

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 07-11582	)	
	)	
KWEKU AKAN	)	
MARY J. JOHNSON	)	
	)	
Debtors	)	
	)	
	)	
EUELL A. WILSON CENTER, INC.	)	
	)	
Plaintiff	)	
	)	
vs.	)	PROC. NO. 07-1252
	)	
KWEKU AKAN	)	
	)	
Defendant	)	

**DECISION AND ORDER DENYING  
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

At Fort Wayne, Indiana, on February 20, 2008.

By this adversary proceeding the court has been asked to declare that the defendant/debtor’s obligation to the plaintiff it is a non-dischargeable debt, pursuant to § 523(a)(2) and § 523(a)(6) of the United States Bankruptcy Code. That debt arises out of a lawsuit for breach of contract, fraud and misrepresentation, and breach of warranty, and is represented by a default judgment from the Allen Superior Court in the amount of \$45,938.37, plus costs. The plaintiff has filed a motion for summary judgment based upon the proposition that the judgment it received in the state court, supplemented by a copy of a newspaper article from the Fort Wayne Journal-Gazette, obviates the need for further litigation on the dischargeability issue. It is that motion, together with the defendant’s response thereto, which is presently before the court.

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Bankr. P. Rule 7056(c); Fed. R. Civ. P. Rule 56(c). Rule 56 requires the moving party to inform the court of the basis of the motion and to identify “those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553. The non-moving party may oppose the motion with any of the evidentiary materials listed in Rule 56(c), but reliance on the pleadings alone is not sufficient to withstand summary judgment. Posey v. Skyline Corp., 702 F.2d 102, 105 (7th Cir. 1983).

The plaintiff argues that, through the doctrine of collateral estoppel, the default judgment it received from the Allen Superior Court establishes the nondischargeability of the judgment debt.<sup>1</sup> While the doctrine is alive and well in the bankruptcy courts, see e.g., Grogan v. Garner, 498 U.S. 279, 111 S. Ct. 654 (1991); In re Catt, 362 F.3d 789 (7th Cir. 2004); Klingman v. Levinson, 831 F.2d 1292 (7th Cir. 1987); In re Busick, 264 B.R. 518 (Bankr. N.D. Ind. 2001); In re Staggs, 178 B.R. 767, 774 (Bankr. N.D. Ind. 1994), aff’d Matter of Staggs, 177 B.R. 92 (N.D. Ind. 1995), the plaintiff has failed to show how its operation leads to the conclusion that the debtor’s obligation is a non-dischargeable one. “Generally, collateral estoppel operates to bar subsequent relitigation of the same

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<sup>1</sup>In support of the motion, the plaintiff submitted a copy of a newspaper article, dated October 28, 2006, from an online version of the Fort Wayne Journal-Gazette, in which the defendant was quoted as to his awareness of the lawsuit against him. In responding to the motion, the defendant spent a great deal of time arguing that the content of the article constitutes inadmissible hearsay, an argument that may well be correct. Nonetheless, it is not necessary to decide that issue in order to rule on the present motion and so the court does not address it further.

fact or issue where that fact or issue was necessarily adjudicated in a former suit and the same fact or issue is presented in the subsequent lawsuit.” Staggs, 178 B.R. at 774 (citations omitted). The key to collateral estoppel is that findings of fact were necessarily made by a court in connection with prior litigation between the parties in which a final judgment was rendered. It then acts to bar the relitigation of those same facts in a subsequent proceeding. The party asserting preclusion is expected to identify the facts that were determined in the previous litigation and then demonstrate how those facts compel a particular result in the subsequent action. Busick, 264 B.R. at 522.

Here, it is not at all apparent what findings of fact, if any, may have been made by the state court in connection with its judgment. This court has only a copy of a newspaper article, in which the defendant purportedly said that he would defend any legal action the plaintiff might bring; it also knows that a judgment was entered against him in such an action by default.<sup>2</sup> Plaintiff’s motion does nothing to indicate how the issues presented in this proceeding are identical to those presented to the Allen Superior Court or how the decision of that court leads to the conclusion that the debt represented by the judgment is a nondischargeable one. Without information or analysis of this type, the court has no basis for concluding that collateral estoppel precludes further litigation.

Plaintiff’s motion for summary judgment is DENIED.

SO ORDERED.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court

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<sup>2</sup>Accompanying the complaint in this proceeding, as Exhibit E, is a copy of the order entered by Allen Superior Court. That order simply grants the plaintiff’s motion for default judgment, awards \$45,938.37, and says nothing more.