



IT IS ORDERED as set forth below:

Date: July 14, 2010

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

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

| | | |
|--|---|-------------------------------|
| In re: | : | |
| | : | |
| GUY LAURENCE COOPER, | : | BANKRUPTCY CASE NUMBER |
| | : | 10-64199-MGD |
| Debtor. | : | |
| | : | |
| DONALD F. WALTON, United States | : | ADVERSARY CASE NUMBER |
| Trustee for Region 21, | : | 10-06151-MGD |
| | : | |
| Plaintiff, | : | |
| v. | : | CHAPTER 7 |
| | : | |
| GUY LAURENCE COOPER, | : | |
| | : | |
| Defendant. | : | |

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

The above-styled adversary proceeding is before the Court on Donald F. Walton's ("Plaintiff") Motion for Summary Judgment ("Motion"). (Docket No. 5). No response to the

Motion has been filed by or on behalf of Guy Laurence Cooper (“Defendant”), although Defendant did file an Answer to the Complaint. (Docket No. 4). The issue before the Court on summary judgment is whether Defendant is eligible for a Chapter 7 Discharge when Defendant received a Chapter 7 discharge in a prior case. For the reasons set forth herein, Plaintiff’s Motion is **GRANTED**.

I. FACTS

The material facts are undisputed. The facts are set forth in Plaintiff’s Statement of Undisputed Facts (“Statement”), which is attached to the Motion. Defendant has submitted no evidence to the Court. The undisputed material facts in the record are as follows: On July 1, 2002, Defendant filed a Chapter 13 bankruptcy petition. (Case No. 02-96796-REB); (Statement, ¶ 2). On June 13, 2003, after the case was converted from Chapter 13 to Chapter 7, Defendant received a Chapter 7 discharge. (Case No. 02-96796-REB, Docket No. 42); (Statement, ¶ 3). On February 12, 2010, within eight years of Defendant’s previous Chapter 7 petition, Defendant filed his present case *pro se*. (Case No. 10-64199-MGD); (Statement, ¶ 1). On March 25, 2010, Plaintiff filed his Complaint Objecting to Discharge.

In Defendant’s Answer, he states that “[t]he facts in plaintiff’s complaint are all true.” (Docket No. 4). Defendant alleged additional facts explaining why his prior Chapter 7 discharge was related to a case filed in 2002, rather than Defendant’s first bankruptcy case that was filed in 2000. (*Id.*)

II. STANDARD APPLICABLE TO MOTIONS FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure, applicable herein by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that summary judgment shall be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *See also, Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Maniccia v. Brown*, 171 F.3d 1364, 1367 (11th Cir. 1999). In reviewing a motion for summary judgment, the court must view the record and all inferences therefrom in a light most favorable to the non-moving party. *See WSB-TV v. Lee*, 842 F.2d 1266, 1270 (11th Cir. 1988). “The party seeking summary judgment bears the initial burden to demonstrate to the [trial] court the basis for its motion for summary judgment and identify those portions of the pleadings, depositions, answers to interrogatories, and admissions which it believes show an absence of any genuine issue of material fact If the movant successfully discharges its burden, the burden then shifts to the non-movant to establish, by going beyond the pleadings, that there exist genuine issues of material facts.” *Hairston v. Gainesville Sun Publ’g Co.*, 9 F.3d 913, 918 (11th Cir. 1993), *reh’g denied*, 16 F.3d 1233 (11th Cir. 1994). The non-movant may not simply rest on his pleadings, but must show, by reference to affidavits or other evidence, that a material issue of fact remains. Fed. R. Civ. P. 56.

III. APPLICATION OF LAW

A Chapter 7 debtor is entitled to a discharge “unless— . . . (8) the debtor has been granted a discharge under [§ 727], under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of filing the

petition.” 11 U.S.C. § 727(a)(8). Section 727(a)(8) “defines a condition that the Debtor [is] required to satisfy in order to qualify” for a discharge. *Tidewater Fin. Co. v. Williams*, 498 F.3d 249, 254–55 (4th Cir. 2007) (citing *In re Williams*, 333 B.R. 68, 73 (Bankr. D. Md. 2005)). A debtor who previously has received a Chapter 7 discharge is not eligible for another Chapter 7 discharge in any case filed within the proscribed period. *See, e.g., In re McKittrick*, 349 B.R. 569, 547 (Bankr. W.D. Wis. 2006); and *In re Asay*, 364 B.R. 423, 427 (Bankr. D.N.M. 2007); . Thus, the Bankruptcy Code requires a debtor to wait eight years after initiating a case that ends in a Chapter 7 discharge before filing a new Chapter 7 case, or the debtor will not receive a Chapter 7 discharge in the new case. Here, Defendant’s first Chapter 7 case was filed on July 1, 2002, and Defendant received a Chapter 7 discharge in that case. Thus, Defendant will not be eligible for a Chapter 7 discharge in any case filed less than eight years after July 1, 2002. Defendant’s present case was filed on February 2, 2010, which is less than eight years after July 1, 2002, and therefore Defendant is not eligible for a discharge in his current Chapter 7 case. Accordingly, it is

ORDERED that Plaintiff’s Motion for Summary Judgment is hereby **GRANTED**.

The Clerk shall serve a copy of this Order upon Debtor, Plaintiff, counsel for Plaintiff, the Chapter 7 Trustee, and all creditors in Debtor’s case.

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