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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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COLUMBUS, OHIO

In re:) Case No. 98-17653
)
)
HARRY CHARLES EDWARDS and) Chapter 7
MARY ANNE EDWARDS,)
)
) Judge Pat E. Morgenstern-Clarren
Debtors.)
_____)
)
)
BONNIE MACDONALD,) Adversary Proceeding No. 99-1004
)
)
Plaintiff,)
)
)
v.) **MEMORANDUM OF OPINION**
)
)
HARRY CHARLES EDWARDS, et al.,)
)
)
Defendants.)

Plaintiff Bonnie MacDonald moves for summary judgment on the issue of whether her state court judgment against Defendant-Debtors Harry Edwards and Mary Anne Edwards is a nondischargeable debt under 11 U.S.C. § 523(a)(2)(A) (the "Motion").¹ (Docket 6, 13). This request is unopposed.² For the reasons stated below, the Motion is granted.

JURISDICTION

The Court has jurisdiction to hear this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of

¹ Ms. MacDonald also requested that the Debtors be denied discharges under 11 U.S.C. § 727. The parties, however, have agreed that the sole legal issue is dischargeability of the Judgment. (Joint Pretrial Statement)(Docket 7).

² The deadline for filing a response in opposition to the Motion was extended to July 2, 1999 at Defendant-Debtors' request. (Docket 15, 18). No opposition was filed.

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Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

FACTS

These are the undisputed material facts based on the Motion, the exhibits submitted in support of the Motion, and the parties' Joint Pretrial Statement (Docket 6,7,13,14):

Ms. MacDonald purchased property from the Debtors in 1993. On April 27, 1995, Ms. MacDonald filed an action against the Debtors in the Cuyahoga County Common Pleas Court, *Bonnie MacDonald v. Harry Edwards, et al.*, Case No. 288548 (the "Lawsuit"), alleging fraud in the sale of the property. The Lawsuit was tried to a jury and submitted to it solely on the issue of fraud. The jury returned a verdict against the Debtors and in favor of Ms. MacDonald in the amount of \$58,953 (the "Judgment"). The Debtors appealed the Judgment to the Eighth District Court of Appeals, which affirmed.

The Debtors filed for bankruptcy on October 8, 1998. Ms. MacDonald filed this Adversary Proceeding seeking a determination that the Judgment is not dischargeable because it conclusively establishes fraud on the part of the Debtors in the sale of the property.

DISCUSSION

I.

Summary Judgment Standard

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c), made applicable by Fed. R. Bankr. P. 7056; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The movant must initially demonstrate the absence of a genuine issue of

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material fact. *Celotex Corp. v. Catrett*, 477 U.S. at 323. The burden is then on the non-moving party to show the existence of a material fact which must be tried. *Id.* The non-moving party must oppose a proper summary judgment motion "by any of the kinds of evidentiary material listed in Rule 56(c), except the mere pleadings themselves" *Celotex Corp. v. Catrett*, 477 U.S. at 324. All reasonable inferences drawn from the evidence must be viewed in the light most favorable to the party opposing the motion. *Hanover Ins. Co. v. American Eng'g Co.*, 33 F.3d 727, 730 (6th Cir. 1994). Summary judgment may be granted when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Northland Ins. Co. v. Guardsman Prod., Inc.*, 141 F.3d 612, 616 (6th Cir. 1998), quoting *Agristor Fin. Corp. v. Van Sickle*, 967 F.2d 233, 236 (6th Cir. 1992).

II.

11 U.S.C. § 523(a)(2)(A)

Ms. MacDonald asserts that the Judgment is a nondischargeable debt under 11 U.S.C. § 523(a)(2)(A). That section provides that a discharge under 11 U.S.C. § 727 does not discharge a debtor from a debt:

- (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--
 - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's . . . financial condition[.]

11 U.S.C. § 523(a)(2)(A).

In order to have a debt declared nondischargeable under this section, a creditor must prove that (1) the debtor obtained property through a material misrepresentation known to the

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debtor to be false when made or made with gross recklessness as to its truth; (2) the debtor intended to deceive the creditor; (3) the creditor justifiably relied on the misrepresentation; and (4) the reliance was the proximate cause of the loss. *Rembert v. AT & T Universal Card. Servs. Inc. (In re Rembert)*, 141 F.3d 277 (6th Cir. 1998); *Providian Bancorp v. Shartz (In re Shartz)*, 221 B.R. 397 (B.A.P. 6th Cir. 1998). The burden of proof under this section is a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279 (1991).

III.

The Request for Summary Judgment

Ms. MacDonald argues that she is entitled to summary judgment because the Judgment is conclusively established as a nondischargeable debt under 11 U.S.C. § 523(a)(2)(A) based on the doctrine of collateral estoppel.

IV.

Full Faith and Credit

The Full Faith and Credit statute provides that "judicial proceedings [of any state court] shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken." 28 U.S.C. § 1738. This statute has been interpreted to require a federal court to give a state court judgment the same preclusive effect that a court sitting in that state would give it, unless Congress has created an exception. *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373 (1985). The full faith and credit principle applies in dischargeability proceedings. *Bay Area Factors v. Calvert (In re Calvert)*, 105 F.3d 315 (6th Cir. 1997); *Rally Hill Prod., Inc. v. Bursack (In re Bursack)*, 65 F.3d 51 (6th Cir. 1995). The United States Supreme Court has held that collateral

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estoppel, or issue preclusion, also applies in dischargeability proceedings. *Grogan v. Garner*, 498 U.S. 279 (1991). A party may rely on issue preclusion "in certain circumstances to bar relitigation of issues relevant to dischargeability, although the bankruptcy court retains jurisdiction to ultimately determine the dischargeability of the debt." *Gober v. Terra + Corp. (In re Gober)*, 100 F.3d 1195, 1201 (5th Cir. 1996). Among other things, the issue preclusion concept applies to state court determinations of the amount of a debt. *National City Bank v. Plechaty (In re Plechaty)*, 213 B.R. 119 (B.A.P. 6th Cir. 1997). Res judicata in the sense of claim preclusion does not, however, apply in determining the dischargeability of debts. *Brown v. Felsen*, 442 U.S. 127 (1979).

Ohio Law of Preclusion

Ohio law recognizes that the doctrine of res judicata consists of two principles: claim preclusion and issue preclusion. *Fort Frye Teachers Ass'n v. State Employment Relations Bd.*, 81 Ohio St.3d 392, 692 N.E.2d 140 (1998). The "claim preclusion concept holds that a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Fort Frye Teachers Ass'n*, 81 Ohio St.3d at 395, 692 N.E.2d at 144, *citing with approval Grava v. Parkman Township*, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995). The concept of issue preclusion provides that "a prior judgment estops a party . . . from subsequently relitigating the identical issue raised in the prior action." *Goodson v. McDonough Power Equip., Inc.*, 2 Ohio St.3d 193, 443 N.E.2d 978, 979 (1983). "Collateral estoppel [issue preclusion] applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral

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estoppel is asserted was a party in privity with a party to the prior action." *Thompson v. Wing*, 70 Ohio St.3d 176, 183, 637 N.E.2d 917, 923 (1994).

The Judgment

The Judgment is based on a jury verdict finding that the Debtors committed fraud in selling the property to Ms. MacDonald. The elements of fraud under Ohio law include:

- (a) a representation, or where there is a duty to disclose, concealment of a fact;
- (b) which is material to the transaction at hand;
- (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred;
- (d) with the intent of misleading another into relying upon it;
- (e) justifiable reliance upon the representation or concealment; and
- (f) a resulting injury proximately caused by the reliance.

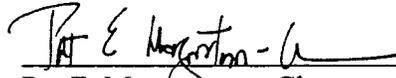
Cohen v. Lamko, Inc., 10 Ohio St.3d 167, 169, 462 N.E.2d 407, 409 (1984). These elements parallel the elements of nondischargeability under 11 U.S.C. § 523(a)(2)(A). *See Rembert*. It is clear, therefore, that these same parties previously litigated the facts and issues which are essential to a dischargeability determination under § 523(a)(2)(A). Those facts and issues as determined in the state court support a determination that the Judgment is not dischargeable under that section. The Judgment is a final determination by a court of competent jurisdiction of those facts and issues and it is entitled to preclusive effect in this matter. The Debtors have not identified any material fact which must be tried or otherwise argued against this legal conclusion. Ms. MacDonald is, therefore, entitled to summary judgment based on the Judgment.

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CONCLUSION

For the reasons stated, Ms. MacDonald's Motion for Summary Judgment is granted. A separate judgment reflecting this decision will be entered.

Date: 11 August 1999



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: John Dyer, III, Esq.
S. Forrest Thompson, Esq.

By: Maria Doyaniero

Date: August 11, 1999

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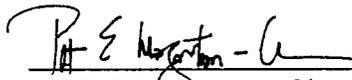
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)	Judge Pat E. Morgenstern-Clarren
Debtors.)	
_____)	
)	
BONNIE MACDONALD,)	Adversary Proceeding No. 99-1004
)	
Plaintiff,)	
)	
v.)	<u>JUDGMENT</u>
)	
HARRY CHARLES EDWARDS, et al.,)	
)	
Defendants.)	

For the reasons stated in the Memorandum of Opinion filed this same date,

IT IS, THEREFORE, ORDERED that Summary Judgment is entered in favor of the Plaintiff on the Complaint and her judgment debt is determined to be nondischargeable under 11 U.S.C. § 523(a)(2)(A).

Date: 11 August 1999



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: John Dyer, III, Esq.
S. Forrest Thompson, Esq.

By: Maria Sojaniera

Date: August 11, 1999