

I. Introduction

The trial on Count II of the adversary complaint was held on May 15, 2025 (the “Trial”). Count II asserts a claim for malicious prosecution that is excepted from discharge by 11 U.S.C. § 523(a)(6).¹ On August 13, 2024, the Court entered the *Opinion And Order Granting In Part And Denying In Part Defendant Sean D. Savinell’s Amended Motion For Summary Judgment (Doc. 34)* (Doc. 47) (the “Summary Judgment Opinion”), which granted summary judgment in favor of Mr. Savinell on Count I² but denied it on Count II.³ As set forth herein, upon consideration of the evidence adduced at the Trial,⁴ the Court determines that Mr. Michael has sustained his burden of proof under 11 U.S.C. § 523(a)(6), and will therefore enter judgment in favor of Plaintiff on Count II of the Complaint.⁵

II. Jurisdiction and Venue

The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 and Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring

¹ References to the “Complaint” are to the *Complaint To Determine Dischargeability Of Debt* (Doc. 1) filed by Plaintiff, Edward Michael (hereinafter “Mr. Michael”), and references to the “Answer” are to the *Answer* (Doc. 6) filed by Defendant, Sean D. Savinell (hereinafter “Mr. Savinell”).

² In Count I, Plaintiff sought to determine dischargeability based on 11 U.S.C. § 523(a)(2) (debts for misrepresentation, false pretenses, and actual fraud).

³ The Summary Judgment Opinion was reported as *Michael v. Savinell (In re Savinell)*, 661 B.R. 829 (Bankr. S.D. Ohio 2024). All citations herein will be to the Bankruptcy Reporter version of the decision.

⁴ At the Trial, Laura Nesbitt appeared on behalf of Mr. Michael, and Nathaniel Sinn appeared on behalf of Mr. Savinell. Mr. Michael and Mr. Savinell were both present and testified. Maria Conway, the Vice President of Finance and Administration of Precision, was also called to testify by Mr. Michael. Each party introduced various exhibits that were admitted into evidence.

⁵ This Opinion constitutes the Court’s findings of fact and conclusions of law made pursuant to Rule 52(a)(1) of the Federal Rules of Civil Procedure (the “Civil Rules”), made applicable herein by Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

all bankruptcy matters to this Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Venue properly lies in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

III. Procedural Background

Mr. Savinell filed his chapter 7 bankruptcy case jointly with his wife, Gina Savinell, (collectively, the “Debtors”) on March 13, 2023, being case no. 23-50786 (the “Main Case”). The Debtors received their discharge in the Main Case on June 21, 2023. Case No. 23-50786, Order of Discharge, ECF No. 26. . Mr. Michael timely filed the Complaint against Mr. Savinell on June 12, 2023. Compl., ECF No. 1. The Complaint consists of two counts, both of which assert that Mr. Savinell’s debt to Mr. Michael should be excepted from the Debtor’s chapter 7 discharge under 11 U.S.C. § 523(a)(2) (Count I) and (6) (Count II). Mr. Savinell denied the material allegations of the Complaint and sought summary judgment on both counts of the Complaint. Answer, ECF No. 6; Pl.’s Am. Mot. Summ. J., ECF No. 34. After briefing and oral argument, on August 13, 2024, the Court issued the Summary Judgment Opinion, which granted summary judgment on Count I, but denied it on Count II. On Count II, the Court found that there were genuine disputes of material fact about the issues of causation and willful and malicious injury. *Savinell*, 661 B.R. at 841-43. Accordingly, the Court directed that the matter proceed to trial on Count II. *Id.* at 843. Having determined that Plaintiff was not entitled to judgment under 11 U.S.C. § 523(a)(2), the Court proceeded with the Trial on 11 U.S.C. § 523(a)(6) (debts for willful and malicious injury).

At the conclusion of the Trial, the Court scheduled June 16, 2025 as the deadline for the parties to submit written post-trial briefs in lieu of closing argument. Order, ECF No. 58. Mr. Michael timely filed the *Plaintiff’s Post-Trial Brief* (Doc. 60). Mr. Savinell did not file a post-trial brief.

IV. Findings of Fact

The material events in this case took place nearly two decades ago, commencing in late 2007 and running through 2011. The parties agree on of the overall facts that surround their dispute. But many of the details are vigorously disputed.

In 2007, Mr. Savinell and his wife resided in New Jersey. Mr. Savinell was contemplating whether to open a small pizza restaurant (the “Pizza Shop”). He had identified a potential location for the Pizza Shop in a strip mall located at 801 Tilton Road, Unit 100, in Northfield, New Jersey. Pl.’s Ex. 2. Mr. Savinell began looking for potential contractors to obtain quotes so he could determine what the cost to open the Pizza Shop would be. ECRO at 10:46:20.⁶ He was referred to Mr. Michael, who owned two companies, known as Precision Home Builders and Precision Mechanical.⁷ that engaged in that type of work. Id. The parties agree that they held a meeting to discuss the project on December 21, 2007 (the “Meeting”), but they disagree about many of the details. The disagreements range from small details such as where the meeting was held and how certain documents were drafted to more significant details regarding the specifics that were discussed and what the parties agreed to at the Meeting.

There is no dispute that, at the Meeting, the parties discussed Mr. Savinell’s idea for the Pizza Shop and what would be needed to build out the space to fit Mr. Savinell’s concept. ECRO at 10:46:35 – 10:49:00; 1:15:00 – 1:17:00. They further agree that an invoice (the “Invoice”) was created at the Meeting. Pl.’s Ex. 2; ECRO at 10:55:00 – 10:56:20; 1:21:18. In the description of

⁶ A transcript of the Trial has not been prepared. All citations to testimony are to the Court’s ECRO recording system, utilizing the timestamp of the testimony in question.

⁷ Precision Home Builders, Inc. will hereinafter be referred to as “Precision.” The evidence did not indicate that Precision Mechanical played any role in this case. The Court notes that Plaintiff’s Exhibit 3 (a copy of a cancelled check) bears a stamped endorsement suggesting that the formal legal name of Precision was “AOSC Properties, LLC DBA Precision Home Builders.” Pl.’s Ex. 3. No other evidence regarding Precision’s formal legal name was introduced and it is not material to the outcome of the case, so the Court will not address it further.

services to be performed, the Invoice states the following: “Scope of Work at 801 Tilton Rd. Unit 100, Northfield, NJ 08225 ‘Bada Bing’ [the Pizza Shop] Prepare construction drawings, including building specifications and reflective ceiling plans for new restaurant located at the above-mentioned address.” *Id.* The Invoice further reflects that the price for these services would be \$5,000, and that a \$5,000 payment had been made, so that there was no money due. *Id.* The Invoice is stamped “**PAID**” in large bold print. *Id.* Finally, the Invoice bears the signatures of both Mr. Michael and Mr. Savinell. *Id.* Both Plaintiff and Defendant confirmed that they signed the Invoice at the Meeting. ECRO at 10:55:30; 1:21:18. It is also undisputed that Mr. Savinell tendered a \$5,000 check (the “Check”) at the Meeting. The Check is made payable to Precision. Pl.’s Ex. 3. Precision deposited the Check the same day into its business account. *Id.*; ECRO at 2:30:30. In the memo line of the Check, there is a handwritten notation stating, “Deposit – Construction.” Pl.’s Ex. 3. Beyond these basic facts, the parties, however, differed sharply on many of the details.

According to Mr. Michael, at the initial stage, there were too many unknowns for Precision to commit to do anything. Mr. Michael suggested that Precision put together a bid package by reviewing the site and the blueprints, developing specifications, and determining what would be needed, and then obtaining subcontractor quotes to develop an estimate. ECRO at 1:18:00 – 1:22:00. In addition, Mr. Michael needed additional time to provide Mr. Savinell an estimate because Mr. Savinell initially did not appear to have a business plan for what he envisioned and was unsure of basic details. ECRO at 1:17:54. The \$5,000 was to cover this initial work. ECRO at 1:22:00. With these details agreed to, Mr. Michael dictated the language on the Invoice to Ms. Conway, who prepared the Invoice. ECRO at 1:21:18; 2:24:00.⁸ Ms. Conway then brought the

⁸ Ms. Conway was the Vice President of Finance and Administration of Precision and she was responsible for all invoicing. As she described it, she really “ran the company.” ECRO at 2:27:23.

Invoice into the meeting room. ECRO at 2:25:15, and her testimony at the Trial confirmed that the Meeting had taken place at Precision's offices. ECRO at 2:23:18 - 43. Ms. Conway also confirmed that she had typed the Invoice on her computer, as she did with all of Precision's invoices, and that she had used her standard numbering system, which was a four-part invoice number based upon the year, month, day, and how many invoices had been created on that day. ECRO at 2:25:15 – 2:26:00. She went on to explain that the Invoice bears number "07-12-21-01," which means that it was created on December 21, 2007, and was the first invoice created that day. ECRO at 2:26:00. Ms. Conway also testified that the only time she met Mr. Savinell was at Precision's offices. ECRO at 2:23:18.

In contrast, Mr. Savinell believes that the Meeting took place at the proposed location for the Pizza Shop, and that the Invoice was created on a computer at a Kinko's or Office Express store that was next door. ECRO at 10:57:26. He thought that the build-out would be "easy" and "[Mr. Michael] could take care of it all." ECRO at 10:46:45. Mr. Savinell expected that the total cost of construction would be around \$15,000 to get the restaurant up and running. ECRO at 10:49:40. In his view, the Check was a deposit against Precision acting as the general contractor on the project. ECRO at 10:55:00 – 10:55:10. Mr. Savinell first described the Invoice as "a receipt." ECRO at 10:55:20 – 10:56:00. When shown the Invoice at the Trial, he stated that the Check was not payment for the scope of work set forth on the Invoice. ECRO at 10:56:41. He asserted that the Check was given for Mr. Michael to be the general contractor. ECRO at 10:56:45. Mr. Savinell did not explain why he had signed the Invoice, when he clearly felt that it incorrectly stated the parties' agreement and the purpose of the Check.

Mr. Michael disputed Mr. Savinell's testimony and believed Mr. Savinell's \$15,000 figure to be too low. According to Mr. Michael, in 2007 to build-out a space with a size of the Pizza Shop – approximately 25 by 100 feet - would have been about \$250,000. ECRO at 1:48:33.

Based on the evidence and testimony, the Court finds that Mr. Savinell's testimony that the Check was given not in payment of the Invoice but rather as a deposit against Precision's agreement to serve as the general contractor at a total price of \$15,000, is simply not plausible. The Invoice sets forth an agreement that is fundamentally incompatible with Mr. Savinell's version of events. He had no explanation why he signed the Invoice if it was as incorrect as he claims. The Invoice is a simple one-page document, and its relevant provisions are not buried in boilerplate that makes them hard to find or understand. In particular, the scope of work provision is just one sentence long and is easy to understand by a layperson. It contains no suggestion that Precision was agreeing to act as a general contractor. Rather, it provides, just as Mr. Michael testified, for Precision to perform specific services, and for Precision to be paid \$5,000 for those preliminary services. The Court finds that it accurately reflects the parties' agreement and understanding.

Following the Meeting, Mr. Michael assigned the project to several Precision employees, who obtained access to the building, went to the proposed location of the Pizza Shop and took various measurements, obtained the building blueprints, and further evaluated what needed to be done for the project. ECRO at 1:24:20 – 1:25:40. Mr. Michael recalled that he personally went to the site himself. ERCO at 1:25:55. Precision's employees on the project then developed specifications and drawings for the build-out and obtained subcontractor quotes. ECRO at 3:03:23. And after they had put together the specifications, drawings, and subcontractor quotes, they assembled them and sent them (the "Bid Package") to Mr. Savinell. *Id.*⁹ The estimates included

⁹ The contents of this package were not offered in evidence.

in the Bid Package totaled somewhere around \$150,000, much higher than Mr. Savinell was expecting. ECRO at 3:03:40.

When Mr. Savinell received the Bid Package from Precision, he decided that the project was more involved and expensive than he had anticipated so he called Mr. Michael on the telephone and advised that he had decided not to go forward with the Pizza Shop. ECRO at 10:59:00; 1:26:35. There is no dispute that this discussion took place and that the subject of a refund of the \$5,000 was discussed during this call, but the parties dispute the specific details. According to Mr. Savinell, he asked for the \$5,000 to be refunded less the time that Precision had incurred, and that Mr. Michael said he would do so, but the money never came. ECRO at 10:59:59.

According to Mr. Michael, he told Mr. Savinell that Precision had performed significant work on the project, so he could not give a complete refund, but invited Mr. Savinell to make a proposal regarding the money. ECRO at 1:26:35. But Mr. Michael said he never heard from Mr. Savinell again. According to Ms. Conway, given the amount of work Precision's employees had performed, granting such a request would have been unfair. In her view, Precision had done exactly what it had promised to do. ECRO at 2:30:28.

Mr. Savinell subsequently went to the Police Department of Egg Harbor Township, New Jersey, on or about April 4, 2008, to report Mr. Michael for theft because he had failed to refund the \$5,000. Mr. Savinell spoke with Officer R. Harte at the police department, and Officer Harte subsequently typed a police report (the "Police Report"). Pl.'s Ex. 4. Mr. Savinell did not create the Police Report, but he testified that it was accurate. ECRO at 11:07:18. The Police Report provides as follows:

On Friday 4/4/08, Mr. Sean Savinell came to headquarters to report a theft of \$5,000.00. I spoke to Mr. Savinell.

Mr. Savinell stated he wrote a check to Precision Home Builders for work in the amount of \$5,000 00 for a deposit for construction located at 2511 Fire Road.¹⁰ He gave the check to Mr. Edward B Michael, the owner of company on 12/21/07 (see photocopy of canceled check). Mr. Savinell stated he spoke to Mr. Michael on several occasions and Mr. Michael had told him he would return the money to him but was having some financial problems.

Mr. Savinell gave him until 4/2/08 to return the money but Mr. Michael did not.

Complaints were signed by Mr. Savinell against Mr. Michael.

Nothing further at this time.

Pl.'s Ex. 4, p. 2. At the Trial, Mr. Savinell summarized what he told Officer Harte: "I gave money to a contractor, and that they didn't do any work, and I never got my money back." ECRO at 11:06:52. When asked if he hoped that the police would help him get his money back, Mr. Savinell testified, "I thought the judge would, yeah." ECRO at 11:05:22.

On May 6, 2008, thirty-two days after the Police Report was filed, the Grand Jury for the State of New Jersey, County of Atlantic (the "Grand Jury") issued an indictment against Mr. Michael (the "Indictment"). Pl.'s Ex. 5. The Indictment was signed by the grand jury foreperson and an assistant prosecutor, and states, in pertinent part:

On or about the 21st of December, 2007 in the Township of Egg Harbor, County of Atlantic, and within the jurisdiction of this Court,

EDWARD B. MICHAEL

did commit theft by purposely obtaining or retaining property belonging to SEAN D. SAVINELL valued in the amount of \$5,000 upon agreement or subject to a known legal obligation to make specified payment or other disposition and did deal with the property as his/her own and did fail to make the required payment or disposition; contrary to the provisions of N.J.S. 2C:20-9, and against the peace of this State, the government and dignity of the same.

¹⁰ The Court notes that the Invoice lists 801 Tilton Rd. Unit 100, Northfield, NJ 08225 as the site of the Pizza Shop. Pl.'s Ex. 2. Mr. Savinell testified that the address listed on the Invoice (801 Tilton Rd., Unit 100, Northfield, NJ 08225) was the correct address for the Pizza Shop. ECRO at 10:56:23. No testimony was offered that explains why the Police Report references 2511 Fire Road.

Id. There is little evidence regarding what investigation took place by the police or prosecutor before the Indictment was sought. According to Mr. Savinell, he spoke with the prosecutor's office after the Police Report was filed. ERCO at 2:54:48. And that he did not ask the prosecutor's office to prosecute Mr. Michael. ECRO at 2:54:18. Rather, Mr. Savinell just wanted his money back because "I didn't think he did anything." ECRO at 2:55:00. Mr. Michael was charged with accepting the \$5,000 "upon agreement or subject to a known legal obligation to make specified payment or other disposition and did deal with the property as his/her own and did fail to make the required payment or disposition." Pl.'s Ex. 5. Mr. Michael testified that the Indictment was dismissed shortly before it was to go to trial in 2011. ECRO at 1:33:45 – 1:34:10.

On July 31, 2013, Mr. Michael filed a civil complaint for malicious prosecution (the "New Jersey Complaint"), seeking a jury trial against Mr. Savinell in the Superior Court of New Jersey, Atlantic County (the "State Court"), case no. ATL-L5140-13 (the "New Jersey Suit"). The New Jersey Suit was resolved by entry of a default judgment (the "New Jersey Default Judgment") on January 19, 2017. Def.'s Ex. 1. The New Jersey Default Judgment states that it was entered following a "proof hearing" and that judgment was granted in favor of Mr. Michael and against Mr. Savinell for a total of \$164,302.26, comprised of: compensatory damages of \$100,000.00, punitive damages of \$50,000.00, attorney's fees (criminal) of \$10,000.00, and attorney's fees (civil) of \$4,302.26. *Id.*

Mr. Savinell asserts that he was never served with the New Jersey Complaint and was unaware of any of the proceedings until 2021 when he obtained a credit report and saw that a judgment had been entered against him. ECRO at 2:57:37. He retained counsel in New Jersey to file a motion to vacate the default judgment, which was filed on December 15, 2021. Def.'s Ex. 3. Mr. Savinell testified that this motion was denied without prejudice at some point in 2022.

ECRO at 11:29:27. No specifics regarding the State Court's reasoning for denying the motion to vacate were offered into evidence at the Trial. Although the motion was denied without prejudice, Mr. Savinell did not further pursue vacation of the New Jersey Default Judgment.

V. Conclusions of Law

A. Credibility of the Witnesses

Given the dispute over the pertinent facts, the Court's decision is partly based on its perception of the credibility of the witnesses and the Court's evaluation of the testimony, understanding that each party has a bias in favor of his own interest. Furthermore, in evaluating the witness testimony, the Court has considered the fact that the key events of this case occurred between December 21, 2007, and May 4, 2008, over seventeen years earlier, and the passage of time can impact the ability of any witness to recall details.

At the same time, the Court notes that Mr. Savinell tended to claim a lack of memory of details that he perceived would be harmful to his case. His answers on cross-examination were often hedged with an "I guess" or "I suppose." But he rarely showed such uncertainty on matters that he believed were helpful to his case. Mr. Savinell also tended to give answers that were inconsistent without even recognizing the inconsistency.¹¹

Mr. Michael, in contrast, was generally able to recall details of events, even those that were not particularly helpful to him. On occasions where he did not recall details the inability to recall did not appear to be calculated and it was not based upon whether the details might be helpful to

¹¹ For example, he repeatedly asserted that Mr. Michael had done nothing to earn the money that had been paid to him, but also repeatedly conceded that Mr. Michael's employees had performed work on the project. On at least one instance, he did both in the same sentence. ECRO at 11:01:00-08 ("And I said, well, you know, you haven't done anything. Just give me my money back less whatever time you have involved, and he refused."). When asked to explain how Mr. Michael would have any costs for work done when he had not done any work, Mr. Savinell said that he was "trying to be nice" but did not explain or even appear to recognize the discrepancy. ERCO at 11:01:20-26.

his case or not. For example, he volunteered that he had been indicted on two unrelated incidents in the same approximate time frame as the Indictment in this case. ECRO at 1:32:00 – 1:34:00.¹²

Finally, the Court generally found Maria Conway, the only non-party witness, to be generally credible, despite being the Vice President for Finance and Administration for Mr. Michael’s company, Precision. But even after accounting for her bias in favor of Mr. Michael, the Court found Maria Conway’s testimony credible. She played a relatively small role in the events at issue and provided clear testimony regarding the events she was involved in but did not attempt to overstate her involvement.

B. The Chapter 7 Discharge and Exceptions Thereto

“One of the ‘main purpose[s]’ of the federal bankruptcy system is ‘to aid the unfortunate debtor by giving him a fresh start in life, free from debts, except of a certain character.’” *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 715, 138 S. Ct. 1752, 1758, 201 L. Ed. 2d 102 (2018) (quoting *Stellwagen v. Clum*, 245 U.S. 605, 617, 38 S. Ct. 215, 62 L. Ed 507 (1918)). For over a century, the Supreme Court has recognized the concept of a fresh start. *See Traer v. Clews*, 115 U.S. 528, 541, 6 S. Ct. 155, 29 L. Ed. 467 (1885). Indeed, it has held that the fresh start, as embodied in a discharge of existing debt, is a defining characteristic of a bankruptcy law, as that term is used in the United States Constitution. *Stellwagen*, 245 U.S. at 617 (“Our decisions lay great stress upon this feature of the law – as one not only of private but great public interest in that it secures to the unfortunate debtor, who surrenders his property for distribution, a new opportunity in life.”).¹³ This concept has been carried forward into the modern Bankruptcy Code, enacted in

¹² The other two indictments went to trial, and both were dismissed by the judge at the close of the prosecution’s case before the defense case could start. ECRO at 1:33:00-25.

¹³ In fact, the concept of the “fresh start” predates even the Bankruptcy Act of 1898. It first appears in *Traer*, which involved the Bankruptcy Act of 1867. *Traer*, 115 U.S. at 541 (“The policy of the bankrupt act [of 1867] was, after taking from the bankrupt all his property not exempt by law, to discharge him from his debts and liabilities, and enable him to take a fresh start.”).

1978. It implements the fresh start by providing a broad discharge of the debtor’s prepetition debts in exchange for having his or her nonexempt assets liquidated by a trustee and distributed to creditors. *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007).

But the fresh start is not the only purpose of the Bankruptcy Code, which “like all statutes, balances multiple, often competing interests.” *Bartenwerfer v. Buckley*, 598 U.S. 69, 81, 143 S. Ct. 655, 214 L. Ed. 2d 434 (2023). This balancing is reflected in the scope of a debtor’s discharge, which broadly relieves a debtor from liability for prepetition obligations – but it is subject to exceptions set forth in 11 U.S.C. § 523. *Id.* “The statutory provisions governing nondischargeability reflect a congressional decision to exclude from the general policy of discharge certain categories of debts” *Grogan v. Garner*, 498 U.S. 279, 287, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991). When it enacted § 523, “Congress evidently concluded that the creditors’ interest in recovering full payment of debts in these categories outweighed the debtors’ interest in a complete fresh start.” *Id.* This case involves one such exception, which excepts from the discharge “any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity.” 11 U.S.C. § 523(a)(6).

The Sixth Circuit has emphasized that, because the exceptions to discharge set forth in 11 U.S.C. § 523(a) limit the fresh start, “exceptions to discharge are to be strictly construed against the creditor.” *Padzierz v. First Amer. Title Ins. Co. (In re Padzierz)*, 718 F.3d 582, 586 (6th Cir. 2013) (quoting *AT&T Universal Card Svcs., Inc. v. Rembert (In re Rembert)*, 141 F.3d 277, 280 (6th Cir. 1998)).

C. Elements of a Claim Under § 523(a)(6) and Burden of Proof

The Sixth Circuit has identified five essential elements required to prove nondischargeability under § 523(a)(6), which are drawn from the statutory language. There must be: (1) a debt owed to the plaintiff, (2) the plaintiff must have suffered an injury to itself or to its property, (3) the injury must have been caused by the debtor's conduct, (4) the debtor's conduct was willful, and (5) the debtor's conduct was also malicious. *Steier v. Best (In re Best)*, 109 F. App'x 1, 5-6 (6th Cir. 2004). The Supreme Court has ruled that “the standard of proof for the dischargeability exceptions in 11 U. S. C. § 523(a) is the ordinary preponderance-of-the-evidence standard.” *Garner*, 498 U.S. at 291. The Court will analyze each element in turn.

D. Application of § 523(a)(6) Elements

1. The Debt and its Amount is Established by the New Jersey Default Judgment

The existence of a debt, and its amount, were determined by the New Jersey Default Judgment. In the Summary Judgment Opinion, this Court determined that, because New Jersey law gives res judicata effect to default judgments, the New Jersey Default Judgment “does determine the existence of the debt owed to Plaintiff.” However, “the New Jersey Default Judgment does not have res judicata effect regarding dischargeability” *Michael v. Savinell (In re Savinell)*, 661 B.R. 829, 838 (Bankr. S.D. Ohio 2024)) (citing *Long v. Piercy (In re Piercy)*, 21 F.4th 909, 918 (6th Cir. 2021)).¹⁴ Therefore, the New Jersey Default Judgment establishes that Mr. Savinell owes Mr. Michael a debt in the amount of \$164,302.26, which includes:

¹⁴ Collateral estoppel (also known as issue preclusion) can, where applicable, preclude relitigation of issues determined by a nonbankruptcy court. *Long*, 21 F.4th at 918. Although Mr. Savinell asked the Court to grant summary judgment on his argument that collateral estoppel did not apply, the Court held that the state of the record at that time left unclear whether collateral estoppel could apply because, with limited exceptions, New Jersey law does not give collateral estoppel effect to default judgments. *Savinell*, 661 B.R. at 837-39. Mr. Michael did not argue at the Trial or in his post-trial brief that collateral estoppel applies here, so the Court will not address that issue further.

compensatory damages of \$100,000.00, punitive damages of \$50,000.00, attorney's fees (criminal) of \$10,000.00, and attorney's fees (civil) of \$4,302.26. Def.'s Ex. 1. Accordingly, the Court concludes that the first element of § 523(a)(6) is satisfied.

2. Mr. Michael Proved That He Suffered an Injury

Mr. Michael testified that because of the Indictment he suffered harm to his reputation and to his business, that he was forced to incur legal fees to defend himself, and that he faced the stress and anxiety connected with potential incarceration. Mr. Savinell did not dispute or rebut this testimony, and these are, unquestionably "injuries to the person or property of another entity" as required by § 523(a)(6). Therefore, the second element of § 523(a)(6) is established.

3. Mr. Michael Proved Causation

Under 11 U.S.C. § 523(a)(6), "it must be proved that the creditor's loss was caused by the willful and malicious conduct of the debtor." *Best*, 109 F. App'x at 5-6 (quoting *Redmond v. Finch (In re Finch)*, 289 B.R. 638, 644 (Bankr. S.D. Ohio 2003)).

In malicious prosecution cases brought under § 523(a)(6), bankruptcy courts evaluate the causation issue under the law of the state where the underlying acts took place. *Haas v. Trammell (In re Trammell)*, 388 B.R. 182, 188 (Bankr. E.D. Va. 2008) (evaluating causation under Virginia's malicious prosecution law, since that is where the acts in that case occurred). Here, the relevant conduct occurred in New Jersey. New Jersey courts have held that a private party can be viewed as the instigator or cause of a prosecution if they are the "proximate and efficient cause of maliciously putting the law in motion." *Epperson v. Wal-Mart Stores, Inc.*, 862 A.2d 1156, 1161 (N.J. App. 2004). While "this factor is not met when defendant merely approves or silently acquiesces in the acts of another, it may be met by proof that defendant took 'some active part in instigating or encouraging the prosecution . . .'" *Id.* (quoting *W. PAGE KEETON ET AL., PROSSER*

AND KEETON ON THE LAW OF TORTS § 119 at 872 (5th ed., 1984)); *see also Seidel v. Greenberg*, 260 A.2d 863, 868 (N.J. Super. 1969) (“in order to impose liability there must be some affirmative action by way of advice, encouragement, pressure, etc., in the institution, or causing the institution, of the prosecution or in affirmatively encouraging its continuance after it has been instituted.”). Furthermore, courts have held that causation may be demonstrated where the defendant does not make a fair and full report to the police but rather distorts or twists the facts to make the defendant look guilty. *Geissler v. Catanio*, 2018 WL 3141832, at *16 (D.N.J. June 27, 2018) (“Here, the allegations are not simply that Borgata made a 9–1–1 call but that it falsely alleged the Plaintiff had stolen something and falsely represented the evidence on which it based that allegation . . .”).

In *Epperson*, the court held that where store personnel had brought an alleged shoplifter to the police station and had participated in his interrogation, the store could be liable for causing the malicious prosecution. This was true even though none of its personnel had signed the criminal complaint because the court found that the evidence supported the conclusion that the defendant had encouraged the prosecution and participated in the investigation. 862 A.2d at 1161. Similarly, in *Afiriye v. Bank of Am., N.A.*, 79 UCC Rep. Serv. 2d 628, 2013 WL 451895, at *17 (N.J. App. Feb. 7, 2013), the court found that a bank employee had caused a criminal prosecution even though its employee did not sign a criminal complaint, where the employee called the police, told them that the plaintiff had tried to pass a fraudulent check, and assured the police that she would sign a criminal complaint.

On the other hand, a party who has simply made an accurate factual report to the police, without requesting that a prosecution be made, cannot be the cause of a subsequent prosecution. *Myrick v. Resorts Intern. Casino & Hotel*, 726 A.2d 262, 267 (N.J. App. 1999) (holding that where a casino merely provided information to law enforcement without ever asserting a crime had been

committed, the casino was not the cause of the prosecution). Thus, “if a citizen comes forth and tells a prosecuting officer truthfully what he knows and the prosecuting officer files a complaint, defendant is not liable for malicious prosecution.” *Seidel*, 260 A.2d at 873; *Brenner v. Township of Moorestown*, 2011 WL 1882394, at *16 (D.N.J. May 17, 2011) (“Plaintiff’s argument that a party can initiate a criminal proceeding by simply making a 9–1–1 call is unpersuasive.”).

Applying these principles, the Court concludes that causation is established here. First, Mr. Savinell initiated the criminal case. He went to the police of his own volition and for his own purposes. He accused Mr. Michael of theft and requested that Mr. Michael be prosecuted, and he signed the criminal complaint against Mr. Michael. Pl.’s Ex. 4 at 2. By taking these actions, Mr. Savinell set the machinery of the law in motion and went far beyond merely approving or silently acquiescing in Mr. Michael’s prosecution.

Second, Mr. Savinell did not make a full and fair report of the facts to the police. Rather, he provided a distorted and materially misleading picture to the police, one that made it far more likely that Mr. Michael would be prosecuted. The facts that Mr. Savinell omitted from the Police Report and the documents which he failed to provide the police are material. The story that Mr. Savinell told the police is that he gave a deposit to a contractor and got nothing in return, without providing the Invoice or the Bid Package. Had the Invoice and the Bid Package been provided to the police, they would have shown that Precision had performed some services and that the parties had some type of agreement. At a minimum, it would have prevented the theft allegations from proceeding. Falsely representing the evidence to the police can establish that Mr. Savinell instituted the proceedings against Mr. Michael. *Geissler*, 2018 WL 3141832, at *16; *see also Abbo v. Rossi, McCreery & Assocs. (In re McCreery)*, 192 B.R. 891, 894-95 (Bankr. N.D. Ohio 1996), *aff’d*, 168 F.3d 930 (6th Cir. 1999) (holding that a state court malicious prosecution judgment for

filing false police reports and providing information to the police that was “false and/or perjured” was nondischargeable under § 523(a)(6)).

This is particularly true here, where Mr. Savinell was the only witness the authorities had available to them. By providing a slanted and misleading picture of the facts to the authorities, Mr. Savinell made it more likely that the Indictment would result, particularly since there was no other witness available to provide the authorities with a broader picture. Mr. Savinell thus caused the prosecution of Mr. Michael and the causation element is satisfied.

4. Mr. Michael Has Established that Defendant Acted Willfully

A willful injury under 11 U.S.C. § 523(a)(6) requires “a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury.” *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 140 L. Ed. 2d 90 (1998). The debtor must have had “actual intent to cause injury.” *Id.* at 61. The Sixth Circuit has held that courts should measure willfulness and intent using “only a subjective standard, asking whether the debtor himself was motivated by a desire to inflict injury.” *MarketGraphics Rsch. Grp., Inc. v. Berge (In re Berge)*, 953 F.3d 907, 915 (6th Cir. 2020) (citing *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 464 (6th Cir. 1999)). The debtor must either desire to cause the injury or believe that the injury is substantially certain to result from his or her act. *Berge*, 953 F.3d at 915; *Moyer v. Anthony (In re Anthony)*, 648 B.R. 556, 572-73 (Bankr. S.D. Ohio 2023). As with other issues involving state of mind, the debtor need not actually admit intent, and “intent may be inferred from the circumstances of the injury.” *Berge*, 953 F.3d at 915 (citation omitted).

In the context of malicious prosecution and similar injuries, the willfulness inquiry is fairly straightforward. Almost by definition, a person who reports a crime and requests that a particular person be prosecuted as the perpetrator intends for the alleged perpetrator to be prosecuted and to

suffer all the consequences that flow from being prosecuted. Nothing more is required to show a willful injury. See *Watson v. Bradsher (In re Watson)*, ___ F.4th ___, 2025 WL 2205853, at *5 (11th Cir. Aug. 4, 2025) (“Watson erroneously assumes that false imprisonment is only “willful” if he intended both the confinement *and* its unlawfulness. But the statute requires only that the debtor ‘willful[ly]’ cause the ‘injury.’”). And this is true even if the debtor has made a factually neutral report. The injuries that flow from a malicious prosecution are those that result from the prosecution itself (anxiety, damage to reputation, costs of defense, and the like), and not from the fact that it is wrongful. *Watson*, at *5. To the extent that a debtor asserts that they were merely doing their civic duty by reporting a crime to the police, that issue falls under the malice inquiry. *Id.* at *6.¹⁵

Here, Mr. Savinell “came to headquarters to report a theft of \$5,000.” Pl.’s Ex. 4, at 2. He signed a complaint against the Plaintiff. *Id.* The conclusion is inescapable that he desired that Mr. Michael be prosecuted. And this is true notwithstanding Mr. Savinell’s insistence that he just wanted his money back. As Mr. Savinell put it, he thought the judge would help him get his money back. ECRO at 11:05:28. But the only way for the matter to come before a judge was for the prosecution to be brought. Mr. Savinell also acknowledged that he was aware of all the harms that flow from being prosecuted, such as stress, anxiety, and harm to reputation, as well as the costs of retaining defense counsel. Therefore, the evidence establishes that Mr. Savinell desired that Mr. Michael be prosecuted, and that he hoped that Mr. Michael, facing all the consequences that flow from being prosecuted, would give him his money back. Nothing more is required to show that

¹⁵ This point is also demonstrated by *Juett v. Casciano (In re Casciano)*, 2016 WL 105926 (B.A.P. 6th Cir. Jan. 11, 2016). There, in considering these issues in a § 523(a)(6) action arising out of a bar fight, the Bankruptcy Appellate Panel held that the intent behind throwing a punch is to do harm, and it is therefore willful even if there are circumstances (such as self-defense or defense of others) that might justify it. Whether or not the act was wrongful was better addressed under the malice inquiry. 2016 WL 105926, at *5-6.

Mr. Savinell acted willfully. Whether he acted wrongfully is more appropriately judged under the separate requirement of maliciousness.

5. Mr. Michael Established That Mr. Savinell Acted Maliciously

The Sixth Circuit has explained that the term malicious in § 523(a)(6) means in “conscious disregard of one’s duties or without just cause or excuse....” *Berge*, 953 F.3d at 915 (quoting *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986)). “And as to the requirement that malicious conduct be taken ‘without just cause,’ Black’s Law Dictionary defines ‘just cause’ as ‘[a] legally sufficient reason,’ and ‘excuse’ as ‘[a] reason that justifies an act or omission or that relieves a person of a duty.’” *Berge*, 953 F.3d at 915-16 (quoting BLACK’S LAW DICTIONARY (11th ed. 2019)). The Sixth Circuit Bankruptcy Appellate Panel has explained that “conscious disregard of one’s duties” means that “[t]here must be a consciousness of wrongdoing It is this knowledge of wrongdoing, not the wrongfulness of the debtor’s actions, that is the key to malicious under § 523(a)(6).” *Kraus Anderson Cap., Inc. v. Bradley (In re Bradley)*, 507 B.R. 192, 204 (B.A.P. 6th Cir. 2014) (quoting *ABF, Inc. v. Russell (In re Russell)*, 262 B.R. 449, 455 (Bankr. N.D. Ind. 2001)). Courts have also held that malice may be established by showing that the debtor’s conduct was wrongful and excessive under the circumstances. *Watson*, ___ F.4th at ___, 2025 WL 2205853, at *6 (“We have held that a bankruptcy court is free to imply malice when the preponderance of the evidence establishes that the [debtor] committed wrongful acts that were excessive.”) (citation and internal quotation marks omitted).¹⁶

Based upon the facts as found above, the Court concludes that Mr. Savinell acted wrongfully – and was conscious of that wrongdoing – by knowingly making a misleading report

¹⁶ As with willfulness, maliciousness is a state of mind that can be proven circumstantially by inference – the Court is not bound by Mr. Savinell’s testimony. *O’Brien v. Sintobin (In re Sintobin)*, 253 B.R. 826, 831 (Bankr. N.D. Ohio 2000); *Roe v. Boland (In re Boland)*, 596 B.R. 532, 545 (B.A.P. 6th Cir. 2019), *aff’d*, 946 F.3d 335 (6th Cir. 2020)).

to the police. It further concludes that he committed wrongful acts that were excessive. As set forth in the findings of fact, Mr. Savinell provided the police with an incomplete and misleading picture. He withheld from them the evidence that showed that he had agreed to the scope of work Precision would perform to earn the \$5,000 and the evidence that showed Precision had performed that work. By providing the police with only a copy of the Check, bearing the notation “Deposit – Construction,” he was able to support his story that he paid a deposit which was effectively stolen by Mr. Michael. The language of the Indictment makes clear how important this is. It states that Mr. Michael accepted the \$5,000 “subject to a known legal obligation to make specified payment or other disposition and did deal with the property as his/her own and did fail to make the required payment or disposition.” Pl.’s Ex. 5. The key to the Indictment was thus the allegations that the Check was a deposit, that Precision did nothing to earn the payment, and that Mr. Michael refused to return the money.

But this is where the facts that Mr. Savinell did not tell the police are critical. The Invoice – which was signed by both parties – makes clear that the \$5,000 payment was not merely a deposit but rather was intended as payment for the specific services set forth in the scope of work section of the Invoice. Pl.’s Ex. 3. And the Bid Package would have demonstrated that Precision did what it agreed to do in the Invoice. But Mr. Savinell withheld all of that from the police. Because Mr. Savinell knew all the facts at the time he went to the police, the Court can only conclude that he knew he was not telling the police the full story and acted with the “knowledge of wrongdoing” that is “the key to malicious under § 523(a)(6).” *Bradley*, 507 B.R. at 204.

There can be little dispute that Mr. Savinell, who was personally involved and who had copies of the relevant documents, entered into a contract with Precision that set forth specifically the services Mr. Savinell paid for with the Check. And, of course, as with every party, Mr. Savinell

was presumed to be familiar with the contracts he had signed. *See Stout v. J.D. Byrider, Inc.*, 228 F.3d 709, 715 (6th Cir. 2000).¹⁷ Defendant did not attempt to rebut that presumption or otherwise try to explain why what he told the police was so different from what he had agreed to in the Invoice. Nor did he provide the police with a copy of the Invoice. By any definition, this conduct was wrongful – and Mr. Savinell knew it was wrongful.

Mr. Savinell acknowledged at the Trial that accusing Mr. Michael of theft if he had not stolen the money would be wrong. ERCO at 11:50:20. And his conduct in providing the police with an edited and selective version of the facts demonstrates not merely wrongdoing, but consciousness of wrongdoing. At the Trial, Mr. Savinell repeatedly testified that he felt justified in using the criminal process because “I didn’t think he [Mr. Michael] did anything” to earn the \$5,000.

Even where a debtor has an “honest belief” in the truthfulness of their statements, courts have found malice where the debtor’s conduct is wrongful and excessive. *Watson v. Bradsher (In re Watson)*, ___ F.4th ___, 2025 WL 2205853, (11th Cir. Aug. 4, 2025). In *Watson*, the Eleventh Circuit upheld a finding that the debtor acted maliciously by pressing the police to arrest the plaintiffs, despite “genuinely believing” that the plaintiffs had stolen his wallet. Despite the debtor’s genuine belief, the court held that his conduct in continuing to press for an arrest after he saw the police search the plaintiffs and determine that they did not have his wallet, combined with his abuse of the plaintiffs while they were being searched, and a threat to use his position as a county commissioner to punish the police if they did not comply with his demands, was excessive. “[A]fter reporting his wallet missing, Watson's civic duty was done. Despite his genuine yet

¹⁷ New Jersey law is in accord. *In re Watson*, 286 B.R. 594, 602 (Bankr. D.N.J. 2002) (“Under New Jersey law, absent allegations of ‘fraud, duress, mistake, or illegality,’ a contract is normally binding on the parties to the contract and each party ‘is conclusively presumed to understand and assent to its terms and legal effect.’”) (quoting *Rudbart v. North Jersey Dist. Water Supply Comm.*, 605 A.2d 681 (N.J. 1992)) (internal quotations omitted).

mistaken belief, his later actions crossed the line from ‘civic duty’ to report a crime into ‘wrongful’ and ‘excessive’ conduct.” ___ F.4th at ___; 2025 WL 2205853, at *6.

The same is true here. Mr. Savinell acted excessively when he turned a garden-variety civil dispute over whether Mr. Michael had sufficiently performed the scope of work set forth in the Invoice into a criminal matter. New Jersey courts have long decried the practice of using the criminal justice system to collect debts. *Jacobs v. Mark Lindsay and Son Plumbing 7 Heating, Inc.*, 203 A.3d 952, 963 (N.J. App. 2019) (“Here, Lindsay admitted that MLSP has a history of instituting criminal actions as a means of collecting its unpaid invoices. This outrageous abuse of our criminal justice system is precisely the type of unconscionable commercial practice the CFA was designed to protect consumers from and deter unscrupulous commercial entities from engaging in.”). Thus, while Mr. Savinell appeared to believe that use of the criminal process to collect a debt was appropriate, the New Jersey courts do not agree. And even if going to the police might have been appropriate if he had told the full story, there is no question that he crossed the line into excessive conduct when he did not tell the police the full story.

The Court thus finds, based upon the circumstances here, that Mr. Savinell engaged in wrongdoing when he provided the police with a highly selective and misleading version of the facts. Further, Mr. Savinell was conscious of that wrongdoing and his conduct was excessive. Therefore, the Court finds that Mr. Michael established that Mr. Savinell acted maliciously.

VI. Conclusion

Mr. Michael established each element under 11 U.S.C. § 523(a)(6), and therefore the Court concludes that the New Jersey Default Judgment is excepted from discharge under 11 U.S.C. § 523(a)(6). Since the Court previously determined that Mr. Savinell was entitled to partial summary judgment in his favor on Count I of the Complaint, the Court will enter judgment in

favor of Defendant on Count I, and in favor of Plaintiff on Count II, finding that the New Jersey Default Judgment is excepted from the Debtor's discharge as a debt for a willful and malicious injury pursuant to the provisions of 11 U.S.C. § 523(a)(6).¹⁸

Counsel for Mr. Michael shall submit a proposed final judgment consistent with the foregoing Opinion within seven days pursuant to LBR 9072-1.

IT IS SO ORDERED.

Copies to:
Laura Nesbitt, counsel for Plaintiff
Nathaniel Sinn, counsel for Defendant

¹⁸ In Count II of the Complaint, Mr. Michael asserted that he is owed debts in addition to the New Jersey Default Judgment, and that these additional debts should also be found nondischargeable under § 523(a)(6). Specifically, Mr. Michael asserted that Mr. Savinell caused willful and malicious damages during Mr. Michael's prebankruptcy collection efforts in 2021 and 2022, and separately alleged that Mr. Savinell had willfully and maliciously filed a motion for sanctions in this Court in the Main Case. Compl. ¶¶ 11-17, 18-29, and 38, ECF No. 1. Mr. Michael did not present any evidence at trial related to these allegations or the additional damages he claimed as a result, nor did he address them in his post-trial brief. Accordingly, while the Court has found in Mr. Michael's favor on Count II regarding the New Jersey Default Judgment, the Court considers the remaining issues raised in Count II to have been abandoned. See *Harbison v. Little*, 723 F.Supp.2d 1032, 1038-39 (M.D. Tenn. 2010) ("If a plaintiff fails to include arguments regarding a claim in a post-trial brief, the court is justified in finding that the plaintiff has abandoned that claim."); *In re Mallinckrodt PLC*, 638 B.R. 57, 75, 81 (Bankr. D. Del. 2021) (same)).