

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 9:20-CV-80126-ROSENBERG**

SCOTT STORICK,

Appellant,

v.

CFG LLC,

Appellee.

Bankruptcy Case No:  
18-15728-MAM

**ORDER AFFIRMING BANKRUPTCY COURT DECISION**

This matter is before the Court upon Appellant’s Initial Brief [DE 13] in his appeal of the Bankruptcy Court’s Memorandum Opinion and Order Granting Defendant’s Converted Motion for Summary Judgment, Denying Plaintiff’s Cross-Motion for Summary Judgment, and Cancelling Pre-Trial Conference, entered on January 13, 2020. The Court has considered Appellant’s Initial Brief, Appellee’s Responsive Brief [DE 20], Appellant’s Reply Brief [DE 25], and the record in this case. For the reasons set forth below, the Court affirms the Bankruptcy Court’s Order.

**I. BACKGROUND**

This case stems from a Chapter 7 bankruptcy petition filed by Appellant-Debtor Scott Storick on September 3, 2009 (“2009 Bankruptcy Case”). DE 5-4 at 260, 292-94. Appellant scheduled Appellee-Creditor CFG LLC, a Delaware Limited Liability Company, as a creditor in the 2009 Bankruptcy Case. *Id* at 261, 307. The parties resolved the issues relating to Appellee’s debt and the 2009 Bankruptcy Case by entering into a settlement agreement on April 23, 2010, which was later amended on June 18, 2010 (“Amended Settlement Agreement”). *Id.* at 262, 355-

66, 397-404. Paragraph 4 of the Amended Settlement Agreement contains a non-dischargeable provision that provides:

**CFG DEBT NON-DISCHARGEABLE**: The Debtor agrees that the CFG Debt is a non-dischargeable debt pursuant to the provisions of 11 U.S.C. Section 523(a), which debt shall be excepted from Debtor's discharge granted pursuant to the provisions of 11 U.S.C. Section 727 in this Bankruptcy Case or any future bankruptcy case in which Storick is a debtor. Any order entered by the Bankruptcy Court approving this Agreement shall include a provision excepting the CFG Debt from the Debtor's discharge in his Bankruptcy Case in accordance with the foregoing sentence.

*Id.* at 262-63, 724.

Additionally, Paragraph 5 of the Amended Settlement Agreement contains a confession of judgment provision that provides:

**CONFESSION OF JUDGMENT**: Debtor hereby irrevocably appoints and constitutes CFG as Debtor's duly appointed attorney-at-law to appear in open court in the Superior Court for the City of Wilmington, Delaware, or in any other court of competent jurisdiction, and to confess judgment pursuant to the provisions of Title 10 Section 4732 of the Delaware Code, as amended, against Debtor for all principal and interest and any other amounts due and payable under this Agreement. This power of attorney is coupled with an interest and may not be revoked and/or terminated by the Debtor. This power of attorney shall not be revoked and/or terminated by virtue of the death or disability of the Debtor. No single exercise of the power to confess judgment shall be deemed to exhaust this power of attorney.

*Id.* at 724.

After a hearing, the Bankruptcy Court presiding over the 2009 Bankruptcy Case approved the Amended Settlement Agreement on June 30, 2010, and granted stay relief to Appellee to pursue all available remedies in Delaware. *Id.* at 418-419.<sup>1</sup> On August 4, 2010, Appellant received his discharge in the 2009 Bankruptcy case. *Id.* at 263, 421-22.

---

<sup>1</sup> Appellant was represented by counsel when he signed the original Settlement Agreement and Amended Settlement Agreement, when the Bankruptcy Court held a hearing on the parties' Joint Motion to Approve the Amended

Appellee, as expressly permitted by the Amended Settlement, sought entry of judgment on Appellant's debt in the Delaware Superior Court on July 16, 2020. *Id.* at 425-27. Appellant failed to appear for the Judgment Hearing, thus, the court entered a final order of judgment in favor of Appellee on August 20, 2010, in the amount of \$540,000. *Id.* at 263, 428. Appellant sought to vacate the judgment, arguing that paragraph 13 of the Amended Settlement Agreement provided that Florida law controlled and that because Florida law prohibits confessed judgments, the judgment was entered in error. *Id.* at 433.

On February 12, 2012, while the proceeding in Delaware Superior Court remained ongoing, Appellant filed a complaint in this Court, later amended on March 12, 2012, seeking declaratory relief regarding: (1) whether Florida law protected Appellant's wages from Appellee's efforts to collect upon the Delaware judgment via garnishment and (2) whether the Delaware judgment, obtained via a stipulated confession of a judgment procedure, was valid. DE 5-4 at 466-70, 483-91. As both issues were also raised in the ongoing Delaware proceeding, this Court declined to exercise jurisdiction and dismissed the case on May 3, 2012. *See Storick v. CFG, LLC*, No. CV 12-80181-CIV, 2012 WL 12895514, at \*3 (S.D. Fla. May 3, 2012), *aff'd*, 505 F. App'x 883 (11th Cir. 2013). The Eleventh Circuit affirmed this Court's decision and noted that Appellant "expressly agreed to allow CFG to confess judgment in Delaware *for a long-standing debt he admits he owes.*" *Storick v. CFG, LLC*, 505 F. App'x 883, 884 (11th Cir. 2013) (emphasis added).

On July 13, 2013, the Delaware Superior Court denied Appellant's motion to vacate the Delaware judgment and resolved all other issues raised in the motion in Appellee's favor. DE 5-4

---

Settlement Agreement, and when the Bankruptcy Court approved the Amended Settlement Agreement. *See* DE 5-4 at 525, 534, 551, 675, 737.

at 431. On July 29, 2014, the Delaware Superior Court denied Appellant’s motion for reconsideration. *Id.* at 438. Appellant then appealed the Superior Court’s order to the Delaware Supreme Court, which affirmed the Superior Court’s order on March 30, 2015, holding that Appellant “waived his right to challenge execution of the Delaware judgment—*on a debt which he continues to admit he owes—in Delaware.*” *Storick v. CFG LLC*, No. 472, 2014, 2015 WL 1469088, at \*5-6 (Del. Mar. 30, 2015) (emphasis added)

Neither the record from the Delaware litigation nor the record from the Florida litigation show that Appellant ever argued that the debt in question was or should have been discharged in the 2009 Bankruptcy Case. *See generally* DE 5-3, DE 5-4.

## **II. Procedural History**

On May 12, 2018, Appellant filed a Chapter 7 bankruptcy petition, resulting in the bankruptcy proceeding in the instant case. DE 5-5 at 1. Appellant scheduled his obligation to Appellee as a disputed debt in an unknown amount. *Id.* at 30. On November 21, 2018, Appellant commenced an Adversary Proceeding seeking declaratory relief to determine the dischargeability of the debt owed by Appellant to Appellee, and damages for Appellee’s alleged violation of the discharge order entered in the 2009 Bankruptcy Case. DE 5-1 at 8-12. Appellee moved to dismiss the Adversary Complaint on January 11, 2019, arguing that the equitable defenses barred the claims asserted by Appellant. *Id.* at 26. The Bankruptcy Court converted Appellee’s motion to dismiss to a motion for summary judgment pursuant to Federal Rule of Civil Procedure 12(d). DE 5-1 at 244. Appellant filed a cross-motion for summary judgment on February 27, 2019, arguing that Appellee’s failure to follow certain procedural requirements in the 2009 Bankruptcy Case caused the court presiding over that case to commit “legal error” in approving the Amended

Settlement Agreement, making the debt owed by Appellant to Appellee dischargeable. DE 5-1 at 611-20.

The Bankruptcy Court ultimately granted Appellee's motion and denied Appellant's motion. *In re Storick*, No. 18-15728-MAM, 2020 WL 211471, at \*10 (Bankr. S.D. Fla. Jan. 13, 2020). The Bankruptcy Court held that Appellant's claims in his Adversary Complaint were barred by (1) the doctrine of laches, (2) equitable estoppel, and (3) collateral estoppel. *Id.* at \*5-9. The court also disregarded Appellant's procedural arguments, deemed the Delaware Judgment to be valid, and held that Appellant's claim remains non-dischargeable. *Id.* at \*10. The dischargeability of Appellant's debt is the issue on appeal to this Court.

### **III. STANDARD OF REVIEW**

Under Federal Rule of Bankruptcy Procedure 8013, a district court reviews the factual findings of a bankruptcy court for clear error. As for conclusions of law and application of law to the facts of a case, a district court conducts a *de novo* review. *In re Feingold*, 730 F.3d 1268, 1272 n.2 (11th Cir. 2013).

### **IV. DISCUSSION**

Appellant raises six issues on appeal, but his arguments are best divided into two groups: (1) whether the Bankruptcy Court erred in determining that equitable defenses barred Appellant's claims, and (2) whether the Bankruptcy Court erred in determining that the Amended Settlement Agreement that resolved the 2009 Bankruptcy Case complied with Federal bankruptcy law. As the Court finds the Bankruptcy Court did not err in holding that equitable defenses bar Appellant's claims, the Court will not address Appellant's procedural arguments.

### A. Doctrine of Laches

The equitable doctrine of laches “bars a plaintiff from maintaining a suit if he unreasonably delays in filing a suit and as a result harms the defendant.” *Amtrak v. Morgan*, 536 U.S. 101, 121 (2002). “To establish laches, a defendant must demonstrate (1) a delay in asserting a right or a claim, (2) that the delay was not excusable, and (3) that there was undue prejudice to the party against whom the claim is asserted.” *AmBrit, Inc. v. Kraft, Inc.*, 812 F.2d 1531, 1545 (11th Cir. 1986); see *In re King*, 463 B.R. 555, 570 (Bankr. S.D. Fla. 2011). Whether the doctrine of laches applies is essentially a question “of fact addressed to the discretion of the trial court.” *Compania Anonima Venezolana De Navegacion v. M/V TIUNA*, No. 83-2509, 1985 WL 71277236 (S.D. Fla. Dec. 11, 1985) (citing *Gardner v. Panama R. Co.*, 342 U.S. 29, 30 (1951)).

The Court agrees with the Bankruptcy Court that rarely is there “a more clear-cut situation demanding the application of laches” than in the instant case. *In re Storick*, 2020 WL 211471, at \*6. The issues regarding dischargeability of his debt raised in Appellant’s Adversary Complaint could have been identified by Appellant as early as June 2010. Further, Appellant had numerous opportunities to raise these issues when he fought Appellee’s collection of the debt owed on other grounds in Delaware and Florida courts between 2010 and 2015. Instead, Appellant inexcusably waited nearly a decade to assert that his debt was discharged in the 2009 Bankruptcy Case. The Court also finds it undoubtedly the case that Appellee “has been (and continues to be) unduly prejudiced by Storick’s ten-year delay in seeking declaratory relief that directly contradicts the explicit terms of the Amended Settlement.” *Id.* Therefore, the Bankruptcy Court acted within its discretion in concluding that Appellant’s claims in the Adversary Proceeding are barred by the doctrine of laches.

## B. Equitable Estoppel

“Equitable estoppel is based on principles of fair play and essential justice and arises when one party lulls another party into a disadvantageous legal position.” *Starbuck v. R.J. Reynolds Tobacco Co.*, 349 F. Supp. 3d 1223, 1228 (M.D. Fla. 2018) (citation omitted). The doctrine is “designed to aid the law in the administration of justice where without its aid injustice might result.” *Deshong v. Seaboard Coast Line R.R. Co.*, 737 F.2d 1520, 1522 (11th Cir. 1984). A claim of equitable estoppel generally requires “(1) a representation by the party estopped to the party claiming the estoppel as to some material fact, which representation is contrary to the condition of affairs later asserted by the estopped party; (2) a reliance upon this representation by the party claiming the estoppel; and (3) a change in the position of the party claiming the estoppel to his detriment, caused by the representation and his reliance thereon.” *Seidle v. GATX Leasing Corp.*, 45 B.R. 327, 330-31 (S.D. Fla. 1984).

As the Bankruptcy Court held, the application of equitable estoppel is appropriate in the instant case. First, it is clear from representations made by counsel at the hearing regarding the entry of the Amended Settlement Conference that both parties were in agreement that the debt owed by Appellant to Appellee was to be deemed non-dischargeable:

**THE COURT:** Okay. So you are not stipulating that the debt is non-dischargeable, or you are?

**MR. FREEDMAN [Counsel for Appellee]:** No, the debtor is stipulating that the debt is nondischargeable –

. . . .

**MR. NEIWIRTH [Counsel for Appellant]:** . . . . We went back to the table, we talked it over, and, essentially, we’ve done the same settlement, but with no promise of payment. *The debtor signed off on it. He signed the agreement. We understand the debt is non-dischargeable, and that they’re entitled to get a judgment.* And then I wish them luck with what they get to do with it, because he’s probably never more judgment proof that he is today.

DE 5-4 at 738-39, 741 (emphasis added).

As for reasonable reliance, the record shows that Appellee reasonably relied upon Appellant's "(i) agreement to the Amended Settlement (including the Non-Dischargeability Provision and Judgment Provision), (ii) joint request with CFG for court approval of the Amended Settlement, (iii) acquiescence to entry of the Delaware Judgment, and (iv) failure to challenge the dischargeability of the CFG Debt in either the Delaware Litigation or the Florida Litigation." *In re Storick*, 2020 WL 211471, at \*7. And, this reasonable reliance has been to Appellee's great detriment in the form of the below Adversary Proceeding and attorneys' fees. Therefore, the Bankruptcy Court acted within its discretion in concluding that Appellant's claims in the Adversary Proceeding are barred by equitable estoppel.


As the Court has affirmed the Bankruptcy Court's regarding the issues of the application of the doctrine of laches and equitable estoppel, the entire Order is affirmed and there is no need to address the other arguments Appellant raised on appeal.

#### V. CONCLUSION

For the reasons set forth above, the Bankruptcy Court's Order Granting Defendant's Converted Motion for Summary Judgment, Denying Plaintiff's Cross-Motion for Summary Judgment, and Cancelling Pre-Trial Conference, entered January 13, 2020, is **AFFIRMED**. The Clerk of the Court shall **CLOSE THIS CASE**.

**DONE and ORDERED** in Chambers, West Palm Beach, Florida, this 21st day of January, 2021.

Copies furnished to Counsel of Record

  
ROBIN L. ROSENBERG  
UNITED STATES DISTRICT JUDGE