



IT IS ORDERED as set forth below:

Date: June 8, 2012

Mary Grace Diehl

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

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

In re:	:	Chapter 7
	:	
LAURA ANN OLIVER,	:	Case No. 10-43065-MGD
	:	
Debtor,	:	Judge Diehl
	:	
MAGBEE BROTHERS LUMBER and	:	
SUPPLY COMPANY, INC.,	:	Adversary Proceeding
	:	
Plaintiff,	:	No. 11-4041-MGD
	:	
v.	:	
	:	
LAURA ANN OLIVER,	:	
	:	
Defendant.	:	

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on a Motion for Summary Judgment filed by Plaintiff Magbee Brothers Lumber and Supply Company, Inc. ("Magbee"). (Docket No. 39). Magbee initiated this adversary proceeding by filing a complaint objecting to Defendant Laura Ann Oliver's ("Oliver")

discharge under 11 U.S.C. § 727 on July 15, 2012. (Docket No. 1). Oliver filed a response to the Motion on March 27, 2012, and Magbee filed a reply on April 4, 2012. (Docket Nos. 41, 42). Magbee's Motion is now ripe for determination. The Court has subject matter over this core proceeding in accordance with 28 U.S.C. § 157(b)(2)(j) and 28 U.S.C. § 1334. For the reasons set forth below, the Motion is DENIED.

Background

In the summer of 2009, Oliver transferred real property ("Property") located in Bartow County, Georgia to her daughter, Lindsey McIntyre. The transfer was recorded in the Bartow County real estate records on August 10, 2009. Oliver filed a petition under Chapter 7 of the Bankruptcy Code on August 3, 2010. According to Oliver's Statement of Financial Affairs, the Property was transferred to McIntyre as repayment for charges Oliver had made on McIntyre's credit cards. The Statement of Financial Affairs also listed a pending state-court lawsuit between Magbee and Oliver. On July 15, 2011, Magbee filed its Complaint objecting to Oliver's discharge, asserting claims under 11 U.S.C. §§ 727(a)(2)-(5) and (7). Magbee's Motion now seeks summary judgment on two of these claims: 11 U.S.C. § 727(a)(2) and § 727(a)(4).

Summary Judgment Standard

Under Rule 56 of the Federal Rules of Civil Procedure, applicable to this Court in accordance with Rule 7056 of the Federal Rules of Bankruptcy Procedure, summary judgment is appropriate only if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). Material facts are those which might affect the outcome of a proceeding under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,

248 (1986). Further, 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 its entitlement to summary judgment. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). The moving party must identify the pleadings, discovery materials, or affidavits that show the absence of a genuine issue of material fact. *Id.* Once this burden is met, the nonmoving party must present specific facts that demonstrate there is a genuine dispute over material facts. *Id.* The Court must view the evidence in the light most favorable to the nonmoving party and resolve all reasonable doubts and inferences in favor of the non-moving party. *Rosen v. Biscayne Yacht & Country Club, Inc.*, 766 F.2d 482, 484 (11th Cir. 1985).

At the summary judgment stage, all facts asserted by the party opposing summary judgment must be regarded as true if supported by evidentiary material. *Warrior Tombigbee Transp. Co., Inc. v. M/V Nan Fung*, 695 F.2d 1294, 1298 n. 2 (11th Cir. 1983). To defeat a summary judgment motion, “[a]ll that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *BP Prods. N. Am., Inc. v. Se. Energy Group*, 282 Fed. Appx. 776, 779 (11th Cir. 2008).

Under 11 U.S.C. § 727, the Bankruptcy Code denies a discharge to debtors in certain circumstances. Because denying a debtor’s discharge is an extraordinary remedy, “statutory exceptions to discharge must be construed liberally in favor of the debtor and strictly against the objecting party.” *Eastern Diversified Distributors, Inc. v. Matus (In re Matus)*, 303 B.R. 660, 672 (Bankr. N.D. Ga. 2004). The “reasons for denying discharge ... must be real and substantial, not merely technical and conjectural.” *Equitable Bank v. Miller (In re Miller)*, 39 F.3d 301, 304 (11th

Cir. 1994 (quoting *In re Tully*, 818 F.2d 106, 110 (1st Cir. 1987)). Additionally, as a general rule, objections to discharge under § 727 can seldom be resolved at the summary judgment stage. *Owens v. Owens* (*In re Owens*), 2006 WL 6589904, *4 (Bankr. N.D. Ga. 2006) (citing *U.S. v. Lenard* (*In re Lenard*), 140 B.R. 550, 555 D. Colo. 1992) (explaining that § 727 objections “often require inquiry into the debtor’s state of mind or justification for his actions, necessitating explanatory testimony by the debtor and an assessment of his demeanor and credibility”). This is especially the case with § 727(a)(2) and (4), which involve issues of intent and fraud. *Hoover v. Radabaugh*, 307 F.3d 460, 467 (6th Cir. 2002) (stating that summary judgment is “particularly inappropriate when intent is at issue”); *Bell v. Stuerke* (*In re Stuerke*), 61 B.R. 623, 626 (B.A.P. 9th Cir. 1986 (noting that “fraud claims in particular are normally so attended by factual issues that summary judgment is seldom possible”).

Disputed Facts

Here, summary judgment cannot be granted because there are material facts in dispute on both of the claims on which Magbee seeks summary judgment. Under the § 727(a)(2) claim, Oliver’s discharge will be denied if she transferred estate property within one year before the bankruptcy filing with the intent to hinder, delay, or defraud creditors. Magbee has pointed to circumstantial evidence supporting its contention that Oliver intended to hinder, delay, or defraud creditors by transferring the Property to Oliver’s daughter. (June 11, 2010 Deposition of Laura Ann Oliver pp. 11, 20-21, 100-102, Exh. B, Part 5, Docket No. 39). But circumstantial evidence in the record also belies an inference of intent. (January 25, 2012 Deposition of Lindsey McIntyre pp. 11-12, Docket No. 45). Magbee filed a full transcript of the deposition of Lindsey McIntyre, who is Oliver’s daughter. (*Id.*) McIntyre stated in the deposition that Oliver transferred the Property to

McIntyre as repayment for loans to Oliver. (*Id.*) Because Oliver is the non-movant, the Court assumes this fact as true and views it in the light most favorable to Oliver. Given this fact, there is a factual dispute over Oliver's intent to hinder, delay, or defraud creditors by transferring the Property.

Under the § 727(a)(4) claim, Oliver's discharge will be denied if she "knowingly and fraudulently, in or in connection with the case— (A) made a false oath or account" 11 U.S.C. § 727(a)(4)(A). To succeed in this objection to discharge, Magbee must show that (1) Oliver made an omission or false statement knowingly and with fraudulent intent that (2) was material to the bankruptcy case. *In re Matus*, 303 B.R. 660, 676-78 (Bankr. N.D. Ga. 2004). There is also a factual dispute here over Oliver's knowledge and intent, as both parties have introduced evidence supporting their factual contentions as to Oliver's intent. (January 25, 2012 Deposition of Laura Ann Oliver pp. 60-65, Exh. A, Part 5, Docket No. 39; compare Affidavit of Laura Ann Oliver, Exh., Part 4, Docket No. 41).

Accordingly, it is

ORDERED that Magbee's Motion for Summary Judgment is **DENIED**. The parties are directed to submit a proposed pre-trial order within thirty (30) days of the date of this Order.

The Clerk is directed to serve a copy of this Order on Plaintiff, counsel for Plaintiff, Defendant, and counsel for Defendant.

END OF DOCUMENT