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11 USC § 523(a)(2)(A)  
11 USC § 523(a)(6)  
Fraud  
Collateral Estoppel  
ORS 59.115(2)(a)  
ORS 59.115(1)(a) & (b)  
ORS 59.135

Fabia v. Clibborn Adv. # 96-6153-aer  
In Re Clibborn Main Case # 696-60747-aer7

Fabia v. Overholser Adv. # 96-3307-psh/aer  
In Re Overholser Main Case # 396-31252-psh7  
10/14/99 Radcliffe Unpublished\*

Default had been entered prepetition against the debtors in state court litigation as a sanction for failing to appear at a deposition. A separate damages hearing was held. After debtors filed Chapter 7 petitions, limited relief from stay was granted to complete the state court litigation. Judgment was entered against debtors on common law and statutory fraud claims, and affirmed on appeal. The judgment awarded compensatory and punitive damages, as well as attorney fees and costs.

The judgment creditors sought exception to discharge of the judgment under §§ 523(a)(2)(A) & (6), and moved for summary judgment based on the judgment's collateral estoppel effect.

In a separate adversary proceeding, one of the debtors entered into a settlement with the Chapter 7 trustee and the judgment creditors, among others, allowing a defined amount of proceeds (from the sale of real property) to be paid to the judgment creditors to satisfy any claim they had against the estate. The settlement was expressly without prejudice to the judgment creditors prosecuting their state court and § 523 claims.

The judgment creditors were paid the proceeds from the settlement. The Ch. 7 trustee then objected to their claim, recommending reduction to the amount paid per the settlement. The judgment creditors did not request a hearing, so the objection was sustained through a self-executing order. Debtor then argued in his own motion for summary judgment that the effect of this order was to satisfy the creditors' claims against the debtor, thus mooting the § 523 litigation.

Held: Creditors' Motion Granted; Debtor's Motion Denied.

Under 9<sup>th</sup> Circuit authority, the collateral estoppel effect of a state court judgment in bankruptcy court is determined by the law of the rendering state. Under Oregon law, default judgments are entitled to preclusive effect. Common law fraud in Oregon mimics the elements of § 523(a)(2)(A). The award of punitive damages plus the allegations of the state court complaint (deemed true in a default

1 situation) were also sufficient to establish a § 523(a)(6) claim.  
2 Under U.S. Supreme Court precedent, the entire state court judgment  
3 including the attorney fees and punitive damages awarded therein,  
was excepted from discharge. However, creditors were denied their  
attorney fees for litigating dischargeability issues.

4 A fair interpretation of the self-executing claims order  
5 incorporated the settlement in the adversary proceeding, which  
6 expressly was without prejudice to creditors maintaining the action  
7 at bar.

8  
9 \*On occasion the Court will decide to publish an opinion  
10 after its initial entry (and after submission of this summary).  
11 Please check for possible publication in WESTLAW, West's Bankruptcy  
12 Reporter, etc.

13 **E99-21 (15)**  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case No.  
          ) 696-60747-aer7  
RONALD G. CLIBBORN and )  
CHRISTINE ANN CLIBBORN, )  
                                  ) Debtor. )  
\_\_\_\_\_  
ROMEO & NIKA FABIA, ) Adversary Proceeding  
                                  ) No. 96-6153-aer  
                                  ) Plaintiff, )  
                                  ) v. )  
RONALD G. CLIBBORN, )  
                                  ) Defendant. )  
\_\_\_\_\_  
DUANE J. OVERHOLSER, ) Bankruptcy Case No.  
                                  ) 396-31252-psh7  
\_\_\_\_\_  
ROMEO & NIKA FABIA, ) Adversary Proceeding  
                                  ) No. 96-3307-psh/aer  
                                  ) Plaintiff, )  
                                  ) v. )  
DUANE J. OVERHOLSER, ) MEMORANDUM OPINION  
                                  ) Defendant. )

1 Before this court are cross motions for summary judgment in  
2 Adversary Proceeding # 96-6153-aer, and Plaintiffs' motion for  
3 summary judgment in Adversary Proceeding # 96-3307-aer. These two  
4 adversaries (filed in separate main cases) have identical  
5 Plaintiffs, overlapping facts and legal theories. Accordingly, the  
6 above-referenced motions are hereby resolved in one opinion.

### 7 **Background**

8 Plaintiffs filed identical complaints (later amended) in both  
9 adversaries seeking to have a default judgment entered in Yamhill  
10 County Circuit Court (the state court) excepted from discharge under  
11 §§ 523(a)(2)(A) and (a)(6).<sup>1</sup>

12 Plaintiffs moved for summary judgment in both cases.  
13 Defendant Ronald Clibborn (Clibborn) filed a cross motion for  
14 partial summary judgment on the issues of punitive damages and  
15 attorney fees.

16 This Court heard oral argument on the motions. Limited  
17 relief from stay was granted to allow the parties to complete  
18 litigation pending in the state court. The motions were held in  
19 abeyance pending that completion.

20 After the state court litigation was completed, this Court  
21 convened a status conference on the present motions. A briefing  
22 schedule was established. The briefs, as well as supplemental  
23 concise statements have been submitted. The motions are now ripe  
24 for decision.

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25 <sup>1</sup> Unless otherwise noted, all statutory references are to Title  
26 11 of the United States Code.

1           Clibborn has also filed a second motion for summary judgment  
2 Plaintiffs have responded thereto. Neither party has requested oral  
3 argument so that motion is also ripe.

4   **Facts**

5           Based upon the parties' submissions, I find the following  
6 material facts:

7           In September, 1994, Plaintiffs sued Defendants in the state  
8 court for common law fraud, failure to register a security under ORS  
9 59.115(1) (a) and deceit in selling a security under ORS 59.115(1) (b)  
10 and 59.135.

11           In substance, the state court complaint alleged that  
12 Defendants fraudulently induced Plaintiffs to invest or loan  
13 \$50,000.00, by representing the investment or loan was secured by  
14 valuable historic German bearer bonds. In the state court  
15 complaint, Plaintiffs prayed for \$50,000.00 in damages, plus  
16 prejudgment interest, costs and attorney fees, and \$250,000.00 in  
17 punitive damages.

18           Defendants failed to appear for depositions which were  
19 scheduled for late June, 1995. Plaintiffs requested sanctions.  
20 They also sought \$500.00 in attorney fees.

21           On August 7, 1995, a hearing was held on the Plaintiffs'  
22 motion for sanctions. The state court, in its oral ruling, entered  
23 a default, and ordered a further hearing on damages.

24           After a damages hearing was held, the state court entered a  
25 default judgment on August 15, 1995 for \$314,677.67 plus post  
26

1 judgment interest (at 9% from August 15, 1995 until paid), broken  
2 down as follows:

- 3 a) \$ 50,000.00 principal;
- 4 b) \$ 11,328.12 prejudgment interest;
- 5 c) \$250,000.00 punitive damages;
- 6 d) \$ 3,122.50 attorney fees (including the  
\$500.00 sanction noted above) and
- 7 e) \$ 227.00 costs

8 In late August, 1995, Defendants moved to set aside the  
9 judgment under ORCP 71 B(1). On October 25, 1995, the punitive  
10 damages and attorney fees portion of the judgment were set aside.  
11 The state court ordered the matter set for a further damages  
12 hearing.

13 On February 20, 1996, the reset damages hearing was held. At  
14 that hearing the state court announced orally that because of the  
15 sanctions motions and consequent default, there had already been a  
16 finding that Defendants defrauded the Plaintiffs, as such,  
17 \$250,000.00 in punitive damages plus attorney fees were awarded.  
18 The court instructed Plaintiff's counsel to submit a new form of  
19 judgment.

20 Defendants each filed Chapter 7 petitions on February 27,  
21 1996, before the new judgment could be entered. After limited relief  
22 from stay was granted, the state court, on April 4, 1997, re-entered  
23 another judgment, identical to the August 15, 1995 judgment  
24 referenced above.

25 Defendants appealed, the Oregon Court of Appeals, on August  
26 5, 1998, affirmed without opinion. Supreme Court review was not  
sought. The state court judgment is now final.

1           In the meantime, on May 28, 1996, Plaintiffs filed a proof of  
2 claim in Clibborn's Chapter 7 case, for \$329,886.65 unsecured (based  
3 on the judgment) and \$1.00 secured (the alleged value of the German  
4 bearer bonds).

5           In February, 1997, Clibborn's Chapter 7 trustee, Ronald  
6 Sticka (the trustee), obtained a court order to sell Clibborn's  
7 residence free and clear of liens, with the liens to attach to the  
8 proceeds.

9           In May, 1997, the trustee filed an Adversary Proceeding (#97-  
10 6142-aer) naming multiple defendants (including Plaintiffs, and  
11 Clibborn) to determine the extent and validity of certain liens on  
12 Clibborn's homestead.

13           The parties to that adversary proceeding reached a settlement  
14 following a settlement conference at which the Honorable Frank R.  
15 Alley, III presided. The settlement agreement provided in pertinent  
16 part that the balance (at least \$24,352.40) of the Clibborn home  
17 proceeds (after other parties were paid) would be paid to  
18 Plaintiffs. The settlement also provided that the Plaintiffs did  
19 not waive their rights to proceed in these adversaries to determine  
20 the dischargeability of their claims.

21           The trustee noticed the settlement on January 30, 1998. No  
22 one objected; as such, the order approving it became self-executing.  
23 The trustee then moved to dismiss Adversary Proceeding No. 97-6142,  
24 with prejudice, based on the settlement. The settlement agreement  
25 was attached to the Motion. On April 16, 1998, an order was entered  
26

1 dismissing that adversary. At some point, Plaintiffs were paid  
2 \$25,153.70 from the proceeds of the Clibborn home.

3 On January 22, 1999, the trustee objected to Plaintiffs'  
4 proof of claim, on the basis that it was "settled and paid in full  
5 according to agreement." He recommended allowance as a general  
6 unsecured claim for \$25,153.70. Plaintiffs did not request a  
7 hearing on the objection, so the order thereon became self-  
8 executing.

### 9 Discussion

#### 10 Summary Judgment Standards:

11 On a motion for summary judgment, the moving party has the  
12 burden to establish the absence of a material issue of fact for  
13 trial. FRCP 56(c). With regard to its own claims or defenses,  
14 (i.e. those elements for which the moving party bears the burden of  
15 proof at trial)<sup>2</sup> the movant must support its motion with evidence-  
16 using any of the materials specified in Rule 56(c)-that would

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18 <sup>2</sup> As to the burden of proof regarding assertion of collateral  
19 estoppel,

20 The party contending that an issue has been conclusively  
21 litigated and determined in a prior action has the burden of  
22 proving that contention. That party must place into evidence  
sufficient portions of the prior record to enable the  
bankruptcy court to decide if an issue was actually litigated.

23 Washington County Agency on Aging v. Goodrich (In Re Goodrich), Case  
24 # 90-3571-S (Bankr. D. Or. May 22, 1991) (unpublished) (Sullivan,  
J.) (internal citations omitted).

25 However, a party asserting an exception to the normal rules  
26 of collateral estoppel has the burden of proof to prove the  
exception. In Re Dutton, 1995 WL 759031 (Bankr D. Or. 1995) (not  
reported in B.R.).



1 entitle it to a directed verdict if not controverted at trial.  
2 Celotex Corporation v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 2557,  
3 91 L. Ed. 265 (1986) (Brennan, J) (dissent). There must be more than  
4 a "scintilla", indeed the evidence must be "significantly  
5 probative." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.  
6 Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986). The motion must in any  
7 case meet the requirements of FRCP 56(c). In re Rogstad, 126 F.3d  
8 1224 (9th Cir. 1997).

9         If the movant makes the requisite affirmative showing, the  
10 burden of production shifts to the non-moving party to produce  
11 evidentiary materials that demonstrate the existence of a "genuine  
12 issue" for trial, or to submit an affidavit requesting additional  
13 time for discovery. Celotex, supra at 2557 (Brennan dissent).  
14 Conclusory arguments, unsupported by factual statements or evidence  
15 do not meet this burden. In Re Lewis, 97 F.3d 1182 (9th Cir. 1996).  
16 More specifically, conclusory, self-serving affidavits, lacking  
17 detailed facts and any supporting evidence are insufficient to  
18 create a genuine issue of material fact. FTC v. Publishing Clearing  
19 House, Inc., 104 F.3d 1168 (9th Cir. 1996).

20         All inferences drawn from the underlying facts must be viewed  
21 in the light most favorable to the nonmoving party. Simone v.  
22 Manning, 930 F. Supp. 1434 (D. Or. 1996). When different ultimate  
23 inferences can be reached summary judgment is not appropriate. Id.

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4 Preclusive Effect of State Court Judgment:

5 Plaintiffs seek a declaration that the state court judgment  
6 is excepted from discharge under §§ 523(a)(2)(A) and (a)(6).<sup>3</sup>

7 § 523(a)(2)(A) Claim:

8 In order to establish a claim under §523(a)(2)(A) the  
9 Plaintiffs must show that:

- 10 1. the Debtor made representations;
- 11 2. at the time he knew the representations were false, or
- 12 3. he made them with reckless disregard for their truth;
- 13 4. the creditor justifiably relied on the representations;
- 14 5. the creditor sustained the alleged loss and damage as a  
15 proximate result of the representations having been  
16 made.

15 In Re Anastas, 94 F.3d 1280 (9th Cir. 1996).

16 Plaintiffs argue that all these elements were determined by  
17 virtue of the state court judgment, and thus, under principles of

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20 <sup>3</sup> Originally, Plaintiffs' First Claim for relief sought to have  
21 the portions of the default judgment that had not been set aside,  
22 excepted from discharge under §§ 523(a)(2)(A) and (a)(6).  
23 Plaintiffs' Second Claim sought a judgment for \$250,000.00 in  
24 punitive damages, for reasonable attorney fees in obtaining the  
25 judgment, for interest from the date of the judgment, and for  
26 attorney fees in the action as a whole, and that the judgment be  
declared excepted from discharge under §§ 523(a)(2)(A) and (a)(6).

24 Since the Second Claim was filed, the state court has re-  
25 entered a judgment for punitive damages, attorney fees and post  
26 judgment interest, in the same document as the \$50,000.00 principal  
as noted in the First Claim. As such, the Second Claim has merged  
into the First.

1 collateral estoppel, defendants are precluded from contesting them  
2 here.

3 Collateral estoppel (i.e. "issue preclusion") principles  
4 apply in dischargeability proceedings under § 523. Grogan v.  
5 Garner, 498 U.S. 279, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991).<sup>4</sup> In  
6 determining the preclusive effect of a state court judgment in a  
7 subsequent federal suit (including dischargeability proceedings),  
8 the court looks to the collateral estoppel law of the state that  
9 rendered the judgment. In re Nourbakhsh, 67 F.3d 798 (9th Cir.  
10 1995).

11 In Oregon, issue preclusion precludes relitigation of an  
12 issue when that issue or fact has been determined by a valid and  
13 final determination in a prior proceeding. McCall v. Dynic USA  
14 Corp., 138 Or. App. 1, 906 P.2d 295 (1995). The requirements are:

- 15 1) the issue in the two proceedings is identical;
- 16 2) the issue was actually litigated and was essential to  
the final decision on the merits in the prior  
proceeding;
- 17 3) the party sought to be precluded had a full and fair  
opportunity to be heard on that issue;
- 18 4) the party sought to be precluded was a party, or was in  
privity with a party to the prior proceeding; and
- 19 5) the prior proceeding was the type of proceeding to which  
the court will give preclusive effect.

20 Id.

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25 <sup>4</sup> By contrast, the doctrine of claim preclusion does not apply  
26 in dischargeability litigation. Brown v. Felsen, 442 U.S. 127, 99  
S.Ct. 2205, 60 L.Ed.2d 767 (1979).

1 Defendants <sup>5</sup> argue that they never "actually litigated" any of  
2 the elements of fraud.

3 In Oregon, principles of collateral estoppel apply to default  
4 judgments. Gwynn v. Wilhelm, 226 Or. 606, 360 P.2d 312 (1961).  
5 Default judgments have the same "solemn character as judgments  
6 entered after trial." Watson v. State, 71 Or. App. 734, 738, 694  
7 P.2d 560, 562 (1985) rev. withdrawn 299 Or. 204, 701 P.2d 432  
8 (1985). A default judgment establishes the truth of all material  
9 factual allegations of the complaint. Rajneesh Foundation  
10 International v. McGreer, 303 Or. 139, 734 P.2d 871 (1987); Fitch v.  
11 Singleton, (In re Singleton), Case #96-6003-fra (Bankr. D. Or. Oct.  
12 4, 1996) (unpublished) (Alley, J.). As such, this court concludes that  
13 the elements of fraud were "actually litigated."<sup>6</sup>

14 Defendants also argue that they were denied a full and fair  
15 opportunity to litigate the issue of fraud. Specifically, Clibborn  
16 argues such denial was a result of the state court striking his  
17 answer as a sanction for a discovery violation. He cites no  
18 authority, however, which distinguishes this type of default from  
19 the general doctrine that default judgments are entitled to  
20 collateral estoppel effect. In Re Younie, 211 B.R. 367 (9th Cir.  
21 BAP (Cal.) 1997), aff'd, 163 F.3d 609 (1998) (TABLE, TEXT IN

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23 <sup>5</sup> Overholser's submissions for the most part address the merits  
24 of the underlying fraud claims, which have already been reduced to  
25 judgment.

26 <sup>6</sup> The only case going the other way on this issue is In Re  
Hubbard, 167 B.R. 969 (Bankr. D. New Mex. 1994) a case out of New  
Mexico applying Oregon law, and by which this Court is not bound.

1 WESTLAW) (under California law, a default is a default, no matter how  
2 obtained).<sup>7</sup>

3           Given that the state court judgment has collateral estoppel  
4 effect, it appears clear from both the state court's finding of  
5 "fraud" as recited at the February 20, 1997 hearing and its award of  
6 punitive damages, that the judgment is based, at least in part, on  
7 Plaintiffs' common law fraud claim.<sup>8</sup> In Oregon, common law fraud  
8 essentially mimics the § 523(a)(2)(A) elements set out above. See,  
9 Meade v. Cedarapids, Inc., 164 F.3d 1218 (9th Cir. 1999) (applying  
10 Oregon law).

11           Accordingly, Plaintiffs' motions should be granted on their  
12 § 523(a)(2)(A) claims, and the full amount of the judgment,  
13 including the punitive damages and attorney fees award, is excepted  
14 from discharge. Cohen v. De La Cruz, 523 U.S. 213, 118 S. Ct. 1212,  
15 140 L. Ed.2d 341 (1998) (all debt associated with fraud is  
16 nondischargeable under § 523(a)(2)(A)).

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19           <sup>7</sup> Overholser has submitted a sworn statement that his attorney  
20 told both he and Clibborn they did not have to appear at the  
21 depositions. However, Overholser does not expressly argue, and  
22 certainly cites no authority, that advice of one's own counsel is an  
adequate ground to argue denial of a full and fair opportunity to  
litigate.

23           <sup>8</sup> Punitive damages were not recoverable on the statutory  
24 claims. See ORS 59.115(2)(a) and Foelker v. Kwake, 279 Or. 379, 568  
P.2d 1369 (1977) (damages awarded in excess of those provided for in  
ORS 59.115(2) is reversible error).

25           As attorney fees are not awardable for common law fraud, it  
26 appears that the judgment was also based in part on the statutory  
deceit claims. See ORS 59.115(10) providing for attorney fees to the  
prevailing party in a statutory securities claim.

1 Likewise, Clibborn's first cross motion for summary judgment  
2 should be denied on the issues of punitive damages and attorney fee  
3 (as they relate to those awarded by the state court).<sup>9</sup>

4 § 523(a)(6) Claim:

5 In order to establish a claim under § 523(a)(6), the  
6 plaintiffs must show that the defendants intended the injury itself,  
7 not just the act that resulted in the injury. Kawaauhau v. Geiger,  
8 523 U.S. 57, 118 S. Ct. 974, 140 L. Ed.2d 90 (1998). In addition,  
9 the injury must be malicious, meaning that the conduct must be  
10 without just cause or excuse. Sheble Aviation v. Sheble (In Re  
11 Sheble), Adv. # RS98-1113-MJ/EP (Bankr. S.D. Cal. October 29,  
12 1998) (unpublished letter opinion) (Perris, J.).<sup>10</sup>

13 Plaintiffs argue that the state court judgment, including the  
14 award of punitive damages, is sufficient to meet the above  
15 standards, as such, Defendants are precluded from contesting  
16 Plaintiffs' § 523(a)(6) claims. As noted above, the default  
17 judgment has collateral estoppel effect.

18 Regarding the punitive damages award, the 9th Circuit has  
19 stated, "[u]nder Oregon Law, punitive damages are available when

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20 <sup>9</sup> As distinguished by the attorney fees incurred in this action  
21 which are not recoverable. See discussion infra.

22 <sup>10</sup> Judge Perris, recognizing the current split as to whether  
23 Geiger subsumed the concept of malice into the concept of  
24 willfulness, held that willful and malicious are two separate  
25 requirements, that Geiger addressed the meaning of willfulness and  
26 not of malice, and that Geiger did not disturb the formulation set  
out in Tinker v. Colwell, 193 U.S. 473 (1904) that malice requires  
that conduct be without just cause or excuse. Id. at f.n. #1.

1 there is evidence of malicious or wanton conduct." Central Office  
2 Telephone, v. American Telephone and Telegraph Co., 108 F.3d 981,  
3 993 (9th Cir. 1997) rev'd on other grounds, 524 U.S. 214, 118 S. Ct.  
4 1956, 141 L. Ed. 2d 222 (1998) (internal citation omitted).<sup>11</sup> It  
5 further noted "[t]he Oregon Supreme Court has sanctioned the award  
6 of punitive damages whenever there was evidence of a wrongful act  
7 done intentionally, with knowledge that it would cause harm to a  
8 particular person or persons." Id. at 994, f.n. #17 (internal  
9 quotation omitted).

10 Standing alone, it might be arguable whether the award of  
11 punitive damages meets the Geiger standard. Here, however, the  
12 state court complaint, at ¶ 18, alleged that both Clibborn and  
13 Overholser's actions "were malicious, criminal in nature, and  
14 calculated and done with the intention of taking plaintiffs' money  
15 with no intention of honoring the security." This allegation is  
16 deemed true in a default situation, Rajneesh Foundation  
17 International, supra., and is sufficient, especially in light of the  
18 award of punitive damages, to meet the § 523(a)(6) standard.

19 Attorney Fees For Litigating Dischargeability Issues:

20 Attorney fees for litigating the dischargeability issues at  
21 bar are not recoverable. In Re Hashemi, 104 F.3d 1122 (9th Cir.  
22 1997). On this issue, Plaintiffs' motions should be denied, and  
23 Clibborn's cross motion, granted.

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25 <sup>11</sup> Currently ORS 18.537 (effective 1995) imposes the standards  
26 for an award of punitive damages. However, the state court suit was  
commenced before ORS 18.537 became effective, so pre-adoption law is  
applied. Howard, supra, at 140, f.n. #2, 935 P.2d at 434.

1           Effect of Claims Order:

2           In his second motion for summary judgment, Clibborn argues  
3 the self-effectuating order disallowing the balance of Plaintiffs'  
4 claim above \$25,153.70, renders the alleged debt satisfied, even if  
5 nondischargeable. The Court construes this as a "mootness"  
6 argument. If the underlying claim has been satisfied, its  
7 dischargeability is irrelevant. The argument is disingenuous.

8           The trustee's claims objection was grounded on the fact that  
9 the claim had been "settled and paid in full according to  
10 agreement." It recommended allowance of \$25,153.70 as a general  
11 unsecured claim. The self-effectuating order incorporates that  
12 recommendation. A fair interpretation of the order would also  
13 incorporate the basis for the recommendation, which was the  
14 settlement "agreement" referenced therein and the order approving  
15 that settlement. It is undisputed that, under the settlement  
16 agreement, Plaintiffs' claims in these adversary proceedings would  
17 not be prejudiced.

18           On the satisfaction/mootness issue, Clibborn's second motion  
19 should be denied, (and Plaintiffs should be granted summary  
20 judgment) with the exception that \$25,153.70 should be applied as a  
21 credit against the balance due on the state court judgment.

22                               **Conclusion**

23           There is no genuine issue of material fact. Plaintiffs are  
24 entitled to judgment as a matter of law on the §§ 523(a)(2)(A) and  
25 (a)(6) claims except as they relate to attorney fees for litigating  
26 this case. Clibborn's motions should be denied except as they



1 relate to attorney fees for litigating this case and a \$25,153.70  
2 credit against the state court judgment.

3           This opinion constitutes the Court's findings of fact and  
4 conclusions of law under FRBP 7052. They shall not be separately  
5 stated.

7                           ALBERT E. RADCLIFFE  
8                           Chief Bankruptcy Judge

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