

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: AMIN A. RASHID,	:	
Debtor.	:	
	:	
	:	
AMIN A. RASHID,	:	CIVIL ACTION
Appellant-Plaintiff,	:	No. 01-CV-2197
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Appellee-Defendant.	:	

MEMORANDUM AND ORDER

BUCKWALTER, J.

January 8, 2002

Plaintiff-Appellant Amin A. Rashid (“Rashid”) appeals an order of the United States Bankruptcy Court for the Eastern District of Pennsylvania dismissing his adversary proceeding against Appellee-Defendant United States of America (“United States”) and granting summary judgment in favor of the United States. For the reasons discussed below, the decision of the Bankruptcy Court is **AFFIRMED**.

I. Factual and Procedural History

As the decision of the Bankruptcy Court relies in part on the history of related legal proceedings between these parties, a brief summary of them is appropriate.

On December 27, 1993, a federal jury convicted Rashid on over fifty counts of mail fraud, wire fraud, and money laundering stemming from his operation of a fraudulent commercial loan operation. The jury also returned a special verdict on a criminal forfeiture count, finding that his real property located at 444 East Mount Pleasant Avenue, Philadelphia, Pennsylvania (the “real property”) and other assets constituted property traceable to property involved in money laundering violations, in violation of 18 U.S.C. §§ 1956 and 1957, and were, therefore, subject to forfeiture. The district court sentenced Rashid to a period of incarceration, fined him, and ordered him to pay fees and criminal restitution to his victims. The Third Circuit affirmed his conviction and sentence. United States v. Rashid, 66 F.3d 314 (3d Cir. 1995)(unpublished mem.), cert. denied, 516 U.S. 1121 (1996). Following sentencing, by order dated May 18, 1994, Rashid’s interest in the real property was forfeited to the United States pursuant to 18 U.S.C. § 982(b)(1). The Third Circuit also affirmed the forfeiture. United States v. Rashid, 168 F.3d 480 (3d Cir. 1998)(unpublished mem.), cert. denied, 526 U.S. 1011 (1999).

On July 6, 1994, after Rashid’s real property was ordered forfeited, he filed a petition for relief under Chapter 7 with the Bankruptcy Court. In connection with his bankruptcy case, Rashid has filed three adversary proceedings against the United States, of which the action before this Court is the most recent.

The first adversary proceeding, filed October 7, 1994 and docketed at Adv. No. 94-0739, alleged, inter alia, that (1) the forfeiture order was improperly granted and a “nullity,” and (2) the United States violated the bankruptcy stay by recording the forfeiture judgment as a lien in Philadelphia County on August 19, 1994, approximately one month after the bankruptcy petition was filed. Rashid sought as relief, inter alia, (1) to set aside the forfeiture judgment; and

(2) compensatory and punitive damages due to the unlawful recording of the lien. On May 30, 1995, the Bankruptcy Court dismissed the action. The district court affirmed, stating that “an argument that the forfeiture was a ‘nullity’ is directed to the merits of the forfeiture order, not its subsequent impact on bankruptcy.... The Court of Appeals has affirmed the forfeiture order on the merits; this court can not and will not disturb that decision.” Rashid v. Powel, No. 95-4243, 1998 WL 288426 at *3 (E.D. Pa. June 3, 1998). The district court also held that Rashid could not demonstrate any injury resulting from the temporary recording of the lien. Id. The Third Circuit affirmed on these issues, but reversed on a different matter, as it determined that Rashid’s criminal restitution obligation was dischargeable in bankruptcy. In re Rashid, 210 F.3d 201, 208 (3d Cir. 2000).

The second of Rashid’s adversary proceedings against the United States, docketed at Ad. No. 97-890, was filed August 1, 1997. In this action, Rashid alleged that the United States violated his constitutional rights in the criminal forfeiture proceeding and violated the bankruptcy stay when it ejected his wife and children from the real property. On March 26, 1998, the Bankruptcy Court dismissed the action for failure to state a claim. That court held that the May 18, 1994 criminal forfeiture order extinguished whatever rights Rashid may have had to the real property, and that as a result, Rashid could not demonstrate that the bankruptcy stay was violated. Furthermore, that court noted, the forfeiture was affirmed by the Third Circuit.

The case at bar is the third adversary action filed by Rashid against the United States, docketed at Adv. No. 00-633 on September 18, 2000. In his complaint, Rashid again alleges that the criminal forfeiture order was not valid – that in fact, it was the result of a fraud on the court – and that, again, his subsequent loss of interest in the real property was in violation of

the bankruptcy stay. On October 25, 2000, the United States served its answer, which raised seven affirmative defenses. Rashid filed a motion to strike these affirmative defenses, to which the United States filed a response. Rashid also served discovery, including requests for admission, upon the United States. By order of the Bankruptcy Court, the United States' response to Rashid's discovery was due January 2, 2001. However, the United States did not respond by that date due to inadvertence of counsel, and on January 3, 2001 it filed a motion for protective order to stay discovery pending the resolution of its affirmative defenses and nunc pro tunc relief of one day under Fed. R. Civ. P. 34 and 36. On January 11, 2001, the Bankruptcy Court denied Rashid's motion to strike the United States' affirmative defenses, directed the United States to submit a memorandum in support of its third (lack of jurisdiction), fourth (issue and claim preclusion), and sixth (lack of jurisdiction with respect to forfeiture order) affirmative defenses, and stayed all discovery. The next day, on January 12, 2001, the Bankruptcy Court also denied the United States' motion for a discovery protective order as moot since it had stayed all discovery the previous day. On January 25, 2001, the United States filed its memorandum in support of selected affirmative defenses as directed by the court, and Rashid filed a response in opposition.

While the United States' affirmative defenses were pending before the Bankruptcy Court, Rashid filed a "Statement of Material Facts As To Which There Are No Genuine Issues For Trial" ("statement of material facts"), based on the failure of the United States to respond to his requests for admission. The United States filed a motion to strike Rashid's statement of material facts.

On April 4, 2001 the Bankruptcy Court, converting the United States' memorandum into a request for summary judgment sua sponte due to its references to other court decisions involving Rashid, entered an order dismissing the adversary proceeding and granting summary judgment to the United States on the basis of issue and claim preclusion. The court concluded that this action was no more than an attempt by Rashid to re-litigate claims against the United States either already raised and adversely decided, or which could have already been brought in previous actions. This appeal follows.

Rashid asserts on appeal that the Bankruptcy Court erred in granting summary judgment by finding issue and claim preclusion because there are material facts in dispute, as evidenced by the admissions it alleges it secured through United States' failure to respond to his request for admissions. These facts defeat a preclusion defense, he alleges, because they show (1) that he did not have a "full and fair opportunity" to litigate the issues in question, since his criminal conviction and the forfeiture order were the result of a fraud on the court; and (2) changes in facts essential to judgment that render preclusion inapplicable in a subsequent action raising the same issues. Furthermore, in his reply brief, Rashid argues for the first time that the court did not give him proper notice of its sua sponte conversion of the United States' memorandum into a motion for summary judgment, thereby denying him due process.

II. Jurisdiction and Standard of Review

This Court has jurisdiction over appeals from final judgments, orders, and decrees from the Bankruptcy Court pursuant to 28 U.S.C. § 158(a) and Federal Bankruptcy Rule of Procedure 8001. In reviewing a bankruptcy court's determinations, this Court reviews its legal

conclusions de novo, its factual findings for clear error, and its exercise of discretion for abuse thereof. See In re Trans World Airlines, Inc. 145 F.3d 124, 131 (3d Cir. 1998).

III. Discussion

A. Issue and Claim Preclusion

In its decision, the Bankruptcy Court found, after reviewing the prior proceedings between the parties, that summary judgment was appropriate since Rashid's ultimate allegations regarding the invalidity of the criminal forfeiture order and the violation of the bankruptcy stay were barred by issue and claim preclusion. This Court concurs with, and will not repeat, the Bankruptcy Court's basic analysis and conclusion that both issue and claim preclusion bar the claims asserted by Rashid in this action regarding the validity of the criminal forfeiture order and his resulting loss of interest in the real property.

In general, however, "[i]ssue preclusion, otherwise known as collateral estoppel, bars re-litigation of an issue identical to that in a prior action." Parkview Assocs. Partnership v. City of Lebanon, 225 F.3d 321, 329 n.2 (3d Cir. 2000). "In order for the doctrine [of issue preclusion] to apply, (1) the issue decided in the prior adjudication must be identical to the one presented in the later action, (2) there must be a final judgment on the merits, and (3) the party against whom the doctrine is asserted must have been a party or in privity with a party to the prior adjudication and have had a full and fair opportunity to litigate the issue in question in the prior action." Seborowski v. Pittsburgh Press Co., 188 F.3d 163, 169 (3d Cir. 1999).

Claim preclusion, otherwise known as *res judicata*, has a more expansive preclusive effect than issue preclusion. Claim preclusion prohibits re-examination not only of

matters actually decided in the prior case, but also those that the parties might have, but did not, assert in that action.” Parkview Assocs., 225 F.2d at 329 n.2. However, the precluded claims must be based on the “same cause of action.” Eastern Minerals & Chems. Co. v. Mahan, 225 F.3d 330, 336 (3d Cir. 2000). Therefore, “[u]nder the doctrine of claim preclusion, a final judgment on the merits of an action involving the same parties (or their privities) bars a subsequent suit based on the same cause of action.” Id.

On appeal, Rashid asserts two principal arguments why summary judgment was inappropriate in this case. Both of these arguments rely upon his contention that the United States’ failure to respond to his requests for admissions has conclusively established certain facts in the record.¹ According to Rashid, by its failure to respond, the United States admitted that: (1) it was informed of Rashid’s bankruptcy filing *prior* to recording the forfeiture judgment as a lien against the real property; (2) the jury in Rashid’s criminal trial did *not* determine that the real property constituted property traceable to property involved in money laundering violations; (3) at Rashid’s criminal trial, it did not object to his contention that he had a non-forfeitable interest in the real property; (4) the jury in Rashid’s criminal trial was *not* presented with evidence that potential borrowers were defrauded; (5) the United States does *not* possess evidence that identifies defrauded borrowers; (6) the United States did *not* submit the criminal forfeiture count of the indictment to the jury for deliberation and verdict; and (7) the United States’ failure to

¹ Although the United States argues that these facts are not admitted, there is no dispute that it did not respond to Rashid’s request for admissions during the required time period or at all, nor did it receive appropriate relief from the Bankruptcy Court, which denied its motion for a protective order and nunc pro tunc relief as moot after granting a stay of discovery. Therefore, pursuant to Fed R. Civ. P. 36, this Court must accept these facts as admitted. However, as the analysis infra demonstrates, these admissions concern matters that are largely issue-precluded by Rashid’s criminal proceeding, thereby robbing them of any significance. In the alternative, even without regard to the fact that they are issue-precluded, these admissions do not, as Rashid asserts, undermine the Bankruptcy Court’s holding that his ultimate claims in this adversary proceeding are precluded.

convict Rashid on certain criminal counts caused the criminal forfeiture count of the indictment to be constitutionally defective.

Relying on these admissions, Rashid first contends that they show that he has not had a “full and fair opportunity” to be heard on the merits under Seborowski, because they demonstrate that the United States committed a fraud on the court in obtaining his criminal conviction. However, although no party has so argued, the admissions largely concern matters that are *themselves* (in addition to Rashid’s ultimate allegations regarding the invalidity of the criminal forfeiture order and the violation of the bankruptcy stay) subject to issue preclusion under Seborowski because they are identical to issues already decided by the jury in Rashid’s criminal proceeding.² For example, it is clear from the record in the criminal proceeding that the jury *did* find that the real property constituted property traceable to property involved in money laundering violations. Therefore, because the admitted facts are themselves subject to preclusion, they cannot be the basis for Rashid’s arguments as to why he was denied a “full and fair opportunity” to litigate the two ultimate issues that the Bankruptcy Court held were precluded: whether the criminal forfeiture order is valid and whether the United States violated the bankruptcy stay when Rashid’s interest in the real property was forfeited.

In the alternative, even if the admissions are not so precluded, they do not demonstrate lack of a prior “full and fair opportunity” to litigate Rashid’s ultimate claims, as he

² One admission identified by Rashid does not fall into this category but is in any case not relevant to this adversary proceeding. The first admission listed – that the United States was informed of Rashid’s bankruptcy filing *prior* to recording the forfeiture judgment as a lien against the real property – is irrelevant to Rashid’s claims in this action that the criminal forfeiture order is invalid and that bankruptcy stay was violated when his interest in the real property was extinguished pursuant to that order. This admission is relevant, if at all, to Rashid’s claim, advanced in his first adversary proceeding against the United States, that the stay was also violated by the United States’ temporary recording of the forfeiture judgment as a lien after he had already filed for bankruptcy. This claim was previously dismissed because Rashid could not demonstrate any resulting injury as a result of the lien. See Rashid v. Powel, No. 95-4243, 1998 WL 288426 at *3-*4 (E.D. Pa. June 3, 1998).

asserts. In general, these admissions cannot be used to demonstrate *anything* regarding the prior litigation between these parties, since Fed. R. Civ. P. 36 states that “[a]ny admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.” More specifically, the admissions do not show that Rashid lacked a sufficient *opportunity* to present these facts – for example, that the jury in Rashid’s criminal trial was not presented with evidence that potential borrowers were defrauded – in a variety of prior proceedings: at his criminal trial, during his criminal appeal, or even in the prior adversary proceedings in which he specifically challenged both the validity of the criminal forfeiture order or the legality of the United States’ conduct with regard to the bankruptcy stay. That Rashid may have been able to establish certain facts for the purposes of *this* proceeding through the United States’ failure to respond to his request for admissions is irrelevant as to whether he was provided a “full and fair” opportunity to argue these facts in support of his ultimate claims in the relevant *prior* proceedings. There is nothing in the record to indicate that Rashid was prohibited from doing so. As such, these admissions do not support a claim that Rashid was denied a “full and fair opportunity” under Seborowski to litigate the issues of the validity of the criminal forfeiture order or the legality of the forfeiture in terms of the bankruptcy stay. Additionally, it should be noted that the Seborowski analysis applies only to issue preclusion; it does not affect the Bankruptcy Court’s ruling that Rashid’s claims should be denied on the basis of *claim* preclusion as well.

Second, Rashid claims that these admissions present “changes in facts” that render issue preclusion inapplicable. It is indeed well-settled that “changes in facts essential to a judgment will render collateral estoppel in applicable in a subsequent action raising the same

issues.” Montana v. United States, 440 U.S. 147, 159 (1979). However, this argument fails for similar reasons as his first. As explained supra, the matters that are the subject of these admissions are largely issue-precluded themselves as a result of Rashid’s criminal proceeding. Therefore, the admissions cannot form the basis for challenging the application of preclusion to Rashid’s ultimate claims regarding the forfeiture order and its effect.

Put a different way, the admissions again do not make the legal showing that Rashid seeks – this time, because they are not truly “changes in facts.” In the cases cited by Rashid, when courts have refused to apply issue preclusion on this basis, it is because essential facts have actually changed over time, creating two similar, but not identical, sets of facts. For example, in United States v. Certain Land at Irving Place and 16th Street, 415 F.2d 265 (2nd Cir. 1969), the United States initiated a series of condemnation proceedings regarding an office building that resulted in a series of government takings of the property in 1947, 1953, 1958 and 1962. Each one-year taking also included an added provision that the government could exercise an option for the use and possession of the premises over three to four future years. The owners of the property initiated several suits for their loss created by the takings and the options. In a prior lawsuit, the property owners had introduced proof of the value of the options from 1956 through 1960. Although the terms of the takings involved in both lawsuits were identical, the court held that the owners were not prohibited from introducing evidence of the value of the takings from 1960 through 1964 in the case before it, because key facts regarding the value of the options may have changed over time:

[T]he measure of the award which defendants may recover due to the existence of the options is the value of what they have lost as a direct result of the options. It is quite conceivable that the defendants

might suffer no provable damage by virtue of the options in one year, and yet sustain sizable loss in a future year when, for example, their active attempts to secure mortgage financing are defeated because of the option factor.

Id. at 269.

Rashid's case does not present a similar scenario, where essential facts may have changed over time. Indeed, what was true regarding Rashid's criminal trial – the evidence presented, the charges submitted, the verdict rendered – cannot have changed from then to now. Therefore, the admissions in this case do not represent analogous “changes in facts essential to judgment” that render issue preclusion inoperable. Indeed, what Rashid attempts to do with these admissions is simply to fight his criminal conviction over again. Additionally, as in the analysis supra, even if there were sufficient changes in facts to undermine a finding of issue preclusion, it would not affect the Bankruptcy Court's ruling that Rashid's ultimate claims should be denied on the basis of *claim* preclusion as well.

Therefore, for the reasons stated above, the admissions do not raise genuine issues of material fact as to the preclusion defenses accepted by the Bankruptcy Court and do not affect the proper entry of summary judgment on those grounds.

B. Due Process

Rashid also claims that the court did not give him proper notice of its sua sponte conversion of the United States' memorandum into a motion for summary judgment, thereby denying him due process. He cites to Rose v. Bartle, 871 F.2d 331 (3d Cir. 1989), in which the Third Circuit held that all parties must be given notice that "fairly apprises" them of the proposed conversion, so that they may exercise the opportunity to present all relevant materials to the court. Id. at 342. However, Rashid submitted the admissions upon which he bases his appeal to the Bankruptcy Court, so it is not clear why he presses this point, except as a purely procedural matter. In any case, in Bartle, the court also acknowledged that the failure to give notice may be adequately excused if it constitutes harmless error because "there is no set of facts on which plaintiffs could possibly recover." Id. For the reasons outlined as to why issue and claim preclusion are appropriate even in light of the admissions before the Bankruptcy Court, this is such a case. As a result, Rashid was not denied due process.

IV. Conclusion

This court affirms the Bankruptcy Court's order of summary judgment because the claims asserted by Rashid are precluded on the basis of issue and claim preclusion. The admissions cited by Rashid do not demonstrate either a lack of a "full and fair opportunity" to litigate these issues under Seborowski, or "changes in facts essential to judgment" that would render issue preclusion inapplicable. Furthermore, that Court's sua sponte conversion of the

United States' memorandum into a motion for summary judgment did not deny Rashid due process, since, due to the preclusion defense, there is no set of facts upon which he could recover.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: AMIN A. RASHID,	:	
Debtor.	:	
	:	
	:	
AMIN A. RASHID,	:	CIVIL ACTION
Appellant-Plaintiff,	:	No. 01-CV-2197
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Appellee-Defendant.	:	

ORDER

AND NOW, this 8th day of January 2002, Appellant-Plaintiff's April 14, 2001 appeal is **DENIED**, and the order of the United States Bankruptcy Court for the Eastern District of Pennsylvania dated April 4, 2001 is **AFFIRMED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.