

ENTERED ON  
JUL 05 2005

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

DOCKET

IN RE:	)	CHAPTER 11
	)	
ALI M. KABIRI,	)	CASE NO. 03-81449-MHM
	)	
Debtor	)	
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	)	
GENERAL ELECTRIC CAPITAL	)	
BUSINESS ASSET FUNDING	)	
CORPORATION	)	
	)	<b>ADVERSARY PROCEEDING</b>
Plaintiff	)	<b>NO. 04-6136</b>
v.	)	
	)	
ALI M. KABIRI	)	
	)	<b>ORDER</b>
Defendant	)	

Plaintiff filed its complaint April 26, 2004. Defendant filed an answer May 24, 2004. Plaintiff filed a motion seeking summary judgment or, in the alternative, default judgment. Defendant failed to file a response. Therefore, the motion is deemed unopposed. BLR 7007-1(b). Additionally, pursuant to BLR 7056-1(b)(2), the material facts contained in Plaintiff's statement of undisputed facts are deemed admitted.

Plaintiff shows that Defendant guaranteed a loan from Plaintiff to Defendant's corporation Le Petit Bistro, Inc. ("LPB") in the amount of \$17,076,708.69. At the time of the loan, Defendant made representations to Plaintiff, upon which Plaintiff relied, which were false and which Defendant knew to be false. All the facts and circumstances surrounding the transaction support the reasonable inference that Defendant made the false representations with an intent to deceive.

Consequently, pursuant to 11 U.S.C. §523(a)(2)(A), Plaintiff's claim against Defendant in the amount of \$17,076,708,69 is nondischargeable.

Plaintiff has also shown that, although Defendant, through his attorney, filed an answer to Plaintiff's complaint, since the filing of the answer, Defendant has failed in all respects to participate in this adversary proceeding. Defendant failed to make the mandatory disclosures required by Bankruptcy Rule 7026, failed to appear for his deposition, failed to attend the status conference scheduled for August 30, 2004, and has otherwise failed to cooperate in making this proceeding ready for trial. Defendant appears to be a fugitive from criminal proceedings in Minnesota and perhaps other jurisdictions and is believed to have left the United States. Therefore, on all counts of the complaint not addressed by the summary judgment motion, Plaintiff is entitled to default judgment under Bankruptcy Rule 7037. Accordingly, it is hereby

ORDERED that Plaintiff's motion for summary judgment is granted: pursuant to 11 U.S.C. §523(a)(2)(A), Plaintiff's claim against Defendant in the amount of \$17,076,708,69 is nondischargeable. It is further

**ORDERED that Plaintiff's motion for default judgment is granted.**

**DEFAULT JUDGMENT is entered on all counts of the complaint not addressed by the summary judgment motion.**

IT IS SO ORDERED, this the 14 day of July, 2005.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE