In the United States Bankruptcy Court

for the Northern District of Iowa

DEBORAH J. ARENSDORF a/k/a DEBORAH KIEFFER a/k/a DEB CONNOLLY	Bankruptcy No. 99-00003-D
Debtor(s).	Chapter 7
ROXANNE MCDOLE	Adversary No. 99-9038-D
Plaintiff(s)	
vs.	
DEBORAH J. ARENSDORF	
Defendant(s)	

ORDER RE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter came before the undersigned on May 19, 1999 on Plaintiff's Motion for Summary Judgment. Plaintiff Roxanne McDole was represented by Attorneys Joseph Bitter and Tom Bitter. Debtor/Defendant Deborah J. Arensdorf was represented by James O'Brien. After hearing arguments of counsel, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I).

STATEMENT OF THE CASE

Plaintiff moves for summary judgment on her complaint seeking a finding of nondischargeability under 11 U.S.C. §523(a)(2)(A). Plaintiff's claim arises from a judgment against Debtor in Iowa District Court for Dubuque County for $121,253 in actual damages and $100,000 in punitive damages, plus interest and costs.

The parties have filed a copy of the complete record of court filings in the Dubuque County case, McDole v. Arensdorf, Case No. LACV 051471. Plaintiff filed her petition in Iowa District Court on April 2, 1998. The Petition asserts Defendant (Debtor herein) "by ruse, fraud, deception, and misrepresentation" converted Plaintiff's money to Defendant's own use with intent to defraud Plaintiff.

Debtor was served with the Original Notice on April 14, 1998. No answer having been filed, the court entered default of record on May 19, 1998. Hearing was held on July 9, 1998, lasting approximately 30 minutes. Debtor was not present. Plaintiff testified and offered 14 exhibits into the record.

On July 15, 1998, Judge Lawrence Fautsch entered a ruling and judgment in favor of Plaintiff. As part of the findings of fact, the court found Debtor had endeared herself to Plaintiff by serving her alcohol at Debtor's bar, The Hitching Post Saloon, and making promises to Plaintiff. The court found Debtor obtained at least $121,253 in cash and valuables from Plaintiff for which she paid little or nothing.

The court's ruling states Debtor made false promises including offering Plaintiff part ownership of the bar and promising to place a lien on a vehicle title in exchange for receiving the vehicle from Plaintiff. The court stated Debtor falsely told Plaintiff she, Debtor, was dying and that Plaintiff could ultimately be repaid from her probate estate.

The court concluded Debtor perpetrated a pattern of deception against Plaintiff and victimized Plaintiff through fraud, deceitfulness, and the use of alcohol to diminish Plaintiff's judgment. It further found Debtor's actions constituted gross misconduct, entitling Plaintiff to punitive damages. The court concluded: "Plaintiff has established the allegations of her Petition. The actions of the Defendant rise to the level of fraud, deceitfulness, and gross misconduct and entitle Plaintiff to punitive damages as well as actual damages." McDole v. Arensdorf, LACV 051491, "Findings of Fact, Conclusions of Law, and Decree", slip op. at 3 (Iowa Dist. Ct. July 15, 1998).

After execution on the judgment was issued, Attorney Mark Beckman entered an appearance in the action on behalf of Debtor on August 14, 1998. Debtor filed a Motion to Set Aside Default and Stop Execution and filed an Answer denying the Petition. On September 8, 1998, the court held a hearing on the motion to set aside default which lasted approximately 1 ½ hours. Judge Fautsch denied the Motion to Set Aside Default on October 7, 1998. He found Debtor had not established good cause to vacate the default judgment. In the findings of fact, the court set out Debtor's testimony regarding the merits of the cause of action itself. The court stated: "The inconsistencies in the above testimony of Defendant calls her credibility into question." Id., "Order", slip op. at 2 (Iowa Dist. Ct. Oct. 7, 1998).

Plaintiff asserts that issues of fraud, deceit and false representation were raised and resolved in the State Court action. She argues this entitles her to a determination that the debt is nondischargeable for fraud, based on issue preclusion. Plaintiff also argues the Rooker-Feldman doctrine prevents Debtor from challenging the state court decision.

Debtor resists summary judgment. She asserts the State Court judgment was a default judgment for failure to answer the petition and that no issues were actually litigated. Debtor argues issue preclusion does not apply. She also argues the Court should take into account issues of basic fairness in considering whether to apply issue preclusion. Finally, Debtor denies the state court judgment satisfies the requirements of §523(a)(2)(A).

CONCLUSIONS OF LAW

Plaintiff seeks to resolve this matter through a motion for summary judgment. Summary judgment is a drastic remedy and must be exercised with extreme care. Wabun-Inini v. Sessions, 900 F.2d 1234, 1238 (8th Cir. 1990); see also Geiger v. Tokheim, 191 B.R. 781, 785 (Bankr. N.D. Iowa 1996). The Eighth Circuit has recognized, however, that the "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Wabun-Inini, 900 F.2d at 1238 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986)). In considering a motion for summary judgment, the Court must determine "whether the record, viewed in a light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Rabushka v. Crane Co., 122 F.3d 559, 562 (8th Cir. 1997), cert. denied, 118 S. Ct. 1336 (1998).

ROOKER-FELDMAN DOCTRINE

The Rooker-Feldman doctrine and preclusion are closely related legal concepts. In re Goetzman, 91 F.3d 1173, 1177 (8th Cir.), cert. denied, 117 S. Ct. 612 (1996). Under the Rooker-Feldman doctrine, lower federal courts, such as bankruptcy courts, lack jurisdiction to engage in appellate review of state court determinations. Id. Impermissible appellate review may occur when the bankruptcy court is asked to entertain a claim that is "inextricably intertwined" with the state court judgment. Id. The federal claim is inextricably intertwined if relief in the federal court can only be predicated upon a conviction that the state court was wrong. Id. The Court must analyze whether the relief requested would effectively reverse the state court decision or void its ruling. In re Hatcher, 218 B.R. 441, 447 (B.A.P. 8th Cir. 1998), aff'd, ___ F.3d ___, 1999 WL 147048 (8th Cir. March 17, 1999).

The determination of dischargeability of a debt is a matter of federal bankruptcy law. In re Chaney, 229 B.R. 266, 269 (Bankr. D.N.H. 1999). A bankruptcy court is not prohibited by the Rooker-Feldman doctrine from inquiring into the nature of the debt in order to determine whether the debt is nondischargeable. Id.; In re Kemp, ___ B.R. ___, 1999 WL 336130, at *4 (Bankr. W.D. Mo. May 25, 1999). Determining whether a debt is nondischargeable in bankruptcy is a separate and distinct issue from determining the existence of a debt or claim.

The Iowa District Court entered a judgment which constitutes a claim against Debtor in this case. This Court must determine whether that debt is dischargeable under §523(a)(2). Such a determination will not have the effect of reversing the state court decision. Therefore, the Rooker-Feldman doctrine does not mandate summary judgment in Plaintiff's favor.

ISSUE PRECLUSION

In In re Bronson, Adv. No. 96-3138XF, slip op. at 2-4 (Bankr. N.D. Iowa June 9, 1997), this court considered the preclusive effect of a state court default judgment in a dischargeability action under §523(a)(2)(A). It noted that in Marrese v. American Academy, the United States Supreme Court provided relevant definitions:

> [W]e use the term "claim preclusion" to refer to "res judicata" in a narrow sense, i.e., the preclusive effect of a judgment in foreclosing litigation of matters that should have been raised in an earlier suit. In contrast, we use the term "issue preclusion" to refer to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided.

470 U.S. 373, 376 n.1 (1985). The full faith and credit statute, 28 U.S.C. § 1738, requires federal courts to give the same preclusive effect to judgments of state courts that would be given by the state courts where the judgment was rendered. Marrese, 470 U.S. at 380; In re Calvert, 105 F.3d 315, 317 (6th Cir. 1997); Devan v. City of Des Moines, 767 F.2d 423, 424 (8th Cir. 1985), cert. denied, 474 U.S. 1068 (1986).

Plaintiff asserts that issue preclusion, or collateral estoppel, gives the state court default judgment preclusive effect in this action, entitling her to summary judgment. The Supreme Court in Grogan v. Garner, 498 U.S. 279, 284 n.11 (1991), affirmed that the principles of issue preclusion apply in bankruptcy proceedings. Plaintiff contends that the default judgment against Debtor was a valid judgment and that Debtor is precluded from relitigating the issue of fraud. This argument requires the court to examine Iowa law on the preclusive effect of a default judgment. Calvert, 105 F.3d at 317; Devan, 757 F.2d at 424; see Bronson, Adv. No. 96-3138XF, slip op. at 4 (examining Illinois law to determine whether an Illinois default judgment had preclusive effect in a dischargeability proceeding).

Issue preclusion applies when a party attempts to relitigate an issue which has already been raised and decided in a prior action. Matsui v. King, 547 N.W.2d 228, 230 (Iowa App. 1996). Under Iowa law, collateral estoppel, or issue preclusion, applies only where four requirements are met: (1) the issue concluded must be identical, (2) the issue must have been raised and litigated in the prior action, (3) the issue must have been material and relevant to the disposition of the prior action, and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment. Board of Prof'l Ethics v. D.J.I., 545 N.W.2d 866, 874-75 (Iowa 1996).

For collateral estoppel to apply, the matter must have been considered and passed upon. Jordan v. Stuart Creamery, Inc., 137 N.W.2d 259, 265 (Iowa 1965). It cannot apply unless there is an actual trial. Id. The Iowa Supreme Court stated in Lynch v. Lynch, 94 N.W.2d 105, 108 (Iowa 1959), that collateral estoppel is usually not available in default cases. "It must appear that the particular matter was considered and passed on in the former suit, or the adjudication will not operate as a bar to subsequent action." Id. The court found collateral estoppel did not apply because the judgment was entered by default instead of by a trial on the merits. Id. More recently, the court considered the conclusive effect given to a guilty plea in subsequent civil litigation. Ideal Mut. Ins. Co. v. Winker, 319 N.W.2d 289 (Iowa 1982). It found the guilty plea had preclusive effect, distinguishing it from an ordinary default case. Id.at 295. The court concluded that affording issue preclusive effect to a guilty plea, for which a factual basis is found, is different from giving such effect to entry of a default judgment when no exploration of the issues has occurred. Id.at 296.

Debtor points out an exception to issue preclusion which the Iowa Supreme Court noted in Board of Prof'l Ethics v. D.J.I., 545 N.W.2d 866 (Iowa 1996). Issue preclusion might not apply if there is a compelling showing of unfairness. Id.at 872. Unfairness could arise if the party did not have adequate opportunity or incentive to obtain a full and fair adjudication in the first proceeding. Id. Unfairness in this context cannot be based simply on a conclusion that the first determination is patently erroneous. Id.at 873.

The court in Bell v. Douglass, 184 B.R. 301, 304 (N.D. Ill. 1995), considered Iowa law in determining the preclusive effect of an entry of summary judgment based on unanswered requests for admissions. It noted that the "actually litigated" element of issue preclusion is not satisfied on default judgment under Iowa law. Id.at 305. The court concluded that Iowa common law reflects a concern that the court make inquiry and find facts and that the defendant be actively involved in the court proceedings before a judgment is given issue preclusive effect in a dischargeability action. Id.at 306.

In another bankruptcy case which surveyed the law on the preclusive effect of default judgments, the court noted that Iowa is one of the states which do not afford collateral estoppel effect to default judgments. In re Wald, 208 B.R. 516, 539-40 n.28 (Bankr. N.D. Ala. 1997). It stated:

> Bankruptcy courts must jealously guard the debtor's right to a discharge which, in the final analysis, is the primary purpose of bankruptcy. That purpose is defeated if a determination of dischargeability can be made without either the state court or the bankruptcy court making an informed judgment regarding the merits of a case based on evidence presented in an adversarial setting. A rule which accords collateral estoppel effect to a state court simple default judgment, without regard to the facts underlying the cause of action in the state court lawsuit, or the extent and nature of the debtor's participation in the state court case, or thought of whether the debtor is actually guilty of the conduct alleged in the state court complaint, is simply unfair. It is unwarranted by any policy considerations behind issue preclusion in general and completely usurps the role of the bankruptcy court in making dischargeability determinations.

Id.at 561.

ELEMENTS OF §523(a)(2)(A)

Plaintiff's complaint raises a claim under § 523(a)(2)(A), which states "a discharge ... does not discharge an individual debtor from any debt ... to the extent obtained by ... false pretenses, false representation, or actual fraud." In the Eighth Circuit, a creditor proceeding under § 523(a)(2)(A) must prove the following elements:

> (1) the debtor made false representations;
> (2) at the time made, the debtor knew them to be false;
> (3) the representations were made with the intention and purpose of deceiving the creditor;
> (4) the creditor justifiably relied on the representations; 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), as modified by Field v. Mans, 516 U.S. 59, 74-75 (1995); In re Cassis, 220 B.R. 979, 985 (Bankr. N.D. Iowa 1998).

ELEMENTS OF FRAUD UNDER IOWA LAW

In Iowa, a plaintiff must prove the following elements to recover under a claim of fraud:

> (1) a material misrepresentation (2) made knowingly (scienter) (3) with intent to induce the plaintiff to act or refrain from acting (4) upon which the plaintiff justifiably relies (5) with damages.

Beeck v. Kapalis, 302 N.W.2d 90, 94 (Iowa 1981).

CONCLUSIONS

Plaintiff asserts that her action in Iowa District Court and the resulting judgment requires a judgment in her favor in this action finding her claim is nondischargeable under §523(a)(2)(A). In order to be successful in this claim, Plaintiff must meet the elements of issue preclusion. The first element requires that the issues concluded by the first proceeding be identical to the issues in this proceeding. The second element requires that the issues have been raised and litigated in the first action.

The Court has reviewed the record in the Iowa District Court action. Plaintiff's state court Petition asserts Debtor converted Plaintiff's money to her own use by fraud and misrepresentation, with intent to defraud Plaintiff. Judge Fautsch's Decree specifically found a pattern of deception accompanied by false representation, fraud and gross misconduct. He concluded Plaintiff had established the allegations of her Petition.

The elements of §523(a)(2)(A) and an Iowa action for fraud appear to be identical. The record in the action in Iowa District Court, however, fails to reveal any proof or findings regarding the second and fourth elements of both actions, knowledge of Debtor and justifiable reliance by Plaintiff. Judge Fautsch's Decree does not address either of these elements. Plaintiff's Petition does not raise these elements. Nothing in the record conclusively proves these elements were present.

Furthermore, judgment was entered in the state court action without answer, appearance or other involvement by Debtor in the action. Debtor's asserted justifications for not appearing were rejected by Judge Fautsch when he denied her motion to set aside the judgment. The necessary conclusion remains, however, that no actual trial was held. The decree was based solely on evidence submitted by Plaintiff with no involvement by Debtor. Debtor did subsequently appear and file an answer. Her Motion to Set Aside Default, however, was denied, precluding her from actually presenting evidence on the underlying claim.

The elements of issue preclusion are not met in this case. By this ruling, the Court does not condone parties relitigating their state court claims in dischargeability actions in this court. Considering the way the state court action proceeded in this case, however, the Court is indisposed to give the Iowa district court judgment and decree preclusive effect in this action. The Iowa Supreme Court has indicated that default judgments should not have preclusive effect. Debtor did not participate in the state court action until after the judgment and decree were rendered. Furthermore, the record and decree do not establish all the elements of §523(a)(2)(A) as a matter of law.

WHEREFORE, Plaintiff's Motion for Summary Judgment is DENIED.

FURTHER, the Judgment in the Iowa District Court action, Dubuque County, McDole v. Arensdorf, Case No. LACV 051471, does not have issue preclusive effect in this dischargeability action.

SO ORDERED this 21st day of June, 1999.

Paul J. Kilburg
U.S. Bankruptcy Judge