

# Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 09-13886	)	
	)	
RUDRAPPA GUNASHEKER	)	
	)	
Debtor	)	
	)	
	)	
RENUKA DEVI MAHADEVA	)	
BANGALORE BROTHERS, INC.	)	
	)	
Plaintiffs	)	
	)	
vs.	)	PROC. NO. 09-1175
	)	
RUDRAPPA GUNASHEKER	)	
	)	
Defendant	)	

## DECISION ON MOTION FOR SUMMARY JUDGMENT

At Fort Wayne, Indiana, on March 23, 2010.

By this adversary proceeding the court has been asked to declare that the defendant/debtor's obligation to the plaintiffs is non-dischargeable, pursuant to § 523(a)(2) and § 523(a)(6) of the United States Bankruptcy Code. The debt is represented by two judgments from the Allen Superior Court. The first, for criminal conversion, is in the amount of \$41,512.44. The second, for fraud, is in the sum of \$11,000. The plaintiffs have filed a motion for summary judgment based upon the proposition that, through collateral estoppel, the findings and judgments from the state court obviate the need for further litigation over dischargeability. It is that motion which is presently before the court.<sup>1</sup>

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<sup>1</sup>The manner in which the plaintiffs electronically filed the brief in support of their motion, and a number of exhibits, leaves much to be desired. What is labeled as the main document is only the first six pages of the brief. The remaining pages and the beginning of the exhibits are found

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). Thus, summary judgment is essentially an inquiry as to “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202 (1986).

The defendant has not responded to the motion within the time required by the local rules of this court. Accordingly, the court may determine the matter based upon the proposition that “the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy . . . .” See, N.D. Ind. L.B.R. B-7056-1. The court cannot, however, properly grant a motion for summary judgment merely because it is unopposed or insufficiently opposed. Instead, the court is required to go beyond the lack of opposition and “must make the further finding that given the undisputed facts, summary judgment is proper as a matter of law.” Wienco, Inc. v. Katakhn Assocs. Inc., 965 F.2d 565, 568 (7th Cir. 1992). See also, Adickes v. S.H. Kress & Co., 398 U.S. 144, 161, 90 S.Ct. 1598, 1610 (1970).

Collateral estoppel, otherwise known as issue preclusion, “refers to the effect of a judgment in foreclosing litigation in a subsequent action of an issue of law or fact that has been actually

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through the first of eleven hyperlinks and is labeled simply as “exhibit.” The exhibits themselves are identified only generically and buried in bits and pieces throughout those eleven hyperlinks. Rather than being able to easily locate the relevant exhibits by clicking on an appropriately titled hyperlink, the court is forced to wade through each to find what it is looking for. The court’s ECF system easily facilitates a much more useful organization and identification of such submissions. Counsel should take advantage of it.

litigated and decided in the initial action.” LaSalle Nat’l Bank of Chicago v. County of DuPage, 856 F.2d 925, 930 n. 2 (7th Cir.1988) (cert. denied 489 U.S. 1081, 109 S. Ct. 1536 (1989)). For the court to apply collateral estoppel in a dischargeability proceeding, the requisite elements of the dischargeability claim must have been decided by the state court. See, In re Busick, 264 B.R. 518, 522 (Bankr. N.D. Ind. 2001); In re Staggs, 178 B.R. 767, 773-74 (Bankr. N.D. Ind. 1994) (discussing the elements of collateral estoppel). See also, In re Krautheimer, 210 B.R. 37, 52 (Bankr. S.D. N.Y. 1997). Thus, collateral estoppel “may be used in dischargeability actions where . . . there has been a prior state court decision,” but only “where the fact issues in the state and federal proceedings are ‘substantially identical.’” In re Halperin, 215 B.R. 321, 335 (Bankr. E.D. N.Y.1997). See also, Grogan v. Garner, 498 U.S. 279, 284 n.11, 111 S. Ct. 654 (1991). So, the issue before the court involves the findings made by the state court and whether those findings correspond with the facts plaintiffs need to prove under § 523(a).

The first judgment, the one for \$41,000, arises out of criminal conversion, see, I.C. 35-43-4-3, and is based upon the court’s finding that defendant “knowingly and intentionally exerted unauthorized control over” plaintiff’s property, in particular cash and rent proceeds. Section 523(a)(6) excepts from the scope of a debtor’s discharge debts “for willful and malicious injury by the debtor.” 11 U.S.C. § 523(a)(6). A willful injury for the purposes of § 523(a)(6) is an intentional one. Kawaauhau v. Geiger, 523 U.S. 57, 61, 118 S. Ct. 974, 977 (1998). Malicious means “without just cause or excuse.” Matter of Thirtyacre, 36 F.3d 697, 700 (7th Cir. 1994); In re Russell, 262 B.R. 449 (Bankr. N.D. Ind. 2001). The elements of criminal conversion and § 523(a)(6) are the same. The state court’s findings that the defendant acted “knowingly and intentionally” satisfies the “willful” requirement of § 523(a)(6) and the finding concerning “unauthorized control” satisfies the

malicious component. Accord, In re Russell, 262 B.R. 449 (Bankr. N.D. Ind. 2001); In re Kaminski, 2006 WL 2136010, 2006 Bankr. LEXIS 1682 (Bankr. N.D. Ind. 2006); In re Granati, 270 B.R. 575 (Bankr. E.D. Va. 2001) (conversion constitutes a willful and malicious injury and is nondischargeable under § 523(a)(6)).

The second judgment, the one for \$11,000, is based on fraud. The state court found that defendant committed fraud by, inter alia, lying about the amount of rent paid for a particular property as part of “an unconscionable plan or scheme” to manipulate a receivership proceeding. Section 523(a)(2)(A) excepts from discharge debts which arise out of “false pretenses, false representations, or actual fraud.” It encompasses “any deceit, artifice, trick or design involving direct and active operation of the mind, used to circumvent and cheat another’ . . .” McClellan v. Cantrell, 217 F.3d 890, 893 (7th Cir. 2000) (citing 4 Collier on Bankruptcy, para. 523.08[1][e](15th edition)). The defendant’s actions, intent and goals, as found and described by the state court, certainly constitute a design to cheat another and satisfy the requirements of § 523(a)(2)(A).<sup>2</sup>

There are no genuine issues of material fact. The defendant’s obligations to the plaintiffs, represented by the judgment issued by the Allen Superior Court in Cause No. 02D01-0201-PL-17, in the amount of \$41,512.44, and the judgment issued by the Allen Superior Court in 02D01-0701-PL-8, in the amount of \$11,000, are non-dischargeable. Judgment will be entered accordingly.

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

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<sup>2</sup>Because it finds this debt to be non-dischargeable under § 523(a)(2)(A), the court need not address the argument that it is non-dischargeable under § 523(a)(6).