11 USC § 523(a)(4)
11 USC § 523(a)(6)

Ranger Enterprises, Inc.
v. Anthony Lee McBride
(In re Anthony Lee McBride

CV 00-1324
Adv. No. 99-3303-rld
Case No. 399-31214-rld7

11/16/00 District Court (Judge Anna Brown) aff'g RLD

Unpublished

Appeal was taken from the bankruptcy court's Order Denying Summary Judgment ("Order") to plaintiff and the Summary Judgment ("Judgment") entered in debtor/defendant's ("Debtor") favor. The Order and Judgment were entered based upon the bankruptcy court's oral findings. The bankruptcy court found that Ranger had not met the standards of §§ 523(a)(4) and 523(a)(6) for a denial of Debtor's discharge, in that Debtor's defalcation did not occur while Debtor was acting in a fiduciary capacity under an express or technical trust and Debtor's conduct did not constitute willful and malicious injury. The District Court affirmed.

P00-5(23)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re	)	CV 00-1324
	)	
ANTHONY LEE MCBRIDE,	)	OPINION AND ORDER
	)	
Debtor.	)	
	)	
_____	)	
	)	
RANGER ENTERPRISES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
	)	
ANTHONY LEE MCBRIDE,	)	
	)	
Defendant.	)	

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ECF (57)

BROWN, Judge.

This matter comes before the Court on appeal from a Judgment of the Bankruptcy Court for the District of Oregon. The Bankruptcy Court granted Appellee McBride's Motion for Summary Judgment to dismiss Appellant's Complaint To Except Debt from Discharge and entirely discharged Appellant's claims against Appellee. The Bankruptcy Court also denied Appellant Ranger's Motion for Summary Judgment to except from discharge the debt it was owed by Appellee.

For the reasons discussed below, the Court affirms the Bankruptcy Court's rulings that exceptions to discharge under 11 U.S.C. §§ 523(a)(4) and 523(a)(6) are inapplicable and that Appellee's debt to Appellant is dischargeable.

JURISDICTION

This Court has jurisdiction over the appeal of the Bankruptcy Court's final Order and Judgment granting Appellee's Motion, as well as Order denying Appellant's Motion,[1] under 28 U.S.C. § 158(a). Appellant filed a timely notice of appeal under Bankruptcy Rule 8002(c)(2).

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[1]The Bankruptcy Court's Interlocutory Order denying Appellant's Motion for Summary Judgment became final for appeal purposes upon entry of summary judgment. See Krishnamurthy v. Nimmagadda (In re Krishnamurthy), 209 B.R. 714, 718 (9th Cir. BAP), aff'd, 125 F.3d 858 (9th Cir. 1997), cert. denied, 524 U.S. 930 (1998) (interlocutory order to dismiss counterclaim ripe for appeal upon entry of summary judgment).

FACTUAL BACKGROUND[2]

On or before November 25, 1991, Gerry Hollenbach and Pat McLain, two principals of Appellant Ranger Enterprises, Inc., invented an improved work light called the Caddy Light. In late 1991 Ranger began exploring ways to commercialize the Caddy Light. Initially, Ranger desired to manufacture the Caddy Light and market it through distributors. Ranger began investigating sources of parts.

To obtain low-price parts, McLain contacted Electripak, which referred him to Appellee Anthony Lee McBride, a field representative for Electripak. McLain contacted McBride. On November 25, 1991, McBride made a sales call on Ranger. Hollenbach and McLain took McBride to a room in which work on the Caddy Light took place to show McBride the parts Ranger wanted to buy.

When McBride saw the Caddy Light, he became very excited. He said the Caddy Light had great potential, it would win an award at a fair in Chicago, and Ranger could sell at least 50,000 Caddy Lights a year in the Pacific Northwest alone. McBride wanted to market the light.

McBride suggested having the Caddy Light manufactured and

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[2]This fact summary is taken from Plaintiff's Concise Statement of Material Facts and Defendant's Response To Concise Statement of Facts (with Statement of Additional Facts) pertaining to Appellant's Motion, as well as Defendant's Statement of Facts regarding Defendant's Motion. No other factual statements or responses by the parties were included in the Excerpt of Record for this Appeal, and the contents of any such additional fact statements were not considered.

distributed by Electripak and persuaded Ranger that working with a national distributor like Electripak would be the best way to achieve Ranger's goals. At McBride's request, Ranger sold a Caddy Light prototype to McBride for consideration by Electripak. McBride said he would make money if Electripak decided to sell the light. McBride knew the information disclosed by the appearance of the Caddy Light in his possession had value. McBride also knew Ranger did not want the information used without compensation. Ranger never told McBride the design of the Caddy Light was confidential information.

McBride and Ranger agreed McBride would find a distributor for the Caddy Light. McBride anticipated working with Hollenbach to sell the Caddy Light and understood Ranger trusted McBride to help Ranger make money with the light. McBride entered into a confidential relationship with Ranger and asked permission to show the Caddy Light to certain buyers. McBride knew Ranger trusted him not to show the light to someone who would not work with Ranger.

In addition to McBride, Ranger employed other sales representatives, Binnsco (a marketing representative) and Electricord (a manufacturer of electrical cords) to market its light. Chuck Potter, Ranger's sales representative for Oregon, Washington and Idaho, was not told and did not consider the Caddy Light to be confidential.

Initially, McBride showed the Caddy Light to Electripak personnel and to three trusted buyers for Costco, Fred Meyer, and

Eagle Hardware stores. On January 24, 1992, McBride sent a letter to Ranger regarding a proposed meeting with Electripak. In the letter McBride stated, "[W]e are both getting closer to making some money with your Caddy-Light idea," and further discussions should include "how we can all benefit from a partnership" and "future products, more partnerships."

On February 5, 1992, a meeting was held with J.D. McIngvale, a representative of Electripak. At McBride's request, Ranger also brought another Caddy Light to the meeting to give to Electripak. An agreement was discussed whereby, among other things, Electripak would manufacture and distribute the Caddy Light and pay a royalty to Ranger. After the meeting, Ranger wrote to Electripak proposing an eight-percent royalty and Electripak wrote back proposing a three-percent royalty. In a July 31, 1992, telephone call, McIngvale told Hollenbach it would be at least six months before Electripak could make a decision on manufacturing the Caddy Light. Additionally, McIngvale told Hollenbach that McBride had left Electripak and was then employed by Leen and Associates, Inc.[3]

When McBride left Electripak, he had one of the Caddy Lights in his possession. Hollenbach tried unsuccessfully on a number of occasions to reach McBride by telephone at Leen. On August

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[3]Leen & Associates, Inc., was originally named as a defendant in Ranger's United States District Court action. The United States District Court's decision, which was affirmed by the Ninth Circuit, did not allow recovery on Ranger's tort claims and found that Leen had no vicarious liability. See Memorandum at 3 (September 21, 1998).

26, 1992, McBride called Hollenbach. McBride asked, "[W]hat would you think about having these [Caddy Lights] made offshore?" Hollenbach answered, "[Y]es, as long as there is money in it for [Ranger], that would be fine." McBride stated he would do some checking and would get back in touch with Hollenbach. Ranger, however, heard nothing further from McBride.

Shortly after McBride went to work for Leen, he showed a Caddy Light to Monte Leen[4] who had never before seen a lamp like it, and who thought it was a great idea. At the time he showed the light to Leen, McBride knew Ranger had been selling the light on the open market for six months. McBride thought Leen would work with and deal fairly with Ranger in marketing the light.

McBride had already shown the light to Monte Leen when he placed the August 1992 telephone call to Hollenbach. McBride knew when he disclosed the light to Leen he was in a confidential relationship with Ranger and it was wrong to give another company commercially-sensitive information. McBride also thought helping Leen with a new product would advance his position with Leen and the new product potentially would benefit both of them.

Soon after McBride's disclosure of the Caddy Light to Monte Leen, Leen sent it to a Taiwanese manufacturer to be replicated (i.e., "knocked off"). In March 1993 Leen introduced its first Caddy Light knock-off, a Model L-850 "Mighty Light." McBride

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[4]Monte Leen was at one time a named defendant in Ranger's United States District Court action. Claims against Monte Leen were dismissed for lack of personal jurisdiction. See Memorandum at 6.

helped introduce Leen's knock-off product at a Chicago trade show in March 1993. In October 1993, Hollenbach saw the knock-off product for sale at a Fred Meyer store. Hollenbach looked at the package and saw it was manufactured by McBride's company.

When contacted by Ranger's attorney who was investigating the knock-off, McBride made false statements about his role in showing the Caddy Light to Leen. At his initial deposition in this action, McBride gave false testimony: He said he did not know Leen had knocked off the Caddy Light and did not know how Leen got the idea. McBride corrected his testimony at his second deposition.

Leen ultimately established a market position for its knock-off, and Ranger sustained $ 425,000 in damages.

PROCEDURAL SUMMARY

In 1995 Ranger filed suit against Leen and McBride. In an October 5, 1995, Sealed Opinion, the United States District Court granted partial summary judgment and dismissed Ranger's fraud claims. In January 1996 a jury found McBride liable on Ranger's claims of misappropriation of confidential information, breach of implied contract, and tortious breach of the covenant of good faith and fair dealing. The jury also found Leen vicariously liable on the tort claims, awarded compensatory damages of $ 425,000 against each, and awarded punitive damages of $ 450,000 against Leen. Following the jury trial, Leen and McBride filed motions for judgment as a matter of law.

On July 1, 1996, the United States District Court ruled that

Ranger's misappropriation of confidential information and tortious breach of good faith and fair dealing claims were preempted by the Oregon Trade Secrets Act (OTSA);[5] thus, tort claims could not be asserted against Leen based on vicarious liability. In alternative rulings, the trial court assumed no preemption and held the evidence and relevant law supported Ranger's misappropriation of confidential information claims; Ranger's claims for tortious breach of good faith and fair dealing were insufficient because evidence did not support a finding of a special relationship between Ranger and McBride; and McBride's conduct was insufficient under Oregon law to support an award of punitive damages. The United States District Court found there was sufficient evidence McBride had broken his implied contract with Ranger by disclosing the light to Leen, but reduced Ranger's compensatory damages to $213,000.

Ranger appealed. On September 21, 1998, the Ninth Circuit affirmed the trial court's ruling that the OTSA preempted Ranger's misappropriation of confidential information claims; reversed the trial court's decision that Ranger's tortious breach of good faith and fair dealing claims were preempted and adopted the court's alternative finding there was insufficient evidence of a special relationship to support the jury's finding of liability; and affirmed the trial court's alternative ruling that

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[5]The trial court ruled, and the Ninth Circuit affirmed, it was no longer a secret when McBride showed the Caddy Light to Leen because of Ranger's public sales of the light, and Ranger, therefore, had no viable claim against McBride under the OTSA.

Leen was not vicariously liable for McBride's acts. The Ninth Circuit affirmed the facts and relevant law supported liability against McBride for breach of an implied-in-fact contract. With respect to damages, the Ninth Circuit reinstated the jury's award of $ 425,000 in compensatory damages and agreed Ranger had not established by clear and convincing evidence that McBride acted in a way to justify imposition of punitive damages.

After the Ninth Circuit's mandate issued, Ranger filed a motion for entry of final judgment on February 22, 1999. Before the trial court entered judgment, McBride filed his Chapter 7 Petition in Bankruptcy on or about March 1, 1999. In August 1999 Ranger filed its Complaint to Except Debt from Discharge Under 11 U.S.C. §§ 523(a)(4) and 523(a)(6). The parties filed cross-motions for summary judgment addressing Ranger's claims for nondischargeabililty.

In proceedings held January 26, 2000, the Bankruptcy Court announced its findings of fact and rulings on the pending cross-motions. In so doing, the Court took into account the parties' respective arguments that the Bankruptcy Court is bound in this action under issue preclusion to follow the factual and legal determinations previously made by the U.S. District Court as affirmed by the Ninth Circuit. The Bankruptcy Court granted summary judgment in McBride's favor on both claims stated in Ranger's Complaint and found Ranger had not met the specific standards of §§ 523(a)(4) and 523(a)(6) for a denial of discharge. The Court determined McBride had engaged in a

defalcation but not in a fiduciary capacity under an express or technical trust as required by § 523(a)(4). Moreover, noting that "wilful and malicious injury" requires a "deliberate or intentional injury" like that for intentional torts, the Court found McBride's conduct did not constitute such wilful and malicious injury as to except Ranger's claim from discharge under § 523(a)(6).

On or about February 11, 2000, the Bankruptcy Court issued an Order Denying Summary Judgment to Ranger and issued Summary Judgment in McBride's favor in which the Court discharged Ranger's claims against McBride. Ranger filed its Notice of Appeal and Election to Have District Court Hear Appeal on March 1, 2000.

STANDARD OF REVIEW

The Bankruptcy Court's conclusions of law are reviewed de novo. In re Daniels-Head & Assoc., 819 F.2d 914, 918 (9th Cir. 1987). Findings of fact are reviewed under a "clearly erroneous" standard. Id. Collateral estoppel applies in dischargeability proceedings, and its availability is a question of law reviewed de novo. In re Baldwin, 245 B.R. 131, 134 (9th Cir. BAP 2000).

In reviewing summary judgment, all reasonable inferences are made in favor of the non movant to determine whether there exists any genuine issue of material fact precluding judgment as a matter of law. In re United Energy Corp., 944 F.2d 589, 593 (9th Cir. 1991). When both parties move for summary judgment, the court must evaluate each side's motion on its own merits and draw

all inferences in favor of the non moving party. Chevron USA, Inc. v. Cayetano, 224 F.3d 1030, 1037 (9th Cir. 2000).

DISCUSSION

Appellant raises a series of five primary and four secondary specifications of error. It assigns primary error to the following rulings of the Bankruptcy Court:

(1) An express trust was not established when Ranger transferred a Caddy Light to McBride even though Appellant contends the Caddy Light's appearance disclosed confidential information over which McBride had complete control;

(2) The 1996 jury verdict in which the jury found McBride liable in tort for misappropriation of confidential information did not establish Appellant's claim of nondischargeability under 11 U.S.C. § 523(a)(4);

(3) McBride's debt was dischargeable notwithstanding Appellant's argument that under § 523(a)(4) no express or technical trust is required for an exception to discharge for fraud committed by a debtor while acting in a fiduciary capacity and that no material facts were in dispute;

(4) The jury's verdict on misappropriation of confidential information and breach of implied contract did not establish Appellant's claim of nondischargeability under § 523(a)(6);

(5) Appellant's claim for exception to discharge under § 523(a)(6) was not sustainable because McBride's conduct was not intentional and without just excuse.

Appellant assigns secondary error to the following actions and rulings by the Bankruptcy Court:

(6) The Court was bound by collateral estoppel and did not independently consider the inferences of the jury verdict and the total evidentiary record as referred to in Appellant's Concise statement of Material Facts submitted to the Bankruptcy Court in Support of Appellant's Motion for Summary Judgment;

(7) The Court considered "'McBride showed the light to Leen thinking that Leen would work with Ranger and McBride trusted Leen to deal fairly with Ranger'" in the absence of evidence in the record to that effect and in spite of the alleged irrelevance of such information as it relates to Appellant's Claim under § 523(a)(6);

(8) The Court considered facts not supporting a punitive damages claim as cited by the United States District Court and the Ninth Circuit, which were not part of the record before the Bankruptcy Court and which pertained to an incorrect standard for determining whether an act is wilful and malicious under § 523(a)(6); and

(9) The Court relied on the preponderance of evidence standard of proof even though it arguably conflicted with and precluded the Bankruptcy Court's strict construction of exceptions to discharge under § 523(a) against the objecting creditor and in favor of the debtor.[6]

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[6]This specification of error was not briefed by Appellant or Appellee, and the Court, therefore, has not considered it.

Appellee contends Appellant's nine specifications of error should properly be simplified to two distinct issues requiring review: (1) whether the requisite fiduciary relationship existed between Appellant and Appellee for an exception to discharge under § 523(a)(4); and (2) whether Appellee's actions that harmed Appellant were wilful and malicious for an exception to discharge pursuant to § 523(a)(6).

The Court agrees the nine primary and secondary issues raised by Appellant are appropriately reviewed through evaluating the two central points of Appellant's action.

1. **Issue Preclusion Applies and Prevents Relitigation of Issues Actually Litigated Between the Parties and Necessarily Determined by a Previous Court**

As they did before the Bankruptcy Court, the parties agree collateral estoppel or issue preclusion governs the outcome of their respective Motions and Appellant's appeal.[7] Issue preclusion prevents relitigation of any issues of fact or law that were actually litigated and necessarily decided by a valid and final judgment between the parties in a prior proceeding. Moore v. Brewster, 96 F.3d 1240, 1245 (9th Cir. 1996), cert. denied, 519 U.S. 1118 (1997). The doctrine is intended to protect parties from multiple lawsuits and the possibility of

[7]While arguing collateral estoppel applies, Appellant also contends the Bankruptcy Court erred in considering it was bound by collateral estoppel and in failing to independently consider the inferences of the jury verdict and the total evidentiary record as presented by Appellant. The Court rejects this specification of error and finds the Bankruptcy Court appropriately applied the doctrine of issue preclusion and drew the necessary inferences from the judgment and evidence as reflected in the Bankruptcy Court record.

inconsistent decisions as well as to preserve judicial resources. In re Baldwin, 245 B.R. at 134. Under issue preclusion "[n]ecessary inferences from the judgment, pleadings and evidence will be given preclusive effect." Davis & Cox v. Summa Corp., 751 F.2d 1507, 1518 (9th Cir. 1985).

2. The Bankruptcy Court Correctly Ruled McBride and Ranger did not Have a Fiduciary Relationship Under § 523(a)(4)

Exceptions to discharge include "any debt . . . for fraud or defalcation while acting in a fiduciary capacity." 11 U.S.C. § 523(a)(4). Whether a relationship is a fiduciary one within the meaning of § 523(a)(4) is a question of federal law. In re Lewis, 97 F.3d 1182, 1185 (9th Cir. 1996). The "broad general definition of a fiduciary relationship -- one involving confidence, trust and good faith -- is inapplicable in the dischargeability context." In re Evans, 161 B.R. 474, 477 (9th Cir. BAP 1993). "[T]he fiduciary relationship must be one arising from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt." In re Lewis, 97 F.3d at 1185. Courts look to state law to assess whether "a trust in this strict sense exits." Ragsdale v. Haller, 780 F.2d 794, 796 (9th Cir. 1986).

The Bankruptcy Court correctly ruled McBride was not a fiduciary under § 523(a)(4) in his relationship with Ranger. In support of its appeal, Ranger contends McBride did undertake a fiduciary duty as Ranger's agent to find a distributor for the Caddy Light. Relying on Starkweather v. Shaffer, 262 Or. 198, 205, 497 P.2d 358 (1972), Ranger argues "'[a] fiduciary

relationship exists in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interest of the one reposing confidence.'" The sort of fiduciary relationship asserted by Appellant, however, falls within the broad general definition that does not meet the requirements of § 523(a)(4).

Moreover, the United States District Court expressly held there was insufficient evidence to support a finding that Ranger and McBride had a special relationship of a fiduciary nature. With respect to Appellant's tortious breach of good faith and fair dealing claim, the Court instructed the jury that a special relationship "'is one of trust or of a fiduciary relation' and 'involves an exceptional degree of reliance between the persons.'" Additionally, the Court instructed the jury that a fiduciary relationship is one "involving 'special confidence placed in one person who in good conscience is bound to act in good faith and with due regard to the interests of the person who placed the trust in him.'"

Applying these standards, the United States District Court overturned the jury's verdict for Appellant and ruled in the alternative "[t]he evidence does not support a finding that Ranger had the necessary special relationship." See July 1, 1996, Opinion at 18-21. The Ninth Circuit adopted and affirmed "the district court's alternative finding of fact that the evidence did not support the jury's finding of liability on the

[tortious breach of] good faith and fair dealing claim." See Memorandum at 3.

The Bankruptcy Court properly found McBride's relationship with Ranger did not rise to the level of an express or technical trust. Ranger maintains and McBride agrees information can be the subject of an express trust. Ranger, therefore, argues confidential information "was in the form of a physical device, which once transferred was in the exclusive control of McBride" and constituted an express trust.

The evidence, however, shows the information reflected in the physical appearance of the Caddy Light was not in McBride's exclusive possession and no express trust arose.[8] Viewing the evidence in the light most favorable to Ranger, the United States District Court noted the evidence showed Ranger hired a company called Binnsco to act as a marketing representative for the Caddy Light beginning in late 1991, and Ranger met with Electricord's sales representative, Chuck Potter, in November 1991. In January 1992, Binnsco and Potter entered into a sales representation agreement, and Potter became Ranger's sales representative for Oregon, Washington, and Idaho. At no time did Ranger alert

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[8]Ranger contends there is no express or technical trust requirement under § 523(a)(4) for non-discharge of a debt arising from fraud by a fiduciary. Fraud by a fiduciary, however, is not at issue here. The United States District Court granted partial summary judgment in favor of McBride and Leen and found there was no evidence of fraud. The Bankruptcy Court found McBride's conduct rose "to the level of defalcation," but did not find McBride engaged in fraud. Ranger cites no legal authority to support its assertion the elements of a fiduciary relationship are different under § 523(a)(4) depending on whether the debtor engaged in fraud or defalcation.

Potter or McBride the Caddy Light was confidential. In 1992 Ranger communicated directly with J.D. McIngvale of Electripak regarding the Caddy Light.

McBride was hired by Leen sometime after July 20, 1992, by which time Ranger had sold 132 Caddy Lights to third parties. By the time McBride helped introduce Leen's "Mighty Light" at the Chicago trade show in March 1993, Ranger had sold an additional 111 Caddy Lights to members of the public. Such evidence was expressly taken into account by the federal trial court when it reached its alternative ruling that a reasonable jury could not have found in Ranger's favor on its tortious breach of good faith and fair dealing claim. Accordingly, the Ninth Circuit affirmed the trial court's alternative finding and explained "we agree that Ranger failed to show a 'special responsibility'" arose on McBride's part. See Memorandum at 3. The Bankruptcy Court appropriately reasoned its finding of no fiduciary relationship was consistent with the independent determinations of the United States District Court and Ninth Circuit.

Appellant relies on Templeton v. Bockler, 73 Or. 494, 506-09, 144 P. 405 (1914) to argue "[a]n agent dealing with property for the benefit of another person by reason of the confidence reposed in him receives the property in trust and is acting in a fiduciary capacity." In Templeton the defendant was given custody of sheep to care for and to sell in order to apply the proceeds pursuant to an agreement with the plaintiff. The court found a trust arose and the defendant violated the trust when he

converted to his own use a portion of the sale proceeds. Templeton, however, is distinguishable from the facts here because, as noted earlier, McBride did not have exclusive control of the self-disclosing information reflected in the Caddy Light. Also, acting on behalf of Electripak, McBride purchased a Caddy Light from Ranger at the outset of his relationship with Ranger. This is not a situation in which Ranger loaned a specific Caddy Light to McBride expecting he would return or otherwise account for it.

Ranger also asserts the Bankruptcy Court erred when it failed to apply issue preclusion to the jury's verdict in Ranger's favor regarding the misappropriation of confidential information claim and, therefore, when it failed to find McBride's debt nondischargeable under § 523(a)(4). The United States District Court held the evidence and relevant law supported the jury's verdict but ruled Ranger's misappropriation claim was preempted by the OTSA. The Ninth Circuit affirmed the trial court's preemption holding.

In order for issue preclusion to apply, the determination in the earlier proceeding "must have been essential to the final judgment." In re Giangrasso, 145 B.R. 319, 322 (9th Cir. BAP 1992). Here, the jury verdict on Ranger's misappropriation claim was not essential to the final judgment of the trial court because the claim was preempted from consideration as a matter of law. This Court finds the Bankruptcy Court correctly found § 523(a)(4) does not prevent discharge even though the jury found

McBride liable for misappropriation of confidential information. Moreover, notwithstanding preemption and, as the Bankruptcy Court explained, "[t]he mere fact that state law places two parties" together with "some of the characteristics of a fiduciary relationship does not necessarily mean" there is a fiduciary relationship for purposes of § 523(a)(4) in the absence of an express or technical trust .

Thus, the Court finds under § 523(a)(4) Appellee's Motion was properly granted, Appellant's Motion was appropriately denied, and the Bankruptcy Court correctly ruled McBride's debt to Ranger is dischargeable.

3. **The Bankruptcy Court properly held McBride's Debt is not Excepted From Discharge Under § 523(a)(6)**

Section 523(a)(6) excepts from discharge any debt resulting from "willful and malicious injury by the debtor to another entity or to the property of another entity." In support of its appeal, Ranger contends the Bankruptcy Court erred when it failed to find the jury's verdict on misappropriation of confidential information and breach of implied contract established its claim of nondischargeability under § 523(a)(6). McBride responds he was found liable only for breach of contract, and even a "'knowing breach of contract'" would not satisfy the requirement of deliberate and intentional injury sufficiently to trigger § 523(a)(6).

The Bankruptcy Court correctly found McBride's conduct at issue does not constitute a wilful and malicious injury that would except Ranger's claim from discharge under §523(a)(6). An

exception from discharge under § 523(a)(6) pertains solely to tortious liabilities and does not include debts stemming from violations of contract. In re Riso, 978 F.2d 1151, 1154 (9th Cir. 1992)(citations omitted). When a debtor's conduct constitutes both a breach of contract and a tort, the resulting debt does not fit within § 523(a)(6) unless liability for the tort is independent of liability on the contract. In re Jercich, 243 B.R. 747, 751 (9th Cir. BAP 2000). See also In re Krishnamurthy, 209 B.R. at 719-20 (affirming determination of nondischargeability under § 523(a)(6) when debt arose from torts independent of contract cause of action).

In this instance, the debt Appellant seeks to have excepted from discharge arises solely from a judgment against Appellee for breach of an implied contract. The United States Supreme Court, however, in Kawaauhau v. Geiger expressly declined to adopt a broad interpretation of § 523(a)(6) that would have included "'knowing breach of contract'" within the exception. 523 U.S. 57, 61-62 (1998) (finding nondischargeability under § 523(a)(6) requires a "deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury").[9]

Appellant argues the requirements of § 523(a)(6) have been established through issue preclusion because the jury in the

[9]Given the Court's holding that Appellee's debt for violation of an implied contract is not excepted from discharge under § 523(a)(6), the Court need not address and does not reach Appellant's contentions the Bankruptcy Court erred when it considered facts cited by the United States District Court and Ninth Circuit for which no independent admissible evidence was submitted regarding the application of § 523(a)(6).

United States District Court case found McBride liable for the tort of misappropriation of confidential information, and the trial court agreed, in the alternative, the law and evidence supported the verdict. As discussed, however, the United States District Court ruled Appellant's claim that Appellee misappropriated confidential information was preempted by the OTSA, which the Ninth Circuit affirmed. Further, the United States District Court and the Ninth Circuit held Appellant had "no viable claim" under the OTSA because the Caddy Light was no longer a trade secret at the time McBride showed the Caddy Light to Leen due to Appellant's public sales of the light. Because the jury's verdict on the misappropriation claim was not essential to the final judgment against Appellee, issue preclusion does not apply. See In re Evans, 161 B.R. at 477.

Appellant further maintains two recent opinions released after the Bankruptcy Court issued its decision apply the rule of Kawaauhau v. Geiger in a manner that supports Appellant's position in this appeal. See In re Chlebowski, 246 B.R. 639, 645 (Bankr. D. Or. 2000)(claim arising from the tort of conversion was not dischargeable under § 523(a)(6)) and In re Baldwin, 245 B.R. 131, 136 (9th Cir. BAP 2000)(giving issue preclusive effect to a state court judgment and finding the debt arising from a battery on the judgment creditor was nondischargeable under § 523(a)(6)).

These decisions, however, do not support Appellant's contention the Bankruptcy Court erred when it did not find

Appellee's conduct was intentional and without just cause or excuse sufficient to sustain an exception to discharge under § 523(a)(6). Chlebowski and Baldwin each relied upon and quoted from the Fifth Circuit's decision in Matter of Miller, 156 F.3d 598, 603 (5th Cir. 1998) (reasoning the standard for discharge under § 523(a)(6) "might be met by any tort generally classified as an intentional tort, by any tort substantially certain to result in injury, or any tort motivated by a desire to inflict injury" and rejecting the first standard) (emphasis added). Such opinions, however, reflect nondischargeability under § 523(a)(6) relates only to tort liabilities and not to debts arising from violation of contract.

Therefore, the Court finds under § 523(a)(6) Appellee's Motion was properly granted, Appellant's Motion was appropriately denied, and the Bankruptcy Court correctly ruled Appellee's debt to Appellant is dischargeable.

CONCLUSION

Based on the forgoing, the Court affirms the Bankruptcy Court's rulings that exceptions to discharge under 11 U.S.C. §§ 523(a)(4) and 523(a)(6) do not apply, and Appellee's obligation to Appellant is properly discharged.

IT IS SO ORDERED.

DATED this 15th day of November, 2000.

ANNA J. BROWN
United States District Judge