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

In re:

Jeremy Gene Babcock, **Case No. 16-02260-als7**
Sasha Renea Babcock,

Debtor(s)

Grundy Mutual Insurance Association, **Adv. Pro. 17-30005-als**

Plaintiff(s)

v.

Jeremy Gene Babcock,

Defendant(s)

MEMORANDUM OF DECISION
(date entered on docket: August 24, 2017)

Before the Court is the Plaintiff's Motion for Summary Judgment and the Defendant's response. The Court has jurisdiction of these matters under 28 U.S.C. §§ 157(b)(1) and 1334. For the reasons stated the Motion is denied.

BACKGROUND

Jeremy Babcock filed a joint voluntary chapter 7 petition with his spouse on November 17, 2016. Schedule E/F identified Todd Greer as counsel for Grundy Mutual Insurance Company ("Grundy") that holds an unsecured nonpriority claim in the amount of $110,583.52 arising from a default judgment entered against Babcock in a state court civil action. Grundy timely filed this adversary proceeding objecting to the discharge of this debt pursuant to 11 U.S.C. § 523(a)(6). Grundy has filed a Motion for Summary Judgment ("Motion") which Babcock resists.

The filings in this case reflect that Grundy insured real estate and personal property owned by Jeff and Carol Arends. According to the complaint, Babcock allegedly trespassed on their

property and intentionally caused a fire. Babcock was charged with Second Degree Arson related to the fire but he later pled guilty to the reckless use of fire and received a suspended sentence. Grundy obtained a default judgment against Babcock in state court for $110,583.52 which apparently represented the loss paid to Arends' mortgage holder under the terms of the policy. In his objection to the pending Motion Babcock asserts that he was never served notice of the state court civil suit and that he intends to re-open that action to file a motion to quash service and set aside the default judgment.

The Court took these matters under advisement without hearing.

DISCUSSION

Federal Bankruptcy Rule 7056 which incorporates Federal Rule of Civil Procedure 56 states in relevant part:

> (a) . . . The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. . . .
>
> (c)(1) A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Celotex v. Catrett*, 477 U.S. 317, 319 (1986). Once the moving party has met its burden of showing both the absence of a genuine issue of material fact and its entitlement to judgment as a matter of law, the burden shifts to the non-moving party to set forth specific facts to show that a genuine issue of material fact exists. *N. Am. Specialty Inc. Co. v. Thomas (In re Thomas)*, No. 08-42854, 2010 U.S. Dist. LEXIS 16269 at *8 (Bankr. E.D. Mo. Feb. 24, 2010).

The analysis under Rule 56 is two-part. First, whether there is "a genuine dispute of material fact – i.e., a triable issue as to a fact necessary to satisfy an essential element of the claim or defense in question, under the governing law." *Community Finance Group, Inc. v. Fields (In re Fields),* 449 B.R. 387, 391 (Bankr. D. Minn 2011). Second, "only if there is no genuine dispute of material fact, [whether] the governing law dictate[s] judgment for the movant on the facts thus established as uncontroverted[.]" *Id.*

Grundy's complaint asserts that the actions taken by Babcock were willful and malicious which prevents him from discharging his personal liability of the debt under 11 U.S.C. § 523(a)(6). "Willfulness is defined as 'headstrong and knowing' conduct and 'malicious' as conduct 'targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause . . . harm.'" *Fischer v. Scarborough (In re Scarborough),* 171 F.3d 638, 641 (8th Cir. 1999) (quoting *Johnson v. Miera (In re Miera),* 926 F.2d 741, 743-33 (8th Cir. 1991)). To be non-dischargeable, the injury from which the debt resulted must be "a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Sells v. Porter (In re Porter),* 539 F.3d 889, 894 (8th Cir. 2008) (citing *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998)) (emphasis omitted). Injury that occurs due to merely reckless or negligent conduct does not meet the standard required under 11 U.S.C. § 523(a)(6). *Geiger*, 523 U.S. at 59. This element has been characterized by the Eighth Circuit as subjective, and requiring "proof that the debtor desired to bring about the injury or was, in fact, substantially certain that his conduct would result in the injury that occurred." *Blocker v. Patch (In re Patch),* 526 F.3d 1176, 1180-81 (8th Cir. 2008). Awareness that conduct will result in harm is all that is necessary; specific intent to bring about a particular consequence is not required to prove willfulness. *See id.* at 1180.

In support of its Motion, Grundy relies upon two exhibits to establish Babcock's willful and malicious conduct: the Default Judgment and Plea Agreement. Babcock does not cite to any genuine issue of material fact in his response to the request for summary judgment[1]. Although not directly stated, the Court liberally construes his filing as raising the dispute of whether Grundy can

[1] There is a line of cases that states that a moving party is entitled to summary judgment only if the movant shows that there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *See* Fed. R. Bankr. P. 7056; *N. Slope Borough v. Rogstad (In re Rogstad),* 126 F.3d 1224, 1227 (9th Cir. 1997) (emphasis omitted). These cases hold that a motion for summary judgment may not be granted merely because no opposition was filed. *See also Hibernia Nat'l Bank v. Admin. Cent. Sociedad Anonima,* 776 F.2d 1277, 1279 (5th Cir. 1985).

appropriately rely on these documents to establish the elements required under 11 U.S.C. § 523(a)(6).

> The binding effect of a former adjudication, often generically termed res judicata, can take one of two forms. Claim preclusion (traditionally termed res judicata or "merger and bar") bars relitigation of the same claim between parties or their privies where a final judgment has been rendered upon the merits by a court of competent jurisdiction. Issue preclusion (or "collateral estoppel") applies to legal or factual issues actually and necessarily determined, with such a determination becoming conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.

W.A. Lang Co. v. Anderberg-Lund Printing Co. (In re Anderberg-Lund Printing Co.), 109 F.3d 1343, 1346 (8th Cir. 1997) (citations omitted).

Res judicata, also known as claim preclusion, bars the relitigation of all claims and defenses if the matter has been definitively settled by a prior proceeding. "Res judicata prevents litigation of all grounds for, or defenses to, recover[ies] that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." *Zio Johnos Inc. v. Ziadeh* (*In re Ziadeh),* 276 B.R. 614, 618 (Bankr. N.D. Iowa 2002). Claim preclusion requires a final judgment on the merits. Claim preclusion will bar a subsequent suit when: "(1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involved the same cause of action; and (4) both suits involved the same parties or their privies." *In re Anderberg-Lund Printing Co.,* 109 F.3d at 1346 (citations omitted). Additionally, "the party against whom res judicata is asserted must have had a full and fair opportunity to litigate the matter in the proceeding that is to be given preclusive effect. *In re Ziadeh,* 276 B.R. at 618. Courts in the Eighth Circuit have held that claim preclusion or res judicata is not applicable in a 523 proceeding "because the claim adjudicated in the state court did not involve any determination of the dischargeability of debt under § 523 of the Bankruptcy Code." *Treadwell v. Lodge (In re Treadwell*), 459 B.R. 394, 403 (Bankr. W.D. Mo. 2011).

Collateral estoppel (also known as issue preclusion) is a narrower doctrine than res judicata. "[W]hereas res judicata forecloses all that which might have been litigated previously, collateral estoppel treats only those questions actually and necessarily decided in a prior suit." 9D Am Jr. 2d Bankruptcy § 3717 (2012). Applied to bankruptcy proceedings, "a debtor is collaterally

estopped from relitigating, in a discharge exception proceeding, issues decided in a state court action that resulted in a judgment in favor of a creditor." *Id.* When the court has already "decided an issue of fact or law necessary to its judgment, the same issue cannot be relitigated in later proceedings." *Winnebago Indus. v. Haverly*, 727 N.W.2d 567, 571 (Iowa 2006). As a general matter, collateral estoppel applies in bankruptcy proceedings. *Hobson Mould Works, Inc. v. Madsen (In re Madsen)*, 195 F.3d 988, 989 (8th Cir. 1999) (citing *Grogan v. Garner*, 498 U.S. 279, 284-85 (1991)). Federal courts apply the law of the state in whose courts the prior judgment was entered when determining whether collateral estoppel arises from a prior state court judgment. *See Osborne v. Stage*, 321 B.R. 486, 493 (B.A.P. 8th Cir. 2005). Collateral estoppel includes the requirement that the claim be "raised and litigated." An exception to this standard may be available if it is demonstrated that a party was afforded a reasonable opportunity to defend himself on the merits but chooses not to do so. *FDCI v. Daily (In re Daily)*, 47 F.3d 365, 368 (9th Cir. 1995). Because Babcock asserts that he was not served with the state court lawsuit that does not appear to be the case here. Proving that a claim was actually litigated is difficult with anything less than a court's judgment after a trial or hearing on the facts.

> In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated. Therefore, the rule of this Section does not apply with respect to any issue in a subsequent action. The judgment may be conclusive, however, with respect to one or more issues, if the parties have entered an agreement manifesting such an intention.

Winnebago Indus., 727 N.W.2d at 572 (quoting Restatement (Second) of Judgments § 27 cmt. e). At this juncture of the case there is no indication that any such agreement existed between the parties on the elements involved in the state court litigation. Entry of the default judgment in the Iowa District Court appears to be based solely upon the allegations contained in Grundy's lawsuit stating that Babcock "trespassed upon property located at 396 Juniper Avenue, Alden, Franklin County, Iowa, and willfully and intentionally caused the fire which resulted in Plaintiff's loss." Consequently, the default judgment does not meet the actually litigated standard and cannot be relied upon as the sole evidence to establish the elements of a willful and malicious injury. Similarly, the criminal case and plea agreement involving Babcock are equally inadequate to demonstrate that excepting the debt from discharge is appropriate.

The initial criminal charge filed against Babcock was for Second Degree Arson which requires the State to prove that: "[a defendant] entered the house with the intent to destroy it. Iowa Code §§ 712.1, 712.3. The element of intent was never established because Babcock pled guilty to a lesser charge of the reckless use of fire under Iowa Code section 712.5 that provides: "Any person who shall so use fire or any incendiary or explosive device or material as to recklessly endanger the property or safety of another shall be guilty of a serious misdemeanor." *State v. Chapman*, 895 N.W.2d 486 (Iowa Ct. App. Dec. 21, 2016). There is no information that the Court can rely upon to determine that Babcock's conduct under the criminal charge was intentional rather than merely reckless, which is insufficient for purposes of establishing the required elements under 11 U.S.C. § 523(a)(6).

Setting aside the default judgment for the issue of dischargeability to be determined by this Court is unnecessary. For the reasons stated,

It is therefore ORDERED that:

1. The Motion for Summary Judgment is denied.
2. Defendant's request to defer this adversary proceeding pending a resolution in the state court is denied.
3. A pre-trial conference will be scheduled by the Court to establish deadlines and a trial date.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Adversary Proceeding