

Nondischargeability-fraud  
11 USC § 523(a)(2)(A)  
Collateral Estoppel  
State-court default judgment

Rinaldi v. Aguirre, Adversary No. 11-6050-fra  
Devian Aguirre, Case No. 11-60599-fra7

7/14/2011 FRA

Unpublished

Plaintiffs filed a complaint against Defendant/Debtor in state court alleging fraud and breach of contract. Defendant did not file a responsive pleading and an order of default was entered along with a default judgment for \$350,000 on both the fraud and breach of contract claims. Defendant filed bankruptcy and Plaintiffs filed this adversary proceeding to except the default judgment from discharge. Plaintiffs thereafter filed a motion for summary judgment.

The bankruptcy court examined the interplay between state and federal law and held that the default judgment preclusively established the elements necessary to except the judgment from discharge under § 523(a)(2)(A). Motion for summary judgment granted.

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

IN RE	)	Bankruptcy Case
	)	No. 11-60599-fra7
DEVIAN AGUIRRRE,	)	
<u>Debtor.</u>	)	
JOHN RINALDI and BONNIE RINALDI,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Adversary Proceeding
	)	No. 11-6050-fra
DEVIAN AGUIRRE, HELMAN SPRINGS	)	
HOMES, LLC, and SAGE DEVELOPMENT,	)	
LLC,	)	
<u>Defendants.</u>	)	Memorandum Opinion <sup>1</sup>

Plaintiffs filed a motion for summary judgment, seeking a declaration that the default judgment obtained in state court against Debtor/Defendant Aguirre is nondischargeable. For the reasons that follow, the motion will be granted and judgment entered for Plaintiffs.

BACKGROUND

Plaintiffs filed a complaint for fraud and breach of contract in the Circuit Court for Jackson County against the Defendants, alleging as

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<sup>1</sup>This Memorandum Opinion is designated as not for publication.

1 follows:

2 1) Defendant Aguirre owned and managed Sage Development, LLC  
3 ("Sage") and Sage managed Helman Springs Homes, LLC ("Helman"). Aguirre,  
4 holding herself out as manager of Sage and Helman, presented and  
5 distributed an investment offering soliciting investments in Helman,  
6 which needed equity capital to develop and construct single family homes  
7 on 4.38 acres of land in Ashland, Ore. She also represented to  
8 Plaintiffs that even though they would not be offered a mortgage or deed  
9 of trust as security, the investment would be secure because Helman  
10 would own the real estate. Defendant also represented that the  
11 Plaintiffs would realize a 20% return on their investment.

12 2) Defendants never intended to transfer the land to Helman, and  
13 knew that it would be impossible to earn a 20% return under the  
14 circumstances.

15 3) Defendant made the representations to induce the investment by  
16 Plaintiffs.

17 4) In reasonable reliance on Defendant's representations, Plaintiffs  
18 purchased 35 membership units in Helman for \$350,000.

19 5) Defendants did not transfer the real property from Sage to Helman  
20 as represented, but borrowed money from a third party in exchange for a  
21 first deed of trust against the property, which deed of trust has since  
22 been foreclosed. Plaintiffs' investment in Helman was thus rendered  
23 worthless.

24 Defendants did not file a responsive pleading in the Circuit Court  
25 action and a default judgment was obtained against Defendants, jointly  
26 and severally, on both the fraud and breach of contract claims in the

1 amount of \$350,000, plus costs and interest.

2 Defendant Aguirre filed a chapter 7 bankruptcy and Plaintiffs filed  
3 this adversary proceeding, seeking a determination that the judgment  
4 obtained in state court is nondischargeable under 11 U.S.C. §  
5 523(a) (2) (A)<sup>2</sup> Defendant Aguirre filed an Answer denying the substantive  
6 allegations of the complaint. Plaintiffs then filed a motion for summary  
7 judgment to which the Defendant Aguirre did not file a response. The  
8 parties have agreed that the matter may be decided by the court without  
9 oral argument.

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11 DISCUSSION

12 Code § 523(a) (2) (A)

13 In order to prove fraud under § 523(a) (2) (A), a creditor must prove  
14 by a preponderance of the evidence the following five elements: (1) the  
15 debtor made a material misrepresentation, (2) with knowledge of its  
16 falsity, (3) with the intent to deceive, (4) on which the creditor  
17 justifiably relied, and (5) due to which the creditor sustained loss or  
18 damage. In re Kirsh, 973 F.2d 1454, 1457 (9th Cir. 1992).

19 In a Ninth Circuit case dealing with nondischargeability under 11  
20 U.S.C. § 523(a) (2) (A), the court stated that

21 [t]he preclusive effect of a state court judgment in a  
22 subsequent federal lawsuit generally is determined by the full  
23 faith and credit statute, which provides that state judicial  
24 proceedings 'shall have the same full faith and credit in every  
court within the United States . . . as they have by law or  
usage in the courts of such . . . State from which they are  
taken.'

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26 <sup>2</sup>All statutory references contained herein, unless otherwise  
specified, are to the Bankruptcy Code, 11 U.S.C. §§ 101 to 1532.

1 Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 800 (9th Cir.  
2 1995) (internal citation omitted). In Oregon, a valid default judgment  
3 admits the truth of all material allegations of the complaint. Kerschner  
4 v. Smith, 121 Or. 469, 256 P. 195 (1927). As there have been no  
5 allegations regarding the validity of the default judgment in the present  
6 case and it appears to have been validly obtained, all material  
7 allegations contained in the underlying complaint are admitted for  
8 purposes of this action to determine dischargeability of the judgment.

9 In order to succeed in a claim for fraud under Oregon law, a party  
10 must prove the following elements: (1) a representation, (2) its falsity,  
11 (3) its materiality, (4) the speaker's knowledge of its falsity or  
12 ignorance of its truth, (5) the speaker's intent that it should be acted  
13 on by the person and in the manner reasonably contemplated, (6) the  
14 hearer's ignorance of its falsity, (7) the hearer's reliance on its  
15 truth, (8) the hearer's right to rely thereon, and (9) the hearer's  
16 consequent and proximate injury. Merten v. Portland General Electric  
17 Co., 234 Or.App. 407, 416, 228 P.3d 623 (2010) (internal citation  
18 omitted). The allegations of the state court complaint, listed above,  
19 which led to the default judgment are all material to the state-law fraud  
20 claim and make out a *prima facie* claim for nondischargeability under §  
21 523(a)(2)(A).<sup>3</sup> Accordingly, as the default judgment obtained in Circuit  
22 Court awarded damages under the fraud claim, that damage award is  
23 nondischargeable in Defendant Aguirre's bankruptcy case under §  
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25 <sup>3</sup>The "justifiable reliance" standard under § 523(a)(2)(A) is  
26 encompassed by the "reasonable reliance" standard alleged in the state  
court complaint and made part of the default judgment.

1 523(a)(2)(A).

2 Dismissal of Non-Debtor Defendants

3 Defendants Sage Development, LLC and Helman Springs Homes, LLC are  
4 not debtors in bankruptcy. As this adversary proceeding was filed solely  
5 to adjudicate the dischargeability in bankruptcy of the debt obtained in  
6 Jackson County Circuit Court, the two non-debtor defendants will be  
7 dismissed.

8 CONCLUSION

9 The default judgment obtained by Plaintiffs in the Circuit Court for  
10 Jackson County against the Defendants is not subject to discharge in  
11 Defendant Aguirre's chapter 7 bankruptcy under § 523(a)(2)(A). Because  
12 the two remaining defendants have not filed bankruptcy, they must be  
13 dismissed from this adversary proceeding. An order will be entered  
14 granting Plaintiffs' motion for summary judgment. Counsel for Plaintiffs  
15 should submit a form of judgment consistent with this Memorandum Opinion.

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19 FRANK R. ALLEY, III  
20 Chief Bankruptcy Judge