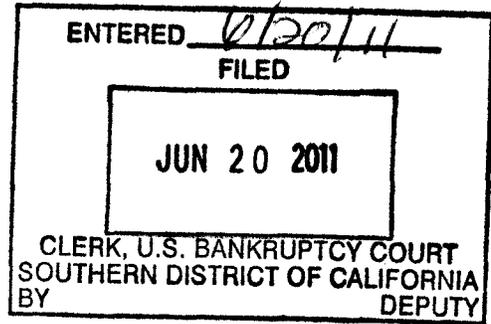


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WRITTEN DECISION – NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:

RONALD LYNN SPILSBURY AND  
STACEY LYNNE PITTMAN,

Debtors,

BANC OF AMERICA LEASING  
CAPITAL, LLC,

Plaintiff,

vs.

RONALD SPILSBURY aka RON  
SPILSBURY,

Defendant.

Bankruptcy No. 11-03565-MM7

Chapter: 7

Adversary Proceeding No. 11-90155-MM

**AMENDED MEMORANDUM DECISION  
RE MOTION FOR SUMMARY  
JUDGMENT FILED BY BANC OF  
AMERICA LEASING & CAPITAL, LLC**

DATE: June 2, 2011

TIME: 3:00 PM

CRTRM: 1

JUDGE: Margaret M. Mann

Banc of America Leasing Capital, LLC ("BofA") filed a complaint against Ronald Spilisbury, Debtor/Defendant ("Debtor") to have its debt arising from a default judgment entered in state court excepted from discharge under 11 U.S.C. § 523(a)(2). BofA now seeks summary judgment contending that collateral estoppel precludes the Debtor from re-litigating the fraud findings<sup>1</sup> made in connection with the default judgment again in this action.

<sup>1</sup> BofA also makes a glancing reference in its summary judgment motion to its nondischargeability

1 **I. BACKGROUND**

2 On July 20, 2009, Plaintiff BofA filed a complaint in the Orange County Superior Court  
3 against the Debtor and Clinassure, Inc. ("Clinassure"), a company of which the Debtor was co-  
4 founder and CFO. The complaint alleged causes of action for Breach of Contract, Fraud – Promise  
5 Without Intent to Perform ("Fraud Claim"), and Possession of Personal Property, relating to  
6 computers financed by BofA through a contract with Clinassure. After a default in payments, the  
7 computers were not returned to BofA as required by the contract.

8 The Fraud Claim was alleged against both Clinassure and the Debtor. Each of the elements  
9 of the Fraud Claim under California law were alleged against the Debtor: (1) at the time the Debtor  
10 promised to repay the financed cost of the computers or return the equipment, the Debtor had no  
11 intention of doing so; (2) the Debtor's promises were made with the intent to induce BofA to finance  
12 and deliver the equipment to the Debtor; (3) BofA could not have discovered with reasonable  
13 diligence the Debtor's secret intention not to perform and acted in reliance on the Debtor's false  
14 promises to provide the financing of the equipment; (4) BofA would not have consented to the  
15 contract if BofA had known the Debtor's intention not to perform; (5) the Debtor failed to perform  
16 and as a proximate result, BofA suffered damages in the amount of \$52,613.74. BofA sought these  
17 general damages, as well as exemplary and punitive damages, in its prayer for relief on the Fraud  
18 Claim. BofA then dismissed its other causes of action.

19 On November 13, 2009, a default judgment was approved by Judge Sheila Fell, and entered  
20 by the state court against the Debtor and in favor of BofA on the Fraud Claim, the sole remaining  
21 cause of action. The state court specifically ruled: "Judgment is on Plaintiff's second cause of  
22 action for fraud." The state court also awarded costs and general damages in the amount of  
23 \$51,992.67, but did not award any other damages sought in the complaint.

24 On March 4, 2011, the Debtor filed for Chapter 7 bankruptcy.  
25

26 \_\_\_\_\_  
27 cause of action brought under 11 U.S.C. § 523(a)(6). However, its discussion of the elements for  
28 application of collateral estoppel does not apply to this cause of action as conceded in its reply. The  
Court denies summary judgment on this cause of action.

1 **II. ANALYSIS**

2 **A. No Issue of Material Fact**

3 As the moving party, BofA bears a heavy burden under Federal Rule of Bankruptcy  
4 Procedure 7056. It must demonstrate that summary judgment is appropriate because "there are no  
5 disputed facts warranting disposition of the case on the law without trial." *In re Younie*, 211 B.R.  
6 367, 372 (9th Cir. B.A.P. 1997) (quoting *In re Aquaslide "N" Dive Corp.*, 85 B.R. 545, 547 (9th Cir.  
7 B.A.P. 1987)). Once BofA meets that burden, the Debtor as opponent to the summary judgment  
8 motion must produce some evidence to "affirmatively show that a material issue of fact remains in  
9 dispute." *Id.* (quoting *Frederick S. Wyle P.C. v. Texaco, Inc.*, 764 F.2d 604, 608 (9th Cir. 1985)).

10 BofA has met its heavy burden by producing the default judgment entered by the state court  
11 which incontrovertibly shows that judgment was entered in favor of BofA on its cause of action  
12 against the Debtor for fraud. The Debtor does not dispute the validity of this affirmative evidence,  
13 and indeed has produced no affirmative evidence of his own which would demonstrate that a  
14 genuine issue of material fact exists regarding the judgment for fraud. The only question before this  
15 Court is whether the default judgment precludes the Debtor from re-litigating the dischargeability of  
16 its debt to BofA under the doctrine of collateral estoppel.

17 **B. The Court Must Apply Collateral Estoppel Under California Law**

18 As a matter of full faith and credit, 28 U.S.C.S. section 1738 requires courts apply the  
19 collateral estoppel principles of the state from which the judgment was entered. *Grogan v. Garner*,  
20 498 U.S. 279, 284 (1991); *In re Honkanen*, 446 B.R. 373, 382 (B.A.P. 9th Cir. 2011) (citing  
21 *Grogan* and holding that in "determining the preclusive effect of a state court judgment, federal  
22 courts must, as a matter of full faith and credit, apply that state's collateral estoppel principles").  
23 Under California law, collateral estoppel requires that: (1) the issue to be precluded from  
24 relitigation be identical to that decided in the prior proceeding; (2) the issue have been actually  
25 litigated; (3) the issue have been necessarily decided; (4) the decision on the issue be final and on  
26 the merits; and (5) the party be the same as, or in privity with, the party in the prior proceeding.

1 *Younie*, 211 B.R at 373. The Debtor disputes all elements but the fifth of this collateral estoppel  
2 test.

3 **1. Identical Issues**

4 In order to establish that the Debtor's fraud judgment is non-dischargeable under §  
5 523(a)(2)(A) based upon collateral estoppel, the following statutory elements must be identical to  
6 the elements of fraud: "(1) misrepresentation, fraudulent omission or deceptive conduct by the  
7 debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to  
8 deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage  
9 to the creditor proximately caused by its reliance on the debtor's statement or conduct." *In re*  
10 *Harmon*, 250 F.3d 1240, 1246 (9th Cir. 2001). Since the Ninth Circuit Bankruptcy Appellate Panel  
11 ("BAP") has already determined these 11 U.S.C. § 523(a)(2) elements are identical to those required  
12 for a California judgment for fraud, there is no doubt the first element of the collateral estoppel test  
13 is satisfied. *Younie*, 211 B.R. at 374.

14 **2. Actually Litigated**

15 *Younie* held that a California "default judgment satisfies the 'actually litigated' requirement  
16 for the application of collateral estoppel" even though as here, the debtors were never involved in  
17 the state court proceeding and the state court did not make full findings on the elements of fraud.  
18 *Younie*, 211 B.R. at 374-375. A default judgment is as conclusive on the allegations in the  
19 complaint as would be a trial on the issues. *See In re Moore*, 186 B.R. 962, 972 (Bankr. N.D. Cal.  
20 1995) (citing *Burtnett v. King*, 33 Cal. 2d 805, 810 (1949)). All that needs to be demonstrated is  
21 that the judgment is regular and valid, and that the judgment was based on a cause of action in the  
22 complaint. *Id.*; *Younie*, 211 B.R. at 375. The state court here entered a regular valid judgment and  
23 demonstrated distinctly that its judgment was entered only on the Fraud Claim. The "actually  
24 litigated" element has been met here.

25 The Debtor's reliance on cases which do not apply California law to argue that collateral  
26 estoppel does not apply in a default judgment context is neither controlling nor persuasive. *See In*

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1 *re Silva*, 190 B.R. 889, 894 (9th Cir. B.A.P. 1995). *Silva* applied federal collateral estoppel law,  
2 which does not find a default judgment to meet the "actually litigated" standard. *Id.* at 894.

3 The Debtor also asserts some degree of early participation in the previous trial on the part of  
4 the debtor is required in order for a default judgment to meet the actually litigated requirement,  
5 citing *Moore*, 186 B.R. at 972. This reading of *Moore* cannot be reconciled with the controlling  
6 BAP authority in *Younie*, which rejected a similar claim as that asserted by the Debtor on similar  
7 facts. The debtors in *Younie* failed to answer the plaintiff's complaint for fraud, and did not  
8 participate in the state court proceeding. After a default judgment was entered against them by the  
9 state court on the plaintiff's fraud claim, the BAP nevertheless found that this default judgment met  
10 the actually litigated requirement for collateral estoppel. *Younie*, 211 B.R. at 375.

11 The Debtor's early participation claim also cannot be reconciled with *Fitzgerald v. Herzer*,  
12 78 Cal. App. 2d 127, 128 (2nd Dist. 1947), the case upon which the *Moore* court relied to find that a  
13 default judgment met the actually litigated requirement. In *Fitzgerald*, there had also been no early  
14 participation by the defendant before the default. Despite this lack of participation, the court held:

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16 By permitting his default to be entered he confessed the truth of all the material  
17 allegations in the complaint including the allegations of wantonness, recklessness,  
18 and gross carelessness. A judgment by default is as conclusive as to the issues  
19 tendered by the complaint as if it had been rendered after answer filed and trial had  
20 on allegations denied by the answer. Such a judgment is res judicata as to all issues  
21 aptly pleaded in the complaint and defendant is estopped from denying in a  
22 subsequent action any allegations contained in the former complaint.

23 *Id.* at 131 (internal citations omitted). *Fitzgerald* continues to be valid law, as it has been recently  
24 cited by the California Supreme Court, *see, ex., Murray v. Alaska Airlines, Inc.*, 50 Cal. 4th 860,  
25 871 (2010), as well as in numerous California appellate decisions. *See Flood v. Simpson*, 45 Cal.  
26 App. 3d 644, 651 n.12 (2nd Dist. 1975); *Robinson v. Early*, 248 Cal. App. 2d 19, 22 (5th Dist.  
27 1967); *Martin v. General Finance Co.*, 239 Cal. App. 2d 438, 443 (2nd Dist. 1966); *O'Brien v.*  
28 *Appling*, 133 Cal. App. 2d 40, 42 (2nd Dist. 1955).

BofA has met the actually litigated element of the collateral estoppel test.

1                   **3. Necessarily Decided**

2                   The third element of the collateral estoppel test is whether the fraud issue was necessarily  
3 decided by the default judgment. To defeat this element the Debtor alludes to *In re Cantrell*, 329  
4 F.3d 1119, 1124 (9th Cir. 2003), which reversed the bankruptcy court's grant of summary judgment  
5 for the default judgment creditor, but only because the identical issues element of collateral estoppel  
6 was lacking. *Cantrell* affirmed the BAP determination that even if collateral estoppel applied to  
7 prevent the debtor from re-litigating the fraud findings of the state court, these findings were not  
8 identical to the elements of the defalcation by a fiduciary cause of action under 11 U.S.C. §  
9 523(a)(4) at issue there. *Id.* As applied to the necessarily decided element, though, the Ninth  
10 Circuit affirmed that collateral estoppel was applicable in a default judgment context.  
11 In *Cantrell*, the state court had made no express finding on the issue of fraud on the multiple claims  
12 alleged in the default judgment, but had awarded punitive damages. *Id.* The Ninth Circuit applied  
13 collateral estoppel by extrapolating from the punitive damages the state court had awarded. Since  
14 punitive damages could only have been based on the fraud claims, the appellate court found the  
15 fraud claims were thus necessarily litigated. *Id.* at 1125. *Cantrell* is thus controlling here on the  
16 necessarily decided element, despite its ultimate holding. While the state court here did not make  
17 specific findings on each of the elements of fraud, it did order judgment on BofA's Fraud Claim.  
18 Interpolation from a punitive damages award is not even necessary here as it was in *Cantrell*. The  
19 judgment on BofA's Fraud Claim thus "necessarily included a determination of all of the facts  
20 required for actual fraud under California law." *Younie*, 211 B.R. at 374 (citing *Servente v. Murray*,  
21 10 Cal. App. 2d 355, 364 (Cal. Ct. App. 1935)). The third collateral estoppel element is satisfied.

22                   **4. Final and On the Merits**

23                   As to the fourth collateral estoppel element, the Debtor claims the default judgment was  
24 entered by the clerk of court, not the court itself, which would not render the default judgment final  
25 and binding. But, on both page one and two of the Judgment, the judgment is entered by the court,  
26 not the clerk. Indeed, on page two, the Judgment is stamped by Judge Sheila Fell.

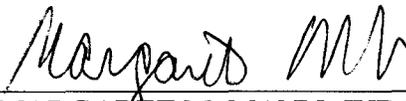
27                   This Fraud Claim finding is final and binding.

1 **III. CONCLUSION**

2 Since BofA has met each disputed element of the collateral estoppel test, its Motion for  
3 Summary Judgment is granted. This Memorandum Decision will serve as the court's findings of  
4 fact and conclusions of law. Conditioned upon BofA dismissing its claims under 11 U.S.C. §  
5 523(a)(6), BofA may submit its judgment in this action. If BofA does not dismiss its claims under  
6 11 U.S.C. § 523(a)(6), it is required to schedule a status conference to resolve the remainder of this  
7 action.

8 IT IS SO ORDERED.

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10 DATED: June 17, 2011

  
11 MARGARET M. MANN, JUDGE  
12 United States Bankruptcy Court  
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