



IT IS ORDERED as set forth below:

Date: March 10, 2011

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

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

IN RE:	:	Chapter 7
	:	
WINSTON JASON PETERS,	:	Case Number: 10-70648-MGD
	:	
Debtor,	:	Judge Diehl
	:	
CHASE BANK USA, N.A.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Adversary Proceeding No: 10-06316
	:	
WINSTON JASON PETERS,	:	
	:	
Defendant.	:	

ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

This case is before the Court on Chase Bank USA, N.A.'s Motion for Default Judgment ("Motion") filed on January 5, 2011 (Docket No. 6). Chase Bank USA, N.A. ("Plaintiff") commenced the above-styled adversary proceeding against Winston Jason Peters ("Defendant") on July 12, 2010, seeking a determination that Defendant's debt to Plaintiff was nondischargeable

pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(2)(C), and (a)(14). A summons was issued commanding Defendant to file and serve an answer to the complaint. According to the certificate of service, it appears service was proper under Rule 7004(b) of the Federal Rules of Bankruptcy Procedure. (Docket No. 3). Rule 7012 of the Federal Rules of Bankruptcy Procedure requires a defendant to “serve an answer within 30 days after the issuance of the summons.” To date, no answer or response has been filed, and Defendant has failed to appear.

Entry of Default was made on November 16, 2010, and on January 5, 2011, Plaintiff filed the Motion. It appears that Plaintiff’s Motion for Default Judgment abandons its §§ 523(a)(2)(A) and (a)(2)(c) claims and seeks an award of \$5,083.80 based solely on its § 523(a)(14) claim. Plaintiff’s complaint fails to allege facts sufficient for the Court to award a default judgment, and, therefore, Plaintiff’s Motion is **DENIED**.

I. RELEVANT FACTS FOR SECTION 523(A)(14) CLAIM

Defendant filed a Chapter 7 case in the Northern District of Georgia, Atlanta Division on April 7, 2010. (Complaint, ¶ 1). Plaintiff issued a credit line to Defendant on a credit account, having account number XXX-XXXX-XXXX-7342, on July 22, 2002. (Complaint, ¶¶ 4, 6). Prior to Defendant’s filing bankruptcy, Defendant accumulated charges and/or cash advances in the amount of \$8,021.68. (Complaint, ¶ 6). Defendant made ten charges before filing his bankruptcy. (Complaint, ¶ 6). Plaintiff alleges “[a]t least two (2) charge [sic] were used to pay the U.S. Treasury Department.” (Complaint, ¶ 6). Four charges on the account occurred on November 2, 2009 to vendors that were “taxing authorities for the State of New York and the United States.” (Affidavit of Plaintiff’s Representative in Support of Motion). The outstanding balance on the account as of the date of the Complaint was \$9,115.46. (Complaint, ¶ 7). Defendant listed a liability to Plaintiff

in Defendant's schedules. (Complaint, ¶ 4).

II. DISCUSSION

Plaintiff has moved for a default judgment. The Court has discretion as to the entry of a default judgment. Federal Rule of Civil Procedure 55(b), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7055, provides that the court *may* enter judgment by default. FED. R. CIV. P. 55(b) (emphasis added). “[A] defendant’s default does not in itself warrant the court in entering default judgment. There must be a sufficient basis in the pleadings for the judgment entered.” *Nishimatsu Constr. Co., Ltd. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *see also Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988), *cert. denied*, 493 U.S. 858 (1989); *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985). Plaintiff seeks a determination that Defendant’s debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(14).¹ Based on Plaintiff’s failure to plead facts sufficient to make out the elements of a § 523(a)(14) claim, there is no legal basis to award judgment by Plaintiff.

Section 523(a)(14) provides that a debt “incurred to pay a tax to the United States” is nondischargeable if the tax itself would be nondischargeable under § 523(a)(1). 11 U.S.C. § 523(a)(14). To succeed in establishing the nondischargeability of a debt pursuant to § 523(a)(14), Plaintiff must show 2 elements: “(1) the debt was incurred to pay a tax owed to the United States; and (2) the tax owed to the United States would have otherwise been nondischargeable under § 523(a)(1).” *Ramey v. Barton (In re Barton)*, 321 B.R. 877, 879 (Bankr. N.D. Ohio 2005); *see also*

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Based on the facts alleged in the Complaint, it seems that Plaintiff seeks a nondischargeability determination based on § 523(a)(14) and (14A). Both subsections reference § 523(a)(1), which references § 507(a)(8). The facts as alleged fail to make out the elements under § 507(a)(8), and Plaintiff’s failure to assert a § 523(a)(14A) claim is not essential to the Court’s ruling.

Fry v. Dinan (In re Dinan), 425 B.R. 583, 586 (Bankr. D. Nev. 2010), *Chase Manhattan Bank v. Rollings (In re Rollings)*, 2009 Bankr. LEXIS 360, *6 (Bankr. D.N.M. Feb. 12, 2009), *Am. Express Centurion Bank v. Gavin (In re Gavin)*, 248 B.R. 464, 465 (Bankr. M.D. Fla. 2000). It appears that Plaintiff also seeks a nondischargeability determination based on Defendant's payment of taxes to governmental units by incurring debt to Plaintiff under § 523(a)(14A). Section 523(a)(14A) provides similar relief with respect to debts "incurred to pay governmental unit, other than the United States, that would be nondischargeable under [§ 523](1)." 11 U.S.C. § 523(a)(14A).

Plaintiff fails to establish that the debt was incurred to pay a tax otherwise non-dischargeable under § 523(a)(1). Plaintiff merely alleges that four charges occurred on November 2, 2009 to "vendors that were taxing authorities for the United States and the State of New York." (Affidavit of Plaintiff's Representative in Support of Motion). In addition to not pleading the proper statutory subsection for the alleged State of New York charges, the fatal flaw with Plaintiff's Complaint and Motion is the failure to allege sufficient facts to establish that the debt incurred was based on payment of taxes otherwise nondischargeable under § 523(a)(1).

Section 523(a)(1) provides that a debt is nondischargeable if it is "for a tax or a customs duty— of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed." 11 U.S.C. § 523(a)(1)(A). Although Plaintiff does not identify which code section is applicable to its determination of dischargeability under § 523(a)(1)(A), presumably, Plaintiff intended to prove that the debt at issue included taxes of the kind and for the periods specified in 507(a)(8).² Section 507(a)(8) is an extensive section, dealing with unsecured prepetition tax claims for income taxes, property taxes, trust fund taxes, employment

² Defendant voluntarily filed for bankruptcy. Thus, section 507(a)(3) is inapplicable here.

taxes, excise taxes, customs duties, and penalties related to those taxes. There is a specified time period for which tax claims are incurred and assessed to qualify for priority status under § 507(a)(8). Plaintiff makes no factual allegations regarding the tax year, or otherwise, that relates to the referenced charges. Simply alleging that charges on an account were made to the taxing authorities for the United States and State of New York on November 2, 2009 does not provide adequate facts to entitle Plaintiff an award of judgment under § 523(a)(14).

The Supreme Court has explained that the pleading requirements under Rule 8 of the Federal Rules of Civil Procedure³, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7008, require the complaint to contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929. Without pleading the required elements of the cross-referenced statutory sections, § 523(a)(1) and § 507(a)(8), there are insufficient facts to state a claim for relief, and there is no basis to enter a default judgment against Defendant under § 523(a)(14). Accordingly, it is

ORDERED that Plaintiff’s Motion for Default Judgment is hereby **DENIED**.

IT IS FURTHER ORDERED that Plaintiff has fourteen (14) days in which to file an amended complaint. If no such pleading is timely filed, this adversary proceeding shall, without further notice, stand **DISMISSED**.

The Clerk is directed to serve a copy of this Order upon Plaintiff, Plaintiff’s counsel, Defendant, and Defendant’s counsel.

END OF DOCUMENT

³ Federal Rule of Civil Procedure 8(d)(1) provides that “each allegation must be simple, concise, and direct.”