

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Case No. 05-bk-13780-JAF
Chapter 7

ROBERT ADAMO,

Debtor.

KEY BANK, N.A.,

Plaintiff,

v.

Adv. No. 06-ap-00080-JAF

ROBERT ADAMO,

Defendant.

**ORDER GRANTING PLAINTIFF'S
MOTION TO ENFORCE SETTLEMENT**

This proceeding came before the Court upon Key Bank, N.A.'s ("Plaintiff") Motion to Enforce Settlement and for Entry of Judgment of Nondischargeability ("Motion"), Robert Adamo's ("Adamo") Response to Plaintiff's Motion to Enforce Settlement Agreement ("Response"), Plaintiff's Reply to Defendant's Response to Motion to Enforce Settlement ("Reply"), and Adamo's Response to the Reply ("Response to Reply"). The Court conducted a hearing on June 19, 2007 (the "Hearing"). The Court took the matter under advisement. Upon review of the Motion, Response, Reply and Response to Reply, and the evidence presented at the Hearing, the Court finds it appropriate to grant the Motion.

BACKGROUND

Adamo, a defendant in a related adversary proceeding Anton Ptach ("A. Ptach"), and their entity, Tab Express International, and several of Tab Express International entities (collectively, "Tab Express"), filed two lawsuits against Plaintiff in district court. (Tr. at p. 11, lines 15-17.) During discovery, Plaintiff became aware of what it considered fraud in various contexts on the part of Adamo, A. Ptach and Tab Express. (Tr. at p. 11, lines 19-24.) As a result of that revelation, Plaintiff filed a counterclaim against Adamo and A. Ptach.

(Tr. at p. 12, lines 1-11.) After the counterclaim was filed, Adamo, A. Ptach and his son, Peter Ptach ("P. Ptach") filed for relief under the Bankruptcy Code with the Court. (Tr. at p. 12, lines 21-23.)

While the district court case was still pending, the parties were ordered by the district court to mediate the main issues. A settlement conference was conducted on August 17, 2006 (the "Conference"), by United States Magistrate Judge James G. Glazebrook ("Judge Glazebrook"). Present at the Conference were Scott O'Connell ("O'Connell") and Rebecca McMahon, attorneys who were present on behalf of Plaintiff; Adamo, A. Ptach and their attorney, Mark Hutchison ("Hutchison"); an additional defendant, Adamo's former lawyer, Tim Fiedler, who was present on behalf of himself and his law firm, Fogle & Fiedler, P.A., as well as his attorney, Raymond A. Biernacki, Jr. ("Biernacki"). (Tr. at p. 14, lines 11-22; Pl.'s Br. at 2, 4.) At approximately 10:10 p.m. on the date of the Conference, a settlement was reached and the terms of the settlement agreement were read into the record by counsel. (Pl.'s Ex. 2.) The agreement was based upon an entry of a \$2,000,000 judgment in favor of Plaintiff and against Adamo and A. Ptach (collectively, "Debtors"), as well as their Tab Express entities (the "Stipulated Judgment"). (*Id.*)

The Stipulated Judgment read into the record by O'Connell at the Conference states in pertinent part:

[T]he parties have agreed that the Tab entities, Mr. Adamo and Mr. Ptach will enter a stipulated judgment in the amount of \$2 million on the claims in this case. Parties have agreed that there will be a dismissal of this action with prejudice entered as to Tim Fiedler and his law firm, Fogle and Fiedler. *Parties agree that certain bankruptcy adversaries involving Anton Ptach, Peter Ptach and Robert Adamo will be concluded in a fashion appropriate for the bankruptcy court by the filing of stipulated judgment in those actions. . . .*

(Pl.'s Ex. 2 at p. 13, lines 17-21) (emphasis added.) Hutchison, when asked by Judge Glazebrook if the recorded text reflected his interpretation of the Stipulated Judgment, then clarified that he "believ[ed]" that what was contemplated, that the adversary proceeding in Peter Ptach's bankruptcy

would be withdrawn.” (Pl.’s Ex. 2 at p. 15, lines 3-5.) O’Connell then agreed with such clarification, and augmented his statement by stating that he intended that the “adverse actions [would] be concluded to the appropriate mechanism with regard to Anton Ptach and Robert Adamo by the filing of the stipulated judgment from this action and in those actions and the action against Peter Ptach [would] be withdrawn.” (Pl.’s Ex. 2 at p. 15, lines 10-14.)

DISCUSSION

The main issues for the Court to decide are: 1) whether the settlement reached between the parties provided that the \$2,000,000 judgment would be non-dischargeable as to Debtors, and 2) if that debt is non-dischargeable, whether the Court could enter that judgment as a result in this proceeding. With respect to the settlement agreement, contract law governs their enforceability and interpretation. In re Sav-a-Stop, Inc., 124 B.R. 356, 359 (Bankr. M.D. Fla. 1991); Sure-Snap Corp. v. Miller (In re Sure-Snap Corp.), 91 B.R. 178, 180 (Bankr. S.D. Fla. 1988); In re Hillsborough Holdings Corp., 267 B.R. 882, 892 (Bankr. M.D. Fla. 2001) (citing Sure-Snap, 91 B.R. at 180). There is an inherent ambiguity as to the meaning of the emphasized text of the Stipulated Judgment, namely, the conclusion of the adversary proceedings against Debtors. The Court notes that the term “non-dischargeable” does not appear anywhere in the transcript of the Conference, nor is it reflected in the Stipulated Judgment. But because the settlement agreement announced is ambiguous as to the specifics of the \$2,000,000 judgment agreed to between the parties, the Court permitted parol evidence at the Hearing.

The Court finds that the overwhelming weight of the evidence admitted at trial supports Plaintiff’s argument that the \$2,000,000 judgment was meant to be non-dischargeable.¹ On September 14, 2006, Hutchison wrote a letter encompassing his interpretation of the Stipulated Judgment, which specifically states that he envisioned that Tab Express, Adamo and A. Ptach “would consent to the entry of a judgment against them on the claims of Key Bank in the Federal case for \$2,000,000.00, *with the judgment being non dischargeable in any bankruptcy proceeding . . .*” (Pl.’s Ex. 3 at 2)

¹ As an initial matter, the Court finds that all exhibits previously admitted at the Hearing are relevant, and therefore Defendant’s objection to their admission is overruled.

(emphasis added.) During his June 14, 2007 deposition, A. Ptach stated that he understood that Plaintiff could attempt to collect the Stipulated Judgment from him over the next 20 years at a rate of 9 percent.² (Tr. at p. 69, lines 2-6.) And Plaintiff’s witnesses, O’Connell and Biernacki, testified that it was their understanding from the Conference that the \$2,000,000 judgment was intended to be non-dischargeable. In addition to this overwhelming evidence, the Court notes that the parties, most of them sophisticated attorneys, would not have spent an entire day at the Conference only to reach an agreement based upon a debt that Plaintiff could not collect, in exchange for Plaintiff’s dismissal of its potential fraud claims against the Debtors.

As to Debtors’ arguments for denial of Plaintiff’s Motion, the Court finds such arguments unpersuasive. First, Debtors claim that a ruling granting Plaintiff’s Motion would be in violation of the “fair and equitable” test because neither or the Trustee nor any creditors were noticed for the Hearing and therefore could not voice their potential concerns regarding the non-dischargeability of this debt. As an initial matter, this issue was not raised at trial, although Debtors’ counsel may have alluded to such an argument through cross-examination. However, even if counsel had addressed this concern at the Hearing, the Court notes that neither the Trustee nor any party in interest filed an objection to the Motion.³

Debtors’ argument that the dismissal of the district court case disposed of Plaintiff’s current claim to enforce the Stipulated Judgment is also without merit. The district court case was dismissed because of the settlement agreement the parties had reached. The bankruptcy-related matters were to be dealt with in the proper forum, to wit, this Court. As a result, the dismissal of the underlying district court suit has no bearing on the dismissal *vel non* of the current proceeding.

As to the second issue the Court must decide, the Court finds that the forum is proper and the Court can enter a judgment of non-

² The Court does not find credible Adamo or A. Ptach’s self-serving testimony that their understanding of the Stipulated Judgment was that the \$2,000,000 judgment was intended to be dischargeable.

³ The Trustee or a creditor would have no basis to get involved in a dispute over the dischargeability of a debt to another creditor.

dischargeability against Debtors. Debtors themselves chose this forum when they filed for bankruptcy. Therefore, notwithstanding Debtors' arguments to the contrary, there is no need for an independent state court action to enforce the settlement agreement. Courts encourage judicial economy, and the determination that the \$2,000,000 judgment against Debtors is non-dischargeable falls squarely within the powers of this Court.

The Stipulated Judgment read into the record at the Conference was intended by the parties that the \$2,000,000 judgment owed by Debtors was to be non-dischargeable. Thus, the Court finds that the \$2,000,000 judgment shall be non-dischargeable against Adamo and A. Ptach, jointly and severally. Based upon the foregoing, it is

ORDERED:

1. The Motion is granted. The Court shall enforce the settlement reached between the parties and finds that the debt is non-dischargeable.

2. The Court directs Plaintiff to furnish an appropriate judgment in accordance with the terms of this Order.

DATED this 18 day of July, 2007 in Jacksonville, Florida.

/s/ Jerry A. Funk
JERRY A. FUNK
United States Bankruptcy Judge

Copies furnished to:

Jacob A. Brown, Esq., Attorney for Plaintiff
Robert N. Reynolds, Esq., Attorney for Adamo