

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Dischargeability
Collateral estoppel
11 U.S.C. § 523(a)(2)(A)
11 U.S.C. § 523(a)(6)

Fitch v. Singleton 96-6003-fra
(In re William and Reba Singleton) 695-64463-fra7

10/4/96 FRA Unpublished

The Plaintiff is a mechanic to whom the Defendant brought his car for repairs. When the Defendant came in to pick up his car, the Plaintiff agreed to accept two checks for the work - one for \$413.60 and a second for \$476.40, the second post-dated by approximately three weeks because Defendant claimed he did not currently have the money to cover both checks. Later, on the advice of an attorney, Defendant stopped payment on the second check because the attorney told him that the Plaintiff was required by statute to give Defendant a written estimate, which he failed to do. Defendant also alleged that the work performed was substandard and exceeded the work authorized. Plaintiff brought an action in state court on the unpaid check and obtained a default judgment against Defendant totalling more than \$7,000, including \$5,000 in punitive damages. Defendant subsequently filed for bankruptcy.

Plaintiff brought this action in bankruptcy court to have the default judgment declared nondischargeable under 11 U.S.C §§ 523(a)(2)(A) and 523(a)(6). A trial was held and testimony taken. The court held that it was collaterally estopped from relitigating the facts deemed admitted in the default judgment. Those facts, in addition to the evidence established at trial, were sufficient to establish the nondischargeability of the debt under both §§ 523(a)(2)(A) and 523(a)(6). Because the debt was found to be nondischargeable under § 523(a)(6), the entire amount of the judgment, including punitive damages, was excepted from discharge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)
)
WILLIAM J. SINGLETON and) Case No. 695-64463-fra7
REBA L. SINGLETON,)
)
_____ Debtors.)
)
CHRISTOPHER A. FITCH,)
)
)
Plaintiff,)
vs.) Adversary No. 96-6003-fra
)
WILLIAM JERRY SINGLETON,)
)
_____ Defendant.) MEMORANDUM OPINION

Plaintiff, an automobile mechanic, seeks a determination that a judgment against debtor, and the underlying claim, are nondischargeable in bankruptcy. The matter was tried on September 26, 1996. Based on the testimony and evidence, I find that the debt is excepted from discharge.

I. FACTS

Plaintiff operates an automobile repair shop under the assumed business name of Farmers Automotive Service Center. On September 15, 1994, Defendant took his car in for repairs, noting

1 that there was "oil in my water and water in my oil." Defendant
2 also indicated that there was noise in the front end that needed
3 to be looked into. Plaintiff undertook to diagnose the problem,
4 and determined that the engine had a cracked block. Defendant
5 disagreed, insisting that all that was needed was to repair the
6 head gasket. Despite Plaintiff's recommendations, Defendant
7 directed Plaintiff to attempt repairs to the head gasket. In
8 addition, he authorized Plaintiff to reline the front brakes.
9 Plaintiff estimated that the work would cost \$890.¹

10 Defendant returned after the work was completed on October
11 20. He was presented with a bill for \$923.15 in parts and labor;
12 the total due was written down to \$890.00 to conform to the
13 amount of the estimate. Defendant told plaintiff that he did not
14 have the funds available to pay the full amount, and offered to
15 give two checks, one post-dated to November 15. Plaintiff
16 agreed, and accepted a check \$413.60, which was the amount shown
17 for labor on the engine, and a post-dated check \$476.40 for the
18 balance.

19 After leaving Plaintiff's shop Defendant observed that the
20 car still smoked heavily. Defendant consulted with an attorney,
21 who advised Defendant to stop payment on the second check.

23 ¹No written estimate was asked for or given before the work
24 was done. Defendant makes much of this, arguing that a prior
25 written estimate was required by ORS 746.292(2). The statute is
26 limited to body and frame repair shops, as defined in ORS
746.275(3). Moreover, it applies only where a written estimate
is requested by the customer. There is no evidence that
Defendant requested a written estimate.

1 Defendant did so, and the check was returned to Plaintiff after
2 presentment. At no time up to this point did Defendant contact
3 Plaintiff to complain about the work performed.

4 Plaintiff commenced an action on the check in the District
5 Court for Lane County. The complaint alleged that, among other
6 things:

7 1. The parties agreed that Defendant would pay Plaintiff
8 \$890 for the repair work, and that this was a reasonable amount;

9 2. Plaintiff performed as agreed;

10 3. A balance remained of \$476.40;

11 4. Defendant made and endorsed a check payable to Plaintiff
12 in the sum of \$476.40; and that, at the time the check was made
13 "Defendant did not intend to pay same [sic] and in fact said
14 check was dishonored because payment had been stopped by the
15 Defendant"; and

16 5. Defendant's actions were done with malice and intent to
17 injure plaintiff, and that Plaintiff was entitled to punitive
18 damages.

19 The complaint was duly served, but Defendant failed to
20 appear. On October 19, 1995 a default judgment was entered for
21 \$476.40 general damages, \$5,000 punitive damages, \$1,425
22 attorneys fees, and \$150.50 costs.

23 Plaintiff now asserts that the entire amount awarded to him
24 is excepted from discharge under Bankruptcy Code §§523(a)(2) and
25 523(a)(6).

26 //

1 //

2 II. ISSUES PRESENTED

3 Plaintiff claims that the entire sum awarded by the default
4 judgment is excepted from discharge under 11 U.S.C. §523(a)(2),
5 as a debt based on false pretenses or fraud, and §523(a)(6), as a
6 debt arising from a willful injury to Plaintiff's property.

7 While evidence was presented detailing the events at issue,
8 Plaintiff argues that the state court judgment is binding on this
9 court.

10 Defendant denies liability in the first instance. While not
11 addressing the issue directly, it is implicit from Defendant's
12 evidence and testimony that he does not believe the judgement
13 should have any preclusive effect. Defendant also claims that,
14 since he acted on advice of counsel, his actions should not
15 result in denial of discharge.

16 The issues to be determined are:

17 (1) What is the effect of a prior judgment on a proceeding
18 to deny discharge of the judgment and underlying debt?

19 (2) Has Plaintiff proven that the elements of §523(a)(2) or
20 (a)(6) are present, thus requiring that discharge of the debt be
21 denied?

22 III. APPLICABLE LAW

23 1. **Bankruptcy Code provisions:**

24 The applicable provisions of Code §523 provide:

25 (a) A discharge under section 727, 1141, 1228(a),
26 1228(b), or 1328(b) of this title does not discharge an
individual debtor from any debt—

1 * * *

2 (2) for money, property, services, or an
3 extension, renewal, or refinancing of credit, to the
4 extent obtained by-

5 (A) false pretenses, a false
6 representation, or actual fraud, other than a statement
7 respecting the debtor's or an insider's financial
8 condition;

9 * * *

10 (6) for willful and malicious injury by the
11 debtor to another entity or to the property of another
12 entity;

13 In order to establish that a debt is nondischargeable under
14 §523(a)(2) plaintiff must prove, by a preponderance of the
15 evidence, that (1) debtor made a material representation, (2)
16 debtor knew the representation was false, (3) debtor intended to
17 deceive, (4) the plaintiff justifiably relied on the
18 representation, and (5) the creditor was damaged by the false
19 representation. In re Kirsh, 973 F.2d 1454, 1457 (9th Cir.
20 1992).

21 A claim of nondischargeability under §523(a)(6) requires
22 proof that defendant committed a "wrongful act...done
23 intentionally, [which] necessarily produces harm and is without
24 just cause or excuse." In re Cecchini, 780 F.2d 1440, 1443 (9th
25 Cir. 1986). Proof is by a preponderance of the evidence. Grogan
26 v. Garner, 498 U.S. 279 (1991).

2. Effect of prior judgement:

The Court of Appeals for the Ninth Circuit, in a case

1 involving nondischargeability under Code §523(a)(2)(A), states
2 that

3 The preclusive effect of a state court judgment in a
4 subsequent federal lawsuit generally is determined by
5 the full faith and credit statute [28 U.S.C. 1738],
6 which provides that state judicial proceedings 'shall
7 have the same full faith and credit in every court
8 within the United States...as they have by law or usage
9 in the courts of such...state from which they are
10 taken.

11 Gayden v. Nourbakhsh (In re Nourbakhsh) 67 F.3d 798, 800
12 (9th Cir. 1995).

13 Oregon courts give collateral estoppel effect to prior
14 judgments when the issues in the two proceedings are identical,
15 were actually litigated and were essential to a final decision in
16 the prior proceeding. Nelson v. Emerald Peoples' Utility
17 District, 318 Or 103, 104, 862 P.2d 1293 (1993). The party
18 subject to preclusion must have been a party in the prior case,
19 or in privity with a party, and must have had a full and fair
20 opportunity to be heard on the issue. Id.

21 Under Oregon law the issues in a case resulting in a default
22 judgment are deemed to be fully litigated, and judgments entered
23 in such cases "have the same solemn character as judgments
24 entered after trial." See Watson v. State, 71 Or. App. 734, 738,
25 694 P.2d 560, 562, *rev. withdrawn* 299 Or. 204, 701 P.2d 434
26 (1985). A default judgment establishes the truth of all material
factual allegations contained in the complaint. Kershner v.
Smith, 121 Or. 469, 256 P. 195 (1927), State ex rel Nilsen v.
Cushing, 253 Or. 262, 265, 453 P.2d 945 (1969), Rajneesh

1 Foundation International v. McGreer, 303 Or. 139, 142, 734 P.2d
2 871, 873 (1987). Under In re Nourbakhsh, 67 F.3d 798 and 28
3 U.S.C. 1738, the same standard is applied by this court with
4 respect to the default judgment entered against Defendant.²

5 IV. DISCUSSION

6 The state court's judgment establishes the material facts
7 set out in the complaint in that case, which cannot be reexamined
8 here. In re Nourbakhsh, *supra*. It is therefore established that
9 the amount charged by Plaintiff for his services were agreed to
10 by the Defendant, and that Defendant made and delivered the
11 second check to Plaintiff with no intention of honoring it.
12 Evidence at trial established that Defendant told Plaintiff that
13 there would be sufficient funds available to honor the check on
14 the date written on it: in effect, that the check would be paid
15 when presented at the agreed upon time. Given Defendant's
16 intentions, this was a false and material representation.
17 Plaintiff reasonably and justifiably relied on the
18 representation. It follows that the debt is excepted from
19 discharge under §523(a)(2)(A).

20 The debt is also nondischargeable under §523(a)(6).

21
22 ²Defendant maintains that Brown v. Felsen, 442 U.S. 127, 99
23 S.Ct. 2205, 60 L.Ed.2d 767 (1979) requires an independent review
24 by the bankruptcy court in discharge cases, and that principles
25 of collateral estoppel do not apply. The Nourbakhsh case does
26 not support this contention. In any case, application of Oregon
law as mandated by Nourbakhsh and 28 U.S.C. 1738 does not
interfere with this court's determination of dischargeability,
since the default judgement admits only to the facts pleaded, and
not to any legal conclusions. Rajneesh Foundation International
v. McGreer, 303 Or. at 142, 734 P.2d at 873.

1 Defendant's purpose was to induce Plaintiff to release the car.
2 The complaint in the state court case alleged that Defendant's
3 acts were "done with malice, with an intent to injure the
4 plaintiff." As noted, Defendant is precluded from relitigating
5 this issue.³ Oregon case law respecting punitive damages reveals
6 a standard for willful and malicious conduct at least as
7 stringent as that applied by federal courts in cases under
8 §523(a)(6). See Friendship Auto Sales, Inc. v. Bank of
9 Willamette Valley, 300 Or. 522, 716 P.2d 715, 721-22 (1986).
10 Consequently, the judgment in the state court is binding on
11 Defendant as to the element of willful and malicious conduct. At
12 the time Plaintiff had a possessory lien against the car to
13 secure payment for his services. ORS 87.152. The deliberate
14 use of deception to induce Plaintiff to relinquish possession --
15 and thus his lien -- constitutes a willful and malicious injury
16 to a property interest, and the claim arising from that conduct
17 is not subject to discharge.

18 The measure of damages was determined by the state court.
19 Since the claim is excepted from discharge under §523(a)(6), both
20 the compensatory and punitive elements are excepted from
21 discharge. In re Britton, 950 F.2d 602 (9th Cir. 1991).

22 V. CONCLUSION

23 Defendant is indebted to Plaintiff in the sum of \$7,051.90,
24 plus interest thereon at the rate of 9% per annum from October
25

26 ³Defendant may not, therefore, defend his action on the
basis that he relied on the advice of counsel.

1 19, 1995. This debt is not dischargeable in this Chapter 7 case.

2 This Memorandum contains the Court's findings of fact and
3 conclusions of law, which will not be separately stated. Counsel
4 for Plaintiff shall prepare and submit a form of judgment
5 consistent herewith.

6

7

8

9

FRANK R. ALLEY, III
Bankruptcy Judge

10

11

12 cc: Robert Nowack
13 Barry Taub

13

14

15

16

17

18

19

20

21

22

23

24

25

26