

ENTERED ON  
SEP 10 2004

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOCKET

IN RE:	)	CHAPTER 7
	)	
JUNE C. LONG	)	CASE NO. 03-65260-MHM
	)	
Debtor	)	
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HAZEL GANTT LOCKLEY	)	
	)	
Plaintiff	)	
TRAVELERS BOND	)	
	)	
Intervenor Plaintiff	)	<b>ADVERSARY PROCEEDING NO. 03-9230</b>
	)	
v.	)	
	)	
JUNE C. LONG	)	
	)	
Defendant	)	<b>ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT</b>

On April 10, 2003, Debtor June C. Long ("Defendant") voluntarily filed for relief under Chapter 7 of the Bankruptcy Code. On July 14, 2003, Plaintiff Hazel Gantt Lockley ("Plaintiff") filed this adversary proceeding pursuant to 11 U.S.C. § 523(a)(4) to prevent the discharge of a state court judgment awarded in the Probate Court of Fulton County on January 26, 2001, in favor of Plaintiff against Defendant. Before this Court is the motion of Plaintiff for summary judgment seeking a determination that an amount of \$47,415.14 plus 12% interest from the date of the state court judgment is nondischargeable. Defendant filed a response in which she stated she admits the allegations in Plaintiff's Motion for Summary Judgment, but disputes the amounts she

owes Plaintiff. Defendant argues that Plaintiff's motion should be denied, and requests that a hearing be held on the exact amount owed Plaintiff. For the following reasons set forth below, Plaintiff's motion for summary judgment should be granted.

In accordance with Federal Rule of Bankruptcy Procedure 7056, which incorporates Federal Rule of Civil Procedure 56, summary judgment is available in the absence of any genuine issue of material fact so as to make the moving party entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The court will view the entire record in the light most favorable to defendant, the party against whom summary judgment is sought. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). "There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-250 (1986). If the evidence presented by the nonmoving party is merely colorable, or is not sufficient or significantly probative, summary judgment may be granted. *Id.*; see also *Dombrowski v. Eastland*, 387 U.S. 82, 87 S.Ct. 1425, 18 L.Ed.2d 577 (1967) (*per curiam*). Rule 56(e) provides that, when a properly supported motion for summary judgment is made, the adverse party "must set forth specific facts showing that there is a genuine issue for trial." *Id.*

Defendant admits to the allegations set forth in Plaintiff's Motion for Summary Judgment. Defendant, however, argues that certain payments of the amount owed Plaintiff have already been made to Plaintiff, and challenges the amount owed Plaintiff and the interest rate to be used on the amount owed. Defendant claims that since January 26, 2001, "substantial payments" have been made to Plaintiff. On June 20, 2001,

Defendant claims that a check was made payable to Plaintiff in the amount of \$22,344.93, of which \$21,743.39 was credited to the amount owed Plaintiff by Defendant. Defendant also alleges that on November 14, 2002, Traveler's Bond, the surety for Defendant, tendered a check to Plaintiff's counsel in the amount of \$27,755.84 to be credited towards the amount Defendant owed Plaintiff. Defendant, however, asserts these claims without presenting any evidence showing proof of payment. Defendant has had sufficient time to accumulate proof in the form of either affidavits or copies of the checks tendered evidencing payments to Plaintiff. Defendant has presented no such evidence. Additionally, it appears the amounts cited by Defendant have already been credited to the amount owed to Plaintiff. As a result, Defendant has failed to meet the burden of proof to show that a genuine issue of fact exists. Plaintiff is entitled summary judgment as a matter of law. Accordingly, it is hereby

ORDERED that Plaintiff Hazel Gantt Lockley's motion for summary judgment is granted.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.**

IT IS SO ORDERED, this the 10<sup>th</sup> day of September, 2004.

  
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MARGARET M. MURPHY  
UNITED STATES BANKRUPTCY JUDGE