UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: GAYLE D. HUFFMAN — CHAPTER 7
CASE NO. 04-14358

VERNER DRUIEN, EXECUTRIX FOR THE ESTATE OF OBEL JAMES — PLAINTIFF

VERSUS — ADV. PROC. NO. 04-1138

GAYLE D. HUFFMAN, DENNIS MOORE, LEEANN MOORE, AND STEPHEN P. LIVINGSTON, SR., TRUSTEE — DEFENDANTS

OPINION

On consideration before the court is a motion for summary judgment filed in the above captioned adversary proceeding by the plaintiff, Verner Druien, Executrix for the Estate of Obel James; no responses to the motion for summary judgment having been filed by any of the said defendants; and the court, having considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157, as well as, the General Order of Reference issued by the United States District Court for the Northern District of Mississippi on July 27, 1984.

This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(I).

II.

The plaintiff filed the subject adversary complaint against the debtor/defendant, Gayle D. Huffman, seeking to deny the dischargeability of an indebtedness evidenced by a judgment entered in the Chancery Court of Lafayette County, Mississippi, on June 20, 2002. The judgement, which is appended hereto and incorporated herein by reference, specifies that Huffman and Teresa Pannell acted in concert to wrongfully and fraudulently deprive their uncle, Obel James, of substantial assets. Huffman and Pannell were found to be jointly and severely liable in the sum of $98,552.68, which included attorney's fees and costs, in addition to interest which was to accrue thereafter at the legal rate of 8%, compounded. The Chancellor, Norman L. Gillespie, pointed out that the interest award was compounded because he had concluded that Huffman and Pannell had breached a fiduciary duty, as well as, had abused a trust. He specifically cited, §75-17-1, Miss. Code Ann., Van Ryan v. McMurtray, 505 So.2d 1015 (Miss. 1987), and Jones v. Parker, 216 Miss. 64, 61 So.2d 681 (1952). The cause of action, resulting in the judgment, had been fully litigated with an adjudication of all of the relevant issues, including specifically the existence of a fiduciary relationship, as well as, the breach of the attendant fiduciary duties which constituted fraud.

The complaint in the subject adversary proceeding is based on alleged violations of 11 U.S.C. §523(a)(4) and (6), which provide as follows:

> 523. 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–
>
> . . . .
>
> (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;
>
> . . . .

> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

Huffman, and the co-defendants, Dennis and LeeAnn Moore, filed an answer to the complaint in this proceeding on September 13, 2004, essentially acknowledging the aforementioned Chancery Court judgment rendered against Huffman.

Previously, this court entered a preliminary injunction directing the co-defendants, Dennis and LeeAnn Moore, to pay one-fourth of their monthly mortgage installment payments into escrow pending the outcome of this proceeding, the said one-fourth payments representing the amounts that would ordinarily be payable to Huffman.

In her motion for summary judgment, the plaintiff asserts that the Chancery Court judgment should be given collateral estoppel effect to preclude the relitigation of the issues of non-dischargeability which are contemplated by §§523(a)(4) and (6) of the Bankruptcy Code.

III.

In addressing the theory of collateral estoppel, three authorities must be noted:

First, the Supreme Court case, Brown v. Felsen, 442 U.S. 127, 139 n. 10, 99 S.Ct. 2205, 2213 n. 10, 60 L.Ed.2d 767 (1979), addressed the issue of the applicability of collateral estoppel in a bankruptcy dischargeability action as follows:

> If, in the course of adjudicating a state law question, a state court should determine factual issues using standards identical to those of [§523 of the present Bankruptcy Code] then collateral estoppel, in the absence of countervailing statutory policy, would bar relitigation of those issues in bankruptcy court.

Id.

Second, in In re Shuler, 722 F.2d 1253, 1255 (5th Cir. 1984), the Fifth Circuit stated that collateral estoppel may be invoked in a dischargeability action, but held that the bankruptcy court

is not bound by the earlier determination and, in fact, retains exclusive jurisdiction to determine the ultimate question of the dischargeability of a debt. In addition, the Shuler decision, citing White v. World Finance of Meridian, Inc., 653 F.2d 147, 151 (5th Cir. 1981), set forth the following test for applying the doctrine of collateral estoppel within the Fifth Circuit: (i) the issue to be precluded must be identical to that involved in the prior action, (ii) the issue must have been actually litigated in the prior action, and (iii) the issue determination in the prior action must have been necessary to the resulting judgment. In re Shuler, 722 F.2d at 1256 n. 2.

Third, the Fourth Circuit decision, Combs v. Richardson, 838 F.2d 112, 114 (4th Cir. 1988), held that a jury award of punitive damages based solely on a wilful and malicious standard will collaterally estop relitigation of the debtor's wilful and malicious conduct in a subsequent bankruptcy dischargeability proceeding. See also, In re Nunnley, 237 B.R. 907 (Bankr. N.D. Miss. 1991).

IV.

Summary judgment is properly granted when pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Bankruptcy Rule 7056; Uniform Local Bankruptcy Rule 18. The court must examine each issue in a light most favorable to the nonmoving party. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Phillips v. OKC Corp., 812 F.2d 265 (5th Cir. 1987); Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). The moving party must demonstrate to the court the basis on which it believes that summary judgment is justified. The nonmoving party must then show that a genuine issue of

material fact arises as to that issue. Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.29 265 (1986); Leonard v. Dixie Well Service & Supply, Inc., 828 F.2d 291 (5th Cir. 1987), Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). An issue is genuine if "there is sufficient evidence favoring the nonmoving party for a fact finder to find for that party." Phillips, 812 F.2d at 273. A fact is material if it would "affect the outcome of the lawsuit under the governing substantive law." Phillips, 812 F.2d at 272.

V.

The Chancery Court judgment, appended hereto, specifically concludes that Huffman and Pannell were jointly and severely liable for breaching their fiduciary duty by fraudulently converting assets owned by their uncle, Obel James. Since the issues were actually litigated, the findings set forth in the judgment are sufficient to meet all of the tests required to invoke the theory of collateral estoppel. As such, this court determines that the Chancery Court judgment indebtedness is non-dischargeable in Huffman's bankruptcy case, pursuant to §523(a)(4) of the Bankruptcy Code, in the total amount enumerated in the said judgment.

The court also concludes that the judgment indebtedness is non-dischargeable pursuant to §523(a)(6) of the Bankruptcy Code. The conclusions in the said Chancery Court judgment clearly demonstrate that the underlying indebtedness was the product of a willful and malicious injury inflicted by Huffman on her uncle and his property.

VI.

As a result of the foregoing analysis, the judgment indebtedness in the sum of $98,552.68, which includes attorney's fees and costs, plus interest accruing thereafter at the legal

rate of 8% per annum, compounded, is a non-dischargeable debt in this bankruptcy case pursuant to §523(a)(4) and (6) of the Bankruptcy Code.

Those mortgage installments paid into escrow by the co-defendants, Dennis and LeeAnn Moore, shall be released to the plaintiff. In addition, one-fourth of all future payments made by the said co-defendants on the mortgage indebtedness, representing monies that would ordinarily be payable to Huffman, shall be paid directly to the plaintiff.

A separate order will be entered consistent with this opinion.

This the 11th day of April, 2005.

/s/ DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE