IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In Re:

RODNEY DIXON DORAND, Case No. 21-30205

Debtor.

THE ESTATES OF ROBERT MOSS AND BRENDA MOSS, et al.,

Plaintiffs,

v. Adversary Case No. 21-3003

RODNEY DIXON DORAND,

Defendant.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

The plaintiffs, the Estates of Robert Moss and Brenda Moss by Danae Brown, Executrix, and the Estates of Charles Saunders and Peggy Saunders by Amanda Andrews, Administrator, filed this adversary proceeding for nondischargeability of a debt under 11 U.S.C. § 523(a)(2)(A) represented by a state court judgment against the debtor-defendant Rodney Dixon Dorand.[1] The case is before the court on the plaintiffs' motion for summary judgment (doc. 18). The debtor has filed a response and the plaintiffs have filed a reply. Having reviewed the summary judgment submissions, the law, and the record in this case, the court denies the motion for summary judgment.

[1] The individual state court plaintiffs died in 2019 and 2021. (*See* Brown aff., doc. 21-8). There is no dispute that their estates are the proper parties to this action. For ease of reference, the court will simply refer to "plaintiffs" throughout.

Background

In January 2015, the Circuit Court of Tallapoosa County, Alabama entered a judgment for the plaintiffs for $1.6 million against the debtor and others. (*See* circuit court order, doc. 21-1). The defendants, including the debtor, did not appear for trial. (*See id.*). The circuit court order states in its entirety:

> Order
>
> This case having come before the Court for a jury trial docket on March 26, 2014. The case was called for trial. The Plaintiffs Robert Moss and Brenda Moss were present and both they and the Plaintiffs Charles Saunders and Peggy Saunders were represented by counsel, Donald R. Harrison. The Defendants Glenwood-The Bluffs at Copper Creek, LLC, Glenwood Development, LLC, Dorand Development, LLC, Rodney Dorand, The Rodney D. and Barbara H. Dorand Living Trust, Leigh Dorand, The Leigh and Kimberly Dorand Living Trust and KAD Away Trust were not present and their counsel had previously withdrawn from the case. The Plaintiffs sought Default Judgment and provided testimony regarding liability upon fraud, breach of contract and fraudulent concealment and also provided testimony regarding damages.
>
> Upon consideration of the evidence, it is the opinion of this Court that Default Judgment should and is hereby granted.
>
> Therefore, it is ORDERED, ADJUDGED, and DECREED that Judgment is hereby granted in favor of the Plaintiffs Robert Moss, Brenda Moss, Charles Saunders and Peggy Saunders, and against the and against the Defendants Glenwood-The Bluffs at Copper Creek, LLC, Glenwood Development, LLC, Dorand Development, LLC, Rodney Dorand, The Rodney D. and Barbara H. Dorand Living Trust, Leigh Dorand, The Leigh and Kimberly Dorand Living Trust and KAD Away Trust, both separately and severally for One Million Six Hundred Thousand Dollars ($1,600,000.00) together with costs herein.
>
> DONE this 26th day of January, 2015.
>
> /s/ RAY D. MARTIN
> CIRCUIT JUDGE

(*Id.*).

Four years later, the circuit court defendants filed a motion to set aside the circuit court judgment, which was denied. (*See* motion and order, docs. 21-9, 21-10). They appealed that denial to the Alabama Supreme Court, which dismissed the appeal as untimely. (*See* notice of appeal, doc. 21-11; motion to dismiss appeal, doc. 21-12; order dismissing appeal, doc. 21-2).

Debtor Rodney Dorand filed a chapter 7 bankruptcy in this court. The plaintiffs then timely filed this adversary proceeding alleging that the debt owed to them by the debtor as evidenced by the circuit court judgment is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

Legal Discussion

Under Federal Rule of Civil Procedure 56 (applicable here under Federal Rule of Bankruptcy Procedure 7056), "[t]he court shall grant summary judgment 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." In deciding a summary judgment motion, the court views the evidence in the light most favorable to the nonmovant. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

The plaintiffs argue that (1) the court must give full faith and credit to the circuit court order and that *Rooker-Feldman* applies; (2) res judicata applies to the circuit court order; and (3) collateral estoppel applies to the circuit court order. The court discusses each argument in turn below.

Full faith and credit/*Rooker-Feldman*

The court agrees with the plaintiffs that the circuit court order is final. The debtor cannot challenge the finality of the circuit court order here and admits as much in his response. (*See* doc. 25, p.5 n.2). However, giving the circuit court order "full faith and credit" does not require this court to find the circuit court order nondischargeable. State court orders "must be given the full faith and credit that they would have received in the originating court." *See In re Hooks*, 238 B.R. 880, 884 (Bankr. S.D. Ga. 1999); *see also In re Harris*, 2021 WL 2946295, at *2 (11th Cir. July 14, 2021). As discussed below, the practical effect of this doctrine is that this court applies Alabama collateral estoppel law in this action.

"[U]nder what has come be known as the *Rooker-Feldman* doctrine, lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments." *See Lance v. Dennis*, 546 U.S. 459, 463 (2006). The United States Supreme Court has characterized *Rooker-Feldman* as "a narrow doctrine, confined to 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the [federal] court proceedings commenced and inviting district court review and rejection of those judgments.'" *See id.* at 464. Here, the plaintiffs were the state-court winners, not losers. *See, e.g.*, *Brown v. R.J. Reynolds Tobacco Co.*, 611 F.3d 1324, 1331 (11th Cir. 2010).

At any rate, under *Rooker-Feldman*, a "nondischargeability determination[] under § 523(a)(2)(A) . . . does not amount to a review of the underlying state court judgment" and is instead an independent claim "exclusively within the jurisdiction of lower federal courts." *See In re Doll*, 585 B.R. 446, 461-62 (Bankr. N.D. Ohio 2018). A determination by this court that the circuit court order "is not due preclusive effect for dischargeability purposes [would] not

constitute a collateral attack on the state court judgment because said determination neither reverses the state court judgment nor voids its ruling." *See id.* (citation, quotation marks, and brackets omitted); *see also, e.g.*, *In re Blackwell*, No. 7-08-14402 JA, 2010 WL 3037583, at *5 (Bankr. D.N.M. July 29, 2010); *In re Glunk*, No. 05-31656-ELF, 2009 WL 2916975, at *2 n.12 (Bankr. E.D. Pa. May 26, 2009). "Simply stated, overturning a state court judgment is barred by *Rooker-Feldman*; determining the dischargeability of a judgment debt is not." *In re Hartnett*, 330 B.R. 823, 827 n.3 (Bankr. S.D. Fla. 2005). *Rooker-Feldman* thus does not apply to this nondischargeability action.

Res judicata, *i.e.*, claim preclusion

Claim preclusion does not apply to dischargeability proceedings in bankruptcy. *See generally Brown v. Felsen*, 442 U.S. 127 (1979); *see also In re Nunez*, 400 B.R. 869, 875 (Bankr. S.D. Fla. 2008) ("The res judicata effect of a prior state court judgment may not be raised in connection with a dischargeability action in bankruptcy."); *In re May*, 518 B.R. 99, 116 (Bankr. S.D. Ga. 2014); *In re Glunk*, 2009 WL 2916975, at *2 n.12. The court thus declines to grant summary judgment on this ground.

Collateral estoppel, *i.e.*, issue preclusion

Although res judicata/claim preclusion does not apply in dischargeability proceedings, collateral estoppel/issue preclusion does apply. *See generally Grogan v. Garner*, 498 U.S. 279 (1991); *In re Nunez*, 400 B.R. at 875. Because an Alabama state court issued the underlying order, this court applies Alabama collateral estoppel law to determine the order's preclusive

effect.[2] *See In re Harris*, 2021 WL 2946295, at *2; *Beem v. Ferguson*, 713 F. App'x 974, 983 (11th Cir. 2018).

For collateral estoppel to apply under Alabama law:

(1) the issue must be identical to the one involved in the previous suit;

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

(3) the resolution of the issue must have been necessary to the prior judgment.

See McCulley v. Bank of Am., N.A., 605 F. App'x 875, 878 (11th Cir. 2015); *see also Lee L. Saad Constr. Co. v. DPF Architects, P.C.*, 851 So. 2d 507, 520 (Ala. 2002).[3] "Because of the difficulty in determining whether there is an identity of issues between state court actions and subsequent dischargeability actions, any reasonable doubt as to what was decided by a prior judgment should be resolved against using it as an estoppel." *In re Harris*, 2021 WL 2946295, at *4 (citation, quotation marks, brackets, and ellipses omitted).

The plaintiffs bear "the burden to establish by a preponderance of the evidence that the debt at issue meets an exception to discharge under § 523." *See In re Jones*, 611 B.R. at 693; *In re Harris*, 2021 WL 2946295, at *3. "'[I]ntertwined with this burden is the basic principle of bankruptcy that exceptions to discharge must be strictly construed against a creditor and liberally

[2] Even so, construing the evidence in the light most favorable to the nonmovant, the court would also deny summary judgment applying Florida law on collateral estoppel. *See, e.g.*, *Crowley Maritime Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 931 F.3d 1112, 1126 (11th Cir. 2019) (discussing elements of issues preclusion under Florida law); *see also generally In re Harris*, 2021 WL 2946295.

[3] There is no dispute about the identity of parties in the circuit court case and this case, as the plaintiffs' estates effectively "stepped into the shoes" of the plaintiffs.

construed in favor of a debtor so that the debtor may be afforded a fresh start.'" *See In re Harris*, 2021 WL 2946295, at *3 (citation omitted).

"Section 523(a)(2)(A) excepts certain debts from discharge if the debt was 'obtained by' 'false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.'" *In re Jones*, 611 B.R. 685, 693 (Bankr. M.D. Ala. 2020) (citing 11 U.S.C. § 523). "A prior fraud judgment, if the elements coincide with the [the elements of § 523(a)(2)(A)], can have collateral estoppel effect in dischargeability proceedings in bankruptcy court."[4] *See id.*

Those elements are:

(1) that the debtor used false pretenses, or made a false representation, or committed actual fraud;

(2) that the creditor relied on the debtor's conduct;

(3) that that reliance was justified; and

(4) that the debtor's conduct caused the creditor's loss.

See In re Harris, 2021 WL 2946295, at *3.

Although the circuit court order refers to a "default judgment," the court accepts the plaintiffs' position that the order was a final judgment on the merits, *see generally In re Jones*, 611 B.R. 685, and that the circuit court made findings necessary to support its judgment of $1.6

[4] In *Grogan*, the Supreme Court found that the preponderance standard – rather than a higher standard of proof – applies to § 523(a) actions. In doing so, it stated: "A final consideration supporting our conclusion that the preponderance standard is the proper one is that . . . application of that standard will permit exception from discharge all fraud claims creditors have successfully reduced to judgment." *See* 498 U.S. at 290. *Grogan* does not stand for the plaintiffs' proposition that all judgments for "fraud" are automatically excepted from discharge, even those that do not meet the elements of § 523(a). Regardless, this court cannot determine whether the circuit court judgment was based on a finding of fraud, even if plaintiffs had shown that the elements of any fraud claim coincided with the elements of § 523(a)(2)(A).

million. But the court still finds that the plaintiffs are not entitled to summary judgment on collateral estoppel grounds.

The first problem is that the circuit court order does not state the court found in favor of the plaintiffs on the fraud claim. *See, e.g.*, *In re Bennitt*, 348 B.R. 820, 828-29 (Bankr. N.D. Ala. 2006) (for a state court order "'to have collateral estoppel effect in a bankruptcy court, it must be clear that the factual determinations made by the trier of fact parallel the facts necessary to meet the federal standard of nondischargeability'") (citation omitted); *see also In re St. Laurent*, 991 F.2d 672, 676 (11th Cir. 1993) ("If the judgment fails to distinguish as to which of two or more independently adequate grounds is the one relied upon, it is impossible to determine with certainty what issues were in fact adjudicated, and the judgment has no preclusive effect."). The circuit court merely stated that the plaintiffs "provided testimony regarding liability upon fraud, breach of contract and fraudulent concealment" as well as damages. The circuit court then concluded that "[u]pon consideration of the evidence, it is the opinion of this Court that Default Judgment should and is hereby granted[;]" the court did not state whether it was entering a judgment on all claims, just the fraud/fraudulent concealment claims, or just the breach of contract claim. For example, the court could have accepted the testimony on breach of contract only and entered a judgment for $1.6 million only on the contract claim. The circuit court order is like a general verdict, which is not provided collateral estoppel effect under Alabama law when it is unclear what issues were decided. *See, e.g.*, *In re Bennitt*, 348 B.R. at 829-30 and n.6.

The second problem is that, even if the circuit court had specifically entered judgment on the fraud claim, the court cannot determine from the record the nature of the fraud that was pleaded or proven. While the plaintiffs rely heavily on *In re Jones*, *supra*, the circuit court order

is unlike the underlying judgment in that case. There, the judgment was encompassed "[i]n a detailed Memorandum of Decision" in which the court "combed through each count of the Complaint" and included comprehensive findings of actual fraud in violation of Alabama Code § 8-9A-4(b), part of the Alabama Uniform Fraudulent Transfers Act. *See In re Jones*, 611 B.R. at 690-91. Here, the circuit court order contains no specific factual findings, and neither the circuit court complaint or the transcript of the hearing in which the circuit court took testimony is in the record.

Without that record, summary judgment must be denied because not all types of fraud under Alabama law will support a judgment of nondischargeability. *See, e.g.*, *In re Bennitt*, 348 B.R. at 825 (noting that the "standard for proving nondischargeable fraud in a bankruptcy context is far stricter than proof of certain types of fraud under state law"); *see also In re Wallis*, No. 10-00010-BGC-7, 2011 WL 2357365, at *9 (Bankr. N.D. Ala. Mar. 31, 2011); *In re Preston,* No. 6:06-ap-00169-ABB, 2007 WL 4707544, at *2-4 (Bankr. M.D. Fla. July 16, 2007).

As another bankruptcy court in Alabama has explained:

> In regard to the identity of issues between the fraud that must be proved for nondischargeability and the fraud that case exist under Alabama law, there can be quite a difference. 'Fraud' in Alabama is the extensive subject of many statutes and judicial opinions. Unlike nondischargeable fraud, there are different types of fraud in Alabama law with varying degrees of intent. For example, section 6-5-101 of the Code of Alabama provides, 'Misrepresentations of material fact made willfully to deceive, or recklessly without knowledge, and acted on by the opposite party, or if made by mistake and innocently and acted on by the opposite party, constitute legal fraud.' Under section 6-5-101, a false representation, even if made by mistake or innocently, is actionable and entitles a plaintiff to compensatory damages. Fraudulent intent, or an intent to deceive, is not essential to a recovery under that section. Neither is knowledge by the defendant of the falsity of his or her representations.

> Thus, Alabama law demonstrates that the standard of proof for certain types of fraud under state law is far less than the standard for proving nondischargeable fraud in the bankruptcy context.

In re Wallis, 2011 WL 2357365, at *9 (citations omitted).

Conclusion

To the extent the court has not specifically addressed any of the parties' arguments or evidence, it has considered them and determined that they would not alter the result. For the reasons discussed herein, the court denies the plaintiffs' motion for summary judgment.

Dated: August 3, 2021

HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE