

FOR PUBLICATION

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NOV 19 2013

CLERK U.S. BANKRUPTCY COURT
Central District of California
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

Sara Raziyan,

Debtor.

Gateway One Lending & Finance LLC,

Plaintiff,

v.

Sara Raziyan, aka Nijat Raziyan Tanha,
aka Nijat T. Raziyan,

Defendant.

CHAPTER 7

Case No.: 2:12-bk-18736-TD
Adv. No.: 2:12-ap-01708-TD

MEMORANDUM DECISION

Date: September 26, 2013
Time: 1:30 p.m.
Courtroom: 1345

On August 15, 2007, Platinum Auto Haus entered into a retail sales contract (Contract) for the purchase of a 2003 Mercedes Benz (VIN WDBLK70G53144109) with Defendant Sara Raziyan (Raziyan). Platinum Auto Haus immediately assigned the Contract to Gateway One Lending & Finance, LLC (Plaintiff). Pursuant to the Contract,

1 Raziyan agreed not to sell, rent, lease, or transfer any interest in the car or the Contract
2 without permission. Tr. Ex. 1, Contract, paragraph 2(b). She also agreed not to expose
3 the car to misuse, seizure, confiscation, or involuntary transfer. *Id.* According to the
4 Contract, Raziyan was required to make monthly payments of \$508.16 beginning
5 September 14, 2007, through August 14, 2013. Raziyan failed to complete all of the
6 monthly payments. She made her last payment to Plaintiff in February 2011. After this
7 default, and without Plaintiff's knowledge or permission, Raziyan did not return the car
8 to Plaintiff but instead turned over possession of the car to her husband, Ali Lavassani,
9 from whom she was separated; they were living separately and in the process of
10 divorce.
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13 Upon Raziyan's default, Plaintiff attempted to contact Raziyan to recover the car.
14 Raziyan did not respond constructively or helpfully. Raziyan acknowledged at trial that
15 she did not return the car to Plaintiff, then or later, but turned it over to her husband who
16 worked in the "car business" and that she expected him to "take care of" the car for her.
17

18 Although Plaintiff recovered the car later after considerable investigative effort
19 and expense, Plaintiff has not been paid the defaulted balance and remains unable to
20 resell the car because California DMV records no longer reflect Plaintiff's lien. Plaintiff
21 discovered that its registered lien on the car's title had been improperly removed from
22 California DMV records; title to the car was inexplicably transferred to a third party
23 without Plaintiff's knowledge or consent. See Tr. Ex. 4. Plaintiff's evidence reasonably
24 established that it suffered proximate economic loss of about \$20,000 due to
25 Defendant's non-payment of the Contract balance, her unauthorized transfer of
26 possession, and the unexplained transfer of title to a third party. The circumstantial
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1 evidence suggests that Raziyan's husband, or an agent her husband may have
2 enlisted, participated in the unauthorized transfer of title.

3 On March 12, 2012, Raziyan filed a voluntary chapter 7 petition. On May 16,
4 2012, Plaintiff timely filed an adversary complaint seeking an exception to discharge
5 under 11 U.S.C. § 523(a)(6) against Raziyan. The complaint alleges that Raziyan made
6 an unauthorized transfer of the car legally owned by the Plaintiff to a third party,
7 Raziyan's husband, resulting in damages to the Plaintiff of \$20,000. The trial was held
8 on September 26, 2013, and the matter was taken under advisement based on the
9 testimony and documentary evidence, both of which were minimal.
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11 Pursuant to 11 U.S.C. § 523(a)(6), a debt is nondischargeable by an individual
12 when such debt is "for willful and malicious injury by the debtor to another entity or to
13 the property of another entity" In order for a debt to be nondischargeable under §
14 523(a)(6), the bankruptcy court must find the injury inflicted by defendant was both
15 willful and malicious. *Matter of Ornsby*, 591 F.3d 1199, 1206 (9th Cir. 2010). "The
16 Supreme Court in *Kawaauhau v. Geiger (In re Geiger)*, 523 U.S. 57, 118 S.Ct. 974, 140
17 L.Ed.2d 90 (1998), made it clear that for section 523(a)(6) to apply, the actor must
18 intend the consequences of the act, not simply the act itself." *Ornsby* at 1206, *citing*
19 *Geiger* at 60. "The Debtor is charged with the knowledge of the natural consequences
20 of his [or her] actions." *Ornsby* at 1206 [citations omitted]. "In addition to what a debtor
21 may admit to knowing, the bankruptcy court may consider circumstantial evidence that
22 tends to establish what the debtor must have actually known when taking the injury-
23 producing action." *Id.* See also *Carrillo v. Su (In re Su)* 290 F.3d 1140, 1146 n. 6 (9th
24 Cir. 2002).
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1 A willful injury requires “a deliberate or intentional *injury*, not merely a deliberate
2 or intentional *act* that leads to injury.” *Geiger* at 61. The willful requirement of 523(a)(6)
3 is met when it is shown either (a) that the debtor had a subjective intent to cause harm
4 or (b) knowledge that harm is substantially certain to occur as a result of his [or her]
5 conduct. *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1208 (9th Cir. 2001). *In re*
6 *Su* at 1144-45 n. 3.

8 The next step of the inquiry is whether the injury was “malicious.” “An injury is
9 ‘malicious,’ as that term is used in Section 523(a)(6), when it is: (1) a wrongful act; (2)
10 done intentionally; (3) which necessarily causes injury; and (4) is done without just
11 cause and excuse.” *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir. 2005).

13 Raziyan intended to inflict harm on Plaintiff. Plaintiff’s loss was the result of a
14 deliberate, intentional act on Raziyan’s part in transferring and abandoning the car to
15 her husband in direct violation of her obligations to Plaintiff. Raziyan’s act was wrongful
16 at best, done intentionally, and was, in this instance, the direct cause of Plaintiff’s injury.
17 These conclusions are based on the following reasons:

19 Raziyan concedes that she turned the car over to her husband. She did so
20 without the Plaintiff’s knowledge or permission. Her conduct led directly to an egregious
21 violation of Plaintiff’s property rights. Her testimony regarding the reason for giving the
22 car to her husband was vague and unpersuasive; essentially, she evaded her financial
23 responsibility to Plaintiff by saying she knew that her husband was in the car business
24 and thought he would “take care” of the car for her. The court infers from this evidence
25 that Raziyan expected her husband to dispose of the car, but otherwise she disregarded
26 any further responsibility to Plaintiff. Instead Raziyan sought the respite of chapter 7
27 bankruptcy and the hope of an easy discharge of her debt to Plaintiff.
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1 Raziyan was required by the Contract with Plaintiff to return the car to the Plaintiff
2 when she could not pay. Because Raziyan intentionally concealed the car from Plaintiff
3 and instead gave the car to her husband without the Plaintiff's knowledge or permission
4 after she defaulted on the Contract, she had to know that she was depriving Plaintiff of
5 its property and Plaintiff's immediate right to possession of the car. She had to know
6 that avoiding or delaying Plaintiff's recovery of the car would aggravate Plaintiff's
7 economic loss resulting from her contractual default and that harm to Plaintiff was
8 substantially certain to occur as a result of her conduct.
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10 The court concludes that Plaintiff's economic loss was a direct result of an
11 intentional wrongful act by Raziyan that she knew, or subjectively had to know, would
12 deprive Plaintiff of its right to mitigate its economic loss by repossession and resale.
13 The circumstantial evidence here leads the court to conclude that Plaintiff's ultimate
14 losses were a direct and natural consequence of Raziyan's conduct. See *Geiger* at 60.
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16 Under the circumstances, Raziyan did not have any valid reason to give the car
17 to her husband without Plaintiff's consent. Raziyan's defenses are unconvincing.
18 Plaintiff has proved by a preponderance of the evidence that Raziyan should be held
19 liable to Plaintiff on a nondischargeable basis under 11 U.S.C. § 523(a)(6) for willful and
20 malicious injury suffered by the \$20,000 loss of Plaintiff's property. Plaintiff has proved
21 that Raziyan acted deliberately and intentionally in turning the car over to her husband
22 while failing to immediately turn over the car to the Plaintiff. Raziyan knew or had to
23 have known the consequences of her actions in giving the car to her husband. She had
24 to know that this action was wrongful and would cause injury to the Plaintiff. Raziyan
25 failed to establish that there was any just cause or excuse for her conduct in failing to
26 return the car to the Plaintiff but instead concealing the car from Plaintiff and turning it
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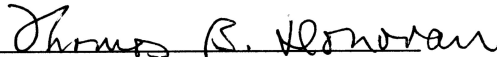
1 over to her husband. Raziyan's conduct does not establish that she was an honest
2 debtor simply seeking relief from insurmountable debt. It proved instead that she
3 actively dodged her responsibility to allow Plaintiff to mitigate its economic losses
4 resulting from Raziyan's contractual defaults. Raziyan does not deserve the discharge
5 she seeks.
6

7 Raziyan's willful, malicious conduct also constituted conversion of Plaintiff's
8 interest in the car. Under California law, the elements of a conversion are: (1) the
9 creditor's ownership or right to possession at the time of the conversion; (2) the debtor's
10 conversion by a wrongful act or disposition of property rights; and (3) damages. *In re*
11 *Thiara*, 285 B.R. 420, 427 (9th Cir. BAP 2002). Plaintiff here alleged and proved all
12 three elements: (1) Plaintiff held legal title to the car and had the right to repossess it
13 upon Raziyan's payment default; (2) Raziyan converted the car by wrongfully and
14 maliciously concealing it from Plaintiff on her own private terms; and (3) Plaintiff
15 suffered a total of \$20,000 in economic loss as a result of Raziyan's conduct.
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17 Judgment will be entered for Plaintiff excepting Raziyan's debt to Plaintiff from
18 discharge in the amount of Plaintiff's total damages of \$20,000, plus interest at the
19 federal rate, costs and attorneys' fees, to be established by a separate application.
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21 IT IS SO ORDERED.
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24 Date: November 19, 2013


Thomas B. Donovan
United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): **MEMORANDUM DECISION** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner stated below:

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) ^B Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of (*date*) 11/18/13, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

Wesley H Avery (TR)
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Ali Matin on behalf of Defendant Sara Raziyan
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Thomas J Prenovost, Jr on behalf of Plaintiff Gateway One Lending & Finance LLC
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krocha@pnbd.com

United States Trustee (LA)
ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY THE COURT VIA UNITED STATES MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Debtor/Defendant
Sara Raziyan
10645 Wilshire Blvd., Unit 303
Los Angeles, CA 90024

Defendant's Attorney
Mitra Ahouraian
2029 Century Park East, 14th Floor
Los Angeles, CA 90067

☐ Service information continued on attached page

3. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

☐ Service information continued on attached page