

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re

JOHN GUY BECKSTEAD,  
  
Debtor.

Case No. 01-23757-L  
Chapter 7

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Don F. Flanagan,  
Plaintiff,

v.

Adv. Proc. No. 01-0463

John Guy Beckstead,  
Defendant.

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**MEMORANDUM OPINION**

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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, Don F. Flanagan (“Flanagan”) obtained a default judgment in the amount of \$84,700 against the defendant John Guy Beckstead (“Beckstead”) on the basis of fraud, which debt is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2)(A) or (B). Beckstead argues that the underlying default judgment does not preclude litigation of the question of dischargeability of the obligation in bankruptcy and that he is entitled to judgment as a matter of law. Because the court concludes that the state court judgment does preclude relitigation of the issue of fraud, and thus that the judgment debt is nondishagable pursuant to 11 U.S.C. § 523(a)(2)(A), summary judgment will be entered for Flanagan. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I).

**I.**

As the result of a failed investment in The BCS Group, LLC (“BCS”), Flanagan filed suit against Beckstead in the Chancery Court of Hamilton County, Tennessee, alleging breach of contract, misrepresentations, fraud and fraudulent inducement, and violations of the Tennessee Consumer Protection Act. When Beckstead failed to answer or defend, Flanagan obtained a default judgment against him in the principal amount of \$77,000 together with attorney fees in the amount of \$7,700. Judgment was entered August 23, 2000.

Beckstead filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code on March 15, 2001, listing \$2,350 in assets and \$136,809 in liabilities. Beckstead did not list the judgment debt to Flanagan among his liabilities. Beckstead’s Statement of Financial Affairs shows no income in years 2000 or 2001 up to the date of filing, and \$10,000 in income in 1999. Schedule I states that the Debtor is married, and has two step-children and two natural children. He lists income of \$530 per month received as alimony, maintenance or support, and expenses of \$1,749 per month. He lists no income for his spouse. Some explanation for the Debtor’s financial condition is provided by his affidavit which indicates that his son was diagnosed with a brain tumor around October of 1999 causing him to relocate from Chattanooga to Memphis, Tennessee, for treatment at St. Jude Hospital.

A Complaint Objecting to Discharge and To Determine Dischargeability of Debt was timely filed by Flanagan on June 19, 2001. Although the title of the complaint indicates that Flanagan

objects to the granting of the general discharge, the body of the complaint and prayer for relief seek only the determination of the dischargeability of a particular debt. Flanagan has advanced no argument for the denial of Beckstead's general discharge and the court will not address this issue.

## II.

Bankruptcy Code section 523(a)(2)(A) excepts from discharge a debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement concerning the debtor's financial condition." The question of the dischargeability of a particular debt is a matter of federal bankruptcy law and is within the exclusive jurisdiction of the bankruptcy courts. *See* 11 U.S.C. § 523(c)(1). Nevertheless, generally, the doctrine of collateral estoppel applies to dischargeability actions. *Grogan v. Garner*, 498 U.S. 279, 284 n.11, 111 S. Ct. 654, 658 n.11 (1991). That is, the doctrine of collateral estoppel prevents the relitigation of facts established in a state court judgment in connection with a subsequent federal claim based upon the same facts. The preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute. *Marrese v. American Academy of Orthopedic Surgeons*, 470 U.S. 373, 380, 105 S. Ct. 1327, 1331 (1985); *see* 28 U.S.C. § 1738.<sup>1</sup> The federal court must look to the preclusion law of the

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<sup>1</sup> **State and Territorial statutes and judicial proceedings; full faith and credit.** The Acts of the 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

state in which judgment was rendered. *Id.* “Absent an exception to § 1738, state law determines at least the issue preclusive effect of a prior state judgment in a subsequent action involving a claim within the exclusive jurisdiction of the federal courts.” *Id.* at 380, 105 S. Ct. at 1332.

In the state of Tennessee, collateral estoppel bars relitigation of an issue if it was raised in an earlier case between parties, actually litigated, and necessary to the judgment of the earlier case. *See Massengill v. Scott*, 738 S.W.2d 629, 632 (Tenn. 1987). A default judgment satisfies the requirement that the issue be “actually litigated”:

A judgment taken by default is conclusive by way of estoppel in respect of all such matters and facts as are well pleaded and properly raised, and material to the case made by declaration or other pleadings, and such issues cannot be relitigated in any subsequent action between the parties and their privies.

*Lawhorn v. Wellford*, 170 Tenn. 625, 168 S.W.2d 790, 792 (1943) (citations omitted). Under Tennessee law, collateral estoppel applies to true default judgments – judgments rendered when the defendant fails to respond at all to a state court suit.

Beckstead argues in his supplemental memorandum that a bankruptcy court may “look behind” a state court default judgment when considering the dischargeability of a debt. None of the

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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.

28 U.S.C. § 1738.

authorities relied upon by Beckstead are controlling, however, and Beckstead fails to address the controlling precedent of *Bay Area Factors v. Calvert (In re Calvert)*, 105 F.3d 315 (6<sup>th</sup> Cir. 1977). In *Calvert* the court took up the issue left open in *Rally Hill Productions, Inc. v. Bursack (In re Bursack)*, 65 F.3d 51 (1995), whether there exists an exception to the full faith and credit statute for true default judgments. Prior to the Supreme Court decision in *Marrese*, the court in *Spilman v. Harley*, 656 F.2d 224 (6<sup>th</sup> Cir. 1981), had opined based upon federal law that default judgments do not satisfy the requirement of actual litigation for purposes of collateral estoppel. *Marrese* dictated that the federal court look first to state law to determine the preclusive effect of a state judgment. In *Bursack* the court determined that default judgments are given preclusive effect under Tennessee law, but left open the question whether Congress created an exception to section 1738 for dischargeability proceedings in the case of true default judgments. *See Bursack*, 65 F.3d at 54. In *Calvert*, the court addressed the precise issue of whether a true default judgment is excepted from the application of section 1738 in dischargeability proceedings. Finding no indication in the Bankruptcy Code or legislative history that such an exception was intended by Congress, the court held that “collateral estoppel applies to true default judgments in bankruptcy dischargeability proceedings in those states which would give such judgments that effect.” *Calvert*, 105 F.3d at 322.

Because no exception exists to the application of section 1738 for true default judgments, the court looks to controlling Tennessee law and its application to the facts of this case. As stated earlier, Tennessee applies preclusive effect to “all such matters and facts as are well pleaded and

properly raised, and material to the case made by declaration or other pleadings.” *Lawhorn*, 168 S.W.2d at 792. Flanagan has provided the court with a copy of the Chancery Court complaint. The complaint alleges, among other facts, that Beckstead misrepresented certain material facts to Flanagan, and that Beckstead made fraudulent statements intended to induce Flanagan to make the investment promoted by Beckstead. Beckstead has not argued that these matters were not material to the case, and they certainly appear to have been material to the state court judgment. Thus, Beckstead is precluded from relitigating the issues of false representation and fraud in this forum and the court need not consider his remaining arguments.

Bankruptcy Code section 523(a)(2)(A) excepts from discharge debts based upon false representations or actual fraud. The judgment rendered by the Hamilton County Chancery Court was based upon false representations and actual fraud. The entire debt, including attorney fees and prejudgment interest, flows from the Debtor’s fraud and is nondischargeable. Although Flanagan did not file a cross motion for summary judgment, it is appropriate to grant summary judgment for him nonetheless as there are no material factual issues, Beckstead has been given ample opportunity to brief his position, and Flanagan is entitled to judgment as a matter of law. *See Holland v. Dole*, 591 F. Supp. 983, 985 n.1 (M.D. Tenn. 1984) citing 10A C. WRIGHT, A. MILLER AND M. KANE, FEDERAL PRACTICE AND PROCEDURE § 2720 (2d ed. 1983).

### III.

*In re John Guy Beckstead*  
Chapter 7 Case No.01-23757-L  
*Don F. Flanagan v. John Guy Beckstead*  
Adv. Proc. No.01-0463  
Memorandum Opinion

For the foregoing reasons, summary judgment should be entered for the Plaintiff. The court will enter a separate judgment consistent with this opinion.

BY THE COURT

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JENNIE D. LATTA  
United States Bankruptcy Judge

Date: \_\_\_\_\_

cc: Debtor  
Debtor's Attorney  
Plaintiff  
Plaintiff's Attorney  
United States Trustee  
Case Trustee (if any)