

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

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Will This Opinion be Published Yes

Bankruptcy Caption: In re Camilo Andres Ferro

Bankruptcy No. 20 B 10492

Adversary Caption: Renew Packaging, LLC v. Camilo Andres Ferro

Adversary No. 20 A 00273

Date of Issuance: April 4, 2022

Judge: Donald R. Cassling

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Bankruptcy No. 20 B 10492
)	
CAMILO ANDRES FERRO,)	
)	
Debtor.)	Chapter 7
)	
)	
)	Honorable Donald R. Cassling
RENEW PACKAGING, LLC,)	
)	
Plaintiff,)	Adversary No. 20 A 00273
)	
v.)	
)	
CAMILO ANDRES FERRO,)	
)	
Defendant.)	

ORDER GRANTING PARTIAL SUMMARY JUDGMENT TO THE PLAINTIFF

The Debtor and his former business partners started the Plaintiff company, which provides Chinese-made packaging to small businesses in the United States. The Debtor and his business partners each executed agreements prohibiting them from competing against the Plaintiff. Notwithstanding his non-compete agreement, the Debtor secretly formed a new business to steal customers and suppliers from the Plaintiff, while still ostensibly working on behalf of the Plaintiff company. In pre-bankruptcy arbitration proceedings, the arbitrator determined that the Debtor’s wrongdoing caused the Plaintiff more than a million dollars in damages. A state court confirmed the arbitrator’s award and entered judgment against the Debtor in that amount.¹

The Debtor subsequently filed this Chapter 7 case, hoping to discharge rather than pay the judgment debt. In response, the Plaintiff filed this adversary proceeding seeking a determination that the debt is non-dischargeable under Section 523(a)(6), which excepts willful and malicious injuries from discharge.

Plaintiff thereafter filed a motion for summary judgment, arguing that all issues of material fact have been conclusively determined in Plaintiff’s favor by the arbitrator’s award and the state-court judgment confirming that award. While acknowledging the preclusive effect of the state-court litigation, the Debtor argues that summary judgment is

¹ The confirmation of the arbitration award elevated the award into an ordinary state-court judgment. *See* 710 ILCS 5/14.

inappropriate because the state court did not specifically find that the Debtor acted with malice, a necessary element of a Section 523(a)(6) claim. For the reasons more fully explained below, neither side is entirely correct.

BACKGROUND²

The Plaintiff sells packaging made in China. The Debtor presided over the Plaintiff's supply chain and oversaw its sales group in his capacity as a member-manager of the business. While still in this position, he formed a new company, One Earth Packaging, LLC, to compete with the Plaintiff. He then secretly persuaded some of the Plaintiff's key suppliers and clients to end their relationships with the Plaintiff and begin sending their business to One Earth. His disloyalty to Plaintiff significantly disrupted the Plaintiff's operations and caused more clients to sever their relationship with the Plaintiff when it could not fulfill their orders on time.

In May 2018, the parties began arbitrating their disputes. The Plaintiff demanded injunctive relief and the imposition of a constructive trust as well as damages for breach of contract, breach of fiduciary duty, and tortious interference with prospective economic advantage. The arbitrator awarded interim relief, enjoining the Debtor from competing and interfering with the Plaintiff's business, or encouraging its suppliers or customers to end their relationship with the Plaintiff.

But the Debtor ignored the arbitrator's award and continued stealing customers and suppliers from the Plaintiff. As a result, the state court held him in contempt and fined him \$17,000 (plus the Plaintiff's costs) after finding that the Debtor "willfully and contumaciously" disobeyed its order by continuing to engage in "communicating with [the Plaintiff's] suppliers and customers," interfering with the Plaintiff's business, "and/or" diverting business to One Earth after the arbitrator and state court had enjoined the Debtor from doing exactly that. (Reply Br. at pp. 12 & 14-15 of Ex. A, Dkt. No. 80.)

The arbitrator also granted summary judgment to the Plaintiff on its constructive trust and damages claims. He found that the Debtor had breached the Plaintiff's operating agreement's non-interference and non-competition clauses, his statutory duty of loyalty, and his common law fiduciary duties to deal with the Plaintiff in good faith and to refrain from self-dealing. He also found that the Debtor tortiously interfered with the Plaintiff's "legitimate business expectancy" as to its existing and future planned business and enjoined the Debtor from any direct or indirect interference or competition with the Plaintiff for two years. (*Id.* at p. 21.) The Plaintiff's net damages were \$1,247,593.78. (*Id.* at p. 23.)

The Debtor's response to this judgment was to file a Chapter 7 petition in May 2020. This Court modified the automatic stay to permit the Plaintiff to enforce the equitable relief awarded in the arbitration proceedings and to seek confirmation of that award by the state court. When the Plaintiff did so, the Debtor argued that it had violated the automatic

² These facts are all taken from the decisions, award, and orders entered by the arbitrator and state court. Certified copies of these documents are docketed as Ex. A of Dkt. No. 80.

stay and moved for damages. The Court denied that motion, and the Plaintiff subsequently initiated this proceeding.

ANALYSIS

The Plaintiff's state-court judgment is based on a number of different counts, some of which, such as breach of contract, are generally dischargeable in bankruptcy. But the Plaintiff argues that the state-court judgment awarding damages for the Debtor's tortious interference with prospective economic advantage is nondischargeable under Section 523(a)(6). The Debtor argues that this Court may not enter summary judgment in the Plaintiff's favor on that count because neither the arbitrator nor the state court specifically found that the Debtor acted with malice. For the reasons stated below, the Court concludes that the Plaintiff's argument is correct and that it is appropriate to enter summary judgment with respect to that portion of the Plaintiff's claim attributable to its tortious-interference claim.

A. Summary Judgment Standard When Collateral Estoppel is the Basis for the Motion

Summary judgment is appropriate when no material facts are genuinely disputed, and the movant shows it is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). In the typical case, the only question for the Court to resolve is whether any material dispute of fact requires a trial, *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003), resolving any doubt on that point in the nonmovant's favor. *Joll v. Valparaiso Cmty. Sch.*, 953 F.3d 923, 928 (7th Cir. 2020). However, a dispute over material facts is only genuine when the evidence is such that a reasonable factfinder could rule in favor of the nonmoving party. *Carroll v. Lynch*, 698 F.3d 561, 564 (7th Cir. 2012).

Significantly, when collateral estoppel is the basis for a summary judgment motion, any facts decided in the prior case are no longer subject to genuine dispute. Those facts cannot be re-litigated, and this Court *must* give the state court's findings and conclusions full faith and credit to the same extent it would be preclusive under local law. *See Walczak v. Chi. Bd. of Educ.*, 739 F.3d 1013, 1016 (7th Cir. 2014); *Clark v. Henninger*, 50 F. App'x 758, 759 (7th Cir. 2002).

Under Illinois law, three things must be true for collateral estoppel to be applied: "(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." *Nowak v. St. Rita High Sch.*, 757 N.E.2d 471, 478 (Ill. 2001). The second and third prongs of the test for collateral estoppel are neither contested nor reasonably contestable in this proceeding. Instead, the parties' sole factual dispute is whether the state-court judgment necessarily included the evidence required to support a finding of malice, as that term has been defined in the Seventh Circuit.

B. An Injury Intentionally Inflicted Without Justification Is “Maliciously Inflicted” for Purposes of Section 523(a)(6)

Section 523(a)(6) excepts from discharge any debt for “(1) an injury caused by the debtor (2) willfully and (3) maliciously.” *First Weber Grp., Inc. v. Horsfall*, 738 F.3d 767, 774 (7th Cir. 2013). The latter modifiers require “a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury.” *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). Because people intend the natural consequences of their actions, a debtor willfully inflicts injury when the harm itself was his goal or the act’s objective nature made the injury substantially certain. *Gerard v. Gerard*, 780 F.3d 806, 811 (7th Cir. 2015). On the other hand, malice requires that a debtor consciously disregarded his duties or acted “without just cause or excuse.” *In re Calvert*, 913 F.3d 697, 701 (7th Cir. 2019). In short, the consequences of the Debtor’s actions must have been objectively foreseeable, and the act itself must have been unjustified. *Jendus-Nicolai v. Larsen*, 677 F.3d 320, 324 (7th Cir. 2012) (“[A] willful and malicious injury, precluding discharge in bankruptcy of the debt created by the injury, is one that the injurer inflicted knowing he had no legal justification and either desiring to inflict the injury or knowing it was highly likely to result from his act.”)

Proof of these three elements compels a nondischargeability determination, and “collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).” *Grogan v. Garner*, 498 U.S. 279, 285 n.11 (1991). The parties agree that the pre-bankruptcy judgment is binding, and also that the nature of the Debtor’s debt to the Plaintiff satisfies the first two elements of Section 523(a)(6). They only dispute whether or not the state court actually decided that the Debtor acted maliciously when he tortiously interfered with the Plaintiff’s business.

After examining the record, it is clear that the Plaintiff has the better argument. Under Illinois law, a claim for tortious interference with prospective economic advantage requires a plaintiff to demonstrate four things: “(1) that the plaintiff had a reasonable expectation of entering into a valid business relationship, (2) that the defendant knew of this expectancy, (3) that the defendant *intentionally and unjustifiedly interfered to prevent* the expectancy from being fulfilled, and (4) that damages to the plaintiff resulted from the interference.” *Anderson v. Vanden Dorpel*, 667 N.E.2d 1296, 1299 (Ill. 1996) (emphasis added).

The Plaintiff would not have prevailed on his tort claim if the arbitrator had not found good cause to determine that the Debtor *unjustifiedly* “acted with the purpose of injuring [the Plaintiff’s] expectancies,” *Sunny Handicraft (H.K.) Ltd. v. Envision This!, LLC*, 14 C 1512, 2017 WL 1105400, at *14 (N.D. Ill. Mar. 24, 2017). There is no distinction to be drawn between causing injury “unjustifiedly” under tort law and causing injury “without justification” under bankruptcy law. Nor is there good reason to attempt to draw such distinctions for the benefit of tortfeasors. *See Digital Sys. Eng., Inc. v. Moreno (In re Moreno)*, 414 B.R. 485, 493 (Bankr. W.D. Wis. 2009). After all, the whole reason that Congress enacted Section 523(a)(6) was “to prevent the discharge of debts incurred as a result of intentional torts.” *In re Pickens*, 234 F.3d 1273 (7th Cir. 2000). Tortious interference falls squarely within that provision because it “is a ‘purposely’ caused tort,”

J. Eck & Sons, Inc. v. Reuben H. Donnelley Corp., 572 N.E.2d 1090, 1093 (Ill. App. Ct. 1991), that is done without justification. *Fredrick v. Simmons Airlines, Inc.*, 144 F.3d 500, 502 (7th Cir. 1998). That is precisely the type of conduct that the nondischargeability statute addresses. See *In re Sarff*, 242 B.R. 620, 627-28 (B.A.P. 6th Cir. 2000) (affirming a bankruptcy court's determination that a tortious interference claim was excepted from discharge).

For these reasons, the Court finds and holds that a judgment for tortious interference with prospective economic advantage under Illinois law necessarily satisfies the requirement in Section 523(a)(6) of the Bankruptcy Code that the injury be inflicted "maliciously."

However, that conclusion resolves only part of the summary judgment motion, because it is not clear from the state-court judgment how much of the damages award was attributable to the tortious-interference claim and how much was attributable to other counts, such as the dischargeable breach-of-contract claim. Unfortunately, the state court did not partition the damages awarded on a count-by-count basis. Instead, it partitioned them by the year in which the damages were incurred. The Court, therefore, has not been presented with the evidence necessary to determine which damages result from the nondischargeable tortious-interference count, and which result from the other dischargeable counts.

This leaves the Court with two options: First, having found that the Plaintiff is entitled to partial summary judgment with respect to that portion of the Plaintiff's claim attributable to its tortious-interference count, the Court could conduct a trial to determine what portion of the state-court judgment is attributable to that count. The second option would be to remand the damages-determination portion of this proceeding to the state court to obtain its findings on this issue. Given that the state court is obviously much more familiar with the facts of this case and the damages award which it has already made, the second option is preferable from the standpoint both of judicial comity and of judicial efficiency. *Citicorp Savs. of Ill. v. Chapman (In re Chapman)*, 132 B.R. 153, 158 (Bankr. N.D. Ill. 1991) ("Retaining this matter here would waste and duplicate judicial resources by forcing this matter, which has already been tried in state court, to be litigated in this forum . . ."). The Court, therefore, directs the Plaintiff to file a motion before the state court asking it to clarify which portion of its judgment for damages applies to the tortious-interference claim. When that has been done, the Plaintiff should file a copy of that clarification order within two weeks of its entry by the state court and notify this Court's Courtroom Deputy that it has filed that order. The amount of the award the state court attributes to the tortious-interference claim shall then be deemed by this Court to be nondischargeable.

For these reasons, the Court will grant the Plaintiff's motion in part, stay this proceeding, and give the Plaintiff leave to seek clarification in state court.

CONCLUSION

The Plaintiff has shown that its tort judgment is excepted from discharge. But it has not shown which portion of the debt falls within that category. For the foregoing reasons, IT IS HEREBY ORDERED:

1. The Plaintiff’s motion for summary judgment is granted in part;
2. Consistent with this order, the Plaintiff is given leave to file a motion for clarification in state court;
3. The portion of the Debtor’s debt to the Plaintiff which the state court attributes to the tortious interference claim in its clarification order shall be excepted from the Debtor’s discharge under Section 523(a)(6);
4. This proceeding is stayed pending the outcome of the motion for clarification;³ and
5. Status on the motion is set for July 12, 2022 at 10:00 a.m.

ENTERED:

DATE: _____

Donald R. Cassling
United States Bankruptcy Judge

³ “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).