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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
STEVEN SCOTT BRANAM,
Debtor(s).

Case No. 96-58954-JRG
Chapter 7

KEITH CROWDER,
Plaintiff(s),

Adversary No. 97-5076

vs.

STEVEN SCOTT BRANAM,
Defendant(s).

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
JUDGMENT ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

The motion of plaintiff, Keith Crowder, for summary judgment came on regularly for hearing before the Honorable James R. Grube on July 10, 1997, and for further hearing on September 11, 1997. Attorney Phillip G. Svalya appeared on behalf of plaintiff and judgment creditor, Keith Crowder; attorney James Nelsen appeared on behalf of debtor, Scott Branam.

The court having considered the papers filed in support of

1 said motion and in opposition thereto, oral argument having been
2 heard, the court having been fully advised, and good cause
3 appearing therefor, the court makes the following findings and
4 judgment:

5 1. The principles of collateral estoppel of a State Court
6 judgment specifically apply to nondischargeability of claims
7 under 11 U.S.C. § 523(a). Grogan v. Garner, 498 U.S. 279
8 (1991). Bankruptcy courts must look to state law to determine
9 the collateral estoppel effect of state court judgments. In re
10 Russell, 76 F.3d 242, 244 (9th Cir. 1996); In re Nourbakhsh, 67
11 F.3d 798, 800 (9th Cir. 1995); see also, 28 U.S.C. 1738 (federal
12 courts must give "full faith and credit" to state court
13 judgments). The elements of collateral estoppel in California
14 are as follows:

15 (a) the issue sought to be precluded from the
16 litigation must be identical to that litigated in the
17 former proceeding;

18 (b) the issue must have been actually litigated in the
19 former proceeding;

20 (c) the issue must have been necessarily decided in
21 the former proceeding;

22 (d) the decision in the former proceeding must be
23 final and on the merits; and

24 (e) the party against whom preclusion is sought must
25 be the same as, or in privity with, the party to the former
26 proceeding.

27 Lucido v. Superior Court, 51 Cal.3d 335, 341, cert. denied,

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1 500 U.S. 920 (1991).

2 2. Debts for "willful and malicious injury by the debtor
3 to another entity" are excluded from a debtor's discharge under
4 11 U.S.C. § 523(a)(6). In order to find that the debt owed by
5 debtor Scott Branam, to plaintiff Keith Crowder, is
6 nondischargeable under § 523(a)(6), plaintiff must prove that:
7 a) the debtor committed a wrongful and intentional act; b) such
8 action necessarily produced harm; and c) the action was without
9 just cause or excuse. In re Karlin, 112 BR 319 (9th Cir. BAP
10 1989), *aff'd*, 940 F.2d 1534. The plaintiff need not prove a
11 specific intent to injure. In re Cecchini, 780 F.2d 1440, 1443
12 (9th Cir. 1986). Rather, the plaintiff must show a wrongful act
13 was done intentionally, that it necessarily produces harm and
14 that it is without just cause or excuse. Id.

15 3. To prove the elements required by § 523(a)(6) to show
16 that Branam's debt is nondischargeable because his conduct was
17 willful and malicious, plaintiff has provided this court with a
18 certified copy of the Santa Clara County Superior Court Judgment
19 on Special Verdict, rendered by the jury after a two-week trial.

20 (a) Based on the jury's answer to the following
21 question, the court finds this answer satisfied the element
22 that defendant Branam committed a "wrongful act done
23 intentionally:"

24 i. Did defendant Branam intend to cause a
25 harmful or offensive contact with plaintiff? The jury
26 answered "yes."

27 (b) Based on the jury's answer to the following
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1 question, the court finds this answer satisfied the element
2 that the act "necessarily produced harm:"

3 i. Did plaintiff Crowder suffer injury as a
4 result of defendant Branam's actions? The jury
5 answered yes. In addition, the jury found that Branam
6 had damaged Crowder in the sum of \$750,000 plus costs.

7 (c) Based on the jury's answers to the following four
8 questions, the court finds these answers satisfied the
9 element that the act was "without just cause or excuse:"

10 i. Did plaintiff Crowder consent to the
11 defendant Branam's actions? The jury answered no.

12 ii. Were plaintiff Crowder's injuries proximately
13 caused by defendant Branam's willful, unprovoked
14 physical act of aggression? The jury answered yes.

15 iii. Did defendant Branam honestly and reasonably
16 believe plaintiff Crowder was about to inflict harm on
17 him? The jury answered no.

18 iv. Did defendant Branam use only such force
19 against plaintiff Crowder as appeared reasonably
20 necessary under the circumstances? The jury answered
21 no.

22 4. The decision in the state court is final, defendant
23 Branam's appeal having been dismissed on February 13, 1997.
24 Based on the foregoing findings of the jury, and the principals
25 of collateral estoppel as set forth in Grogan v. Garner, supra.,
26 this court finds that the necessary requirements of § 523(a)(6)
27 have been met to prove that debtor Branam committed a wrongful
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1 and intentional act, that such act necessarily produced harm,
2 and that the act was without just cause or excuse.

3 5. The finding of the jury with respect to the issue of
4 punitive damages regarding the question of malice by clear and
5 convincing evidence is irrelevant to this proceeding. This
6 finding is made for two reasons:

7 (a) the definition of malice under California law is
8 different than that under Federal law; and

9 (b) the jury was required to answer this question by
10 proof of clear and convincing evidence, a standard which is
11 inapplicable in this proceeding. The court does not know
12 what the jury would have found under a preponderance of the
13 evidence standard.

14 6. The court concludes that the findings of the jury
15 satisfy the "malice" component of § 523(a)(6). In addition to
16 having to prove the elements of "battery," an intentional tort,
17 because the incident took place in the course and scope of the
18 parties' employment, plaintiff also had to establish all of the
19 elements of Calif. Labor Code § 3601(a), as set forth in Jury
20 Instruction No. 33:

21 An employee [defendant] may be held liable for injury
22 to another employee [plaintiff] if the injury is
23 proximately caused by the employee's willful,
24 unprovoked, physical act of aggression.

25 "Willful," as defined by case law in the context of Labor
26 Code § 3601(a), requires a "specific intent to injure." Soares
27 v. City of Oakland, 9 Cal.App.4th 1822, 12 Cal.Rptr. 405 (1992).

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1 Thus, the jury was instructed:

2 A willful act is an act done with specific intent to
3 injure a person. It is necessary only that defendant
4 have intended to cause harm of any type, whether
5 physical or mental, to plaintiff. The defendant need
6 not have intended to cause the actual injury inflicted
7 on defendant.

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Based on the foregoing findings of fact and conclusions of law, summary judgment in favor of plaintiff is hereby granted.

DATED: _____
JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE