UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA

In re: Case No.03-12040 DHW
Chapter 7

JASON DWIGHT LUDLAM,

Debtor.

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JONATHAN ERIC RONEY,

Plaintiff,

v. Adv. Proc. No.03-1115 DHW

JASON DWIGHT LUDLAM,

Defendant.

MEMORANDUM OPINION

On October 10, 2003, Jonathan Eric Roney (hereinafter, "Roney") filed this complaint to determine the dischargeability of his claim against Jason Dwight Ludlam (hereinafter, "Ludlam"), who is the debtor in the underlying chapter 7 bankruptcy case. Therein, Roney asserts that damages awarded him through the State court default judgment are not dischargeable under 11 U.S.C. §523(a)(6).[1]

On November 12, 2003, Ludlam moved to dismiss the adversary proceeding for failure to state a claim upon which relief could be had, under Fed. R. Bankr. Proc. 7012(b)(6), or alternatively for summary judgment, under Fed. R. Bankr. Proc. 7056.

The undisputed facts here are that Ludlam furnished alcoholic beverages

[1] 11 U.S.C. §523(a)(6) excludes from discharge debts for "willful and malicious injury by the debtor to another entity or to the property of another entity."

to a minor. Thereafter, the minor, while intoxicated, personally injured Roney in an automobile accident. Prior to the accident, Ludlam was not acquainted with Roney. In May of 1997 Roney was awarded a default judgment against Ludlam by the Circuit Court of Barbour County, Alabama in the amount of $250,000 consisting of $125,000 compensatory damages and $125,000 punitive damages.

The Supreme Court in *Kawaauhau v. Geiger*, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998) addressed the issue of whether the "willful and malicious" discharge exception of §523(a)(6) covers acts done intentionally which result in injury or only acts done with actual intent to injure. *Id* at 60, 977. The Court held that " . . . nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Id* at 61, 977.

Here, the undisputed facts, viewed in a light most favorable to Roney, show only that Ludlam intended the act of furnishing alcohol to a minor. The facts, however, fall short of showing that he intended the resulting injury to Roney as a consequence of that act. Hence, as a matter of law, Roney's claim falls outside the §523(a)(6) exception to discharge.

Finally, Roney contends that the punitive damage portion of his claim against Ludlam should be excepted from discharge because, under Alabama law, punitive damages constitute penalties. The court is not persuaded.

Under 11 U.S.C. §523(a)(7), debts that are for "a fine, penalty, or forfeiture *payable to and for the benefit of a governmental unit*, . . . " are excepted from discharge. (Emphasis added). Even if punitive damages in Alabama take the form of a penalty as Roney suggests, in the case *sub judice* they are nevertheless dischargeable because they are payable to Roney and not to a governmental unit. Simply put, for a penalty to constitute a nondischargeable debt, it must be shown that the penalty was payable to and for the benefit of the government.

For these reasons the defendant's motion for summary judgment is due to be GRANTED and the adversary proceeding must be DISMISSED. A judgment consistent with this opinion will enter separately.

Done this the 16th day of January, 2004.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Albert H. Adams, Jr., Attorney for Plaintiff
Christie G. Pappas, Attorney for Plaintiff
Donald J. McKinnon, Attorney for Defendant