



IT IS ORDERED as set forth below:

Date: January 13, 2011

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
	:	
HOLLY DIANE HATCHETT,	:	BANKRUPTCY CASE
	:	NO. 10-10078-WHD
Debtor.	:	
_____	:	
	:	
THE WOODBURY BANKING CO.	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 10-1020
v.	:	
	:	
HOLLY DIANE HATCHETT,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

This matter comes before the Court on the “Motion for Summary Judgment” (hereinafter the “Motion”) filed by The Woodbury Banking Company (hereinafter the “Plaintiff”). The Motion arises in connection with an adversary proceeding initiated by the

Plaintiff to determine the dischargeability of a debt owed by Holly Diane Hatchett (hereinafter the “Defendant”). The Defendant opposes the Motion. This matter is a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(I); § 1334.

FINDINGS OF FACT

From August 15, 1997 through January 2006, the Defendant was an employee of the Plaintiff. Plaintiff’s Statement of Material Facts Not in Dispute, ¶ 6.¹ The Defendant worked during this time as a bookkeeper, loan processor, Bank Secrecy Act officer, and internal auditor. *Id.* ¶ 7. While employed by the Plaintiff, the Defendant maintained a personal checking account with the Plaintiff and a personal savings account. *Id.* ¶¶ 13-14. The Defendant also borrowed funds from the Plaintiff. *Id.* ¶ 15. Without the Plaintiff’s authorization, the Defendant increased the amount of the principal balance of loans taken from the Plaintiff and transferred funds in those amounts to her personal and checking accounts. *Id.* ¶¶ 16-18.

The Plaintiff recovered \$60,783.61 of the unauthorized loan proceeds from the Defendant’s father, Charles Hatchett. *Id.* ¶ 20. The Plaintiff then made an authorized loan of \$56,404.81 to the Defendant to allow her an opportunity to repay the unauthorized funds

¹ As the Defendant has not controverted the Plaintiff’s Statements of Undisputed Facts, these facts are deemed admitted, as provided for in BLR 7056-1(a)(2).

to the Plaintiff. *Id.* ¶ 21-22. After making 43 of the payments agreed to under the terms of the new loan, the Defendant stopped making payments to the Plaintiff. *Id.* ¶ 25. In December 2009, the Plaintiff declared the new loan to be in default and sued the Defendant in Meriwether County Superior Court. *Id.* ¶ 27. The Defendant pled guilty to theft by conversion arising from her conduct with regard to the original loans. *Id.* ¶ 29. These criminal convictions resulted in a sentence of criminal restitution in the amount of \$50,000 owed by the Defendant to the Plaintiff. *Id.* ¶ 29.

The Defendant filed a voluntary petition under Chapter 7 of the Bankruptcy Code on January 8, 2010. The Plaintiff filed a timely complaint objecting to the dischargeability of the debt owed by the Defendant to the Plaintiff, pursuant to sections 523(a)(4) and 523(a)(6) of the Code. The Plaintiff seeks summary judgment, which the Defendant has opposed. The Defendant, however, has failed to controvert any of the facts listed in the Plaintiff's statement of undisputed facts or to point to any evidence that would permit the Court to find that any material facts remain in dispute.

CONCLUSIONS OF LAW

A. Summary Judgment

In accordance with Federal Rule of Civil Procedure 56 (applicable to bankruptcy under FED. R. BANKR. P. 7056), this Court will grant summary judgment only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a

matter of law." FED. R. CIV. P. 56(c). A fact is material if it might affect the outcome of a proceeding under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute of fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The moving party has the burden of establishing the right of summary judgment, *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991); *Clark v. Union Mut. Life Ins. Co.*, 692 F.2d 1370, 1372 (11th Cir. 1982), and the Court will read the opposing party's pleadings liberally. *Anderson*, 477 U.S. at 249.

In determining whether a genuine issue of material fact exists, the Court must view the evidence in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Rosen v. Biscayne Yacht & Country Club, Inc.*, 766 F.2d 482, 484 (11th Cir. 1985). The moving party must identify those evidentiary materials listed in Rule 56(c) that establish the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986); *see also* FED. R. CIV. P. 56(e). Once the moving party makes a prima facie showing that it is entitled to judgment as a matter of law, the nonmoving party must go beyond the pleadings and demonstrate that there is a material issue of fact which precludes summary judgment. *Celotex*, 477 U.S. at 324; *Martin v. Commercial Union Ins. Co.*, 935 F.2d 235, 238 (11th Cir. 1991).

B. *Standards of Section 523(a)(4)*

Section 523(a)(4) provides a "discharge under section 727 . . . of this title does not

discharge an individual from any debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.” 11 U.S.C. § 523(a)(4). The Plaintiff asserts that the debt owed by the Defendant to the Plaintiff is nondischargeable because it arises from either the Defendant's embezzlement or larceny. For purposes of section 523(a)(4), “[e]mbezzlement is defined as the fraudulent appropriation of property by a person to whom such property has been entrusted, or into whose hands it has lawfully come.” *In re Neal*, 300 B.R. 86 (Bankr. M.D. Ga. 2003) (quoting *Farmers and Merchants Bank of Eatonton, Georgia v. Brinsfield (In re Brinsfield)*, 78 B.R. 364, 369 (Bankr. M.D. Ga. 1987)).

The undisputed facts establish that the Defendant was entrusted with oversight of the Plaintiff's property in the course of her employment. The Defendant used her position of employment to make unauthorized loans to herself and to transfer the Plaintiff's funds to her personal accounts. The undisputed facts show that the Defendant was not authorized by the Plaintiff to make these additional loans to herself. The fact that Defendant did not simply apply for a new loan from the Plaintiff, thus permitting the Plaintiff to determine whether the Defendant was creditworthy, supports the Court's inference that the Defendant acted with fraudulent intent in making these unauthorized loans and transferring the funds to her personal accounts. The Defendant has offered no evidence to rebut this inference. Accordingly, the Court concludes that the debt owed by the Defendant to the Plaintiff arose from the Defendant's embezzlement of the loan proceeds and, is therefore, nondischargeable pursuant to section 523(a)(4) of the Bankruptcy Code.

CONCLUSION

For the reasons stated above, the Plaintiff's Motion for Summary Judgment is hereby **GRANTED**. The debt owed by the Defendant, Holly Diane Hatchett, to the Plaintiff, The Woodbury Banking Company, is **NONDISCHARGEABLE** pursuant to section 523(a)(4) of the Bankruptcy Code. A separate judgment will be entered contemporaneously herewith.

END OF DOCUMENT