

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

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**IN RE**

**Jimmy E. Reaves and  
Edwina Reaves,**

**Case No. 00-13964**

**Debtor.**

**Chapter 7**

**Hardin County Bank,**

**Plaintiff,**

**v.**

**Adv. Pro. No. 01-5049**

**Jimmy E. Reaves,**

**Defendant.**

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**MEMORANDUM OPINION AND ORDER RE  
COMPLAINT OBJECTING TO DISCHARGE FILED BY HARDIN COUNTY BANK  
AND FOR ANCILLARY RELIEF**

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The Court conducted a trial in this matter on June 22, 2001. 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 FACT**

In 1999, the debtor in this case, Jimmy E. Reaves, ("Reaves"), executed three separate promissory notes in favor of the Plaintiff, Hardin County Bank ("Bank"). Reaves borrowed the principal sum of \$16,893.96 from the Plaintiff, Hardin County Bank, ("The Bank") on March 3,

1999. As security for the loan, Reaves granted the Bank a lien on a 1985 International Truck.

Reaves borrowed the principal sum of \$6,100.00 from the Bank on March 23, 1999. As security for the loan, Reaves granted the Bank a lien on a 1974 GMC model truck. Reaves borrowed the principal sum of \$19,505.23 from the Bank on September 3, 1999. As security for the loan, Reaves granted the Bank a lien on a 1986 Freightliner truck. At the time this adversary proceeding was filed the balance on the three notes was \$32,585.24.

Reaves and his wife filed for Chapter 7 relief on October 24, 2000. An agreed order granting the Bank relief from the automatic stay and abandoning the collateral to the Bank was entered on January 3, 2001. When the Bank recovered the property, the trucks were in a state of disrepair. The 1985 International Truck's bed and rear tires had been removed. The 1974 GMC was not operational, the cab was caved in and several engine components were missing. The 1986 International Truck was in tact, but the engine was blown. The Bank sold the 1985 International for \$100.00, the 1986 Freightliner for \$4,000.00, and the 1974 GMC for \$500.00. In filing this adversary proceeding, it is the Bank's contention that the debtor failed to preserve and protect the Bank's collateral in violation of 11 U.S.C. § 523(a)(6).

The Debtor testified at the trial that after purchasing the vehicles, he was in the process of repairing them; however, sometime after the purchase, he suffered a heart attack and was unable to continue to work on the trucks. Reaves and his wife are both on disability and cannot afford to pay to have the vehicles repaired. Reaves denied intentionally harming the Bank's collateral.

## II. CONCLUSIONS OF LAW

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). Until recently, the Sixth Circuit's standard for § 523(a)(6) claims was rather lenient. As long as a debtor could be shown to have intentionally committed an act which led to an injury, he would be found liable under § 523(a)(6), regardless of whether or not he actually intended the injury. *Perkins v. Scharffe*, 817 F.2d 392, 394. *Perkins* was overruled in 1998 by the U.S. Supreme Court case of *Kawaauha v. Geiger*, 523 U.S. 57, 18 S.Ct. 974, 140 L.Ed.2d 90 (1998). In *Geiger*, the Supreme Court held that only acts done with the intent to cause the actual injury will rise to the level of a "willful and malicious injury" as used in § 523(a)(6). *Id.* In 1999, the Sixth Circuit announced the new § 523(a)(6) standard in light of *Geiger*:

[W]e now hold that unless "the actor desires to cause consequences of his act, or . . . believes that the consequences are substantially certain to result from it," he has not committed a "willful and malicious injury" as defined under § 523(a)(6).

*Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 464 (6<sup>th</sup> Cir. 1999).

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 (6<sup>th</sup> Cir. 1988). The objecting creditor must

prove the elements of a § 523(a) claim by a preponderance of the evidence. *Grogan v. Garner*,  
498 U.S. 279, 291 (1991).

In the case at bar, no proof was presented that the debtor intended to cause any harm to the Bank's collateral. The Debtor's unrefuted testimony was that while in the process of repairing the vehicles, he suffered a heart attack. Since that time, he has been both physically and financially unable to complete the repairs. The only conclusion this Court can draw from this testimony is that the condition in which the Bank found the vehicles was not the result of any willful or malicious acts by the Debtor, but was the result of the Debtor's unfortunate and unforeseen heart attack. While the Court can sympathize with the Bank about the condition in which it found its collateral, It cannot award them a nondischargeable judgment pursuant to § 523(a)(6) without proof of any malicious intention on the Debtor's part.

### **III. ORDER**

It is therefore **ORDERED** that the Complaint Objecting to Discharge Filed by Hardin County Bank and for Ancillary Relief is **DENIED**.

**IT IS SO ORDERED.**

**By the Court,**

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

**Date: August 1, 2001**