

JAN 16 2009

HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**ORDERED PUBLISHED**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

6	In re:	)	BAP No.	SC-07-1401-MoJuKw
7	MARIZA SUAREZ,	)	Bk. No.	05-14824
8	Debtor.	)	Adv. No.	06-90302
9	_____	)		
10	MARIZA SUAREZ,	)		
11	Appellant,	)		
12	v.	)	<b>O P I N I O N</b>	
13	TRACY BARRETT,	)		
14	Appellee.	)		
	_____	)		

Submitted Without Oral Argument  
on November 21, 2008

Filed - January 16, 2009

Appeal from the United States Bankruptcy Court  
for the Southern District of California

Hon. Peter W. Bowie, Chief Bankruptcy Judge, Presiding

Before: MONTALI, JURY, and KWAN,<sup>1</sup> Bankruptcy Judges.

<sup>1</sup> Hon. Robert N. Kwan, Bankruptcy Judge for the Central District of California, sitting by designation.

1 MONTALI, Bankruptcy Judge:

2

3 We address in this opinion a case of apparent first-  
4 impression in the Ninth Circuit, viz., whether a chapter 7 debtor  
5 may discharge a judgment for attorneys fees and costs where that  
6 is the only monetary liability imposed on her for contempt for  
7 violating a court order. She may not.

8 Debtor-Appellant, Mariza Suarez ("Suarez"), appeals from a  
9 judgment of nondischargeability under section 523(a)(6)<sup>2</sup>  
10 regarding a judgment awarded to Creditor-Appellee, Tracy D.  
11 Barrett ("Barrett") in a state court civil contempt proceeding.  
12 For the reasons set forth below, we AFFIRM.

13

## I. FACTS

### 14 **Prepetition Facts**

15 The record before us is sparse, consisting primarily of  
16 pleadings and orders filed in Suarez's bankruptcy case and in  
17 family law proceedings between Suarez and her former spouse,  
18 Kevin R. Barrett ("Kevin"). However, the relevant facts are not  
19 in dispute.

20 Kevin is currently married to Barrett. Since at least 2003,  
21 Suarez and the Barretts have been embroiled in a lengthy and  
22 acrimonious dispute between them as to child custody, visitation  
23 and support, which has resulted in numerous hearings in the

24

---

25 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
27 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as  
28 enacted and promulgated prior to the effective date of The  
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,  
Pub. L. 109-8, 119 Stat. 23.

1 Superior Court of California, County of San Diego ("State  
2 Court").

3 Barrett claims that on or about October 29, 2003, Suarez  
4 assaulted her, causing Barrett various physical and psychological  
5 injuries and prompting Barrett to file a petition for a three-  
6 year permanent restraining order against Suarez in State Court.<sup>3</sup>  
7 After a hearing on November 20, 2003, the State Court issued an  
8 order granting Barrett injunctive relief (the "Injunction")  
9 against Suarez, enjoining her from contacting, molesting,  
10 harassing, attacking, threatening, assaulting, or telephoning  
11 Barret, blocking her movements in public places or thoroughfares,  
12 and ordering Suarez to stay at least 100 yards from Barrett, her  
13 residence and her workplace.

14 Sometime in early or mid-2005, Barrett filed a motion in the  
15 State Court to hold Suarez in contempt for violating the terms of  
16 the Injunction. After a trial on August 16, 2005, the State  
17 Court found that Suarez repeatedly violated the Injunction and  
18 found her guilty of contempt of a court order, pursuant to  
19 California Code of Civil Procedure § 1209(a) ("CCP § 1209(a)").  
20 Suarez was ordered to serve five days in jail and to pay  
21 Barrett's attorneys fees and costs in connection with the  
22 contempt proceeding. The State Court awarded the attorneys fees  
23 and costs under California Code of Civil Procedure § 1218(a) ("CCP  
24 § 1218(a)"), which sets out the penalties for contempt violations  
25 under CCP § 1209(a). It also issued a Minute Order on that same  
26

---

27 <sup>3</sup> Although the record is not conclusive on this issue, on  
28 appeal Suarez does not deny the assault allegations by Barrett.

1 day, stating: "Upon consideration of the evidence and testimony  
2 presented, the Court finds by proof beyond a reasonable doubt  
3 that defendant Mariza Suarez has violated the permanent  
4 injunction prohibiting harassment issued November 20, 2003  
5 numerous times and is therefore held in contempt of court."  
6 A final judgment was entered on September 14, 2005, awarding  
7 Barrett \$11,573.00 for her attorneys fees and costs ("Fees and  
8 Costs Judgment").

9 **Postpetition Facts**

10 Suarez filed a voluntary petition under chapter 7 on October  
11 15, 2005. Barrett filed her Amended Complaint to Determine  
12 Dischargeability of Debt on November 15, 2006, seeking to except  
13 the Fees and Cost Judgment from discharge under section 523(a)(6)  
14 as a willful and malicious injury by the debtor. In her Answer,  
15 Suarez admitted that the State Court found that she intentionally  
16 violated the Injunction, but denied that there was any finding of  
17 "injury" to Barrett.

18 The bankruptcy court held a trial on the nondischargeability  
19 action on September 6, 2007. Suarez asserted that since the  
20 State Court awarded Barrett only her attorneys fees and costs,  
21 rather than compensable damages as a result of a willful and  
22 malicious injury by Suarez, then this "stand alone" debt was  
23 dischargeable because it consisted only of statutory attorneys  
24 fees and costs to a prevailing party in a State Court contempt  
25 proceeding. The court ordered Suarez to file a supplemental  
26 brief that responded to three cases the court believed  
27 demonstrated that such a debt is nondischargeable. In her  
28 supplemental brief, Suarez attempted to distinguish the three

1 cases, noting that in each case there was an underlying judgment  
2 awarding compensatory damages for actual injury to the creditor  
3 in addition to an award for attorneys fees and costs. The court  
4 took the matter under submission.

5 On October 10, 2007, the bankruptcy court entered a  
6 Memorandum Decision. It was not persuaded by Suarez's arguments.  
7 After thoroughly explaining the findings of the State Court in  
8 the contempt proceeding and applying controlling United States  
9 Supreme Court and Ninth Circuit authority on nondischargeability  
10 of a debt under section 523(a)(6), the bankruptcy court stated:

11 All of the violations are clearly "willful" within the  
12 meaning of § 523(a)(6) because they were aimed at Ms.  
13 Barrett and substantially certain to result in injury to  
14 Ms. Barrett. Ms. Barrett had two choices when the  
15 conduct occurred, suffer in silence, or pursue  
16 enforcement of the outstanding order. In doing so, she  
17 was substantially certain to incur fees and costs, and  
18 the monetary sanction imposed was compensatory for those  
19 fees and costs. Debtor's conduct was "malicious" within  
20 the meaning of § 523(a)(6), as well, consisting of  
21 knowing and intentional acts in violation of a known  
22 restraining order - and therefore wrongful, done without  
23 just cause or excuse, and necessarily produced the very  
24 injury for which the compensatory sanction award was  
25 made.<sup>4</sup>

19 As a result, the bankruptcy court concluded that the Fees  
20 and Costs Judgment was nondischargeable under section 523(a)(6).  
21 The court entered its Judgment to this effect on October 10,  
22 2007. Suarez timely appealed.

---

24 <sup>4</sup> We have no transcript from the bankruptcy court trial.  
25 However, we do have before us a post-judgment certification order  
26 from the bankruptcy court (issued pursuant to 28 U.S.C. § 753(f),  
27 requiring the trial court to certify whether or not the appeal is  
28 frivolous) stating that "[t]he facts [are] not in real dispute  
because they [have] already been determined by the [S]tate  
[C]ourt."

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C.  
3 §§ 157(b) (2) (I) and 1334. We have jurisdiction under 28 U.S.C.  
4 § 158.

5 **III. ISSUE**

6 Did the bankruptcy court err when it determined that the  
7 Fees and Costs Judgment was nondischargeable, arising out of a  
8 “willful and malicious injury” under section 523(a) (6)?

9 **IV. STANDARD OF REVIEW**

10 The issue of dischargeability of a debt is a mixed question  
11 of fact and law that is reviewed de novo. Miller v. U.S., 363  
12 F.3d 999, 1004 (9th Cir. 2004) (citing Diamond v. Kolcum (In re  
13 Diamond), 285 F.3d 822, 826 (9th Cir. 2002).

14 **V. DISCUSSION**

15 Suarez, appearing pro se, has adopted the supplemental trial  
16 brief filed by her former counsel and submitted it as her  
17 appellate brief. She asserts that since Barrett received no  
18 damage award for any injury, and the Fees and Costs Judgment  
19 awarded was merely statutory and penal in nature and not  
20 compensatory or punitive, it fails to satisfy the elements of a  
21 willful and malicious “injury” under section 523(a) (6) and is  
22 therefore dischargeable.

23 Suarez does not challenge on appeal the bankruptcy court’s  
24 findings that her conduct leading to contempt was willful and  
25 malicious. Nevertheless, in the interest of completeness and  
26 because Suarez appears without counsel, we address briefly all of  
27 the relevant issues presented in a section 523(a) (6)  
28 determination such as this.

1 **A. The Elements Of A § 523(a) (6) Claim.**

2 The plaintiff bears the burden of proving that her claim  
3 against a debtor/defendant is excepted from discharge under  
4 § 523(a) (6) by a preponderance of the evidence. Grogan v.  
5 Garner, 498 U.S. 279, 287 (1991). Section 523(a) (6) provides in  
6 relevant part:

7 (a) A discharge under 727 . . . does not discharge an  
8 individual debtor from any debt -

9 . . . .  
(6) for willful and malicious injury by the debtor to  
another entity or to the property of another entity.

10 A determination whether a particular debt is for "willful and  
11 malicious injury by the debtor to another" under section  
12 523(a) (6) requires application of a two-pronged test to apply to  
13 the conduct giving rise to the injury. The creditor must prove  
14 that the debtor's conduct in causing the injuries was both  
15 willful and malicious. Carrillo v. Su (In re Su), 290 F.3d 1140,  
16 1146-47 (9th Cir. 2002); and see Barboza v. New Form, Inc. (In re  
17 Barboza), 545 F.3d 702,711 (9th Cir. 2008) (recent case  
18 reinforcing Su and the requirement of courts to apply a separate  
19 analysis in each prong of "willful" and "malicious").

20 Willfulness requires proof that the debtor deliberately or  
21 intentionally injured the creditor, and that in doing so, the  
22 debtor intended the consequences of his act, not just the act  
23 itself. Su, 290 F.3d at 1143 (citing Kawaauhau v. Geiger, 523  
24 U.S. 57 (1998) for support). The debtor must act with a  
25 subjective motive to inflict injury, or with a belief that injury  
26 is substantially certain to result from the conduct. Id. at  
27 1146.

28 For conduct to be malicious, the creditor must prove that

1 the debtor: (1) committed a wrongful act; (2) done intentionally;  
2 (3) which necessarily causes injury; and (4) was done without  
3 just cause or excuse. Id. at 1146-47.

4 As neither of these elements has been challenged by Suarez  
5 on appeal, we accept that her conduct was both wilful and  
6 malicious.

7 **B. Conduct Leading To A Judgment For Contempt Of A Court Order**  
8 **May Be Determined To Be Willful And Malicious Under Section**  
9 **523(a) (6) .**

10 Section 523(a) (6) does not make "contempt" sanctions  
11 nondischargeable per se, and neither does any other subpart of  
12 section 523(a). Whether contempt sanctions are nondischargeable  
13 accordingly depends not on whether they are labeled as  
14 "contempt," but on whether the conduct leading to them was  
15 "willful and malicious."

16 Although the Ninth Circuit has not weighed in on the  
17 nondischargeability of a "contempt" judgment, at least one other  
18 circuit has held that a contempt judgment against a debtor in  
19 bankruptcy can be immune from discharge under section 523(a) (6).  
20 The Eighth Circuit addressed this issue in Siemer v. Nangle (In  
21 re Nangle), 274 F.3d 481 (8th Cir. 2001), cited by the bankruptcy  
22 court in its Memorandum Decision. There, the creditor obtained a  
23 judgment which included punitive damages against the debtor in  
24 Illinois state court. The creditor pursued the debtor in  
25 Missouri, recording the Illinois judgment and starting collection  
26 efforts. A Missouri court subsequently held the debtor in  
27 contempt for failing to comply with a court order to produce  
28 documents disclosing his assets and imposed a "compensatory  
fine," which consisted of the Illinois judgment doubled. Debtor

1 then filed bankruptcy. The bankruptcy court found the contempt  
2 judgment nondischargeable. The Eighth Circuit BAP reversed. The  
3 Eighth Circuit then reversed the BAP, stating:

4 The key question, we believe, is whether the contempt  
5 order established that Mr. Nangle's failure to comply  
6 with a court order constituted "willful and malicious"  
7 conduct. We believe that it did and therefore that the  
8 debt arising from it is nondischargeable under  
9 § 523(a)(6).

10 Id. at 484. In other words, when the debtor's conduct leading to  
11 the contempt judgment was "willful and malicious," then the debt  
12 arising from that willful and malicious conduct suffices as an  
13 injury and is nondischargeable under section 523(a)(6).

14 Nangle did not go as far as adopting a per se rule that  
15 failing to comply with a court order constitutes willful and  
16 malicious conduct as a matter of law within the meaning of  
17 section 523(a)(6). We do not need to go that far either.  
18 However, some courts have taken this view. Two frequently cited  
19 bankruptcy court cases holding contempt judgments  
20 nondischargeable under section 523(a)(6) are PRP Wine Int'l. v.  
21 Allison (In re Allison), 176 B.R. 60 (Bankr. S.D. Fla. 1994), and  
22 Buffalo Gyn Womenservices, Inc. v. Behn (In re Behn), 242 B.R.  
23 229 (Bankr. W.D. N.Y. 1999).

24 In Allison, the court denied discharge of a debt to a debtor  
25 who continued to breach a "no compete" clause in an employment  
26 agreement after a state court issued a temporary injunction,  
27 holding that such failure to comply with court directives  
28 contained in an injunction order satisfies the definition of  
"willful and malicious" within section 523(a)(6). Id. at 64.

In Behn, the court explained:

1 . . . [W]hen a court of the United States . . . issues an  
2 injunction or other protective order telling a specific  
3 individual what actions will cross the line into injury  
4 to others, then damages resulting from an intentional  
5 violation of that order (as is proven either in the  
6 Bankruptcy Court or (so long as there was a full and fair  
7 opportunity to litigate the questions of volition and  
8 violation) in the issuing court) are ipso facto the  
9 result of a "willful and malicious injury."

10 This is because what is "just" or "unjust" conduct as  
11 between the parties has been defined by the court . . . .  
12 An intentional violation of the order is necessarily  
13 without "just cause or excuse" and cannot be viewed as  
14 not having the intention to cause the very harm to the  
15 protected persons that order was designed to prevent.

16 Id. at 238. See Heyne v. Heyne (In re Heyne), 277 B.R. 364, 369  
17 (Bankr. N.D. Ohio 2002) (same).

18 We are persuaded by the reasoning of the Eighth Circuit in  
19 Nangle that a debt for contempt sanctions may be nondischargeable  
20 under section 523(a) (6) when the conduct leading to the contempt  
21 is willful and malicious, as determined by Su. Applying that  
22 reasoning to the conceded facts presented by the record in this  
23 case, we see no clear error in the bankruptcy court's finding  
24 that Suarez's Injunction violations were clearly "willful" within  
25 the meaning of section 523(a) (6) because they were aimed at  
26 Barrett and substantially certain to result in injury to Barrett.  
27 Nor do we find clear error in the court's finding that Suarez's  
28 conduct was "malicious" within the meaning of section 523(a) (6)  
because she knowingly and intentionally violated the Injunction,  
her conduct was wrongful, done without just cause or excuse, and  
that it caused Barrett "injury" in the form of attorneys fees and  
costs.

We next address the third element of Su - the focus of this  
appeal - viz., whether Suarez's conduct necessarily produced an

1 "injury" for which the Fees and Costs Judgment was awarded,  
2 recognizing as we have, that Barrett was not awarded any  
3 compensatory damages for Suarez's contempt.

4 **C. The Fees And Costs Judgment, Even Without A Compensatory  
5 Monetary Award, Gives Rise To A Nondischargeable Debt Under  
6 Section 523(a) (6) .**

6 Established case law holds that a debtor's obligation for  
7 attorneys fees and costs is excepted from discharge under section  
8 523(a) (6) as a "debt for" debtor's willful and malicious injury  
9 when awarded by the state court "with respect to" or "by reason  
10 of" the same underlying conduct that precluded discharge of the  
11 underlying compensatory damages award. Nolan v. Smith (In re  
12 Smith), 321 B.R. 542, 548 (Bankr. D. Colo. 2005) (applying the  
13 rationale of Cohen v. de la Cruz, 523 U.S. 213 (1998) for  
14 nondischargeability of attendant attorneys fees and costs under  
15 section 523(a) (2) (A) to section 523(a) (6); Star's Edge, Inc. v.  
16 Braun (In re Braun), 327 B.R. 447, 452 (Bankr. N.D. Cal.  
17 2005) (applying Cohen to reach same result regarding statutory  
18 damages for copyright infringement); Mills v. Ellerbee (In re  
19 Ellerbee), 177 B.R. 731, 744 (Bankr. N.D. Ga. 1995) (attorneys fee  
20 obligation imposed on debtor by same state court judgment that  
21 gave rise to nondischargeable judgment debt is likewise excepted  
22 from discharge as an additional kind of damages flowing from  
23 debtor's underlying willful and malicious tort), aff'd, 78 F.3d  
24 600 (11th Cir. 1996); Solomon v. Jarrett (In re Jarrett), 303  
25 B.R. 816, 820 (Bankr. E.D. Ark. 2003) (same); Biggers v. Wilson  
26 (In re Wilson), 216 B.R. 258, 269 (Bankr. Wis. 1997) (same); Au  
27 Pharm., Inc. v. Whitner (In re Whitner), 179 B.R. 699, 703  
28 (Bankr. E.D. Okla. 1995) (same); and Littlefield v. McGuffey (In

1 re McGuffey), 145 B.R. 582, 597 (Bankr. N.D. Ill. 1992) (same).

2 Here, there is no question that the Fees and Costs Judgment  
3 awarded to Barrett under CCP § 1218(a) was the proximate result  
4 of Suarez's conduct for her willful and malicious violation of  
5 the Injunction, and, presumably, had the State Court granted  
6 Barrett even one penny in compensatory damages separate from the  
7 Fees and Costs Judgment, Suarez could not make the same argument  
8 she does here because there would be an additional underlying  
9 compensatory award.

10 There appears to be no Ninth Circuit (or any other circuit)  
11 case law on this distinctive issue of what is the result when  
12 there is no underlying judgment debt for contempt and the injured  
13 creditor is awarded only statutory attorneys fees and costs.  
14 Neither Suarez nor the bankruptcy court cited any cases on point.  
15 But we have found a remarkably similar situation involving a  
16 sanctions order and apply its reasoning to the Fees and Costs  
17 Judgment against Suarez.

18 In Papadakis v. Zelis (In re Zelis), 66 F.3d 205 (9th Cir.  
19 1995), the state appellate court ordered sanctions against the  
20 debtor, some of which were awarded to the creditors and some to  
21 the court, because debtor's intentionally filing of a frivolous  
22 appeal necessarily caused harm to the creditors by requiring them  
23 to incur unnecessary litigation costs, attorneys fees, and  
24 delayed final resolution of the dispute. Subsequently, the  
25 creditors sought to have their portion of the sanction award  
26 determined as a nondischargeable debt under section 523(a)(6).  
27 Based upon the principles of collateral estoppel (issue  
28 preclusion), the Ninth Circuit, affirming this Panel and the

1 bankruptcy court, held that the state court sanctions judgment  
2 for filing a frivolous appeal was a "willful and malicious"  
3 nondischargeable debt under section 523(a)(6) because the debtor  
4 acted intentionally and his conduct necessarily caused harm to  
5 the creditors in the form of attorneys fees and delay. Id. at  
6 209. In other words, there was no underlying monetary obligation  
7 other than the sanction, yet the court found the sanction  
8 nondischargeable nonetheless.<sup>5</sup>

9 Zelis is almost on all fours with this case. The only  
10 difference is that in Zelis the sanction awarded to the creditors  
11 was imposed for debtor's filing a frivolous appeal, as opposed to  
12 debtor's violation of a court order. However, this is a  
13 difference without distinction. Whether a sanction of attorneys  
14 fees and costs is imposed for filing a frivolous appeal or  
15 imposed for violating a court order, no underlying judgment debt  
16 is necessary for the attorneys fees and costs to be a  
17 nondischargeable debt under section 523(a)(6).

18 We find further support for our reasoning in pre-Geiger,  
19 out-of-circuit case, Safeco Ins. Co. v. Orrick (In re Orrick), 51  
20 B.R. 92 (Bankr. N.D. Okla. 1985). There, the debtor filed suit  
21 against his insurer, Safeco, in state court for wrongful breach  
22 of contract for refusing to recompense him for loss of his car by  
23 fire. Safeco alleged that debtor intentionally burned his own  
24

---

25 <sup>5</sup> We recognize that Zelis was decided pre-Geiger and cites  
26 In re Cecchini, 780 F.2d 1440 (9th Cir. 1986) which provided the  
27 previous standards for "willful and malicious" - requiring only  
28 an intended act that causes injury. However, we are confident  
that even if Zelis were issued today and applied the standards  
set forth in Geiger and Su, the result would be the same.

1 car. A trial was held, the state court determined that debtor  
2 did burn his car, and it entered judgment for attorneys fees and  
3 costs in favor of Safeco. Subsequently, Safeco sought to have  
4 the attorneys fees and costs determined as a nondischargeable  
5 debt under section 523(a)(6). In its opinion, the bankruptcy  
6 court stated:

7 Orrick's failure to meet the burden of proof with the  
8 evidence presented . . . and the arguments and briefs  
9 submitted concerning Safeco's motion for summary  
10 judgment in this bankruptcy court clearly convinces  
11 this Court that Orrick willfully, maliciously and with  
12 specific intent destroyed his own automobile.

13 . . . [T]he sole issue before the bankruptcy court is  
14 the dischargeability of a judgment debt for attorney  
15 fees and costs. These fees and costs are a direct  
16 consequence of Orrick's suit brought against Safeco for  
17 breach of insurance contract . . . . Had Orrick not  
18 brought suit against Safeco, it is reasonable to  
19 conclude that there would be no fees and costs  
20 resulting from litigation. Accordingly, this Court  
21 concludes that the judgment debt for attorney fees and  
22 costs resulting from Orrick v. Safeco is properly  
23 brought before the Court in a complaint seeking  
24 exception to Orrick's discharge pursuant to 11 U.S.C.  
25 § 523(a)(6) (internal citations omitted).

26 . . . [T]his Court finds that all pertinent facts and  
27 issues have necessarily been litigated and that any  
28 further action by this Court is barred by collateral  
estoppel. This renders the judgment debt for attorney  
fees and costs previously awarded to Safeco  
nondischargeable . . . pursuant to 11 U.S.C.  
§ 523(a)(6).

29 Id. at 96.

30 Just as in this case, the only award at issue in Orrick was  
31 creditor Safeco's attorneys fees and costs; there was no  
32 underlying judgment for damages due to Orrick's willful and  
33 malicious conduct. Despite this, the attorneys fees and costs  
34 were found nondischargeable under 523(a)(6).

35 Finally, the policy and principles of Cohen v. de la Cruz

1 apply here. Although we appreciate the fine line Suarez would  
2 have us draw between contempt judgments with and without  
3 compensatory awards, it is clear that the Fees and Costs Judgment  
4 debt was "as a result of," "with respect to" and "by reason of"  
5 Suarez's willful and malicious violation of the Injunction.  
6 Barrett's action against Suarez arose solely out of those  
7 wrongful acts, and as the bankruptcy court noted Barrett had two  
8 choices: to suffer in silence, or pursue enforcement of the  
9 outstanding order. Neither the law nor basic fairness require  
10 the former; the latter was the natural consequence of Suarez's  
11 contemptuous behavior. In electing to pursue her remedies,  
12 Barrett was substantially certain to incur fees and costs, and  
13 the monetary sanction imposed was to compensate her for those  
14 fees and costs. We agree with the bankruptcy court's reasoning.  
15 Furthermore, Suarez has not shown that any portion of the Fees  
16 and Costs Judgment constituted payment for liability arising from  
17 anything other than her willful and malicious acts toward Barrett  
18 and her contempt of the State Court.

19 **CONCLUSION**

20 We conclude that attorneys fees and costs awarded to a  
21 judgment creditor in relation to a debtor's underlying willful  
22 and malicious contemptuous conduct, even when no compensatory  
23 judgment debt exists, constitute a nondischargeable debt under  
24 section 523(a)(6). Consequently, the bankruptcy court did not  
25 err when it determined the Fees and Costs Judgment is  
26 nondischargeable under section 523(a)(6), and we therefore  
27 AFFIRM.

28

1 JURY, Bankruptcy Judge, concurring:

2  
3 I agree that with the majority that the debt at issue is  
4 nondischargeable under § 523(a)(6), and I do not quibble with its  
5 well-reasoned analysis. However, I write separately because I  
6 believe our conclusion is not only consistent with the Supreme  
7 Court's decision in Cohen v. De La Cruz, 523 U.S. 213 (1998) but  
8 is compelled by it. Although there was an underlying monetary  
9 judgment in Cohen, that factual circumstance did not impact the  
10 Supreme Court's statutory analysis, nor should the lack of a  
11 damages judgment here impact ours.

12 Section 523(a)(6) prevents discharge of "any debt for a  
13 willful and malicious injury by the debtor to another  
14 entity . . . ." § 523(a)(6). The Cohen court construed the  
15 phrase "debt for" used throughout the various subsections of  
16 § 523 to mean "debt as a result of," "debt with respect to,"  
17 "debt by reason of," and the like, "connoting broadly any  
18 liability arising from the specified object . . . ." Id. at 220.  
19 The Supreme Court did not write that monetary damages were  
20 necessary to its decision.

21 Here, the \$11,573 debt at issue unquestionably is "as a  
22 result of", "with respect to" and "by reason of" debtor's  
23 violation of the injunction and court order. But for debtor's  
24 willful and malicious behavior, no attorneys fees and costs would  
25 have been incurred nor awarded by statute. Just as the attorneys  
26 fees found nondischargeable in Cohen were linked to an underlying  
27 judgment for damages, the attorneys fees and costs here are  
28 linked to an underlying judgment for injunctive relief. No

1 distinction exists.

2       The plain meaning of § 523(a)(6) as construed by the Cohen  
3 court compels our conclusion that the fees and costs are  
4 nondischargeable.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28