

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 7
)
JOSEPH H. HARMAN, II,) CASE NO. 00-64335 - MHM
)
Debtor.)

**ORDER DENYING DEBTOR'S MOTION
TO ENFORCE DISCHARGE INJUNCTION**

Debtor seeks a determination that the claim of Carolyn T. McAfee ("Creditor"), arising from a judgment of the State Court of Fulton County in the action styled *Carolyn T. McAfee v. Joseph H. Harman*, Case No. 04VS065331E (the "State Court Action") was discharged by the order entered June 12, 2001 (the "Discharge"); and seeks enforcement against Respondent's claim of the discharge injunction of §524 arising from the Discharge. For the reasons set forth below, Debtor's *Motion to Enforce Discharge Injunction* (Doc. No. 56) is denied.

STATEMENT OF FACTS

On September 1, 1998, Debtor executed a Promissory Note as President and on behalf of Carter Oaks Crossing, Ltd. ("Carter Oaks") for the benefit of James T. McAfee, Jr. Under the terms of the Note, Carter Oaks would pay McAfee the principal sum of \$400,000.00, plus 25% per annum interest, and all Net Cash Flow would be paid to McAfee prior to any compensation or reimbursement of Debtor or any other limited partners of Carter Oaks. As an addendum to the Note, Debtor executed a personal Conditional Guarantee that made Debtor liable for the Promissory Note in the event of

"any act of conversion, misappropriation, misapplication, theft or embezzlement" by Debtor with respect to the property of Carter Oaks.

Debtor filed a Chapter 7 bankruptcy case December 3, 1999, but neither Debtor's Petition nor Schedules listed James McAfee's contingent claim. A Discharge Order, including a report of no distribution by the Chapter 7 Trustee confirming that the Debtor's bankruptcy was a "no asset" case, was entered June 12, 2001.

James McAfee filed a complaint in state court April 12, 2004, claiming default of the Promissory Note, activation of the Conditional Guarantee, fraud, and attorney's fees and expenses. Mr. McAfee died November 3, 2004, and Carolyn T. McAfee was substituted in plaintiff in the State Court Action as executor of Mr. McAfee's estate. McAfee filed a motion for summary judgment, and Debtor filed a cross-motion for summary judgment, contending that the complaint was barred by the June 12, 2001 Discharge Order. In denying Debtor's motion for summary judgment, the state court found that McAfee's claim was not dischargeable pursuant to 11 U.S.C. § 523(a)(3)(A). April 13, 2009, the state court granted McAfee's motion for summary judgment as to the issues of the Conditional Guarantee and attorney's fees and expenses, and reserved judgment on the allegation of fraud. McAfee dismissed the fraud allegation, and a Final Judgment was entered February 4, 2011.

CONCLUSIONS OF LAW

Principles of *res judicata* bar the filing of claims that were raised or could have been raised in an earlier proceeding. *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1238 (11th Cir. 1999). A claim could have been raised if it was "in existence at the time the

original complaint [was] filed or [it was] actually asserted . . . in the earlier action
[T]he underlying core of facts must be the same in both proceedings." *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1298-1301 (11th Cir. 2001). "The purpose behind the doctrine of *res judicata* is that the 'full and fair opportunity to litigate protects [a party's] adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.'" *Ragsdale* at 1238, *citing Montana v. United States*, 440 U.S. 147 (1979).

State court judgments receive full faith and credit in federal courts and carry the same preclusive effect as they would in state courts. *Marrese v. American Academy of Othopaedic Surgeons*, 470 U.S. 373, 380 (1985) *citing* 28 U.S.C. § 1783. Under Georgia law, a "judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside." Ga. Code Ann. § 9-12-40. Thus, Georgia bars a subsequent filing if four elements for *res judicata* are met: 1) a final judgment was entered on the merits in the prior proceeding, 2) the judgment in the prior proceeding was rendered by a court of competent jurisdiction, 3) the parties are identical, and 4) the same cause of action is involved in both proceedings.

DISCUSSION

In the State Court Action, that court granted summary judgment for Respondents and denied Debtor's motion for summary judgment, entering a final judgment February 4, 2011. In so doing, the State Court determined that Respondent's claim against Debtor was

not discharged by the June 12, 2001 Discharge Order. The Georgia Court of Appeals affirmed that decision. Further, the State Court is a court of competent jurisdiction to render such a judgment. 28 U.S.C. § 1334(b) confers concurrent jurisdiction over the issue of dischargeability arising in a bankruptcy proceeding to both state and federal courts. *In re Toussaint*, 259 B.R. 96, 101 (E.D.N.C. 2000) *citing In re Franklin*, 179 B.R. 913, 919 (Bankr. E.D. Cal 1995). Because the parties of the State Court Action are the same as the parties in this proceeding, and because the issues raised in this proceeding were or could have been raised in the State Court Action, the elements of *res judicata* have been met. Accordingly, it is hereby

ORDERED that Debtor's Motion to Enforce Discharge Injunction is *denied*.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, creditor Carolyn T. McAfee, counsel for Carolyn T. McAfee, the Chapter 7 Trustee, and the U.S. Trustee.

IT IS SO ORDERED, this the 22nd day of July, 2011.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE