

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 7
)
ROY W. MURRAY,)
DEBORAH J. MURRAY,) CASE NO. 07-62926 - MHM
)
Debtors.)
_____)
CHARLES G. MCKELVEY, III,)
)
Plaintiff,)
v.) **ADVERSARY PROCEEDING**
) **NO. 07-6275**
ROY W. MURRAY,)
DEBORAH J. MURRAY,)
)
Defendants.)

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff filed a complaint alleging *inter alia* that in January 2003, he loaned Defendants approximately \$200,000, which was to be repaid upon the sale of Defendants' business, DJM Enterprises, Inc. ("DJM"). In July 2004, Defendants sold DJM but failed to repay Plaintiff. In July 2006, Plaintiff filed an action in state court against Defendants. Defendants failed to answer and a default judgment was entered September 22, 2006, reserving the issue of damages. A hearing on the damages issue was scheduled for hearing October 18, 2006, with notice of the hearing provided to Defendants. Defendants failed to

appear at the hearing on damages. Following that hearing, an order was entered by the state court containing a finding, based upon Defendants' default, that their failure to repay Plaintiff was fraudulent. Judgment was entered in the amount of \$274,716.33 plus punitive damages of \$100,000 (the "State Court Judgment").

Plaintiff filed a motion for partial summary judgment, seeking a determination that his claim against Defendants is nondischargeable pursuant to §523(a)(2)(A). Plaintiff asserts that, under the doctrine of collateral estoppel, the State Court Judgment precludes Defendants from relitigating the issue of fraud and from relitigating the amount of the damages awarded. Defendants filed a response opposing the motion for summary judgment, but Defendants failed to respond to Plaintiff's *Statement of Undisputed Material Facts* [Doc. No. 15]. Under BLR 7056-1(a)(2):

The respondent to a motion for summary judgment shall attach to the response a separate and concise statement of material facts, numbered separately, as to which the respondent contends a genuine issue exists to be tried. Response should be made to each of the movant's numbered material facts. All material facts contained in the moving party's statement that are not specifically controverted in respondent's statement shall be deemed admitted. The response that a party has insufficient knowledge to admit or deny is not an acceptable response unless the party has complied with the provisions of Rule 56(f) of the Federal Rules of Civil Procedure.

This constraint holds little significance in this adversary proceeding, however, as Defendants apparently have no basis upon which to dispute the validity of the State Court Judgment. The single issue presented in Plaintiff's motion for summary judgment is the preclusive effect of the State Court Judgment.

The U.S. Supreme Court has held that, in dischargeability proceedings in bankruptcy courts, principles of *res judicata* are inapplicable to prior state court judgments. *Brown v. Felsen*, 442 U.S. 127, 131 (1979). Principles of collateral estoppel, however, are applicable in dischargeability proceedings. *Grogan v. Garner*, 498 U. S. 279 (U.S. 1991). When the prior litigation was in state court, that state's law regarding collateral estoppel is applied. *Bush v. Balfour Beatty Bahamas, Limited*, 62 F. 3d 1319 (11th Cir. 1995); *St. Laurent v. Ambrose*, 991 F. 2d 672 (11th Cir. 1993).

Under Georgia law, three elements must be present to support collateral estoppel: (1) the current issue must be identical to the issue in the prior litigation; (2) the issue must have been actually litigated; and (3) the parties must have had a full and fair opportunity in the prior litigation to litigate the issues. *Moore v. Gill*, 181 BR 666 (Bankr. N.D. Ga. 1995)(J. Drake). Georgia law recognizes a default judgment as a judgment on the merits entitled to preclusive effect. *League v. Graham*, 191 B.R. 489 (Bankr. N.D. Ga. 1996) (J. Drake). Therefore, the doctrine of collateral estoppel acts to preclude relitigation of whether Plaintiff's claim arose from Defendants' fraudulent conduct. Additionally, punitive damages awards arising from the same course of fraudulent conduct from which nondischargeable compensatory damages arose are likewise nondischargeable. *St. Laurent v. Ambrose*, 991 F. 2d 672 (11th Cir. 1993). Accordingly, it is hereby

ORDERED that Plaintiff's motion for summary judgment is **granted**: Plaintiff's claim against Defendants is nondischargeable under §523(a)(2)(A).

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendants' attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the ____ day of October, 2009.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE