UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 15-11855	)	
PAUL FRANCIS TWEDT	NOT INTENDED FOR PUBLICATION	
Debtor	)	
GREASE MONKEY INTERNATIONAL, INC.	)	
Plaintiff	)	
vs.	)	PROC. NO. 15-1131
PAUL FRANCIS TWEDT	)	
Defendant	)	

DECISION AND ORDER GRANTING MOTION TO DISMISS

On February 11, 2016.

The parties entered into a franchise agreement by which the debtor's business (JPT) would operate an oil change and auto service facility. When the plaintiff subsequently sought to terminate the franchise, the debtor transferred the business assets to another entity, in violation of the plaintiff's contractual right of first refusal and option to purchase. As a result, the plaintiff filed suit against the debtor and JPT requesting specific performance and a demand for arbitration, which resulted in decisions in its favor. By this adversary proceeding, the plaintiff seeks a declaration that the debtor's obligation to it is non-dischargeable, under § 523(a)(6) of the United States Bankruptcy Code, as a willful and malicious injury to property. 11 U.S.C. § 523(a)(6). It contends the debtor intentionally breached his contractual obligations – the option to purchase and right of first refusal – by selling the business assets to someone else. The debtor responded with a motion to dismiss, arguing the

complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. Rule 12(b)(6). The matter is before the court to consider the issues raised by that motion and plaintiff's response thereto.[1]

Exceptions to discharge are construed narrowly in favor of the debtor. Ojeda v. Goldberg, 599 F.3d 712, 718 (7th Cir. 2010); Matter of Scarlata, 979 F.2d 521, 524 (7th Cir. 1992); In re Kimzey, 761 F.2d 421, 424 (7th Cir. 1985). Consequently, § 523(a)(6) must be read as applying to intentional torts, not breaches of contract. See, Kawauhau v Geiger, 523 U.S. 57, 62, 118 S.Ct. 974, 977 (1998). Claims for breach of contract are dischargeable debts. See, In re Whiters, 337 B.R. 326, 339 (Bankr. N.D. Ind. 2006); In re Barr, 194 B.R. 1009, 1017-18 (Bankr. N.D. Ill. 1996); In re Guy, 101 B.R. 961, 978-979 (Bankr. N.D. Ind. 1988); In re Cortese, 77 B.R. 961 (Bankr. S.D. Fla. 1987). Even an intentional breach of contract will not create a non-dischargeable debt, unless the breach is accompanied by conduct that is also tortious. In re Williams, 337 F.3d 504, 509-10 (5th Cir. 2003); Petralia v. Jerich, 238 F.3d 1202, 1205-06 (9th Cir. 2001); In re Riso, 978 F.2d 1151, 1154 (9th Cir. 1992). See also, In re Jendusa-Nicolai v. Larsen, 677 F.3d 320, 324 (7th Cir. 2012); In re Snyder, 542 B.R. 429, 438-44 (collecting cases); In re Salvino, 373 B.R. 578, 591 (Bankr. N.D. Ill. 2007). In re Lazzara, 287 B.R. 714, 722 (Bankr. N.D. Ill. 2002) (applying §523(a)(6)). Arguing that the debtor "deceptively" or "surreptitiously" sold property in violation of his contractual duties, see, Plaintiff's Opposition to Motion to Dismiss, filed Jan. 18, 2016, p.14, or that he concealed his

[1]To the extent the plaintiff argues that the defendant is somehow collaterally estopped by the arbitrator's decision, it has not identified any facts found by the panel as to willfulness or maliciousness or demonstrated how such facts might have been necessary to the decision. Thus, collateral estoppel does not apply. See, In re Busick, 264 B.R. 518, 522 (Bankr. N.D. Ind. 2001); In re Staggs, 178 B.R. 767, 773-74 (Bankr. N.D. Ind. 1994) (discussing the elements of collateral estoppel).

actions, id. at 17, does not allege an independent tort.[2]

"A 'knowing breach of contract'" does not create a non-dischargeable debt under § 523(a)(6). Geiger, 523 U.S. at 62, 118 S.Ct. at 977. Were it otherwise, the very act of filing bankruptcy could render a debtor's obligations non-dischargeable. The filing is undeniably intentional and, by allowing the debtor to discharge its obligations with less than payment in full, it is substantially certain to harm creditors. Indeed, that harm, that consequence, that result is usually the debtor's very purpose and intent in filing. Furthermore, the Bankruptcy Code authorizes trustees to intentionally breach executory contracts, when it is economically advantageous to do so (in the best interests of the estate), by rejecting them under § 365. See, 11 U.S.C. § 365(a), (g). See also, Salvino, 373 B.R. at 591. It would be passing strange for Congress to condemn via § 523(a)(6) the same actions it allows a trustee to perform through § 365.

The defendant's motion to dismiss is GRANTED. Plaintiff shall file any amended complaint within fourteen (14) days. The failure to do so will result in the dismissal of this adversary proceeding, without further notice or hearing.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court

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[2]This case is distinguishable from conversion of collateral cases under § 523(a)(6) because a secured creditor has a property interest in its collateral, which is the very thing dissipated, see e.g., In re Russell, 262 B.R. 449 (Bankr. N.D. Ind. 2001),while the owner of a right of first refusal or an option to purchase has no interest in the property subject to the option or right of first refusal. Its only property interest is in the contract which gives it those rights, not the property to which they apply. U.S. v. Swan, 467 F.3d 655, 657 (7th Cir. 2006) (option to purchase not in interest in property under Illinois law); In re Riso, 978 F.2d 1151, 1154 (9th Cir. 1992) (right of first refusal not property interest); In re Vitogiannis, 2009 WL 1372065 *13 (Bankr. N.D. Ill. 2009) (if option to purchase not an interest in property, right of result cannot be); Robroy Land Co., Inc. v. Prather, 622 P.2d 367, 370 (Wash. 1980).