United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Daniel J. Lodderhose

Bankruptcy No. 99 B 17282

Adversary Caption: Anglo-Iberia Underwriting Management Company and Industrial Re International, Inc. v. Daniel J. Lodderhose

Adversary No. 99 A 01368

Date of Issuance: September 19, 2000

Judge: John H. Squires

Appearance of Counsel:

Attorney for Plaintiff: John S. Delnero, Esq., Bell. Boyd & Lloyd, 70 West Madison Street, Suite 3300, Chicago, IL 60602 and John Keough, Esq., Waesche Sheinbaum & O'Regan, 111 Broadway, 4th Floor, New York, NY 10006

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: DANIEL J. LODDERHOSE, Debtor.	)	Chapter 7 Bankruptcy No. 99 B 17282 Judge John H. Squires
ANGLO-IBERIA UNDERWRITING MANAGEMENT COMPANY and INDUSTRIAL RE INTERNATIONAL, INC., Plaintiffs, v. DANIEL J. LODDERHOSE, Defendant.	)	Adversary No. 99 A 01368

MEMORANDUM OPINION

This matter comes before the Court on the motion of Anglo-Iberia Underwriting Management Company and Industrial Re International, Inc. (the "Plaintiffs") for summary judgment pursuant to Federal Rule of Bankruptcy 7056. Further, the Plaintiffs seek to terminate the automatic stay so as to proceed against the Debtor, Daniel J. Lodderhose (the "Debtor") to adjudicate damages. For the reasons set forth herein, the Court denies the motion.

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A), (G), (I), (J) and (O).

II. APPLICABLE STANDARDS

A. Summary Judgment

In order to prevail on a motion for summary judgment, the movant must meet the statutory criteria set forth in Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7056. Rule 56(c) reads in part:

> [T]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). See also Dugan v. Smerwick Sewerage Co., 142 F.3d 398, 402 (7th Cir. 1998). The primary purpose for granting a summary judgment motion is to avoid unnecessary trials when there is no genuine issue of material fact in dispute. Trautvetter v. Quick, 916 F.2d 1140, 1147 (7th Cir. 1990); Farries v. Stanadyne/Chicago Div., 832 F.2d 374, 378 (7th Cir. 1987) (quoting Wainwright Bank & Trust Co. v. Railroadmen's Federal Sav. & Loan Ass'n of Indianapolis, 806 F.2d 146, 149 (7th Cir. 1986)). Where the material facts are not in dispute, the sole issue is whether the moving party is entitled to a judgment as a matter of law. ANR

Advance Transp. Co. v. International Bhd. of Teamsters, Local 710, 153 F.3d 774, 777 (7th Cir. 1998).

In 1986, the United States Supreme Court decided a trilogy of cases which encourage the use of summary judgment as a means to dispose of factually unsupported claims. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Matsushita Electric Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The burden is on the moving party to show that no genuine issue of material fact is in dispute. Anderson, 477 U.S. at 248; Matsushita, 475 U.S. at 585-86; Celotex, 477 U.S. at 322.

All reasonable inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. Parkins v. Civil Constructors of Ill., Inc., 163 F.3d 1027, 1032 (7th Cir. 1998). The existence of a material factual dispute is sufficient only if the disputed fact is determinative of the outcome under applicable law. Anderson, 477 U.S. at 248; Frey v. Fraser Yachts, 29 F.3d 1153, 1156 (7th Cir. 1994). "Summary judgment is not an appropriate occasion for weighing the evidence; rather the inquiry is limited to determining if there is a genuine issue for trial." Lohorn v. Michal, 913 F.2d 327, 331 (7th Cir. 1990).

Local Rule 402.M of the Bankruptcy Rules adopted for the Northern District of Illinois requires the party moving for summary judgment to file a detailed statement ("402.M statement") of material facts that the movant believes are uncontested. Local Bankr. R. 402.M.

The 402.M statement "shall consist of short numbered paragraphs, including, within each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. Failure to submit such a statement constitutes grounds for denial of the motion." Id.

The Plaintiffs filed a 402.M statement that substantially complied with the requirements of Rule 402.M. It contained numbered paragraphs setting out uncontested facts with reference to parts of the record.

The party opposing a summary judgment motion is required by Local Rule 402.N to respond ("402.N statement") to the movant's 402.M statement, paragraph by paragraph, and to set forth any material facts that would require denial of summary judgment, specifically referring to the record for support of each denial of fact. Local Bankr. R. 402.N. The opposing party is required to respond "to each numbered paragraph in the moving party's statement" and make "specific references to the affidavits, parts of the record, and other supporting materials relied upon." Local Bankr. R. 402.N(3)(a). Most importantly, "[a]ll material facts set forth in the [402.M] statement required of the moving party will be deemed admitted unless controverted by the statement of the opposing party." Local Bankr. R. 402.N(3)(b).

The Debtor has not complied with this rule. The Seventh Circuit has upheld strict application of local rules regarding motions for summary judgment. See Dade v. Sherwin-Williams Co., 128 F.3d 1135, 1140 (7th Cir. 1997); Feliberty v. Kemper Corp., 98 F.3d 274, 277-78 (7th Cir. 1996); Bourne Co. v. Hunter Country Club, Inc., 990 F.2d 934, 938 (7th Cir.), cert. denied, 510 U.S. 916 (1993); Schulz v. Serfilco, Ltd., 965 F.2d 516, 519 (7th Cir. 1992); Maksym

v. Loesch, 937 F.2d 1237, 1240-41 (7th Cir. 1991). Because the Debtor failed to file the Rule 402.N statement within the allotted time, the facts set forth in the Plaintiffs' Rule 402.M statement are deemed admitted.

B. Collateral Estoppel

The Plaintiffs seek summary judgment based on the doctrine of collateral estoppel. Collateral estoppel is an equitable doctrine. It applies when the following four requirements are met: (1) the issue sought to be precluded has been decided in a prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the determination of the issue was essential to the final judgment in the prior proceeding; and (4) the party against whom the doctrine is asserted was fully represented in the prior proceeding. Chicago Truck Drivers, Helpers and Warehouse Union (Independent) Pension Fund v. Century Motor Freight, Inc., 125 F.3d 526, 530 (7th Cir. 1997) (citation omitted); Klingman v. Levinson, 831 F.2d 1292, 1295 (7th Cir. 1987).

As the Supreme Court of the United States has stated: "[u]nder collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." Montana v. United States, 440 U.S. 147, 153 (1979) (citations omitted). "Whether the issues are identical is a question of law." E.B. Harper & Co., Inc. v. Nortek, Inc., 104 F.3d 913, 922 (7th Cir. 1997) (citations omitted).

In the Seventh Circuit, the doctrine of collateral estoppel applies to dischargeability proceedings. Meyer v. Rigdon, 36 F.3d 1375, 1378-79 (7th Cir. 1994) (citing Klingman, 831 F.2d at 1294-95; Grogan v. Garner, 498 U.S. 279, 285 n.11 (1991) ("[C]ollateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).")). Hence,

"where a court of competent jurisdiction has previously ruled against a debtor upon specific issues of fact that independently comprise elements of a creditor's nondischargeability claim, the debtor may not seek to relitigate those underlying facts in bankruptcy court, provided that the issues involved had been 'actually litigated.'" French, Kezelis & Kominiarek, P.C. v. Carlson (In re Carlson), 224 B.R. 659, 663 (Bankr. N.D. Ill. 1998) (citation omitted).

C. The Standards for Dischargeability in the Seventh Circuit

The party seeking to establish an exception to the discharge of a debt bears the burden of proof. Selfreliance Fed. Credit Union v. Harasymiw (In re Harasymiw), 895 F.2d 1170, 1172 (7th Cir. 1990); Banner Oil Co. v. Bryson (In re Bryson), 187 B.R. 939, 961 (Bankr. N.D. Ill. 1995). The United States Supreme Court has held that the burden of proof required to establish an exception to discharge is a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991); In re McFarland, 84 F.3d 943, 946 (7th Cir.), cert. denied, 519 U.S. 931 (1996); In re Thirtyacre, 36 F.3d 697, 700 (7th Cir. 1994). To further the policy of providing a debtor a fresh start in bankruptcy, "exceptions to discharge are to be construed strictly against a creditor and liberally in favor of a debtor." In re Scarlata, 979 F.2d 521, 524 (7th Cir. 1992) (quoting In re Zarzynski, 771 F.2d 304, 306 (7th Cir. 1985)). Accord In re Reines, 142 F.3d 970, 972-73 (7th Cir. 1998), cert. denied, 525 U.S. 1068 (1999).

III. FACTS AND BACKGROUND

On January 7, 1997, the Plaintiffs commenced an action against the Debtor and his company, Security Resources International, Inc. ("SRI"), of which he was a principal, in the United States District Court for the Southern District of New York (the "District Court"). See Exhibit No. 1. The Plaintiffs are Delaware and New York corporations in the businesses of

reinsurance underwriting managers and intermediaries. The Debtor and SRI allegedly misrepresented to the Plaintiffs that they were the managers of reinsurance for PT. Jamsostek (then known as PT. Astek) of Indonesia, an insurance entity of the Republic of Indonesia. The Plaintiffs entered into an agreement to act as underwriting managers of reinsurance for Astek to reinsure certain risks as declared by the Plaintiffs during the period from January 1, 1995 through January 1, 1997. Various false representations were allegedly made by the Debtor and SRI to the Plaintiffs in this regard from September 1995 through August 1996, which are the bases of this adversary proceeding and which the Plaintiffs assert induced them to enter into the agreement. On March 31, 2000, the District Court entered a judgment by default (the "Default Judgment") in favor of the Plaintiffs and against SRI based on repeated violations of the District Court's discovery orders by SRI and its principal, the Debtor. See Exhibit No. 2.

On May 28, 1999, the Debtor filed a voluntary Chapter 7 bankruptcy petition. Thereafter, on November 3, 1999, the Plaintiffs filed this adversary proceeding against the Debtor. It is based on the same conduct complained of in the District Court action. Counts I through III of the complaint seek a determination that the debt owed by the Debtor to the Plaintiffs is non-dischargeable under 11 U.S.C. § 523(a)(2)(A), § 523(a)(4) and § 523(a)(6), respectively. Counts IV through VI of the complaint assert claims against the Debtor for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1964. Count VII alleges objections to the Debtor's discharge under 11 U.S.C. § 727(a)(2), (3), (4) and (5). The Debtor, through his former attorney of record, filed an answer and an amended answer denying the substantive allegations of any wrongdoing on his part and asserted various affirmative defenses. See Exhibit No. 3.

IV. DISCUSSION

The Court must deny the Plaintiff's motion for summary judgment because not all of the elements of collateral estoppel have been satisfied. First, the Plaintiffs have not alleged, let alone demonstrated, that the Debtor was fully represented in the District Court proceeding. Moreover, the Default Judgment was entered against SRI, not the Debtor.

Default judgments are not ordinarily given preclusive effect in subsequent court proceedings because no issue was "actually litigated" in the earlier proceeding. See Rigdon, 36 F.3d at 1379; In re Cassidy, 892 F.2d 637, 640 n.1 (7th Cir.), cert. denied, 498 U.S. 812 (1990). Prior to Rigdon, this Court has held that a default judgment entered by a court based on a record of proof to sustain a prima facie cause of action, coupled with a court's sufficient findings of fact and conclusions of law, can be given collateral estoppel effect in a proceeding to determine the dischargeability of a debt. See AMFA v. Wien (In re Wien), No. 92 B 19154, 1993 WL 266897, at *7-8 (Bankr. N.D. Ill. June 30, 1993). Detailed findings of fact from the earlier proceeding are necessary to enable the bankruptcy court in the subsequent adversary proceeding to determine which facts were actually proven, which issues were decided and what was essential to the other court's judgment entered by default. It is both fair and logical that a party be required to prove all essential elements of its case at least once before the doctrine of collateral estoppel may be appropriately applied in the second proceeding to avoid the unnecessary fees and expenses incurred by proving up the same case twice. Absent an adequate showing of what evidence was submitted at a prior prove-up, which led to the findings and conclusions of the judge in the other case, the doctrine of collateral estoppel is not properly applied.

That is the situation here. The Default Judgment contains no findings of fact or conclusions of law regarding the Debtor's fraudulent and/or willful and malicious conduct. Rather, the Default Judgment is silent on these matters. The District Court entered the Default Judgment against SRI for the Debtor's failure to appear for deposition in willful violation of a prior court order. See Exhibit No. 2. Thus, it is impossible to determine the factual and legal bases underlying the judgment. The Court has only been furnished the Default Judgment and the Plaintiffs' complaint in the District Court action. The Plaintiffs' unverified complaint contained many counts on alternative theories and allegations. The Default Judgment did not award any damages, but indicated that the District Court would conduct a further hearing to determine same. It is impossible at this stage to determine which factual allegations were actually proven, litigated and found essential to the District Court's Default Judgment. Further, the Plaintiffs have not provided the Court with any of the transcripts from the earlier proceeding, nor any supporting affidavits as Bankruptcy Rule 7056 contemplates.

Because the Plaintiffs have relied solely on the doctrine of collateral estoppel without furnishing the Court an adequate record from the District Court action, the motion for summary judgment must be denied. An independent determination must be made as to whether the debt should be excepted from discharge under § 523(a)(2)(A), (a)(4) and (a)(6) or whether the Debtor's discharge should be denied under § 727(a)(2), (3), (4) and (5). Accordingly, the Court will not apply the doctrine of collateral estoppel to this matter. Hence, based on the limited record submitted, the Court is unable as a matter of law to grant summary judgment.

V. CONCLUSION

For the foregoing reasons, the Court denies the Plaintiffs' motion for summary judgment. Concurrently entered herewith is the Court's Final Pretrial Order setting this adversary proceeding for trial on December 22, 2000 at 1:00 p.m.

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order shall be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

ENTERED:

DATE: _____ _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: DANIEL J. LODDERHOSE, Debtor.	)	Chapter 7 Bankruptcy No. 99 B 17282 Judge John H. Squires
ANGLO-IBERIA UNDERWRITING MANAGEMENT COMPANY and INDUSTRIAL RE INTERNATIONAL, INC., Plaintiffs, v. DANIEL J. LODDERHOSE, Defendant.	)	Adversary No. 99 A 01368

O R D E R

For the reasons set forth in a Memorandum Opinion dated the 19th day of September 2000, the Court hereby denies the motion of Anglo-Iberia Underwriting Management Company and Industrial Re International, Inc. for summary judgment. Concurrently entered herewith is the Court's Final Pretrial Order setting this adversary proceeding for trial on December 22, 2000 at 1:00 p.m.

ENTERED:

DATE: _____ _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List