



Dated: October 18, 2018
The following is SO ORDERED:


David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re Case No. 16-27850-K
WILLIAM H. THOMAS, JR., Chapter 11
Debtor.
S.S.N.: xxx – xx – 8251

CLEAR CHANNEL OUTDOOR, INC,
Plaintiff,
v. **Adv. Proc. No. 16-00260-K**
WILLIAM H. THOMAS, JR.,
Defendant.

TENNISON BROTHRS, INC,
Plaintiff,
v. **Adv. Proc. No. 16-00261-K**
WILLIAM H. THOMAS, JR.,
Defendant.

MEMORANDUM AND ORDER ON PLAINTIFFS' FED. R. BANKR. P. 7056 MOTIONS FOR SUMMARY JUDGMENT COMBINED WITH NOTICE OF THE ENTRY THEREOF

INTRODUCTION

The above-named Chapter 11 Debtor in Possession, William Thomas (“Mr. Thomas”), has been involved in Tennessee State Court litigation with creditors Clear Channel Outdoor, Inc. (“Clear Channel”) and Tennison Brothers, Inc. (“Tennison Brothers”) (collectively “Creditors”) for approximately a decade. After Mr. Thomas filed this Chapter 11 petition on June 2, 2016, Creditors each filed an adversary proceeding against him (being Adv. Proc. Nos. 16-00260 and 16-00261 respectively) on September 26, 2016, seeking a judicial determination that their particular debts were non-dischargeable under 11 U.S.C. § 523(a)(6).¹ On July 26, 2018, Tennison Brothers, Inc. filed a motion pursuant to Fed. R. Bankr. P. 7056 seeking a summary judgment. On July 27, 2018, Clear Channel Outdoor, Inc. also filed its motion for summary judgment. Given the issues in the two above-captioned adversary proceedings and summary judgment motions are identical, the parties and their attorneys, along with the Court, have essentially been treating them as one combined/consolidated proceeding. So, on September 25, 2018, Mr. Thomas filed identical responses in each summary judgment motion. Both Creditors replied to those summary judgment responses on October 2, 2018, whereupon Mr. Thomas then filed a sur-reply on October 5, 2018. A final hearing on Creditors’ motions for summary judgment was held on October 9, 2018, whereupon these matters were taken under submission for further consideration by the Court (and this written opinion).

For the reasons mentioned and discussed below, this Court grants the motions for summary judgment in favor of both Creditors.

¹ 11 U.S.C. § 523(a)(6) provides as follows: “A discharge under section . . . 1141 . . . of the title does not discharge an individual debtor for any debt— for willful and malicious injury by the debtor to another entity or to the property of another entity.”

JURISDICTION

Judicial determinations regarding the dischargeability of particular debts under 11 U.S.C. § 523(a)(6) are statutorily illustrated core proceedings which this Court may both hear and determine under 28 U.S.C. § 157(b)(2)(I). The Court has subject matter jurisdiction under 28 U.S.C. § 1334(a)-(b) and § 157(a).

BACKGROUND FACTS AND PROCEDURAL HISTORY

This Chapter 11 case arises after years of litigation involving Mr. Thomas and the Creditors in various state and federal forums. Unsurprisingly, the history of these matters is rather lengthy and complex. Despite this complexity, the Court believes there are actually only a handful of background facts and law that are actually necessary to resolve these summary judgment motions. In order to balance economy with clarity and to achieve the judicial goal set forth in Fed. R. Bankr. P. 1001, the Court will summarize much of the relevant background facts and procedural history between Mr. Thomas and the Creditors while emphasizing the underlying salient points. To further aid in economy, citations to the record will include two above-captioned docket references; the first will be for Adv. Proc. No. 16-00260 (filed by Clear Channel Outdoor, Inc.) and the second will be for Adv. Proc. No. 16-00261 (filed by Tennison Brothers, Inc.).

Except where specifically noted, the following background facts and procedural history are undisputed. Tennison Brothers owned property which it leased to Clear Channel for the purpose of constructing a billboard. (Dkt. no. 27-1 & Dkt. no. 20-1, *Tennison Bros. v. Thomas*, No. W2016-00795-COA-R3-CV at 2 (Tenn. Ct. App. Sept. 20, 2017) (hereafter *Tennison II.*)) Within days of this agreement, Mr. Thomas entered into a written lease with the owner of the real property adjacent to Tennison Brothers'. (*Id.*) Mr. Thomas also intended to construct a

billboard. (*Id.*) At the time, the *Tennessee Billboard Regulation and Control Act* required permits to be obtained prior to constructing a billboard. (*Id.*) However, because of the proximity of the two properties, only one party could be awarded a permit. (*Id.*)

The legal battle over who should be awarded a permit lasted approximately two years, but ultimately, Mr. Thomas did not prevail. (*Id.* at 3-4.) This was problematic because Mr. Thomas had already constructed a billboard! (*Id.*) After demand was made, Mr. Thomas refused to remove his billboard; and Tennison Brothers filed a lawsuit in the Chancery Court of Shelby County, Tennessee (“Chancery Court”). (*Id.* at 4.) Tennison Brothers alleged, inter alia, intentional interference with business relationships and inducement to breach a contract. (*Id.* at 5.) More specifically here, Tennison Brothers’ lawsuit also alleged that Mr. Thomas acted “maliciously and intentionally.” (*Id.*)

Clear Channel was a named defendant in the lawsuit brought by Tennison Brothers. (*Id.*) It answered and filed a cross-complaint against Mr. Thomas. (*Id.* at 6.) The cross-complaint asserted various causes of action against Mr. Thomas, including intentional interference with a business relationship. (*Id.*) Mr. Thomas refused to respond adequately to discovery in the proceeding despite two prior orders from the Chancery Court, so his answer was stricken and a default judgment was entered against him by the Chancery Court. (*Id.*)

In 2010 Mr. Thomas once again refused to participate in discovery and the Chancery Court ordered that he would not be able to present proof related to damages, but he would be allowed to cross-examine witnesses presented by other parties. (*Id.* at 8.) After the hearing on damages, the Chancery Court determined that Mr. Thomas did not have an improper motive, as required to support a claim of intentional interference with business relationships, and no damages were awarded. (*Id.* at 9.) On appeal, the Tennessee Court of Appeals disagreed. (*Id.*)

In a decision referred to hereafter as *Tennison I*, the Tennessee Court of Appeals declared that Creditors had properly pled, inter alia, the elements for intentional interference with business relationships and that Mr. Thomas had admitted to his improper motive when the default judgment was entered against him. (*Id.*; Dkt. no. 1-4 & Dkt. no. 1-4.)

On remand, a special master was appointed by the Chancery Court. (*Tennison II* at 11.) Ultimately, the trial court adopted the report of the special master. (*Id.* at 12.) *Tennison Brothers* was awarded damages in the amount of \$1,094,670.94 and *Clear Chanel* was awarded damages in the amount of \$3,906,000. (*Id.*)

Mr. Thomas appealed these decisions, raising numerous issues that the Tennessee Court of Appeals later rejected. (*Id.* at 38.) These issues included consideration of the fact that Mr. Thomas had received a favorable ruling in the United States District Court for the Western District of Tennessee, which declared the *Tennessee Billboard Regulation and Control Act* unconstitutional. (*Id.* at 36.)

ANALYSIS

Mr. Thomas has raised numerous issues, many of which this Court believes are actually unnecessary to decide the limited and ultimate issue of whether the doctrine of collateral estoppel applies here. Mr. Thomas believes that this Court erred in granting relief under 11 U.S.C. § 362(d)(1) from the automatic stay so that the Tennessee Court of Appeals could proceed to finality and rule on the pending State law issues before it; that collateral estoppel does not apply in this instance; and that Creditors have unclean hands. In an attempt to show that Mr. Thomas

has been heard and his arguments duly considered, this Court will address each of Mr. Thomas's points in turn.

I. Relief From the Automatic Stay Under 11 U.S.C. § 362(d)(1)

Mr. Thomas begins his opposition of the Creditors' motions for summary judgment by stating that this Court "wrongfully ruled that the automatic stay . . . should be lifted to allow Clear Channel and Tennison Brothers to pursue a state court appellate proceeding." The basis of this argument is the assertion that this Court failed to consider United States Supreme Court precedent when it granted relief from the automatic stay so that Creditors could pursue and Mr. Thomas could defend in opposition a pending State Court appeal. Simply put, this argument is without merit.

The United States Supreme Court case in question is *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015). That case involved a party whose First Amendment Rights were limited by a local law which limited the party's ability to use certain signage. It was not a bankruptcy case, nor did it involve a proceeding seeking relief from the automatic stay under 11 U.S.C. § 362(a) created in a bankruptcy case. In short, it had no precedential value regarding questions of whether relief from the 11 U.S.C. § 362(a) automatic stay should be granted. As such, Mr. Thomas indeed is correct in stating that this Court did not consider it when it granted relief from the automatic stay under 11 U.S.C. § 362(d)(1) to allow the State appellate court proceedings to proceed to finality.

The bankruptcy automatic stay is created by operation of law and governed by 11 U.S.C. § 362(a). No formal written order is entered. Section 362(d)(1) specially provides that "the court shall grant relief from the stay . . . for cause." This Court granted Creditors' relief from the bankruptcy automatic stay so that they could pursue an appeal involving purely State law issues that had already been pending and decided by the lower Tennessee State Court. It is again noted

that such issues involved pure questions of Tennessee State law and NOT federal bankruptcy law. It also is emphasized here that the Bankruptcy Court is not a reviewing or appellate court and is not the appropriate forum for reviewing (and reversing, modifying, or affirming) state court decisions. Therefore, it was appropriate under the particular facts and circumstances and applicable law for this Court to grant relief from the automatic stay “for cause” to allow the parties to proceed in the State Court to finality and conclude pending state law matters, which, notably, had been active in the State Court for years. Except for the automatic stay issues under 11 U.S.C. § 362(d)(1), and as noted earlier, no specialized bankruptcy law existed in granting relief from the stay here. The issues involved, for example, State law, the interests of comity with the Tennessee State Courts, and respect for State law. *Compare* 28 U.S.C. § 1334(c)(1).

Mr. Thomas's contention that this Court failed to consider whether the Tennessee State statute prevented Creditors from building a billboard is also without merit. That question was not before this Court when it granted relief from the § 362(a) automatic stay. The only question was if Creditors could show “good cause” under 11 U.S.C. § 362(d)(1) based on a totality of the particular facts and circumstances. The Court stands by the proposition that allowing state courts to decide pending questions of pure state law and concomitantly fostering the doctrine of comity is “good cause” as contemplated under § 362(d)(1), especially when, as here, protracted and far advanced litigation has already occurred in that forum and, as noted again, no specialized substantive bankruptcy laws existed.

The cases Mr. Thomas cited in support of his position simply had no bearing on this Court's decision to grant relief from the § 362(a) automatic stay to allow the pending State Court matter to proceed to finality.

II. Standard for Summary Judgment

Federal Rule of Bankruptcy Procedure 7056 makes Federal Rule of Civil Procedure 56 applicable to these proceedings. Rule 7056 allows this Court to grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” When considering summary judgment, the Court will view all facts in the light most favorable to the non-moving party.

III. Doctrine of Collateral Estoppel

To satisfy their burden in proving that no issue of material fact exists, Creditors rely on the doctrine of collateral estoppel. Their argument may be briefly summed up as follows: the Tennessee State Courts have already determined what the facts and applicable law of these proceedings are. Accordingly, this Court must give full faith and credit under 28 U.S.C. § 1738 to those State Court findings and conclusions. In summary, this Court must answer two questions. First, does the doctrine of collateral estoppel apply; and if so, did the State Courts make findings and conclusions that are determinative of this matter on summary judgment?

A. Does Collateral Estoppel Apply?

Generally speaking, federal courts are to give full faith and credit to state court judgments. 28 U.S.C. § 1738; *see also, for example, Marrese v. American Acad. of Orthopedic Surgeons*, 470 U.S. 373, 380 (1985). When determining whether collateral estoppel applies, federal courts consider if state courts would give the judgment preclusive effect. *See* 28 U.S.C. § 1738; *Marrese*, 470 U.S. at 382. Because the State Court judgments in these matters were rendered by Tennessee State Courts, if Tennessee would give the judgments preclusive effect, this Court should as well.

Tennessee State law allows a party to successfully raise collateral estoppel to prevent relitigating legal or factual disputes that were already decided in an earlier proceeding. *Mullins v. State*, 294 S.W.3d 529, 534 (Tenn. 2009). To prevail, the asserting party must show:

(1) That the issue to be precluded is identical to an issue decided in an earlier proceeding, (2) that the issue to be precluded was actually raised, litigated, and decided on the merits in the earlier proceeding, (3) that the judgment in the earlier proceedings has become final, (4) that the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier proceeding, and (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded.

Id. at 535.

Mr. Thomas admits that the State Court judgments in question have become final and that he was an active party to the earlier litigation. He contends that Creditors cannot meet the remaining three requirements needed to trigger the doctrine of collateral estoppel, and, even if they can, an exception to collateral estoppel applies.

1. Are the Issues Identical?

As explained below,² by allowing a default judgment to be entered against him, Mr. Thomas, a businessman and an attorney, in essence, admitted in the State Court action that he acted with “malice.” However, for collateral estoppel to apply, the meaning of “malice” used in Tennessee must be the same or encompassed within the meaning of “malice” in the Bankruptcy Code.

Under Tennessee law, “malice in the context of an inducement-of-breach claim does not require ill will or spite toward the injured party.” *Freeman Mgmt. Corp. v. Shurgard Storage Ctrs., LLC*, 461 F. Supp. 2d 629, 639 (M.D. Tenn. 2006). Malice “requires the intentional commission of a harmful act without justifiable cause.” *Id.* It is emphasized that the Tennessee

² *Supra* III.A.iii.

Court of Appeals has already found that Mr. Thomas intentionally committed a harmful act without justifiable cause. The question is whether this is enough to satisfy the meaning of “malice” under the Bankruptcy Code.

The United States Supreme Court has stated that “only acts done with the intent to cause injury” can be considered “willful and malicious.” *See Kawaauhau v. Geiger*, 523 U.S. 57, 61-62 (1998). The Sixth Circuit Court of Appeals has noted that 11 U.S.C. § 523(a)(6) requires “a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury.” *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 464 (6th Cir. 1999). If there is a difference in the meaning of malice in Tennessee and the Bankruptcy Code, it is far too subtle for this Court to find.

Because the Tennessee Court of Appeals specifically found that Mr. Thomas acted “intentionally and with malice,” it found that he committed an intentional act which harmed Creditors without justification. If Mr. Thomas's contention is that the Tennessee Court of Appeals only found that he committed an intentional act and not that he acted with intent to harm, he has failed to convince this Court. If that were the case, the words “intentionally” and “maliciously” would seemingly be redundant. This Court believes the issue of malice was identical in the earlier State Court proceedings to the issue of malice in these bankruptcy proceedings.

2. Were the Issues Actually and Necessarily Raised, Litigated, And Decided on the Merits?

Mr. Thomas argues that Creditors did not actually raise the issue of malice in the State Court actions because their respective complaints failed to provide factual support to such an assertion; however, this Court is not persuaded by Mr. Thomas's arguments. Whether malice

existed is a question of intent, which by definition necessarily makes it a question of fact. This means that if Creditors properly pled “malice” in the State Court actions, when the default judgment was entered against him, Mr. Thomas thereby admitted he acted with malice.³

In *Tennison I*, the Tennessee Court of Appeals specifically quoted the Tennison Brothers’ second amended complaint as saying “Thomas . . . maliciously and intentionally interfered with the business relationship” of Creditors. (*Tennison I* at 17.) The Tennessee Court of Appeals went on to overrule the trial court because it had considered Mr. Thomas's intent in determining damages. This was improper because Mr. Thomas had already admitted his intent when he allowed a default judgment to be entered against him. Mr. Thomas is essentially asking this Court to make the same mistake as the Tennessee trial court and reconsider his intent. This Court is not, under a totality of the particular facts and circumstances and applicable law, inclined to do so.

This Court is also not convinced by Mr. Thomas's argument that Creditors' State Court complaints lacked sufficient factual allegations. First, the Tennessee Court of Appeals treated such arguments with little merit. Second, Creditors alleged that Mr. Thomas knew of their relationship and nonetheless built his billboard because he knew it would prevent them from building their billboard and that he also knew it would damage their business relationship. What other facts should Creditors possibly have to allege to plead malice more effectively?

Finally, Mr. Thomas argues that Tennessee State Courts may not treat default judgments entered as a sanction or penalty the same as a true default judgment for purposes of collateral estoppel. It is true that the Tennessee courts apparently have not made a definitive ruling on this issue. Unfortunately for Mr. Thomas, the Sixth Circuit Court of Appeals, however, has ruled

³ This would be malice as defined by Tennessee State law. See *supra* III.A.ii for a discussion on this topic.

that penalty default judgments in Tennessee are to be given the same preclusive effect as true default judgments. *See, for example, Couch v. Panther Petroleum, LLC (In re Couch)*, 704 F. App'x 569, 573 (6th Cir. 2017). Mr. Thomas believes that this holding was deficient and therefore not binding on this Court. This Court completely disagrees. Until Tennessee rules on the matter itself, this Court is bound to follow the Sixth Circuit's interpretation of Tennessee law. This means that the penalty default judgment against Mr. Thomas will be treated here as a true default for the purposes of collateral estoppel.

3. Did Mr. Thomas Have a Full And Fair Opportunity to Contest the Issues?

Mr. Thomas argues that the doctrine of collateral estoppel should not apply because he was not given an opportunity to fully contest the issues. Given that the State Court issues in question required two separate opinions from the Tennessee Court of Appeals, this Court is skeptical of such an argument; however, Mr. Thomas's argument is nuanced in such a way that fairness requires closer scrutiny by this Court.

Prior to Creditors filing their complaints in State Court, Mr. Thomas's billboard was declared "illegal" by an Administrative Law Judge in a proceeding with Tennessee Department of Transportation. Mr. Thomas appealed this ruling, but the appeal was dismissed because Mr. Thomas had previously sold the billboard and thus lacked standing under the circumstances and applicable law. Therefore, Mr. Thomas was never given an opportunity to appeal the order declaring his billboard "illegal."

Mr. Thomas goes on to argue that because he was never allowed to appeal the Administrative Law Judge's ruling that his billboard was "illegal," any subsequent judgment based on that ruling is suspect and should not be given preclusive effect. According to Mr.

Thomas, because Creditors relied on this ruling when seeking the State Court judgment, he was not afforded an opportunity to fully contest the issues.

This argument perhaps would be stronger if not for the fact that Mr. Thomas lost the State Court litigation with Creditors by **default**. In *Tennison I*, the Tennessee Court of Appeals noted:

. . . we cannot overlook the specific facts pled in [Creditors'] respective complaints. Therein, both Tennison and CCO aver that Mr. Thomas illegally constructed a billboard without a permit to prevent the construction of a billboard by CCO on Tennison's property. . . . [This] is sufficient to satisfy the fourth criterion for this tort.

(*Tennison I* at 18.) When the default judgment was entered against Mr. Thomas by a Tennessee Court of competent jurisdiction, his liability was firmly established. He has had multiple opportunities in the State Court to contest Creditors' default judgments. As the Tennessee Court of Appeals noted above, liability is based on the facts pled by Creditors and admitted by Mr. Thomas by default, it is not predicated on the earlier ruling of the Administrative Law Judge. Therefore, this Court believes the initial "illegality" ruling asserted by Mr. Thomas is irrelevant to this discussion. The fact that Mr. Thomas never had an opportunity to appeal seems to have had no bearing on his liability because the judgment against him was entered by **default**; and thus, Mr. Thomas admitted the well-pled facts of Creditors' State Court complaints. This conclusion is bolstered by the Tennessee Court of Appeals in *Tennison II*: "Because the default judgment established Thomas's liability for the causes of action asserted, he **CANNOT** continue to litigate the legality of his billboard." (*Tennison II* at 37 (emphasis added.)) Moreover, "the default judgment conclusively established Thomas's liability, admitting that his interference with the contract between Tennison Brothers and Clear Channel resulted in their inability to construct a billboard." (*Id.*)

Mr. Thomas's argument that he was denied an opportunity to contest these matters because the Tennessee Court of Appeals ruled that he waived his constitutional arguments when he failed to notify the Tennessee Attorney General are also without merit. It is expressly noted that the State of Tennessee is not a party to these proceedings, but even if it were, this Court doubts that this Bankruptcy Court is an appropriate forum under these facts and circumstances and applicable law for challenging the constitutional ruling in *Tennison II*. After all, as noted earlier, this Court is not a reviewing court. Mr. Thomas might have been better served appealing *Tennison II* to the United States Supreme Court if he felt that Tennessee Courts were misapplying constitutional law – not seeking review in this Bankruptcy Court.

4. Are There Any Applicable Exceptions to Collateral Estoppel?

In Tennessee, courts may decline to apply collateral estoppel under certain limited circumstances. *See, for example, In re Bridgestone/Firestone*, 286 S.W.3d 898, 906 (Tenn. Ct. App. 2008) (hereinafter “*Firestone II*”); *State ex rel. Cihlar v. Crawford*, 39 S.W.3d 172, 179 (Tenn. Ct. App. 2000). In particular, Tennessee does recognize an exception to the doctrine of collateral estoppel when there is intervening change of law. *See Firestone II*, 286 S.W.3d at 909 (citing and discussing RESTATEMENT (SECOND) OF JUDGMENTS § 28 (AM. LAW INST. 1982)). Mr. Thomas believes that such an intervening change of law occurred here when United States District Judge for the Western District of Tennessee, the Honorable Jon P. McCalla, found the *Tennessee Billboard Regulation and Control Act* unconstitutional. Unfortunately for Mr. Thomas, the Tennessee Court of Appeals addressed this specific issue in *Tennison II* and disagreed.

The pertinent section of *Tennison II* reads:

Thomas claims that the district court's ruling regarding constitutionality renders [Creditors] unable to ‘recoup under said unconstitutional

provisions' in the future. However, [Creditors] are not attempting to 'recoup' under the Billboard Act. **They are entitled to damages for the tort claims set forth in their complaints**, for which they obtained a default judgment.

(*Tennison II* at 37 (emphasis added.)) This Court understands this to mean that the Tennessee Court of Appeals had been made fully aware of the intervening change in law, but found that it had no bearing on the outcome of the proceedings before it. Since this Court is now applying Tennessee State law to determine if the doctrine of collateral estoppel applies, it would be odd indeed for this Court to allow Mr. Thomas an opportunity to change the outcome of the State Court judgment when the Tennessee Court of Appeals did not believe the intervening change of law warrants any such change of outcome.

Mr. Thomas argues that it is inequitable to prevent him from having the benefit of the new law "simply because of timing." He believes that this would be akin to a "man, who is convicted under a criminal law that is later declared unconstitutional, [being] kept in prison because his conviction, although unlawful, was final." This analogy is unpersuasive and would be more accurate if the individual were convicted of assaulting a victim over a property dispute; then, after having the property law which the victim relied upon to prove ownership declared unconstitutional, the individual claimed that such a ruling absolved him of criminal assault. Such a result under the circumstances would be unfounded. Criminal assault is not a constitutional issue and neither is tortious interference with a contract under applicable Tennessee State law. Mr. Thomas is not being denied the benefit of the new law simply because of timing. If Mr. Thomas wanted to argue that the construction of his billboard was not wrongful, he should NOT have allowed a **default judgment** to be entered against him. The Tennessee Court of Appeals clearly states that by doing so Mr. Thomas admitted "that his

interference with the contract between [Creditors] resulted in their inability to construct a billboard.” (*Tennison II* at 37.)

Because the Tennessee Court of Appeals considered the intervening change of law regarding the constitutionality of the *Tennessee Billboard Regulation and Control Act* and found it to be irrelevant to the tort claims of Creditors, this Court sees no reason why the intervening change of law should have any bearing on the issue of whether the doctrine of collateral estoppel applies here. Therefore, this Court finds, based on the foregoing, that no exception to the doctrine of collateral estoppel is applicable to this matter.

5. Collateral Estoppel Does Apply

Accordingly, this Court believes, considering a totality of the particular facts and circumstances and applicable law, that all the requirements of collateral estoppel have been met and no exception to the doctrine is applicable here. Therefore, this Court is required to give the prior Tennessee State Court penalty default judgment full faith and credit. Mr. Thomas cannot now dispute facts which were in essence admitted by him in the State Court action.

IV. Unclean Hands

Mr. Thomas's final argument is that the Creditors' instant summary judgment motions should be denied because this Court denied him the right to take discovery, which would have proved that Creditors committed fraud upon the State Court. This argument can be broken down into two parts: (1) it was unfair for this Court to deny Mr. Thomas the right to take discovery; and (2) that Creditors have unclean hands. Under a totality of the particular background facts and procedural history and also considering applicable law, both of these arguments are flawed for the following reasons.

First, Federal Rule of Bankruptcy Procedure 7056 allows summary judgment to be filed at any point until 30 days after the close of all discovery or 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, whichever occurs first. Creditors timely filed their summary judgment motions prior to either of these deadlines.

The entire purpose of summary judgment is to make litigation more efficient. By allowing parties to seek determinations on issues of which there is no genuine issue of fact, courts can, among other things, save time and money and also foster the judicial goal of Fed. R. Bankr. P. 1001. One of the primary ways this is accomplished is by preventing unnecessary discovery. When a party seeks summary judgment based on the doctrine of collateral estoppel, the need for discovery is particularly weak. After all, the crux of collateral estoppel is that another court of competent jurisdiction has already determined the facts, and, thus, such facts cannot be disputed later by the parties or another court. Discovery is unlikely to be needed in such instances because the question of whether collateral estoppel applies is a legal question and not a factual one. If a court determines that collateral estoppel does apply and the facts determined by the earlier court are enough to satisfy the issues before it, then there is simply no need for discovery in such a case. For these reasons, this Court did not believe further discovery was necessary to decide the instant motions for summary judgment.

The Court also notes that Federal Rule of Civil Procedure 56(d) made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056 outlines a procedure for when a non-moving party believes discovery is necessary to defend against a motion for summary judgment. Mr. Thomas did not avail himself of this procedure. Even if he had, how the Court would have responded is in its discretion; and this Court does not believe discovery was necessary here.

Second, the discovery Mr. Thomas wished to receive is irrelevant to these proceedings. Mr. Thomas states that discovery would have allowed him to allege Creditors have “unclean hands.” Unclean hands may be used as a defense to an 11 U.S.C. § 523(a) claim under the Bankruptcy Code; however, Mr. Thomas's theory falls short in this instance. Mr. Thomas cites two cases for the proposition that federal courts may set aside judgments obtained by fraud against the court. Neither of these cases involved a bankruptcy court setting aside a state court judgment such as the ones that exist here. Simply put, this Court does not believe that it is the appropriate forum to grant such requested relief.

Additionally, fraud on the court involves more than a witness committing perjury or the like. It is an attack on the basic function of the judicial system itself.

Fraud on the court is a serious allegation, however, involving ‘corruption of the judicial process itself.’ *In re Whitney-Forbes*, 770 F.2d 692, 698 (7th Cir. 1985). A verdict will be vacated only in the ‘most egregious cases . . . in which the integrity of the court and its ability to function impartially is directly impinged.’ *Great Coastal Express, Inc. v. International Brotherhood of Teamsters*, 675 F.2d 1349, 1356 (4th Cir. 1982).

Cleveland Demolition Co. v. Azcon Scrap Corp., Div. of Gold Fields American Indus., Inc., 827 F.2d 984, 986 (4th Cir. 1987). As noted earlier, the State Court judgment entered against Mr. Thomas was entered by default. By definition, this necessarily means Mr. Thomas admitted all of the factual allegations in the complaints regardless of the truth of those allegations. The Tennessee Court of Appeals notes in *Tennison I* that the proof is not important with a default judgment because the allegations in the complaint are admitted. While it may be possible to commit fraud against a court by lying in a complaint, it is irrelevant here, because Mr. Thomas has admitted as true any such lie that Creditors may have told.⁴

⁴ This statement is hypothetical only. The Court has seen no evidence to support or suggest that Creditors actually lied in their complaints filed in the State Court actions.

Finally, the Court notes that Mr. Thomas appears to have also raised this issue with the State Courts; and it was rejected there as well. (*See Creditor's Replies* Exhibit 1.) Once again, it is noted that this Bankruptcy Court is not a reviewing court, and thus not an appropriate forum for reviewing prior judicial determinations of state courts having competent jurisdiction.

V. Summary Judgment is Appropriate

Under the doctrine of collateral estoppel, Mr. Thomas is unable to relitigate issues, such as these, that were previously raised, heard, and determined by the Tennessee State Courts. Because the underlying facts in these matters have already been determined by the State Court judgments, there is no issue of material fact for this Bankruptcy Court to determine. Since the facts show that Mr. Thomas caused “willful and malicious injury” to another entity, Creditors have sufficiently satisfied 11 U.S.C. § 523(a)(6) and are entitled to judgment as a matter of law. Accordingly, summary judgment is appropriate in favor of the Creditors. The judgments of Creditors, Clear Channel and Tennison Brothers, are accordingly non-dischargeable under 11 U.S.C. § 523(a)(6).

CONCLUSIONS

Creditors, Clear Channel and Tennison Brothers, each have massive monetary claims reduced to penalty default judgments against Mr. Thomas. They have sought to have these prepetition judgments declared non-dischargeable under 11 U.S.C. § 523(a)(6). Under the doctrine of collateral estoppel, the Court must accept the version of facts established in the prior State Court proceedings. Considering the background facts and case as a whole, those facts are sufficient to satisfy the requirements of 11 U.S.C. § 523(a)(6) and also the doctrine of collateral estoppel. This means there is no issue of material fact. Accordingly, summary judgment is hereby granted in favor of Creditors, Clear Channel and Tennison Brothers, as they have

sufficiently carried the burden of proving that all the requirements of the Tennessee doctrine of collateral estoppel have been established. *See also, for example, Grogan v. Garner*, 111 S. Ct. 654, 658 n.11 (1991); *Spilman v. Harley*, 656 F.2d 224, 229 (6th Cir. 1981); *Rally Hill Prods., Inc. v. Bursack (In re Bursack)*, 65 F.3d 51, 53 (6th Cir. 1995); *Massengill v. Scott*, 738 S.W.2d 629, 632 (Tenn. 1987); *Lawhorn v. Wellford*, 168 S.W.2d 790, 792 (Tenn. 1943) (quoting *Taylor v. Sledge*, 75 S.W. 1074, 1075 (Tenn. 1903)).

BASED ON ALL OF THE FOREGOING, IT IS ORDERED AND NOTICE IS
HEREBY GIVEN that:

1. Summary judgment is hereby **GRANTED** in favor of Clear Channel Outdoor, Inc. The prepetition judgment of Clear Channel Outdoor, Inc. against Mr. Thomas for \$4,035,487.60 (proof of claim #4) is hereby non-dischargeable under 11 U.S.C. § 523(a)(6).
2. Summary judgment is also **GRANTED** in favor of Tennison Brothers, Inc. The prepetition judgment of Tennison Brothers, Inc. against Mr. Thomas for \$1,094,670.94 (proof of claim #7) is hereby non-dischargeable under 11 U.S.C. § 523(a)(6).
3. The Bankruptcy Court Clerk shall cause a copy of this Memorandum, Order, and Notice of the entry thereof to be sent to the following interested persons:

Michael P. Coury, Esq.
Attorney for Debtor in Possession, Mr. William H. Thomas, Jr.
Glankler Brown, PLLC
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