UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

In re

DAVID SHERWOOD AND PATRICIA BREWTON MCADOO, **Case No. 02-12101**

Debtors. **Chapter 7**

FIRST CITIZENS NATIONAL BANK,

Plaintiff,

v. **Adv. Pro. No. 02-5272**

DAVID SHERWOOD AND PATRICIA BREWTON MCADOO,

Defendants.

MEMORANDUM OPINION AND ORDER RE
"MOTION FOR NEW TRIAL/ AMEND JUDGMENT AND/OR MOTION FOR RELIEF FROM JUDGMENT"

The Court conducted a hearing on Patricia McAdoo's "Motion for New Trial/Amend Judgment and/or Motion for Relief from Judgment" on August 6, 2003. FED. R. BANKR. P. 9014 Resolution of this matter is a core proceeding. 28 U.S.C. § 157(b)(2). The Court has reviewed the testimony from the hearing and the record as a whole. This Memorandum Opinion and Order shall serve as the Court's findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

The Court awarded First Citizens National Bank a non-dischargeable judgment against Patricia McAdoo and her husband, David McAdoo, on June 24, 2003. This judgment, in the amount of $73,500.00, was based on § 523(a)(6) of the Bankruptcy Code which states that

> (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 examining the evidence before it, the Court found that David McAdoo had willfully and maliciously injured First Citizens National Bank's security interest when he made three draws on a line of credit he had at the bank. The evidence established that the line of credit was to be used to construct town homes on eight lots the debtors owned in Union City, Tennessee. David McAdoo made several draws on the line of credit over the course of dealing with the bank; however, the evidence established that David McAdoo made three draws on the line of credit between July 2000 and January

2001 and did not use that money to construct a town home on the only remaining lot. The Court found, that by doing this, David McAdoo maliciously and willfully injured the bank's security interest.

On July 2, 2003, Patricia McAdoo, a joint-debtor in this case, filed a "Motion for a New Trial; Amend Judgment and/or Motion for Relief from Judgment" in which she alleged that "the Court erred in ruling that her liability on the indebtedness owing to the adversary plaintiff be declared non-dischargeable." Patricia McAdoo further asserted that the Court based its § 523(a)(6) ruling solely on the actions of her husband and, as a result, the finding of non-dischargeability against her was incorrect.

The Court has reviewed the evidence and the testimony from the April 2, 2003, non-dischargeability trial in this case and concluded that the imposition of liability on Patricia McAdoo was incorrect. Section 523(a)(6) requires a creditor to prove that the debtor acted with a deliberate intent to harm the creditor and "in conscious disregard of his duties or without just cause or excuse." *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 464 (6th Cir. 1999)*; Gonzalez v. Moffitt (In re Moffitt)*, 252 B.R. 916, 923 (B.A.P. 6th Cir. 2000). In the case at bar, there was no evidence that Patricia McAdoo even knew her husband was making draws on the line of credit. As a result of this conclusion, the Court will amend its June 24, 2003, Memorandum Opinion and Order to exclude Patricia McAdoo from the non-dischargeability judgment.

ORDER

It is therefore **ORDERED** that Patricia McAdoo's "Motion for New Trial/Amend Judgment and/or Motion for Relief from Judgment" is **GRANTED AS FOLLOWS:**

The "Order" paragraph of the June 24, 2003, "Memorandum Opinion and Order re Plaintiff's Complaint to Determine Dischargeability," **IS AMENDED** to read "*First Citizens National Bank is awarded a non-dischargeable judgment against David Sherwood McAdoo in the amount of $73,500.00.*"

It is **FURTHER ORDERED** that First Citizens objection to Patricia McAdoo's motion is **DENIED.**

IT IS SO ORDERED,

BY THE COURT,

G. Harvey Boswell
United States Bankruptcy Judge

Date: September 4, 2003

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