

FILED

UNITED STATES BANKRUPTCY COURT 96 NOV 26 PM 12: 01

DISTRICT OF SOUTH CAROLINA

U.S. BANKRUPTCY COURT
DIST OF SOUTH CAROLINA

IN RE:)
)
 JOHN RUSSELL WATKINS)
)
 Debtor)
 _____)
)
 MARGARET H. BIVENS)
)
 Plaintiff)
)
 vs.)
)
 JOHN RUSSELL WATKINS)
)
 Defendant)
 _____)

CASE NUMBER 95-76152-W
CHAPTER 7

ENTERED
NOV 27 1996
V. L. D.

ADVERSARY PROCEEDING
NUMBER 96-8062-W

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law as cited in the attached Order of the Court, the Plaintiff's Motion for Summary Judgment is granted in part; an indebtedness to the Plaintiff in the amount of \$922,000.00 is excepted from discharge pursuant to 11 U.S.C. §523(a)(4).

As to the remaining issues, the Plaintiff's Motion for Summary Judgment is denied.


UNITED STATES BANKRUPTCY JUDGE

November 26, 1996
Columbia, South Carolina

UNITED STATES BANKRUPTCY COURT **FILED**

DISTRICT OF SOUTH CAROLINA 96 NOV 25 PM 12: 01

IN RE:)
JOHN RUSSELL WATKINS)
Debtor)
_____)
MARGARET H. BIVENS)
Plaintiff)
vs.)
JOHN RUSSELL WATKINS)
Defendant)
_____)

CASE NUMBER 95-76152-W
CHAPTER 7
ADVERSARY PROCEEDING
NUMBER 96-8062-W

U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

ORDER OF PARTIAL SUMMARY JUDGMENT

THIS MATTER comes before the Court upon the Motion for Summary Judgment filed by the Plaintiff, Margaret H. Bivens, pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure arising out of an adversary proceeding seeking a determination that the debt to the Plaintiff is nondischargeable pursuant to 11 U.S.C. §§ 523(a)(4) and 523(a)(6).¹ Based upon the presentations of counsel for the Plaintiff and counsel for the Defendant/Debtor, and the pleadings

¹ Further reference to the Bankruptcy Code, 11 U.S.C. § 101, et seq., shall be by section number only.

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and affidavits filed to date,² the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Plaintiff Margaret H. Bivens filed a Complaint against the Defendant in the Court of Common Pleas for the State of South Carolina ("State Court") in March 1989 alleging numerous causes of action including breach of fiduciary duty, fraud and conversion against the Defendant.

2. Judge Walter J. Bristow, Jr. by Order of August 30, 1991 ("Judge Bristow's Order") awarded the Plaintiff \$31,000.00 on the conversion cause of action and dismissed the remaining causes of action of the Plaintiff for lack of standing.

3. Margaret H. Bivens appealed the Order entered by Judge Bristow to the South Carolina Court of Appeals.

4. On appeal, the South Carolina Court of Appeals, by Order filed August 9, 1993, ("Court of Appeals' Order") determined in part that a fiduciary relationship existed between Plaintiff Bivens and Defendant Watkins and that there was overwhelming evidence of a breach of fiduciary duty by Defendant Watkins. It remanded the action for a full determination of the breach of fiduciary duty cause of action.

5. On remand, Judge Daniel E. Martin, Sr. entered an Order on April 3, 1994 ("Judge Martin's Order") in favor of the Plaintiff on the breach of fiduciary duty cause of action in the amount of \$1,922,000.00, which included \$922,000.00 in actual damages and \$1,000,000.00 in punitive damages.

² Over Plaintiff's objection, the Court shall allow and consider in this matter, an affidavit filed by Defendant Watkins on October 10, 1996.

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6. The Order issued by Judge Martin, as well as the previous orders issued by Judge Bristow and the Court of Appeals, included findings of misappropriation of funds and mismanagement by the Defendant Watkins.

7. No appeal of the judgment entered by Judge Martin was taken by any party.

8. The Defendant/Debtor filed a voluntary Chapter 7 bankruptcy petition on November 3, 1995.

9. On March 6, 1996, this adversary proceeding was filed seeking a determination that the debt to the Plaintiff is non-dischargeable pursuant to § 523(a)(4), based upon fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny and/or pursuant to § 523(a)(6), based upon willful and malicious injury to another entity or property of another entity.

CONCLUSIONS OF LAW

Summary judgment should be granted if "there is no genuine issue as to any material fact and if the moving party is entitled to judgment as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Rule 7056(c) of the Federal Rules of Bankruptcy Procedure. "At the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id. at 249. On a motion for summary judgment, evidence and inferences must be viewed and drawn in a light most favorable to the non-moving party. D.L. Auld Co. Chroma Graphics Corp., 714 F.2d 1144 (Fed. Cir., 1983).

In the Complaint before the Court, the Plaintiff alleges that the Defendant committed defalcation within the meaning of § 523(a)(4) and malicious and willful acts against the Plaintiff and the Plaintiff's property pursuant to § 523(a)(6).

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Collateral Estoppel

"Generally, a bankruptcy court may give collateral estoppel effect to those elements of a claim that are identical to the elements required for discharge and which were 'actually litigated and determined in the prior action.'" Grogan v. Garner, 498 U.S. 279, 284 n. 11, 111 S.Ct. 654, 658 n. 11, 112 L.Ed.2d 755 (1991). Collateral estoppel is defined as:

Prior judgment between same parties on different causes of action is an estoppel as those matters in issue or points controverted, on determination of which finding or verdict was rendered. E.I duPont de Nemours & Co. v Union Carbide Corp., D.C. 111., 250 F.Supp. 816, 819. When an issue of ultimate fact has been determined by a valid judgment, that issue cannot be again litigated between the same parties in future litigation. City of St. Joseph v Johnson, Mo.App., 539 S.W.2d 784, 785.

Blacks Law Dictionary 237 (5th Ed. 1979).

In In re Ward, 194 B.R. 53 (Bkrty.D.S.C. 1995), this Court, in declining to apply collateral estoppel to a default judgment, followed the reasoning and rationale of M&M Transmission, Inc. v. Raynor, 992 F.2d 1146 (4th Cir. 1991) which adhered to the proposition that in order to invoke collateral estoppel the issues presented "must have been both litigated and determined." It is clear that the two trials and the appeal in this case allowed the complete litigation of many issues raised by the Complaint which resulted in a final valid State Court Order.

In order to determine if the rulings can be given collateral estoppel effect, this Court must look to the elements of §§ 523(a)(4) and (a)(6).

Section 523(a)(4)

Section 523(a)(4) requires the Plaintiff to prove two elements. First, a showing that the Defendant acted in a fiduciary capacity. Second, a showing that the Defendant committed fraud or defalcation while acting in a fiduciary capacity.

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The South Carolina Court of Appeals and Judge Martin both determined that a fiduciary relationship existed between Plaintiff Bivens and Defendant Watkins.³ This Court has also found that a finding of the existence of a fiduciary duty under state law may meet the requirements of §523(a)(4). In re Rainwater, 94-73566-W (Bkrcty. D.S.C. 1/1/95). The first element of §523(a)(4) is therefore met by these findings.

The Defendant argues that the second element has not been met because there was no finding of fraud by the State Court. However, §523(a)(4) requires a finding of either "fraud or defalcation." This Court, in In re Owens, 54 B.R. 162 (Bkrcty. D.S.C. 1984), adopted the definition of defalcation as "the slightest misconduct, and it need not be intentional misconduct; negligence or ignorance may be 'defalcation.'"

Judge Martin after a hearing on the remand in which the Defendant represented himself, made a specific finding that the Defendant misappropriated funds held in a fiduciary capacity:

At the bench trial before me, Mrs. Bivens presented evidence that Watkins transferred assets of their corporation to another corporation in which Watkins has a substantial interest. This was directly contrary to the interest of the shareholders of the corporation, including Mrs. Bivens. Even if Watkins did not transfer the assets of the corporation, he was obligated to exercise the appropriate degree of care in managing the corporation's assets. The record in this case and the testimony at trial established that the corporation recorded a \$250,000 loan. Mrs. Bivens signed as guarantor to this loan to solve the corporation's cash flow problems. The record further establishes that one month after receiving the loan proceeds, the money was gone and the corporation was still in financial trouble. This clearly

³ The South Carolina Court of Appeals reversed the trial court's finding on this issue and held there was a confidential relationship between Watkins and Bivens.

indicates mismanagement of corporate assets and a breach of Watkins' duty to appropriately manage the corporation assets.

Under the In re Owens standard, these findings clearly indicate that the Defendants' breach of duty owed to the Plaintiff was of a nature so as to constitute defalcation under §523(a)(4). Therefore the Defendant is collaterally estopped from relitigating this issue again in this Court. The amount of actual damages awarded in the State Court Order, \$922,000.00, for breach of fiduciary duty is therefore not dischargeable under § 523(a)(4).

**Punitive Damages
and Section 523(a)(6)**

The next issue presented to this Court in the Plaintiff's Motion is whether collateral estoppel should apply to the conversion judgment in Judge Bristow's Order, and the award of punitive damages in the amount of \$1,000,000.00 included in Judge Martin's Order.

It is unclear from Judge Martin's Order whether there was any express finding of willful, wanton, reckless or gross conduct on the part of the Defendant. The Plaintiff argues that the award of punitive damages is itself sufficient evidence of a finding of willful and malicious conduct on the part of the Defendant. However, for purposes of summary judgment, this Court will not imply gross conduct without ample support from the State Court record. Therefore, the Defendant is not collaterally estopped from litigating these issues and defending the award of punitive damages.

As to the issues raised by the Plaintiff in the Adversary Proceeding citing the judgment for conversion and alleging willful and malicious conduct, this Court notes that Judge Bristow's order (which was affirmed in this part by the Court of Appeals) expressly declined to provide for punitive damages. Therefore, this Court finds that genuine issues of material fact exist and the Plaintiff's Motion for Summary Judgment as to these issues is denied and the trial of this case may proceed as

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to these issues.

CONCLUSION

For the reasons stated within, it is therefore

ORDERED, that the Plaintiff's Motion for Summary Judgment is granted in part and the award in the State Court Order entered April 3, 1994 of actual damages in the amount of \$922,000.00 is excepted from discharge pursuant to 11 U.S.C §523(a)(4). It is further

ORDERED, that the Summary Judgment Motion is denied in part as to the award of punitive damages and judgment for conversion as the issues alleging willful and malicious injury to the Plaintiff or property of the Plaintiff and those issues may be pursued in the trial of this case.


UNITED STATES BANKRUPTCY JUDGE

November 26, 1996,
Columbia, South Carolina.

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