

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

RORY G. INGOLDBY

Debtor

CASE NO. 97-64038

Chapter 7

JEFFREY HAYES

Plaintiff

vs.

ADV. PRO. NO. 97-70226A

RORY G. INGOLDBY

Defendant

APPEARANCES:

SETRIGHT, CIABOTTI & LONGSTREET
Attorneys for Plaintiff
313 Montgomery Street
Syracuse, New York 13202

MICHAEL J. LONGSTREET, ESQ.
Of Counsel

GOLDBERG & FABIANO
Attorneys for Defendant
1408 W. Genesee Street
Syracuse, New York 13204

HAROLD GOLDBERG, ESQ.
Of Counsel

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court has before it a motion for summary judgment filed by Jeffery Hayes (“Plaintiff”) in connection with the adversary proceeding commenced by Plaintiff on August 18, 1997. In his complaint, Plaintiff seeks a determination that a certain debt arising from a judgment rendered in the Schroepel, New York Town Court on May 13, 1997, in the amount of \$3,015

is nondischargeable pursuant to § 523(a)(6) of the Bankruptcy Code (11 U.S.C. §§ 101-1330) (“Code”).

The motion initially appeared on the Court’s calendar at Syracuse, New York on October 21, 1997, and was consensually adjourned thereafter for the parties to file memoranda of law. The motion was finally submitted for decision on February 3, 1998.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction of this adversary proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(a), (b)(1) and (2)(I).

FACTS

According to the decision (“Decision”) of the Hon. Frances A. Ciardullo, Town Justice, Plaintiff and Rory Ingoldby (“Debtor”) were involved in an altercation in a bar on February 17, 1996. Both parties were represented by counsel at the hearing before Justice Ciardullo on May 9, 1997. After hearing testimony, Justice Ciardullo found that “there is no question that Rory Ingoldby struck Jeff Hayes in the head while holding a beer bottle in his hand.”

At the hearing Plaintiff testified that he was hit five times before he passed out. One witness testified that he saw the Debtor hit the Plaintiff at least 2-3 times and the Debtor admitted that he hit the Plaintiff twice. Justice Ciardullo made the finding that “repeated striking of Mr. Hayes with a beer bottle was not reasonable force under the circumstances. . . . Defendant should

have realized the beer bottle was likely to break upon impact. Mr. Ingoldby was not justified in continuing to strike Mr. Hayes in the head with the shattered bottle after the first blow. The later blows constituted excessive force.”

Justice Ciardullo awarded the Plaintiff \$3,000 to cover his medical bills and lost profit while he was unable to work, as well as court costs. According to Plaintiff, no punitive damages were sought and none were awarded because \$3,000 was the maximum recovery possible in Town Court. Debtor’s counsel points out that the Debtor was found not guilty on criminal charges and, therefore, the Court should conclude that the Debtor “did not possess an intent sufficient to find him guilty of criminal conduct” Debtor’s counsel argues that without a specific finding of intent, the Court should not grant summary judgment on the issue of whether the Debtor’s actions in striking Plaintiff were willful and malicious.

DISCUSSION

There is disagreement among the various circuits concerning whether Code § 523(a)(6) requires an intentional act that results in an injury or an act done with the intent to cause injury. *See Printy v. Dean Witter Reynolds, Inc.*, 110 F.3d 853, 856 (1st Cir. 1997).¹ The Court of Appeals for the Second Circuit, while citing to 3 Lawrence P. King et al., *Collier on Bankruptcy*

¹ On March 3, 1998, the United State Supreme Court in *Kawaauhau vs. Geiger*, No. 97-115 (U.S. March 3, 1998) held that in order to succeed under Code § 523(a)(6) a plaintiff must establish a deliberate and willful injury “not merely a deliberate or intentional act that leads to injury,” *slip op* at 4. The Court concluded that “debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6).” *Slip op* at 7. The case involved the plaintiffs efforts to render non-dischargeable a state court medical malpractice judgment against a debtor physician.

¶ 523.16[1] at 523-110 (15th ed. 1996) for the statement that “malicious” means “wrongful and without just cause or excuse, even in the absence of personal hatred, spite, or ill-will,” also acknowledges the Eleventh Circuit’s definition that “malicious means wrongful and without just cause *or excessive* even in the absence of personal hatred, spite or ill-will.” *See Navistar Financial Corp. v. Stelluti (In re Stelluti)*, 94 F.3d 84, 87 (2d Cir. 1996), quoting *In re Walker*, 48 F.2d 1161, 1164 (11th Cir. 1995) (emphasis added).

In this case, Justice Ciardullo made a specific finding that Debtor’s conduct in continuing to strike the Plaintiff was not justified under the circumstances and she considered the later blows by the Debtor as constituting excessive force. This situation is to be distinguished from *Patane v. Mariano (In re Mariano)*, Case No. 96-62220, Adv.Pro. 96-70215 (Bankr. Sept. 25, 1997) in which this Court concluded that the plaintiff had failed to establish malice on the part of the defendant/debtor. In that case, the plaintiff grabbed the defendant and the defendant retaliated by striking plaintiff a single blow before exiting the premises. The facts presented herein are more like that of the case of *Williams v. Slee (In re Slee)*, 40 B.R. 825 (Bankr. D.Vt. 1984) in which the defendant hit the plaintiff in self-defense after the plaintiff struck him with a “sucker punch.” The court found that the defendant had struck the plaintiff several times with what it described as “rather severe blows”. *See id.* at 827. The court concluded that instead of retreating after the initial blow, the defendant had “vigorously attacked the Plaintiff for the purpose of wantonly inflicting bodily injury.” *Id.* at 828. As a result, the court determined the debt to be nondischargeable as the plaintiff had established that the actions of the defendant were “clearly willful and malicious.” *Id.*

The argument of Debtor’s counsel that the Debtor was found not guilty of criminal

conduct is not persuasive. Not only has the Court not been apprised of the criminal charges brought against the Debtor, but the Court also notes that the standard in establishing guilt in criminal court is “beyond a reasonable doubt.” This is a higher standard than that necessary for establishing nondischargeability pursuant to Code § 523(a), namely “preponderance of the evidence.” *See Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 661, 112 L.Ed.2d 755 (1991). The fact that the prosecution may not have been able to prove the Debtor guilty “beyond a reasonable doubt” does not prevent this Court from concluding that the preponderance of the evidence presented supports a finding that the Debtor’s actions were both willful and malicious.

In this case the doctrine of collateral estoppel is applicable to the Court’s determination pursuant to Code § 523(a). Collateral estoppel is available when (1) the issues sought to be precluded are identical to those involved in the prior action; (2) the issues’ determination in the prior action was essential to the prior judgment; (3) the issues were determined by a valid and final judgment; and (4) the issues were actually litigated in the prior action.” *See Patane v. Mariano (In re Mariano)*, Case No. 96-62220, Adv.Pro. 96-70215, slip op. at 7 (Bankr. Dec. 13, 1996) (citations omitted).

The issue before Justice Ciardullo was “whether Mr. Ingoldby’s actions were justified because he acted in self defense.” It is evident from Justice Ciardullo’s synopsis of the issue before her that she not only found that the Debtor had acted, but also that he had acted with the *intent* to defend himself. Thus, there was an intentional act on the Debtor’s part, whether or not he intended injury to the Plaintiff. Furthermore, the issues were determined by a valid and final judgment, and Justice Ciardullo’s award of damages in favor of the Plaintiff and her dismissal of the Debtor’s counterclaim evidence a finding that the force used by the Debtor in self-defense

was not reasonable and, as Justice Ciardullo expressly found, excessive under the circumstances. Unlike the situation in *Mariano* in which the plaintiff had received a default judgment in the state court, the Plaintiff and Debtor herein were represented at the hearing before Justice Ciardullo and had an opportunity to present both sides of the case. Thus, the matter was actually litigated for purposes of collateral estoppel.

Finally, it would appear that the test established by the Supreme Court in *Kawaauhau* has been met. The repeated striking of the Plaintiff with a beer bottle would appear to evidence an act to deliberately and intentionally injure him rather than a deliberate and intentional act which incidentally led to his injury.

Therefore, there is no genuine issue of material fact which precludes the Court from granting the Plaintiff's motion for summary judgment. This Court concludes that the Plaintiff has established by a preponderance of the evidence that Debtor's actions were both willful and malicious and the judgment rendered by Justice Ciardullo and the debt arising therefrom is nondischargeable.

Dated at Utica, New York

this 10th day of March 1998

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge