

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

IN RE: BOBBY D. BRYANT and PEGGY C. BRYANT, Debtors

No. 5:04-bk-24598

Ch. 11

JIM ROGERS and LAURIE ROGERS

PLAINTIFFS

vs.

No. 5:05-ap-1101

BOBBY D. BRYANT and PEGGY C. BRYANT

DEFENDANTS

MEMORANDUM OPINION AND ORDER

Before the Court is the Amended Complaint to Determine Dischargeability of Debt Under 11 U.S.C. § 523, filed by the plaintiffs, Jim and Laurie Rogers, on May 6, 2005, and the Answer to Complaint of Dischargeability of Debt Under 11 U.S.C. Sec 523, filed by the debtors on May 12, 2005. The Court heard the complaint on August 24, 2005, and took the matter under advisement. For the reasons stated below, the Court grants the plaintiffs' complaint and finds that the debt is non-dischargeable in the debtors' bankruptcy.

Jurisdiction

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(I). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

Background

On July 1, 2003, Jim and Laurie Rogers [the plaintiffs] filed a complaint against the debtors, Bobby and Peggy Bryant, in state court. In the complaint, the plaintiffs alleged two counts. Count I was for malicious prosecution and abuse of process relating to a criminal action caused to be filed against Ms. Rogers. Count II was for conversion and

trespass to chattels relating to the interference of the plaintiffs' possessory interest in their personal property, which was identified in the complaint. The Bryants were served with the complaint on September 26, 2003. Instead of answering the complaint, the Bryants filed a chapter 13 bankruptcy petition on October 24, 2003. That bankruptcy case was subsequently dismissed on November 8, 2004. On November 18, 2004, the Circuit Court of Dallas County, Arkansas, entered a default judgment against the Bryants, which states, in relevant part:

On this day, this cause of action being heard by the Court upon the Complaint filed herein, the Summons issued against the Defendants, Bob and Peggy Bryant, and the return showing proper service at the time and manner required by law, and the evidence introduced by the Plaintiffs, the Court finds:

The Defendants have been duly served with Summons for more than twenty (20) days before this date; Defendants have failed to timely respond to the Complaint, or otherwise appear and defend against this action; and Plaintiffs are entitled to judgment by default. By virtue of the pleadings, exhibits, testimony of the parties, and evidence adduced, this Court finds that there is substantial evidence to justify a judgment in favor of Plaintiffs and against both Defendants. This Court further finds that there is substantial evidence to show that the defendants willfully and maliciously injured the plaintiffs and the property of the plaintiffs by willfully seizing and disposing of Plaintiffs' property while in the fiduciary capacity of landlord and failing to account for the sale of said property.

IT IS THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that Plaintiffs have and recover from the Defendants, jointly and severally, Bob Bryant and Peggy Bryant, the sum of \$50,000.00 for compensatory damages for trespass, the sum of \$50,000.00 for punitive damages, and the sum of \$60,987.00 for the value of Plaintiffs' personal property, plus the sum of \$200.00 for costs expended, all of which to bear interest at the statutory rate of 10% per annum until paid, upon which execution and garnishment may immediately issue. . . .

The Bryants did not appeal the default judgment. On December 6, 2004, the Bryants filed another chapter 13 bankruptcy petition, which was converted to chapter 11 on May

10, 2005. The Rogers then filed the current adversary proceeding to determine the dischargeability of the state court judgment.

Positions of the parties

The plaintiffs argue that the doctrine of collateral estoppel prevents this Court from litigating the issues presented in the present adversary proceeding. According to the plaintiffs, because the state court found that the debtors had willfully and maliciously injured the plaintiffs or property of the plaintiffs, the Court is bound, and the debtors should be estopped from re-litigating the same issues in the plaintiffs' dischargeability complaint. At trial, the debtors also argued that the *Rooker-Feldman* doctrine makes the state court judgment binding on this Court and thus prevents re-litigation of the same issues in the adversary proceeding.¹

The debtors argue that nothing in the state court judgment established that the injury suffered by the plaintiffs was the result of a willful and malicious act by the debtors. Additionally, the debtors argue that they have not had an opportunity to fully and fairly litigate the issues raised in the state court complaint. The debtors believe that they should be allowed to present evidence to this Court in defense of the allegations brought against them by the plaintiffs.

¹ The plaintiffs' reliance on the *Rooker-Feldman* doctrine is misplaced and will not be addressed by the Court. According to the Bankruptcy Appellate Panel of the Eighth Circuit, the doctrine is confined to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Jacobus v. Binns (In re Binns)*, 328 B.R. 126, 131 (B.A.P. 8th Cir. 2005) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 125 S.Ct. 1517 (2005)). This adversary proceeding is brought by the state court winner (the plaintiffs), who are trying to use the default judgment offensively to establish the basis for a determination of dischargeability. The *Rooker-Feldman* doctrine is simply not applicable in this situation.

Collateral Estoppel

The doctrine of collateral estoppel precludes a court from conducting further proceedings on issues that have been litigated and ruled upon previously. *Fisher v. Scarborough (In re Scarborough)*, 171 F.3d 638, 641 (8th Cir. 1999). If the elements of a willful and malicious injury to an entity or property of an entity in the state court action are the same as those required under 11 U.S.C. § 523, the doctrine of collateral estoppel will control. According to the Supreme Court, the standard of proof for dischargeability exceptions under the code is the ordinary preponderance of the evidence standard. *Grogan v. Garner*, 498 U.S. 279, 291 (1991). In determining whether the state court judgment is entitled to preclusive effect, the Court must apply the law of Arkansas. *Scarborough*, 171 F.3d at 641 (stating that the court must look to the substantive law of the forum state in applying collateral estoppel). In Arkansas, there are four elements required to establish collateral estoppel: “(1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) that issue must have been actually litigated; (3) the issue must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment.” *Riverdale Dev. Co. v. Ruffin Bldg. Sys., Inc.*, 146 S.W.3d 852, 855 (Ark. 2004).

Regarding the first element, the plaintiffs argue that the debt in the adversary proceeding is exempt from discharge under § 523(a)(4) and (a)(6) because of the state court default judgment. Section 523(a)(4) states that discharge is not available to a debtor for any debts “for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.” 11 U.S.C. § 523(a)(4). Section 523(a)(6) states that discharge is not available to a debtor for any debts “for willful and malicious injury by the debtor to another entity or to the property of another entity.” 11 U.S.C. § 523(a)(6). Because the state court did not make a specific finding that the debtors committed larceny, as alleged in Count I of the plaintiff’s adversary proceeding, the Court will concentrate its examination on the § 523(a)(6) allegation. Also, nothing in the state court complaint suggests that this is a case involving a breach of fiduciary duty. The language in the judgment referring to fiduciary duty appears to be an attempt to include language that the plaintiffs believed

may have some effect in a prospective bankruptcy, but is not necessary to the judgment. This belated language is not founded on any allegation in the complaint and does not have the same preclusive consequences.

Under § 523(a)(6), the plaintiffs must prove by a preponderance of the evidence that a willful and malicious injury occurred to the plaintiffs or property of the plaintiffs as a result of the debtors' actions. To satisfy the first element of collateral estoppel, this issue must be the same as presented in the state court action. In the Eighth Circuit, willful and malicious are two distinct requirements. *Scarborough*, 171 F.3d at 641. According to the court, “[w]illfulness is defined as ‘headstrong and knowing conduct’ and ‘malicious’ as conduct ‘targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause . . . harm.’” *Id.* (quoting *Johnson v. Miera (In re Miera)*, 926 F.2d 741, 743 (8th Cir. 1991)). In this case, the debtors must have acted with the intent to harm the plaintiffs “rather than merely acting intentionally in a way that resulted in harm.” *Id.*

Under Arkansas law, upon entry of an order for default judgment, the facts alleged in the complaint are admitted. *See Kohlenberger, Inc. v. Tyson's Foods, Inc.*, 510 S.W.2d 555, 560 (Ark. 1974); *see also Jean-Pierre, M.D. v. Plantation Homes of Crittenden County, Inc.*, 89 S.W.3d 337, 340-41 (Ark. 2002) (stating that the court has repeatedly held that a default judgment establishes liability, and citing cases); *Gardner v. Robinson*, 854 S.W.2d 356, 357 (Ark. Ct. App. 1993) (stating the general rule that in an inquiry of damages upon default, all of the plaintiff's material allegations are to be taken as true). The general allegation of facts stated in the state court complaint (Pls.' Ex. 2, ¶¶ 4-14) are virtually identical to the general allegation of facts stated in this adversary proceeding. Additionally, the plaintiffs alleged two counts in the state court complaint. Count I was for malicious prosecution and abuse of process relating to a criminal action caused to be filed against Ms. Rogers. Included in Count I is the statement that “Defendants' actions have been willful and so egregious so as to warrant the imposition of punitive damages.” (Pls.' Ex. 2, ¶ 19.) Count II was for conversion and trespass to chattels relating to the

interference of the plaintiffs' possessory interest in their personal property, which was identified in the complaint. Included in Count II is the statement that "Defendants' actions have been so egregious so as to warrant the imposition of punitive damages." (Pls.' Ex. 2, ¶ 30.) The state court found that there was "substantial evidence" to justify a judgment in favor of the plaintiffs and that the debtors "willfully and maliciously injured the plaintiffs and the property of the plaintiffs" by seizing and disposing of the plaintiffs' property.

The state court's judgment included an award of punitive damages against the debtors. Under Arkansas law, "[i]n order to support an award of punitive damages, the evidence must indicate the defendant acted wantonly in causing the injury or with such a conscious indifference to the consequences that malice might be inferred." *Freeman v. Anderson*, 651 S.W.2d 450, 452 (Ark. 1983). Only in a case where the acting party knew or had reason to believe that his actions would cause injury, and he continued in his course of conduct in spite of that knowledge, may malice be inferred and punitive damages awarded. *James v. Bill C. Harris Construction Co.*, 763 S.W.2d 640, 642 (Ark. 1989). In this case, because punitive damages were awarded in the state court action, this Court must find that the debtors acted not only willfully, but also with malice. Because the judgment entered against the debtors and the allegations contained in the state court complaint are sufficiently similar to those that would support a finding of both willful and malicious injury under the bankruptcy code, the Court finds that the first element of collateral estoppel has been met.

The second element of collateral estoppel is that the issue must have been actually litigated. The law in Arkansas regarding default judgments has been stated in numerous cases: "A judgment by default is just as binding and enforceable as a judgment entered after a trial on the merits." *Reyes v. Jackson*, 861 S.W.2d 554, 555 (Ark. Ct. App. 1993); *see also Glass v. Cagle (In re Cagle)*, 253 B.R. 437, 439 (Bankr. E.D. Ark. 2000) (listing six additional cases in support). The policies underlying the principle of collateral estoppel require that this Court give full faith and credit to a state court judgment,

whether obtained by default or after a full defense. *Cagle*, 253 B.R. at 439. Accordingly, the Court finds that the second element of collateral estoppel has been met.

The third element is that the issue must have been determined by a valid and final judgment. As discussed above, upon entry of an order for default judgment, the facts alleged in the complaint are admitted. The allegations in the state court complaint combined with the default judgment indicate that the debtors willfully and maliciously injured the plaintiffs and property of the plaintiffs. Because of the award of punitive damages, this is also sufficient to meet the requirements contained in § 523(a)(6) for a willful and malicious injury. The debtors did not appeal the state court decision. Consequently, the Court finds that the determination of a willful and malicious injury was made in a valid and final judgment in state court and the third element of collateral estoppel has been met.

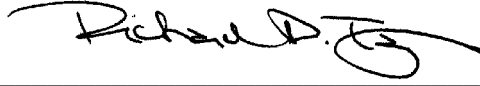
The fourth element requires that the determination of a willful and malicious injury established in the third element was essential to the judgment entered. The state court complaint included two causes of action, each of which alleged willful actions by the debtors “so egregious as to warrant the imposition of punitive damages.” The state court found that the debtors willfully and maliciously injured the plaintiffs and the property of the plaintiffs and entered judgment against the debtors for damages, including punitive damages. The willful and malicious injury referenced in the judgment specifically related to seizing and disposing of property of the plaintiffs. Accordingly, the Court finds that the fourth element is met because the determination of a willful and malicious injury established in the third element was essential to the judgment entered.

Because all four elements of collateral estoppel have been met, the Court finds that the issues before the Court have been litigated and ruled upon previously and the doctrine of collateral estoppel controls. The Court further finds that judgment entered in state court is non-dischargeable in the debtors’ bankruptcy in accordance with § 523(a)(6).

IT IS SO ORDERED.

September 13, 2005

DATE



RICHARD D. TAYLOR
UNITED STATES BANKRUPTCY JUDGE

cc: Andrew L. Clark, attorney for the debtors
Luther Oneal Sutter, attorney for Jim and Laurie Rogers
Charles W. Tucker, Ass't U.S. Trustee