

AUG 11 2006

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION_____
IN RE:

CASE NO. 05-98568

MongTuyen Thi Tran,

CHAPTER 7

Debtor.

JUDGE MASSEY

Wells Fargo Financial Georgia, Inc.,

Plaintiff,

v.

ADVERSARY NO. 06-6078

MongTuyen Thi Tran,

Defendant.
_____ORDER GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

Plaintiff Wells Fargo Financial Georgia, Inc. brought this adversary proceeding to determine that a debt owed by Debtor and Defendant MongTuyen Thi Tran to Plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(C). Plaintiff moves for a default judgment.

Plaintiff made the following factual allegations in the complaint. On or about October 8, 2005, Debtor purchased a Diamond Solitaire Pendant, Diamond Solitaire Earrings and a Ladies Silver Bracelet from White Hall Company Jewelers for the total price of \$2,453.51. Debtor entered into a Revolving Charge Agreement pursuant to which he financed the total purchase price. The Complaint is not entirely clear if the Revolving Charge Agreement was made directly with Plaintiff or was made with White Hall and assigned to Plaintiff, but the Complaint plainly alleges that Plaintiff now holds the claim against Debtor in respect to the jewelry purchase.

Plaintiff filed bankruptcy on October 14, 2005, six days after the purchase. As of the date of bankruptcy, Debtor was unemployed according to his Schedule I, of which the Court takes judicial notice.

On July 7, 2006, one day after the filing of the motion for a default judgment, the Clerk made an entry of default, indicating that Defendant had not filed any response to the motion.

Plaintiff, as the party asserting nondischargeability, must prove that the debt owed on the charge account is nondischargeable. *See In re Reines*, 142 F.3d 970, 973 (7th Cir. 1998) ("[A] party seeking to establish an exception to discharge bears the burden of proof."). Plaintiff is helped in this regard by Debtor's default; Plaintiff's well-pleaded allegations of fact are deemed established. *See Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) ("The defendant, by his default, admits the plaintiff's well-pleaded allegations of fact....").

The question, then, is whether Plaintiff's alleged facts, when deemed to be established due to Debtor's default, prove that the debt is nondischargeable.

Section 523(a)(2) provides in relevant part:

(a) A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from 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, other than a statement respecting the debtor's or an insider's financial condition;

(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than \$1,000 for "luxury goods or services" incurred by an individual debtor on or within 60 days before the order for relief under this title, or cash advances aggregating more than \$1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title, are presumed to be nondischargeable; "luxury goods or services" do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be

defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act[.]

In order to prevail under § 523(a)(2)(C), Plaintiff must show that the debt is a “consumer debt.” Section 101(8) defines a “consumer debt” as a “debt incurred by an individual primarily for a personal, family, or household purpose.” The Court takes judicial notice of the Schedules and Statement of Financial Affairs. Those documents do not show or remotely imply that Defendant was in the jewelry business. From the absence of any mention of a business in jewelry and from the nature of the goods purchased, the Court infers that the debt at issue was incurred for a personal, as opposed to a commercial, purpose. Hence, the facts established by Defendant’s failure to answer the complaint supply all of the elements necessary to render the debt in question nondischargeable under 11 U.S.C. S 523(a)(2)(C).

Plaintiff also alleges in the complaint that under the Finance Agreement, it is “entitled to recover its costs of collection herein, including, but not limited to court and litigation costs.” In a proposed order submitted with the motion, it refers to interest at the rate of 21%. Because it failed to allege any facts concerning interest in the complaint, however, Plaintiff is not entitled to prejudgment interest or postjudgment interest based on a contract rate not alleged.

For the foregoing reasons,

Plaintiff’s motion for default judgment is GRANTED.

IT IS SO ORDERED.

Dated: August 9, 2006.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE