

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**In re: MARK HOPPE,
Debtor.**

**Case No. 99-35819 WHB
Chapter 7**

**SALENA LUNSFORD,
Plaintiff,**

v.

Adv. Proc. No. 00-0228

**MARK HOPPE,
Defendant.**

**OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court is "Plaintiff's Motion for Summary Judgment," filed April 2, 2001. Defendant filed a "Motion for Extension of Time And/Or Response" on April 18, 2001. The Court took the matter under advisement on April 26, 2001, with a brief deadline for Defendant of May 10, 2001. As Defendant has not submitted a brief, the Court bases its decision on the pleadings submitted in this matter.

Plaintiff, Salena Lunsford, initiated the adversary proceeding on March 31, 2001 upon filing a "Complaint to Deny Dischargeability of Debt." The debt that is the subject of that complaint arose when Plaintiff sold her automobile to Mark Hoppe Chevrolet, Defendant's automobile dealership, and Defendant contracted to pay off Plaintiff's indebtedness to the lienholder. Plaintiff states that

Defendant resold the vehicle but that the check Defendant sent to pay off the lienholder was returned due to insufficient funds. Therefore, Plaintiff asserts that Defendant's debt to Plaintiff is nondischargeable due to 11 U.S.C. §523(a)(2), (4), and (6).

Defendant contends that Plaintiff committed a fraud upon the Chancery Court in obtaining the default judgment. In addition, Defendant claims that he individually had nothing to do with this transaction, that the corporate veil was not pierced, and therefore, Mark Hoppe Chevrolet, LLC is liable for the default on the contract.

After reviewing the arguments of both parties, this Court determines that it is precluded from ruling on the merits of Defendant's arguments by the principles of collateral estoppel and the *Rooker-Feldman* Doctrine. Collateral estoppel or "issue preclusion" states that "once an issue is actually and necessarily decided by a court with proper jurisdiction over the matter, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Montana v. United States*, 440 U.S. 147, 153 (1979). Principles of collateral estoppel apply in dischargeability proceedings. *Grogan v. Garner*, 498 U.S. 279 (1991). Tennessee law states that collateral estoppel applies to bar relitigation if three elements are met: (1) the issue was raised in an earlier case between the same parties; (2) the issue was actually litigated; and (3) the issue was necessary to the judgment of the earlier case. *Massengill v. Scott*, 738 S.W.2d 629, 631 (Tenn. 1987).

In this case, it is clear that Chancery Court determined that Defendant "intentionally, knowingly and willfully engaged in unfair and deceptive acts and practices under" Tennessee Law, that Defendant's conduct and misrepresentations to Plaintiff were fraudulent, deceitful, and

malicious, and that the corporate veil should be pierced so as to make Defendant personally liable. These issues were raised and were necessary to the judgment in the initial case. The Chancery Court judgment was not appealed and is final. Although this was a default judgment, the Chancery Court heard proof from Plaintiff. Tennessee's "actually litigated" requirement is satisfied by such default judgments. *Rally Hill Prod., Inc. v. Bursack (In re Bursack)*, 65 F.3d 51, 54 (6th Cir. 1995). In addition, the Sixth Circuit has held collateral estoppel applies to true default judgments in bankruptcy dischargeability proceedings in states which would give such judgments that effect. *Bay Area Factors v. Calvert (In re Calvert)*, 105 F.3d 315, 316 (6th Cir. 1997). Therefore, the fact that this was a default judgment does not prevent the applicability of collateral estoppel.

In addition, the Defendant's attempt to collaterally attack the judgment of the Chancery court through the bankruptcy court, instead of through the state appellate courts, is precluded by the *Rooker-Feldman* Doctrine. "The Supreme Court has made it clear in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), that 'the federal trial courts have only original subject matter, and not appellate, jurisdiction [and] . . . may not entertain appellate review of [or collateral attack on] a state court judgement.'" *In re Levy*, 250 B.R. 638, 643 (Bank. W.D. Tenn. 2000)(citing *Singleton v. Fifth Third Bank of Western Ohio (In re Singleton)*, 230 B.R. 533, 536 (6th Cir. B.A.P. 1999)(quoting *In re Johnson*, 210 B.R. 1004, 1006 (Bankr. W.D. Tenn. 1997)).

In addition to prohibiting a federal trial court from reviewing a state court judgment, the *Rooker-Feldman* doctrine also applies to any cases that are "inextricably intertwined" with a state court's determinations. *Feldman*, 460 U.S. at 483 n. 16. "A 'federal claim is inextricably

intertwined' with the state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.' *In re Levy*, 250 B.R. at 643 (citing *Pennzoil Co. v. Texaco*, 481 U.S. 1, 25 (1987)).

This case is "inextricably intertwined" with the Chancery Court judgment. For this Court to find that there is a genuine issue of material fact and, therefore, that the motion for summary judgment should be denied, it would have to contemplate that the Chancery Court could have erred in its findings, including its determination that Defendants intentionally, knowingly, willfully and maliciously made a false representation. The Defendant's efforts to attack the Chancery Court's judgment is made in the wrong court: This Court is precluded by *Rooker-Feldman* from making that determination. Since this Court is bound by the Chancery Court's finding of fraud, there is no genuine issue of material fact for the Court to consider.

IT IS THEREFORE ORDERED that, for cause shown, Plaintiff's Motion for Summary Judgment is **GRANTED**. The debt resulting from the Chancery Court judgment is excepted from discharge under 11 U.S.C. § 523(a)(2)(A), due to the Chancellor's finding of fraud and personal liability.

SO ORDERED this 4th day of June, 2001.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE

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