

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)

elk 10/1

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 JK DEPUTY
doc 11/6/92

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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

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

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

1 - ORDER

45

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

8 BACKGROUND

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

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

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

2 - ORDER

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

13 STANDARD

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

17 DISCUSSION

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

3 - ORDER

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

8 In Georgia, a judgment of a court of competent jurisdiction is
9 conclusive between the same parties "as to all matters put in
10 issue or which under the rules of law might have been put in issue
11 in the cause wherein the judgment was rendered until the judgment
12 is reversed or set aside." Ga. Code § 9-12-40 (1992). Collateral
13 estoppel applies only to such matters which were necessarily
14 adjudicated for the previous judgment to have been rendered, or
15 which were actually litigated and determined. Usher v. Johnson,
16 278 S.E.2d 70, 72 (Ga. App. 1981). "[I]n order for the former
17 decision to be conclusive, it must have been based, not merely on
18 purely technical grounds, but at least in part on the merits where
19 under the pleadings they were or could have been involved." Id.
20 (emphasis added). The collateral estoppel effect of a judgment is
21 not diminished by the fact that it resulted from a default. In re
22 Wright, 57 B.R. 961, 964 (Bkrtcy. N.D. Ga. 1986) (applying Georgia
23 law); see also Butler v. Home Furnishing Co., 296 S.E.2d 121, 122
24 (Ga. App. 1982) (a default judgment is considered to be on the
25 merits); Fierer v. Ashe, 249 S.E.2d 270, 272 (Ga. App. 1978)
26 (default judgments can be res judicata).

4 - ORDER

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

12 After it is determined that the state rules of collateral
13 estoppel apply, the relevant inquiry is whether any federal
14 statute expressly or impliedly excepts to the normal application
15 of the full faith and credit section. Marrese, 105 S.Ct. at 1332.
16 I can find no indication, express or implied, that § 1738 should
17 not be applied to § 523(a) actions. See In re Heuser, 127 B.R.
18 895, 898 (Bkrtcy. N.D. Fla. 1991) (finding no exception to the
19 application of § 1738 in a § 523(a) action); In re Byard, 47 B.R.
20 700, 706 (Bkrtcy. M.D. Tenn. 1985) (finding nothing in § 523 or
21 congressional statements that would indicate that § 1738 should
22 not apply in § 523(a) actions).

23 ///

24 ///

25 ///

26 ///

5 - ORDER

CONCLUSION

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

3 DATED this 29 day of September, 1992.

4 Malcolm F. Marsh
5 Malcolm F. Marsh
6 United States District Judge

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

6 - ORDER