NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. RI 10-062

Bankruptcy Case No. 09-11638-ANV
Adversary Proceeding No. 09-01070-ANV

STEPHEN D'ABROSCA,
Debtor.

MICHAEL PETRUCELLI,
Plaintiff-Appellee,

v.

STEPHEN D'ABROSCA,
Defendant-Appellant.

Appeal from the United States Bankruptcy Court
for the District of Rhode Island
(Hon. Arthur N. Votolato)

Before
de Jesús, Tester, and Bailey,
United States Bankruptcy Appellate Panel Judges.

Laurel E. Bretta, Esq., on brief for Defendant-Appellant.
Andru H. Volinsky, Esq., on brief for Plaintiff-Appellee.

August 10, 2011

Bailey, U.S. Bankruptcy Appellate Panel Judge.

Stephen D'Abrosca (the "Debtor") appeals the bankruptcy court orders granting the motion for summary judgment of Michael Petrucelli (the "Plaintiff") and denying the Debtor's motion for reconsideration. On appeal, the Debtor argues that the bankruptcy court erred in giving preclusive effect to a state court jury verdict against the Debtor for breach of fiduciary duty and conversion. For the reasons set forth below we **REVERSE** and **REMAND**.

BACKGROUND

In 1999, the Debtor and the Plaintiff decided to open a car dealership in New Hampshire. The Debtor agreed to run the business on a day-to-day basis, and the Plaintiff provided the capital funding. The Plaintiff was the vice president and treasurer of the corporation; the Debtor was the president and ran the day-to-day business. After four years and per their agreement, they sold the dealership. Thereafter, it was discovered that there were numerous financial irregularities.

The Plaintiff, individually, filed a multi-count complaint against several parties to recover his monetary damages.[1] In that complaint, the Plaintiff described various acts, including self-dealing and forgery, to support his count for breach of fiduciary duty against the Debtor. Specifically, in Count II of the complaint, the Plaintiff provided that as "the president, director and majority shareholder of [the corporation, the Debtor] owed fiduciary obligations of loyalty to the corporation. . . . Furthermore, as a shareholder in a closely held corporation, [the Debtor

[1] In addition to the Debtor, the other defendants included the law firm that represented each of the shareholders. The Plaintiff settled with the law firm, but the jury was never informed of this award. The Debtor suggests on several occasions that in the event that the judgment is determined to be nondischargeable, it should be reduced by the amount the Plaintiff recovered from the law firm.

owes the Plaintiff] the same fiduciary duty in the operation of the enterprise that partners to a partnership owe one another." The matter resulted in a week-long jury trial.

In her jury instruction as to Count II, the trial judge explained:

> A fiduciary relationship exists whenever special confidence has been placed in another. A breach of fiduciary relationship results whenever influence has been acquired and abused or confidence has been reposed and betrayed. . . . As a fiduciary, [the Debtor] had the obligation to behave in a moral and selfless manner while acting in [the Plaintiff's interest]. . . .
>
> [The Plaintiff] alleges that [the Defendant] intentionally violated the trust that [the Plaintiff] placed in [the Debtor] by self-dealing, by taking funds of the dealership to which he was not entitled and/or by failing to inform [the Plaintiff] of the true finances of the dealership.

After explaining the parameters of the conversion and negligence counts,[2] the trial judge addressed damages. She explained that first the jury had to decide whether the Debtor was legally at fault. Thereafter, the jury had to determine, for each item of loss or harm, whether the Plaintiff had proven that it is more probable than not that he suffered the harm and that it was the Debtor who caused or substantially caused the harm. If the jury found those two elements, the judge explained, then the jury was to decide how much money would compensate the Plaintiff for each item of loss. She further explained that they could also award "enhanced compensatory damages" to compensate the Plaintiff, as opposed to punishing the Debtor, if they found that the Debtor's conduct was "wanton, malicious or oppressive."

Pursuant to New Hampshire practice, the parties drafted a "special verdict form" which the jury used to return its verdict. On that form, the jury indicated that it found "more probable

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[2] With respect to the count for conversion, the trial court explained that it "is an intentional exercise of dominion or control over property, including money, that so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the property."

than not" that the Debtor: (1) breached his fiduciary duty to the Plaintiff; (2) "wrongfully exercised dominion and control over the property belonging to the Plaintiff" (conversion); (3) "negligently violated a duty of care" owed to the Plaintiff (negligence)"; and (4) "negligently misrepresented material facts" to the Plaintiff (negligent misrepresentation). At the bottom of the form, the jury listed damages at $1,616,500.00 without attributing the amount to specific counts. The jury also awarded an additional $500,000.00 for the enhanced compensatory damages. To the request for an allocation of comparative negligence, the jury responded that the Plaintiff and his bookkeeper sister were 8 and 12 percent at fault, respectively. The special verdict form indicated that the trial judge would be charged with allocating those damages in accordance with the percentage of fault, but there is no indication that the trial judge took any further steps with respect to the award.

While before the bankruptcy court, the Plaintiff explained that the parties had agreed that the special verdict form would have one damage paragraph that was applicable to any count because the Plaintiff would be entitled only to recover under one count. Therefore, according to the Plaintiff, the judgment of $1.6 million applied to each count, but the Plaintiff was only entitled to collect the amount once and not for each count. The Debtor appealed the jury verdict, but the appeal was dismissed.

In April 2009, the Debtor filed for relief under chapter 7.[3] In August 2009, the Plaintiff filed a one-count complaint seeking to except the jury award from the Debtor's discharge pursuant to 11 U.S.C. § 523(a)(4). The Plaintiff cited to the state court jury instruction to

[3] Although the state court litigation took place in New Hampshire, the Debtor is a resident of Rhode Island and filed for relief in that state.

characterize the fiduciary duty and breach thereof. The Debtor answered the complaint, denied the allegations, and asserted seventeen affirmative defenses.

The Plaintiff then moved for summary judgment, arguing that the jury award should be given preclusive effect. The Debtor opposed the motion and filed a cross-motion for summary judgment asserting that although he and the Plaintiff were two shareholders in a closely-held corporation, they were not fiduciaries as that term is construed under the Bankruptcy Code. Further, the Debtor argued that because the jury found some fault lay with the Plaintiff, he could not establish defalcation. This was particularly evident, he explained, because others shared the blame (referring to a settlement the Plaintiff reached with a defendant law firm). The Debtor offered that the jury must have relied more heavily on the negligence counts in assessing damages and urged the court to consider that the Plaintiff played a role in that negligence. The Debtor also urged that the enhanced compensatory damages should be discharged because the unattributed grounds for such an award could not rise to the level of nondischargeability.

After conducting a hearing, the bankruptcy judge issued his Order Granting Summary Judgment in which he wrote:

> Applying this standard [Baylis] to the present case, the Court is satisfied that the state court judgment for breach of fiduciary duty meets the § 523(a)(4) standards. To hold the Debtor liable for breach of fiduciary duty, the trial judge instructed the jury that they must find: (1) that a fiduciary relationship existed between [the Plaintiff] and the Debtor, and (2) that the Debtor breached that relationship. It is presumed that juries follow instructions, see, e.g., U.S. v. Griffin, 524 F.3d 71, 78 (1st Cir. 2008), and the jury found that the Debtor breached his fiduciary duty. Since a finding of breach of fiduciary duty is equivalent to a finding of defalcation while acting in a fiduciary capacity under § 523(a)(4), this Court is bound to conclude that the state court judgment against the Debtor for breach of fiduciary duty is nondischargeable. Accordingly, the Plaintiff's Motion for Summary Judgment is GRANTED, and the judgment

> against the Debtor for breach of fiduciary duty is nondischargeable. The Court does refrain, however, from entering a money judgment for a sum certain, because in this instance the state court judgment on the multi-count complaint is all-inclusive and does not specifically define the damages awarded on account of the Debtor's breach of fiduciary duty. See, e.g., Stein v. McDowell (In re McDowell), 415 B.R. 601 (Bankr. S.D. Fla. 2008) (bankruptcy court adjudged debt for breach of fiduciary duty nondischargeable, but state court was the proper venue to determine extent of damages, as specific damages amount had not been fixed), aff'd McDowell v. Stein, 415 B.R. 584 (S.D. Fla. 2009).

Thereafter, the Debtor moved for reconsideration, reasserting his argument that it was error to apply collateral estoppel and error to suggest the parties return to state court as it would be impossible to reconvene the jury. He also asked that the bankruptcy court amend its judgment to address the dischargeability of the enhanced compensatory damages. The Plaintiff countered that the Debtor had failed to meet the high standard set for reconsideration and offered that if there were any ambiguity with respect to damages, the state court could resolve the matter upon his filing of a declaratory judgment action. The bankruptcy court denied the motion without ruling on the dischargeability of the enhanced compensatory damages.

The Debtor appealed the orders granting summary judgment and denying reconsideration. He did not appeal the order denying his cross-motion for summary judgment.

JURISDICTION

The Panel has jurisdiction to hear appeals from "final judgments, orders, and decrees" of the bankruptcy court. 28 U.S.C. § 158(a) and (b). A bankruptcy court's order granting summary judgment is a final order. Maali v. United States (In re Maali), 432 B.R. 348, 351 (B.A.P. 1st Cir. 2010). An order denying reconsideration is final if the underlying order is final. Schwartz v. Schwartz (In re Schwartz), 409 B.R. 240, 245 (B.A.P. 1st Cir. 2008). Therefore, the orders on appeal are final orders.

STANDARD OF REVIEW

A summary judgment decision is subject to *de novo* review. See Rutanen v. Baylis (In re Baylis), 313 F.3d 9, 16 (1st Cir. 2002); Piccicuto v. Dwyer, 39 F.3d 37, 40 (1st Cir. 1994). An order denying reconsideration is subject to an abuse of discretion standard. In re Schwartz, 409 B.R. at 245.

DISCUSSION

I. Dischargeability of a Debt Under 11 U.S.C. § 523(a)(4)

Pursuant to 11 U.S.C. § 523(a)(4), a debtor may not discharge "any debt . . . for fraud or defalcation while acting in a fiduciary capacity . . ." The two elements must be established by a preponderance of the evidence. See In re Baylis, 313 F.3d at 17.

II. Summary Judgment Standard[4]

A motion for summary judgment is governed by the same standards applicable to motions under Fed. R. Civ. P. 56. See Fed. R. Bankr. P. 7056. Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The moving party bears the initial burden with respect to a genuine dispute. Razzaboni v. Schifano (In re Schifano), 378 F.3d 60, 66 (1st Cir. 2004) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). "An issue is 'genuine' if 'a reasonable jury could resolve the point in favor of the nonmoving party' . . . A fact is 'material' if 'its existence or nonexistence has the

[4] Fed. R. Bankr. P. 7056 incorporates Fed. R. Civ. P. 56. Pursuant to the Rules Enabling Act, 28 U.S.C. § 2072, on December 1, 2010, Fed. R. Civ. P. 56 was amended. The amended rule will apply if it is "just and practicable and would not work a manifest injustice . . . " Farmers Ins. Exchange v. RNK, Inc., 632 F.3d 777, 782 n.4 (1st Cir. 2011) (explaining the amendments did not change the summary judgment standard or burdens).

potential to change the outcome of the suit.'" Tropigas de Puerto Rico, Inc. v. Certain Underwriters at Lloyd's of London, 637 F.3d 53, 56 (1st Cir. 2011).

"If the initial burden is met, the burden shifts to the non-moving party [ ] to show that genuine issues of material fact exist." In re Schifano, 378 F.3d at 66 (citing Fed. Deposit Ins. Corp. v. Ponce, 904 F.2d 740, 742 (1st Cir.1990)). "The non-moving party must set forth more than conclusory allegations, improbable inferences or unsupported speculation to establish genuine issues of material fact. Competent evidence is required." Id. (citing Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir.1990)); see also Tropigas de Puerto Rico, 637 F.3d at 56 ("Where . . . the nonmovant bears the burden of proof on the dispositive issue, it must point to 'competent evidence' and 'specific facts' to stave off summary judgment."). Although the court must view the record in the light most favorable to the non-moving party, "as to any essential factual element of its claim on which the nonmovant would bear the burden of proof at trial, its failure to come forward with sufficient evidence to generate a trialworthy issue warrants summary judgment to the moving party." McCrory v. Spigel (In re Spigel), 260 F.3d 27, 31 (1st Cir. 2001) (quotations and citations omitted).

III. Doctrine of Collateral Estoppel

Preclusion principles apply to actions seeking to except debts from discharge. Blacksmith Invs., Inc. v. Woodford (In re Woodford), 418 B.R. 644, 650 (B.A.P. 1st Cir. 2009) (citing, *inter alia*, Grogan v. Garner, 498 U.S. 279, 284 n.11 (1991)). Bankruptcy courts must apply the collateral estoppel law of the state in which the judgment was rendered. U.S. v. One Parcel of Real Property, 900 F.2d 470, 473 (1st Cir. 1990). Under New Hampshire law, collateral estoppel will bar the relitigation of a claim if (1) the issue is identical, (2) the issue was

resolved finally on the merits, and (3) the party to be estopped appeared as a party in the first action. See Cook v. Sullivan, 829 A.2d 1059, 1064 (N.H. 2003).

The parties do not dispute that the Plaintiff met the second and third elements. Both before the bankruptcy court and in this appeal, however, the Debtor has vigorously disputed whether the Plaintiff can meet the first element. The Debtor's opposition is based largely upon three grounds. First, the Debtor contends that the bankruptcy court erred in granting summary judgment because the standard the jury applied in New Hampshire for determining fiduciary duty and breach thereof was not the same standard that is required under 11 U.S.C. § 523(a)(4). Second, the Debtor asserts that the jury did not consider or decide whether the Debtor's actions constituted defalcation. Third, the Debtor claims that because the jury determined damages and enhanced compensatory damages without allocating the damages to the counts in the complaint, it is impossible to determine whether and to what extent the damages awarded pertain to the breach of fiduciary duty count.

IV. Fiduciary Duty Standard

The fiduciary relationship necessary for a denial of discharge under 11 U.S.C. § 523(a)(4) is determined by federal law. See FNFS, Ltd. v. Harwood (In re Harwood), 637 F.3d 615, 620 (5th Cir. 2011); Follett Higher Educ. Group, Inc. v. Berman (In re Berman), 629 F.3d 761, 767 (7th Cir. 2011); Patel v. Shamrock Floorcovering Servs., Inc. (In re Patel), 565 F.3d 963, 968 (6th Cir. 2009). As with the exceptions to discharge in general, the concept of fiduciary capacity in 11 U.S.C. § 523(a)(4) is construed narrowly. See id.; see also Gupta v. Eastern Idaho Tumor Inst., Inc. (In re Gupta), 394 F.3d 347, 350 (5th Cir. 2004); Guerra v.

Fernandez-Rocha (In re Fernandez-Rocha), 451 F.3d 813 (11th Cir. 2006); Barclays Am./Bus. Credit, Inc. v. Long (In re Long), 774 F.2d 875, 878 (8th Cir. 1985).[5]

A fiduciary relationship exists when there is an express or technical trust. See In re Baylis, 313 F.3d at 17. A trust imposed by law due to malfeasance would not constitute a trust in this context. Mullen v. Jones (In re Jones), 445 B.R. 677, 707 (Bankr. N.D. Tex. 2011). Moreover, the "broad definition of fiduciary under nonbankruptcy law—a relationship involving trust, confidence, and good faith—is inapplicable in the dischargeability context." Honkanen v. Hopper (In re Honkanen), 446 B.R. 373, 378-79 (B.A.P. 9th Cir. 2011) (citing Cal-Micro, Inc. v. Cantrell (In re Cantrell), 329 F.3d 1119, 1125 (9th Cir. 2003)). Neither party suggest an express trust existed in this case.

A technical trust is one that arises under statute or common law. See Farley v. Romano (In re Romano), 353 B.R.738 (Bankr. D. Mass. 2006) (citing M-R Sullivan Mfg. Co., Inc. v. Sullivan (In re Sullivan), 217 B.R 670, 674 (Bankr. D. Mass. 1998)); Collenge v. Runge (In re Runge), 226 B.R. 298, 305 (Bankr. D.N.H. 1998). State law is relevant in considering whether such a trust exists. See A.J. Rinella & Co. v. Bartlett (In re Bartlett), 397 B.R. 610, 620 (Bankr. D. Mass. 2008); LaPointe v. Brown (In re Brown), 131 B.R. 900, 905 (Bankr. D. Me. 1991) ("one must . . . ascertain whether the relationship was imbued with attributes giving rise to, in substance, a trust"). A state law fiduciary relationship may not rise to the level of 11 U.S.C. § 523(a)(4) unless "state law imposes the duties of a trustee on a party." McDowell v. Stein, 415

[5] In In re Holman, the bankruptcy court explained that the definition of trust has been narrowly construed because defalcation is not similarly construed and due to applicable Supreme Court precedent. Moore v. Holman (In re Holman), 42 B.R. 848 (Bankr. E.D. Mo. 1984) (citing, *inter alia*, Chapman v. Forsyth, 43 U.S. 202 (1844) and Davis v. Aetna Acceptance Co., 293 U.S. 328 (1934).

B.R. 584, 595 (S.D. Fla. 2009); see also Fowler & Peth, Inc. v. Regan (In re Regan), 477 F.3d 1209, 1211 (10th Cir. 2007).

Case law in this circuit also provides an alternative theory for determining fiduciary capacity. See In re Romano, 353 B.R. at 764. In Romano, Judge Feeney addressed whether two 50 percent shareholders owed each other a fiduciary duty under 11 U.S.C. § 523(a)(4). Id. at 763. Relying upon O'Shea v. Frain (In re Frain), 230 F.3d 1014 (7th Cir. 2000), she explained that a "fiduciary capacity for purposes of § 523(a)(4) could be established by the existence of a contract and substantial ascendancy of one shareholder over another as an alternative to an express or technical trust." In re Romano, 353 B.R. at 762-63. Because one shareholder did not hold a position of ascendency over the other, Judge Feeney ruled there was no fiduciary capacity between the two shareholders.

Her holding is in accordance with In re Brown, 131 B.R. at 905. In that case, Judge Haines explained that "although it cannot be questioned that, in a general state law sense, Brown [one of two shareholders] was a corporate fiduciary, one must look further to ascertain whether the relationship was imbued with attributes giving rise to, in substance, a trust." Id. Because the debtor was the sole officer, kept the books, and managed the accounts and assets, Judge Haines ruled that his relationship was "in substance no different than that of a trustee to its trust, a guardian to its ward." Id.

Many other bankruptcy courts have grappled with the issue of whether state fiduciary duties of corporate officers and directors satisfy the requirements of fiduciary capacity for purposes of 11 U.S.C. § 523(a)(4). See In re Sullivan, 217 B.R. at 676; see also In re Cantrell, 329 F.3d at 1127 ("California case law has consistently held that while officers possess the

fiduciary duties of an agent, they are not trustees with respect to corporate assets."); Milburn Partners LLC v. Miles (In re Miles), 2011 WL 1124183 (Bankr. N.D. Ga. 2011) (holding that status as corporate officer alone is insufficient to establish fiduciary capacity); Murray v. Woodman (In re Woodman), No. 09-06052, 2011 WL 1100264 (Bankr. D. Idaho Mar. 22, 2011) (state fiduciary relationship did not rise to fiduciary capacity under subsection (a)(4)); McDowell v. Stein, 415 B.R. at 596 (explaining that because "New York law imposes sufficient trustee-like obligations on co-owners of a closely held corporation to constitute a fiduciary duty under § 523(a)(4)," collateral estoppel was proper); Fish v. Sadler (In re Sadler), No. 07-11333, 2007 WL 4199598, *2 (Bankr. N.D. Fla. Nov. 26, 2007) ("However, there is no Florida statute that establishes a trust to meet the bankruptcy's standard of fiduciary capacity for a corporate director or officer[.]"); Dominie v. Jones (In re Jones), 306 B.R. 352, 354-55 (Bankr. N.D. Ala. 2004) (ruling, despite close corporation officer and controlling shareholder, duty did not constitute technical trust); Michigan Web Press, Inc. v. Wilcox (In re Wilcox), 310 B.R. 689, 696-97 (Bankr. E.D. Mich. 2004); Streibick v. Murrell (In re Murrell), No. 03-21239, 2004 WL 1895200 *8 (Bankr. D. Idaho Aug. 12, 2004) ("However, Plaintiffs have not shown that any of the Idaho cases would establish a trust or otherwise impose fiduciary duties sufficient to meet the bankruptcy standard required for a § 523(a)(4) claim under applicable federal law."); Woodstock Housing Corp. v. Johnson (In re Johnson), 242 B.R. 283 (Bankr. E.D. Pa. 1999) ("The vast majority of cases . . . hold that corporate directors and officers are § 523(a)(4) fiduciaries of their corporations.").

In looking to New Hampshire law, we note that while the actual articles of incorporation are not included in the record, the parties do not dispute that their business was incorporated and

that it was a "close corporation." See Durham v. Durham, 871 A.2d 41, 45 (N.H. 2005) (recognizing such a corporation has a small number of shareholders and an overlap between ownership and management). "Under New Hampshire law, officers and directors of a corporation owe a fiduciary duty to the corporation and its shareholders." Off'l Comm. of Unsecured Creditors v. Foss (In re Felt Mfg. Co., Inc.), 371 B.R. 589, 611 (Bankr. D.N.H. 2007); see also Mica Prods. Co. v. Heath, 128 A. 805, 806 (N.H. 1925) ("In this state the view obtains that the directors of a corporation act in a trust capacity, in so far as shareholders and creditors are concerned."); Pearson v. Concord R. Corp., 62 N.H. 537 (N.H. 1883) ("A director of a railroad corporation, though not technically a trustee, stands in a fiduciary relation to the corporation, and is under the disability of a trustee."); Smith v. Putnam, 61 N.H. 632 (N.H. 1882) ("While directors of corporations are not trustees in a technical sense, there is yet no doubt that they occupy a fiduciary position towards stockholders and creditors of the corporation, and that they come within the designation of persons filling a fiduciary relationship.").

From the state court and bankruptcy pleadings, the Panel has learned that the Plaintiff and the Debtor filed articles of incorporation, held a 49 percent-51 percent interest in the corporation, and appear to have divided the officer duties. The record in this appeal is devoid of any documents or governing statutes pertaining to these facts. See Davis v. Olson (In re Olson), No. 10-2056, 2011 WL 1832751, *5 (Bankr. W.D. Mo. May 13, 2011) (declining to find "fiduciary capacity" between members of a limited liability company because neither operating agreement nor statute established a relationship sufficient for § 523(a)(4); Walker v. Silvonen (In re Silvonen), No. 10-00050, 2011 WL 2837507 (Bankr. D. Mont. July 14, 2011) (same), but see

Ragsdale v. Haller, 780 F.2d 794, 796 (9th Cir. 1986) (concluding California case law established partners were trustees over partnership assets).

Having reviewed the applicable standard for 11 U.S.C. § 523(a)(4) and the New Hampshire law with respect to the fiduciary obligations of directors and officers, we turn back to whether the breach of fiduciary duty presented in the state court proceeding was the same issue as what is required for a finding of nondischargeability in order to determine whether the bankruptcy court properly applied collateral estoppel. In the state complaint, the Plaintiff explained the fiduciary duty existed because the parties' roles in a corporation or because they were partners.[6] In moving for summary judgment, the Plaintiff argued that the parties were fiduciaries because they were joint venturers, which is akin to being partners. In the jury instructions, the trial judge provided a traditional and broad definition of fiduciary duty without referring to corporate, partnership, or joint venture fiduciary duties.

In re Gupta presents a similar set of facts to those in this case, a state court judgment for breach of fiduciary duty and a bankruptcy court that applied collateral estoppel to prevent relitigation. 394 F.3d at 348. The state court jury had found that there existed a relationship of trust and confidence between the debtor and the plaintiff which the debtor breached. Id. at 349. On appeal, the Fifth Circuit considered "how to interpret the jury's findings of a breach of fiduciary duty in light of Texas partnership law and this circuit's interpretation of the federal standard." Id. at 350. After reviewing fiduciary relationships under Texas law, and indeed the

[6] Some courts apply partnership law to close corporations. See, e.g., Donahue v. Rodd Electrotype Co. of New England, Inc., 367 Mass. 578, 592-593 (1975) (ruling close corporation stockholders owed one a fiduciary duty akin to partners: the duty of utmost good faith and loyalty). It is unclear whether New Hampshire would similarly proceed. Rockwood v. SKF USA Inc., 758 F. Supp. 2d 44, 65 (D.N.H. 2010) (explaining court would not find a joint venture if a different business structure existed).

circuit's earlier opinions related to officers and directors, the court emphasized that the "jury's separate finding of a breach of fiduciary duty was based on general phrases concerning the duty . . . rather than on specific events or actions that might fall within the parameters of the amended statute." Id. at 352.[7] Because the state court findings were "insufficiently precise to govern the dischargeability determination for federal purposes," the court reversed and remanded. Id.

Courts in other contexts have grappled with whether the state court jury instructions were sufficient to allow for application of collateral estoppel in a nondischargeability action. See, e.g., Duncan v. Duncan (In re Duncan), 448 F.3d 725, 729-30 (4th Cir. 2006) (declining to apply collateral estoppel for summary judgment where jury instruction resulted in two categories of willful and wanton conduct.); Bailey v. Cook (In re Bailey), 34 Fed. Appx. 150 (5th Cir. 2002) (ruling jury instructions and findings rose to the level of § 523(a)(2)(A) warranting application of collateral estoppel); Hobson Mould Works, Inc. v. Madsen (In re Madsen), 195 F.3d 988, 989-90 (8th Cir. 1999) (granting summary judgment as jury instruction definitions were equal to standards under § 523(a)(6)); Stahl v. Gross, 288 B.R. 655, 658 (Bankr. E.D.N.Y. 2003) ("An examination of the jury instructions in the context of the applicable law governing the tort of malicious prosecution clearly demonstrates that the issue of willfulness within the meaning of § 523(a)(6) was actually and necessarily litigated in the earlier malicious prosecution action."); Big River Props., Inc. v. Stafford (In re Stafford), 223 B.R. 94, (Bankr. N.D. Miss. 1998)

[7] The court also noted that "there is no way to tie the damages found for breach of fiduciary duty back to specific instances of [the debtor's] misconduct that might correlate with Texas' amended statute or the federal standard." In re Gupta, 394 F.3d at 352.

(granting summary judgment based upon issue preclusion as jury instruction contained same standard for action under § 523(a)(2)(A)).

The record in this appeal does not contain the trial court transcript or all of the documents related to the parties' corporation. The pleadings before us reflect that the fiduciary duty was not consistently described and that the trial judge gave the jury very broad instruction with respect to fiduciary duty. "The broad definition of fiduciary–a relationship involving confidence, trust and good faith–is inapplicable in the dischargeability context." Ragsdale v. Haller, 780 F.2d at 796. Because the jury was given this broader definition and not one related to the specific duties between the parties, we cannot conclude that the issue the Plaintiff seeks to preclude from litigation is identical to the issue presented to the jury in New Hampshire.

CONCLUSION

Because the issues were not identical, it was error to enter summary judgment based upon collateral estoppel and to deny reconsideration. Having reached this conclusion, we need not address the additional issues related to the amount of damages or the enhanced compensatory damages. Accordingly, we **REVERSE** the bankruptcy court's orders granting summary judgment and denying reconsideration and **REMAND** for further proceedings