

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 7

QIAO LIN,

Case No. 14-42344-ess

Debtor.

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GUO ZHONG WU, RONG ZHENG,
and WEN DONG LIN,

Adv. Pro. No.: 14-01111-ess

Plaintiffs,

-against-

QIAO LIN,

Defendant.
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**MEMORANDUM DECISION ON PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Appearances:

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Attorneys for Plaintiffs

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HONORABLE ELIZABETH S. STONG
UNITED STATES BANKRUPTCY JUDGE

Introduction

Before the Court is a motion for partial summary judgment by plaintiffs Gu Zhong Wu, Rong Zheng, and Wen Dong Lin seeking an order finding that the default judgment entered against the defendant Qiao Lin and others in *Wu v. Glyphs Garden, Inc.*, No. 12-07995 (S.D.N.Y. May 20, 2013) (the “District Court Action”), a case brought by these plaintiffs in the United States District Court for the Southern District of New York, is nondischargeable under Bankruptcy Code Section 523(a)(6). The Plaintiffs argue that there is no genuine dispute as to a material fact as to each element of their claim based on the record here, and separately, based on the collateral estoppel effect of the District Court’s judgment.

Mr. Lin opposes this motion on grounds that collateral estoppel does not apply here, and that the Plaintiffs have not established that there is no genuine dispute as to a material fact as to whether he engaged in “willful” and “malicious” conduct as required by Section 523(a)(6).

Jurisdiction

This Court has jurisdiction over this adversary proceeding pursuant to Judiciary Code Sections 157(b)(1) and 1334(b), and the Standing Order of Reference dated August 28, 1986, as amended by the Order dated December 5, 2012, of the United States District Court for the Eastern District of New York. In addition, this Court may adjudicate these claims to final judgment to the extent that they are core proceedings pursuant to Judiciary Code Section 157(b), and to the extent that they are not core proceedings, pursuant to Judiciary Code Section 157(c) because the parties have stated their consent to this Court entering a final judgment. *See Wellness Int’l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1940 (2015) (holding that in a non-core

proceeding, a bankruptcy court may enter final orders “with the consent of all the parties to the proceeding”).

Background

The District Court Action and Default Judgment

On October 26, 2012, the Plaintiffs commenced an action (the “District Court Action”) by filing an amended complaint in the District Court against Mr. Lin, as well as Glyphs Garden, d/b/a Saigon Grill, d/b/a/ Saga (the “Restaurant”), Bei Lin, Xin Wei Lin, and Hsiao Tong Chang a/k/a Frank Chang (the “Restaurant Defendants”). In that action, the Plaintiffs asserted violations of the Fair Labor Standards Act of 1938 (the “FLSA”), promulgated and enforced under New York’s Minimum Wage Act and Labor Law (the “NY Labor Law”). Neither Mr. Lin nor the other defendants responded to the amended complaint.

On February 8, 2013, the Clerk of the Court entered a Certificate of Default as to Mr. Lin and the other Restaurant Defendants, and a motion for default judgment followed. That motion asserted that Mr. Lin, among others, willfully circumvented minimum wage and overtime laws; willfully falsified pay stubs by reporting incorrect hours worked; willfully failed to post lawfully required notices concerning federal and state minimum wage protections or otherwise to inform the Plaintiffs of those protections; willfully failed to provide the Plaintiffs with notices required under the NY Labor Law; willfully retained portions of the Plaintiffs’ tip earnings; and unlawfully dismissed employees Mr. Wu and Mr. Zheng. The Plaintiffs sought entry of a default judgment against all of the Restaurant Defendants, including Mr. Lin.

On April 25, 2013, the District Court held a hearing on the motion for default judgment. None of the Restaurant Defendants appeared or opposed the motion, and on April 26, 2013, the District Court entered an order granting the motion for default judgment. On May 20, 2013, the District Court entered a judgment in the amount of \$180,933.65 against the Restaurant

Defendants, jointly and severally, comprised of \$125,422 in damages and \$55,511.65 in attorneys' fees and costs, pursuant to the FLSA and the NY Labor Law (the "Default Judgment"). Default Judgment, ECF No. 32, *Wu v. Glyphs Garden, Inc.*, No. 12 Civ. 7995 (S.D.N.Y.).

This Bankruptcy Case

On May 9, 2014, Mr. Lin filed a petition for relief under Chapter 7 of the Bankruptcy Code. On July 21, 2014, Richard J. McCord, the Chapter 7 Trustee, filed a Report of No Distribution, and on August 11, 2014, Mr. Lin received a discharge.

This Adversary Proceeding

On August 11, 2014, the Plaintiffs filed this adversary proceeding seeking a determination that the Default Judgment is nondischargeable pursuant to Sections 523(a)(2) and 523(a)(6). Here, as in the District Court Action, they allege that over the course of their employment at the Restaurant, they regularly worked hours without compensation and were paid less than the minimum wage, all in violation of the FLSA and the NY Labor Law. The Plaintiffs also allege that in July 2011, Mr. Wu and Mr. Zheng complained to Mr. Lin that they were not receiving compensation for hours that they worked in excess of forty per week, and he responded that they would not be compensated for any hours worked in excess of that amount. The Plaintiffs claim that on August 29, 2011, in retaliation for their complaints, Mr. Lin fired Mr. Wu and Mr. Zheng.

The Plaintiffs allege that the Default Judgment should not be discharged in Mr. Lin's bankruptcy case because it arises from their claims that Mr. Lin obtained services from them by violating minimum wage and overtime laws, including by falsifying pay stubs to report an incorrect number of hours that they worked, failing to post notices required by wage and labor

laws, failing to provide Mr. Wu and Mr. Zheng with notices required by the NY Labor Law, and retaining portions of their tip earnings. They also allege that Mr. Lin undertook each of these actions willfully and maliciously.

On September 10, 2014, Mr. Lin answered the Complaint, and, in substance, denies information sufficient to form a belief as to the allegations. Mr. Lin also asserts seventeen affirmative defenses, including that the Complaint fails to state a claim upon which relief can be granted, the claims are barred by applicable statute of limitations, and the relief requested is precluded because his conduct was not willful; and as to damages, that the Plaintiffs failed to mitigate their damages, and their damages were *de minimis*.

This Motion for Partial Summary Judgment

On July 1, 2016, the Plaintiffs moved for partial summary judgment on their Section 523(a)(6) claim (the “Summary Judgment Motion”). The Plaintiffs argue that Mr. Lin is collaterally estopped from relitigating the elements of this claim, as these issues were previously decided by the District Court. They state that each of the elements of collateral estoppel is met, namely, that the issues raised here and in the District Court Action are identical, their claims were actually litigated and decided by the District Court, and Mr. Lin was afforded a full and fair opportunity to litigate the District Court Action. The Plaintiffs acknowledge that there has been a change in interpretation of the New York Wage Theft Prevention Act (the “WTPA”) since the District Court entered judgment, but argue that this shift leads only to a modest reduction in the amount of that judgment, and is not “the type of ‘significant’ change in law that would preclude this Court from applying collateral estoppel.” Plfs’ Mem. at 13, ECF No. 48 (quoting *Faulkner v. Nat’l Geographic Enters. Inc.*, 409 F.3d 26, 37 (2d Cir. 2005)).

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