

In the United States Bankruptcy Court

for the Northern District of Iowa

DANIEL TOVAR, JR., CHERYL M. TOVAR
Debtors.

Bankruptcy No. 95-62263KW
Chapter 7

NEIL PETERSEN, ANNETTE PETERSEN
Plaintiffs

Adversary No. 95-6205KW

vs.

DANIEL TOVAR, JR. dba COMMERCIAL
AND HOME IMPROVEMENT CENTER,
C.T.T., INC.
Defendants.

ORDER RE MOTION FOR SUMMARY JUDGMENT

This matter came on for telephonic hearing before the undersigned on June 14, 1996 on Plaintiffs' Motion for Summary Judgment. Plaintiffs Neil and Annette Petersen were represented by Attorney Kimberly Knoshaug. Defendant/Debtor Daniel Tovar, Jr. was represented by Attorney Barton Schwieger. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(I).

Plaintiffs request summary judgment on their 523(a)(2)(A) complaint. They received a small claims judgment against Debtor on October 16, 1995 in Iowa District Court in and for Black Hawk County. Essentially, Plaintiffs assert in their adversary complaint the same basis of facts asserted in the small claims case, i.e. that Debtor's fraudulent misrepresentations regarding carpet installation caused them damages. They argue the small claims judgment has preclusive effect which entitles them to summary judgment.

Plaintiffs must show the absence of any genuine issue of material fact in order to succeed in their motion for summary judgment. Fed. R. Bankr. P. 7056; Fed. R. Civ. P. 56; In re Earhart, 68 B.R. 14, 15 (Bankr. N.D. Iowa 1986). In considering a motion for summary judgment, the Court must view the facts in the light most favorable to the party opposing the motion, giving that party the benefit of all reasonable inferences to be drawn from the facts. United States v. One 1989 Jeep Wagoneer, 976 F.2d 1172, 1176 (8th Cir. 1992).

Res judicata (claim preclusion) precludes the relitigation of a claim on grounds that were or could have been raised in a prior action. Lane v. Peterson, 899 F.2d 737, 741 (8th Cir.), cert. denied, 498 U.S. 823 (1990).

Res judicata bars relitigation of a claim if: (1) the prior judgment was rendered by a court of competent jurisdiction; (2) the prior judgment was a final judgment on the merits; and (3) the same cause of action and the same parties or their privies were involved in both cases.

Lane, 899 F.2d at 742. The first two elements of res judicata cannot seriously be disputed in this case. Debtor does not deny that the Iowa District Court had jurisdiction over the small claims action filed by Plaintiffs against Debtor. The October 16, 1995 ruling was a final judgment on the merits. Further, the same parties are involved in both this adversary action and the small claims action.

In this situation, it is self-evident that the requirement that the actions involve the "same cause of action" is met. The Eighth Circuit has adopted the position of the Restatement (Second) of Judgments in determining whether two causes of action are the same for res judicata purposes. Lane, 899 F.2d at 742. "Generally, under this approach a claim is barred by res judicata if it arises out of the same nucleus of operative facts as the prior claim." Id. Under this "transactional" approach to the "same claim" concept, the Court concludes that Debtor is barred by the small claims judgment in Iowa District Court from avoiding a judgment in this case that the small claims judgment is excepted from discharge as arising from fraudulent representation.

The small claims judgment states as follows:

All of the representations were false and material. Mr. Tovar knew the representations were false. Mr. Tovar intended to deceive the plaintiffs. The plaintiffs acted in reliance on the truth of the representations made by Mr. Tovar and were justified in relying on the representations. The representations were a proximate cause of the plaintiffs' damages. Iowa Civil Jury Instruction 810.1.

Petersen v. Tovar, Case No. SCSC070612, slip op. at 5 (Iowa District Court, Oct. 16, 1995).

By comparison, the elements of 523(a)(2)(A) are as follows:

A five part test must be satisfied before a debt will be excepted from discharge under 523(a)(2)(A). The elements are: (1) the debtor made false representations; (2) the debtor knew the representations were false at the time they were made; (3) the debtor made the representations with the intention and purpose of deceiving the creditor; (4) the creditor justifiably relied on the representations, Field v. Mans, 116 S. Ct. 437, 446 (1995); and (5) the creditor sustained the alleged injury as a proximate result of the representations having been made.

In re Van Horne, 823 F.2d 1285, 1287 (8th Cir. 1987); In re Lively, Adv. No. 96-2009KD, slip op. at 3 (Bankr. N.D. Iowa June 7, 1996).

The Court is confident that summary judgment is appropriate in this case. This action and the small claims action both arise from the same nucleus of operative facts. Furthermore, the claims asserted in both actions contain identical elements of proof. The portion of the small claims judgment quoted above sets forth the Small Claims Court's conclusions on all five of the elements of Plaintiffs' 523(a)(2)(A) claim. Viewing the record in the light most favorable to Debtor, the Court concludes that Plaintiffs are entitled to summary judgment. Plaintiffs have met the elements of 523(a)(2)(A) based on the doctrine of res judicata. The small claims judgment against Debtor is excepted from discharge.

WHEREFORE, Plaintiffs' Motion for Summary Judgment is GRANTED.

FURTHER, Plaintiffs' small claims judgment against Debtor in the amount of \$1,330.42 plus interest and costs is excepted from discharge under 523(a)(2)(A).

FURTHER, judgment shall enter accordingly.

SO ORDERED this 14th day of June, 1996.

Paul J. Kilburg
U.S. Bankruptcy Judge