

9/26/06 JD

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

IN RE:	:	CASE NO. A05-83409-REB
	:	
KORIE DION DIXON,	:	
	:	
Debtor.	:	
	:	
_____	:	
JPI PARTNERS, L.L.C.,	:	ADVERSARY PROCEEDING
	:	NO. 06-6124
Plaintiff,	:	
	:	
v.	:	
	:	CHAPTER 7
KORIE DION DIXON,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE
	:	

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Before the Court is the second amended motion of Plaintiff for summary judgment on its complaint, which seeks a determination that certain federal district court awards entered in favor of Plaintiff and against Defendant-Debtor in the respective sums of \$47,790.00 and \$41,624.51, for a total amount of \$89,414.51, are excepted from discharge in accordance with 11 U.S.C. §§ 523(a)(2)(A) and (a)(4).<sup>1</sup> The district court awarded relief on Plaintiff's claims for breach of "fiduciary duty, fraud and misrepresentation, negligent misrepresentation, conspiracy, conversion, breach of contract, and for the expenses of litigation." See Order of July 26, 2005, p. 12. Debtor

<sup>1</sup> Plaintiff's motion refers to a federal court action decided by order entered on July 26, 2005 and modified by its subsequent order entered on May 9, 2006 (*JPI Partners, LLC v. Korie Dixon*, Civil Action No. 1:04-CV-0826-JOF (N.D.Ga.)). Plaintiff has provided a copy of these orders with its motions. From a review of same, it appears the first order was entered on Plaintiff's motion for summary judgment to which Debtor had failed to respond, and that the second order added an award of fees and costs.

challenges herein the grounds upon which said orders were entered, questioning her ability to “actively or significantly participate” before the district court as Debtor claims she was “forced to represent herself.” The record before this Court, however, does not reflect that these challenges by the Debtor were ever the basis for a motion for reconsideration or an appeal in connection with the aforementioned orders of the district court. Based on the following reasoning, the Court concludes that the motion should be granted.<sup>2</sup>

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c), applicable herein through Fed. R. Bankr. P. 7056; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11<sup>th</sup> Cir. 1991). In deciding whether the moving party has met this burden, all factual inferences reasonably drawn from the evidence presented must be viewed in the light most favorable to the party resisting summary judgment. The Court cannot weigh the evidence or choose between competing inferences. *See Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11<sup>th</sup> Cir. 1997); *Raney v. Vinson Guard Serv., Inc.*, 120 F.3d 1192, 1196 (11<sup>th</sup> Cir. 1997).<sup>3</sup>

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<sup>2</sup> In making this ruling, the Court has considered all of the pleadings and briefs filed herein including those that may have been untimely filed.

<sup>3</sup> Once the party moving for summary judgment has identified those materials demonstrating the absence of a genuine issue of material fact, the non-moving party cannot rest on mere denials or conclusory allegations, but must go beyond the pleadings and designate, through proper evidence, specific facts showing the existence of a genuine issue for trial. *See Fed. R. Civ. P. 56(e)*; *see also Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Johnson v. Fleet Finance, Inc.*, 4 F.3d 946, 948-49 (11<sup>th</sup> Cir. 1993); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11<sup>th</sup> Cir. 1993).

In this case, Plaintiff argues that the findings of the district court support a ruling of nondischargeability herein based upon collateral estoppel. This doctrine prohibits “the relitigation of issues already litigated and determined by a valid and final judgment in another court;” and further, “[i]t is well-established that the doctrine of collateral estoppel applies in a discharge exception proceeding in bankruptcy court.” *HSSM #7 Limited Partnership v. Bilzerian (In re Bilzerian)*, 100 F.3d 886, 892 (11<sup>th</sup> Cir. 1996), citing *Grogan v. Garner*, 498 U.S. 279, 284 n. 11, 111 S.Ct. 654, 658 n. 11, 112 L.Ed.2d 755 (1991); see also *Hoskins v. Yanks (In re Yanks)*, 931 F.2d 42, 43 n. 1 (11th Cir.1991). Collateral estoppel or issue preclusion applies in connection with a prior federal court decision if the following elements are present:

- (1) The issue in the prior action and the issue in the bankruptcy court are identical;
- (2) The bankruptcy issue was actually litigated in the prior action;
- (3) The determination of the issue in the prior action was a critical and necessary part of the judgment in that litigation; and
- (4) The burden of persuasion in the discharge proceeding must not be significantly heavier than the burden of persuasion in the initial action.

*Bush v. Balfour Beatty Bahamas, Ltd. (In re Bush)*, 62 F.3d 1319, 1322 (11th Cir.1995) (citations omitted).

Upon review of the district court awards, the Court concludes that each element has been satisfied. First, the issues considered in that matter are identical with the requirements under Sections 523(a)(2)(A) and 523(a)(4).<sup>4</sup> Second, it appears to this Court that Debtor was accorded

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<sup>4</sup> The standards for section 523(a)(2)(A) are addressed in *Schweig v. Hunter (In re Hunter)*, 780 F.2d 1577, 1579 (11<sup>th</sup> Cir. 1986). See also *City Bank & Trust Co. v. Vann (In re Vann)*, 67 F.3d 277 (11<sup>th</sup> Cir. 1995); *Lakeside Inv. Group, Inc. v. Allen*, 253 Ga.App. 448, 450, 559 S.E.2d 491 (2002). The tests for section 523(a)(4) are considered in *Quaif v. Johnson*, 4

an opportunity to defend herself and that the matters were actually litigated consistent with the necessary standards of collateral estoppel.<sup>5</sup> Debtor has not shown sufficient irregularities in the record to refute preclusive effect herein. If she believed her *pro se* status had a negative effect on her representation, she should have pursued those issues via appeal and/or a motion for reconsideration. Although this Court does carefully review matters of procedural fairness in connection with rulings for which a party seeks preclusive effect, this Court does not serve as an appellate court. Third, the findings of the district court at issue herein appear to have been critical to and a necessary part of its awards to Plaintiff. Finally, the burden of persuasion is the same in both actions.

Based on the above analysis, it appears to the Court that sufficient grounds have been demonstrated by Plaintiff to support the application of preclusive effect to the awards of the district court under collateral estoppel. The Court further observes that although the district court did not apportion the damage awards based on the various legal grounds cited in its orders, the same set of facts can support multiple grounds for recovery if they are not inconsistent. *Lusk v. Williams (In re Williams)*, 282 B.R. 267, 275-76, 278 (Bankr. N.D.Ga. 2002). If the basis of the judgment based upon the conduct of a debtor falls within the discharge exceptions of Section 523, the

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F.3d 950 (11<sup>th</sup> Cir. 1993). See also *Atlanta Market Ctr. Mgmt. Co. v. McLane*, 269 Ga. 604, 503 S.E.2d 278 (1998).

<sup>5</sup> The federal court entered its ruling on the basis of Georgia state law. Although this Court uses the federal collateral estoppel test since the awards were entered by a federal court, this test appears substantially similar to the test under Georgia law. See e.g. *League v. Graham (In re Graham)*, 191 B.R. 489, 493-5 (Bankr. N.D.Ga. 1996). Under Georgia law, collateral estoppel is appropriate if the following are shown: (1) identity of parties; (2) identity of issues; (3) actual and final litigation of the issue(s); (4) essentiality of the prior adjudication; and (5) full and fair opportunity to litigate the issue(s). See *Lusk v. Williams (In re Williams)*, 282 B.R. 267, 272 (Bankr. N.D.Ga. 2002) (cites omitted).

presence of other viable theories of relief arising from said conduct does not render issue preclusion inapplicable. For, as seen in this case, each of the several grounds of recovery, including fraud, supports the entire award. 282 B.R. at 276. Hence, the question of apportionment of damages in this case does not prevent the application of collateral estoppel based upon this Court's review of the orders presented.

For the above reasons, the Court concludes, based upon the record presented, that the awards of the district court discussed herein are entitled to preclusive effect under the doctrine of collateral estoppel, and that Plaintiff is entitled to summary judgment against Debtor on grounds of nondischargeability in regard to said awards.

Accordingly, it is

**ORDERED** that Plaintiff's motion for summary judgment as amended be, and hereby is, **granted**, and it is

**FURTHER ORDERED** that the awards entered by the United States District Court for the Northern District of Georgia, as set forth in that federal action styled *JPI Partners, LLC v. Korie Dixon*, Civil Action No. 1:04-CV-0826-JOF, by orders entered on July 26, 2005 and May 9, 2006, respectively, wherein Plaintiff was awarded the sum of \$47,790.00 on grounds of breach of "fiduciary duty, fraud and misrepresentation, negligent misrepresentation, conspiracy, conversion, [and] breach of contract," and thereafter for \$41,624.51 in litigation costs, for a total amount of \$89,414.51, be and hereby are, **excepted** from discharge and same are nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and (a)(4).

A separate judgment is entered contemporaneously herewith.

The Clerk is directed to serve a copy of this Order upon Plaintiff's counsel, Debtor's

counsel, the Chapter 7 Trustee, and the U.S. Trustee.

**IT IS SO ORDERED.**

At Atlanta, Georgia this 25<sup>T</sup> day of September, 2006.



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ROBERT E. BRIZENDINE  
UNITED STATES BANKRUPTCY JUDGE