SO ORDERED.

SIGNED this 24th day of May, 2017.

Janice Miller Karlin
United States Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

In re:	**Case No. 16-40310**
Pat Allen Crenshaw,	**Chapter 7**
Debtor.	
Lorraine State Bank,	
Plaintiff,	
v.	**AP-Case No. 16-7024**
Pat Allen Crenshaw,	
Defendant.	

Order Granting, in Part, and Denying, in Part, Plaintiff Lorraine State Bank's Motion for Summary Judgment and Setting Case for Trial

Plaintiff/Creditor Lorraine State Bank ("Bank") seeks a determination that its claim against Defendant/Debtor Pat Allen Crenshaw ("Debtor") is nondischargeable

under 11 U.S.C. §§ 523(a)(2)(B) and (a)(6).[1] The Bank first alleges it would not have made some unspecified dollar amount of loans had it known that Debtor made some false statements in certain financial statements. It further claims that Debtor's conversion of collateral secured to it was willful and malicious—again without doing the math so the Court can determine whether the allegedly converted assets total the debt the bank seeks to except from discharge.

Because Debtor, who is now proceeding without counsel, elected to not oppose the Bank's Motion for Summary Judgment[2] and specifically withdrew his original defenses,[3] the Bank's properly supported facts entitle it to partial summary judgment on its § 523(a)(6) claim. However, as the uncontroverted facts do not support a judgment in favor of the Bank under § 523(a)(2)(B) or for a judgment in the Bank's favor in the total amount of its claim, the Court denies summary judgment on the § 523(a)(2)(B) claim and denies summary judgment on the Bank's § 523(a)(6) claim in any amount over $150,593.66, and sets the remaining claims for trial.

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[1] For the remainder of this opinion, all references to Title 11 of the United States Code will be to section number only.

[2] The Court sent a specific Notice to Debtor providing additional time to respond and warning him of the consequences of failing to respond to the summary judgment motion. *See* Doc. 42.

[3] Doc. 40, Pretrial Order, ¶ 7.3 ("Defendant withdraws his four (4) affirmative defenses listed in his ... answer to Plaintiff's complaint."

I. Findings of Fact[4]

Debtor filed bankruptcy in April of 2016. At that time, he owned and operated a farm where he raised cattle and produced hay and alfalfa. From approximately May 2010 through August 2014, the Bank made a series of loans to Debtor so he could purchase farm equipment, inventory, and livestock and, later, refinance these earlier notes. He pledged farm equipment, livestock, and inventory as collateral to secure repayment of those loans.

The security agreements Debtor signed required him to "keep the property at [his] address," to "try [not] to sell the property," or, if Debtor did sell the property, to "receive written permission to do so" and "have the payment made payable to the order of you (the Bank) and me (Debtor)."[5] The security agreements also required Debtor to "prepare any report or accounting" the Bank requested.[6] At least in 2013 and 2014, the Bank requested Debtor prepare an annual financial statement certifying the nature and value of his assets and liabilities. Finally, the security agreements gave the Bank "the right of reasonable access in order to inspect the property."[7] The record reflects that the Bank conducted annual collateral inspections in April of 2013 and 2014, and a final one in January of 2015.

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[4] These facts are established by the unopposed affidavit submitted by the Bank in support of its motion. Doc. 38, exhs. 1-46.

[5] Doc. 38, ex. 3, p. 2 ("Ownership and Duties Toward Property").

[6] *Id.*

[7] *Id.*

Throughout 2013 and 2014, Debtor sold his cattle at one of three businesses: Sylvan Sales Commission, Russell Livestock, or Farmers & Ranchers Livestock Commission. Debtor periodically sold fewer than 10 head of cattle at a time—though once or twice a year he sold between 12 and 65 head in a single transaction. Debtor admits that he sold cattle in small amounts so he could get a smaller check, cash it, and use the proceeds to pay for his "gambling or whatever."[8]

Prior to foreclosing its security interest in 2015, the Bank received payment only from those transactions where Debtor sold 12 or more head of cattle (with one exception in December, 2014). The Bank identified sales of 111 head of cattle Debtor sold during this time for which they received no part of the proceeds. Unfortunately, the Bank has not calculated the total sales price to assist the Court in determining if those sales proceeds equaled or exceeded the balance due on its notes.

The Bank sought a collateral inspection in January of 2015, but Debtor refused to cooperate with scheduling or participating in that inspection (but admitted cattle numbers had dropped to 49). When the Bank ultimately performed an inspection on January 28, 2015, it learned of several discrepancies between Debtor's previous financial statements and the current state of his farm. It only found 44 cattle and noted some of Debtor's farm equipment was now located on a neighboring farm. As a result, the Bank sued Debtor in state court seeking to foreclose its security interest in Debtor's remaining collateral. When Debtor failed to answer the Bank's petition, the court

[8] Doc. 38, ex. 45, 92:22–93:1. In at least two instances, Debtor had the sale barn make out a check to a third party. *See* Doc. 38, ex. 42, pp. 30-34.

granted default judgment to the Bank in the amount of $391,716.50 (plus interest, costs, and attorney fees).

Throughout 2015, Debtor apparently cooperated with the Bank by selling his remaining cattle, equipment, and farm products and turning over the proceeds to the Bank. But Debtor was unable to recover and sell several items listed in his 2014 financial statement, including a John Deere 4020 tractor, a tire repair machine, some cattle water tanks, a wire roller, assorted shop tools, "150-596" bales of hay,[9] and over 100 head of cattle.

By March 2016, Debtor had apparently sold any remaining pledged collateral he still owned, turning over the proceeds to the Bank for application on the judgment. The Bank then received an order setting its deficiency judgment at $188,574.19. The Bank timely filed this adversary proceeding, seeking a determination that this remaining judgment is nondischargeable under §§ 523(a)(2)(B) and (a)(6).

Debtor admitted, under oath in a deposition, that he deliberately sold cattle in small numbers so he could obtain smaller checks from some sale barns. He then used those proceeds for his own purposes without remitting them to the Bank as required by the security agreements.

While Debtor did not admit that he intended to harm the bank by withholding

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[9] The Bank's April, 2014 collateral inspection report listed 100 bales of hay and 50 bales of alfalfa. Four months later—in August, 2014, Debtor listed 596 bales of hay but did not specify the number of alfalfa bales. Debtor valued his farm products in August, 2014 at $48,000. Although the Bank's January, 2015 collateral inspection report listed no farm products, Debtor sold and turned over to the Bank approximately $41,159.88 in proceeds from the sale of farm products during 2015.

the proceeds of the sales, he clearly understood that the security agreements required him not to sell the property securing the Bank's loans without written permission and that they required him to request all sale proceeds be made payable jointly to himself and the Bank. Debtor estimated that he used at least half of the proceeds of the smaller sales to pay gambling debts.

The Bank's supporting affidavit clearly states it did not consent to the sale of the cattle for which it did not receive payment and that a Bank representative had numerous conversations with Debtor before he sold the collateral, emphasizing the need for Debtor to pay all cattle sale proceeds to the Bank for application on outstanding loans. Debtor also admitted that, previously, "every time [he] sold something, [he] took those checks in to the bank . . . because [the bank's] name was on" the check.[10] Further, the Bank representative testified he never advised Debtor to retain any proceeds from the sale of any pledged collateral.

II. Analysis

A. Motion for Summary Judgment

An adversary proceeding to determine the dischargeability of a debt is a core proceeding under 28 U.S.C. § 157(b)(2)(I), over which this Court may exercise subject matter jurisdiction.[11]

Federal Rule of Civil Procedure 56 requires a court to grant summary judgment

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[10] Doc. 38, ex. 45, 19:1-6.

[11] 28 U.S.C. §§ 157(b)(1), 1334(b).

"if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[12] When analyzing a summary judgment motion, the Court draws all reasonable inferences in favor of the non-moving party.[13] An issue is "genuine" if "there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way."[14] "Material facts" are those that are "essential to the proper disposition of [a] claim under applicable law."[15]

The moving party bears the initial burden of demonstrating—by reference to pleadings, depositions, answers to interrogatories, admissions, or affidavits—the absence of genuine issues of material fact.[16] If the moving party meets its initial burden, the nonmoving party cannot prevail by relying solely on its pleadings.[17] "Rather, the nonmoving party must come forward with specific facts showing the presence of a genuine issue of material fact for trial and significant probative evidence supporting the allegation."[18]

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[12] Fed. R. Civ. P. 56, incorporated and applied in bankruptcy courts under Fed. R. Bankr. P. 7056.

[13] *Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 34 (10th Cir. 2013).

[14] *Thom v. Bristol-Myers Squibb Co.*, 353 F.3d 848, 851 (10th Cir. 2003) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

[15] *Id.*

[16] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

[17] *United States v. Dawes*, 344 F. Supp. 2d 715, 717–718 (D. Kan. 2004) (citing *Anderson*, 477 U.S. at 256).

[18] *Id.*

This standard is "somewhat modified in an unopposed motion for summary judgment."[19] But "[i]t is improper to grant a motion for summary judgment simply because it is unopposed."[20] Rather, the court must be "certain that the uncontroverted facts as established by the unopposed motion for summary judgment reveal no undisclosed factual dispute and constitute a sufficient legal basis for this court to grant plaintiffs judgment as a matter of law."[21]

This Court's own local bankruptcy rules emphasize that "[t]he court will deem admitted . . . all material facts contained in the statement of the movant unless the statement of the opposing party specifically controverts those facts."[22] Given that Debtor declined to respond to the summary judgment motion, after being given additional time and warned of consequences of failing to respond, the Court deems admitted all material facts contained in the Banks's motion that are supported "by affidavit, declaration under penalty of perjury, and/or through the use of relevant portions of pleadings depositions, answers to interrogatories and responses to requests for admissions."[23] Thus, the Court's analysis focuses solely on whether the uncontroverted

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[19] *Thomas v. Bruce* 428 F. Supp. 2d 1161, 1163 (D. Kan. 2006).

[20] *Equal Emp't Opportunity Comm'n v. Lady Baltimore Foods, Inc.*, 643 F. Supp. 406, 407 (D. Kan. 1986).

[21] *Id.*

[22] D. Kan. LBR 7056.1(a).

[23] *Id.* at (d).

facts entitle the Bank to judgment as a matter of law.[24]

B. Nondischargeability under § 523(a)(2)(B)

This subsection excepts from discharge a debt "for money, property, services or an extension, renewal, or refinancing of credit, **to the extent** obtained by . . . use of a statement in writing—(i) that is materially false; (ii) respecting the debtor's . . . condition; (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive."[25] A creditor has the burden to prove each element of a § 523(a)(2)(B) claim by a preponderance of the evidence.[26]

To satisfy the first element of § 523(a)(2)(B), a financial statement must contain "'an omission, concealment or understatement as to any of the debtor's material liabilities,'" and "'paint an untruthful picture of a debtor's financial condition in such a light which would normally affect the decision on the part of a creditor to grant credit.'"[27] It is not enough that the financial statement contain false information—the

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[24] *See ReVest LLC v. Long (In re Long)*, No. 09-12827, 2011 WL 976460, at *1 (Bankr. D. Kan. Mar. 1 2011) ("Once the Court determines which facts are not in dispute, it must then determine whether those uncontroverted facts establish a sufficient legal basis upon which to grant movant judgment as a matter of law.") (citing *Equal Emp't Opportunity Comm'n v. Lady Baltimore Foods*, 643 F. Supp. at 407).

[25] § 523(a)(2)(B) (emphasis added).

[26] *See Grogan v. Garner*, 498 U.S. 279, 291 (1991).

[27] *Rural Enters. of Oklahoma, Inc., v. Watson (In re Watson)*, Case no. 01-1298, 2003 WL 21241702, at *3 (10th Cir. BAP May 29, 2003) (quoting *Red Oak Branch of Farmers State Bank v. White (In re White)*, 167 B.R. 977, 979 (Bankr.

statement must be so substantially untrue as to depict a fictitious financial condition.[28]

1. John Deere 4020 Tractor

The Bank claims Debtor submitted two financial statements that included property he did not own, thereby overstating his assets' value and deceiving the Bank into continuing to extend credit. Debtor does not contest that he listed a John Deere tractor, arguably co-owned with his neighbor,[29] on both his 2013 and 2014 financial statements. Thus, the Court finds that these two financials statements were possibly inaccurate.

But the Court's inquiry does not end there. The Bank must also show by a preponderance of the evidence that this inaccuracy was "material"—that, if the financial statements had been accurate (i.e., did not include this tractor), they would have

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E.D. Okla. 1994) (internal citations omitted)).

[28] *See generally*, *id*; *Colo. E. Bank & Trust v. McCarthy (In re McCarthy)*, 421 B.R. 550, 559-60 (Bankr. D. Colo. 2009) (finding that the debtor's omission of two personal guarantee obligations on his financial statement was material as they totaled $2.8 million and the debtor's net worth was $2.7 million).

[29] There exists a factual dispute about who really owned the tractor. In the Bank's supporting affidavit at ¶ 56, it relies on hearsay to assert Debtor is not the owner. Debtor, in his deposition, testified that he and his neighbor, Bill Malir, had verbally agreed that the tractor belonged to Debtor, but that Malir helped pay for some parts. However, Debtor also admitted that he has not been using the tractor, that he doesn't care who has been using it, and that he does not want to have anything to do with his neighbor, the purported co-owner of the tractor. And Debtor did not choose to controvert any facts in the summary judgment motion. Thus, the Court finds that, if at any point Debtor did have an ownership interest in the John Deere 4020 tractor, he has apparently since abandoned it. *See* Doc. 38, ex. 45, 47:25-48:23.

painted an "untruthful picture"[30] of Debtor's financial health. On this point, the Bank has not carried its burden.

Debtor valued the tractor for $12,000 and $10,000, respectively, on his 2013 and 2014 financial statements; this asset thus accounted for approximately 5% of Debtor's total net worth (total assets minus total liabilities).[31] While the Court agrees that misstating as much as 5% of a debtor's value is not insignificant, it does not believe the inclusion of the tractor resulted in painting an untruthful picture of Debtor's overall financial condition—especially considering the quantity, both in number and kind, of other collateral securing the Bank's loans. This is because the Bank's loans were also secured by Debtor's cattle, other farm equipment (including at least two other tractors and various other farming instruments), and agriculture products. Accordingly, while Debtor may not have been the full and/or rightful owner of the John Deere 4020 tractor, the inclusion of this piece of equipment in his financial statements did not "paint an untruthful picture"[32] of his overall financial condition.

The Court should make one other point. While the Bank's claim regarding the tractor fails under the first element of § 523(a)(2)(B), the Court also finds that the Bank failed to show, under § 523(a)(2)(B)(iii), that it reasonably relied on Debtor's purportedly

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[30] *In re Watson*, 2003 WL 21241702, at *3.

[31] The Court notes that Debtor's 2014 financial statement was incomplete on its face. It listed only assets, even though Debtor obviously owed money to the Bank and likely had other liabilities as noted on the 2013 statement. The Bank does not claim it relied on this statement.

[32] *In re Watson*, 2003 WL 21241702 at *3.

false financial statements when determining Debtor's creditworthiness. The Bank annually inspected Debtor's farm to document the collateral securing its loan and on its April 29, 2013 collateral inspection report, it listed each piece of machinery found on Debtor's farm. Conspicuously absent from this list is the John Deere 4020 tractor. The tractor was again absent from the Bank's 2014 report. Accordingly, the Court also finds the Bank failed to meet its burden to show it reasonably relied on Debtor's purported ownership of a tractor that was absent from its own collateral report.

Finally, § 523(a)(2)(B) can only serve to render nondischargeable as much of the debt –"to the extent"—as the false statement actually caused. So even if this asset had been more than a de minimis part of Debtor's overall financial condition, and even if the Bank had met its burden to show reasonable reliance, it would not result in the nondischarge of the entire judgment. Instead, it would at most result in the nondischarge of the value of the misrepresented asset. The Court therefore denies, as a matter of law, the Bank's Motion for Summary Judgment on this point.

2. Cattle

The Bank also argues that Debtor's failure to account for the sale of over 100 head of cattle on his financial statements constitutes a materially false statement under § 523(a)(2)(B).[33] The Court finds that the Bank's motion "reveal[s] . . . an undisclosed

[33] The Bank argues Debtor's failure to disclose several sales of cattle during the Bank's annual collateral inspection also constitutes a materially false statement in writing under § 523(a)(2)(B). The Court does not consider this argument, however, as the Bank never explains why *its* annual inspection of Debtor's farm would constitute "the use of a statement in writing . . . that the debtor caused to be made or published," which is required under § 523(a)(2)(B)(iv).

factual dispute"[34] regarding the number of cattle in Debtor's possession at the time he submitted his 2013 financial statement to the Bank.

The Bank's 2013 collateral inspection report, dated April 29, 2013, included 118 head of cattle on Debtor's property. Two months later, Debtor claimed 158 head on his financial statement—an increase of 40 head—which the Bank alleges is inaccurate. However, the Bank does not provide any affidavit, pleading, or deposition supporting this allegation, as required under D. Kan. LBR 7056.1(d).[35]

The Bank's motion seems to suggest that, because Debtor periodically sold off cattle without its permission and used some of those proceeds to fund his gambling habit, his financial statements, by definition, could not be accurate. The Court is not persuaded by this argument for two reasons. First, the records upon which the bank relies show that Debtor's cattle sales began on August 5, 2013, a month after Debtor submitted his 2013 financial statement. Thus, that earlier financial statement cannot show how the number of cattle changed between April and July. Second, Debtor's cattle count *increased* between the collateral inspection and the date of the financial statement. So even if Debtor had been selling off cattle during that period, he was also replenishing his stock and therefore likely protecting the Bank's investment since it also

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[34] *Equal Emp't Opportunity Comm'n v. Lady Baltimore Foods, Inc.*, 643 F. Supp. 406, 407 (D. Kan. 1986).

[35] "All facts on which a motion or opposition is based must be presented by affidavit, declaration under penalty of perjury, and/or through the use of relevant portions of pleadings, depositions, answers to interrogatories and responses to requests for admission."

claimed a security interest in any issue.[36]

If, as the Bank insists, it is likely Debtor artificially inflated the number of cattle he owned to induce the Bank to extend credit, it is equally likely that Debtor purchased 40 head of cattle at some point between April and July, 2013. The Court therefore finds that there is a factual dispute regarding the number of cattle owned by Debtor on the date of his 2013 financial statement. The Court thus denies the Bank's Motion for Summary Judgment on this point.

Turning to the Bank's 2014 collateral inspection report, it counted 113 head of cattle at that April 30, 2014 inspection. Less than four months later, on August 18, 2014, Debtor submitted a financial statement claiming only 89 head of cattle—a decrease of 24 head. But during that same four month period, according to sales records the Bank provides, Debtor sold 29 head. This would mean Debtor overstated his herd by 5 head of cattle on the date he made the August 18, 2014 financial statement. Again, the Bank insists this shows Debtor's financial statement was materially false. Similar to the tractor analysis above, the Court does not find this difference so significant to Debtor's overall financial picture as to make the financial statement materially false.

The Bank's loans continued to be secured by Debtor's equipment, farm products,

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[36] *See* Doc. 38, ex. 11 ("To secure the payment and performance of the above described Secured Debts, liabilities and obligations, I give you a security interest in all of the property described below that I now own and that I may own in the future, wherever the property is or may be located, and all proceeds and products from the property. . . . Farm Products. All farm products including, but not limited to . . . all poultry and livestock and their young, along with their products, produce and replacements.").

and livestock—assets totaling $599,120. *At most*, the unaccounted for cattle were worth $22,500 or approximately 3.8% of the value of the total assets, and more likely only 1.2% of total assets based on actual sale prices.[37] The Court finds this inaccuracy immaterial and therefore denies, as a matter of law, the Bank's motion on this point.

In conclusion, the Court denies the Bank's Motion for Summary Judgment on its § 523(a)(2)(B) count both as a matter of law—as to the tractor and the 2014 financial statement—and because the Bank's own summary judgment documents present a factual dispute concerning the number of cattle owned by Debtor on the date of his 2013 financial statement.

C. Nondischargeability under § 523(a)(6)

This subsection excepts from discharge "any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity."[38] Much ink has been spilled to determine what level of intent is necessary to support a finding that an injury was "willful and malicious." The Tenth Circuit, following the Supreme Court

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[37] The Court extrapolates from data in Debtor's 2014 financial statement, which lists two types of cattle owned by Debtor: Angus Bulls ($4,500 market value per head) and crossbred cows ($3,000 market value per head). In reviewing the sales data provided in the summary judgment motion, the price Debtor actually sold most head for was typically *considerably* lower than this number. *See, e.g.,* sale of 3 head for $4,021 on October 2, 2014, or 2 head for $3,154 on October 6, 2014, or 2 head for $2,860 on November 13, 2014. Using these numbers, the actual per head price is closer to $1,450 for an overstatement of $7,250, or 1.2% of Debtor's total assets.

[38] § 523(a)(6).

case *Kawaauhau v. Geiger*,[39] has stated that the application of this exception "turns on the state of mind of the debtor, who must have wished to cause injury or at least believed it was substantially certain to occur."[40] Intent can be inferred from the totality of the circumstances[41] and it is not *per se* inappropriate for a court to grant summary judgment when intent is an element of proof.[42] The moving party must prove by a preponderance of the evidence that the debtor intended to cause the injury through his actions.[43]

The Bank argues Debtor intentionally converted the Bank's property when he failed to turnover proceeds he received from multiple sales in spite of his knowledge that he was required to do so. In order to except a debt from discharge due to conversion of collateral, the Bank must show (1) Debtor committed a wrongful and intentional act; (2) the act necessarily caused injury to the Bank; (3) the act was without just cause or excuse; and (4) Debtor acted with the specific intent to cause injury to the Bank or knew or believed injury to the Bank was substantially certain to occur as a result of his

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[39] 523 U.S. 57 (1998).

[40] *In re Englehart*, case no. 99-3339, 2000 WL 1275614, at *3 (10th Cir. Sept. 8, 2000).

[41] *See In re Young*, 91 F.3d 1367, 1375 (10th Cir. 1996).

[42] *See Kansas Dep't of Labor v. Oliver, Jr.*, 554 B.R. 493, 500 (Bankr. D. Kan. 2016) (citing *Colonial Pac. Leasing v. Mayerson (In re Mayerson)*, 254 B.R. 407, 412 (Bankr. N.D. Ohio 2000) (finding that while "state of mind issues . . . are generally not to be disposed of upon summary judgment . . . [t]his . . . does not mean that summary judgment is per se inappropriate with issues concerning a person's state of mind").

[43] *See Grogan v. Garner*, 498 U.S. 279, 291 (1991).

actions.[44]

The Bank's evidence proves the first three of these elements. Debtor knowingly sold some of the Bank's collateral out of trust for his own purposes (which, at least in part, was to fuel his gambling habit), Debtor failed to remit the proceeds of many of those sales to the Bank and therefore did not apply the proceeds to his outstanding obligation as he was required to do, and Debtor damaged the Bank to the extent of the conversion. Because Debtor does not controvert this evidence, the Court finds the Bank has met its burden of proof for the first three elements of the § 523(a)(6) test.

As to the fourth element, the Bank argues that Debtor's process of repeatedly selling his cattle in small numbers while concealing these sales from the Bank (while simultaneously continuing to make larger sale payments to the Bank to deceive it into thinking it *was* receiving all sale proceeds) conclusively demonstrates that Debtor knew or believed injury to the Bank was substantially certain. The Bank has established that the Debtor knew he was obligated to turnover any proceeds from sales of collateral to the Bank, and the Bank has demonstrated that the Debtor acknowledged in a sworn deposition that, at a minimum, most of the proceeds from the smaller cattle sales were not paid to the Bank. Thus, the Court finds Debtor knew injury to the Bank would occur when he sold the Bank's collateral and elected to convert those proceeds instead of remitting them to the Bank. Thus, the Bank has established the fourth element of the

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[44] *See Cmty. Nat'l Bank—Chanute v. Abram (In re Abram)*, case no. 09-6048, 2010 WL 605663, at *2 (Bankr. D. Kan. Feb. 17, 2010) (citing *Exchange Bank v. Burd (In re Burd)*, case no. 06-1133, 2007 WL 2401836, at *5 (Bankr. N.D. Okla. Aug. 17, 2007)).

§ 523(a)(6) test.

D. Damages

The Bank claims Debtor caused it damages in the amount of its entire deficiency judgment—$188,574.19— when he sold collateral without remitting the proceeds. This amount apparently represents the principal amount remaining on Debtor's promissory note after the sale of all recovered collateral. The Bank claims the following collateral was never recovered, and the Court has used the Bank's values except as it relates to the hay:

Property	Value
John Deere 4020 Tractor	$10,000
Tire Repair Machine	900
Cattle Water Tanks	2,000
Wire Roller	800
Shop Tools	1,500
150-596 Bales of Hay	6,840.12
111 Head of Cattle	128,553.54
Total:	$150,593.66

Regarding the hay value, however, the Bank's own records only demonstrate a loss of $6,840.12 for unrecovered farm products—as opposed to the $23,840 figure the Bank attributes to 596 bales of hay. The Court is also unable to determine how the Bank arrived at the higher number of bales, so its claimed loss is not supported by the uncontroverted facts. Further, Debtor claimed $48,000 of farm products on his 2014 financial statement.[45] The Bank recovered $41,159.88 from the sale of farm products (part of which came from Debtor's crop insurer, Western Agricultural Insurance

[45] *See* Doc. 38, p. 33 and ex. 2, pp. 2-10.

Company).[46] The difference is the $6,840.12 the Court uses to value this line item.

Because the Bank's evidence only demonstrated that Debtor's willful and malicious conduct caused it $150,593.66 in damages, the Court finds that $150,593.66 of the Bank's claim is excepted from discharge under § 523(a)(6).

III. Conclusion

In sum, on its § 523(a)(2)(B) claim, the Court finds that because there remains a factual dispute regarding the number of cattle listed on Debtor's 2013 financial statement, the Court must deny summary judgment to the Bank on that claim. The Court also finds that the Bank failed to show it is entitled to judgment as a matter of law regarding certain inaccuracies on Debtor's 2013 and 2014 financial statements. As a result, the Court also denies summary judgment to the Bank on that portion of its § 523(a)(2)(B) claim. It thus sets the Bank's § 523(a)(2)(B) claim to trial.

The Court also finds the Bank did meet its burden of proof under § 523(a)(6) up to the amount of $150,593.66. As a result, the Court grants summary judgment to the Bank, in part, holding that $150,593.66 of its claim is denied discharge. The Court denies summary judgment to the Bank on its § 523(a)(6) claim to the extent it seeks a judgment that the rest of its claim is nondischargeable. To the extent the Bank wishes to present evidence that Debtor's willful and malicious actions caused it damages exceeding $150,593.66, it will be allowed to do so.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Summary

[46] *See* Doc. 38, ¶¶ 154, 157, 158, and 162.

Judgement is GRANTED, in part, and DENIED in part. The Court sets for trial the Bank's 11 U.S.C. § 523(a)(2)(B) claims and its 11 U.S.C. § 523(a)(6) claim for any amount in excess of $150,593.66. Trial is set to this Court's July 20-21, 2017 stacked trial docket.

IT IS SO ORDERED.

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