

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

GEORGE J. DORN,

DEBTOR

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CASE NO. BK85-2865

Affirmed 87:246  
88:552

MEMORANDUM OPINION

This matter came on for hearing on August 29, 1986, on the debtor's objection to the claim filed by Travelers Insurance Company. Appearing on behalf of the debtor were John Rouse of Lincoln, NE, and Jack Graham of Brainerd, MN. Appearing on behalf of Travelers was Gregory Searson of Omaha, NE.

Facts

Travelers Insurance Company filed a claim based on the mortgage executed to it by the debtor. Debtor has filed an objection, claiming that Travelers violated the Federal Truth-in-Lending Act. This issue had previously been litigated in the U.S. District Court and Richardson County District Court. Travelers claims that the debtor is barred from raising this issue in Bankruptcy Court by res judicata. Debtor argues that res judicata is not a bar with regard to the U.S. District Court action. Debtor concedes that res judicata "technically" (Debtor's term) bars the issue with regard to the Richardson County District Court decision, but urges the Court to consider this case an important matter of public policy that should be an exception to the rule of res judicata.

Issues

1. Does the fact that the U.S. District Court ultimately dismissed the earlier case on the basis of the statute of limitations bar the applications of res judicata because the other issues involved were not fully litigated?

2. Is there a public policy exception to the rule of res judicata which would permit this case to be heard again in spite of the fact that all of the issues were, as the debtor admits, fully litigated in the Richardson County District Court?

## Conclusions of Law and Discussion

The debtor doesn't allege that there was improper jurisdiction, different causes of action or different parties involved, only that the issues weren't fully litigated in the U.S. District Court. Res judicata bars relitigation of issues which were actually litigated or which could have been litigated in the first suit. (Emphasis is the Court's.) Federated Department Stores v. Moitie, 452 U.S. 394, 101 S.Ct. 2424, 69 L.Ed. 2d 103 (1981). Although the District Court ultimately dismissed the earlier case because it was outside the statute of limitations, it discussed fully and rejected all of the debtor's arguments with regard to the Truth-in Lending Act. In addition, the rule in the 8th Circuit is that an issue or claim is barred by the res judicata effect of the earlier court's decision that claims were brought outside the period of the applicable statute of limitations. Myers v. Bull, 599 F.2d 863 (8th Cir. 1979).

After admitting that the Richardson County case "technically" bars this action because all issues were litigated, the debtor claims that this case is such an important matter that it should be heard again under a "public policy" exception to res judicata, citing Mercoird Corp. v. Mid-Continent Co., 320 U.S. 661 (1944). That was a patent case that really isn't applicable here. Even if it were, the Supreme Court very clearly stated in Federated Department Stores, supra, that there is no public policy exception to res judicata.

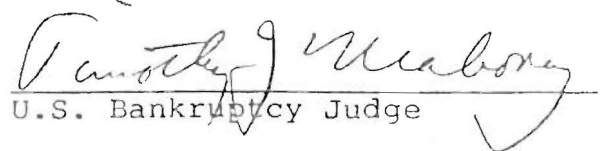
This Court concludes that res judicata bars Dorn from litigating these claims after having done so in the U.S. District Court and Richardson County Court.

Objection to claim is overruled.

Separate journal entry shall be filed.

DATED: December 18, 1986

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies to:

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