STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FILED-CLERK OF COURT GREENVILLE CO. S.C. PAUL B. TRENSHAW
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
2012 JUL 26 P 4:20

[redacted] HUSBAND) Civil Action No. 2012-CP-23-1325
)
Plaintiff,)
)
vs.) **ORDER GRANTING DEFENDANT REPUBLIC FINANCE, LLC AND FITNESS SOLUTIONS, INC.'S MOTION TO DISMISS**
)
Republic Finance, LLC; Fitness Solutions, Inc.; and [redacted] WIFE)
)
Defendants.)

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 28, 2008, Plaintiff [redacted] HUSBAND and his then wife, Defendant [redacted], filed for Chapter 11 Bankruptcy in the District of South Carolina. In their initial filing, the [redacted] COUPLE scheduled a $7,153 debt to Republic Finance, LLC (Republic) secured by a treadmill as a joint debt. (See Bankruptcy Schedules [Docket #12] (Case No. 08-04874-JW, filed August 28, 2008), P. 25.) On May 29, 2009, the [redacted] COUPLE filed a Second Amended Plan of Reorganization, which specifically referenced a Proof of Claim filed by Republic. (See Bankruptcy Schedules [Docket #90(08-04874-JW] filed May 29, 2009), P. 7.) In their Plan of Reorganization, the [redacted] COUPLE reaffirmed the debt to Republic and acknowledged Republic's claim, which included a copy of the Retail Installment Sales Contract for purchase of the treadmill. The Bankruptcy Court ultimately approved the [redacted] COUPLE'S Chapter 11 reorganization plan, which required repayment of the Republic debt upon terms more favorable to the [redacted] COUPLE.

On September 28, 2011, Republic sued [redacted] PLAINTIFF HUSBAND in magistrate's court to collect on the debt. Republic, for reasons unknown, ultimately dismissed the suit. [redacted] PLAINTIFF then commenced this action against Republic, Fitness Solutions, Inc. (Fitness), and [redacted] DEFENDANT WIFE, alleging that the

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treadmill transaction was fraudulent. He contends he had no knowledge of the transaction, and that his signature on the sales contract was forged. He further asserts that his marriage to his WIFE was void ab initio because at the time he wed her, she was married to two other men. In addition to seeking damages and rescission of the contract based on the fraud cause of action, Plaintiff's complaint seeks damages against Defendants on the theories of civil conspiracy, forgery, unjust enrichment, and unfair trade practices.

Republic and Fitness move to dismiss Plaintiff's lawsuit, maintaining that it is barred by res judicata and collateral estoppel due to Plaintiff's representation made in the bankruptcy proceeding. Alternatively, they claim Plaintiff's suit is barred by the statute of limitations.

The court heard oral argument on Defendants' motions on May 31, 2012. At the motion hearing, Dowse B. ("Brad") Rustin, IV, Esquire appeared for Republic, and Knox L. Haynsworth, III, Esquire appeared for Fitness. Plaintiff was represented at the hearing by Melissa D. Spivey, Esquire, and H. Michael Spivey, Esquire.

II. LAW/ANALYSIS

A. Judicial Estoppel

Relief under the federal bankruptcy code is premised on the full and frank disclosure of a debtor's assets and liabilities, which allows affected creditors notice and an opportunity to have their positions heard. The couple listed the debt to Republic on their schedules, which were required to be filed under oath. The bankruptcy court necessarily relied on the veracity of the couples acknowledgement of the debt when it fashioned the final Chapter 11 reorganization.

Now, nearly four years after affirming the debt under oath, Plaintiff husband seeks to disavow knowledge of its very existence. A party's attempt to present separate faces to separate tribunals is not a novel tactic, but the judicial response has been uniform. One of the earliest expositions

of the doctrine now known as "judicial estoppel" arose against the backdrop of bankruptcy. In Davis v. Wakelee, 156 U.S. 680 (1895), Davis filed for bankruptcy in 1869. Wakelee, one of his creditors, obtained a state court judgment against Davis in 1873. In 1875, Davis petitioned for discharge. Wakelee opposed the petition, but Davis convinced the Court to dismiss Wakelee's opposition on the ground that Wakelee had already reduced her claim to judgment.

After his discharge, Davis sought to invalidate Wakelee's judgment in another forum on the ground that it was void because Davis had never been personally served. The United States Supreme Court dispensed with Davis' argument:

> It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. . . . It is contrary to the first principles of justice that a man should obtain an advantage over his adversary by asserting and relying upon the validity of a judgment against himself, and in a subsequent proceeding upon such judgment claim that it was rendered without personal service upon him.

Id. at 689-91.

Today the doctrine of judicial estoppel is firmly entrenched, designed to safeguard the integrity of the courts and stem perversions of the judicial process. New Hampshire v. Maine, 532 U.S. 742, 749-50 (2001). Judicial estoppel "is an equitable doctrine invoked by a court at its discretion." Id., 532 U.S. at 750 (citation omitted). The United States Supreme Court—while noting that the appropriate context for its application is fact-driven—has held that the doctrine generally applies when a party (1) takes a position clearly inconsistent with an earlier position, (2) a court previously accepted the party's earlier position, and (3) the party seeking to assert an inconsistent position would gain an unfair advantage or an unfair detriment would be imposed on

the opposing party if not estopped. Id.; see also Wright, Miller, & Cooper, et al., 18B Federal Practice and Procedure § 4477 (2d. ed. 2012).

The South Carolina Supreme Court has refined these elements and established that judicial estoppel applies where: (1) two inconsistent positions are taken by the same party or parties in privity with one another, (2) the positions taken are in the same or related proceedings involving the same party or parties in privity, (3) the party taking the earlier position was successful in maintaining that position and received some benefit, (4) the inconsistency must be part of an intentional effort to mislead the court, and (5) the two positions must be totally inconsistent. Cothran v. Brown, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004) (internal citation omitted).

To the surprise of no one, a party's sworn bankruptcy filings often doom their later attempts to manipulate the judicial machinery. The typical scenario involves a party seeking to cash in on a claim he failed to disclose as an asset of the estate. See, e.g., Guay v. Burack, 677 F.3d 10 (1st Cir. 2012); Moses v. Howard Univ. Hosp., 606 F.3d 789, 798 (D.C. Cir. 2010) ("[E]very circuit that has addressed the issue has found that judicial estoppel is justified to bar a debtor from pursuing a cause of action in district court where that debtor deliberately fails to disclose the pending suit in a bankruptcy case.").

Plaintiff [redacted] did not conceal his relationship with Republic from the bankruptcy court; he embraced it as a valid debt in the hope, ultimately fulfilled by the bankruptcy court, that it could be reorganized to his benefit.

In his affidavit presented to this Court, Plaintiff [redacted] represented that "[a]bsolutely none of this information as [to] the present suit was known until September 28, 2011." Based on his affidavit, Plaintiff [redacted] claims he had no knowledge of the Republic debt and that his signature was

forged on the sales contract. Plaintiff's [redacted] conduct may most charitably be described as curious, for if he were oblivious to the Republic debt one wonders why he identified it—under penalty of perjury—as a joint debt with his wife [redacted] on their bankruptcy schedules. Presumably, Plaintiff [redacted] is not saying he disclosed the debt but knew it was incurred by the fraud he now sues about (and if he were, estoppel would bar it on the ground that he failed to reveal it as a potential asset of his estate).

Equity abhors a charade. When confronted by a litigant intent on taking the stage in a newly manufactured identity, equity empowers a court to shut down the production entirely.

This court will take Plaintiff [redacted] at his initial word as given to the Bankruptcy Court. The version he has unveiled in this court is clearly inconsistent. Plaintiff [redacted] and the Defendants were in privity, he obtained a distinct benefit from his debt reorganization, and his pursuit of a retreaded version of the relationship was an intentional attempt to mislead the court. Plaintiff's [redacted] claims are therefore barred by the doctrine of judicial estoppel.

B. Statute of Limitations

As noted, Plaintiff [redacted] submitted his bankruptcy schedules on August 28, 2008, which included the Republic debt. This action was filed February 21, 2012, some three and one half years after the cause of action arose or should have been discovered. As such, Plaintiff's [redacted] claims are barred by the various South Carolina statutes of limitations, S.C. CODE ANN. §§ 15-3-530, et seq.

Because the court finds that the above grounds are dispositive of Defendants' motions, the court need not address the additional grounds raised by Defendants.

III. CONCLUSION

THEREFORE, IT IS ORDERED Defendants Republic Finance, LLC and Fitness Solutions, Inc.'s Motions to Dismiss are granted and Plaintiff's Complaint is hereby dismissed

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with prejudice. Defendants are granted the right to file additional motions seeking fees and costs pursuant to the South Carolina Frivolous Proceedings Act, S.C. CODE ANN. §§ 15-36-10, et seq.

IT IS SO ORDERED.

D. Garrison Hill
Circuit Judge

July 25, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS HUSBAND

[redacted] *vs.* **Republic Finance Llc**

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2301325

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B.WICKENSIMER

2012 JUL 26 P 4:20

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☒ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter

PRESIDING JUDGE

This judgment was entered on the 26th day of July, 2012, and a copy mailed first class this 26th day of July, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

H. Michael Spivey PO Box 809 Mauldin, SC 29662

ATTORNEY(S) FOR THE PLAINTIFF(S)

Knox L. Haynsworth III PO Box 2464 Greenville, SC 29602
Dowse Bradwell Rustin IV Poinsett Plaza, 9th Floor 104 S. Main St. Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

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