

IT IS SO ORDERED.

Dated: February 22, 2013
11:36:39 AM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

ROBERT ALLEN LUCENTE,

Debtor.

* * * * *

ARLEY EDGELL and
CAROLYN EDGELL,

Plaintiffs,

v.

ROBERT ALLEN LUCENTE,

Defendant.

CASE NUMBER 08-40271

ADVERSARY NUMBER 08-4124

HONORABLE KAY WOODS

MEMORANDUM OPINION REGARDING MOTION FOR SUMMARY JUDGMENT

This cause is before the Court on Motion for Summary
Judgment (Doc. # 26) filed by Plaintiffs Arley Edgell and

Carolyn Edgell on December 20, 2012. Debtor/Defendant Robert Allen Lucente did not respond to the Motion for Summary Judgment. For the reasons set forth herein, the Court will grant the Motion for Summary Judgment.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general orders of reference (Gen. Order Nos. 84 and 2012-7) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

I. FACTUAL AND PROCEDURAL BACKGROUND

On February 1, 2008 ("Petition Date"), the Debtor filed a voluntary petition pursuant to chapter 7 of Title 11, United States Code, which was denominated Case No. 08-40271 ("Main Case").¹ Prior to the Petition Date, on April 3, 2007, the Plaintiffs filed suit against the Debtor in the Court of Common Pleas, Mahoning County, Ohio ("Mahoning Court"). The proceeding was captioned *Arley Edgell, et al. v. Robert A. Lucente, Jr. dba R. Lucente and Sons Construction Co., et al.* and denominated Case No. 2007-CV-1204 ("Mahoning Lawsuit").

On July 11, 2008, the Plaintiffs filed Complaint by Arley & Carolyn Edgell to Determine Dischargeability of Debt

¹ All docket references are to this adversary proceeding unless the Main Case is indicated.

("Complaint") (Doc. # 1), which commenced the instant adversary proceeding. The Plaintiffs state that they entered into a written contract with the Debtor and R. Lucente and Sons Construction Company ("Lucente & Sons") in February 2006 whereby the Debtor and Lucente & Sons were to construct a home on the Plaintiffs' real property at 5625 Duck Creek Road, Berlin Center, Ohio for \$176,000.00 ("Construction Contract"). The Plaintiffs entered into a loan agreement with FirstMerit Mortgage Corporation ("FirstMerit") to finance construction of the home. The Plaintiffs allege, *inter alia*, that the Debtor (i) fraudulently induced the Plaintiffs to enter into the Construction Contract; (ii) altered the Construction Contract to receive unauthorized payments from FirstMerit; and (iii) failed to complete construction of the home.

The Plaintiffs filed the Mahoning Lawsuit to "recover the monies misappropriated and damages incurred" as a result of the aforementioned allegations. (Compl. ¶ 21.) The Plaintiffs state that the Mahoning Court entered default judgment against the Debtor and Lucente & Sons and awarded the Plaintiffs damages in the amount of \$227,176.00.² The Plaintiffs request this Court to determine that the damages are non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(4).

² On January 20, 2009, the Plaintiffs filed a proof of claim denominated Claim No. 50-1, in which the Plaintiffs assert an unsecured claim in the amount of \$227,176.00. No party in interest objected to Claim No. 50-1.

On August 11, 2008, the Debtor filed Answer of Defendant (Doc. # 7), in which the Debtor generally denies the allegations in the Complaint and asserts several affirmative defenses.

Upon the parties' joint motion (Doc. # 13), on May 11, 2009, the Court stayed this adversary proceeding and granted relief from both the automatic stay in 11 U.S.C. § 362 and the discharge injunction in 11 U.S.C. § 524 to permit resolution of the Mahoning Lawsuit (Doc. # 14).

A. Mahoning Lawsuit³

On April 3, 2007, the Plaintiffs commenced the Mahoning Lawsuit. On August 13, 2007, the Mahoning Court entered default judgment against the Debtor and Lucente & Sons. The Mahoning Court held a hearing regarding damages on September 12, 2007, at which the Plaintiffs appeared, but neither the Debtor nor a representative of Lucente & Sons appeared. Magistrate DeLaurentis of the Mahoning Court awarded the Plaintiffs damages in the amount of \$227,176.00. On December 7, 2007, Judge Durkin of the Mahoning Court adopted the Magistrate's entry of default judgment and award of damages.

On January 28, 2008, - *i.e.*, prior to the Petition Date - the Debtor and Lucente & Sons moved for relief from the default judgment and award of damages, which the Plaintiffs opposed.

³ The facts contained in subsection I(A) are taken from the Motion for Summary Judgment, the attachments thereto and the Mahoning Lawsuit docket, available at <http://courts.mahoningcountyoh.gov/pa/pa.urd/pamw6500.display> ("Mahoning Docket").

Prior to ruling on the motion, on February 28, 2008, the Mahoning Court stayed the Mahoning Lawsuit because the Debtor filed his bankruptcy petition. After this Court lifted the automatic stay and the discharge injunction, the Mahoning Lawsuit was reinstated to the active docket. On January 26, 2010, the Mahoning Court vacated the default judgment against the Debtor and Lucente & Sons and likewise vacated the award of damages in favor of the Plaintiffs.

On June 1, 2012, the Plaintiffs moved for summary judgment against the Debtor and Lucente & Sons in the Mahoning Lawsuit ("Mahoning Motion").⁴ The Plaintiffs requested summary judgment with respect to the following counts of their complaint: (i) Counts One and Two - breach of oral and written contract; (ii) Count Three - conversion; (iii) Count Four - breach of duty of care; (iv) Count Five - breach of express warranty; and (v) Count Six - fraudulent misrepresentation. Neither the Debtor nor Lucente & Sons responded to the Mahoning Motion. On September 25, 2012, Magistrate DeLaurentis entered Magistrate's Decision, which granted the Mahoning Motion.⁵ The Magistrate's

⁴ A copy of the Mahoning Motion is attached to the Motion for Summary Judgment as Exhibit B.

⁵ A copy of the Magistrate's Decision is attached to the Motion for Summary Judgment as pages 1 through 4 of Exhibit A.

Decision included the following findings of fact and conclusions of law:⁶

4. [L]ucente wrongfully and maliciously converted the Plaintiffs' property. Lucente fraudulently altered the Construction Contract in order to induce FirstMerit Bank to release an amount exceeding One Hundred Seventy-One Thousand and 00/100 Dollars (\$171,000.00) contact [sic] price. FirstMerit Bank ultimately released an amount of One Hundred Ninety Thousand and 00/100 Dollars (\$191,000.00) [sic] to Lucente. Lucente's intentional fraudulent alteration of the Construction Contract directly damaged the Plaintiffs in excess of Twenty Thousand and 00/100 Dollars (\$20,000.00).

* * *

6. [L]ucente breached an express warranty for the materials and labor for the construction of Plaintiffs' home. Lucente's un-workmanlike performance on Plaintiffs' home resulted in Plaintiffs' basement being in need of major wholesale repair at a cost in excess of One Hundred-Sixty [sic] Five Thousand and 00/100 Dollars (\$165,000.00). Lucente has failed to repair and/or pay for the repair of Plaintiffs' basement as required by Lucente's express warranty and Lucente has therefore breached his express warranty.

7. [L]ucente made fraudulent representations to induce Plaintiffs to enter into the Construction Contract with Lucente, all to the detriment of Plaintiffs. Lucente made several material false misrepresentations with the clear and malicious intent to mislead the Plaintiffs and which resulted in Lucente both (a) fraudulently inducing the Plaintiffs to grant Lucente this Construction Contract and (b) receiving more of the Plaintiffs' funds from FirstMerit Bank than Lucente was entitled. First, Lucente represented that it had builder's risk insurance with State Farm, which they did not. Second, Lucente fraudulently concealed the fact that Lucente went around the Plaintiffs' backs to deliver a

⁶ The Magistrate's Decision collectively referred to the Debtor and Lucente & Sons as "Lucente." (See Mag.'s Dec. at 1.)

fraudulently altered contract to FirstMerit Bank which increased the payout amount of the contract beyond what Lucente was properly entitled to receive. Third, Lucente fraudulently submitted documents to FirstMerit Bank indicating that the construction of Plaintiffs' home was complete when it was not. Lastly, Lucente fraudulently represented to FirstMerit Bank that he had fully completed all required construction and installed all required materials, per the contract terms, when Lucente knew they did not do so. As a direct and proximate result of Lucente's fraudulent misrepresentations, the Plaintiffs were damaged because they lacked recourse from an insurance company for these multiple failures of Lucente to perform according to the Construction Contract, because FirstMerit Bank paid out more than Lucente was owed under the Construction Contract, and finally because their home was not fully constructed and completed as required by the Construction Contract (even though Lucente fraudulently obtained payment of the full Construction Contract Price).

* * *

11. Plaintiffs are entitled to judgment in their favor on Counts One through Six of their First Amended Complaint.

12. This Court, recognizing that a hearing on the Plaintiffs' damages was already held on September 12, 2007 and a Magistrate Decision was already rendered a decision [sic] on the amount of damages on November 6, 2007 and a Judgment Entry affirming this amount was rendered by this Court on December 7, 2007, and the Magistrate hereby reaffirms the amount of damages as set forth and approved by this Court previously as Two Hundred Twenty-Seven Thousand One Hundred Seventy-Six and 00/100 Dollars (\$227,176.00).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Plaintiffs, Arley Edgell and Carolyn Edgell and against Robert A. Lucente, Jr. and R. Lucente and Sons Construction Company, jointly and severally, for the intentional, malicious and fraudulent conduct in the amount of Two Hundred Twenty-Seven Thousand One Hundred Seventy-Six and 00/100 Dollars \$227,176.00.

(Mag.'s Dec. at 2-4.)

On November 5, 2012, Judge Durkin entered Journal Entry,⁷ which adopted the Magistrate's Decision in its entirety and granted judgment for the Plaintiffs against the Debtor and Lucente & Sons, jointly and severally, in the amount of \$227,176.00 based on their "intentional, malicious and fraudulent conduct" ("Mahoning Judgment"). (Journal Entry at 1.) Neither the Debtor nor Lucente & Sons appealed or otherwise requested relief from the Mahoning Judgment.

B. Motion for Summary Judgment

The instant adversary proceeding was reinstated to the active docket on November 20, 2012,⁸ and the Plaintiffs filed their Motion for Summary Judgment on December 20, 2012. The Debtor did not respond to the Motion for Summary Judgment. The Plaintiffs argue that the doctrine of collateral estoppel requires this Court to find that the Mahoning Judgment is based upon fraudulent misrepresentation and, thus, is non-dischargeable pursuant to § 523(a)(2)(A).⁹ Specifically, the Plaintiffs state that the Mahoning Judgment "is a final non-appealable judgment on the merits of the issue of Defendant's

⁷ A copy of the Journal Entry is attached to the Motion for Summary Judgment as pages 5 and 6 of Exhibit A.

⁸ Prior to reinstatement of this adversary proceeding, on September 13, 2012, Donald J. DeSanto, Esq. withdrew as counsel for the Debtor in this proceeding. (Doc. # 21.) The Debtor has proceeded *pro se* since that date.

⁹ The Plaintiffs do not argue in the Motion for Summary Judgment that the Mahoning Judgment is non-dischargeable pursuant to § 523(a)(4).

liability to Plaintiffs and whether Defendant's conduct was fraudulent, malicious and/or intentional." (Mot. for Summ. J. at 5.)

II. STANDARD OF REVIEW

FED. R. CIV. P. 56(a), made applicable to this proceeding by FED. R. BANKR. P. 7056, states, in pertinent part, "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a) (West 2013). Material facts are those "that might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

"The moving party bears the burden of proving the absence of genuine issues of material fact and its entitlement to judgment as a matter of law." *Longaberger Co. v. Kolt*, 586 F.3d 459, 465 (6th Cir. 2009) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). In evaluating a motion for summary judgment, "the court must view the factual evidence and draw all reasonable inferences in favor of the nonmoving party." *Banks v. Wolfe County Bd. of Educ.*, 330 F.3d 888, 892 (6th Cir. 2003) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

III. LEGAL STANDARDS

A. Section 523(a)(2)(A)

Section 523(a)(2)(A) states,

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any 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 or an insider's financial condition[.]

11 U.S.C. § 523(a)(2)(A) (West 2013).¹⁰ The creditor bears the burden of proving by a preponderance of the evidence that a debt is excepted from discharge pursuant to § 523(a). *Meyers v. I.R.S. (In re Meyers)*, 196 F.3d 622, 624 (6th Cir. 1999) (citing *Grogan v. Garner*, 498 U.S. 279, 290-91 (1991)). Section 523(a)(2) codifies the “long-standing bankruptcy policy that any debt which is shown to have arisen from a dishonest or otherwise wrongful act committed by a debtor is not entitled to the benefits of a bankruptcy discharge.” *Hoffman v. Anstead (In re Anstead)*, 436 B.R. 497, 500 (Bankr. N.D. Ohio 2010) (citing *Cohen v. De La Cruz*, 523 U.S. 213 (1998)).

To except a debt from discharge pursuant to § 523(a)(2)(A), the creditor must prove the following:

¹⁰ The Debtor received a discharge pursuant to 11 U.S.C. § 727 on December 18, 2008. (Main Case, Doc. # 113.)

(1) the debtor obtained money through a material misrepresentation that, at the time, the debtor knew was false or made with gross recklessness as to its truth; (2) the debtor intended to deceive the creditor; (3) the creditor justifiably relied on the false representation; and (4) its reliance was the proximate cause of loss.

Rembert v. AT&T Universal Card Servs., Inc. (In re Rembert), 141 F.3d 277, 280-81 (6th Cir. 1998) (n.2 omitted) (citing *Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 961 (6th Cir. 1993)).

B. Collateral Estoppel

The doctrine of collateral estoppel, or issue preclusion, “precludes relitigation of issues of fact or law actually litigated and decided in a prior action between the same parties and necessary to the judgment, even if decided as part of a different claim or cause of action.” *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 461 (6th Cir. 1999) (quoting *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1992)). Collateral estoppel applies in non-dischargeability proceedings. *Gonzalez v. Moffitt (In re Moffitt)*, 252 B.R. 916, 920-21 (B.A.P. 6th Cir. 2000) (citing *Grogan*, 498 U.S. at 285 n.11).

A federal court “must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which that judgment was rendered.” *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). “Collateral estoppel will apply where (1) the law of collateral

estoppel in the state in which the issue was litigated would preclude relitigation of such issue, and (2) the issue was fully and fairly litigated in state court." *Markowitz*, 190 F.3d at 461 (n.4 omitted) (citing 28 U.S.C. § 1738 (West 1994)).

In Ohio, the following four elements must be established to assert collateral estoppel:

"(1) The party against whom estoppel is sought was a party or in privity with a party to the prior action;

(2) There was a final judgment on the merits in the previous case after a full and fair opportunity to litigate the issue;

(3) The issue must have been admitted or actually tried and decided and must be necessary to the final judgment; and

(4) The issue must have been identical to the issue involved in the prior suit."

Cashelmarra Villas Ltd. P'Ship v. DiBenedetto, 623 N.E.2d 213, 215-16 (Ohio Ct. App. 1993) (quoting *Monahan v. Eagle Picher Indus., Inc.*, 486 N.E.2d 1165, 1168 (Ohio Ct. App. 1984)). "The burden of pleading and proving the identity of the issues currently presented and the issues previously decided rests on the party asserting the estoppel." *Am. Fiber Sys., Inc. v. Levin*, 928 N.E.2d 695, 701 (Ohio 2010) (citing *Goodson v. McDonough Power Equip., Inc.*, 443 N.E.2d 978, 983 (Ohio 1983)).

IV. ANALYSIS

A. Collateral Estoppel and Section 523(a)(2)(A)

As the party asserting the doctrine of collateral estoppel, the Plaintiffs must establish that the four requirements of issue preclusion under Ohio law are met with respect to each element of this § 523(a)(2)(A) action. *Palik v. Sexton (In re Sexton)*, 342 B.R. 522, 532 (Bankr. N.D. Ohio 2006). As set forth below, this Court finds that the Plaintiffs have met their burden of proof and, thus, this Court must accept the findings of fact and conclusions of law reached by the Mahoning Court.

1. Identity of the Parties

Because the Plaintiffs and the Debtor were parties to the Mahoning Lawsuit, the first element – identity or privity of parties – is satisfied without the need for analysis.

2. Opportunity to Litigate a Final Judgment on the Merits

The Plaintiffs must establish that the Mahoning Judgment is a final judgment on the merits and that the Debtor was provided a full and fair opportunity to litigate the Mahoning Judgment. The Plaintiffs state that the Mahoning Judgment is a final judgment because more than thirty days have elapsed since entry of the Mahoning Judgment and the Debtor failed to appeal the Mahoning Judgment. The Plaintiffs also assert that the Debtor was provided a full and fair opportunity to litigate the Mahoning Judgment, as evidenced by the parties' agreement to

stay this adversary proceeding to permit resolution of the Mahoning Lawsuit.

The Mahoning Judgment was entered on November 5, 2012, and the Mahoning Docket indicates that neither the Debtor nor Lucente & Sons has appealed or otherwise sought relief from the Mahoning Judgment. Accordingly, the Mahoning Judgment is a final judgment.

Furthermore, the Debtor was granted a full and fair opportunity to litigate the Mahoning Judgment. The Mahoning Docket reveals that the Debtor sought and obtained relief from the Mahoning Court's entry of default judgment in favor of the Plaintiffs. The Debtor then received leave from the Mahoning Court to file an answer and, in fact, filed his answer on March 25, 2010. The Mahoning Docket further reflects that the Debtor participated in discovery. Although the Debtor failed to respond to the Mahoning Motion, the Magistrate's Decision states that the Mahoning Court considered the Debtor's answer and the evidence submitted. Based upon the aforementioned facts, this Court finds that the Mahoning Judgment is a final judgment on the merits and that the Debtor was provided a full and fair opportunity to litigate the Mahoning Judgment.

3. Issue Necessary to Final Judgment Tried and Decided

The third element of the collateral estoppel doctrine requires the Plaintiffs to demonstrate that the issue before

this Court was actually tried and decided by the Mahoning Court and was necessary to the Mahoning Judgment. The Mahoning Judgment was entered in conjunction with resolution of the Mahoning Motion, which requested summary judgment against the Debtor. The Sixth Circuit Court of Appeals has found:

Generally, disposition of a case on summary judgment grounds meets the actually litigated requirement of the issue preclusion test. *Exhibitors Poster Exch., Inc. v. Nat'l Screen Serv. Corp.*, 421 F.2d 1313, 1319 (5th Cir. 1970), *cert. denied*, 400 U.S. 991 (1971) ("It would be strange indeed if a summary judgment could not have collateral estoppel effect. This would reduce the utility of this modern device to zero. It would compel the useless ritual of a formal trial to get the equivalent ruling at the end of the evidence Indeed, a more positive adjudication is hard to imagine.").

Nat'l Acceptance Co. v. Bathalter, Case No. 91-3128, 1991 U.S. App. LEXIS 29787, *7 (6th Cir. Dec. 9, 1991) (unpublished). As a consequence, there is no dispute that the Mahoning Judgment was actually tried and decided by the Mahoning Court.

Next, the Court must determine whether resolution of the issue before this Court was necessary to the Mahoning Judgment. To prevail in this § 523(a)(2)(A) action, the Plaintiffs must establish the following: (i) the Debtor obtained money through a material misrepresentation that, at the time, the Debtor knew was false or made with gross recklessness as to its truth; (ii) the Debtor intended to deceive the Plaintiffs; (iii) the Plaintiffs justifiably relied on the false representation; and

(iv) the Plaintiffs' reliance was the proximate cause of loss. *Rembert v. AT&T Universal Card Servs., Inc. (In re Rembert)*, 141 F.3d 277, 280-81 (6th Cir. 1998) (n.2 omitted) (citing *Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 961 (6th Cir. 1993)).

The Mahoning Court granted summary judgment against the Debtor with respect to Count Six - *i.e.*, fraudulent misrepresentation. Under Ohio law, a plaintiff must demonstrate the following to prevail on a claim of fraudulent misrepresentation in a contract action: "(1) a false representation concerning a fact material to the transaction; (2) knowledge of the falsity of the statement or utter disregard for its truth; (3) intent to induce reliance on the misrepresentation; (4) reliance under circumstances manifesting a right to rely; and (5) injury resulting from the reliance.'" *Dana Partners, LLC v. Koivisto Constructors & Erectors, Inc.*, 2012 Ohio 6294, ¶ 57 (Ohio Ct. App. 2012) (quoting *Sanfillipo v. Rarden*, 493 N.E.2d 991, 994 (Ohio Ct. App. 1985)). In granting summary judgment with respect to Count Six, the Mahoning Court concluded:

[L]ucente made fraudulent representations to induce Plaintiffs to enter into the Construction Contract with Lucente, all to the detriment of Plaintiffs. Lucente made several material false misrepresentations with the clear and malicious intent to mislead the Plaintiffs and which resulted in Lucente both (a) fraudulently inducing the Plaintiffs to grant Lucente this Construction Contract and (b) receiving more of the Plaintiffs' funds from

FirstMerit Bank than Lucente was entitled. . . . As a direct and proximate result of Lucente's fraudulent misrepresentations, the Plaintiffs were damaged because they lacked recourse from an insurance company for these multiple failures of Lucente to perform according to the Construction Contract, because FirstMerit Bank paid out more than Lucente was owed under the Construction Contract, and finally because their home was not fully constructed and completed as required by the Construction Contract (even though Lucente fraudulently obtained payment of the full Construction Contract Price).

(Mag.'s Dec. ¶ 7.)

The elements required to prevail in a § 523(a)(2)(A) action and to prove a claim of fraudulent misrepresentation under Ohio law are materially identical. By concluding that the Debtor committed fraudulent misrepresentation, the Mahoning Court necessarily found and, in fact, did find that (i) the Debtor made a material misrepresentation to the Plaintiffs that he knew was false; (ii) the Debtor intended to deceive the Plaintiffs; (iii) the Plaintiffs justifiably relied on the misrepresentation; and (iv) the Plaintiffs suffered damages as a result of their reliance. Accordingly, this Court finds that resolution of the issue before this Court was necessary to resolution of Count Six of the Mahoning Lawsuit.

Because the Plaintiffs prevailed on Counts One through Six in the Mahoning Lawsuit, the Court must determine what portion of the \$227,176.00 Mahoning Judgment was based upon fraudulent misrepresentation. The Magistrate's Decision did not allocate

the award of damages among the Counts, and the Mahoning Judgment simply adopted the Magistrate's Decision in its entirety. Regarding specific amounts of damages, the Magistrate's Decision merely stated that the Debtor "fraudulently altered the Construction Contract," which "directly damaged" the Plaintiffs in excess of \$20,000.00, and that the Debtor's "un-workmanlike performance on Plaintiffs' home resulted in Plaintiffs' basement being in need of major wholesale repair" at a cost in excess of \$165,000.00. (*Id.* ¶¶ 4, 6.) The Magistrate's Decision provided no further explanation of damages, including how the total amount of \$227,176.00 was calculated.

Based upon a review of the Magistrate's Decision, this Court finds that the entire Mahoning Judgment resulted from fraudulent misrepresentation. The Mahoning Court expressly concluded that the Debtor fraudulently induced the Plaintiffs to enter into the Construction Contract. (*Id.* ¶ 7 ("Lucente made fraudulent representations to induce Plaintiffs to enter into the Construction Contract with Lucente . . . and which resulted in Lucente . . . fraudulently inducing the Plaintiffs to grant Lucente this Construction Contract").) Because the Debtor's fraudulent misrepresentations induced the Plaintiffs to execute the Construction Contract, the damages caused by the Debtor's breach of the Construction Contract derived from such misrepresentations. In addition, the Debtor misrepresented that

he had builder's risk insurance, which damaged the Plaintiffs "because they lacked recourse from an insurance company for these multiple failures of Lucente to perform according to the Construction Contract." (*Id.*) Finally, the Mahoning Court found that the Debtor "deliver[ed] a fraudulently altered contract to FirstMerit Bank which increased the payout amount of the contract beyond what Lucente was properly entitled to receive" and, despite failing to complete construction of the home, "fraudulently obtained payment of the full Construction Contract Price." (*Id.*)

The Mahoning Court concluded that the Debtor's fraudulent misrepresentations (i) caused the Plaintiffs to execute the Construction Contract; (ii) precluded the Plaintiffs from seeking recourse against a third party; and (iii) permitted the Debtor to receive payment to which he was not entitled. These misrepresentations and associated damages comprise the entirety of the Mahoning Judgment. As a consequence, this Court finds that the full amount of the Mahoning Judgment arose from fraud.

4. Identical Issues

As explained above, the issue in this § 523(a)(2)(A) proceeding is materially identical to the issue before the Mahoning Court in Count Six. Therefore, the Court finds that the Plaintiffs have satisfied the fourth and final requirement of the collateral estoppel doctrine.

B. Summary Judgment

Finally, the Court must determine if summary judgment in favor of the Plaintiffs is warranted. The Plaintiffs bear the burden to establish that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. *Longaberger Co. v. Kolt*, 586 F.3d 459, 465 (6th Cir. 2009) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). The Plaintiffs contend that summary judgment is proper because the material facts necessary to resolve this § 523(a)(2)(A) action were decided by the Mahoning Court. This Court agrees.

As stated above, the Mahoning Court expressly found that (i) the Debtor made a material misrepresentation to the Plaintiffs that he knew was false; (ii) the Debtor intended to deceive the Plaintiffs; (iii) the Plaintiffs justifiably relied on the misrepresentation; and (iv) the Plaintiffs suffered damages as a result of their reliance. Having concluded that this Court is bound by the findings of fact and conclusions of law reached by the Mahoning Court, this Court finds that there is no genuine dispute that the Mahoning Judgment is a debt based upon fraudulent misrepresentation and that the Plaintiffs are entitled to judgment as a matter of law. As a consequence, the Court finds that the Mahoning Judgment is non-dischargeable pursuant to § 523(a)(2)(A) and will grant the Plaintiffs' Motion for Summary Judgment.

V. CONCLUSION

The Mahoning Court determined all issues of material fact necessary to resolve this proceeding by concluding that (i) the Debtor made a material misrepresentation to the Plaintiffs that he knew was false; (ii) the Debtor intended to deceive the Plaintiffs; (iii) the Plaintiffs justifiably relied on the misrepresentation; and (iv) the Plaintiffs suffered damages as a result of their reliance. Collateral estoppel requires this Court to accept as true the findings and conclusions reached by the Mahoning Court because (i) the Plaintiffs and the Debtor were parties to the Mahoning Lawsuit, which resulted in a final judgment on the merits; (ii) the Debtor was provided a full and fair opportunity to litigate the Mahoning Judgment; (iii) the issue of whether the Debtor's fraudulent misrepresentations caused injury to the Plaintiffs was actually tried and decided by the Mahoning Court and was necessary to the Mahoning Judgment; and (iv) the issue in (iii), above, is identical to the issue presently before this Court.

Based upon the Mahoning Court's findings, the Plaintiffs are entitled to judgment as a matter of law. As a consequence,

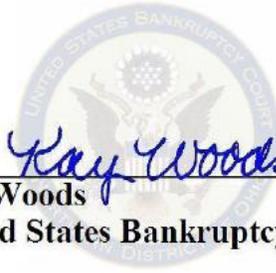
the Court finds that the Mahoning Judgment is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and will grant the Plaintiffs' Motion for Summary Judgment.

An appropriate order will follow.

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IT IS SO ORDERED.

Dated: February 22, 2013
11:36:39 AM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

ROBERT ALLEN LUCENTE,

Debtor.

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CAROLYN EDGELL,

Plaintiffs,

v.

ROBERT ALLEN LUCENTE,

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CASE NUMBER 08-40271

ADVERSARY NUMBER 08-4124

HONORABLE KAY WOODS

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

This cause is before the Court on Motion for Summary
Judgment (Doc. # 26) filed by Plaintiffs Arley Edgell and

Carolyn Edgell on December 20, 2012. Debtor/Defendant Robert Allen Lucente did not respond to the Motion for Summary Judgment.

For the reasons set forth in this Court's Memorandum Opinion Regarding Motion for Summary Judgment entered on this date, the Court hereby:

1. Finds that the doctrine of collateral estoppel requires this Court to accept the findings of fact and conclusions of law reached by the Mahoning Court in the Mahoning Lawsuit;
2. Finds that there is no genuine issue of material fact;
3. Finds that the Plaintiffs are entitled to judgment as a matter of law;
4. Finds that the Mahoning Judgment is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A); and
5. Grants the Plaintiffs' Motion for Summary Judgment.

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