

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
JASON LEE MANWARREN,	)	CASE NO. 09-33752 HCD
	)	CHAPTER 7
DEBTOR.	)	
	)	
	)	
WELLS FARGO AUTO FINANCE, INC.,	)	
	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 09-3129
	)	
JASON LEE MANWARREN,	)	
	)	
DEFENDANT.	)	

Appearances:

Karen Lobring, Esq., counsel for plaintiff, Lobring & Associates, LLP, 5977 West State Road 252, Edinburgh, Indiana 46124; and

Mark Telloyan, Esq., counsel for defendant, O'Brien & Telloyan, P.C., Post Office Box 449, South Bend, Indiana 46624-0449.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 23, 2011.

Before the court is the Complaint to Determine Dischargeability of Debt filed by plaintiff Wells Fargo Auto Finance, Inc., servicer for Wells Fargo Bank, N.A. (“plaintiff” or “Wells Fargo”). It asks this court to find nondischargeable the obligation owed to it by the defendant Jason Lee Manwarren, chapter 7 debtor (“defendant” or “debtor”). After a trial was held on the Complaint, the court took the matter under advisement.<sup>1</sup>

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<sup>1</sup> The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

## BACKGROUND

The dispute between the parties is a purely factual one: Did the defendant enter into a Contract with Wells Fargo Bank to buy a truck and, if so, is he obligated under it? According to the plaintiff's Complaint, Wells Fargo Bank and the defendant entered into a Retail Installment Contract and Security Agreement ("Contract") on May 18, 2007, to finance the purchase of a 2003 GMC Yukon Denali for \$25,639.50. Wells Fargo Bank holds a perfected security interest in the vehicle. Wells Fargo Auto Finance, Inc., plaintiff herein, is the successor in interest to the Bank's rights and interests in the Contract and the vehicle. Under the Contract, the defendant warranted that he would "keep the [vehicle] in his possession in good condition and repair" and would not "transfer any rights in the [vehicle] to anyone else without [Wells Fargo's] knowledge or consent."

The defendant filed a voluntary chapter 7 petition on August 5, 2009. On Schedule B of his bankruptcy schedules, the debtor listed the GMC Denali truck and other vehicles as his personal property and stated that he intended to surrender possession of them:

2004 (*sic*) GMC Denali truck; not in debtor's possession. Debtor co-signed for friend: Travis Dumas. SURRENDER. Current Value of Debtor's Interest – \$30,000.00.

Two Motorcycles. Debtor signed the loans for friends: Dennis Mallory & Travis Dumas. Does not have in his possession. SURRENDER. Current Value of Debtor's Interest – \$28,000.00.

Suzuki Arctic Cat snowmobile. Debtor did not purchase this item; his name was used by Travis Dumas. SURRENDER. Current Value of Debtor's Interest – \$16,519.00.

In its Complaint, Wells Fargo identified the defendant's specific conduct which breached the Contract or which was disproved by the Contract: (1) The defendant allowed a third party to remain in possession of the vehicle; (2) the defendant claimed, in Schedule B, that he was only a co-signor on the Contract; and (3) the defendant did not surrender the vehicle, despite the plaintiff's demands. The plaintiff then charged that the defendant's actions constituted a willful and malicious injury to Wells Fargo's interest in the vehicle. As a result, the plaintiff alleged, the obligation the defendant owed the plaintiff under the Agreement must be held to be nondischargeable under 11 U.S.C. § 523(a)(6).

In his Answer, the defendant denied that he entered into a Contract with Wells Fargo. He asserted that an acquaintance, Travis Dumas, came to the defendant's workplace, AutoZone, and asked the defendant to co-sign on a loan because Dumas didn't have good credit. Although he thought he was just co-signing, the debtor got a bill from Wells Fargo. The defendant contended that the signature on the Retail Installment Contract and Security Agreement was not his, and pointed out that he "always write[s] out the letters in his last name." R.5, ¶ 2. He attached a copy of his driver's license to his Answer as proof of his signature. He further denied Wells Fargo's charges by stating: "I never signed any purchase agreement. It was my understanding I was just a co-signor on the loan." *Id.*, ¶ 8. He also claimed that he had looked for the vehicle but couldn't find it. He understood that Travis Dumas was in possession of it, he said.

At trial on the Complaint, the defendant Jason Lee Manwarren testified that he met Travis Dumas in March or April 2007. Dennis Mallory and Travis Dumas came to AutoZone, where the defendant worked, to ask him to co-sign on two motorcycles. According to the defendant, they had the documents with them, and he signed them without reading them or keeping a copy. Dumas paid him \$200 to co-sign for the motorcycles, but Mallory did not pay him anything. The defendant said he did not possess either motorcycle and did not know he was the only one to sign the documents. He also testified that the Arctic Cat snowmobile showed up on a credit report; he did not remember it at all, he said.

The defendant did sign for the Denali, he admitted. He testified that Dumas brought an Odometer Disclosure Statement to AutoZone, and the defendant signed it. He said he hasn't seen Dumas since. Dumas was supposed to give him \$400, but he didn't. He did not find Dumas or Mallory afterwards. However, he testified, he never intended to own the Denali. He did it for the \$400. He said he did not realize that he was obligated to pay if he co-signed; he simply wanted to let a friend use his good credit.

The defendant then testified that he did in fact sign the following documents: the bankruptcy petition (Exhibit 5), the Request for Admissions (Exhibit 6), the Answer to the Complaint (Exhibit 24), and the Odometer Disclosure Statement on page 4 of the R & B Car Company, Inc., sales documents (Exhibit

4). However, he insisted that the signatures on the other R & B Car Company, Inc., documents – on pages 1 (purchase contract) , 2 (application information), 3 (insurance coverage information), and 5 (application for certificate of title) of Exhibit 4 – were not his signatures. He admitted that he co-signed on the Denali and motor cycles for his friend but never thought he'd be required to make a payment. He insisted that he never intended to harm Wells Fargo.

Wells Fargo confronted the defendant's denial of his signatures on its documents by hiring a handwriting expert to analyze the documents. Tamara Kaiden testified as a forensic document examiner. She had studied the methods of examining handwriting since 1994 and became board certified. She told the court that she worked on more than 200 cases and reviewed over 5,000 documents in state and federal courts. Her resume was admitted, and Kaiden was qualified as an expert forensic document examiner. She then described in detail the method she used for analyzing handwriting: She looked at 48 characteristics, such as baseline usage, letter forms, and slants. She studied habitual, unconscious characteristics seen in handwriting, such as the point at which the writing was started (upper, middle, and lower zones) and whether letters were "threaded" or strung along rather than actually formed. And she took into account natural variations when deciding whether handwriting characteristics were similar or dissimilar.

For this case, she studied the handwritten signatures on the "known documents" which Manwarren testified he had written. She then compared them with the signatures on the "questioned documents," those which he testified he had not signed. She had created her own forensic exhibits to demonstrate points of comparison and contrast in each step of her analysis. For example, she pointed out natural variations in the writing of the letter "J" at the beginning of the defendant's first name, "Jason": The commencement stroke began on the baseline but sometimes a little below or above it. She noted that the defendant had a habit of writing the "a" in "Jason" falling below the baseline and the "s" in "Jason" rising above the baseline. She pointed out subconscious habits indicated in the defendant's formation of the "M" in "Manwarren": The beginning and ending strokes ended below the baseline, and the second hump of the

“M” usually was higher than the first in the “M.” She also commented that the ending stroke at the end of his last name had a predictable similar variation. After further detailed comparisons of the baseline usage of the signatures, the ending strokes for first and last names, the design variations in the various letters, and other points of comparison and contrast, the expert witness opined that the signatures on all the documents were written by the same person. By deductive reasoning, she concluded that the evidence indicated that the signatures were Jason Manwarren’s on each and every document in question.

On cross examination, the witness agreed that the science underlying her analysis was not like a blood test. However, she stated that she was certain that the same writer wrote all the signatures. She also pointed out that she was not a biased witness; she was paid for the expertise of her analysis, not for achieving a certain result. She said she examined similarities and dissimilarities and determined when the variations were significantly alike or different. In this case, she testified, she found the differences insignificant and saw only variations of habit in the writing of one writer.

When Wells Fargo rested, the defendant took the stand in his own defense. He denied that he had entered into a retail sales contract with Wells Fargo and denied that his signature was on the contract. He also denied that he went to the R & B Car Company and entered into a contract to buy one of their cars. He insisted he never had possession or control of the GMC Denali. He testified that he co-signed for a vehicle to help out his friend Travis. He had no intent to hurt Wells Fargo, he stated.

The defendant disputed the expert’s conclusions concerning his handwriting. He submitted into evidence his social security card and driver’s license, which are evidence of his signature, and pointed out differences between those signatures and the questioned ones. He noted that his “J” starts at a 45-degree angle, for example. He also pointed out that he uses back slashes between the numbers on dates, not dashes (like the ones found on the retail sales contract). Nevertheless, the defendant admitted that he signed the Odometer Disclosure Statement and that he intended to co-sign on a loan for a friend. He did not dispute that his friend was a man he had known for only a month or so. Plaintiff’s counsel then asked the defendant

to sign his name on a piece of paper. When he did so, in open court, and then was asked to compare that signature with the one on the Odometer Statement, he admitted that the signatures did not look alike.

The plaintiff then presented two rebuttal witnesses. The first was a representative of the insurance department of Teachers Credit Union. She testified that the defendant's mother purchased vehicle insurance from her. The vehicles were titled in the mother's name, she testified. The defendant was not the named insured but was covered under the policy as a driver. She also testified that the Denali was not listed as one of the vehicles insured under that policy.

The general manager of R & B Car Company, Inc., also testified. He was general manager in May 2007, when the GMC Denali was sold, and oversaw the sales process. He reviewed the documents executed in the sale of the Denali. He agreed that the person signing them signed as Jason Manwarren. There was no other buyer on the paperwork, he stated. A copy of Manwarren's driver's license was attached to the paperwork; it was the company's procedure, he said, to verify the identity of the person purchasing the car by comparing the photograph and signatures. In addition, it was the policy in May 2007, he testified, that the person purchasing and signing the contract had to be there in the showroom. If only one of the people on the contract was present in the show room, an employee might take the documents to the other person to sign, he said, but the company did not send documents home with people.

Finally, the plaintiff asked the defendant one last question and was told that Travis Dumas is African American. After closing arguments, the court took the case under advisement. Now, having reviewed the evidence and testimony presented at trial and having considered the arguments of the parties in their pleadings, the court now sets forth below its reasons for sustaining the plaintiff's Complaint.

#### DISCUSSION

The plaintiff's Complaint asked the court to determine the dischargeability of the debtor's debt to the plaintiff under § 523(a)(6) of the Bankruptcy Code, which excepts from discharge any debt "for willful

and malicious injury by the debtor to another entity or to the property of another entity.” See *Kawaauhau v. Geiger*, 523 U.S. 57, 118 S. Ct. 974, 140 L.Ed.2d 90 (1998); see also *Berkson v. Gulevsky (In re Gulevsky)*, 362 F.3d 961, 963-64 (7th Cir. 2004); *In re Thirtyacre*, 36 F.3d 697, 700 (7th Cir. 1994). “This provision is intended to prevent the discharge of debts incurred as a result of intentional torts.” *In re Pickens*, 234 F.3d 1273 at \*1 (7th Cir. 2000) (unpub’d). Debts are excepted from discharge under § 523(a)(6) “only if the debtor intended the injury, not merely the act that caused the injury.” *Garoutte v. Damax, Inc.*, 400 B.R. 208, 213 (S.D. Ind. 2009) (citing *Kawaauhau*, 523 U.S. at 61). By a preponderance of the evidence, the plaintiff must establish these elements: “(1) that the debtor intended to and caused an injury to the [creditor or to the] creditor’s property interest; (2) that the debtor’s actions were willful; and (3) that the debtor’s actions were malicious.” *Colemichael Investments, L.L.C. v. Burke (In re Burke)*, 405 B.R. 626, 652 (Bankr. N.D. Ill. 2009).

To resolve whether the defendant intended to injure and did injure the plaintiff, and whether the defendant’s actions were willful and malicious, the court was required to make evidentiary and credibility determinations. The plaintiff, as the moving party, bore the burden of establishing a *prima facie* case by a preponderance of the evidence. See *In re Smolenski*, 210 B.R. 780, 784 (Bankr. N.D. Ill. 1997). It first presented the contracts at issue, with the signatures of Jason Manwarren. It then presented the defendant, who testified that he had signed the Odometer Disclosure Statement, but no other documents, and that he had co-signed to help a friend. With that conflicting evidence placed squarely before the court, Wells Fargo then presented the expert testimony of the forensic document examiner, who had examined thoroughly the handwriting samples and had concluded, to a high degree of certainty, that Jason Manwarren had signed every document at issue. The court found that the expert’s testimony was sufficiently probative, reliable and trustworthy to be entitled to great weight, and the court relied upon it when evaluating the documents before it. The court determined, therefore, that the plaintiff succeeded in establishing a *prima facie* case that the defendant had caused harm to the plaintiff’s property interest in the vehicle and that his action in denying

the validity of his signatures was willful and malicious. The burden then shifted to the defendant to establish a credible defense. See *In re Zwosta*, 395 B.R. 378, 382 (6th Cir. B.A.P. 2008); *In re West*, 163 B.R. 133, 137 (Bankr. N.D. Ill. 1993).

The defendant challenged the expert's opinion by pointing out counter-examples of differences between his known signature on his social security card and driver's license and his disputed signatures. The expert's response, that the distinctions were merely variations in his handwriting, was credible. Indeed, the court found the expert's detailed analysis of the handwriting samples to be professional, thorough, and worthy of the court's confidence. It found that the defendant's challenges to her testimony were shallow distinctions that failed to convince the court of the flaws in the expert's methodology. The defendant himself admitted the differences in his signatures when he compared the one he just had written with the one on the Odometer Disclosure Statement. The court found the expert to be a more credible witness.

The defendant also raised in his closing argument, however, that even if he had signed the contract (and he did admit that he co-signed for his friend), and even if there was a valid contract and a resulting debt, all that the plaintiff had proven is that there was a breach of contract. He insisted that the defendant's acts did not rise to the level of willful and malicious conduct and therefore that the debt was dischargeable under § 523(a)(6).

The court notes that this argument was raised for the first time only briefly, without evidentiary support or legal development, in the defendant's closing remarks, and that the plaintiff had no opportunity to respond to it. See, e.g., *In re Airadigm Commc'ns, Inc.*, 616 F.3d 642, 654 (7th Cir. 2010) (conclusory arguments are construed as waived). The court further points out that the record before it does not support a simple breach of contract. The credible evidence demonstrated that the signatures of Jason Manwarren on the documents in question in fact were the signatures of the debtor. Certainly handwriting analysis is not an exact science, and defendant's counsel did an admirable job of pointing out the many variations in the defendant's signatures. Nevertheless, the expert's careful and thorough presentation was sufficient to

convince the court that the signatures were the defendant's and that he had lied when he said he did not sign the documents.

In fact, nothing in the defendant's testimony rang true. On one hand, he denied that he had signed the Wells Fargo contract; yet, he admitted that he had co-signed on the loan for the GMC Denali truck (and two motorcycles). On one hand, he testified that he did not possess the Denali (or the two motorcycles or the snowmobile); yet, on Schedule B he offered to "surrender" them. He testified that he agreed to co-sign loan documents, just to share his good credit rating with friends; he never acknowledged that, when a co-signer signs a written instrument, he agrees to be financially responsible for the loan if the borrower-debtor does not pay. In the end, it made no sense to the court that the debtor agreed to co-sign loans for two men he barely knew. *See, e.g., In re Rodriguez*, 2010 WL 2342452 (Bankr. N.D. Ill. June 3, 2010) (presenting plausible story of debtors being tricked into cosigning on a loan). In this case, the debtor's story simply did not sound credible or hold together.

The court finds, therefore, that the defendant's conduct was deliberate and intentional. Considering all the facts presented at trial, it determines that malice can be inferred from the debtor's actions. *See In re Odeh*, 431 B.R. 807, 817 n.9 (Bankr. N.D. Ill. 2010). In the court's view, the defendant's denial that he had signed the Contract and his transfer of the vehicle to another party were malicious acts certain to cause injury to the plaintiff and its security interest in the vehicle. Based on all the facts before it, the court is convinced that the debtor is not the "honest but unfortunate debtor" entitled to discharge of this debt. *See In re Rinaudo*, 418 B.R. 42, 46 (Bankr. W.D. N.Y. 2009).

#### CONCLUSION

Based upon the findings made in this Memorandum of Decision, the court finds that the plaintiff Wells Fargo Auto Finance, Inc., has met its burden of proof under 11 U.S.C. § 523(a)(6). Therefore, the debt

of the defendant Jason Lee Manwarren to the plaintiff is determined to be excepted from his discharge. The court grants the relief sought in the Complaint.

SO ORDERED.

/s/ HARRY C. DEES, JR.  
HARRY C. DEES, JR., JUDGE  
UNITED STATES BANKRUPTCY COURT