IT IS ORDERED as set forth below:

Date: March 11, 2011

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBERS**
LAMAR A. BELL	:	
ESTHER D. BELL,	:	BANKRUPTCY CASE
	:	NO. 09-11758-WHD
Debtors.	:	
_____	:	
	:	
JAMES MEDLIN	:	
JUDY MEDLIN,	:	
	:	
Plaintiffs,	:	ADVERSARY PROCEEDING
	:	NO. 09-01076
v.	:	
	:	
L & E BELL FAMILY PARTNERSHIP	:	
LAMAR A. BELL,	:	
ESTHER D. BELL	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendants.	:	BANKRUPTCY CODE

O R D E R

On September 28, 2010, the Court held a trial on a Complaint to Determine Dischargeability of Debt, filed by James and Judy Medlin (hereinafter the "Plaintiffs"). This

matter arises from a complaint to determine the dischargeability of a particular debt and, accordingly, constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(I); § 1334.

FINDINGS OF FACT

Lamar Bell is the general partner of L & E Bell Family Partnership, L.P. (hereinafter "L & E"), while Esther Bell is a limited partner of L & E. L & E was in the business of selling and financing real estate and buying existing loans on real estate. During the relevant time, L & E held approximately 300 loans. In order to administer and account for the loans, L & E utilized a computerized software system.

L & E held a promissory note in the original amount of $28,800 given by Plaintiffs originally to W.W. Robinson (hereinafter the "Note"). The Note was secured by a deed to secure debt on property located at 33 Valley Road, Tallapoosa, Georgia (hereinafter the "Property"). Plaintiffs were supposed to make 180 monthly payments of $374.00 from September 19, 1989, to August 19, 2004. While Plaintiffs did not always make monthly payments on time, they made payments until November, 22, 2004. In March 2004, Plaintiffs questioned L&E as to the amount of the remaining balance owed on the Note. At that time, Plaintiffs believed the Note would be paid off in August 2004. L & E asserted Plaintiffs were behind on payments, due to the accrual of interest on late payments.

On April 5, 2005, L&E filed a dispossessory action against Plaintiffs to try and collect money it believed Plaintiffs owed on the note. Plaintiffs filed an answer to the action

on April 11, 2005 and notified L & E's counsel of their position that a dispossessory action was inappropriate, considering Plaintiffs were not tenants of property owned by L & E. On April 13, 2005, Plaintiffs and L & E filed a mutual dismissal of the dispossessory action.

In July 2008, Plaintiffs filed a complaint against L & E in the Superior Court of Carroll County, Georgia, Civil Action File No. 08CV00590. The complaint asserted a claim for breach of contract, slander of title, and attorneys fees. L & E did not answer the complaint, and the court issued a default judgment on July 24, 2008. L&E did not attend the damages hearing, and on September 3, 2008, the court awarded Plaintiffs $1,547.85 in actual damages, $500 in statutory damages, $3,493.47 in attorney fees, $105 in costs, and $100,000 in punitive damages. In the interim, on July 8, 2008, L & E had issued a quit claim deed to Plaintiffs, releasing all right, title, and interest in the property to Plaintiffs.

The Defendants filed a voluntary petition under Chapter 7 of the Bankruptcy Code on May 14, 2009. On August 24, 2009, Plaintiffs filed the instant complaint to determine dischargeability, and a trial was held on September 28, 2010.

CONCLUSIONS OF LAW

First, the Court agrees with Defendants that L & E is not a proper defendant to this matter, as: 1) L & E is not a debtor; and 2) even if L & E were a debtor, section 523, by its terms, does not apply to a debtor that is not an individual. *See* 11 U.S.C. § 523(a). Accordingly, the complaint, as to L & E, should be dismissed.

The Plaintiffs' complaint seeks a determination that any debt owed by Defendants to

Plaintiffs as a result of Defendants' refusal to satisfy the Note is nondischargeable pursuant to sections 523(a)(6) and 523(a)(2) of the Bankruptcy Code. Under section 523(a)(2)(A), a discharge under section 722 does not discharge an individual debtor from any debt to the extent the debt was obtained by "false pretenses, a false representation, or actual fraud." 11 U.S.C. § 523(a)(2)(A). To succeed under section 523(a)(2)(A), a creditor must establish by a preponderance of the evidence that:

> (1) the debtor made a false representation with the purpose and intention of deceiving the creditor;
>
> (2) the creditor relied upon the debtor's representation;
>
> (3) such reliance by the creditor was justifiable; and
>
> (4) the creditor suffered a loss as a result of that reliance.

See City Bank & Trust Co. v. Vann (In re Vann), 67 F.3d 277, 279-84 (11th Cir. 1995); *see also Grogan*, 498 U.S. at 285-90; *Signet Bank v. Keyes*, 959 F.2d 245 (10th Cir. 1992); *Mfr. Hanover Trust Co. v. Ward (In re Ward)*, 857 F.2d 1082, 1082 (6th Cir. 1988); *Hunter*, 780 F.2d at 1579. In the case *sub judice*, as in most fraud cases, there is no direct evidence of fraudulent purpose or intent. Consequently, the intent or "scienter" element must be inferred from the totality of the evidence and the circumstances. *Kendrick v. Pleasants (In re Pleasants)*, 231 B.R. 893, 898 (Bankr. E.D. Va. 1999); *Kadlecek v. Ferguson (In re Ferguson)*, 222 B.R. 576, 585 (Bankr. N.D. Ill. 1998) (citation omitted).

The Court finds no evidence that Defendants intentionally misrepresented the amount owed on the Plaintiffs' account. Neither the testimony of any witness, nor the essential circumstances of this case, support a finding that Defendants intentionally caused L & E to

falsely seek repayment of additional sums from Plaintiffs. At best, the evidence demonstrates Defendants may have negligently relied upon the information input into a computerized accounting system. The Court finds Plaintiffs have failed to carry their burden of establishing Defendants made a false representation with intent to deceive the Plaintiffs into paying extra payments.

Section 523(a)(6) provides that any debt for willful and malicious injury by the debtor shall be nondischargeable. 11 U.S.C. § 523(a)(6). To establish that a debt is one that arises from a willful injury, Plaintiffs must show the Defendants had the specific intent to inflict an injury or that there was a substantial certainty that injury would result from their actions. *See In re Miller*, 156 F.3d 598 (5th Cir. 1998); *In re Moody*, 277 B.R. 865 (Bankr. S.D. Ga. 2001); *see also In re Hollowell*, 242 B.R. 541 (Bankr. N.D. Ga. 1999) (Murphy, J.); *In re Camacho,* 411 B.R. 496 (Bankr. S.D. Ga. 2009) ("Further an injury is willful and malicious when there is objective substantial certainty of harm or a subjective motive to cause harm."). This standard is consistent with the United States Supreme Court's holding that a finding that the debtor's actions were voluntary is insufficient to support a conclusion that the debt is nondischargeable. *See Kawaauhau v. Geiger*, 523 U.S. 57 (1998) ("The word 'willful' . . . modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional *injury,* not merely a deliberate or intentional *act* that leads to injury."). "Malicious means wrongful and without just cause or excessive even in the absence of personal hatred, spite, or ill will." *In re Neal*, 300 B.R. 86, 93-94 (M.D. Ga. 2003) (citing *In re Walker*, 48 F.3d 1161 (11th Cir. 1995)).

Plaintiffs have the burden to prove Defendants intended an injury. Plaintiffs have proven only that Defendants caused L & E to perform a series of acts that may have caused an injury to Plaintiffs. Nothing in the evidence supports Plaintiffs' contentions that Defendants subjectively intended harm or had the objective knowledge that such harm would occur. The evidence demonstrates only that Defendants subjectively believed, based on the information available, that Plaintiffs had not paid the Note in full. It is not clear exactly when Defendants became aware that Plaintiffs' claims of overpayment were genuine. Even at that time, however, it does not appear that Defendants took any action to collect further payments. While it is true that Defendants did not take immediate action to satisfy the Note, Plaintiffs failed to convince the Court that Defendants did so with any intent to cause an injury to Plaintiffs. The evidence suggests Defendants' failure to act immediately was due to simple inattention..

CONCLUSION

Having given this matter its careful consideration, the Court concludes that Plaintiffs failed to prove the debt in question should be declared nondischargeable under section 523(a)(2)(A) or section 523(a)(6). Accordingly, judgment will be entered in favor of Defendants and against Plaintiffs. A separate judgment will be entered contemporaneously in accord with this Order.

END OF DOCUMENT