

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

IN RE:	:	
	:	CASE NO. G10-23176-REB
LEE HARRIS-ONAXIS	:	
and SUZANNE HARRIS-ONAXIS,	:	
	:	
Debtors.	:	
	:	
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ANNE WILSON PARHAM	:	ADVERSARY PROCEEDING
and LAWRENCE NEIL PARHAM,	:	NO. 10-2169
	:	
Plaintiffs,	:	
	:	
v.	:	CHAPTER 7
	:	
SUZANNE HARRIS-ONAXIS	:	
and LEE HARRIS-ONAXIS,	:	
	:	
Defendants.	:	JUDGE BRIZENDINE
	:	

ORDER DENYING DEFENDANT-DEBTORS' MOTION FOR RECONSIDERATION

Before the Court is the motion of Defendant-Debtors named above for reconsideration of this Court's Order entered on December 8, 2011, in which the Court granted summary judgment in favor of Plaintiffs and against Debtors under 11 U.S.C. § 523(a)(2). The matter came on for hearing, and the Court allowed Debtors additional time to file a brief in support of their motion, which they did on January 17, 2012. Based upon a thorough and careful review of Debtors' motion and argument in support, and the authority cited therein, the Court will deny the motion.

In their motion, Debtors offer several legal grounds for setting aside this Court's Order as follows. They contend that Plaintiffs' failed to specify in their motion for summary judgment

which particular subsection of Section 523(a) upon which they relied in seeking relief, and, therefore, unduly forced the Court to speculate with respect to same. As stated in this Court's Order, however, among the counts originally presented by Plaintiffs in their amended complaint, the Court confined its ruling to Section 523(a)(2) based on statements contained in Plaintiffs' brief in opposition to Debtors' renewed motion to dismiss. *See* Docket Entry No. 12.

In addition, Debtors correctly observe that under the Local Rules of this Court, a party seeking summary judgment is directed to file a statement of material facts to which that party contends there is no genuine issue for trial. *See* Local Rule BLR 7056-1, N.D. Georgia. Plaintiffs did not file a statement of undisputed facts in this case, although the Court acknowledges that such a statement would have assisted the Court. Plaintiffs did, however, clearly refer to the ruling of an Alabama state court, whose findings of fact this Court deemed to be binding under the doctrine of collateral estoppel. The findings of the Alabama state court upon which Plaintiffs relied herein were adequate to place Debtors on notice regarding the asserted factual grounds for Plaintiffs' motion herein as the issues determined by the state court were based on these findings. As such, the Court concludes that Plaintiffs sufficiently complied with the requirements of this rule.

Debtors challenge the state court's acceptance of the allegations set forth in count III of the state court complaint based on their apparent default. Yet, this Court applied the federal legal standard with reference to state law in examining the circumstances of the entry of the state court's order, and in determining that same were entitled to preclusive effect in this Court. Further, the Court concluded that same were sufficient as findings of fact to establish the requisite elements to except any damages awarded as a result of the state court litigation from discharge herein as provided under Section 523(a)(2).

Debtors are also correct in their contention that fraud does not lie for the mere failure to perform promises, which may constitute an action for breach of contract but is not ordinarily excepted from discharge. As this Court concluded in its Order, however, the allegations in question state more. The record shows that the statements upon which Plaintiffs were found to rely were intentionally made by Debtors with knowledge of their falsity in order to procure Plaintiffs' reliance, that did in fact occur and led to their injury, thus satisfying the test for nondischargeability set forth in Section 523(a)(2).

As Debtors further contend, this Court cannot enter summary judgment on allegations pertaining to a debtor's state of mind because issues of credibility must be determined following an opportunity for the court to observe the demeanor of same as he or she testifies in open court. See *Sims v. Morris (In re Morris)*, 185 B.R. 939 (Bankr. N.D.Ga. 1994). In the case at hand, however, this Court concluded that the Alabama state court entered its findings on issues of fact as contained within the allegation of fraud in the circumstances there presented. As mentioned, in its Order this Court engaged in a thorough analysis of applicable federal and state law to determine the preclusive effect to be given a prior state court judgment. Findings of fact upon which such a judgment are based cannot be relitigated in this Court if the requirements for collateral estoppel are satisfied as in this case.¹

In *Morris*, this Court concluded that the state court had not made a specific finding regarding a debtor's subjective intent. The situation in *Morris* is distinguishable from the present

¹ Collateral estoppel applies to findings on the issue of a debtor's intent, as a question of historical fact or as a mixed question of law and fact, such that same may be binding in subsequent litigation. See *HSSM # 7 Ltd. Partnership v. Bilzerian (In re Bilzerian)*, 100 F.3d 886, 892 (11th Cir. 1996); see also *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S.Ct. 1189, 1194, 25 L.Ed.2d 469 (1970); *accord RecoverEdge L.P. v. Pentecost*, 44 F.3d 1284, 1290, 1294-95 (5th Cir. 1995).

case, however, because the Alabama state court, in adopting the allegations of the complaint as true based on the circumstances of default, did make a finding on the issue of Debtors' intent in support of its ruling on liability. Hence, in granting Plaintiffs' motion for summary judgment, this Court did not engage in deciding such an issue of fact — it decided whether the state court's finding as to same was entitled to preclusive effect herein and if so, whether this finding along with others made by the state court were sufficient herein to satisfy the federal bankruptcy standard for nondischargeability under Section 523(a)(2).

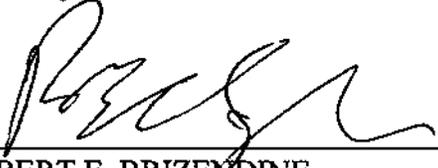
Based upon the foregoing discussion and having fully addressed Debtors' arguments as presented herein, it is

ORDERED that Defendant-Debtors' motion for reconsideration of this Court's Order as entered on December 8, 2011 granting summary judgment in favor of Plaintiffs' on count I of their amended complaint be, and the same hereby is, **denied**.

The Clerk is directed to serve a copy of this Order upon counsel for Defendant-Debtors, counsel for Plaintiffs, the Chapter 7 Trustee, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 23rd day of February, 2012.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE