



IT IS ORDERED as set forth below:

Date: November 10, 2010

A handwritten signature in black ink, appearing to read "W. H. Drake", is written over a horizontal line.

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

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

IN THE MATTER OF:	:	CASE NUMBERS
	:	
JOHN B. MELIN,	:	BANKRUPTCY CASE
	:	NO. 07-12358-WHD
	:	
Debtor.	:	
_____	:	
	:	
JOHN B. MELIN,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 08-1047
v.	:	
	:	
HENRY HOLDINGS OF	:	
TALLAHASSEE, INC., ROBERT E.	:	
MALONEY, JR., JULIA FREEMAN	:	
HOWARD,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 12 OF THE
Defendants.	:	BANKRUPTCY CODE

ORDER

Before the Court is a Partial Motion for Summary Judgment, filed by John Melin

(hereinafter the "Plaintiff") against Julia Freeman Howard (hereinafter the "Defendant"). The Motion is opposed. This matter arises from a complaint filed by the Plaintiff seeking damages for fraud. Consequently, this is a non-core proceeding, over which this Court has limited subject matter jurisdiction. *See* 11 U.S.C. § 157(b)(2); § 1334.

FINDINGS OF FACT

1. The real property known as the "Melin Family Farm" consists of approximately 454 acres in Spalding County, Georgia. Plaintiff's Statement of Undisputed Facts, ¶ 1; Defendant's Response to Plaintiff's Statement of Undisputed Facts, ¶ 1.
2. A deed to secure debt identifying 346.62 acres of the Melin Family Farm as security for a loan made by Henry Holdings of Tallahassee, Inc. (hereinafter "HHT") to TRG Homebuilders (hereinafter "TRG") contains the signatures of "John B. Melin" and "Julia M. Freeman Howard." Plaintiff's Statement of Undisputed Facts, ¶ 2; Defendant's Response to Plaintiff's Statement of Undisputed Facts, ¶ 2.
3. The Plaintiff owns an undivided seven-eighths (7/8) interest in the 346.62 acres that served as collateral for the HHT loan. Plaintiff's Statement of Undisputed Facts, ¶ 4; Defendant's Response to Plaintiff's Statement of Undisputed Facts, ¶ 4.
4. Following the execution of the original deed to secure debt, the Defendant signed her name to eleven modifications to the deed to secure debt. Plaintiff's Statement of Undisputed Facts, ¶¶ 5-26. The Defendant also signed the Plaintiff's name to these subsequent

modifications of the deed to secure debt. Defendant's Response to Plaintiff's Statement of Undisputed Facts, ¶¶ 5-26.

CONCLUSIONS OF LAW

The Plaintiff seeks summary judgment solely as to the issue of whether the Defendant engaged in fraud by signing the Plaintiff's name to a security deed and eleven separate modifications of the deed without the Plaintiff's authorization, consent, or knowledge. The Defendant asserts that, under the facts of the case and the parties' pattern of practice and conduct, she believed that the Plaintiff had authorized her to sign the Plaintiff's name to the modifications.

Rule 7056 of the Federal Rules of Bankruptcy Procedure makes Rule 56(c) of the Federal Rules of Civil Procedure applicable to adversary proceedings. Rule 56(c) provides that summary judgment “should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). Not only is the Court to ensure that no material fact is in dispute, but the Court must “view all the evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party.” *Maniccia v. Brown*, 177 F.3d 1364, 1367 (11th Cir. 1999). Moreover, “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 through the pleadings, that there exist genuine issues of material fact.” *Fleet Credit Card Services v. Kendrick (In re Kendrick)*, 314 B.R. 468, 471 (N.D. Ga. 2004) (quoting *Hairston v. Gainesville Sun. Pub. Co.*, 9 F.3d 913, 918 (11th Cir. 1993)).

"The tort of fraud has five elements: a false representation by a defendant, scienter, intention to induce the plaintiff to act or refrain from acting, justifiable reliance by plaintiff, and damage to plaintiff." *Crawford v. Williams*, 258 Ga. 806, 375 S.E.2d 223 (Ga. 1989). “[G]iven that fraud is inherently subtle, slight circumstances of fraud may be sufficient to establish a proper case. Proof of fraud is seldom ever susceptible of direct proof, thus recourse to circumstantial evidence usually is required. Moreover, it is peculiarly the province of the jury to pass on these circumstances showing fraud.” *Weatherly v. Weatherly*, 292 Ga. App. 879, 883, 665 S.E.2d 922, 925 (Ga. App. 2008).

Here, the Plaintiff seeks summary judgment as to whether the Defendant committed fraud by signing his name to a security deed and subsequent modifications to enable TRG, a company owned by the Defendant's daughter, to obtain funds for the development of a residential subdivision. The Defendant admits that she signed the subsequent modifications to the deeds, but contends that the Plaintiff signed the original deed. She also asserts that she did not have the requisite intent required for a finding of fraud. Specifically, the

Defendant points to several past dealings between the Plaintiff and the Defendant with regard to their ownership of the Melin Family Farm, which the Defendant contends led her to believe that the Plaintiff would be "allright" with her signing subsequent modifications of the deed to secure debt originally signed by the Plaintiff. The Plaintiff argues that these past dealings were not relevant to the transactions in which the Defendant later signed his name and that the Defendant could not have reasonably believed that the Defendant would have allowed her to sign his name to the modifications.

Having reviewed the deposition testimony of both the Plaintiff and the Defendant, the Court agrees with the Defendant that whether she intended to defraud the Plaintiff is a matter that can only be resolved at trial. If the facts of the case were clear that the Plaintiff had never authorized his share of the Melin Family Farm to be used as collateral for a debt that benefitted TRG and knew nothing of the subsequent loan from HHT to TRG, the Court might agree with the Plaintiff that the facts support a finding that the Defendant intended to defraud the Plaintiff by hiding the matter from him and forging his name to the deeds. Several of the undisputed and disputed facts of this case, however, call into question whether the Defendant could have believed that the Plaintiff knew about the transactions and had agreed to her signing his name.

The deposition testimony reveals that the Plaintiff had pledged previously his interest in the Melin Family Farm as collateral for a debt owed by TRG to Park Avenue Bank, the funds from which were used for the purpose of developing a residential subdivision by TRG. Deposition of John B. Melin (hereinafter "Melin Deposition") at 78. It appears that the

subsequent loan from HHT, which was secured by the deed that the Plaintiff alleges was forged, was used for the same purpose as the earlier loan and was possibly used to pay off that loan. Deposition of Julia M. Freeman Howard (hereinafter "Howard Deposition") at 54. Accordingly, the Defendant might reasonably have believed that the Plaintiff understood and agreed that the original loan would be "renewed." Melin Deposition at 136 ("I assumed it [the earlier loan from Park Avenue Bank] would have been renewed.").

Contrary to the Plaintiff's testimony that he did not sign the original deed to HHT and that he did not know anything about the loan from HHT, the Defendant testified that she presented the original HHT deed to the Plaintiff, which he signed, and explained that HHT "wanted the same security as" the original lender. Howard Deposition, at 14-15, 34, 66, 78. The Defendant also testified that she had "casual conversation[s]" with the Plaintiff about the need for TRG to borrow additional funds to complete the subdivision project and that the Plaintiff knew additional funds were being borrowed from HHT. Howard Deposition, at 24, 26, 33. These conversations with the Plaintiff may have led the Defendant to believe that the Plaintiff was "allright" with her signing the modifications on his behalf. At the least, if the Defendant's testimony is true, this fact supports the Defendant's contention that she lacked the intent to defraud the Plaintiff, as one would assume that a person engaged in fraud would take steps to hide the matter from the victim.

For the reasons discussed above, the Court cannot make a determination with regard to the Defendant's fraudulent intent without taking evidence at trial. Accordingly, summary judgment in favor of the Plaintiff would be inappropriate.

CONCLUSION

For the reasons stated above, the Motion for Summary Judgment filed by John B. Melin is hereby **DENIED**.

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