The document below is hereby signed.

Signed: March 26, 2018

S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
RAYMOND THOMAS SINGLETON,	)	Case No. 16-00610
	)	(Chapter 7)
Debtor.	)	
_____	)	
	)	
FRED DANIEL MULLENS, JR,	)	
	)	
Plaintiff,	)	
	)	Adversary Proceeding No.
v.	)	17-10006
	)	
RAYMOND THOMAS SINGLETON,	)	Not for publication in
	)	West's Bankruptcy Reporter.
Defendant.	)	

MEMORANDUM DECISION AND ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Fred Daniel Mullens, Jr., the plaintiff, seeks a judgment against the debtor, Raymond Thomas Singleton, declaring that the debt owed to him be deemed nondischargeable pursuant to 11 U.S.C. § 523(a)(6). As stated at the scheduling conference in this proceeding, and as explained in greater depth below, the plaintiff's motion for summary judgment must be denied.

I

FACTS

On July 31, 2003, the District Court of Maryland for Montgomery County found the debtor guilty of second degree assault for a physical confrontation between the debtor and the plaintiff. On April 9, 2004, the plaintiff filed a civil complaint against the debtor for assault, requesting $10,000.00 in damages and compensation for costs and fees. On August 2, 2006, the District Court of Maryland for Montgomery County issued a default judgment against the debtor in the amount of $9,000.00 plus costs of $75.00.

In his motion for summary judgment, the plaintiff argues that the debt owed by the debtor to the plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(6), which excepts from discharge any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity[.]" The plaintiff relies on theories of res judicata and collateral estoppel to claim that the prior criminal conviction of and civil default judgment against the debtor require a finding of nondischargeability pursuant to § 523(a)(6) as a matter of law.

II

ANALYSIS

There are two prior judgments against the debtor that stem from the physical altercation between the debtor and the

plaintiff that occurred on April 10, 2003. The court will address each in turn and explain why, without more in the record, neither sufficiently demonstrates that the plaintiff is entitled to judgment as a matter of law that the debt owed by the debtor to the plaintiff is nondischargeable pursuant to § 523(a)(6).

A. The Criminal Conviction

In the state of Maryland, the crime of "assault" is defined as "the crimes of assault, battery, and assault and battery, which retain their judicially determined meanings." *MD Code, Criminal Law* § 3-201(b). Assault in the second degree is prohibited pursuant to *MD Code, Criminal Law* § 3-203. Second degree assault in Maryland is comprised of three types of common law assault and battery: (1) the "intent to frighten" assault, (2) attempted battery and (3) battery. *Snyder v. State*, 63 A.3d 128, 134 (Md. App. 2013). For all we know from the materials in the record on this motion for summary judgment, the conviction may have been for the third category, battery.

The "intent to frighten" category of second degree assault relates to an action taken by the defendant with the intent to place another in fear of immediate physical harm when the defendant had the apparent ability at that time to bring about that physical harm and the person assaulted was aware of the impending attack. *Id.* at 135 (citing *Dixon v. State*, 488 A.2d 962, 966-70 (Md. 1985), and *Harrod v. State*, 499 A.2d 959, 961

(Md. App. 1985)). In contrast, the attempted battery version of second degree assault requires a defendant to have had the specific intent to cause physical injury to the victim and to have taken a substantial step towards causing the victim the injury, but does not require, among other things, the victim to have been aware of the impending battery at the time of the attack. *Young v. State*, 493 A.2d 352, 356 (Md. 1985); *Snyder v. State*, 63 A.3d at 135 (citing *Harrod*, 499 A.2d at 960-62).

The third and final type of second degree assault, battery, is "the unlawful application of force to the person of another." *Cruz v. State*, 963 A.2d 1184, 1188 n.3 (Md. 2009) (citing *Snowden v. State*, 583 A.2d 1056, 1059 (Md. 1991)). An unlawful application of force to the person of another constitutes battery for purposes of criminal liability for second degree assault in Maryland if the defendant acted either intentionally or recklessly. *See Duckworth v. State*, 594 A.2d 109, 112-13 (Md. 1991), cited in *Cruz*, 963 A.2d 1188 n.3. *See also* Maryland Criminal Pattern Jury Instructions, No. 4:04 (1986), cited in Duckworth, 594 A.2d at 112 & n.2 ("[I]n order to convict the Defendant of battery, the State must prove the following elements: that the Defendant caused physical contact or harm to the victim; that the contact was the result of an intentional or reckless act of the Defendant and was not accidental, and that the contact was not legally justified.")

For example, in *Duckworth*, 594 A.2d at 112, the Maryland Court of Appeals affirmed the defendant's conviction of battery for shooting a child because the evidence demonstrated that the defendant acted recklessly when he pointed a gun directly at the child, who was pleading with him not to shoot her, and threatened to shoot her if she did not stop crying. The Court of Appeals noted that even if the defendant had discharged the gun accidentally, as he claimed, he "criminally wounded [the girl] by recklessly handling a firearm." *Id.* at 114.

Importantly, Maryland's criminal code and the related case law demonstrate that a defendant may be convicted for second degree assault in the state of Maryland for either willful or reckless applications of force against another. In order to find a debt nondischargeable pursuant to 11 U.S.C. § 523(a)(6), the debt at issue must be "for willful and malicious injury by the debtor to another entity or to the property of another entity[.]" The word "willful" in 11 U.S.C. § 523(a)(6) modifies the word "injury," and a finding of nondischargeability therefore requires the defendant to have inflicted injury deliberately or intentionally, not to have taken an action deliberately or intentionally that resulted in injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998).

A creditor who seeks to demonstrate that his or her claim against the debtor is non-dischargeable pursuant to a § 523(a)(6)

exception must do so by a preponderance of the evidence. *See Grogan v. Garner*, 498 U.S. 279, 291 (1991). Statutory exemptions to a bankruptcy discharge should be narrowly construed. *In re Long*, 774 F.2d 875, 879 (8th Cir. 1985) (citations omitted). Section 523(a)(6) explicitly requires Singleton to have acted "willfully" in inflicting injury on Mullens in order for that action to fall within the § 523(a)(6) exception to discharge. Without access to the particular jury instructions used in the criminal case against Singleton (or findings of the state court if the trial was a non-jury trial), the Bankruptcy Court cannot assume that there was an explicit determination that Singleton's application of force against Mullens constituted a knowing or intentional infliction of injury, as is required under § 526(a)(6). Therefore, this court cannot grant Mullens's motion for summary judgment in regards to his claim under § 523(a)(6) in light of Singleton's criminal conviction for second degree assault on the grounds of res judicata or collateral estoppel.

B. The Civil Default Judgment

The default judgment issued against the debtor in the District Court of Maryland for Montgomery County for civil assault, also cannot be the basis of granting the plaintiff's motion for summary judgment on res judicata or collateral estoppel grounds. Nothing in the default judgment indicates that the default judgment was for an intentional infliction of injury,

and even if it did, a default judgment is not entitled to collateral estoppel effect.

The doctrine of collateral estoppel applies in dischargeability proceedings pursuant to 11 U.S.C. § 523(a). *Grogan v. Garner*, 498 U.S. 279, 284-85 n.11 (1991); *Combs v. Richardson*, 838 F.2d 112, 115 (4th Cir. 1988) (*quoting Spilman v. Harley*, 656 F.2d 224, 227 (6th Cir. 1981)). Collateral estoppel, or issue preclusion, bars relitigation of an issue previously decided in a prior judicial proceeding if the party against whom the prior decision is asserted had a "full and fair opportunity" to litigate that issue in the earlier case. *Allen v. McCurry*, 449 U.S. 90, 95 (1980). Federal courts have interpreted their statutory duty under 28 U.S.C. § 1738 to give full faith and credit to state court judicial proceedings to mean that federal courts, including bankruptcy courts, must give a state court judgment the same preclusive effect it would receive in the state that issued that judgment. *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379-82 (1985), *reh'g denied* 471 U.S. 1062 (1985) (ruling that 28 U.S.C. § 1738, the full faith and credit statute, "directs a federal court to refer to the preclusion law of the State in which judgment was rendered").

Maryland, the state in which the default judgment was entered against the defendant debtor in this case, does not grant default judgments collateral estoppel effect when the defendant

did not participate in the prior litigation in any manner. *See Nestorio v. Associates Commercial Corp.*, 250 B.R. 50, 55-56 (D. Md. 2000) (*quoting* 18 Charles Alan Wright et al., *Federal Practice & Procedure* § 4442, at 375–76 (1981) ("The prevailing view is that collateral estoppel does not apply to default judgments entered 'without further inquiry upon failure to answer.'")); *Phillip v. Reecher (In re Reecher)*, 514 B.R. 136, 153 (Bankr. D. Md. 2014) ("In applying this test to default judgments, the determination usually rests on whether the judgment was actually litigated. This requirement is met when (as is the case here) a defendant files an answer or appears in the matter, the issues are considered by a jury or finder of fact, the defendant had notice and an opportunity to argue on its behalf, and the defendant had an incentive to litigate the matter in the prior proceeding and reasonably foresee litigation on the same issue."). The plaintiff attached to his complaint in this adversary proceeding a copy of the docket for the civil case in which he earned a default judgment against the defendant. *See* Dkt. No. 1, Ex. 2. The docket reflects that over the course of two years there was no appearance or filing by the defendant and there were multiple notations of summons renewals, and even an indication that the summons was ultimately posted on the defendant's property in an effort to notify him. He was then not present at the trial held on August 2, 2006, and the default

judgment was entered against him. Therefore, the civil case cannot be said to have been "actually litigated" and the default judgment cannot be granted collateral estoppel effect in this adversary proceeding even if (which the current record does not show) the complaint in the state court had sought damages based on a willful and malicious infliction of injury.

III

ORDER

For the foregoing reasons, it is

ORDERED that the plaintiff's motion for summary judgment (Dkt. No. 21) is DENIED without prejudice to renewal of the assertion, on a fuller record, of the collateral estoppel effect of the criminal conviction.

[Signed and dated above.]

Copies to: E-recipients of orders.