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,

Defendant.

ORDER DENYING SECOND MOTION TO DISMISS AND SETTING SCHEDULING CONFERENCE

THIS MATTER is before the Court on the Second Motion to Dismiss Under Rule 12(b)(6) for Failure to State a Claim Upon which Relief can be Granted ("Second Motion to Dismiss" – Doc. 17) filed by Defendant Guadalupe Servando Chavez-Medina. Plaintiffs' Amended Complaint to Determine Dischargeability of Debt ("Amended Complaint" – Doc. 16) under 11 U.S.C. § 523(a)(6)[1] includes allegations that Defendant willfully decided "to travel over 65 miles per hour on the right-hand shoulder," and "knew that traveling at high speeds while not keeping a proper lookout, and driving erratically on the shoulder of a highway, was substantially likely to result in an injury."[2] Because non-dischargeability of a debt based on willful and malicious injury is dependent upon whether Defendant subjectively believed that his intentional,

[1] Unless otherwise specified, references to "section__" or "§__" are to title 11 of the United States Code.
[2] *See* Amended Complaint, ¶¶ 20 and 23.

wrongful actions, taken without justification or excuse, were substantially certain to cause injury, the Court cannot conclude that Plaintiffs' Amended Complaint fails to state a plausible claim upon which relief can be granted. Accordingly, the Court will deny the Second Motion to Dismiss and set a scheduling conference.

PROCEDURAL HISTORY AND DISCUSSION

Plaintiffs filed a Complaint to Determine Dischargeability of Debt ("Complaint" – Doc. 1) asserting that damages arising from a serious automobile accident are non-dischargeable under § 523(a)(6) based on willful and malicious injury. Plaintiffs incorporated by reference factual allegations contained in a complaint filed against defendant in state court based on alleged violations of various New Mexico motor vehicle statutes.[3] Defendant filed a Motion to Dismiss Under Rule 12(b)(6) for Failure to State a Claim Upon Which Relief Can be Granted ("First Motion to Dismiss" – Doc. 7), asserting that Plaintiffs' alleged facts describing the terrible automobile collision failed to satisfy the non-dischargeability standards for willful and malicious injury under § 523(a)(6). The Court agreed that the Complaint did not satisfy the requisite non-dischargeability standard, but granted Plaintiffs leave to amend the Complaint consistent with Fed. R. Civ. P. 15, made applicable to adversary proceedings by Fed. R. Bankr. P. 7015.[4]

In its Order Regarding First Motion to Dismiss, the Court explained that under Tenth Circuit precedent, a party asserting a non-dischargeability claim under § 523(a)(6) must establish that the injury was both "willful" and "malicious" in order to meet the standards of § 523(a)(6). *See* Order Regarding First Motion to Dismiss, p. 3 (citing *Panalis v. Moore (In re Moore)*, 357 F.3d 1125, 1129 (10th Cir. 2004) ("Without proof of *both* [willful and malicious elements under

[3] *See* Complaint, ¶ 11 and Exhibits A and B.
[4] *See* Order Regarding Motion to Dismiss Under Rule 12(b)(6) for Failure to State a Claim Upon which Relief can be Granted ("Order Regarding First Motion to Dismiss" – Doc. 15).

§ 523(a)(6)], an objection to discharge under that section must fail.") (emphasis in original). The Court explained further that, under Supreme Court precedent, the "willful" component requires proof of both an intentional act and an intended injury, not merely an intentional act that results in injury. *Id.* (citing *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998)). If there is no direct evidence of a defendant's specific intent to injure, the Court may infer that the defendant acted willfully if the defendant believed that the consequences of his or her intentional act were substantially certain to cause harm. *Id.* (citing *Anaya v. Cardoza (In re Cardoza)*, 615 B.R. 901, 908 (Bankr D.N.M. 2020)).

This test for inferred willfulness is a subjective test that focuses on the defendant's state of mind and subjective belief; it is not an objective one, which would consider whether a reasonable person would have known that the action at issue was substantially certain to cause injury. *See Via Christi Reg'l Med. Ctr. v. Englehart (In re Englehart)*, 229 F.3d 1163, 2000 WL 1275614, at *3 (10th Cir. Sept. 8, 2000) (unpublished) (subjective test); *In re Patch*, 526 F.3d 1176, 1180 (8th Cir. 2008) ("If the debtor knows that the consequences are certain, or substantially certain, to result from his conduct, the debtor is treated as if he had, in fact, desired to produce those consequences.") (citation omitted); *Tso v. Nevarez (In re Nevarez)*, 415 B.R. 540, 545 (Bankr. D.N.M. 2009) (explaining that the court must not apply an objective, reasonable person standard when considering whether defendant knew that his or her actions were substantially certain to cause harm). As for the "malicious" element, evidence that a defendant acted intentionally, and wrongfully, without justification or excuse, is sufficient. *Penix v. Parra (In re Parra)*, 483 B.R. 752, 773 (Bankr. D.N.M. 2012); *see also Burris v. Burris (In re Burris)*, 598 B.R. 315, 334-35 (Bankr. W.D. Okla. 2019) ("Malice may be implied where the preponderance of the evidence establishes that the debtor committed acts that were wrongful and

without just cause." (quoting *AVB Bank v. Costigan (In re Costigan)*, Adv. No. 16-8013, 2017 WL 6759068, at * 5 (Bankr. E.D. Okla. Dec. 29, 2017))) .

Plaintiffs filed the Amended Complaint on March 15, 2023. The Amended Complaint includes the following allegations:

> Defendant was driving erratically on Interstate 25 traveling south, when he was trying to pass someone by traveling on the right shoulder when he violently struck Plaintiffs and the vehicle they were using.[5]
>
> [I]t was defendant's willful decision to travel over 65 miles per hour on the right-hand shoulder.[6]
>
> Defendant knew that traveling at high speeds without keeping a proper lookout was substantially certain to result in injury.[7]
>
> Defendant knew that traveling at high speeds while not keeping a proper lookout, and driving erratically on the shoulder of a highway, was substantially likely to result in an injury.[8]
>
> Traveling at such high speeds in a designated no travel lane is a willful and malicious decision.[9]
>
> Defendant made no statement to police that he did not see the Plaintiffs.[10]
>
> Such a decision disregards the rights and safety of the public, including the Plaintiffs.[11]

Defendant asserts that these additional allegations still fall short of stating a non-dischargeability claim under § 523(a)(6). This Court disagrees.

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6)[12] for failure to state a claim under which relief can be granted, a plaintiff must allege facts sufficient to "state a claim to relief

[5] Amended Complaint, ¶ 15.
[6] Amended Complaint, ¶ 20.
[7] Amended Complaint, ¶ 22.
[8] Amended Complaint, ¶ 23.
[9] Amended Complaint, ¶ 24.
[10] Amended Complaint, ¶ 25.
[11] Amended Complaint, ¶ 27.
[12] Fed. R. Bankr. P. 7012 makes Fed. R. Civ. P. 12(b)(6) applicable to adversary proceedings.

that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570).

When evaluating a motion to dismiss, the Court accepts as true all well-pleaded factual allegations contained in the complaint and construes them in the light most favorable to the plaintiff. *Twombly*, 550 U.S. at 555; *Jefferson Cnty. Sch. Dist. No. R-1 v. Moody's Investor's Servs., Inc.*, 175 F.3d 848, 855 (10th Cir. 1999). And, as Plaintiffs point out, even if the Court believes "that actual proof of [the alleged] facts is improbable, and 'that a recovery is very remote and unlikely,'" *Twombly*, 550 U.S. at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)), a complaint will withstand a motion to dismiss as long as the alleged facts plausibly demonstrate "a reasonable prospect of success." *Robbins v. Oklahoma*, 519 F.3d 1242, 1248 (10th Cir. 2008).

Here, the factual allegations in the Amended Complaint sufficiently state a plausible claim for relief under § 523(a)(6) because they focus on Defendant's subjective belief that his intentional action in driving his vehicle erratically on the shoulder of the freeway at a high rate of speed was substantially certain to cause harm. As noted above, "[t]he Tenth Circuit applies a subjective standard in determining whether a debtor desired to cause injury or believed the injury was substantially certain to occur." *Burris*, 598 B.R. at 334 (citing *Utah Behavior Serv. Inc. v. Bringhurst (In re Bringhurst)*, 569 B.R. 814, 823 (Bankr. D. Utah 2017)). The Amended Complaint also includes allegations indicating that Defendant acted wrongfully, without

justification or excuse,[13] which would support a finding that Defendant's acts were "malicious" within the meaning of § 523(a)(6).

> Overall, as observed by the Seventh Circuit,
>
> > [W]e imagine that all courts would agree that a willful and malicious injury, precluding discharge in bankruptcy of the debt created by the injury, is one that the injurer inflicted knowing he had no legal justification and either desiring to inflict the injury or knowing it was highly likely to result from his act.

Jendusa-Nicolai v. Larsen, 677 F.3d 320, 324 (7th Cir. 2012).

Although car accidents generally fall into the category of reckless or negligent behavior, which would not satisfy the non-dischargeability requirements of § 523(a)(6),[14] it is not outside the realm of plausibility that a defendant who intentionally drives erratically at a high rate of speed on the shoulder of the freeway subjectively believes that the likelihood of injury is substantially certain to occur, and is acting wrongfully without justification or excuse. Given the allegations of the Amended Complaint, while the Court may be asked to infer the defendant's subjective belief based on the surrounding facts and circumstances, it is inappropriate to dismiss a complaint for failure to state a claim when no evidence of defendant's state of mind has yet been presented. *Cf. Gelb v. Bd. of Elections of City of New York,* 224 F.3d 149, 157 (2d Cir. 2000) ("[S]ummary judgment is generally inappropriate where questions of intent and state of mind are implicated."); *Burris*, 591 B.R. at 794-95 ("[Q]uestions involving a defendant's state of mind or intent are

[13] *See* Amended Complaint, ¶¶ 24, 25, and 27.

[14] *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)."); *Watkins v. Fleisch (In re Fleisch)*, 543 B.R. 166, 171 (Bankr. M.D. Pa. 2015) ("Section 523(a)(6) is ill-suited to address injuries inflicted in a traffic accident arising from a debtor's wrongful conduct . . . . [because successful claims arising from such accidents] are often obtained by the lesser standards of negligence or recklessness.") (citation omitted). It is also correct that violation of a state law, such as the New Mexico motor vehicle statutes cited in Plaintiffs' state court action, "does not, without more, establish the willfulness and/or maliciousness of an action within the meaning of 11 U.S.C. § 523(a)(6)." *Ward v. Roberson (In re Roberson)*, 92 B.R. 263, 264 (Bankr. S.D. Ohio 1988) (citation omitted).

ordinarily not appropriately resolved on summary judgment.") (citations omitted). Even so, Plaintiffs will have a high bar to hurdle to meet the "substantially certain" standard necessary for the Court to infer Defendant's willful intent within the meaning of § 523(a)(6). *See Ortiz v. Ovalles (In re Ovalles)*, 619 B.R. 23, 33 (Bankr. D.P.R. 2020) ("Regarding willfulness, courts have set a high bar to meet the 'substantially certain' standard following *Geiger*.").

WHEREFORE, IT IS HEREBY ORDERED that the Second Motion to Dismiss is DENIED.

ORDERED FURTHER, that the Court will conduct a scheduling conference on **May 10, 2023** at **1:30 p.m.** in the Brazos hearing room, 5th Floor, Pete V. Domenici United States Courthouse, 333 Lomas Blvd. NW, Albuquerque, New Mexico. Counsel may appear at the scheduling conference by telephone by making arrangements with chambers (505-600-4650 or jacobvitzstaff@nmb.uscourts.gov) at least one business day prior to the date of the scheduling conference.

ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: May 3, 2023

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