

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Sid Brooks

In re:)	
)	
GARY MATHIAS)	Bankruptcy Case No.
SS#xxx-xx-9352 and)	00-25188-CEM
LINDA L. MATHIAS)	Chapter 7
SS# xxx-xx-1982,)	
)	
Debtors.)	
_____)	
)	
KEITH HOYT and)	
DIANE HOYT)	
)	
Plaintiffs,)	
)	
v.)	Adversary Proceeding No.
)	01-1090-SBB
GARY M. MATHIAS,)	
)	
Defendant.)	

ORDER DENYING PLAINTIFF’S MOTION FOR ENTRY OF DEFAULT JUDGMENT

THIS MATTER comes before the Court after a hearing on Tuesday, June 19, 2001, for consideration of the Motion for Entry of Default Judgment filed by Keith and Diane Hoyt (“Plaintiffs”) on April 26, 2001. At the hearing, Mr. Walter J. Downing appeared on behalf of the Plaintiffs. Defendant, Mr. Gary M. Mathias (“Defendant”), appeared *pro se*. The Court, having heard argument on the Motion for Entry of Default and having reviewed the file and being advised in the premises, enters the following order.

For the reasons set forth herein, this Court concludes that the Plaintiff’s Motion for Entry of Default Judgment should be DENIED.

I. BACKGROUND

Plaintiffs brought a Complaint and Jury Demand against Colorado’s Best Additions, a Colorado partnership, Dennis Wayne Platts and the Defendant in Case No. 99-CV-75, District Court, County of Douglas, State of Colorado (“State Court Proceeding”). The State Court Proceeding arose out of a contract between the parties for the addition and remodel to a portion of the Plaintiff’s home. The Complaint raised five claims for relief: (1) breach of contract, (2) breach of constructive trust, (3) conversion, (4) fraud, and (5) deceptive trade practices. On April 27, 1999, a default judgment was entered in the District Court of Douglas County,

Colorado, in favor of the Plaintiffs and against Colorado's Best Additions, a Colorado partnership, Dennis Wayne Platts and the Defendant, jointly and severally ("State Court Default Judgment"). The State Court Default Judgment was entered as a result of the defendants failure to answer, plead or otherwise respond to the Complaint. The State Court Default Judgment, while entering judgment on each of the Plaintiffs' claims for relief, made *no substantive, detailed or specific findings of fact or conclusions of law relative to fraud, willful and malicious injury, or related matters.*

On December 20, 2000, Defendant filed for relief under Chapter 7 of the Bankruptcy Code. Thereafter, on March 9, 2001, Plaintiffs filed their Complaint asserting three claims for relief. Plaintiffs, under their first claim for relief, seek denial of Defendant's discharge pursuant to 11 U.S.C. § 523(a)(2) for alleged "fraud" and (a)(6) for "willful and malicious injury" to Plaintiff's inflicted by Defendant. Under their second claim for relief, Plaintiffs seek application of collateral estoppel to the State Court Default Judgment. The third claim for relief requests application of the full faith and credit provisions of 28 U.S.C. § 1738 to the State Court Default Judgment.

Defendant did not file an answer or otherwise plead in response to the Complaint. On April 23, 2001, the Clerk's Entry of Default was entered. On April 26, 2001, Plaintiffs filed their Motion for Entry of Default Judgment. This Court set a hearing for Tuesday, June 19, 2001, to consider the Motion for Entry of Default Judgment. The Court directed that the Plaintiffs serve on the Defendant (1) a copy of the Order and Notice setting the hearing and (2) the Motion for Entry of Default Judgment. Plaintiffs appeared by their counsel at the hearing and Mr. Mathias appeared *pro se*.

II. DISCUSSION

A. Sua Sponte Consideration to Determine Whether the Allegations Support the Relief Sought

[A] default judgment may be lawfully entered only "according to what is proper to be decreed upon the statements of the bill, assumed to be true," and not "as of course according to the prayer of the bill." The defendant is not held ... to admit conclusions of law. In short, despite occasional statements to the contrary, a default is not treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover.

Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975) (quoting *Thomson v. Wooster*, 114 U.S. 104, 113, 5 S.Ct. 788, 29 L.Ed. 105 (1884) (internal quotations and other citations omitted).

The Court must, therefore, determine whether the well-pleaded allegations in the Plaintiff's complaint support the relief sought in the action. If the well-pleaded allegations do not

support the relief sought, then default judgment should not enter regardless of whether a response to the complaint is filed by the defendant. *See Ryan v. Homecomings Financial Network*, ___ F.3d ___, 2001 WL 589712, *1-2 (4th Cir. June 1, 2001) (acceptance of certain undisputed facts does not necessarily entitle the moving party to the relief sought).

B. Collateral Estoppel and Full Faith and Credit

The central focus of the Plaintiff's Motion for Default Judgment is that the State Court Default Judgment should be given (1) collateral estoppel effect and (2) full faith and credit pursuant to 28 U.S.C. § 1738. The Tenth Circuit Court of Appeals has held that:

Collateral estoppel is binding on the bankruptcy court and precludes relitigation of factual issues if (1) the issue to be precluded is the same as that involved in the prior state action, (2) the issue was actually litigated by the parties in the prior action, and (3) the state court's determination of the issue was necessary to the resulting final and valid judgment.

In re Wallace, 840 F.2d 762, 764 (10th Cir. 1988). The purpose of the doctrine of collateral estoppel is to bar the relitigation of factual issues. *Solar Systems and Peripherals, Inc. v. Burress (In re Burress)*, 245 B.R. 871, 876 (Bankr. D. Colo. 2000). In addition, under the *Rooker-Feldman* doctrine, this Court cannot act as an appellate court to the state court or otherwise collaterally attack the state court judgment. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923); *Dist. Of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed. 2d 206 (1983).

Because a Colorado court rendered the default judgment, Colorado law governs whether the default judgment should be given issue-preclusive effect. *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380, 105 S.Ct. 1327, 1331-32, 84 L.Ed.2d 274 (1985). As a *general* rule, Colorado court's have determined that default judgments may be entitled to preclusive effect under the doctrine of collateral estoppel. *See Aspen Plaza Co. v. Garcia*, 691 P.2d 763, 764-65 (Colo. Ct. App. 1984); *Ortega v. Bd. of County Comm'rs*, 683 P.2d 819, 821 (Colo. Ct. App. 1984). However,

[n]ot all default judgments will have, nor should they have, preclusive effect on dischargeability issues in Bankruptcy Court. That would deprive the Bankruptcy Court of its ultimate authority and responsibility to decide issues of dischargeability. [citations omitted]. Moreover, default judgments which are not entered on consent, or which may be the product of, or tainted by, mistake, fraud, clerical error, lack of due process, denial of debtor's opportunity to a full and fair trial, or other similar infirmity, would be defective and ineffective to collaterally estop the Bankruptcy Court from hearing a dischargeability case.

Pacific Energy and Minerals, Ltd. v. Austin (In re Austin), 93 B.R. 723, 728 (Bankr.D.Colo. 1988). Moreover, this Court “has a right, indeed it has an obligation, to review the circumstances in which a default judgment has entered.” *Id.*

In this case, it is undisputed that the issue of “fraud” is very similar to, and perhaps the same as, the issue involved in the State Court Proceeding. In addition, the issue of “willful and wanton conduct” and/or “willful and malicious injury” are similar, if not the same. However, Defendant contests that the issues were actually litigated and denies liability. Where, as here, there was no participation in the state court proceeding by the Defendant, no discovery conducted and no evidence of “fraud” presented,¹ the matter was not “actually litigated” by way of the default judgment. *See, e.g., In re Palmer*, 207 F.3d 566, 568 (9th Cir. 2000) (a default judgment is not entitled to collateral estoppel effect because there is no actual litigation of issues). Moreover, because of the lack of any pertinent factual findings or legal conclusions in the state court judgment, *this Court cannot conclude that the state court’s determination of the issues of fraud or willful and malicious injury were necessary to, or part of, the resulting judgment. See Asplin v. Mueller (In re Mueller)*, 34 B.R. 869, 871 (Bankr.D.Colo. 1983) (collateral estoppel should only apply where the precise issue in the dischargeability determination was previously litigated by the parties in state court). As a consequence, this Court cannot conclude that this judgment would *necessarily* receive preclusive effect in Colorado such this judgment should be given full faith and credit by this Court under 28 U.S.C. § 1738. Therefore, this Court declines to grant Plaintiff’s Motion for Entry of Default Judgment.

III. CONCLUSION

IT IS THEREFORE ORDERED that the Plaintiffs’ Motion for Entry of Default Judgment is hereby DENIED.

¹ The Court does recognize, however, that an Affidavit of Keith Hoyt was filed in the State Court Proceeding in support of the Motion for Default Judgment. The Affidavit on which the state court default judgment was entered, as well as the Motion for Default Judgment, are somewhat detailed and specific. The fundamental and overarching assertions therein involve allegations and factual recitals of breach of contract, negligence, failure to perform, inept and delayed construction, and defective engineering/workmanship. They are not grounded in fraud or similar tortious conduct. Moreover, the Plaintiffs repeatedly refer only to Dennis Platts, the partner of this Defendant, and not to this Defendant, as having engaged in wrongful conduct. Indeed, by inference, the Court could reasonably conclude that Defendant’s liability, if any, might be vicarious only, or by and through the partnership, Colorado’s Best Additions.

Thus, upon close review and scrutiny of this Affidavit, this Court is unable to conclude that Defendant’s alleged “fraud” for the purposes of 11 U.S.C. § 523(a)(2) has been “litigated,” or considered or determined in the state court action on which the collateral estoppel claim is based. Further, this Court similarly cannot conclude that the state court “litigated,” or considered or determined with respect to allegations that Debtor *willfully and maliciously* injured Plaintiffs so as to warrant a collateral estoppel determination of non-dischargeability of this debt pursuant to 11 U.S.C. § 523(a)(6).

IT IS FURTHER ORDERED that the Defendant herein shall file with the Court and serve Plaintiffs with his Answer on or before **July 6, 2001**.

Dated: June 28, 2001

BY THE COURT:

Sidney B. Brooks,
United States Bankruptcy Judge