

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3173
Summary Calendar

In the Matter of: David H. Scheuermann, Jr. and
Martina Teran Scheuerman,
Debtors.

DAVID H. SCHEUERMANN, JR.,
Appellant,

versus

BONOMOLO LIMOUSINES, INC.,
Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(92-CV-1403-K(3))

(October 28, 1993)

Before POLITZ, Chief Judge, DAVIS and SMITH, Circuit Judges.

PER CURIAM:*

David Scheuermann appeals the judgment of the bankruptcy court, affirmed by the district court, that his debt to Bonomolo Limousines, Inc. was nondischargeable under 11 U.S.C. § 523(a)(6)

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

because it arose from a willful and malicious injury. We affirm.

Background

Bonomolo orally consigned a 1977 Rolls Royce Silver Shadow II to Scheuermann, a limousine dealer connected with British American Imports of New Orleans ("BAI"). Scheuermann was to repair and attempt to sell the vehicle. When a sale was consummated, Scheuermann was to pay Bonomolo \$24,000. In April 1988 Scheuermann sold the Rolls to Joseph Carvallo, representative for British American Imports of Massachusetts ("BAIM"), for \$33,000, receiving a deposit of \$8,000. Shortly thereafter, Carvallo deposited \$17,000 for the purchase of a 1978 Rolls Royce Corniche from Scheuermann which was not on consignment from Bonomolo.

In August 1988, Scheuermann contacted Bonomolo about the title to the Rolls. A disagreement arose over whether Bonomolo would present the title prior to its receipt of the \$24,000 due Bonomolo. In September 1988 Scheuermann shipped Bonomolo's Rolls to BAIM. BAIM accepted delivery but refused to pay Scheuermann the balance because he failed to provide merchantable title. In October 1988 Bonomolo learned that Scheuermann had sold the Rolls to BAIM and requested payment from Scheuermann. Bonomolo delivered the registered title for the Rolls to Scheuermann in late May 1989 but still received no payment. Bonomolo sued Scheuermann in state court.

On July 17, 1990, Scheuermann and his wife filed a petition for bankruptcy under Chapter 7, listing Bonomolo as a creditor but

contesting the validity of his claim.¹ The bankruptcy court rejected Scheuermann's defense to liability based on BAI's corporate status and held that although the evidence failed to establish nondischargeability based on fraud under 11 U.S.C. § 523(a)(2)(A), Scheuermann's actions constituted "willful and malicious" injury rendering the debt to Bonomolo nondischargeable under section 523(a)(6). The district court affirmed; Scheuermann timely appealed.

Analysis

On appeal Scheuermann challenges the ruling as to nondischargeability. We review bankruptcy court conclusions of law *de novo* and its findings of fact against the clearly erroneous standard, giving due regard to that court's opportunity to judge the credibility of the witnesses.² "Thus we will affirm the bankruptcy court's findings unless 'on the entire evidence, [we are] left with the definite and firm conviction that a mistake has been committed.'"³ Creditors bear the burden of demonstrating nondischargeability under section 523(a)(6) by preponderance of the evidence.⁴

Section 523(a) excepts from discharge any debt "for willful

¹ On March 25, 1990, BAI filed for bankruptcy relief under Chapter 11 which was converted in August 1990 to Chapter 7.

² **In re Perez**, 954 F.2d 1026 (5th Cir. 1992).

³ **In re Sutton**, 904 F.2d 327, 329 (5th Cir. 1990) (citations omitted).

⁴ **Grogan v. Garner**, 498 U.S. 279 (1991).

and malicious injury by the debtor to another entity or to the property of another entity." Although conversion of another's property may constitute a willful and malicious injury precluding discharge under section 523(a)(6),⁵ not all conversions of property are willful and malicious. Willful is defined as "intentional," and malicious is defined as "without just cause or excuse."⁶ Scheuermann argues that his actions were at most a technical conversion and were not willful and malicious under section 523(a)(6). We are not persuaded.

The evidence reflects that Scheuermann intentionally received and disposed of Bonomolo's 1977 Rolls Royce. He received a total of \$25,000 in payments on the Rolls and Corniche from BAIM, an amount sufficient to pay Bonomolo the \$24,000 due on the Rolls. Scheuermann, however, never paid Bonomolo despite its delivery of merchantable title and demand for payment. Scheuermann's intentional failure to pay Bonomolo without just cause or excuse, supports the bankruptcy court's finding of a willful and malicious injury within the intentment of section 523(a)(6).

The judgment of the district court is AFFIRMED.

⁵ E.g., **In re Bercier**, 934 F.2d 689 (5th Cir. 1991).

⁶ **Chrysler Credit Corp. v. Perry Chrysler Plymouth, Inc.**, 783 F.2d 480, 486 (5th Cir. 1986); 3 Collier on Bankruptcy ¶ 523.16[1] (15th ed.).