



**IT IS ORDERED as set forth below:**

**Date: November 8, 2013**

*Mary Grace Diehl*

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

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

In re:	:	
	:	CASE NO. 10-44460-MGD
<b>ANDREA JANE BRENNER aka</b>	:	
<b>ANDREA GIBBY,</b>	:	CHAPTER 7
	:	
Debtor.	:	
	:	
<b>MICHIKO GIBBY,</b>	:	
	:	
Plaintiff,	:	
	:	
v.	:	ADVERSARY CASE NUMBER
	:	13-4034-MGD
<b>ANDREA JANE BRENNER aka</b>	:	
<b>ANDREA GIBBY,</b>	:	
	:	
Defendant.	:	
	:	

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This case is before the Court on Plaintiff's Motion for Summary Judgment ("Motion").  
(Docket No. 8). Defendant timely filed a response to the Motion. (Docket No. 16).

Pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure, incorporating Rule 56

of the Federal Rules of Civil Procedure, a grant of summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The movant bears 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." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotation marks omitted); *accord, e.g., Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009). The court must resolve a motion for summary judgment by viewing all evidence and drawing all reasonable inferences in the light most favorable to the non-moving 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); *Lubin v. Cincinnati Ins. Co.*, 2010 WL 5313754, at \*4 (N.D. Ga. Dec. 17, 2010) (citing *Patton v. Triad Guar. Ins. Corp.*, 277 F.3d 1294, 1296 (11th Cir. 2002)). 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) (internal quotations and citations omitted). After considering the record in the light most favorable to the Defendant, the Court concludes that the requirements for granting summary judgment have not been met.

Plaintiff commenced the above-styled adversary proceeding by filing a complaint for nondischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(2), (4), and (6) and 523(c). The debt at issue is a loan, evidenced by a promissory note, from Plaintiff to Defendant and her former husband, who is Plaintiff's son. The parties dispute Defendant's intent in procuring and executing

the promissory note. Thus, a fact issue remains that is material to the nondischargeability determination. Further, several of Plaintiff's assertions, including that Defendant did not intend to repay the debt at the time the note was executed and that Defendant procured the loan in order to leverage a larger divorce settlement, are conclusory and not supported by facts in the record. Thus, Plaintiff has not provided sufficient evidence demonstrating that it is entitled to judgment as a matter of law.

Summary judgment is inappropriate at this juncture. Plaintiff has not produced sufficient evidence demonstrating that it is entitled to judgment as a matter of law, and Defendant has presented sufficient evidence to warrant an opportunity to try this matter. Accordingly, it is

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

It is **FURTHER ORDERED** that the parties submit a consolidated pretrial order within thirty (30) days of entry of this Order.

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

**END OF DOCUMENT**