UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:	)	
	)	
Brokers, Inc.,	)	**Case No. 04-53451**
	)	
Debtor.	)	
	)	

ORDER DENYING BROKERS' MOTION TO DISMISS CLAIM FOR PUNITIVE DAMAGES

This matter came before the Court for hearing on October 10, 2007 upon Brokers' Motion to Dismiss Claim for Punitive Damages. Appearing before the court was Andrew Brown, counsel for claimant Hossein Ahmadi ("Ahmadi" or "Plaintiff"), and Paul Daniels and Benjamin Kahn, counsel for Brokers, Inc. (the "Debtor" or "Defendant"). Upon consideration of the motion, the court makes the following findings of fact and conclusions of law:

Procedural History

On November 22, 2004, the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Prior to the death of its principal and sole shareholder, Dolen Bowers ("Bowers"), the Debtor operated as a real estate holding, management and development company, and its assets consist primarily of real estate located in Davidson, Guilford, Montgomery and Randolph County. Bowers died testate on June 6, 2003. After significant litigation regarding the ownership of the Debtor, the heirs entered into a settlement agreement acknowledging that the estate of Bowers (the "Bowers Estate") is the sole shareholder of the Debtor. On January 27, 2006, the court confirmed a plan of liquidation pursuant to which all claims have been or will be paid in full.

On April 13, 2005, Ahmadi filed a proof of claim (the "Claim") for a debt incurred on or about May 2002 in an unliquidated amount with a copy of a complaint attached. On April 27, 2005, the court entered an agreed order modifying the automatic stay for the limited purpose of permitting Ahmadi to file the complaint in state court to prevent the running of the applicable statutes of limitations and permitting Ahmadi to serve the complaint on the Debtor. The parties agreed that the Debtor was not required to file an answer or any other responsive pleading in state court, and that the matter would be litigated as a claim in the bankruptcy proceeding.

Accordingly, Ahmadi filed the complaint on April 29, 2005 against the Debtor in the North Carolina Superior Court, High Point Division, asserting claims for negligent damage to automobiles, trespass to personalty, punitive damages, and negligent damage to business equipment. In response, Brokers filed an objection to the Claim and this court entered a scheduling order, which was amended numerous times, setting deadlines for various pleadings and discovery. The complaint was amended on July 17, 2007 (the "Amended Complaint"), and a second scheduling order was entered. On September 6, 2007, the Debtor filed the present motion to dismiss Ahmadi's punitive damages claim.

The Amended Complaint

In the Amended Complaint, Ahmadi alleges that he leased business property from the Debtor located in Thomasville in Davidson County, North Carolina from 1993 to June 2004 upon which he operated his business of purchasing, reconditioning, and selling vehicles. In or about the first week of May 2002, and in the months before and following, while Ahmadi was out of the country for a period of time, the Debtor, by and through its agents, moved vehicles located on the lease property without notice or permission of Ahmadi. The Amended Complaint further alleges that when Ahmadi returned to the leased property, he noticed that a great number of vehicles were missing. Ahmadi could not located all of the missing vehicles, and on or about May 7, 2002, Ahmadi filed a police report with the Sheriff's Department of Davidson County. As a result of the ensuing investigation, Ahmadi discovered that the Debtor had moved the vehicles off of the leased property to a remote portion of the Debtor's property for the benefit of the Debtor. The Amended Complaint alleges that numerous vehicles were damaged during and as a result of the relocation. The Amended Complaint alleges that the actions of the Debtor, through its authorized agents, were done with willful, wanton, conscious, and intentional disregard of, and indifference to, the property rights of Ahmadi. In support of these allegations, the Amended Complaint alleges that may vehicles were moved with a forklift and stacked one upon another.

Additionally, the Amended Complaint alleges that beginning in or about May 2002, and continuing thereafter during the remainder of the occupation of the premises by Ahmadi, the building on the leased property leaked to such an extent that Ahmadi suffered substantial damage to his business personal property. Despite complaints, the Debtor failed to remedy the situation or pay for damages to the property.

Discussion

Debtor moves for dismissal pursuant to Fed. R. Civ. P. 12(b)(6), made applicable to this proceeding by Fed. R. Bankr. P. 7012(b), on Ahmadi's punitive damages claim on the basis that the Plaintiff has failed to allege sufficiently egregious conduct to state a cause of action. In general, a motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the complaint. Randall v. United States, 30 F.3d 518, 522 (4th Cir.1994). In considering a Rule 12(b)(6) motion, a plaintiff's well-pleaded allegations are taken as true and the complaint is viewed in the light most favorable to the plaintiff. Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir.1993). Nevertheless, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, (2007) (internal quotations and citations omitted).

North Carolina General Statute § 1D-15 provides for punitive damages as follows:

> a) Punitive damages may be awarded only if the claimant proves that the defendant is liable for compensatory damages and that one of the following aggravating factors was present and was related to the injury for which compensatory damages were awarded:
>
> (1) Fraud.
>
> (2) Malice.
>
> (3) Willful or wanton conduct.

"Punitive damages are recoverable in tort actions only where there are aggravating factors surrounding the commission of the tort such as actual malice, oppression, gross and wilful wrong, insult, indignity, or a reckless or wanton disregard of plaintiff's rights." Burgess v. Busby, 142 N.C. App. 393, 409, 544 S.E.2d 4, 13 (2001) (quoting Burns v. Forsyth Co. Hospital Authority, 81 N.C. App. 556, 561, 344 S.E.2d 839, 844 (1986)).

The Amended Complaint pleads all elements of a punitive damages claim including that Brokers, with the participation and knowledge of its officers and directors, acted with willful, wanton and intentional disregard for Ahmadi's rights. Specifically, the Amended Complaint, Ahmadi includes the following two paragraphs in support of his punitive damages claim:

> 20. The Plaintiff is informed and believes, and based upon such alleges, that the actions of the Defendant, through its authorized officers, employees and agents, in taking the

> automobiles of the Plaintiff off of the business premises of the plaintiff and damaging the same, were done with willful, wanton, conscious and intentional disregard of, and indifference to, the property rights of the Plaintiff, and that the Defendant, through its authorized officers, employees and agents, knew such conduct would reasonably likely result in injury or damage to the Plaintiff. Further, the Chief Executive Officer and majority stockholder of the Defendant participated in or condoned the conduct by directing that the property of the Plaintiff be removed from the business premises of the Plaintiff, and taken to other business property of the Defendant without the knowledge or consent of the Plaintiff.
>
> 21. In support of such allegation immediately above, the Plaintiff would state that any [sic] of the automobiles were moved using techniques constituting reckless disregard for the Plaintiff's property in that the vehicles were gouged with forklifts and stacked one upon the other.

The court finds that these paragraphs sufficiently allege facts that support a finding of malice, fraud, or willful or wanton conduct.

In addition, the Debtor contends that punitive damages are inapplicable in this case as a result of the death of Bowers, the original principal and sole shareholder of the Debtor. Pursuant to North Carolina law, punitive damages are not available against an estate of a deceased wrongdoer because a decedent is no longer capable of being punished. Thome v. Wilson, 58 N.C. App. 292, 298, 293 S.E.2d 675, 680 (1982) ("The general rule in this and other jurisdictions is that there can be no recovery for punitive damages against the personal representative of the deceased wrongdoer, however aggravated the circumstances may be."). In this case, however, the alleged wrongdoer is Brokers, a corporate entity, not Bowers. While Bowers was a shareholder at the time of the alleged wrongdoing, a corporation is an entity separate from its stockholder under all ordinary circumstances. Department of Transp. v. Airlie Park, Inc., 156 N.C. App. 63, 68, 576 S.E.2d 341, 344 (2003). Brokers, the entity against which Ahmadi is seeking punitive damages, is still in existence and may be held accountable. The Debtor has not cited a case where, as a result of the death of a shareholder, a corporation is unequivocally protected from a claim for punitive damages. Therefore, the court will not dismiss Ahmadi's claim for punitive damages on these grounds.

Lastly, the Debtor argues that it would be inequitable to allow a punitive damages claim in this case. Courts have disallowed claims for punitive damages in Chapter 11 cases in some instances. See, e.g., In re A.H. Robins Co., Inc., 89 B.R. 555 (E.D. Va.1988); In re Johns-Manville Corp., 68 B.R. 618, 627-28 (Bankr. S.D.N.Y. 1986). In A.H. Robins., the court considered the impact of the allowance of numerous punitive damages claims, many of which were unliquidated, on the debtor's plan of reorganization. 89 B.R. at 562. The court found that the allowance of punitive damages would frustrate and jeopardize the successful reorganization of the debtor. Id. In the case of Johns-Manville, the court reasoned that allowing punitive damages would risk depletion of assets of the estate at the expense of future victims, such that innocent creditors would bear the burden of the debtor's wrongdoing. In re Johns-Manville Corp., 68 B.R. at 627.

The Debtor's argument that Ahmadi's punitive damages claim should be dismissed on equitable grounds is not persuasive given the facts in this case. First, cases such as A.H. Robins and Johns-Manville are easily distinguishable from the present case. Here, a Chapter 11 plan has been confirmed, and the estate has assets that are sufficient to pay all creditors in full. As a result, innocent creditors will not bear the burden of the Debtor's wrongdoing, and the feasibility of the plan is not in jeopardy. See In re Hillsborough Holdings Corp., 247 B.R. 510, 512 (Bankr. M.D. Fla. 2000) (finding an insufficient basis for blanket disallowance of punitive damage claims where debtor's confirmed plan of reorganization was substantially consummated and allowance of punitive damages would have no negative impact on confirmed plan. Further, the

Debtor's argument equates the beneficiaries of the Bowers' Estate, the sole shareholder of the Debtor, with creditors of the Debtor. However, the two groups are very different, and the equitable reasons for protecting other creditors do not apply to protecting equity holders. Creditors's rights and claims take priority over equity interests. See 11 U.S.C. §§ 1129(a)(7) and 1129(b)(2)(B)(ii). See generally In re Dow Corning Corp., 456 F.3d 668, 679 (6th Cir. 2006) ("When a debtor is solvent, then, the presumption is that a bankruptcy court's role is merely to enforce the contractual rights of the parties, and the role that equitable principles play in the allocation of competing interest is significantly reduced.")

Based upon the foregoing, the Debtor's Motion to Dismiss Ahmadi's claim for punitive damages is DENIED.

December 3, 2007

Catharine R. Carruthers

UNITED STATES BANKRUPTCY JUDGE

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