

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA**

In Re

GLEN PAUL WILCOXSON,

Case No. 97-14519

Debtor.

Chapter 7

GLEN PAUL WILCOXSON,

Plaintiff,

v.

ADV. PROC. NO. 98-1123

UNITED STATES OF AMERICA,

Defendant.

ORDER

Michael B. Smith, Counsel for Debtor
Wendy Vann, Counsel for United States of America

This case is before the Court on cross-motions for summary judgment. 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 matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The debtor, Glen Paul Wilcoxson (hereinafter “Wilcoxson”), filed his Chapter 7 bankruptcy petition on December 16, 1997. The debtor, who is plaintiff in the instant adversary proceeding, is a medical doctor. This adversary proceeding was filed to determine the dischargeability of the debtor’s tax liabilities for the tax years 1984 through 1992. On December 30, 1998, the Court granted the debtor’s motion for summary judgment only as to the issue of the dischargeability of fraud penalties, an issue which the United States conceded.

On May 1, 2000, the Court previously granted in part the cross-motion of the United States for summary judgment and determined that the debtor’s federal income tax liabilities for taxable years 1984, 1985, and 1987 and 1988 were excepted from discharge. The Court further ruled, with the agreement of the United States, that the debtor’s tax liabilities for the tax year 1992 were not

excepted from discharge. The dischargeability for the taxable years 1986, 1989, 1990 and 1991 remains in dispute.

Following its ruling granting in part on the cross-motion of the United States for summary judgment for the years 1984, 1985, 1987 and 1988, the Court requested that the parties clarify the factual issues which remained in dispute and required the United States to show what facts it relied upon to show that the debtor attempted to evade or defeat his taxes with respect to the remaining tax liabilities. The Court further required that each of the parties review the transcript of the debtor's criminal trial and set forth which facts, if any, presented by the prosecution at the criminal trial are contested by the debtor.

In response, the United States filed a supplemental brief which set forth the factual matters which it contends have been proven in the criminal trial and has cited by reference to the trial transcript and other exhibits by their page number. The debtor, in his response to the cross-motion of the United States for summary judgment has failed to point to any facts presented by the prosecution in the debtor's trial which he specifically contests.

The Court has reviewed the evidence submitted in support of the cross-motion including the extensive trial transcripts, the jury charges, the indictment, the presentence report, the deposition of the debtor (taken in this adversary case) the judgment and verdict form and all of the documents attached to the cross-motion of the United States and to the briefs supplied by the United States in support of its motion for summary judgment. The Court has also reviewed the answers to interrogatories (which were supplemented at least seven times), document production requests, and response to admission requests.

In 1992, Wilcoxson was convicted of conspiracy, mail fraud, wire fraud, (tax evasion for the taxable years 1989 and 1988) and currency transaction reporting violations for activities that occurred between February of 1986 and October 30, 1991. He was also convicted of money

laundrying, but that conviction was overturned on appeal. The facts of this case are lengthy. In particular, the facts relating to the debtor's criminal scheme for which he was convicted are quite complex. The United States' memorandum in support of the cross-motion for summary judgment, filed with the Court on July 27, 1999 (hererinafter "July 27, 1999 memorandum") contains an extensive statement of facts that are cross referenced to exhibits which the United States relies on in support of its motion. These facts are not in dispute. Therefore, this Court will adopt by reference the statement of facts contained in the July 27, 1999 memorandum (docket entry # 56-2) and incorporate them herein.

The debtor has not submitted any evidence to controvert the facts of this case. In his memorandum in response to the cross-motion of the United States for summary judgment dated August 1, 2000 and filed with the Court on August 11, 2000 (dkt. entry #67), the debtor objected to "the admission into evidence of any prior acts, other than acts that occurred in 1990 and 1991. . ." and informally objected to the certain exhibits submitted by the United States "because they have no relevancy to 1990 and 1991 . . ." The debtor failed to supply the Court any authority to support his objection. After being given the opportunity in this case, debtor has not contested any facts that were presented in the criminal prosecution. This Court overrules such objection and finds that the exhibits are admissible and are therefore considered in support of the Unites States' cross-motion for summary judgment. Further, the Court finds that the exhibits are relevant to support the United States' position that the debtor was involved over a period of years in a concealment scheme to evade or defeat the assessment and collection of taxes.

The party moving for summary judgment has the burden of demonstrating that no genuine issue as to any material fact exists, and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158 (1970). The non-moving party opposing the motion for summary judgment may not simply rest upon mere

allegations or denials of the pleadings; after the moving party has met its burden of coming forward with proof of the absence of any genuine issue of material fact, the non-moving party must make a sufficient showing to establish the existence of an essential element to that party's case, and on which that party will bear the burden of proof at trial. *Celotex Corp.*, 477 U.S. at 324.

In this adversary proceeding, the debtor seeks to determine the dischargeability of certain tax indebtedness for tax years 1986, 1989, 1990 and 1991. The United States seeks to except Wilcoxson's debt from discharge under 11.U.S.C.§523(a)(1)(c). In its cross-motion for summary judgment, the United States contends that all material issues of fact necessary to establish its entitlement to an exception from discharge have already been litigated between the parties to this case, were determined adversely to Wilcoxson, and pursuant to principals of collateral estoppel, may not be relitigated by Wilcoxson in the present case.

“Prior judgment between same parties on different causes of action is an estoppel as to those matters in issue or points controverted, on determination of which finding or verdict was rendered.” Black's Law Dictionary, 261 (6th ed. 1990). The Supreme Court has stated that “once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.” *Montana v. United States*, 440 U.S. 147, 153; 99 S. Ct. 970, 973 (1979).

Issues of dischargeability are within the bankruptcy court's exclusive jurisdiction. However, the bankruptcy court may look to a prior non-bankruptcy court's “determination of subsidiary facts that were actually litigated and necessary to the decision” to bar relitigation of those same factual issues in a discharge exception proceeding. In other words, collateral estoppel principles apply to bankruptcy discharge exception proceedings. *In re Shuler*, 722 F.2d 1253, 1255 (5th Cir.), cert. denied, 469 U.S. 817, 105 S. Ct. 85, 83 L.Ed.2d 32 (1984); *Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991); *Brown v. Felsen*, 442 U.S. 127, 99 S.Ct. 2205, 60 L.Ed.2d 767

(1979); *In re Halpern*, 810 F.2d 1061 (11th Cir. 1987). Application of the doctrine of collateral estoppel in summary judgment proceedings merely denotes the court’s utilization of “issue preclusion to reach conclusions about facts that the court would then consider as ‘evidence of nondischargeability’ ” and is not to be viewed as a relinquishment of its exclusive responsibility over dischargeability matters. *Halpern*, 810 F.2d at 1064 (citation omitted).

In order for collateral estoppel to apply, each of the following three elements must be satisfied:

(1) The issue at stake in the bankruptcy proceeding must be identical to the one involved in the prior litigation;

(2) The issue must have been actually litigated in the prior litigation; and

(3) The determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in the earlier action.

Halpern, 810 F.2d at 1064; *In re Held*, 734 F.2d 628, 629 (11th Cir. 1984). The burden of proof is on the creditor to prove the necessary elements by a preponderance of the evidence. *Grogan*, 498 U.S. at 279.

On its cross-motion for summary judgment, the United States has provided the Court with the entire record of the criminal trial which took place in Lubbock, Texas in 1992. The Court has reviewed the transcript, indictment, the verdict, final judgment, jury charges and the presentence report as well as the other documents submitted in support of the cross-motion for summary judgment. The parties have provided legal briefs to the Court containing extensive citations of authority.

A debtor who has been criminally convicted for tax-related crimes may be collaterally estopped from discharging his debts in bankruptcy for the same years. See, e.g., *Blohm v. Commissioner of Internal Revenue*, 994 F.2d 1542 (11th Cir.) (*Alford* plea to tax evasion estops

taxpayer from denying civil tax fraud liability for the same year); *Tomlinson v. Lefkowitz*, 334 F.2d 262 (3rd Cir. 1964) (prior conviction for tax evasion foreclosed issue of fraudulent intent for years in question); *Dube v. United States*, 169 B.R. 886 (Bankr. N.D. Ill. 1994) (prior conviction for tax evasion by failure to file return and submission of fake Employee Withholding Allowance Certificates); *Goff v. Internal Revenue Service*, 180 B.R. 193 (Bankr. W.D. Tenn. 1995) (prior conviction for tax evasion by filing a false and fraudulent return).

In this case, the debtor was not only convicted of tax evasion for taxable years 1987 and 1988, but he was also convicted of mail fraud, wire fraud, currency transactions violations, and conspiracy activities which occurred between 1986 through October 1991. The issues in this adversary proceeding are identical to those determined in the criminal trial and conviction of Wilcoxson. An indictment sets forth the facts relied upon in bringing each count. The indictment contains the same matters in issue, both factual and legal, that are in this dischargeability case. These facts and legal conclusions were established under a higher standard of proof during Wilcoxson's criminal trial and he was found guilty. *See* Exhibits 5 and 6.¹

Wilcoxson was a party to the criminal proceeding and had the opportunity, while represented by legal counsel, to litigate the factual and legal issues in the case (as he does in the instant adversary proceeding). The factual and legal matters set forth in the indictment were determined in the criminal proceeding. "In criminal cases, of course, the government bears the burden of proving beyond a reasonable doubt each of the factual propositions embodied in each of the essential elements of the offense charged. A guilty verdict is fairly to be characterized as a finding that each of those factual propositions is true." *United States v. Hogue*, 812 F.2d 1568, 1578 (11th Cir. 1987). "[W]hat was decided by the criminal judgment must be determined by the trial judge . . . upon an

¹ All references to numbered exhibits relate to the United States' cross-motion for summary judgment.

examination of the record, including the pleadings, the evidence submitted, the instructions under which the jury arrived at its verdict, and any opinions of the courts.” *Emich Motors Corp. v. General Motors Corp.*, 340 U.S. 558, 569 (1951).

Each of the facts set forth above and in the indictment, was determined in the prior trial as is demonstrated by the indictment, judgment, trial testimony, jury charges, and verdict form. *See*, Exhibits 5-6, 10-13. In order for the jury to reach its findings on tax evasion, currency transaction reporting violations, wire fraud, conspiracy, and mail fraud, it necessarily had to determine the facts and legal issues set forth in the indictment on those counts in the Government’s favor. This is so because those facts for each count are such that all of said facts had to have been established in order to reach a guilty verdict under the statute. The record, instructions, and Wilcoxson’s guilt on the other counts reveal that the factfinders necessarily must have decided that all of the findings and legal issues set forth in the indictment for conspiracy were true. *See* Exhibits 5-6, 11-12. In order for Wilcoxson to be found guilty of the charges, the jury would have to find that he was a participant in an elaborate scheme to funnel money and that he had the necessary intent for each of the counts. Thus, the factual and legal issues for which Wilcoxson was found guilty must be taken as true. It would be inefficient to retry the evidence on these points.

A discharge under Section 727 of the Bankruptcy Code “does not discharge an individual debtor from any debt . . . for a tax . . . with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.” 11 U.S.C. § 523(a)(1)(C). The burden of establishing that a debtor’s tax liabilities are excepted from discharge rests with the United States. The United States must prove, by a preponderance of the evidence, that Wilcoxson willfully attempted to evade or defeat his outstanding federal income tax liabilities for the years 1986-1991. *Grogan v. Garner*, 498 U.S. 279, 291 (1991).

Attempts to evade or defeat taxes generally include any actions showing that the taxpayer

attempted to avoid assessment or collection of taxes despite knowing of the duty to do so and having the ability to do so. *See, e.g., In re Wright*, 191 B.R. 291 (S.D.N.Y. 1995), *In re Freidus*, 165 B.R. 537 (Bankr. E.D.N.Y. 1994); *In re Boch*, 154 B.R. 647 (Bankr. M.D. Pa. 1993). Courts have held that attempts to conceal income are attempts to evade or defeat taxes. *See e.g., In re Matter of Zuhone*, 88 F.3d 469 (7th Cir. 1996); *Dalton v. IRS*, 77 F.3d 1297 (10th Cir. 1996); *In re Matter of Bruner*, 55 F.3d 195 (5th Cir. 1995). Transferring of assets, dealing in cash transactions, and consistently filing late returns also signify an attempt to evade or defeat taxes. *See, e.g., Bruner*, 55 F.3d 195 (pattern of non-filing, non-payment, and concealing assets constitutes willful attempt to evade or defeat taxes); *Eyler v. Commissioner*, 760 F. 2d 1129 (11th Cir. 1985) (transfers made in the face of serious financial difficulties constitute badges of fraud and raise an inference of an intent to evade taxes); *In re Lewis*, 151 B.R. 140 (Bankr. W.D. Tenn. 1992) (tax liabilities were non-dischargeable despite good faith negotiations with IRS because debtor knew of their duty to file, yet engaged in pattern of concealing assets, making cash transactions, and shielding income); *Berzon v. United States*, 145 B.R. 247, 251 (Bankr. N.D. Ill. 1992) (badges of fraud, which provide circumstantial evidence of debtor's intent to evade tax obligations, include repeated filing of late returns).

This circuit previously determined that a failure to pay taxes, without more, is insufficient to prevent discharge in bankruptcy. *In re Haas*, 48 F.3d 1153, 1157 (11th Cir. 1995). In that case, the debtor properly filed tax returns and acknowledged that taxes were owed, but simply failed to pay them. In *Griffith v. United States*, 206 F.3d 1389 (11th Cir. 2000), the Court determined that attempts to evade or defeat either assessment or collection of taxes fall within the exception to discharge of 11 U.S.C. § 523 (A)(1)(C).

The Eleventh Circuit has provided further guidance on 11 U.S.C. § 523(a)(1)(C) in the case of *United States v. Fretz*, 244 F.3d 1323 (11th Cir. 2001). The Court in *Fretz* held that “Section 523

(a)(1)(C) does not contain an affirmative conduct requirement. Insofar as conduct is concerned, the plain statutory language simply requires that the debtor have “attempted in any manner to evade or defeat [a] tax.” *Id.* at 1329. The Court further stated that “as for the mental state requirement, a debtor’s attempt to avoid his tax liability is considered willful under § 523(a)(1)(C) if it is done voluntarily, consciously, or knowingly, and intentionally. Fraudulent intent is not required.” *Id.* at 1330 (citations omitted).

It is clear that the debtor had a pattern of concealment of assets and late filing of returns and this scheme continued through 1991. A pattern of activities designed to avoid collection or assessment of taxes during the years prior to and following the tax years in questions is relevant to a determination of whether the debtor has attempted to evade or defeat taxes. *In re the Matter of Birkenstock*, 87 F.3d 947 (7th Cir. 1996).

The debtor in this case took actions before, during, and after each year at issue to evade or defeat payment of his taxes. The debtor consistently filed late tax returns, failed to pay his acknowledged tax liabilities and engaged in a pattern of evasion for which he was prosecuted and convicted of numerous tax related crimes. He even took affirmative steps to avoid the assessment and payment of taxes by submitting documents protesting the tax system and devising a scheme attempting to hide both the amount and location of his income. Significantly, his scheme during the years 1986 through 1991 involved moving his income through a series of trust fund accounts where the income ended up in an account on which Wilcoxson had signatory authority and on which he withdrew hundreds of thousands of dollars for personal use and charitable purposes.

Against all this evidence, the debtor, in his brief, simply asserts that the United States did not enforce a fraud penalty on the debtor for the years in question and further states that the government has not offered any evidence that there was any wrong doing by Wilcoxson in attempting to evade his tax liabilities for the years 1990 and 1992. Such a conclusion totally ignores

the overwhelming facts which the debtor has not even controverted. The debtor's argument fails to consider the conviction for conspiracy and other crimes previously referred to. In order for the jury to convict, it had to find the facts set forth in the indictment for conspiracy, wire fraud, mail fraud, tax evasion and currency reporting violations as true beyond a reasonable doubt. This Court concludes that based on the facts established by the debtor's convictions, the doctrine of collateral estoppel prevents the debtor from being able to relitigate those issues.

The Court further notes that the trial judge specifically adopted the findings and conclusions contained in the presentence report prepared by the United States Probation Office.² The presentence report, which was attached as Exhibit A to the brief of the United States, summarized the facts proven at trial which were the basis of the debtor's convictions. The objections of the debtor to the presentence report did not relate to the facts of the debtor's conduct as set forth in the presentence report.

The doctrine of collateral estoppel also applies to the above-listed sentencing findings because (1) the factual issues are identical to those in the pending case, i.e. the facts giving rise to debtor's guilt of conspiracy, wire fraud, mail fraud, tax evasion, currency transaction reporting violations, are the basis for the United States' position that the debtor attempted to evade or defeat taxes; (2) the issues were necessarily decided in the criminal trial as they are set forth in the indictment against the debtor for the crimes of which he was convicted and sentenced; (3) the debtor was represented both at his criminal trial and at the sentencing hearing; and (4) the relevant facts were actually litigated during the criminal trial and the debtor had an opportunity to dispute them at the sentencing hearing. See *Blohm v. Commissioner of Internal Revenue*, 994 F.2d 1542, 1553 (11th Cir. 1993) (establishing four-part test to determine whether collateral estoppel applies).

Based on the above, this Court concludes that the doctrine of collateral estoppel applies, that

² See Transcript of Sentencing Hearing, dated July 17, 1992, at p. 8.

there are no material facts in dispute, and that as a matter of law the cross-motion of the United States for summary judgment is due to be GRANTED. The Court further determines that the motion for summary judgment of the debtor is due to be DENIED. Accordingly, the debts owed by the debtor to the United States for tax years 1986, 1989, 1990 and 1991 are hereby determined to be non-dischargeable, and a separate judgment in favor of the United States and against Glenn Paul Wilcoxson will be entered to that effect.

Dated: January 2, 2002