

§ 727(a)(2)
collateral estoppel
issue preclusion

Mitchell v. Clearwater-Thompson, Civ. No. 98-933-HA (Bankr. Adv.
No. 97-3090
In re Clearwater-Thompson, Case No. 395-37326

12/9/98

Haggerty, Dist. Judge
(affirming ELP)

unpublished

Debtor appealed the bankruptcy court's granting of the trustee's motion for summary judgment on the trustee's complaint to deny discharge under § 727(a)(2). The bankruptcy court had found that the claim was established by issue preclusion as a result of findings entered in an earlier contempt proceeding. In the contempt proceeding, the court had found that debtor received and converted to her own use the payoff from a land sale contract, that she failed to advise the court of her receipt of the funds, and that she misrepresented to the court that she had put the funds in a certificate of deposit when in fact she had transferred them. The court concluded that those findings established the claim to deny discharge under § 727(a)(2). The district court adopted the decision of the bankruptcy court and affirmed.

P98-17(4)

entered on the Docket on
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DONALD M. CINNAMOND
By ACW/MT Deputy

FILED

1998 DEC -9 P 2:24

CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

BY [Signature]

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12-11-98

Certified to be a true and correct
copy of original.
Dated 12/9/98
Donald M. Cinnamon, Clerk
By A. Wickala Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In Re:

BECKY CLEARWATER-THOMPSON

Debtor-Appellant

Bank. No. 395-37326-elpl3

CIVIL NO. 98-933-HA

JOHN MITCHELL, Trustee,

Plaintiff - Appellee,

Adversary Proceeding
No. 97-03090

v.

OPINION AND ORDER

BECKY CLEARWATER-THOMPSON

Defendant-Appellant.

Daniel F. Vidas
Dunn, Carney, Allen, Higgins & Tongue
851 S.W. Sixth Avenue Suite 1500
Portland, Oregon 97204-1357

Attorneys for Trustee-Appellee John Mitchell

Becky Clearwater-Thompson
1415 Appleton Circle
Medford, Oregon 97501

Debtor-Appellant.

[Signature] (48)

(2)

1 HAGGERTY, Judge:

2 The matter before the court is construed as an appeal from the decision of the
3 United States Bankruptcy Court for the District of Oregon entered 16 July 1997. The
4 district court acts as an appeals court from decisions of the bankruptcy court. The district
5 court reviews the findings of fact of the bankruptcy court under a clearly erroneous
6 standard; conclusions of law are reviewed de novo. Daniels-Head & Assocs. v. William M.
7 Mercer, Inc. (In re Daniels-Head & Assocs.), 819 F.2d 914, 918 (9th Cir. 1987).

8 **BACKGROUND**

9 Appellant is unrepresented in this action. She commenced her bankruptcy
10 proceedings in March, 1995, by filing a voluntary Chapter 13. On 25 July 1996 this was
11 converted to a chapter 7 proceeding, and appellee John Mitchell was appointed Trustee.
12 The Trustee filed a complaint to deny discharge on 28 February 1997, on grounds that
13 appellant had received \$28,658 from a title company in 1996, concealed these funds, and
14 failed to disclose them to the Bankruptcy Court at the hearing to confirm her plan, in
15 violation of 11 U.S.C. § 727(a)(2).

16 On 19 May 1997 Trustee moved for summary judgment. In his supporting
17 memorandum, the Trustee relied on findings the Bankruptcy Court had already made in
18 related proceedings pertaining to appellant and her ex-spouse, George Clearwater. The
19 Trustee for George Clearwater, Michael Grassmueck, sought sanctions against appellant for
20 civil contempt because she violated the automatic stay imposed in George Clearwater's
21 proceeding by removing a valuable antique back bar from a restaurant the parties once
22 owned.

23 Earlier, on 22 January 1997, the Bankruptcy Court had ruled on the motion for
24 contempt by making findings, including that appellant collected \$28,000 before her
25 bankruptcy confirmation and failed to disclose the funds, and then misrepresented what she
26 did with the money. The court also found that appellant knew beyond a reasonable doubt

1 of the restraining order that precluded removal of the back bar, and that she "willfully
2 disobeyed that order by asking her father to remove and sell the back bar." Memorandum
3 in Support of Trustee's Motion for Summary Judgment, Ex. 2 to Appellee's Supplemental
4 Excerpt of the Record, p.7.

5 The court concluded:

6 Throughout this case, debtor has exhibited a cavalier disregard for
7 court orders and the Bankruptcy Code. She has been untruthful with this
8 court. Her removal of the back bar despite her knowledge the court had
restrained from removing it was a blatant violation of this court's restraining
order.

9 Id.

10 On 7 July 1997, the Bankruptcy Court granted the Trustee's motion for summary
11 judgment, on grounds that the court's prior findings were sufficient grounds for denying
12 appellant's discharge pursuant to 11 U.S.C. § 727(a)(2), and that the doctrine of collateral
13 estoppel prohibited such issues from being re-litigated. Appellant's attorney waived oral
14 argument. Order re: Summary Judgment Motion, Ex. 5 to Appellee's Supplemental
15 Excerpt of the Record, p. 44. On 16 July 1997, the Bankruptcy Court entered Judgment
16 accordingly, denying appellant's discharge pursuant to 11 U.S.C. § 727(a)(2).

17 On 29 June 1998, appellant submitted what has been construed as an appeal to this
18 court of the 16 July 1997 Bankruptcy Court ruling. The filing consists of voluminous
19 excerpts pertaining to her appeal of her criminal contempt matter, and is in fact titled,
20 "United States Court of Appeals for the Ninth Circuit; Appeal from the United States
21 District Court for the District of Oregon." Appellant includes in this filing a "Statement and
22 History of Events," however, in which she indicates she is without representation and
23 seeking a "reversal of the denial order issued by the Honorable Bankruptcy Judge Elizabeth
24 L. Perris in 1997 for a discharge of my bankruptcy."

25 She explains that there was no evidence that she received notice not to remove the
26 back bar, which was perceived by her as personal property. She also asserts that Judge


1 Perris could not be impartial regarding her bankruptcy issues after presiding over the
2 criminal contempt allegations against her. She addresses the \$28,658 she received from a
3 title company in 1996, but fails to explain or justify the fact that she concealed these funds,
4 and failed to disclose them.

5 **RULING OF THE COURT**

6 This court ADOPTS the decision of the Honorable Elizabeth L. Perris, United
7 States Bankruptcy Judge, which was filed with the bankruptcy court on 16 July 1997.
8 Appellant's appeal is denied.

9 IT IS SO ORDERED.

10 DATED this 9 day of December, 1998.

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14 ANCER L. HAGGERTY
15 United States District Judge
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