

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
TRACI LYNN BRADEN, : Case No. 92-174-C H
Debtor. : Chapter 7

BEADEL DISTRIBUTING CO., INC., :
Plaintiff, : Adv. No. 92-92079
vs. :
TRACI LYNN BRADEN, :
Defendant. :

ORDER ON MOTION FOR SUMMARY JUDGMENT AND DISCHARGEABILITY

On July 9, 1992 by telephonic hearing, the Court heard Defendant's Motion for Summary Judgment. On November 16, 1992 the Plaintiff's complaint to determine dischargeability of a debt came on for trial. Both the motion for summary judgment and the trial were taken under advisement. In both proceedings Tom W. George represented the Plaintiff, Beadel Distributing Co., Inc. (hereafter Beadel); and Randall C. Stravers represented the Defendant-Debtor, Traci Lynn Braden (hereafter Braden). The parties have submitted trial briefs and the Court considers the matter fully submitted. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The Court now enters its findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. As a result of a motor vehicle accident that

occurred on or about July 29, 1988, Richard Fordyce filed a Petition at Law in Iowa District Court in and for Mahaska County on July 30, 1990. The petition named, among others, Beadel Distributing Co., Inc. and Traci Lynn Braden as defendants.

2. Count I of the Petition alleged Braden was negligent in driving her automobile while under the influence of alcohol and thereby injured Fordyce by striking him from behind while he was riding his bicycle. Wherefore, Fordyce demanded judgment against Braden to compensate him for his injuries and damages.

3. Count IV of the Petition alleged that employees, agents and servants of Beadel Distributing Co., Inc. served alcohol to Braden to the point where she became intoxicated or while she was intoxicated. Count IV further alleges that after being so served, Braden operated her automobile while intoxicated and in a negligent manner and caused damages to Fordyce. Fordyce charges that his injuries were a direct and proximate result of the actions of Beadel and that he is therefore entitled to a judgment for damages against Beadel Distributing Co., Inc.

4. Count V of the petition states that defendant Jeffrey T. Ridley was a police officer of the defendant City of Oskaloosa on duty at the time of the accident. Count V further alleges that Ridley stopped Braden prior to the accident and knew or should have known Braden was intoxicated but negligently permitted or directed Braden to resume

operation of her motor vehicle. Alleging that Ridley's negligence was a direct and proximate cause of the accident, Fordyce demanded judgment against Ridley and the City of Oskaloosa. Fordyce v. Berry Enters., et al., No. CL0380-0790 (D. Iowa filed July 30, 1990).

5. On November 27, 1991, Beadel filed a Crossclaim for Contribution against Braden praying for judgment over and against her and that her fault be compared and enforced with that of other parties to the state court action described above. Crossclaim for Contribution, Fordyce v. Berry Enters., et al., No. CL 0380-0790 (D. Iowa Crossclaim filed Nov. 27, 1991).

6. On January 21, 1992, Braden filed her petition requesting relief under Chapter 7 of the Bankruptcy Code.

7. On April 20, 1992, Beadel filed this adversary proceeding seeking a determination that any debt owed by Braden to Beadel by virtue of Beadel's crossclaim against Braden in the state court action is nondischargeable pursuant to 11 U.S.C. § 523(a)(9).

Beadel in its Complaint also requested relief from the automatic stay imposed by 11 U.S.C. § 362 in order to continue its claim against Braden.

8. On April 28, 1992, Braden was granted a discharge.

9. With regard to the allegations underlying this matter, the Court makes the following findings. On the night of July 28, 1988 Braden left work at approximately 10:15 p.m.

Between the time of her departure from work and the time of

2:30 a.m., when the accident occurred, Braden was drinking almost continuously and she admitted to having had "a few beers" prior to the accident. Her balance was affected; her speech impaired; she broke a bottle in a convenience store parking lot in anger in the presence of a police officer; she drove erratically and recklessly immediately before the accident; and she drove off the main traveled portion of the roadway on several occasions. She left the scene of an accident after it was obvious she had struck something while traveling down the highway. She failed to stop and report her actions even when she knew or, as a reasonable person, should have known that someone was injured in the vicinity where her vehicle had struck something and she pleaded with witnesses not to say anything after the accident. People who knew her and were with her immediately before Fordyce was struck believed that she was intoxicated at the time of the accident.

DISCUSSION

MOTION FOR SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). To preclude the entry of summary judgment, the nonmovant must make a sufficient showing on

every essential element of its case for which it has the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552 (1986); Continental Grain Co. v. Frank Seitzinger Storage, Inc., 837 F.2d 836, 838 (8th Cir. 1988). Rule 56(e) requires the nonmoving party to go beyond the pleadings and by affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e); Celotex, 477 U.S. at 324; Johnson v. Schopf, 669 F.Supp. 291, 295 (D. Minn. 1987). The proof that the nonmoving party must produce is not precisely measurable, but it must be "enough evidence so that a reasonable jury could return a verdict for the nonmovant." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257, 106 S.Ct. 2505, 2510 (1986); Johnson, 669 F. Supp. at 295-96. On a motion for summary judgment, the court views all the facts in the light most favorable to the nonmoving party, and gives that party the benefit of all reasonable inferences that can be drawn from the facts. United States v. City of Columbia, Mo., 914 F.2d 151, 153 (8th Cir. 1990); Woodsmith Publishing Co. v. Meredith Corp., 904 F.2d 1244, 1247 (8th Cir. 1990).

Braden moves for summary judgment arguing that the underlying common liability to state-court plaintiff Fordyce has been discharged in bankruptcy as to Braden; therefore, under state law, Beadel can no longer make any claim against Braden for contribution. Citing, among other cases, Pepper v. Star Equipment, 484 N.W.2d 156 (Iowa 1992), Braden argues that

under Iowa's Comparative Fault Statute fault may be assessed only against a party that may be liable. To assess fault against an entity, a specific claim must be made against that entity. Furthermore, contribution rests on common liability, liability that can be enforced against each tortfeasor individually. Beadel's claim against Braden is based on contribution, the common liability each of them may have to plaintiff Fordyce, not for personal injury or damage sustained by Beadel. Because the claims the other state court litigants may have had against Braden were discharged, argues Braden, Beadel no longer has a claim for contribution. No liability may be attributed to Braden because the underlying common liability has been discharged in bankruptcy. That is, under the reasoning of Pepper, no claim remains against Braden on behalf of any other parties (because it's been discharged); therefore, no common liability exists and no fault can be assessed to Braden.

Beadel argues that under Iowa law its claim for contribution is an action independent of the underlying claim Fordyce has made against Braden and Beadel. Thus, while Fordyce's claim may be discharged, the effect on Beadel's contribution claim is nil. See Schreier v. Sonderleiter, 420 N.W.2d 821, 823-24 (Iowa 1988). To allow Braden to discharge Beadel's contribution claim would contravene the intent underlying § 523(a)(9), argues Beadel.

11 U.S.C. § 727(b) provides that except as provided in § 523, a discharge under § 727(a) discharges a debtor from all

debts that arose prepetition. 11 U.S.C. § 523(a)(9) provides that a discharge under section 727 does not discharge an individual debtor from any debt for death or personal injury caused by debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

A § 523 complaint other than under § 523(c) may be filed at any time. Fed.R.Bankr.P. 4007(b). A complaint filed pursuant to § 523(a)(9) is not a complaint under § 523(c). Thus, even though the other parties that may have a claim against Braden have not filed § 523(a)(9) complaints against her, their claims against her were not discharged under § 727(b) if they fall into the category of debts covered by § 523(a)(9).

This complaint may not be dismissed by summary judgment. Defendant's reliance on Pepper v. Star Equipment, 484 N.W.2d 156 (Iowa 1992) is misplaced. Pepper held that a defendant in a products liability action could not implead, for the purpose of fault apportionment, a third-party defendant protected against a personal judgment by federal bankruptcy law. In this case, if Braden's debt is established and nondischargeable pursuant to § 523(a)(9), she is not protected against a personal judgment by bankruptcy law and Pepper does not apply. Indeed, there is a genuine issue of fact raised by the pleadings, depositions, and affidavits on file as to whether this debt is nondischargeable pursuant to § 523(a)(9).

Defendant's argument that the claim underlying Plaintiff's claim has been discharged in bankruptcy must also

fail. First, Beadel's cross-claim for contribution is an action independent of the underlying claim Fordyce makes against Braden and Beadel. See Schreier v. Sonderleiter, 420 N.W.2d 821, 823-24 (Iowa 1988). Second, if the debt is one that qualifies under § 523(a)(9), it is not discharged by entry of the discharge Braden received. 11 U.S.C. § 727(b). A complaint to determine dischargeability under § 523(a)(9) may be brought at any time. Fed.R.Bankr.P. 4007(b). Thus, a creditor with such a debt may continue its collection efforts once the stay imposed by 11 U.S.C. § 362 is lifted. 11 U.S.C. § 524 bars only the continuation of actions to collect discharged debts. 11 U.S.C. § 524(a)(2).

Because Braden is not entitled to judgment as a matter of state law and because there exist genuine issues as to the material facts concerning the nature of the debt, the motion for summary judgment will be denied.

DISCHARGEABILITY UNDER § 523(a)(9)

To render this debt nondischargeable, Plaintiff must prove by a preponderance of the evidence two elements: 1) that the debt arises from death or personal injury caused by Debtor's operation of a motor vehicle and 2) that the operation of the vehicle was unlawful because debtor was intoxicated. The parties have stipulated that the crossclaim debt arises from personal injury caused by Debtor's operation of a motor vehicle, so the only element of § 523(a)(9) in issue is whether Braden operated her motor vehicle in an unlawful manner because she was intoxicated. Under Iowa law a

person commits the offense of operating while intoxicated if the person operates a motor vehicle while under the influence of an alcoholic beverage. Iowa Code § 321J.2(1)(a) (1993). A person is "under the influence" when, by drinking liquor and/or beer, her reason or mental ability has been affected, her judgment is impaired, her emotions are visibly excited, or she has, to any extent, lost control of bodily actions or motions. State v. Cunningham, 463 N.W.2d 887, 890 (Iowa Ct. App. 1990); Iowa Criminal Jury Instruction 2500.5.

The clear and convincing evidence put on at trial proved that Braden's operation of her vehicle was unlawful because she was intoxicated. Her debt is, therefore, nondischargeable. Witnesses testified that shortly before the accident Braden's balance seemed to have been affected, that her speech was thick-tongued and that she had a carefree attitude typical of when she has had too much to drink. That her judgment was impaired is evidenced by her conduct in breaking a bottle and swerving in and out of traffic, as observed by a police officer. While she may have feared the consequences of reporting the accident to the authorities, the fact that she did not, even though personal injury was involved, further indicates how her judgment was impaired. Finally, the fact she could not keep the car on the road while driving shows that she had lost control of her bodily actions and motions. Accordingly, the Court finds Braden operated her vehicle unlawfully because intoxicated.

ORDER

IT IS ACCORDINGLY ORDERED that Defendant's motion for summary judgment is denied.

IT IS FURTHERMORE ORDERED that Defendant's debt to Plaintiff is found to be nondischargeable pursuant to 11 U.S.C. § 523(a)(9) in accordance with the above discussion.

Dated this day of 21st day of April, 1993.

Russell J. Hill
U.S. Bankruptcy Court