

1
2 UNITED STATES BANKRUPTCY COURT
3 NORTHERN DISTRICT OF CALIFORNIA

4 In re

5 ANDREW and MARY MUSAELIAN,

No. 02-11458

6 Debtor(s).
7 _____/

8 Memorandum on Objection to Claim
9 _____

9 Debtor Andrew Musaelian is a process server. Before bankruptcy, he was sued by creditor
10 Joseph Reiter based on an altercation during an attempt to serve him. After a trial, the state court
11 rendered a judgment against Musaelian for \$81,720.65 which was entered on October 23, 2001. The
12 judgment assessed \$14,922.00 in compensatory damages, \$10,000.00 in general damages, and \$9,000.00
13 in punitive damages; the balance was for attorneys' fees and costs.

14 In the same action, some two years before the trial, a default judgment has been entered against
15 Musaelian, individually and doing business as Attorney's Legal Research. Attorney's Legal Research is
16 a fictitious business name used by Musaelian. On March 17, 2000, the state court vacated the default
17 judgment.

18 On July 18, 2001, Reiter brought a motion in the state court "to reinstate default and default
19 judgment against Attorney's Legal Research." Apparently, something in the *pro se* answer Musaelian
20 had filed had alleged that Attorney's Legal Research was a separate entity, which was not the case.
21 Relying on the answer and apparently applying principles of judicial estoppel, the state court granted the
22 motion.

23 For some reason, the form of order submitted by him and entered by the state court reinstated the
24 default judgment as to "Andrew Musaelian doing business as Attorney's Legal Research." This order
25 was made on the day of trial, and about two months before entry of the judgment after trial.

26 Reiter argued before this court that he had two judgments against Musaelian in the same case: the

1 judgment for \$81,760.25 rendered after trial and the earlier default judgment for \$488,000.00. Relying
2 on the default judgment and ignoring the judgment rendered after trial, he argued that Musaelian was over
3 the debt limit for Chapter 13 eligibility and the case must therefore be dismissed.

4 This court rejected Reiter's arguments. It noted that under state law there can be only one final
5 judgment. Since the state court had not determined which judgment was the final judgment, this court
6 held that it was permitted to decide the issue of eligibility without being bound by the two conflicting
7 judgments. The court noted that the judgment entered against Musaelian after trial represented the true
8 amount owed to Reiter.

9 After this court's ruling the parties returned to state court to seek clarification. On May 12, 2003,
10 the state court issued findings which confirmed that the order reinstating the default "does not comply
11 with the requested relief" and that the default judgment is not enforceable against Musaelian and
12 "therefore not a priority secured lien against ANDREW MUSAELIAN on the basis of that judgment."

13 Relying on the state court's clarification, the debtors have objected to the secured claim filed by
14 Reiter relying on the default judgment. Reiter has responded with a blizzard of technical and procedural
15 arguments trying to justify allowance of his secured claim even though it is based on a judgment
16 unenforceable against the debtors.

17 All of the doctrines relied upon by Reiter, including the Rooker-Feldman doctrine and issue
18 preclusion doctrines, are at their heart intended to do justice and prohibit a litigant from seeking a
19 second bite of the apple from a federal court after a state court has heard and fairly adjudicated his
20 claims. None of those doctrines require blind, slavish adherence when the result is manifest injustice.
21 See *In re Baldwin*, 249 F.3d 912, 919 (9th Cir.2001) [courts will apply collateral estoppel only if
22 application of preclusion furthers the public policies underlying the doctrine]; *In re Marino*, 181 F.3d
23 1142, 1145 (9th Cir.1999)[res judicata may be applied as long as the result is not unfair]. The state
24 court having confirmed that the default judgment is not enforceable against Musaelian or his property,
25 there is no just basis for Reiter's continued assertion of a lien based on that judgment because that is
26 simply unjust.

1 Moreover, the Full Faith and Credit Act only requires state court decisions be given the same
2 preclusive effect in federal court they would be given in the courts of the rendering state. 28 U.S.C. §
3 1738. The state court has determined that the default judgment is not enforceable against the debtors and
4 is not bound to rigidly give effect to decisions it rendered before it recognized the error. *Lucindo v.*
5 *Superior Court* (1990) 51 Cal. 3d 335, 343 [“collateral estoppel is not an inflexible, universally
6 applicable principle”].

7 For the foregoing reasons the objection of the debtors will be sustained. Counsel for the debtors
8 shall submit an appropriate form of order.

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11 Dated: June 7, 2003

Alan Jaroslovsky
U.S. Bankruptcy Judge