



IT IS ORDERED as set forth below:

Date: April 10, 2016

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

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

IN RE:

JAMAL LAFITTE LEWIS,

Debtor.

HIT-EM-HARD CORPORATION, a
New Jersey Corporation,

Plaintiff,

v.

JAMAL LAFITTE LEWIS,

Defendant.

CASE NO. 12-58938-PWB

CHAPTER 7

ADVERSARY PROCEEDING
NO. 12-5577-PWB

ORDER AND NOTICE

Hit-Em-Hard Corporation (the “Plaintiff”) asserts that its prepetition judgment in the amount of \$3,855,266.08 is excepted from discharge pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), (a)(6), and (a)(19) and that the Debtor’s discharge should be denied pursuant to 11 U.S.C. §§ 727(a)(2)(A), (a)(3), and (a)(5). The Plaintiff seeks summary judgment on its nondischargeability claims on the theory that the findings and conclusions in its prepetition judgment are entitled to preclusive effect. For the reasons stated herein, the motion for summary judgment is denied.

The circumstances giving rise to the Plaintiff’s complaint arise from a failed business venture between the Plaintiff and an entity named All-American Xpress, Inc. (“AAXI”). The Debtor was the sole owner and chief executive officer of AAXI. On March 8, 2010, the Plaintiff brought suit against the Debtor, William Perry, and AAXI in the Superior Court of Fulton County, Georgia, alleging claims for breach of contract, reformation of contract, request for accounting, securities fraud, attorney’s fees, and punitive damages.

Default judgment was entered against all of the Defendants as to liability only. [Doc. 12-6, Exh. E, “Default Judgment”]. After a hearing on damages at which none of the Defendants appeared, the Superior Court entered a final judgment against all of the Defendants in the amount of \$3,855,266.08, consisting of \$1,442,070 in liquidated damages, \$388,844.86 in prejudgment interest, \$24,351.22 in attorney’s fees,

\$2,000,000 in punitive damages, and post-judgment interest of \$246.93 per day from the date of entry of the default judgment. [Doc. 12-6, Exh. F, “Final Judgment”].

Issue preclusion prevents the relitigation of issues already litigated and determined by a valid and final judgment in another court. The doctrine of issue preclusion applies in a discharge exception proceeding in bankruptcy court. *See Grogan v. Garner*, 498 U.S. 279, 284 n. 11, 111 S.Ct. 654, 658 n. 11 (1991); *Hoskins v. Yanks (In re Yanks)*, 931 F.2d 42, 43 n. 1 (11th Cir.1991). When determining the preclusive effect of a state court judgment in dischargeability litigation, it is unsettled whether a bankruptcy court applies state or federal issue preclusion law. *See Colorado West Trans. Co., Inc. v. McMahon (In re McMahon)*, 356 B.R. 286 (Bankr. N.D. Ga. 2006), *rev'd and remanded*, 380 B.R. 911 (N.D. Ga. 2007). The decision is not determinative in this case.

Noting that Georgia law does not set forth a “canonical list” of elements necessary for issue preclusion, the Eleventh Circuit has stated that a party seeking to assert issue preclusion under Georgia law must demonstrate that “(1) an identical issue, (2) between identical parties, (3) was actually litigated and (4) necessarily decided, (5) on the merits, (6) in a final judgment, (7) by a court of competent jurisdiction.” *Community State Bank v. Strong*, 651 F.3d 1241, 1264 (11th Cir. 2011) (citations omitted). Finally, a party must have had a full and fair opportunity to litigate the issues in the prior case. *Allen v. McCurry*, 449 U.S. 90, 95 (1980). These requirements are comparable to the federal rule of issue preclusion. *In re Bush*, 62 F.3d 1319, 1322 (11th Cir. 1995).

The Court concludes that the Superior Court’s Default Judgment and Final Judgment fail to satisfy the requirements of issue preclusion for purposes of the Plaintiff’s §§ 523(a)(2) and (a)(19) dischargeability claims.¹ Specifically, the Court concludes that (1) the elements of the securities fraud claim were not necessary to the Superior Court’s Default Judgment and Final Judgment; and (2) the basis for the award of punitive damages is too vague and ambiguous to require the Court to conclude otherwise.

A default is an admission of fact. But the principles of issue preclusion, especially in a bankruptcy context, insist upon certainty as to which unique facts a court relied upon in reaching its judgment. This is because “where two or more possible grounds would theoretically support a judgment, and both were actually litigated, and the court does not clearly state on which ground its judgment rests, the judgment cannot have issue preclusive effect as to either issue, for neither is definitely the ground of the judgment.” *Community State Bank v. Strong*, 651 F.3d 1241, 1268 (11th Cir. 2011).

The Plaintiff asserted claims for breach of contract, reformation of contract, accounting, securities fraud, attorney’s fees, and punitive damages.

The Plaintiff’s problem is that while the elements of a state law claim for securities fraud would satisfy the requirements for a § 523(a)(2) or a § 523(a)(19) claim, respectively, the existence of the other possible grounds creates ambiguity. The

¹ The state court complaint sets forth no facts with respect to a claim under §§ 523(a)(4) or (a)(6) and, therefore, the Court limits its discussion to §§ 523(a)(2) and (a)(19).

Superior Court's lack of specificity in its Default Judgment and Final Judgment prevents the Court from concluding that the elements of securities fraud were "necessary" to the judgment.

In order for issue preclusion to apply, "the issue must have been squarely addressed, or 'directly decided,' in the former suit before it can be held as conclusive for subsequent litigation." *Tootle v. Player*, 225 Ga. 431, 169 S.E.2d 340, 341 (1969) (quoting *Brown v. Brown*, 212 Ga. 202, 91 S.E.2d 495, 497 (1956)); Restatement of Judgments, § 27, cmt. *i* ("If a judgment of a court of first instance is based on determinations of two issues, either of which standing independently would be sufficient to support the result, the judgment is not conclusive with respect to either issue standing alone.").

Because the Plaintiff pled multiple theories of recovery and the Superior Court's Default Judgment and Final Judgment did not make specific findings of fact or conclusions of law, this Court cannot conclude that any particular issue, with respect to the elements necessary for a dischargeability ruling, was directly decided in the underlying litigation.

The Court reaches this conclusion notwithstanding the award of punitive damages.

Under Georgia law, a court may award punitive damages where the defendant's actions show "willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences." O.C.G.A. § 51-12-5.1(b).

The Final Judgment provides, “Finally, the Court, after hearing evidence of Defendants’ intentional torts and bad faith conduct, hereby awards Plaintiff punitive damages in the amount of \$2,000,000.00.” [Doc. 12-6, Exh. F, ¶ 9].

This statement, standing alone, is too vague and ambiguous to warrant a preclusive finding. There are no specific findings in the judgment to support the award and there is no transcript of the hearing or other evidence in the record to demonstrate the basis for the award. While Georgia law contemplates an award of punitive damages for “fraud,” it also permits punitive damages in circumstances that do not rise to that level that would render a debt nondischargeable. (“willful misconduct, malice, fraud, wantonness, oppression, *or* that entire want of care which would raise the presumption of conscious indifference to consequences”). Given this ambiguity, the Court cannot conclude that the Final Judgment is entitled to preclusive effect with respect to the §§ 523(a)(2) and (a)(19) claims. Based on the foregoing, it is

ORDERED that the motion for summary judgment is denied.

END OF ORDER

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