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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

RHONDA DILLER,

Plaintiff,

vs.

RONALD JEFFEREY DILLER, DILLER  
DEVELOPMENT,

Defendants.

Case No. 93-05147

**MOTION FOR SUMMARY JUDGMENT  
(RES JUDICATA/COLLATERAL  
ESTOPPEL)**

**BACKGROUND:**

This is a dischargeability action under § 523(a)(2), (a)(4), and (a)(6) based on fraud, breach of fiduciary duty, and willful and malicious conversion resulting from a course of conduct taken to deprive plaintiff of profits from a real estate development. The defendant seeks summary judgment on the basis that the plaintiff's entire case is barred under the doctrines of collateral estoppel and res judicata because the same claims have been litigated in state court and resulted in a final judgment. The defendant also requests that the court take judicial notice of the state court pleadings and strike the portion of the declaration of Carla Lindsey, the supervisor of the Santa Clara County Clerk's Office, which states that the clerk's office does not treat a statement of decision as a judgment because such an opinion invades the province of the court to make a legal determination.

Parties are former spouses and the only two shareholders of Diller Development, Inc., which was in the business of a real estate development. Ron was the sole officer and director. Diller Development

1 borrowed \$800,000 from the DNS Trust, of which Sanford and Helen Diller (parents) are trustees, to  
2 acquire Town Square in Sunnyvale. The corporation also borrowed \$1.9 million from the Trust to  
3 acquire a property in Mardesich. The corporation executed demand notes. Both loans were secured by  
4 the properties and guaranteed by Ron and Rhonda Diller. Rhonda Diller contends there was an oral  
5 understanding that the loans would not be repaid until the properties were developed.

6 Diller Development had completed pre-development of Town Center, including the acquisition of  
7 entitlements, by June 20, 1990 when United Savings Bank approved a construction loan for \$3.4 million.  
8 Ron Diller commenced a marriage dissolution proceeding on June 28, 1990. He allowed the loan  
9 commitment to expire.

10 Sanford Diller called the demand notes on October 10, 1990 and, through an assignee, commenced  
11 an action on October 30, 1990 for judicial foreclosure, breach of contract, and a declaration of alter ego  
12 liability against the corporation, Ron, and Rhonda. Rhonda cross-claimed against the corporation and  
13 Ron Diller and counter-claimed against the DNS Trust, Sanford Diller and Helen Diller in January 1991  
14 for her economic losses resulting from a foreclosure. A foreclosure sale took place in May 1991.  
15 Rhonda Diller amended the cross-complaint in July 1991 asserting breach of fiduciary duty by Ron Diller  
16 and conspiracy by the Dillers to prevent her from realizing any benefits from the real estate developments.

17 In October 1991, the state court granted summary judgment against the corporation, Ron Diller, and  
18 Rhonda Diller on the demand notes. Helen Diller was dismissed from the counterclaim. The balance of  
19 the allegations of the amended cross-complaint were tried by jury in May 1992. The jury found that Ron  
20 Diller had breached his fiduciary duty to Rhonda Diller both as a spouse and as a corporate officer and  
21 director and found damages. It further found that Sanford Diller had not conspired against Rhonda  
22 Diller. A judgment in favor of the DNS Trust and Sanford Diller was entered and has been appealed.  
23 With respect to Ron Diller, the state court issued a Notice of Tentative Decision on September 28, 1992.  
24 On request by Rhonda Diller, the state court also issued a Statement of Decision to support the tentative  
25 ruling. The Statement of Decision found no damages. Both parties filed objections to the form of the  
26 Statement of Decision. A judgment against Ron Diller has not been entered.

27 **ISSUE:**

28 Whether a state court statement of decision constitutes a final judgment and has a preclusive effect on

1 the instant proceeding.

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3 **RECOMMENDATION:**

4 Motion for summary judgment premature.

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6 **Analysis:**

7 1. Res judicata applies only to claims based on a cause of action that was previously litigated. Collateral  
8 estoppel applies to bar relitigation of an issue that was actually litigated and necessary to the decision in  
9 a prior proceeding. **Greater L.A. Council on Deafness, Inc. v. Baldrige, 827 F.2d 1353 (9th Cir.**  
10 **1987).**

11 2. To determine whether res judicata or collateral estoppel applies, a federal court applies the preclusion  
12 law of the state which issued the prior judgment. **Kremer v. Chemical Constr. Corp., 465 U.S. 461, 482**  
13 **(1982); Hirst v. State of California, 770 F.2d 776, 778 (9th Cir. 1985).**

14 3. Under California law, res judicata and collateral estoppel applies only to judgments and orders that  
15 are final. **Service Employees Int'l Union v. Hollywood Park, Inc., 197 Cal. Rptr. 316 (Ct. Cal. App.**  
16 **1983).**

17 4. A statement of decision is not a final appealable order under California law. **Garat v. City of**  
18 **Riverside, 3 Cal. Rptr. 2d 504, 515 (Ct. Cal. App. 1991); Industrial Indemnity Co. v. San**  
19 **Francisco, 267 Cal. Rptr. 445, 447 (Ct. Cal. App. 1990); Fosselman's, Inc. v. City of Alhambra,**  
20 **224 Cal. Rptr. 361, 363 n. 3 (Ct. Cal. App. 1986); CCP § 904.1 (list of appealable judgments and**  
21 **orders, which does not include statement of decision).**

22 However, this motion is premature. For there to be a determination that the proceedings in the  
23 superior court have a preclusive effect, the movant should seek relief from the stay so that a final  
24 judgment can be entered. Only then may res judicata or collateral estoppel apply.