UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In re

STEPHEN M. ALFORD, Case No. 01-41816-PNS3
CHERI L. ALFORD,

Debtors.

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,

Plaintiff,

vs. Adv. No. 01-80056

STEPHEN M. ALFORD,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR REHEARING

John E. Venn, Jr., Pensacola, Florida, Attorney for Stephen M. Alford
W. Douglass Hall and F. Townsend Hawkes, Tallahassee, Florida, Attorneys for St. Paul Fire and Marine Insurance Company

This matter is before the Court on Stephen Alford's motion for a rehearing of the Court's order granting summary judgment to St. Paul Fire and Marine Insurance Company and finding that Mr. Alford's debt to St. Paul is excepted from discharge. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is denying Mr. Alford's motion.

FACTS

St. Paul Fire and Marine Insurance Company provides payment and performance bonds to a variety of businesses involved in the construction industry. St. Paul does business by entering into agreements with insurance agencies which solicit insurance contracts that are subsequently placed with St. Paul. Certain employees of these insurance agencies are authorized to issue bonds on behalf of St. Paul.

Stephen Alford was employed by an insurance agency that placed some of its insurance contracts with St. Paul. He was not authorized to issue bonds on St. Paul's behalf. Mr. Alford approached St. Paul to issue bonds to two of his clients for shipbuilding projects. St. Paul declined because it believed that the projects were too risky. Unlike St. Paul, Mr. Alford was confident that his clients were capable of completing the projects with a minimal risk of default. Therefore, he designed fake bonds bearing St. Paul's name and issued them to his clients.

Mr. Alford designed the fake St. Paul bonds himself. He meticulously patterned them to look like real St. Paul bonds he had seen issued on other projects. Mr. Alford typed up the appropriate language for each bond. He placed a stolen St. Paul corporate seal on each one, forged the signature of an agent authorized to issue bonds on St. Paul's behalf, and attached a stolen St. Paul power of attorney authorizing that agent to issue St. Paul bonds. Mr. Alford received $1,050,000 from one of his clients for issuing a fake St. Paul bond and he was attempting to collect $852,000 from another when his scheme unraveled.

St. Paul filed a lawsuit against Mr. Alford and secured a $3,469,542.50 default judgment against him in the United States District Court for the Eastern District of Louisiana. Mr. Alford and his wife subsequently filed a chapter 7 bankruptcy case in this Court. St. Paul filed a

complaint against Mr. Alford alleging that his $3,469,542.50 debt is excepted from discharge under the Bankruptcy Code because it was obtained by fraud under §523(a)(2)(A); because it was obtained by embezzlement or larcency under §523(a)(4); and because it constituted a willful and malicious injury to St. Paul under §523(a)(6). This Court granted summary judgment to St. Paul on November 3, 2003. It found that Mr. Alford's debt was excepted from discharge because it constituted a willful and malicious injury under §523(a)(6). Mr. Alford filed a Rule 9023 motion for rehearing on November 12, 2003.

LAW

A motion for reconsideration may be brought pursuant to Fed. R. Civ. P. 59(e) or 60(b).[1] "If the motion is served within ten days of the rendition of judgment, the motion falls under Rule 59(e); if it is served after that time, it falls under Rule 60(b)." *Sussman v. Salem, Saxon & Nielson*, 153 F.R.D. 689, 694 (M.D. Fla. 1994). Mr. Alford filed his motion for reconsideration within Rule 59(e)'s ten day limit; therefore, the Court will consider it under Rule 59(e) grounds.

"Rule 59(e) does not set forth any grounds for relief and the district court has considerable discretion in reconsidering an issue." *Id.* at 694(citing *American Homes Assur. Co. v. Glenn Estess & Associates, Inc.*, 763 F.2d 1237, 1238-39 (11th Cir.1985). However, "courts have delineated three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; (3) the need to correct clear error or prevent manifest injustice." *Id.*(citing to *Decker Coal Co. v. Hartman*, 706 F.Supp. 745, 750 (D. Mont.

[1] Most of the Federal Rules of Civil Procedure are incorporated into the Federal Bankruptcy Rules of Procedure. Federal Rules 59(e) and 60(b) are incorporated into the Bankruptcy Rules and, with exceptions that do not apply in this case, they are identical to Bankruptcy Rules 9023(e) and 9024(b). Therefore, nonbankruptcy cases that interpret the rules are applicable.

1988)(quoting *All Hawaii Tours v. Polynesian Cultural Center*, 116 F.R.D. 645, 649 (D. Haw. 1987). There has not been an intervening change in controlling law since this Court granted St. Paul's summary judgment motion on November 3, 2003, nor is new evidence available. Accordingly, Mr. Alford's motion may only proceed under the third ground for reconsideration - the need to correct clear error or prevent manifest injustice.

In his motion for rehearing, Mr. Alford argues that (1) the Court used the wrong standard under §523(a)(6), and (2) the Court should not have granted summary judgment to St. Paul because there were disputed facts. Although the Court finds no merit in either of his arguments, it will take this opportunity to more fully "spell out" its reasons for granting summary judgment to St. Paul and its finding that Mr. Alford's debt was excepted from discharge under §523(a)(6). Each of Mr. Alford's arguments is addressed separately below.

I. SECTION 523(a)(6) STANDARD UNDER *GEIGER*

The United States Supreme Court determined the standard to be applied in a §523(a)(6) discharge exception proceeding in *Kawaauhau v. Geiger*, 523 U.S. 57 (1998). In *Geiger*, the Supreme Court considered the meaning of the phrase "willful and malicious injury" under §523(a)(6). It held that "[t]he word 'willful' in (a)(6) modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury." *Geiger* at 57.

Although the petitioners in *Geiger* argued that a more encompassing definition should apply, the Supreme Court held that such a definition could wrongly except from discharge "a wide range of situations in which an act is intentional, but injury is unintended, *i.e.*, neither desired nor in fact anticipated by the debtor." *Id.* at 62. It gave as an example every traffic

accident originating from a driver's initial intentional act of rotating his steering wheel to make a left hand turn without first looking for oncoming traffic. *Id.* Such acts would be intentional but debts resulting from them would not constitute willful and malicious injuries because the drivers would not have intended or anticipated the resulting accident.

This Court considered Mr. Alford's actions under the *Geiger* standard in its order granting St. Paul's summary judgment motion. *St. Paul Fire and Marine Ins. Co. v. Alford*, Case No. 01-41816-PNS3, Adv. No. 01-80056 (Bankr. N.D. Fla. November 11, 2003). It found that "Mr. Alford, at the very least, anticipated that issuing fake St. Paul bonds to his clients would injure St. Paul." *Id.* at 15. Based on its finding, the Court held that "[b]ecause Mr. Alford anticipated that he *may* injure St. Paul, his injury was willful and malicious under §523(a)(6)." *Id.* (emphasis added).

In Mr. Alford's motion for rehearing, he argues that the Court used the wrong standard under §523(a)(6) to determine that he willfully and maliciously injured St. Paul. Mr. Alford argues that the Court's use of the word "may" to modify "injure" in its holding indicates that the Court incorrectly applied a "reckless disregard" standard in this case. Although Mr. Alford's argument may appear to have some merit if that one sentence is considered in isolation, when it is considered in the context of the entire paragraph from which it was taken, it is clear that the Court's use of the word "may" was merely superfluous because it had already found that "Mr. Alford ... anticipated that issuing fake St. Paul bonds ... would injure St. Paul." *Id.* Therefore, the Court finds that it used the correct standard under *Geiger*.

II. APPROPRIATENESS OF SUMMARY JUDGMENT

To determine if a grant of summary judgment is appropriate, a court "must review the pleadings, depositions, answers to interrogatories, admissions and affidavits, if any, to determine whether there is no genuine issue as to any material fact so that the moving party is entitled to judgment as a matter of law." *Navistar Fin. Corp. v. Stelluti (In re Stelluti),* 163 B.R. 699, 702 (Bankr. S.D.N.Y. 1994)(citing *Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 247 (1986). "The moving party has the burden of showing that there is an absence of evidence to support the nonmoving party's case," *Id.*(citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); and "[t]he nonmoving party may oppose a summary judgment motion by making a showing that there is a genuine issue as to a material fact in support of a verdict for that party," *Id.*(citing *Anderson* at 249). The Court must view the underlying facts, and all reasonable inferences drawn therefrom, in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

This Court considered Mr. Alford's actions under the summary judgment standards set out by the United States Supreme Court in its *Celotex* and *Anderson* decisions. *St. Paul Fire and Marine Ins. Co. v. Alford*, Case No. 01-41816-PNS3, Adv. No. 01-80056 (Bankr. N.D. Fla. November 11, 2003). It reviewed "the Louisiana District Court transcript of the default confirmation proceeding, the fake St. Paul bonds submitted into evidence, Mr. Alford's affidavit submitted into evidence, and Mr. Alford's extensive deposition testimony." *Id.* This Court found that it was "appropriate to grant St. Paul's summary judgment motion because 'there is no genuine issue as to any material fact and [St. Paul] is entitled to judgment as a matter of law.'" Id.(citing Anderson *v. Liberty Lobby, Inc.*, 447 U.S. 242, 247 (1986).

Mr. Alford, in his motion for rehearing, argues that the Court's grant of summary judgment was inappropriate because there were disputed facts regarding his motive, his intent and "the probability of harm occurring to St. Paul." (Defendant's Motion for Rehearing at 4). Although Mr. Alford admits that he issued forged St. Paul bonds, he argues that he did not intend to cause any harm to St. Paul and even if he did, factual issues preclude the grant of summary judgment because "[i]f the forgery never came to light, no harm would have resulted to St. Paul." (Defendant's Motion for Rehearing at 5).

In its order granting summary judgment to St. Paul, the Court did not flesh out all of the evidence showing that Mr. Alford intended to injure St. Paul because it found that Mr. Alford's mere anticipation of injury to St. Paul was enough to satisfy §523(a)(6) under the *Geiger* standard. After considering Mr. Alford's motion for rehearing, the Court finds that there was ample evidence in Mr. Alford's deposition testimony to support its finding because Mr. Alford's actions were substantially certain to injure St. Paul. If any doubt remains that the Court could have found Mr. Alford's actions merely reckless or negligent, thereby precluding summary judgment based on disputed facts, the Court will take this opportunity to expound upon its findings that Mr. Alford willfully and maliciously injured St. Paul under the *Geiger* standard.

Mr. Alford argues that he did not intend to injure St. Paul because it was his opinion that the bonds would not be called. However, the Court finds that Mr. Alford simply ignored the inherent risks associated with issuing fake bonds because of his desire to help out his clients and make a profit. Mr. Alford knew that St. Paul had declined to issue bonds on the projects because it believed that the risk of default was too high. He also knew what had happened in an analogous situation in which fake St. Paul bonds were issued. Mr. Alford testified in deposition

that he asked Bob Simmons, a friend of his who worked for St. Paul, for more information about an incident in which fake St. Paul bonds were issued by another insurance agent. (Alford Dec. 14, 1994 Dep. 115-17). Mr. Simmons told Mr. Alford that a bond manager for another insurance agency had issued fake St. Paul bonds on a project in which the bonds were called. Mr. Simmons told Mr. Alford that St. Paul had to honor the fake bonds on that project and the insurance agency had to indemnify St. Paul for the loss. Therefore, Mr. Alford knew that there was a substantial risk that the fake bonds would be called and he knew that he would injure St. Paul if they were because he was told that St. Paul would have to honor the fake bonds.

Mr. Alford's deposition testimony contains further evidence that he anticipated that he would injure St. Paul. First, he wrote various letters to his clients which typically included instructions to dispose of them after they were read. (Alford Dec, 14, 1994 Dep. 168; Alford Feb. 14, 1995 Dep. 167). Mr. Alford testified that one of his letters stated "I know that I do not need to explain the risk that I am taking in any way I approach you with the idea. Regardless, it is a risky venture for me, one that could cause [sic] me my insurance license, not to mention possible criminal proceedings. I feel that I have to be compensated accordingly." (Alford Dec. 14, 1994 Dep. 153). The content of this particular letter along with the instructions typically included by Mr. Alford to dispose of letters after they were read indicate that he knew his activities were not only harmful to St. Paul but likely unlawful as well.

Second, Mr. Alford testified that he asked for approximately $2 million in compensation from one of his clients to issue a fake St. Paul bond. He stated that he "wanted to have enough money to put in the bank as premium, which should have been a million and a half – or one and a half percent, so at the end of the job I could show to St. Paul the premium if this became an

issue. And on top of that, I wanted a million dollars for my fee to do it, to issue the unauthorized bond." (Alford Dec. 14, 1994 Dep. 173). This statement indicates that Mr. Alford expected his actions would harm St. Paul and he wanted to have enough money to pay off St. Paul if his scheme was uncovered.

Finally, Mr. Alford stated that he wrote a letter to the chief financial officer of another client requesting payment for issuing fake St. Paul bonds that he mistakenly believed had been honored by St. Paul even after it discovered that the bonds were fakes. Mr. Alford testified that he "did not know that [St. Paul] had not honored the bond for [his client]. I thought the bond was honored. And I was basically asking [the C.F.O.], hey you got – my mind set at this point was, you got the bonds as a result of what I did, regardless of whether you had a major ordeal to go through. I'm broke, I want some help." (Alford Feb. 14, 1995 Dep. 141). Although Mr. Alford never mailed this letter, it indicates that he expected that St. Paul would have to honor his fake bonds even after it had refused to issue legitimate bonds on the projects.

This additional evidence bolsters the Court's finding that Mr. Alford anticipated injuring St. Paul. Mr. Alford knew that issuing fake St. Paul bonds would harm St. Paul and he knew that his actions were probably illegal as well. From the inception of his plan, he knew there was a substantial likelihood that the bonds would be called and he knew that St. Paul would have to honor them. However, he issued the bonds anyway because he thought that if his scheme was discovered, he could simply pay off St. Paul for its trouble. Mr. Alford's motivation to pay off St. Paul does not absolve him though. Rather, it shows that Mr. Alford intended to injure St. Paul and then make amends for his injury by offering to pay St. Paul for having to honor the bonds.

Although Mr. Alford maintains that regardless of the above findings, he did not possess the requisite intent not to injure St. Paul, the circumstances of this case clearly suggest otherwise. Unlike the example used by the Supreme Court in *Geiger* of a driver intentionally making a left hand turn but not first looking for oncoming traffic, in which case the driver would not intend or anticipate an accident, Mr. Alford's actions are more aptly compared to a driver who intentionally drives the wrong way down a one way street at rush hour and then claims that he did not intend or anticipate an accident because he is such a good driver. Like the actions of the driver in the latter example, Mr. Alford's actions were substantially certain to result in an injury. Therefore, this Court found that his debt to St. Paul was excepted from discharge under §523(a)(6) of the Bankruptcy Code.

CONCLUSION

Mr. Alford's motion for rehearing does not assert that there has been an intervening change in controlling law since this Court granted summary judgment to St. Paul. Nor does it assert that new evidence is available to support his position that he did not willfully and maliciously injure St. Paul. Mr. Alford moves this Court to grant his motion based on the third ground justifying reconsideration - the need to correct clear error or prevent manifest injustice. Courts have held that a motion of this type must give a "reason why the Court should reconsider its prior decision, and must set forth facts or law of a strongly convincing nature to induce the Court to reverse its prior decision." *Sussman* at 694. Mr. Alford has "not set forth facts or law of a strongly convincing nature to induce the Court to" alter or amend its prior judgment in favor of St. Paul. Id. at 695. Accordingly, the Court concludes that it should deny Mr. Alford's

motion for rehearing. The denial of a Rule 59(e) motion is reversible only for abuse. Id. at 694 (citing to *Huff v. Metropolitan Life Ins. Co.*, 675 F.2d 119, 122 (6th Cir. 1982).

IT IS ORDERED that Stephen Alford's motion for rehearing is DENIED.

Dated: January 5, 2004

Margaret A. Mahoney
MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE