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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:)	Bankruptcy Case
)	No. 98-3-1575-SCTC
CANDACE PING-PING WUCHANG,)	Chapter 7
)	
Debtor.)	
)	
_____)	
CITY OF REDWOOD CITY,)	Adv. Proc. No. 98-3-190-TC
)	
Plaintiff,)	
)	
vs.)	
)	
CANDACE PING-PING WUCHANG,)	<u>MEMORANDUM DECISION</u>
)	
Defendant.)	
_____)	

Plaintiff seeks a determination that attorneys fees awarded against Defendant in a prior District Court action are nondischargeable in Defendant's bankruptcy case. The present action was tried to the court on August 3, 1999. Peggy S. Doyle appeared for Plaintiff City of Redwood City (Redwood City). Defendant Candace Ping-Ping WuChang (WuChang) appeared in pro per. Upon

1 due consideration, I determine that the fee award is nondis-
2 chargeable, because the conduct of WuChang that gave rise to
3 the fee award was willful and malicious within the meaning of
4 11 U.S.C. § 523(a)(6).

5

6 **FACTS**

7 On April 8, 1995, Candace and Abel WuChang were evicted
8 by the Redwood City police from real property owned by
9 Gilberto Villareal. Villareal had suffered a stroke and
10 apparently had agreed to allow the WuChangs to live in one-half
11 of Villareal's duplex in exchange for personal care. Later,
12 however, Villareal sought to evict the WuChangs from the duplex.
13 On April 6, 1995, Villareal obtained from the San Mateo County
14 Superior Court an order to show cause, returnable on April 27,
15 1995, why Candace WuChang should not be ordered to cease
16 harassment of Gilberto Villareal. Although the court had not
17 issued a temporary restraining order, the Redwood City police
18 removed Candace and Abel WuChang from the duplex on April 8, 1995.

19 Candace and Abel WuChang submitted an administrative claim
20 to Redwood City, alleging that police officers lost or destroyed
21 jewelry and other personal property worth \$10,200. They sought
22 compensatory and punitive damages totalling \$750,000. After
23 Redwood City denied the claim, the WuChangs filed an action in
24 the United States District Court for the Northern District of
25 California (the District Court Action) seeking damages under
26 42 U.S.C. § 1983 for violation of their federal civil rights.
27 The action was assigned to District Judge D. Lowell Jensen.

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MEMORANDUM DECISION

1 Magistrate Judge Phyllis J. Hamilton was assigned to oversee
2 discovery.

3 The District Court attempted to settle the case. Judge
4 Hamilton conducted a settlement conference on October 3, 1996.
5 Following the settlement conference, the defendants filed offers
6 of judgment totalling \$17,321 under Fed. R. Civ. P. 68.
7 Plaintiffs rejected that offer. The case was then set for a case
8 management confer-ence on December 4, 1996.

9 The discovery process quickly degenerated into a flurry of
10 motions and counter motions that resulted in the dismissal of
11 the action. The court granted the defendants' motions: (1) to
12 compel return of documents (Pl. Exh. 7, 9, 12); (2) to strike
13 lis pendens (Pl. Exh. 6); (3) directing Candace WuChang¹ to cease
14 disruptive conduct at depositions (Pl. Exh. 7, 13); and (4) to
15 strike irrelevant, embarrassing, and defamatory papers filed by
16 WuChang (Pl. Exh. 5, 12). In several of the orders, the court
17 found WuChang had violated Rule 11 (Pl. Exh. 5, 6, 11, 12). The
18 court denied WuChang's motions for Rule 11 sanctions against
19 defendants (Pl. Exh. 7, 12) and WuChang's motions to disqualify
20 Judges Hamilton and Jensen (Pl. Exh. 11). Judge Hamilton finally
21 recommended that the action be dismissed on the basis of WuChang's
22 improper disruption of discovery (Pl. Exh. 13). Judge Jensen
23 entered judgment for defendants, granting both the defendants'
24 motion for summary judgment and Judge Hamilton's recommendation
25 for terminating sanctions (Pl. Exh. 15).²

26 Following entry of judgment in favor of Redwood City,
27 Judge Jensen ordered the WuChangs to pay Redwood City \$25,000

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MEMORANDUM DECISION

1 for attorneys fees (the Fee Award). He noted that a prevailing
2 defendant in a section 1983 suit may, in the discretion of the
3 court, recover attorneys fees "where plaintiff's action, even
4 though not brought in subjective bad faith, is frivolous,
5 unreasonable or without foundation." He determined that a fee
6 award against the WuChangs was appropriate under that standard.

7 The Court is persuaded that this is the unusual
8 case in which prevailing defendants are entitled to
9 recover some portion of their attorneys fees.
10 Plaintiffs' conduct in pursuing their claims concerns
11 the Court. In litigating this case, plaintiffs have
12 routinely inundated the Court with numerous motions
and filings and refused to cooperate with court orders
despite repeated warnings regarding the consequences
of such failure. See Order dated March 13, 1998. Such
action caused defense counsel to respond to numerous
unnecessary filings by plaintiffs.

13 Even more troubling, however, is the fact that
14 plaintiffs engaged in this pattern even after defen-
15 dants extended their Rule 68 offers of judgment which,
16 combined, exceeded the amount claimed by plaintiffs.
17 Although plaintiffs' summary judgment papers contain
18 a measure of damages that is higher than the initial
19 claim submitted to the City, the Rule 68 offers of
20 judgment exceeded the amount of damages claimed by
plaintiffs at the time of the offers. The Court makes
the finding that plaintiffs knew or should have known
that their claims were unreasonable once they rejected
the Rule 68 offers of judgment and continued to pursue
their claims. On this basis, the Court finds that
defendants are entitled to an award of attorneys fees.

21 Pl. Exh. 18 at 6. Judge Jensen then carefully reviewed the fees
22 sought, fixing the Fee Award at \$25,000 to: (1) exclude fees
23 incurred before the WuChangs rejected the defendant's offers of
24 judgment; (2) exclude fees incurred in work helpful to a companion
25 case; and (3) take account of the WuChangs' poor financial
26 condition.

27 Candace WuChang filed a petition under chapter 7 of the
28 Bankruptcy Code on April 14, 1998.³ In the present action,

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1 Redwood City seeks a determination that WuChang's liability under
2 the Fee Award is nondischargeable under section 523(a)(6) of the
3 Bankruptcy Code, because WuChang's conduct that gave rise to the
4 Fee Award was willful and malicious.⁴ Redwood City filed a motion
5 for summary judgment, seeking to establish the elements of nondis-
6 chargeability via the doctrine of collateral estoppel. I denied
7 the motion, concluding that Judge Jensen's decision did not
8 address whether WuChang's actions were willful and malicious. I
9 did hold that the Fee Award established both the fact and amount
10 of WuChang's liability. The matter was then set for trial on the
11 issue of WuChang's intent.

12 The matter was tried to the court on August 3, 1999. Because
13 the issue to be tried was a narrow one, and because WuChang had
14 shown a unique propensity to waste time through repeated and
15 extended excursions into irrelevant issues, I limited each side
16 to three hours of testimony.⁵

17

18 **DISCUSSION**

19 Section 523 of the Bankruptcy Code provides in relevant part:

20 (a) A discharge under section 727, 1141, 1228(a),
21 1228(b), or 1328(b) of this title does not discharge
an individual debtor from any debt

22 (6) for willful and malicious injury by the
23 debtor to another entity or to the property of
another entity.

24 The Supreme Court recently held that section 523(a)(6)
25 renders nondischargeable only liabilities arising from acts
26 performed with intent to cause injury. "The word 'willful' in
27 (a)(6) modifies the word 'injury,' indicating that nondischarge-

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1 ability takes a deliberate or intentional *injury*, not merely a
2 deliberate or intentional *act* that leads to injury." Kawaauhau v.
3 Geiger, 523 U.S. 57, 118 St. Ct. 974, 977 (1998)(emphasis in
4 original). In a post-Kawaauhau decision, the Fifth Circuit held
5 that intent to cause injury can be inferred from the nature of
6 the act performed. "[W]e hold that an injury is 'willful and
7 malicious' where there is either an objective substantial
8 certainty of harm or a subjective motive to cause harm." Miller
9 v. J.D. Abrams, Inc., 156 F.3d 598, 606 (5th Cir. 1998), cert.
10 denied, 119 S.Ct. 1249 and 1250 (1999). Accord Caton v. Trudeau,
11 157 F.3d 1026, 1030 (5th Cir. 1998), cert. denied, 119 S.Ct. 1462
12 (1999). The Tenth Circuit Bankruptcy Appellate Panel has also
13 held that under Kawaauhau intent to injure may be implied from
14 the nature of the debtor's act.

15 Intent may be established by either direct or indirect
16 evidence. Willful injury may be established by direct
17 evidence of specific intent to harm a creditor or the
18 creditor's property. Willful injury may also be
19 established indirectly by evidence of both the debtor's
20 knowledge of the creditor's lien rights and the debtor's
21 knowledge that the conduct will cause particularized
22 injury.

23 In re Longley, 235 B.R. 651, 657 (BAP 10th Cir. 1999)(citations
24 omitted).

25 I find that WuChang intended to harm Redwood City in the
26 acts which gave rise to the Fee Award. I infer such intent from
27 the nature of WuChang's acts, which were clearly wrongful and
28 substantially certain to cause harm to Redwood City. In finding
that WuChang acted with intent to harm Redwood City, I make and
rely upon the following subsidiary findings of fact.

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1 (1) WuChang disobeyed court orders directing her to return
2 certain telephone records. On February 12, 1997, Judge Hamilton
3 granted a request for protective order barring WuChang from
4 enforcing a subpoena seeking the billing records for six telephone
5 numbers. On April 24, 1997, Judge Hamilton found that WuChang
6 obtained the telephone records notwithstanding the protective
7 order, and ordered WuChang to return those records. Pl. Exh. 7
8 at 13-15. The order explained that WuChang was to do this by
9 returning the records to Pacific Bell and by filing a declaration
10 on or before April 28, 1997 stating that she had done so. Id.
11 On May 7, 1997, Judge Hamilton issued an order to show cause re
12 contempt on the basis that WuChang had not submitted the required
13 declaration. Pl. Exh. 9. Judge Jensen found that WuChang
14 obtained the telephone records despite the protective order, and
15 had not returned those records or filed the required declaration
16 as of September 1997. Pl. Exh. 12 at 6-8. In granting the
17 defendants' motion for terminating sanctions on March 13, 1998,
18 Judge Jensen found that WuChang still had not complied with the
19 order requiring her to file a sworn declaration regarding the
20 telephone records. Pl. Exh. 15 at 10-12. WuChang's failure to
21 file a sworn declaration after repeatedly being directed to do so
22 by the court can only be viewed as an intentional failure to obey
23 the court's orders.

24 (2) WuChang disobeyed court orders governing the conduct
25 of depositions by engaging in repeated disruptive behavior. On
26 April 24, 1997, Judge Hamilton found that WuChang had acted
27 improperly at prior depositions. She ordered WuChang to start
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1 all depositions on time, stop arguing with opposing counsel, ask
2 brief, clear questions, and stop making personal attacks on
3 counsel and witnesses. Pl. Exh. 7 at 2-10. On August 27, 1997,
4 Judge Hamilton issued a second order. She found WuChang had
5 violated the April 24th order, and she issued very specific
6 directions as to how WuChang was to raise objections and respond
7 to yes or no questions. She warned WuChang that she would
8 recommend termination sanctions if the order was not obeyed.
9 Pl. Exh. 13 at 5. On November 24, 1997, Judge Hamilton determined
10 that WuChang had violated the August 27th order at WuChang's
11 September 25th deposition by not bringing requested documents, by
12 not following the court's specific orders regarding the manner of
13 raising objections and answering yes or no questions, and by
14 spending much of the three-hour deposition arguing about requested
15 documents. Pl. Exh. 13. She found WuChang's conduct so egregious
16 that she recommended terminating sanctions. Id. Judge Jensen
17 found that terminating sanctions were appropriate, stating:

18 This Court agrees with Judge Hamilton that plaintiffs
19 have abused and exhausted the patience of the Court,
20 thus warranting the imposition of terminating sanctions
21 in this case. Although involuntary dismissal is a
22 drastic measure, and one that his Court does not impose
23 lightly, the Court is convinced that this is the rare
24 case deserving of such a sanction.

25 Pl. Exh. 15 at 15. After review of Judge Hamilton's and Judge
26 Jensen's orders and excerpts of the transcript from WuChang's
27 September 25th deposition, I find that WuChang willfully disobeyed
28 Judge Hamilton's orders with the natural result that Redwood City
incurred additional attorneys fees.

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1 (3) WuChang filed repeated frivolous motions to disqualify
2 the judges hearing the District Court Action. On May 6, 1997,
3 WuChang filed a motion to disqualify Judge Hamilton, citing no
4 evidence of prejudice other than the judge's rulings. Pl. Exh. 8.
5 She filed a second motion to disqualify Judge Hamilton on
6 August 12, 1997. Pl. Exh. 10. Judge Jensen denied the motions on
7 October 6, 1997, holding that the allegation that Judge Hamilton
8 repeatedly ruled against WuChang did not state a legally
9 sufficient basis to disqualify the judge. See Liteky v. United
10 States, 510 U.S. 551, 556 (1994). On June 3, 1998, well after she
11 received Judge Jensen's order denying the motions to disqualify
12 Judge Hamilton, WuChang filed a motion seeking to disqualify both
13 Judge Jensen and Judge Hamilton. This motion also failed to cite
14 any evidence of bias other than the two judges' rulings and was
15 denied. Pl. Exh. 31, 33.

16 (4) WuChang made unsupported personal attacks on Redwood
17 City's counsel and witnesses. On April 17, 1997, WuChang filed
18 a motion seeking Rule 11 sanctions charging that Redwood City
19 witnesses and counsel had submitted perjured declarations and
20 deposition testimony, destroyed or altered evidence, and prevented
21 WuChang from taking discovery. Pl. Exh. 10. The court found
22 these allegations to be completely without merit. See Pl. Exh. 12
23 at 11. WuChang repeated many of these allegations long after they
24 had been rejected by the District Court. During the course of her
25 appeal of the order dismissing the District Court Action, WuChang
26 filed a motion in the Ninth Circuit seeking to disqualify Redwood
27 City's counsel from participating in the appeal on the basis of

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1 the allegations of misconduct at the trial court level that had
2 previously been rejected by the District Court. Pl. Exh. 20 at
3 2-4. The motion was denied.⁶

4 (5) WuChang filed a frivolous lis pendens. On January 27,
5 1997, Wuchang filed in the District Court two notices of pending
6 action concerning six properties owned by the Villareal and
7 Tarangioli families. The property owners moved to strike the lis
8 pendens on the basis that the District Court Action, which alleged
9 various intentional torts, did not involve a claim concerning
10 title to the real properties in question. The court granted the
11 motion to strike and determined that WuChang had violated Rule 11
12 in filing the lis pendens.

13 In the present case, plaintiffs' notices of lis
14 pendens were unwarranted by existing law and legally
15 unreasonable. California Code of Civil Procedure
16 section 405.54 clearly states that recording a lis
17 pendens is only proper in a case involving a claim
18 to real property. Having drafted their own complaint,
19 plaintiffs are well-aware of their claims against
20 defendants and should know that none involve a claim
21 to title of defendants' real property.

22 Pl. Exh. 6 at 7.⁷

23 (6) The District Court found that WuChang improperly
24 inflated her claim for lost personal property. In the administra-
25 tive claim submitted to Redwood City, which was attached to her
26 complaint, WuChang claimed that police officers lost or destroyed
27 personal property worth \$10,000. Pl. Exh. 1. Following a
28 settlement conference with Judge Hamilton, the defendants filed
offers of judgment under Fed. R. Civ. P. 68 totalling \$17,321.
Pl. Exh. 2 & 3. In a declaration filed in response to defendants'
motion for summary judgment, WuChang stated that she lost personal

1 property worth \$40,963. Pl. Exh. 18 at 5-6. Judge Jensen found
2 that the timing of this increase demonstrated "that plaintiffs
3 knew or should have known that their claims were unreasonable once
4 they rejected the Rule 68 offers of judgment and continued to
5 pursue their claims." Id. at 6.

6 Together, the acts described above constitute overwhelming
7 evidence of WuChang's intent to injure Redwood City. Wuchang's
8 acts paint a clear picture of a person who felt herself free to
9 use any tactic, however improper, against her opponents. She
10 engaged in conduct at depositions so inherently disruptive and
11 inappropriate that she must be assumed to have intended to impose
12 upon Redwood City the unnecessary legal costs that naturally
13 resulted from those acts. She filed several patently frivolous
14 motions, some of these after the District Court had held similar
15 motions to be completely without foundation. The very nature of
16 WuChang's frivolous motions to disqualify Redwood City's counsel
17 and Judges Hamilton and Jensen suggests that their purpose was to
18 visit retribution on anyone who failed to support her. That these
19 wrongful acts were not the product of merely negligent ignorance
20 of the rules is proved by Wuchang's vigilance enforcement of the
21 rules against her opponents. A finding that Wuchang acted
22 maliciously is further compelled by the indiscriminate,
23 unrestrained personal attacks that appear throughout her papers
24 regarding all attorneys, witnesses, and judges who failed to
25 support her claims.

26 WuChang's argument at trial was that she was justified in
27 bringing the District Court Action because the April 8, 1995

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1 eviction was wrongful. She correctly notes that the San Mateo
2 Superior Court had not issued a restraining order against her,
3 but had only issued an order to show cause returnable 19 days
4 after the eviction. This argument is unpersuasive, because
5 WuChang was not sanctioned for filing the lawsuit. She was
6 ordered to pay attorneys fees because of the grossly inappropriate
7 manner in which she prosecuted the lawsuit. Judge Jensen made
8 this very clear in the memorandum explaining the basis for the
9 Fee Award. He also limited the award to fees incurred after the
10 settlement conference. Similarly, I have not found that WuChang
11 acted improperly in bringing the District Court Action. Rather, I
12 find that she acted maliciously in her conduct at depositions, her
13 filing of frivolous motions, and her failure to obey court orders.

14 **CONCLUSION**

15 WuChang's liability under the Fee Award is nondischarge-
16 able in WuChang's chapter 7 bankruptcy pursuant to 11 U.S.C.
17 § 523(a)(6).
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25 Dated: _____

Thomas E. Carlson
United States Bankruptcy Judge

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1 1. Although the action was filed by both Candace and Abel
2 WuChang, Candace filed all motions and made all court appearances.

3 2. WuChang appealed the judgment. The Ninth Circuit affirmed on
4 June 17, 1999 (Pl. Exh. 48). WuChang petitioned the Ninth Circuit
5 for rehearing and for rehearing en banc on July 1, 1999 (Pl. Exh.
6 49).

7 3. Judge Jensen entered the Fee Award after WuChang filed her
8 bankruptcy petition. Although the automatic stay may not have
9 barred Judge Jensen from entering the Fee Award, because WuChang
10 was a Plaintiff in the District Court Action, to the extent the
11 automatic stay did apply, this court granted retroactive relief
12 from stay on February 12, 1999 to permit entry of the Fee Award.
13 Pl. Exh. 44.

14 4. Redwood City asserted two other causes of action in the
15 present action. The second claim for relief was voluntarily
16 dismissed by Redwood City. The third claim for relief was
17 dismissed for failure to state a claim upon which relief may be
18 granted.

19 5. WuChang's allotted time was not charged for Redwood City's
20 cross examination of WuChang's witnesses. Such cross examination
21 was charged to Redwood City's time allotment.

22 6. Pl. Exh. 22. WuChang's Ninth Circuit motion to disqualify
23 counsel was clearly not part of the basis for the Fee Award. I
24 rely upon it solely to illuminate the intent behind WuChang's
25 conduct in the District Court Action. See Fed. R. Evid. 404(b).

26 7. The filing of the lis pendens did not harm Redwood City and
27 is relied upon solely to illuminate WuChang's intent regarding
28 actions that did affect Redwood City. See Fed. R. Evid. 404(b).