

**The United States Bankruptcy Court for the District of Maryland held that the Debtor did not have the requisite intent to injure the plaintiff casinos under 11 U.S.C. 523(a)(6) and dismissed the complaints seeking nondischargeability of the gambling debt.**

*Desert Palace, Inc. v. Rich (In re Rich)*

**2014 WL 6705473, 2014 Bankr. LEXIS 4862, 60 Bankr. Ct. Dec. 93 (Bankr. D. Md. November 26, 2014).**

Summary by Marissa K. Lilja, Associate

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The Honorable Paul Mannes of the United States Bankruptcy Court for the District of Maryland held in *In re Rich* that the Debtor did not possess the requisite intent to injure the plaintiff casinos<sup>i</sup> under 11 U.S.C. §523(a)(6) and accordingly dismissed the four adversary proceedings requesting exceptions to discharge. The Court carefully considered the Debtor's intent in accumulating gambling debt by signing markers<sup>ii</sup> and found that the Debtor did not purposefully intend to injure the Plaintiffs based on the Debtor's long history of repaying markers, coupled with his lack of malicious motivation.

The Plaintiffs customarily allow gamblers to sign markers when they need more chips to gamble. The markers contain language indicating that the gambler has sufficient funds in his or her bank account. The Court characterizes this language as an "amiable fiction" that both the Plaintiffs and the gambler understand not to be true, supported by the Plaintiffs' business practice of waiting 30 to 60 days to attempt to redeem the markers.

The Debtor, a long-time gambler who had been signing markers with the Plaintiffs for many years, signed and issued several markers to the Plaintiffs and other casinos during a short period of time in 2012. Many of these markers were redeemed, but the Debtor was unable to repay several in the aggregate amount of \$2.5 million. The Debtor unsuccessfully attempted to work out a payment plan with the Plaintiffs, but all parties did not agree on the proposed terms. The Debtor was then criminally charged in 2013 with passing a check without sufficient funds in the bank with the intent to defraud. The Debtor plead guilty because of a strict liability statute in Nevada imposing a presumption of intent to defraud if the drawer passes a check or draft to obtain credit to gamble knowing that the drawer does not have sufficient funds to cover the draft. The Debtor was required to pay restitution under the terms of his plea.

In the instant case, the Plaintiffs filed complaints requesting a determination on the dischargeability of the gambling debt under 11 U.S.C. §523(a)(6). This statute provides that a debt will not be discharged if it is for "willful and malicious injury by the debtor to another entity." In Maryland, a finding of nondischargeability under §523(a)(6) requires a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. The Court cited a leading Fourth Circuit opinion on §523(a)(6), *St. Paul Fire & Marine Ins. Co. v. Vaughn*, 779 F.2d 1003 (4th Cir. 1985). Using that standard, the Court considered whether the Debtor acted with substantial certainty that harm would result or had the motive to cause harm. The Court

found nothing in the record to indicate that the Debtor intended to injure the Plaintiffs, including the guilty plea in Nevada. The Debtor acted at the Plaintiffs' invitation to extend his line of credit and continued to gamble, as he had done for many years without harm by fully repaying the markers. Further, the Court failed to find any malice in the Debtor's actions. For those reasons, the Court dismissed the Plaintiffs' cases.

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<sup>i</sup>The "Plaintiffs" in this case are: Desert Palace, Inc., d/b/a Caesars Palace of Las Vegas; Arai Resort & Casino, LLC; Bellagio LLC; and The Mirage Casino-Hotel.

<sup>ii</sup>Markers are treated like checks under Nevada law, and activate a line of credit at the casino once signed by the gambler.