

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

Case No. 8:10-bk-10779-MGW  
Chapter 7

NEIL WARREN STURGIS and  
BLANCA COLLINS STURGIS,

Debtors.

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BENZ RESEARCH AND  
DEVELOPMENT CORPORATION,  
a Florida corporation,

Adv. No. 8:10-ap-00954-MGW

Plaintiff,

v.

JB Vol #15 #2212

NEIL WARREN STURGIS

Defendant.  
\_\_\_\_\_ /

**FINAL JUDGMENT FOR  
NONDISCHARGEABLE DEBT AGAINST NEIL W. STURGIS IN  
FAVOR OF BENZ RESEARCH AND DEVELOPMENT CORPORATION**

THIS PROCEEDING came before the Court for trial on March 23, 24, and 25, 2011 on the Adversary Complaint (the "**Complaint**"), (Doc. No. 1.) of Benz Research and Development Corporation ("**BRD**") for an order of nondischargeability under 11 U.S.C. section 523(a)(6), a final judgment for damages, and for injunction against Neil Warren Sturgis, the Defendant/Debtor ("**Mr. Sturgis**"). The Court heard the testimony of witnesses, received documents and other tangible personal property into evidence, and heard arguments of counsel. Based on the evidence adduced, the Court makes the following

FINDINGS OF FACT:

BRD is a highly successful research and manufacturing company that produces technology and products for contacts and intraocular lenses. BRD's products are sold worldwide. At the heart of BRD's business is the technologies it has developed over many years.

Many of BRD's processes and technologies fit the definition of trade secrets under Section 688.002(4) of the Florida Statutes. BRD took extensive measures to protect its trade secrets. BRD employees had to sign noncompete and nondisclosure types of agreements, as did independent contractors. BRD had in place numerous procedures to safeguard its trade secrets and BRD reacted very strongly at any time they felt that its trade secrets were at jeopardy. BRD took extensive measures to insure that no secrets left the BRD facility in Manatee County, as one would expect in a company such as BRD.

Mr. Sturgis had knowledge of BRD's policies, particularly in light of his involvement in the case of Dr. Jose Ors who left BRD in April of 2008. Mr. Sturgis was involved in a forensic investigation of Dr. Ors' laptop hard drive in 2008.

Mr. Sturgis was employed initially as an independent contractor by BRD in March of 2005. His confidentiality agreement is in evidence as Plaintiff's Exhibit 1. Mr. Sturgis became a full-time employee on April 6, 2008, and his employment agreement is in evidence as Plaintiff's Exhibit 2.

BRD became dissatisfied with Mr. Sturgis' job performance, and this was communicated to him in a review that was conducted on February 25, 2009. A plan was

put in place to see if Mr. Sturgis could improve his performance. BRD concluded that he had not and gave him an additional unfavorable review on May 8, 2009. Mr. Sturgis was, understandably, not happy with that review. Thereafter ensued a number of actions that were certainly suspicious. There were three flash drives that were inserted into Mr. Sturgis' computer from May 19th to June 2nd of 2009.

In particular, Mr. Sturgis created a "backup.pst." file on May 29, 2009, which contained over 5,000 emails, including several emails containing trade secrets of BRD entered into evidence as Plaintiff's Exhibits 16 through 22. The backup.pst. file was then copied over to one of the flash drives and removed from the building by Mr. Sturgis. On Mr. Sturgis' last day of employment, June 2, 2009, there were a series of unusual incidences of flash drives being inserted into the BRD computer, going on until the early evening, at 5:24 p.m. Also during that timeframe one of the three flash drives used by Mr. Sturgis was inserted into his home computer.

By June 2, 2009, Mr. Sturgis was aware that his employment was going to be terminated. He took off a few days and then came back for the exit interview on June 8, 2009. At that interview, he was confronted with the event log (Plaintiff's Ex. 4) showing the flash drive connections and after inquiry was made, Mr. Sturgis did not tell the truth. Mr. Sturgis stated at the exit interview that the flash drive that he used and that appeared on the event log was the flash drive in his desk. In fact, there were two other flash drives involved.

These three flash drives correspond with a purchase that was made by the company of three flash drives in the identical configuration by the same manufacturer

(Plaintiff's Ex. 43), which purchase had occurred in the previous year, and which was requested by Mr. Sturgis. It appears to the Court that those three company flash drives were the ones that were used during this period of time by Mr. Sturgis.

BRD reacted diligently and brought in Mr. Douglas Rehman, a computer forensic examiner, to find out the extent of access to the company's trade secrets, and Mr. Rehman was able to learn that there had been various flash drives put into the company computer.

The findings of BRD were more or less summarized in a letter that was directed to Mr. Sturgis dated June 10, 2009 (Plaintiff's Ex. 5.), demanding that Mr. Sturgis return all BRD property to their facility immediately. In response to the letter from BRD, Mr. Sturgis purchased, downloaded and installed a program called Safe-It which he used to wipe the two returned flash drives clean. He then reinstalled certain personal data onto those flash drives to give the appearance that the personal data was what was on those flash drives. He then transmitted those cleaned and reconfigured flash drives back to BRD, including a receipt (Plaintiff's Ex. 7) which contained a false statement that the flash drive cleaning had been conducted before Mr. Sturgis left BRD.

Mr. Sturgis stated a number of things in court and in his deposition testimony, and had taken some actions, that result in this Court questioning his credibility. Some of those items are as follows:

- a. The statement to BRD that the flash drive he used was the one in the desk, when there were actually three flash drives used, was a false statement.

b. The statement in the receipt that the wiping of the flash drives had occurred at a date earlier than it had occurred, was a false statement.

c. The use of a wiping program is inherently meant to wipe out or destroy the contents of the flash drives, and those contents were evidence in the instant case.

d. By putting back certain limited files on the flash drives Mr. Sturgis created a false circumstance by recreating reality.

e. Mr. Sturgis' reading of the email of his immediate supervisor, Mr. Rakesh Vasant, to learn that he was going to be terminated cannot be considered to be in the course of Mr. Sturgis' employment.

f. The failure to bring up at any time during this litigation prior to trial the defense that the reason the flash drives were wiped was because they contained pornographic information or materials, also results in another falsehood because Mr. Sturgis did not answer that way in his deposition.

The actions taken by Mr. Sturgis resulted very predictably in the forceful action taken by BRD: BRD sought injunctive relief, obtained the home computer, had their computer expert go in and look at these items, and basically BRD put a stop to the dissemination of its trade secrets (or so it appears).

Based on the spoliation of evidence that occurred when Mr. Sturgis wiped the flash drives clean with the Safe-It program, the Court infers that the contents of the flash drives would have been harmful to Mr. Sturgis' case and would have contained BRD's trade secrets. Mr. Sturgis admitted having BRD information on the flash drives and

deleting the BRD information using the Safe-It software. Mr. Sturgis had a duty to return that information to BRD contractually, and that had been communicated to him. The information that Mr. Sturgis chose to delete would be critical to BRD's case, so that the logical inference from the spoliation is that the backup.pst. file containing the trade secrets was placed on one of the returned flash drives by Mr. Sturgis on May 29, 2009, removed by Mr. Sturgis from the BRD facility, and was later destroyed by Mr. Sturgis.

The Court finds that Mr. Sturgis' acts were willful and intentional, and that BRD's forceful response was reasonable under the circumstances and substantially certain to occur from Mr. Sturgis' conduct. Mr. Sturgis' actions also breached his Employment Agreement with BRD, and the Employment Agreement specifically denotes attorney's fees and expenses incurred as items of damage.

The Court accepts the testimony of BRD's expert on fees that the rate of \$350.00 per billable hour is reasonable for an attorney of Mr. Essenson's experience and the rate of \$280.00 per billable hour is reasonable for his associate, Barbara J. Welch, and that \$120.00 per billable hour is reasonable for Mr. Essenson's paralegal, Darice A. Wallace. BRD incurred reasonable legal fees and costs in the state court injunction proceeding, up through the period of time that BRD obtained a temporary injunction after notice, as follows:

James L. Essenson	\$350.00 x 120.2 hrs. =	\$42,070.00
Barbara J. Welch	\$280.00 x 107.8 hrs. =	\$30,184.00
Darice A. Wallace	\$120.00 x 44.5 hrs. =	<u>\$ 5,340.00</u>
Total: State Court proceeding:	=	\$77,594.00

BRD incurred reasonable legal fees in the adversary proceeding as a result of Mr. Sturgis' willful, malicious, and intentional acts as follows:

160 hours x \$350.00\* per billable hour = \$56,000.00

BRD incurred reasonable expert fees for proving the amount of the legal fees in the state court case as follows:

Roger L. Young- 13 hours x \$350.00 per billable hour = \$4,550.00

BRD incurred expert fees for their computer forensic expert, (Plaintiff's Ex. 24), as a result of Mr. Sturgis' willful, malicious, and intentional acts as follows:

Douglas Rehman \$54,383.00

BRD incurred reasonable expenses for the Receiver appointed in the state court action, as follows:

Robert E. Turffs – 9 hours x \$350.00 per billable hour = \$3,150.00

Based on the foregoing findings of fact and the other evidence adduced, the Court makes the following

#### CONCLUSIONS OF LAW:

Under 11 U.S.C. section 523(a)(6), a discharge otherwise available in bankruptcy does not discharge a debt for willful and malicious injury by the Debtor to another entity or the property of another entity. The standard of proof needed to prove an exception to discharge is the preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991).

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\* (Blended rate including all Essenson Firm personnel)

Under 11 U.S.C. section 523(a)(6), “willful” means voluntary or intentional, and “malicious” means wrongful and without just cause or excuse. See In Re Auffant, 268 B.R. 689, 694 (M.D. Fla. 2001) (citing to Kawaauhau v. Geiger, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998)). A debtor is responsible for a ‘willful’ injury when he or she commits an intentional act the purpose of which is to cause injury or which is substantially certain to cause injury. Hope v. Walker (In re Walker), 48 F.3d 1161, 1165 (11th Cir. 1995); In Re Thomas, 288 Fed.Appx. 547 (11th Cir. 2008).

When evidence is deliberately destroyed by one party, the Court is entitled to make an inference, or a finding of fact that the evidence destroyed would have been unfavorable to the spoliating party and favorable to the adverse party. Optowave Co., Ltd. V. Nikitin, 2007 WL 129009 \*8 (M.D. Fla. 2007). Although governed by federal law, spoliation analysis is also informed by state law. Flury v. Daimler Chrysler Corp., 427 F.3d 939, 944 (11th Cir. 2005). In the instant case, BRD has satisfied the requirements of Florida’s three prong test in Golden Yachts, Inc. v. Hall, 920 So.2d 777 (Fla. 4th DCA 2006), discussed in this Court’s opinion in In Re Electric Machinery Enterprises, Inc., 416 B.R. 801, 873 (M.D. Fla. 2009), thereby entitling BRD to a spoliation inference.

4. Mr. Sturgis’ actions were willful, malicious and intentional, causing BRD to incur fees and costs to obtain an injunction against Mr. Sturgis and to obtain a judgment for damages and to prove the non-dischargeability of his debt to BRD.

Accordingly, it is

**ORDERED:**



1. The judgment set forth herein in favor of BRD and against Mr. Sturgis is nondischargeable under 11 U.S.C. section 523(a)(6).

2. Final judgment is hereby entered in favor of Benz Research and Development Corporation, 6447 Parkland Drive, Sarasota, FL 34243 and against Neil Warren Sturgis in the following amounts:

a.	State court proceeding attorneys' fees:	\$77,594.00
b.	Bankruptcy adversary proceeding attorneys' fees:	\$56,000.00
c.	Expert forensic fees (Douglas Rehman):	\$54,383.00
d.	Expert Witness fees (Roger L. Young):	\$ 4,550.00
e.	Receiver Fee (State Court; Robert E. Turffs):	\$ 3,150.00

for a total of \$195,677.00, which shall bear interest from the date hereof at the legal statutory rate, and for which amount let execution issue.

3. The Court shall enter a permanent injunction against Mr. Sturgis in favor of BRD as a separate final judgment in connection with the instant case.

4. The Court reserves jurisdiction over this cause and the parties hereto to enter any other and further orders for post-judgment relief as may be appropriate.

**DONE and ORDERED** in chambers in Tampa, Florida, on May 03, 2011



Michael G. Williamson  
United States Bankruptcy Judge

Copies furnished to:

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