

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:)	
)	JUDGE RICHARD L. SPEER
Jeffrey/Diane Siebert)	
)	Case No. 03-3101
Debtor(s))	
)	(Related Case: 02-38257)
Farmers & Merchants State Bank)	
)	
Plaintiff(s))	
)	
v.)	
)	
Jeffrey/Diane Siebert)	
)	
Defendant(s))	

DECISION AND ORDER

This cause comes before the Court upon the Plaintiff's Motion for Summary Judgment and Memorandum in Support. In its Motion, the Plaintiff raised one issue for resolution: whether a finding of nondischargeability entered through a consent judgment in a prior bankruptcy case implicates the doctrine of res judicata so as to exclude that same debt from discharge in a subsequent bankruptcy case? On this issue, the Defendants/Debtors did not, within the time frame set forth by Local Bankruptcy Rule 9013-1(b), file a response to the Plaintiff's Motion for Summary Judgment.

On the issue raised by the Plaintiff, judicial notice may be taken of these facts: (1) in a previous bankruptcy case, the Honorable Walter J. Krasniewski signed a consent judgment entry wherein the Debtors agreed to the nondischargeability of a debt owed to the Plaintiff; and (2) the instant adversary complaint stems from a Chapter 7 petition filed by the Debtors on December 4,

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2002. In addition, as it regards these facts, it is not disputed that at the time they filed their instant bankruptcy case, the Debtors had failed to satisfy their obligation as set forth in the consent judgment.

A consent judgment is defined as a “judgment, the provisions and terms of which are settled and agreed to by the parties to the action.” *Kearns v. Chrysler Corp.*, 32 F.3d 1541 (Fed.Cir.1994). Given the consensual nature of such judgments, it is the general rule that, in the absence of fraud, consent judgments are, as between the parties, to be given preclusive effect with respect to the underlying cause of action. *Amalgamated Sugar v. NL Industries*, 825 F.2d 634, 640 (2nd Cir. 1987), *cert. denied*, 484 U.S. 992, 108 S.Ct. 511, 98 L.Ed.2d 511 (1987). This rule has been applied by the Sixth Circuit Court of Appeals. For example, in *Schlegel Manufacturing Co. v. USM Corp.*, it was held that even though the degree of judicial involvement is different between a consent decree and a litigated result, the difference is not so consequential so as to justify different res judicata treatment. 525 F.2d 775, 780 (6th Cir. 1975), *cert. denied*, 425 U.S. 912 (1976). Similarly, in *Vulcan, Inc. v. Fordees Corp.*, the Sixth Circuit found that the important public interest of achieving finality in litigation was advanced by giving res judicata effect to consent decrees. 658 F.2d 1106, 1111 (6th Cir. 1981), *cert. denied*, 456 U.S. 906 (1982). The Supreme Court of Ohio has also given preclusive effect to consent judgments. *Horne v. Woolever*, 170 Ohio St. 178, 10 O.O.2d 114, 163 N.E.2d 378 (1959); *Sponseller v. Sponseller*, 110 Ohio St. 395, 144 N.E. 48 (1924).

As it pertains to the above, this Court, after reviewing the consent judgment entered by Judge Krasniewski, as well as the record of the Debtors’ prior bankruptcy case, could not discern any irregularities, and none has been called to this Court’s attention, which would suggest that any fraud was involved in the procurement of this judgment. Accordingly, based upon the standard set forth in Bankruptcy Rule 7056, judgment will be granted in the Plaintiff’s favor. In reaching this conclusion, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

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Accordingly, it is

ORDERED that the Motion for Summary Judgment of the Plaintiff, Farmers & Merchants State Bank, be, and is hereby, GRANTED.

It is ***FURTHER ORDERED*** that the obligation set forth in the consent judgment entered by the Honorable Walter J. Krasniewski, in the Case of Farmers & Merchants State Bank v. Jeffrey and Diane Siebert (Case No. 96-3103), be, and is hereby, determined to be a NONDISCHARGEABLE DEBT on the same terms and conditions as set forth therein.

Dated:

Richard L. Speer
United States
Bankruptcy Judge