



IT IS ORDERED as set forth below:

Date: March 25, 2011

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re:)	
)	
ARNOLD SCOTT MEREDITH,)	CHAPTER 7
)	
Debtor.)	CASE NO. 10-77391-WLH
)	
DURHAMTOWN PLANTATION)	
SPORTSMAN'S RESORT, LLC,)	
)	
Plaintiff,)	
v.)	ADVERSARY PROCEEDING
)	
ARNOLD SCOTT MEREDITH,)	NO. 10-6528
)	
Defendant.)	
)	

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This adversary proceeding is before the Court on Debtor Defendant Arnold Meredith's Motion for Summary Judgment (the "Motion") (Docket No. 6) and Plaintiff Durhamtown Plantation Sportsman's Resort's Response in Opposition thereto (Docket No. 9). Defendant's Motion seeks summary judgment on a Complaint objecting to the Debtor Defendant's discharge

pursuant to 11 U.S.C. § 727(a)(4). 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 and supporting documents and briefs submitted by the parties. For the reasons stated below, the Court concludes that the Defendant's Motion for Summary Judgment is **DENIED**. The following constitutes the Court's findings of facts and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

FINDINGS OF FACT

Debtor Defendant Arnold Meredith ("Meredith") is the father and natural guardian of Hunter Meredith ("Hunter"), a minor child. Meredith is married to Christine Meredith ("Christine"), the mother and natural guardian of Hunter. On March 15, 2008, Meredith brought Hunter to the D.P. Riding and Rental, Inc. facility for the purpose of participating in motorcycle racing and freestyle motorcycle riding.

Prior to attending the D.P. Riding and Rental, Inc. facility on March 15, 2008, Meredith executed a document denominated "Release of Liability and Waiver". While in use of the D.P. Riding and Rental Inc. facility, Hunter was involved in a motorcycle collision and sustained serious physical injuries. On March 12, 2010, Christine, individually and as Guardian and Friend of Hunter, commenced a civil action in the Superior Court of Greene County, Georgia, Civil Action File No. 10-CV-183 ("Superior Court Litigation"), against Plaintiff Durhamtown Plantation Sportsman's Resort, LLC ("Durhamtown") and other parties including Meredith (her husband), seeking damages in connection with Hunter's injuries. On April 14, 2010, Durhamtown filed an answer in the Superior Court Litigation, including a cross-claim against Meredith for indemnification. Meredith is not a plaintiff in the Superior Court Litigation.

On June 14, 2010, Meredith filed a Chapter 7 bankruptcy case with this Court. On September 20, 2010, Durhamtown filed a Complaint pursuant to 11 U.S.C. § 727 objecting to Meredith's discharge. (Docket No. 1). The Complaint sought denial of Meredith's discharge based on an alleged failure to schedule initially, or amend the Schedules thereafter, to reflect any claim by Meredith against Durhamtown or other defendants in the Superior Court Litigation and failure to schedule, or amend the Schedules thereafter, to disclose Meredith's potential right to share in any damages awarded to Christine.

In connection with the Chapter 7 bankruptcy petition filed by Meredith, Meredith filed a Statement of Financial Affairs and Schedules. In response to question 4 of Meredith's Statement of Financial Affairs, Meredith identified "Christine Meredith, et. al. v. Scott Meredith; 10-CV-183" as "pending" in the Superior Court of Greene County. In Schedule F of his bankruptcy Schedules, Meredith identified "D.P. Riding and Rental, Inc. c/o E.J. Boswell Esq." for an unknown claim amount as a creditor holding an unsecured non-priority claim in the case. Meredith also identified "Durhamtown Plantation Sportsman's Resort, LLC c/o E.J. Boswell, Esq." on Schedule F of his bankruptcy Schedules as a creditor holding an unsecured non-priority claim in the case for an unknown amount.

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 (1986). The party moving for summary judgment has the burden of demonstrating that no dispute exists as to

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

any material fact. Hairston v. Gainesville Sun Pub. Co., 9 F.3d 913, 918 (11th Cir. 1993). Once this burden is met, the non-moving party cannot merely rely on 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. Id. 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.

The pivotal issues raised in this adversary proceeding are (i) whether Meredith has a potential claim against Durhamtown, and if so whether he knowingly and fraudulently failed to disclose it in his Schedules or to amend them thereafter to disclose the claim; and (ii) whether Meredith has a potential right to one-half (1/2) of any damages awarded to Christine on behalf of Hunter, and if so whether Meredith knowingly and fraudulently failed to disclose it in his Schedules or to amend them thereafter to disclose the claim.

The Claim Against Durhamtown

The provisions relating to discharge of debtors must generally be construed liberally in favor of the debtor and strictly against those who challenge the debtor's right to a discharge. Reynolds v. Trafford (In re Trafford), 377 B.R. 387, 392 (Bankr. M.D. Fla. 2007). The creditor bears the burden of proving nondischargeability by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279 (1991).

Under 11 U.S.C. § 727(a)(4), a court shall grant a discharge to a debtor unless “the debtor knowingly and fraudulently, or in connection with the case – (A) made a false oath or account”. A denial of discharge pursuant to section 727(a)(4) is justified when a false oath is (i) fraudulent and (ii) material. See Protos v. Silver (In re Protos), 322 Fed. Appx. 930, 933-34 (11th Cir. 2009)

(citing Swicegood v. Ginn, 924 F.2d 230, 232 (11th Cir. 1991)). “Deliberate omissions by the debtor may [] result in the denial of a discharge.” Protos, 322 Fed. Appx. at 933 (citing Chalik v. Moorefield (In re Chalik), 748 F.2d 616, 618 (11th Cir. 1984)).

A creditor arguing fraudulent intent under section 727(a)(4), must establish actual, not constructive, fraud. Chambers v. Coon (In re Coon), 396 B.R. 772, 778 (Bankr. M.D. Fla. 2008). A debtor’s fraudulent intent may be inferred from the totality of circumstances or circumstantial evidence. See Ingersoll v. Kriseman (In re Ingersoll), 124 B.R. 116, 123 (Bankr. M.D. Fla. 1991). Fraudulent intent “may be inferred from a series of incorrect statements and omissions contained in the schedules.” Pergament v. Boccia (In re Boccia), 2009 WL 891766, at *4 (Bankr. E.D.N.Y. 2009) (citations omitted). However, denial of discharge is not justified when the false oath was based upon a mistake or inadvertence. Hunerwadel v. Dulock (In re Durlock), 250 B.R. 147, 152 (Bankr. N.D. Ga. 2000) (citing Beaubouef v. Beaubouef (In re Beaubouef), 966 F.2d 174, 178 (5th Cir. 1992)).

In the instant matter, to grant summary judgment to Meredith, the Court must first determine whether it is undisputed that Meredith did not have a claim against Durhamtown as Meredith argues. If the existence of the claim is open to dispute, Meredith may nevertheless prevail on a motion for summary judgment if the possibility of a claim was adequately disclosed in Meredith’s Schedules and Statement of Financial Affairs.

Durhamtown argues Meredith should have disclosed a claim against Durhamtown even though it is undisputed Meredith has not brought such a claim. Counsel for Meredith (who is different than Meredith’s bankruptcy counsel) sent a letter to Durhamtown on October 21, 2009 on behalf of Meredith and Christine seeking damages for the injury to their son. Durhamtown therefore argues that Meredith has previously asserted the claim, is aware of it, and should have

scheduled it. Attached to the Affidavit of Joni Roberts, filed in support of Durhamtown's response to the Debtor's Motion for Summary Judgment, is a Release of Liability and Waiver signed by Meredith, releasing Durhamtown of liability except in the instance of a willful and wanton negligent act.

Although the Court suspects Durhamtown's position in the Superior Court Litigation is Meredith's claims have been released, neither party has made that statement, and it is not an undisputed fact on which the Court can rely. Moreover, neither party has provided the Court with any pleadings from the Superior Court Litigation. The Court cannot, therefore, determine if Durhamtown is taking inconsistent positions with respect to the existence of a claim. Moreover, the Court cannot determine if Christine has asserted claims for "willful or wanton" negligence, which claims may also have been assertable by Meredith, notwithstanding his execution of the release. The mere fact that a prior counsel on behalf of Meredith demanded damages from Durhamtown does not necessarily mean that Meredith has a claim to be disclosed. It is entirely possible that litigation counsel did not have all the facts before him at the time the letter was sent, including a copy of the Release of Liability and Waiver. However, Meredith's simple statement that he did not believe he had a claim is insufficient to prevail on a motion for summary judgment since a prior demand was made and not all claims were released in the Release. Based on the facts before the Court presently, the Court cannot determine that Meredith has no claim against Durhamtown which should have been disclosed.

If Meredith has a claim against Durhamtown, the disclosures in the Statement of Financial Affairs and Schedules are not sufficient to prevail on a motion for summary judgment as to the adequacy of disclosure. The lawsuit disclosed in response to question 4 of the Statement of Financial Affairs says, "Christine Meredith, et al. v. Scott Meredith; 10-CV-183".

Nowhere is Durhamtown or any third-party identified, and the nature of the proceeding is not disclosed. From the case style of one spouse versus another, a party reviewing the Statement of Financial Affairs may have concluded a divorce action was pending, rather than an action to recover funds from a third-party. Based on the facts before the Court, Meredith's Motion for Summary Judgment is therefore **DENIED**.

The Claim Against Christine Meredith

Next, Durhamtown asserts that Meredith failed to disclose a potential claim for a one-half (1/2) interest in any award recovered by Christine in the Superior Court Litigation. Durhamtown asserts that the right to recover damages for a minor child's medical expenses is joint and several as between the child's parents. Rose v. Hamilton Medical Center, 184 Ga. App. 182, 183 (1987). Since Christine and Meredith are the married, custodial, natural parents of Hunter, Durhamtown maintains that any recovery for Hunter's medical expenses or loss of services will be joint and several as between Christine and Meredith. Meredith's failure to disclose the potential one-half (1/2) interest in a medical expense award is, according to Durhamtown, grounds to object to discharge pursuant to § 727(a)(4). In defense of Meredith's non-disclosure of any one-half (1/2) interest in a medical expense award obtained by Christine, Meredith relies upon O.C.G.A. § 19-3-8 for the proposition that inter-spousal immunity bars third-party actions for indemnity or contribution against a plaintiff's spouse.

As with the claim against Durhamtown, Meredith would be entitled to summary judgment if as a matter of law he has no claim to share in any recovery by Christine or if any potential claim is adequately disclosed in the Schedules and Statement of Financial Affairs. The Court concludes that Durhamtown has raised a valid issue as to whether Meredith would be entitled to any medical expense award or loss of service award, jointly and severally with

Christine. The Rose case states that married parents of a minor child would be entitled to any award jointly and severally, giving rise to an arguable claim by Meredith against Christine. Although the Court has not found a case involving a husband or wife seeking recovery against the other for one-half (1/2) of damages awarded to their minor child, Georgia law provides, in at least one other context that both parents have a right to share in the recovery from the wrongful death of a child. See O.C.G.A. § 19-7-1 (providing that under the Georgia wrongful death statute both parents have a right to share in the recovery for the wrongful death of a child who is not survived by spouse or children).

Meredith's reliance on the inter-spousal immunity bar is misplaced. As Durhamtown asserted in its Response to Debtor Defendant's Reply to Response and Opposition (Docket No. 14), the inter-spousal immunity statute cited by Meredith protects against third-party actions for indemnity or contribution, not claims between spouses for indemnity or contribution. Therefore, the Court concludes, based on the record before it now, it cannot grant summary judgment as to whether, under Georgia law, Meredith has a possible claim for a one-half (1/2) interest in any recovery by Christine.

Having concluded that summary judgment cannot be granted as to whether there is a possibility under Georgia law for a claim, the Court must deny Meredith's Motion for Summary Judgment because any possible claim against Christine is not disclosed in the Schedules or Statement of Financial Affairs. Issues of fact remain as to the likelihood of whether such a claim exists and Meredith's intent with respect to its disclosure.

Based on the foregoing, it is hereby

ORDERED that the Defendant's Motion for Summary Judgment is **DENIED**.

END OF DOCUMENT

DISTRIBUTION LIST

Durhamtown Plantation Sportman's Resort, LLC
c/o John K. Rezac
Taylor English Duma
1600 Parkwood Cir., Suite 400
Atlanta, GA 30339

John K. Rezac
Taylor English Duma LLP
1600 Parkwood Circle
Suite 400
Atlanta, GA 30339

Arnold Scott Meredith
430 Water Shadow Lane
Alpharetta, GA 30022

George M. Geeslin
Eight Piedmont Center, Suite 550
3525 Piedmont Road, N.E.
Atlanta, GA 30305-1565