

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

Case No. 8:13-bk-00922-KRM

CASEY MARIE ANTHONY,

Chapter 7

Debtor.

In re:

ROY KRONK,

Adversary No. 8:13-AP-00629-KRM

Plaintiff.

v.

CASEY MARIE ANTHONY,

Defendant.

DEBTOR/DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

Debtor/Defendant, CASEY MARIE ANTIHONY, by and through her undersigned attorney, files

this, her Motion For Judgment On the Pleadings pursuant to Federal Rule of Civil Procedure 12 (c) and

as grounds therefore states as follows:

1. Plaintiff filed his Complaint on July 22, 2013 [Docket Number 1].
2. Plaintiff filed his Amended Complaint on November 26, 2013 [Docket Number 21].
3. Debtor/Defendant filed her Answer and Affirmative Defenses on January 13, 2014 [Docket Number 27] and the pleadings are now closed.
4. This Court previously entered its case management order which directed the parties to file

Motions For Judgment on the Pleadings or Motions For Summary Judgment by January 7, 2016.

5. Plaintiff's Amended Complaint seeks a determination that Plaintiff's unliquidated claim is Non-dischargeable pursuant to 11 U.S.C. 523(a)(6).
6. The paragraphs of the Amended Complaint which purportedly show on their face the basis for

Plaintiff's claim of non-dischargeability are as follows:

12. The criminal investigation into the disappearance of Caylee Anthony and Casey Anthony's subsequent Criminal Trial was well publicized. During that time, **Casey Anthony, through her attorneys, who acted as her agents, published false and defamatory statements about Kronk.** The false and defamatory statements about Kronk were made out of court and the publications occurred in the public arena, in almost every media format imaginable and were broadcast and/or published across the country, if not the globe, via the internet, the news print media, and national television shows. The specific defamatory statements are as follows:

- a. On or about November 18, 2009, **Defendant's attorney**, a person with actual knowledge of all events involved in the Criminal Trial **who was acting as her agent**, Jose Baez ("Baez") spoke in an out-of-court interview wherein **he stated** "...we are playing around and we are going to get to the bottom of things...it is very odd [about Kronk finding the skull]" alluding to a sinister nature relating to Kronk's Good Samaritan deed of finally locating the body of young Caylee Anthony.
- b. On or about November 20, 2009, **Defendant's attorney Baez and co-counsel**, a person with actual knowledge of all events involved in the Criminal Trial who was acting as Defendant's agent, **Andrea Lyon ("Lyon")** appeared on NBC's *Today Show* and gave an interview with Matt Lauer. **Lyon's critical statements** to the television audience attempt to implicate Kronk as a suspect and include:
 - i. "There is as much circumstantial evidence implicating Roy Kronk, as there is implicating our client. And that the state and police should have investigated him as a suspect; there were so many red flags. It was a sea of red";
 - ii. "He's the only one who's been with the body. He's the only one who magically discovers it." (Lyon uses a hand gesture quoting "Magically").
 - iii. "He takes a day off the day before he discovers it [the body] again in December."

At no time during the interview did **Baez** in any way interject to correct the audacious **statements being made** against Kronk **by Lyon** and in fact he too **agreed with all the statements being made.**

c. On or about November 20, 2009, **another member of Defendant's criminal defense team**, also a person with actual knowledge of all events involved in the Criminal Trial who was **acting as her agent, Ms. Linda Kenney Baden ("Kenney-Baden")**, **appeared** on *The Early Show*. During the interview, Kenney-Baden did not simply allude to mysterious public allegations against Kronk but explicitly stated in her interview that Kronk should be a suspect. **Kenney-Baden's statements include:**

i. Q. Do you believe that there is just as much evidence incriminating Roy Kronk as there is against Casey?
A. Absolutely.

Q. It really doesn't make sense the he'd [Kronk] be the one because he repeatedly tried to alert authorities when he says he saw the body, he tried to call it in several times. Why would he do that if he was the killer?

A. You know, it is easy to snatch a kid away.

d. On or about November 20, 2009, in a continuation of her public accusations and further alluding to Kronk in an insinuating derogatory manner, **Kenney-Baden gave another interview** which was publically televised on TruTV, in which **her comments** included contentions of "suspicious circumstances" in "a grand coincidence of [Kronk] finding the body".

e. On or about December 7, 2009, it was widely reported in national publications that **Casey Antony through her attorneys Baez, Kenney-Baden and Lyon stated:**

1. Meter reader killed Caylee;
2. Kronk has a list of prior crimes;
3. Kronk was involved with inappropriate behavior with young girls;
4. Kronk was involved with holding women against their will;
5. Kronk used duct tape against a woman to hold her against her will;
6. Casey Anthony knows that Kronk killed Caylee;

7. Kronk has a history of abusing women; and
 8. Kronk lives in a world of fantasy and violence.
 - f. On or about December 23 or 24, 2010, **Baez stated** and republished to WKMG Channel 6 news that the defense team is not backing off the above statements and from their position that Kronk was the killer. **He further stated** and republished to WKMG Channel 6 that the defense would not be backing off from any statements made in its Motion In Limine To Introduce Prior Bad Acts and Other Circumstantial Evidence Pertaining To Roy Kronk”. **Baez said** that any claim that the defense team was backing off [from Kronk] is 100% false. Such public **statements by Baez as defendant’s attorney and agent**, to the general public publishes and renews the above previous out-of-court **statements made by the defense team** in televised interviews with news stations.
 - g. On or about June 11, 2011, **Lyon** appeared on 20/20 for an interview in which **she stated** that Kronk “...took a day off an then just decided to wander into this area that had been searched and searched and searched... and he finds the body...that’s very suspicious”. **Lyon also commented** that the “physical state of the remains are questionable because it appears that the remains were removed” alluding that Kronk was somehow involved and further publically reiterating **Baez’s opening statement** charges that “Mr. Kronk is a morally bankrupt individual who actually took Caylee’s body and hid her.”
7. The Amended Complaint further states on its face:
13. ...she knew **that she had authorized, adopted, and permitted her agents to publish** false statements ...about Kronk ...
 14. It was always clear to the defense team that **their [the defense team]** publically disseminated statements about Kronk were false.
 15. ...Casey Anthony **authorized and permitted her attorneys, as her agents,** to make the false and malicious statements...
 16. Casey Anthony knew or was substantially certain that the **statements [by her attorneys]** would cause injury to [Kronk] and she in fact intended such injury.
 17. Casey Anthony, **through her attorneys,** refused to retract the statements, and when confronted with whether she was going to withdraw the defamatory statements, Casey Anthony, **through her attorneys,** responded ...
 25. Casey Anthony directed **her attorneys, who acted as her agents,** to make and publish the false and defamatory statements about Kronk.

26. Casey Anthony, **through her attorneys, who acted as her agents**,...aided and abetted her attorneys...

27. Casey Anthony knew the statements **made by her agents**, at her direction and authorization, ...

32. Although [Casey Anthony] **through her agents**, knew or should have known... Defendant [Casey Anthony] **through her agents**, ...

[EMPHASIS ADDED BY THE UNDERSIGNED]

8. The recurring theme and allegations made throughout these paragraphs is that Casey Anthony's

attorneys, acting as her attorneys and agents, made defamatory statements. Nowhere does the

Amended Complaint allege that Casey Anthony said or did anything directly.

9. Even if Casey Anthony did direct that the defamatory statements be made, nowhere is it alleged

that she, Casey Anthony, did the acts complained of (ie. make defamatory statements about Kronk).

10. The factual scenario herein are similar to those made by Zenaida Gonzalez in her non-

dischargeability claim against Casey Anthony in adversary case number 13-ap-0626; that being

that the Plaintiff was defamed by Casey Anthony on an agency theory. As indicated in the

above emphasized statements in the Amended Complaint, none of the alleged defamatory

statements was made by Casey Anthony. In the Gonzalez case, the non-dischargeability claim

was made based upon statements made by Casey Anthony's mother. Here, it is statements made

by Casey Anthony's criminal defense attorneys.

11. Plaintiff's agency theory is legally deficient. Section 523(a)(6) expressly requires that the willful

and malicious injury be committed “by the debtor.” In *In re Nofziger*, 361 B.R. 236 (Bankr. M.D.

Fla. 2006), the bankruptcy court declined to find a debt to be excepted from discharge where the

debtor’s alleged involvement was having participated in a conspiracy with the creditor’s ex-wife

to defame him. In order to find a debt non-dischargeable under § 523(a)(6), the Court ruled that

the debtor must directly, and therefore not indirectly through a third party, commit some type of

malicious, intentional tort which the debtor knew would cause harm to the creditor. A conspiracy,

(ie., an agreement, to commit a tort or other wrong) does not qualify. Actions taken against the

claimant by someone other than by the debtor, do not qualify. See *In re Eggers*, 51 B.R. 452, 453

(Bankr. Tenn. 1985). Section 523(a)(6) excepts from discharge a willful and malicious injury by

the debtor to another entity. The legislative history accompanying § 523(a)(6) indicates that a

debt is non-dischargeable only where injury has resulted from some deliberate or intentional act of

the debtor. In *Eggers*, the Court said “Simply stated, a co-conspirator’s acts cannot suffice to

establish the elements of Bankruptcy Code Section 523(a)(6), unless the acts were taken directly

by the debtor against the objecting creditor. Participation in a conspiracy is not enough to

establish the intentional wrong needed to make a debt non-dischargeable.” This reasoning is

persuasive. Section 523(a)(6) differs from the exceptions to discharge under Sections 523(a)(2).

In that Section, the exception to discharge is for debts arising from false pretenses, false representation or fraud. Section 523(a)(2) however, which omits the modifier "by the debtor." A

conspiracy is an agreement between the Debtor and one or more parties to commit a tort or other

wrong. Since a conspiracy involving a debtor does not make a debt non-dischargeable if the

actions complained of are the actions of a third party co-conspirator and not the debtor; then in

the analogous situation where actions alleged to have been taken by third parties acting as debtor's agent do not result in creating a non-dischargeable debt.

12. Rule 12(c) motions are generally treated in the same manner as a motion to dismiss.

Accordingly, the court accepts all well pleaded material allegations of the non-moving party as

true and views all facts and inferences in a light most favorable to the pleader. Even accepting the

allegations made in the Amended Complaint in a light most favorable to Kronk, the Amended

Complaint does not state a cause of action upon which Kronk can prevail and therefore Casey

Anthony is entitled to judgment as a matter of law.

WHEREFORE, Casey Anthony moves this Court (1) to enter a judgment on the pleadings in her favor

and against Kronk based upon the finding that the allegations in the Amended Complaint taken in a light

most favorable to Kronk do not state a cause of action upon which Kronk can prevail under Section

523(a)(6); (2) find that any claim of Kronk based upon the acts and non-actions of Casey Anthony are

dischargeable; and (3) for such other and further relief as the Court deems just and proper.

/s/ David L. Schrader

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CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing document has been emailed to Howard Marks, Esq., Burr & Forman, LLP., hmarks@burr.com, rshuker@lseblaw.com; and Cheney Masson, Esq., cheneylaw@aol.com; and ChenMas4@aol.com this 7th day of January, 2016.

/S/ David L. Schrader

David L. Schrader, Esquire