (citing *Miss. Emp’t Sec. Comm’n v. Philadelphia Mun. Separate Sch. Dist. of Neshoba Cnty.*, 437 So. 2d 388, 396 n.8 (Miss. 1983) (quoting *Haring v. Prosise*, 462 U.S. 306, 315 (1983))). In order to establish collateral estoppel in this adversary proceeding, the Court must determine that the requisite elements of the dischargeability claim were decided by the state courts. *See Gupta v. E. Idaho Tumor Inst., Inc. (In re Gupta)*, 394 F.3d 347, 349-50 (5th Cir. 2004) (holding that “[a] bankruptcy court may apply collateral estoppel in a dischargeability proceeding to preclude

relitigation of state court findings that are relevant to dischargeability . . . [but that t]he ultimate determination of dischargeability is, however, a federal question”).

D. Nondischargeability

Debts “for willful and malicious injury by the debtor to another entity or to the property of another entity” are excepted from discharge. 11 U.S.C. § 523(a)(6) (2010). The plaintiff must establish “(1) injury by the debtor; (2) to another (or property of another); and (3) such injury was willful and malicious.” *Whitney Nat’l Bank v. Phillips (In re Phillips)*, Bankr. No. 0802325, Adv. No. 09-00033, 2010 WL 5093388, at *6 (Bankr. S.D. Miss. Dec. 8, 2010). “The test for willful and malicious injury . . . is . . . whether there exists ‘either an objective substantial certainty of harm or a subjective motive to cause harm’ on the part of the debtor.” *Williams v. Int’l Bhd. of Elec. Workers Local 520 (In re Williams)*, 337 F.3d 504, 509 (5th Cir. 2003) (quoting *Miller v. J.D. Abrams, Inc. (In re Miller)*, 156 F.3d 598, 606 (5th Cir. 1998)). Further, “for an injury to be ‘willful and malicious’ it must satisfy our two-part test and not be sufficiently justified under the circumstances to render it not ‘willful and malicious.’” *Mann Bracken, LLP v. Powers*, 421 B.R. 326, 332 (Bankr. W.D. Tex. 2009) (discussing the history of § 523(a)(6) in the 5th Circuit and citing *Berry v. Vollbracht (In re Vollbracht)*, 276 F. App’x 360, 361–62 (5th Cir. 2007)).

Here, the Court of Appeals specifically found that “the chancery court did not err in holding Benny personally liable for his intentional breach of Harold’s employment contract”⁴ and upheld a large portion of the award of actual damages and punitive damages caused by Benny’s intentional conduct. *Knights’ Piping*, 123 So. 3d at 459-60. The Court of Appeals affirmed the Chancery Court’s findings that

⁴ The Court of Appeals also held that Benny was liable “based on his breach his of fiduciary duty.” *Knights’ Piping*, 123 So. 3d at 461 n.3.

Benny admitted in his testimony that he unilaterally terminated Harold. Harold testified that Benny never gave him a reason for his termination, and Benny has offered no legitimate business purpose for terminating Harold. Furthermore, Benny's actions effectively guaranteed that Harold would not receive a return on his interest in [Knights' Piping], as earnings were distributed in the form of salaries and other benefits as opposed to dividends.⁵

Id. at 459. Because the only way for Harold to receive a return on his investment in Knights' Piping was through a salary as an employee, his unjustified termination by Benny was substantially certain to cause Harold injury as the minority shareholder. *See Knights' Piping*, 123 So. 3d at 458-59 (discussing relevant Mississippi cases); *see also Hollis v. Hill*, 232 F.3d 460, 470 (5th Cir. 2000) (“[A] controlling shareholder cannot, consistent with his fiduciary duty, effectively deprive a minority shareholder of his interest as a shareholder by terminating the latter’s employment or salary. . . .”). The factual findings underlying the Chancery Court judgment are sufficient to establish that the debt arising from Benny’s intentional breach of Harold’s contract is nondischargeable. *See Eagle Sindh, Inc. v. Desai (In re Desai)*, Bankr. No. 07-41713, Adv. No. 07-04190, 2009 WL 2855735, at *6 (Bankr. E.D. Tex. Sept. 2, 2009) (“[A]n intentional breach of contract can be excepted from discharge under § 523(a)(6) when it is accompanied by malicious and willful tortious conduct. . . .”).

As for the punitive damages, “[t]he vast majority of courts, including bankruptcy courts in the Fifth Circuit, have . . . held that punitive damages . . . are nondischargeable under Section 523(a)(6).” *Stokes v. Ferris*, 150 B.R. 388, 391 (W.D. Tex. 1992). “Ample authority can be found for the proposition that where willfulness and malice exist, compensatory and punitive damages flowing therefrom are nondischargeable under 11 U.S.C. § 523(a)(6).” *Associated Growers, Inc. v. Horowitz (In re Horowitz)*, 103 B.R. 786, 790 (Bankr. N.D. Miss. 1989). “[T]he

⁵ In further support of the absence of a legitimate business purpose in terminating Harold, the Chancery Court found “that Benny terminated Harold in retaliation for the fight between Benny and Harold’s sons caused by Benny’s belief that Harold and his sons were trying to squeeze him out of the corporation.” Adv. Dkt. No. 26-2 at 20.

status of ancillary obligations . . . depends on that of the primary debt. When the primary debt is nondischargeable due to willful and malicious conduct, the [ancillary obligations] accompanying compensatory damages, including post-judgment interest, are likewise nondischargeable.” *Gober v. Terra + Corp. (In re Gober)*, 100 F.3d 1195, 1208 (5th Cir. 1996) (citing *Stanley v. Cole (In re Cole)*, 136 B.R. 453, 459 (Bankr. N.D. Tex. 1992) (holding punitive damages nondischargeable)). Because the Court has found the compensatory damages award underlying the punitive damages award to be nondischargeable, the Court also finds that the punitive damages award based on the same conduct is nondischargeable.

Harold argues that the debt is nondischargeable under both Sections 523(a)(6) and 523(a)(4). Adv. Dkt. No. 26 at 3. Because the Court finds that the judgment against Benny is nondischargeable as a willful and malicious injury under Section 523(a)(6), it is unnecessary for the Court to analyze the same damages for fraud or defalcation in a fiduciary capacity under Section 523(a)(4).

E. Damages

The Chancery Court awarded damages to Harold in two separate orders. First, it awarded Harold’s damages under his employment contract: (1) \$726,800.00 in lost wages, (2) \$20,475.00 as the cash value of a life insurance policy, (3) \$125,00.00 in yearly payments of \$25,000.00, (4) \$318,500.00 for the repurchase of Harold’s shares of Knights’ Piping, (5) \$33,544.61 in accrued vacation days, (6) \$145,360.00 in accrued sick leave, (7) title to a company vehicle worth \$5,000.00, (8) \$100,000.00 for a forfeited certificate of deposit, and (9) \$14,278.00 for an unrepaid shareholder loan made to Knights’ Piping, (10) \$262,500.00 for lost rental income. Adv. Dkt. No. 26-2 at 20-21. Second, it awarded punitive damages of \$25,350.00 which equaled 1% of Benny’s net worth. Adv. Dkt. No. 26-2 at 6. The total award by the Chancery Court was

\$1,776,457.00 plus 8% interest from July 14, 2010. Adv. Dkt. No. 26-2 at 7. The Court of Appeals reversed and remanded the award for unpaid sick leave. *Knights' Piping*, 123 So. 3d at 460. The Court of Appeals reversed and rendered the awards for the certificate of deposit, the shareholder loan, and the unpaid rent. *Id.* The Court of Appeals affirmed the remainder of the relevant damages, leaving a total award of \$1,254,319.00.

IV. Conclusion

For the reasons stated above, summary judgment should be granted on the issue of dischargeability. Based on the factual findings of the Chancery Court and the Mississippi Court of Appeals, the debt is one for a willful and malicious injury. The Court cannot, however, grant summary judgment as to all of the alleged damages. Harold has only provided evidence to the Court to sustain his claim to the \$1,254,319.00 as affirmed. The Court cannot enforce the amount related to the remanded unpaid sick leave because Harold has not presented either evidence or a post-remand judgment to support it. The Court also disallows the portion of Harold's claim that arises from the damages reversed by the Court of Appeals, including those for attorney's fees awarded to Harold's sons.

IT IS HEREBY ORDERED THAT summary judgment is **GRANTED** on the issue of dischargeability in favor of Plaintiff E. Harold Knight. The judgment debt against Defendant Benny R. Knight, Sr. in the amount of \$1,254,319.00 is nondischargeable.

FURTHER ORDERED THAT summary judgment is denied as to the remainder of the claimed damages.

##END OF ORDER##