

ENTERED ON DOCKET
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:
	: CASE NO. 05-73715-JB
CHRISTOPHER B. COLLINS	:
	: CHAPTER 7
Debtor	:
_____	:
	:
LUMPKIN COUNTY BANK,	:
	:
Plaintiff,	:
	:
v.	: ADVERSARY PROCEEDING
	: NO. 05-06468
CHRISTOPHER B. COLLINS,	:
	:
Defendant	:

ORDER

This adversary proceeding came before the Court on November 8, 2006, for a hearing on Plaintiff's Motion to Strike Defendant's Answer to Complaint to Determine Dischargeability of Debt ("motion to strike") (Docket #29). On October 5, 2006, an Order And Notice of hearing was served on the parties, scheduling a hearing on Plaintiff's motion to strike for November 8, 2006 at 11:00 a.m. (Docket #30). Ted W. Hight, III appeared and no appearance was made by the Defendant. Plaintiff's motion to strike seeks an order striking Defendant's answer for his failure to respond to Plaintiff's discovery requests and failure to comply with this Court's Order entered on August 29, 2006. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

The record reflects that Plaintiff served Defendant with its complaint and summons on December 30, 2005. The complaint seeks to prevent the discharge of a Gwinnett County Superior

Court judgment in the principal amount of \$254,012.45, plus interest, attorneys' fees, and costs pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6). Defendant filed *pro se* an answer on January 19, 2006. Plaintiff served Defendant with Requests for Admissions of Matters and Genuineness of Documents, Interrogatories, and a Request for Production of Documents on June 8, 2006.

Defendant's responses were due on or before July 11, 2006, but Defendant failed to respond to Plaintiff's discovery requests. By correspondence dated August 1, 2006, Plaintiff attempted to contact Defendant to resolve the discovery dispute, pursuant to BLR 7037-1(a) ND Ga. (2005), but Defendant did not respond to Plaintiff's correspondence.

On August 11, 2006, Plaintiff filed a motion to strike Defendant's answer to or, in the alternative, to compel discovery ("motion to compel"). Defendant failed to respond to Plaintiff's motion to compel, and it was deemed unopposed. BLR 7007-1(c) ND Ga. (2005). By Order entered August 29, 2006, the Court granted Plaintiff's motion to compel and ordered the Defendant to file and serve responses to Plaintiff's discovery requests on or before October 2, 2006. In Plaintiff's motion to strike now before the Court, Plaintiff's counsel states that Defendant has still not served any responses to Plaintiff's discovery requests and that Plaintiff has failed to comply with the August 29, 2006 Order. Pursuant to Fed. R. Civ. P. 37(b)(2)(C) made applicable to adversary proceedings by Fed. R. Bankr. P. 7037, it is thus appropriate to strike Defendant's answer and enter a default judgment, declaring Plaintiff's judgment claim nondischargeable under § 523(a)(2)(A) and (a)(6). *Golant v. Levy (In re Golant)*, 239 F.3d 931 (7th Cir. 2001); *Valner v. O'Brien (In re O'Brien)*, 351 F.3d 832 (8th Cir. 2003); *Resolution Trust Corporation v. Rossmiller (In re Rossmiller)*, 140 B.R. (D. Colo. 1992), *aff'd* 991 F.2d 806 (10th Cir. 1993). Accordingly, it is

ORDERED that Plaintiff's motion to strike is hereby granted; Defendant's answer is

stricken of record; and Defendant's judgment claim in the amount of \$254,012.45, plus pre-judgment interest of \$63,640.39, contractual attorneys' fees of \$47,647.92, post-judgment interest at the legal rate, and \$350.00 in court costs is non-dischargeable.

IT IS SO ORDERED, this 28th day of November, 2006.


JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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