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JUDGE: M. A. Mahoney

PARTIES: Lewis Grady Shaver, Kenneth W. Cramton, Jr.

CHAPTER:

ATTORNEYS:

DATE: 4/3/96

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

Lewis Grady Shaver

Case No. 95-12278

Debtor.

Kenneth W. Cramton, Jr.,

Plaintiff,

vs.

Adv. No. 95-1209

Lewis Grady Shaver,

Defendant.

ORDER

This matter is before the Court on a motion for summary judgment filed by Kenneth Cramton seeking to establish that a debt owed to him by the defendant, Lewis Shaver, is non-dischargeable pursuant to 11 U.S.C. § 523(a)(6). 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, Cramton's motion for summary judgment is denied.

FACTS

Lewis Shaver contracted with Kenneth Cramton to lease a 1989 Mercedes-Benz. Shaver defaulted on the payments due under the lease agreement. Cramton sued Shaver in the Circuit Court of Mobile County, Alabama. Shaver was served with the summons and complaint, but did not file an answer. In response to Shaver's failure to defend, Cramton filed an affidavit for the purpose of obtaining an entry of default. The trial court entered a default judgment against

Shaver in the sum of \$16,958.84 and costs of court. The trial court did not make findings of fact.

The state court file records the judgment as follows:

JUNE 17, 1994 - JUDGMENT BY DEFAULT FOR PLTFF & AGAINST DEFT
COUNT 1 (PROMISSORY NOTE) \$2,563.72 COUNT 2 (CONTRACT) \$1,568.65
COUNT 3 (FORGERY) \$10.000 + ATTY FEE \$2,826.47 FOR A TOTAL
JUDGMENT OF \$16,958.84 AND COSTS OF COURT.

This Court was not provided with the actual judgment entered. Shaver was given numerous opportunities to appear and respond on various matters. He failed to answer postjudgment interrogatories and failed to appear at a contempt hearing. In regard to the contempt, he posted a cash bond after being arrested. He never sought to amend or vacate the state court judgment.

After Cramton attempted to execute on the judgment, Shaver filed a chapter 7 bankruptcy case. Cramton then filed a complaint initiating an adversary proceeding to determine whether the debt owed to him by Shaver due to forgery is nondischargeable pursuant to § 523 (a)(6) of the Bankruptcy Code. Cramton filed a motion for summary judgment on the complaint seeking a judgment without a trial on the merits due to his state court default judgment.

It is Cramton's position that the state court judgment for forgery establishes willful and malicious conduct sufficient to warrant nondischargeability of the debt under § 523(a)(6). Count 3 of Cramton's state court Complaint outlines the alleged forgery. The pleading states that

1. On or about the 22nd day of December, 1993, the Defendant, without the consent or knowledge of the Plaintiff, placed or caused to be placed an approximation of Plaintiff's signature on a contract with Premium Assignment Corporation for the purpose of financing the premiums due on certain insurance policies.

2. Defendant failed to pay all sums due under the aforesaid contract and, as a direct consequence thereof, Premium Assignment Corporation made demand for payment upon Plaintiff, sent notices of default to Plaintiff, and Plaintiff has suffered damage to his credit and business reputation.

WHEREFORE, the premises considered, Plaintiff claims compensatory damages, punitive damages and damages for mental anguish in the sum of Twenty-five Thousand and No/100 Dollars (\$25,000), plus costs.

Cramton posits that the \$10,000 award for forgery represents punitive damages. He argues that

the state court could not award punitive damages as a result of Shaver's forgery unless there was evidence to show legal malice, willfulness, or reckless disregard. Shaver's culpability in the forgery was actually found and necessarily decided; thus, Shaver's act of forgery was willful and malicious. In effect, Cramton wishes to rely on the effect of collateral estoppel of the state court proceedings to prove the requisites of his nondischargeability action.

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 default 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.

Both the state court case and the present adversary proceeding raise issues concerning Shaver's alleged forgery and subsequent injury to Cramton. Element 1 is present.

The second prerequisite to the application of collateral estoppel is that the disputed issue must have been actually litigated. Depending upon the jurisdiction, some types of judgments

are not given collateral estoppel effect because the court did not get the benefit of deciding the issue in an adversarial context. In the case of a default judgment, for example, a party may decide that the amount at stake does not justify the expense and vexation of putting up a fight. The defaulting party will certainly lose that lawsuit, but some state law holds that the default judgment is not given collateral estoppel effect. *Spilman v. Harley*, 656 F.2d 224, 228 (6th Cir. 1981); *Commonwealth of Massachusetts v. Hale*, 618 F.2d 224, 228 (1st Cir. 1980); *Matter of McMillian*, 579 F.2d 289, 293 (3rd Cir. 1978).

Alabama is a state whose law does not give collateral estoppel effect to a default judgment. *In re Booth*, 174 B.R. 619, 623 (Bankr. N.D. Ala. 1994). *See also In re Cornner*, 191 B.R. 199, 206 n. 3 (Bankr. N.D. Ala. 1995) (“In Alabama, it is doubtful that a default judgment has any collateral estoppel effect.”) *Id.* Shaver did not participate in the state court litigation before the entry of the default judgment. The judgment was based on an uncontested complaint and was therefore not actually litigated. Element 2 is not present.

The Court believes the better rule to be that “actually litigated” should be read as “actually had the opportunity” to litigate. Allowing parties to simply disregard legal proceedings on the premise that they can always have their day in court in a later bankruptcy case is inequitable and contrary to another basic principle of the U.S. legal system - matters heard on full notice to litigants are binding upon proper parties. Numerous courts have so held. *See e.g., In re Bush*, 62 F.3d 1319, 1322 (11th Cir. 1995); *In re Graham*, 191 B.R. 489, 494 (Bankr. N.D. Ga. 1996); *In re Seifert*, 130 B.R. 607, 609 (Bankr. M.D.Fla. 1991); *In re Wilson*, 72 B.R. 956, 959 (Bankr. M.D.Fla. 1987). However, the Court is compelled to follow Alabama law, and it clearly does not recognize the preclusive effect of default judgments.

In order to except from discharge in bankruptcy an individual’s debt under § 523(a)(6),

the party seeking the exception must prove the willfulness and maliciousness of the act from which the debt arose by clear and convincing evidence. *Chrysler Credit Corp. v. Rebhan*, 842 F.2d 1257, 1262 (11th Cir. 1988). Cramton asserts that a finding of willful and malicious injury was essential to an award of punitive damages. However, in the absence of specific findings of fact, it cannot be determined upon what basis of liability the state court judgment rests. The \$10,000 judgment for forgery could possibly represent an award for compensatory damages or for Cramton's mental anguish. The state court may not have reached a decision as to whether Shaver's conduct was deserving of punishment. From the pleadings and judgment, it is impossible to know whether the issues of willfulness and maliciousness, within the meaning of the Bankruptcy Code, were litigated or determined by the state court. Such a determination was not a necessary part of the judgment for forgery. Element 3 is not present.

In order for one suit to bar subsequent litigation, the parties must have been 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). Cramton and Shaver were the parties in the state court case; they are also the parties in the current bankruptcy court adversary proceeding. Element 4 is present.

CONCLUSION

All the elements for collateral estoppel under Alabama law are not satisfied by the state court default judgment. The issues of willful and malicious conduct were not actually litigated, and it is not clear that the resolution of those issues played a part in the state court's damage award. The default judgment against Shaver cannot be used to preclude litigation in bankruptcy court.

Cramton was unable to show that there is no genuine issue of material fact. He is not entitled to a judgment as a matter of law. Fed R. Civ. P. 56; Fed. R. Bankr. P. 7056. Accordingly, it is

ORDERED that Cramton's motion for summary judgment is denied. The matter is set for trial on **June 14, 1996 at 9:30 a.m.** in Courtroom 2, United States Bankruptcy Court, 201 St. Louis Street, Mobile, Alabama 36602.

Dated: April 3, 1996

MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE