

AUG 27 2004

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

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In re:)	Chapter 7
)	
ANTHONY J. BARNETT and WILLINE)	No. 4:03-bk-06828-JMM
D. BARNETT,)	
)	Adversary No. 4:04-ap-00041-JMM
<u>Debtors.</u>)	
NICOLE BARNETT WILLIAMS,)	
)	MEMORANDUM DECISION
Plaintiff,)	
vs.)	
)	
ANTHONY J. BARNETT and WILLINE)	
D. BARNETT,)	
)	
<u>Defendants.</u>)	

The court has been asked to rule upon a motion entitled "Motion to Prohibit the Presentation of Evidence by the Defendants Based Upon Collateral Estoppel Due to State Court Ruling."

Clearly, in non-dischargeability proceedings, a party may claim that the doctrine of collateral estoppel (issue preclusion) applies, and that a case need not be re-tried a second time. Such cases always involve matters wherein a prior, non-bankruptcy court proceeding resulted in a judgment in favor of a party. Then, when bankruptcy is filed by a debtor in the hope of stripping off or discharging the judgment debt, the creditor acts by filing a complaint alleging non-dischargeability, and asking the court to prevent a second trial by invocation of collateral estoppel issues.

These types of issues, however, are traditionally presented in the context of a motion for summary judgment where the creditor must show that genuine issues of material fact do not exist, that the prior claim was fully tried under state law, and that the state law elements of the case fit within the federal law framework and are adequate to hold a debt non-dischargeable.

Thus, procedurally, the court is having difficulty with the current pleading, which asks it to preclude evidence in a case which we do not yet know is going to trial.

1 The court suggests that before it rules on evidentiary issues, that we first determine whether the
2 matter should even proceed to a trial. This focuses the issue on the collateral estoppel doctrine. In the
3 Ninth Circuit, collateral estoppel may be utilized to prevent re-trying matters which have already been
4 tried and adjudicated.

5 Collateral estoppel, or issue preclusion, applies in dischargeability proceedings. *Grogan v.*
6 *Garner*, 498 U.S. 279, 284-85 and n.11, 111 S. Ct. 654, 658 and n.11, 112 L. Ed. 2d 755 (1991).

7 Federal courts "must give to a state-court judgment the same preclusive effect as would be given
8 that judgment under the law of the state in which the judgment was rendered." *Migra v. Warren City*
9 *School Dist. Bd. of Educ.*, 465 U.S. 75, 81, 104 S. Ct. 892, 896, 79 L. Ed. 2d 56 (1984); *Gayden v.*
10 *Nourbakhsh (In re Nourbakhsh)*, 67 F.3d 798, 800 (9th Cir. 1995).

11 "Collateral estoppel or issue preclusion is applicable when the issue or fact to be litigated was
12 actually litigated in a previous suit, a final judgment was entered, and the party against whom the doctrine
13 is to be invoked had a full opportunity to litigate the matter and actually did litigate it, provided such
14 issue or fact was essential to the prior judgment." *Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571,
15 573, 716 P.2d 28, 30 (1986).

16 In Arizona, in the case of a judgment entered by default, issue preclusion is not applied, because
17 none of the issues is "actually litigated." *Id. See also Circle K Corp. v. Indus. Comm'n of Ariz.*, 179
18 Ariz. 422, 425, 880 P.2d 642, 645 (Ct. App. 1993).

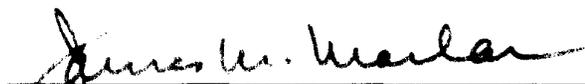
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RULING

Having re-directed the collateral estoppel inquiry into the posture of a future summary judgment motion, it is premature to rule on the current evidentiary motion. Therefore, the Motion to Prohibit the Presentation of Evidence by the Defendants Based Upon Collateral Estoppel Due to State Court Ruling will be DENIED, without prejudice. A separate order will be entered concurrently with this Memorandum Decision. FED. R. BANKR. P. 9021.

DATED this 27 day of August, 2004.



JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

COPIES mailed this 27 day of August, 2004, to:

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