

United States District Court
District of Vermont

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED
2008 JUL 11 P 2:18
CLERK
BY
DEPUTY CLERK

ROLAND J. PION,
LEITA M. PION,

Appellants,

v.

KEVIN BEAN,
TINA BEAN,

Appellees.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 1:07-CV-272

 Jury Verdict. This action came before the Court for trial by jury. The issues have been
Tried and the jury has rendered its verdict.

 X **Decision by Court.** This action came to trial or hearing before the Court. The issues
Have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order (Doc. No. 4) filed
July 11, 2008, the Order of the Bankruptcy Court is AFFIRMED.

Date: July 11, 2008

RICHARD PAUL WASKO
Clerk

William J. Ryan
(By) Deputy Clerk

JUDGMENT ENTERED ON DOCKET
DATE 07/11/2008

FILED
2008 JUL 14 AM 9 23
U.S. BANKRUPTCY COURT
DISTRICT OF VERMONT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

2008 JUL 14 AM 9 23
U.S. BANKRUPTCY COURT
DISTRICT OF VERMONT

FILED

ROLAND PION and LEITA PION,
Appellants,

v.

KEVIN BEAN and TINA BEAN
Appellees.

File No. 1:07-CV-27

MEMORANDUM OF DECISION

Appellants Roland and Leita Pion (the "Pions") bring this appeal from the Bankruptcy Court's October 22, 2007 Order which granted in part Appellees Kevin and Tina Bean's (the "Beans") motion for partial summary judgment on Count I of their amended complaint. Count I sought a determination that the Pions' debt to the Beans was not dischargeable under 11 U.S.C. § 523(a)(6) because the debt was based on willful and malicious injury. For the following reasons, the Court affirms the Bankruptcy Court's Order.

A district court reviews the Bankruptcy Court's findings of fact for clear error; conclusions of law and mixed questions of law and fact are reviewed de novo. In re United States Lines, Inc. v. Am. Steamship Owners, 197 F.3d 631, 640-41 (2d Cir. 1999).

On appeal, the Pions parrot the arguments initially made to the Bankruptcy Court in opposing summary judgment. The Bankruptcy Court's thorough rejection of these arguments, however, was sound.

For one, the Bankruptcy Court correctly found that the Beans' Statement of Undisputed Facts was actually undisputed. These material undisputed facts are set forth in the Bankruptcy Court's Memorandum of Decision at pages 1-5.

Relatedly, the Bankruptcy Court correctly applied collateral estoppel even though the issue(s) litigated before the state court did not result in an explicit finding of willful and malicious injury under § 523(a)(6). See Montana v. United States, 440 U.S. 147, 155 (1979) (direct identity of issues is not required for collateral estoppel to apply); Ball v. A.O. Smith Corp., 451 F.3d 66, 69 (2d Cir. 2006) (approving application of collateral estoppel to the facts of a debtor's conduct found in a prior proceeding).

Lastly, the Pions' conduct surrounding the various trespass claims, invasion of privacy claim, punitive damages, and contempt order fits easily within § 523(a)(6)'s willful and malicious injury standard. See Kawaauhau v. Geiger, 523 U.S. 57, 63-64 (1998) (explaining that nondischargeability under § 523(a)(6) requires an intentionally-inflicted injury, as opposed to a

recklessly or negligently-inflicted injury). As meticulously detailed in the Bankruptcy Court's Memorandum of Decision at pages 9-14, the record is indeed "replete with specific references to the willfulness and malice of the Pions' trespass behavior" and the "vicious conduct" taken by the Pions against the Beans was clearly "motivated by the [Pions'] malicious plan to drive the [Beans] from their home[.]"

Accordingly, for substantially the reasons set forth by the Bankruptcy Court, the Order of the Bankruptcy Court is AFFIRMED.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 11th day of July, 2008.

/s/ J. Garvan Murtha

J. Garvan Murtha
United States District Judge

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK

DISTRICT OF VERMONT

FEDERAL BUILDING

BURLINGTON, VERMONT 05402-0945

P.O. BOX 945
BURLINGTON 05402-0945
(802) 951-6301

P.O. BOX 998
BRATTLEBORO 05302-0998
(802) 254-0250

P.O. BOX 607
RUTLAND 05702-0607
(802) 773-0245

RICHARD PAUL WASKO
CLERK

Civil Action No. 1:07-CV-272

Date July 11, 2008

Roland Pion, et al vs. Kevin Bean, et al

NOTICE TO LITIGANTS

If you wish to appeal the enclosed judgment or order, you must file a Notice of Appeal within 30 days after entry of the judgment or order appealed from (or 60 days if the United States or an officer or agency of the United States is a party). Fed.R.App.P. 4(a)(1). The fee for filing an appeal is \$455.00.

If you wish to appeal but are unable to file your Notice of Appeal within 30 days [or 60 days if applicable] after the date of entry shown on line 2 below, then you have an additional 30 days to file a Motion for Extension of Time. The Motion for Extension of Time **must** be filed within 30 days after the date on line 3 below. Every Motion for Extension of Time must contain an explanation which demonstrates "good cause" or "excusable neglect" for failure to file the Notice of Appeal within the time limit required. Fed.R.App.P. 4(a)(5).

PLEASE TAKE NOTICE

- | | |
|----------------------------------------------------------|------------------------|
| 1. Judgment filed | <u>July 11, 2008</u> |
| 2. Date of Entry of Judgment on the docket of this court | <u>July 11, 2008</u> |
| 3. Notice of Appeal MUST be filed on or before | <u>August 11, 2008</u> |


Deputy Clerk