The below described is SIGNED.

Dated: October 2, 2013

JOEL T. MARKER
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re: CHRISTOPHER LEWIS DURLING, Debtor.	Case No. 11-37267 Chapter 7
ENTITLE INSURANCE COMPANY, Plaintiff, v. CHRISTOPHER LEWIS DURLING, Defendant.	Adv. No. 12-2127 Judge Joel T. Marker

MEMORANDUM DECISION

On March 7, 2011, EnTitle Insurance Company sued Christopher Durling and other defendants in the United States District Court for the District of Colorado, alleging state law claims of breach of contract, fraudulent concealment, and fraudulent transfer. Not long thereafter, the parties entered into a Settlement and Release Agreement on September 30, 2011. The Settlement Agreement provided that the parties agreed to the entry of a consent judgment,

and on October 14, 2011, the District Court entered a Consent Judgment against Durling and the other defendants for $3.9 million.

Durling filed his petition under chapter 7 of the Bankruptcy Code on December 6, 2011, and EnTitle filed a timely complaint alleging that its claim should be excepted from discharge under 11 U.S.C. §§ 523(a)(2)(A), (a)(4), and (a)(6).[1] EnTitle moved for summary judgment on its nondischargeability claims, arguing that the Consent Judgment was entitled to collateral estoppel effect, precluding Durling from relitigating—and preventing this Court from reconsidering—the factual issues determined in the District Court proceeding. EnTitle also argues that Durling admitted, through the Consent Judgment, to facts that establish the elements of EnTitle's nondischargeability claims.

Durling admits signing the Consent Judgment, but argues that it is not entitled to preclusive effect. Durling raises four principal arguments on his behalf. First, the elements of the claims pled in the District Court are not identical to, and therefore cannot establish, the elements of EnTitle's nondischargeability claims. Second, the Consent Judgment does not specifically stipulate to a judgment on a cause of action for fraud; instead, it only stipulates to judgment "on the claims asserted." Third, the Consent Judgment lacks any findings of fact on the issues presented in the District Court proceeding, and Durling asserts that it does not operate as an admission of every fact in EnTitle's District Court complaint. Fourth, the Consent Judgment states that it was entered into "prior to a trial on the merits[,]" indicating that the issues raised in the District Court case were not litigated.

In addition, Durling argues that summary judgment should not be granted because there is a genuine dispute on the issue of damages. Durling contends that an undetermined amount of

[1] All future statutory references are to Title 11 of the United States Code unless otherwise indicated.

the $3.9 million judgment is attributable to EnTitle's breach of contract claim, which would be dischargeable in bankruptcy.

The Court held a hearing on EnTitle's Motion for Summary Judgment on September 24, 2013 and took the matter under advisement. After considering the evidence properly before the Court, considering the arguments of counsel, and conducting an independent review of applicable law, the Court issues the following Memorandum Decision denying EnTitle's Motion for Summary Judgment.

I. JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and § 157. This proceeding concerns the dischargeability of a particular debt and is therefore a core proceeding under 28 U.S.C. § 157(b)(2)(I). Notice of the hearing was properly given, and venue is appropriately laid in this District under 28 U.S.C. § 1409.

II. DISCUSSION

A. Summary Judgment Standard

Under Fed. R. Civ. P. 56(a), made applicable to adversary proceedings by Fed. R. Bankr. P. 7056, the Court is required to grant a motion for 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."[2] Substantive law determines which facts are material and which are not. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."[3] Whether a dispute is "genuine" turns on whether "the evidence is such that a reasonable [factfinder] could return a verdict for the

[2] FED. R. CIV. P. 56(a).
[3] *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986).

nonmoving party."[4] In sum, the Court's function at the summary judgment stage is to "determine whether there is a genuine issue for trial."[5]

The moving party bears the burden to show that it is entitled to summary judgment,[6] including the burden to properly support its summary judgment motion as required by Rule 56(c).[7] Once the moving party meets its initial burden, "the burden shifts to the nonmoving party to demonstrate a genuine issue for trial on a material matter."[8] The nonmoving party may not rely solely on allegations in the pleadings, but must instead show "specific facts showing that there is a genuine issue for trial."[9]

When considering a motion for summary judgment, the Court views the record in the light most favorable to the nonmoving party.[10]

B. Undisputed Facts

The Court finds the following facts are not in dispute:

1. On March 7, 2011, EnTitle filed suit against Durling and other defendants in the United States District Court for the District of Colorado.
2. EnTitle asserted state law claims for breach of contract, fraudulent concealment, and fraudulent transfer.
3. On October 14, 2011, EnTitle, Durling, and the other defendants entered into a Consent Judgment.

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[4] *Id.*
[5] *Id.* at 249.
[6] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
[7] *Murray v. City of Tahlequah, Okla.*, 312 F.3d 1196, 1200 (10th Cir. 2002).
[8] *Concrete Works, Inc. v. City & County of Denver*, 36 F.3d 1513, 1518 (10th Cir. 1994).
[9] *Celotex*, 477 U.S. at 324.
[10] *McKibben v. Chubb*, 840 F.2d 1525, 1528 (10th Cir. 1988) (citation omitted).

4. The Consent Judgment states that the complaint filed in the District Court "alleged state law claims of (a) breach of contract, (b) fraudulent concealment, and (c) fraudulent transfer."
5. The Consent Judgment states that it "is entered into prior to a trial on the merits."
6. The Consent Judgment orders that "a consent judgment in the amount of [$3.9 million] is hereby entered against the Defendants, jointly and severally, in favor of EnTitle on the claims asserted against them."

C. Application of Collateral Estoppel

Having found these facts as undisputed, the Court turns to an analysis of the principles of collateral estoppel, which is also known as issue preclusion. EnTitle relies on this doctrine to argue that the Consent Judgment establishes Durling's liability on EnTitle's § 523(a) claims.

"Issue preclusion is a judicially created, equitable doctrine that operates to bar relitigation of an issue that has been finally decided by a court in a prior action."[11] The aim of the doctrine "is to protect parties from multiple lawsuits, prevent the possibility of inconsistent decisions, and conserve judicial resources."[12] The Supreme Court has stated that the principles of issue preclusion "apply in discharge exception proceedings pursuant to § 523(a)."[13]

Which preclusion law to apply depends on the forum from which the prior judgment arises. Where a party in a bankruptcy proceeding attempts to collaterally estop another party from relitigating an issue determined in a prior state court proceeding, the full faith and credit statute, 28 U.S.C. § 1738, directs the bankruptcy court "to refer to the preclusion law of the State

[11] *Martin v. Hauck (In re Hauck)*, 466 B.R. 151, 163 (Bankr. D. Colo. 2012).
[12] *Hill v. Putvin (In re Putvin)*, 332 B.R. 619, 624–25 (10th Cir. BAP 2005).
[13] *Grogan v. Garner*, 498 U.S. 279, 284–85 n.11 (1991).

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