UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 10-18192
	)	
RALPH WILLIAM MILLER and	)	Chapter 7
BERNICE GENEVIEVE MILLER,	)	
	)	
Debtors.	)	Chief Judge Pat E. Morgenstern-Clarren
	)	
	)	
VIRGIL E. BROWN, JR., TRUSTEE,	)	Adversary Proceeding No. 12-1117
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ZACC MANAGEMENT, LLC,	)	**MEMORANDUM OF OPINION**
	)	**AND ORDER**
Defendant.	)	

The plaintiff chapter 7 trustee filed this adversary proceeding seeking to avoid and recover a fraudulent transfer from the defendant ZACC Management, LLC. The defendant moves for summary judgment on the basis of res judicata. For the reasons stated below, the defendant's motion is denied.[1]

I. JURISDICTION

This court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. The issue before the court is a core proceeding under 28 U.S.C. § 157(b)(2)(H) and it is within the court's

[1] Docket 21, 22.

constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. § 2594 (2011), which the parties do not dispute.

II. SUMMARY JUDGMENT

Summary judgment should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show "that there is no genuine dispute as to any material fact and [that] the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a) (made applicable by FED. R. BANKR. P. 7056); *see also 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 moving party generally bears the initial burden of showing that no genuine issue of material fact exists. *Gen. Motors Corp. v. Lanard Toys, Inc*. 468 F.3d 405, 412 (6th Cir. 2006). "[T]hat burden 'may be discharged by 'showing–that is, pointing out to the . . . court–that there is an absence of evidence to support the nonmoving party's case.'" *Id.* (quoting *Bennett v. City of Eastpointe*, 410 F.3d 810, 817 (6th Cir. 2005)). "Once the moving party has satisfied its burden, the nonmoving party may not rest upon its mere allegations or denials of the opposing party's pleadings, but rather it must set forth specific facts showing that there is a genuine issue for trial." *Havensure, L.L.C. v. Prudential Ins. Co. of Am.*, 595 F.3d 312, 315 (6th Cir. 2010). "In determining whether a genuine issue of material fact exists, [the] court draws all inferences in the light most favorable to the nonmoving party." *Id*. The issue at this stage is whether there is evidence on which a trier of fact could reasonably find for the nonmoving party. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1477 (6th Cir. 1989).

III. THE FACTS

These facts are undisputed based on the evidence offered in connection with the motion for summary judgment, the pleadings, and the parties' joint pretrial statement:

The debtors Ralph and Bernice Miller filed a chapter 7 case on August 18, 2010. Before filing, the debtors transferred real property which they owned at 14232 N. Cameo Drive, Sun City, Arizona (the property) to defendant ZACC Management, LLC (ZACC) via a Gift Deed. At the time of the transfer, the debtors' son, David Miller, owned ZACC. On May 9, 2012, the trustee filed this adversary proceeding to avoid the transfer and to recover the property or its value for the estate (the fraudulent transfer proceeding).

Earlier, on November 22, 2010, First Place Bank, a creditor in the bankruptcy case, filed its own adversary proceeding against the debtors. In it, the creditor asked the court to deny the debtors a discharge under Bankruptcy Code § 727(a)(2) based on the transfer of the property to ZACC (the discharge proceeding).[2] The creditor dismissed that lawsuit with prejudice in exchange for a payment to the estate of $20,000.00.

The interplay between those two adversary proceedings is the basis for the defendant's motion for summary judgment.

IV. DISCUSSION

A. The Positions of the Parties

The defendant argues that the doctrine of res judicata bars the trustee from bringing this action. The trustee's position is that res judicata does not apply.

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[2] *First Place Bank v. Miller*, Adv. No. 10-1382.

B. Res Judicata

Under the doctrine of res judicata, which is also referred to as claim preclusion, "a final judgment forecloses successive litigation of the very same claim, whether or not relitigation of the claim raises the same issues as the earlier suit." *Taylor v. Sturgell,* 553 U.S. 880, 892 (2008) (internal quotation marks and citation omitted). As explained by the Sixth Circuit:

> Res judicata, or claim preclusion as it is more helpfully termed, is the doctrine, simply stated, by which a final judgment on the merits in an action precludes a party from bringing a subsequent lawsuit on the same claim or cause of action or raising a new defense to defeat a prior judgment. . . . It precludes not only relitigating a claim or cause of action previously adjudicated, it also precludes litigating a claim or defense that should have been raised, but was not, in a claim or cause of action previously adjudicated.

Gargallo v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 918 F.2d 658, 660-61 (6th Cir. 1990) (internal citation omitted). The doctrine is applied "to promote the finality of judgments, which in turn increases certainty, discourages multiple litigation and conserves judicial resources." *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1992).

Courts use a four-part test to determine whether a claim or defense is barred by claim preclusion: (1) a final decision on the merits by a court of competent jurisdiction; (2) a later action between the same parties or their privies; (3) an issue in the later action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action. *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 528 (6th Cir. 2006).

The defendant has not shown facts that meet this standard. First, the parties to this fraudulent transfer proceeding were not parties in the discharge proceeding. The named parties to the discharge proceeding were First Place Bank and the debtors, while the parties to this

proceeding are the trustee and ZACC. Despite these different parties, the doctrine might apply if the named parties in this action were in privity with the parties to the earlier action. In the context of claim preclusion, "privity . . . means a successor in interest to the party, one who controlled the earlier action, or one whose interests were adequately represented." *Sanders Confectionery Prods., Inc.*, 973 F.2d at 481.

The defendant argues that the trustee and First Place Bank were in privity because the bank is the main creditor in the chapter 7 case and its interests are essentially identical to the trustee's. This is not so. The Bankruptcy Code permits both trustees and creditors to object to discharge, and their interests with regard to discharge proceedings are different. *See Hansen v. Moore (In re Hansen)*, 368 B.R. 868, 880 (B.A.P. 9th Cir. 2007) (noting that § 727 grants both the trustee and creditors the right to object to discharge and that although the interests of the trustee and creditors may be similar with respect to such suits, they are not identical). First Place Bank brought the discharge proceeding on its own behalf, and not as a representative of the chapter 7 estate.

Neither can ZACC show that it was in privity with the debtors. On this point, ZAAC argues that it was in privity with the debtors because the debtors' son owned ZACC and, allegedly, paid the money used to settle that dispute.[3] These are not the types of relationships which generally give rise to privity for purposes of res judicata. *See generally*, Moore's Federal Practice - Civil § 131.40 (noting that the types of legal relationships that create privity generally

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[3] The defendant cites the joint pretrial statement to support its assertion that the debtors' son, David Miller, paid the settlement amount. That statement, however, simply says that First Place agreed to settle for a payment of $20,000.00, without identifying the source of the payment. *See* Joint Pretrial Statement at ¶ 10, docket 18.

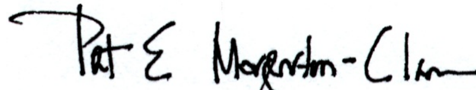
fall into three categories: (1) relationships based on transfer of property; (2) contractual relationships; and (3) status relationships).

Consequently, because this proceeding does not involve the same parties as the discharge proceeding (or their privies), res judicata does not bar this proceeding and the court cannot grant summary judgment for the defendant.[4]

V. CONCLUSION

For the reasons stated, the defendant's motion for summary judgment is denied.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge

[4] Based on this conclusion, the court need not address the other elements of res judicata.