



IT IS ORDERED as set forth below:

Date: March 24, 2016

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

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

In re:	:	BANKRUPTCY CASE NO:
	:	
LOUIS JOSEPH RAGY,	:	15-61721-MGD
	:	
Debtor.	:	CHAPTER 7
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DIRECT HOME TEXTILES GROUP, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	ADVERSARY PROCEEDING NO:
	:	
LOUIS JOSEPH RAGY,	:	15-5357
	:	
Defendant.	:	
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ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Before the Court is Plaintiff Direct Home Textiles Group, LLC’s Motion for Summary Judgment. (Doc. 8) (“Motion for Summary Judgment”). Plaintiff commenced this adversary proceeding on September 8, 2015 by filing a complaint seeking exception to discharge of the debt owed to Plaintiff under § 523(a)(2)(A). Plaintiff filed this Motion for Summary Judgment

on the grounds that a prior state court judgment collaterally estops relitigation of the issues. On January 28, 2016, Plaintiff filed a Statement of Material Facts (“Statement”) pursuant to Local Rule 7056-1(a)(1) (Doc. 8-2). On February 1, 2016, Defendant filed a Response to Plaintiff’s Motion for Summary Judgment (Doc. 9) and a Response to the Statement (“Response”) (*Id.* at 9).

This adversary proceeding, brought under Bankruptcy Code Section 523, is a core proceeding arising under Title 11 in which the Court has authority to enter a final order. 28 U.S.C. § 157(b)(2)(I). The Court has jurisdiction under 28 U.S.C. §§ 157(a) and 1334(b) by general reference, LR 83.7A, NDGa, and venue is proper under 28 U.S.C. § 1409(a).

I. Background

The following material facts are not in dispute. Direct Home Textiles Group, LLC (“Movant”) filed a civil action in the State Court of DeKalb County. (Statement ¶ 1; Response ¶ 1). The action named Louis Joseph Ragy (“Respondent”) and Respondent’s closely-held company as defendants. (Statement ¶ 3; Response ¶ 3). Movant alleged the following charges in its state court complaint: fraud, breach of contract, theft by deception, theft by conversion, and alter ego. (Statement ¶ 2; Response ¶ 2). Neither Respondent nor Respondent’s company filed a defensive pleading in the state court action. (Statement ¶ 3; Response ¶ 3). A default judgment was entered against Respondent and Respondent’s company based on Movant’s complaint. (Statement ¶¶ 2, 3; Response ¶¶ 2, 3). The default judgment against Respondent awarded Movant \$29,131.70. (Statement ¶ 4; Response ¶ 4). Respondent has never made any payments on the default judgment. (Statement ¶ 5; Response ¶ 5).

Movant claims that the state court found Respondent liable for all of the charges listed in the state court complaint. (Statement ¶ 2). Respondent denies that he was found liable for any charges and only admits that a default judgment was entered based on Movant's complaint. (Response ¶ 2).

II. Legal Standards

A. The Summary Judgment Standard

Under Rule 56 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, a grant of summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In determining materiality, "the substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The movant "always bears the initial responsibility of . . . identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotation marks omitted); *accord Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009). The court must "examine the record to determine whether the movant's motion and supporting pleadings provide a sufficient legal basis which would entitle the movant to judgment." *Matter of Graham*, 191 B.R. 489, 492 (Bankr. N.D. Ga. 1996) (citations omitted).

Once the movant's burden is met, "the non-moving party cannot merely rely on allegations or denials in its own pleadings." *In re Lowery*, 440 B.R. 914, 921 (Bankr. N.D. Ga. 2010); Fed. R. Civ. P. 56(e). "[T]he non-moving party must present specific facts that demonstrate there is a genuine dispute over material facts." *In re Lowery*, 440 B.R. at 921. "The court must resolve a motion for summary judgment by viewing all evidence and drawing all reasonable inferences in the light most favorable to the non-moving party." *In re Houser*, 458 B.R. 771, 775–76 (Bankr. N.D. Ga. 2011); *In re Lowery*, 440 B.R. at 921; *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Rosen v. Biscayne Yacht & Country Club, Inc.*, 766 F.2d 482, 484 (11th Cir. 1985).

B. Collateral Estoppel Standard

Collateral Estoppel "prohibits relitigation of issues already adjudicated by a valid and final judgment of another court." *Sterling Factors, Inc. v. Whelan*, 245 B.R. 698, 704 (N.D. Ga. 2000). "It is well-established that the doctrine of collateral estoppel applies in a discharge exception proceeding in bankruptcy court." *In re Bilzerian*, 100 F.3d 886, 892 (11th Cir. 1996); *Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991). In the Eleventh Circuit, "a default judgment issued by a state court may have collateral estoppel effect in a bankruptcy proceeding to prevent relitigation of issues underlying the determination of dischargeability." *Sterling Factors, Inc.*, 245 B.R. at 704; *In re Bush*, 62 F.3d 1319, 1322–25 (11th Cir.1995). "Georgia law recognizes a default judgment as a judgment on the merits entitled to preclusive effect." *In re Murray*, 2009 WL 6527593, at *2 (Bankr. N.D. Ga. 2009) (citations omitted); *In re Rachel*, 527 B.R. 529, 537–38 (Bankr. N.D. Ga. 2015); *see also Matter of Graham*, 191 B.R. at 495 (finding that a default

judgment qualifies as a judgment on the merits for the purposes of Georgia collateral estoppel and that a judgment's "default" nature should pose no barrier to its preclusive impact").

In determining whether to apply collateral estoppel, "the bankruptcy court applies the law of the court issuing the prior judgment." *Sterling Factors, Inc.*, 245 B.R. at 704; *In re St. Laurent*, 991 F.2d 672, 675–76 (11th Cir. 1993); *In re Lowery*, 440 B.R. at 921. Under Georgia law, the following elements are required to establish a claim of collateral estoppel: "(1) identity of the parties is the same; (2) identity of the issues is the same; (3) actual and final litigation of the issue in question occurred; (4) the adjudication was essential to the earlier action; and (5) the parties had a full and fair opportunity to litigate the issues in question." *In re Lowery*, 440 B.R. at 922.

Although collateral estoppel may bar a bankruptcy court from reevaluating factual issues previously decided in state court, "the ultimate issue of dischargeability is a legal question to be addressed by the bankruptcy court in the exercise of its exclusive jurisdiction to determine dischargeability." *In re St. Laurent*, 991 F.2d at 676.

C. Exception to Discharge Standard under 11 U.S.C. 523(a)(2)(A)

Section 523(a)(2)(A) excepts from discharge "any debt for money . . . to the extent obtained by false pretenses, a false representation, or actual fraud." 11 U.S.C. 523(a)(2)(A). The requisite elements of a § 523(a)(2)(A) claim are the following traditional elements of common law fraud: "(1) the debtor made a false representation to deceive the creditor, (2) the creditor relied on the misrepresentation, (3) the reliance was justified, and (4) the creditor sustained a loss as a result of the misrepresentation." *In re Bilzerian*, 153 F.3d at 1281; *In re Johannessen*, 76

F.3d 347, 350 (11th Cir. 1996); *Grogan*, 498 U.S. at 287. A creditor must prove these elements by a preponderance of the evidence. *Grogan*, 498 U.S. at 291.

III. Discussion

Movant bases its Motion for Summary Judgment on a default judgment entered by the State Court of DeKalb County against Respondent. Movant relies on collateral estoppel of the default judgment to satisfy its burden for summary judgment. As such, Movant must first show that factual issues from the default judgment underlying a determination of fraud are entitled to collateral estoppel effect under Georgia law. Movant must then show that the issues granted collateral estoppel effect satisfy the standard of § 523(a)(2)(A).

This Court must first determine whether collateral estoppel precludes it from reconsidering any issues of fact essential to determining dischargeability under § 523(a)(2)(A). In its state court complaint, Movant alleged the following counts against Respondent: fraud, breach of contract, theft by deception, theft by conversion, and alter ego. (Statement ¶ 2). Courts within the Northern District of Georgia have found “the requirements for a fraud claim under Georgia law sufficiently identical to the elements required for a showing of fraud pursuant to 11 U.S.C. § 523(a)(2)(A) to meet the [identity of the issues] prong of the collateral estoppel test.” *Sterling Factors, Inc.*, 245 B.R. at 705–06; *In re Lowery*, 440 B.R. at 924. However, Movant has not identified any facts or evidence in the record to establish that a finding of fraud was essential to the default judgment.

Movant did not provide the Court with a certified copy of the default judgment, and Movant’s stipulations about the default judgment do not disclose the controlling facts or issues decided by the state court regarding fraud or any other issue from Movant’s state court

complaint. The Court may not grant preclusive effect to any factual issues underlying Respondent's liability for fraud because the evidence is not sufficient to determine the grounds on which the state court based the default judgment. *See In re Morris*, 185 B.R. 939, 944 (Bankr. N.D. Ga. 1994) (finding that the plaintiff had not established the requisite elements of collateral estoppel because the record was "not sufficient to permit an accurate and complete determination of the underlying grounds or basis for the state court's ruling as to Defendant's liability").

Moreover, Movant has not provided facts or evidence to show that Respondent had adequate notice of the state court action in order to satisfy the full and fair opportunity to litigate prong of collateral estoppel. *See In re Williams*, 282 B.R. 267, 277 (Bankr. N.D. Ga. 2002) ("[T]he key to full and fair opportunity analysis is determining whether the party had adequate notice of the issue and was afforded the opportunity to participate in its determination.").

IV. Conclusion

For the foregoing reasons, the Court concludes that Movant has failed to meet its burden for summary judgment. Accordingly, it is

ORDERED that Movant's Motion for Summary Judgment is **DENIED**.

It is **FURTHER ORDERED** that the parties are **DIRECTED** to submit a consolidated pretrial order under BLR 7016-2 no later than thirty days after the date of entry of this Order.

The Clerk is directed to serve a copy of this Order on Plaintiff, Defendant, and their respective counsel.

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