

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re

CRAZY JIM,

Debtor.

Case No. 01-24180

Chapter 7

AUCTION ASSOCIATES,

Plaintiff,

v.

CRAZY JIM,

Defendant.

Adversary No. 01-2616

MEMORANDUM DECISION ON
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The plaintiff, Auction Associates, filed a motion for summary judgment seeking a declaration that its claims against the debtor, Crazy Jim, were nondischargeable pursuant to 11 U.S.C. section 523(a)(2)(A). The debtor opposed the requested relief and both parties submitted briefs.

This decision represents the court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052. Because findings of the state court action between the parties do not meet all the requirements for claim preclusion, the plaintiff's motion for summary judgment is denied, in part.

BACKGROUND

On October 29, 1994, Crazy Crazy Jim Demolition Derby, Inc., purchased two vehicles at auction from the plaintiff and issued two separate checks in the amount of \$3,000 each. The checks were later returned to the plaintiff due to "stop payment" orders.

The plaintiff filed two separate civil actions in Circuit Court of Fond du Lac County. The summons and complaint in case number 94-SC-2878 was lodged against the debtor, Crazy Jim, and his company, Crazy Crazy Jim Demolition Derby, Inc., and contained the following allegations:

On 10/29/94 the defendant corporation purchased from plaintiff, at auction, a certain 1987 Chevrolet Crew Cab pickup-truck for the sum of \$3,000.00. When plaintiff attempted to cash the \$3,000.00 check it was dishonored when presented for payment. The defendant, Crazy Jim, caused the check to be issued knowing full well that the check would be dishonored, for said defendant intended to stop payment prior to the checks [sic] issuance.

(Small Claims Summons and Complaint, Case No. 94-SC-2878).

The defendants filed a combined answer in state court denying the allegations and a counterclaim for various alleged damages. In their answer, the debtor denied that he acted in any way as a principal in any transactions with the plaintiff and that all transactions with the plaintiff were carried out by the corporation, Crazy Crazy Jim Demolition Derby, Inc. The defendants alleged that the corporation did not purchase a truck from the plaintiff at the auction, but rather a truck which was supposed to have come from the City of Milwaukee. The defendants further alleged that the plaintiff failed to deliver title to vehicles purchased at the auction in a timely manner and the quality of the vehicles purchased were not as represented by the plaintiff. (Small Claims Answer).

On the initial appearance date, the defendants, through their counsel, orally moved for a change of venue. Although the motion was granted, the right to a change of venue was later waived due to the defendants' failure to submit a proposed order to the court. On March 1, 1995, the plaintiff issued a formal notice of depositions scheduling the depositions of Crazy Jim and the corporate defendant's representative for March 29, 1995. The defendants did not appear for the depositions.

The plaintiff then moved the state court for default judgment, or alternatively, for summary judgment. The state court scheduled the matter for trial, and the plaintiff issued a notice that the summary judgment motion would be brought up for hearing at the time of trial. The plaintiff submitted the affidavits of Timothy Sweeney and Robert Sweeney, on behalf of Auction Associates, along with its motion. The court determined that the two affidavits contained factual statements supporting the allegations contained in the plaintiff's complaint and refuting the allegations contained in the defendants' answer. The court further noted that the defendants had not submitted any affidavits, documents or other admissible evidence to counter the affidavits submitted by the plaintiff.

The state court thus found:

Based upon the uncontroverted affidavits of Timothy Sweeney and Robert Sweeney the court concludes that the allegations contained in the Complaint are true, that there exists no factual basis to support the counterclaim, and that the plaintiff is entitled to summary judgment on all claims, as a matter of law.

(Summary Judgment of John W. Mickiewicz, Wisconsin Circuit Court Judge, Case No. 94-SC-2878, December 4, 1995). The state court granted judgment against Crazy Jim and Crazy Crazy

Jim Demolition Derby, Inc., jointly and severally, for the sum of \$3,000 together with costs and dismissed the defendants' counterclaim with prejudice.

The plaintiff filed a complaint alleging the same conduct in case no. 94-SC-2879, and the state court contemporaneously granted a second judgment for \$3,000, with respect to a 1984 GMC pickup truck also purchased by the defendants.¹ The defendants appealed the summary judgment entered in case no. 94-SC-2878, and the circuit court's decision was summarily affirmed by the state court of appeals on June 19, 1996. The companion case, no. 94-SC-2879, was not appealed.

ARGUMENTS

The plaintiff argues that the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion) prevent litigation of issues of fact or law that were raised, or could have been raised, in the prior actions. The state court findings, according to the plaintiff, conclusively established common law fraud on the part of the debtor.

The debtor argues that the checks in issue were signed by an individual other than himself, and that he was incarcerated and not operating his business at the time of the transactions. According to the debtor, the matter was never litigated on its merits, and the state court never determined actual fraud or misrepresentation on his part.

¹As of the date of the debtor's petition, Auction Associates was owed the sum of \$6,360.69 under each judgment (representing the principal amount of each judgment in the sum of \$3,185, post judgment interest of \$3,070.69, and post judgment costs of \$105). The two judgments totaled \$12,721.38 as of the date the debtor commenced his bankruptcy case.

DISCUSSION

To prevail on a motion for summary judgment, Auction Associates must show that there is no genuine issue as to any material fact, and that it is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). All facts and reasonable inferences to be drawn therefrom will be construed in the debtor's favor. *See id.* at 257-58.

Whether findings of a state court result in issue preclusion depends upon the law of that state. *McNealy v. Caterpillar, Inc.*, 139 F.3d 1113, 1116 (7th Cir. 1998). Under Wisconsin law, issue preclusion limits the relitigation of issues that have been contested in a previous action between the same or different parties. *Michelle T. v. Crozier*, 173 Wis. 2d 681, 687, 495 N.W.2d 327 (1993). In addition, courts must conduct a "fundamental fairness" analysis to determine whether it is equitable to apply issue preclusion in a given case and, in doing so, may consider a variety of factors. *Id.* at 689. The Wisconsin Supreme Court articulated a series of factors which courts have deemed significant to protect the rights of parties to a full and fair adjudication of the issues:

(1) could the party against whom preclusion is sought, as a matter of law, have obtained judicial review of the judgment; (2) is the question one of law that involves two distinct claims or intervening contextual shifts in the law; (3) do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issue; (4) have the burdens of persuasion shifted such that the party seeking preclusion had a lower burden of persuasion in the first trial than in the second; (5) are matters of public policy and individual circumstances involved that would render the application of collateral estoppel to be fundamentally unfair, including inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action?

Id. (citing Restatement (Second) of Judgments § 28 (1982)).

Thus, when an issue of fact or law is actually litigated and determined by a valid judgment, and the determination is essential to the judgment, the determination is conclusive in a

subsequent action between the parties. *Precision Erecting, Inc. v. M & I Marshall & Ilsley Bank*, 224 Wis. 2d 288, 301, 592 N.W.2d 5, 11 (Ct. App. 1998) (citing Restatement (Second) of Judgments § 27 (1982)).

The debtor was represented in the prior state court litigation, and he sought judicial review of one of the summary judgments. Under Wisconsin law, summary judgment satisfies the requirements of a final and conclusive judgment. *Haase v. R & P Indus. Chimney Repair Co.*, 140 Wis. 2d 187, 192, 409 N.W.2d 423, 426 (Ct. App. 1987). It is irrelevant that the state court did not conduct a full trial on the plaintiff's actions. Because the debtor was provided an adequate opportunity to obtain a full and fair adjudication of the merits of the initial actions, the facts established by the prior judgments are entitled to preclusive effect. *Id.*, see also *Allen v. McCurry*, 449 U.S. 90, 95 (1980) (holding that court must determine whether party who opposes collateral estoppel had a full and fair opportunity to litigate the issue in the prior action).

The court now turns to whether issue preclusion prevents the dischargeability of the state court judgments pursuant to § 523(a)(2)(A). Section 523(a)(2)(A) prevents the discharge of loans or extensions of credit incurred through "false pretenses, a false representation, or actual fraud." 11 U.S.C. § 523(a)(2)(A). Because of the fresh start policy underlying the bankruptcy code, the exceptions to discharge are construed strictly against creditors and liberally in favor of debtors. *Matter of Juzwiak*, 89 F.3d 424, 427 (7th Cir. 1996).

To have a debt deemed nondischargeable under § 523(a)(2)(A), Auction Associates must establish the following elements: (1) that the debtor made a representation to Auction Associates; (2) that the representation was false; (3) that the debtor intended to deceive Auction Associates; (4) that Auction Associates relied on the debtor's representations to its detriment; and (5) that

Auction Associate's reliance was justifiable. 11 U.S.C. § 523(a)(2)(A); *Field v. Mans*, 516 U.S. 59, 70 (1995).

The state court found that the allegations contained in the complaint were true, namely, that the debtor "caused the check[s] to be issued knowing full well that the check[s] would be dishonored, for said defendant intended to stop payment prior to the checks [sic] issuance."

Before issue preclusion can be applied to earlier determined facts, those facts must have been essential to the judgment. The prior state court findings have conclusively established that the debtor made a representation to Auction Associates. Without a representation by the debtor – as an ultimately liable party – that Auction Associates was receiving value in exchange for the goods sold, Auction Associates would not have released the goods, thereby avoiding economic injury. Therefore, the plaintiff satisfies the first element required for summary judgment under § 523(a)(2)(A).

On the other hand, findings regarding the debtor's intentional misrepresentations were not necessary to the state court's decision establishing the debtor's liability. Liability could be found merely because the debtor parted with property that was not paid for; it was not essential to the judgment that, before the checks were tendered, the debtor intended to stop payment on the corporate checks. For example, the debtor could have intended to stop payment on any corporate checks written by an employee who stole the checkbook or used it for purchases without his prior authorization. Because the findings regarding whether or not the debtor made a false representation with the intent to deceive were not essential to the state court's judgment in favor of Auction Associates, the debtor is not precluded from subsequently disputing that he made misrepresentations (or caused them to be made by an agent, as Crazy Jim did not issue the check)

with the intent to deceive. Until the debtor has an opportunity to be heard, the issues of misrepresentation and intent to deceive, as those terms are used in actions under § 523(a)(2)(A), have not been established, and summary judgment is not appropriate.

Whether Auction Associates justifiably relied on the debtor's representations to its detriment was not established by the state court. The plaintiff's justifiable reliance may have been in the affidavits presented to the state court; however, those affidavits are not a part of the record before this court. The affidavit of Timothy Sweeney, the Vice President of Auction Associates, was filed in support of the present motion for summary judgment and states:

Auction Associates would not have sold either of the trucks had it known that the checks were going to be dishonored when presented for payment. ... [Mr. Sweeney] was present at the auction where the two motor vehicles were sold. [Mr. Sweeney] was also in charge of that auction and believed that the two checks were going to be honored when presented for payment. Had [Mr. Sweeney] known that Crazy Jim would stop payment on the two checks [he] would not have allowed the sale to be made, would not have accepted the two checks as payment, and would not have transferred possession of the two trucks.

Affidavit of Timothy Sweeney, dated October 15, 2001, ¶¶ 7-8.

The debtor does not discuss the issue of the creditor's reliance. Rule 56(e) of the Federal Rules of Civil Procedure makes clear that "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response ... must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

From the facts established in the uncontested affidavit of Mr. Sweeney, this court concludes that the plaintiff's reliance was justifiably reasonable. While "reasonable reliance" requires such investigation into the truth of the debtor's representations as a reasonable person would have made, "justifiable reliance" does not. *Shaw Steel, Inc. v. Morris*, 240 B.R. 553 (N.D.

Ill. 1999); *see also Field*, 516 U.S. at 77 (holding that creditors are not under a duty to investigate representations absent significant warning signs). Reliance is justifiable unless, under the circumstances, the misrepresentation should have been apparent from a glance or something served to warn of the misrepresentation. *See In re Horwitz*, 100 B.R. 395, 401 (N.D. Ill. 1989). The justifiable standard thus focuses on whether the falsity of the representation was or should have been readily apparent to the individual to whom it was made. *In re Cameron*, 219 B.R. 531 (Bankr. W.D. Mo. 1998).

Auction Associates relied upon the representation that the checks would have been honored because it turned over the vehicles contemporaneously with receipt of the checks. *See Affidavit of Timothy Sweeney*. This reliance was justifiable under the circumstances. *Cf. In re Miller*, 112 B.R. 937, 940 (Bankr. N.D. Ind. 1989) (holding that the fact that the seller parts with possession of goods or property upon delivery of a check may constitute reasonable reliance – a more stringent standard – upon the debtor’s representation of payment). As reliance was not contested by the debtor, either by affidavit or argument in his brief, it is conclusively determined for the purposes of § 523(a)(2)(A), and the plaintiff is entitled to summary judgment on this issue.

Additionally, the debtor’s liability to Auction Associates has been established. *See* 28 U.S.C. § 1738; *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 481-82 (1982); *Froebel v. Meyer*, 217 F.3d 928, 936 (7th Cir. 2000) (in determining the preclusive effect of a state court judgment, the federal courts must, as a matter of full faith and credit, apply the forum state's law of issue preclusion). Therefore, the amounts of the state court judgments will not be disturbed.

CONCLUSION

It has thus been established that the debtor made a representation to Auction Associates and that Auction Associates justifiably relied on the debtor's representations to its detriment. The issues of whether or not the representation was false or that the debtor intended to deceive Auction Associates are not subject to issue preclusion and must be litigated. Summary judgment in favor of Auction Associates is therefore granted, in part, and denied, in part. A separate order consistent with this decision will be entered.

Dated at Milwaukee, Wisconsin, March 25, 2002.

BY THE COURT:

_____/s/_____
Honorable Margaret Dee McGarity
United States Bankruptcy Judge

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ORDER GRANTING, IN PART, AND DENYING, IN PART,
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

For the reasons and to the extent set forth in the court's memorandum decision entered on this date, IT IS ORDERED Auction Associates' motion for summary judgment is granted, in part, and denied, in part.

Dated at Milwaukee, Wisconsin, March 25, 2002.

BY THE COURT:

_____/s/_____
Honorable Margaret Dee McGarity
United States Bankruptcy Judge