



IT IS ORDERED as set forth below:

Date: April 04, 2011

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 09-83847 - WLH
	:	
KWANG CHA YI,	:	CHAPTER 7
	:	
Debtor.	:	
_____	:	
	:	
MYONG SUN SCHRADER,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 09-6742
v.	:	
	:	
KWANG CHA YI,	:	
	:	
Defendant.	:	

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant's Motion for Summary Judgment ("Motion") (Docket No. 17) on a Complaint to Determine Dischargeability pursuant to 11 U.S.C. § 523(a)(2)(A), 11 U.S.C. § 523(a)(2)(B), and 11 U.S.C. § 523(a)(4) filed by the Plaintiff Myong

Schrader (“Schrader”). As such, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and the Court has jurisdiction over it pursuant to 28 U.S.C. § 157 and 28 U.S.C. § 1334.

The Court has considered the pleadings of record and the Motion, briefs and affidavits submitted by the parties and notes that Defendant Kwang Cha Yi (“Yi”) did not submit an affidavit. For the reasons set forth below, the Court concludes that the Defendant’s Motion is **GRANTED IN PART AND DENIED IN PART**. The following constitutes the Court’s findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

FACTS

Because neither party submitted a statement of material undisputed facts as required by Bankruptcy Local Rule 7056-1(a)(1) and (2), the Court will review the pleadings to ascertain the undisputed facts. The record establishes that Plaintiff Schrader and Defendant Yi entered into an oral contract in 2007 to establish a corporation that would operate a Mexican sports bar in Tucker, Georgia. On January 24, 2008, Myong Corporation was issued a Certificate of Incorporation from the State of Georgia. Plaintiff Schrader was given the title of Chief Financial Officer and Secretary and Defendant Yi was designated CEO. The corporation’s restaurant opened for business on December 15, 2008. Ultimately, the restaurant closed in 2009. Defendant Yi filed her Chapter 7 bankruptcy case on September 11, 2009.

CONCLUSIONS OF LAW

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a

matter of law.” Fed. R. Civ. P. 56(c)¹; Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986). “The substantive law applicable to the case identifies which facts are material”. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). A factual dispute is genuine “if the evidence is such that that a reasonable jury could return a verdict for the non-moving party.” Id. at 248, 251-52, 106 S.Ct. at 2510, 2511-12.

The party moving for summary judgment has “the initial responsibility of informing the ... court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any’ which it believes demonstrate the absence of a genuine issue of material fact.” United States v. Four Parcels of Real Prop., 941 F.2d 1428, 1437 (11th Cir. 1991) (citing Celotex Corp., 477 U.S. at 323, 106 S.Ct. at 2553). What is required of the moving party, however, varies depending on whether the moving party has the ultimate burden of proof on the issue at trial.

When the nonmoving party has the burden of proof at trial, the moving party is not required to ‘support its motion with affidavits or other similar material negating the opponent’s claim’ (cites omitted) in order to discharge this ‘initial responsibility’. Instead, the moving party simply may ‘show – that is, point out to the ... court – that there is an absence of evidence to support the nonmoving party’s case. (cites omitted). Alternatively, the moving party may support its motion for summary judgment with affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial.

Four Parcels of Real Prop., 941 F.2d at 1437 (citing Celotex, 477 U.S. at 323-31, 106 S.Ct. at 2553-57). In the Eleventh Circuit, “it is never enough simply to state that the non-moving party cannot meet its burden at trial ... [I]nstead the moving party must point to specific portions of the record in order to demonstrate that the non-moving party cannot meet its burden of proof at trial.” Four Parcels of Real Prop., 941 F.2d at 1438 n. 19; Haines v. Cherokee County, 2010 WL 2821853 (N.D. Ga. 2010). Once this burden is met, the non-moving party cannot merely rely on

¹ Fed. R. Civ. P. 56(c) is made applicable in adversary proceedings by Fed. R. Bankr. P. 7056(c).

allegations or denials in its own pleadings. Fed. R. Civ. P. 56(e). Rather, the non-moving party must present specific facts that demonstrate there is a genuine dispute over material facts. Hairston v. Gainesville Sun Pub. Co., 9 F.3d 913, 918 (11th Cir. 1993). Lastly, when reviewing a motion for summary judgment, a court must examine the evidence in the light most favorable to the non-moving party and all reasonable doubts and inferences should be resolved in favor of the non-moving party. Hairston, 9 F.3d at 918.

In this case, the only factual information provided to the Court in support of the Motion are the (i) Complaint (Docket No. 1); (ii) Answer (Docket No. 4); (iii) Affidavits of Yong Tedder, Chong Ok Kim, Keum Rye Bae and Joy Choy (Docket No. 18); and (iv) Plaintiff's Answers to Defendant's Interrogatories (Docket Nos. 5, 6 and 7). The Court has no factual representations from Defendant Yi herself. If Defendant Yi wishes to shift the burden to Plaintiff Schrader to produce more facts, the initial burden is on Defendant Yi to point to specific portions of the record to show Plaintiff Schrader cannot meet her burden at trial.

11 U.S.C. § 523(a)(2)(A)

To prove a debt was incurred through false representation under Section 523(a)(2)(A), a creditor must show by a preponderance of the evidence: (1) that the debtor made a false representation with the intent to deceive the creditor; (2) that the creditor relied on the representation; (3) that the reliance was justified; and (4) that the creditor sustained a loss as a result of the representation. In re Camacho, 411 B.R. at 505 (citing In re Bilzerian, 100 F.3d 886, 892 (11th Cir. 1996); In re St. Laurent, 991 F.2d 672, 676 (11th Cir. 1993)).

A review of the Complaint reflects that paragraph 5 alleges Defendant Yi represented she:

would establish a corporation to operate a Mexican sports bar in Tucker, Georgia; that Plaintiff and Defendant would be 50% shareholder [sic] of the corporation

each; and that the fund [sic] [\$97,000] would be invested to the corporation as its operating capital.

(Compl. ¶ 5). Defendant Yi's Answer admits Plaintiff Schrader and Defendant Yi discussed operating a Mexican sports bar as co-owners. (Docket No. 4). Defendant Yi also admits in her brief and attachments submitted in support of her Motion that Myong Corporation was formed on January 24, 2008 and the restaurant opened for business on December 15, 2008. The undisputed facts set forth by Plaintiff Schrader and Defendant Yi, therefore, establish that a corporation was formed and a restaurant opened some time later. Thus, there appears to be no misrepresentation relating to the establishment of the corporation or the operation of a sports bar. Summary judgment is granted for Defendant Yi as to this representation.

The second representation contained in paragraph 5 of the Complaint is, "Plaintiff and Defendant would be 50% shareholder [sic] of the corporation each". Defendant Yi denied this alleged misrepresentation in the Answer, See (Docket No. 4, ¶ 5) but submitted no additional facts regarding this allegation in her Brief in Support of Motion for Summary Judgment and accompanying documents (Docket No. 18). Plaintiff Schrader restates her allegation that Defendant Yi failed to issue her stock despite promises to do so in her discovery responses. (Docket No. 5). Defendant Yi did not carry her burden of identifying portions of the record that evidence there is no dispute as to this allegation. Rather, Defendant Yi disputes the allegation and Plaintiff Schrader's right to stock in the company. As such, summary judgment is denied as to this allegation.

It appears to the Court that Plaintiff Schrader also seeks recovery under Section 523(a)(2)(A) based upon the following representations set forth in the Complaint:

Defendant asked Plaintiff to write checks without designating the payee because a corporation was not established at that time. Plaintiff gave [sic] total five (5) checks without designating the payee totaling \$97,000 to Defendant from January

2007 to November 2007, and Plaintiff promised to deposit them into a corporation's account when she establishes [sic] one.

In January 2008, Defendant incorporated Myong Corporation (the "Corporation") and started to operate a Mexican sports bar. But Defendant deposited the checks [sic] to her other business account at Bank of America with the account number xxxx-xxxx-0524 and to her contractor's account, JK & Lee, Inc. ...

Defendant did not have intent to invest Plaintiff's money to the Corporation...

(Compl. ¶¶ 7-8, 10). These allegations are also made in Plaintiff Schrader's responses to Defendant Yi's interrogatories. (Docket No. 5). Reading this allegation most favorably to Plaintiff Schrader, the allegation is that Defendant Yi promised to use the money for the corporation but had no intention of doing so and did not do so.

Defendant Yi in her Answer denies that Plaintiff Schrader invested \$97,000 in the business venture and that the money was not deposited in a corporate account or used for the corporation. Defendant Yi in her Brief in Support of Summary Judgment acknowledges that Plaintiff invested \$97,000 in the business but offered no specific factual support, by affidavit or otherwise, that would lead the Court to conclude there is no genuine issue as to this material fact. A brief is not evidence – only argument. Therefore, summary judgment will not be granted as to whether Plaintiff Schrader's debt is nondischargeable because of alleged misrepresentations regarding the \$97,000 investment in the business.

Lastly, the Complaint appears to assert a misrepresentation concerning Defendant Yi's intent to repay Plaintiff Schrader for her investment of \$97,000. Here, again, Defendant Yi generally denied the alleged representation in the Brief in Support of Motion for Summary Judgment but offered no factual support, by affidavit or otherwise, and pointed to no portions of the record that would lead the Court to conclude there is no genuine issue relating to this material fact. Specifically, Defendant Yi argued on page 7 of the Brief in Support of the Motion for Summary Judgment that each investor in the business was "well aware of the plans for the use of

the funds” and “[each investor] knew that [the investors] would not be repaid until the business was profitable.” (Docket No. 18). Defendant Yi offers factual support for her argument through the affidavits of Yong Tedder, Chong Ok Kim, Keum Rye Bae and Joy Choy, all of which were investors in the company. See id. at Ex. 4-7. Although the affidavits submitted by Defendant Yi establish that the affiants understood repayment of any money invested was conditioned upon the profitability of the business, Defendant Yi has not offered factual support as to Plaintiff Schrader’s understanding regarding repayment of invested funds or Defendant Yi’s intention as to repayment of invested funds. Defendant Yi’s argument falls short of establishing an undisputed material fact regarding Plaintiff Schrader and Defendant Yi’s understanding as to repayment of Plaintiff Schrader’s investment. Therefore, the Court denies summary judgment as to whether Defendant Yi intended to repay Plaintiff Schrader.

Summary judgment is granted as to Plaintiff Schrader’s allegations under Section 523(a)(2)(A) that Defendant Yi misrepresented an intent to begin a business with her. Summary judgment is denied as to the allegations under Section 523(a)(2)(A) that (i) Defendant Yi misrepresented Plaintiff Schrader would receive a fifty percent (50%) interest in the company; (ii) Defendant Yi misrepresented the \$97,000 would be used in the operation of the business; and (iii) Defendant Yi misrepresented her intent to repay Plaintiff Schrader.

11 U.S.C. § 523(a)(2)(B)

The Bankruptcy Code bars discharge under 11 U.S.C. § 523(a)(2)(B) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by...

- (B) use of a statement in writing,
 - (i) that is materially false;
 - (ii) respecting the debtor’s or an insider’s financial condition;
 - (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
 - (iv) that the debtor caused to be made or published with the intent to deceive.

11 U.S.C. § 523(a)(2)(B). After reviewing the Complaint and the record, the Court is unable to identify any allegations that would set forth a basis for relief under Section 523(a)(2)(B). It appears to the Court that all the allegations in the Complaint relate to a claim under Section 523(a)(2)(A) or (a)(4).

Defendant Yi argues that Plaintiff Schrader has not presented any written document that would subject Defendant Yi to a Section 523(a)(2)(B) claim. Defendant Yi further argues that paragraph 4 of Plaintiff's Response to Defendant's Interrogatories states that there was no written contract, only an oral contract between the parties. (Docket No. 5). The Court agrees with Defendant Yi. Given the lack of factual or documentary support (e.g. loan papers) relating to a statement in writing and Plaintiff Schrader's own admission, the Court concludes that Defendant Yi is entitled to summary judgment on any claim objecting to the dischargeability of debt under Section 523(a)(2)(B). See Material Products Int'l, Ltd. v. Ortiz (In re Ortiz), 441 B.R. 73, 77-78 (Bankr. W.D. Tex. 2010) (differentiating between the dischargeability of a debt obtained through a false oral statement respecting the debtor's financial condition and the dischargeability of debt obtained by a false written statement of the same version).

11 U.S.C. § 523(a)(4)

Schrader also asserts a claim under 11 U.S.C. § 523(a)(4). Under subsection (a)(4), a debt for "fraud or defalcation while acting in a fiduciary capacity" is nondischargeable. 11 U.S.C. § 524(a)(4). The meaning of the word "fiduciary" in this section "is a question of federal law," Smith v. Khalif (In re Khalif), 308 B.R. 614, 621-22 (Bankr. N.D. Ga. 2004), although state law can be consulted in ascertaining whether such a duty has been imposed. See Quaif v. Johnson, 4 F.3d 950 (11th Cir. 1993). A fiduciary relationship under Section 523(a)(4) is to be construed narrowly. Quaif, 4 F.3d at 953 (citing Davis v. Aetna Acceptance Co., 293 U.S. 328,

55 S.Ct. 151 (1934)). “Section 523(a)(4) requires that the debtor, acting as a fiduciary in accordance with an express or technical trust that existed prior to the wrongful act, committed an act of fraud or defalcation.” In re Lemmons, 2005 WL 6487216 (Bankr. N.D. Ga. 2005) (citing Eavenson v. Ramey (In re Eavenson), 243 B.R. 160, 164 (N.D. Ga. 1999)). A technical trust has been defined by the Eleventh Circuit as “an express trust created by statute or contract that imposes trust-like duties on the defendant and that pre-exists the alleged defalcation,” as opposed to constructive or resulting trusts. Quaif, 4 F.3d at 953-54; see also In re Fernandez-Rocha, 451 F.3d 813, 816 (11th Cir. 2006). “Mere friendship does not meet this standard, nor does an ordinary business relationship.” In re Ferland, 2010 WL 2600588 (Bankr. M.D. Ga. 2010) (citing Tarpon Point, LLC v. Wheelus (In re Wheelus), 2008 WL 372470 (Bankr. M.D. Ga. 2008)). Thus, a plaintiff must show that (i) the debtor held a fiduciary position vis a vis the plaintiff under a technical, express or statutory trust; (ii) that the claim arose while the debtor was acting as a fiduciary; and (iii) that the claim is for fraud or defalcation.

In the Complaint, Schrader alleges that Yi was acting as a fiduciary as the corporation’s CEO and director. (Compl. ¶ 12). The Complaint further alleges:

Plaintiff Myong S. Schrader is an equitable shareholder of the Corporation and is entitled to raise objection to dischargeability on behalf of the Corporation.

For her position as the CEO and the director of the Corporation, Defendant owes a fiduciary duty of care to the Corporation and to other shareholder [sic]. Defendant has exercised sole control over the Corporation’s operation, finance, and tax matters.

Defendant has failed to disclose the Corporation’s financial information and tax returns to Plaintiff. Defendant has not accounted for the Corporation’s revenue, expenses, and other financial information since the start of the Corporation.

In August 2009, Defendant closed the Corporation’s Mexican sport bar business without explaining financial aspect of her decision to Plaintiff [sic]. Also, it has been argued that Defendant did not appropriately report the Corporation’s sales revenue to the IRS and the Georgia Department of Revenue to embezzle the Corporation’s fund before the Corporation’s business is closed. [sic].

Because Defendant had unrestricted control over the Corporation's financial matters and the Corporation's business activities had not been properly recorded under generally acceptable accounting guidelines, it is highly probable that Defendant may have embezzled the Corporation's assets, siphoning off other shareholder's interest in the Corporation.

(Compl. ¶¶ 11-15).

Defendant Yi argues she is entitled to summary judgment because Plaintiff Schrader has failed to show that there is a fiduciary relationship that satisfies the requirements of Section 523(a)(4). As an officer of the company of which Plaintiff Schrader was allegedly a shareholder, Defendant Yi was a fiduciary and owed a fiduciary duty to the corporation and its shareholders. Wachovia Ins. Services, Inc. v. Fallon, 299 Ga. App. 440, 448 (2009). While typically shareholders cannot bring a direct action against officers and directors for breach of a fiduciary duty (as opposed to a derivative action), the Georgia courts have carved out an exception to this rule for closely-held corporations. See Rosenfeld v. Rosenfeld, 286 Ga. App. 61, 65 (2007); Southwest Health & Wellness, L.L.C. v. Work, 282 Ga. App. 619 (2006); Thomas v. Dickson, 250 Ga. 772, 774 (1983). Nevertheless, this Court need not reach a conclusion as to whether Defendant Yi's fiduciary duty to shareholders as an officer of a company is the type of fiduciary duty contemplated by 11 U.S.C. § 523(a)(4) in order to address Defendant's Summary Judgment Motion. But see Omega Cotton Co., Inc. v. Sutton (In re Sutton), 2008 WL 4527761 (Bankr. M.D. Ga. 2008) (holding an officer of company is not a fiduciary for purposes of Section 523(a)(4)); In re Wheelus, 2008 WL 372470 (Bankr. M.D. Ga. 2008) (holding that members and manager of limited liability corporation not acting in fiduciary capacity for purposes of Section 523(a)(4)); Blashke v. Standard (In re Standard), 123 B.R. 444 (Bankr. N.D. Ga. 1991) (holding that a general partner did not qualify as fiduciary for purposes of Section 523(a)(4)); Milburn

Partners LLC v. Miles (In re Miles), 2011 WL 1124183 (Bankr. N.D. Ga. 2011) (holding that the status as corporate officer alone is insufficient to establish fiduciary capacity).

The Court finds that, even if Defendant Yi had a fiduciary duty to Plaintiff Schrader as a shareholder and the shareholder could bring a claim directly against Defendant Yi as opposed to derivatively, Plaintiff Schrader has no claim under 11 U.S.C. § 523(a)(4) because her claim does not arise from fraud or defalcation while acting as a fiduciary. Case law is clear that the fiduciary duty must predate the wrongful act. Quaif, 4 F.3d at 953; Murphy & Robinson Inv. Co. v. Cross (In re Cross), 666 F.2d 873 (5th Cir. 1982); In re Khalif, 308 B.R. at 622. Moreover, the debt must be directly related to the fiduciary relationship. In re Khalif, 308 B.R. at 622. Lastly, the claim must be a result of fraud or defalcation. A breach of fiduciary duty claim is not *per se* sufficient unless it rises to the level of fraud or defalcation. In re Sutton, 2008 WL 4527761. Fraud, for purposes of Section 523(a)(4), is intentional deceit, while defalcation is a failure to produce funds entrusted to a fiduciary. See Quaif, 4 F.3d at 954-55.

Here, Plaintiff Schrader's claim for \$97,000 arises from payments she allegedly gave Defendant Yi from January through November 2007. The corporation of which Defendant Yi was an officer was not created until January 2008, after all the payments had been made. Consequently, any fiduciary duties owed by Defendant Yi as an officer of the corporation did not arise until after the payments were made. Any claim of fraud or defalcation against Defendant Yi as a result of these payments, therefore, did not arise while Defendant Yi was acting in a fiduciary capacity.

With respect to Defendant Yi's "derivative" claim set forth in paragraphs 11-15 of the Complaint, the Court finds the claim is not for fraud or defalcation while acting in a fiduciary capacity. First, any claim by Plaintiff Schrader for failure to disclose corporate books and records in violation of O.C.G.A. § 14-2-1602 must be made against the corporation and not

Defendant Yi directly. Under Georgia law, if a corporation does not allow a shareholder, who complies with subsection (b) of O.C.G.A. § 14-2-1602 to inspect and copy any records required for inspection, a superior court may summarily order inspection and copying of the records demanded. O.C.G.A. § 14-2-1604. Georgia law “clearly contemplates an action by the shareholder *against the corporation* where there is a refusal of a demand to inspect and copy the corporate records.” Barnett v. Fullard, 306 Ga. App. 148, 151 (2010) (emphasis in original). Georgia law provides an avenue for Plaintiff Schrader to inspect the corporate records and that avenue is against the corporation. See id. The Court, therefore, concludes that Defendant Yi is entitled to summary judgment under Section 523(a)(4) for any claim for failure to allow inspection of the corporate books and records.

Plaintiff next complains that Defendant Yi closed the business without discussion with the Plaintiff. However, this is not a claim for fraud or defalcation. At most, it is a claim for breach of fiduciary duty, which as the Court has already stated is not *per se* sufficient for purposes of Section 523(a)(4). Lastly, the Plaintiff alleges in the Complaint that Defendant Yi, while acting as an officer, did not appropriately report the corporation’s sales revenue to the IRS and the Georgia Department of Revenue, in order “to embezzle” corporate funds. Plaintiff Schrader attached copies of corporate bank records and state sales tax returns in her response. However, these documents do not show that the corporation underreported its sales, as not every deposit in a bank account is a result of a reportable sale. Further, Plaintiff Schrader has not articulated how a failure to report all sales is a basis for Plaintiff Schrader’s claim either individually or as a shareholder. Any damage for failure to report income would be to the taxing authorities. Moreover, Plaintiff Schrader has provided no evidence that Defendant Yi took corporate funds. Defendant Yi adequately shifted the burden with respect to this allegation and Plaintiff Schrader, as the non-moving party, must respond with evidence that a fact is disputed.

Plaintiff Schrader has not done so. Consequently, the Court grants summary judgment to Defendant Yi on all of Plaintiff Schrader's allegations that her claim arises from fraud or defalcation while Defendant Yi was acting in a fiduciary capacity.

Alternatively, Plaintiff Schrader appears to allege her claim is nondischargeable because it is a claim for embezzlement under 11 U.S.C. § 523(a)(4). Embezzlement is the fraudulent appropriation of property by a person to whom such property has been lawfully entrusted or into whose hands it has lawfully come. In re Lam, 2008 WL 7842072 (Bankr. N.D. Ga. 2008). In order to establish a claim for embezzlement under Section 523(a)(4), a plaintiff must prove that a debtor appropriated funds to his or her benefit, and that the debtor did so with fraudulent intent or deceit. Fraud in this sense means positive fraud or fraud in fact. Id.

Defendant Yi argues that summary judgment must be granted to Defendant Yi because "Plaintiff cannot carry her burden with mere allegations." However, on a motion for summary judgment, it is the moving party's obligation to point to specific portions of the record that show the plaintiff cannot carry her burden at trial in order to shift the burden back to the non-moving party. Simply stating Plaintiff Schrader cannot meet her burden is insufficient. The Complaint alleges two sets of facts which could arguably constitute embezzlement. First, Plaintiff Schrader alleges that the funds she provided to Defendant Yi for the benefit of the corporation were in fact deposited into personal and other accounts not for the benefit of the corporation. This fact remains disputed and is material to the determination, so summary judgment at this stage is inappropriate. Secondly, Plaintiff Schrader alleges that money collected by the corporation as sales tax was not appropriately remitted to the requisite taxing authority. However, as Defendant Yi points out, the allegation here is vague – "it is highly probable that Debtor may have embezzled the Corporation's assets". The allegations are not facts, but only speculation.

Plaintiff Schrader did not respond with any evidence on this point that creates a material issue of fact. Summary judgment is granted to Defendant Yi on this allegation.

CONCLUSION

In summary, it is **ORDERED** that Defendant Yi's Motion for Summary Judgment is hereby **GRANTED** as to the following:

- (a) Any claim under Section 523(a)(2)(A) related to Defendant Yi's representation that a corporation would be established for the purposes of operating a Mexican sports bar;
- (b) Any claims by Plaintiff Schrader under Section 523(a)(2)(B);
- (c) Any claims by Plaintiff Schrader under Section 523(a)(4) that her claim is nondischargeable because it arises from fraud or defalcation while acting in a fiduciary capacity; and
- (d) Any claims by Plaintiff Schrader under Section 523(a)(4) for embezzlement of corporate funds.

It is **FURTHER ORDERED** that Defendant Yi's Motion for Summary Judgment is hereby **DENIED** without prejudice as to the following:

- (a) Any claims by Plaintiff Schrader under Section 523(a)(2)(A) related to representations that Plaintiff Schrader was to be a fifty percent (50%) shareholder in the corporation;
- (b) Any claims by Plaintiff Schrader under Section 523(a)(2)(A) related to representations that the \$97,000 paid by Plaintiff Schrader would be used in the operation of the business;
- (c) Any claims by Plaintiff Schrader under Section 523(a)(2)(A) related to Defendant Yi's intent to repay the Plaintiff; and

(d) Any claims by Plaintiff under Section 523(a)(4) for embezzlement of \$97,000 paid by Plaintiff.²

END OF DOCUMENT

² As a final note, the Court did not consider any factual or legal arguments raised in Plaintiff's Response to Defendant's Motion for Summary Judgment (Docket No. 34) relating to any claims under 11 U.S.C. § 727, because the Complaint does not identify any claim under Section 727.

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