IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of:

Kurt Eugene Pille	Case No. 12-01008-als7
Debtor	Chapter 7
Farmers Savings Bank	Adv. Pro. 12-30047-als
Plaintiff	
v.	
Kurt Eugene Pille	
Defendant	

MEMORANDUM OF DECISION
(date entered on docket: September 3, 2013)

The matter before the Court arises from Farmers Savings Bank's ("Plaintiff" or "Bank") amended complaint seeking to have a debt owing to it declared non-dischargeable pursuant to 11 U.S.C. section 523(a)(6). Sean Heitmann represents the Bank. The Defendant did not appear at the time of trial. The court has jurisdiction of these matters pursuant to 28 U.S.C. sections 157(b)(1) and 1334. The following findings of fact and conclusions of law are entered by the Court pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014. For the reasons set forth herein, the obligation owing to the Bank from the Defendant is excepted from discharge.

COURSE OF PROCEEDING

Kurt Pille ("Pille" or "Defendant") filed his chapter 7 case on March 30, 2012. The Plaintiff filed a timely complaint requesting that its debt be excepted from discharge pursuant to 11 U.S.C. sections 523(a)(2) and (a)(4). An answer to the complaint was filed on behalf of the

Defendant by Gail Boliver, his attorney of record in the main case. The Bank moved to amend its complaint, which was unopposed, and an order was entered granting the Motion to Amend. The amended complaint removed the allegation under 11 U.S.C. section 523(a)(4), and included, as a basis for the non-dischargeability of its debt, 11 U.S.C. section 523(a)(6).

The Defendant did not file an answer to the amended complaint, but his answer to the original complaint contained general denials and admissions, and the following affirmative defenses: promissory estoppel, statute of frauds, assumption of risk, reliance, failure to mitigate, res judicata, and waiver. Pille additionally asserted that the Bank's claim fails as a matter of law because its allegations are not supported by sufficient evidence to establish a cause of action for fraud, fraudulent inducement, causation, intent to deceive, violation of trust, false representation, or willful and malicious injury under applicable state and federal law.

A Trial Notice and Order was docketed on May 17, 2013 that scheduled the matter to be heard on July 9, 2013. On May 28, 2013, Defendant's counsel of record filed a Motion to Withdraw as Attorney. In granting this Motion the Court's order specifically stated that: "Defendant Kurt Eugene Pille shall obtain new counsel promptly or shall be prepared to proceed pro se." The Plaintiff submitted its pre-trial statement, but no documents were received prior to trial from the Defendant.

On the day of trial, the Defendant did not appear. The docket reflects that no motion to continue was filed by him, or on his behalf. Prior to presenting its case, the Plaintiff requested voluntary dismissal of its causes of action under 11 U.S.C. section 523(a)(2) which was granted with prejudice.

FACTS

The parties entered into two loans on August 30, 2007 related to the Defendant's farming operation. Loan number 1000250474 ("Loan Number 474") was in the original amount of $25,000 and granted the Bank a security interest in three pieces of equipment. Loan number 1000250484 ("Loan Number 484") was in the amount of $41,000 secured by ten head of bred stock cows and ten head of stock cows with calves. Each of these loans was further collateralized by Commercial Security Agreements which provided for a blanket lien on all of the Defendant's farm assets. Both loans went into default and the Bank sent Pille a Notice of Right to Cure for each loan. When the default was not cured, the Bank initiated a state court action to recover its collateral. As a result of this action the Plaintiff obtained possession of the three items of equipment and some livestock which were sold at auction. The Bank contends that it was unable to locate much of its collateral including: six calves, one heifer, and fifty head of stock cows. If all of the collateral subject to the Bank's security agreements had been recovered, the Bank asserts it would have been paid in full on the two loans at issue. As of the trial date, the Plaintiff was owed outstanding balances of $11,420.02 under loan 474 and $31,162.88 under loan 484, plus the accruing interest.

DISCUSSION

The Plaintiff relies upon 11 U.S.C. section 523(a)(6) in objecting to the dischargeability of its debt which provides in relevant part: "[a] discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6) (2012). The Bank bears the burden of proving the two distinct elements identified in the statute by a preponderance of the evidence. See Fischer v. Scarborough (In re Scarborough), 171 F.3d 638,

641 (8th Cir. 1999). Dischargeability actions are narrowly construed against the creditor and in favor of the debtor in order to promote the principle of a "fresh start." See Owens v. Miller (In re Miller), 276 F.3d 424, 429 (8th Cir. 2002). "If an objecting plaintiff fails to establish every element under section 523(a), the indebtedness at issue is dischargeable." Crop Production Services, Inc. v. Grabanski (In re Grabanski), No. 10-30902, Adv. No. 10-7033, 2011 WL 3651339, at *4 (Bankr. D.N.D. Aug. 18, 2011) (citing Grogan v. Garner, 498 U.S. 279, 286 (1991); Simek v. Erdman (In re Erdman), 236 B.R. 904, 910 (Bankr. D.N.D. 1999)). The Court applies this standard even though Pille did not appear at trial.

The first of the two components required under the statute is "willfulness," which has been defined as 'headstrong and knowing' conduct. Scarborough, 171 F.3d at 641 (quoting Johnson v. Miera (In re Miera), 926 F.2d 741, 743-44 (8th Cir. 1991)). To be non-dischargeable, the injury from which the debt resulted must be "a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." Sells v. Porter (In re Porter), 539 F.3d 889, 894 (8th Cir. 2008) (quoting Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998) (emphasis omitted). Injury that occurs due to merely reckless or negligent conduct does not meet the standard required under 11 U.S.C. section 523(a)(6). Geiger, 523 U.S. at 64. This element has been characterized by the Eighth Circuit as subjective, and "requiring proof that the debtor desired to bring about the injury or was, in fact, substantially certain that his conduct would result in the injury that occurred." Blocker v. Patch (In re Patch), 526 F.3d 1176, 1180-81 (8th Cir. 2008). Awareness that conduct will result in harm is all that is necessary; specific intent to bring about a particular consequence is not required to prove willfulness. See id. at 1180.

The remaining issue to be decided arises under the second element required under the statute. To qualify as malicious behavior for purposes of the statute, there must be actions that

are more than reckless or intentional acts that result in harm. See Fischer v. Scarborough (In re Scarborough), 171 F.3d 638, 641 (8th Cir. 1999). "Malice requires conduct more culpable than that which is in reckless disregard of the creditor's economic interests and expectancies. Crop Production Servs., Inc. v. Grabanski (In re Grabanski), No. 10-30902, Adv. No. 10-7033, 2011 WL 3651339, at *7 (Bankr. D.N.D. Aug. 18, 2011) (citing Porter v. Porter (In re Porter), 375 B.R. 822, 827 (B.A.P. 8th Cir. 2007)). "A malicious injury is one resulting from conduct 'targeted at the creditor ... at least in the sense that the conduct is certain or almost certain to cause financial harm.'" Reshetar Sys. v. Thompson (In re Thompson), 458 B.R. 504, 510 (B.A.P. 8th Cir. 2011) (quoting Barclays American/Business Credit, Inc. v. Long (In re Long), 774 F.2d 875, 881 (8th Cir. 1985)); see also Van Daele Bros., Inc. v. Thoms (In re Thoms), 460 B.R. 749, 752-53 (citing Hobson Mould Works, Inc. v. Madsen (In re Madsen), 195 F.3d 988, 989 (8th Cir. 1999)).

At its core, the Plaintiff's argument is that Pille's conversion of its collateral that was subject to its security interest constitutes willful and malicious conduct which supports an exception to discharge under 11 U.S.C. section 523(a)(6). Under Iowa law, conversion is defined as the act of wrongful control or dominion over chattels in derogation of another's possessory right thereto. Jensma v. Allen, 248 Iowa 556, 562, (1957). The sales of livestock by the Defendant were done without the permission of the Bank. According to Eighth Circuit precedent, the inquiry does not end with this conclusion.

> Debtors who willfully break security agreements are testing the outer bounds of their right to a fresh start, but unless they act with malice by intending or fully expecting to harm the economic interests of the creditor, such a breach of contract does not, in and of itself, preclude a discharge.

Long, 774 F.2d at 882. In evaluating whether conduct satisfies the elements of willful and malicious conduct, courts look to whether the "debtor made attempts to conceal the disposition of the collateral from the creditor, placed proceeds in a separate account, or covered up a scheme." Thoms, 461 B.R. at 55 (citations omitted).

The facts presented by the Plaintiff establish that Pille did not merely breach the security agreement in place with the Bank. Although ultimately unsuccessful, workout options were discussed between the parties. When discussing the default and potential work out options with the Bank, the Defendant offered various and contradictory explanations for the missing collateral. He represented that he had sold cattle, and then took contrary positions on whether proceeds were actually remitted to the Bank. The evidence clearly shows that Defendant was buying and selling cattle and placing the proceeds in his personal account(s). The Defendant also represented that the cattle had died. Apparently one cow was killed by lightning, but there is no evidence of disease or substantial death loss in the record.

Defendant's sale of livestock, in which Plaintiff held a right to possessory interest, or at a minimum a security interest, was done with intentional disregard of the Bank's rights, which constitutes more than reckless or negligent behavior. By continuing to sell collateral and failing to properly remit the sale proceeds as required by the security agreement, the Defendant engaged in conduct targeting the Bank which would certainly result in economic harm to the Plaintiff.

Defendant's decision to not participate in the trial renders the facts presented by the Plaintiff unopposed. Even the most liberal and generous interpretation of these facts in favor of the Defendant does not result in a conclusion that his conduct was not willful and malicious. The Plaintiff has established a prima facie case under 11 U.S.C. section 523(a)(6).

For the reasons stated herein

IT IS ORDERED that

1. The obligations owing to the Plaintiff under Loan Numbers 474 and 484 are excepted from discharge pursuant to 11 U.S.C. section 523(a)(6);

2. Judgment shall enter accordingly.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Adversary Proceeding
Kurt Eugene Pille, Defendant