

The document below is hereby signed.

Dated: September 15, 2011.



*S. Martin Teel, Jr.*

**S. Martin Teel, Jr.  
U.S. Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
BRANDI S. NAVE,	)	Case No. 09-00651
	)	(Chapter 7)
Debtor.	)	
_____	)	
	)	
KEITH BRITT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No.
	)	09-10033
	)	
BRANDI S. NAVE,	)	Not for publication in
	)	West's Bankruptcy Reporter
Defendant.	)	

MEMORANDUM DECISION RE PLAINTIFF'S RESPONSE TO ORDER  
TO SHOW CAUSE WHY ADVERSARY PROCEEDING OUGHT NOT BE DISMISSED

The plaintiff Britt was allowed to pursue in the Superior Court his sanctions claims that he was asserting could be found non-dischargeable under § 523(a)(6). The Superior Court has ruled against Britt. Under the doctrine of *res judicata* (claim preclusion), the Superior Court's judgment bars Britt's pursuit of his claim in this court. Because Britt is deemed not to have any claim, the doctrine of collateral estoppel (issue

preclusion), which might (or might not) have disposed of the § 523(a)(6) question if the Superior Court had ruled instead that Britt was entitled to a judgment in his favor, does not come into play as there is no claim as to which to apply that doctrine.

In response to this court's order to show cause why this adversary proceeding ought not be dismissed based on the Superior Court ruling, Britt notes that he has taken an appeal from the Superior Court's ruling. The law, however, is well established that a final judgment is entitled to *res judicata* effect even if an appeal is pending. If Britt prevails on appeal, he may within a reasonable time file a motion under Federal Rule of Civil Procedure 60(b)(5) to vacate the dismissal of this proceeding.<sup>1</sup> Britt asks that the court stay this proceeding pending the outcome of his appeal from the Superior Court's ruling, but this court has no desire to periodically inquire into the status of Britt's appeal. Instead, the burden should be on Britt to notify this court via a timely Rule 60(b)(5) motion in the event his appeal is successful. A judgment follows dismissing this adversary proceeding.

[Signed and dated above.]

Copies to: All counsel of record.

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<sup>1</sup> Rule 60(b)(5) provides in relevant part that a court may relieve a party from a judgment for the reason that "the judgment . . . is based on an earlier judgment that has been reversed or vacated . . . ."