

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND

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In re: :  
  
JON CHAFFEE : BK No. 09-12414  
Debtor : Chapter 7  
:  
COXCOM, INC., d/b/a :  
COX COMMUNICATIONS NEW ENGLAND :  
Plaintiff :  
  
v. : A.P. No. 09-1093  
  
JON CHAFFEE :  
Defendant :  
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**ORDER GRANTING SUMMARY JUDGMENT, DETERMINING DEBT TO BE  
NONDISCHARGEABLE, AND ENTERING MONETARY JUDGMENT**

APPEARANCES:

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**BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge**

Heard on CoxCom's Motion for Summary Judgment, and a determination that its monetary judgment against the Debtor is nondischargeable under § 523(a)(6), which excepts from discharge, "debts for willful and malicious injury by the debtor to another entity or to the property of another entity." This exception to discharge covers only "acts done with the actual intent to cause injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998). "Debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.* at 64, 118 S.Ct. 974, 140 L.Ed.2d 90. The focus under this subsection, therefore, is whether the Debtor actually intended to cause the damage done to Coxcom.

In this case the U.S. District Court for the District of Rhode Island, adopting in full Magistrate Judge Lincoln Almond's Report and Recommendation, granted CoxCom's Motion for Summary Judgment, on its complaint based upon § 553(1) of the Communications Act and § 1201 of the Digital Millennium Act Copyright Act. Based upon the facts, the arguments, and the undisputed evidence, the District Court ruled that the Debtor "sold cable television filters that provided free access to CoxCom's pay-per-view television services," and "specifically intended that the product be used for this illegal purpose." See *CoxCom, Inc. v. Jon Chaffee et al.*, 2006 U.S. Dist. LEXIS 46564 (April 25, 2006). Elaborating, the District Court stated:

It is clear that Defendants possessed specific knowledge concerning the illegal capabilities of the filters, and that Defendants, through their actions, specifically intended to assist others in using the filters for their illegal purpose.

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After a thorough review of the facts and the arguments presented, the Court concluded that the overwhelming, undisputed evidence supports a finding that Defendants had specific knowledge concerning the illegal use of the filters and that Defendants knew that their customers planned to (and did) use the filters for illegal purposes.

*Id.*

The Court of Appeals for the First Circuit affirmed the District Court's summary judgment ruling. *See CoxCom, Inc. v. Jon Chaffee et al.*, 536 F.3d 101 (1st Cir. 2008). Despite these unequivocal judicial setbacks, the Debtor, through his memoranda and oral arguments, attempts to persuade this Court to review, and to allow the Debtor to relitigate the findings and conclusions of a Federal Magistrate Judge, the District Court, and the United States Court of Appeals for the First Circuit. Substituting persistence and repetitiveness for merit, the Debtor seeks yet another bite at the apple here, on the ground that the issue of bankruptcy dischargeability has not been litigated, and that he is therefore

entitled to revisit his entire litany of charges against CoxCom, from the Section 523 vantage point.<sup>1</sup>

The principle(s) of collateral estoppel or issue preclusion, "bars relitigation of any factual or legal issue that was *actually* decided in previous litigation between the parties, whether on the same or a different claim." *Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 30-31 (1st Cir. 1994) (internal quotations omitted) (emphasis in original). For issue preclusion to apply, four elements must be present:

- (1) the issue sought to be precluded must be the same as that involved in the prior action;
- (2) the issue must have been actually litigated;
- (3) the issue must have been determined by a valid and binding final judgment; and
- (4) the determination of the issue must have been essential to the judgment.

*Id.* "An issue may be actually decided even if it is not *explicitly* decided, for it may have constituted, logically or practically, a necessary component of the decision reached in the prior litigation." *Id.* (emphasis in original).

If the issues in this Section 523 proceeding are not identical, they were easily and comprehensively subsumed within the very similar factual issues that were litigated and decided at the

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<sup>1</sup> The Debtor's decision to devote so much time and effort in support of his contention that he has been the target of a personal vendetta by CoxCom, does not place that issue before this Court in this proceeding.

District Court; namely, that the Debtor advertised for sale and actually sold property that was specifically intended to be used to illegally access (and steal) CoxCom's pay-per-view services, and that as a result CoxCom suffered pecuniary harm. That litigation resulted in a final judgment against the Debtor, which was thereafter affirmed on appeal by the First Circuit Court of Appeals.

Based on the record established in the District Court, there is no genuine issue of material fact as to whether the Debtor's conduct was carried out intentionally, with the intention to cause financial harm to CoxCom. Under such circumstances, this Court is satisfied that collateral estoppel clearly applies here. Accordingly, CoxCom's Motion for Summary Judgment is **GRANTED**, its claim against the Debtor is determined to be nondischargeable, and Judgment should enter in favor of the Plaintiff in the amount of \$333,586.11. See *Baker v. Friedman (In re Friedman)*, 300 B.R. 149 (B.A.P. 1st Cir. 2003).

Enter Judgment consistent with this Order.

Dated at Providence, Rhode Island, this 14<sup>th</sup> day of April, 2010.



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Arthur N. Votolato  
U.S. Bankruptcy Judge

Entered on docket: 4/14/10