

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

IN RE

JOHN & VIRGINIA BOYD,

Case No. 98-10529

Debtor.

Chapter 11

AMERICAN GENERAL FINANCE,

Plaintiff,

v.

Adv. Pro. No. 98-5118

JOHN & VIRGINIA BOYD,

Defendant.

**MEMORANDUM OPINION AND ORDER RE
OBJECTION TO DISCHARGE FILED BY AMERICAN GENERAL FINANCE**

The Court conducted a trial in this matter on November 30, 1998. FED. R. BANKR. P. 7001. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the trial and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACTS

In July 1997, the defendants to this adversary proceeding, John and Virginia Boyd ("debtors"), executed a promissory note with American General Finance ("American General") in the amount of \$3,066.23 (excluding finance charges and interest). As security for this note, the debtors granted American General a security interest in the following pieces of collateral: a Panasonic Camcorder, 2 Kodak 35mm cameras, 2 Advantex 35 mm cameras, a Stevens Antique Rifle, a Sears 2-wheel bicycle, a Sears 3-wheel bicycle, a gas weed-eater, a Pioneer Stereo, a 21" Magnavox television, and an Emerson VCR.

The debtors filed the instant chapter 7 case on February 6, 1998. At their § 341 meeting of creditors, the debtors testified that all of the collateral securing American General's note had been lost in a fire. The debtors' testimony further alleged that, although there was a homeowner's insurance policy in

effect at the time of the fire, none of the collateral which had been pledged to American General was covered by insurance.

Sometime after the fire, the debtors received an insurance check in the amount of \$48,874.67 as payment for what was covered under their policy. According to Virginia Boyd's testimony at trial, the debtors used this money to pay off the home that had been destroyed in the fire, to make a down payment on a new house, and to buy new furniture and new clothes. Virginia Boyd further testified that they did not pay any of the insurance money to creditors nor did they inform American General of the receipt of this money.

Sometime after the fire, the debtors defaulted on their payments to American General. At the time of filing bankruptcy, the balance due under the note was \$4,172.74. American General filed the instant Complaint Objecting to Discharge on March 30, 1998. American General asserts that the debtors are not entitled to a chapter 7 discharge because they have failed to satisfactorily explain the loss of the pledged collateral and thus are in violation of 11 U.S.C. § 727(a)(5). American General also asserts that the debtors are not entitled to a discharge because they have "transferred, removed, destroyed, mutilated, or concealed" property within one year of filing their chapter 7 petition in violation of 11 U.S.C. § 727(a)(2).

II. CONCLUSIONS OF LAW

Denying a debtor a general discharge under chapter 7 of the Bankruptcy Code is a harsh penalty which a court should only impose in the most serious of circumstances. The Court does not feel that the case at bar falls into that category. The Court does feel, however, that the debtors are guilty of behavior that entitles the plaintiff to some measure of recovery. As a result of these conclusions, the Court is granting American General's complaint as to its debt under 11 U.S.C. § 523(a)(6).

Section 523(a)(6) of the Bankruptcy Code states: "(a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . (6) for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). In order to meet its burden under this section, American General must establish that the debtors deliberately or intentionally caused the injury to its security interest. *Perkins v. Scharffe*, 817 F.2d 392, 394 (6th Cir.), cert denied, 484 U.S. 853, 108 S.Ct. 156, 98 L.Ed.2d 112 (1987) (defining a willful act as a "deliberate and intentional act which necessarily leads to injury"); see also *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th

Cir. 1986) (stating that “malicious” means “in conscious disregard of one’s duties or without just cause or excuse; it does not require ill-will or specific intent to do harm”).

In the case at bar, the debtors are guilty of two acts either of which entitle American General to a judgment of non-dischargeability under § 523(a)(6). First, the debtors deliberately and intentionally chose not to insure the plaintiff’s collateral thereby subjecting it to the risk of destruction without the possibility of reimbursement. Because American General had an interest in the collateral, they also had the right to have that interest protected. Secondly, the debtors deliberately and intentionally chose not to remit any of the insurance proceeds from the fire to American General. This failure caused a significant injury to the plaintiff’s security interest in the debtors’ collateral.¹ Now that the collateral has been destroyed and the insurance money has been spent, the plaintiffs are attempting to discharge American General’s debt. The debtors are attempting to deprive American General of both the right to payment of its debt and the opportunity to collect and liquidate the pledged collateral. Because the latter is an impossibility, the Court feels that American General is entitled to the former. As a result, an order finding the debt to American General in the amount of \$4,172.74 to be non-dischargeable will be entered.

III. ORDER

It is therefore **ORDERED** that American General Finance’s debt in the amount of \$4172.74 is excepted from discharge and a judgment for said amount is hereby granted.

IT IS SO ORDERED.

By the Court,

**G. Harvey Boswell
United States Bankruptcy Judge**

Date: December 10, 1998

¹ The Court finds it difficult to believe that a general homeowner’s policy specifically did not cover the few pieces of pledged collateral. Even if the policy did contain such an exclusion, however, the debtors failed to present any proof of it. They did not present a copy of the insurance policy or of any amendments thereto which may have proven their assertion of exclusion.