**Dated: August 20, 2013**
**The following is SO ORDERED:**

**Jimmy L. Croom**
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT**
**WESTERN DISTRICT OF TENNESSEE**
**EASTERN DIVISION**

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| **In re** | ) | |
| | ) | |
| **CHAD M. MURRAY and** | ) | **Case No. 12-11989** |
| **LISA N. MURRAY,** | ) | |
| **Debtors .** | ) | **Chapter 7** |
| | ) | |
| **FIRST CITIZENS NATIONAL BANK,** | ) | |
| **Plaintiff,** | ) | |
| **v.** | ) | **Adv. Proc. No. 12-5114** |
| | ) | |
| **CHAD M. MURRAY and** | ) | |
| **LISA N. MURRAY,** | ) | |
| | ) | |
| **Defendants.** | ) | |

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**MEMORANDUM OPINION COMBINED WITH NOTICE OF HEARING TO CONSIDER ISSUE OF ATTORNEY'S FEES**

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This matter is before the Court on the adversary complaint filed by First Citizens National Bank (herein "Bank") against the joint debtors, Chad Murray and Lisa Murray

(collectively "Debtors"). The Bank seeks a determination that the outstanding balance owed by the Debtors to the Bank is nondischargeable pursuant to 11 U.S.C. § 523(a)(6). Because the parties stipulated that the debt is nondischargeable as to Lisa Murray, the sole issues in this proceeding are (1) whether the debt is nondischargeable as to Chad Murray, who was not physically involved in damaging the Bank's collateral, and (2) what portion of the Bank's debt is nondischargeable. The Court conducted a trial in this matter on July 24, 2013. Chad Murray appeared and testified at the trial. Lisa Murray did not.

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 and, thus, may enter a final order in this matter. This memorandum opinion shall serve as the Court's findings of fact and conclusions of law. Fed. R. Bankr. P. 7052.

## I. FACTS

The facts in this adversary proceeding are substantially undisputed. On March 1, 2011, the Debtors executed a promissory note in favor of the Bank in the principal amount of $31,204.42. The Debtors pledged a 2002 Chevrolet Suburban ("Suburban") and a 2000 Chevrolet Silverado ("Truck"), (collectively "Vehicles"), as collateral for this loan. The Bank perfected its security interest in the Vehicles by notation on the respective certificates of title. Chad Murray's father also pledged his tractor as collateral for this loan. The approximate monthly payment on the note was $600.00.

The Debtors legally separated in August 2011, and filed a complaint for divorce on October 19, 2011. The divorce was highly contested based on issues surrounding the Debtors' children.[1] The Debtors also could not agree as to the division of their joint debt with the Bank. According to Chad Murray, Lisa Murray wanted him to assume all liability for the

[1]During the separation, Chad Murray had to have a sheriff's deputy escort him when picking up his children at Lisa Murray's residence.

Bank's loan even though she retained sole possession and use of the Suburban after the separation.

At some point after the Debtors separated, they defaulted on the Bank's note. Chad Murray explained to a loan officer at the Bank that he was unable to make the entire $600.00 monthly payment himself and that Lisa Murray was refusing to pay any portion thereof. As a result, Chad Murray made arrangements with the Bank to surrender his Truck. He also informed the loan officer at the Bank that Lisa Murray would be at a parent-teacher organization meeting ("PTO meeting") at their children's school at a certain time and date and that the Bank could obtain possession of the Suburban at that time. He did not inform Lisa Murray that the Bank was going to repossess the Suburban.

Prior to the PTO meeting, Chad Murray was involved in an automobile accident in the Truck. He took the Truck to a body shop in order to repair the damage. While the Truck was being repaired, Chad Murray drove a rental car. It was that car, and not the Truck, that Chad Murray drove to the PTO meeting.

During the PTO meeting, Lisa Murray learned of the repossession and became upset. In response, she and a friend used keys to repeatedly scratch the paint on Chad Murray's rental car. They also used the friend's vehicle to block Chad Murray in his parking spot. Chad Murray had to seek police intervention in order to leave the school parking lot.

Following repossession of the Vehicles, Chad Murray paid the Bank approximately $1,000.00 to regain possession of his Truck. Lisa Murray, through her attorney, also made arrangements with the Bank to obtain possession of the Suburban.

Despite the Debtors' attempts to keep the note current, they once again failed. As a result, Chad Murray made arrangements to surrender his Truck and his father's tractor to the Bank. The Bank also repossessed Lisa Murray's Suburban for a second time. Upon arriving at Lisa Murray's house, the Bank discovered that she had vandalized the vehicle.

The Bank eventually sold the Truck for $4,000.00 and the tractor for $3,000.00. Because of the damage to the Suburban, the Bank was only able to sell that vehicle for $1,200.00. The Bank applied all of the sale proceeds towards the Debtors' outstanding

balance.

On February 13, 2012, Lisa Murray was indicted for intentionally hindering enforcement of the Bank's lien by vandalizing the Suburban in violation of Tennessee Code Annotated § 39-14-116. Lisa Murray pled guilty to the class E felony on January 7, 2013. On April 2, 2013, the state court sentenced her to five years in the Judicial Diversion program. On May 6, 2013, the state court suspended that sentence and placed Lisa Murray on probation for a period of five years. Her sentence also required her to make restitution to the Bank in the amount of $6,925.00 at the rate of $100.00 per month. This amount represented the NADA guidebook value minus the $1,200.00 the Bank netted from the sale of the Suburban. Based on her guilty plea in state court, the attorneys for the parties to this adversary proceeding stipulated that the Bank is entitled to a nondischargeable judgment against Lisa Murray pursuant to 11 U.S.C. § 523(a)(6). The parties did not, however, stipulate as to the amount of the nondischargeable judgment against Lisa Murray.

The Debtors filed a joint chapter 7 petition for bankruptcy relief on July 18, 2012. The Debtors subsequently resolved the child custody issues and entered into an agreed decree of divorce. The state court granted the Debtors a final divorce on September 17, 2012. The Court issued a chapter 7 discharge in the Debtors' case on November 20, 2012, of all debts with the exception of the Bank's deficiency claim. The Court reserved discharge as to this debt pending a decision in this adversary proceeding.

According to statements made by Chad Murray at the trial in this matter, Lisa Murray struggles with drug addiction. She has missed all her appointments with her probation officer and Chad Murray does not know where she currently lives. He has full custody of the couples' children.

At the trial in this adversary proceeding, Chad Murray testified that he did everything he could to work with the Bank and reach a compromise whereby he could retain possession of his Truck. Once it became apparent that it would not be possible to retain the Vehicles, he worked diligently to get the collateral turned over to the Bank. Although he regrets the damage Lisa Murray inflicted on the Suburban, Chad Murray affirmatively stated that he had no reason to believe Lisa Murray would damage the vehicle. He had not witnessed any damage to the

Suburban the last time he had seen it nor had he ever witnessed Lisa Murray damage the vehicle. He also stated that he had no control over either her actions or the Surburan. Lisa Murray had both sets of keys for the vehicle and also kept the vehicle in her possession at all times after the separation.

The Bank asserted that Chad Murray knew or should have known that the Suburban would be at risk in the hands of Lisa Murray and that he should have anticipated the vandalism especially after she keyed his car in the school parking lot. By failing to take action to stop the vandalism, the Bank asserts Chad Murray willfully and maliciously injured the Bank.

According to the Bank's loan officer, the Debtors' note has an outstanding balance of $22,631.25. This amount does not include any attorney fees, but does include some court costs. The Bank did not submit a copy of the promissory note, an itemized account statement for the note, or an itemized bill for its attorney fees and expenses. It did, however, state that the promissory note entitles them to attorney fees. The only proof presented to the Court as to the amount of damage caused by the vandalism was a copy of the state court probation order which directed Lisa Murray to pay $6,925.00 in restitution.

## II. ANALYSIS

11 U.S.C. § 523(a)(6), in pertinent part, provides that "A discharge under section 727...of this title does not discharge an individual debtor from any debt...for willful and malicious injury by the debtor to another entity or to the property of another entity." "From the plain language of the statute, the [§ 523(a)(6)] judgment must be for an injury that is both willful and malicious. The absence of one creates a dischargeable debt." *Markowitz v. Campbell* (*In re Markowitz*), 190 F.3d 455, 463 (6th Cir. 1999). A creditor seeking to have a debt declared non-dischargeable under this section must prove § 523(a)(6)'s elements by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 286, 111 S. Ct. 654, 659 (1991). Once a creditor establishes a prima facie case, the burden shifts to the debtor to present credible evidence that a defense to the liability exists. *Sears Roebuck & Co. v. Miller* (*In re Miller*), 70 B.R. 55, 56 (Bankr. S.D. Ohio 1987). Exceptions to discharge are to be strictly construed against the creditor and liberally in favor of the debtor "with the benefit of any doubt going to the debtor." *Manufacturer's Hanover Trust Co. v. Ward* (*In re Ward*), 857 F.2d

1082, 1083 (6th Cir. 1988).

In order to satisfy the "willful" prong of § 523(a)(6), the Supreme Court has held that "nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 977 (1998). Consequently, in order to demonstrate that the debtor willfully caused an injury, a creditor must demonstrate that the debtor " 'desire[d] to cause consequences of his act, or . . . believe[d] that the consequences [were] substantially certain to result from it.' " *Markowitz* at 464 (6th Cir. 1999) (citing Restatement (Second) of Torts § 8A (1964)). As recognized in *Geiger*, "the (a)(6) formulation triggers in the lawyer's mind the category 'intentional torts,' as distinguished from negligent or reckless torts. Intentional torts generally require that the actor intend 'the *consequences* of an act,' not simply 'the act itself.' " *Geiger*, 523 U.S. at 61-62 (citing Restatement (Second) of Torts § 8A cmt. a (1964)).

Turning to the "malicious" prong of § 523(a)(6), "a person is deemed to have acted maliciously when that person acts in conscious disregard of his duties or without just cause or excuse." *Gonzalez v. Moffitt* (*In re Moffitt*), 252 B.R. 916, 923 (B.A.P. 6th Cir. 2000) (citations omitted); *River View Land Co., Inc., v. Bucak* (*In re Bucak*), 278 B.R. 488, 493 (Bankr. W.D. Tenn. 2002) (citations omitted).

Proving that a debtor acted willfully and maliciously under § 523(a)(6) can be difficult. Debtors will rarely, if ever, admit to acting in a willful or malicious manner. As a result, a creditor may establish that a debtor acted "willfully" by presenting circumstantial evidence. *J & A Brelage, Inc., v. Jones* (*In re Jones*), 276 B.R. 797, 802 (Bankr. N.D. Ohio 2001):

> . . . the "willful" requirement of § 523(a)(6) may be indirectly established by the creditor demonstrating the existence of two facts: (1) the debtor knew of the creditor's lien rights; and (2) the debtor knew that his conduct would cause injury to those rights.
>
> . . .
>
> It therefore follows that, for purposes of determining whether a debtor knew his actions would injure the creditor's lien rights, a rebuttable presumption will arise when the debtor, despite having knowledge as to the implications of the security agreement, took no action to protect the creditor's interest therein.

*Id.* at 802 (citations omitted); see also, *O'Brien v. Sintobin* (*In re Sintobin*), 253 B.R. 826, 831 (Bankr. N.D. Ohio 2000); *Rizzo v. Passialis* (*In re Passialis*), 292 B.R. 346, 353 (Bankr. N.D. Ill. 2003).

Courts in the Sixth Circuit have determined that deliberately vandalizing the creditor's premises or property may constitute a willful and malicious injury which is excepted from discharge under 11 U.S.C. § 523(a)(6). *Sintobin*, 253 B.R. at 826. When Lisa Murray pled guilty in the state court action, she admitted that she intentionally, willfully and maliciously harmed the Bank's security interest in the Suburban. As a result, counsel for the parties stipulated that the Bank is entitled to a § 523(a)(6) nondischargeable judgment against Lisa Murray. They did not, however, stipulate as to an amount of the judgment. Aside from this, the sole remaining issue is whether the Court can impute liability for Lisa Murray's conduct to Chad Murray such that the judgment is also nondischargeable as to him.

The majority of the time, courts have "universally held that a person's willful and malicious actions cannot be imputed to another person for the purpose of holding that debt nondischargeable under § 523(a)(6)." *Id.* at 830. Courts base this refusal on the language of § 523(a)(6) itself:

> An examination of the language under § 523(a)(6) shows that the phrase "by the debtor" directly follows the phrase "for willful and malicious injury." Specifically, § 523(a)(6) provides that any debt which arises by a "willful and malicious injury by the debtor to another entity or the property of another entity" is nondischargeable in bankruptcy. Thus, under the plain meaning of § 523(a)(6), it must be the debtor who acts in both a willful and malicious manner in causing an injury to another entity or the property of another entity.

*Id.*; *Deroche v. Miller* (*In re Miller*), 196 B.R. 334, 336 (Bankr. E.D. La. 1996); *Thatcher v. Austin* (*In re Austin*), 36 B.R. 306, 311-12 (Bankr. M.D. Tenn. 1984) ("There is nothing in the language or legislative history of § 523(a)(6) to suggest that common law notions of vicarious or imputed liability are appended to the statutory exceptions to a discharge in bankruptcy.").

As recognized by the *Sintobin* court, however, there are certain limited instances in which the willful and malicious actions of one person may be imputed to another.

[A]ny debtor who seeks or encourages another person to commit a willful and

> malicious act would not, for purposes of § 523(a)(6), be entitled to have any liability arising therefrom discharged in bankruptcy. Further, the types of encouragement which may lead to a finding of nondischargeability under § 523(a)(6) can range from overt encouragement to simply an omission, if such an omission was calculated by the debtor in a willful and malicious manner to cause injury. . . . Analysis of the historical background of § 523(a)(6) demonstrates that where there is conduct of *an exceptionally culpable nature*, participated in or permitted by a responsible person, the liability resulting therefrom may not be dischargeable.

*Id.* at 830-31 (emphasis added) (internal citations omitted). When attempting to impute liability to a debtor for another person's willful and malicious injury, an injured party must prove that the debtor acted with some deliberate intent to cause the injury or was substantially certain the injury would result. Merely acting in a negligent or reckless manner is not sufficient to impute liability to the debtor. *Knowles v. McGuckin* (*In re McGuckin*), 418 B.R. 251, 256 (Bankr. N.D. Ohio 2009) (internal citations omitted) ("[T]he specific intent standard espoused in *Kawaauha v. Geiger* will normally be accompanied by overt acts, or something closely akin thereto–*e.g.,* purposely failing to act in order to produce a desired consequence."); *First Tenn. Nat'l Bank N.A. v. Hansen* (*In re Hansen*), 473 B.R. 240, 254-55 (Bankr. E.D. Tenn. 2012) (concluding that although debtors may have been reckless in allowing a tenant to live in their rental property, such recklessness did not give rise to vicarious liability for damage the tenant caused to the house when making methamphetamines).

At issue in *Sintobin* was damage the debtors' children and their friends caused to the house the debtors were renting. On a repeated basis, the children and their friends deliberately "spray painted walls, destroyed cupboards, . . ., ripped up linoleum, . . ., [put] holes in walls, and [knocked] doors . . . off their hinges." *Sintobin*, 253 B.R. at at 828. It was undisputed that the children and their friends committed this damage willfully and maliciously. *Id*. at 830. It was also undisputed that the debtors did not play an active part in causing any of the harm. The *Sintobin* court reviewed the facts of the case and determined that the debtors, with full knowledge of the damage their children were causing, took no actions to deter the ongoing vandalism. The court also found that the debtors were aware that the vandalism was damaging the creditor's collateral. Based on these facts, the court concluded that the debtors' failure to act was tantamount to deliberate encouragement of the behavior

and the resulting damage. Consequently, the *Sintobin* court imputed the children's actions to the debtors and excepted the debt from the debtors' discharge pursuant to 11 U.S.C. § 523(a)(6). *Id.* at 831.

*Sintobin* is definitely an exception to the general rule that liability for a willful and malicious injury will not be imputed to a debtor. Even in many cases where a creditor attempts to hold a debtor-parent vicariously liable for the actions of a child, courts rarely impute liability and except the debt from discharge under § 523(a)(6). *Jones v. Whitacre* (*In re Whitacre*), 93 B.R. 584, 585 (Bankr. N.D. Ohio 1988) (refusing to impute a child's tortious behavior to the parents based on the fact that there were no allegations that the parents failed to properly supervise their child and therefore could be found to have intended the assault.); *Yelton v. Eggers* (*In re Eggers*), 51 B.R. 452, 453 (Bankr. E.D. Tenn. 1985) (concluding that merely signing a child's application for a driver's license could not give rise to vicarious liability for injuries caused by that child in a motor vehicle accident). This is true even where state law obligates a parent for some acts committed by a minor child. *American Home Assurance Co. v. Coleman*, 180 So.2d 577, 579 (La. Ct. App. 1965) ("This court believes that although the father is responsible for the negligence of his minor son, the intentional and willful act of the minor cannot be imputed in such a way as to deem his father guilty of an intentional and willful act. Whereas the father may become responsible for the negligence and liable therefor, he cannot be said to have intentionally or willfully caused the accident."); *Browse v. Cornell* (*In re Cornell*), 42 B.R. 860, 862 (Bankr. E.D. Wash. 1984) (finding that state statute which imposed strict liability on parents for their children's actions "without regard to fault" could not serve as a basis to impute liability for a willful and malicious injury under § 523(a)(6)).

Outside of the parent-child relationship, courts have, on very limited occasions, imputed liability for a willful and malicious injury to a debtor based on the acts of the debtor's agents or employees. *See Atlantic Recording Corp. v. Chin-Liang Chan* (*In re Chin-Liang Chan*), 325 B.R. 432 (Bankr. N.D. Cal. 2005) (imputing liability for copyright infringement to the debtor because the debtor, as CEO of the company, exercised control over the company, knew that the company was repeatedly infringing on copyrights, and took no steps to prevent the violations); *Bairstow v. Sullivan* (*In re Sullivan*), 198 B.R. 417, 424 (Bankr. D. Mass. 1996) (imposing vicarious liability on debtor for damages caused by his employees when they

trespassed and cut down trees on neighboring land because "Debtor knew this continuing trespass was being committed but did nothing about it."). As with parental liability, however, in order to impute liability and except a debt from discharge under § 523(a)(6), a plaintiff must demonstrate that the debtor was more than merely negligent or reckless in supervising his employees or agents. *Hamilton v. Nolan* (*In re Nolan*), 220 B.R. 727 (Bankr. D.D.C. 1998).

With regard to the imputation of liability for a willful and malicious injury to a debtor's spouse, courts are even more reluctant to except debts from discharge under § 523(a)(6). *First New Mexico Bank v. Bruton* (*In re Bruton*), Bankr. No. 7-09-13458 JA; Adv. No. 09-1187 J, 2010 WL 2737201, *8 (Bankr. D.N.M. July 12, 2010) (concluding that plaintiff's § 523(a)(6) claim failed as a mater of law against debtor's spouse because that section "requires a willful and malicious injury caused 'by the debtor' . . ."); *Acer v. Carbray* (*In re Carbray*), Bankr. No. 04-13987-GBN, Adv. No. 04-01207, 2006 WL 2559849, *5 (Bankr. D. Ariz. Sept. 5, 2006) (refusing to impute liability to debtor's spouse for willful and malicious injury when evidence did not establish that spouse played any active part in causing the injury); *Columbia Farms Distrib., Inc. v. Maltais* (*In re Maltais*), 202 B.R. 807, 813 (Bankr. D. Mass. 1996); *Grimm v. Grimm* (*In re Grimm*), 82 B.R. 989, 994 (Bankr. W.D. Wis. 1988).

At the trial in this matter, the Bank offered several cases in support of its position that imputation of Lisa Murray's willful and malicious injury to Chad Murray was appropriate in this case. For the following reasons, those cases are inapposite to the Bank's argument.

In the case of *First Citizens National Bank v. McAdoo* (*In re McAdoo*), No. 02-12101, Adv. Pro. No. 02-5272, 2003 WL 22871603 (Bankr. W.D. Tenn. June 24, 2003), Judge Boswell determined that one of the joint debtors willfully and maliciously injured a bank's security interest when he withdrew funds from a construction account and then failed to devote the proceeds towards construction of town homes. By failing to use the money for the purpose stated in the security agreement, the court determined that the debtor willfully and maliciously injured the bank's security interest and excepted the debt from discharge under § 523(a)(6).

The Bank argues that *McAdoo* supports its position because the debtors in that case were husband and wife and, although the evidence only established that the husband misappropriated the money, the court found the debt nondischargeable as to both debtors.

While this is true, the Court finds the decision in *McAdoo* distinguishable for two reasons. First, the debtors in *McAdoo* were married at the time the money was misappropriated and throughout the entire bankruptcy proceedings. Secondly, the *McAdoo* debtors never asserted that the debt should be dischargeable as to the wife because she was not involved in misappropriating the money. As a result, whether the husband's actions should be imputed to the wife was not an issue the *McAdoo* court addressed.

In the second case offered by the Bank, *BancBoston Mortgage Corp. v. Ledford* (*In re Ledford*), 970 F.2d 1556 (6th Cir. 1992), the Sixth Circuit determined that the fraud of one partner could be imputed to another partner who had no actual knowledge of the fraud such that the creditor was entitled to a nondischargeable judgment against the innocent partner pursuant to 11 U.S.C. § 523(a)(2)(A). Vicarious liability under § 523(a)(2)(A) is altogether different from vicarious liability under § 523(a)(6) because the latter contains the requirement that the willful and malicious injury be committed "by the debtor." 11 U.S.C. § 523(a)(6); *Chenaille v. Palilla* (*In re Palilla*), 493 B.R. 248, 254 (Bankr. D. Colo. 2013). Courts more often impute liability to one spouse for fraud committed by the other spouse under § 523(a)(2); however, vicarious liability under this subsection is premised on principles of agency and partnership, not on the spousal relationship alone. *Id.* at 1561; *Luce v. First Equipment Leasing Corp.* (*In re Luce*), 960 F.2d 1277, 1284 n.10 (5th Cir. 1992) (noting that "It is irrelevant to the determination of the dischargeability of [Mrs.] Luce's debts under section 523(a)(2) that the business partners also enjoyed a marital relationship. The concepts of law we employ do not turn on the nature of the marital relationship, but on the nature of the business relationship between the Luces–the Luce Partnerships.").

The third case cited by the Bank in support of their argument was *In re Sintobin*, 253 B.R. 826. That case is easily distinguishable. In *Sintobin*, the court found that the debtors failed to deter their children's ongoing and repeated damage to the creditor's collateral. That is not the case in the current adversary proceeding. Although the Bank argues that Chad Murray should have known that Lisa Murray would vandalize the Suburban after she keyed his rental car, the Court finds this argument without merit. The keying of another person's vehicle does not indicate that a person would then cause over $6,500.00 worth of damage to her *own* vehicle. Although Lisa Murray did not appear at the trial to testify as to her mindset,

her actions seem to indicate that she keyed Chad Murray's rental vehicle because she was mad at him, not the Bank. In addition, Lisa Murray's actions at the PTO meeting did not demonstrate an intention to damage the Bank's collateral since it was a rental car and not Chad Murray's Truck that she harmed.

Chad Murray testified that Lisa Murray had sole possession of the Suburban and the keys to that vehicle at all times after the parties separated. Chad Murray never witnessed any damage to the Suburban prior to the second repossession. The Bank failed to present evidence that Lisa Murray warned Chad Murray that she was going to damage the Suburban or that Chad Murray had reason to believe she would damage the vehicle to the extent she did. There was no evidence or testimony which demonstrated that Lisa Murray had ever caused any type of damage to the couples' property throughout the entirety of their relationship. The Bank also failed to present any evidence that Lisa Murray had vandalized the Suburban prior to the second repossession. Given the fact that the Bank returned the Suburban to Lisa Murray after the first repossession, it seems likely that the vehicle was damage-free when it was picked up at the PTO meeting. Based on all of these facts, the Court concludes the Bank failed to meet its burden of proof in demonstrating that imputation of liability for the vandalism to Chad Murray is appropriate in this case. As a result, the Court will enter an order excepting the debt from discharge as to Lisa Murray, but discharging the debt as to Chad Murray.

Although counsel for the parties stipulated that the debt owing to the Bank was nondischargeable as to Lisa Murray, they did not stipulate as to an amount of the judgment. Because the only proof presented to the Court as to the amount of damage caused by Lisa Murray's vandalism to the Suburban was the $6,925.00 restitution judgment, the Court will enter a nondischargeable judgment in that amount against Lisa Murray.

At the trial in this matter, the Bank asserted the underlying promissory note entitles it to its attorney's fees in prosecuting this matter. As stated *supra*, the Bank did not present a copy of the note or an itemized statement of its fees. Without this information, the Court is unable to determine if the Bank is in fact entitled to its attorney's fees and, if it is so entitled, the amount of fees that should be awarded. Accordingly, counsel for the Bank is directed to

file an application for attorney's fees by Wednesday, September 4, 2013. The Court will conduct a hearing on the application on October 3, 2013, at 10:00 a.m.

In light of the unresolved attorney's fee issue, the Court will wait to enter a final order on the Bank's adversary complaint until such time as the fee issue is resolved. If the Bank fails to file a fee application by the September 4, 2013 deadline, the Court will consider the Bank's request for its attorney's fee waived and will promptly enter a final order on the adversary complaint.

Mailing List

Debtors
Gerald W. Ketchum, attorney for debtors
Mark D. Johnson, attorney for First Citizens National Bank
United States Trustee