

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

-----)	CASE NO.	00-31192
IN RE:)		
DARRELL S. HACKETT,)		
)		
DEBTOR.)	CHAPTER	7
-----)		
RALPH APUZZO,)	ADV. PRO. NO.	00-3094
)		
PLAINTIFF,)		
vs.)		
)		
DARRELL S. HACKETT,)		
)		
DEFENDANT.)		
-----)		

**MEMORANDUM OF DECISION ON COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT PURSUANT TO SECTION 523(a)(6)**

I. INTRODUCTION

In this adversary proceeding the Plaintiff, Ralph Apuzzo, upon a claim of “wilful and malicious injury” pursuant to Bankruptcy Code Section 523(a)(6), requests a determination of nondischargeability of a debt previously liquidated in the Superior Court for the State of Connecticut in the amount of \$20,000.00. As explained hereafter, the Plaintiff has satisfied this Court that he is entitled to such relief.

II. JURISDICTION

The United States District Court for the District of Connecticut has subject matter jurisdiction over the instant adversary proceeding by virtue of 28 U.S.C. § 1334(b); and this Court derives its authority to hear and determine this matter on reference from the District Court pursuant to 28 U.S.C. §§ 157(a), (b)(1). This is a “core proceeding” pursuant to 28

U.S.C. § 157(b)(2)(I).

III. DISCUSSION

A. Procedural Background

On March 20, 2000, Darrell S. Hackett (hereafter, the “Debtor”), commenced the instant bankruptcy case by the filing of a joint voluntary petition under Chapter 7 of the United States Bankruptcy Code. On June 12, 2000, Ralph Apuzzo (hereafter, the “Plaintiff”) initiated Adversary Proceeding No. 00 – 3094, by filing a Complaint Objecting to Dischargeability of Debts (hereafter, the “Complaint”), seeking a determination of nondischargeability of a debt for “wilful and malicious injury” pursuant to Bankruptcy Code Section 523(a)(6). During the pendency of this case, and following the August 3, 2000, entry of an order, *inter alia*, modifying the automatic stay of Section 362(a), see Doc. I.D. No. 9, the relevant debt was stipulated and liquidated in the Superior Court for the State of Connecticut in the amount of \$20,000.00. The parties then submitted to this Court a proposed form of Order [Judgment], (hereafter, the “Proposed Judgment”) ordering “judgment shall enter in favor of the [Plaintiff] against the [Defendant] in the amount of Twenty Thousand \$20,000.00”. Doc. I.D. No. 13. On January 4, 2006, and May 9, 2006, this adversary proceeding was dismissed and closed, respectively, without entry of the Proposed Judgment.

On September 21, 2007, the Plaintiff filed a Motion to Vacate Order of Dismissal and Enter an Order Re: Stipulated Judgement (hereafter, the “Motion to Vacate”), Doc. I.D. No. 24, seeking the reopening of the Adversary Proceeding and entry of the Proposed Judgment. On November 14, 2007, following a hearing held that same date, the Motion to Vacate was granted as to the request to reopen, denied as to the request for entry of the

Proposed Judgment, and the Adversary Proceeding was rescheduled for trial.

On August 18, 2008, a trial was held before this Court during which the Court received evidence, testimonial and documentary, and heard and considered arguments of counsel for the Plaintiff, and the Debtor (appearing *pro se*).

B. Bankruptcy Code Section 523(a)(6)

A bankruptcy discharge has the following effects, *inter alia*:

- (1) [it] voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727 . . . of . . . title [11] . . . [and]
- (2) [it] operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor

11 U.S.C. § 524(a) (2005).

A debtor in a Chapter 7 case receives a discharge of debts under the authority of Section 727(b) of the Bankruptcy Code, which provides, in relevant part, that “[e]xcept as provided in section 523 of this title, a discharge . . . discharges the debtor from all *debts* that *arose before the date of the order for relief* under this chapter” (emphasis supplied).

This adversary proceeding seeks to determine the dischargeability of a debt under the standards of Bankruptcy Code Section 523(a)(6), which excepts from a debtor’s discharge any debt for “willful and malicious injury by the debtor to another entity or to the property of another entity.” While neither “willful” nor “malicious” conduct is defined by the Bankruptcy Code, the United States Supreme Court has clarified that Section 523(a)(6) renders non-dischargeable “only acts done with *actual intent to cause injury*”, not merely “acts, done intentionally, that cause injury.” Kawaauhau v. Geiger, 523 U.S. 57, 118 S.Ct. 974 (1998) (emphasis added).

C. The Facts

Based upon the testimonial and documentary evidence presented at trial the Court finds the following facts. On August 1, 1998, at approximately 5:00 PM, the Plaintiff was in the Fireside Café and Restaurant drinking beer at the bar. The Plaintiff had been drinking for a little less than one hour, and had by then consumed three to four beers. Seated next to him at that time was Ginny Hackett (hereafter, “Mrs. Hackett”), the present spouse of the Debtor, then the Debtor’s fiancé. The Debtor was also at the bar within a few feet of Mrs. Hackett talking to a friend. The Plaintiff, upon hearing a statement from friends who had joined him at the bar, *i.e.*, “did you smell french vanilla”, or words to that effect, leaned over, put his hand on the back of Mrs. Hackett and “sniffed” her hair near her neck. Mrs. Hackett reacted by staring at the Plaintiff. A few minutes later the Plaintiff repeated this conduct and within seconds heard comment from behind him – “did you get a good whiff”, or words to that effect. In response to this comment the Plaintiff turned around and was punched in the face by the Debtor. The blow knocked the Plaintiff to the floor, rendered him momentarily unconscious, and resulted in, *inter alia*, a fractured jaw, broken teeth, facial lacerations and bruises.

It is not disputed, and upon these factual findings, it is clear, that the Debtor committed an act, did so intentionally, and caused injury. Accordingly, the singular remaining and contested issue before this Court is whether the Debtor, in hitting the Plaintiff, acted with the requisite *actual intent to cause injury*. While it is not clear that the Debtor intended to fracture the Plaintiff’s jaw, and inflict other injury to the extent actually suffered by the Plaintiff, it is clear from the force of the blow alone that significant harm was intended. The possibility that the injury inflicted may have exceeded the *degree* of harm

actually intended is irrelevant to the pure Geiger calculus.¹

IV. CONCLUSION

The Plaintiff has established to the satisfaction of this Court by clear and convincing evidence that the Debtor committed an act with actual intent to cause injury, and which caused injury, to the Plaintiff. Accordingly, the debt of the Debtor/Defendant Darrell S. Hackett to the Plaintiff Ralph Apuzzo as liquidated and determined in the Superior Court for the State of Connecticut, is nondischargeable in the Debtor's pending bankruptcy case pursuant to 11 U.S.C. § 523(a)(6).

This Memorandum of Decision shall constitute this Court's Findings of Fact and Conclusions of Law pursuant to Fed. R. Bankr. P. 7052. A separate Judgment shall enter simultaneously herewith.

Dated: August 20, 2008

BY THE COURT


Albert S. Dabrowski
Chief United States Bankruptcy Judge

¹The Debtor in defending his actions acknowledged that he hit the Plaintiff, and did not contest the claim that the Plaintiff suffered the specific injuries alleged, but, rather, sought to justify his actions as a reasonable response to the abhorrent conduct of the Plaintiff. Assuming, *arguendo*, that "reasonableness" is in issue, the Court finds that the Debtor's striking a hard blow to the head of the Plaintiff with an intent to injure was far beyond a reasonable response to the Plaintiff's conduct.