

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBERS
	:	
ROBERT D. MACPHERSON,	:	BANKRUPTCY CASE
	:	NO. 04-13337-WHD
Debtor.	:	
	:	
	:	
R&L DIST., INC.	:	
d/b/a DOOR TECH,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 05-1701
v.	:	
	:	
ROBERT D. MACPHERSON,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court are cross motions for summary judgment, filed by R&L Distributors, Inc./dba Door Tech (hereinafter the "Plaintiff") and Robert MacPherson (hereinafter the "Debtor"). Both motions are opposed. The motions arise from a complaint objecting to the dischargeability of a particular debt. Accordingly, this matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(I).

FINDINGS OF FACT

1. During the time period of December 7, 2000 through April 1, 2002, the Plaintiff

transacted business with certain corporations owned or controlled by the Debtor. These business transactions resulted in debts owed by the corporations to the Plaintiff, which the Debtor personally guaranteed. Plaintiff's Statement of Material Facts, ¶ 1; Debtor's Statement of Material Facts, ¶ 2.

2. The Debtor has defaulted on those debts. Plaintiff's Statement of Material Facts, ¶ 2.

3. The Plaintiff filed suit against the corporations and the Debtor to enforce the debt in the Fayette County State Court. Debtor's Statement of Material Facts, ¶ 6. The Debtor and the Plaintiff entered a consent order regarding the suit. Debtor's Statement of Material Facts, ¶ 8. Following the Debtor's default under the terms of the consent order, the Plaintiff obtained a judgment against the Debtor for these debts. Debtor's Statement of Material Facts, ¶ 9; Plaintiff's Statement of Material Facts, ¶ 3.

4. The Plaintiff sued the Debtor and his wife, Linda MacPherson, in Fayette County Superior Court, alleging that the Debtor fraudulently conveyed certain property and had defrauded the Plaintiff (hereinafter referred to as the "Superior Court Suit"). Plaintiff's Statement of Material Facts, ¶ 4.

5. By consent, an order and judgment was entered against Linda MacPherson in the Superior Court Suit. MacPherson admitted that the transfer of the marital residence to her by the Debtor was a fraudulent conveyance and agreed that the Plaintiff would have a lien on the property. Debtor's Statement of Material Facts, ¶ 14. Following the Debtor's failure to file an answer in the Superior Court Suit, the Plaintiff obtained a

default judgment against the Debtor in the Superior Court Suit. Plaintiff's Statement of Material Facts, ¶ 7.

6. In the Superior Court Suit default judgment, the court found that the Debtor, while insolvent, transferred property to his wife with the actual intent to hinder, delay, and defraud his creditors. Plaintiff's Statement of Material Facts, ¶ 8.

7. In the Superior Court Suit, the judge held a hearing and considered the Debtor's testimony before entering a judgment in favor of the Plaintiff against the Debtor, which denied the Plaintiff's request for punitive damages and granted the Plaintiff's request for attorney's fees in the amount of \$2,500. Plaintiff's Statement of Material Facts, ¶ 9.

CONCLUSIONS OF LAW

The Plaintiff's complaint seeks a declaration that a debt owed by the Debtor to the Plaintiff, which resulted from a personal guarantee of debts owed by corporations owned or controlled by the Debtor, is nondischargeable pursuant to section 523(a)(2), (a)(4), and (a)(6) of the Bankruptcy Code. The Plaintiff is apparently seeking summary judgment as to only the claim that the debt is nondischargeable under section 523(a)(2). It also appears that the Debtor has moved for summary judgment as to only the section 523(a)(2) claim, as he makes no mention of whether there is any merit to the Plaintiff's claims under section 523(a)(4) or (a)(6).

The concept of discharging pre-existing debt forms one of the most primary tenets

of bankruptcy policy. Indeed, "a central purpose of the Code is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy 'a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.'" *Grogan v. Garner*, 498 U.S. 279, 286 (1991) (citations omitted). At the same time, however, a separate equitable policy mandates that any such mechanism for an unencumbered fresh start only should redound to the benefit of those debtors who are unfortunate, yet honest. *Id.* at 286-87. In light of these competing policy goals, Congress included the following provision in the Bankruptcy Code:

(a) A discharge under section 722, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor of any debt—

* * * *

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent *obtained* by--

(A) false pretenses, a false representation, or actual fraud;

* * * *

11 U.S.C. § 523(a)(2)(A) (emphasis added). Thus, through section 523(a)(2)(A), the Code offers a means of denying those individuals who do not qualify as "honest but unfortunate debtors" the benefits of a fresh start. *Id.* at 287. Like other exceptions to discharge, however, the provisions of section 523(a)(2)(A) warrant narrow construction. *See Gleason v. Thaw*, 236 U.S. 558, 562 (1915); *Schweig v. Hunter (In re Hunter)*, 780 F.2d 1577, 1579

(11th Cir. 1986). The creditor bears the burden of establishing non-dischargeability under § 523(a)(2)(A). *Hunter*, 780 F.2d at 1579.

To succeed under section 523(a)(2), a creditor must first establish that the debt at issue is a “debt for money, property, services, or . . . credit” that was “*obtained by . . . false pretenses, a false representation, or actual fraud.*” In this case, the original debt arose when the Plaintiff extended credit to the Debtor’s corporation and the Debtor personally guaranteed that obligation. There is no allegation and no evidence to suggest that the Debtor made any false representation or committed fraud to obtain this extension of credit. The Debtor’s alleged fraudulent transfer after the debt arose had nothing to do with the Plaintiff’s underlying debt. It is this Court’s view that section 523(a)(2) mandates such a causal connection between the conduct complained of and the creation of the debt. Accordingly, with respect to the section 523(a)(2) count of the Plaintiff’s complaint, there is no genuine issue as to any material fact such that the Debtor is entitled to a judgment as a matter of law.

CONCLUSION

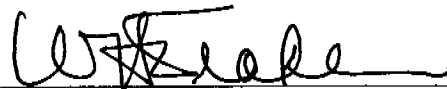
For the reasons stated above, the Court finds that the undisputed facts do not support the Plaintiff’s contention that the original debt owed by the Debtor to the Plaintiff is nondischargeable pursuant to section 523(a)(2). Accordingly, the Debtor’s Cross Motion

for Summary Judgment must be, and hereby is, **GRANTED.**¹

If either party wishes to file a motion for summary judgment with regard to the remaining counts of the Plaintiff's complaint, he should do so within sixty (60) days of the date of the entry of this Order. Otherwise, the parties shall prepare and submit a proposed, consolidated pre-trial order on or before April 14, 2006.

IT IS SO ORDERED.

At Newnan, Georgia, this 15 day of January, 2006.



W. HOMER DRAKE, JR.

UNITED STATES BANKRUPTCY JUDGE

¹ The Court will reserve ruling on whether the \$2500 attorney's fee award may be nondischargeable under section 523(a)(2) until such time as the Court considers whether the original debt and the attorney's fee award are nondischargeable under section 523(a)(6) or (a)(4).