

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	Chapter 7
)	
ROBERT C. REDDEN,)	Case No. 95-1485 (JKF/HSB)
)	Adv. P. No. 96-27
Debtor.)	
EDWARD R. COLLUM,)	
)	
Appellee,)	
)	
v.)	Civil Action No. 00-503 GMS
)	
ROBERT C. REDDEN,)	
)	
Appellant.)	
)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On January 19, 2000, the United States Bankruptcy Court for the District of Delaware, by the Honorable Judith K. Fitzgerald, entered an order declaring that a debt arising from a state court judgment was nondischargeable in bankruptcy pursuant to 11 U.S.C. § 523. The debtor filed a notice of appeal on May 18, 2000. The debtor argues that the bankruptcy court erred because it : (1) relied on a complaint in making its nondischargeability determination; (2) contradicted its earlier findings regarding the complaint; and (3) failed to reduce the nondischargeable debt in light of the debtor's payments.

After examining the briefs, the lower court opinions, and the law, the court is persuaded that the bankruptcy court properly decided that the debt was nondischargeable. However, the court also finds that the bankruptcy court should have reduced the nondischargeable amount to reflect the debtor's payments in satisfaction of the debt. The court therefore affirms the bankruptcy court as

to its legal conclusions, but reverses and remands to enable the bankruptcy court to modify its order to reflect the debtor's payments. The court will now explain the reasons for its decision.

II. STANDARD OF REVIEW

In reviewing a case on appeal, the Bankruptcy Court's factual determinations will not be set aside unless they are clearly erroneous. *See Mellon Bank, N.A. v. Metro Comm., Inc.*, 945 F.2d 635, 641 (3d Cir. 1991), *cert. denied*, 503 U.S. 937, (1992). Conversely, a Bankruptcy Court's conclusions of law are subject to plenary review. *See Metro Comm., Inc.*, 945 F.2d at 641. Mixed questions of law and fact are subject to a "mixed standard of review." *See id.* at 641-42. Under this "mixed standard of review," the appellate court accepts findings of "historical or narrative facts unless clearly erroneous, but exercise[s] plenary review of the trial court's choice and interpretation of legal precepts and its application of those precepts to historical facts." *Id.*

III. BACKGROUND¹

Collum and the debtor were engaged in real estate transactions. In 1994, Collum obtained a judgment against the debtor in a Virginia state court for \$158,950.00.² The debtor subsequently filed for chapter 7 bankruptcy. The debtor asserts that \$50,000 of the judgment has been paid.

¹ The record facts of this case are fully set forth in the Bankruptcy Court's opinion and need not be repeated here. Only procedural facts will be recounted.

² The judgment was comprised of \$62,000 plus interest, \$65,000 in actual damages, \$10,000 in damages, and \$21,950 in attorney's fees.

In bankruptcy court, Collum asserted that the Virginia judgment was nondischargeable because the debtor had fraudulently convinced him to release certain monies from an escrow account.³ Collum attempted to argue that the mere entry of the Virginia judgment established grounds for nondischargeability. On December 11, 1997, Bankruptcy Judge Helen Balick found that the Virginia judgment, standing alone, did not establish nondischargeability on fraud grounds because the Virginia court apparently did not address or decide the fraud issue. Thus, the court held that issue preclusion did not apply, and granted summary judgment in favor of the debtor on that issue. However, the court also gave Collum leave to file an amended complaint wherein he could, if he chose, attempt to establish nondischargeability on fraud grounds.

Subsequent to her ruling, Judge Balick retired from the bench. The case was reassigned to Bankruptcy Judge Judith K. Fitzgerald. Pursuant to Judge Balick's ruling, Collum filed an amended complaint alleging nondischargeability due to the debtor's fraudulent procurement of Collum's release. On January 19, 2000, Judge Fitzgerald found that the debtor had falsely represented the status of the property and his interest in it to convince Collum to release the escrow. (Mem. Opn. of 1/19/00 at 8.) The bankruptcy court, therefore, held that the debt secured by the judgment was nondischargeable. (Order of 1/19/00 at 1.) The court, however, declined to fix the amount owed by the debtor.

In a subsequent order, the bankruptcy court stated that the *Rooker-Feldman* doctrine precluded the debtor's challenge to the validity of the Virginia judgment. Finally, Judge Fitzgerald stated that the bankruptcy court "was not the appropriate forum" to litigate the amount of the debt owed. This appeal followed.

³ The escrow account was opened in relation to one of the many real estate transactions.

IV. DISCUSSION

A. The Bankruptcy Court's Reliance on the Complaint

The debtor argues that the bankruptcy court erred in relying on allegations of the complaint to support its conclusion that the debt was nondischargeable. The debtor never explains precisely why this is error. Moreover, the debtor provides no authority for the proposition that a bankruptcy court cannot rely on a complaint. Indeed, section 523 of the Bankruptcy Code is silent in this regard. Finally, and most important, the bankruptcy court did not rely solely on the complaint. The nondischargeability decision was made only after a trial on the matter. For all of these reasons, the court determines that the bankruptcy court did not rely exclusively on the complaint. If it did, however, it was not error to do so.

B. The Bankruptcy Court's "contradiction" of its Previous Holding

The debtor appears to argue that Judge Fitzgerald was somehow bound by Judge Balick's earlier ruling. This argument fails because the rulings dealt with different issues. Thus, Judge Fitzgerald was not confined by Judge Balick's prior rulings. Judge Balick's ruling was limited to deciding whether the Virginia judgment precluded the litigation of the nondischargeability issue in the bankruptcy proceedings. After deciding that it did not, Judge Balick granted Collum leave to file a complaint that would prove nondischargeability on fraud grounds. Based on the new complaint, Judge Fitzgerald decided that Collum had sufficiently plead fraud. She concluded, therefore, that the judgment was nondischargeable. Judge Balick's decision was limited to whether principles of issue preclusion prevented consideration of Collum's appeal, whereas Judge Fitzgerald decided the matter on the merits. The decisions are not in conflict. Thus, this is not a viable ground

for appeal.

C. The Bankruptcy Court's Failure to Reduce the Judgment to Reflect Payments

The bankruptcy court erred in failing to reduce the judgment amount. The court correctly stated that as a general proposition, the amount of a judgment (or any other debt) should not be litigated in bankruptcy court. *See In re Clayton*, 195 B.R. 342, 346 (Bankr. E.D. Pa. 1996) (noting that where the judgment amount has not been liquidated, the bankruptcy court should not determine the amount of damages.) However, in the present case, the court was not asked to liquidate the judgment - only to reduce the judgment to reflect payments made by the debtor. The bankruptcy court has the authority to make such a reduction. *See In re DeLong*, 228 B.R. 405, 406 (Bankr. N.D. Ohio 1998) (subtracting debtor's payments from the total amount owed). Therefore, to the extent that the debtor can prove the payments were made, the bankruptcy court is directed to reduce the nondischargeable judgment amount to reflect those payments.

V. CONCLUSION

For the foregoing reasons, the bankruptcy court's legal conclusions regarding dischargeability are affirmed. However, the court directs the bankruptcy court to reduce the judgment amount to reflect payments made by the debtor. Thus, the court will reverse and remand to enable the bankruptcy court to amend its order accordingly.⁴

⁴ In light of the court's decision, it need not consider the defendant's arguments under the *Rooker-Feldman* doctrine.

NOW, THEREFORE IT IS HEREBY ORDERED that:

1. The legal conclusions contained in the January 19, 2000 memorandum and order of the Bankruptcy Court for the District of Delaware are AFFIRMED.
2. The bankruptcy court is hereby directed to amend its January 19, 2000 and February 18, 2000 orders to reflect payments made in satisfaction of the debt. The court shall reduce the amount owed by the debtor accordingly.
3. The Appellant's Motion for Stay Pending Appeal (D.I. 11) is DISMISSED as moot.
4. The clerk shall close this case.

Dated: March 26, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE