**UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**
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| In re: | ) | |
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| CHAD H. TUCKER, | ) | Case No. 6:12-bk-03863-KSJ |
| | ) | Chapter 7 |
| | ) | |
| Debtor. | ) | |
| _____ | ) | |
| | ) | |
| R & R TURF FARMS, L.L.P. | ) | |
| | ) | |
| Plaintiff, | ) | |
| vs. | ) | |
| | ) | Adv. Pro. No. 6:12-ap-00125-KSJ |
| CHAD H. TUCKER, | ) | |
| | ) | |
| Defendant. | ) | |
| _____ | ) | |

**MEMORANDUM OPINION GRANTING**
**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

The plaintiff, R & R Turf Farms, L.L.P, ("R & R"), filed a four-count Complaint[1] in this adversary proceeding averring that a state court default judgment of $340,080 and an attorneys' fees judgment of $339,334 entered against the Debtor and Defendant, Chad Tucker, are not dischargeable under Sections 523(a)(2)(A), (4), and (6) of the Bankruptcy Code.[2] R & R now seeks a summary judgment[3] relying on the doctrine of collateral estoppel. For the reasons explained in this opinion, the Court will enter judgment in favor of R & R finding that the state court judgments are non-dischargeable.

[1] Doc. No. 1.
[2] All references to the Bankruptcy Code herein refer to Title 11 of the United States Code.
[3] Doc. No. 15.

Tucker's debt to R & R stems from two judgments entered against him by the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida. R & R's multi-count civil complaint[4] against Tucker and several co-defendants alleged, among other things, violation of Florida's Criminal Practices Act (Fla. Stat §§ 772.103 & 772.104), Civil Conspiracy, and Civil Theft of 1,864 pallets of sod worth more than $149,000.00. In addition to other remedies, R & R sought treble damages and attorneys' fees.

Circuit Court Judge Michael E. Raiden presided over more than four years of litigation in the state court case. Tucker answered and actively defended the state court case. In 2011, when the Defendant failed to properly respond to discovery requests, Judge Raiden held an evidentiary hearing and issued a preliminary order finding Tucker had engaged in serious discovery abuses that, unless cured within sixty days, warranted sanctions of striking Tucker's defensive pleadings and entry of default judgment against him.[5]

Tucker did not remedy his discovery violations. On March 23, 2012, the last business day before he was to appear before Judge Raiden for a final hearing on the sanctions, he filed this bankruptcy case.

After obtaining relief from the automatic stay, R & R returned to state court to allow the state court to make final rulings on liability and damages on Counts I (Violation of Florida's Criminal Practices Act), IV (Civil Conspiracy), and VI (Civil Theft) of the state court complaint.[6]

On June 27, 2012, Judge Raiden found Tucker had continued his obstructive behavior and imposed the sanction of striking Tucker's defensive pleadings and entering a default against

[4] Doc. No. 24, Exh. 1. The state court case is styled *R&R Turf Farms, L.L.P. v. Chad H. Tucker, et al.*, Case No. 2007CA-00832-0000-00 .
[5] Doc. No. 1, Ex. B.
[6] Main Case, Doc. Nos. 31, 58. The remaining counts of the state court complaint were dismissed voluntarily.

him.[7] On November 27, 2012, Circuit Judge Ellen Masters entered a final summary judgment of $340,080 against Tucker and his sod business, jointly and severally. This amount "represent[s] three times the actual damages suffered by the Plaintiff as a consequence of the criminal practices and fraudulent conduct of the Defendants described in the [state court complaint]."[8] Judge Masters also found R & R was entitled to recovery of reasonable attorney's fees and costs incurred in bringing the state court case and retained jurisdiction to determine those amounts at a subsequent evidentiary hearing.

In an order entered January 23, 2013, Judge Masters found the attorneys' fees and costs incurred by R & R Turf Farms in the state court case "were losses resulting from the Defendants' willful and malicious conduct;" she further found Defendants' actions "were direct and intentional actions that were done without just cause or excuse . . . . , and the Defendants intended the injuries [attorneys' fees and costs] to the Plaintiff."[9] Judge Masters entered an attorneys' fees and costs judgment of $339,334.07 in R & R's favor against Tucker and his business jointly and severally.[10]

R & R now seeks a determination that the state court judgments are not dischargeable pursuant to Section 523(a)(2)(A), (a)(4), and (a)(6) because they are debts stemming from fraud, larceny, and willful and malicious injury which resulted from Debtor's participation in a fraudulent scheme to steal sod from R & R. In its motion for summary judgment, R & R contends that the doctrine of collateral estoppel bars Tucker from relitigating the fraudulent character of his actions in the bankruptcy case.

[7] Doc. No. 1, Ex. C.
[8] Doc. No. 15, Ex. A at 3.
[9] Doc. No. 15, Ex. B at 1-2.
[10] Doc. No. 15, Ex. B.

Under Federal Rule of Civil Procedure 56, made applicable by Federal Rule of Bankruptcy Procedure 7056, a court may grant summary judgment where "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."[11] The moving party has the burden of establishing the right to summary judgment.[12] "When a motion for summary judgment has been made properly, the nonmoving party may not rely solely on the pleadings, but . . . must show that there are specific facts demonstrating that there is a genuine issue for trial."[13] In this case, no factual disputes have been raised. Therefore, adjudication of the adversary proceeding by way of a summary judgment is appropriate.

"Collateral estoppel prohibits the relitigation of issues that have been adjudicated in a prior action. The principles of collateral estoppel apply in discharge exception proceedings in bankruptcy court."[14] Whether to apply collateral estoppel "is within the sound discretion of the trial court."[15]

The Eleventh Circuit Court of Appeals has held that the collateral estoppel law of the state that issued the prior judgment determines whether the prior judgment can have a preclusive effect in a subsequent proceeding.[16] Because the judgments against Tucker were entered by a Florida state court, Florida's collateral estoppel law applies. In Florida, collateral estoppel precludes a subsequent proceeding where: (1) the issue at stake is identical to the one decided in the prior litigation; (2) the issue was actually litigated in the prior proceeding; (3) the prior determination of the issue was a critical and necessary part of the judgment in the earlier

[11] Fed. R. Civ. P. 56.
[12] *Fitzpatrick v. Schlitz (In re Schlitz)*, 97 B.R. 671, 672 (Bankr. N.D. Ga. 1986).
[13] *Brown v. Crawford*, 906 F.2d 667, 670 (11th Cir. 1990).
[14] *Bush v. Balfour Beatty Bahamas, Ltd.*, 62 F.3d 1319, 1322 (11th Cir. 1995).
[15] *Id.* at 1325 n. 8 (*citing Parklane Hosiery Company, Inc. v. Shore*, 439 U.S. 322, 331 (1979)).
[16] *St. Laurent v. Ambrose (In re St. Laurent)*, 991 F.2d 672, 675-76 (11th Cir. 1993) (citation omitted).

decision; and (4) the standard of proof in the prior action was at least as stringent as the standard of proof in the later case.[17]

The Debtor takes issue with the existence of the first three prongs of the collateral estoppel test. Because the judgment entered against him in the state court case was based upon a default issued as a sanction, he argues the state court did not actually determine he acted with fraudulent intent; that a finding of fraudulent intent was not necessary to the state court's judgment; and that he did not have sufficient opportunity to litigate the relevant issues in the state court case. The Debtor does not dispute the existence of the fourth prong; he concedes the standard of proof in the state court case was at least as stringent as the standard of proof in this dischargeability action.

The Court finds each of the four prongs of the collateral estoppel test is satisfied in this case. The critical issue (Tucker's intent) was resolved by the state court and is identical to that in the instant proceeding; it was actually litigated there for over four years before the judgment was issued; and determination of the issue was critical and a necessary part of the judgment.

The issue at stake here – whether Tucker had fraudulent intent – is identical to the one decided in the prior litigation. The state court's final summary judgment found Tucker liable for violation of the Florida Civil Remedies for Criminal Practices Act, Fla. Stat. § 772.103 & 104; for conspiracy to violate the same statute; and for Civil Theft under Fla. Stat. § 812.014 and § 812.019.[18] It explicitly found Tucker liable for the fraudulent scheme alleged as the predicate for these statutory counts.[19] It stated the damages award "represent[ed] three times the actual damages suffered by the Plaintiff as a consequence of the criminal practices and fraudulent

[17] *In re Houston*, 305 B.R. 111, 117 (Bankr. M.D. Fla. 2003) (citing *In re St. Laurent*, 991 F.2d at 676 (11th Cir. 1993); *In re Bilzerian*, 153 F.3d 1278, 1281 (11th Cir. 1998)) (other citations omitted).
[18] Doc. No. 15, Ex. A at 1-2.
[19] *Id.*

conduct of the Defendants described in the [state court complaint]."[20] These findings establish the intent requirement of the dischargeability causes of action alleged by Plaintiff in this adversary proceeding.[21] The fact that the state court judgment was one resulting from default does not change that.[22]

Tucker had ample opportunity to defend and, in fact, did defend the state court complaint alleging his fraudulent intent and criminal action. He retained an attorney, filed his answer to the complaint, participated in discovery, and appeared and testified at evidentiary hearings on the discovery and sanctions motions. The state court case dragged on for over four years, undoubtedly in no small part because of Tucker's defensive and obstructionist tactics. The default entered by the state court directly resulted from Tucker's participation in the lawsuit and his persistent obstructive refusal to comply with the requirements of discovery in that case.

The state court's finding of criminal intent was a critical and necessary part of the judgment. That finding was necessary for the state court to find liability under Florida's Civil Remedies for Criminal Practices Act predicated on violations of Fla. Stat. §§ 812.014 and 812.019.

Section 812.014(1) states:

> A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
>
> (a) Deprive the other person of a right to the property or a benefit from the property.

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[20] *Id*. at 3.
[21] *See Sidney v. Ragucci (In re Ragucci)*, 433 B.R. 889, 895 (Bankr. M.D. Fla. 2010).
[22] *Bush*, 62 F.3d at 1325; *see also In re Vickers*, 247 B.R. 530, 535 (Bankr. M.D. Fla. 2000) ("A pure default judgment, entered when there is no participation by the defendant, is sufficient to satisfy the 'actually litigated' element of collateral estoppel under Florida law.") (*citing Masciarelli v. Maco Supply Corp.*, 224 So.2d 329, 330 (Fla. 1969); *Avant v. Hammond Jones, Inc*., 79 So.2d 423, 424 (Fla. 1955)).

> (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

Similarly, § 812.019 requires criminal intent:

> Dealing in stolen property.—
>
> (1) Any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen shall be guilty of a felony of the second degree, punishable as provided in ss. 775.082, 775.083, and 775.084.
>
> (2) Any person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property shall be guilty of a felony of the first degree, punishable as provided in ss. 775.082, 775.083, and 775.084.

The state court case was litigated for several years, the essential issue of Tucker's fraudulent intent was determined by the state court, that determination was necessary to the state court judgments, and the burden of proof for the state court action was at least as stringent as the standard of proof in this dischargeability action. Collateral estoppel precludes Tucker from relitigating the issues of fraudulent intent and action in this adversary proceeding. No genuine issue of material fact exists as to whether the judgment debt owed by Tucker to R & R is a debt stemming from fraud, larceny, and willful and malicious injury.

Debtor's final argument addresses the amount of the nondischargeable debt. Debtor argues only the actual damages caused R & R should be nondischargeable. The Court rejects this argument. Treble damages and attorneys' fees awards resulting from fraud are not dischargeable pursuant to § 523.[23] The nondischargeable debt is the total amount of the state court judgments – $679,413.07 — plus reasonable attorneys' fees and costs incurred in this adversary proceeding.

[23] *Cohen v. de la Cruz*, 523 U.S. 213, 219, 223, 118 S. Ct. 1212, 1216, 1219 (1998).

Accordingly, the Court will grant R & R's Motion for Summary Judgment. A separate order consistent with this Memorandum Opinion shall be entered.

DONE AND ORDERED in Orlando, FL, on June 10, 2013.

KAREN S. JENNEMANN
Chief United States Bankruptcy Judge