

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRANSMITTAL SHEET FOR OPINIONS FOR POSTING

<i>Will this opinion be published?</i>	No
<i>Bankruptcy Caption:</i>	In re Donald R. Miller
<i>Bankruptcy No.:</i>	23bk00363
<i>Adversary Caption:</i>	Avi Emanuel v. Donald R. Miller
<i>Adversary No.:</i>	23ap00095
<i>Date of Issuance:</i>	April 18, 2025
<i>Judge:</i>	Deborah L. Thorne
<u><i>Appearances:</i></u>	
<i>Attorney for Donald R. Miller</i>	Joel A. Schechter 53 W. Jackson Blvd, Suite 1522 Chicago, IL 60604
<i>Avi Emanuel</i>	<i>PRO SE</i>

Summary:

Plaintiff filed an adversary complaint, asking the court to find non-dischargeable a debt incurred by the Debtor's conversion of the Plaintiff's motorcycle. HELD: The debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

United States Bankruptcy Court, Northern District of Illinois

JUDGE	Deborah L. Thorne	Case No.	23bk00363
DATE	April 18, 2025	Adversary No.	23ap00095
CASE TITLE	In re Donald R. Miller; Avi Emanuel v. Donald R. Miller.		
TITLE OF ORDER	Judgment on Dischargeability		

STATEMENT

Avi Emanuel (“Emanuel”) filed an adversary complaint seeking an order that his claim against Donald Miller (“Miller”) is nondischargeable under 11 U.S.C. § 523(a)(6). A state court previously held Miller in default under a complaint based on the same facts and entered a judgment of \$15,386. Miller subsequently filed a chapter 7 bankruptcy, and Emanuel filed a claim in Miller’s bankruptcy case for the amount awarded in the state court judgment, plus certain post-judgment interest and filing fee costs. On November 12, 2024, this court heard the evidence and argument presented by Emanuel and Miller. Believing the parties had both rested, the court entered an order in favor of Emanuel on November 14, which the court later vacated to allow Miller to present evidence and argument in defense. The continuation of the trial was set for January 13, 2025, when the defendant was unable to appear due to illness. The trial was continued to January 27, on which date the defendant chose not to appear to testify. Counsel for the defendant requested, and the court granted, the opportunity for both parties to present written closing arguments and post-trial briefing. Having reviewed the parties’ papers, the court finds, as it did initially, that Emanuel’s claim is nondischargeable in the amount of \$15,386.

Background

Emanuel and Miller both testified at the trial. Emanuel is an attorney and represented himself. He testified that his motorcycle, a 2013 Kawasaki Zx6r, disappeared from his garage sometime between April 29 and May 2, 2020. Once he noticed it was missing, he notified the police. He then undertook a personal investigation. Although Emanuel is certainly not a trial attorney, his testimony demonstrated

that he was diligent and determined to find the person who allegedly stole and then sold parts of his motorcycle.

He testified that, after he purchased the motorcycle in 2017, he added specific parts to the motorcycle, including but not limited to a white passenger seat cowl, an aftermarket driver's seat, a steering damper, and a GoPro mount. He also removed the fender and changed the placement of the license plate. Several other aftermarket parts had been added prior to his purchase, including a LeoVince Exhaust and alternate tank grips. He shared pictures of the Kawasaki Zx6r prior to shipping it to Chicago from California. Emanuel testified that he discovered the white passenger seat cowl, the steering damper, and the LeoVince exhaust being sold on eBay and Facebook Marketplace. He traced the accounts to Miller.

Miller was not credible throughout his testimony and testified that he did not remember where he obtained the motorcycle parts. He narrated that he "might" have purchased a box of motorcycle parts at a motorcycle meet and then placed these for sale on eBay and Facebook Marketplace. He identified several Facebook pages and eBay pages where he placed items for sale. He said that he rented a garage with his father during April and May 2022 and used it to store tools, his dirt bike and some of his father's stuff, and he identified the garage in several pictures. One of the identifying features of the garage was a distinct crack in the cement floor.

Emanuel testified and shared with the court pictures from Miller's eBay listings and records from eBay obtained through discovery. The listings and the records showed that Miller marketed and sold parts that matched Emanuel's, down to a scratch on the LeoVince Exhaust. Miller was shown and recognized a Facebook Messenger conversation where he used the name "Carl Gallagher" to sell motorcycle parts. "Gallagher's" sales pitch here was replete with fabrications and falsehoods, and Miller acknowledged as much, stating that lying is sometimes part of his business strategy. The records obtained from eBay showed what was sold and purchased by Miller, including listings that matched many of the parts that had been on Emanuel's motorcycle. The records also showed that on May 2, 2020,

Miller purchased a lock set, designed to replace the lock mechanism of the Zx6r, and he testified that lock sets are designed to be used to unlock a motorcycle by someone who does not have a key. Three days later, Miller purchased a key blank for a Kawasaki Zx6r. And, although Miller generally purchased and sold various motorcycle parts, he did not resell the lock mechanism or key blank after purchase.

Another exhibit which further demonstrated Miller's lack of credibility was a video posted on Miller's Instagram and Snapchat accounts. The author of the posts added a caption with a 4:13 a.m. timestamp. Both showed a Kawasaki Zx6r motorcycle which looked identical to Emanuel's, including the GoPro mount. It was missing some items sold, including the LeoVince Exhaust and the white seat cowl. Miller admitted he had published the posts, and his explanation was not credible: he stated that he always stops to look at motorcycles stopped on the side of the road, to make sure that the rider is not injured, and often takes videos.

Miller was granted the opportunity, but declined, to present evidence in his defense. The court scheduled a date in early January for him and his attorney to put on their case; at the time the trial was to occur, counsel for the defendant told the court his client was ill and asked to reschedule. The court did so, and Miller's attorney and Emanuel returned to court a few weeks later—without Miller, who had decided, apparently at the eleventh hour, not to appear or present any further evidence.

Discussion

Section 523(a)(6) provides that a chapter 7 debtor is not discharged from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." The question in this case is whether Emanuel's claim for the alleged conversion of his motorcycle by Miller is nondischargeable.

Emanuel demonstrated time and again that Miller was in possession of his Kawasaki Zx6r and its parts. Miller's explanation as to how he came into possession of the motorcycle and its parts was simply unbelievable. And although apparently no one saw the motorcycle removed from Emanuel's garage, it

was clear that Miller possessed it, stripped it of certain parts, sold them, and obtained key mechanisms that allowed him to operate the motorcycle.

Moreover, Emanuel demonstrated the marketing and the sale of the parts, including the Facebook Messenger conversation showing Miller's attempt to sell the LeoVince exhaust and the white seat cowl. This conversation, where Miller posed as "Carl Gallagher," contained a picture of a used LeoVince exhaust with a scratch that was identical to the scratch on Emanuel's LeoVince Exhaust. Other listings on eBay corroborated his attempt to sell this and other parts.

Although Miller argued there was no direct evidence that Miller stole the motorcycle, there was a plethora of evidence that Miller sold a LeoVince exhaust with an identical scratch, possessed the motorcycle with the identical GoPro mount, and shared a picture of a Kawasaki Zx6r in a garage with the same crack in the floor that appeared in photos of Miller's garage.

Miller argued that the evidence was circumstantial and therefore cannot support a finding that the claim is nondischargeable, citing *In re Javalera*, 642 B.R. 451 (Bankr. N.D. Ill. 2022). The evidence here, however, was far from merely circumstantial. Miller admitted that he frequently lied, and it was also clear that he was in possession of parts which were identical to those on Emanuel's motorcycle. Remarkably, he purchased a lock set the same day Emanuel later reported his motorcycle stolen and bought a key blank just a few days later. Although he sold many motorcycle-related goods on eBay and Facebook, the records do not show that he sold these items, and based on the circumstances it is reasonable to infer he bought these for his personal use to render Emanuel's Kawasaki Zx6r operational.

Miller urges that even if the debt is found to be nondischargeable, he should not be liable for \$15,386.00, which is the amount of damages a state court had awarded Emanuel (\$12,169 in property damage, \$2,000 for loss of use, and \$1,217 in costs). He argues that he should be liable only for the value of the parts that Emanuel found on eBay. The court holds that the claim is allowed in full. It is true that the proper measure of damages for conversion is the fair market value of the converted collateral. *In re Krause*, 44 B.R. 159, 163 (1984). The state court held a prove-up hearing on the value of the property at

the time of conversion, and this court hold that is good evidence of the market price. It is also the case, however, that the willful injury Emanuel has alleged encompasses his loss of use and his fees for filing the actions in two courts. The court finds that state court damages are a good measure for these, as well.

Conclusion

For the foregoing reasons, the court holds that Emanuel's claim is nondischargeable pursuant to 11 U.S.C. § 523(a)(6), in the amount of \$15,386.

ENTER:



Dated: April 18, 2025

Honorable Deborah L. Thorne
United States Bankruptcy Judge