IT IS ORDERED as set forth below:

Date: December 24, 2013

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NUMBERS
	:	
CELESTINE A. GREENE,	:	**BANKRUPTCY CASE**
	:	**NO. 13-65956-MGD**
Debtor.	:	
	:	CHAPTER 7
	:	
DELTA COMMUNITY CREDIT UNION,	:	**ADVERSARY CASE**
	:	**NO. 13-05326**
Plaintiff,	:	
	:	
v.	:	
	:	
CELESTINE A. GREENE,	:	
	:	
Defendant.	:	
	:	

ORDER GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

This case is before the Court on Plaintiff Delta Community Credit Union's Motion for Default Judgment ("Motion"). (Docket No. 6). Plaintiff seeks to have its debt, in the amount of $34,349.73, deemed nondischargeable under 11 U.S.C. § 523(a)(2)(A), (a)(2)(B), and (a)(6). According to the certificate of service, Defendant was served the summons and complaint by first

class certified mail on September 11, 2013 in accordance with Rule 7004 of the Federal Rules of Bankruptcy Procedure. (Docket No. 3). Plaintiff filed an amended complaint one day later. Defendant did not file an answer or otherwise respond and an entry of default was made on October 21, 2013. This motion for default judgment was then filed. Again, Defendant has not filed a response of any other pleading to set aside entry of the default.

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 (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). In default, the complaint's factual allegations – except those relating to the amount of damages – are deemed admitted. FED. R. BANKR. P. 7008 (applying FED. R. CIV. P. 8(b)(6)).

The facts as alleged support the entry of a default judgment under § 523(a)(2)(A), (a)(2)(B) and (a)(6). The amended complaint states that Defendant applied to Plaintiff for the purpose of financing a car purchase. Defendant made false oral and written representations on her membership application regarding her employment and fabricated a paystub that Defendant relied upon. Defendant presented a purported Bill of Sale that induced Plaintiff to loan Defendant $29,992.43. Plaintiff and Defendant executed a security agreement. The security agreement contemplates a further security interest in the purchase of a vehicle and the parties orally discussed Plaintiff

obtaining a security interest in the purported vehicle that was to be purchased. Plaintiff issued the check made payable to Defendant and the purported seller, Royal Exotic LLC, and issued a Georgia Certificate of Title that was to be returned to Plaintiff. Defendant endorsed the check with her signature and for the co-payee, Royal Exotic LLC, to obtain the funds. She did not purchase the vehicle or return to Plaintiff the Certificate of Title.

Exceptions to discharge must be construed narrowly, *Equitable Bank v. Miller (In re Miller)*, 39 F.3d 301, 304 (11th Cir. 1994); *Matter of Cross*, 666 F.2d 873, 880-81 (5th Cir. Unit B 1982); *Carlan v. Dover (In re Dover)*, 185 B.R. 85, 88 (Bankr. N.D. Ga. 1995), and the burden is on the party seeking nondischargeability to prove by a preponderance of the evidence that such an exception is warranted. *Lewis v. Lowery (In re Lowery),* 440 B.R. 914, 921 (Bankr. N.D. Ga. 2010) (citing *Grogan v. Garner*, 498 U.S. 279, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991)).

A. Section 523 (a)(2)(A)

Plaintiff alleges that Defendant obtained the loan funds by false pretenses. Section 523 (a)(2)(A) provides that a debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud" is nondischargeable. 11 U.S.C. § 523 (a)(2)(A). The uncontested facts, as set forth above, make out the elements of all of these claims.

Courts have required a plaintiff to establish the traditional elements of common law fraud to prevail in a section 523(a)(2)(A) action. *SEC v. Bilzerian (In re Bilzerian)*, 153 F.3d 1278, 1281 (11th Cir.1998). A plaintiff must establish: (i) the debtor made a false representation with the purpose and intent to deceive the creditor; (ii) the creditor relied on the misrepresentation; (iii) the reliance was justified; and (iv) the creditor sustained a loss as a result of the misrepresentation. *Id.*;

In re Johannessen, 76 F.3d 347, 350 (11th Cir.1996). "A plaintiff must prove that the debtor's conduct involved actual fraud—either moral turpitude or intentional wrong on the debtor's part" to prevail in a section 523(a)(2)(A) action. *In re DeLisle*, 125 B.R. 310, 312 (Bankr. M.D. Fla.1991).

The false representation giving rise to the claim must have been knowingly and fraudulently made to except a debt from discharge. *In re Shusteric*, 380 B.R. 58, 65 (Bankr. M.D. Fla. 2007). Intent is a subjective issue requiring the court to "examine the totality of the Debtor's actions to determine if [he] possessed the requisite intent to deceive the Plaintiffs." *In re Copeland*, 291 B.R. 740, 766 (Bankr. E.D. Tenn.2003). The reliance upon the debtor's false representation must be justified. *Field v. Mans*, 516 U.S. 59, 73–5, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995) (justifiable reliance is a subjective test). "Justifiable reliance is gauged by an individual standard of the plaintiff's own capacity and the knowledge which he has, or which may fairly be charged against him from the facts within his observation in the light of his individual case." *City Bank & Trust Co. v. Vann (In re Vann)*, 67 F.3d 277, 283 (11th Cir. 1995).

Defendant's default and Plaintiff's plead facts establish each of these required elements, and Plaintiff is entitled to a nondischargeability judgment.

B. Section 523(a)(2)(B)

Section 523(a)(2)(B) requires four elements to be proven to deny a discharge of the debt. The objecting party must show that the debt was obtained by a writing that is: (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive. § 523(a)(2)(B).

"A statement is materially false for purposes of section 523(a)(2)(B) if it paints a

substantially untruthful picture of financial conditions by misrepresenting information of the type that would normally affect the decision to grant credit." COLLIER, ¶ 523.08[2][b]. "A falsehood is material if it is significant in both amount and effect on the creditor receiving the financial statement. The information must have actual usefulness to the creditor and must have been an influence on the extension of credit." *Citizens Bank of Washington County v. Wright (In re Wright)*, 299 B.R. 648, 659 (Bankr. M.D. Ga. 2003). As with § 523(a)(2)(A), reasonable reliance is a subjective standard that "connotes the use of the standard of the ordinary and average person." *In re Vann*, 67 F.3d at 280.

Defendant's intentionally false membership application, including her intentionally false employment and paystub, satisfies the required elements of § 523(a)(2)(B). Employment and her purported salary are material terms, and based upon the documentation provided, the plead facts establish that the reliance was reasonable.

C. Section 523(a)(6)

Section 523(a)(6) excepts from discharge an individual's debts incurred by "willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). The legislative history on the term "willfulness" refers to a deliberate and intentional act that necessarily leads to injury. H.R. REP. NO. 595, 95th Cong., 1st Sess. 365 (1977). "Malicious" acts under this section are "wrongful and without just cause or excessive even in the absence of personal hatred, spite, or ill will." *Matter of Holt*, 173 B.R. 806, 812 (Bankr. M.D. Ga. 1994). Malice can be implied from the nature of the act. *In re Walker*, 48 F.3d 1161, 1164 (11th Cir. 1995). Courts have held that a wrongful act done intentionally, which necessarily produces harm or which has a substantial certainty of causing harm and is without just cause or excuse, is "willful and

malicious" within the meaning of section 523(a)(6). *See In re Walker*, 48 F.3d 1161, 1164 (11th Cir. 1995); *accord Printy v. Dean Witter Reynolds, Inc.*, 110 F.3d 853, 37 C.B.C.2d 1370 (1st Cir. 1997) (collecting cases). "Section 523(a)(6) is confined to acts . . . done with an actual intent to cause injury as opposed to acts done intentionally that result in injury." *In re Boggus*, 479 B.R. 147, 157 (Bankr. N.D. Ga. 2012) citing *Kawaauhau v. Geiger,* 523 U.S. 57 (1998). The facts plead by Plaintiff, taken as true, are sufficient to establish a section 523(a)(6) claim. Falsifying employment information for the purposes of securing a loan and using funds for a purpose other than what was represented reveal the requisite willful intent. Defendant had reasonable cause to know that Plaintiff would not have lent her the funds without this false information. Further, Plaintiff was injured by Defendant's action because it does not have a secured claim since Defendant did not purchase the purported vehicle as represented. There is no just cause or alternative explanation for Defendant's actions, especially in this default setting. The injury caused to Plaintiff was the natural consequence and certain result based on Defendant's actions.

Plaintiff is entitled to entry of a default judgment and its debt is deemed nondischargeable. The amount of Plaintiff's debt is not a facts that can be admitted by default. FED. R. BANKR. P. 7008. Accordingly, it is

ORDERED that Plaintiff's Motion for Default Judgment is hereby **GRANTED.**

It is **FURTHER ORDERED** that Plaintiff's debt is non-dischargeable under § 523 (a)(2)(A), (a)(2)(B) and (a)(6).

A separate judgment in favor of the Plaintiff will be entered contemporaneously with this Order.

The Clerk is directed to serve a copy of this Order upon Plaintiff, Plaintiff's counsel,

Defendant, Defendant's counsel, and the Chapter 7 Trustee.

END OF DOCUMENT