IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

In re: JACK DANIEL PORTER, JR. and BRANDY D. PORTER, Debtors — **No. 5:11-bk-73561, Chapter 7**

ARVEST BANK — **PLAINTIFF**

v. — **AP No. 5:11-ap-07153**

JACK DANIEL PORTER, JR. and BRANDY D. PORTER — **DEFENDANTS**

ORDER DENYING THE DEBTORS' MOTION FOR SUMMARY JUDGMENT

Before the Court is the motion for summary judgment and supporting brief filed by the debtors, Jack Daniel Porter, Jr. and Brandy D. Porter [the Porters], on March 9, 2012; and the response and supporting brief filed by Arvest Bank [Arvest] on March 22, 2012. In their motion for summary judgment, the Porters argue that res judicata precludes Arvest from bringing its claims under 11 U.S.C. § 523(a)(2) and § 523(a)(4) because Arvest failed to allege fraud in its prior breach of contract action in state court. For the reasons stated below, the Court denies the Porters' motion for summary judgment.

Background

According to the facts presented to the Court in the pleadings, on September 25, 2009, Arvest filed a complaint against the Porters in Benton County Circuit Court for breach of contract on three separate contracts entered into between Arvest and Jack Porter or Brandy Porter for repayment of loans secured by vehicles. On November 5, 2009, the state court entered a default judgment in favor of Arvest.

On August 2, 2011, the Porters filed their chapter 7 bankruptcy petition. On November 7, 2011, Arvest filed a complaint to determine the dischargeability of its debt under § 523(a)(2) and (a)(4). Subsequently, the Porters filed their motion for summary judgment now before the Court.

Jurisdiction

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). The following findings constitute findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact and Conclusions of Law

The Porters argue that because Arvest failed to allege fraud in its state court lawsuit, Arvest is now barred by res judicata from raising allegations of false pretenses, false representations, or actual fraud against the Porters in its complaint to determine the dischargeability of its debt. Accordingly, the Porters argue that no genuine issues of material fact exist, and they are entitled to judgment as a matter of law.

The purpose of res judicata is "to prevent repetitive suits involving the same cause of action." *Ripplin Shoals Land Co., LLC v. U.S. Army Corps of Eng'rs*, 440 F.3d 1038, 1042 (8th Cir. 2006). To determine whether res judicata bars a party from asserting a claim, three elements must be considered: (1) whether the prior judgment was entered by a court of competent jurisdiction; (2) whether the prior decision was a final judgment on the merits; and (3) whether the same cause of action and the same parties or their privies were involved in both cases. *Id.* Only the third element is at issue here, and the question hinges solely on whether the issues being brought in the bankruptcy adversary proceeding constitute the same cause of action that was decided in the state court case. The Eighth Circuit has stated that if two cases arise "out of the same nucleus of operative fact . . . the two cases are really the same 'claim' or 'cause of action' for purposes of res judicata." *Ruple v. City of Vermillion*, 714 F.2d 860, 861 (8th Cir. 1983).

The Porters argue that the same nucleus of operative fact–the Porters' breach of contracts with Arvest–is the basis for both actions, and because Arvest did not allege fraud in the state court action, res judicata now precludes Arvest from doing so in the current action. However, the Court finds that the state court action and the current bankruptcy adversary proceeding have distinctly different purposes and are not the same cause of action. The

state court action established the existence of a debt owed because of the Porters' breach of several contracts with Arvest, while the current complaint seeks a determination of the dischargeability of that debt in bankruptcy. *Countrywide Home Loans, Inc. v. Blair* (*In re Blair*), 324 B.R. 725, 731 (Bankr. W.D. Ark. 2005); *see also Jennen v. Hunter* (*In re Hunter*), 52 B.R. 912, 915 (D.N.D. 1984) ("A pre-bankruptcy judgment, although res judicata on the issue of liability, is not res judicata upon the issue of dischargeability of a debt, which constitutes a different cause of action and which is the ultimate issue in a dischargeability proceeding."). In addition, Arvest had no reason to pursue issues related to dischargeability in its 2009 state court action because the Porters had not filed bankruptcy at that time. To require a creditor to litigate dischargeability issues that are not necessary to the state court action because of the possibility that a debtor will file bankruptcy at some time in the future is contrary to this Court's concept of judicial economy.

Federal Rule of Civil Procedure 56, made applicable by Federal Rule of Bankruptcy Procedure 7056, states that summary judgment shall be granted "if the movant shows that there is no genuine dispute as to the material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). There remain genuine issues of material fact regarding whether the Porters' actions fell under the purview of § 523(a)(2) and (a)(4) sufficient to except their debt with Arvest from discharge. Accordingly, the Porters' motion for summary judgment is denied. The parties' complaint and answer remain set for hearing.

IT IS SO ORDERED.

April 5, 2012
DATE

Ben Barry
BEN T. BARRY
UNITED STATES BANKRUPTCY JUDGE

cc: J. Christopher Harris, attorney for the debtors
Burton E. Stacy, Jr., attorney for Arvest Bank