IT IS ORDERED as set forth below:

Date: March 30, 2011

James R. Sacca
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 09-90923-JRS
	:	
SOLOMON C. HEDD-WILLIAMS,	:	
aka Chukwuma S. Hedd-Williams	:	
aka Solomon Williams	:	
aka Chukuma Williams	:	
aka Chukuma S. Hedd-Williams, and	:	
LAURINA A. HEDD-WILLIAMS	:	
	:	
Debtor.	:	
	:	CHAPTER 7
	:	
ADRIAN JEFFERSON	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 10-6091-JRS
v.	:	
	:	
SOLOMON C. HEDD-WILLIAMS,	:	
aka Chukwuma S. Hedd-Williams	:	
aka Solomon Williams	:	
aka Chukuma Williams	:	
aka Chukuma S. Hedd-Williams, and	:	
LAURINA A. HEDD-WILLIAMS	:	
	:	
Defendant.	:	

O R D E R

This matter is before the Court on Plaintiff's Motion for Summary Judgment [Doc. No. 10] (the "Motion") filed on October 7, 2010 for the purpose of determining whether the debt owed to Plaintiff by Defendants is nondischargeable under 11 U.S.C. § 523(a)(6). The Court, having considered the motion, response and all other matters of record, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On October 24, 2007, Plaintiff obtained a judgment against Defendants in the State Court of Gwinnett County (the "State Court"), *Pl.'s Mot. Summ. J.*, ¶ 1, Doc. No. 10; *Jefferson v. Oceans Sports Bar & Grill, Inc., et al.*, No. 05-c-2082-3 ("Final Judgment" on the separate issue of damages), (the "State Court Judgment") which provided that Defendants were jointly and severally liable for:

> 1. the sum of TWENTY FOUR THOUSAND FOUR HUNDRED FIFTY FOUR AND 29/100 DOLLARS **($24,454.29)** as Past Medical Expense;
> 2. the sum of NINE THOUSAND SIX HUNDRED DOLLARS **($9,600.00)** as Past Wage Loss;
> 3. the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS **($150,000.00)** as compensatory damages for pain and suffering; and
> 4. the sum of SEVENTY FIVE THOUSAND DOLLARS **($75,000.00**) as punitive damages as the Court finds said Defendants' collective actions to be that willful misconduct, malice, fraud, wantonness, oppression, or entire want of care which would raise a presumption of conscious indifference to consequences of injury to Plaintiff, ADRIAN JEFFERSON.

Pl.'s Statement of Material Facts as to Which There Is No Genuine Issue, ¶ 8, Doc. No. 10 (quoting the State Court Judgment). The State Court made no further detailed findings of fact with respect to Defendants' liability. *See id.*

Plaintiff's complaint before the State Court alleged the following facts: Defendants owned a corporation named Ocean Sports Bar and Grill, Inc. (the "Corporation"), which operated a sports bar by the same name, *Pl.'s Ex. C*, ¶¶ 2-4, Doc No. 11. The Corporation employed security personnel that monitored the front door of the bar. *Id.* ¶ 8. On March 21, 2004, Plaintiff was a guest at the bar, and as he was leaving, the security personnel attacked Plaintiff unexpectedly and broke his ankle. *Id.* ¶¶ 6, 7, 9. Plaintiff's injuries required several medical services, including emergency care, hospitalization, surgery and rehabilitation. *Id.* ¶ 10. Based on the description of the events in his complaint, Plaintiff contended that the Corporation and Defendants were liable for compensatory damages and punitive damages under several legal theories including negligence, battery, intentional infliction of emotional distress and negligence per se. *Id.* ¶ 12-42.

Defendants and the Corporation filed an answer in the State Court proceeding, but it was stricken from the record for failure to comply with discovery requests. *Pl.'s Ex. E*, 1, Doc No. 11. Defendants allege that they were unable to comply with discovery because they could not pay for legal services, their counsel withdrew and they proceeded pro se. *Defs.' Resp. Pl's Mot. Summ. J.*, 2, Doc No. 13. Regardless, the State Court entered a default judgment against the Corporation, found that Defendants and the Corporation were one and the same and entered partial summary judgment against Defendants. *Pl.'s Ex. F*, 1-2, Doc No. 11. In its order granting partial summary judgment against Defendants, the State Court found them personally liable[1] to Plaintiff but reserved judgment on the issue of damages. *Id.* In its final judgment, entered several months later, the State Court found Defendants liable for past medical expenses, past wage loss, compensatory damages for

[1] The State Court did not specify the legal theory, negligence, battery, intentional infliction of emotional distress or negligence per se, on which it based its judgment against Defendants.

pain and suffering and punitive damages for actions that were "that willful misconduct, malice, fraud, wantonness, oppression, or entire want of care which would raise a presumption of conscious indifference to consequences of injury to Plaintiff." *Pl.'s Ex. G*, 1, Doc No. 11.

On November 23, 2009, Defendants filed their petition for bankruptcy relief, and on February 22, 2010, Plaintiff filed this adversary proceeding, seeking to have the debt to him, evidenced by the State Court Judgment, to be determined to be nondischargeable pursuant to 11 U.S.C. § 523(a)(6). Defendants filed an answer on March 12, 2010. Plaintiff filed a motion for summary judgment and related pleadings on October 7, 2010. Defendants filed their response on October 27, 2010.

CONCLUSIONS OF LAW

Under Federal Rule of Civil Procedure 56,[2] a grant of summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears the "initial responsibility of informing the . . . court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986) (internal quotation marks omitted); *accord, e.g.*, *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009). The court must resolve a motion for summary judgment by viewing all evidence and drawing all reasonable inferences in the light most favorable to the non-moving party. *Lubin v. Cincinnati Ins. Co.*, No.1:09-CV-2985-RWS,

[2] Fed.R.Civ.P. 56(c) is made applicable to adversary proceedings by Fed. R. Bankr.P. 7056(c).

2010 WL 5313754, at *4 (N.D. Ga. Dec. 17, 2010) (citing *Patton v. Triad Guar. Ins. Corp.*, 277 F.3d 1294, 1296 (11th Cir. 2002)).

In the instant adversary proceeding, Plaintiff seeks a determination that the debt owed to him by Defendants is nondischargeable as a matter of law under section 523(a)(6) of the Bankruptcy Code. Exceptions to discharge must be construed narrowly, *e.g.*, *Equitable Bank v. Miller (In re Miller)*, 39 F.3d 301, 304 (11th Cir. 1994); *Matter of Cross*, 666 F.2d 873, 880-81 (5th Cir. Unit B 1982); *Carlan v. Dover (In re Dover)*, 185 B.R. 85, 88 (Bankr. N.D. Ga. 1995), and the burden is on the party seeking nondischargeability to prove by a preponderance of the evidence that such an exception is warranted. *Lewis v. Lowery (In Re Lowery)*, 440 B.R. 914, 921 (Bankr. N.D. Ga. 2010) (citing *Grogan v. Garner*, 498 U.S. 279, 111 S. Ct. 654 (1991)).

Section 523(a)(6) excepts from discharge individual debtors' debts incurred by "willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). Under this section, "willful" acts are those that are "deliberate or intentional," S. REP. No. 95-989, at 79 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5865; H.R. REP. No. 95-595, at 365 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6320, and a showing of mere recklessness does not establish willfulness. *Kawaauhau v. Geiger*, 523 U.S. 57, 64, 118 S.Ct. 974, 978 (1998); *Lee v. Ikner (In re Ikner)*, 883 F.2d 986, 989 (11th Cir. 1989) (citing *Chrysler Credit Corp. V. Rebhan*, 842 F.2d 1257, 1262-63 (11th Cir. 1988)); *Fincher v. Holt (In re Holt)*, 173 B.R. 806, 812 (M.D. Ga. 1994) (quoting *Chrysler Credit Corp. v. Smith (In re Smith)*, 143 B.R. 284, 291 (Bankr. M.D. Ga. 1992)). "Malicious" acts, under this section, are "wrongful and without just cause or excessive even in the absence of personal hatred, spite, or ill will." *In re Holt*, 173 B.R. at 812 (quoting *In re Smith*, 143 B.R. at 291) (internal quotation marks omitted); *accord In re Ikner*, 883 F.2d at 991.

Plaintiff argues Defendants are precluded from re-litigating issues regarding dischargeability because they were the subject of a partial summary judgment and final judgment rendered by the State Court. *Pl.'s Br. Supp. Mot. Summ. J.*, 2-4, Doc. No. 10. The Eleventh Circuit Court of Appeals, in *In re St. Laurent*, provides a succinct explanation of how collateral estoppel applies in dischargeability proceedings when a prior state court judgment is at issue:

> Collateral estoppel, or issue preclusion, bars relitigation of an issue previously decided in judicial or administrative proceedings if the party against whom the prior decision is asserted had a "full and fair opportunity" to litigate that issue in an earlier case. Collateral estoppel principles apply to dischargeability proceedings. If the prior judgment was rendered by a state court, then the collateral estoppel law of that state must be applied to determine the judgment's preclusive effect . . . . [H]owever, the ultimate issue of dischargeability is a legal question to be addressed by the bankruptcy court in the exercise of its exclusive jurisdiction to determine dischargeability.

In re St. Laurent, 991 F.2d 672, 675 (11th Cir. 1993) (citations omitted) (quoting *Allen v. McCurry*, 449 U.S. 90, 95, 101 S.Ct. 411, 415, 66 L.Ed.2d 308 (1980) (citing *Grogan*, 498 U.S. at 285 n. 11, 111 S.Ct. at 658 n. 11; *In re Touchstone*, 149 B.R. 721, 725 (Bankr. S.D. Fla.1993); *In re Halpern*, 810 F.2d 1061, 1064 (11th Cir. 1987)).

The prior judgment in the instant case was decided by a Georgia court, and consequently, the application of Georgia law is required to determine if collateral estoppel bars relitigation under these circumstances.[3] Under Georgia law, collateral estoppel applies when the following elements are met:

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[3] In his motion for summary judgment, Plaintiff cites *Bush v. Balfour Beatty Bah., Ltd. (In re Bush)*, 62 F.3d 1319, 1322 (11th Cir. 1995), which sets forth the elements of collateral estoppel under federal law. *Pl.'s Br. Supp. Mot. Summ. J.*, p. 3-4, Doc. No. 10. In *In re Bush,* the prior decision was rendered by a federal district court, and the Eleventh Circuit Court of Appeals consequently applied federal collateral estoppel law. 62 F.3d at 1321, 1322. As mentioned above, the prior decision in this case was rendered by the State Court, and therefore, Georgia collateral estoppel law applies. *See League v. Graham (In re Graham)*, 191 B.R. 489, 493 (Bankr. N.D. Ga. 1996) (discussing *In re Bush*, 62 F.3d 1319 (11th Cir. 1995) ("In its *Bush* holding, the Eleventh Circuit dealt with a prior judgment by a *federal court* and consequently that court applied the *federal doctrine of collateral estoppel.* It did not make any reference to the preclusive effect of state court default judgments of fraud." (emphasis in original)).

(1) there is an identity of parties between the two cases; (2) there is an identity of issues between the two cases; "(3) actual and final litigation of the issue in question occurred; (4) the adjudication was essential to the earlier action; and (5) the parties had a full and fair opportunity to litigate the issues in question." *In re Lowery*, 440 B.R. at 922 (citing *Newton Group v. Lemmons (In re Lemmons)*, Adversary No. 00-6828, 2005 WL 6487216, at *2 (Bankr. N.D. Ga. December 20, 2005)); *see Fowler v. Vineyard*, 261 Ga. 454, 455-56, 405 S.E.2d 678, 680 (1991); *Kent v. Kent*, 265 Ga. 211, 211-12, 452 S.E.2d 764, 766 (1995).

As mentioned above, § 523(a)(6) excepts from discharge "willful *and* malicious injury by the debtor to another entity or to the property of another entity," 11 U.S.C. § 523(a)(6) (emphasis added), but a finding of recklessness does not establish willfulness. *In re Ikner*, 883 F.2d at 989 (citing *Rebhan*, 842 F. at 1262-63); *In re Holt*, 173 B.R. at 812 (quoting *In re Smith*, 143 B.R. at 291 (Bankr. M.D. Ga. 1992)). In the prior proceeding, the State Court ruled that Defendants were liable for "willful misconduct, malice, fraud, wantonness, oppression, *or* that entire want of care which would raise the presumption of conscious indifference to consequences" without making any additional findings. *Pl.'s Statement of Material Facts as to Which There Is No Genuine Issue*, ¶ 8, Doc. N o. 10 (emphasis added) (internal quotation marks omitted) (quoting the State Court Judgment). Though the State Court did not cite a specific Georgia statute in the State Court Judgment, the language used therein is identical to the language of O.C.G.A. § 51-12-5.1(b). Therefore, the Court must determine whether in considering Defendants' liability for punitive damages under O.C.G.A. § 51-12-5.1(b), the State Court found facts identical to those this Court would have to find to determine the dischargeability of debt under § 523(a)(6) of the Bankruptcy Code.

Although § 523(a)(6) of the Bankruptcy Code and O.C.G.A. § 51-12-5.1(b) are similar in certain ways, some distinct differences separate the two. Focusing on the "entire want of care" language of the Georgia statute, the court in *Norrell Health Care, Inc. v. Clayton (In re Clayton)*, 168 B.R. 700 (Bankr. N.D. Cal. 1994), discussed the differences between the Georgia statute and § 523(a)(6) at length:

> At a hearing on this motion, the Court raised the question with the parties of whether the "entire want of care" language (from the Georgia statute) allowed for the award of punitive damages against defendants who acted only in "reckless disregard" of the rights of others, and did not deliberately violate those rights. In its responsive pleading, [the Plaintiff seeking a determination that the debt was nondischargeable] cited to the case of *Annis v. Tomberlin & Shelnutt Assoc.*, 195 Ga.App. 27, 392 S.E.2d 717 (1990) ("*Annis*"), a decision of a Georgia intermediate appellate court, for support of its argument that the "entire want of care" term meant "an intentional disregard of the rights of another, knowingly or willingly disregarding such rights." *Annis*, 392 S.E.2d at 723. The language of *Annis* does support the position of [Plaintiff] that awards of punitive damages under O.C.G.A. § 51-12-5.1(b) could only be made in response to wrongful acts that would also violate 11 U.S.C. § 523(a)(6). However, while actually citing *Annis*, a later Georgia court defined the statute to include acts that were "wanton or were done for a *reckless disregard* for or a conscious indifference to the rights of ..." (emphasis added by Court). *Bruno et al. v. Evans et al.*, 200 Ga.App. 437, 441, 408 S.E.2d 458, 462 (1991) (citing *Bowen v. Waters*, 170 Ga.App. 65, 67, 316 S.E.2d 497, 500 (1984) ("*Bowen*")). To further confound the situation, the *Bowen* court relied on the holding of the Georgia Supreme Court in *Gilman Paper Co. v. James*, 235 Ga. 348, 219 S.E.2d 447 (1975) ("*Gilman*"), which defined the "entire want of care" standard to mean an "intentional disregard of the rights of another, knowingly or willingly disregarding such rights." *Gilman*, 235 Ga. at 351, 219 S.E.2d 447. . . .
>
> With this potential conflict in Georgia law in mind, and reading all factual questions in favor of the non-moving party, the Court cannot hold as a matter of law that the award of $150,000 in punitive damages was based solely upon factual findings that would also satisfy the requirements of 11 U.S.C. § 523(a)(6). Given the above-related dispute among Georgia courts and the lack of findings of fact or conclusions of law in the arbitrator's decision, there is no way to know how [the prior trier of fact] interpreted the punitive damages statute.

168 B.R. at708 (alterations other than brackets in original).

The analysis in *Clayton* is sound and neither *Bowen* nor *Gilman* have been overruled or specifically treated negatively by any other court. In addition, in *MDC Blackshear, LLC v. Littell*, 273 Ga. 169, 173, 537 S.E.2d 356, 361 (2000), the Supreme Court of Georgia stated that "[p]unitive damages cannot be imposed without a finding of culpable conduct based upon either intentional and wilful acts, *or* acts that exhibit an entire want of care and indifference to consequences, " *Id.* (emphasis added), indicating that an "entire want of care" is distinguishable from intent or willfulness. Yet even assuming *arguendo* that a finding that Defendants acted with an "entire want of care" would satisfy § 523(a)(6), there are five other disjunctive parts to the Georgia statute, any of which may support an award of punitive damages: (1) willful misconduct, (2) malice, (3) fraud, (4) wantonness, or (5) oppression. The State Court in the instant case did not identify on which of the disjunctive parts of the Georgia statute, or combination thereof, it based its decision. If the State Court Judgment was based on some of these, but not others, the debt would not be non-dischargeable as a matter of law. Consequently, this Court cannot determine as a matter of law, without more detailed findings of fact, that the State Court Judgment satisfies the requirements of § 523(a)(6) of the Bankruptcy Code.

CONCLUSION

Because questions of material fact remain with respect to this case, it is hereby ORDERED that summary judgment for the Plaintiff on the question of whether the debt owed to him by Defendants is non-dischargeable under 11 U.S. § 523(a)(6) is DENIED.