



1 by counsel. Following trial, the Court invited supplemental  
2 briefing. Those briefs have been filed.

3 The Court has subject matter jurisdiction over this  
4 adversary proceeding pursuant to 28 U.S.C. § 1334 and General  
5 Order No. 312-D of the United States District Court for the  
6 Southern District of California. This is a core proceeding under  
7 28 U.S.C. § 157(b)(2)(I).

8 Discussion

9  
10 On or about November 20, 2003, Judge David Ryan of the San  
11 Diego Superior Court issued an injunction restraining Ms. Suarez  
12 from *inter alia*, contacting, telephoning, following, surveilling  
13 or otherwise harassing Ms. Barrett, and required Ms. Suarez to  
14 stay at least 100 yards from Ms. Barrett, her residence, and her  
15 workplace.

16 In August, 2005 a trial concluded on whether Ms. Suarez had  
17 violated Judge Ryan's restraining order. Judge Brannigan found  
18 that Ms. Suarez knowingly and intentionally violated the  
19 restraining order on multiple occasions. Moreover, he found that  
20 the violations were proven beyond a reasonable doubt. He  
21 sanctioned Ms. Suarez by ordering her into custody for five  
22 days and to pay Ms. Barrett's attorney's fees. The amount of  
23 fees and costs was later found to be \$11,573 by order dated  
24 September 14, 2005. It is the money judgment for \$11,573 that  
25 Ms. Barrett seeks to have declared nondischargeable.

26 ///

1 Section 523(a)(6) of Title 11, United States Code, provides:

2 (a) A discharge under section 727 . . . does  
3 not discharge an individual debtor from any  
4 debt -

4 . . .

5 (6) for willful and malicious injury by  
6 the debtor to another entity or to the  
7 property of another entity . . . .

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

9 There, the Court noted:

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

13 523 U.S. at 61. Accordingly, the Court held "that debts arising  
14 from recklessly or negligently inflicted injuries do not fall  
15 within the compass of § 523(a)(6)." 523 U.S. at 64.

16 The facts in Geiger help explain the holding. The plaintiff  
17 sought treatment for a foot injury from Dr. Geiger. He admitted  
18 her to the hospital for treatment and intentionally chose a  
19 course of oral penicillin over intravenous because of the  
20 plaintiff's desire to minimize cost, although he knew intravenous  
21 administration was more effective. Dr. Geiger left plaintiff in  
22 the care of other physicians and went on a business trip. On his  
23 return he found the doctors had referred the plaintiff to an  
24 infectious disease expert. He cancelled the referral and ordered  
25 the antibiotics discontinued because he thought the infection had  
26 subsided. Plaintiff lost her leg, sued, and obtained a judgment.

1 Dr. Geiger carried no malpractice insurance, so the plaintiff  
2 chased him into bankruptcy. There, the bankruptcy court found  
3 the debt nondischargeable and the district court affirmed.

4 A panel of the Eighth Circuit reversed, and the court  
5 *en banc* agreed, and held that § 523(a)(6) was "confined to debts  
6 'based on what the law has for generations called an intentional  
7 tort.'" 523 U.S. at 60. Before the Supreme Court, plaintiff  
8 argued that "Dr. Geiger intentionally rendered inadequate medical  
9 care to [plaintiff] that necessarily led to her injury." *Id.* At  
10 61. Plaintiff contended that Dr. Geiger "deliberately chose less  
11 effective treatment because he wanted to cut costs, all the while  
12 knowing that he was providing substandard care." *Id.* The  
13 Supreme Court affirmed the Eighth Circuit's decision and rejected  
14 the plaintiff's argument that Dr. Geiger's conduct met the  
15 "willful and malicious injury" standard of § 523(a)(6).

16 Subsequent to *Geiger*, in *In re Jercich*, 38 F.3d 1201 (2001),  
17 the Ninth Circuit explained:

18 In *Geiger*, the U.S. Supreme Court held  
19 that debts arising out of a medical  
20 malpractice judgment, i.e., "debts arising  
21 from reckless or negligently inflicted  
22 injuries," do not fall within § 523(a)(6)'s  
23 exception to discharge. In so holding, the  
24 Court clarified that it is insufficient under  
25 § 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.

26 238 F.3d at 1207.

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

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

11           238 F.3d at 1208. The court then defined the separate  
12 requirement of § 523(a)(6), maliciousness, as follows:

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

17           238 F.3d at 1209.

18           Still more recently, the Ninth Circuit looked at § 523(a)(6)  
19 again, this time in In re Su, 290 F.3d 1140 (2002). There,  
20 debtor was driving a van in downtown San Francisco during the  
21 morning rush hour. He went speeding into an intersection  
22 when the light was already red, crashed into another car, then  
23 hit plaintiff, a pedestrian lawfully crossing the street.  
24 Plaintiff prevailed in state court and Mr. Su filed bankruptcy.  
25 The bankruptcy court found the debt nondischargeable under  
26 § 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

1 knowledge or intent or whether such a finding  
2 can be predicated upon an objective  
evaluation of the debtor's conduct.

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

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

8 Id.

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

11 [T]hat failure to adhere strictly to the  
12 limitation expressly laid down by In re  
Jercich will expand the scope of  
13 nondischargeable debt under § 523(a)(6) far  
beyond what Congress intended. By its very  
14 terms, the objective standard disregards the  
particular debtor's state of mind and  
15 considers whether an objective reasonable  
person would have known that the actions in  
16 question were substantially certain to injure  
the creditor. In its application, this  
17 standard looks very much like the "reckless  
disregard" standard used in negligence. That  
18 the Bankruptcy Code's legislative history  
makes it clear that Congress did not intend  
19 § 523(a)(6)'s willful injury requirement to  
be applied so as to render nondischargeable  
20 any debt incurred by reckless behavior  
reinforces application of the subjective  
21 standard. The subjective standard correctly  
focuses on the debtor's state of mind and  
22 precludes application of § 523(a)(6)'s  
nondischargeability provision short of the  
23 debtor's actual knowledge that harm to the  
creditor was substantially certain.

24 290 F.3d at 1145 - 1146.

25 This Court invited the parties to review and address several  
26 cases. One is In re Nangle, 274 F.3d 481 (8<sup>th</sup> Cir. 2001).

1 There, the creditor obtained a judgment in Illinois state court,  
2 which included punitive damages. The creditor pursued the debtor  
3 in Missouri, recording the sister-state judgment and commencing  
4 efforts to collect on it. A Missouri court then held him in  
5 contempt and imposed a "compensatory fine" which was apparently  
6 the amount of the Illinois judgment doubled.

7 Debtor filed bankruptcy, and the bankruptcy court  
8 subsequently found the contempt judgment nondischargeable. The  
9 Eighth Circuit Bankruptcy Appellate Panel reversed. The Eighth  
10 Circuit then reversed the BAP, stating:

11 The key question, we believe, is whether the  
12 contempt order established that Mr. Nangle's  
13 failure to comply with a court order  
14 constituted "willful and malicious" conduct.  
15 We believe that it did and therefore that the  
16 debt arising from it is nondischargeable  
17 under § 523(a)(6).

18 Some courts have held that failure to  
19 comply with a court order constitutes willful  
20 and malicious conduct as a matter of law  
21 within the meaning of § 523(a)(6). (Citation  
22 omitted.)

23 274 F.3d at 484. The Eighth Circuit then explained that the  
24 Missouri state court had found the debtor's conduct willful and  
25 intended to interfere with the creditor's efforts to collect the  
26 judgment.

27 Ms. Suarez attempts to distinguish Nangle on the theory that  
28 there was an underlying "injury" in the form of the Illinois  
29 judgment. However, the Eighth Circuit addressed both the  
30 Illinois judgment and the Missouri contempt judgment as separate  
31 debts each of which was nondischargeable under § 523(a)(6).

1 ///

2  
3 274 F.3d at 484, 485. It seems clear that the Missouri contempt  
4 judgment stood on its own. Id. at 485.

5 The Sixth Circuit Bankruptcy Appellate Panel reached a  
6 similar result in In re Sarff, 242 B.R. 620 (2000), where it  
7 held nondischargeable a \$250 fine for violating an injunction  
8 and \$2,000 in sanctions for discovery violations because of  
9 purposeful redaction of information from documents.

10 In In re Leslie, 271 B.R. 508 (Bankr. E.D. Mich. 2001), a  
11 Chapter 7 debtor did not comply with court orders to surrender  
12 her vehicle to the secured creditor. An order fixing damages  
13 covering depreciation, costs, expenses and attorneys' fees was  
14 entered. Subsequently, it was determined nondischargeable  
15 because the debtor knew that such injuries were substantially  
16 certain to result.

17 Notwithstanding debtor's arguments to the contrary, the same  
18 result obtains in this case. The debtor was present in court  
19 when the restraining order was issued. The later sanctioning  
20 judge found that the earlier judge had explained to debtor that  
21 the burden was on her to vacate a place if Ms. Barrett was there,  
22 or arrived there. The sanctioning court found that debtor stood  
23 outside a school classroom window and glared. Intervention by  
24 the Sheriff's Office was required. The court also found that  
25 debtor used her car to block Ms. Barrett's vehicle, and debtor  
26 refused to leave a school play when Ms. Barrett arrived and was

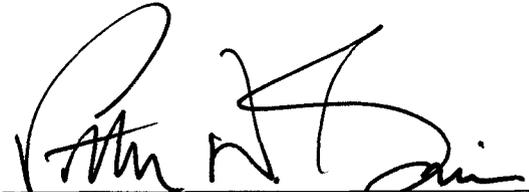
1 noticed by debtor. The sanctioning court found other  
2 instances of violations of the restraining order, as well. All  
3 of the violations are clearly "willful" within the meaning of  
4 § 523(a)(6) because they were aimed at Ms. Barrett and  
5 substantially certain to result in injury to Ms. Barrett.  
6 Ms. Barrett had two choices when the conduct occurred, suffer in  
7 silence, or pursue enforcement of the outstanding order. In  
8 doing so, she was substantially certain to incur fees and costs,  
9 and the monetary sanction imposed was compensatory for those fees  
10 and costs. Debtor's conduct was "malicious" within the meaning  
11 of § 523(a)(6), as well, consisting of knowing and intentional  
12 acts in violation of a known restraining order - and therefore  
13 wrongful, done without just cause or excuse, and necessarily  
14 produced the very injury for which the compensatory sanction  
15 award was made.

16 Conclusion

17  
18 For all the foregoing reasons, the Court finds and concludes  
19 that the debt of \$11,573, awarded on or about September 14, 2005  
20 is nondischargeable, pursuant to 11 U.S.C. § 523(a)(6). No  
21 attorney's fees are awarded to either side.

22 IT IS SO ORDERED.

23 DATED: ~~OCT 10~~ 2007

24  
25   
26 PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court