

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

IN RE: : CASE NO. G05-23377-REB

CHRISTINE RENEE LAUDERMILL,

Debtor.

AEGIS MORTGAGE CORPORATION
d/b/a NEW AMERICA FINANCIAL.

Plaintiff,

v.

CHRISTINE RENEE LAUDERMILL.

Defendant.

ADVERSARY PROCEEDING
NO. 06-3003

CHAPTER 7

JUDGE BRIZENDINE

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Before the Court is the motion of Plaintiff Aegis Mortgage Corporation d/b/a New America Financial for summary judgment on its complaint, which seeks a determination that a certain judgment entered in favor of Plaintiff and against Defendant-Debtor should be excepted from discharge in accordance with 11 U.S.C. § 523(a)(2)(A) & (B) and further, that Debtor's discharge should be denied under 11 U.S.C. § 727(a)(3) & (7). Judgment was entered in the amount of \$306,854.87 against Debtor on a joint and several basis following a bench trial by the Superior Court of Fulton County, Georgia on Plaintiff's cross claim as a third-party plaintiff on grounds of a fraudulent mortgage scheme.¹ In its brief in support of its motion for summary judgment,

¹ The Superior Court entered this final judgment on October 21, 2005 in an action styled *William N. McGill v. Phillip E. Hill, Sr., Christine Laudermill, et. al*, Civil Action File No. 2002 CV500-48.

Plaintiff claims with respect to the issue of dischargeability under Section 523(a)(2)(A), that the findings of the state court supporting the judgment should be given preclusive effect herein under the doctrine of collateral estoppel. In her response, Debtor argues through counsel that based on the record presented including the state court judgment, Plaintiff has failed to demonstrate the absence of a fact issue regarding Debtor's alleged fraudulent intent notwithstanding that Debtor may have derived a benefit from the transaction(s) in question. Based on the following reasoning, this Court concludes that Plaintiff's motion should be granted to the extent it seeks a determination that the obligation owed to Plaintiff by Debtor as a result of the state court judgment for fraud is nondischargeable.²

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 (11th 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 (11th Cir. 1997); *Raney v. Vinson Guard Serv., Inc.*, 120 F.3d 1192, 1196 (11th Cir. 1997).³

² The complaint herein also asserted a claim for denial of discharge under 11 U.S.C. § 727(a)(3) & (7) and same will be set for trial by separate notice.

³ 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

As mentioned above, Plaintiff argues that the findings of the state 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 (11th 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). Under Georgia law, collateral estoppel is appropriate if the following elements are shown: (1) identity of the parties; (2) identity of the issues; (3) actual and final litigation of the issue(s); (4) the essentiality of the prior adjudication; and (5) a 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).

Upon review of the state court judgment, and after considering Plaintiff’s arguments and Debtor’s response, the Court concludes that each element has been satisfied.⁴ There is no dispute that the parties are the same in both actions. In addition, the adjudication by the state court on the

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 (11th Cir. 1993); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 (11th Cir. 1993).

⁴ During a hearing held before this Court on December 5, 2006, counsel for Debtor acknowledged that the state court judge would have found the necessary five elements for fraud under state law to support his judgment in regard thereto. Counsel disputes the efficacy of the judgment for purposes of any claimed preclusive effect herein, however, on grounds that it was not entered in accord with procedural fairness as Debtor did not have a reasonable opportunity to participate at the hearing, and since its entry was null and void as same occurred after the filing of this bankruptcy case.

issues presented were critical to and a necessary part of its findings in support of its judgment as awarded to Plaintiff. Moreover, the issues considered in the state court trial are identical to the requirements under Section 523(a)(2)(A).⁵ The Court carefully reviewed the transcripts from the state court bench trial as well as the exhibits tendered therein. Although the state court judge initially expressed doubt about Debtor's intent concerning the transaction in question, based on the evidence presented he ultimately concluded that Debtor was sufficiently linked to the matter, characterized as a fraudulent conspiracy, and was therefore liable by reason of her participation as a joint tortfeasor. *See* Transcript of Sept. 14, 2005, Vol. II, pp. 338-50. As specifically stated in the final judgment of the state court, damages were awarded against Debtor "resulting from fraud."⁶

Regarding the final two factors, the Court carefully reviews matters of procedural fairness in connection with rulings for which a party seeks preclusive effect. Debtor argues that she was "wrongfully deprived of counsel" due to her preceding period of imprisonment and had to appear *pro se*. Although the Court is mindful of her alleged difficulty in retaining counsel following such imprisonment and her resulting "impoverished state," this circumstance does not serve as an adequate basis for denying preclusive effect to the findings of the state court. Further, Debtor did appear in that litigation but chose not to be present for the entire proceeding. Based on its review of the record, the Court finds that Debtor was provided "a full and fair opportunity" to defend

⁵ The standards for section 523(a)(2)(A) are addressed in *Schweig v. Hunter (In re Hunter)*, 780 F.2d 1577, 1579 (11th Cir. 1986), *abrogated on other grounds, Grogan v. Garner*, 498 U.S. at 291. *See also City Bank & Trust Co. v. Vann (In re Vann)*, 67 F.3d 277 (11th Cir. 1995); *Lakeside Inv. Group, Inc. v. Allen*, 253 Ga.App. 448, 450, 559 S.E.2d 491 (2002).

⁶ In addition, the burden of persuasion is the same in both the state court litigation and the dischargeability action herein. Contrary to Debtor's contention, preponderance of the evidence is the standard used in dischargeability actions. *See Grogan v. Garner*, 498 U.S. 279.

herself in accordance with due process, and that the findings in issue were actually litigated in the state court consistent with the necessary standards for applying collateral estoppel effect thereto.

Finally, Debtor argues that the state court judgment is null and void as same was entered subsequent to the filing of the above bankruptcy case on October 14, 2005. The record reflects that while the award was entered on October 21, 2005, it bears a signature date by the judge of September 15, 2005. As provided in Section 362(a)(1), a bankruptcy petition "operates as a stay, applicable to all entities, of— (1) the commencement or continuation...of a judicial...action or proceeding against the debtor...." 11 U.S.C. § 362(a)(1). Post-petition entry of the judgment is arguably a continuation of a judicial proceeding within the meaning of this provision in violation of the automatic stay. Upon closer review, however, this Court is satisfied that entry of the judgment was a ministerial, routine act by the state court clerk and as such is exempted from the stay. In entering the judgment in question there was nothing left to the exercise of the clerk's discretion or judgment. *See Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 973-5 (1st Cir. 1997).

Consistent with the above analysis and reasoning, the Court concludes based upon the record presented that the findings in the judgment of the state court discussed herein are entitled to preclusive effect under collateral estoppel, and that Plaintiff is entitled to summary judgment against Debtor on grounds of nondischargeability in regard to said judgment.

Accordingly, it is

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

FURTHER ORDERED that the judgment of the Superior Court of Fulton County,

Georgia as set forth in the state court action styled *William N. McGill v. Phillip E. Hill, Sr., Christine Laudermill, et. al*, Civil Action File No. 2002 CV500-48 and as entered jointly and severally against Defendant-Debtor in the sum of \$259,024.00 as actual damages on grounds of fraud and in the sum of \$47,830.87.00 for attorney's fees and expenses, producing a total award of \$306,854.87, be, and same hereby is, **excepted** from discharge and same is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

A separate judgment is entered contemporaneously herewith.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff, counsel for Defendant-Debtor, the Chapter 7 Trustee, and the U.S. Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 8th day of March, 2007.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE