

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP No. MB 97-097

**IN RE: JAMES G. MACDONALD,
Debtor.**

**FILOMENA TREGLIA and VIRGINIA TREGLIA,
Plaintiffs/Appellants,**

v.

**JAMES G. MACDONALD, Individually and as Trustee of MacDonald Realty Trust,
Defendant/Appellee.**

**Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Carol J. Kenner, U.S. Bankruptcy Judge)**

**Before
Goodman, Haines, and Carlo, U.S. Bankruptcy Judges**

Robert O. Berger and Jonathan D. White, for the Appellants.

**Jonathon D. Friedman, Patrick G. Waters, Marie L. Troiano, and Gargill, Sassoon &
Rudolph, for the Appellee.**

November 2, 1999

Per Curiam

In our order dated February 18, 1999, we certified to the Massachusetts Supreme Judicial Court the question whether the debtor/appellee, who had prevailed against the appellants' § 523(a)(2)(A) dischargeability complaint, was collaterally estopped from defending against their allegations of fraud in light of a pre-bankruptcy state court default judgment entered in the appellants' favor.¹

We certified the question because we determined that the issue was unclear as a matter of Massachusetts law and that its answer was critical to the appeal. We noted that the appellants had not challenged the legal or factual sufficiency of the bankruptcy court's determination that their claim was, on the merits, dischargeable.²

The Supreme Judicial Court has answered our query. It concluded that a default judgment, entered in circumstances such as those presented by this case, does not collaterally estop the

¹ To be precise, we certified the following question, based on the appellee's circumstances, to the Supreme Judicial Court:

When a defendant appears in a civil action, files a motion seeking interlocutory relief, obtains that relief, but does not thereafter answer or defend; and when, after a damages hearing (in which the defendant does not participate), default judgment enters; does Massachusetts law preclude the defendant's litigation of the substantive elements underlying the default judgment in a subsequent action initiated by the same plaintiffs.

Mem. and Order Certifying Legal Question to the Supreme Judicial Court of Massachusetts at 2.

² Indeed, we noted that, on the merits, the bankruptcy court's findings and conclusions were "unassailable." Id. at 2 n.1.

judgment debtor from defending against the judgment creditor in a subsequent civil proceeding presenting some or all of the same factual issues. See Treglia v. MacDonald, 1999 WL 795674 (October 7, 1999). Thus, MacDonald was entitled to defend the Treglias' § 523(a)(2)(A) dischargeability complaint. He did so successfully.

In the absence of any additional issues on appeal, we conclude that the judgment of the bankruptcy court is hereby AFFIRMED.