

**UNITED STATES BANKRUPTCY  
COURT DISTRICT OF CONNECTICUT  
BRIDGEPORT DIVISION**

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In re:	:	
	:	CHAPTER 7
ERICK A. ROYER,	:	
	:	CASE NO. 16-51314(JAM)
Debtor.	:	
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SOUNDVIEW F.C.U.,	:	
	:	
Plaintiff.	:	ADVERSARY PROCEEDING
	:	
V	:	NO. 17-05002 (JAM)
	:	
ERICK A. ROYER	:	RE: ECF Nos. 10, 11, 12
	:	
Defendant.	:	
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**RULING AND ORDER DENYING DEBTOR’S MOTION TO DISMISS**

Pursuant to 11 U.S.C. § 523<sup>1</sup>, Soundview F.C.U (the “Plaintiff”), a secured creditor of the Debtor, filed a complaint seeking to have the debts owed to it by the Debtor deemed nondischargeable (the “Complaint”, ECF No. 1). The Debtor filed a Motion to Dismiss the Complaint (the “Motion to Dismiss”, ECF No. 10). For the reasons set forth below, the Motion to Dismiss is **DENIED**.

**I. Background**

The Debtor executed two credit applications with the Plaintiff on August 10, 2009, and October 20, 2009, in order to obtain car loans. The Debtor subsequently defaulted on his loan obligations. The Plaintiff sued to collect the outstanding debt and obtained two default

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<sup>1</sup> The Plaintiff does not specify which subsection of § 523 forms the basis of its Complaint. Unless otherwise specified, all future statutory references are to Title 11 of the United States Code.

judgments against the Debtor on its contract claims in the Connecticut Superior Court (the “debt/default judgments”).<sup>2</sup>

On October 1, 2016, the Debtor filed for relief under Chapter 7 of the Bankruptcy Code. On January 3, 2017, the Plaintiff commenced this adversary proceeding against the Debtor, seeking to establish that the debt/default judgments are nondischargeable under § 523. The Complaint is brought based on the same facts underlying the debt/default judgments.

On February 2, 2017, the Debtor filed the Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) (the “Rule 12”), made applicable to adversary proceedings by Fed. R. Bankr. P. 7012, and a brief in support of the Motion to Dismiss (ECF No. 11). On February 17, 2017, the Plaintiff filed an objection to the Motion to Dismiss (ECF No. 12). A hearing was held on the Motion to Dismiss on March 7, 2017. At the conclusion of the March 7<sup>th</sup> hearing, the Court took the Motion to Dismiss under advisement.

## **II. Legal Standard**

When reviewing a Rule 12 motion to dismiss for failure to state a claim, the court must accept all factual allegations set forth in a complaint as true and draw all reasonable inferences in a plaintiff’s favor. *See Sasmor v. Powell*, 554 Fed. Appx. 67, 68 (2d Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A claim will survive a Rule 12 motion to dismiss only if a complaint alleges “enough facts to state a claim to relief that is plausible on its face.” *Powell*, 554 Fed. Appx. at 68 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Iqbal*, 556 U.S. at 678. “A claim will have ‘facial plausibility when the plaintiff pleads

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<sup>2</sup> Although this information appears only in the Motion to Dismiss and not in the Complaint, the Debtor represents that on April 16, 2012, the Connecticut Superior Court entered a default judgment against the Debtor in the amount of \$2,854.09, plus costs and interest. *See* Ex. 4 of Debtor’s Brief In Support of Motion to Dismiss, ECF No. 11. On July 16, 2012, the Connecticut Superior Court entered another default judgment against the Debtor in the amount of \$13,670.27, plus costs and interest. *See* Ex. 8 of Debtor’s Brief In Support of Motion to Dismiss, ECF No. 11.

factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Powell* at 68 (quoting *Iqbal* at 678).

### III. Analysis

The Debtor asserts three arguments in support of the Motion to Dismiss: (i) The Complaint fails to state a claim under § 523; (ii) The Complaint is barred by res judicata and/or collateral estoppel; and (iii) The Complaint is barred by the applicable statute of limitations.

The Debtor's claim that the Complaint fails to state a claim under § 523 is without merit. The Complaint specifically alleges § 523 causes of action. The Plaintiff alleges it was induced to extend credit to the Debtor based on information in the August 10, 2009 credit application, and the October 20, 2009 credit application, that the Debtor submitted to the Plaintiff in order to obtain car loans (the "Applications"). *See* Complaint at 2-3. The Plaintiff further alleges that the Applications did not disclose all of the Debtor's debts, overstated the Debtor's income and assets, failed to state his ownership interest in RC Universe.Com and/or other entities, failed to provide his tax returns or profit and loss statements for his business, and that the Debtor knew that the Applications were inaccurate when he submitted the Applications to the Plaintiff. *See id.*<sup>3</sup> These allegations squarely fall under § 523(a)(2)(A) and/or (B).

To state a claim for nondischargeability under § 523(a)(2)(A), a creditor must establish that: (i) the debtor made the representations knowing they were false; (ii) the debtor made the representations with the intent and purpose of deceiving the plaintiff; (iii) the creditor justifiably relied on the debtor's false representations; and (iv) the creditor suffered a loss or damage as a proximate consequence of the representation having been made. 11 U.S.C. § 523(a)(2)(A). To state a claim for nondischargeability under § 523(a)(2)(B), a creditor must establish that a debt

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<sup>3</sup> The Debtor argues that: (i) he had no intent to defraud the Plaintiff; and (ii) there was no reliance by the Plaintiff as it should have screened the Debtor's financial condition pursuant to the terms of the credit applications. These issues are issues of fact for trial.

was obtained by “use of a statement in writing—(i) that is materially false; (ii) respecting the debtor’s or an insider’s financial condition; (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive.” 11 U.S.C. § 523(a)(2)(B). Viewing the Complaint in the light most favorable to the Plaintiff, and accepting all factual allegations set forth in the Complaint as true, the Court finds that the Complaint alleges sufficient facts to state a claim under § 523(a)(2)(A) and/or (B).

Furthermore, res judicata or collateral estoppel does not apply because the issue of nondischargeability under § 523(a)(2)(A) and/or (B) was not decided by the Connecticut Superior Court.<sup>4</sup> The debt/default judgments were for breach of contract, while the Complaint alleges nondischargeability for § 523(a)(2)(A) and/or (B). Lastly, the Debtor does not indicate which statute of limitations applies to the Complaint, and thus the Court will not address that argument.

#### **IV. Conclusion**

After careful consideration of the issues presented, the balancing of the relevant factors, a review of the case law cited herein, and pursuant to § 523(a)(2)(A) and (B), and Rule 12, it is hereby

**ORDERED:** The Motion to Dismiss is **DENIED**; and it is further

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<sup>4</sup> Because the default judgments were issued by a Connecticut court, their preclusive effect is analyzed under Connecticut law. *See In re Swirsky*, 372 B.R. 551, 562 (Bankr. D. Conn. 2006). Connecticut generally gives claim preclusive (res judicata) effect to default judgments. *See Slattery v. Maykut*, 176 Conn. 147, 157 (1978); *see also Wheeler v. Beachcroft, LLC*, 320 Conn. 146, 156-57 (2016) (Res judicata bars later litigation if an earlier decision was (1) “rendered on the merits by a court of competent jurisdiction; (2) the parties to the prior and subsequent actions must be the same or in privity; (3) there must have been an adequate opportunity to litigate the matter fully; and (4) the same underlying claim must be at issue.”); *Powell v. Infinity Ins. Co.*, 282 Conn. 594, 600-01 (2007) (“[Collateral estoppel] prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties or those in privity with them upon a different claim.... An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined.”).

**ORDERED:** A pretrial conference shall be held on April 24, 2018 at 11:00 a.m. to discuss, among other things, the need to enter a Pretrial Order in this adversary proceeding.

Dated at Bridgeport, Connecticut this 26th day of February, 2018.

*Julie A. Manning*  
Chief United States Bankruptcy Judge  
District of Connecticut

