

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 2, 2024 at 10:00 a.m.

1. <u>23-23292</u> -E-7 IAN LONG	STATUS CONFERENCE RE:
<u>23-2105</u>	COMPLAINT
CAE-1	12-18-23 [1]

TRUSTED BRIDGE, LLC V. LONG

Plaintiff's Atty: Barry H. Spitzer, Christopher W. Peterman, Keith D. Ropp
Defendant's Atty: Patricia Wilson

Adv. Filed: 12/18/23
Answer: 1/22/24

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 3/20/24 to be conducted in conjunction with the Motion for Summary Judgment.

Statement of Corporate Ownership of Trusted Bridge, LLC filed 6/6/24 [Dckt 36]

The Status Conference is XXXXXXX

JULY 2, 2024 STATUS CONFERENCE

At the July 2, 2024 hearing on Plaintiff's Motion for Summary Judgment, the court granted the Motion, concluding that the State Court Judgment for Fraud was nondischargeable based on issue preclusion and 11 U.S.C. § 523(a)(2)(A).

At the Status Conference, XXXXXXX

MARCH 20, 2024 STATUS CONFERENCE

Pursuant to the Stipulation of the Parties the court continued the Status Conference to March 20, 2024. The continuance had been requested as the Parties and their counsel in conducting their Discovery Conference and other communications recognized that additional time to prepare for the scheduling in this Adversary Proceeding was required. The Stipulation provided for a discovery plan to be filed by March 19, 2024.

At the March 20, 2024 Status Conference the issue was raised that Plaintiff will be seeking the entry of a judgment determining that a State Court Judgment for Fraud is nondischargeable. The Parties agreed that before proceeding with discovery and setting other dates and deadlines, adjudication of such a motion was appropriate.

Plaintiff shall file and serve its Motion for Summary Judgment (or other proper motion) in this Adversary Proceeding based on the principles of Res Judicata and its sub-principles of Collateral Estoppel, and issue preclusion (and such other legal theories based on the State Court Judgment) the week of April 29, 2024.

Defendant-Debtor shall file and serve his Opposition pleadings to Plaintiff's Motion on or before May 24, 2024.

Plaintiff's Reply, if any, to the Opposition shall be filed and served on or before June 5, 2024.

The hearing on the Plaintiff's Motion for Judgment based on the State Court Judgment shall be conducted at 10:00 a.m. on June 25, 2024.

The court stays setting discovery and other dates and deadlines in this Adversary proceeding until after conclusion on the Plaintiff's forgoing Motion for Judgment.

2. [23-23292-E-7](#)
[23-2105](#)
KDR-1

IAN LONG
Patricia Wilson

MOTION FOR SUMMARY JUDGMENT
AND/OR MOTION FOR SUMMARY
5-8-24 [\[23\]](#)

TRUSTED BRIDGE, LLC V. LONG ADJUDICATION

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Attorneys of record who have appeared in the Bankruptcy Case, the Adversary Proceeding, or contested matter on May 8, 2024. The court issued the following Order setting dates material to this proceeding:

IT IS HEREBY ORDERED:

1. Plaintiff shall submit its Motion for Summary Judgment by May 8, 2024.
2. Defendant shall submit his objection thereto by May 31, 2024.
3. Plaintiff shall submit its reply, if any, by June 12, 2024.
4. Hearing shall remain as originally docketed on June 25, 2024, at 10:00 AM. (The court subsequently rescheduled this hearing to take place on July 2, 2024, due to a scheduling conflict. See Order, docket 29).

Order, Docket 22. Plaintiff complied with this deadline, and Defendant-Debtor did not timely file any Objection.

<p>The Motion for Partial Summary Judgment is granted.</p>
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Plaintiff in this Adversary Proceeding Trusted Bridge, LLC ("Plaintiff") moves this court for an order granting partial summary judgment / adjudication pursuant to Fed. R. Bank. P. 7056 on its "First Claim for Determination of Dischargeability of Debt" alleged in its Complaint against Defendant-Debtor Ian Christopher Long ("Defendant"). Plaintiff states with particularity as the relief sought:

- (1) That the court determine, pursuant to *Grogan v. Garner*, 498 US 279 (1991) and the other authorities described in Plaintiff's Memorandum of Points and Authorities, that the underlying state court judgment against Defendant for common-law fraud is preclusive in this action.

(2) That the court determine that as a result of the preclusive effect of the state court judgment, the debt is conclusively based on “false pretenses, a false representation, or actual fraud” and is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

(3) That the court grant the other relief requested in Plaintiff’s complaint, including but not limited to an award of costs, and if applicable, attorney fees.

Mot. 2:3-11, Docket 23.

Plaintiff’s Pleadings in Support

Plaintiff files in support of their Motion a Memorandum of Points and Authorities (Docket 26) (“Memo”), the Declaration of Kathleen Schuyler (Docket 24), the State Court Case Register as Exhibit A (Docket 25), and a Statement of Undisputed Facts (Docket 27). Plaintiff also incorporates by reference Exhibits A-F that were filed in support of the complaint. Docket 6.

Plaintiff asserts in its Memo that it received a state court judgment in Douglas County Circuit Court in the State of Oregon in the amount of \$600,000 at 9% interest against Defendant for common-law fraud. Mem. 2:2-5, Docket 26. Plaintiff succeeded in that action by summary judgment, Defendant not responding in that suit. *Id.* at 10-14. Plaintiff seeks to succeed here on the theory of issue preclusion as laid out in *Grogan v. Garner*, 498 US 279 (1991), and that 11 U.S.C. § 523(a)(2)(A) renders this debt nondischargeable, being a debt obtained by “false pretenses, a false representation, or actual fraud[.]” *Id.* at 2:19-24.

What the Oregon State Court found in its ruling was that Plaintiff established each of the following elements required for fraud in Oregon:

- (1) the defendant made a material misrepresentation that was false;
- (2) the defendant did so knowing that the representation was false;
- (3) the defendant intended the plaintiff to rely on the misrepresentation;
- (4) the plaintiff justifiably relied on the misrepresentation; and
- (5) the plaintiff was damaged as a result of that reliance.

Mem. 8:7-17, Docket 26; Order Granting Mot. For Summ. J., Ex. D 53:3-6, Docket 6. *See Strawn v. Farmers Ins. Co.*, 350 Or 336, 352, 258 P. 3d 1199, 1209 (Or. 2011).

Ms. Schuyler testifies as to the facts asserted in the Motion, Statement of Undisputed Facts, and Memo, and she authenticates the Exhibits. She testifies in her Declaration that the Oregon State Court “granted the motion [for summary judgment] as to various claims, including the fraud claim.” Decl. 3:15-16, Docket 24. She further testifies that on “April 2, 2019, the trial court signed and entered a Limited Judgment in which the court granted judgment on the fraud claim with a money award in the amount of \$600,000.00. . .” *Id.* at 3:24-25. Ms. Schuyler also testifies that Defendant was properly served in the state court action and failed to respond. *Id.* at 4:12-18.

APPLICABLE LAW

Summary Judgment

In an adversary proceeding, summary judgment is proper when “[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000). “[A dispute] is ‘genuine’ only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is ‘material’ only if it could affect the outcome of the suit under the governing law.” *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must “cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials.” Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court “generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented.” *Agosto v. INS*, 436 U.S. 748, 756 (1978). “[A]t 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.” *Anderson*, 477 U.S. at 249.

Actual Fraud

11 U.S.C. § 523(a)(2)(A) states:

(a) A discharge under section 727, 1141, 1192 [1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

...

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

In the Ninth Circuit the elements of common law fraud for purposes of 11 U.S.C. § 523(a)(2)(A) are as follows:

- (1) the debtor made . . . representations;
- (2) that at the time he knew they were false;
- (3) that he made them with the intention and purpose of deceiving the creditor;
- (4) that the creditor relied on such representations; [and]
- (5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

Am. Express Travel Related Servs. Co. v. Hashemi (In re Hashemi), 104 F.3d 1122, 1125 (9th Cir 1996), quoting *Britton v. Price (In re Britton)*, 950 F.2d 602, 604 (9th Cir. 1991).

Issue Preclusion

The doctrine of Issue Preclusion, formerly referred to as Collateral Estoppel, as a subcategory of the Doctrine of *Res Judicata* provides that if an issue has been adjudicated in a prior judicial proceeding, it cannot be relitigated in a subsequent judicial proceeding.

The bankruptcy court may give preclusive effect to a state court judgment as the basis for excepting a debt from discharge. As stated by the Supreme Court in *Grogan v. Garner*, 498 U.S. 279, 285 (1991) [emphasis added],

Our prior cases have suggested, but have not formally held, that the principles of collateral estoppel apply in bankruptcy proceedings under the current Bankruptcy Act. *See, e.g., Kelly v. Robinson*, 479 U.S. 36, 48, n.8, 93 L. Ed. 2d 216, 107 S. Ct. 353 (1986); *Brown v. Felsen*, 442 U.S. at 139, n.10. *Cf. Heiser v. Woodruff*, 327 U.S. 726, 736, 90 L. Ed. 970, 66 S. Ct. 853 (1946) (applying collateral estoppel under an earlier version of the bankruptcy laws). Virtually every Court of Appeals has concluded that collateral estoppel is applicable in discharge exception proceedings. *See In re Braen*, 900 F.2d at 630; *Combs v. Richardson*, 838 F.2d at 115; *Klingman v. Levinson*, 831 F.2d 1292, 1295 (CA7 1987); *In re Shuler*, 722 F.2d 1253, 1256 (CA5), *cert. denied sub nom. Harold V. Simpson & Co. v. Shuler*, 469 U.S. 817, 83 L. Ed. 2d 32, 105 S. Ct. 85 (1984); *Goss v. Goss*, 722 F.2d 599, 604 (CA10 1983); *Lovell v. Mixon*, 719 F.2d 1373, 1376 (CA8 1983); *Spilman v. Harley*, 656 F.2d 224, 228 (CA6 1981). *Cf. In re Rahm*, 641 F.2d 755, 757 (CA9) (prior judgment establishes only a *prima facie* case of nondischargeability), *cert.*

denied sub nom. Gregg v. Rahm, 454 U.S. 860, 70 L. Ed. 2d 157, 102 S. Ct. 313 (1981). **We now clarify that collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).**

In applying the principles of Collateral Estoppel, it is important to distinguish Collateral Estoppel issue preclusion, which prevents the re-determination of issues which were part of an earlier judgment, and *Res Judicata* action preclusion which prevents the subsequent filing of an action. Many of the cases in which the courts have held that *Res Judicata* does not apply to a state court judgment have been when the debtor attempts to assert that a creditor's judgment for breach of contract precludes the creditor from subsequently filing a nondischargeability action for fraud.

In *Cal-Micro, Inc. v. Cantrell*, 329 F.3d 1119 (9th Cir. 2003), the Ninth Circuit Court of Appeals restated the established rule of law that 28 U.S.C. §1738^{Fn.1.} requires the federal courts to give full faith and credit to a state's (California's) collateral estoppel principles, citing to the earlier Ninth Circuit decision, *Gayden v. Nourbakhsh*, 67 F.3d 798, 800 (9th Cir. 1995). *See also Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001). The court applies the forum state's law of issue preclusion. *Id.*

With respect to the application of Issue Preclusion under Oregon Law, Plaintiff cites the court to *Nelson v. Emerald People's Utility District*, 318 Ore. 99m 104 (1993), which states:

If one tribunal has decided an issue, the decision on that issue may preclude relitigation of the issue in another proceeding if five requirements are met:

1. The issue in the two proceedings is identical. *North Clackamas School Dist. v. White, supra*, 305 Or at 53; *State Farm Fire & Cas. v. Reuter, supra*, 299 Or at 158.
2. The issue was actually litigated and was essential to a final decision on the merits in the prior proceeding. *Heller v. Ebb Auto Co.*, 308 Or 1, 5, 774 P2d 1089 (1989).
3. The party sought to be precluded has had a full and fair opportunity to be heard on that issue. *Chavez v. Boise Cascade Corporation*, 307 Or 632, 635, 772 P2d 409 (1989); *State v. Ratliff, supra*, 304 Or at 258.
4. The party sought to be precluded was a party or was in privity with a party to the prior proceeding. *North Clackamas School Dist. v. White, supra*, 305 Or at 53; *State Farm Fire & Cas. v. Reuter, supra*, 299 Or at 159.
5. The prior proceeding was the type of proceeding to which this court will give preclusive effect. *North Clackamas School Dist. v. White, supra*, 305 Or at 52; *State v. Ratliff, supra*, 304 Or at 258.

4

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

A court is not required to apply issue preclusion even if the five threshold factors are met because the court is also charged with determining whether issue preclusion “furthers the public policies underlying the doctrine.” *In re Harmon*, 250 F.3d at 1245 (citing *Lucido v. Super. Ct.*, 51 Cal.3d 335 (1990)). In short, the decision to apply issue preclusion is discretionary.

The party asserting issue preclusion “carries the burden of proving a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action.” *In re Lambert*, 233 Fed. Appx. 598, 599 (9th Cir. 2007).

DISCUSSION

In this case, the court finds issue preclusion is in effect because the elements for fraud as determined in the state court case are essentially identical to the elements of fraud for purposes of 11 U.S.C. § 523(a)(2)(A). The court declines to relitigate issues already decided. For this Motion and Adversary Proceeding, Plaintiff has documented that a State Court Judgment has been entered which is based on actual fraud.

The Complaint filed in the Oregon Action seeks multiple claims for relief, including breach of contract and fraud against Defendant-Debtor. Exhibit A to the Complaint; Dckt. 6. Exhibit C is a communication from Oregon Circuit Judge Kathleen Johnson stating that she was granting judgment for Plaintiff and against Defendant-Debtor for Fraud, Rent, and Conversion. *Id.*

Exhibit E is the Limited Judgment issued by Circuit Judge Johnson, stating that judgment is entered against Defendant Debtor on the following claims:

1. Second Claim for Relief - Fraud, with the principal amount of the judgment to be \$600,000.00.
2. Fifth Claim For Relief - Rent, with the principal amount of the judgment to be \$56,000.00.

3. Sixth Claim for Relief - Conversion, with the principal amount of the judgment to be \$15,000.

4. Post Judgment Interest in the amount of 9% per annum.

Id.

The General Judgment issued by the Oregon Circuit Court is provided as Exhibit F (which appears to be mislabeled as a second Exhibit E), dismisses the first, third, and fourth claims asserted in the State Court Complaint, and grants based on the (1) Second claim of relief for Fraud, (2) the Fifth claim of relief for Rent, and the Sixth claim for relief for Conversion the following monetary judgment amounts:

1. For Plaintiff and against Defendant-Debtor for costs in the amount of \$1,884.01.

2. For Plaintiff and against Defendant-Debtor for \$64,807.90 in attorney's fees.

Id.

~~_____ The Motion for Partial Summary Judgment is granted, and the court shall enter judgment that the monetary obligation owing in the amount of \$600,000, plus 9% interest post judgment interest, in the State Court Judgment against Defendant-Debtor is nondischargeable as provided in 11 U.S.C. § 523(a)(2)(A) (fraud).~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Partial summary Judgment filed by Trusted Bridge, LLC ("Plaintiff") having been presented to the court, Findings of Fact and Conclusions of Law stated in the Civil Minutes for the hearing; and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~_____ **IT IS ORDERED** that the Motion for Partial Summary Judgment, pursuant to Fed. R. Civ. P. 56(a) as incorporated by Fed. R. Bankr. P. 7056, is granted.~~

~~_____ **IT IS FURTHER ORDERED** that judgment is granted for Plaintiff and against Defendant-Debtor Ian Christopher Long ("Defendant"), on the claim for relief pursuant to 11 U.S.C. § 523(a)(2)(A), and judgment shall be entered that the obligation owing on the judgment obtained by Plaintiff against Defendant in the in the Circuit Court for the State of Oregon for Douglas County, case number 17CV02739, in the amount of \$600,000.00, plus 9% post-judgment interest, granted for the claim for relief for fraud, is nondischargeable and may be enforced, including any additional amount accruing thereto, through that state court proceeding or as otherwise permitted under applicable state law to be added to the judgment for fraud.~~