

11 USC § 524(a)  
11 USC § 524(e)  
11 USC § 1328  
28 USC § 1738  
collateral estoppel

Stockfleth & Chenoweth v. Corey Adv. No. 93-3129-S

In re Stockfleth Case No. LAX 88-53559 GM

DDS                      8/26/93                      unpublished

A complaint seeking to enjoin a fraudulent conveyance action in state court was dismissed. The debtor received a chapter 13 discharge in Los Angeles. Two years later, she was convicted of arson and manslaughter in Oregon. As part of the sentence, she was ordered to pay restitution to the victims of the crime. Some of the victims of the fire had been listed as creditors in the chapter 13. The state court was aware of the dischargeability issue when the debtor was sentenced. The decision of the state court that the restitution was available as a sentencing device is entitled to collateral estoppel, and should have been appealed rather than attacked in a separate case in bankruptcy court. In addition, the debtor's discharge did not protect her son who was the co defendant in state court as having received a fraudulent transfer from the debtor.

The debtor and her son were not entitled to an injunction from the bankruptcy court, and the case was dismissed.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case No.
	)	LAX 88-53559 GM
KATHLEEN BRYAN STOCKFLETH,	)	
	)	Adversary Proceeding No.
Debtor,	)	93-3129-S
	)	
KATHLEEN BRYAN STOCKFLETH,	)	MEMORANDUM GRANTING SUMMARY
and WILLIAM BRYAN CHENOWETH,	)	JUDGMENT TO DEFENDANTS,
	)	DISMISSING PROCEEDINGS
Plaintiffs,	)	
	)	
v.	)	
	)	
JAMES COREY and JAN COREY,	)	
and their attorney, and	)	
COMSTOCK INSURANCE COMPANY	)	
and its attorney, and all	)	
other persons or entities	)	
seeking to collect on debts	)	
discharged in California	)	
Bankruptcy Case	)	
LAX 88-53559 GM,	)	
	)	
Defendants.	)	

Kathleen Stockfleth, the debtor, and William Brian Chenoweth, her son, filed a complaint to enjoin Comstock Insurance Company ("Comstock") and James and Jan Corey ("the

Coreys") from continuing civil actions to recover fraudulent conveyances allegedly made by the debtor to her son. Comstock and the Coreys ("defendants") had sued to recover the transfers in the Lincoln County and Union County Circuit Courts after the debtor received a discharge in bankruptcy in a chapter 13 proceeding filed in the Bankruptcy Court for the Central District of California. Plaintiffs asserted that the defendants violated the statutory injunctions of 11 U.S.C. §§ 524(a) and 1328 governing discharge. Defendants claimed a right to restitution under a criminal sentence which the State of Oregon purports to have assigned. The state is not a party. The parties filed cross motions for summary judgment. Defendants' motion should be granted. My reasons follow.

On September 29, 1985 and January 27, 1986, fire destroyed Odie's Cafe and Bronco Room which the debtor and a partner operated in Elgin, Oregon. One person died. Comstock paid over \$150,000 in insurance proceeds pursuant to policies which it had issued. Comstock filed complaints to recover sums it had paid on the grounds that the debtor had intentionally set the fires. On August 4, 1988, the debtor filed chapter 13 in the Central District of California listing the defendants and other victims of the fire. The debtor's plan proposed to pay \$2,642.20 to creditors. She listed only nominal assets.

The Bankruptcy Court confirmed the plan and on November 30, 1989 issued a discharge based upon a trustee's report that all payments under the plan had been made. Comstock and the Coreys, although notified, did not appear in the chapter 13 proceeding.

On November 19, 1991 in the Union County Circuit Court, the debtor pleaded "No Contest" to crimes of Arson I and Manslaughter II, the latter count having been reduced from Felony Murder. The district attorney submitted a memorandum to the sentencing judge outlining his view that the 1990 amendment to 11 U.S.C. § 1328 made criminal restitution invulnerable to the prior chapter 13 discharge. The Circuit Court evidently agreed with the prosecutor's conclusion and sentenced the debtor to ten years in prison and imposed a judgment of restitution in favor of the State of Oregon for \$323,256 to be distributed to Comstock and the Coreys and other victims of the crime. Thereafter, the State of Oregon assigned Comstock its share of the restitution judgment. The debtor at present is free on parole.

Comstock and the Coreys may pursue property which the debtor fraudulently transferred and may sue third parties even though the debtor has been discharged in chapter 13. Rights against third parties are not affected by the discharge pursuant to 11 U.S.C. § 524(e). Injunction is not available to

protect non-debtor third parties. In re American Hardwoods, 885 F.2d 621 (9th Cir. 1989). In addition, the Union County Circuit Court at the time of sentencing considered the issue of whether the chapter 13 discharge precluded resitution and decided that it did not. Under Oregon law, principles of res judicata and collateral estoppel set in and the debtor's remedy was to appeal the sentence directly and not to later collaterally attack the sentence in the Bankruptcy Court.

Principles governing exhaustion of state court remedies, res judicata and collateral estoppel apply to this case even though plaintiffs now seek to vindicate a federal right in a federal court. Huffman v. Pursue, Ltd., 420 U.S. 592, 606, n. 19, 95 S. Ct. 1200, 43 L.Ed 2d 482 (1975), reh'g denied, 421 U.S. 971, 95 S. Ct. 1969, 44 L.Ed.2d 463 (1975); Scoggin v. Schrunk, 522 F.2d 436 (9th Cir.) cert. denied, 423 U.S. 1066, 96 S. Ct. 807, 46 L.Ed.2d 657 (1976); Clark v. Yosemite Community College Dist., 785 F.2d 781 (9th Cir. 1986). Under the full faith and credit statute, 28 U.S.C. § 1738, the Bankruptcy Court is bound by the Oregon law governing collateral estoppel in regard to federal issues over which the state court has jurisdiction. Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. 518, 106 S. Ct. 768, 88 L.Ed.2d 877 (1986).

A conviction in a criminal case collaterally estops

relitigation of the issues in a subsequent civil case. Meyers v. Burwell, 271 Or. 84, 530 P.2d 833. (1975); Dell A. Alexander, Comment, The Conclusiveness of Criminal Judgments in Subsequent Civil Cases; An Expanding Role for Collateral Estoppel in Oregon, 11 Willamette L. J. 176 (1975). Although the specific holding of Meyers v. Burwell, that a traffic offense conviction can be utilized for collateral estoppel in a subsequent civil action was abrogated by O.R.S. 41.905(1), the other principles of law stated therein remain applicable. State Farm Fire & Cas. Co. v. Century Home Components, Inc., 275 Or. 97, 550 P.2d 1185 (1976). The rule is the same whether the issue is factual or, as here, legal. Restatement (Second) of Judgments 2d, § 27; Drews v. EBI Cos., 310 Or. 134, 795 P.2d 531, 535 (1990). Except for certain limited exceptions not applicable, Congress did not give the Bankruptcy Court exclusive jurisdiction over dischargeability questions. Countryman, The New Dischargeability Law, 45 Am. B.L.J., 1, 25 (1971). Notwithstanding 11 U.S.C. § 524(a)(1), collateral estoppel or the doctrines of issue preclusion survived passage of the Bankruptcy Code. Grogan v. Garner, 498 U.S. 279, 111 S. Ct. 654, 112 L.Ed.2d 755 (1991).

Defendants established under summary judgment principles that the issue of discharge in the present case is, in fact, identical to the issue determined by the sentence

imposed in the criminal case and that the plaintiff had a full and fair opportunity to contest the sentencing judge's determination that the prior discharge was not a bar to imposing restitution. These are the two tests which must be satisfied under Oregon law to fulfill the doctrine of collateral estoppel. Bahler v. Fletcher, 257 Or. 1, 474 P.2d 329, 338 at n. 7 (1990); 11 Willamette L. J. at 177, supra.

Entry by the Bankruptcy Court into the state processes is not warranted absent certain exceptions which have not been shown. The state criminal court had jurisdiction of the dischargeability issue presented to it. The post-discharge timing of the sentence and the fact that the debtor is at liberty distinguishes this case from Pennsylvania Dept. of Public Welfare v. Davenport, 495 U.S. 552, 564, 110 S. Ct. 2126, 109 L.Ed.2d 588 (1990) and In re Hucke, 992 F.2d 950 (9th Cir. 1993) and justifies imposition of principles of Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L.Ed.2d 669 (1971). None of the exceptions to the rules of issue preclusion described in Restatement (Second) of Judgments, § 28 apply to the present case. The "no contest" nature of the plea does not create an exception to the rule because the defendants seek to enforce the sentence itself rather than an issue common to a different action.

Interference by the Bankruptcy Court would be offensive

intrusion into state processes. The sentencing judge should have been apprised of the debtor's view that restitution was unavailable as a sentencing tool under federal law and the debtor should have appealed the sentence if she felt that the judge incorrectly applied the law. Other major issues involved in the pending civil action are matters of state law such as application of the Oregon Law of collateral or direct estoppel, the validity of the assignment by the state, and the effect of the transferor's discharge in bankruptcy in a fraudulent conveyance action. These issues should be settled in the state courts.

A separate order should enter dismissing the complaint for the foregoing reasons.

DATED this \_\_\_\_\_ day of August, 1993.

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DONAL D. SULLIVAN  
Bankruptcy Judge

cc: Rose M. Z. Freeby  
Gregory B. Snook  
Richard G. Matson  
Stephen P. Riedlinger