

DOCKET NUMBER: 96-13068

ADV. NUMBER: 96-1282

JUDGE: M. A. Mahoney

PARTIES: James A. Johnson, Jane S. Johnson, Bankruptcy Recovery Corporation as assignee of Williamson Home & Auto Supply, Inc.

CHAPTER: 7

ATTORNEYS:

DATE: 5/19/97

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

James A. Johnson,
Jane S. Johnson

Case No. 96-13068

Debtors.

Bankruptcy Recovery Corporation
as assignee of
Williamson Home & Auto Supply, Inc.,

Plaintiff,

vs.

Adv. No. 96-1282

James A. Johnson,
Jane S. Johnson

Defendants.

ORDER AND JUDGMENT

This matter is before the Court on the complaint of Bankruptcy Recovery Corporation as assignee of Williamson Home & Auto Supply, Inc. to determine the dischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(4). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court concludes that \$45,000 of the debt that James A. Johnson owes to Bankruptcy Recovery Corporation is dischargeable and \$51,011.04 is non-dischargeable.

FACTS

The debtors, James and Jane Johnson, operated an insurance business, The Village Agency. Williamson Home & Auto Supply, Inc. (Williamson) purchased insurance from James Johnson. Thereafter, Williamson suspected that its insurance premiums had been misappropriated. Williamson sued the debtors and several other defendants in the Circuit Court of Monroe County,

Alabama. A jury trial was held. On August 16, 1996, the jury returned a verdict against James Johnson in the sum of \$96,011.04. The verdict reads as follows:

VERDICT

We the jury find with regard to the claims of Williamson Home And Auto Supply, Inc. against James Arthur Johnson on the following causes action regarding Lincoln Insurance Company: (choose one)

in favor of James Arthur Johnson and against Williamson Home And Auto Supply, Inc. on all Lincoln claims.

in favor of Williamson Home And Auto Supply, Inc. and against James Arthur Johnson on the following claims:

(choose one or both)

Breach of Contract .

Fraud,

and assess compensatory damages of \$ **45,000** Dollars

We the Jury find that punitive damages (choose one)

Should not be awarded for fraud regarding the Lincoln Insurance Company claims.

Should be awarded for fraud regarding the Lincoln Insurance Company claims, and assess punitive damages in the amount of \$ **45,000** Dollars

We the jury find with regard to the claims of Williams Home And Auto Supply, Inc. against James Arthur Johnson on the following causes action regarding Allstate Insurance Company: (choose one)

in favor of James Arthur Johnson and against Williamson Home And Auto Supply, Inc. on all Allstate claims.

in favor of Williamson Home And Auto Supply, Inc. and against James Arthur Johnson on the following claims:

(choose one or both)

Breach of Contract .

Fraud,

and assess compensatory damages of \$**6,011.04** Dollars

We the Jury find that punitive damages (choose one)

Should not be awarded for fraud regarding the Allstate Insurance Company claims.

Should be awarded for fraud regarding the Allstate Insurance Company claims, and assess punitive damages in the amount of \$ _____ Dollars

This Court was not provided with the actual judgment entered.

On August 23, 1996, the debtors filed a chapter 7 bankruptcy petition. The debtors' schedules list Williamson as a creditor. Bankruptcy Recovery Corporation (BRC) as assignee of Williamson filed a complaint initiating this adversary proceeding. BRC contends that the entire debt of \$96,011.04 is non-dischargeable. Because of the state court trial, BRC is requesting a judgment

on the bankruptcy complaint without a trial on the merits. BRC is also requesting costs of suit and payment of attorney's fees.

It is BRC's position that the state court judgment establishes fraud sufficient to warrant non-dischargeability of the debt pursuant to § 523(a)(2)(A) and § 523(a)(4). In effect, BRC wishes to rely on the effect of collateral estoppel of the state court proceeding to prove the requisites of its non-dischargeability action. The parties agree that the entire debt is dischargeable as to Jane Johnson because she was not found liable in the state court proceeding. The debtors do not dispute that \$51,011.04 of the debt is non-dischargeable as to James Johnson. However, debtors' counsel argues that the remainder of the debt, \$45,000, was not necessarily awarded because of James Johnson's fraudulent acts. Counsel suggests that the \$45,000 could represent damages for breach of contract.

LAW

A litigant in a bankruptcy dischargeability proceeding will be collaterally estopped from relitigating issues previously decided in a related state court proceeding. The law of the individual state must be applied to determine the state court judgment's preclusive effect. *In re St. Laurent*, 991 F.2d 672, 676 (11th Cir. 1993). The judgment at issue was rendered in state court and the parties are Alabama citizens, so Alabama law defines collateral estoppel in this case.

The elements of collateral estoppel were set out by the Alabama Supreme Court in *Wheeler v. First Ala. Bank of Birmingham*, 364 So.2d 1190, 1199 (Ala. 1978). Collateral estoppel requires (1) that the issue be identical to one litigated in the prior suit; (2) that the issue have been actually litigated in the prior suit; (3) that the resolution of that issue have been necessary to the prior judgment; and (4) that the parties have been the same in both suits. Where these elements are

present, the parties are barred from relitigating issues actually litigated in a prior suit. The plaintiff, BRC, has the burden of establishing by a preponderance of the evidence that all of the elements are present. *Grogan v. Garner*, 498 U.S. 279 (1991).

Both the state court case and the present adversary proceeding raise issues concerning James Johnson's fraudulent acts. Element 1 is present. The state court case was heard and decided in an adversarial context. The judgment was based on a jury verdict and was therefore actually litigated. Element 2 is present. In order for the state court judgment to bar subsequent litigation, the parties must be substantially the same in both cases. This means that the parties in both cases must be either the same, or in privity of estate, blood, or law with the original parties. *Clark v. Whitfield*, 213 Ala. 441, 444, 105 So. 200, 203 (1925). Williamson and the Johnsons were parties in the state court case; Williamsons' assignee, BRC, and the Johnsons are parties in the current bankruptcy court adversary proceeding. Element 4 is present.

The third element to the application of collateral estoppel requires that the resolution of the disputed issue have been necessary to the prior judgment. The issue presented by this case is whether the award of \$45,000 relates to the claim of breach of contract, the claim of fraud, or both claims. The relevant part of the verdict shows the following:

We the jury find with regard to the claims of Williamson Home And Auto Supply, Inc. against James Arthur Johnson on the following causes action regarding Lincoln Insurance Company: (choose one)
() in favor of James Arthur Johnson and against Williamson Home And Auto Supply, Inc. on all Lincoln claims.
(√) in favor of Williamson Home And Auto Supply, Inc. and against James Arthur Johnson on the following claims:
(choose one or both)
 (√) Breach of Contract .
 (√) Fraud,
 and assess compensatory damages of \$ **45,000** Dollars

The Court finds that the compensatory damage award of \$45,000 relates to the jury's finding of both breach of contract and fraud. However, in the absence of any breakdown, it cannot

be determined what percentage, if any, was awarded for fraud. The award could possibly represent \$44,000 for breach of contract and \$1,000 for fraud. Only that amount of the award which is attributable to fraud is non-dischargeable. The Court cannot find any amount of the \$45,000 non-dischargeable without a clear indication as to what percentage of the \$45,000 was awarded based on James Johnson's fraudulent actions. BRC did not establish element 3. Therefore, the \$45,000 state court judgment award is dischargeable.

As to the debt that is non-dischargeable, BRC's requested costs and attorney's fees. That issue should be addressed in state court as to the state court judgment. There is no statutory authority for awarding attorney's fees to a creditor in a dischargeability case under 11 U.S.C. § 523. No other authority was cited. BRC filed a motion for default judgment. Because an appearance was registered for the debtors, the motion for default judgment is denied.

Therefore, it is ORDERED and ADJUDGED that \$45,000 of the debt owing by James A. Johnson to Bankruptcy Recovery Corporation as assignee of Williamson Home & Auto Supply, Inc. is DISCHARGEABLE, and \$51,011.04 is non-dischargeable by James A. Johnson through his bankruptcy case.

Dated: May 19, 1997

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE