

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:06-bk-01282-ABB
Chapter 7

ANGELA R. PRESTON,

Debtor.

SPECIALIZED COMMERCIAL LENDING, LLC,

Plaintiff,

vs.

Adv. Pro. No. 6:06-ap-00169-ABB

ANGELA R. PRESTON,

Defendant.

ORDER

This matter came before the Court on the Motion for Summary Judgment on Basis of Collateral Estoppel¹, herein (“Motion”), filed by Specialized Commercial Lending, LLC, the Plaintiff herein (“Plaintiff”), against Angela R. Preston, the Defendant and Debtor, herein (“Debtor”). The Plaintiff seeks summary judgment on its Complaint² to have a debt deemed nondischargeable pursuant to 11 U.S.C. Section 523(a)(2)(A). A hearing was held on July 9, 2007 at which counsel for both Plaintiff and Debtor were present. The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

FINDINGS OF FACT

The Plaintiff instituted litigation against the Debtor and a number of other entities in the 22nd Judicial District Court for the Parish of St. Tammany, State of Louisiana (“State Court”) on July 9, 2001. The suit arose out of the misappropriation of a loan in excess of \$1,000,000.00 issued from the Plaintiff to Brian B. Brown Construction, Inc., (“Brown Construction”) the Debtor’s employer at the time. Brown Construction and the Debtor were not named

¹ Doc. No. 21.

² Doc. No. 1.

defendants in the State Court action but were joined as parties.

The State Court entered a judgment (“Judgment”) awarding total damages of \$654,497.02 to the Plaintiff on October 4, 2005. The Debtor, Brown Construction, Brian B. Brown, and Bacmar Enterprises, Inc. were held jointly, severally, and solidarily liable for 40% of the total damages or \$392,698.21. The State Court, in its Reasons for Judgment, explained the Debtor admitted during her testimony she and Brian B. Brown provided Murphy-Blossom Appraisal with false information in order to keep receiving the installment loan payments from the Plaintiff. The Court held the Debtor’s testimony evidenced fraud for which the Debtor and Brown Construction should be held liable but did not specify the standard of fraud it relied upon.

The Plaintiff, through its Complaint, requests this Court deem the Judgment debt nondischargeable pursuant to 11 U.S.C. Section 523(a)(2)(A), and, through its Motion, seeks summary judgment based upon the State Court’s determinations with the application of collateral estoppel. The State Court, however, did not make specific findings relating to all of the elements of fraud required for non-dischargeability pursuant to 11 U.S.C. Section 523(a)(2)(A). The State Court’s general references to Louisiana’s standards for fraud are not sufficient to establish the elements of Section 523(a)(2)(A). Collateral estoppel does not preclude the Debtor from challenging the Plaintiff’s claim of non-dischargeability based upon fraud. The Plaintiff is not entitled to judgment as a matter of law and summary judgment is due to be denied.

CONCLUSIONS OF LAW

The Plaintiff challenges the dischargeability of the Judgment debt pursuant to 11 U.S.C. § 523(a)(2)(A). Granting summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c) (2005) (made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 7056). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

The Plaintiff contends the State Court Judgment establishes the requisite fraud elements for

non-dischargeability pursuant to Section 523(a)(2)(A) and the collateral estoppel doctrine precludes relitigation of the issues determined by the State Court. Congress requires federal courts to give preclusive effect to state court judgments whenever the courts of the state rendering the judgments would do so. See 28 U.S.C. § 1738; Allen v. McCurry, 449 U.S. 90, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980). Collateral estoppel precludes relitigation of issues tried and decided in prior judicial or administrative hearings where each party had a full and fair opportunity to litigate the issues decided. In re St. Laurent, 991 F.2d 672, 675 (11th Cir. 1993). Collateral estoppel principles apply to dischargeability proceedings. Grogan v. Garner, 498 U.S. 279, 285 n. 11, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991). The collateral estoppel law of the state that issued the prior judgment must be applied to determine whether the judgment has preclusive effect. Id.

Louisiana collateral estoppel law is the applicable law since the State Court judgment was issued by a Louisiana state court.

Collateral estoppel prohibits litigation between the same parties in any future lawsuit when an issue of ultimate fact has been determined by a valid and final judgment. When an issue or factor of law is actually litigated and determined to be a valid final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

Vines v. Northeast Louisiana University, 839 So.2d 979, 983 (La.App. 2 Cir., 2003) (citing RecoverEdge v. Pentecost, 44 F.3d 1284 (5th Cir. 1995)).

All elements required to establish “actual fraud” pursuant to Section 523(a)(2) (A) must have been proved in the prior proceeding for collateral estoppel to apply. Grogan, 498 U.S. at 281 (citing In re Garner, 73 B.R. 26 (W.D. Mo. 1987)) (holding all elements required to establish actual fraud pursuant to Section 523 must be proved for collateral estoppel to apply). Collateral estoppel would bar relitigation of issues if, in the course of adjudicating a state law issue, a state court determines factual issues using the standards identical to those in the pertinent code provision. Brown v. Felsen, 442 U.S. 127, 139 (1979) (finding standards must be identical to those in Bankr. Act § 17 for collateral estoppel to apply).

The Plaintiff seeks to have the State Court Judgment debt deemed nondischargeable pursuant to Section 523(a)(2)(A), contending the elements of fraud were litigated and resolved in the State Court. The State Court did not, in its Judgment, set forth the elements of fraud pursuant to Section 523(a)(2)(A) or make the requisite specific findings as to each element. The State Court only made a cursory reference to Louisiana’s standards for fraud. The language of the State Court Judgment is insufficient to establish the elements of Section 523(a)(2)(A).³ The elements of Section 523(a)(2)(A) were not actually litigated in the State Court proceeding.

The party objecting to the dischargeability of a debt carries the burden of proof and the standard of proof is preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991); Fed. R. Bankr. P. 4005 (2005). A chapter 7 discharge does not discharge an individual debtor from a debt to the extent such debt is obtained by “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) (2005). To establish fraud pursuant to Section 523(a)(2)(A), courts have generally required a plaintiff to establish the traditional elements of common law fraud. A plaintiff must prove the following elements: (i) the debtor made a false representation to deceive the creditor; (ii) the creditor relied on the misrepresentation; (iii) the reliance was justified; and (iv) the creditor sustained a loss as a result of the misrepresentation. SEC v. Bilzerian (In re Bilzerian), 153 F.3d 1278, 1281 (11th Cir. 1998).

The Plaintiff relies, in his Motion, solely on the State Court Judgment to support its proposed entitlement to summary judgment. The State Court, however, did not set forth the elements of Section 523(a)(2)(A). The Judgment does not include specific findings of justified reliance on false representations made to deceive the creditor which resulted in loss to the creditor. The language of the State Court Judgment is insufficient to establish the elements of Section 523(a)(2)(A) and the elements were not actually litigated in the State Court proceeding. Collateral estoppel does not preclude the

³ See In re St. Laurent, 991 F.2d 672, 676 (11th Cir. 1993) (finding a state court judgment to be nondischargeable where the judgment contained specific findings regarding fraudulent representations and established the elements of § 523(a)(2)(A) of the Bankruptcy Code. Collateral estoppel barred relitigation of the facts necessary for a determination of § 523(a)(2)(A) dischargeability).

Debtor from challenging the Plaintiff's claim of non-dischargeability. The Plaintiff is not entitled to judgment as a matter of law and its Motion is due to be denied.

Accordingly it is,

ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion for Summary Judgment (Doc. No. 21) is hereby **DENIED**.

Dated this 16th day of July, 2007.

/s/Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge