



IT IS ORDERED as set forth below:

Date: June 25, 2007

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: A05-67727-PWB
	:	
SHARON LISA SWEAT	:	
a/k/a LISA WU SWEAT	:	
a/k/a SHARON MILLETTE WU,	:	
	:	IN PROCEEDINGS UNDER
Debtor.	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE
	:	
KEITH SWEAT,	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
SHARON LISA SWEAT	:	ADVERSARY PROCEEDING
a/k/a LISA WU SWEAT	:	NO. 05-6331
a/k/a SHARON MILLETTE WU,	:	
	:	
Defendant.	:	

ORDER DENYING MOTION TO EXCLUDE ISSUE FROM PRETRIAL ORDER

On March 21, 2007, the Court conducted a pretrial conference with counsel for the Plaintiff and counsel for the Debtor. In response to issues raised at the pretrial conference, the Debtor has filed a motion to exclude from the proposed pretrial order the issue of whether the

Debtor fraudulently misappropriated the Plaintiff's name and likeness. The Plaintiff opposes the Debtor's motion.

The following facts are undisputed according to the proposed pretrial order. The Debtor is the ex-wife of the Plaintiff. The Debtor was and is the sole shareholder and director of Black Ball, Inc., a Georgia corporation created for the purpose of holding and owning the movie, "Black Ball." The Plaintiff entered into a written agreement with the Debtor and Black Ball, Inc., whereby he loaned the Debtor \$150,000 to help fund production of the movie. The agreement contained terms for repayment of the loan, as well as terms for the distribution of compensation of profits and restrictions on the sale and licensing of the movie.

The Plaintiff contends that the Debtor and her distribution company entered into a distribution agreement with another entity (which then entered into a second agreement with another party) for the distribution and sale of the film without the Plaintiff's permission. The Plaintiff contends that the Debtor failed to obtain his written approval before entering into a distribution agreement; wrongfully concealed from the Plaintiff the existence of these agreements; failed to account for loan proceeds; concealed profits arising from the distribution agreement; and made false and fraudulent statements pertaining to the sale and licensing of the movie. The Debtor disputes the allegations and, *inter alia*, contends that she has received no compensation from the movie and that the parties varied the terms of the agreement between themselves.

At issue is the Plaintiff's inclusion of the question of whether the Debtor "fraudulently misappropriated Plaintiff's name and likeness" in the Plaintiff's statement of legal issues to be tried. The Plaintiff's statement of the case also states that the Debtor "willfully and maliciously misappropriated Plaintiff's name in connection with the Movie and is not entitled to a discharge under 11 U.S.C. § 523(a)(6) based on the same." The Debtor objects to this issue being included

(and, it follows, being litigated and tried) and contends that the inclusion of the Plaintiff's name in the credits as executive producer was appropriate and that the Plaintiff has not presented any facts which support his position that the Debtor misappropriated his name and likeness.

If the Plaintiff had failed to properly plead this issue, thereby depriving the Debtor of the ability to prepare a defense in anticipation of trial, the Debtor arguably would have a basis for objecting to inclusion of this issue in the pretrial order. However, the Plaintiff's complaint sufficiently sets forth this claim as follows (Complaint, ¶ 34):

The debt owing Plaintiff is for and based, at least in part, upon the willful and malicious injury by the Debtor to the Plaintiff or to the property of the Plaintiff. For example and without limitation:

a. The Debtor has improperly associated the Plaintiff's name with the Movie.

A factual dispute as to whether the Plaintiff can prove his claim is not a basis for exclusion of the claim from the pretrial order. The time for filing a motion for summary judgment expired prior to the submission of the pretrial order and the pretrial conference and it is clear that even if such a motion was properly before the Court, based on the divergent versions of the facts as reflected in the parties' separate statements of the case included in the pretrial order, there are genuine issues as to material facts. Based on the foregoing, the Court concludes that there is no basis for excluding the issue of whether the Debtor fraudulently misappropriated Plaintiff's name and likeness in connection with the movie. Therefore, it is

ORDERED that the Debtor's motion is denied.

The Clerk is directed to serve copies of this Order on counsel for the Plaintiff and counsel for the Defendant.

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