

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

U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED

NOV 20 1998

CHARLENE J. PENNINGTON, CLERK
BY _____ DEPUTY

IN RE: CHAPTER 7
GENE MARK BAINES CASE NO. 93-10228

IN RE: CHAPTER 7
CLEMENT C. ALLEYNE CASE NO. 93-00270 JEE

DR. THEODORE C. JONES PLAINTIFF
VS. ADVERSARY NO. 93-0103 JC

GENE MARK BAINES DEFENDANT

DR. THEODORE C. JONES PLAINTIFF
VS. ADVERSARY NO. 93-0060 JC

CLEMENT C. ALLEYNE DEFENDANT

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Edward Ellington, Judge

FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON MOTION FOR SUMMARY JUDGMENT,
MOTION TO STRIKE DEBTORS' COUNTER MOTION,
AND
COUNTER MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on *Motion for Summary Judgment* filed by Plaintiff/Creditor, Theodore C. Jones, and *Response to Motion for Summary Judgment and Counter Motion for Summary Judgment* filed by Defendants/Debtors, Gene Mark Baines and Clement C. Alleyne. After considering the pleadings and briefs submitted by the parties, the Court finds that Jones' *Motion for Summary Judgment* should be denied in part and granted in part and that Debtors' *Counter Motion for Summary Judgment* should be denied in part and granted in part.

FINDINGS OF FACT

The facts in this case have been established pursuant to findings of the Chancery Court of the First Judicial District of Hinds County, Mississippi and the Mississippi Supreme Court. In 1986, Jones and the Debtors, dentists and shareholders of JABB Systems, Inc., P.A., decided to purchase a church building to remodel into dental offices. In order to finance the purchase and remodeling of the building, Jones and the Debtors entered into a construction loan with Deposit Guaranty National Bank (Deposit Guaranty). The construction loan was made to the corporation and secured by the property and a guaranty of the Small Business Administration (SBA). The SBA received guarantees from Jones and the Debtors and took deeds of trust on the Debtors' residences and on certain commercial property of Jones in order to secure their guarantees. JABB also entered into a loan with Deposit Guaranty for the purpose of purchasing dental equipment, which was secured by that equipment.

During March 1988, dissension among the JABB shareholders began after Jones sought resolution of financial difficulties of the corporation. Following a dispute regarding payment of the corporate expenses and a proposed increase in their monthly rental payment, the Debtors vacated the premises. The Chancery Court found that the Debtors did not attend meetings of the JABB board

of directors, withdrew from the corporation, and did not make payments toward the Deposit Guaranty debt or the expenses of the corporation after April 1988.

After withdrawal of the Debtors from JABB, Jones refinanced the Deposit Guaranty mortgage and equipment loans by obtaining a loan from Trustmark National Bank (Trustmark), which he signed personally, secured by the property of the corporation. The refinancing with Trustmark released the Debtors from their liability to Deposit Guaranty. The Chancery Court found that once released from their liability to Deposit Guaranty, the Debtors attempted to assert claims to the assets of the corporation and the building without being willing to pay any proportionate share of the expense. Eventually, Jones was unable to make payments on the Trustmark loan, causing Trustmark to institute foreclosure proceedings upon the property.

In 1992, the Debtors filed suit against Jones and others in the Chancery Court asserting claims of fraud, breach of fiduciary duties, conspiracy, unlawful placement of a cloud on the title of corporate property, and seeking cancellation of the deed of trust executed by Jones in favor of Trustmark. Jones counterclaimed, alleging unjust enrichment, breach of fiduciary duties, and interference with a business relationship between himself and Trustmark. He sought contribution on the Trustmark debt and certain corporate expenses as well as punitive damages.

Following a trial on the merits in January 1993, the Chancery Court entered its *Findings of Fact and Judgment*. The state court found that the Debtors had failed to prove any of their claims against Jones and that Jones had failed to sustain the burden of proof required for interference with a business relationship or for breach of fiduciary duties. However, on Jones' unjust enrichment counterclaim concerning the expenses of the corporation paid by him following the Debtors' withdrawal from JABB, the state court ordered a pro rata contribution by each of the Debtors in the

amount of \$14,633.96. In addition, the state court ordered contribution by each of the Debtors in the amount of \$54,215.53 on the Trustmark loan. The Chancery Court also found that the Debtors had brought a lawsuit which was unnecessary and an harassment and that the filing of such a frivolous lawsuit warranted an assessment of attorneys' fees as punitive damages, jointly and severally against the Debtors, in the amount of \$60,000.00. Thus, Jones was awarded actual damages in the amount of \$68,849.49 against each Debtor, as well as punitive damages against the Debtors, jointly and severally, in the amount of \$60,000.00, for a total award of \$197,698.98.

On January 26, 1993, Alleyne filed his petition for relief under Chapter 7 of the Bankruptcy Code in the Southern District of Mississippi, while Baines filed his petition for relief under Chapter 7 on January 28, 1993, in the Northern District of Mississippi.¹ Jones commenced an adversary proceeding against each of the Debtors on May 3, 1993, to determine the dischargeability of the state court judgment pursuant to 11 U.S.C. § 523(a)(6). The adversary proceeding against Baines was transferred from the Northern District to the Southern District on June 25, 1993, whereupon the parties filed a motion to consolidate the adversary proceedings on July 16, 1993.² On March 26, 1997, the Court entered an order holding the adversary proceedings in abeyance while an appeal of the state court judgment was pending before the Mississippi Supreme Court. The Mississippi Supreme Court affirmed the state court decision on December 15, 1997.

Thereafter, on June 5, 1998, Jones filed the *Motion for Summary Judgment* presently before

¹Hereinafter, all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code unless otherwise stated.

²Although a motion to consolidate the adversary proceedings was filed, no order granting that motion was entered. Therefore, an order and judgment will be entered in each of the separate adversary proceedings.

the Court wherein he argues that the Debtors are collaterally estopped from relitigating issues relating to the Debtors' abandonment of the corporation and refusal to contribute to its expenses, and to the Debtors' filing of a lawsuit which was frivolous, unnecessary and an harassment. Jones asserts that the state court findings in regard to these issues conclusively demonstrate that the Debtors committed willful and malicious injuries against him in the context of § 523(a)(6) and that, consequently, the damages awarded by the state court are non-dischargeable. Debtors, in their *Response to Motion for Summary Judgment and Counter Motion for Summary Judgment* filed on July 9, 1998, also contend that the parties are collaterally estopped from relitigating the issues previously determined by the state court. Debtors maintain, however, that the state court findings support their argument that the judgment is dischargeable in its entirety. They contend that their liability to Jones, based on equitable claims of unjust enrichment and contribution, and on attorneys' fees in the nature of punitive damages, does not rise to the level of a non-dischargeable tort liability under § 523(a)(6).

CONCLUSIONS OF LAW

I.

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

II.

On August 13, 1998, Jones filed a *Motion to Strike Debtors' Counter Motion for Summary Judgment* on the basis that the counter motion was untimely filed.³ Jones is correct that the

³On that same date, Jones also filed a *Response to Debtors' Counter Motion for Summary Judgment*.

scheduling order in this case set the filing deadline for dispositive motions as June 5, 1998 and that since Debtors' counter motion was filed on July 9, 1998, it is technically untimely. Nevertheless, the Court will address the motions on the merits and will, consequently, deny Jones' *Motion to Strike Debtors' Counter Motion for Summary Judgment*.

III.

In his *Motion for Summary Judgment*, Jones alleges that there are no genuine issues of material fact in the dispute between the parties and that as a consequence, the Court should declare the state court judgment to be non-dischargeable. In support of his motion, Jones has attached an itemization of material facts. In their *Response to Motion for Summary Judgment and Counter Motion for Summary Judgment*, Debtors agree that there are no genuine issues of material fact.⁴ They contend, however, that the state court findings support their argument that they are entitled to have the state court judgment discharged.

Federal Rule of Bankruptcy Procedure 7056⁵ states in pertinent part:

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim . . . may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim . . . is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

⁴Debtors have, however, submitted a separate itemization of material facts wherein they offer certain additional information for clarification purposes.

⁵Bankruptcy Rule 7056 states that "Rule 56 F.R.Civ.P. applies in adversary proceedings."

(c) Motion and Proceedings Thereon. . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In order for the Court to sustain a motion for summary judgment, “[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, must demonstrate there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Krim v. BancTexas Group, Inc., 989 F.2d 1435, 1444 (5th Cir. 1993) (quoting Ayo v. Johns-Manville Sales Corp., 771 F.2d 902, 904 (5th Cir. 1985)). The court views the available evidence in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587-88, 106 S.Ct. 1348, 1356-57, 89 L.Ed.2d 538 (1986).

In reference to the parties’ motions for summary judgment, the Court finds that there is no dispute between the parties as to any material fact.

IV.

In their motions, the parties also argue that the doctrine of collateral estoppel applies to the adversary proceedings. The United States Supreme Court has stated that “collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).” Grogan v. Garner, 498 U.S. 279, 284 n.11, 111 S.Ct. 654, 658 n.11, 112 L.Ed.2d 755 (1991). Thus, parties may invoke collateral estoppel in certain circumstances to bar relitigation of issues relevant to dischargeability. Matter of Gober, 100 F.3d 1195, 1201 (5th Cir. 1996). However, the bankruptcy court retains exclusive jurisdiction to ultimately determine the dischargeability of the debt. Id.

In deciding the preclusive effect of a state court judgment in federal court, the Court is guided by the full faith and credit statute, which provides that “judicial proceedings of any court of any . . . State . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.” Id. Accordingly, the Court must look to the state that rendered the judgment to determine whether the courts of that state would afford the judgment preclusive effect. Id.; Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380, 105 S.Ct. 1327, 1332, 84 L.Ed.2d 274 (1985). Since the judgment at issue in this case was entered by a Mississippi state court, the Court must follow the law of Mississippi.

Mississippi has enunciated the following test for applying the doctrine of collateral estoppel: (1) the issue at stake must be identical to the one involved in the prior action; (2) the issue must have been actually litigated in the prior action; and (3) the determination of the issue in the prior action must have been a necessary part of the judgment in that earlier action. RecoverEdge L.P. v. Pentecost, 44 F.3d 1284, 1290 (5th Cir. 1995); see also City of Jackson v. Lakeland Lounge of Jackson, Inc., 688 So. 2d 742, 748 n.1 (Miss. 1996) (collateral estoppel “precludes parties from relitigating the exact issue in a different and subsequent cause of action”).

Upon a review of the record, the Court is unable to conclude that the state court actually litigated whether the Debtors’ conduct regarding their abandonment of the corporation and refusal to make payment toward its debt and expenses was willful and malicious. The state court did find that the Debtors had been unjustly enriched by their failure to pay their portions of the corporation’s debts and expenses following their withdrawal from JABB and consequently, ordered the Debtors to contribute to those costs, but the state court did not make any finding as to the willfulness or

maliciousness of their conduct regarding their decision to abandon the corporation and their subsequent refusal to pay its debts. Accordingly, contrary to the parties' urging, the Court cannot afford collateral estoppel effect to the state court judgment in regard to those issues.

The Court does agree, however, that the willful and malicious nature of the Debtors' conduct in filing the lawsuit against Jones was litigated in the state court because Jones' claim of interference with a business relationship required consideration of that exact issue. In addition, the state court specifically found that the Debtors had filed a frivolous and unnecessary lawsuit which was tantamount to harassment, thereby addressing the Debtors' subjective motivations in filing the suit. The Court therefore concludes that collateral estoppel, while not barring relitigation of the willful and malicious nature of the Debtors' conduct as to their abandonment of the corporation and refusal to pay their pro rata portion of its debt and expenses, would prevent relitigation of the Chancery Court's finding that the Debtors filed against Jones a frivolous and unnecessary lawsuit, which was tantamount to harassment.

Nevertheless, when determining the dischargeability of a particular debt pursuant to § 523(a)(6), a bankruptcy court is not bound by an earlier proceeding relating to the debtors' conduct and is free to draw independent conclusions from the record therein. Brown v. Felsen, 442 U.S. 127, 99 S.Ct. 2205, 60 L.Ed.2d 767 (1979); Carey v. Bell, 615 F.2d 370 (5th Cir. 1980); Berry v. McLemore, 97 B.R. 903, 906 (Bankr. N.D. Miss. 1988). Accordingly, the Court has conducted an independent review of the record in this case, and having determined that there are no genuine issues of material fact to preclude the entry of summary judgment, will address the merits of the parties' arguments.

V.

A.

11 U.S.C. § 523 provides in pertinent part:

§ 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.

A creditor seeking to deny a debtor discharge of a debt pursuant to § 523(a)(6) must prove by a preponderance of the evidence that the debt is non-dischargeable. Grogan, 498 U.S. at 286, 111 S.Ct. at 659 (1991); RecoverEdge L.P., 44 F.3d at 1292.

The United States Supreme Court recently addressed the parameters of a willful and malicious injury pursuant to § 523(a)(6) in Kawaauhau v. Geiger, ___ U.S. ___, 118 S.Ct. 974, ___ L.Ed.2d ___ (1998). In Kawaauhau, the Supreme Court held that “the word willful in (a)(6) modifies the word injury, indicating that non-dischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury.” Id. at 977. It further likened the § 523(a)(6) exception to discharge with intentional torts, as distinguished from negligent or reckless torts. Id. Specifically, the Supreme Court explained,

Had Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead “willful acts that cause injury.” Or, Congress might have selected an additional word or words, i.e., “reckless” or “negligent,” to modify “injury.” Moreover, as the Eighth Circuit observed, the (a)(6) formulation triggers in the lawyer’s mind, the category “intentional torts,” as distinguished from negligent or reckless torts. Intentional torts generally require that the actor intend “the consequences of an act,” not simply “the act itself.” (Citation omitted).

Kawaauhau, 118 S.Ct. at 977. The Kawaauhau Court also noted that a “more encompassing

interpretation could place within the excepted category a wide range of situations in which an act is intentional, but injury is unintended, i.e., neither desired nor in fact anticipated by the debtor.” Id. In other words, § 523(a)(6) applies only to those claims where the debtor intended the consequences of his act, not simply the act itself. Id.; see also In Re Delaney, 97 F.3d 800, 802 (5th Cir. 1996)(debtor must have intended actual injury that resulted).

Although the Supreme Court did not specifically address the malice prong of the § 523(a)(6) test in Kawaauhau, the Fifth Circuit, in Miller v. J.D. Abrams Inc., 156 F.3d 598, 606 (5th Cir. 1998), subsequently adopted an implied malice standard, requiring that the debtors’ conduct evince either an “objective substantial certainty of harm or subjective motive to do harm.” The Fifth Circuit opined that “the label ‘intentional tort’ is too elusive to sort intentional acts that lead to injury from acts intended to cause injury,” id. at 603, and observed that although the Supreme Court’s statement in Kawaauhau that “the (a)(6) formulation triggers in the lawyer’s mind the category ‘intentional torts,’” is an acknowledgment of a logical association, it nonetheless avoids equating § 523(a)(6) with intentional torts, id. at 604. Concluding that the implied malice standard is “synonymous to the Kawaauhau standard for ‘willful injury,’” id., the Court ultimately held that a ‘willful and malicious injury’ is a unitary concept entailing a single two-pronged test, i.e., that the debtors’ conduct had an objective substantial certainty of causing harm or the debtors had a subjective motive to cause harm, id. at 606. Applying the Kawaauhau and Miller holdings to the case at bar, the Court concludes for the reasons that follow that the state court judgment rendered against the Debtors is dischargeable in part and non-dischargeable in part.

B.

Jones first argues that the Chancery Court's findings that the Debtors "did receive notice of meetings of the board of directors of JABB Systems, Inc., P.A. during 1988 and simply chose not to attend those meetings and chose to withdraw from the corporation," and that they "refused to take responsibility for the corporate debts," prove that the Debtors willfully injured him. Chancery Court Judgment, ¶¶ 21, 26. Furthermore, Jones argues, these findings constitute a determination by the state court that the Debtors acted maliciously because they were fully cognizant of the terms and legal import of their positions as directors and shareholders of JABB yet, with Dr. Jones' rights in mind, they abandoned the corporation and refused to meet their obligations for the corporate debts.

To meet the Kawaauhau standard set forth above, Jones must prove that the Debtors' actions were in the nature of intentional torts, not negligent or reckless torts, such that the Debtors intended to injure him, not just that they intended to commit an act which led to an injury against him. That is, as clarified by the Miller decision, there must have been either an objective substantial certainty of harm from the Debtors' actions or the Debtors must have had a subjective motive to cause harm to Jones.

The record reflects that the Debtors clearly intended to and did leave the corporation and thereafter failed to contribute financially to the corporate debts. The record also reveals the Mississippi Supreme Court's statement that "[a]s a result (of the Debtors' actions), Dr. Jones was left with severe financial difficulties and the sole responsibility of maintaining the corporation." Supreme Court Opinion, p. 10. Nevertheless, the record does not lead this Court to the conclusion that the Debtors intended to harm Jones by their decision to withdraw from JABB and to stop contributing to its debts. That is, despite the Chancery Court's findings that the Debtors received

notice of the Board of Directors' meetings, chose not to attend those meetings, withdrew from the corporation and thereafter refused to contribute to its expenses, the record does not disclose that the Debtors' intention in taking those actions was willful and malicious rather than, for instance, negligent or reckless. The Court thus finds that Jones has failed to establish that there was an objective substantial certainty that the Debtors' abandonment of JABB would injure Jones. Nor is the Court persuaded that the Debtors harbored a subjective motivation to injure Jones by their withdrawal from JABB. Accordingly, the Court concludes that Jones has failed to demonstrate by a preponderance of the evidence that the Debtors' actions prior to filing their lawsuit against Jones constitute willful and malicious injuries against him within the meaning of § 523(a)(6). On the other hand, the Court finds that the Debtors have shown that these actions did not constitute willful and malicious injuries against Jones within the meaning of § 523(a)(6), and that as a consequence, the state court award of actual damages in the amount of \$68,849.49, assessed against each of the Debtors, is dischargeable.

C.

Jones also contends that the Debtors' filing of the lawsuit against him was a willful and malicious injury within the meaning of § 523(a)(6). More specifically, he alleges that the state court's findings that the litigation was frivolous, unnecessary and an harassment reflect its determination that the Debtors inflicted such a willful and malicious injury against him. The Court agrees that pursuant to Miller, the Debtors did indeed commit a willful and malicious injury against Jones by the filing of a frivolous and unnecessary lawsuit which was tantamount to harassment.

First, the Court rejects Jones' argument that the state court's findings regarding the filing of the lawsuit establish that the Debtors have committed the intentional tort of malicious prosecution.

Jones failed to bring such an action against the Debtors in state court within the time period for doing so, and this Court declines to interpret the state court judgment in such a manner.

Next, the Court concludes that there was not an objective substantial certainty that Jones would suffer harm from the filing of the Debtors' lawsuit. The Chancery Court stated that the Debtors were "privileged to take action or attempt to assert their rights as they perceived them with regard to the Trustmark loan." Chancery Court Judgment, ¶ 18. In addition, the state court's determination that Jones had failed to establish the elements of his claim against the Debtors for tortious interference with a business relationship, which are 1) an intentional and willful act, 2) calculated to cause damage to the claimant in his lawful business, 3) done with the unlawful purpose of causing damage and without right or justifiable cause, 4) which results in actual damage or loss, see Hopewell Enter., Inc. v. Trustmark Nat'l Bank, 680 So. 2d 812, 818 (Miss. 1996), leads this Court to conclude that there was not an objective substantial certainty that the Debtors' actions would injure Jones.

Nor does the fact that the state court awarded "punitive damages" demonstrate that the Debtors inflicted a willful and malicious injury against Jones because in Mississippi, punitive damages may be awarded where a defendant acted with malice, or gross negligence or reckless disregard for the rights of others. Hurst v. Southwest Mississippi Legal Servs. Corp., 708 So. 2d 1347, 1350 (Miss. 1998); see also Miss. Code Ann. § 11-1-65 (Supp. 1997); cf. Kawaauhau, 118 S.Ct. at 978 ("debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)"). Moreover, the state court's assessment of "attorney's fees as punitive damages" reflects that the \$60,000.00, although referred to as a punitive damages award, was awarded not to punish the Debtors for their conduct prior to filing the lawsuit, but to sanction them

for burdening Jones with the expense of litigation. Chancery Court Judgment, ¶ 23.

However, in the Court's opinion, the state court judgment does establish the Debtors' subjective motivation to harm Jones by filing the lawsuit against him. The state court's finding that the lawsuit was frivolous, unnecessary and an harassment, in addition to its finding that following their release from their responsibilities in regard to the Deposit Guaranty loan, the Debtors "made every effort to gain all the benefit of the corporation without accepting any responsibility, and attempted to obtain the property debt free," reflect its conclusion that the Debtors harbored a subjective motivation to injure Jones by filing suit against him. And, although this Court has determined that the punitive damages were not awarded to punish the Debtors for their decision to leave the corporation or failure to pay the expenses of the corporation, those damages were awarded to sanction the Debtors for filing the frivolous and unnecessary lawsuit.

Accordingly, the Court concludes that Jones has demonstrated by a preponderance of the evidence that the Chancery Court findings regarding the Debtors' filing of a frivolous and unnecessary lawsuit establish a non-dischargeable willful and malicious injury within the meaning of § 523(a)(6), and that the state court "punitive damages" award in the amount of \$60,000.00 is non-dischargeable.

CONCLUSION

Based on the foregoing, the Court concludes that although the Debtors acted deliberately when they left the corporation and when they refused to pay the debts of the corporation, Jones has failed to show that the Debtors intended the consequences of those acts, i.e., that they intended to commit a deliberate or intentional injury, in the nature of an intentional tort, against him, or that there was either an objective substantial certainty of harm from the Debtors' conduct or that they

harbored a subjective motivation to harm him. Debtors, on the other hand, have persuaded the Court that there is no genuine issue of material fact and that Jones did not suffer a willful and malicious injury pursuant to § 523(a)(6) as a result of those actions taken by the Debtors. The Court therefore finds that Jones' *Motion for Summary Judgment* should be denied as to the non-dischargeability of actual damages in the amount of \$137,698.98, which reflects the state court award of actual damages in the amount of \$68,849.49 against each Debtor, and that the Debtors' *Counter Motion for Summary Judgment* should be granted as to the dischargeability of actual damages in the amount of \$137,698.98, reflecting the state court award of actual damages in the amount of \$68,849.49 against each of them. In addition, the Court finds that Jones' *Motion to Strike Debtors' Counter Motion for Summary Judgment* should be denied.

The Court further finds that Jones has established that the Debtors harbored a subjective intention to harm him when, for purposes of harassment, they filed a frivolous and unnecessary lawsuit against him. Accordingly, Jones' *Motion for Summary Judgment* should be granted as to the non-dischargeability of the state court award of punitive damages in the amount of \$60,000.00, jointly and severally, against the Debtors and that Debtors' *Counter Motion for Summary Judgment* should be denied as to the dischargeability of the state court award of punitive damages in the amount of \$60,000.00, jointly and severally, against them.

A separate judgment consistent with this opinion will be entered in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

This the 20th day of November, 1998.


UNITED STATES BANKRUPTCY JUDGE

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

U.S. BANKRUPTCY COURT
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DR. THEODORE C. JONES PLAINTIFF

VS. ADVERSARY NO. 93-0103 JC

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DR. THEODORE C. JONES PLAINTIFF

VS. ADVERSARY NO. 93-0060 JC

CLEMENT C. ALLEYNE DEFENDANT

FINAL JUDGMENT
ON MOTION FOR SUMMARY JUDGMENT,
MOTION TO STRIKE DEBTORS' COUNTER MOTION
FOR SUMMARY JUDGMENT,
AND
COUNTER MOTION FOR SUMMARY JUDGMENT

Consistent with the Court's opinion dated contemporaneously herewith, it is hereby ordered that:

- 1) The *Motion for Summary Judgment* of Plaintiff/Creditor Theodore C. Jones should be and hereby is granted in part and denied in part, that the *Motion to Strike Debtors' Counter Motion for Summary Judgment* of Jones should be and hereby is denied, and that the *Counter Motion for Summary Judgment* of Defendants/Debtors Gene Mark Baines and Clement C.

Alleyne should be and hereby is denied in part and granted in part.

2) The judgment rendered in favor of Jones against Baines and Alleyne by the Chancery Court of the First Judicial District of Hinds County, Mississippi, in cause number 147,760 should be and hereby is discharged in the amount of \$137,698.98, pursuant to 11 U.S.C. § 727.

3) The judgment rendered in favor of Jones against Baines and Alleyne by the Chancery Court of the First Judicial District of Hinds County, Mississippi, in cause number 147,760 should be and hereby is non-dischargeable in the amount of \$60,000.00, pursuant to 11 U.S.C. § 523(a)(6).

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

SO ORDERED this the 20th day of November, 1998.


UNITED STATES BANKRUPTCY JUDGE