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U.S. BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

# IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

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Ť	In re:	) Chapter 11
11	JOHN RICHARD STEPHENS and	) ) No. 0-05-bk-01680-JMM
12	SANDRA J. STEPHENS,	) Adversary No. 0-06-AP-00002-JMM
13	Debtors.	)
		MEMORANDUM DECISION RE:
14	CORONA COLLEGE HEIGHTS ORANGE & LEMON ASSOCIATION,	) ) MOTION FOR SUMMARY JUDGMENT
15	EXPORT SELECT, LLC, AND KODIAK	)
	PRODUCE & STORAGE, INC.,	(Opinion to Post)
16	71	)
1.77	Plaintiffs,	)
17	VS.	)
18	JOHN RICHARD STEPHENS and SANDRA J. STEPHENS,	) ) }
19	SANDRA J. STEITIENS,	)
	Defendants.	ý – – – – – – – – – – – – – – – – – – –
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The Plaintiffs have asked this court to grant summary judgment on their behalf. For the reasons outlined below, the court finds oral argument to be unnecessary, and rules as follows:

- 1. Corona College Heights Orange & Lemon Association's ("CCH") motion is GRANTED;
- 2. Export Select, LLC's ("ESL") motion is GRANTED;
- 3. Kodiak Produce & Storage, Inc.'s ("Kodiak") motion is DENIED;

4. Oral argument, currently set for September 11, 2006, is VACATED;

5. The trial setting of September 11, 2006, at 11:00 a.m. is reaffirmed as to Plaintiff Kodiak and the Defendants. A joint pre-trial statement is due no later than Wednesday, September 6, 2006.

#### (1) CCH and ESL's Motion

Without ever actually identifying the theory for summary judgment as one seeking a collateral estoppel adjudication, Plaintiffs CCH and ESL have provided a sufficient record to accord them relief on that theory. While never using the words "collateral estoppel" or presenting any law on the subject, the court nonetheless finds that such claims are implied in their argument, and that a final U.S. District Court judgment dated July 14, 2005, is therefore non-dischargeable pursuant to 11 U.S.C. § 523(a)(4).

Because collateral estoppel applies fully to the claims of CCH and ESL, there is no need for the court to relitigate that which has already been litigated, nor to look behind those stipulations and factual findings that formed the basis for the District Court judgment, and which fully support it.

Collateral estoppel applies in bankruptcy proceedings. *Grogan v. Garner*, 498 U.S. 279, 284, 111 S.Ct. 654 (1991); *Brown v. Felsen*, 442 U.S. 127, 138-39, 99 S.Ct. 2205, 2212-13 (1979). The doctrine precludes the relitigation of issues already decided. All that a bankruptcy court must do is compare the elements of a non-bankruptcy civil action, findings, and judgment against the elements required for non-dischargeability, and if they match, the judgment(s) may be declared non-dischargeable. *See Clark v. Bear Sterns & Co.*, 966 F.2d 1318, 1320 (9th Cir. 1992); *Palm v. Klapperman (In re Cady)*, 266 B.R. 172, 183 (9th Cir. BAP 2001), *aff'd*, 315 F.3d 1121 (9th Cir. 2003).

Of all of the various, factually intensive, non-dischargeable types of claims, defalcation of a fiduciary has the lowest threshold of proof. In the Ninth Circuit, the elements are:

- 1. The existence of a trust relationship--express, technical, or statutory-that was in existence before the wrong complained of;
- 2. That the debtors were fiduciaries under that trust;
- 3. That the fiduciaries breached that trust, and
- 4. That the plaintiffs' beneficiaries suffered injury because of that breach.

Ragsdale v. Haller, 780 F.2d 794, 795-96 (9th Cir. 1986); Lewis v. Scott (In re Lewis), 97 F.3d 1182, 1185 (9th Cir. 1996). A defalcation requires no wrongful intent; even an innocent defalcation is non-dischargeable under § 523(a)(4). *Id.* at 1186; *Blyler v. Hemmeter (In re Hemmeter)*; 242 F.3d 1186, 1190 (9th Cir. 2001).

#### (2) The Stipulation and Judgment

A dispute arose between CCH and ESL against Debtors John and Sandra Stephens (in their individual capacities); and against entities owned or controlled by the Stephens. On July 13, 2005, the Stephens executed a stipulation which, in pertinent part, acknowledged:

- 1. They received perishable agricultural commodities from CCH and ESL, which shipping entities property preserved their PACA trust rights;
- 2. The Stephens failed to pay, which is a violation of the PACA trust;
- 3. The Stephens controlled the PACA trust assets at all relevant times;
- 4. The Stephens acknowledged that they had breached their obligations as PACA trust trustees, thereby harming the trust beneficiaries; and
- 5. The Stephens were jointly and severally liable for such breach.

(Ex. A to motion for summary judgment, paras. 1 - 6 of stipulated facts to stipulation for entry of judgment.)

U.S. District Judge Stephen M. McNamee then, on July 14, 2005, accepted that stipulation as containing undisputed facts, and adopted them as the court's findings of fact. Order of July 14, 2005.

Judgment was then entered, on the same day, against all defendants in that civil action, including the Defendants herein, as follows:

For CCH	•	\$38,957.50 damages
	•	7,190.50 attorneys' fees (applicable to both CCH and ESL)
	•	5,424.63 finance charges
For ESL	•	\$44,102.83 damages
	•	4,660.41 finance charges

The court then ordered that interest was due on any unpaid sums at the simple interest rate of 18% per annum until all sums were fully paid.

#### (3) Defendants' Defenses

The Defendants, in their response, challenge the aforesaid judgment and stipulated facts on the merits. In Sandra Stephens' case, she also argues that she had no active role in the businesses which injured the Plaintiffs. However, the Defendants are raising these defenses too late, and in direct contradiction to their previous stipulation. Thus, they are judicially estopped from so doing. *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782-83 (9<sup>th</sup> Cir. 2001). To now allow the Defendants to change their story from that to which they previously agreed, and require the Plaintiffs to start again, is for them to play too "fast and loose" with the court. *Id.* at 782. Their District Court stipulation is binding upon them. *Sec Crown Life Insurance Co. v. Springpark Associates (Matter of Springpark Associates)*, 623 F.2d 1377, 1380 (9th Cir. 1980).

Therefore, the District Court judgment of July 14, 2005, is declared to be non-dischargeable pursuant to 11 U.S.C. § 523(a)(4).

### (4) Attorneys' Fees

As for Plaintiffs' claim for attorneys' fees in this <u>non-dischargeability</u> action, while Plaintiffs have pointed to federal cases allowing fees and costs in a PACA lawsuit, this court notes that those fees and costs have <u>already</u> been awarded in the District Court action, which this court has now found to be non-dischargeable obligations.

However, the Plaintiffs have not provided the court with any authority as to their claim for fees under the <u>bankruptcy</u> statute, 11 U.S.C. § 523(a)(4). In the United States, the "American Rule" is that, unless otherwise provided by contract or statute, each party is to bear their own attorneys fees. *See Alyeska Pipeline Serv. Co. v. Wilderness Society*, 421 U.S. 240, 257-58 (1975).

Fees for the non-dischargeability proceeding shall not be awarded. Taxable costs, however, shall be. An affidavit or bills of costs of appropriate taxable costs for the bankruptcy action shall be filed within 20 days.

## (5) Kodiak's Motion

Unlike CCH and ESL, Kodiak holds no prior judgment or stipulation. The affidavits of the parties reveal conflicting interpretations of undeveloped facts. Thus, this court must hear all the evidence and judge the credibility of all witnesses. Accordingly, Kodiak's motion for summary judgment shall be DENIED, and a trial shall commence thereon on September 11, 2006, at 11 a.m.

DATED: August 28, 2006.

JAMES M. MARLAR UNITED STATES BANKRUPTCY JUDGE

Jame M. Marla

1	COPIES served as indicated below this 28th
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