

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

FILED
U.S. Bankruptcy Court
WDNC, Asheville, NC

APR - 6 2000

Geraldine Treutelaar Crockett,
Clerk
/smr

In re DANIEL WINTER,

Debtor.

STANLEY N. TENEN and CYNTHIA
TENEN, and MERU FOUNDATION,

Plaintiffs,

vs.

DANIEL WINTER,

Defendant.

CASE NO. 99-10678 GRH

JUDGMENT ENTERED ON APR - 6 2000

JUDGMENT

ADVERSARY PROCEEDING
NO. 99-01037

This matter coming on to be heard before the undersigned United States Bankruptcy Judge for the Western District of North Carolina, presiding upon the motion of Plaintiffs, filed on March 8, 2000, for Summary Judgment on their First Claim for Relief set forth in the Complaint, and the Debtor having withdrawn any objection it had to Plaintiffs' motion, and having duly considered Plaintiffs' Complaint, the Answer, the Affidavit of Cynthia Tenen, and Plaintiffs' Memorandum of Law, and the authorities cited therein, and for good cause shown, it appears to the Court as follows:

FINDINGS OF FACT

1. Plaintiffs are creditors of the Debtor, pursuant to the Findings of Fact, Conclusions of Law and Order of the United States District Court for the Western District of New York, entered on September 9, 1998 (the "New York Judgment"), in an action pending in that Court entitled Stanley N. Tenen and Cynthia Tenen, and Meru Foundation v. Daniel Winter, individually and b/d/a Daniel Winter and Friends and d/b/a Crystal Health Institute, No. 6:94 CV 7934 (the "New York Action") (See Compl., ¶ 1; New York Judgment, Exhibit A. to Compl.)

(12)

2. The New York Judgment is 24 pages long, and contains a detailed statement of Findings of Fact and Conclusions of Law, which, among other things, (i) identify copyrighted materials of Plaintiffs that the Debtor infringed, (ii) find that such copyrights are valid and enforceable, (iii) specify how the Debtor infringed Plaintiffs' copyrights and disparaged Plaintiffs and their work, and (iv) detail the damages Plaintiffs suffered due to the Debtor's infringements. (New York Judgment ¶¶ 10-17, at pp. 6-11)

3. In the New York Judgment, the Court held:

These copyright infringements were willful and malicious. The infringements were willful in that they were done knowingly and intentionally, and despite the continuous and strenuous objections of the plaintiffs. . . . The infringements were malicious in that they were done, and continued to be done, even after the plaintiffs informed the defendant that his behavior was damaging them . . .

(New York Judgment, at p. 10)

4. The Debtor consented in writing to the entry of the New York Judgment. (New York Judgment, at p. 25; Ans. ¶ 4)

5. The Debtor was represented by counsel at the time he consented to entry of the New York Judgment, that counsel being attorney Brad Salai. (Ans. ¶ 4)

6. In consenting to entry of the New York Judgment, the Debtor admitted to all of the findings contained therein, including that he had willfully and maliciously infringed Plaintiffs' copyrights, and further admitting the damage his infringement caused to Plaintiffs and their property. (New York Judgment, at p. 25)

7. The parties in the New York Action are identical to the parties in this action.

8. The Debtor and the Plaintiffs litigated the New York Action for approximately 5 years before negotiating the terms of the New York Judgment, which the parties then presented to the Court, along with documents and deposition testimony. (Ans., ¶ 4; New York Judgment, pp. 1-2)

9. In the New York Action, the Debtor and the Plaintiffs had a full and fair opportunity to litigate the issue determined in the New York Judgment, including but not limited to the Debtor's infringement of Plaintiffs' copyrights, whether that infringement was willful and malicious, and the damage caused to Plaintiffs by Defendant's infringement.

10. The New York Judgment was a final judgment that determined the issues addressed therein on their merits. (Compl. ¶ 10; Ans. ¶ 7)

11. Debtor did not appeal the New York Judgment, and any time to appeal has since expired. (Compl. ¶ 11; Ans. ¶ 7)

12. There is now due and owing to Plaintiffs on the New York Judgment a total sum of \$75,000 (Seventy-Five Thousand Dollars) as of September 9, 1998, plus interest accruing from that date forward at a rate of 12%, pursuant to the terms of the New York Judgment. (Compl. ¶ 14)

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the factual allegations, taken in the light most favorable to the non-moving party, present no genuine issues of material fact for determination at trial. See Harleysville Mutual Insurance Co. v. Packer, 60 F.3d 1116, 1119-20 (4th Cir. 1995). Where there are no genuine issues of material fact, the court should examine the legal theories of the parties and enter a judgment as a matter of law. See Bland v. Norfolk & Southern Railroad Co., 406 F.2d 863 (4th Cir. 1969).

2. Summary judgment in favor of Plaintiffs is appropriate because all the material facts are set forth in the New York Judgment, and/or are admitted in the Debtor's Answer.

3. The doctrine of collateral estoppel (also termed "issue preclusion") is applicable to dischargeability proceedings in bankruptcy. In Grogan v. Garner, 498 U.S. 279, 112 L. Ed 2d 755, 111 S.Ct. 654, note 11 (1991).

4. "Collateral estoppel precludes relitigation of an issue decided previously in judicial or administrative proceedings provided the party against whom the prior decision was asserted enjoyed a full and fair opportunity to litigate that issue in an earlier proceeding." In re McNallen, 62 F.3d 619, 624 (4th Cir. 1995).

5. Res judicata requires a showing of the following three elements: "(1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits." Young-Henderson v. Spartanburg Area Ment. Health Ctr., 945 F.2d 770, 773 (4th Cir. 1991), quoting Nash County Bd. of Ed. v. Biltmore Co., 640 F.2d 484, 486 (4th Cir.), cert. denied, 454 U.S. 878 (1981).

6. The New York Judgment meets all the requirements for res judicata and/or collateral estoppel to apply. It is a final judgment that determined the issues addressed thereon on their merits. (Ans. ¶ 7; Compl. ¶ 10). The parties in the New York Action are identical to the parties in this adversary proceeding. The Debtor admits that he litigated the matter for five years before agreeing to the terms of the New York Judgment (Ans., ¶ 4). Thus, the Debtor had a full and fair opportunity to litigate all of the issues determined in the New York Judgment, including but not limited to Defendant's infringement of Plaintiffs' copyrights, whether that infringement was willful and malicious, and the damage caused by Defendant's infringements.

7. In his Answer, the Debtor alleges that he did not have sufficient funds to proceed with the trial, and therefore had no choice but to consent to the terms of the New York Judgment. (Ans., ¶ 4). However, the Debtor admits he was represented by counsel during the negotiation of the Judgment, and he himself signed a statement agreeing to its entry. (Answer, ¶ 4) The Debtor also admits he did not appeal the New York Judgment. (Ans., ¶ 7, admitting the allegations of ¶ 11 of the Compl.) The Debtor's allegations are therefore insufficient to prevent the application of the doctrines of collateral estoppel and/or res judicata. See In re Austin, 138 B.R. 898, 910 (Bankr. N.D. Ill. 1992) (where debtor had entered into the consent decree knowingly and voluntarily, decree would be given collateral estoppel effect, despite debtor's contention that at the time he entered into the decree his counsel was threatening to withdraw and he believed he had no choice but to settle).

8. Under the doctrines of res judicata and/or collateral estoppel, the New York Judgment prevents the Debtor from relitigating the issues of his infringement of Plaintiffs' copyrights, the willful and malicious nature of that infringement, the damage caused to Plaintiffs by the Debtor's infringement, and all other issues addressed in that Judgment. See In re Hibbs, 161 B.R. 259 (Bankr. C.D. Cal. 1993), aff'd, 122 F.3d 1071 (9th Cir. 1997) (granting motion of the plaintiff creditor for summary judgment, holding that a prior federal judgment against the debtor for intentional copyright infringement was nondischargeable).

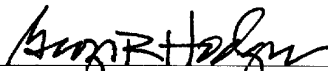
9. The Debtor's actions, as detailed in the New York Judgment, are explicitly stated to constitute willful and malicious injury by the Debtor to the Plaintiffs and/or their property. (New York Judgment, ¶ 16, at p. 10).

10. Section 523(a)(6) of the Bankruptcy Code excepts from discharge "any debt. . . for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 USC § 523 (a)(6).

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. Plaintiffs' Motion for Summary Judgment on the First Claim for Relief set forth in the Complaint is granted;
2. The debt owed by the Debtor to the Plaintiffs, which is represented by the New York Judgment, is nondischargeable, and remains a valid and legal obligation of the Debtor, notwithstanding any discharge entered, or to be entered, in this case; and
3. The costs of this proceeding shall be taxed to the Debtor.

THIS, the 6 day of Apr, 2000.



George R. Hodges, Judge Presiding
United States Bankruptcy Judge

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