

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 10-12952
)
CHARLES R. LAURIE, JR.,) Chapter 7
)
Debtor.) Chief Judge Pat E. Morgenstern-Clarren
_____)
)
DANIEL J. RYAN, *et al.*,) Adversary Proceeding No. 10-1223
)
Plaintiffs,)
)
v.)
)
CHARLES R. LAURIE, JR.,) **MEMORANDUM OF OPINION**¹
)
Defendant.)

When the debtor Charles Laurie filed his bankruptcy case, there was a state court lawsuit pending against him brought by the same individuals who later filed this adversary proceeding.² This court lifted the automatic stay to permit the plaintiffs to return to state court to liquidate their claims against the debtor. After the state court entered a final judgment against the debtor on the plaintiffs' fraud claim, the parties returned to the bankruptcy court.

The plaintiffs now move for summary judgment on count 1 of their first amended complaint determining that the debtor's liability to them under the state judgment is

¹ This opinion is not intended for publication, either electronically or in print.

² The plaintiffs in this adversary proceeding are Daniel Ryan, William Doyle, Michael Flament, Fred Lick, Jr., Patrick D'Angelo and Jaime Serrat.

nondischargeable under Bankruptcy Code § 523(a)(2)(A). The plaintiffs also ask to dismiss the other counts of the complaint. The debtor opposes summary judgment.

For the reasons stated below, the motion for summary judgment on count I is granted and the remaining counts are dismissed.³

I. JURISDICTION

Jurisdiction over this proceeding exists 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. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I), and it is within the court's constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011).

II. FACTS

These are the relevant undisputed facts based on the evidence offered by the plaintiffs in support of their motion and the parties' joint pretrial statement:

The plaintiffs and the debtor entered into a series of financial transactions between April 1998 and March 1999.⁴ In 2002, the plaintiffs filed suit against the debtor and others in Cuyahoga County Common Pleas Court: *Daniel J. Ryan, et al. v. Jeffrey Ambrosio, et al.*, No. CV-02-476833. The plaintiffs' first amended complaint in the lawsuit asserted eight counts against the debtor and the other defendants. Count one asserted that the debtor was strictly liable under Ohio's "Blue Sky" securities law. Count two asserted his liability for fraud, alleging that: (1) the debtor held himself out to the plaintiffs as an experienced financial analyst and advisor;

³ Docket 58, 59, 60.

⁴ Joint Pretrial Statement, docket 25.

(2) the debtor fraudulently induced the plaintiffs to invest in a corporation named Unity Motion through the use of misrepresentations and material omissions; (3) the debtor made the representations and omissions knowing they were false or with utter disregard and recklessness as to whether they were true; (4) the debtor made the representations and omissions with the intent of inducing the plaintiffs to rely on them and to invest their funds in Unity Motion through the Ambrosio Partnerships; (5) the plaintiffs justifiably relied on the misrepresentations and omissions; and (6) the debtor defrauded the plaintiffs and caused them to incur substantial damages.

On September 4, 2013, the state court entered summary judgment in favor of the plaintiffs against the debtor on counts one and two, with the court's journal entry stating:

Plaintiffs' motion (filed 6/29/12) for summary judgment against defendant Charles R. Laurie, Jr. is granted in part. The court grants plaintiffs' motion for summary judgment as to Count one (Ohio's "Blue Sky" securities law) and Count 2 (Fraud) of Plaintiffs' first amended complaint. Counts 3, 4, 5, 6, 7 and 8 remain pending against Defendant Charles R. Laurie, Jr.

Pursuant to this ruling, the Court enters judgment as follows:

1. Judgment is granted in the amount of \$325,000.00 against Defendant Charles R. Laurie, Jr. and in favor of Plaintiff Daniel J. Ryan.
2. Judgment is granted in the amount of \$190,000.00 against Defendant Charles R. Laurie, Jr. and in favor of Plaintiff William T. Doyle.
3. Judgment is granted in the amount of \$165,000.00 against Defendant Charles R. Laurie, Jr. and in favor of Plaintiff Michael Flament.
4. Judgment is granted in the amount of \$130,000.00 against Defendant Charles R. Laurie, Jr. and in favor of Plaintiff Fred Lick, Jr.

5. Judgment is granted in the amount of \$95,000.00 against Defendant Charles R. Laurie, Jr. and in favor of Plaintiff Jaime P. Serrat.

6. Judgment is granted in the amount of \$60,000.00 against Defendant Charles R. Laurie, Jr. and in favor of Plaintiff Patrick D'Angelo. . . .

The plaintiffs then dismissed the remaining counts and the state court granted the plaintiffs' motion for prejudgment interest, entering these final judgments: Daniel Ryan (\$573,625.00); William Doyle (\$333,350.00); Michael Flament (\$291,225.00); Fred Lick, Jr. (\$229,450.00); Jamie Serrat (\$167,675.00); and Patrick D'Angelo (\$105,900.00).

III. THE POSITIONS OF THE PARTIES

The plaintiffs argue that the state court judgment for fraud conclusively establishes the elements of § 523(a)(2)(A) nondischargeability under the doctrine of issue preclusion. With those elements established, the plaintiffs contend that they are entitled to a judgment that this debt is not discharged in the bankruptcy case. The debtor argues that the state court judgment does not meet the requirements for the issue preclusion doctrine to apply because the state court judge did not make factual findings and the debtor lacked the required intent to defraud.

IV. SUMMARY JUDGMENT STANDARD

Summary judgment should be rendered if the pleadings, the discovery and disclosure materials on the docket, 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 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, 1479 (6th Cir. 1989).

V. 11 U.S.C. § 523(a)(2)(A)

An individual chapter 7 debtor is released from most debts, with certain exceptions. The exception at issue here is § 523(a)(2)(A), which provides that a debtor is not discharged 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 or an insider’s financial condition[.]

11 U.S.C. § 523(a)(2)(A). To exclude a debt from discharge under this provision, a creditor must prove that:

(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) (footnote omitted). The standard of proof is a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 291 (1991).

VI. ISSUE PRECLUSION

Issue preclusion, also referred to as collateral estoppel, “refers to the effect of a judgment in foreclosing relitigation of a matter that has been actually litigated and decided.” *Corzin v. Fordu (In re Fordu)*, 201 F.3d 693, 703 (6th Cir. 1999).⁵ “Even though Congress intended the bankruptcy court to determine the issue of whether a debt is dischargeable, Congress does not require the bankruptcy court to redetermine all the underlying facts.” *Phillips v. Weissert (In re Phillips)*, 434 B.R. 475, 485 (B.A.P. 6th Cir. 2010). As a result, issue preclusion applies in dischargeability proceedings and may serve to bar relitigation of issues relevant to dischargeability that were already decided by a state court. *Grogan v. Garner*, 498 U.S. 279, 284 n. 11 (1991).

A federal court is required to give a state court judgment the same “full faith and credit” that it is entitled to under the law of the state that entered it. 28 U.S.C. § 1738; *see Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 384 (1985). Under Ohio law, issue preclusion “prevents parties or their privies from relitigating facts and issues in a subsequent suit that were fully litigated in a prior suit.” *Thompson v. Wing*, 637 N.E. 2d 917, 923 (Ohio 1994).

⁵ The plaintiffs’ brief also refers to claim preclusion. The relevant doctrine for this matter, however, is issue preclusion.

The party invoking issue preclusion has the burden of proving that these four elements exist:

1) A final judgment on the merits in the previous case after a full and fair opportunity to litigate the issue; 2) The issue must have been actually and directly litigated in the prior suit and must have been necessary to the final judgment; 3) The issue in the present case must . . . [be] identical to the issue in the prior suit; and 4) The party against whom estoppel is sought was a party or in privity with a party to the prior action.

Sill v. Sweeney (In re Sweeney), 276 B.R. 186, 189 (B.A.P. 6th Cir. 2002)

VII. DISCUSSION

As stated, the plaintiffs must prove that their state law judgment satisfies each of the four preclusion elements required by Ohio law. The first element is that the state court judgment is a judgment on the merits after a full and fair opportunity to litigate the issue. Ohio law does not require that a matter go to trial to satisfy this element; instead, it also gives preclusive effect to summary judgments. *Masek v. Kleese Dev. Assocs.*, No. 2011-T-0107, 2012 WL 4481360 at *3 (Ohio Ct. App. Sept. 28, 2012); *see also Glidden Co. v. Lumbersmens Mut. Cas. Co.*, 861 N.E.2d 109, 118 (Ohio 2006) (stating that collateral estoppel could not be invoked because the partial summary judgment in the prior action never became final as the action was ultimately settled and dismissed); *A-1 Nursing Care of Cleveland, Inc. v. Florence Nightingale Nursing, Inc.*, 647 N.E.2d 222, 627 (Ohio Ct. App. 1994) (noting that “[s]ummary judgment terminates a party’s action on the merits and a subsequent filing of an action decided on summary judgment is prohibited by the doctrine of *res judicata*”); *Ed Schory & Sons, Inc. v. Francis (In re Francis)*, 226 B.R. 385, 388 (B.A.P. 6th Cir. 1998) (noting that a summary judgment is a final

determination of rights after a full opportunity to litigate for purposes of issue preclusion under Ohio law).

Skipping to the third element, the plaintiffs must prove that the issue in the dischargeability action is the same as the issue that led to the state court judgment. This element is also satisfied because the issue in both proceedings is whether the debtor engaged in fraudulent behavior vis a vis the plaintiffs. That is seen by comparing the state law elements of fraud to § 523. For the state court to have granted summary judgment, it must have found that: (1) the debtor made a representation to the plaintiffs; (2) the representation was material to the transaction at hand; (3) the debtor made the representation falsely, with knowledge of its falsity or with such utter disregard and recklessness as to whether it was true or false that his knowledge may be inferred; (4) he made it with the intent to mislead the plaintiffs into relying upon it; (5) the plaintiffs justifiably relied; and (6) the plaintiffs' resulting injury was proximately caused by their reliance. See *Volbers-Klarich v. Middletown Mgt., Inc.*, 929 N.E.2d 434, 440 (Ohio 2010) (stating the elements of an Ohio fraud claim). Those findings are virtually the same as the findings required under § 523(a)(2)(A) and support a determination of nondischargeability in this proceeding. *Francis*, 226 B.R. at 389.

The fourth element is that the party against whom estoppel is sought was a party or in privity with a party to the state court lawsuit. Here, the debtor was the defendant in both lawsuits, which satisfies this element.

That leaves the second preclusion element, which is that the state court actually and directly litigated the fraud issue. The debtor argues that the plaintiffs cannot prove this element because the state court did not enter specific factual findings in the judgment. The plaintiffs

respond that this element is proven by reviewing the state court complaint, judgment, and journal entry of final judgment.

An issue is considered to have been passed upon and determined by a prior judgment if it was directly determined by and essential to the judgment. *Buckeye Union Ins. Co. v. New England Ins. Co.*, 720 N.E.2d 495, 501 (Ohio 1999). In situations such as this where the state court made no findings, the bankruptcy court uses a deductive methodology to determine whether the first court conclusively decided issues. *Beard Research, Inc. v. Kates (In re Kates)*, 485 B.R. 86, 102 (Bankr. E.D. Pa. 2012); *see also Yust v. Henkel (In re Henkel)*, 490 B.R. 759, 781 (Bankr. S.D. Ohio 2013) (noting that a bankruptcy court may review the state court record to determine the grounds for and the meaning of a state court order for purposes of issue preclusion). Using this approach,

the bankruptcy court starts with the ultimate conclusions of the first court (which usually are not in dispute) – for example, that the court entered judgment in the creditor’s favor on a particular cause of action. The court next attempts to reconstruct inferentially the necessary foundations to the prior decision. If that reconstruction process is successful, the court then compares those foundational elements of the prior court ruling to the statutory elements of the § 523(a) nondischargeability asserted by the plaintiff. This reasoning process may involve a purely legal analysis, *e.g.*, a comparison of the necessary elements of the claim litigated in the first proceeding with the elements of the bankruptcy nondischargeability claim. Or, the bankruptcy court may consider additional materials from the first proceeding, such as pleadings, briefs and jury instructions, in an effort to ascertain what issues were actually litigated before and necessarily decided by the prior court[.]

Kates, 485 B.R. at 102 (footnotes omitted).

The analysis starts, then, by working backwards from the state court judgment. That judgment entered summary judgment for fraud against the debtor. To arrive at that judgment,

the state court must have found in the plaintiffs' favor on each of the elements of that claim under Ohio law. In essence, the state court found that the plaintiffs proved all of the elements of fraud and that the debtor failed to present any contrary evidence. *See Doss v. State of Ohio*, 985 N.E.2d 1229, 1234 (Ohio 2012) (noting that to prevail on a motion for summary judgment the plaintiff "must have demonstrated that there was no genuine issue of material fact, that he was entitled to judgment as a matter of law, and that reasonable minds, viewing the evidence in the light most favorable to the nonmoving party, can come to only one conclusion, which is adverse to the nonmoving party."). As noted above, those findings are virtually the same as those required under § 523(a)(2)(A) and are sufficient to support a determination of nondischargeability in this proceeding. A review of the complaint further supports this conclusion because it includes allegations as to each element of fraud. The absence of factual findings does not, therefore, undermine the application of the preclusion doctrine.

The debtor cites *NCM Enters. Sand and Stone, Ltd. v. Earnest (In re Earnest)*, Adv. No. 12-3040, 2013 WL 795399 (Bankr. N.D. Ohio Mar. 1, 2013) to support a different result. That decision addressed materially different facts and is not instructive here. In *Earnest*, the plaintiffs made multiple claims against the debtor in state court. The facts to establish some, but not all, of the claims would also have supported a § 523 claim. The state court entered summary judgment in favor of the plaintiffs without identifying which claims it was addressing. Under those circumstances, the bankruptcy court found that the plaintiffs were not entitled to summary judgment based on issue preclusion because they did not show that the state court had actually passed on the issues relating to nondischargeability. In the present case, the judgment states that it is for fraud, removing any doubt as to the basis for the judgment.

The debtor also argues that he is entitled to try the § 523(a)(2)(A) action so that he may present evidence that he has mental difficulties which would negate a finding of nondischargeability. That argument fails, however, because the state court judgment conclusively determined the issue of his intent.

In sum, the plaintiffs proved that the state court judgment is entitled to preclusive effect, that there are no genuine issues of material fact as to the nondischargeability of the debt owed by the debtor to the plaintiffs under Bankruptcy Code § 523(a)(2)(A), and that the plaintiffs are entitled to judgment as a matter of law on count I of the complaint.

VIII. CONCLUSION

For the reasons stated, the plaintiffs' motion for summary judgment on count I of the amended complaint is granted and the debtor's liability to them under their state court judgment is determined to be nondischargeable under 11 U.S.C. § 523(a)(2)(A). Additionally, the plaintiffs' request to dismiss the other counts of the complaint (counts II and III) is granted. The court will enter a separate judgment to that effect.



Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge

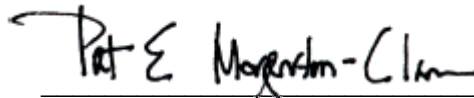
UNITED STATES BANKRUPTCY COURT
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Debtor.) Chief Judge Pat E. Morgenstern-Clarren
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DANIEL J. RYAN, et al.,) Adversary Proceeding No. 10-1223
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Plaintiffs,)
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v.)
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CHARLES R. LAURIE, JR.,) **JUDGMENT**
)
Defendant.)

For the reasons stated in the memorandum of opinion entered this same date, the plaintiffs¹ amended motion for summary judgment is granted and the plaintiffs are granted judgment against the defendant-debtor Charles Laurie, Jr. on count I of the complaint. (Docket 58). The plaintiffs' judgment against the defendant-debtor for fraud entered by the Cuyahoga County Court of Common Pleas in *Daniel J. Ryan, et al. v. Jeffrey Ambrosio, et al.*, No. CV-02-476833 is determined to be nondischargeable under 11 U.S.C. § 523(a)(2)(A).

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge

¹ The plaintiffs in this adversary proceeding are Daniel Ryan, William Doyle, Michael Flament, Fred Lick, Jr., Patrick D'Angelo and Jaime Serrat.