

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 03-15282)
)
RICHARD JAMES KAMINSKI)
DAWN MARIE KAMINSKI)
)
Debtors)
)
)
MCS LASERTEC, INC. and)
KAM COMPANIES, INC.)
)
Plaintiffs)
)
vs.) PROC. NO. 04-1115
)
RICHARD JAMES KAMINSKI)
)
Defendant)

**DECISION GRANTING PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

At Fort Wayne, Indiana, on July 27, 2006.

By this adversary proceeding the court has been asked to declare that the defendant/debtor's obligation to the plaintiffs is a non-dischargeable debt, pursuant to § 523(a)(6) or § 523(a)(7) of the United States Bankruptcy Code. That debt is represented by a judgment plaintiffs received from the Allen Superior Court, following a trial of the issue raised in proceedings before that court. The matter is presently before this court on the plaintiffs' motion for summary judgment.

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). Instead, it is required to come forward and identify “specific facts” that may be in issue and then, through the use of affidavits or other admissible evidence, affirmatively demonstrate the existence of genuine issues concerning them. In ruling on the motion, the court accepts the non-moving party’s evidence as true, draws all inferences in favor of the non-moving party, and does not weigh the evidence and credibility of the witnesses. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S.Ct. 2505, 2511(1986).

The plaintiffs argue that, through doctrine of collateral estoppel, the judgment from the Allen Superior Court regarding the criminal conversion of five checks, establishes the nondischargeability of the judgment debt. 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 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. at 284 n. 11, 111 S. Ct. 654 (1991).

In this instance, the elements of the dischargeability claim are substantially similar to the factual issues which were fully litigated, actually and necessarily decided by the state court. Criminal conversion is defined as knowingly or intentionally exerting unauthorized control over the property of another person. I.C. 35-43-4-3. Liability for this type of misconduct constitutes a debt for a willful and malicious injury which is rendered nondischargeable by § 523(a)(6). In re Russell, 262 B.R. 449 (Bankr. N.D. Ind. 2001); In re Granati, 270 B.R. 575 (Bankr. E.D. Va. 2001). See also, Kawauhau v. Geiger, 523 U.S. 57, 118 S.Ct. 974 (1998); Matter of Thirtyacre, 36 F.3d 697, 700 (7th Cir. 1994); In re Whilters, 337 B.R. 326 (Bankr. N.D. Ind. 2006); In re Auffant, 268 B.R. 689 (Bankr. M.D. Fla. 2001); In re Staggs, 178 B.R. 767, 772-773 (Bankr. N.D. Ind. 1994), aff’d, 177 B.R. 92, 96 (N.D. Ind. 1995). Furthermore, § 523(a)(6) excepts not only compensatory damages, but also any enhancements, such as attorney fees or punitive damages, from discharge. Cohen v. de la Cruz, 523 U.S. 213, 218, 118 S.Ct. 1212, 1216 (1998). “[D]ischargeability, under § 523(a)(6), is determined by the nature of the debtor’s conduct, not the amount or character of the damages awarded because of it.” Staggs, 178 B.R. at 782. See also, In re Maxwell, 51 B.R. 244 (Bankr. S.D. Ind. 1983)(attorneys fees awarded in a civil action for loss suffered as a result of criminal conversion are nondischargeable under § 523(a)(6)). The entire amount of the judgment obtained by the plaintiff against the defendant, including treble damages, attorneys fees and court costs, is nondischargeable

as a debt for wilful and malicious injury.¹

In response to the motion, defendant contends that plaintiffs have “unclean hands” because they misused tax information concerning him which they had received in connection with the litigation between them. He also argues that the amount due the plaintiff should be reduced by payments he made prior to the bankruptcy and any payments which might be made by the bankruptcy trustee as a result of plaintiff’s proof of claim. The first argument is irrelevant and therefore any facts concerning it, whether disputed or not, are not material. There is no counterclaim against the plaintiff in this proceeding – nor could there be. To the extent defendant is complaining about something the plaintiffs are alleged to have done prior to the petition, assuming the state court has not already ruled against him on the issue, any claim arising out of those actions would be property of the bankruptcy estate, and as such can be asserted only by the trustee. Matter of Perkins, 902 F.2d 1254, 1257-58 (7th Cir. 1990). If the trustee has abandoned that claim or if the defendant is complaining about something the plaintiffs are supposed to have done after the date of the petition, this court has no subject matter jurisdiction over either type of claim, which would have nothing to do with either the bankruptcy estate or how it will be distributed to debtor’s creditors. See, 28 U.S.C. § 1334(b). See also, In re Imports & Mini Car Parts, Ltd., Inc., 200 B.R. 857 (Bankr. N.D. Ind. 1996), aff’d, 203 B.R. 124 (N.D. Ind. 1996), aff’d, Matter of Mini Car Parts, Ltd., Inc., 97 F.3d 1454 (7th Cir. 1996) (table), 1996 WL 554450 (unpublished decision). As for the second argument, it misconstrues the underlying purpose for this proceeding, which is not to determine how much, if

¹The defendant argues that state court did not specifically tie the attorney fees it awarded to the conversion claim. That may well be true, but what other basis was there for the award? As the plaintiffs note, in order to receive an award of attorney fees, they had to have been successful on something, and the only claim on which they had success was the conversion claim, which carried with it the right to enhanced damages and attorney fees.

anything, the defendant may owe the plaintiffs and then enter a judgment in that amount. The state court has already done that; both res judicata and the full faith and credit that judgment is entitled to preclude reexamining the issue. The only purpose for this proceeding is to determine whether the obligation represented by the state court judgment should be discharged: yes or no. That is purely a matter of declaratory relief. In re Sieger, 200 B.R. 636, 638-39 (Bankr. N.D. Ind. 1996); In re Imel, 169 B.R. 37, 38 (Bankr. W.D. Tex. 1994). Once that determination has been made, issues concerning the enforcement of the state court judgment and the collection of the remaining amounts due under it are matters over which this court has no interest or authority. In re Bass, 171 F.3d 1016, 1022-26 (5th Cir. 1999); Sieger, 200 B.R. at 639.

Even when viewed in the light most favorable to the defendant, there are no genuine issues of material fact and the plaintiffs are entitled to the entry of judgment in their favor as a matter of law. Pursuant to § 523(a)(6), defendant's obligation to the plaintiffs, represented by the judgment issued by the Allen Superior Court in Cause No. 02D01-9903-CP-582 and affirmed by the Indiana Court of Appeals is a nondischargeable debt. This conclusion renders it unnecessary to consider whether the debtor's obligation might also be excepted from discharge pursuant to § 523(a)(7). Judgment will be entered accordingly.

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