

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
) In Proceedings
) Under Chapter 7
EDWARD J. KUPINSKI,)
) No. BK 90-30467
 Debtor)
)
STATE FARM MUTUAL AUTOMOBILE) Adv. Proceeding
INSURANCE COMPANY,) No. 90-0188
)
 Plaintiff,)
)
vs.)
)
EDWARD J. KUPINSKI,)
)
 Defendant)

MEMORANDUM AND ORDER

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendant Edward J. Kupinski, a debtor under Chapter 7 of the Bankruptcy Code, became liable to plaintiff, State Farm Mutual Automobile Insurance Company ("State Farm"), for moneys disbursed by it due to an automobile accident caused by debtor. State Farm brought a subrogation cause of action against debtor which resulted in a default judgment. State Farm filed this adversary complaint to have debtor's obligation declared nondischargeable pursuant to 11 U.S.C. § 523(a)(9). This Court has considered the opposing parties' motions for summary judgment and enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On July 16, 1985, debtor was involved in a collision with a vehicle operated by Charles S. Page, Jr. Joseph Weier, a minor, was a passenger in Page's vehicle at the time of the collision.

Joseph Weir sustained injuries which required extensive treatment. State Farm disbursed a total of \$50,000 to the guardian of the Joseph Weier's estate under the uninsured motorist clauses of two automobile policies. State Farm filed suit against debtor in the Circuit Court of St. Clair County to recover under its right of subrogation. Debtor was properly served with summons and complaint and subsequently filed an answer to the complaint, pro se.

State Farm alleged, inter alia, that debtor caused the relevant collision, resulting in severe injuries to Weier. Count IV of State Farm's complaint alleged that debtor was guilty of negligence for failing to keep his automobile under proper control, failing to keep a proper lookout and stop his automobile in time to avoid collision, and speeding in violation of Chapter 95 1/2, ¶ 11-601, Ill. Rev. Stat. In addition, Count IV alleged that Debtor:

. . .negligently operated his automobile while under the influence of intoxicating liquor in violation of Chapter 95 1/2, ¶ 11-501, Ill. Rev. Stat.

State Farm prayed for judgment of \$50,000 plus costs.

Although debtor filed an answer pro se, he failed to appear at the trial. The only reason given was that he could not afford an attorney. The court entered a default judgment in favor of State Farm for \$50,000 compensatory damages, plus costs and \$50,000 punitive damages. The court specifically found that

. . .[T]he defendant acted in a willful manner in that he drove his car at a high rate of speed, while intoxicated, in a busy business district and said acts were performed in a manner that the defendant knew, or should have known, that his acts were likely to cause death or great bodily

injury.

State Farm has filed this adversary proceeding seeking an order finding debtor's obligation nondischargeable under 11 U.S.C. § 523(a)(9). Both the debtor and State Farm seek summary judgment.

CONCLUSIONS OF LAW

State Farm argues that the debtor is collaterally estopped from relitigating the issue of whether he was intoxicated at the time of the accident. As such, debtor's obligations to State Farm are nondischargeable under 11 U.S.C. § 523(a)(9).

In order for debtor's obligation to be declared nondischargeable under §523(a)(9), it must be established that the debt arose from a judgment or decree entered in a court of record as a result of the debtor's operation of a motor vehicle, and that the debtor operated the motor vehicle while legally intoxicated under the laws of the state in which the motor vehicle was operated. In re Pahule, 78 B.R. 210 (Bankr.E.D.Wis. 1987), Aff'd, 849 F.2d 1056, 1058 (7th Cir. 1988); In re Keating, 80 B.R. 115, 117. (Bankr.E.D.Wis. 1987).¹

¹Title 11 U.S.C. § 523(a) provides, in pertinent part:

"Exceptions to discharge."

"(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt---

"(9) to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated under the laws or regulations of any jurisdiction

The exhibits and affidavit establish that debtor's debt arose from a judgment entered in a court of record which resulted from his operation of a motor vehicle. The dispositive issue, then, is whether the state court's finding that the debtor was intoxicated at the time of the accident collaterally estops him from relitigating this issue. If it can be found that the state court's determination that debtor was intoxicated is valid for purposes of this action, then the debtor's obligation will not be discharged and summary judgment for State Farm must be granted.

The four elements that must be met for collateral estoppel to apply are: (1) the issue sought to be precluded must be the same as that involved in the prior action; (2) the issue must have been actually litigated; (3) the determination must have been essential to the final judgment; and (4) the party against whom estoppel is invoked must have been fully represented in the prior action. Klingman v. Levinson, 831 F.2d 1292, 1295 (7th Cir. 1987); In re Dvorak, 118 B.R. 619, 624 (Bankr.N.D.Ill. 1990). The Supreme Court has held that collateral estoppel does apply in discharge exception proceedings pursuant to § 523(a). Grogan v. Garner, 498 U.S. __, 111 S.Ct. 654, 112 L.Ed.2d 755, n. 11. Collateral estoppel, however, is not appropriate in all instances since the Court holds:
". . . [A] bankruptcy court could properly give collateral estoppel effect to those elements required for discharge and which were actually

within the United States or its territories
wherein such motor vehicle was operated and
within which such liability was incurred; . . .
. . ."

litigated and determined in the prior action." Grogan 11 S.Ct. 654 at 658 (emphasis added).

In re Bennett, 80 B.R. 800 (Bkrtcy.E.D.Va. 1988) is factually identical to the instant case. As here, a default judgment was entered when debtor was sued for damages he caused in an automobile accident which occurred while debtor was intoxicated. Bennett held that the debt arising from such default was not dischargeable. The Bennett court, however, relied solely upon public policy arguments and did not consider the ramifications of the collateral estoppel doctrine. The Bennett court voiced concerns that debtors liable for injuries inflicted due to their drunken driving may turn to bankruptcy as "a convenient tool to cover certain past wrongs." Bennett, 80 B.R. at 801. Section 523(a)(9), however, was drafted into the bankruptcy code for that very reason, to prevent debtors from avoiding such obligations. Allowing debtors to litigate an issue of intoxication which was not "actually litigated" in a prior lawsuit will not allow debtors to escape liability if, in fact, their conduct fits within § 523(a)(9). Ensuring that the debtor has a fair opportunity to protect his interests through adversarial litigation outweighs interests of judicial economy furthered by automatic application of collateral estoppel in cases such as this one. See In re Dvorak 118 B.R. 619, 625 (Bkrtcy.N.D.Ill. 1990).

A more reasoned approach is outlined in Dvorak, 118 B.R. at 625. The case concerns nondischargeable debts under 11 U.S.C. §523(a)(6), rather than §523(a)(9) as in this case; however, the holdings of Dvorak are applicable to the instant case. The court discussed at length

whether a default judgment should have a collateral estoppel effect in a subsequent bankruptcy proceeding and concluded that in most cases it should not. This is so because a court does not necessarily require proof of the allegations of the pleadings before entering a default judgment. Ch. 110, ¶ 2-1301(d) Ill.Rev.Stat.; Dvorak, 118 B.R. at 626. The Dvorak court concluded that it is up to the bankruptcy court to determine whether or not the issue sought to be collaterally estopped was actually litigated. ". . . [B]efore applying the doctrine of collateral estoppel, the bankruptcy court must determine if the issue was actually litigated and was necessary to the decision in the state court." Id., citing Spilman v. Hurley, 656 F.2d 224, 228 (6th Cir. 1981). Accordingly, the bankruptcy court should look at the entire record of the state proceeding or hold a hearing. Id.; see In re Roberson, 92 B.R. 263 (Bankr.S.D.Ohio 1988).

This Court cannot determine from the pleadings, stipulations, affidavit, or exhibits below whether or not the state court did, indeed, have before it any cogent proof of Debtor's inebriation at the time of the relevant automobile accident. We cannot conclude that the issue was actually litigated.² The default judgment, therefore, cannot be the basis for application of collateral estoppel in the instant case.

Plaintiff's motion for summary judgment denied.

This Court will conduct a hearing on _____ to

²Because this Court is not satisfied that the issue of Debtor's intoxication was actually litigated, necessary elements of collateral estoppel have not been met. It is unnecessary, then, to discuss the other elements of collateral estoppel.

determine whether the Debtor was intoxicated at the time of the automobile accident. Parties may submit a copy of the trial transcript prior to the hearing if it will dispense with the need for a hearing.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: July 8, 1991