Not For Publication

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:	)	CASE NO.	04-32780 (LMW)
RODERICK N. WINTERS,	)	CHAPTER	7
DEBTOR.	)		
BARBARA KLINGMAN,	)	ADV. PRO. NO.	04-3121 (LMW)
PLAINTIFF,	)		
V.	)		
RODERICK N. WINTERS,	)		
DEFENDANT.	)		

APPEARANCES

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MEMORANDUM OF DECISION RE: COMPLAINT
TO DETERMINE THE NONDISCHARGEABILITY OF DEBT

Lorraine Murphy Weil, United States Bankruptcy Judge

Before the court is that certain Complaint To Deny Dischargeability of Debt (Adv. P. Doc.

I.D. No. 1, the "Complaint ")[1] filed by the plaintiff Barbara Klingman (the "Plaintiff") against the defendant Roderick N. Winters (the "Debtor"), seeking a determination that a certain alleged debt owing to the Plaintiff was not discharged in this case pursuant to 11 U.S.C. § 523(a)(6). The court has jurisdiction over this matter as a core proceeding, pursuant to 28 U.S.C. §§ 1334 and 157(b), and that certain Order dated September 21, 1984 of the District Court (Daly, C.J.).[2] For the reasons set forth below, judgment will enter for the Plaintiff.

I. BACKGROUND

A. The Chapter 7 Case

This chapter 7 case was commenced by the Debtor's filing of a voluntary petition on June 9, 2004. (Doc. I.D. No. 3.) A full set of schedules was filed with the petition. (*See id.*) On Schedule F (Creditors Holding Unsecured Nonpriority Claims), the Debtor listed a liquidated, noncontingent and undisputed judgment debt (the "Judgment") owed to the Plaintiff in the amount of $240,000.00. (Doc. I.D. No. 3, p. 10.) Pursuant to that certain Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines (Doc. I.D. No. 2), the meeting of creditors was scheduled for July 6, 2004, and September 7, 2004 was established as the bar date for filing complaints objecting to discharge or seeking a determination of nondischargeability. The meeting of creditors was held as scheduled, and the chapter 7 trustee filed a report of no distribution on July 8, 2004.

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[1] References to the docket of this chapter 7 case appear in the following form: "Doc. I.D. No. __." References herein to the docket for this adversary proceeding appear in the following form: "Adv. P. Doc. I.D. No. __." References herein to the docket for the state court proceeding appear in the following form: "State Court Doc. I.D. No. __." References to the August 25, 2005 trial transcript appear in the following form: "Trial Tr. _:__"(denoting page:line(s)).

[2] That order referred to the "Bankruptcy Judges for this District" *inter alia* "all proceedings . . . arising under Title 11, U.S.C. . . . ."

(Doc. I.D. No. 6.)

B. The Adversary Proceeding

The Plaintiff filed the Complaint against the Debtor in this court on August 9, 2004, initiating this adversary proceeding. The Complaint alleged that the Debtor caused willful and malicious personal injury to the Plaintiff within the purview of 11 U.S.C. § 523 (a)(6), and requested that the court render a determination that the debt in respect thereof (the "Debt") was not dischargeable in this chapter 7 case. The Complaint also requested the court to award judgment in the amount of $240,000.00, statutory interest pursuant to Section 37-3a of the Connecticut General Statutes, and reasonable attorney's fees and costs. *Id.*

The Plaintiff filed a Motion for Default on October 27, 2004 for the Debtor's failure to answer the Complaint. (Adv. P. Doc. I.D. No. 13, the "Motion for Default.") The Debtor filed a Motion To Dismiss the Adversary Proceeding on November 4, 2004. (Adv. P. Doc. I.D. No. 15, the "Motion To Dismiss.") On December 30, 2004 the Plaintiff filed a Motion for Default Judgment, or in the alternative, a Motion for Summary Judgment (Adv. P. Doc. I.D. No. 22, the "Motion for Default Judgment"), pleading collateral estoppel on the issue of willful and malicious injury. An objection to that motion (Adv. P. Doc. I.D. No. 27, the "Objection") and a memorandum in support (Adv. P. Doc. I.D. No. 28) were filed by the Debtor on January 14, 2005. A hearing was held in reference to the Objection on February 2, 2004. An order entered on February 3, 2005 overruling the Objection for failure to prosecute. (Adv. P. Doc. I.D. No. 30.) The Debtor filed a Motion To Vacate Order Overruling Objection on February 14, 2005. (Adv. P. Doc. I.D. No. 32, the "Motion To Vacate.") A hearing was held on March 30, 2005 in reference to the Motion To Dismiss, the Motion for Default Judgment, and the Motion To Vacate, and orders denying the Motion To Dismiss

(Adv. P. Doc. I.D. No. 41), denying the Motion for Default Judgment (Adv. P. Doc. I.D. No. 43), and granting the Motion To Vacate (Adv. P. Doc. I.D. No. 42) entered on that date.

On June 6, 2005 the Plaintiff filed a Motion in Limine with the court (Adv. P. Doc. I.D. No. 49, the "Motion in Limine"), requesting, *inter alia*, that the bankruptcy court determine the issue of dischargeability of the Debt without considering the issue of liquidation of the damages, *i.e.*, that the bankruptcy court limit the evidence in this matter to evidence establishing whether or not the Debtor willfully and maliciously injured the Plaintiff, excluding any evidence establishing the amount of damages resulting from such injury.[3] A hearing was held on the Motion in Limine on June 29, 2005, and an order entered granting the motion. (Adv. P. Doc. I.D. No. 56, the "Order in Limine.")

A trial (the "Trial") on the Complaint was held on August 25, 2005. At the Trial, testimony was heard from the Debtor, with no other witnesses testifying on his behalf. Testimony was also heard from the Plaintiff, and also testifying on her behalf were Joanne Quinones (Trial Tr. 91:4-100:17) and Joan Marie Callaghan. (Trial Tr. 100:21 - 105:15.) The parties also introduced documentary evidence into the record. The court took the matter under advisement, and the parties submitted post-trial briefs. (Adv. P. Doc. I.D. Nos. 63, 64, and 66.) The matter is now ripe for the court's consideration.

II. **FACTS**

The following facts, based on the entire record of the chapter 7 case and the adversary proceeding, have been found by the court. The Debtor and the Plaintiff met when both were

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[3] This court does not have jurisdiction to liquidate personal injury tort claims. 28 U.S.C. § 157(b)(5).

employed as corrections officers with the Connecticut Department of Corrections. (Trial Tr. 6:1-21; 25:7-26:4.) The Debtor and the Plaintiff were involved in an intimate relationship, which lasted for approximately four to five years prior to August 26, 2000, the approximate date of the alleged attack on the Plaintiff by the Debtor (hereinafter referred to as the "Incident") which is the subject of this adversary proceeding. (Trial Tr. 6:14-18; 26:18-20; 30:10-14; Winters Trial Ex. No. 5.) On the date of the Trial, the Debtor stated that he then was 41 years old,[4] his height was 5' 7", and he weighed 175 pounds. (Trial Tr. 4:19.) On the date of the Trial, the Plaintiff stated that she then was 52 years old.[5] (Trial Tr. 23:10-11.) She opined that in August of 2000 she weighed about 120 to 125 pounds. (Trial Tr. 26:5-6.) During the aforementioned intimate relationship between the Debtor and the Plaintiff, the Debtor was married. He and his wife had been married since June 4, 1985. (Trial Tr. 4:20-5:3.) The Plaintiff was also married at the beginning of the intimate relationship with the Debtor but obtained a legal separation from her husband on June 10, 1998. The Plaintiff's divorce became final on or about August 31, 2000. (Trial Tr. 26:21 - 27:1; 47:2-13.)

Both parties admit to being together on or about August 26, 2000. (Trial Tr. 7:6-18; 27:22-23.) Both parties testified that their relationship ended at that time. (Trial Tr. 7:2-14; 27:2-3.) The Debtor stated that, on the date in question, he went to the Plaintiff's house to end the relationship, upset that the Plaintiff was calling his house (his wife answered the phone) and disrupting his life. (Trial Tr. 7:6-14.) At this juncture in the Trial testimony, the stories sharply diverged.

A. <u>The Plaintiff's Story (Corroborated in Part by Other Evidence)</u>

The Plaintiff was sitting in her house at the counter of her snack bar when the Debtor

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[4] The Debtor would have been 37 years old on the date of the Incident.

[5] The Plaintiff would have been 48 years old on the date of the Incident.

entered without knocking, and came to the top of the stairs. After exchanging heated words,[6] the Plaintiff slapped the Debtor on his face and asked him to leave her house. The Debtor picked her up and threw her into her living room. She hit the coffee table located in the living room, and the impact broke the table. She was dazed for a minute, then got up and returned to her stool by the snack bar. Not wanting to upset "John," an autistic male who was in her custodial care and then at home, the Debtor and the Plaintiff decided to go in the Debtor's pickup truck to a school located about a half mile from the Plaintiff's house, to talk. The Plaintiff believed that, by then, the Debtor had calmed down enough that she felt safe with him. (Trial Tr. 27:19 - 29:2.)

At the school, while both were in the cab of the Debtor's pickup truck, the Debtor grabbed the Plaintiff and held her, and she tried to get away by kicking him and hitting him. The Debtor was choking her and slapping her. He grabbed her by the arms, leaving hand prints, and hit her twice in the nose. (Trial Tr. 31:3 - 32:13.) At that point, the Debtor got out of the truck and walked around to the passenger door. He opened the door, took off his tee-shirt and gave it to the Plaintiff to catch the blood dripping from her nose. The Debtor then grabbed the Plaintiff by the wrists, and pulled her out of the truck, dragging her two or three feet over pavement to a cement sidewalk. The Plaintiff was somehow placed on the ground face down, and the Debtor stomped on her with his foot three times. The Plaintiff then got up, climbed onto the bed of the truck and asked the Debtor to take her home. The Plaintiff did not want to walk home with a torn dress and with blood all over her face and dress. (Trial Tr. 33:2 - 34:21.)

The Debtor drove to the Plaintiff's house, and as soon as she started to climb out of the truck,

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[6] That exchange included the following statement by the Debtor: "You need to remember you're nothing but my whore. That's all you are to me." (Trial Tr. 28:15-16.)

the Debtor took off, causing the Plaintiff to fall back into the truck. He went around the block, stopped again in front of the Plaintiff's house, subsequently accelerated, causing her once again to fall back into the truck. The Debtor then drove to the school, where the Plaintiff jumped from the bed of the truck and ran to her house. A neighbor asked the Plaintiff if she was "okay," at which point she asked the neighbor to call the police, which he did. (Trial Tr. 34:22 - 35:24.) Upon arriving at her house, the Plaintiff phoned her friend, Joanne Quinones, and told her that she had been beaten by the Debtor. (Trial Tr. 92:14-15.) Ms. Quinones arrived at the Plaintiff's house at approximately the same time as the police officers. (Trial Tr. 36:3-11.) The Plaintiff told police that she had been beaten, and she needed an ambulance to transport her to the hospital. She estimates that she was at home approximately 10 minutes before going to Backus Hospital in Norwich, Connecticut. (Trial Tr. 36:13-37:4.)

Joanne Quinones was also a corrections officer who worked with both the Debtor and the Plaintiff. (Trial Tr. 91:15-21.) Upon Ms. Quinones' arrival at the Plaintiff's house, approximately five minutes after the call from the Plaintiff, Ms. Quinones saw a living room in shambles, with a broken coffee table. The Plaintiff was bleeding through her nose, and had a bloody lip. The Plaintiff had marks on her neck indicative of being choked, and "fingerprints" on both her arms. The Plaintiff was also bleeding from her knee, her leg, and the bottom of her foot. (Trial Tr. 95:13-19.) When the ambulance transported the Plaintiff to William Backus Hospital, Ms. Quinones drove to the hospital and accompanied the Plaintiff to the emergency room, where Ms. Quinones remained until the Plaintiff was taken for x-rays. (Trial Tr. 95:25-96:13.)

The "Emergency Department Note" from the William W. Backus Hospital stated that the Plaintiff had multiple bruises, a swollen upper lip, and bruising on both sides of her neck consistent

with being choked. (Klingman Trial Ex. E; Trial Tr. 38:3-9.) In addition, the report noted bruising in a hand print or fingerprint distribution on both of the Plaintiff's upper arms. The Plaintiff also reported pain in her nose but no x-rays were taken of her nose. (Klingman Trial Ex. E; Trial Tr. 39:2-20.)

Another friend and former co-worker of the Plaintiff's, Joan Marie Callaghan, was also at the hospital. Ms. Callaghan arrived at the hospital as the Plaintiff was leaving the emergency room with Joanne Quinones. Ms. Callaghan observed that the Plaintiff was on crutches. The Plaintiff's left leg was heavily bandaged, she had blood all over her, and gauze in her nose. She had many contusions. The Plaintiff was moving very slowly and with great difficulty. Ms. Callaghan and her husband put the Plaintiff into their car and drove to the Plaintiff's house. Upon helping the Plaintiff into her house, Ms. Callaghan observed a broken coffee table and the Plaintiff's living room in disarray. (Trial Tr. 101:18-102:20.) Ms. Callaghan set the Plaintiff up in her bed, elevated her leg, and provided ice packs for her knee, nose, and back. In addition, Ms. Callaghan placed towels, water and a telephone within reach of the plaintiff. Ms. Callaghan's husband was sent to pick up the Plaintiff's medications. (Trial Tr. 102:25-103:5.) Approximately two days after the Incident, the Plaintiff's primary care physician examined the Plaintiff and told the Plaintiff that her nose was broken. (Trial Tr. 39:25-40:6.)

B. The Debtor's Story

The Debtor arrived at the Plaintiff's house at approximately 3:30 to 3:45 in the afternoon. (Trial Tr. 14:2-4.) The Debtor never entered the Plaintiff's house, but remained in the foyer area of the house. When he told the Plaintiff that he wanted to end the relationship, the Plaintiff reacted negatively to the news, and started knocking things off the walls in the foyer. After the

confrontation with the Plaintiff, the Debtor left to go to a prior engagement. The Plaintiff ran from her house and jumped into the Debtor's pickup truck. The Debtor told the Plaintiff that he was going to drive to the police station, but instead drove to a school located about a half mile away from the Plaintiff's house, where he parked in a parking lot. When the Debtor parked the truck at the school, the Plaintiff assaulted him and tried to take the keys from the ignition, but he successfully deflected her blows. (Trial Tr. 7:15 - 9:20.) At one point while both were in the truck, the Plaintiff was swinging at the Debtor, trying to kick him, and was able to bite him on the arm. The Plaintiff also knocked the Debtor's glasses off and kicked the steering column, causing injury to her foot. The Debtor asked the Plaintiff to get out of his truck and she refused, so he tricked the Plaintiff into getting out of the cab of the truck and then locked the doors. At that point, the Plaintiff jumped into the bed of the truck. There was no physical confrontation of any kind between the Plaintiff and the Debtor outside the truck. The Debtor drove away with the Plaintiff in the bed of the pickup truck, with the Plaintiff trying to smash the Plexiglas® window in the back of the cab. (Trial Tr. 10:17-12:20.) The Debtor drove the Plaintiff back to her house, where a gentleman was standing out on his lawn. The Debtor asked the gentleman to call the police because the Plaintiff would not get out of his truck. The Plaintiff then jumped out of the truck, and the Debtor left the scene. The Plaintiff left the truck at approximately 4:00 to 4:30 P.M. (Trial Tr. 12:22-12:25.) The Debtor observed that the Plaintiff had one injury, a cut on the bottom of her foot from kicking the truck's steering column, and that her dress was torn. He did not know how the Plaintiff's dress got torn. (Trial Tr. 14:11-19.)

C. <u>The Legal Aftermath</u>

The Plaintiff secured a restraining order (*i.e.*, an order of protection) against the Debtor from the Connecticut Superior Court on September 18, 2000. (Trial Tr. 41:24-42:24; Klingman Trial Ex.

D.) On November 28, 2001 the Plaintiff filed a complaint (Klingman's Trial Ex. B, the "State Court Complaint") against the Debtor in Superior Court, seeking compensatory and punitive damages for the physical injuries she allegedly suffered, as well as attorney's fees. (Trial Tr. 42:25-43:8; Klingman's Trial Ex. B.) The Debtor filed an answer to the State Court Complaint on January 10, 2002. (Klingman Trial Ex. C.) A pretrial conference was held in the matter on September 26, 2002, which the Debtor did not attend (he alleges that he never received notice of the conference). (Doc. I.D. No. 28 at 2.) Default entered against the Debtor for failure to appear at the September 26, 2002 conference, and a subsequent Superior Court hearing on damages was held on December 2, 2002. The Debtor was not present at that hearing. (Doc. I.D. No. 28 at 2.) The Judgment was entered against the Debtor on December 2, 2002 in the amount of $240,000.00. (Trial Tr. 43: 9-11; Klingman Trial Ex. A.) The Debtor filed a motion to reopen the Judgment on January 2, 2004. (State Court Doc. I.D. No. 115, the "Motion To Open Judgment.") That motion is currently pending in the Connecticut Superior Court at New London. (*See* State of Connecticut Docket No. KNL-CV-02-0560881-S.)

III. ANALYSIS

A. The Law

1. Section 523(a)(6)

Bankruptcy Code § 523 (a) provides in pertinent part that "(a) [a] discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) 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 . . . ." 11 U.S.C.A. § 523 (West 2006). "The Supreme Court has held that the burden is on the party claiming nondischargeability. The appropriate standard of proof is a preponderance

of the evidence." *Neshewat v. Salem (In re Salem*), 290 B.R. 479, 484 (S.D.N.Y. 2003) *aff'd*, 94 Fed. Appx. 24 (2d Cir. 2004) (citing *Grogan v. Garner*, 498 U.S. 279, 285, 111 S.Ct. 654 (1991)) (internal quotations omitted).

2. Willful and Malicious Injury

"A determination of non-dischargeability under subsection (a)(6) requires proof that there was a willful and malicious injury, that is, a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Garcia v. Amaranto* (*In re Amaranto)*, 252 B.R. 595, 599 (Bankr. D. Conn. 2000) (Shiff, C.J.) (citing *Kawaauhau v. Geiger*, 523 U.S. 57, 57 (1998)) (internal quotations omitted). The bankruptcy court must first determine that there was in fact an injury, and if so, it must then be determined whether that injury was willful and malicious. *Garcia* at 598. In addition, "[a] victim's pre-existing condition is not a factor in the determination of whether an antagonist's conduct was malicious and willful." *Id.* at 599.

"The terms 'willful' and 'malicious' are separate elements that must both be satisfied." *Salem*, 290 B.R. at 485. In *Kawaauhau v. Geiger*, the Court determined that the legislative reports note that the word "willful" in Section 523 (a)(6) means "deliberate or intentional." In addition, the Court found that because "[t]he word 'willful' in (a)(6) modifies the word 'injury,'" nondischargeability takes a deliberate and intentional injury. The Court opined that "[h]ad Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead "willful acts that cause injuries." *Geiger*, 523 U.S. at 61.

The Second Circuit interprets "malicious" as "wrongful and without just cause or excuse, even in the absence of personal hatred, spite, or ill-will . . . [M]alice may be implied by the acts and conduct of the debtor in the context of the surrounding circumstances." *Salem*, 290 B.R. at 485,

(citing *Navistar Fin. Corp. v. Stelluti (In re Stelluti)*, 94 F.3d 84, 87 (2d Cir. 1996)). Malice is implied when "anyone of reasonable intelligence knows that the act in question is contrary to commonly accepted duties in the ordinary relationships among people, and injurious to another." *Aldus Green Co. v. Mitchell (In re Mitchell)*, 227 B.R. 45, 51 (S.D.N.Y. 1998).

3. Collateral Estoppel

Under the Bankruptcy Code, "collateral estoppel principles . . . apply in discharge exception proceedings pursuant to § 523(a)." *Grogan v. Garner*, 498 U.S. at 285. "The Connecticut Supreme Court has determined that a default judgment may have the preclusive effect of collateral estoppel only if there has been a 'full and fair opportunity to litigate [the issue] and such issue[ ][was] necessary to [the] default judgment.'" *H.J. Bushka Lumber v. Boucher (In re Boucher),* --- B.R. ---, 2005 WL 3529367 (citing *Jackson v. R.G. Whipple, Inc.*, 225 Conn. 705, 717-18 (1993)).[7]

B. Application of Law to Fact

The Plaintiff's version of the events that took place on the day of the Incident is persuasive; the Debtor's account is not. The court adopts the Plaintiff's version in material part as fact. Based on the Plaintiff's testimony (either alone or as corroborated), the court finds that the Plaintiff

[7] The Plaintiff claims that the Judgment has preclusive effect on the nondischargeability issue in these proceedings. Because the court finds the Debt to be nondischargeable on other grounds, the court need not address the preclusive effect of the Judgment for nondischargeability purposes. Ordinarily, the Judgment would be preclusive at least on the issue that the Debtor owes the Plaintiff a debt arising out of the Incident in the amount of the Judgment. However, as noted above, the Judgment was taken by default and, also as noted above, the Plaintiff must prove that there was a full and fair opportunity to litigate before preclusive effect will be accorded the Judgment. The issue of "full and fair opportunity to litigate" is a question of fact. *See Jackson*, 225 Conn. at 717-18. Although (as noted above) the Judgment was scheduled by the Debtor as an uncontested debt, the Motion To Open Judgment remains pending and the Debtor continues to challenge the sufficiency of notice in the state court proceedings. Accordingly, the court will leave the issue of the preclusive effect of the Judgment (and other issues of liquidation of damages) to the state court.

sustained an "injury" at the Debtor's hands (and feet) in the course of the Incident. The court credits the Plaintiff's description of the Debtor's attack upon her, which attack the court finds to be vicious and brutal. Based upon the foregoing, the court concludes that the Debtor inflicted a "willful and malicious injury" upon the Plaintiff during the Incident within the purview of Bankruptcy Code § 523(a)(6). Accordingly, the Debt was not discharged in this chapter 7 case.

IV. ATTORNEY'S FEES, COSTS AND POSTJUDGMENT INTEREST

A. Attorney's Fees

"[T]here is no general right to attorney's fees in bankruptcy actions, [but] a party may be entitled to them in accordance with state law. However, where the litigated issues involve . . . issues peculiar to federal bankruptcy law, attorney's fees will not be awarded absent bad faith or harassment by the losing party." *Bank Boston, N.A. v. Sokolowski (In re Sokolowski*), 205 F.3d 532, 535 (2d Cir. 2000). "If the proceeding involves solely an issue of bankruptcy law, bankruptcy law, rather than state law will determine the propriety of awarding attorneys' fees." *Id. (citing* 6 Norton Bankr. L. & Prac. 2d § 142:7 (1997)).

In the case at bar, the Plaintiff specifically pleaded in paragraph number 7 of the Complaint her claim for judgment in the amount of $240,000.00, statutory interest pursuant to Section 37-3a of the Connecticut General Statutes, all costs and a reasonable attorney's fee, in addition to including the same in the prayer for relief. However, because the Complaint was based on an issue that is solely an issue of bankruptcy law, Connecticut state law will not apply. In addition, the court does not find bad faith or harassment by the Debtor pertaining to this adversary proceeding which was commenced by the Plaintiff's filing of the Complaint. Accordingly, the court will not award attorney's fees to the Plaintiff.

B. **Costs**

In *Citibank USA, N.A. v. Spring (In re Spring*), this court held that

> [t]he court, in its discretion, may award costs in an adversary proceeding. Under Bankruptcy Rule 7054(b), the prevailing party in an adversary proceeding is not prima facie entitled to recover costs. *See* Fed. R. Bankr. P. 7054(b) ("The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides"). The prevailing party bears the burden of establishing a basis for the award, and the costs which may be awarded are set forth in 28 U.S.C. § 1920. *See* 6 William L. Norton, Jr., Norton Bankruptcy Law and Practice § 142:5 (2d ed. 2004). However, in unusual circumstances--such as a showing of misconduct on the part of the prevailing party or the inability of the unsuccessful party to pay -- courts tend not to impose costs. *See id. See also Stuebben v. Gioioso* (*In re Gioioso*), 979 F.2d 956, 963 (3d Cir. 1992) ("[I]n its sound exercise of discretion, a bankruptcy court could deny costs if it would be futile to award them").

Citibank USA, N.A. v. Spring (In re Spring), 2005 WL 588776 * 6 (Bankr. D. Conn. 2005).

In the case at bar, the Plaintiff has not established a basis for the award of costs, nor has the Debtor established his inability to pay such costs. The parties will be allowed to brief the issue of allowable costs (with supporting affidavits) pursuant to 28 U.S.C. § 1920, and submit said briefs to the court for its review within 20 days of the filing of this order. If the Plaintiff fails to timely file such brief and affidavit, costs will be denied without further notice or hearing.

C. **Postjudgment Interest**

On the issue of postjudgment interest, "[a] decision to deny or grant postjudgment interest is primarily an equitable determination and a matter lying within the discretion of the trial court." *Bower v. D'Onfro*, 45 Conn. App. 543, 550 (1997). In the instant case, the trial court entering the Judgment was the Connecticut Superior Court. The court directs the plaintiff to the Superior Court for a determination by that court with respect to the postjudgment interest that she is seeking.

IV. CONCLUSION

For the reasons set forth above, the court concludes that the Debt was not discharged in this chapter 7 case. Attorney's fees will not be awarded to the prevailing party. The matter of costs will be briefed by the parties within 20 days of the filing of this memorandum. The court will not award postjudgment interest, but, rather, directs the Plaintiff to the state court on that issue (as well as all other issues of Debt liquidation). Judgment consistent with the foregoing will enter.

Dated: February 22, 2006 BY THE COURT

Lorraine Murphy Weil
United States Bankruptcy Judge