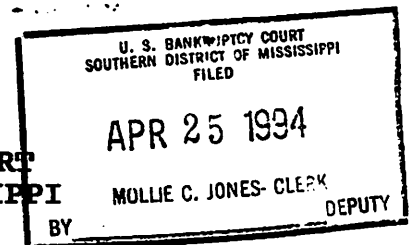


IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE: PRISCILLA KAYE BROWN

CASE NO. 9202729EEJ

MARGARET EUBANKS (HAMILTON)

PLAINTIFF

VS.

ADVERSARY NO. 9200232

PRISCILLA KAYE BROWN

DEFENDANT

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Edward Ellington, Bankruptcy Judge

**MEMORANDUM OPINION**

This adversary proceeding is before the Court on the complaint of Margaret Eubanks against the Debtor, Priscilla Brown, wherein Ms. Eubanks seeks an order declaring her claim against the Debtor nondischargeable pursuant to 11 U.S.C. § 523(a)(6).<sup>1</sup> Ms. Eubanks's claim is based on a state court judgment against the Debtor arising out of an altercation between Ms. Eubanks and the Debtor. By stipulation of the parties, the Court has considered as

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<sup>1</sup> Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

evidence in this matter the complaint, answer and counterclaim, and answer to counterclaim which were filed in the state court proceeding; the state court trial transcript; the jury instructions; and the judgment entered in state court.

After considering the abovementioned evidence and applicable law, this Court holds that Ms. Eubanks's claim against the Debtor is nondischargeable pursuant to § 523(a)(6) of the Bankruptcy Code. In so holding, the Court makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

Margaret Eubanks filed a complaint against Priscilla Brown in the Circuit Court of Rankin County, Mississippi, seeking damages arising out an alleged assault committed by Priscilla Brown. Priscilla Brown filed a counterclaim to Ms. Eubanks's complaint alleging that, in fact, Ms. Eubanks committed an assault on her.

The matter was tried before a jury, with the jury being instructed as follows:

The court instructs the jury that a person can use such force as reasonably appears necessary to repel an attack and to defend themselves from bodily injury at the hands of another.

Therefore, if you find by the preponderance of the evidence that Priscilla Brown was the aggressor and physically attacked Margaret Eubanks, and Margaret Eubanks used only such force as reasonably necessary to repel the attack on her by Priscilla Brown, then in that event you shall return a verdict for Margaret Eubanks on her claim for damages against Priscilla Brown and

also return a verdict for Margaret Eubanks on the counter claim against her of Priscilla Brown.

On the other hand, if you find from a preponderance of the evidence that Margaret Brown was the aggressor and physically attacked Priscilla Brown, and Priscilla Brown used only such force as reasonably necessary to repel the attack on her by Margaret Eubanks, then in that event you shall return a verdict for Priscilla Brown on her counter claim for damages against Margaret Eubanks and also return a verdict for Priscilla Brown on the claim against her of Margaret Eubanks.

After being so instructed, the jury returned a verdict in favor of Ms. Eubanks on her claim for assault, with an award of damages in the amount of \$ 15,000. The jury also found for Ms. Eubanks on Ms. Brown's counterclaim for assault. A judgment in accordance with the jury verdict was entered on January 28, 1992.

On July 24, 1992 Priscilla Brown filed a petition for relief under Chapter 7 of the Bankruptcy Code. Ms. Eubanks subsequently filed her complaint objecting to the discharge of her claim against Ms. Brown pursuant to § 523(a)(6) of the Bankruptcy Code.

#### CONCLUSIONS OF LAW

In order to obtain a judgment of nondischargeability under § 523 of the Bankruptcy Code, Ms. Eubanks must prove her case by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279 (1991). Additionally, the issue of whether a particular debt is nondischargeable under the Bankruptcy Code is a matter of federal law. Id.; Allison v. Roberts (Matter of Allison), 960 F.2d 481, 483 (5th Cir. 1992).

Ms. Eubanks claims that Ms. Brown's actions, upon which the state court judgment is based, are sufficient to render her claim against Ms. Brown nondischargeable under § 523(a)(6), which provides in pertinent part as follows:

11 USC § 523

§ 523. Exceptions to discharge.

(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 . . .

"Section 523(a)(6) is based on tort principles rather than contract. It is designed to compensate the injured party for the injury suffered while not allowing the debtor to escape liability for a 'willfull [sic] and malicious' injury by resort to the bankruptcy laws." Friendly Finance Service v. Modicue (In re Modicue), 926 F.2d 452, 453 (5th Cir. 1991)(citations omitted).

The controlling standard adopted by the Fifth Circuit Court of Appeals for determining whether the Debtor's conduct was "willful and malicious" within the meaning of § 523(a)(6) is as follows:

In order to fall within the exception of section 523(a)(6), the injury to an entity or property must have been willful and malicious. An injury of an entity or property may be a malicious injury within this provision if it was wrongful and without just cause or excessive [sic], even in the absence of personal hatred, spite or ill-will. The word 'willful' means 'deliberate or intentional,' a deliberate and intentional act which necessarily leads to injury. Therefore, a

wrongful act done intentionally, which necessarily produces harm and is without just cause or excuse, may constitute a willful and malicious injury.

Kelt v. Quezada (Matter of Quezada), 718 F.2d 121, 123 (5th Cir. 1983) cert. denied, 467 U.S. 1217 (1984)(citing 3 Collier on Bankruptcy, 523.16 at 523-128 (15th ed. 1983)(emphasis added). See also Seven Elves, Inc. v. Eskenazi, 704 F.2d 241, 245 (5th Cir. 1983); Petty v. Dardar (Matter of Dardar), 620 F.2d 39, 40 (5th Cir. 1980); Vickers v. Home Indemnity Co., 546 F.2d 1149, 1150 (5th Cir. 1977); Federal Deposit Insurance Corp. v. Lefevre (In re Lefevre), 131 B.R. 588, 602 (Bankr. S.D. Miss. 1991); Guaranty Corp. v. Fondren (In re Fondren), 119 B.R. 101, 105 (Bankr. S.D. Miss. 1990); Meridian Production Ass'n. v. Hendry (In re Hendry), 77 B.R. 85 (Bankr. S.D. Miss. 1987); Berry v. McLemore (In re McLemore), 94 B.R. 903, 906 (Bankr. N.D. Miss. 1988).

According to Fifth Circuit precedent, the term "willful" as used in § 523(a)(6) means that Ms. Brown's actions must have been "deliberate or intentional." The term "malicious" means that her actions must have been "wrongful and without just cause or excuse."

The jury in the state court action was instructed that in order to return a verdict in favor of Margaret Eubanks, it must find that Priscilla Brown was the aggressor and physically attacked Margaret Eubanks, and the Margaret used only such force necessary to defend herself. In returning a verdict in favor of Margaret Eubanks, the jury so found that Priscilla Brown was the aggressor and physically attacked Margaret Eubanks.

From a review of the state court trial transcript, the instructions given to the jury, and the verdict rendered by the jury, this Court holds that Ms. Brown's actions in physically attacking Margaret Eubanks were committed intentionally, and therefore were "willful."

This Court also holds that in light of the jury's finding that Ms. Brown was the aggressor in the altercation, and that Ms. Eubanks only used force sufficient to defend herself, Ms. Brown's actions were also "wrongful and without just cause or excuse." Therefore, Ms. Brown's actions were "malicious" within the meaning of § 523(a)(6).

#### CONCLUSION

Based on the evidence presented to the Court, this Court holds that the Plaintiff, Margaret Eubanks, has met her burden of proof regarding the nondischargeability of her claim against the Debtor, Priscilla Brown. Therefore, her claim will be excepted from discharge pursuant to § 523(a)(6) of the Bankruptcy Code.

In accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure, a separate judgment will be entered consistent with this opinion.

Dated this the 25 day of April, 1994.

  
UNITED STATES BANKRUPTCY JUDGE

APR 25 1994

MOLLIE C. JONES- CLERK

BY

DEPUTY

IN THE UNITED STATES BANKRUPTCY COURT  
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DEFENDANT

FINAL JUDGMENT

Consistent with this Court's opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the judgment entered on January 28, 1992 in the Circuit Court of Rankin County, Mississippi, in the case of Margaret Eubanks v. Priscilla Brown, civil action number 15,620, is excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).

This is a final judgment for the purposes of Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

ORDERED AND ADJUDGED this the 25 day of April, 1994.



UNITED STATES BANKRUPTCY JUDGE