WRITTEN DECISION - NOT FOR PUBLICATION

ENTERED MAR 22 2006
FILED
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CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re JAY WALKER, Debtor.	Case No. 00-10958-B7 Adversary No. 01-90036-B7 MEMORANDUM DECISION
BIO PRIME ENTERPRISES, INC., Plaintiff, v. JAY WALKER, Defendant.	

This matter came on regularly for trial on plaintiff's claim that the debt allegedly owed to it was nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and General Order No. 312-D of the United States District Court for the Southern

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District of California. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

At the outset of trial, the parties offered certain stipulations, which the Court accepted. The first was that if Bio Prime prevailed on its complaint, the amount of damages that would be nondischargeable is $187,794. They also stipulated that if defendant Walker were called to testify, he would state that Mr. Lacerte and Mr. Kalenuik approached him, made clear to Mr. Walker that they already had the intent to breach their agreement with Mr. Najor and, through him, Bio Prime, and it was only after that that Mr. Walker agreed to supply product directly to Mr. Lacerte and Mr. Kalenuik.

Subsection (a)(6) of 11 U.S.C. § 523 provides:

> (a) A discharge under section 727 . . . does not discharge an individual debtor from any debt -
>
> . . .
>
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity . . . .

The United States Supreme Court had occasion to consider the reach of § 523(a)(6) in Kawaauhau v. Geiger, 523 U.S. 57 (1998). There, the Court noted:

> The word "willful" in (a)(6) modifies the word "injury," indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury.

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523 U.S. at 61. Accordingly, the Court held "that debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." 523 U.S. at 64.

The facts in Geiger help explain the holding. The plaintiff sought treatment for a foot injury from Dr. Geiger. He admitted her to the hospital for treatment and intentionally chose a course of oral penicillin over intravenous because of the plaintiff's desire to minimize cost, although he knew intravenous administration was more effective. Dr. Geiger left plaintiff in the care of other physicians and went on a business trip. On his return he found the doctors had referred the plaintiff to an infectious disease expert. He cancelled the referral and ordered the antibiotics discontinued because he thought the infection had subsided. Plaintiff lost her leg, sued, and obtained a judgment. Dr. Geiger carried no malpractice insurance, so the plaintiff chased him into bankruptcy. There, the bankruptcy court found the debt nondischargeable and the district court affirmed.

A panel of the Eighth Circuit reversed, and the court *en banc* agreed, and held that § 523(a)(6) was "confined to debts 'based on what the law has for generations called an intentional tort.'" 523 U.S. at 60. Before the Supreme Court plaintiff argued that "Dr. Geiger intentionally rendered inadequate medical care to [plaintiff] that necessarily led to her injury." Id. at 61. Plaintiff contended that Dr. Geiger "deliberately chose less effective treatment because he wanted to cut costs, all the while knowing that he was providing substandard care." Id. The

Supreme Court affirmed the Eighth Circuit's decision and rejected the plaintiff's argument that Dr. Geiger's conduct met the "willful and malicious injury" standard of § 523(a)(6).

Subsequent to Geiger, in In re Jercich, 238 F.3d 1201 (2001), the Ninth Circuit explained:

> In Geiger, the U.S. Supreme Court held that debts arising out of a medical malpractice judgment, i.e., "debts arising from reckless or negligently inflicted injuries," do not fall within § 523(a)(6)'s exception to discharge. In so holding, the court clarified that it is insufficient under § 523(a)(6) to show that the debtor acted willfully and that the injury was negligently or recklessly inflicted; instead, it must be shown not only that the debtor acted willfully, but also that the debtor inflicted the injury willfully and maliciously rather than recklessly or negligently.

238 F.3d at 1207.

The Ninth Circuit next examined "the precise state of mind required to satisfy § 523(a)(6)'s "willful standard." Id. The court concluded:

> We hold . . . that under Geiger, the willful injury requirement of § 523(a)(6) is met when it is shown either that the debtor had a subjective motive to inflict the injury or that the debtor believed that injury was substantially certain to occur as a result of his conduct.

238 F.3d at 1208. The court then defined the separate requirement of § 523(a)(6), maliciousness, as follows:

> A "malicious" injury involves "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse."

238 F.3d at 1209.

Still more recently, the Ninth Circuit looked at § 523(a)(6) again, this time in In re Su, 290 F.3d 1140 (2002). There, the debtor was driving a van in downtown San Francisco during the morning rush hour. He went speeding into an intersection when the light was already red, crashed into another car, then hit plaintiff, a pedestrian lawfully crossing the street. Plaintiff prevailed in state court and Mr. Su filed bankruptcy. The bankruptcy court found the debt nondischargeable under § 523(a)(6), but the BAP reversed, holding the court applied the wrong legal standard. The Ninth Circuit affirmed the BAP. As the Ninth Circuit put it:

> The question presented on appeal is whether a finding of "willful and malicious injury" must be based on the debtor's subjective knowledge or intent or whether such a finding can be predicated upon an objective evaluation of the debtor's conduct.

290 F.3d at 1142. The court then stated its conclusion:

> We hold that § 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct.

Id.

In rejecting the objective standard used by the bankruptcy court, the appellate court stated its view:

> [F]ailure to adhere strictly to the limitation expressly laid down by In re Jercich will expand the scope of nondischargeable debt under § 523(a)(6) far

> beyond what Congress intended. By its very terms, the objective standard disregards the particular debtor's state of mind and considers whether an objective reasonable person would have known that the actions in question were substantially certain to injure the creditor. In its application, this standard looks very much like the "reckless disregard" standard used in negligence. That the Bankruptcy Code's legislative history makes it clear that Congress did not intend § 523(a)(6)'s willful injury requirement to be applied so as to render nondischargeable any debt incurred by reckless behavior reinforces application of the subjective standard. The subjective standard correctly focuses on the debtor's state of mind and precludes application of § 523(a)(6)'s nondischargeability provision short of the debtor's actual knowledge that harm to the creditor was substantially certain.

290 F.3d at 1145 - 1146.

Facts

Most of the underlying facts are relatively straightforward. The debtor, Jay Walker, was at relevant times the president, and sole direct employee of an entity called United States Medical Research Foundation (USMRF). On or about September 26, 1997 Walker executed an agreement on behalf of USMRF which purported to grant to Bio Prime Enterprises, Inc. the exclusive distribution rights of human grown hormone products manufactured by USMRF.

Article I of the Agreement recites:

> 1.1. USMRF owns and holds the exclusive rights and proprietary information and formulation of certain human grown hormone products. These products are currently being manufactured by USMRF and are being distributed in the United States.

> 1.2. Bio Prime desires to become the exclusive distributor with exclusive rights to package, market and transfer distribution rights for the human grown hormone product ("Product") on the terms and conditions set forth in this Agreement.

The term "Product" is defined in Article 2.2:

> 2.2. The "Product" means those products which are currently produced by USMRF as human grown hormone products and currently marketed as Regenesis 1, together with any enhancements, improvements, or other formulations of such products.

Article 3 of the Agreement has three important subparts:

> 3.1. In consideration of the mutual covenants herein contained USMRF hereby grants to Bio Prime, and Bio Prime hereby accepts, the exclusive worldwide rights to package, market and transfer distribution rights for the Product.
>
> 3.2. Nothing herein shall prohibit Bio Prime from appointing one or more packaging and or distribution agents . . ..
>
> 3.3. Notwithstanding any other provision of this Agreement, the parties acknowledge, agree and understand that the actual ownership of the Product and the formula for the Product shall at all times during the term of this Agreement, remain the property of USMRF.

Finally, Article 7 has two relevant subparts:

> 7.2. In the course of performing its obligations hereunder, Bio Prime will have access to and become acquainted with trade secrets and proprietary information of USMRF. Bio Prime shall not disclose any such information or use all or any portion of it in any way, either directly or indirectly at any time during the term of this Agreement.
>
> 7.3. So long as Bio Prime is in conformance with all of the terms and conditions of this Agreement, USMRF shall not

> license the sale, distribution, marketing or packaging of the Product to any third party.

Ramsey Najor signed the Agreement for Bio Prime as its president, as did Mr. Walker for USMRF. Roy Dittman also signed the Agreement, as vice president of Bio Prime.

The testimony of Mr. Najor was uncontroverted that after entering into the exclusive distributorship agreement with USMRF, Bio Prime spent about $200,000 on developing marketing materials that met FDA guidelines for nutritional supplements; caused clinical and double-blind studies to be performed; and developed the spray form for delivery of the product to replace the eyedropper method used by USMRF.

On or about April 29, 1998 Mr. Najor, Phil Lacerte and Sam Kalenuik signed a letter of understanding (LOU) for the formation of a multi-level marketing entity (MLM Entity) to distribute certain products. The entity was to be incorporated in Nevada, and Mr. Najor was to have a 30% ownership interest. Mr. Lacerte was to supply the initial financing up to $2.5 million and Mr. Najor "shall provide the Parties with a certificate of authorization from Bio Prime, granting Ramsey authority to enter into a 5-year distribution agreement . . . for the distribution of Regenesis (the 'Product')."

The LOU contained exclusive pricing provisions with required minimum purchases, and reflected "a 5-year guaranteed $10.00/unit discount below that of any other distribution for the Product." Paragraph 10 of the LOU recited, in part: "Ramsey and Jay Walker

will provide the MLM Entity with a written mechanism for the alternative manufacturing of the Product . . .." Paragraph 13 provided:

> The MLM Entity shall obtain and maintain during the term of the Distribution Agreement . . . key-man insurance policies covering Ramsey Najor and Jay Walker for the benefit of the MLM Entity . . ..

Paragraph 14 set out certain conditions which were to be met before "consummation of this transaction". The conditions included:

> (i) the negotiation and execution of definitive agreements and related documentation and representations with terms and conditions as outlined . . ., (ii) the completion of the Distribution Agreement with Regenesis . . ..

Lastly, paragraph 16 stated: "This letter shall serve as a binding agreement upon the Parties, subject to the terms and conditions hereof and shall serve as a basis to proceed with this transaction."

It is to be remembered that the LOU was signed on April 29, 1998. Things happened quickly after that. A letter dated May 4, 1998, on USMRF letterhead, addressed to Mr. Najor, stated that USMRF had granted Bio Prime "exclusive worldwide marketing rights to sell the Regenesis HGH product line . . .." (Ex. 10) On or about May 15, 1998 Bio Prime issued an invoice for 10,000 units of Regenesis 1 (Ex. 72), which apparently was picked up the same date for delivery to Mr. Kufus, who was identified in the

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LOU as someone authorized to distribute under the MLM Entity to be created under the LOU.

Then, by letter dated May 20, 1998 and sent by Federal Express, a Salt Lake City law firm employed by Lacerte and Kalenuik notified Mr. Najor that they were terminating the negotiations under the LOU. Specifically, the letter asserted:

> As you well know, Mr. Lacerte and Mr. Kalenuik have made substantial commitments and incurred considerable expenses associated with acquiring the distribution rights and to developing marketing and other materials for distributing Regenesis based on your representations relating to your distribution rights.
>
> As they have made inquiry and conducted their due diligence in connection with substantiating your representations, they have developed serious concerns regarding some of the representations you have made to them with respect to any distribution rights you may actually have and your ability or authority to actually enter into a distribution agreement as was originally contemplated.
>
> Therefore, we have advised Mr. Lacerte and Mr. Kalenuik to place you on notice that they are hereby terminating negotiations with you regarding this transaction and withdrawing any letters of understanding relating to the contemplated transaction until such time, if ever, as they and their counsel have been provided with information and documentation satisfactory to them that you in fact have such distribution rights or are authorized to enter into any agreements relating thereto . . ..

Ex. 88. Two days later, the law firm faxed a second letter, stating: "this letter is to reiterate and make absolutely clear to you that Mr. Phil Lacerte and Mr. Sam Kalenuik have terminated

all negotiations with you and withdrawn all letters of understanding relating to the above referenced matter." Ex. 89.

It was not made clear during the trial, but some of the confusion regarding Bio Prime's and Mr. Najor's distribution rights may have arisen from the settlement of the breakup of business relations between Mr. Najor and Mr. Dittman in their ownership and management of Bio Prime. As of March 27, 1998 Mr. Najor became the sole owner of Bio Prime. However, the Agreement recited, in relevant part:

> 4. Bio Future and Bio Prime Enterprises, Inc. will retain their worldwide marketing rights of hGH hormone from United States Medical Research Foundation upon approval of USMRF. Any other uses of hGH products purchased from USMRF requires their written approval. Any exclusive delegation of these rights to any person or organization will require the written agreement of USMRF.
>
> . . .
>
> 6. Bio Prime Enterprises, Inc. maintains the legal rights to the trade names, Regenesis 1 and Regenesis Pro (trade market under DBA Bio Prime Enterprises, Inc.).

Ex. 127. Neither USMRF nor Mr. Walker were a party to that agreement. However, Mr. Najor's uncontroverted testimony was that Mr. Walker was on the board of Bio Prime during the time of the separation, and Mr. Walker personally helped broker it.

At some time prior to May 29, 1998 Mr. Walker and Mr. Lacerte were in contact with each other. Pursuant to stipulation, Mr. Walker would have testified that he was told Mr. Lacerte and Mr. Kalenuik had already determined to sever

their relationship with Mr. Najor and Bio Prime. Mr. Walker would have testified that it was only after learning that information that he then agreed to supply product directly to Quantum Leap.

By letter agreement dated May 29, 1998, USMRF authorized Mr. Biden to act as its agent in transferring exclusive worldwide marketing rights to Quantum Leap and its principals consistent with certain deal points contained in the agreement. Exhibit 97. That document was followed by a distribution agreement (Ex. 103) between Biden and Quantum Leap, dated June 25, 1998, with an acknowledgment and agreement to comply signed by Mr. Walker. The terms of the agreement, including 32% of the ownership of Quantum Leap to be transferred to USMRF and its agent, were very similar to the terms of the LOU between Mr. Najor, Mr. Lacerte and Mr. Kalenuik.

Discussion

After distilling both the documentary and testimonial evidence, the Court finds that in September, 1997 Mr. Walker signed an agreement for USMRF granting exclusive distribution rights to Bio Prime Enterprises. In or about October, 1997 Mr. Walker was put on the board of Bio Prime and, according to Mr. Najor, was consulted on most everything. In April, 1998 Mr. Najor entered into a Letter of Understanding to create a multi-level marketing entity to market product Bio Prime will purchase from USMRF. Mr. Najor testified Mr. Walker was consulted throughout the negotiations as to price, quantity and

authority. The LOU itself called for certain things involving Mr. Walker by name, including keyman insurance and an alternative manufacturing mechanism to avoid disruption in delivery of the product. Bio Prime received an initial order from Quantum Leap for 10,000 bottles and at least by the time of delivery Mr. Walker knew who was receiving it, and likely knew the mark-up Bio Prime was receiving over what it paid USMRF. Sometime after the first order, around May 15, and before May 29, 1998, Mr. Walker and Mr. Lacerte were in contact. In the meantime, Mr. Lacerte's lawyers, by letters dated May 20 and May 22, told Mr. Najor they were breaking off negotiations to complete the agreement contemplated by the LOU.

The evidence adduced at trial does not establish whether Mr. Lacerte approached Mr. Walker, or the other way around, although Mr. Walker would have testified to the former. Mr. Lacerte had created Quantum Leap, had paid $250,000 for 10,000 bottles, had signed an LOU calling for a minimum purchase in 1998 of 100,000 bottles, and had his lawyers send letters to break off negotiations with Mr. Najor five days after the first order.

Mr. Walker was on the board of Bio Prime from October, 1997 to June, 1998. He knew that Bio Prime had invested in developing the packaging, testing, and delivery mechanism for the product. He knew that Mr. Najor had negotiated a Letter of Understanding to market significant quantities of the product his business makes, and knew the prices charged for it in contrast with what

he would receive from Bio Prime. He aided the process by providing his May 4 letter stating that Bio Prime had a written contract granting it exclusive worldwide marketing rights to the Regenesis product line. Before the end of the same month, Mr. Walker had made his own deal with Quantum Leap, through his agent, Mr. Biden.

So, the issues are whether Mr. Walker owes a debt to Bio Prime for his conduct, and whether that debt is a nondischargeable one under 11 U.S.C. § 523(a)(6). The first issue can be disposed of in short order because it is based on the mistaken notion that the corporate form of USMRF somehow insulates Mr. Walker from any liability for his personal conduct while acting ostensibly on behalf of USMRF. This case does not involve an instance of trying to hold an individual's assets accountable for a liability of a corporate entity because of all the elements that might justify a piercing of a corporate veil. To the contrary, this case involves a determination of whether Mr. Walker's personal conduct makes him liable for its consequences.

Although it claims to have reserved other theories of liability, Bio Prime has focused on asserting that Mr. Walker intentionally interfered with Bio Prime's prospective economic advantage. Under California law, the elements of such a claim are: 1) an economic relationship existed between the plaintiff and a third party, containing a probable future economic benefit or advantage to plaintiff; 2) the defendant knew of the existence

of the relationship; 3) the defendant engaged in wrongful conduct designed to interfere with or disrupt the relationship; 4) the defendant did so with the intent to interfere with or disrupt this relationship, or with the knowledge that the interference or disruption was certain or substantially certain to occur as a result of his action; 5) the economic relationship was actually interfered with or disrupted; and 6) the wrongful conduct of the defendant which was designed to interfere with or disrupt this relationship caused damage to the plaintiff. BAJ1 7.82 (2003 Revision).

Mr. Walker has attempted to create an issue concerning the fact that the LOU was between Lacerte, Kalenuik and Najor, not Bio Prime. However, the LOU itself, at paragraph 7, recognizes that Bio Prime is the source of Najor's authority. The Court finds and concludes there was an economic relationship between Bio Prime, through Najor, and Lacerte and Kalenuik, pursuant to which Bio Prime had a present economic benefit and an expectancy of a probable future one.

It is clear that Mr. Walker knew of the existence of the relationship; that the economic relationship was actually interfered with; and that Bio Prime was damaged as a result, thus satisfying the second, fifth and sixth elements.

The third element requires that the defendant engage in "wrongful conduct" designed to interfere with the relationship. BAJ1 7.86.1 (2003 Revision) defines "wrongful conduct". It provides:

> "Wrongful conduct" is conduct that is wrongful separate and apart from the fact that the conduct interfered with or disrupted the economic relationship between the plaintiff and the defendant, and is also wrongful in the sense that the conduct violated a statute, or considered by itself constitutes the basis for a claim of [some other cause of action].

The rationale behind requiring "wrongful conduct" is clear. Most competition, by definition, interferes with another's hope or expectation to sell to the same customer. But regular competition is privileged, as recognized in BAJ1 7.86. So unprivileged interference must be wrongful in some independent way, such as by violation of some constitutional, statutory, regulatory, common law or other prohibition. Here, Mr. Walker's wrongful conduct begins with the breach of his duties as a member of the board of Bio Prime, in taking business away from Bio Prime by contracting for the same business directly. It was also wrongful for Mr. Walker to give Mr. Biden authority to transfer exclusive distribution rights to Quantum Leap when he had already transferred those same rights to Bio Prime. It was also wrongful conduct for Mr. Walker to take the same product and sell it as Regenesis when he testified in deposition without controversion that the name Regenesis was owned by Najor and Dittman, or by Bio Prime. He also testified that he believed USMRF never owned or asserted ownership rights in the name Regenesis 1, but Ex. 86 makes clear that product was produced and sold under that label after May 29, and after June 25. When Mr. Walker changed the name of the product to Life Span, it was still the same formula,

delivery system, quantity and the like. The Court finds and concludes that Mr. Walker engaged in wrongful conduct within the meaning of the requisite element 3 for intentional interference with prospective economic advantage.

That leaves the fourth element - that Mr. Walker acted with the intent to interfere with or disrupt the relationship, or with the knowledge that the interference or disruption was certain or substantially certain to result from his conduct. It is clear that if Mr. Walker contracts directly with Bio Prime's client, Bio Prime will lose that business, as it indeed did. He had to know that would be the consequence of his direct contract with Quantum Leap, made through USMRF's agent, Mr. Biden.

Mr. Walker has claimed that Mr. Lacerte and Mr. Kalenuik approached him. Mr. Najor testified that Mr. Walker told him later that Mr. Lacerte and Mr. Kalenuik did not like Mr. Najor, didn't want to do business with him, but still needed the product, suggesting that is why they went to the source. The Court's view of the evidence is that it is more probable that Mr. Walker precipitated the subsequent withdrawal of Lacerte and Kalenuik from the LOU based on the timing and sequence of events. As we know, the LOU was dated and signed April 29, 1998. On May 4, Mr. Walker provided Mr. Najor with the letter showing Bio Prime had the exclusive rights to market. By May 15, the first order of 10,000 bottles was placed and picked up the same day, and $250,000 was paid. So at that point, Mr. Lacerte and Mr. Kalenuik had invested a quarter of a million dollars into

product, delivered to one of their distributors to be resold. They had signed an LOU only 16 days before calling for 100,000 bottles for the remainder of the year. Yet five days later their lawyers said they are withdrawing. Having set up at least the first stages of a distribution system and investing a significant sum for the first product, it seems highly unlikely they would withdraw from their source agreement unless they had already made alternative arrangements. The Court cannot know for sure which party first contacted the other, but it seems likely that Mr. Walker contacted Mr. Lacerte, rather than the other way around, in particular because Mr. Walker and USMRF had the most to gain. The product was going to cost Quantum Leap approximately the same amount whether they got it from Mr. Najor and Bio Prime, or from Mr. Walker and USMRF. However, USMRF and Mr. Walker would not only receive their base price, but also the mark-up that Bio Prime would otherwise receive. Given the speed with which the change was made, it seems more likely that it was at Mr. Walker's instigation. It seems likely, also, that the ground given by Mr. Lacerte's lawyers, that there was an issue about Mr. Najor's authority to provide Quantum Leap with distribution rights, had to have come from Mr. Walker, given Mr. Walker's May 4 letter declaring that Bio Prime did have the marketing rights.

The Court finds and concludes that Mr. Walker knew that interference and disruption of Bio Prime's and Najor's economic relationship with Mr. Lacerte and Mr. Kalenuik would result from

his making a contract with them directly and cut out Bio Prime and Mr. Najor from the chain. Accordingly, the Court finds and concludes that Mr. Walker does owe a debt to Bio Prime for his conduct.

The remaining issue is whether what the Court has found meets the elements of § 523(a)(6), and therefore renders Mr. Walker's debt to Bio Prime nondischargeable. As already noted, the statute has two prongs: 1) that the conduct was willful, and 2) that it was malicious. The "willful" prong is established if "it is shown either that the debtor had a subjective motive to inflict the injury or that the debtor believed that injury was substantially certain to occur as a result of his conduct." In re Jercich, 238 F.3d at 1208. As made clear in In re Su, 290 F.3d 1140, 1142 (9th Cir. 2002), the debtor must have a subjective motive to inflict injury or the debtor must believe that injury is substantially certain to result from his actions. As already stated, the Court has found that Mr. Walker knew injury to Bio Prime and Mr. Najor was substantially certain to result from his conduct.

The second prong of § 523(a)(6), maliciousness, requires: "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." In re Jercich, 238 F.3d at 1209. The Court has already found that Mr. Walker acted intentionally, and that his conduct necessarily caused injury. No just cause or excuse has been proffered, and the Court does not credit Mr. Walker's claim that

he was contacted after Mr. Lacerte and Mr. Kalenuik had already determined to withdraw from the LOU. But even if that were true, Mr. Walker still had duties to Bio Prime as a member of its board, which his conduct breached.

The final question, not unlike the central issue in Kawaauhau v. Geiger, 523 U.S. 57 (1998), is whether the nature of Mr. Walker's conduct is the sort of conduct Congress had in mind when it wrote § 523(a)(6). As subsequent courts have noted, § 523(a)(6) was aimed at the traditional intentional torts. Is intentional interference with prospective economic advantage one of those? It appears that the elements of the state tort match the requirements of § 523(a)(6). The tort requires an intent to interfere or disrupt, or knowledge that it is "certain or substantially certain" to result, which appears to match the Jercich requirement. The tort requires knowledge and, most importantly, it requires that the conduct itself be wrongful in some way.

Conclusion

Based on the evidence adduced at trial, coupled with the arguments of the parties and consideration of the applicable authorities, the Court finds that Bio Prime has met its burden of establishing that Mr. Walker owes it a debt that is nondischargeable pursuant to 11 U.S.C. § 523(a)(6). The amount of the debt, if one was found to exist, was established by stipulation at the outset of the trial to be $187,794.00.

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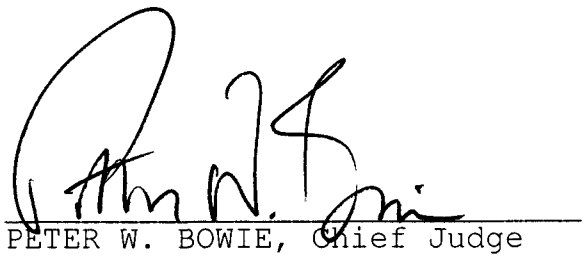
Counsel for plaintiff shall prepare and lodge, or obtain approval as to form from defendant's counsel, a separate form of judgment consistent with this Memorandum Decision within thirty (30) days of the date of entry of this Memorandum Decision.

IT IS SO ORDERED.

DATED: MAR 22 2006



PETER W. BOWIE, Chief Judge
United States Bankruptcy Court