IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-1687

IN THE MATTER OF:

PETER B. DAUTERMAN,

Debtor.

PETER B. DAUTERMAN,

Appellant,

VERSUS

THE GOODMAN GROUP, INC.,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:92-CV-0781-T)

(May 20, 1993)

Before JOHNSON, SMITH, and EMILIO M. GARZA, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

Peter Dauterman appeals a summary judgment affirming the bankruptcy court's order requiring him to pay a state court judgment against him as non-dischargeable under the Bankruptcy Code, 11 U.S.C. § 523(a)(4). Finding no error, we affirm.

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[*] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Dauterman is a resident of Dallas, Texas, and a former officer of the Dallas-based real estate investment company, the Goodman Group ("Goodman"). Dauterman was employed by Goodman from December 15, 1980, to July 15, 1983, initially in the capacity of Vice President of Marketing and ultimately as Vice President of Property Acquisition.

In 1982, Dauterman examined the possibility of acquiring the Watkins Miniwarehouse in Memphis, Tennessee (the "Watkins property"), for syndication as an income-producing property by Goodman. On July 15, 1983, Dauterman resigned his position with Goodman and thereafter became president of DF&L Realty Group, Inc. ("DF&L"). In August 1983, DF&L prepared information summaries and private placement memoranda to be used to sell limited partnership interests in the Watkins property. In September, the Watkins property was assigned to DF&L and a certificate filed with the State of Tennessee for the Watkins Miniwarehouse Limited Partnership. DF&L and another individual were named as the general partners; approximately thirty limited partnership interests were sold at $12,500 each.

Goodman subsequently sued Dauterman in state court for damages resulting from his misappropriation of a business opportunity. Dauterman counterclaimed for breach of his employment contract, and the jury rendered its verdict on October 6, 1989, finding in favor of each party on its respective claim.

On September 13, 1990, Dauterman filed a chapter 7 bankruptcy petition; Goodman responded three months later by filing the instant adversary proceeding. Goodman seeks to have the debt established by the state court judgment against Dauterman declared non-dischargeable as a defalcation while acting in a fiduciary capacity under section 523(a)(4).

By its order dated February 18, 1992, the bankruptcy court entered summary judgment in favor of Goodman. The district court affirmed.

II.

Dauterman contends that the bankruptcy court misapplied the standard for determining the existence of a fiduciary relationship, at least as the term is defined for purposes of section 523(a)(4). Although conceding that his position as an officer of Goodman gave rise to a fiduciary obligation under Texas law, Dauterman argues that in this case his fiduciary duties arose only because he was determined to be a trustee ex maleficio with respect to the business opportunity he wrongfully diverted from Goodman.

Section 523(a)(4) excepts from discharge in bankruptcy "any debt . . . for fraud or defalcation while acting in a fiduciary capacity . . . ." The scope and meaning of a fiduciary relationship as it applies to this section are questions of federal law, but state law plays an important role in determining the existence of such a relationship. Angelle v. Reed (In re Angelle), 610 F.2d 1335, 1341 (5th Cir. 1980) (interpreting equivalent former

Bankruptcy Act § 17(a)(4)). In Angelle we further held that the concept of a fiduciary under section 523(a)(4) is "narrowly defined": It applies only to technical or express trusts, not those that the law implies from the contract or from constructive trusts imposed as a remedy for wrongdoing. Id. at 1338-39.

Most recently, however, we have stated that the technical or express trust requirement is not so limiting as it might sound; specifically, "the trust obligations necessary under section 523(a)(4) can arise pursuant to a statute, common law or a formal trust agreement." LSP Inv. Partnership v. Bennett (In re Bennett), 1993 U.S. App. LEXIS 8578, at *16 (5th Cir. April 19, 1993). Bennett directs us to look to state common law to ascertain the nature and existence of any fiduciary obligations between the parties; we then must consult federal law to determine whether these obligations suffice to come within section 523(a)(4)'s exception to dischargeability. Id.

Texas law recognizes a pre-existing fiduciary relationship between officers and the corporation that, among other things, imposes upon the officer a duty of loyalty not to allow his personal interests to take precedence over those of the corporation or to pursue for himself a business opportunity that properly belongs to the corporation. See Safety Int'l, Inc. v. Dyer (In re Safety Int'l, Inc.), 775 F.2d 660, 662 (5th Cir. 1985) ("When a corporate officer or director diverts a corporate opportunity to himself, he breaches his fiduciary duty of loyalty to the corporation."); International Bankers Life Ins. Co. v. Holloway, 368

S.W.2d 567, 577 (Tex. 1963) ("A corporate fiduciary is under obligation not to usurp corporate opportunities for personal gain, and equity will hold him accountable to the corporation for his profits if he does so.").

Dauterman does not dispute the existence in Texas law of such a duty but, rather, contends that the Texas duty of loyalty fails to meet the federal law fiduciary standard of section 523(a)(4). His argument, however, misstates the narrowness of the exception and confuses the nature of a judicial remedy with the existence of the underlying wrong. Dauterman undoubtedly lost in state court because he violated his duty of loyalty to Goodman. His breach of this pre-existing fiduciary obligation in turn gave rise to money damages owed to Goodman; the court's imposition of a constructive trust as a remedy, so that DF&L held the Watkins property and its proceeds in trust for Goodman, does not alter the essential nature of the wrong. This case, rather, presents both the violation of a trust and a constructive trust imposed to remedy it. Cf. Ragsdale v. Haller, 780 F.2d 794, 796-97 (9th Cir. 1986) (holding partner's debt non-dischargeable where California statute created constructive trust ex maleficio and state common law imposed pre-existing fiduciary relationship).

In short, we find this case to be something of an archetype for the application of section 523(a)(4) and conclude that Dauterman should not be allowed to discharge this debt on the ground that he is not a fiduciary. Dauterman plainly violated his fiduciary obligations to his employer, thereby incurring court-

ordered damages; and while the Bankruptcy Code may offer him temporary sanctuary from his other creditors, section 523(a)(4) ensures that this is one obligation he cannot escape. See Moreno v. Ashworth (In re Moreno), 892 F.2d 417, 421 (5th Cir. 1990) (debtor corporate officer's breach of Texas fiduciary duty renders debt arising from self-dealing transactions non-dischargeable under section 523(a)(4)).[1]

III.

Dauterman next asserts that the district court erred in holding that his actions in appropriating to himself the business opportunity represented by the Watkins property constituted a defalcation within the meaning of section 523(a)(4). Under the section, once a fiduciary relationship has been established, "the plaintiff need only prove the defendant is guilty of defalcation or fraud while acting in that fiduciary capacity. The plaintiff need not prove embezzlement or larceny." Council 49, Am. Fed'n of State, County & Mun. Employees v. Boshell (In re Boshell), 108 B.R. 780, 783 (Bankr. N.D. Ala. 1989).

This Court has recently defined defalcation as "a willful

[1] Dauterman urges upon us a number of cases examining the relationship between partners, yet his argument is inapposite; not all states impose fiduciary relations upon partners. This accounts for the difference between Donohoe v. Hurbace (In re Hurbace), 61 B.R. 563, 565-66 (Bankr. W.D. Tex. 1986), where the court held that a trust ex maleficio was created by a Texas statute when the partner derived profits from the partnership without the other partners' consent, and Ragsdale, 780 F.2d at 796-97 (9th Cir. 1986), in which there was both a trust ex maleficio created by California statute and a pre-existing fiduciary duty between partners imposed by California common law. Thus, the fact that Texas imposes no general fiduciary duty between co-equal partners is irrelevant when the obligations between officers and directors and the corporation are undoubtedly fiduciary in nature. See generally Bennett, 1993 U.S. App. LEXIS 8578, at *16-*21 (distinguishing Hurbace and Ragsdale); Hurbace, 61 B.R. at 566 (same).

neglect of duty [which need not be] accompanied by fraud or embezzlement." Moreno, 892 F.2d at 421. As stated earlier, Texas law imposes a duty on corporate fiduciaries not to usurp corporate opportunities. Holloway, 368 S.W.2d at 577. Dauterman plainly breached that duty, and there is no question but that he breached it willfully. Hence, the bankruptcy court's findings were not factually erroneous, and we conclude that Dauterman's breach of his fiduciary duty of loyalty easily fits within the Code's definition of a defalcation.

IV.

Finally, Dauterman contends that the bankruptcy court erred by invoking the doctrine of collateral estoppel to give preclusive effect to the state court judgment. As support, he points to the district court's statement in its July 13, 1992, order affirming the bankruptcy court, agreeing with him that the two issues necessary for a determination of the debt's non-dischargeability)) Dauterman's status as a fiduciary and whether the debt arises from an act of defalcation)) were not addressed in the state court.

"Simply stated, collateral estoppel means that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue or point in controversy cannot be relitigated between the same parties in any future lawsuit." White v. World Fin., 653 F.2d 147, 151-52 (5th Cir. Unit A Aug. 1981). Thus, if we were to apply collateral estoppel in this case, we would have to accept that Dauterman committed the predicate acts that gave rise

to Goodman's legal claim of wrongful misappropriation. Unlike in the case of res judicata, however, we would remain free to determine that those predicate acts do not rise to the legal standard required to invoke section 523(a)(4)'s non-dischargeability provision.

In determining whether the bankruptcy court owes preclusive effect to an underlying state court judgment, we are guided by a four-part inquiry:

> (1) whether courts of the state whose court rendered the subject decision would apply collateral estoppel in a subsequent case;
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> (2) whether the record meets the federal test for the application of collateral estoppel[2];
>
> (3) whether the prior non-bankruptcy trial was conducted without a view to predetermine dischargeability issues, and
>
> (4) whether each component of the judgment debt should be excepted from discharge.

Haile v. McDonald (In re McDonald), 73 B.R. 877, 879-80 (Bankr. N.D. Tex. 1987).

Applying the test set out above, only the first two prongs require extended discussion. In Texas, a judgment may be given issue-preclusive effect whenever "`the conclusion in question is procedurally definite.' The factors to be considered in answering this question include whether `the parties were fully heard, [whether] the court supported its decision with a reasoned opinion

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[2] The federal test is itself tripartite and requires that the factual issues determined in the prior proceeding be (1) identical to the issues in the present proceeding; (2) actually litigated; and (3) necessary to the resulting judgment. White, 653 F.2d at 151.

[and whether] the decision was subject to appeal or was in fact reviewed on appeal.'" Van Dyke v. Boswell, O'Toole, Davis & Pickering, 697 S.W.2d 381, 385 (Tex. 1985) (quoting Restatement (Second) of Judgments (1982)).

The bankruptcy court in this case, which crafted the four-part test set out in McDonald, examined the pleadings, jury charge, and judgment of the state trial court. It apparently found nothing to suggest that the state court proceedings lacked any of the definiteness that the Texas doctrine of collateral estoppel requires, nor has Dauterman demonstrated to this court any deficiencies in the hearing it received.

Lastly, the federal test for issue preclusion, set out supra at note 3, presents no bar to reliance upon the ultimate facts determined in the state court judgment. As the district court noted, while the legal issues posed by section 523(a)(4) were not addressed in the state court proceeding, "the facts necessary for the bankruptcy court to make the required § 523(a)(4) determinations were fully litigated."

These factual determinations supply the basis for the bankruptcy court's dischargeability determination; whether the state law and Bankruptcy Code standards for fiduciaries and defalcations differ to such a degree as to render the state court judgment meaningless for purposes of the dischargeability determination presents a purely legal question, resolution of which is entirely appropriate on summary judgment. Nothing in the record convinces us that the district court erred in its resolution of

these disputed issues or in granting issue-preclusive effect to the state court judgment.

We therefore AFFIRM the judgment of the district court.