



IT IS ORDERED as set forth below:

Date: December 4, 2015

**W. Homer Drake
U.S. Bankruptcy Court Judge**

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

IN THE MATTER OF:	:	CASE NUMBERS
	:	
MARY ALICE MANNING,	:	BANKRUPTCY CASE
Debtor.	:	NO. 15-11360-WHD
_____	:	
	:	
GEORGIA DEPARTMENT OF	:	ADVERSARY PROCEEDING
HUMAN SERVICES,	:	No. 15-1045-WHD
Plaintiff,	:	
	:	
v.	:	
	:	IN PROCEEDINGS UNDER
MARY ALICE MANNING,	:	CHAPTER 13 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Entry of Default Judgment filed by the Georgia Department of Human Services (hereinafter, "DHS") in the above-captioned adversary proceeding. This matter arises in connection with DHS's complaint contesting the

dischargeability of a debt pursuant to section 523(a)(2) of the Bankruptcy Code. This constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(I), 1334.

Discussion

Mary Alice Manning (hereinafter, the “Debtor”) filed her petition under Chapter 13 of the Bankruptcy Code on June 26, 2015. DHS filed its complaint against Mary Alice Manning (hereinafter, the “Debtor”) on August 27, 2015. The Debtor filed no responsive pleading. On October 27, 2015, DHS filed the instant motion for default judgment.

In order to grant default judgment, the Court must first determine that DHS’s allegations of fact serve as a sufficient basis for entry of a judgment. *Nishimatsu Construction Co., Ltd. v. Houston National Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *see also Bonner v. Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (announcing that decisions of the Fifth Circuit Court of Appeals prior to September 30, 1981, would be binding precedent in the Eleventh Circuit). In evaluating those allegations, the Court notes that “a defaulted defendant is deemed to have admitted the movant’s well-pleaded allegations of fact, [but] she is not charged with having admitted ‘facts that are not well-pleaded...or conclusions of law.’” *Perez v. Wells Fargo, N.A.*, 774 F.3d 1329, 1339 (11th Cir. 2014) (second alteration in original) (quoting *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005)).

In DHS’s complaint, it alleges that the Debtor “failed to provide complete and accurate information regarding her household size and household income” in order to obtain food stamp benefits from April of 2009 to March of 2013. Specifically, the Debtor failed to disclose that her

husband was living with her at home, resulting in DHS disbursing \$18,865 in benefits to the Debtor. Had the Debtor truthfully reported this fact to DHS, she would have been ineligible to receive those benefits. On February 28, 2014, the Debtor entered into an agreement with DHS whereby she agreed to repay the \$18,865 in monthly payments of \$200. After the Debtor failed to make any payments under that agreement, DHS intercepted her 2014 Federal tax refund of \$6,965, and further reduced the debt by \$1.44 through an expunged benefit adjustment. As a result of these actions, the debt owed to DHS was reduced to \$11,907.56 at the time the petition was filed. DHS initiated this adversary proceeding to contest the dischargeability of that debt pursuant to § 523(a)(2) and § 1328(a)(2).

At the outset, the Court notes that the exceptions to discharge under § 523 are to be strictly construed. *See Gen. Ret. Sys. of the City of Detroit v. Dixon (In re Dixon)*, 525 B.R. 827, 840 (Bankr. N.D. Ga. 2015) (Hagenau, J.). Yet even with that guiding principle in mind, the Court concludes that the Debtor's debt to DHS is excepted from discharge pursuant to § 523(a)(2) and § 1328(a)(2).

Section 523(a)(2) excepts from discharge any debt "for money, property, services, or refinancing of credit, to the extent obtained by" one of two means: (A) "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition"; or (B) use of a materially false statement in writing "respecting the debtor's or an insider's financial condition" on which a creditor relied. 11 U.S.C. § 523(a)(2)(A)-(B). Section 1328(a)(2) makes the § 523(a)(2) exception applicable in cases under Chapter 13 of the Bankruptcy Code. 11 U.S.C. § 1328(a)(2).

Here, DHS's complaint makes no mention of a written statement, so the analysis must proceed under § 523(a)(2)(A). *See Ill. Dept. of Emp't Sec. v. Winston (In re Winston)*, 114 B.R. 566, 569 (Bankr. N.D. Ill. 1990) (finding that creditor could not make prima facie case under § 523(a)(2)(B) without furnishing the written statement to the court). In order to prevail under that section, DHS must show the following elements: (1) the Debtor made a false representation with the intent to deceive DHS; (2) DHS justifiably relied on that misrepresentation; and (3) the misrepresentation caused DHS to suffer a loss. *See HSSM #7 Ltd. P'ship v. Bilzerian (In re Bilzerian)*, 100 F.3d 886, 892 (11th Cir. 1996); *In re Dixon*, 525 B.R. at 840-41; *see also In re Winston*, 114 B.R. at 570.

All three of these elements are satisfied in this case. To begin with, "[i]t is well recognized that silence, or the concealment of a material fact, can be the basis of a false impression which creates a misrepresentation actionable under § 523(a)(2)(A)." *SunTrust Bank v. Brandon (In re Brandon)*, 297 B.R. 308, 313 (Bankr. S.D. Ga. 2002) (alteration in original) (quoting *Minority Equity Capital Corp. v. Weinstein (In re Weinstein)*, 31 B.R. 804, 809 (Bankr. E.D.N.Y. 1983)). Here, the Debtor concealed the fact that her husband was living with her, a material fact because it had a direct relation to DHS's disbursement of benefits. Furthermore, because the Debtor would have received fewer benefits had she disclosed this information, the Court can infer from the circumstances that she withheld the information in order to deceive DHS in order to continue to receive benefits. *See Gurta v. DeLong (In re DeLong)*, 2014 WL 4059790, at *3 (Bankr. N.D. Ga. July 14, 2014) (Sacca, J.); *Mo. Div. of Family Servs. v. Jones (In re Jones)*, 37 B.R. 195, 197 (Bankr. E.D. Mo. 1984) (concluding that intent to deceive was only reasonable inference where

debtor had failed to disclose employment to state agency in order to continue receiving benefits). Because the Debtor withheld material information with the intent to deceive DHS, the first element is satisfied.

Turning to the second element, in determining whether a creditor justifiably relied on a debtor's misrepresentation, a court should look to "an individual standard of the [creditor's] own capacity and the knowledge which he has, or which may fairly be charged against him from the facts within his observation in the light of his individual case." *City Bank & Trust Co. v. Vann (In re Vann)*, 67 F.3d 277 (11th Cir. 1995). The standard "does not require a duty to investigate, unless a creditor has reason to suspect that he is being deceived," but "[r]eliance is not justifiable if a cursory investigation can reveal the representation's falsity." *In re DeLong*, 2014 WL 4059790, at *5. Here, because the Court has not been presented with any evidence suggesting that DHS should have suspected the Debtor's deception, DHS's reliance on the information provided by the Debtor (or the lack thereof) was justified. *Cf. In re Jones*, 37 B.R. at 197 (finding reasonable reliance where government agency "had no other reasonable means of verifying [debtor's] unemployment" than her own statements).

As for the final element, there is no doubt that the Debtor's misrepresentation caused harm to DHS, as the Debtor's failure to disclose her complete home situation caused DHS to disburse \$18,865 in benefits that it otherwise would not have.

Therefore, having considered the allegations in DHS's complaint, it is hereby **ORDERED, ADJUDGED, AND DECREED** that the Motion for Default Judgment filed by DHS is **GRANTED**, and DHS's claim for \$11,907.56 is excepted from discharge in its entirety in the

Debtor's Chapter 13 case.

The Clerk is **DIRECTED** to serve a copy of this Order on DHS, the Debtor, and the Chapter 13 Trustee.

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