UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re: GUADALUPE SERVANDO CHAVEZ-MEDINA, No. 22-10678-j7

Debtor.

JOSE ALVARADO, REBECCA ALVARADO and CAROLINE MORALES,

Plaintiffs,

v. Adversary No. 22-1025-j

GUADALUPE SERVANDO CHAVEZ-MEDINA,

Defendants.

ORDER REGARDING MOTION TO DISMISS UNDER RULE 12(b)(6) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, AND GRANTING PLAINTIFF LEAVE TO AMEND COMPLAINT

THIS MATTER is before the Court on the Motion to Dismiss Under Rule 12(b)(6) for Failure to State a Claim Upon which Relief can be Granted ("Motion to Dismiss" – Doc. 7). Having reviewed the Motion to Dismiss and the Complaint to Determine Dischargeability of Debt ("Complaint" – Doc. 1), the Court agrees that the Complaint fails to allege sufficient facts to sustain a non-dischargeability claim under 11 U.S.C. § 523(a)(6)[1] based on willful and malicious conduct. However, consistent with Fed. R. Civ. P. 15, made applicable to adversary proceedings by Fed. R. Bankr. P. 7015, the Court will grant Plaintiff leave to amend the Complaint.

[1] All future references to "Code," "Section," and "§" are to Title 11 of the United Sates Code unless otherwise indicated.

MOTION TO DISMISS STANDARD

Defendant requests the Court to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6), made applicable to adversary proceedings by Fed. R. Bankr. P. 7012, for "failure to state a claim upon which relief can be granted." In determining whether to grant a motion to dismiss for failure to state a claim upon which relief can be granted, the Court examines whether Plaintiffs have alleged facts sufficient to "to state a claim that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007)). The facts must "nudge the[ ] claims across the line from conceivable to plausible . . . ." *Bell Atl. Corp. v. Twombly*, 550 U.S. at 570. A claim is plausible when it has a "reasonable prospect of success, but also . . . inform[s] the defendants of the actual grounds of the claim against them." *Robbins v. Oklahoma,* 519 F.3d 1242, 1248 (10th Cir. 2008). The Court accepts as true all factual allegations contained in the complaint. *Iqbal*, 556 U.S. at 678. However, "a legal conclusion couched as a factual allegation" or "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" will not satisfy this standard. *Id.*

DISCUSSION

Plaintiffs' Complaint alleges that a debt arising from a serious accident caused by Debtor while "driving erratically on Interstate-25 southbound" is non-dischargeable under § 523(a)(6) for willful and malicious injury. Other than that brief description of the accident, the Complaint is devoid of any factual allegations. Instead, the Complaint incorporates by reference a copy of the complaints[2] (together, the "State Court Complaint") Plaintiffs filed in the Second Judicial

[2]Plaintiffs Jose Alvarado and Rebecca Alvarado filed a Complaint for Personal Injuries and Damages in the State Court Action on March 18, 2022. *See* Doc. 2. Plaintiff Carolina Morales was added as a third-party plaintiff, filing her own complaint that alleges Ms. Morales was a passenger in the vehicle that was struck by Debtor and contains the same causes of action as those asserted in the original complaint filed by Plaintiffs Jose Alvarado and Rebecca Alvarado. *See* Doc. 3. For purposes of this Order, the Court will refer to both complaints together as the "State Court Complaint."

District Court of New Mexico as Case No. D-202-CV-2022-01424. The State Court Complaint consists of two counts against Debtor for negligence and negligence per se based on alleged violations of various New Mexico state motor vehicle statutes, a count for recovery from the insurance company that insured the vehicle Debtor was driving when the accident occurred, and a count for damages, including a request for punitive damages.

The State Court Complaint alleges that Debtor "was driving erratically on Interstate 25 travelling south," and that he tried "to pass someone by traveling on the right shoulder when he violently struck Plaintiffs and the vehicle they were using" causing injuries and damages to Plaintiffs as a result of Debtor's inattention and failure to keep a proper lookout.[3] The State Court Complaint also asserts that Debtor failed to exercise care while operating his vehicle in violation of standards set forth in applicable New Mexico statutes.[4]

Debts for "willful and malicious injury by the debtor to another entity or to the property of another entity" are non-dischargeable under § 523(a)(6). Within the Tenth Circuit, to sustain a claim for non-dischargeability of a debt under § 523(a)(6), a party must establish that the injury was both "willful" and "malicious." *Panalis v. Moore (In re Moore)*, 357 F.3d 1125, 1129 (10th Cir. 2004) ("Without proof of *both* [willful and malicious elements under § 523(a)(6)], an objection to discharge under that section must fail.") (emphasis in original); *Mitsubishi Motors Credit of America, Inc. v. Longley (In re Longley)*, 235 B.R. 651, 655 (10th Cir. BAP 1999) (recognizing that the Tenth Circuit standard requires proof of "two distinct elements").

The "willful" component requires proof of both an intentional act and an intended injury; an intentional act that leads to injury is insufficient. *See Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) ("The word 'willful' in (a)(6) modifies the word 'injury,' indicating that

[3] Doc. 2 and Doc. 3.
[4] *Id.*

nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury.") (emphasis in original). Absent direct evidence of a specific intent to injure, the willful component may also be satisfied by proving facts from which the Court may infer that a debtor acted with the belief that the consequences of the act were substantially certain to occur. *Anaya v. Cardoza (In re Cardoza)*, 615 B.R. 901, 908 (Bankr. D.N.M. 2020).[5] In an unpublished opinion, the Tenth Circuit observed that willfulness is a subjective test that "turns on the state of mind of the debtor, who must have wished to cause injury or at least believed it was substantially certain to occur." *Via Christi Reg'l Med. Ctr. v. Englehart (In re Englehart)*, 229 F.3d 1163, *3 (10th Cir. 2000). The inquiry must "focus . . . [on] *the debtor's* belief in the substantial certainty of injury, not on a factfinder's independent view of the likelihood of injury." *Id*. at *1 (emphasis in original). In other words, the inquiry must focus on the debtor's subjective belief; the Court does not apply an "objective standard, which would disregard the debtor's state of mind and consider whether a reasonable person would have known that the actions at issue were substantially certain to cause injury." *Tso v. Nevarez (In re Nevarez)*, 415 B.R. 540, 545 (Bankr. D.N.M. 2009).

"The 'malicious' component of § 523(a)(6) requires the Court to examine the debtor's motives and any claimed justification or excuse for taking the action while desiring, knowing or intending that the action will cause the resulting harm." *Cardoza*, 615 B.R. at 908 (citing *Door Bentley & Pecha, CPA's, P.C. v. Pasek (In re Pasek)*, 983 F.2d 1524, 1527 (10th Cir. 1993)). In other words, an intentional, wrongful act, taken without justification or excuse will satisfy the "malicious" requirement for non-dischargeability under § 523(a)(6). *See Penix v. Parra (In re*

[5] *See also Bank of Commerce & Trust Co. v. Schupbach (In re Schupbach)*, 500 B.R. 22, 35-36 (Bankr. D. Kan. 2013) (Willful injury under § 523(a)(6) may be "established indirectly by evidence of . . . the debtor's knowledge that the conduct will cause particularized injury." (*quoting Longley*, 235 B.R. at 657)).

Parra), 483 B.R. 752, 772 (Bankr. D.N.M. 2012). *See also Shirley v. Lopez (In re Lopez)*, 566 B.R. 255 (Bankr. D.N.M. 2017) (concluding that Lopez colliding into a vehicle in an effort to escape through an entrance to avoid being trapped by someone he perceived to be threatening and dangerous did not act willfully and maliciously as required under § 523(a)(6)).

However, without more, negligent or reckless acts, even if they result in a horrific injury, cannot satisfy the "willful and malicious" requirements for non-dischargeability under § 523(a)(6). *See Geiger*, 523 U.S. at 64 ("[D]ebts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)."). Thus, personal injury claims resulting from auto accidents generally do not satisfy the standards of § 523(a)(6), even if they are the result of reckless or careless driving that increases the probability that an accident will occur. *See, e.g., Nevarez*, 415 B.R. at 546 (standard for non-dischargeability under § 523(a)(6) not met where a driver was speeding and ran a red light because there was no evidence the driver believed the injury was substantially certain to occur as a result of his action); *Ortiz v. Ovalles (In re Ovalles)*, 619 B.R. 23, 34-35 (Bankr. D.P.R. 2020) (gross recklessness in operating a motor vehicle resulting in injury did not establish non-dischargeability under § 523(a)(6) where the evidence did not establish that the driver believed the injury was substantially certain to occur). In *Allen v. Greenwasser (In re Greenwasser)*, 269 B.R. 918, 925 (Bankr. S.D. Fla. 2001) the bankruptcy court noted that "most [§ 523(a)(6)] cases have held that car accidents are considered negligent or reckless, rather than intentional."

The factual allegations in the Complaint (including the allegations in the State Court Complaint incorporated by reference) fall far short of satisfying the willful and malicious standards required to sustain a non-dischargeability claim under § 523(a)(6). Neither the Complaint nor the State Court Complaint contain factual allegations that Defendant drove his

vehicle with the intent to injure Plaintiffs or that Defendant subjectively believed the injury was substantially certain to occur. The request for punitive damages, though suggestive of some type of wrongful intent, is a remedy, not a factual allegation. Finally, the Complaint's allegation that Defendant "acted in a willful and malicious manner" merely tracks the language of § 523(a)(6), and is a mere legal conclusion couched as a factual allegation. Because the factual allegations in the Complaint, considered together with the allegations incorporated by reference in the State Court Complaint, are insufficient to state a plausible claim for relief, the Court could appropriately grant the Motion to Dismiss.

However, Plaintiffs' response includes a request for leave to amend the Complaint pursuant to Fed. R. Civ. P. 15, made applicable to adversary proceedings by Fed. R. Bankr. P. 7015.[6] Leave to amend under Rule 15 should be "freely give[n] when justice so requires," Fed. R. Civ. P. 15(a)(2) so a plaintiff will have sufficient opportunity to allege facts the plaintiff believes will support a claim for relief. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (Rule 15(a)'s "mandate [to freely grant leave to amend] is to be heeded."). The Court will, therefore, grant Plaintiffs an opportunity to amend the Complaint and deny the Motion to Dismiss, without prejudice, conditioned on Plaintiffs timely filing an amended complaint.

WHEREFORE, IT IS HEREBY ORDERED that the Motion to Dismiss is conditionally denied, without prejudice to filing another motion to dismiss the amended complaint if Plaintiffs timely amend.

ORDERED FURTHER, that Plaintiffs may amend the Complaint no later than **March 15, 2023**.

[6] *See* Doc. 12.

ORDERED FINALLY, that if Plaintiffs do not timely file an amended Complaint, the Court will dismiss this adversary proceeding, with prejudice, without further notice or a hearing.

ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: March 1, 2023

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