IT IS ORDERED as set forth below:

Date: January 30, 2015

Barbara Ellis-Monro
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	
HOPE BELINDA ROGERS, Debtor.	CASE NO. 13-70614-BEM
	CHAPTER 7
A.D.R. FINANCIAL SERVICES, INC., Plaintiff,	
v.	ADVERSARY PROCEEDING NO. 14-5164-BEM
HOPE BELINDA ROGERS, Defendant.	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff's Motion for Summary Judgment (the "Motion"). [Doc. No. 9]. Plaintiff filed a complaint to determine the dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(7) (the "Complaint"). [Doc. No. 1]. The Complaint alleges that the Debtor-Defendant ("Rogers" or "Defendant") was ordered to pay restitution to A.D.R.

Financial Services, Inc. ("ADR" or "Plaintiff") in the amount of $108,260.48 as a condition of her probation. Defendant, acting *pro se,* filed an answer contesting that the payment ordered by the state court was awarded as restitution and arguing that restitution as a condition of probation is a dischargeable debt under the Bankruptcy Code. [Doc. No. 4]. The Court held a status conference in which both the Plaintiff and Defendant appeared. After the status conference, the Court entered an Order setting a deadline of October 25, 2014 for the parties to file dispositive motions. [Doc. No. 7]. Plaintiff timely filed the Motion. Defendant did not timely respond, but did file an Answer to Motion for Summary Judgment on December 1, 2014. [Doc. No. 10]. Considering Defendant is acting *pro se,* and in the interest of adjudicating the merits of this proceeding, the Court will consider Defendant's Answer to Motion for Summary Judgment. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I), and the Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. § 523.

I. Summary Judgment Standard

Motions for summary judgment are governed by Federal Rule of Civil Procedure 56, made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7056. Summary judgment is appropriate when "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); *Celotex Corp v. Catrett*, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 2553 (1986). "The inquiry performed is the threshold inquiry of determining whether…. there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 511 (1986).

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. *Celotex*, 477 U.S. at 322. Once this burden is met, the nonmoving party cannot merely rely on allegations or denials in its own pleadings. *Hariston v. Gainesville Sun Publ'g. Co.*, 9 F.3d 913, 918 (11th Cir. 1993). Rather, the non-moving party must present specific facts supported by evidence that demonstrate there is a genuine material dispute. *Id.* In deciding a motion for summary judgment, the Court views the evidence and reasonable inferences in favor of the non-moving party. *Gray v. Manklow* (*In re Optical Tech., Inc.*), 246 F.3d 1332, 1334 (11th Cir. 2001).

The movant is required to submit a separate statement of material facts, and the respondent is required to file a statement controverting any facts in dispute. BLR N.Ga. 7056-1(a)(1), (2). Any facts not controverted by the respondent will be deemed admitted. *Id.* 7056-1(a)(2). When the material facts are not in dispute, the role of the Court is to determine whether the law supports a judgment in favor of the moving party. *Anderson*, 477 U.S. at 250.

II. Facts

The following facts are undisputed: (1) Defendant was convicted of four (4) felony counts of Forgery in the First Degree; (2) Defendant was sentenced to twenty (20) years in prison; (3) Defendant served five (5) years of this sentence and the remainder was to be served on probation; (4) the conviction entered by the DeKalb County Superior Court included, as a condition of probation, that Defendant pay restitution; (5) Defendant was released from prison in August, 2012; (6) on September 30, 2013, Defendant filed a petition under Chapter 7 of Title 11;

(7) Defendant received a discharge in her Chapter 7 case on January 13, 2014; and (8) this proceeding was commenced on May 21, 2014. *See* Doc. No. 9, p. 3-5; Doc. No. 10, p. 2-3.

The following issues are disputed: Plaintiff asserts that the initial bankruptcy notice was not served correctly; and Defendant disputes that Plaintiff was listed as a victim on the docket of the criminal proceeding and asserts that the deadline for Plaintiff to file this adversary proceeding had passed at the time Plaintiff commenced this action.

The Court will now consider whether the undisputed facts and the reasonable inferences in favor of the non-moving party support entry of judgment in this case.

III. Legal Analysis

A debt is non-dischargeable "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss…." 11 U.S.C. § 523(a)(7). The Supreme Court has held that a restitution obligation, imposed in a criminal proceeding which is payable as a condition of probation is not subject to discharge in a Chapter 7 proceeding. *Kelly v. Robinson*, 479 U.S. 36, 107 S. Ct. 353 (1986). The Supreme Court found that, because the "criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a whole" that restitution is not actually for the benefit of the victim but in in the nature of a fine, like any other fine that is excepted from discharge. *Id.* at 51-2. "Because criminal proceedings focus on the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation….restitution orders imposed in such proceedings operate 'for the benefit of' the State. Similarly, they are not assessed 'for … compensation' of the victim. The sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the State. Those interests are sufficient to place restitution orders within the meaning of § 523(a)(7)."

Id. at 53. The Supreme Court plainly held, "Section 523(a)(7) preserves from discharge any condition a state criminal court imposes as part of a criminal sentence." *Id.* at 50. The Eleventh Circuit has confirmed that this is the case, regardless of the recipient of the restitution payments. *Colton v. Verola*, 446 F.3d 1206 (11th Cir. 2006). Thus, the law is clear that restitution payments constitute debts excepted from discharge under Section 523(a)(7).

Defendant relies on a law review article written prior to the *Kelly* decision that argues that restitution as a condition of probation is a dischargeable debt under the Bankruptcy Code. *See* Alycia M. Peloso, *Criminal Restitution Obligations As Debts Under the Bankruptcy Code*, 54 Fordham L. Rev. 869 (1986). Although law review articles may be persuasive, such articles are not law and do not constitute binding authority. The law, which this Court is bound to follow, makes clear that restitution obligations are not dischargeable under section 523(a)(7). *See*, *Kelly* and *Verola.*

Defendant argues further that the deadline to file a complaint to determine dischargeability passed sixty (60) days "after notice of meeting of creditors." Doc. No. 10, p. 1. Pursuant to Rule 4007(b) "a complaint other than under § 523(c) may be filed at any time." FED.R.BANKR.P. 4007(b). Plaintiff filed its Complaint to determine the dischargeability of a debt under 11 U.S.C. § 523(a)(7), not § 523(c). Accordingly, the Complaint could be filed at any time and was timely filed.

The undisputed facts in this proceeding show that as a condition of Defendant's probation, the Defendant was to pay restitution. The Consent Restitution Order specifically orders: "Defendant Hope Rogers shall pay restitution in the amount of $108,260.48 (one hundred eight thousand, two hundred and sixty dollars and forty-eight cents) to the following victim: ADR Financial Service, Inc., 1260 Glenwood Avenue, SE, Atlanta, Georgia 30316, Attn: Allison

Mell." [Doc. No. 9-2]. Notwithstanding that payment is to be made to the victim, all state criminal restitution orders are excepted from discharge by § 523(a)(7). *Verola*, 446 F.3d at 1209. Accordingly, it is now hereby,

ORDERED that Plaintiff's Motion is GRANTED.

END OF ORDER

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