NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	CHAPTER 7
Elliot Howard Gourvitz, Debtor.	CASE NO. 05-25397 (NLW)
Barry McTiernan & Moore, Plaintiffs,	ADVERSARY NO.: 05-2522
v.	
Elliot Howard Gourvitz, Defendant.	**OPINION**

Before: HON. NOVALYN L. WINFIELD

A P P E A R A N C E S :

Gary F. Eisenberg, Esq.
Syreeta Carrington, Esq.
Windels, Marx, Lane & Mittendorf, LLP
120 Albany Street Plaza
New Brunswick, NJ 08901
Attorneys for Barry McTiernan & Moore

John F. Bracaglia, Jr.
Cohn, Bracaglia & Gropper
275 East Main Street
PO Box 1094
Somerville, NJ 08876
Attorney for Elliot Howard Gourvitz

INTRODUCTION

Before this Court is a Motion for Summary Judgment brought by the Debtor, Elliot Howard Gourvitz ("Mr. Gourvitz"), to dismiss the adversary complaint of the Creditor/Plaintiff, Barry, McTiernan & Moore (the "Law Firm"). The adversary complaint seeks to prevent Mr. Gourvitz from discharging the legal fees he owes to the Law Firm. The legal fees were incurred in the collection of a judgment which was entered against Mr. Gourvitz under the New Jersey Law Against Discrimination ("LAD"). Mr. Gourvitz contends that the legal fees are unrelated to the underlying LAD Judgment and are debts which are dischargeable in bankruptcy. The law firm argues that the legal fees are integral to the underlying LAD Judgments against Mr. Gourvitz and are subject to exemption from discharge in bankruptcy under 11 U.S.C. § 523(a)(6).

As more fully explained below, this Court denies Mr. Gourvitz's summary judgment motion.

JURISDICTION

The Court has jurisdiction to review and determine this matter pursuant to 28 U.S.C. §§ 1334 and 157(a), and the Standing Order of Reference issued by the United States District Court for the District of New Jersey on July 23, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I). The following constitutes this Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure § 7052.

STATEMENT OF FACTS

Mr. Gourvitz filed for chapter 7 bankruptcy protection on May 6, 2005. The Law Firm filed an adversary complaint requesting that the attorney fees due to the Law Firm be excepted from discharge.[1] As further described below, the debts owed to the Law Firm are for attorney's fees awarded in state court as a result of the Law Firm's efforts to enforce judgments entered against Mr. Gourvitz and his law firm.[2] The underlying judgments against Mr. Gourvitz (the "LAD Judgments") arose from a claim brought by Helen Rokos under the New Jersey Law Against Discrimination ("LAD"). N.J.S.A. 10:5-1 et. Seq. After the LAD Judgments were entered, Mr. Gourvitz entered into a settlement which satisfied her claim. Helen Rokos is neither a party to this adversary proceeding, nor a creditor of the estate.

Mr. Gourvitz argues that since the underlying LAD judgments were paid as a consequence of his settlement with Helen Rokos, the additional judgments which the Law Firm now seeks to except from discharge are merely unrelated collection fees, and are not of a nature to be excepted from discharge. The Law Firm's position, however, is that the additional attorney fee judgments

---

[1] The Law Firm seeks the following relief: 1) to have all debts owed by Mr. Gourvitz to the Law Firm declared non-dischargeable pursuant to 11 U.S.C. 523 (a)(6); 2) an award of compensatory and consequential damages; 3) a declaration that the Law Firm "may enforce its claims against [Mr. Gourvitz] as if this case had not been filed"; (4) an award of attorneys' fees and costs; and 5) for such other relief as the Court deems just and equitable. (Certification of Elliot Gourvitz in Support of Motion for Summary Judgment ("Gourvitz Cert."), Ex. A (Adversary Complaint to Oppose Dischargeability of Debt ("Complaint") at p. 6)).

[2] The parties have not provided the Court with a full record of the prepetition litigation. The Court has attempted to piece together the history of this litigation primarily from a handful of exhibits and certifications that have been submitted by the parties. In particular, the Court has relied on two separate state court opinions - one rendered by the New Jersey Superior Court, Law Division, Essex County and the other by New Jersey Superior Court, Appellate Division. (Certification of Richard Wedinger in Opposition to Motion for Summary Judgment ("Wedinger Cert."), Exs. D and E.).

are so inextricably linked to the underlying LAD Judgments that they are part of the LAD Judgments, which the Law Firm asserts is a nondischargeable a debt under 11 U.S.C. 523(a)(6).

The parties engaged in extensive litigation in the Superior Court of the state of New Jersey both before and after Mr. Gourvitz filed for bankruptcy. The following is a brief summary of some of the relevant proceedings leading up to the bankruptcy, the adversary complaint filed by the Law Firm, and the summary judgment motion filed by Mr. Gourvitz.

The LAD Claim

Prepetition, the Law Firm represented Helen Rokos in her claim against Mr. Gourvitz and his law firm, Elliot H. Gourvitz, P.A. ("Gourvitz, P.A."), in the Superior Court of New Jersey, Law Division, Essex County (the "LAD Litigation").

The trial commenced on June 17, 2002 and jury verdicts were reached in favor of Helen Rokos on June 25, 2002 in the amount of $300,000.00 for compensatory damages and on June 26, 2002 in the amount of $5,000 for punitive damages.[3] (Wedinger Cert., Ex. B.). Following the jury

[3] The jury charge instructed the jury that in order to award punitive damages, the jury must find "the discrimination was especially egregious." (Supplemental Certification of Gary F. Eisenberg in Further Opposition to Motion for Summary Judgment ("Eisenberg Cert."), Ex. D.) The jury charge defined "especially egregious behavior" as:

> conduct that is motivated by actual malice, or that was done with a willful and wanton disregard for the rights of the Plaintiff. Actual malice means that the discrimination by the Defendant was intentional wrongdoing in the sense of an evil minded act designed, intended and done specifically to injure the Plaintiff. Willful and wanton disregard of the rights of the Plaintiff means that the discrimination of Gourvitz amounted to deliberate acts done with the knowledge of a high degree of probability of harm to the Plaintiff, and reckless indifference to the consequences of that act.
>
> In making your determination as to whether the discrimination of the Defendant was especially egregious or outrageous, you must consider all of the evidence surrounding the wrongful conduct including
>
> 1. The likelihood that serious harm would arise from the discrimination.

verdicts, judgments were entered in favor of Helen Rokos (i) on August 30, 2002 for $344,590 on account of $305,000 in damages, $39,386 in prejudgment interest and $204.00 in costs, and (ii) on October 15, 2002 for $195,463.36 on account of attorney fees[4] in the amount of $152,061.22, costs of $5,386.84 and an enhancement of $38,015.30 (collectively, the "LAD Judgments"). (Wedinger Cert., Ex. B).

Enforcement of the LAD Judgments and Related State Court Litigation

The matter becomes complicated after the entry of the LAD Judgements. The extensive litigation between the parties to enforce the LAD Judgements produced a series of state court orders and appeals and resulted in control of Gourvitz P.A. being placed with a receiver. It also appears that the combined effect of the LAD litigation and the appointment of the receiver was the impetus for Mr.Gouvitz' bankruptcy filing.

According to Richard Wedinger ("Wedinger"), a member of the Law Firm, Mr. Gourvitz and Gourvitz , P.A. appealed the LAD Judgements in addition to "interim collection rulings, all of which ultimately were affirmed on appeal." (Wedinger Cert. at ¶ 5). In 2004 and 2005, the Law Firm was granted three subsequent judgments for attorney fees incurred to collect the LAD Judgments for

---

2. Gourvitz's awareness or reckless disregard of the likelihood that serious harm would arise.

Id.

[4]N.J.S.A. 10:5-27.1 states in relevant part:

In any action or proceeding brought under this act, the prevailing party may be awarded a reasonable attorney's fee as part of the cost, provided however, that no attorney's fee shall be awarded to the respondent unless there is a determination that the complainant brought the charge in bad faith.

Helen Rokos (the "Attorney Fee Awards"). The Attorney Fee Awards were granted as follows: (i) on October 25, 2004, upon a cross-motion brought by the Law Firm, the state court entered an order of judgment against Mr. Gourvitz and Gourvitz, P.A., individually and jointly, and in favor of the Law Firm in the total amount of $59,023.51; (ii) on February 28, 2005, upon a motion brought by the Law Firm, the state court entered an order of judgment against Mr. Gourvitz and Gourvitz, P.A, individually and jointly and in favor of the Law Firm in the total amount of $18,814.76; and (iii) on February 28, 2005, upon a motion brought by the Law Firm, the state court entered an order of judgment against Mr. Gourvitz and Gourvitz, P.A., individually and jointly and in favor of the Law Firm in the total amount of $22,022.27.[5] (Wedinger Cert., Ex. C). Mr. Wedinger certifies that the Law Firm "had to undertake substantial collection efforts" and was awarded the above-described three judgment orders for those efforts. (Wedinger Cert. at ¶6).

The February 28, 2005 Opinion

On February 28, 2005, the Honorable James S. Rothschild issued a written decision on the motion by Helen Rokos to hold Mr. Gourvitz in contempt for his failure to comply with prior court orders. (Wedinger Cert., Ex. D ("Feb. 28, 2005 Opinion")). Judge Rothschild found that Mr. Gourvitz's failure to abide by various court orders was contumacious. Feb. 28, 2005 Opinion at p.3. Although some remedies were imposed by Judge Rothschild, he declined to incarcerate Mr. Gourvitz because Mr. Gourvitz had finally funded a settlement with Helen Rokos. Id. at p.5-6. It appears that in January, 2005 certain real estate was refinanced and the refinance proceeds together

[5]Although the judgments are against both Mr. Gourvitz and Gourvitz, PA, this opinion only concerns Mr. Gourvitz.

with monies received from prior collection efforts were utilized to settle Mr. Gourvitz obligation to Helen Rokos arising from the LAD Judgements.[6] Id. at p.2, ¶ 6.

Mr. Gourvitz objected to imposition of any remedies for his conduct and further objected to the Law Firm's prosecution of the motion for contempt arguing that the Law Firm did not possess standing. Judge Rothschild was not persuaded by Mr. Gourvitz' argument. The Court determined that "[t]he standing issue can be resolved by noting that the debt to Rokos' lawyers grew out of this case and is part of the case ...." Feb. 28, 2005 Opinion at page 6. In reaching its decision, the Court cited several cases that set forth the threshold for standing under New Jersey law, which the Court described as a "fairly low" standard. Id.[7] Judge Rothschild also cited Tanksley v. Cook, 360 N.J. Super. 63 (App. Div. 2003) as a basis for his conclusion.

---

[6]The February 28, 2005 Opinion noted that the settlement did not encompass the Attorney Fee Awards which resulted from the Law Firm's efforts on behalf of Helen Rokos to collect on the LAD Judgements.

[7] In the Feb. 28, 2005 Opinion, Judge Rothschild relied upon James v. Arms Technology, Inc. 359 N.J. Super. 291, 320 (App. Div. 2003), among other cases. The James court described New Jersey's standing requirement as follows:
"In deciding a question of standing, New Jersey courts must 'balance conflicting considerations and weigh questions of remoteness and degree.' ... However, 'New Jersey cases have historically taken a much more liberal approach on the issue of standing than have the federal cases.' ... Our courts have deemed "the threshold for standing to be fairly low.' ... Standing 'involves a threshold determination which governs the ability of a party to initiate and maintain an action before the court.' ... New Jersey courts confer standing in those cases where the party's concern with the subject matter of litigation evidences 'a sufficient stake and real adverseness.' ... In making that determination, we give 'due weight to the interests of individual justice, along with the public interest, always bearing in mind that throughout our law we have been sweepingly rejecting procedural frustrations in favor of 'just and expeditious determinations on the ultimate merits.' ... A financial interest in the outcome of litigation is ordinarily sufficient to confer standing. ... However, a litigant does not have standing to assert a right of a third party." James, 359 N.J. Super at 320-21. (Internal citations omitted).

The February 8, 2006 Appellate Division Opinion

On February 8, 2006, the Appellate Division of the New Jersey Superior Court issued a per curiam decision on the multiple appeals filed by Mr. Gourvitz. (Wedinger Cert., Ex. E. ("Appellate Division Opinion")). The Appellate Division recounted the relevant history of the case as follows:

> In June 2002, plaintiff [Helen Rokos] obtained a jury verdict against appellant [Mr. Gourvitz] in her Law Against Discrimination complaint. Pursuant thereto, a judgment was entered for $344,590, with interest. An additional judgment of $195,463.36 was entered for counsel fees. Appellant's [Mr. Gourvitz'] appeal therefrom was unsuccessful. Plaintiff [Helen Rokos] commenced efforts to obtain satisfaction of the judgment. In early 2004, appellant [Mr. Gourvitz] agreed, pursuant to a payment plan, to pay $350,000 in settlement of the judgment. He did not make the required payments and so plaintiff [Helen Rokos] again commenced enforcement efforts, resulting in September 24, 2004, and October 26, 2004, orders for incarceration, an October 25, 2004, order awarding plaintiff [Helen Rokos] counsel fees, and a February 28, 2005 , order awarding plaintiff [Helen Rokos] additional counsel fees. Appellant appeals these orders, along with an order of November 15, 2004, denying his motion to sanction plaintiff's attorney for violation of a confidentiality agreement.

Appellate Division Opinion at p. 2.

The Appellate Division listed the points raised by Mr. Gourvitz on appeal:

I The trial court abused its discretion by applying Rule 1:10-3 to incarcerate defendant in a civil action.

II Counsel fees incurred by Plaintiff's attorneys were 'fruits of the poisonous tree,' i.e. Plaintiff and the Court misapplied Rule 1:10-3 and, as such , based upon the misapplication, the counsel fee award should be reversed.

III As the within matter is no longer an L.A.D. case, and for the last two years it has become a collection case, Plaintiff's attorneys are not entitled to a counsel fee award.

IV There should be no award of counsel fees to plaintiff's attorney subsequent to fair offer of settlement, which plaintiff rejected and based upon the Court's indication that it would be reluctant to award any counsel fees subsequent to said date.

V The Court erred in denying defendant's motion to sanction Plaintiff's attorney's violation of the confidentiality agreement of the Court ordered settlement.

Id. at p. 3.[8] Notably, Point III above is identical to Mr. Gourvitz's argument in support of the pending summary judgment motion.

The Appellate Division ruled against Mr. Gourvitz. Particularly pertinent to the matter sub judice, the Appellate Division relied upon Tanksley v. Cook, 360 N.J. Super. 63, 66 (App. Div. 2003), to find that as for the second, third and fourth points raised by Mr. Gourvitz there was "no abuse of discretion in the award of counsel fees incurred in an effort to obtain enforcement of plaintiff's LAD judgments and the subsequent settlement thereof." Id. at p. 3-4.

Mr. Gourvitz petitioned for certification to the New Jersey Supreme Court. The petition for certification was denied with costs in April of 2006. (Eisenberg Cert., Ex. B). In Mr. Gourvitz's petition for certification he requested Supreme Court review of the following contentions:

> the Court left stand the counsel fees awards to Plaintiff's counsel as an impermissible extension of N.J.S.A. 10:5-27.1 despite the fact that, except for the payment of the initial judgment, the matter became a simple collection case.
> N.J.S.A. 5:27-1 provides attorney's fees for the prevailing party for Defendant's violation against the law against discrimination. The award of counsel fees is restricted to actions brought under the act and does not extend to collection matters post-judgment, as opposed to the payment being made over the collection process in which there was no money to pay the judgment.

(Eisenberg Cert., Ex. C).

---

[8] The Appellate Division found Mr. Gourvitz' first point was moot since Mr. Gourvitz was never incarcerated, Mr. Gourvitz paid his debt to Helen Rokos and the Law Firm conceded that the incarceration orders were no longer effective and could not be used to procure the attorneys fees. Appellate Division Opinion at p.7. The court further determined that the fifth point was "of insufficient merit to warrant an opinion." Id.

DISCUSSION

Fed.R.Civ.P.56(c), which is made applicable to this adversary proceeding through Fed.R.Bankr.P. 7056, provides the standard that must be met before summary judgment may be granted. Rule 56(c) states in relevant part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

A material fact is one that "might affect the outcome of the case, and an issue is genuine if the evidence is such that a reasonable fact finder could return a verdict in favor of the nonmovant." In re Headquarters Dodge, Inc. 13 F.3d 674, 679 (3d Cir. 1994). (Citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). Substantive law determines which facts are material and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. at 248.

The initial burden is on the moving party to point to " those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The Court must view the facts in the light most favorable to the non-moving party. Matsushita Electric Industrial Co. V. Zenith Radio Corp., 475 U.S. 574, 587 (1986). Thereafter, if the moving party meets its burden, the burden shifts to the nonmoving party to identify specific facts which demonstrate there is a genuine issue of material fact for trial. Fed.R.Civ.P. 56(e).

Mr. Gourvitz and the Law Firm largely agree on the material facts underlying the summary judgment motion.. For example, the existence of the LAD litigation, the resulting LAD Judgements and the Attorney Fee Awards are not in dispute. However, the parties have significantly different views as to the legal effect of those facts. The Court is persuaded that the legal authorities and analysis provided by the Law Firm properly set forth the framework for deciding this motion. In addition, certain issues raised by Mr. Gourvitz have already been decided against him and in favor of the Law Firm in state court and those decisions are given preclusive effect here.

Issue Preclusion

Mr. Gourvitz questions the Law Firm's "standing" to pursue its complaint under 11 U.S.C. 523(a)(6). Specifically, Mr. Gourvitz states the following, in relevant part:

> *Plaintiff Cannot Rely Upon 11 U.S.C. § 523(a)(6) Because Helen Rokos Is Not A Party In This Action And Plaintiff Is Not Purporting to Represent Her.*
>
> As a preliminary matter, it should be noted that plaintiff cannot even rely upon the narrow exceptions of 11 U.S.C. § 523(a)(6) for protection as plaintiff has no standing to assert this exception.
>
> It is not clear if plaintiff is arguing that plaintiff's claim is a continuation of the state court action or if plaintiff is asserting an independent cause of action. That is to say that it is not clear if plaintiff is trying to link its claims to that of any which Helen Rokos may have had. Gourvitz Cert. ¶12-13. If that is the case, then a number of things must be clarified.
>
> The first is that Helen Rokos is not a party to these proceedings.
>
> The second is that even if she was a party to these proceedings, plaintiff would still have no standing on her behalf as plaintiff elected to file its adversary complaint in plaintiff's own capacity (and not on behalf of Helen Rokos).

> The third is that even if plaintiff amended its complaint to state that it was representing Helen Rokos, the fact is that Helen Rokos accepted payment in full under the ordered settlement and she no longer has any claim against defendant. Gourvitz Cert. ¶8. The ordered-settlement contains standard settlement language regarding no-admission of liability.

(Memorandum of Law in Support of Motion for Summary Judgment ("Gourvitz Br.") at pp. 9-10).

Mr. Gourvitz's argument that the Law Firm lacks "standing" is actually an argument that the Law Firm is not a proper plaintiff in this adversary proceeding. In other words, Mr. Gourvitz argues that because the Law Firm was not the plaintiff in the LAD suit, it cannot claim that the attorney fees resulting from its collection efforts are non-dischargeable under §523(a)(6). Mr. Gourvitz posits that the collection of the LAD judgment must be viewed as separate and distinct from the LAD claim itself. Thus, the issue before this Court is whether attorney fees awarded in connection with collection of the LAD Judgments should be viewed as part of the LAD Judgments. When framed in this manner, resolution of the issue and the summary judgment motion require consideration of the doctrine of issue preclusion. Both the Superior Court and the Appellate Division have determined that the attorney fees awarded to the Law Firm for its efforts to collect the LAD Judgments for Helen Rokos are part of the LAD Judgments.

It is recognized that "[n]ondischargeability actions frequently involve legal issues that have already been litigated between the parties prior to the bankruptcy case." 4 COLLIER ON BANKRUPTCY ¶ 523.06 (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2006). Issue preclusion, also referred to as collateral estoppel, can be applied in a non-dischargeability action to bar a party from re-litigating issues that have already been decided in a different court. Grogan v Garner, 498 U.S. 279 (1991); In re Docteroff, 133 F.3d 210, 214 (3d Cir. 1997) ("Collateral estoppel

prohibits the relitigation of issues that have been adjudicated in a prior lawsuit. The principles of collateral estoppel apply in discharge proceedings in bankruptcy court.")

Federal courts look first to state law to determine whether a matter decided in state court should be given preclusive effect in a federal proceeding. In re Hawkins, 231 B.R. 222, 228-29 (D.N.J. 1999) (citing Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 379 (1985)) ("under the Full Faith and Credit Statute federal courts must first look to the law of the state where the judgment was rendered in order to determine the judgment's preclusive effect on subsequent federal proceedings."). Therefore, this Court looks to New Jersey law on issue preclusion.

Under New Jersey law, the party asserting the doctrine must meet the following five prong test:

> (1) the issue must be identical; (2) the issue must have actually been litigated in a prior proceeding; (3) the prior court must have issued a final judgment on the merits; (4) the determination of the issue must have been essential to the prior judgment; and (5) the party against whom collateral estoppel is asserted must have been a party or in privity with a party to the earlier proceeding.

Delaware River Port Authority v. Fraternal Order of Police, 290 F.3d 567, 573 (3d Cir. 2002) (citing In re Estate of Dawson, 136 N.J. 1, 641 A.2d 1026, 1034-35 (1994)).

In the matter at hand, all the criteria for application of issue preclusion are met and the Court finds that the issue of whether the Law Firm has "standing" to pursue the "attorney fee awards" has been fully litigated in the state court. It bears emphasis that this matter has been the subject of vigorous and extensive litigation. Mr. Gourvitz, who is an attorney, was represented by counsel and actively pursued appeals of the various decisions rendered in connection with the LAD judgments. In the contempt motion before Judge Rothschild and the appeal to the Appellate Division the issue of whether the Attorney Fee Awards constituted part of the LAD Judgments was squarely addressed.

Finally, both Courts explicitly relied upon Tanksley v. Cook, 360 N.J. Super. 63 (N.J. App. Div. 2003) to hold that the counsel fees incurred in the effort to enforce Helen Rokos' LAD judgments are part of the underlying LAD action. Plainly, issue preclusion bars Gourvitz from re-litigating the issue before this Court, and requires denial of his summary judgment motion.

Tanksley v. Cook Provides Independent Authority for the Attorney Fee Awards to be considered as part of LAD Awards

Even if issue preclusion did not apply, the Court is persuaded that Tanksley v. Cook requires that the Attorney Fee Awards be treated as part of the LAD Judgments.

In Tanksley v. Cook, the Appellate Division reviewed the trial court's denial of a motion requesting an award of attorney fees incurred in collection efforts to enforce a verdict under the Consumer Fraud Act ("CFA").[9] In the underlying CFA action the plaintiff was awarded treble damages and counsel fees. Plaintiff's attorney commenced collection efforts, invested time and effort to investigate the defendant's assets and eventually obtained a writ of execution. Thereafter, the entire underlying CFA award was paid "to avoid imminent towing of vehicles from defendant's used car lot." Id. at 65. When Plaintiff moved for attorneys' fees and costs incurred in the collection efforts, the trial court denied plaintiff's request on the basis that there seemed to be a "certain piling on aspect to it." Id.

The Appellate Division reversed the trial court and allowed the fees as part of the underlying CFA judgment. In doing so, the Appellate Division rejected what it described as the trial court's belief that "plaintiff needed to prove some fraudulent or deceitful post-judgment conduct designed

[9] Under the fee-shifting provision of the Consumer Fraud Act ("CFA"), the prevailing party may recover attorneys' fees and costs. N.J.S.A. 56:8-19.

to thwart the collection process before plaintiff could prevail on this application." Id. at 65-66. The Appellate Division outlined the underlying policy considerations of the CFA and other similarly remedial legislation. It particularly noted the holding in Balark v. Curtin, 655 F.2d 798, 803 (7th Cir. 1981) regarding civil rights judgements:

> The compensatory goals of the civil rights laws would thus be undermined if fees were not also available when defendants oppose the collection of civil rights judgments. An award of compensation for injuries sustained as a result of unconstitutional state action would be "diluted" if fees were denied to plaintiffs required to contest substantial efforts to resist or obstruct the collection of civil rights judgments. The victory would be hollow if plaintiffs were left with a paper judgment not negotiable into cash except by undertaking burdensome and uncompensated litigation.

Id. at 68.[10]

The Tanksley Court determined that denial of the attorneys fees would leave the plaintiff in the matter before it "less than whole and dilute the damage award intended by the Legislature against fraudulent merchants." Id. The same rationale is readily applicable to efforts to collect LAD Judgments.

---

[10]The Appellate Division also cited approvingly the following observation made by the Eleventh Circuit in Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292, 1305 (11th Cir. 1988):

> The law seeks to compensate attorneys for work reasonably done actually to secure for clients the benefits to which they are entitled. In many class actions, whether ended by judgment after trial or by consent decree, the order of the court does not always secure the actual benefit and additional legal work may be required. To paraphrase the acute observation of baseball great Yogi Berra, a case ain't over till it's over. This means that class counsel are entitled to compensation until all benefits obtained by the litigation are in hand. Hence, hours reasonably expended on post-decree administration are compensable. The case is remanded for an award for this work.

Tanksley, 360 N.J. Super at 67.

Mr. Gourvitz has also attempted to distinguish Tanksley from the current matter on the basis that Tanksley addressed the Consumer Fraud Act which contains a mandatory fee shifting provision. He notes that the fee provision in the LAD statute is discretionary and does not require the court to award fees to a prevailing plaintiff. However, the overriding remedial statutory purpose and policy of both statutes is largely the same. Notably, the Court in Tanksley relied on similar remedial policies underlying civil rights actions. Nothing in the Court's analysis suggests that the mandatory nature of the fee provision was critical to the decision in Tanksley.

This Court finds that the LAD statute is remedial in nature, and a type of civil rights statute. The award of counsel fees in connection with collection of LAD Judgments must likewise be viewed as closely connected to, and in furtherance of, the remedial purpose of the LAD statute. It would similarly make a victory under the LAD statute a hollow victory if the unrecompensed cost of achieving satisfaction of a judgment devalued a judgment in favor of a LAD plaintiff.

As a consequence, if the Law Firm establishes that under § 523(a)(6) the LAD judgments constitute a debt "for willful and malicious injury by the debtor to another entity," then under Cohen v. de la Cruz, 523 U.S. 213 (1998) the Attorney Fee Awards are also non-dischargeable. In de la Cruz, the Supreme Court considered whether § 523(a)(2) excepts from discharge only those damages directly attributable to the actual fraud, or whether all liability attributable to the fraud (treble damages as well as attorney fees and costs) is non-dischargeable. Justice O'Connor concluded that the use of the phrase "debt for" did not impose a restitutionary ceiling on a § 523(a)(2) debt thereby limiting the debt to its initial value. Id. at 219-20. She pointed out that "... 'debt for' is used throughout [§523] to mean 'debt as a result of,' 'debt with respect to,' 'debt by reason of,' and the

like..." Id. at 220. Thus, if the LAD judgments are non-dischargeable, then the Attorney Fee Awards are likewise non-dischargeable.

Effect of the Settlement

To the extent that Mr. Gourvitz argues that this Court should dismiss the Law Firm's non-dischargeability claim because the settlement agreement with Helen Rokos transformed the original LAD judgments into a claim based in contract rather than tort, his argument also fails.

This issue is resolved by the analytical framework and holding of Archer v. Warner, 538 U.S. 314 (2003). In Warner, prior to filing bankruptcy, the debtor settled a state court fraud suit by executing a promissory note in favor of the state court plaintiff. After the bankruptcy filing, the state court plaintiff filed an adversary proceeding seeking to exempt the debt from discharge under 11 U.S.C. § 523(a)(2). The bankruptcy court, district court, and the Fourth Circuit Court of Appeals all found the debt dischargeable in bankruptcy. The Fourth Circuit found that the settlement amounted to a novation which replaced the "old potential debt" based on fraud with a "new" contractual debt. Warner, 538 U.S. at 318. The Supreme Court disagreed, relying on its earlier decision in Brown v. Felsen, 442 U.S. 127 (1979). Among the determinations reached by Justice Breyer in the majority opinion was the following:

> Despite the dissent's protests to the contrary... what has *not* been established here, as in Brown, is that the parties meant to resolve the *issue* of fraud or, more narrowly, to resolve that issue for purposes of a later claim of non-dischargeability in bankruptcy.

Id. at 322. Similarly, in the present matter there is nothing in the record before the Court that demonstrates that the settlement between Mr. Gourvitz and Helen Rokos was directed at settlement of any nondischargeability issues.

CONCLUSION

For the reasons outlined above, the Debtor's Summary Judgment motion is denied.