IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF	:	**CIVIL ACTION**
	:	
	:	
	:	
NEIL J. WURSTER	:	**NO. 98-5042**

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 9th day of August, 1999, upon consideration of Neil J. Wurster's Appeal from the Order of the United States Bankruptcy Court, Eastern District of Pennsylvania, denying Debtor's Motion to Reconsider Order Denying Debtor's Motion to Avoid Judicial Lien of Bankcard Associates (Doc. No. 1, filed September 22, 1998) and Appellant's Brief on Appeal from Bankruptcy Court Order Denying Debtor's Motion to Avoid Lien of Bankcard Associates (Doc. No. 3, filed October 9, 1998), **IT IS ORDERED**, for the reasons set forth in the attached Memorandum, that the decision of the United States Bankruptcy Court, Eastern District of Pennsylvania, denying Debtor's Motion to Reconsider Order Denying Debtor's Motion to Avoid Judicial Lien of Bankcard Associates is **AFFIRMED.**

MEMORANDUM

I. BACKGROUND

On September 26, 1996, appellant Neil J. Wurster ("Wurster") filed a voluntary petition in bankruptcy under Chapter 7 of the Bankruptcy Code in United States Bankruptcy Court, Eastern District of Pennsylvania. On December 24, 1996, in those proceedings, Wurster filed a motion under 11 U.S.C. § 522 (f)(1)[1] to avoid the judgment lien of appellee Bankcard Associates ("Bankcard") in the amount of $8,843.83.[2] Instead of litigating the matter, Wurster and Bankcard stipulated to the retention by Bankcard of a secured judgment lien in the amount of $3,541.00 and an unsecured claim for the balance of the original judgment lien. The Stipulation was approved by the Chapter 7 Bankruptcy Court in an Order dated May 16, 1997. By Order dated May 21, 1997, the Chapter 7 Bankruptcy Court discharged Wurster from all dischargeable debts.

On February 4, 1998, Wurster filed a voluntary petition in bankruptcy under Chapter 13 of the Bankruptcy Code in United States Bankruptcy Court, Eastern District of Pennsylvania. According to Wurster's brief, the Chapter 13 petition was filed "in order to pay

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[1]Under 11 U.S.C. § 522(f)(1), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that the lien impairs an exemption to which the debtor is entitled.

[2]On October 31, 1994, in the Berks County, Pennsylvania Court of Common Pleas, Bankcard obtained a judgment lien in the amount of $8,843.83 against Wurster.

the mortgage arrearage that accumulated after the prior bankruptcy and to pay an assessment for connecting his property to the sewer, which he was unable to pay in a lump sum."[3] (Appellant's Brief at 3.)

On February 5, 1998, in the Chapter 13 proceedings, Wurster filed a motion to avoid Bankcard's judgment lien under 11 U.S.C. § 522(f)(1). Wurster argued that he was entitled to avoid Bankcard's judgment lien in those proceedings because, as of that time, there was no non-exempt equity in his real property.[4] On April 7, 1998, the Chapter 13 Bankruptcy Court denied Wurster's motion to avoid Bankcard's judgment lien on the ground that he was attempting to relitigate an issue in violation of the doctrines of claim and issue preclusion. That court ruled that the identical issue, involving the same parties, was resolved by Stipulation approved by the court in the Chapter 7 proceedings.

On April 16, 1998, Wurster filed a motion for reconsideration of the April, 7, 1998 Order. By Order dated August 21, 1998, the Chapter 13 Bankruptcy Court denied the motion for reconsideration,

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[3]ComNet Mortgage Services has a mortgage lien against Wurster's residence in the amount of $69,807.56. Lower Heidelberg Township Municipal Authority has a municipal lien against the residence in the amount of $5,147.00.

[4]In his voluntary petition under Chapter 13, Wurster listed his residence at 4318 Hill Terrace Drive, Sinking Spring, Pennsylvania, as his only real property holding, and stated that it had a fair market value of $75,000.00. The mortgage and the municipal lien noted in footnote 3 exceeded the fair market value of the residence.

holding that Wurster "has not established that reconsideration is necessary due to an intervening change in controlling law, to correct a clear error of law, to prevent manifest injustice or to present new evidence which was not previously available." (Bankr. Court Order, August 21, 1998 at 1 (citation omitted).) Wurster filed the instant appeal from that Order on September 22, 1998.[5]

After Wurster filed the appeal, Bankcard's attorney, Joel Flink, Esq., filed, in this Court, a motion to withdraw appearance as counsel, which was granted by Order dated January 19, 1999. In the order, Bankcard was given one month to retain new counsel or to request additional time to do so. Bankcard has not retained new counsel and has not requested additional time to do so. Accordingly, the Court will decide this appeal based on Appellant's Brief on Appeal from Bankruptcy Court Order Denying Debtor's Motion to Avoid Lien of Bankcard Associates.

II. ANALYSIS

A. Standard of Review

When reviewing bankruptcy court orders on appeal, this Court may not set aside findings of fact unless they are clearly erroneous. See In re Morrissey, 717 F.2d 100, 104 (3d Cir. 1983). Conclusions of law are reviewed de novo. See Brown v. Pennsylvania

[5]The appeal was timely filed pursuant to Bankr. Code, Rule 8002 (1999). The Court has jurisdiction to hear appeals from final judgments, orders, and decrees of the bankruptcy court under 28 U.S.C. § 158 (a).

State Employees Credit Union, 851 F.2d 81, 84 (3d Cir. 1988).

When the Court reviews the denial of a motion for reconsideration, "the standard of review varies with the nature of the underlying judgment." North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995) (quoting McAlister v. Sentry Ins. Co., 958 F.2d 550, 552-53 (3d Cir. 1992)). With respect to questions of law, the Court exercises plenary review. See North River Ins. Co., 52 F.3d at 1218.

In the instant appeal, the Court must determine whether the Chapter 13 Bankruptcy Court erred in denying Wurster's motion for reconsideration. This determination involves only a question of law. Thus, the Court exercises plenary review.

A motion for reconsideration may be granted if there is "(1) an intervening change in controlling law; (2) the availability of new evidence [not available previously]; [or] (3) the need to correct clear error [of law] or prevent manifest injustice." North River Ins. Co., 52 F.3d at 1218 (citations omitted). Wurster does not aver that there has been an intervening change in controlling law, or that he should be allowed to present evidence unavailable during the Chapter 13 proceedings. His sole argument is that the Chapter 13 Bankruptcy Court erred in denying his motion for reconsideration by failing to correct a clear error of law.

B. Collateral Estoppel

Wurster contends that the Chapter 13 Bankruptcy Court

committed a clear error of law when it denied his February 5, 1998 motion to avoid Bankcard's judgment lien based on claim and issue preclusion doctrines.[6] The question presented for this Court is whether the Stipulation of the parties as to the amount of Bankcard's secured judgment lien, approved by the Court in the Chapter 7 bankruptcy proceedings, bars relitigation of the same question in the Chapter 13 proceedings.

Wurster argues that although res judicata applies generally to bankruptcy cases, the doctrine should not prevent him from litigating an 11 U.S.C. § 522(f)(1) exemption in the Chapter 13 proceeding notwithstanding the prior resolution of that issue in the Chapter 7 proceedings. Wurster does not argue that Bankcard's secured judgment lien, stipulated to by the parties and approved by court order in the Chapter 7 proceeding, is invalid. He contends only that because his financial circumstances changed after his discharge in the Chapter 7 proceedings, requiring him to file a voluntary petition under Chapter 13, he should have the opportunity to litigate the 11 U.S.C. § 522(f)(1) exemption in the Chapter 13 proceedings.

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[6]At the outset the Court notes that the parties incorrectly used the terms res judicata and collateral estoppel, and the terms issue and claim preclusion, interchangeably. Res judicata, also known as claim preclusion, is a doctrine which prevents relitigation of claims. Collateral estoppel, alternatively known as issue preclusion, bars relitigation of an issue as opposed to a claim. See Witkowski v. Welch, 173 F.3d 192, 199 n.8 (3d Cir. 1999).

The doctrine of collateral estoppel prevents parties from relitigating an issue when a court of competent jurisdiction has already adjudicated the issue on its merits, and a final judgment has been entered as to those parties and their privies. Schroeder v. Acceleration Life Ins. Co., 972 F.2d 41, 45 (3d.Cir. 1992). Issue preclusion "forecloses relitigation in a later action [ ] of an issue of fact or law which was actually litigated and which was necessary to the original judgment." Witkowski v. Welch, 173 F.3d 192, 198-99 (3d Cir. 1999)(quoting Hebden v. Workmen's Compensation Appeal Bd., 632 A.2d 1302, 1304 (Pa. 1993))(internal quotation marks omitted); see also Restatement (Second) of Judgments, § 27 cmt. c (1982) ("An issue on which relitigation is foreclosed may be one of evidentiary fact, of 'ultimate fact' (i.e. the application of law to fact), or of law."). As the Supreme Court has observed, this doctrine reduces the costs of multiple lawsuits, facilitates judicial consistency, conserves resources, and "encourage[s] reliance on adjudication." Allen v. McCurry, 449 U.S. 90, 94 (1980).

Collateral estoppel may be applied to rulings of the Bankruptcy Court. See Katchen v. Landry, 382 U.S. 323, 334 (1966). It applies if (1) the issue decided in the prior adjudication is identical to the one presented in the later action; (2) there is a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party or in privity with the party to

the prior adjudication; and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in question in the prior adjudication. Witkowski, 173 F.3d at 199.

The February 5, 1998 motion to avoid Bankcard's judgment lien satisfies the first element of collateral estoppel. The issue raised in that motion is identical to the issue resolved by Stipulation and approved in the Chapter 7 Bankruptcy Court's May 16, 1997 Order. Specifically, the issue in both cases was whether or not Wurster could avoid Bankcard's judgment lien pursuant to an 11 U.S.C. § 522 (f)(1) exemption.

For purposes of collateral estoppel, a judgment by stipulation is a judgment on the merits. See 1B James W. Moore et. al., Moore's Federal Practice ¶ 0.444[3] (2d ed. 1991)("[a judgment] should not be deprived of collateral estoppel effect by the fact that it was rendered upon the consent of the parties rather than as the result of an adversary trial."). In the Chapter 7 proceedings the Bankruptcy Court, by Order dated May 16, 1997, approved the Stipulation between Wurster and Bankcard under which Bankcard retained a secured judgment lien in the amount of $3,541.00. The Stipulation, as approved by Order of the Chapter 7 Bankruptcy Court, represents a judgment on the issue of lien avoidance. Thus, the issue of Bankcard's judgment lien against Wurster, decided by the Stipulation and approved by Order of the Chapter 7 Bankruptcy

Court, was, for collateral estoppel purposes, a final judgment on the merits. This satisfies the second element of collateral estoppel.

With respect to the third and fourth collateral estoppel requirements, identity of the parties and opportunity to litigate, although the trustees were different in the Chapter 7 and Chapter 13 proceedings, the parties involved in resolving Bankcard's judgment lien (Wurster and Bankcard) are identical, and the parties had a full and fair opportunity to litigate the issue. Thus, the third and fourth elements are satisfied.

The Chapter 13 Bankruptcy Court correctly denied Wurster's motion to avoid Bankcard's judgment lien[7] based on collateral estoppel.[8] Thus, there was no clear error of law, and Wurster's

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[7]The Bankruptcy Court held that "the mere fact that debtor's prior bankruptcy case was a [C]hapter 7 case involving a [C]hapter 7 Trustee while this case is a [C]hapter 13 case and involves the standing [C]hapter 13 Trustee does not affect the application of the issue and claim preclusion doctrines to the facts involved in this proceeding. It nonetheless remains that Debtor filed a motion to avoid Bankcard Services' lien in his [C]hapter 7 case and that Debtor and Bankcard Services entered into a Stipulation which resolved the motion and which was approved by this Court in our May 16, 1997 Order. As a result, Debtor is barred from relitigating the issues raised in his present motion to avoid Bankcard Services' lien." (Bankr. Court Order, April 7, 1998, at 1 n.1.)

[8]In view of the Court's disposition of the appeal on collateral estoppel grounds, there is no need to discuss res judicata. Whether the Stipulation, as approved by the Chapter 7 Bankruptcy Court's May 16, 1997 Order, is deemed to constitute an adjudication of an issue (collateral estoppel) or a claim (res judicata), the result would be the same.

motion for reconsideration was properly denied.

IV. CONCLUSION

Based on the foregoing analysis, the decision of the Bankruptcy Court denying the motion to reconsider is affirmed.

BY THE COURT

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JAN E. DUBOIS, J.