

JUDGE BUCHANAN SUMMARY

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March, 2016

Papa, et al. v. Bolera, Adv. No. 11-1184 (10/13/16) – In re Bolera, Case No. 11-14625

Court's 23 page decision granting, in part, and denying, in part, a motion for summary judgment in an adversary proceeding for the nondischargeability of debts owed by the Debtor.

Chiropractor (Papa) and his company (RPBM) brought suit against Debtor (also a chiropractor) in Florida state court due to the demise of a business relationship. There were several claims asserted by the plaintiffs including fraud, breach of fiduciary duty and deceptive trade practices. Prior to trial, Debtor filed a Chapter 7 here and plaintiffs filed an adversary proceeding to have the debts determined to be nondischargeable. The Court granted relief from stay so that the litigation could be reduced to judgment in Florida state court but the issue of dischargeability was reserved for the bankruptcy court's later decision.

Instead of a trial, the state court found in a hearing that the Debtor committed a fraud upon the state court, by clear and convincing evidence, and plaintiffs were granted judgment as to liability. The state court held a trial on damages only. Papa was awarded \$760,551 for common law fraud and RPBM was awarded \$991,854 for breach of fiduciary duty and deceptive trade practices.

In considering the motion for summary judgment in the adversary proceeding, the Court reviewed the Florida standards for preclusive effect of the judgments. The Court found that, as to Papa, the common law fraud resembled closely the standard for nondischargeability under Section 523 (a)(2). As to RPBM, the Court found that the standards for breach of fiduciary duty and deceptive trade practices were not sufficiently similar to the standards under Sections 523(a)(2), (4) or (6). Accordingly, the Court held the judgment for Papa nondischargeable and denied the motion for summary judgment on nondischargeability by RPBM on all counts.