IT IS ORDERED as set forth below:

Date: August 20, 2010

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	:	
	:	
JAMES QUARTERMAN and	:	BANKRUPTCY CASE NUMBER
FELICIA LACONYA QUARTERMAN,	:	**09-65818-MGD**
	:	
Debtors.	:	
	:	
DOUGLAS COUNTY BOARD	:	ADVERSARY CASE NUMBER
OF COMMISSIONERS,	:	**09-06399-MGD**
	:	
Plaintiff,	:	
v.	:	CHAPTER 7
	:	
JAMES QUARTERMAN,	:	
	:	
Defendant.	:	

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The above-styled adversary proceeding is before the Court on Douglas County Board of Commissioners' ("Plaintiff") Motion for Summary Judgment ("Motion"), which Plaintiff filed on February 26, 2010. (Docket No. 10). Attached to Plaintiff's Motion are a Superior Court of

Douglas County Order, filed April 20, 2006, awarding attorney's fees ("Exhibit A"), Plaintiff's First Request for Admissions to Defendant ("Exhibit B"), Plaintiff's letter informing Defendant of Plaintiff's Request for Admissions, including a certified mail receipt signed by "Felecia Quarterman" ("Exhibit C"), Affidavit of Arthur A. Ebbs ("Exhibit D"), a Superior Court of Douglas County Order, filed November 30, 2007, awarding attorneys' fees ("Exhibit E"), Affidavit of Sonja Cox ("Exhibit F"), and Plaintiff's Statement of Material Facts as to which There is No Genuine Issue to be Tried ("Statement").

James Quarterman ("Defendant") filed a *pro se* response ("Response") in opposition to Plaintiff's Motion on March 16, 2010. (Docket No. 11). Defendant's Response appears to assert that there are disputed material facts and argues that Plaintiff's Complaint should be dismissed as untimely. Plaintiff filed a reply to Defendant's response on March 30, 2010. (Docket No. 14).

For the reasons set forth herein, the Court **GRANTS** Summary Judgment in favor of Plaintiff. The undisputed material facts show that Defendant neither listed nor scheduled his debt to Plaintiff in his bankruptcy petition, that Defendant never served Plaintiff with notice of his bankruptcy filing, and that Plaintiff did not have actual knowledge of Defendant's bankruptcy filing in time for Plaintiff to file a proof of claim in Defendant's bankruptcy case and to file a timely objection to the dischargeability of Defendant's debt to Plaintiff.; Defendant's debt to Plaintiff is therefore nondischargeable pursuant to 11 U.S.C. § 523(a)(3). The undisputed material facts also show that Defendant filed frivolous lawsuits against Plaintiff pre-petition in state courts, knowingly caused Plaintiff to incur legal fees to defend against those suits, and was adjudged liable for those legal fees; Defendant's debt to Plaintiff is therefore nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

I. FACTS

Plaintiff's Complaint alleges that Defendant has a nondischargeable debt to Plaintiff as a result of a willful and malicious injury that occurred pre-petition and as a result of Defendant's failure to include the debt in Defendant's underlying bankruptcy case. Defendant's Response to Plaintiff's Motion asserts that Plaintiff's Complaint is untimely and should be dismissed. The Court therefore will address the undisputed material facts first with regard to the parties' pre-petition interactions and then with regard to Defendant's bankruptcy case and the filing of the present adversary proceeding. In reviewing these facts, and pursuant to Federal Rule of Civil Procedure 36, made applicable herein by Federal Rule of Bankruptcy Procedure 7036, the Court deems Defendant to have admitted all the matters addressed in Plaintiff's Request for Admissions, to which Defendant never responded. *See* Fed. R. Civ. P. 36(a)(3).

A. The Pre-Petition Period

Defendant's pre-petition interactions with Plaintiff are marked by a "long history of frivolous litigation" by Defendant against Plaintiff. (Exhibit A). In one instance of such litigation, on January 6, 2005, Defendant filed a complaint against Plaintiff in the Superior Court of Douglas County in the state of Georgia. (*Id*.). In that matter, Plaintiff filed a Motion for Award of Attorney's Fees and Expenses of Litigation, regarding which the Superior Court held a hearing on March 28, 2006. (*Id*.) On April 20, 2006, the Superior Court entered an order against Defendant and awarded Plaintiff attorney's fees. (*Id*.). That court found that Defendant had previously been precluded from filing a lawsuit regarding the validity of a particular revenue bond and that Defendant's 2005 lawsuit dealt with precisely that issue in violation of a Georgia

Supreme Court Order. (*Id.*). Of Defendant's claims in the 2005 lawsuit, each had either been previously litigated adversely to Defendant or lacked substantial justification. (*Id.*). The Superior Court ultimately found that Defendant's "litigation practice is to afford him a platform for seeking public exposure, notoriety, and personal aggrandizement and not to secure redress or relief from the misuse or abuse of power by government officials as he alleged." (*Id.*). Further, Defendant never refuted testimony from others that Defendant "just wanted to make [Plaintiff] work." (*Id.*). In the pursuit of his frivolous claims, Defendant demanded "burdensome discovery" of Plaintiff and subpoenaed parties for "lengthy court hearings." (*Id.*). As a result, Plaintiff incurred "substantial attorney's fees" and the Superior Court found that Plaintiff was entitled to an award of $16,454.41, against Defendant, of attorney's fees and litigation expenses pursuant to O.C.G.A. § 9-15-14(b). (*Id.*). Defendant admits that he willfully and maliciously injured Plaintiff by filing his 2005 lawsuit in the Superior Court of Douglas County. (Exhibit B, ¶¶ 1–2). Defendant has not paid any of the debt related to the fee award in that case. (Exhibit F, ¶ 3). Defendant admits that he did not list or identify this award on his bankruptcy schedules. (Exhibit B, ¶ 5).

Defendant filed another lawsuit in the Superior Court of Douglas County against Plaintiff in 2007. (Exhibit E). The Superior Court noted that the case before it at the time was the twelfth lawsuit by Defendant against Douglas County's public entities and officials since 2002 and that "[n]one of these cases has been found to have any merit." (*Id.*) The Superior Court entered an order in that case on November 30, 2007, in which the court awarded Plaintiff attorneys' fees related to the litigation. (*Id.*). That court found that Defendant's complaint had "a complete absence of any justiciable issue of law or fact" and "lacked substantial justification and was

interposed for delay and/or harassment." (*Id*.). The Superior Court therefore awarded Plaintiff's fees and expenses, in the amount of $34,454.88, pursuant to O.C.G.A. § 9-15-14(a) and (b). (*Id*.). Defendant admits that he willfully and maliciously injured Plaintiff by filing his 2007 lawsuit in the Superior Court of Douglas County. (Exhibit B, ¶¶ 3–4). Defendant has not paid any of the debt related to the fee award in that case. (Exhibit F, ¶ 3). Defendant admits that he did not list or identify this award on his bankruptcy schedules. (Exhibit B, ¶ 6).

In Defendant's Response to Plaintiff's Motion, Defendant appears to dispute the above facts related to Defendant's personal reasons and legal justifications for filing the 2005 and 2007 lawsuits against Plaintiff. (*See, e.g.*, Response at ¶ 76).

B. The Present Case

Defendant filed his Chapter 7 petition on March 3, 2009. (Bankr.. Case No. 09-65818-MGD). Defendant's petition and schedules include unsecured debts owed to Douglas County Superior Court and to Douglas County Magistrate Court. (Case No. 09-65818-MGD, Docket No. 1, Schedule F). Defendant's list of creditors included both Douglas County Superior Court and Douglas County Magistrate Court. The debt is listed as a joint obligation of Defendant and his wife and the amount of claim is listed as zero dollars. On March 4, 2009, the Court notified all creditors listed in Defendant's petition that the bar date for filing exceptions to Defendant's discharge was set for June 12, 2009. (Bankr. Case No. 09-65818-MGD, Docket No. 4).

Plaintiff is a separate entity from Douglas County Clerk of Superior Court. (Exhibit F, ¶ 4). Defendant admits that neither of the court awards of attorneys' fees were included in his bankruptcy schedules. (Exhibit B, ¶¶ 5–6). Additionally, Plaintiff was not listed as a creditor in Defendant's schedules and would not have been served with notice of the filing of Defendant's

petition. (Exhibit B, ¶¶ 7–8;). Despite Defendant's failure to include Plaintiff in his list of creditors, on June 8, 2009, Plaintiff did receive notice of Defendant's bankruptcy filing. (Exhibit F, ¶ 4). Plaintiff learned of Defendant's filing only four days before the established bar date in Defendant's case.

The Court granted Defendant a discharge and closed his bankruptcy case on June 22, 2010. (Bankr. Case No. 09-65818-MGD, Docket No. 14). Plaintiff filed a Motion to Reopen Defendant's bankruptcy case on July 29, 2009, which was granted as unopposed on August 4, 2009.[1] (Bankr. Case No. 09-65818, Docket Nos. 17, 22). Plaintiff filed its Complaint in the present adversary proceeding on July 20, 2009, approximately forty-three days after Plaintiff learned of Defendant's bankruptcy filing.

II. STANDARD APPLICABLE TO MOTIONS FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure, applicable herein by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *See also, Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Maniccia v. Brown*, 171 F.3d 1364, 1367 (11th Cir. 1999). In reviewing a motion for summary judgment, the court must view the record and all inferences therefrom in the light most favorable to the non-moving party. *See WSB-TV v. Lee*, 842 F.2d 1266, 1270 (11th

[1] Defendant filed an objection to Plaintiff's Motion to Reopen on August 20, 2009, which the Court overruled as untimely. (Bankr. Case No. 09-65818, Docket Nos. 24–25).

Cir. 1988). "The party seeking summary judgment bears the initial burden to demonstrate to the [trial] court the basis for its motion for summary judgment and identify those portions of the pleadings, depositions, answers to interrogatories, and admissions which it believes show an absence of any genuine issue of material fact . . . . If the movant successfully discharges its burden, the burden then shifts to the non-movant to establish, by going beyond the pleadings, that there exist genuine issues of material facts." *Hairston v. Gainesville Sun Publ'g Co.*, 9 F.3d 913, 918 (11th Cir. 1993), *reh'g denied*, 16 F.3d 1233 (11th Cir. 1994). The non-movant may not simply rest on his pleadings, but must show, by reference to affidavits or other evidence, that a material issue of fact remains. Fed. R. Civ. P. 56.

In his Response, Defendant alleges that there remain unresolved issues of material facts. *E.g.*, Response at ¶ 76. The Court finds that the facts Defendant seeks to dispute have already been admitted by Defendant in the form of his failure to respond to Plaintiff's Request for Admissions. Further, those facts have already been determined by a court of law and Defendant is precluded from challenging those facts in this proceeding. The Court will further address these issues below as part of its analysis of Plaintiff's claim pursuant to 11 U.S.C. § 523(a)(6). Given that there are no unresolved issues of material fact, it is appropriate for the Court to consider Plaintiff's Motion for Summary Judgment at this time.

III. APPLICATION OF LAW

In his Response, Defendant asserts that Plaintiff's Complaint is untimely and should be dismissed because the debt at issue should be discharged pursuant to 11 U.S.C. § 523(c). (Response at ¶¶ 79–82). Plaintiff seeks summary judgment that Defendant's debt is

nondischargeable pursuant to both 11 U.S.C. § 523(a)(6) and § 523(c). The Court will first address the applicability of 11 U.S.C. § 523(c), then will address Plaintiff's claims pursuant to 11 U.S.C. § 523(a)(6).

A. Applicability of 11 U.S.C. § 523(c)

In his Response, Defendant argues Plaintiff's Complaint is untimely and that his debt to Plaintiff is subject to discharge pursuant to 11 U.S.C. § 523(c) because Plaintiff failed to act to protect its rights despite having learned of Defendant's bankruptcy case prior to the established bar date. For the following reasons, the Court holds that Plaintiff's Complaint is timely.

The dischargeability of debts described by 11 U.S.C. § 523(a)(6) is determined by § 523(c) of the Bankruptcy Code. Section 523 provides that a debtor "shall be discharged" from a debt described in § 523(a)(6) unless the Court, after notice and a hearing upon the request of the creditor to whom the debt is owed, determines that the debt is excepted from the discharge. 11 U.S.C. § 523(c)(1). The Federal Rules of Bankruptcy Procedure require creditors to file complaints to determine dischargeability under § 523(a)(6) no later that 60 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 4007(c). On March 4, 2009, the Court provided notice to all creditors listed on Defendant's bankruptcy petition that the meeting of creditors would be held on April 13, 2009, and that the deadline for filing objections would be June 12, 2009. Defendant relies on the above facts and legal provisions for his argument that Plaintiff had knowledge of his petition in time to file an objection and that Plaintiff's failure to do so means that Defendant's debt is discharged. Response at ¶ 81. Section 523 further provides, however, for an exception to that rule: a debt that is provided for by 11 U.S.C. § 523(a)(3)(B) is not automatically discharged. If Defendant's debt to Plaintiff is subject to 11

U.S.C. § 523(a)(3)(B), then it is excepted from the automatic discharge provisions of 11 U.S.C. § 523(c).

Section 523(a)(3)(B) provides that a debt to a specific creditor that is "neither listed nor scheduled" is not included in a Chapter 7 discharge if the debt is of the kind specified in § 523(a)(6) unless the creditor "had notice or actual knowledge of the case" in time to file a timely proof of claim and a request for a determination of dischargeability. Defendant has admitted that his debt to Plaintiff was not included in his schedules and that Plaintiff was not identified as a creditor on his schedules. Plaintiff is asserting that Defendant's debt is of the kind specified in § 523(a)(6). Defendant's debt to Plaintiff, therefore, is not included in the discharge unless Plaintiff had notice or actual knowledge of the case in time for Plaintiff to timely file a proof of claim and a request for determination of dischargeability.

The undisputed facts establish that Plaintiff received notice of Defendant's bankruptcy filing on June 8, 2009. The bar date was June 12, 2009. Four days' notice is not sufficient notice for the filing of a proof of claim or a request for determination of discharge. *See, e.g.*, *In re Dewalt*, 961 F.2d 848, 851 (9th Cir. 1992) (holding that seven days' notice prior to the bar date is insufficient); *and In re Heiney*, 194 B.R. 898, 902–903 (D. Colo. 1996) (holding that eighteen days' notice prior to bar date is insufficient). Plaintiff did not have notice of Defendant's bankruptcy case in time to file a timely proof of claim or a timely request for determination of the discharge. If Plaintiff can show that Defendant's debt is of the kind described in § 523(a)(6), then Defendant's debt to Plaintiff is not included in the discharge. Accordingly, Plaintiff's Complaint is timely and the Court will now consider whether Defendant's debt to Plaintiff is nondischargeable pursuant to § 523(a)(6).

B. Nondischargeability Pursuant to 11 U.S.C. § 523(a)(6)

A debt "for willful and malicious injury by the debtor to another entity or the property of another entity" is nondischargeable. 11 U.S.C. § 523(a)(6). Plaintiff must show each element, willful and malicious, as two separate prongs of the analysis rather than viewing the two as one "amorphous standard." *In re Reynolds-Marshall*, 162 B.R. 51, 56 (D. ME 1993) (quoting *In re Long*, 774 F.2d 875, 881 (8th Cir. 1985)). Willful is defined in the Eleventh Circuit as "intentional or deliberate and can not be established merely by applying a recklessness standard." *In re Ellerbee*, 117 B.R. 731, 739 (Bankr. N.D. Ga. 1995) (J. Massey) (quoting *In re Ikner*, 883 F.2d 986, 989 (11th Cir. 1986)). Further, the term "willful" modifies the term "injury," so the intent to be proven is the intent to cause the harmful consequences of an act, not merely the intent to commit the act. *Kawaauhau v. Geiger*, 523 U.S. 57, 64 (1998). A willful injury, therefore, is "an injury that the debtor intended to cause or that the debtor knew was substantially certain to be the consequence of his acts." *In re Ellerbee*, 117 B.R.731, 740 (Bankr. N. D. Ga. 1995).

For the second prong of the analysis, Plaintiff must show that the injury was malicious. Malicious is defined in the Eleventh Circuit as "wrongful and without just cause or excessive even in the absence of personal hatred, spite or ill-will." *In re Ellerbee*, 117 B.R. 731, 739 (Bankr. N.D. Ga. 1995) (quoting *In re Latch*, 820 F.2d 1163, 1166 n.4 (11th Cir. 1987)). The required malice may be implied or constructive, if the nature of the act committed sufficiently implies malice. *In re Ikner*, 883 F.2d 986, 991 (11th Cir. 1986). Therefore, there is no need to show special malice by Defendant for Plaintiff.

Plaintiff here has proven the willfulness and maliciousness of the injury caused by Defendant in two ways: first, Defendant has admitted that he inflicted a willful injury and that he

inflicted a malicious injury with regard to each lawsuit he filed against Plaintiff; second, the Superior Court of Douglas County made a factual finding that Defendant filed frivolous lawsuits against Plaintiff, that Plaintiff incurred legal fees as a result of those lawsuits, and that Defendant is liable for those fees.

Defendant admitted that he inflicted a willful and malicious injury by failing to respond to Plaintiff's Request for Admissions. Plaintiff's Request for Admissions included statements that Defendant willfully and maliciously caused Plaintiff's injuries by filing his 2005 and 2007 lawsuits. As stated above, Rule 36(a)(3) of the Federal Rules of Civil Procedure provides that matters are deemed admitted when a party fails to respond to a request for admissions. Defendant has admitted, therefore, that he willfully and maliciously caused Plaintiff's injuries by filing his 2005 and 2007 lawsuits against Plaintiff.

The Court must find that Defendant caused willful and malicious injuries to Plaintiff even in the absence of Defendant's admission. Defendant is precluded from arguing here that his prior lawsuits against Plaintiff were not frivolous. The doctrine of collateral estoppel provides that "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action." *Allen v. McCurry*, 449 U.S. 90, 94 (1980). It is appropriate for this Court to give preclusive effect to an issue decided by a state court. *See Id.* at 95. Collateral estoppel can be used against a party that had a "full and fair opportunity" to litigate that issue in the earlier case. *Id*. Here, the Court finds that Defendant had a full and fair opportunity to litigate whether his 2005 and 2007 lawsuits against Plaintiff in the Superior Court of Douglas County were frivolous filings. In both of those cases, the Superior Court held that Plaintiff was entitled to a judgment against Defendant for legal fees pursuant to

O.C.G.A. § 9-15-14(b), and in the 2007 case the Superior Court also held that Defendant was liable pursuant to O.C.G.A. § 9-15-14(a). Awards of attorney's fees pursuant to these sections of Georgia law indicate that Defendant's claims in those actions had "such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted . . . claim" and that Defendant's lawsuit "that lacked substantial justification" or was "interposed for delay or harassment." O.C.G.A. § 9-15-14(a)–(b). The Superior Court's Order dated April 20, 2006, specifically addressed Defendant's intent in filing these lawsuits: Defendant sought "a platform for seeking public exposure, notoriety, and personal aggrandizement and not to secure redress or relief from the misuse or abuse of power by government officials as he alleged." Rather than redressing any harm, Defendant filed his suit as a deliberate act to "make [Plaintiff] work." The legal fees Plaintiff incurred in defending these suits, therefore, amount to a willful injury that Defendant was substantially certain would result from the filing of his lawsuits. As those lawsuits lacked any justiciable issues and were not filed to redress harms, Defendant's injury to Plaintiff was wrongful and without just cause.

IV. CONCLUSION

Defendant never included his debts to Plaintiff in his schedules, nor did he list Plaintiff as a creditor in his case. Plaintiff never received official notice of Defendant's bankruptcy filing, and only received actual notice four days prior to the bar date for filing proofs of claims and requests to determine dischargeability. Plaintiff, therefore, did not have sufficient time to file a proof of claim or a request to determine dischargeability prior to the established bar date. For these reasons, Plaintiff's Complaint was not barred and was timely filed.

Plaintiff has provided sufficient proof that Defendant's debt to Plaintiff is nondischargeable as a debt described by 11 U.S.C. § 523(a)(6). Defendant admitted having caused willful and malicious injuries to Plaintiff by filing his 2005 and 2007 lawsuits. The Superior Court of Douglas County found that Defendant's purpose in filing his 2005 lawsuit against Plaintiff was to provide himself a platform for public exposure and not to redress any harm caused by Plaintiff. The Superior Court further found that both of those lawsuits lacked justiciable issues. Finally, the Superior Court awarded Plaintiff attorney's fees in the amounts of $16,454.41 and $34,454.88 to cover the costs Plaintiff incurred in defendant against Defendant's lawsuits. Defendant, therefore, willfully and maliciously caused Plaintiff injury in the amounts of $16,454.41 and $34,454.88. Accordingly, it is

ORDERED that Plaintiff's Motion for Summary Judgment is **GRANTED**. A separate judgment shall be entered contemporaneously herewith.

The Clerk shall serve a copy of this Order upon the Plaintiff, counsel for Plaintiff, and Defendant.

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