

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
JOHN GUY BECKSTEAD,
Debtor.

Case No. 01-23757-L
Chapter 7

Frederick W. Honeycutt,
Plaintiff

v.

Adv. Proc. No. 01-0462

John Guy Beckstead,
Defendant.

MEMORANDUM AND ORDER DENYING MOTION FOR SUMMARY JUDGMENT

THIS ADVERSARY PROCEEDING is before the court upon the motion for summary judgment filed by the Defendant on July 12, 2002. The underlying complaint alleges that the plaintiff, Frederick W. Honeycutt (“Honeycutt”) obtained a default judgment against the defendant John Guy Beckstead (“Beckstead”) in the amount of \$47,500 plus costs. Although the state court complaint was based simply upon a note and guaranty, Honeycutt alleges in this adversary proceeding that the debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) because it resulted from false pretenses and false representations of Beckstead. The motion for summary judgment is based upon three grounds: (1) that the document relied upon by the Plaintiff is not a statement of the Debtor’s or an insider’s financial condition sufficient to satisfy the requirements of 11 U.S.C. §523(a)(2)(A); (2) that the Debtor did not make false representations to Honeycutt sufficient to satisfy the requirements of 11 U.S.C. § 523(a)(2)(A); and (3) that the default judgment, rendered with no appearance or defense by Beckstead, does not satisfy the “actual litigation” requirement for application of collateral estoppel. At the request of the court, the parties also briefed a fourth issue, whether the debt was merged with the state court judgment thus precluding litigation

of the issue of fraud that was not raised in the state court. Because the court finds that there are material issues of fact requiring trial, the motion for summary judgment will be denied. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I).

I.

The underlying facts essentially are these: Beckstead approached Honeycutt about forming a company to be known as H&B Industries to manufacture and sell sports-related products. Honeycutt obtained a loan from a bank in the amount of \$40,000 and provided these funds to Beckstead to be used in the business. The business failed and Honeycutt took up the note and guaranty of Beckstead. Honeycutt sued Beckstead in the Chancery Court of Hamilton County, Tennessee, and obtained a default judgment on July 21, 2000, in the amount of \$40,000 in principal and \$7,500 in attorney fees. Beckstead filed a voluntary Chapter 7 petition on March 15, 2001, and a Complaint Objecting to Discharge and To Determine Dischargeability of Debt was timely filed on June 19, 2001. Honeycutt alleges that Beckstead had no intention of manufacturing the product or repaying the bank loan and that he actually used the funds to pay personal expenses. Beckstead denies these claims, saying that the funds were properly used for appropriate business expenses and that the business failed as the result of a lack of capital. Although the title of the complaint indicates that Honeycutt objects to the granting of the general discharge, the body of the complaint and prayer for relief seek only a determination of the dischargeability of a particular debt. Honeycutt has advanced no argument for the denial of Beckstead's general discharge and the court will not address this issue.

II.

Three of the issues raised by Beckstead's motion can be disposed of rather quickly. First, the adversary complaint filed in this case is based solely on 11 U.S.C. § 523(a)(2)(A). No section 523(a)(2)(B) issue is pled or argued by Honeycutt. No judgment should be rendered for Beckstead on an issue not before the court.

Second, as the court has more fully discussed in its opinion of even date entered in the companion case of *Flanagan v. Beckstead (In re Beckstead)*, Adversary Proceeding No. 01-0462, in Tennessee collateral estoppel does apply to true default judgments and no exception to the application of the full faith and credit statute, 28 U.S.C. § 1738, applies in bankruptcy dischargeability proceedings. Thus, the underlying state court judgment does preclude relitigation of "matters and facts well pleaded and properly raised, and material to the case made by declaration or other pleadings." *Lawhorn v. Wellford*, 170 Tenn. 625, 168 S.W.2d 790, 792 (1943). In this adversary proceeding, however, unlike *Flanagan*, fraud was not pled in the state court. Thus, while Beckstead is precluded from relitigating the *amount* of the obligation owed to Honeycutt, he is not precluded by the state court judgment from litigating the question of whether the debt resulted from false pretenses, false representations or actual fraud.

Conversely, Honeycutt is *not* precluded by the prior judgment from litigating the issue of fraud. Although the court asked the parties to brief the question of the merger of the underlying debt into the state judgment, Beckstead presented cases that tended to show that a bankruptcy court could look behind a state default judgment. Although that position is appropriate to the *Flanagan* case

where the underlying state court complaint did allege false representations and fraud, it is the opposite of the position that Beckstead should be taking in this case. Beckstead should be attempting to preclude Honeycutt from litigating issues that were not raised in the state court. The attempt would be futile, however, because of controlling law that prevents Beckstead from taking advantage of the prior state judgment. In *Brown v. Felsen*, 442 U.S. 127, 99 S. Ct. 2205 (1979), the Supreme Court held that a prior state judgment does not preclude the litigation of the question of the dischargeability of that judgment in a subsequent bankruptcy case. *Id.* at 138, 99 S. Ct. at 2213. “[T]he bankruptcy court is not confined to a review of the judgment and record in the prior state-court proceedings when considering the dischargeability of ... debt.” *Id.* *Brown* was based upon the application of res judicata, which the Court held does not prevent the prevailing plaintiff from meeting a debtor’s affirmative defense of bankruptcy in a suit subsequent to the entry of judgment. *Id.* at 133, 99 S. Ct. at 2210. The *Brown* Court did not address the more narrow issue of collateral estoppel which does prevent the relitigation of questions actually and necessarily litigated in the prior suit. *Id.* at 139 n.10, 99 S. Ct. at 2213 n.10. It is clear from the papers produced by Honeycutt, that the state court never considered the question of fraud in connection with the entry of the default judgment against Beckstead. Thus Honeycutt is free to raise these issues in the context of this suit to determine the dischargeability of debt in order to counter Beckstead’s new defense of bankruptcy.

This leaves the final issue of whether or not the debt owed by Beckstead to Honeycutt arose from false pretenses, false representations or actual fraud such that the debt is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A). The affidavits and deposition excerpts filed by the

parties show that there are sharp disagreements as to matters of material fact that are not suitable for resolution on a motion for summary judgment. As a general rule, the issue of fraud is not appropriate for determination on a motion for summary judgment, but requires the trier of fact to hear testimony and determine questions of credibility.

III.

For the foregoing reasons, the motion for summary judgment is denied. The court will conduct a scheduling conference on **January 27, 2003, at 9:30 a.m.**, to determine an appropriate date and time for trial.

IT IS SO ORDERED.

BY THE COURT

JENNIE D. LATTA
United States Bankruptcy Judge

Date: _____

cc: Debtor
Debtor's Attorney
Plaintiff
Plaintiff's Attorney
United States Trustee
Case Trustee