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Adviser Bankruptcy Law

O.J. Simpson's Civil Judgment Is Not Dischargeable

By Howard Madris

O.J. Simpson will be indebted to the families of Nicole Brown Simpson and Ronald Goldman for the rest of his life unless he pays the full amount of the huge civil judgment against him or the judgment is overturned on appeal.

Even if Simpson files for Chapter 11 bankruptcy protection following the \$33.5 million verdict, he cannot discharge either the compensatory or punitive portion of the judgment. Bankruptcy Code Section 523(a)(6) precludes a debtor from discharging any debt "for willful and malicious injury by the debtor" to a person.

Holdings from the 9th U.S. Circuit Court of Appeals illustrate that both portions of the civil judgment are nondischargeable.

In *In re Adams*, 761 F.2d 1422, 1427-28 (9th Cir. 1985), the 9th Circuit held that both the punitive and compensatory portions of a drunk-driving damage award were nondischargeable under Section 523(a)(6). (Under the amended Bankruptcy Code, drunken-driving debts are now nondischargeable pursuant to Section 523(a)(9).)

In *Adams*, the debtor argued that only punitive damages could be nondischargeable because only those damages are designed to punish a wrongdoer for intentional, willful and malicious conduct. However, the 9th Circuit held that if a debtor engages in willful and malicious injury, "[a]ll liabilities resulting therefrom are nondischargeable," including, in addition to punitive damages, liabilities for "actual compensation," i.e., compensatory damages.

Subsequently, in *In re Britton*, 950 F.2d 602, 605-07 (9th Cir. 1991), the 9th Circuit, relying on *Adams*, held that both the compensatory and punitive portions of a judg-

ment are nondischargeable where the debtor "willfully and maliciously" misrepresented himself as a doctor and arranged for a surgical procedure in which tubing was improperly left in the judgment creditor's abdomen.

The Chapter 7 debtor in *Britton* asserted that he was entitled to discharge the punitive portion of the damages. However, the 9th Circuit rejected the debtor's narrow interpretation of the word "debt." The court held that punitive damages are covered by Section 523(a)(6) as nondischargeable debts for willful and malicious injury.

The 9th Circuit also rejected the debtor's contention that Section 523(a)(7), which provides that certain fines, penalties and forfeitures payable to governmental units are nondischargeable, precludes private entities from pursuing nondischargeable judgments for punitive damages under Section 523(a)(6).

Furthermore, although a central purpose of the Bankruptcy Code is to afford a debtor a fresh start by discharging all of the debtor's obligations, only an "honest but unfortunate debtor" is entitled to such relief. A debtor liable for willful and malicious injury or for certain other misdeeds is not entitled to such a fresh start, the court added.

Similarly, in *In re Klaus*, 181 B.R. 487, 493 (Bankr. C.D. Cal. 1995), the bankruptcy court relied on *Britton* and *Adams*. The *Klaus* court held that punitive damages for willful and malicious injury are nondischargeable under Section 523(a)(6) where the debtor engaged in a scheme to defraud creditors.

To determine whether a debtor committed willful and malicious injury, a bankruptcy court must apply state-law collateral

estoppel principles. Under California law, collateral estoppel bars litigation under the following circumstances:

■ The issue decided in the prior case is identical to the issue presented in the second case.

■ There was a final judgment on the merits.

■ The party against whom estoppel is asserted is the same in both cases. See *In re Bugna*, 33 F.3d 1054, 1057 (9th Cir. 1994).

If or when the civil judgment becomes final, a bankruptcy court would most likely hold that Simpson's debt to the victims' families is for willful and malicious injury. The Simpson civil judgment was based on the same issues as Section 523(a)(6).

For example, the jury found that Simpson willfully and wrongfully caused Ronald Goldman's death. Furthermore, the jury found that Simpson acted with malice in battering Goldman and Nicole Brown Simpson. Indeed, under California law, punitive damages can only be awarded in this action if the defendant acted with malice or oppression. California Civil Code Section 3294.

If Simpson files for bankruptcy, and the bankruptcy court determines that he committed willful and malicious injury, the court would hold that the entire amount of the \$33.5 million civil judgment is nondischargeable under Section 523(a)(6).

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