

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

Collateral Estoppel
Dischargeability
11 U.S.C. 523(a)(6)

Wallis v. McGrath Adv. No. 95-6275-fra
In re Hermelinda McGrath Case No. 695-63126-fra7

8/8/96 FRA Unpublished

The debtor burglarized the plaintiff's home. The plaintiff thereafter filed a civil suit against the debtor in Marion County Circuit Court and received a default judgment in the amount of \$5,873.35 for restitution, punitive damages, and court costs. The debtor was then arrested and pled guilty to First Degree Burglary and was ordered by the court to pay a relatively small amount of restitution.

The debtor filed for bankruptcy and the plaintiff filed this suit to have the default judgment obtained in Marion County Circuit Court declared nondischargeable under § 523(a)(6). The bankruptcy court held that the criminal conviction established the necessary elements under § 523(a)(6) and the debtor is collaterally estopped from relitigating those issues in bankruptcy court. The default judgment established the amount of the judgment and that amount could not be relitigated. The default judgment was held to be nondischargeable under § 523(a)(6).

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

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE)	
)	
HERMELINDA MCGRATH,)	Case No. 695-63126-fra7
)	
_____ Debtor.)	
)	
KIMBALL WALLIS,)	
)	
Plaintiff,)	
vs.)	Adversary No.95-6275-fra
)	
HERMELINDA MCGRATH,)	
)	
_____ Defendant.))	MEMORANDUM OPINION

This matter is before the court on cross-motions for summary judgment. There are no material issues of fact outstanding; therefore the case may be decided on the motions. The Plaintiff, holder of a default judgment against the Defendant, seeks to have the court determine that the debt is nondischargeable under 11 U.S.C. § 523(a)(6).¹

¹All statutory references hereinafter are to the Bankruptcy Code, 11 U.S.C. § 101 et seq., unless otherwise indicated.

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

I. FACTS

1. Defendant was arrested and convicted in Marion County Circuit Court for the crime of Burglary in the First Degree. The conviction resulted, in part, from the burglary of Plaintiff's home.

2. The court-imposed sentence required the Defendant to pay restitution to the Plaintiff in the amount of \$250. The balance remaining of the restitution debt to the Plaintiff is \$224.

3. Based on the same incident, and prior to the Defendant's criminal conviction, the Plaintiff filed a civil complaint in Marion County Circuit Court against the Defendant alleging that the Defendant unlawfully entered the Plaintiff's residence and removed certain items of personal property belonging to the Plaintiff. The complaint further alleged that the Defendant admitted to the theft from Plaintiff's residence and also alleged that the Defendant's conduct was intentional and malicious.

4. There being no response to the complaint, the Plaintiff was awarded a default judgment by the Marion County Circuit Court against the Defendant in the amount of \$5,873.35, consisting of \$500 restitution, \$5,000 punitive damages, and \$373.35 for court costs and fees.

5. The Defendant filed for bankruptcy under Chapter 7 of the Bankruptcy Code on August 14, 1995.

6. The Plaintiff filed a complaint in bankruptcy court on December 11, 1995 to determine the dischargeability of Plaintiff's

1 debt under § 523(a)(6).

2 II. DISCUSSION

3 Plaintiff argues that the nature of the act committed, First
4 Degree Burglary, contains the necessary elements to hold that the
5 default judgment obtained based on the same incident is
6 nondischargeable under § 523(a)(6). Defendant argues that neither
7 the criminal conviction nor the civil default judgment establishes
8 the elements necessary to hold the debt nondischargeable under §
9 523(a)(6). For the reasons that follow, the court holds that the
10 debt related to the civil default judgment obtained in Marion County
11 Circuit Court is nondischargeable under § 523(a)(6).

12 Elements to Prove Under § 523(a)(6)

13 11 U.S.C. 523(a)(6) states that a debt will not be discharged
14 if it relates to the "willful and malicious injury by the debtor to
15 another entity or to the property of another entity." "Willful and
16 malicious" has been defined by the Ninth Circuit Court of Appeals as
17 a "wrongful act . . . done intentionally, [which] necessarily
18 produces harm and is without just cause or excuse." In re Cecchini,
19 780 F.2d 1440, 1443 (9th Cir. 1986). An act may be willful and
20 malicious even absent proof of a specific intent to injure. Id. An
21 action necessarily produces harm if the "act is targeted at the
22 creditor and . . . the predictable result of the debtor's
23 intentional act would almost certainly be harmful to the creditor."
24 In re Littleton, 942 F.2d 551, 555 (9th Cir. 1991). The party
25 asserting the nondischargeability of a debt bears the burden of
26 proving the necessary elements by a preponderance of the evidence.

1 Grogan v. Garner, 498 U.S. 279 (1991).

2
3
4 Preclusive Effect of Criminal Conviction

5 In a Ninth Circuit case dealing with nondischargeability under
6 11 U.S.C. § 523(a) (2) (A), the court stated that

7 The preclusive effect of a state court judgment in a
8 subsequent federal lawsuit generally is determined by the
9 full faith and credit statute, which provides that state
10 judicial proceedings 'shall have the same full faith and
11 credit in every court within the United States . . . as
12 they have by law or usage in the courts of such . . .
13 State from which they are taken.

14 Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798,800 (9th
15 Cir. 1995).

16 Oregon courts apply collateral estoppel when the following
17 conditions are met:

- 18 1. The issue in the two proceedings is identical.
- 19 2. The issue was actually litigated and was essential to a
20 final decision on the merits in the prior proceeding.
- 21 3. The party sought to be precluded has had a full and
22 fair opportunity to be heard on the issue.
- 23 4. The party sought to be precluded was a party or was in
24 privity with a party to the prior proceeding. [and]
- 25 5. The prior proceeding was the type of proceeding to
26 which this court will give preclusive effect.

27 Nelson v. Emerald People's Utility Dist., 318 Or. 103, 104, 862
28 P.2d 1293 (1993).

29 The Defendant pled guilty to First Degree Burglary in Marion
30 County Circuit Court. Under Oregon law, a person commits that
31 offense when the person "enters or remains unlawfully in a building

1 with intent to commit a crime therein" when that building is a
2 dwelling. ORS 164.255. Count 1 of the indictment to which the
3 Defendant pled guilty alleged that the Defendant "unlawfully,
4 feloniously and knowingly enter[ed] and remain[ed] in a dwelling,
5 located at 20170 Davis Court, Saint Paul, Oregon, with the intent to
6 commit the crime of theft therein."

7 Under Oregon law, a guilty plea is an admission of the ultimate
8 facts that are the material elements of the crime charged in the
9 indictment. State Farm Fire and Casualty Co., 149 Or.App. 89, 93,
10 914 P.2d 697, 700 (1996). The Defendant therefore admitted by her
11 guilty plea that she unlawfully entered the dwelling of the
12 Plaintiff with the intent to commit theft. Oregon courts give
13 collateral estoppel effect in later court proceedings to a prior
14 criminal conviction obtained through a guilty plea. See, State Farm
15 Fire and Casualty Co., 149 Or.App. at 94. All the conditions
16 enumerated in Nelson necessary to bar relitigation of the issues
17 admitted to in the Defendant's criminal conviction are present.

18 The criminal conviction therefore establishes that the
19 Defendant committed a wrongful act, done intentionally, which would
20 necessarily produce harm to the the Plaintiff.² The court must also
21 conclude that there was no just cause or excuse for the Defendant's
22 actions because the trial court was required under Oregon law to
23 determine, prior to entering a judgment based on the guilty plea,
24

25 ²Under Oregon law, damage is presumed when an intentional
26 trespass occurs. Hoaglin v. Decker., 72 Or.App. 472, 713 P.2d 674
(1986). Burglarizing a dwelling is, in and of itself, an infliction
of injury.

1 that there was a factual basis for the plea and that the guilty plea
2 was voluntarily and intelligently made. ORS 135.390 and 135.395.
3 All the elements necessary to prove nondischargeability under §
4 523(a)(6) are deemed admitted by defendant's guilty plea.

5 Preclusive Effect of Default Judgment

6 Under Oregon law, a default judgment has the "same solemn
7 character as [a judgment] entered after trial." Watson v. Oregon,
8 71 Or.App. 734, 694 P.2d 560 (1985). A valid default judgment
9 admits the truth of all material allegations of the complaint.
10 Kerschner v. Smith, 121 Or. 469, 256 P.195 (1927). The default
11 judgment obtained in Marion County Circuit Court therefore
12 establishes the amount of damages and that amount cannot be
13 relitigated in this court. Because it has already been determined
14 that the guilty plea to burglary establishes the elements necessary
15 to prove nondischargeability of the debt, it is not necessary to
16 determine whether those elements are also preclusively established
17 by the default judgment.

18 III. CONCLUSION

19 The Plaintiff obtained a default judgment in state court
20 against Defendant based on actions to which the Defendant later pled
21 guilty to First Degree Burglary. The guilty plea was an admission
22 of the ultimate facts that are the material elements of the crime
23 charged in the indictment. Those facts establish in this court the
24 necessary elements to prove nondischargeability under § 523(a)(6)
25 and the Defendant is barred from relitigating those facts. The
26 amount of damages has been preclusively determined by the default

1 judgment obtained in state court. The claim held by the Plaintiff
2 in the amount of \$5,878.35 relating to the civil judgment obtained
3 in Marion County Circuit Court is therefore nondischargeable under §
4 523(a)(6). Summary Judgment is granted for Plaintiff and denied to
5 Defendant. An order consistent herewith will be entered.

6
7
8 Frank R. Alley, III
9 Bankruptcy Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26