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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re
EDWARD EARL PETTINGILL,
Debtor.

Bankruptcy No. 04-05772-JM7
Adversary No. 04-90427

IVAN BODGE,
v. Plaintiff,
EDWARD EARL PETTINGILL,
Defendant.

MEMORANDUM DECISION

The plaintiff, Ivan Bodge ("Plaintiff"), brought a complaint for nondischargeability of a debt pursuant to Bankruptcy Code Section 523(a)(6). He asserted that the defendant, Edward Earl Pettingill ("Defendant"), engaged in stalking behavior that led to the Defendant being charged under the California Penal Code. The Defendant pleaded "Guilty/No Contest" to a felony stalking charge.

The Plaintiff then brought a civil action against the Defendant in state court. On November 3, 2003, the state court entered a default judgment ("Judgment") in that action. On April 26, 2004, the

1 state court denied Defendant's motion to set aside the Judgment. The
2 Defendant apparently asserted that he had not been properly served,
3 but the state court found otherwise.

4 The Defendant filed for relief under Chapter 7 of the Bankruptcy
5 Code ("Code") on June 29, 2004. The Plaintiff filed his
6 nondischargeability complaint on September 27, 2004, and then on
7 December 6, 2004, the Plaintiff filed a motion for summary judgment
8 ("Motion") contending that the underlying Judgment supported a
9 nondischargeability judgment under Code Section 523(a)(6).
10 Essentially, the Plaintiff's argument was that the Judgment should be
11 given collateral estoppel effect, though he did not specifically use
12 that term. The Defendant did not file written opposition, but he did
13 appear at the hearing to oppose the Motion. The Motion was heard by
14 the Court on January 20, 2005, and taken under submission at that
15 time.

16 As an initial matter, the Court notes that the bankruptcy court
17 is not the proper forum for litigating whether the Judgment was
18 properly entered. In the state court action, the Defendant raised the
19 argument that he was not properly served with the civil action
20 complaint. The state court rejected that argument. The Defendant's
21 proper course of action at that point would have been to take an
22 appeal to the state appellate court. The bankruptcy court lacks
23 authority to overrule the state court decision. In re Williams, 280
24 B.R. 857, 863 (9th Cir. 2002).

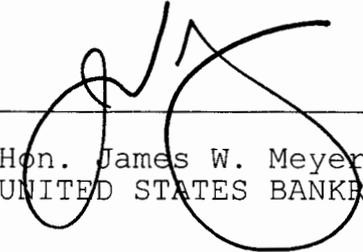
25 The Plaintiff has provided a copy of the Judgment, but has not
26 provided a copy of the complaint he filed in state court. In order
27 to determine if the Judgment satisfies the elements of
28 nondischargeability under Section 523(a)(6), the Court will need to

1 review the complaint filed by the Plaintiff in the state court action.
2 See In re Cantrell, 329 F.3d 1119, 1123 (9th Cir. 2003) (issue sought
3 to be precluded from relitigation must be identical to that decided
4 in the former proceeding).

5 The Plaintiff is given 21 days from the date that this Memorandum
6 is entered to provide the Court with a copy of the underlying state
7 court complaint. Once that document is submitted, the Court will
8 consider the merits of the Motion brought by the Plaintiff. If the
9 Plaintiff fails to file the document in the time required, then the
10 Court may opt to deny the motion for summary judgment.

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Date: MAY 2 2005



Hon. James W. Meyers
UNITED STATES BANKRUPTCY JUDGE