

11 USC §362
11 USC §523(a) (4)
11 USC §523(a) (6)
collateral estoppel

Washington County Agency on Aging v. Goodrich Adv. No. 90-3571-S
In re Goodrich 390-34980-S11

5/14/91

DDS

unpublished

The court annulled the automatic stay to retroactively validate a state court judgment which had been entered post petition. The state court heard the case over a four day period and had issued a written opinion on the merits of the case before the chapter 11 was filed. The debtor would not be prejudiced by allowing the judgment to stand, and it would be the most efficient use of judicial resources to permit the parties to continue their appeal in the state court system.

The County was also entitled to partial summary judgment that a portion of the state court judgment was nondischargeable as a willful and malicious injury. The state court memorandum clearly stated the facts upon which the court relied in entering judgment for conversion and assessing punitive damages against the debtor. The preponderance of evidence standard applies in both state court and the adversary proceeding, and the state court rulings were sufficient to support a determination that the judgment was non dischargeable. The doctrine of collateral estoppel precludes the debtor from relitigating the issues. The record presented was sufficient for the bankruptcy court to grant summary judgment without the need to review the entire transcript of the state court

proceedings.

The County was not entitled to summary judgment on the second half of the judgment for interference with contract. The record supplied was insufficient for the bankruptcy court to determine that the necessary issues were litigated and decided so to render that portion of the judgment nondischargeable.

P91-14(7)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 390-34980-S11
DWAYNE D. GOODRICH and)
ELIZABETH MARIE GOODRICH,) Adversary Proceeding No.
) 90-3571-S
)
Debtors,)
) MEMORANDUM GRANTING MOTION TO
WASHINGTON COUNTY AREA) MODIFY STAY OF WASHINGTON
AGENCY ON AGING, a) COUNTY AREA AGENCY ON AGING,
political subdivision of) GRANTING PARTIAL SUMMARY
the State of Oregon,) JUDGMENT
)
Plaintiff,)
)
v.)
)
DWAYNE D. GOODRICH,)
)
Defendant.)

There are two motions pending in this case on issues between the debtor and Washington County Area Agency on Aging. They both concern a judgment entered by the Washington County Circuit Court after the automatic stay was in effect. The debtor sought a determination that the judgment is void, and the County requested that the stay be annulled and modified to render the judgment valid. The debtor appealed the judgment,

but the appeal was stayed by this chapter 11.

I will deny debtor's motion to void the judgment and will grant the County's motion to retroactively lift the stay to validate the Washington County judgment, and permit the state court appeal to proceed. Allowing the judgment to stand would be the most efficient use of judicial resources, and would not prejudice the debtor. The state court tried the case over a four-day period, and issued a memorandum opinion before the debtor filed chapter 11. The parties disagreed on the form of judgment and apparently continued to submit their views to the state court even after the the debtor filed chapter 11. The debtor was represented and has already appealed the state court judgment. The plan of reorganization filed by the debtor contemplated that the County's claim will be liquidated by the state court. The issues were tried, briefed, and ruled on by the state court. There is no reason to relitigate the issues just because the judgment was not entered before the debtor filed chapter 11.

The County also moved for summary judgment in the adversary proceeding, which seeks a determination that the state court judgment is not dischargeable. I will grant the motion as to the judgment awarded by the state court on the second claim for relief, which was for conversion, but I will deny the motion as to the fifth claim for relief, which was for

interference with contract. My reasons follow.

The judgment has two components. The court awarded compensatory damages of \$13,675 plus interest and punitive damages of \$27,350 on the first and second claims which were for conversion of personal property. The second half of the judgment awards an equal amount for interference by the debtor and his corporation with the County's contractual relations with the Petra Perez Center and the United States Government, alleged as the fourth and fifth claims in the state court complaint. The amounts are cumulative.

The County moved for summary judgment on the entire state court judgment, relying on the state court memorandum opinion and Grogan v. Garner, ____ U.S. ____, 112 L.Ed.2d 755, 111 S.Ct. 654 (1991). In support of the motion, the County submitted the state court memorandum opinion, the complaint, and at the court's request, a copy of the judgment. The county relies on the state court's findings to argue that the conversion part of the judgment is not dischargeable under §523(a)(6) because it is a willful and malicious injury. The county also contends that the interference with contract part of the judgment is not dischargeable under either §523(a)(4) or (a)(6) as a breach of fiduciary duty or willful and malicious injury, because the debtor was on the board of directors of the Petra Perez Senior Center, and "other implied findings."

The debtor defendant submitted an affidavit and memorandum which argue that the fiduciary relationship issue was not actually litigated and that there was no fiduciary relationship between the debtor and the Petra Perez Center or the County. Neither the debtor's memo or his affidavit contend that the issue of conversion was not actually litigated and decided or that the standards for a state conversion claim are different from those required to find that an injury was willful and malicious under §523(a)(6).

The Supreme Court has clarified the rules governing application of collateral estoppel to an adversary proceeding to determine the dischargeability of a debt. Grogan v. Garner, 111 S.Ct. at 658, n. 11. A creditor need only establish the facts rendering a debt nondischargeable by a preponderance of the evidence. Grogan at 661. The County relies on Heiser v. Woodruff, 327 U.S. 726, 90 L.Ed.970, 66 S.Ct. 853 (1946) for the proposition that the federal court cannot reexamine the state court record to determine what was tried. Heiser is not controlling for a determination of issue preclusion.

While dischargeability of a debt is a federal question, the bankruptcy court can apply issue preclusion principles to avoid trying an issue that has been litigated and necessarily decided in another court. Grogan at 658. The party contending that an issue has been conclusively litigated and determined in

a prior action has the burden of proving that contention. Restatement (Second) of Judgments §27 Comment f (1982). That party must place into evidence sufficient portions of the prior record to enable the bankruptcy court to decide if an issue was actually litigated. In re Miera, 926 F.2d 741 (8th Cir. 1991), Spilman v. Harley, 656 F.2d 224 (6th Cir. 1981). If the materials submitted are inadequate to permit the court to ascertain an identity of issue, the matters decided or the basis of the decision in the prior action, the party seeking estoppel cannot prevail. State Farm Fire and Casualty Co. v. Century Home Components Inc., 275 Or. 97, 550 P.2d 1185 (1976), Heritage Enterprises v. Silcor, Inc. (In re Heritage Enterprises), Civ. No. 91-6033 (D. OR. April 16, 1991) (Jones, J.).

The state court memorandum opinion established that the issue of conversion was actually litigated and decided against the debtor. The state court judge found that the debtor refused to release the property, that he hid it from the view of those taking inventory and that he lied about the location and use of the property. The judge also rejected the debtor's defense that he was entitled to the property through a landlord's lien, and clearly stated the law he was applying to reach his decision. These findings are sufficient to support a determination that the judgment on the second claim arose from a willful act that was done intentionally, necessarily produced harm and was

without just cause or excuse, and that the judgment is not dischargeable under 11 USC §523(a)(6) and In re Cecchini, 780 F.2d 1443 (9th Cir. 1986).

A review of the transcript of testimony of the earlier proceeding is not necessary to determine that the facts sufficient to support a nondischargeability judgment were actually litigated and decided against the debtor on the conversion claim. Combs v. Richardson, 838 F.2d 112,117 (4th Cir.1988). See, also, In re Garner, 73 Bankr. 26, 27 (Bk. W.D. Mo. 1987), regarding the record supplied. The state court findings are very specific on the second claim, and the debtor has not disputed that he had a full and fair opportunity to litigate the facts surrounding the conversion of the property. I will grant partial summary judgment which decides that both the compensatory and the punitive portion of the damages awarded by the state court on the second claim are not dischargeable. In re Adams, 761 F.2d 1422, 1428 (9th Cir. 1985).

The record supplied by the County to support the second half of the judgment is not sufficient to support summary judgment based on issue preclusion, or to overcome the debtor's affidavit. The affidavit states that Mr. Goodrich did not have a fiduciary relationship with the Petra Perez Center, he was only on their board of directors for two weeks, and that he did not know that by withholding the personal property he would

interfere with a contract. The state court's basis for awarding damages on the interference with contract claim was the debtor's membership on the board and his close working relationship with the tenant. These findings are not sufficient to support a determination that the second half of the judgment is not dischargeable.

The court did not discuss the legal standards applicable to the ruling and was not specific as to any facts relied on in awarding the judgment. At a minimum, the transcript of the earlier proceedings which show that the issues were litigated is necessary. The claims can be separated as dischargeable and nondischargeable, even if they arose from the same set of facts. See, In re Lee, 90 Bankr. 202 (Bk. E.D. Va. 1988).

Based on these findings, the plaintiff may submit an order annulling the stay so that the state court judgment is effective and the parties may continue to appeal in the state court system. There should be a condition prohibiting enforcement of the judgment against the debtor without further permission. This memorandum will stand as a grant of partial summary judgment on the dischargeability of the conversion portion of the judgment and as a denial of summary judgment on the dischargeability of the second half of the judgment. Further proceedings on the dischargeability issue should be stayed pending the outcome of the state court appeal. The adversary proceeding is scheduled for a status call on September

3, 1991 at 2:00 p.m.

DATED this _____ day of May, 1991.

DONAL D. SULLIVAN
Bankruptcy Judge

cc: David A. Foraker
Paul S. Wiggins, Jr.
U. S. Trustee