collateral estoppel
523(a)
28 USC 1738

France v. Ray (In re Ray), Civ. No. 92-637-MA (D. Or. Sept. 29, 1992) (Marsh, D.J.) (affirming Judge Luckey)

After an uncontested evidentiary hearing a state court made findings of fact and entered a default judgment of fraud against the debtor. The debtor then commenced a bankruptcy case, and the creditor sought to have the debt determined nondischargeable under § 523(a)(2). Judge Marsh affirmed Judge Luckey's grant of summary judgment based upon collateral estoppel. Because state law bars relitigation of the fraud issues previously decided, the full faith and credit section, 28 U.S.C. § 1738, requires that federal courts give the findings the same preclusive effect. Since the state court's findings contained all the elements necessary for a determination of nondischargeability under § 523(a)(2), the creditor was entitled to summary judgment.

P92-23(6)

FILED

92 SEP 29 PM 4:36

CLERK, US DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

BY _____

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

SEP 29 1992

TERENCE H. DUNN, CLERK

BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

| | |
|---|---|
| In re<br><br>LORNE C. RAY and KELLY L. RAY,<br>Debtors. | Bankruptcy No. 390-36190-P7 |
| PENELOPE G. FRANCE,<br><br>Plaintiff,<br><br>v.<br><br>LORNE C. RAY,<br><br>Defendant, | Adversary No. 91-3075<br><br>Civil No. 92-637-MA<br><br>ORDER |

Timothy J. Conway
TONKON, TORP, et al.
1600 Pioneer Tower
888 S.W. Fifth Avenue
Portland, OR 97204-2099

Attorneys for Plaintiff

Lorne C. Ray
660 N.E. Joanne Court
Hillsboro, OR 97124

Defendant Pro Se

MARSH, Judge.

On October 30, 1991, the United States Bankruptcy Court for



45

43

AO 72
(Rev.8/82)

the District of Oregon entered a judgment of nondischargeability in plaintiff Penelope G. France's ("plaintiff") adversary proceeding against defendant bankruptcy debtor Lorne C. Ray. Defendant appeals on the ground that the Bankruptcy Court erred in according a Georgia default judgment collateral estoppel effect. For the reasons stated below, the judgment of the Bankruptcy Court is AFFIRMED.

BACKGROUND

On November 1, 1990, the Superior Court of Cobb County, Georgia entered a default judgment against defendant on a fraud claim brought by plaintiff. The default judgment was entered after an evidentiary hearing in which plaintiff presented documentary evidence and testimony to the court. The judgment included Findings of Fact and Conclusions of Law in which the court stated, in relevant part, that "Defendant, Lorne C. Ray, knowingly and purposefully deceived and defrauded Plaintiff, who justifiably relied upon Defendant, Lorne C. Ray's misrepresentations made to Plaintiff with the intention and purpose of deceiving and defrauding Plaintiff."

On November 16, 1990, defendant filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.

On February 19, 1991, plaintiff filed her adversary proceeding in which she objected, pursuant to 11 U.S.C. § 523(a)(2) and (6), to the dischargeability in bankruptcy of plaintiff's fraud claim against defendant. Plaintiff subsequently filed for summary judgment on the ground that defendant was collaterally estopped



AO 72
(Rev.8/82)

from relitigating the elements of fraud determined by the Georgia state court in rendering its default judgment. At a hearing on the summary judgment motion, the Bankruptcy Court found that the Georgia default judgment contained all the elements of fraud necessary for a determination that defendant's debt to plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), and that the Georgia default judgment was entitled to collateral estoppel effect. Based on these findings, the Bankruptcy Court granted summary judgment in favor of plaintiff. Defendant now challenges the bankruptcy court's collateral estoppel application of the Georgia default judgment in the nondischargeability proceeding on grounds of fairness.

STANDARD

A district court's review of a bankruptcy court's conclusions of law is de novo. In re American Mariner Industries, Inc., 734 F.2d 426, 429 (9th Cir. 1984).

DISCUSSION

The United States Supreme Court has recently made it clear that collateral estoppel principles apply in discharge exception proceedings pursuant to 11 U.S.C. § 523(a). Grogan v. Garner, 111 S.Ct. 654, 658 n. 11 (1991). In determining the preclusive effect of a prior state court judgment, a federal court must examine the preclusive effect the judgment would be given in the state where that judgment was rendered. Marrese v. American Ac. of Orthopaedic Surg., 105 S.Ct. 1327, 1332 (1985). If state preclusion law bars the relitigation of the claim or issue, the



AO 72
(Rev.8/82)

full faith and credit section, 28 U.S.C. § 1738, requires the federal court to grant preclusion unless a federal exception to full faith and credit exists. Id. at 1331-35. Accordingly, the issues to be determined here are: (1) the preclusive effect of a default judgment in the Georgia state courts; and (2) whether there is an exception to the application of the full faith and credit section in a § 523(a) discharge exception proceeding.

In Georgia, a judgment of a court of competent jurisdiction is conclusive between the same parties "as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside." Ga. Code § 9-12-40 (1992). Collateral estoppel applies only to such matters which were necessarily adjudicated for the previous judgment to have been rendered, or which were actually litigated and determined. Usher v. Johnson, 278 S.E.2d 70, 72 (Ga. App. 1981). "[I]n order for the former decision to be conclusive, it must have been based, not merely on purely technical grounds, but at least in part on the merits where under the pleadings they were or could have been involved." Id. (emphasis added). The collateral estoppel effect of a judgment is not diminished by the fact that it resulted from a default. In re Wright, 57 B.R. 961, 964 (Bkrtcy. N.D. Ga. 1986) (applying Georgia law); see also Butler v. Home Furnishing Co., 296 S.E.2d 121, 122 (Ga. App. 1982) (a default judgment is considered to be on the merits); Fierer v. Ashe, 249 S.E.2d 270, 272 (Ga. App. 1978) (default judgments can be res judicata).



AO 72
(Rev.8/82)

In the present case, the record indicates that the Georgia Superior Court, after an evidentiary hearing, made factual findings as to each of the elements necessary for plaintiff's state fraud claim. There is no dispute but that the Georgia Superior Court was a court of competent jurisdiction, and that the factual findings made by that court contain all the elements necessary for a determination here that defendant's debt to plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(2). Accordingly, the Bankruptcy court correctly determined that the Georgia default judgment was entitled to collateral estoppel effect under Georgia law.

After it is determined that the state rules of collateral estoppel apply, the relevant inquiry is whether any federal statute expressly or impliedly excepts to the normal application of the full faith and credit section. Marrese, 105 S.Ct. at 1332. I can find no indication, express or implied, that § 1738 should not be applied to § 523(a) actions. See In re Heuser, 127 B.R. 895, 898 (Bkrtcy. N.D. Fla. 1991) (finding no exception to the application of § 1738 in a § 523(a) action); In re Byard, 47 B.R. 700, 706 (Bkrtcy. M.D. Tenn. 1985) (finding nothing in § 523 or congressional statements that would indicate that § 1738 should not apply in § 523(a) actions).

///

///

///

///



AO 72
(Rev.8/82)

CONCLUSION

Based on the foregoing, the judgment of the Bankruptcy Court is AFFIRMED.

DATED this 29 day of September, 1992.

Malcolm F. Marsh
United States District Judge



AO 72
(Rev.8/82)