FILED
Nov 28, 2018
DEBORAH S. HUNT, Clerk

No. 18-1117
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: DAVID W. CHARRON, Debtor.	)	
GLENN S. MORRIS TRUST; GLENN S. MORRIS, Plaintiffs-Appellees, v. DAVID W. CHARRON, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

ORDER

Before: SILER, ROGERS, and COOK, Circuit Judges.

David W. Charron, a Michigan attorney proceeding with counsel, petitions for rehearing of this court's October 26, 2018, order affirming the grant of summary judgment in favor of Glenn Morris.

Upon review, we conclude that the court did not misapprehend or overlook any point of law or fact when it issued the October 26, 2018, order. See Fed. R. App. P. 40(a). Accordingly, we DENY the petition for rehearing.

ENTERED BY ORDER OF THE COURT

/s/
Deborah S. Hunt, Clerk

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ORDER

Before: SILER, ROGERS, and COOK, Circuit Judges.

David W. Charron, a Michigan attorney proceeding with counsel, appeals a district court judgment affirming the bankruptcy court's grant of summary judgment in favor of Glenn Morris. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

After Charron filed a petition for relief under Chapter 7 in the Bankruptcy Court for the Western District of Michigan, Morris commenced an adversary proceeding against Charron alleging that a state court contempt judgment was nondischargeable under 11 U.S.C. § 523(a)(6). After determining that the state court opinion holding Charron in contempt was entitled to collateral estoppel, the bankruptcy court granted Morris's motion for summary judgment because, pursuant to the state court's factual findings, Charron's violation of a state court order was willful and malicious. *Morris v. Charron (In re Charron)*, 541 B.R. 656, 673 (Bankr. W.D. Mich. 2015). Charron appealed, and the district court affirmed in a thorough opinion. *Charron v. Morris (In re Charron),* 288 F. Supp. 3d 810, 823 (W.D. Mich. 2017). Charron now argues that the bankruptcy and district courts erred in determining that the contempt judgment was nondischargeable.

We review the grant of summary judgment de novo. *Superior Bank v. Boyd (In re Lewis)*, 398 F.3d 735, 746 (6th Cir. 2005). Summary judgment is appropriate when the evidence presented "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Bankruptcy Code provides that a debt arising from a "willful and malicious injury" is nondischargeable. 11 U.S.C. § 523(a)(6). A willful injury results when "the actor desires to cause consequences of his act" or "believes that the consequences are substantially certain to result from it." *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 464 (6th Cir. 1999) (quoting Restatement (Second) of Torts § 8A, at 15 (1964)). A malicious injury occurs when a debtor acts in "conscious disregard of one's duties or without just cause or excuse." *Trost v.Trost (In re Trost)*, 735 F. App'x 875, 878 (6th Cir. 2018) (quoting *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986)). While this court has not determined that a debt resulting from contempt is necessarily willful and malicious, we have held that a contempt penalty constituted a nondischargeable debt under § 523(a)(6). *Musilli v. Droomers (In re Musilli)*, 379 F. App'x 494, 498-99 (6th Cir. 2010); see *Williams v. Int'l Bhd. of Elec. Workers Local 520 (In re Williams)*, 337 F.3d 504, 511-13 (5th Cir. 2003); *Siemer v. Nangle (In re Nangle)*, 274 F.3d 481, 484 (8th Cir. 2001)."The doctrine of collateral estoppel 'precludes relitigation of issues of fact or law actually litigated and decided in a prior action between the same parties and necessary to the judgment, even if decided as part of a different claim or cause of action." *In re Markowitz*, 190 F.3d at 461 (quoting *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir.1992)). Under Michigan law, the doctrine of collateral estoppel applies when 1) the parties in both proceedings are the same or in privity, 2) there was a valid, final judgment in the first proceeding, 3) the same issue was actually litigated in the first proceeding, 4) that issue was necessary to the judgment, and 5) the party against whom preclusion is asserted (or its privy) had a full and fair opportunity to litigate the issue. *United States v. Dominguez*, 359 F.3d 839, 842 (6th Cir. 2004) (citing *Michigan v. Gate*s, 452 N.W.2d 627, 630-31 (Mich. 1990)). In affirming the trial court's decision to impose sanctions against Charron, the Michigan Court of Appeals actually litigated and necessarily determined that Charron's violation of the court order was willful and malicious. The state appellate court determined that Charron's conduct was willful because the state trial court entered an order prohibiting Robert Schnoor from transferring his company's assets outside the ordinary course of business without court authorization; the injunction was binding on Charron as Schnoor's attorney pursuant to Michigan Court Rule 3.310(C)(4); and Charron actively sought to find a buyer for the company's assets. See *Morris v. Schnoor*, Nos. 315006/315007/315702/315742, 2014 WL 2355705, at *6 (Mich. Ct. App. May 29, 2014) (per curiam). Additionally, the Michigan Court of Appeals determined that Charron's conduct was malicious because he was aware that he was obligated to comply with the court order and violated it anyway. See id. While Charron argues that the contempt award is a punitive sanction and does not represent compensation for injury, the state appellate court rejected this argument because "sanctions imposed after a finding of civil contempt to remedy past noncompliance with a decree are not to vindicate the court's authority but to make reparation to the injured party and restore the parties to the position they would have held had the injunction been obeyed." *Morris v. Schnoor*, No. 321925, 2016 WL 4262387, at *3 (Mich. Ct. App. Aug. 11, 2016) (per curiam) (quoting *Robin Woods Inc. v. Woods*, 28 F.3d 396, 400 (3d Cir. 1994)). Because the state court actually litigated and necessarily determined that Charron's violation of the injunctive order was

willful and malicious, the bankruptcy court did not err in granting summary judgment in favor of Morris on the basis of collateral estoppel.

For the foregoing reasons, we AFFIRM the judgment of the district court.

ENTERED BY ORDER OF THE COURT

/s/
Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID W. CHARRON,	)	
	)	
Appellant,	)	No. 1:15-cv-1273
	)	
GLENN S. MORRIS,	)	Honorable Paul L. Maloney
	)	
Appellee,	)	
	)	

OPINION AND ORDER AFFIRMING BANKRUPTCY COURT

David Charron filed for bankruptcy. Among the debts he sought to discharge, Charron identified the approximately $350,000 he owed Glenn Morris. The money represented the costs and fees awarded to Morris in a contempt hearing against Charron. Morris contested whether the debt was dischargeable and an adversary proceeding was initiated. See *Glenn S. Morris and the Glenn S. Morris Trust v. David W. Charron (In re David W. Charron)*, Adversary Proceeding No. 15-80086 (Bankr. W.D. Mich. 2015) ("AP"). The parties filed cross motions for summary judgment. The bankruptcy court applied collateral estoppel, finding that all of the facts Morris needed to prove to establish that the debt was not dischargeable had been litigated and resolved in the state court proceedings. The bankruptcy court granted Morris's motion and denied Charron's motion. Charron filed this appeal.

For this appeal, the Court must resolve two questions. First, can a civil contempt award be non-dischargeable in a Chapter 7 bankruptcy as a willful and malicious injury? Second, were the facts establishing that the civil contempt award constituted a willful and malicious injury, as defined in the bankruptcy code, actually litigated and necessarily determined by the state court? Because this Court answers both questions affirmatively, the bankruptcy court's decision will be affirmed.

I.

This Court reviews the decision issued by the bankruptcy court using the *de novo* standard. The decision to grant summary judgment is a question of law, and questions of law are reviewed without deference to the deciding court. *In re Morris*, 260 F.3d 654, 663 (6th Cir. 2001); *In re Markowitz*, 190 F.3d 455, 463 (6th Cir. 1999). Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories and admissions, together with the affidavits, show there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a) and ©; *Payne v. Novartis Pharms. Corp.*, 767 F.3d 526, 530 (6th Cir. 2014). The facts, and the inferences drawn from them, must be viewed in the light most favorable to the nonmoving party. *Anderson v. Liberty*

Lobby, Inc., 477 U.S. 242, 255 (1986) (quoting *Matsushita Elec. Indust. Co. v. Zenith Radio Cop.*, 475 U.S. 574, 587 (1986)). When resolving a motion for summary judgment, the court does not weigh the evidence and determine the truth of the matter; the court determines only if there exists a genuine issue for trial. *Tolan v. Cotton*, 134 S.Ct. 1861, 1866 (2014) (quoting Anderson, 477 U.S. at 249). For this appeal, the parties cannot relitigate the factual fmdings made at the contempt hearing and later affirmed on appeal. Either the state court made relevant findings of fact for the purpose of collateral estoppel, or it did not. In either case, there will be no genuine issues of material fact. Neither can the parties relitigate the legal conclusions reached by the state courts. In this appeal of the bankruptcy court's decision, the Court considers only what the state courts decided what the law was, and not whether the state courts correctly interpreted Michigan law.

II.

The following discussion is provided for context. Glenn Morris and Robert Schnoor were two owners of an insurance agency, Morris, Schnoor and Gremel, Inc. (MSG). The two had a falling out and, in 2007, Morris filed a lawsuit against Schnoor and MSG, seeking to dissolve the agency. The lawsuit (2007 Lawsuit) was filed in the Kent County Circuit Court.[1] MSG was represented by the law firm of Charron & Hanisch (C&H). Enforcing a shareholder agreement, the court entered an order requiring Morris to sell his shares of MSG stock to Schnoor. Schnoor made an initial down payment, and Morris was given a secured interest in the MSG stock. Schnoor made several monthly payments, but soon missed payments because he had lost customers and did not have the income. Morris initiated a contempt proceeding against Schnoor in the lawsuit. During that contempt proceeding on August 20, 2008, counsel for Morris asked the court for an order that precluded Schnoor from "engaging in any out of the ordinary business activity, and no transfers of business interests, or activity, or assets in the meantime." (AP ECF No. 13-20 Hrg. Trans. at 106.) When asked by the court, Schnoor's attorney, David Charron, had no objection to maintaining the status quo "for a week or two." (Id.)

On August 22, 2008, the court issued an order directing Schnoor and MSG to produce certain financial documents. The order also memorialized the discussion at the hearing. As part of the order, the court prohibited Schnoor from transferring "assets of Morris, Schnoor & Gremel, Inc., outside of the ordinary course of business without authorization from the Court." (ECF No. 2-7 August 2008 Order PageID.527.) While the order was in place, Charron and C&H took actions that facilitated the transfer of assets from MSG to New York Private Insurance Agency (NYPIA).

[1]Morris v Schnoor, No. 07-6441 (Mich. 17th Cir. Ct.)

In February 2009, Morris sued Charron, C&H, MSG and NYPIA.[2] The lawsuit (2009 Lawsuit) was filed in the Kent County Circuit Court. On October 22, 2009, the court granted Charron's motion for summary disposition and dismissed the claims brought against him personally. (ECF No. 2-3 Page ID.236-47.) On May 19, 2011, in the 2007 Lawsuit, the court issued an order to show cause why Schnoor, MSG, C&H, NYPIA and Charron should not be held in civil contempt for violating the August 2008 order. (ECF No. 2-2 Contempt Opinion at 1 PageID.115.) A trial on the contempt charge was held. On December 27, 2012, the court issued an opinion finding MSG, C&H and Charron in contempt and awarding damages to Morris. (ECF No. 2-2 Contempt Opinion PageID.115-35.) Against Charron, the court awarded Morris "the attorney fees and costs [Morris] incurred in the contempt trial that took place in 2011." (Id. at 16 Page ID.130.) The court subsequently denied a motion for reconsideration and a motion for a new trial. The court then held a five-day evidentiary hearing to determine the fee award, and issued an opinion on January 28, 2014, awarding Morris $349,416 in fees and another $14,09.77 in costs.[3] (ECF No. 2-2 Award Opinion PageID.137-47.) On May 29, 2014, the Michigan Court of Appeals upheld the decision finding Charron in contempt of the 2008 order. (ECF No. 2-4 CoA Opinion Page ID.310-68.) Charron filed for Chapter 7 bankruptcy on December 31, 2014, and listed the award on his schedule of unsecured debts to be discharged. In re Charron, No. 14-7970 (Bankr. W.D.Mich.) Morris filed his complaint objecting to discharge on April 10, 2015, which was used to open the Adversary Proceeding. Judge Boyd held a hearing on the cross motions for summary judgment and, on September 30, 2015, issued his opinion (ECF No. 2-2 MSJ Opinion PageID.59-84) and order (ECF No. 2-2 PageID.57-58) granting Morris's motion and denying Charron's motion. On November 28, 2016, Judge Boyd issued an opinion (ECF No. 2-2 PageID.39-49) denying Charron's Rule 52 Motion to Amend Findings, Rule 59 Motion to Amend Judgment, and Rule 60 Motion for Reconsideration. Judge Boyd issued one order denying the Rule 52 and Rule 59 motions (ECF No. 2-2 PageID.37) and a separate order denying the Rule 60 motion for reconsideration (ECF No. 2-2 PageID.38.) Charron appealed these five opinions and orders. The award is listed as an unsecured debt on Schedule F of Docket Entry 13.

III.

Can a civil contempt award be non-dischargeable in a Chapter 7 bankruptcy as a willful and malicious injury? Resolving this question requires the Court to examine the § 523(a) (6) of the bankruptcy code.

By filing for bankruptcy, Charron sought the protection of the bankruptcy court from his creditors. When a debtor files for bankruptcy under Chapter 7, a trustee liquidates the

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[2]Morris v Morris; Schnoor & Gremel, Inc., No. 09-1878 (Mich. 17th Cir. Ct.)

[3]In the final judgment, the amount was reduced to $363,506.77 because of an offsetting award of attorneys' fees and costs against Morris and in favor of Charron in the 2009 Lawsuit. (ECF No. 2-3 Final Judgment PageID.190.)

debtor's nonexempt assets and then distributes those proceeds to creditors. *See Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 367 (2007). Under the bankruptcy code, 11 U.S.C. § 727(b), "discharge under Chapter 7 relieves a debtor of all debts incurred prior to the filing of a petition for bankruptcy, except those nineteen categories of debts specifically enumerated in 11 § 523(a)." *Rittenhouse v: Eisen*, 404 F.3d 395, 396 (6th Cir. 2005). In the bankruptcy proceeding, Morris had the burden to show that the debt owed to him by Charron was not dischargeable. To avoid discharge, creditors must file a complaint objecting to the discharge of a debt, which initiates an adversary proceeding in the bankruptcy court. See Fed. R. Bankr. P. 4004(c) and 7001(6); *In re Storozhenko*, 459 B.R. 693, 695-96 (E.D. Mich. 2011). The creditor who seeks to avoid the discharge of a debt under § 523(a)(6) bears the burden of proof. *In re Brown*, 489 F. App'x 890, 895 (6th Cir. 2012) (citing *Grogan v. Garner*, 489 U.S. 279, 286 (1991)); *In re Chapman,* 228 B.R. 899, 906 (N.D. Ohio 1998).

Section 523(a)(6) provides that debts for "willful and malicious injury by the debtor to another entity or to the property of another entity" are not dischargeable. *Kawaauhau v. Geiger*, 523 U.S. 57, 59 (1998) (quoting 11 U.S.C. § 523(a) (6)); *In re Markowitz*, 190 F.3d at 458. The Sixth Circuit has interpreted *Kawaauhau* as requiring the creditor to show the debtor willed or desired harm or the debtor believed that injury was substantially certain to occur as the result of his or her behavior. *In re Mussilli*; 379 F. App'x 494, 498 (6th Cir. 2010) (quoting *In re Markowitz*, 190 F.3d at 465 n.10); *Sanderson Farms, Inc. v. Gasbarro*, 299 F. App'x 499, 504 (6th Cir. 2008) (quoting *In re Markowitz*). The injury element means a legal injury, a violation of the creditor's legal right, and not merely harm to the person. *In re Best,* 109 F. App'x 1, 5 (6th Cir. 2004). The "willful and malicious" standard is "stringent" and debts arising from reckless conduct and negligence do not fall within the statutory exception. *In re Best,* 109 F. App'x at 4.

To fall within the exception, the injury must be both willful and malicious; "[t]he absence of one makes the debt dischargeable." *In re Markowitz*, 190 F.3d at 463. The United States Supreme Court has held that the willful injury requirement means that the injury must be deliberate or intentional, not just the act. *Kawaauhau*, 523 U.S. at 61 ("The word 'willful' in (a)(6) modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional *injury*; not merely an intentional or deliberate *act* that leads to injury."). Since *Kawaauhau*, the Sixth Circuit explained "unless 'the actor desires to cause consequences of his act, or . . . believes that the consequences are substantially certain to result from it," "he had not committed a 'willful and malicious Mingy' as defined by § 523(a) (6). *In re Markowitz*, 190 F.3d at 464; see *In re Kennedv*, 249 F.3d 576, 580 (6th Cir. 2001) (discussing *Kawaauhau and Markowitz.*

The malicious injury requirement means the injury must have occurred without just cause. In the Sixth Circuit, several courts have discussed the meaning of the word "malicious" within § 523(a)(6), each citing to *Tinker v. Colwell*, 193 U.S. 473 (1904). "'Malicious' means in conscious disregard of one's duties or without just cause or excuse; it does not require ill-will or specific intent to do harm." *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986)

(citing *Tinker*; 193 U.S. at 486); see *In re Baiardi*, 493 B.R. 497, 502 (E.D. Mich. 2013) ("Malicious" means "done intentionally, without just cause or excuse.") (quoting *Tinker*). In *In re Adams*, 147 B.R. 407, 417 (W.D. Mich. 1992), the court acknowledged that *Tinker's* discussion of malice has been questioned because of subsequent legislative history, but nevertheless applied the *Tinker* standard because the Sixth Circuit's reliance on it in *Wheeler* made the standard binding.

Finally, the focus of § 523(a)(6) is the nature of the debtor's conduct, which has been redressed by the underlying judgment. *In re Abbo*, 168 F.3d 930, 931 (6th Cir. 1999.) The language of the statutory exception "does not distinguish between debts which are compensatory in nature and those which are punitive." Id. (quoting *In re Miera,* 926 F.2d 741, 745 (8th Cir. 1991)). Multiple subsections of § 523(a) except from discharge those liabilities that are a "debt for," which the Supreme Court interpreted to mean "debt as a result of," "debt with respect to," and "debt by reason of" *Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998). Accordingly, debt acquired "as the result of" or "by reason of willful and malicious behavior may not be dischargeable.

The Sixth Circuit has held that fines and damages awarded as the result of criminal contempt were not dischargeable under § 523(a)(6). *In re Musilli* 379 F. App'x at 499. The court noted that "[o]ther courts uniformly have held that a contempt penalty constitutes a nondischargeable willful-and-malicious injury under § 523(a)(6)." Id. at 499 (collecting cases); see *In re Nichdemus*, 497 B.R. 852, 859-60 (B.A.P. 6th Cir. 2013) ("Most cases dealing specifically with the dischargeability of contempt judgments have been decided instead under § 523(a)(6), and have uniformly held that such judgments may constitute nondischargeable debt." (collecting cases); accord *In re Tacason*, 537 B.R. 41, 52-53 (B.A.P. 1st Cir. 2015) ("Court have often held that a violation of a court order resulting in an order of contempt satisfies the willful and malicious requirement of § 523(a) (6).") (collecting cases). In *Musilli* the court acknowledged that it had not decided whether a debt arising from a contempt award is willful and malicious per se. Id. at 498. But, in analogous situations, where willful conduct included a knowing violation of the law and a court order, the court upheld the conclusion that the debt arising from the willful conduct was not dischargeable under § 523(a)(6). Id. at 498-99. The court found that reasoning persuasive because the debt arose from the same conduct that also resulted in a contempt finding. Id at 499. The great weight of authority establishes that a contempt award may be nondischargeable under § 523(a)(6) when the debt is the result of a malicious and willful injury to the creditor or the creditor's property.

IV.

Before addressing the second question, the Court must summarize Michigan's contempt law and review the factual findings made in the state court proceedings.

A.

Michigan law identifies three types of sanctions for contempt. A court may remedy

contemptuous behavior through (1) criminal punishment to vindicate the court's authority, (2) coercion to force compliance with a court's order, and (3) compensatory relief for the complainant. In re *Contempt of Dougherty*, 413 N.W.2d 392, 398 (Mich. 1987); *In re Contempt of United Stationers Supply Co.*, 608 N.W2d 105, 107 (Mich. Ct. App. 2000). When a court uses its contempt power to reimburse the complainant for costs incurred by the contemptuous behavior, including attorney fees, the proceedings are civil in nature. *Porter v. Porter*, 776 N.W. 2d 377 , 381 (Mich. Ct. App. 2009). For civil contempt, "a finding of willful disobedience of a court order is not necessary." *In re Contempt of United Stationers Supply Co.*, 608 N.W. at 108. By statute, Michigan courts have the power to punish, by fine or imprisonment, "persons guilty of any neglect or violation of duty or misconduct" for enumerated situations, including "parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court." Mich. Comp. Laws § 600.1701(g); *In re Bradley Estate*, 835 N.W.2d 545, 551 (Mich. 2013) (referring to § 600.1701 as the "general contempt statute").

B.

On December 27, 2012, in the 2007 Lawsuit, Judge Yates issued the civil contempt opinion and order. (ECF No. 2-2 Contempt Opinion PageID.115-135.) Judge Yates set forth both factual findings and conclusions of law. The court had issued an order prohibiting Schnoor from transferring the assets of MSG without court permission. (Id. at 4 PageID.118.) The parties, including Charron as Schnoor's attorney, were aware of the order. (Id. and n.2.) While the order was in effect, Charron and Schnoor "embarked upon an effort to transfer the assets of MSG to a friendly buyer." (Id. at 4 PageID.118.) Using C&H as a middleman in its capacity as a secured creditor of MSG, C&H took possession of MSG's assets and sold the assets to NYPIA. (*Id.* at 6 PageID.120.) The asset transfer occurred while the court's order was in place. (*Id.*) Charron was "acutely aware that the sale of the MSG's assets violated the court order." (*Id.*) Judge Yates noted that injunctive orders, like his order prohibiting the transfer of MSG's assets, "binds parties and their attorneys alike." (Id. at 15 PageID.129.) Charron's actions "did precisely what the court order forbade" and constituted a "textbook example of contempt of court." (*Id.*) Emails established that Charron "knowingly took part in activities that violated the injunctive order." (*Id* at 17 PageID.125.) Judge Yates found that Charron recognized the impropriety of his conduct. (Id. at 16 PageID.130.) Judge Yates held that "by clear and convincing evidence, ... Attorney Charron acted in contempt of the court order entered on August 22, 2008." (Id at 16 PageID.130.) Judge Yates carefully fashioned the award rendered in the contempt hearing. He clarified that the contempt proceeding was a civil action and he was considering only those sanctions that did not involve the potential for incarceration. (Contempt Opinion at 9-10PageID.123-24.) Judge Yates held that the "appropriate sanction" for Charron's civil contempt was "a compensatory award of attorney fees, other costs, or both" that Plaintiff Glenn Morris incurred in pursuing civil contempt against Attorney Charron." (Id. at 16 PageID.130 (citation omitted)). Judge Yates then ordered Charron to compensate Morris" for the attorney fees and costs he incurred in the contempt trial that took place in 2011." (*Id.*) The Michigan Court of Appeals affirmed the

findings of facts and conclusions of law. Charron was aware of the "injunctive proscriptions" of the trial court's written order. (ECF No. 2-4 CoA Opinion at 8 PageID.317.) As Schnoor's attorney, Charron was bound by the injunctive proscription in the order. (*Id.* at 9 PageID.318.) Charron understood the need to secure court approval before any action could be taken to transfer MSG's assets. (*Id.*) Nevertheless, Charron actively participated in the search for a buyer for the assets. (*Id.*) The Court of Appeals held that the contempt levied against Charron was civil in nature, not criminal. (*Id.* at 15 PageID.324.)

V.

With this background, the Court can address the second question posed at the outset of this opinion. Were the facts establishing that the civil contempt award constituted a willful and malicious injury, as defined the bankruptcy code, actually litigated and necessarily determined by the state court?

A.

"The doctrine of collateral estoppel "precludes relitigation of issues of fact or law actually litigated and decided in a prior action between the same parties and necessary to judgment, even if decided as part of a different claim or cause or action." *In re Markowitz*, 190 F.3d at 461 (quoting Sanders *Confectionery Prods., Inc v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1992)). Collateral estoppel is required by the Full Faith and Credit statute. See 28 U.S.C. § 1738; *In re Bursack*, 65 F.3d 51, 53 (6th Cir. 1995). And, the doctrine applies to dischargeability actions brought under § 523(a). *Grogan v. Garner*, 498 U.S. 279, 285 n.11 (1991) ("We now clarify that collateral estoppel principles do indeed apply in discharge proceedings pursuant to § 523(a)."); *In re Bursack*, 65 F.3d at 53 (citing *Grogan*). Federal courts must give a judgment issued in state courts the same preclusive effect that would be given the judgment under the law of the State where the judgment was rendered. *Migra v. Warren City Sch. Dist. Bd. of Ed*, 465 U.S. 75, 81 (1984). "Under Michigan law, collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties where the prior proceeding culminated in a valid, final judgment and the issue was actually litigated and necessarily determined." *In re Markowitz*, 190 F.3d at 461-62 (citing *People V. Gates*, 452 N.W.2d 627, 630 (Mich. 1990)). "[A] finding on which the judgment did not depend cannot support collateral estoppel." *Bd. of Cty. Road Comm'rs for Cty. of Eaton v. Schultz*, 521 N.W.2d 847, 850 (Mich. Ct. App. 1994); see *In re Trost* 545 B.R. 193, 206 (W.D. Mich. 2016) (Gregg, BJ.); see, e.g., *Santana-Albarran v. Ashcroft,* 393 F.3d 699, 704 (6th Cir. 2005).

B.

The bankruptcy court applied Michigan's collateral estoppel principles and precluded Charron from relitigating the findings of fact made by the state courts. Applying those facts to §523(a)(6), Judge Boyd concluded that the Charron's debt to Morris was a willful and

malicious injury to Morris or Morris's property and, therefore, the debt was not dischargeable. This Court agrees. Judge Boyd was correct in holding that the first two elements for collateral estoppel were present. (MSJ Opinion PageID.75-76.) The 2007 Lawsuit in which the civil contempt award was made was a prior action between the same parties. And, there was a valid and final judgment in the prior proceeding.

1.

Judge Boyd found that the relevant facts, those supporting the non-dischargeability of the debt, were actually litigated (MSJ Opinion PageID.76) and necessarily determined (Id. PageID.76-79). Facts have been "actually litigated" in a prior proceeding when the question was "put into issue by the pleadings, submitted to the trier of fact for a determination, and determined by the trier." *Rental Props. Owners Ass'n of Kent Cty. v. Kent County Treasurer*, 866 N.W2d 817, 835 (Mich. Ct. App. 2014) (citing *VanDeventer E Michigan Nat'l Bank*, 432 N.W.2d 338, 341 (Mich. Ct. App. 1988)). A fact has been "necessarily determined' only if it is 'essential' to the judgment" rendered in the prior action. *Gates*, 452 N.W.2d at 631.

2.

Judge Boyd found that the state courts actually litigated and necessarily determined that Charron's conduct, the violation of the state court's injunction, was willful and malicious. (MSJ Opinion PageID.80-81.) This legal conclusion is supported by the opinions issued in the state courts, which are summarized above. The state trial court set forth acts supporting the conclusion that Charron's contemptuous conduct was willful. Charron had knowledge of the injunctive order and he intended to violate it. The state court of appeals affirmed these factual conclusions. (CoA Opinion at 7-9 PageID.316-18.) The state courts also set forth facts supporting the conclusion that Charron's conduct was malicious. The state trial court and the court of appeals both identified facts in the record establishing that Charron understood that his actions violated the injunction because he understood the necessity for court approval for the transfer of the assets. (Id. 9-10 PageID.318-19.) Those facts demonstrate a lack of cause for Charron's conduct. This Court needs to address several arguments advanced in Charron's brief. First,

Charron's argument that willfulness was not necessarily determined is not persuasive.

Charron is correct that, under Michigan law, willfulness is not necessary to find a party in civil contempt. Charron is also correct that both the state trial court and the court of appeals included this statement of law in their opinions. But, stating the law correctly does not mean that either court applied that statement of law to the facts. Both the state trial court and the state court of appeals described Charron's knowledge of the injunction and intentional conduct in thorough detail. Accordingly, willfulness was actually litigated and actually determined in the state courts. Furthermore, the state courts did not identify facts that would have allowed them to find contempt for conduct that was less than willful. Accordingly, willfulness was necessarily determined. Where contempt can be established by

more than one standard under state law, a factual finding in the state courts meeting the federal standard will support collateral egstoppel for bankruptcy purposes. See *In re Grenier*, 458 F. App'x 436 439 (6th Cir. 2012); *In re Livingston*, 372 F. App'x 613, 619-20 (6th Cir. 2010). Both *Grenier* and *Livingston* involved fraud claims that the debtors sought to discharge in bankruptcy. In both cases, the federal courts concluded that the debtors were collaterally estopped from relitigating certain facts and then found that the debts were not dischargeable. In *Grenier*, the debtor correctly noted that the standard for nondischargeability of the fraud debt was gross recklessness, while the Michigan standard for fmding fraud was only recklessness. The *Greniers* argued that the state court fraud judgment could be based on facts that would not support nondischargeability. The court rejected the Greniers' argument, pointing to the specific factual finding by the state courts that the Greniers had actual knowledge of the facts they misrepresented. Thus, "collateral estoppel may apply even if the Bankruptcy Code's gross-recklessness standard is higher than its counterpart in Michigan common law fraud." *Grenier*, 458 F. App'x at 439. In *Livingston*, the state court also made repeated statements establishing that the debtors had actual knowledge of their misrepresentations. On those findings, the federal court held that it did not need to determine, as a matter of law, whether the state elements of fraud were identical to the federal gross recklessness standard for nondischargeability. The facts that supported a finding of gross recklessness for bankruptcy purposes were actually litigated and necessarily determined by the state courts. *Livingston*, 372 F. App'x at 619-20. In his initial brief, Charron quotes a single sentence from section II(F) of the Michigan Court of Appeal's opinion (PageID.326), where the court states that Charron's subjective view of his behavior was irrelevant because a finding willfulness was not necessary for civil contempt. (ECF No. 4 Appellant Br. at 28 PageID.891.) The court of appeals begins by explaining that "it is clear" from the trial court's contempt opinion that the basis for the contempt finding was Charron's knowledge of the injunction. (CoA Opinion PageID.32,5.) The two sentences immediately preceding the quoted excerpt provides context for the statement quoted by Charron in his brief. According to the court of appeals, the trial court's reference to an email was "merely an observation that Charron did not view his behavior as having been in violation of the order." (Id. PageID.326.) The court of appeals then states that Charron's subjective view of his behavior is irrelevant because he could be found in civil contempt even with that subjective view. In the proper context, the quoted statement does not support the conclusion that the court of appeals held that Charron was held in contempt for something less than a willful violation of the injunction. The court of appeals makes clear that the trial court held Charron in contempt for a willful violation of the injunction.

Second, Charron asserts that the bankruptcy court engaged in improper fact finding. Charron is mistaken. The factual disputes were litigated in the state courts. The bankruptcy court identified how those disputes were resolved by the state trial court and the state court of appeals. Because those factual disputes were actually litigated and necessarily determined, collateral estoppel applies. Charron did not persuade the bankruptcy court, and has not persuaded this Court, that the factual findings in state court can be interpreted multiple ways to create a factual dispute in federal court. Either the state court made a factual finding or

it did not.

Third, Charron asserts that the fee award does not represent indemnification damages under § 600.1721 of Michigan's Compiled Laws, which authorizes awards for tort-likeliability. Charron contends that the fees and costs were awarded under the state court's inherent power. A version of this argument was already presented to and rejected by the Michigan Court of Appeals. See *Morris v. Schnoor*, No. 321925, 2016 WL 4262387, at *6- *8 (Mich. Ct. App. Aug. 11, 2016) (CoA August 2016 Opinion). The court of appeals explained that Charron was "obfuscat[ing] the issue by arguing a distinction between statutory indemnification under MCL 600.1721 and sanctions for contempt." Id. at *6. The court of appeals then explained that the award under § 600.1721 encompasses a loss suffered by the contemptor's misconduct, and that the loss includes the prosecution of the contempt. Id (quoting *Taylor v. Currie*, 743 N.W.2d 571, 581 (Mich. Ct. App. 2007)). Charron's argument is an improper appeal. To agree with Charron, this Court would have to conclude that the Michigan Court of Appeals's interpretation of Michigan law was wrong.

Finally, Charron contends that his error in legal judgment does not constitute malice. Charron's explanation of this argument precisely captures why the argument must fail. Charron insists that he "held a different legal opinion than the tribunal about the propriety of his conduct." (ECF No. 4 Appellant Br. at 29 PageID.892.) Charron's belief that his conduct did not violate the injunctive order was litigated in the state trial court. His disagreement with the state trial court's decision was the subject of this appeal, and was resolved against him by the state court of appeals. For the adversary proceeding and for this appeal, the question is whether the state trial court and the state court of appeals found that Charron acted maliciously. They did. Charron's disagreement with the outcome of that issue does not create a dispute of fact. Charron is collaterally estopped from relitigating that issue.

3.

Judge Boyd also found that the injury question was actually litigated and necessarily determined. (MSJ Opinion PageID.81-83.) Judge Boyd's legal conclusion is supported by the opinions issued by the state courts, which are summarized above. The state trial court identified the injury for which Charron must compensate Morris as "the attorney fees and costs [Morris] incurred in the contempt trial that took place in 2011." (Contempt Opinion at16 PageID.130.) Charron asserts that the state trial court's conclusion in the 2009 Lawsuit that he was not liable for fraud precludes the conclusion that the transfer of funds injured Morris for the purpose of the contempt award. Charron's argument ignores the specific instruction of the state trial court, which awarded the fees and costs to Morris for the costs of the contempt hearing. Charron made this same argument to the state court of appeals, where it was rejected. The state court of appeals found the sanction was appropriate; it was not an abuse of authority and it was consistent with the purpose of civil contempt under Michigan law. (CoA at 14-16 PageID.323-25.) The award of costs and fees was both a compensatory remedy and an encouragement to comply with the court's order. Elsewhere in the opinion, the

court of appeals rejected Morris's argument that Charron should be have held liable for fraud. Relevant here, the court of appeals explained that "harm incurred by the transfer is not attributable to the false and misleading representation, but rather to the violation of the injunctive order. As such, the trial court's election to hold Charron in contempt of court adequately addresses the concerns of Morris and MSG properties and provide compensation." (Id. at 45 PageID.354.) Finally, in its August 2016 opinion, the court of appeals again addressed this argument. The court explained that the injury to Morris was the violation of the court order, and the fee award was compensation for that injury. CoA August 2016 Opinion, at *3 (quoting *Robin Woods, Inc. v. Woods*, 28 F.3d 396,400 (3rd Cir. 1994)) ("[S]anctions imposed after a finding of civil contempt to remedy past noncompliance with a decree are not to vindicate the court's authority but to make reparation to the injured party and restore the parties to the position they would have held had the injunction been obeyed.").

Other courts have found that fees and costs awarded in a contempt hearing can be the injury for the purposes of § 523(a)(6). The Ninth Circuit Bankruptcy Appellate Panel held that a fee award for a violation of a court order may be nondischargeable in bankruptcy, even when no other underlying injury occurred. See *In re Suarez*, 400 B.R. 732, 740-41 (9th Cir. B.A.P. 2009). In *Suarez*, the current wife of Kevin Barrett secured a restraining order against Suarez, the ex-wife of Kevin. The current wife later filed a motion to hold Suarez in contempt of the restraining order. The current wife prevailed, and was awarded, under a California statute, fees and costs as the prevailing party. No other award was made. Suarez filed for bankruptcy. In an adversary proceeding brought by the current wife under § 523(a)(6), the bankruptcy court and then the BAP panel rejected Suarez's argument that the current wife suffered no "injury." The BAP panel explained that the focus of the statute is on the debtor's conduct; whether the debtor's willful and malicious conduct caused an injury.

The court concluded that Suarez's contemptuous conduct was both willful and malicious. As a result, the current wife could either suffer in silence or pursue enforcement of the court's order. By pursuing the enforcement option, the current wife was certain to incur fees, which were awarded as compensation. The Court finds the reasoning in *Suarez* persuasive and consistent with Michigan law. Following *Suarez*, the injury to Morris arose from Charron's contemptuous conduct. The state courts concluded that Charron knowingly and intentionally violated the injunction. Like the new wife in *Suarez*, Morris could either sit in silence or pursue enforcement of the court order. Unlike *Suarez*, the record in this case is not "sparse." *Suarez*, 400 B.R. at 734. Here, the state court records are replete with factual findings. The state courts held that the attorney fees and costs were a compensatory award designed to remedy Morris's injury, the costs of having to prosecute Charron's violation of the injunctive order.

VI.

The Bankruptcy Court concluded that facts litigated and decided in the state courts established the elements for the nondischargeability of Charron's debt to Morris. Applying

collateral estoppel, the Bankruptcy Court granted Morris's motion for summary judgment in the adversary proceeding, and denied Charron's motion for summary judgment. This Court finds no legal error in the Bankruptcy Court's decision. Generally, Charron's attempts at establishing a genuine issue of material fact precluding summary judgment are merely disguised attempts to relitigate the underlying factual findings and legal conclusions decided in the state courts. And, that is precisely what collateral estoppel precludes. Accordingly, the decision of the Bankruptcy Court is AFFIRMED.

IT IS SO ORDERED.

Date: December 29, 2017

/s/ Paul L. Maloney

Paul L. Maloney
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID W. CHARRON,
Appellant,

-v-

GLENN S. MORRIS,
Appellee.

No. 1:15-cv-1273
Honorable Paul L. Maloney

JUDGMENT

Having affirmed the decision of the Bankruptcy Court, all pending matters have been resolved. As required by Rule 58 of the Federal Rules of Civil Procedure, JUDGMENT ENTERS.

THIS ACTION IS TERMINATED.

IT IS SO ORDERED.

Date: December 29, 2017

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Case No: BG 14-07970

In re:

DAVID W. CHARRON, Chapter 7
Debtor.

GLENN S. MORRIS and THE GLENN S. MORRIS TRUST,

Adversary Proceeding
Plaintiffs, No. 15-80086

v.
DAVID W. CHARRON,
Defendant

OPINION DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND GRANTING PLAINTIFFS' CROSS MOTION FOR SUMMARY JUDGMENT

Appearances:

Ronald A. Spinner, Esq., Detroit, Michigan, attorney for Glenn S. Morris and the Glenn S. Morris Trust, Plaintiffs.

Perry G. Pastula, Esq., Wyoming, Michigan, attorney for David W. Charron, Debtor-Defendant

I. INTRODUCTION AND ISSUE PRESENTED.

This adversary proceeding arises from prepetition litigation that the Kent County Circuit Court described as "protracted," "ruinous," and a "testament to the folly of all-

out warfare in the civil justice system."[1] During the course of that litigation, David W. Charron (the "Debtor" or "Attorney Charron"), as lead counsel for one or more of the parties, was held in civil contempt for violating a court order and was ordered to pay Glenn S. Morris (collectively, in his individual capacity and as trustee for The Glenn S. Morris Trust, the "Plaintiff" or "Morris") $363,506.77 in civil contempt sanctions. In this adversary proceeding, Morris seeks a determination that the civil contempt sanctions are excepted from the Debtor's chapter 7 discharge under § 523(a)(6) of the Bankruptcy Code.[2]

The Debtor has filed a motion for summary judgment, arguing that the contempt award was not compensation for injury to the Plaintiff or his property, and is therefore dischargeable. The Plaintiff has filed a cross motion for summary judgment, asserting that the state court contempt judgment establishes the "willful" and "malicious" nature of the debt under § 523(a)(6) and the doctrine of collateral estoppel. For the reasons that follow, the court shall deny the Defendant's motion for summary judgment and grant the Plaintiffs cross motion.

II. JURISDICTION.

The court has jurisdiction over this bankruptcy case. 28 U.S.C. § 1334. The bankruptcy case and all related proceedings have been referred to this court for decision. 28 U.S.C. § 157(a); L. Civ. R. 83.2(a) (W.D. Mich.). This nondischargeable debt action is a statutory core proceeding and this court has constitutional authority to enter a final order. 28 U.S.C. § 157(b)(2)(I) (determinations as to the dischargeability of certain debts); see, e.g., Hart v. Southern Heritage Bank (In re Hart), 564 F. App'x 773, 776 (6th Cir. Apr. 28, 2014) (unpublished opinion) (notwithstanding the Supreme Court's decision in Stern v. Marshall, ___U.S.____, 131 S. Ct. 2594 (2011), the bankruptcy court has "constitutional authority to enter a final money judgment in a dischargeability action"). Further, even Stern claims may be decided by bankruptcy courts if the parties consent. Wellness Int'l Network, Ltd. v. Sharif, ____U.S.____ , 135 S. Ct. 1932 (2015). While this is not a Stern claim, the parties have consented to this court entering a final order in this adversary proceeding. See Plaintiffs Complaint, AP Dkt. No. 1 at ¶3 (expressly consenting to entry of a final order); Defendant's Motion for Summary Judgment, AP Dkt. No. 4 at 1 & n.1 (stating that

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[1] See Opinion and Order Awarding Attorney Fees to the Plaintiff Glenn S. Morris and Against Attorney David W. Charron, AP Dkt. No 4, Exh. C at 2, 11.

[2] The Bankruptcy Code is set forth in 11 U.S.C. §§101-1532 inclusive. Specific provisions of the Bankruptcy Code are referred to in this opinion as "§___".

this is a core proceeding and referencing Plaintiffs jurisdictional statement).

III. FACTS AND PROCEDURAL BACKGROUND.

The contempt order at issue in this adversary proceeding arises from the Debtor's representation of R. Judd Schnoor ("Schnoor") and the insurance agency of Morris, Schnoor & Gremel, Inc. ("MSG") in various state court cases.[3] In July 2007, Morris filed a law suit in the Kent County Circuit Court, seeking dissolution of MSG, an entity which Morris and Schnoor owned as equal partners. (Exh. B at 2; Exh. H at 4.) The state court ultimately ordered Morris to sell his MSG stock to Schnoor for $2.5 million. (Exh. B at 2.) In return, Schnoor gave Morris a down payment of approximately $235,000 and a promissory note for the balance. (Id. at 2-3.) Morris retained a security interest in the MSG stock, but not the company's assets. (Id. at 3.) Schnoor made some payments under the promissory note, but eventually became disgruntled with Morris and ceased making payments in the spring of 2008. (Id.) On August 20, 2008, the state court held a hearing to determine whether Schnoor should be held in contempt for his failure to make payments under the promissory note. (Id.) At the hearing, the parties agreed to entry of an order enjoining the transfer of MSG assets. (Id.) The Debtor appeared as counsel for Schnoor at the hearing. (Id.) When the court asked him if he had any objection to "maintaining the status quo for a week or two," the Debtor responded, "Not for a week or two, your Honor." (Id.) Consistent with the parties' agreement, the state court entered an order on August 22, 2008, stating:

> IT IS FURTHER ORDERED that Defendant R. Judd Schnoor shall not transfer assets of Morris, Schnoor & Gremel, Inc., outside the ordinary course of business without authorization from the Court to do so.

(Id). at 4, sometimes referred to herein as the "Injunctive Order".) At a subsequent hearing, counsel for Morris requested that the August 22, 2008, order remain in effect until further order of the court. (Id.) No party, including the Debtor, objected, and the state court granted that request. (Id.) In so doing, the court noted that the Injunctive Order, as originally drafted, did not contain any time restrictions and was intended to continue until the court ordered otherwise. (Id.) While the state court action against Schnoor remained pending, and despite the court order enjoining the transfer

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[3]The relevant portions of the state court record were attached as exhibits to the Debtor's motion for summary judgment in this adversary proceeding. (See AP Dkt. No. 4.) The exhibits are cited herein as "Exh.__ ." The majority of this court's factual findings are based on Exh. B. (Kent County Circuit Court Opinion and Order Setting Forth Findings of Civil Contempt, dated December 27, 2012) and Exh. H (Michigan Court of Appeals opinion affirming the circuit court's contempt findings, dated May 29, 2014).

of MSG's assets, Schnoor and the Debtor undertook efforts to sell MSG's assets to a friendly buyer. (Id.) In November 2008, the assets were transferred to New York Private Insurance Agency, LLC ("NYPIA"), in transactions orchestrated by the Debtor and Schnoor. (kl. at 1, 4-6.) The Debtor's law firm, Charron & Hanisch, P.L.C. ("C&H"), "served as a middleman" in the sale by initially taking possession of MSG's assets pursuant to a security interest C&H held for repayment of attorney's fees. (Id. at 6.) After obtaining possession of the assets, C&H sold the assets to NYPIA. (Id.) When these transactions occurred, the August 22, 2008, Injunctive Order remained in effect. (Id. at 6.)

The transfer of the MSG assets triggered much subsequent litigation. In February 2009, the Plaintiff filed a verified complaint against MSG, C&H, NYPIA, and the Debtor individually in the state court, asserting fraudulent transfer, "commercially unreasonable sale," fraud, and conversion causes of action relating to the transfer of the MSG assets to C&H and/or NYPIA. (Exh. G.) The Debtor filed a motion for summary judgment on the claims against him personally, and the state court granted that motion. The court held that, "[a]lthough Attorney David Charron was integrally involved in the transactions that gave rise to this lawsuit," there was no basis on which to hold the Debtor personally liable for fraud or conversion of the MSG assets. (Exh. F at 10.) The dismissal of the claims raised by the Plaintiff against the Debtor in the 2009 lawsuit was upheld on appeal. (Exh. H.)

In addition, on May 19, 2011, the Kent County Circuit Court entered an order requiring Schnoor, MSG, the Debtor, C&H, and NYPIA to show cause why they should not be held in civil contempt for violating the Injunctive Order. (Exh. B at 1.) After holding a hearing and considering the parties' arguments, the state court issued a detailed Opinion and Order Setting Forth Findings of Civil Contempt against the Debtor, MSG, and C&H (the "Contempt Opinion").[4] (Exh. B.)

In the Contempt Opinion, the state court specifically stated that it viewed the Debtor's possible violations of the Injunctive Order as being in the nature of civil contempt. (Id. at 10.) As to the applicable legal standard for a finding of civil contempt, the opinion explained that Michigan law requires "clear and unequivocal" proof of the contempt, but does not require a "finding of willful disobedience of a court order." (Id. (citing In re Contempt of Robertson, 209 Mich. App. 433, 439 (1995) and Davis v. Detroit Fin. Review Team, 296 Mich. App. 568, 625 (2012).) Instead, the court indicated that to hold a party in civil contempt, it only needed to "'find that the [alleged

[4]The state court noted that Schoor filed a bankruptcy case on January 28, 2009, and therefore was "shielded from civil liability" in the contempt action (Exh B at 1).

contemnor] was neglectful or violated its duty to obey an order of the court." (Id. at 10-11 (citing Contempt of United Stationers Supply Co., 239 Mich. App. 496, 501 (2000).)

Notwithstanding its explanation of the applicable legal standard, the state court's Contempt Opinion is replete with factual findings that the Debtor was aware of the Injunctive Order and knowingly undertook the sale of MSG's assets in violation of its terms. For example, the court found that "Attorney Charron and Judd Schnoor were acutely aware that the sale of MSG's assets violated the court order of August 22, 2008." (Id. at 6.) The court further found "as a fact that they understood that the sale of MSG's assets . . . in November 2008 violated that court order." (Id. at 8.) As support for these findings, the court cited an October 14, 2008, email authored by the Debtor, which contained a "detailed explanation of the difficulties caused by the existing [Injunctive Order]." (Id. at 6.) The email acknowledges that the Injunctive Order requires court approval prior to any transfer of MSG's assets outside of the ordinary course of business. (Id. at 7.) Given this restriction, the Debtor's email suggests that there are two options: either file a motion to obtain court approval of the transfer or transfer the assets without court approval, and argue afterwards that the transfer was made "in the ordinary course." (Id.) The court found that this email "[spoke] volumes about Attorney Charron's view of the propriety of his firm's sale" of the MSG assets. (Id.)

Describing the Debtor's actions as the "most vexing aspect" of its contempt analysis and discussing the Debtor's personal liability for violations of the prior court order, the state court made the following findings of fact and conclusions of law:

> Michigan law plainly establishes that attorneys can be held in contempt of court both for their actions on behalf of their clients, e.g., Schumacher v Tidswell, 138 Mich. App. 708, 715-716, 722 (1984), and for their interactions with their clients. E.g., Schoensee v Bennett, 228 Mich. App. 305, 317 (1998). Moreover, MCR 3.310(C)(4) makes clear that an injunctive order — such as the Court's order of August 22, 2008, prohibiting transfers of MSG's assets "outside the ordinary course of business" — binds parties and their attorneys alike. Finally, the transcript of the 2008 contempt hearing reveals that Attorney Charron directly and actively participated in discussing the terms of the injunctive order . . . , so Attorney Charron cannot disclaim knowledge of the order. In fact, his internal email traffic confirms that he was well aware of the continuing force of the Court's injunctive decree . . .(Id. at 15.)

Based on the Debtor's knowledge of the court's order, and his failure to abide by it, the court concluded:

In simple terms, the record reveals a textbook example of contempt of court by

> Attorney Charron, who recognized that a court order prohibited all transfers of MSG's assets outside the ordinary course of business, yet took actions on behalf of his client (MSG) and his own law firm that did precisely what the court order forbade. That is, Attorney Charron siphoned all of the assets of MSG through his law firm and passed them on to NYPIA. These forbidden acts, when coupled with Attorney Charron's recognition of the impropriety of his conduct, compel the Court to find, by clear and convincing evidence, that Attorney Charron acted in contempt of the court order entered on August 22, 2008.

(Id. at 15-16 (internal citations to the state court record omitted and emphasis added).

The court also imputed Attorney Charron's knowledge of the Injunctive Order and violations thereof to his law firm, C&H. (Id. at 17.) In so doing, the court reiterated its prior holdings that the Debtor "actively participated in discussing the terms" of the Injunctive Order, and "fully understood" its requirements. (Id.) Despite this knowledge, Attorney Charron "knowingly took part in activities that violated" the order. (Id.)

The court determined that the appropriate sanction for C&H's contempt was to order the law firm to compensate the Plaintiff for one-half of the value of the assets that were seized and transferred in contravention of the Injunctive Order. (Id. at 18.) By contrast, the court determined that the sanction for Attorney Charron's contempt would be a "compensatory award of attorney fees, other costs, or both" for the amounts incurred by Morris in the contempt proceedings. (Id. at 16, 21 (citing Mich. Comp. Laws § 600.1721). After a five-day evidentiary hearing on damages, the court determined that Morris had incurred $349,416.00 in attorney fees and $14,090.77 in costs during the contempt proceedings. The court entered an Opinion and Order Awarding Attorney Fees to Plaintiff Glenn S. Morris and Against Attorney David W. Charron and a Final Judgment, for this total amount, $363,506.77.[5] (Exhs. A and C, referred to collectively with the Contempt Opinion as the "Contempt Award.")

After the Circuit Court denied the Debtor's motion for reconsideration and motion for a new trial, the Debtor appealed the Contempt Opinion to the Michigan Court of Appeals. (See Exhs. D and E.) On appeal, the Debtor challenged the trial court's contempt ruling on several grounds, each of which were rejected by the Court of Appeals in a lengthy written opinion issued on May 29, 2014. The Court of Appeals found no merit in

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[5]The final judgment entered by the state court provides that the total amount of this award, is to be "credited and partially offset by a January 28, 2014 award of attorneys' fees and costs" against Morris and in favor of the Debtor in Kent County Circuit Court Case No. 09-01878-CB. (Exh. A.) The Plaintiffs complaint states that the amount of the offset is $22,443.77, making the net amount of the contempt award $341,063.00. (See AP Dkt. No. 1 at ¶ 7, 9.)

the Debtor's arguments regarding the "infirmity" of the Injunctive Order, including his "challenge to the court's authority" to hold him, as a non-party, in contempt of court. (Exh. H at 7.) The court also deemed the Debtor's arguments about the validity of C&H's security interest to be a "red herring" raised to distract from the real issue, which was that the sale of MSG's assets occurred in violation of the Injunctive Order. (Id. at 8.)

With regard to the Debtor's assertion that the Injunctive Order applied only to Schnoor, and not specifically to Attorney Charron, the Court of Appeals held that:

> There exists no reasonable contention, given the status of Charron and Charron & Hanisch as the attorneys for both Schnoor and MSG throughout the underlying litigation and at all times relevant to the issuance of the injunctive order of August 22, 2008, that they would not be bound by the restrictions contained within that order.. . . .
>
> The record demonstrates that both Charron and Schnoor were present in the trial court when imposition of the injunction was discussed, and that both Charron and Schnoor acknowledged under oath an awareness of the injunctive proscriptions, with Charron acknowledging specifically that as of October 14, 2008, he was aware and had notice of the trial court's written order and its legitimacy.
>
> The existence of the injunctive order, the acknowledged awareness of the order's content, and the binding effect of the order on Schnoor and Charron, by name and by professional relationship, rendered it necessary to receive "authorization from the Court," before effectuating the November 2008 asset sale. (Id. at 7-9.) The court further agreed with the trial court's conclusion that the Debtor's October 14, 2008, email "belie[d] his contention . . . that he respected the [Injunctive Order]."

(Id. at 9.) The court noted that, in the email, "[Attorney] Charron clearly recognizes an obligation to inform the trial court of a transfer." (Id.) The court held that the email indicated the Debtor's knowledge of the Injunctive Order, as well as his"understanding of the necessity for court approval of any action to be taken regarding MSG's assets." (Id. at 9-10.)

The appellate court also rejected Attorney Charron's assertion that the injunction was originally intended to be of a shorter duration than what was ultimately ordered by the trial court. (Id. at 10.) The court held that, even if this assertion was true, Attorney Charron had notice of the trial court's written order and its lack of any time restrictions, as of mid-October 2008. (Id.) For these, and numerous other reasons set forth in the

written opinion, the Michigan Court of Appeals affirmed the trial court's contempt order.[6]

On December 31, 2014, the Debtor filed a voluntary chapter 7 petition. The Plaintiff filed this nondischargeable debt adversary proceeding on April 10, 2015. After holding a hearing on the parties' cross motions for summary judgment on July 8, 2015, this court took the motions under advisement.

IV. DISCUSSION.

A. *Summary Judgment Standard.*

Federal Rule of Civil Procedure 56(a), made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7056, governs motions for summary judgment. The Rule provides that "[a] party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought" and that the "court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

In deciding a motion for summary judgment, the court is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50, 106 S. Ct. 2505, 2511 (1986) (the summary judgment analysis is a "threshold inquiry of determining whether there is the need for a trial — whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party"). All facts and related inferences are to be viewed in the light most favorable to the non-moving party. Anderson, 477 U.S. at 255, 106 S. Ct. at 2513. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986) (citation omitted).

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[6]In his motion for summary judgment and reply to the Plaintiffs motion, the Debtor states that a second appeal, regarding the amount of the contempt award, was filed with the Michigan Court of Appeals in December 2013, and was stayed by the filing of the Debtor's bankruptcy case. (See AP Dkt. No. 4 at n. 6; AP Dkt. No. 13 at 12-13.) The Debtor's pleadings also indicate that he plans to continue the appeal "for the purpose of reducing the amount of the Award" if this adversary proceeding is not dismissed. (AP Dkt. No. 13 at 13.)

When the court inquired about the appeal at oral argument, the parties were unsure of its status. (See Transcript of Hearing on Cross Motions for Summary Judgment, AP Dkt. No. 14 at 6) (herein "Tr. at .") However, accepting the Debtor's statements as true, the fact that the amount of the contempt award may be subject to further appeal does not affect the finality of the state court's liability determination and is not material to this court's analysis of the dischargeability of the debt. Counsel for the Debtor acknowledged at oral argument that the contempt award is a "final judgment as to that obligation." (See Tr. at 3.)

Further, when a court reviews cross-motions for summary judgment, it "must evaluate each motion on its own merits and view all facts and inferences in the light most favorable to the nonmoving party." Wiley v. United States (In re Wiley), 20 F.3d 222, 224 (6th Cir. 1994). Denial of one party's motion for summary judgment does not automatically compel the conclusion that the other party is entitled to summary judgment. B.F. Goodrich Co. v. United States Filter Corp., 245 F.3d 587, 593 (6th Cir. 2001).

B. *Section 523(a)(6) and the Preclusive Effect of the State Court Contempt Award.*

The Plaintiffs complaint in this adversary proceeding alleges that the debt resulting from the state court Contempt Award is nondischargeable in the Debtor's chapter 7 case under § 523(a)(6). In his cross motion for summary judgment, the Plaintiff further alleges that the elements of its nondischargeable debt claim are established by the factual findings in the Contempt Award, which he argues are entitled to collateral estoppel effect in this adversary proceeding. Before addressing the specific arguments raised by the Debtor in response to these assertions and in support of his respective motion for summary judgment, the court will briefly analyze the standards for determining dischargeability under § 523(a)(6) and will consider the issue preclusive effect of the state court Contempt Award.

1. Willful and Malicious Injury under § 523(a)(6) and Contempt Sanctions.

Section 523(a)(6) excepts from discharge debts "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). To except a debt from discharge under this subsection, the Plaintiff must show that he suffered a loss or injury as a result of willful and malicious conduct of the debtor. See Steier v. Best (In re Best), 109 F. App'x 1, 5 (6th Cir. June 30, 2004) (unpublished opinion) (quoting In re Finch, 289 B.R. 638 644 (Bankr. S.D. Ohio 2003)) (additional citations omitted). The "injury must invade the creditors' legal rights." Id. at 6 (explaining that "the word 'injury' usually connotes legal injury *(injuria)* in the technical sense, not simply harm to a person") (quoting In re Geiger, 113 F.3d 848, 852 (8th Cir. 1997), aff'd, 523 U.S. 57, 118 S. Ct. 974 (1998)); see National Sign & Signal v. Livingston, 422 B.R. 645, 653 (W.D.Mich. 2009) ("An 'injury' is Tt]he violation of another's legal right, for which the law provides a remedy; a wrong or injustice.") (citation omitted).

Willfulness under § 523(a)(6) requires "a deliberate or intentional *injury,* not merely a deliberate or intentional *act* that leads to injury." Kawaauhau v. Geiger, 523 U.S. 57, 61, 118 S. Ct. 974, 977 (1998) (emphasis in original). Thus, a willful injury is one where the debtor "desires to cause [the] consequences of his act, or . . . *believes that the consequences are substantially certain to result from it."* Markowitz v. Campbell (In

re Markowitz), 190 F.3d 455, 464 (6th Cir. 1999) (quoting Restatement (Second) of Torts § 8A, at 15 (1964)) (emphasis added); see Kawaahau, 523 U.S. at 61, 118 S. Ct. at 977 (noting that this "formulation triggers in the lawyer's mind the category "intentional torts," as distinguished from negligent or reckless torts"). An injury is "malicious" under § 523(a)(6) when a debtor acts "in conscious disregard of [his] duties or without just cause or excuse; it does not require or specific intent to do harm." Wheeler v. Laudani, 783 F.2d 610, 615 (6th Cir. 1986); Monsanto Co. v. Trantham (In re Trantham), 304 B.R. 298, 308 (6th Cir. B.A.P. 2004). The statute requires that the alleged injury be both willful and malicious for the debt to be nondischargeable. In re Markowitz, 190 F.3d at 463. The Plaintiff bears the burden of establishing each element of his nondischargeable debt cause of action by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291, 111 S. Ct. 654, 661 (1991).

The Sixth Circuit Court of Appeals has suggested a non-exclusive list of the types of misconduct that satisfy the willful and malicious injury standard of § 523(a)(6). That list includes debts arising out of: "intentional infliction of emotional distress, malicious prosecution, conversion, assault, false arrest, intentional libel, and deliberately vandalizing the creditor's premises." In re Best, 109 F. App'x at 5 & n.2 (citations omitted); National Sign & Signal, 422 B.R. at 658. Although this list does not specifically include debts arising from contempt sanctions, other courts, including the Sixth Circuit, have almost "uniformly. . . . held that a contempt penalty constitutes a nondischargeable willful-and-malicious injury under § 523(a)(6)." Musilli v. Droomers (In re Musilli), 379 F. App'x 494, 499 (6th Cir. June 3, 2010) (unpublished opinion) (citing Siemer v. Nangle (In re Nangle), 274 F.3d 481, 484 (8th Cir. 2001) and Williams v. Intl Brotherhood of Elec. Workers Local 520 (In re Williams), 337 F.3d 504, 511-12 (5th Cir. 2003).

In Musilli, the Sixth Circuit held that a debt resulting from a prepetition state court criminal contempt judgment against the debtor was nondischargeable under § 523(a)(6). The debtors in Musilli were shareholders in a law firm that received a fee of over $1 million in a suit against General Motors. Droomers filed suit against the law firm, alleging that the firm owed him a fee of approximately $350,000 for referring the case, or alternatively, that he was owed fees under a theory of *quantum meruit.* In the course of the litigation, the state court entered an order enjoining the law firm from transferring any firm assets until it placed the approximately $350,000 in escrow. Droomers was ultimately unsuccessful on his referral fee claim but prevailed, in part, on his *quantum meruit* claim. The debtors were subsequently held in criminal contempt of court for "flagrantly violating" the escrow order. In re Musilli, 379 F. App'x at 496.

Although the Sixth Circuit stopped short of holding that a "debt resulting from

contempt is willful and malicious *per se,"* it carefully examined the state court record and concluded that the contempt sanctions constituted a debt arising from willful and malicious injury to Droomers. Id. at 498-99. The court explained that the "escrow order made clear that 'injury was substantially certain to occur' should [the debtors] violate it." Id. at 499. The court further noted that the debtors had failed to point to any facts in the record that would refute this finding. Although the state court gave the debtors "clear instructions" that the law firm was to "escrow funds sufficient to cover a judgment against it," the debtors "transferred all of the firm's assets away from the firm, including transferring a significant amount of money to themselves" in direct violation of the court order. The debtors "offered no legitimate justification that might explain why their actions were not willful and malicious." Id. Therefore, the Sixth Circuit affirmed the bankruptcy court's grant of summary judgment on Droomers' § 523(a)(6) claim. The Musilli court's application of the § 523(a)(6) standard to a prior state court contempt finding is instructive in this adversary proceeding.

The rationale for holding contempt sanctions nondischargeable under § 523(a)(6) has also been succinctly articulated by several courts outside of the Sixth Circuit:

> When a court of the United States . . . issues an injunction or other protective order telling a specific individual what actions will cross the line into injury to others, then damages resulting from an intentional violation of that order as is proven either in the Bankruptcy Court or, so long as there was a full and fair opportunity to litigate the questions of volition and violation, in the issuing court are *ipso facto* the result of a "willful and malicious injury."
>
> This is because what is "just" or "unjust" conduct as between the parties has been defined by the court . . . . An intentional violation of the order is necessarily without "just cause or excuse" and cannot be viewed as not having the intention to cause the very harm to the protected persons that order was designed to prevent.

Williams v. Int'l Brotherhood of Elec. Workers Local 520 (In re Williams), 337 F.3d 504, 512 (5th Cir. 2003) (quoting Buffalo Gvn Womenservices, Inc. v. Behn (In re Behn), 242 B.R. 229, 238 (Bankr. W.D.N.Y. 1999)). This court agrees with the quoted rationale and holds that, to the extent the Contempt Award in this proceeding arose from the Debtor's willful and malicious violation of the Injunctive Order and caused injury to the Plaintiff, the Award is nondischargeable under § 523(a)(6).

2. Collateral Estoppel: Is the State Court Contempt Opinion entitled to Preclusive Effect in this Adversary Proceeding?

The Plaintiff asserts that the "willful" and "malicious" nature of the state court Contempt Award is established by the factual findings of the state court, which he argues are entitled to collateral estoppel effect in this adversary proceeding. The doctrine of collateral estoppel, or issue preclusion, applies in nondischargeability proceedings. See Grogan v. Garner, 498 U.S. at 284-85 n.11, 111 S. Ct. at 656; McCurdie v. Strozewski (In re Strozewski), 458 B.R. 397, 403-04 (Bankr. W.D. Mich. 2011) (while the bankruptcy court must make its own determination regarding the dischargeability of a debt, that determination may be governed by factual issues which were decided in a prior proceeding). Accordingly, collateral estoppel prevents an issue of fact or law from being relitigated in a nondischargeable debt proceeding, where the issue "was actually litigated and necessarily decided in a prior action between the same parties." Phillips v. Weissert (In re Phillips), 434 B.R. 475, 485 (6th Cir. B.A.P. 2010) (citing In re Markowitz, 190 F.3d at 461).

When determining the preclusive effect of a prior state court judgment, this bankruptcy court is required to give the prior judgment the same preclusive effect it would have in the state court, unless the Full Faith and Credit Statute, 28 U.S.C. § 1738, provides an exception. Hinchman v. Moore, 312 F.3d 198, 202 (6th Cir. 2002) (quoting Migra v. Warren City School District Bd. of Educ., 465 U.S. 75, 81, 104 S. Ct. 892, 896 (1984); In re Strozewski, 458 B.R. at 404 (also citing Migra) (additional citation omitted). Here, the contempt order was entered by a Michigan court, so Michigan preclusion law governs.

Under Michigan law, issue preclusion applies when:

(1) there is identity of parties across the proceedings,
(2) there was a valid, final judgment in the first proceeding,
(3) the same issue was actually litigated and necessarily determined in the first proceeding, and
(4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the earlier proceeding.

Darrah v. City of Oak Park, 255 F.3d 301, 311 (6th Cir. 2001) (citing People v. Gates, 434 Mich. 146, 154, 452 N.W.2d 627, 630-31 (1990)). Application of these requirements furthers the purpose of collateral estoppel, which is "to strike a balance between the need to eliminate repetitious and needless litigation and the interest in affording litigants a full and fair adjudication of the issues involved in their claims." Storey v. Meijer, Inc., 431 Mich. 368, 372-73, 429 N.W.2d 169, 171 (1988) (citations omitted). When determining whether issue preclusion applies, this court must "look beyond the

pleadings to consider both the 'factual focus' of the prior proceedings and 'whether the party against whom collateral estoppel is asserted has had a full and fair opportunity to litigate the issue." Livingston v. Transnation Title Insurance Co. (In re Livingston), 372 F. App'x 613, 617 (6th Cir. Apr. 9, 2010) (unpublished opinion) (citing Gates, 452 N.W.2d at 631).

There is no dispute that the parties to this adversary proceeding are the same parties involved in the state court litigation and that the contempt sanctions were imposed in a valid, final judgment.[7] The key question is whether the facts necessary to establish "willful and malicious injury" under § 523(a)(6) were actually litigated and necessarily determined in the state court.

Michigan law considers an issue "actually litigated" if it is "put into issue by the pleadings, submitted to the trier of fact for determination, and is thereafter decided." In re Phillips, 434 B.R. at 486 (citing Latimer v. William Mueller & Son, Inc., 149 Mich. App. 620, 640, 386 N.W.2d 618, 627 (1986)). Under Michigan law, "[a]n issue is necessarily determined only if it is 'essential' to the judgment." Gates, 452 N.W.2d at 631 (citing Restatement (Second) of Judgments § 27 cmt. h (1982)). The "appropriate question is whether the issue was actually recognized by the parties as important and by the trier as necessary" to the prior judgment. Restatement (Second) of Judgments § 27 at cmt. j. If it was, the determination will most often be "conclusive between the parties in a subsequent action." Id. (noting that this result is subject to the exceptions to the general rules of issues preclusion set forth in § 28 of the Restatement (Second)).

The issues regarding the Debtor's violation of the Injunctive Order were litigated thoroughly and extensively, both in the trial court and on appeal. The Debtor actively participated in every aspect of the contempt litigation. The trial court made extensive factual findings in a detailed written opinion that was carefully analyzed and affirmed on appeal. The Debtor argues, however, that the factual issues that would establish the willful and malicious nature of the contempt sanctions were not "necessarily determined" by the state courts. The Debtor bases this assertion on the differing standards of culpability that apply to state court civil contempt findings and determinations of nondischargeability under § 523(a)(6).

The Sixth Circuit recently addressed the question of whether collateral estoppel applies to a state court judgment in a nondischargeable debt action when state law

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[7]The court recognizes that the amount of the contempt award may be subject to an additional appeal in the state court. See note 6, supra. This court's determination of the nondischargeable nature of the debt is without prejudice to the Debtor's right to request relief from stay, if necessary, and pursue his appeal regarding the amount of the award in the state court.

imposes a different "mental-state standard" than is required under the Bankruptcy Code. See Nehasil v. Grenier (In re Grenier), 458 F. App'x 436 (6th Cir. Jan. 31, 2012) (unpublished opinion). The creditors in Grenier purchased a home from the debtors, only to discover soon after that the house had serious defects, including "water damage, rotting floors, insect infestation, faulty electrical wiring, and fake water fixtures," that had been concealed by the debtors. Id. at 438. The creditors sued the debtors for fraud in Michigan state court, and the jury returned a verdict awarding the creditors nearly $300,000 in damages. Id. After the debtors filed their bankruptcy case, the creditor sought to have this debt excepted from the debtors' discharge under § 523(a)(2)(A). The debtors argued that the state court jury verdict was not entitled to preclusive effect, because Michigan law permits a finding of fraud when false statements are made recklessly, whereas § 523(a)(2)(A) requires "at least gross recklessness." Id.

The Sixth Circuit held that the debtors' argument about the differing legal standards "might have some force" if all it "had to go on were the fact of the Greniers' liability for fraud."[8] Id. at 438. But, in this case, it "had more." Id. In finding the debtors liable for fraud, "the Michigan jury made specific factual findings" including a finding that the debtors had actual knowledge about the defects in the home that they failed to disclose. Id. at 438-39. The court gave preclusive effect to this factual finding and held that the debt was nondischargeable, notwithstanding the minor difference in the applicable legal standards. Id. at 439; see also In re Livingston, 372 F. App'x at 619 (declining to decide whether the elements of fraud under Michigan law were "identical to the higher federal "gross recklessness" standard for non-dischargeablity under §523(a)(2)(A)" before affording preclusive effect to a state court judgment, because the factual findings of the state courts "conclusively establish[ed] fraud under the bankruptcy-law standard.")

Although Grenier involved fraud under § 523(a)(2)(A), its reasoning applies with equal force to the § 523(a)(6) claim at issue in this adversary proceeding. In the prior state court litigation, both the trial court and the Michigan Court of Appeals acknowledged that civil contempt under Michigan law does not require "willful disobedience" of a court order, but only requires the court to find that the actor "was neglectful or violated its duty to obey an order of the court." See Exh. B at 10; Exh. H

[8]In the absence of specific factual findings, some courts have refused to afford preclusive effect to state court judgments in subsequent nondischargeable debt actions, when the applicable state law imposes a lesser mental state standard than is required under § 523(a). See, e.g., Dantone v. Dantone (In re Dantone), 477 B.R. 28, 38-40 (6th Cir. B.A.P. 2012) (state court money judgment, which did not state basis for award, could be presumed to be for statutory conversion due to inclusion of punitive damages; however, allegations of fraud in complaint were not essential to the judgment because Michigan law does not require a finding of "circumstances indicating fraud" for statutory conversion).

at 7. Under this standard, the state courts theoretically *could* have held the Debtor in contempt without finding the "willful" disobedience of the Injunctive Order required under § 523(a)(6). But that is not what occurred. Instead, having noted the potentially lower standard of culpability, the state courts went on to make detailed factual findings regarding the Debtor's knowledge of the existence, terms, and duration of the Injunctive Order. Describing the Debtor's behavior as a "textbook example of contempt of court" the trial court held that the Debtor, "who recognized that a court order prohibited all transfers of MSG's assets" proceeded to take actions that "did precisely what the court forbade." See Exh. B at 15-16. Citing transcripts of prior court proceedings, and an email authored by the Debtor himself, the trial court held that the Debtor was an active participant in discussing the terms of the Injunctive Order, and was "well aware" of its continuing force. Despite this awareness, the Debtor knowingly participated in the sale of MSG's assets in direct violation of the Injunctive Order. These specific factual findings were not gratuitous comments or dicta, but rather were essential elements of the trial court's analysis and opinion. The significance of these findings, and their centrality to the factual focus of the state courts, is further evidenced by the fact that they were appealed by the Debtor and affirmed by the Michigan Court of Appeals. The appellate court's opinion specifically rejected the Debtors arguments regarding the "infirmity" of the Injunctive Order and his lack of knowledge of the order and its duration. Under the circumstances of this case, the detailed factual findings of the state courts were essential to the Contempt Award should be given preclusive effect in this adversary proceeding.

This court's conclusion that the factual findings made by the state court are entitled to preclusive effect in this adversary proceeding is not only consistent with Grenier and other relevant case law, but also effectuates the underlying purposes of collateral estoppel. Like the findings in Grenier, and as discussed in greater detail below, the state court's factual findings in this case conclusively establish the nature of the Debtor's actions under § 523(a)(6). To relitigate those issues in this court would result in precisely the type of repetitious litigation, waste of resources, and potential for inconsistent judgments that the doctrine of collateral estoppel is designed to prevent. See Monat v. State Farm Ins. Co., 469 Mich. 679, 692-93, 677 N.W.2d 843, 851 (2004) (under Michigan law, the doctrine of collateral estoppel acts "to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication . . . ."); see also Parklane Hoisery Co. v. Shore, 439 U.S. 322, 336 n.23, 99 S. Ct. 645, 654 (1979) ("[T]he whole premise of collateral estoppel is that once an issue has been resolved in a prior proceeding, there is no further factfinding function to be performed.").

3. Do the State Court's Factual Findings Establish the "Willful" and "Malicious" Nature of the Contempt Award?

The state courts' specific factual findings regarding the Debtor's knowing violation of the Injunctive Order establish that the Debtor's actions were willful for purposes of § 523(a)(6). The trial court's factual findings, which were affirmed by the Michigan Court of Appeals, conclusively establish that the Debtor knew about the Injunctive Order, and understood its terms. The Injunctive Order identified the precise conduct — transfer of MSG's assets — that was "substantially certain" to result in injury to the Plaintiff. Despite the Debtor's knowledge of the Injunctive Order and its terms, he intentionally undertook conduct that "did precisely what the court order forbade." See Exh. B at 15. Under these circumstances, this court finds that the Debtor's contemptuous conduct was "willful."

Despite the Debtor's assertions to the contrary, the factual findings made by the state courts in connection with the Contempt Award also establish the "malicious" nature of the Debtor's actions. In his response to the Plaintiff's motion for summary judgment the Debtor raises seven bases on which he asserts this court should hold his violations of the Injunctive Order were undertaken with "just cause or excuse":

> (1) the unusual formation of the injunction; (2) the fact C&H was owed $398,359.91 at the time of the Article 9 sale; (3) C&H held a valid security interest; (4) the Plaintiffs were not creditors of MSG; (5) Schnoor was the only named restrained party; (6) the Injunction was stipulated to be in effect for two weeks but it lasted indefinitely; (6) no one informed C&H or the Debtor that they were restrained by the Injunction; and (7) C&H believed Morris' security interest in the stock was worthless due to the actions of the Plaintiffs . . . .

See AP Dkt. No. 13 at 22. These arguments were raised — and conclusively rejected — in the prior state court litigation. The Michigan Court of Appeals deemed the Debtor's arguments regarding the validity of C&H's security interest a "red herring," and rejected his assertions regarding the "infirmities" of the Injunctive Order. The appellate court also affirmed the trial court's findings that the Debtor knew about the Injunctive Order, knew it applied to him, understood its duration and recognized that it remained in effect at the time the MSG stock were transferred. In light of these factual findings, no plausible argument can be made that the Debtor violated the Injunctive Order with "just cause or excuse." The state court findings establish that the Debtor knowingly and consciously disregarded his duties under the Injunctive Order. Therefore, his actions were malicious under § 523(a)(6).

4. The Defendant's Motion for Summary Judgment: Is the Contempt Award a Debt for Injury to the Plaintiff or the Plaintiffs Property?

Finally, the court will address the Debtor's argument that regardless of the willful and malicious nature of the Debtor's conduct, the Contempt Award does not constitute a debt for "injury" to the Plaintiff or his property, which is a threshold requirement of § 523(a)(6). The Debtor argues that the contempt damages imposed against him personally were awarded to compensate the Plaintiff for costs incurred in conjunction with the contempt proceedings. He points out that the Plaintiff sued other parties — including C&H — for fraud, conversion, and other intentional torts in connection with the transfer of the MSG stock. Even in the context of the contempt proceedings, it was C&H, and not the Debtor, that was held responsible for the Plaintiffs loss of its one-half interest in the MSG stock. According to the Debtor, the state court emphasized this point when it stated in its opinion that the Contempt Award did not involve "damages for personal injury, property damage, or wrongful death" and refused to allocate the award between responsible parties under Mich. Comp. Laws § 600.2957(1). See Exh. D at 2-3; Exh. E at 4.

However, the fact that the Debtor was not held liable for the underlying fraudulent transfer or that other parties were ordered to compensate the Plaintiff for the lost stock value he suffered as a result of the transfer does not compel the conclusion that the Plaintiff suffered no injury as a result of the Debtor's contempt. Again, the state court's Injunctive Order specifically identified a prohibited action — i.e., transfer of MSG's assets — that would "cross the line into injury" to the Plaintiff. In re Williams, 337 F.3d at 512 (quoting In re Behn, 242 B.R. at 238); see In re Best, 109 F. App'x at 5 (for purposes of § 523(a)(6), an "injury" is an "invasion of the creditor's legal rights"). Upon finding that the Debtor knowingly crossed this line and acted in contempt of the Injunctive Order, the state court imposed sanctions pursuant to Mich. Comp. Laws § 600.1721. That section provides that when "alleged misconduct has caused an actual loss or injury to any person the court shall order the defendant to pay such person a sufficient sum to indemnify him, in addition to the other penalties which are imposed upon the defendant." Id. These attorney's fees and costs were awarded to the Plaintiff as a result of the Debtor's knowing violation of the Injunctive Order and were imposed to compensate the Plaintiff for the injuries he suffered as a direct result of the Debtor's willful and malicious actions.

Other courts that have addressed the issue of whether prepetition contempt awards are compensation for "injury" to the plaintiff when there is no underlying judgment debt and the award is only for statutory fees and costs have reached this same result. See, e.g., In re Musilli, 398 BR. 447, 455-56 (E.D. Mich. 2008), affd, 379 F. App'x 494 (6th Cir. 2010) (rejecting debtors' arguments regarding the creditors' lack

of an interest in property subject to state court escrow order and "injury" thereto; even though creditor obtained escrow order by asserting rights under the Michigan UFTA, damages imposed against debtors for violation of that order arose from their contempt and not under the UFTA); Suarez v. Barrett (In re Suarez), 400 B.R. 732 (9th Cir. B.A.P. 2009). In Suarez, the Ninth Circuit B.A.P. held that an award of attorney's fees and costs for contempt of a state court injunction was the proximate result of the debtor's willful and malicious violation of the injunction, notwithstanding the fact that the contempt award did not include a compensatory component. The court noted that, when faced with the debtor's violation of a state court injunction:

> "[The creditor] had two choices: to suffer in silence, or pursue enforcement of the outstanding order. Neither the law nor basic fairness require the former; the latter was a natural consequence of [the debtor's] contemptuous behavior. In electing to pursue her remedies, [the creditor] was substantially certain to incur fees and costs, and the monetary sanction imposed was to compensate her for those fees and costs."

In re Suarez, 400 B.R. at 740 (citing Cohen v. de la Cruz, 523 U.S. 213, 118 S. Ct. 1212 (1998) (the phrase "any debt for" in § 523(a) includes all debts and liability arising from the specified conduct)) (additional citations omitted). Like the attorney's fees and costs in Suarez, the Contempt Award in this adversary proceeding was imposed to compensate the Plaintiff for injuries he suffered as a result of the Debtor's willful and malicious violation of the Injunctive Order. Accordingly, the Contempt Award is nondischargeable under § 523(a)(6)

IV. CONCLUSION.

The Contempt Award in this case was based on the state courts' findings that the Debtor knowingly and intentionally transferred MSG's assets in violation of the Injunctive Order and that the Plaintiff incurred damages as a direct result of the Debtor's actions. Those factual findings also establish that the Debtor's actions were "willful" and "malicious" under § 523(a)(6). The Injunctive Order prohibited conduct that would, by definition, cause injury to the Plaintiff. By knowingly violating the Injunctive Order, the Debtor acted "willfully" because he either intended to cause injury to the Plaintiff, or could be substantially certain that injury would result. The Debtor also acted "maliciously" because his violation of the Injunctive Order was in conscious disregard of his duties to comply with the order. The damages awarded to the Plaintiff were a result of the Defendant's willful, malicious, and contemptuous actions.

For these reasons, the Plaintiff is entitled to judgment as a matter of law under § 523(a)(6) and his cross motion for summary judgment shall be granted. The

Defendant's motion for summary judgment shall be denied. A separate order shall be entered accordingly.

IT IS SO ORDERED.

Dated September 30, 2015

_____/S/_____
James W. Boyd
United States Bankruptcy Judge

Seal of the United States Bankruptcy Court for the Western District of Michigan

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:	Case No: BG 14-07970
DAVID W. CHARRON,	Chapter 7
Debtor. /	
GLENN S. MORRIS and THE GLENN S. MORRIS TRUST,	Adversary Proceeding No. 15-80086
Plaintiffs,	
v.	
DAVID W. CHARRON,	
Defendant. /	

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND GRANTING PLAINTIFFS' CROSS MOTION FOR SUMMARY JUDGMENT

PRESENT: HONORABLE JAMES W. BOYD United States Bankruptcy Judge

In accordance with an Opinion Denying Defendant's Motion for Summary Judgment and Granting Plaintiffs' Cross Motion for Summary Judgment, entered on this date, which reasoning is incorporated herein;

NOW, THEREFORE, IT IS HEREBY ORDERED and ADJUDGED that:

1. The Defendant's Motion for Summary Judgment (AP Dkt. No. 4) be, and hereby is, DENIED.
2. The Plaintiffs' Cross Motion for Summary Judgment (AP Dkt. No. 6) be, and hereby is, GRANTED.
3. The debt owed by the Defendant to the Plaintiffs under the Opinion and Order Setting Forth Findings of Civil Contempt, Opinion and Order Awarding Attorney Fees, and Final Judgment, entered by the Kent County Circuit Court, be, and hereby is, nondischargeable under 11U.S.C. § 523(a)(6).
4. Entry of this nondischargeable debt judgment is without prejudice to either

party's right to seek further relief under state law, including the Defendant's right to seek relief from the automatic stay and to pursue an appeal of the amount of the contempt damage award to the extent permitted by applicable state law.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to FED. R. BANKR. P. 9022 and LBR 5005-4 upon the Defendant; Ronald A. Spinner, Esq., attorney for the Plaintiffs, and Perry G. Pastula, Esq., attorney for the Defendant.

END OF ORDER

IT IS SO ORDERED.

Dated September 30, 2015

/s/
James W. Boyd
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:	Case No: BG 14-07970
DAVID W. CHARRON,	Chapter 7
Debtor. /	
GLENN S. MORRIS and THE GLENN S. MORRIS TRUST,	Adversary Proceeding No. 15-80086
Plaintiffs, v.	
DAVID W. CHARRON,	
Defendant. /	

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND GRANTING PLAINTIFFS' CROSS MOTION FOR SUMMARY JUDGMENT

PRESENT: HONORABLE JAMES W. BOYD United States Bankruptcy Judge

In accordance with an Opinion Denying Defendant's Motion for Summary Judgment and Granting Plaintiffs' Cross Motion for Summary Judgment, entered on this date, which reasoning is incorporated herein;

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4. Entry of this nondischargeable debt judgment is without prejudice to either

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:	Case No: BG 14-07970
DAVID W. CHARRON,	Chapter 7
Debtor.	
GLENN S. MORRIS and THE GLENN S. MORRIS TRUST, Plaintiffs,	Adversary Proceeding No. 15-80086
v.	
DAVID W. CHARRON, Defendant.	

_____/

MEMORANDUM OPINION DENYING DEBTOR-DEFENDANT'S MOTIONS TO AMEND THE COURT'S FINDINGS UNDER RULE 52, AMEND JUDGMENT UNDER RULE 59. AND FOR RECONSIDERATION UNDER RULE 60

Appearances:

Ronald A. Spinner, Esq., Detroit, Michigan, attorney for Glenn S. Morris and the Glenn S. Morris Trust, Plaintiffs.

Perry G. Pastula, Esq., Wyoming, Michigan, attorney for David W. Charron, Debtor-Defendant.

I. FACTS AND PROCEDURAL BACKGROUND.

On September 30, 2015, this Court entered an Opinion and Order Denying Defendant's Motion for Summary Judgment and Granting Plaintiffs' Cross Motion for Summary Judgment in the above-captioned adversary proceeding. (AP Dkt. Nos. 15 & 16.) In the Opinion and Order, this Court held that various factual findings made by the Kent County Circuit Court when it imposed civil contempt sanctions against David W. Charron (the "Debtor") were entitled to preclusive effect in this adversary

proceeding under the doctrine of collateral estoppel. Because those factual findings established that the Debtor's actions were "willful" and "malicious" and resulted in injury to the Plaintiffs or their property, this Court concluded that the state court contempt sanctions were nondischargeable in the Debtor's bankruptcy case pursuant to 11 U.S.C. § 523(a)(6).

On October 14, 2015, the Debtor filed his Motion to Amend the Court's Findings under Rule 52 and Amend Judgment under Rule 59. (AP Dkt. No. 17.) Glenn S. Morris and the Glenn S. Morris Trust (the "Plaintiffs") filed a response to the Debtor's Motion to Amend the Court's Findings under Rule 52 and Amend Judgment under Rule 59. (AP Dkt. No. 18.) On November 2, 2015, the Debtor filed his Motion for Reconsideration under Rule 60. (AP Dkt. No. 19.) The Plaintiffs filed a statement indicating that they would not file a substantive response to the Debtor's Rule 60 motion unless directed to do so by the Court. (AP Dkt. No. 20.) This memorandum opinion addresses the requests for relief asserted in both of the Debtor's motions.

.II. DISCUSSION.

A. *Request for Additional Factual Findings — Rule 52.*

In his first request for relief, the Debtor asks this Court to make twenty-seven "additional fact findings for the purpose of assisting any future appellate review, and more fully depicting the facts of the case . . . ." See Debtor's Motion to Amend the Court's Findings under Rule 52 and Amend Judgment under Rule 59, AP Dkt. No. 17, at 2. The Debtor bases this request on Bankruptcy Rule 7052, which makes Federal Rule of Civil Procedure 52 applicable to adversary proceedings. Rule 52(b) provides:

> On a party's motion filed no later than [14] days after the entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

Fed. R. Civ. P. 52(b); Fed. R. Bankr. P. 7052 (stating that motions under Rule 52(b) must be filed no later than 14 days after entry of judgment in bankruptcy adversary proceedings, rather than 28 days as provided in Rule 52(b)).

The main purpose of Rule 52(b) is "to create a record upon which the appellate court may obtain the necessary understanding of the issues to be determined on appeal." See In re St. Marie Development Corp. of Montana, Inc., 334 B.R. 663, 675 n.3 (Bankr. Mont. 2005); see also 9C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2582 (3d ed. 2015). A motion to amend under Rule 52(b) may be used "to clarify essential findings or conclusions, correct errors of law or fact, or to present newly discovered evidence." 10 Collier on Bankruptcy ¶7052.03 (16th ed. 2015)

(citing Wal-Mart Stores, Inc. v. El-Amin (In re El-Amin), 252 B.R. 652, 656 (Bankr. E.D. Va. 2000) (the purpose of the rule is to correct an "egregious error of law or fact, not the resubmission of unsuccessful arguments")) (additional citations omitted). Rule 52(b) motions are not to be used to obtain a re-hearing on the merits or to raise arguments that could have been made before the court's earlier ruling. In re Busch, 369 B.R. 614, 621 (Bankr. 10th Cir. 2007); Wilkerson v. Debaillon, 2013 WL 3803972 at *7 (W.D. La. July 18, 2013) (unpublished opinion); MidWestOne Bank & Trust v. Commercial Fed. Bank, 331 B.R. 802,813 (S.D. Iowa 2005). Most importantly for purposes of the motion currently before the Court, motions to amend factual findings under Rule 52(b) are generally not appropriate when the matter was decided on summary judgment, because summary judgment does not entail finding facts. 9C Federal Practice and Procedure at § 2582 (citing Trentadue v. Integrity Committee, 501 F.3d 1215, 1237 (10th Cir. 2007) (trial court did not abuse its discretion in denying motion for additional findings under Rule 52(b); the rule only applies to cases in which the trial court "issues factual findings following a trial on the merits" not those "terminated on summary judgment")); Florham Park Chevron, Inc. v. Chevron U.S.A., Inc., 680 F. Supp. 159, 161 (D.N.J. 1988) (the trial court "does *not* engage in fact-finding within the meaning of Fed. R. Civ. P. 52 on a motion for summary judgment" accordingly, a motion for "amendment of findings made in connection with the summary judgment motion is procedurally inappropriate") (emphasis in original)) (additional citations omitted).

In this adversary proceeding, the Court's prior opinion and order were issued on cross motions for summary judgment. Because this Court did not engage in fact-finding within the meaning of Rule 52 in deciding the motions for summary judgment, the Debtor's motion for additional findings under Rule 52(b) is procedurally inappropriate and shall be denied. The Court has, however, considered the matters raised in the Debtor's Rule 52(b) motion in the context of Rule 59 and Rule 60.

B. *Alteration or Amendment of the Judgment — Rule 59.*

The Debtor also asks this Court to amend its prior opinion and order under Federal Rule of Bankruptcy Procedure 9023 and Federal Rule of Civil Procedure 59. Bankruptcy Rule 9023 makes Rule 59 applicable in bankruptcy cases. Rule 59(e) provides that "[a] motion to alter or amend a judgment must be filed no later than [14] days after the entry of the judgment." Fed. R. Civ. P. 59(e); Fed. R. Bankr. P. 9023 (requiring motions to alter or amend to be filed "no later than 14 days after entry of judgment" in bankruptcy cases). The Debtor's request was timely filed.

Alteration or amendment of a judgment under Rule 59(e) is only justified in instances where there is a clear error of law, newly discovered evidence, an intervening

change in controlling law, or to prevent manifest injustice. See GenCorp. Inc. v. American Intl Underwriters, 178 F.3d 804, 834 (6th Cir. 1999) (citations omitted). Motions for reconsideration are "not an opportunity to re-argue a case" and should not be used by the parties to "raise arguments which could, and should, have been made before judgment issued." Sault Ste. Marie Tribe of Chippewa Indians v. Engler146 F.3d 367, 374 (6th Cir. 1998); FDIC v. World Univ. Inc., 978 F.2d 10, 16 (1st Cir.1992).

As noted above, the Court has considered the Debtor's requests to amend the Court's prior "factual findings" under the standard that applies to motions brought pursuant to Rule 59(e). The issues raised in paragraphs one through twenty-seven of the Debtor's motion ask this Court to re-characterize its factual summary of the proceedings in the state trial and appellate courts, and to add additional "findings" based on the Debtor's view of the record in the state courts and in this adversary proceeding. Amending the Court's prior opinion and order to reflect the changes sought by the Debtor would not clarify essential findings or conclusions, correct errors of law or fact, or address newly discovered evidence. Accordingly, the Debtor's requests to alter or amend the judgment on these bases shall be denied. In addition, the issues raised in paragraphs twenty-five and twenty-seven of the Debtor's motion were also argued in the Debtor's Rule 60 motion, and are addressed in that context.

The Court has also reviewed the requests for relief set forth in paragraphs one and two of the Debtor's Rule 59 motion in light of the state court record and the record in this adversary proceeding. These paragraphs of the Debtor's motion ask this Court to change two specific sentences in the prior opinion and order. Those sentences summarized proceedings before the state trial court that led to entry and extension of the Injunctive Order that the Debtor was ultimately found to have violated. The Debtor offers no newly-discovered evidence in support of these requests, and does not argue that there has been an intervening change in controlling law since entry of this Court's prior opinion and order. The Debtor's motion also fails to demonstrate that a clear error of law has been committed or that the language in the prior opinion must be set aside to avoid manifest injustice. Therefore, the Debtor's motion to alter or amend these portions of the Court's previous opinion shall be denied.

The relief requested in the third paragraph of the Debtor's Rule 59(e) motion — i.e., that the Court clarify the basis for the state trial court's contempt award — was also raised in the Debtor's motion to reconsider under Rule 60 and is addressed in that context below.

C. Motion for Relief from Judgment or Order— Rule 60.

In his second motion, filed with the Court on November 2, 2015, the Debtor requests that the Court reconsider its prior opinion and order under Federal Rule of

Bankruptcy Procedure 9024, which makes Federal Rule of Civil Procedure 60 applicable to bankruptcy cases. The Debtor's motion to reconsider is specifically brought pursuant to Rule 60(b)(1) which provides that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect . . . ." Fed. R. Civ. P. 60(b)(1). The Sixth Circuit Court of Appeals has explained that a motion under Rule 60(b)(1) is "'intended to provide relief to a party in only two instances: (1) when the party has made an excusable litigation mistake or an attorney in the litigation has acted without authority; or (2) when the judge has made a substantive mistake of law or fact in the final judgment or order." Cacevic v. City of Hazel Park, 226 F.3d 483, 490 (6th Cir. 2000) (quoting Yapp v. Excel Corp., 186 F.3d 1222, 1231 (10th Cir.1999)); see also Bank of California, N.A. v. Arthur Andersen & Co., 709 F.3d 1222, 1231 (10th Cir.1999)); see also Bank of California, N.A. v. Arthur Andersen & Co., 709 F.2d 1174, 1177 (7th Cir.1983) (Rule 60(b)(1) is intended to allow clear errors to be corrected without the cost and delay of an appeal.").

First, the Debtor's motion for reconsideration argues that this Court's prior opinion ignored the significance of the state trial court's dismissal of the fraudulent conveyance claim brought by the Plaintiffs against the Debtor. This Court disagrees. The basis of this Court's nondischargeability determination was the state court's finding that the Debtor acted in contempt of the Injunctive Order and was therefore responsible for $363,506.77 in attorney fees and costs that were incurred by the Plaintiffs in connection with the contempt proceedings. As explained in this Court's opinion, this finding of civil contempt and award of damages was entirely separate and distinct from the state court's determination that the Debtor was entitled to summary judgment on the fraudulent conveyance claims against him. See Opinion Denying Defendant's Motion for Summary Judgment and Granting Plaintiffs Cross Motion for Summary Judgment, AP Dkt. No. 15 at 24.

Second, the Debtor argues that this Court was mistaken when it concluded that the trial court awarded damages pursuant to Mich. Comp. Laws § 600.1721 instead of through its inherent contempt power. In support of this argument, the Debtor cites a passage in the Michigan Court of Appeals' opinion which quotes In re Bradley Estate, 835 N.W.2d 545, 494 Mich. 367 (2013) and deems the Debtor's reliance on that case "unavailing, based on our Supreme Court's limitation regarding the use of this decision." See Michigan Court of Appeals Opinion at 19 (attached as Exh. H to Defendant's Motion for Summary Judgment, AP Dkt. No. 4) (quoting In re Bradley Estate, and noting that the decision in that case distinguished between contempt actions "premised in tort liability" and those "involving a trial court's inherent power to punish contempt"). The Court of Appeals made this statement in the portion of its opinion that considered — and rejected — the Debtor's argument that the trial court had

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red by failing to allocate liability for the contempt sanctions under MCL § 600.2957.[11]

This Court has again reviewed the opinions of the state trial court and the Michigan Court of Appeals and believes that the contempt sanctions were accurately characterized in this Court's prior opinion. In support of its authority to impose the contempt sanctions, the trial court cited MCL § 600.1721, In re Contempt of Auto Club Ins. Ass'n, 624 N.W.2d 443, 450-51, 243 Mich. App. 697, 708 (2000) (stating that the courts' power to award contempt sanctions includes the ability to "compensate the complainant;" and further noting that the inherent power of courts to punish contempt has been "reinforced" by the enactment of statutes, including the "general contempt statute," MCL § 600.1701) and Davis v. Detroit Financial Review Team, 821 N.W.2d 896, 925, 296 Mich. App. 568, 626, (2012) (explaining that "coercion to force compliance with a court order and compensatory relief for a complainant are both appropriate potential sanctions for civil contempt"). *See* Kent Court Circuit Court Opinion and Order Setting Forth Findings of Civil Contempt at 16, 21 (attached as Exh. B to Defendant's Motion for Summary Judgment, AP Dkt. No. 4.) The Court of Appeals affirmed the trial court's determination of contempt, its imposition of sanctions against the Debtor, and its refusal to allocate those sanctions under MCL § 600.2957. It held that the sanctions imposed by the trial court, which represented "compensation for the loss flowing from the alleged violation of the [Injunctive Order]" were appropriate and "consistent with the purpose of civil contempt proceedings." See Michigan Court of Appeals Opinion at 15-16 (citing In re Contempt of Dougherty, 413 N.W.2d 392, 396, 429 Mich. 81, 92-93 (1987)). Based on the totality of the state court record, the trial court's authority to award the contempt sanctions and the purpose for which they were awarded is entirely evident. The distinction the Debtor attempts to draw between the state court's statutory and inherent contempt powers would not materially affect this Court's nondischargeable debt determination. Accordingly, the Debtor's motion to reconsider this issue is denied.

Finally, the Debtor argues that this Court created an "unexpected change of course" when it found that the Debtor's conduct resulted in an injury to the Plaintiffs' "person," rather than to the Plaintiffs' property, thereby "transform[ing] the `debt' represented by the contempt award into the 'injury' suffered by the Plaintiffs." See Debtor's Motion for Reconsideration under Rule 60, AP Dkt. No. 19 at 12-13. The Debtor's argument not only mischaracterizes the record in this adversary proceeding and the conclusions in this Court's prior ruling, but also attempts to draw another distinction without a difference. The basis of the Plaintiffs' complaint, as well as its cross motion for summary judgment, was that the debt to the Plaintiffs should be nondischargeable under 11 U.S.C. § 523(a)(6). Section 523(a)(6) excepts from discharge any debt "for willful and malicious injury by the debtor to

another entity or to the property of another entity." The nature of the "injury" suffered by the Plaintiffs as a result of the Debtor's contemptuous conduct was identified and directly addressed in the Plaintiffs' complaint and cross motion for summary judgment.[2] The Debtor had ample opportunity to respond to the Plaintiffs' allegations and to argue the legal issues presented.[3] The issues regarding the alleged "injury" were also argued, in some detail, during oral argument on the summary judgment motions. [4] This Court's opinion was based on the entire summary judgment record before it, and included a thorough analysis of the "injury" sustained as a result of the Debtor's contempt. The Debtor's motion merely re-states arguments that were previously considered by this Court. The Debtor has not established a basis for reconsideration of the Court's prior findings of fact and conclusions of law on this issue.

III. CONCLUSION.

For the reasons set forth herein, the Debtor's Motion to Amend the Court's Findings under Rule 52 and Amend Judgment under Rule 59 is denied. The Debtor's Motion for Reconsideration under Rule 60 is also denied. Separate orders shall be entered accordingly.

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[2]In paragraph 95 and 96 of their complaint, the Plaintiffs allege:
95. Charron realized that it was substantially certain that Morris would incur litigation costs as a result of Charron's and C&H's transfer of MSG's assets to NYPIA in violation of the [Injunctive] Order.
96, Charron willfully and maliciously caused injury to Morris's property by forcing Morris to incur litigation costs which would have been unnecessary by for Charron's actions in violation of the [Injunctive] Order.
See Plaintiffs' Complaint Objecting to Discharge, AP Dkt. No. 1, at ¶ 95-96. In both his motion for summary judgment and his motion for reconsideration, the Debtor argues that the only "injury" alleged in the Plaintiffs' complaint was to its property interest in the MSG stock. To support this assertion, the Debtor cites to the Plaintiffs' complaint, but omits these critical paragraphs. See Debtor's Motion for Summary Judgment, AP Dkt. No. 4, at 8; Debtor's Motion for Reconsideration under Rule 60, AP Dkt. No. 19, at 12; see also Debtor's Motion for Amended Findings and to Amend Judgment, AP Dkt. No. 17, at 9.

[3]The Debtor raised arguments about the alleged lack of an "injury" to the Plaintiffs or their property in his motion for summary judgment and in his response to the Plaintiffs' motion. See e.g., Debtor's Motion for Summary Judgment, AP Dkt. No. 4, at 1 n.3 (acknowledging that the state trial court stated that the $363,506.77 contempt sanction represented "a compensatory award of attorney fees, other costs, or both, that Plaintiff Glenn Morris incurred in pursuing civil contempt against the Debtor"); Debtor's Reply to Counter-Motion for Summary Judgment and Memorandum in Support Thereof, AP Dkt. No. 13, at 13 (arguing that the Plaintiffs' motion for summary judgment "fails for the same reason stated in the Debtor's summary judgment motion, namely, the [Kent County] Circuit Court held that the Award does not represent compensation for *injury to the Plaintiffs or their property')* (emphasis added).

[4]See Transcript of July 8, 2015 Cross Motions for Summary Judgment, AP

IT IS SO ORDERED.

/S /

Dated: November 25, 2015 James W. Boyd

United States Bankruptcy Judge

Michigan Statutes

MCL 600.1701 Neglect or violation of duty or misconduct; power to punish by fine or imprisonment.

The supreme court, circuit court, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all of the following cases:

(a) Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority.

(b) Any breach of the peace, noise, or disturbance directly tending to interrupt its proceedings.

© All attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner elected or appointed to perform any judicial or ministerial services, for any misbehavior in their office or trust, or for any willful neglect or violation of duty, for disobedience of any process of the court, or any lawful order of the court, or any lawful order of a judge of the court or of any officer authorized to perform the duties of the judge.

(d) Parties to actions for putting in fictitious bail or sureties or for any deceit or abuse of the process or proceedings of the court.

(e) Parties to actions, attorneys, counselors, and all other persons for the nonpayment of any sum of money which the court has ordered to be paid.

(f) Parties to actions, attorneys, counselors, and all other persons for disobeying or refusing to comply with any order of the court for the payment of temporary or permanent alimony or support money or costs made in any action for divorce or separate maintenance.

(g) Parties to actions, attorneys, counselors, and all other persons for disobeying any lawful order, decree, or process of the court.

(h) All persons for assuming to be and acting as officers, attorneys, or counselors of any court without authority; for rescuing any property or persons that are in the custody of an officer by virtue of process issued from that court; for unlawfully detaining any witness or party to an action while he or she is going to, remaining at, or returning from the court where the action is pending for trial, or for any other unlawful interference with or resistance to the process or proceedings in any action.

(I) All persons who, having been subpoenaed to appear before or attend, refuse or neglect to obey the subpoena, to attend, to be sworn, or when sworn, to answer any legal and proper interrogatory in any of the following circumstances:

(I) As a witness in any court in this state.

(ii) Any officer of a court of record who is empowered to receive evidence.

(iii) Any commissioner appointed by any court of record to take testimony.

(iv) Any referees or auditors appointed according to the law to hear any cause or matter.

(v) Any notary public or other person before whom any affidavit or deposition is to be taken.

(j) Persons summoned as jurors in any court, for improperly conversing with any party to an action which is to be tried in that court, or with any other person in regard to merits of the action, or for receiving communications from any party to the action or any other person in relation to the merits of the action without immediately disclosing the communications to the court.

(k) All inferior magistrates, officers, and tribunals for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law after the cause or matter has been removed from their jurisdiction.

(l) The publication of a false or grossly inaccurate report of the court's proceedings, but a court shall not punish as a contempt the publication of true, full, and fair reports of any trial, argument, proceedings, or decision had in the court.

(m) All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any parties or to protect the rights of any party.

MCL §600.1721 Payment of damages; effect.

If the alleged misconduct has caused an actual loss or injury to any person the court shall order the defendant to pay such person a sufficient sum to indemnify him, in addition to the other penalties which are imposed upon the defendant. The payment and acceptance of this sum is an absolute bar to any action by the aggrieved party to recover damages for the loss or injury.