

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
PAUL DAVID DUFOUR,
Debtor.

Case No. 01-33815-L
Chapter 7

John C. Simmons dba Business Computer Systems,
Plaintiff,

v.

Adv. Proc. No. 01-1052

Paul David Dufour,
Defendant.

**ORDER DENYING PLAINTIFF'S MOTION
FOR JUDGMENT ON THE PLEADINGS AND
DISMISSING COMPLAINT FOR FAILURE TO STATE A CLAIM**

Before the court is the Plaintiff's "Motion for Judgment on the Pleadings and Memorandum in Support Thereof" and Debtor's response thereto which includes a motion to dismiss the complaint. While the basis of the Debtor's motion is not stated, the court understands the Debtor to aver that the complaint fails to state a claim upon which relief can be granted pursuant to FED. R. BANKR. P. 7012(b) which incorporates by reference FED. R. CIV. P. 12(b)(6). The Plaintiff's complaint seeks a determination that the debt owed him by Debtor Paul David Dufour is nondischargeable pursuant to 11 U.S.C. § 523(c)(6). For the reasons set forth below, the court will deny the motion for judgment on the pleadings and grant the Debtor's motion to dismiss the complaint for failure to state a claim upon which relief can be granted. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I).

Plaintiff's complaint, as amended, seeks a determination of the dischargeability of a debt created by a final judgment entered in favor of the Plaintiff in the amount of \$57,766.81. Attached to the amended complaint is a transcript of the chancellor's oral findings of fact and conclusions of law that underlie the written judgment. From the transcript it is clear that the judgment resulted from a simple breach of contract. The pertinent portions of the oral ruling are as follows:

The Court renders judgment in favor of the Plaintiffs against the Defendant for true breach of contract, knowing and willful breach of contract. The Court finds that it is a pure fiction that has been made by this Defendant that he had received inadequate training. The court finds that to be false testimony, untrue testimony.

Does this rise to the level, though, where the law can allow punitive damages? No. You can't get punitive damages. There just can't be. Does it rise to the level, though, where you can get consequential damages? Oh, you bet.

First Amended Complaint, Doc. No. 11, Exhibit B., pp. 130-31. The Plaintiff alleges that the judgment resulted from a fraud committed by the Debtor. The allegation is not supported by the transcript of the chancellor's findings. From that transcript it is clear that the Debtor breached his contract of employment with the Plaintiff and then tried to justify his breach by claiming that he did not receive sufficient training. The chancellor found that excuse to be untrue. Nevertheless, there was no finding that the Debtor never intended to perform the contract (which might be a form of promissory fraud). The chancellor did find that the Debtor had hoped to obtain a different job when he took the Plaintiff's offer, and that shortly thereafter, a second offer was made, which the Debtor

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also accepted. The Debtor maintained both jobs for some period of time, and according to the chancellor, performed his duties for the Plaintiff quite satisfactorily until he quit. The Debtor's fabrication of an excuse for his breach of contract after the fact does not render the breach fraudulent.

The Supreme Court has made clear that the language of section 523(a)(6), excepting those debts that result from "willful and malicious injury" to person or property, contemplates debts arising from intentional torts. *See Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 977, 140 L. Ed.2d 90 (1998). Section 523(a)(6) plainly is not intended to render nondischargeable debts arising from a simple breach of contract.

Accordingly, the Plaintiff's motion is **DENIED**, and the Debtor's motion to dismiss the complaint is **GRANTED**.

IT IS SO ORDERED.

BY THE COURT

JENNIE D. LATTA
United States Bankruptcy Judge

Date: _____

cc: Plaintiff
Plaintiff's Attorney
Debtor/Defendant
Debtor/Defendant's Attorney