IT IS ORDERED as set forth below:

Date: February 27, 2015

Barbara Ellis-Monro
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: JOHN LANGLEY RIDDLE, JR., MELANIE ANN RIDDLE, Defendants.	CASE NO. 14-53381-BEM CHAPTER 7
PEACH STATE BANK & TRUST, Plaintiff, v. JOHN LANGLEY RIDDLE, JR., Defendant.	ADVERSARY PROCEEDING NO. 14-5174-BEM

O R D E R

This adversary proceeding is before the Court on Defendant John Langley Riddle, Jr.'s ("Defendant") Renewed Motion to Dismiss for Failure to State a Claim for Which Relief can be Granted (the "Motion") [Doc. No. 13], and Plaintiff Peach State Bank & Trust's

("Plaintiff") Response to Defendant's Renewed Motion to Dismiss (the "Response"). [Doc. No. 15]. In the Motion and supporting brief, Defendant requests that this adversary proceeding be dismissed, contending that Plaintiff's Amended Complaint [Doc. No. 11] fails to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. FACTS

In the Amended Complaint, Plaintiff alleges the following facts: Defendant owned several companies including Piedmont Logistics, LLC ("PL"), Clarity, and Foundation Express, Inc. [Doc. No. 11, ¶ 7]. In October 2010, Defendant provided a written financial statement to Plaintiff in order to obtain a loan for PL and Clarity. [Id. ¶ 11]. The financial statement listed personal property owned by Defendant in the amount of $172,269. [Id. ¶ 13]. The financial statement also reflected ownership of stocks and bonds worth $21,000, automobiles worth $90,000, a pension plan worth $45,580, personal property of $75,000, other assets worth $1,483,200, and an annual salary of $181,236. [Id. ¶ 23]. Relying on the financial statement provided, Plaintiff entered into a loan agreement with PL and Clarity secured by PL's accounts receivable. [Id. ¶¶ 9, 24]. Defendant also signed a personal guaranty of the loan to PL in favor of Plaintiff and pledged real property as additional collateral for the loan. [Id. ¶¶ 10,14]. Additionally, Defendant agreed that all the collateral pledged to secure the loan would not be pledged as collateral for any other loan. [Id. ¶ 16].

At some point prior to the filing of Defendant's bankruptcy, Plaintiff foreclosed on the real property pledged by Defendant. The amount collected through the foreclosure sale was less than the amount owed on the real estate notes leaving an uncollected deficiency. [Id. ¶ 17]. Plaintiff alleges that PL's accounts receivable were pledged as collateral to other individuals or entities without its consent. [Id. ¶ 18]. Plaintiff alleges further that PL's accounts

receivable were diverted through payment or conversion of proceeds without its knowledge. [Id. ¶¶ 18, 19, 21, 25, 28]. Plaintiff further alleges that Defendant failed to report the use or disposition of the proceeds of accounts receivable pledged to it and further that Defendant failed to disclose his ownership of PL from 2010 through at least 2012 in the Schedules and Statement of Financial Affairs ("SOFA"). [Id. ¶¶ 26, 31-43]. In addition, Plaintiff alleges that the Schedules and SOFA misrepresent Defendant's financial condition as of the date he filed his chapter 7 petition (the "Petition Date"). [Id. ¶¶ 31-43].

Through the Amended Complaint, Plaintiff seeks to bar Defendant's discharge pursuant to 11 U.S.C. §§ 727(a)(2)-(5). [Id. ¶¶ 44-47]. Plaintiff also seeks a determination that any indebtedness Defendant owes it is non-dischargeable pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6).

II. APPLICABLE STANDARDS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), the court may dismiss a complaint for "failure to state a claim upon which relief can be granted", but pursuant to Federal Rule of Civil Procedure 8(a)(2) made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7008(a), a plaintiff needs only to provide, "a short and plain statement of the claim showing that the pleader is entitled to relief." A plaintiff must make factual allegations sufficient to provide the defendant adequate notice of the claim, "and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). Detailed facts are not necessary, but Plaintiff must provide enough information "to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Id.* "A complaint that provides 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action' is not adequate to survive a Rule

12(b)(6) motion to dismiss." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012) (internal citations omitted). *Twombly* does not require that a pleading show the likelihood of success on the merits, "but instead 'simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of' the necessary element." *In re Haven Trust Bancorp., Inc.*, 461 B.R. 910, 912 (Bankr.N.D.Ga. 2011) (citing *Twombly*, 550 U.S. at 556). *See also Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283 (11th Cir. 2010).

"The pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the defendant-unlawfully harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009) (citing *Twombly*, 550 U.S. at 556).

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"

Iqbal, 556 U.S. at 678 (internal citations omitted) (citing *Twombly*, 550 U.S. at 556-57).

Federal Rule of Civil Procedure 9(b), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7009, mandates a heightened pleading standard when pleading a claim for fraud or mistake. A plaintiff is required to "state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b). The Eleventh Circuit has held that in order to comply with Rule 9(b) a complaint must set forth "(1) precisely what statements were made in what documents or oral representations or what omissions were made, and (2) the

time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same, and (3) the content of such statements and the manner in which they misled the plaintiff, and (4) what the defendants obtained as a consequence of the fraud." *Brooks v. Blue Cross and Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1371 (11th Cir. 1997) (internal quotations omitted). However, this heightened pleading standard is required only when pleading intentional fraud. *In re Haven Trust Bancorp, Inc*., 461 B.R. 910, 913 (Bankr.N.D.Ga. 2011) (Diehl, B.J.). *See In re S. Home and Ranch Supply, Inc.*, 2013 WL 7393247 (Bankr. N.D.Ga. Dec. 20, 2013); *In re Noble*, 2009 WL 6499363 (Bankr. N.D. Ga. Aug. 21, 2009); *Kipperman v. Onex Corp.*, 2007 WL 2872463 (N.D. Ga. Sept. 26, 2007).

III. ANALYSIS

Plaintiff argues that Defendant has failed to completely and accurately disclose information in his SOFA and Schedules filed in his chapter 7 case. [Doc. No. 8, p. 2-5]. Specifically, Plaintiff alleges that Defendant has failed to accurately and completely disclose his income, ownership interests in various companies, the time period in which PL operated, co-Defendants and a pension at PL worth in excess of $31,000. [Doc. No. 11, ¶¶ 31, 32, 34, 35, 36, 37, 38, 39, 40, 41]. From this premise of failure to truthfully and completely disclose his financial condition, Plaintiff argues that Defendant must have failed to keep financial records from which his financial affairs can be ascertained and that transactions with various of Defendant's businesses have been concealed. [Doc. No. 8, p. 9]. Plaintiff alleges further that its claims under § 523 all arise from Defendant's misuse of accounts receivable pledged to Plaintiff. [Doc. No. 8, p. 5-6; Doc. No. 11, ¶¶ 18, 19, 20, 41]. The Court will address each of Plaintiff's claims under §§ 727 and 523 to determine whether Plaintiff has alleged sufficient facts to withstand Defendant's motion to dismiss.

11 U.S.C. § 727(a)(4): False Oath

To justify denial of a discharge under § 727(a)(4)(A) the false oath alleged must be (1) fraudulent, and (2) material. *See Swicegood v. Ginn*, 924 F.2d 230, 232 (11th Cir. 1991). "The subject matter of a false oath is 'material,' and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property." *Id.* (quoting *Chalik v. Moorefield* (*In re Chalik*), 748 F.2d 616, 619 (11th Cir. 1984)). "Deliberate omissions from schedules or the statement of financial affairs may constitute false oaths or accounts." *Chalik*, 748 F.2d at 618 n.3; *see also In re Moore*, 375 B.R. 696, 703 (Bankr. S.D. Fla. 2007); *see also In re Letlow*, 385 B.R. 782, 795-6 (Bankr. N.D. Ga. 2007). A series or pattern of errors or omissions may have a cumulative effect giving rise to an inference of an intent to deceive. *Beaubouef v. Beaubouef* (*In re Beaubouef*), 966 F.2d 174, 178 (5th Cir. 1992). However, the discharge may not be denied when the untruth was the result of a mistake or inadvertence. *Id.* Because a claim under 11 U.S.C. § 727(a)(4) is based in fraud, a plaintiff must plead the fraud with particularity, in accordance with Fed.R.Civ.P. 9(b).

Defendant argues that the Plaintiff has not pled fraud with sufficient particularity. However, cases under §727(a)(4) almost always involve omissions from the Defendant's schedules such that some courts have held, with regards to a §727(a)(4) claim, less particularity is required. *In re Smith*, 489 B.R. 875, 896-97 (Bankr. M.D.Ga. 2013) (allegations of omissions on bankruptcy schedules create an inherent particularity not found in typical fraud cases). Plaintiff alleges that Defendant omitted information regarding ownership interests in PL and Clarity and that PL was operational until at least August 2012, rather than ceasing operations in 2010 as stated in the SOFA, that Defendant did not include a "pension, trust with Piedmont

Logistics of an approximate value of over $31,000," that Defendant's income is inconsistently stated in the SOFA and Schedules, and that Defendant failed to disclose his co-Debtors. [Doc. No. 11, ¶ 38]. These allegations contain sufficient particularity to put Defendant on notice of what he is alleged to have omitted from the Schedules and SOFA, the omissions are material to the estate and, when taken as true, such omissions support an inference of fraudulent intent. Consequently, the Court will deny the motion to dismiss this claim.

11 U.S.C. § 727(a)(2): Concealment of Property

A claim under § 727(a)(2) "has two components: (1) a transfer or concealment of property of the Defendant or the estate and (2) an improper intent (i.e., a subjective intent to hinder, delay or defraud a creditor)." *See Parnes v. Parnes* (*In re Parnes*), 200 B.R. 710, 713 (Bankr. N.D.Ga. 1996) (citing *Rosen v. Bezner*, 996 F.2d 1527, 1531 (3d Cir. 1993)). "The improper act can either be within one year of the petition or post-petition." *Id*. "Constructive fraud is insufficient to support a denial of discharge under this section." *Equitable Bank v. Miller (In re Miller)*, 39 F.3d 301, 306 (11th Cir. 1993). Most courts agree that actual fraudulent intent can be proven by circumstantial evidence surrounding the Defendant's objectionable course of conduct and inferred from extrinsic evidence. *Segell v. Letlow* (*In re Letlow*), 385 B.R. 782, 795-6 (Bankr. N.D.Ga. 2007); *Playnation Play Sys., Inc. v. Howard*, No. 03-06101, 2004 Bankr. LEXIS 1804, at *20 (Bankr. N.D.Ga. Sept. 24, 2004) (citing *Future Time, Inc. v. Yates*, 26 B.R. 1006 (Bankr. M.D.Ga. 1983) *aff'd* 712 F.2d 1417 (11th Cir. 1983)); *Menotte v. Cutaia* (*In re Cutaia*), 410 B.R. 733, 738 (Bankr. S.D. Fla. 2007) (citing *Furr v. Lordy* (*In re Lordy*), 214 B.R. 650, 664 (Bankr. S.D. Fla. 1997); *Taunt v. Patrick* (*In re Patrick*), 290 B.R. 306, 310 (Bankr. E.D. Mich. 2003)). Proving intent can be as simple as recounting one singular act or omission, or

displaying a pattern of fraudulent behavior. *Royer v. Smith* (*In re Smith*), 278 B.R. 253, 257 (Bankr. M.D.Ga. 2001).

Plaintiff argues that Defendant's failure to disclose continued operations of PL, the scope of Clarity's business, and transactions of both entities amounts to concealment caused by lack of proper disclosure. Concealment includes physical hiding of the property and "other conduct, such as placing assets beyond the reach of creditors or withholding knowledge of the assets by failing or refusing to disclose the information." *Moyer v. Greer* (*In re Greer*), 522 B.R. 365, 386 (Bankr. N.D. Ga. 2014) (citing *San Jose v. McWilliams*, 284 F.3d 785, 794 (7th Cir. 2002); K*eeney v. Smith (In re Keeney)*, 227 F.3d 679, 684 (6th Cir. 2000); *Gullickson v. Brown (In re Brown)*, 108 F.3d 1290, 1293 n.1 (10th Cir. 1997)). Thus, taking Plaintiff's allegations as true, as the Court must, it is possible that assets have been concealed due to inadequate disclosure, and the alleged facts are sufficient to create an inference of fraudulent intent. Therefore, the Court will deny Defendant's motion to dismiss this claim.

11 U.S.C. § 727(a)(3): Failure to Keep Records

To establish a prima facie action under § 727(a)(3), a plaintiff must show that: (1) the Defendant failed to keep or preserve adequate records, and (2) that such failure makes it impossible to ascertain the Defendant's financial condition. *Menotte v. Moore* (*In re Moore*), 375 B.R. 696, 702 (Bankr. S.D. Fla. 2007). Once plaintiff has demonstrated that the books and records are inadequate the burden shifts to the Defendant to explain why the records were not kept. *Phillips v. Nipper* (*In re Nipper*), 186 B.R. 284, 289 (Bankr. M.D. Fla. 1995). Section 727(a)(3) has been consistently read to impose an affirmative obligation on defendants to keep records appropriate to their circumstances. *Hughes v. Lieberman* (*In re Hughes*), 873 F.2d 262 (11th Cir. 1989). The Defendant's intent is not relevant. *Calisoff v. Calisoff* (*In re Calisoff*), 92

B.R. 346, 356 (Bankr. N.D. Ill. 1988). However, all that is required of a Defendant is that his or her financial condition and transactions may be discerned for a reasonable period of time in the past. *Moore* at 375 B.R. at 702 (citing *In re Bendetti,* 131 Fed. Appx. 224, 225 (11th Cir. 2005)).

Here, Plaintiff has not alleged any facts regarding Defendant's alleged failure to keep records. The only mention of failing to keep records in the Amended Complaint is a prayer to bar Defendant's discharge for failure to keep records. Nowhere else in the Amended Complaint does the Plaintiff suggest that Defendant did not keep adequate financial records or provide adequate information to discern his financial condition. Thus, Plaintiff has not alleged sufficient facts to support is claim under § 727(a)(3) and Defendant's motion to dismiss this claim will be granted.

11 U.S.C. § 727(a)(5): Explanation of Loss

In order to deny a discharge under § 727(a)(5), the objecting party must prove that a Defendant has "failed to explain satisfactorily a loss or deficiency of assets to meet the Defendant's liabilities." *Moore*, 375 B.R. at 704. "Plaintiff has the initial burden of proving that the Defendant, at one time, owned substantial and identifiable assets that are no longer available for her creditors." *Id.* (citing *In re Gonzalez*, 302 B.R. 745, 755 (Bankr. S.D. Fla. 2003)). Once Plaintiff has established that a loss of assets has occurred, the burden then shifts to the Defendant to provide a satisfactory explanation for the loss. *Id.*

Here, Plaintiff alleges that Defendant provided it with a personal financial statement in 2010 that listed, "stocks and bonds of $21,000; automobiles worth $90,000; a pension plan of $45,580; personal property of $75,000; 'other assets' of $1,483,200 and an annual salary of $181,236." [Doc. No. 11, ¶ 23]. The Amended Complaint alleges reliance on this information but does not contain any alleged facts that identify what assets were lost or

dissipated. Certainly the Schedules reflect fewer assets than the financial statement, but the Amended Complaint does not allege any specific loss or dissipation. Thus, the Court concludes that Plaintiff has not alleged sufficient facts to meet the requirements of § 727(a)(5) and will dismiss this claim.

11 U.S.C. § 523(a)(2): False Representations or Fraud

A debt is excepted from discharge if it is "for money, property services, or an extension renewal, or refinancing of credit, to the extent obtained by" certain fraudulent actions. 11 U.S.C. § 523(a)(2). The fraudulent actions are separated into two categories: § 523(a)(2)(A) includes "false pretenses, a false representation, or actual fraud" while § 523(a)(2)(B) considers "a statement in writing – (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." 11 U.S.C. §§ 523(a)(2)(A), (B). The elements of § 523(a)(2) are similar to those required for common law fraud: "(1) the Defendant made a false representation with the intention of deceiving the creditor; (2) the creditor relied on the false representation; (3) the reliance was justified; and (4) the creditor sustained a loss as a result of the false representation." *In re Wood*, 425 Fed.Appx. 91, 917-18 (11th Cir. 2007). As with other claims of fraud, Plaintiff is required to meet Rule 9(b) in order to survive a motion to dismiss.

Plaintiff asserts in the Amended Complaint that the obligations owed by Defendant to Plaintiff are non-dischargeable pursuant to 11 U.S.C. §523(a)(2) because the indebtedness is "infected and founded in fraud." [Doc. No. 11, ¶ 48] With respect to specific allegations to support this position, Plaintiff alleges that Defendant provided a signed written financial statement to it in 2010. [*Id.*, ¶¶ 11, 12]. Plaintiff further alleges that it reasonably relied

upon the financial statement in making loans to PL and Clarity. [*Id.*, ¶ 24]. Plaintiff alleges that the financial statement provided by Defendant "contained material misrepresentations and/or omissions" concerning Defendant's financial condition and/or assets. *[Id.*, ¶ 22]. Plaintiff alleges that the financial statements listed "stocks and bonds of $21,000; automobiles worth $90,000; a pension plan of $45,580; personal property of $75,000; 'other assets' of $1,483,200 and an annual salary of $181,236." [*Id.*, ¶ 23]. There are not, however, any allegations that identity how the financial statement was incorrect. Rather Plaintiff asserts the conclusion that the financial statement contained material misrepresentations and or omissions. These are not however, allegations of fact. Accordingly, Plaintiff has not stated a claim under 11 U.S.C. § 523(a)(2)(B) and Defendant's motion to dismiss this claim will be granted.

Turning to Plaintiff's § 523(a)(2)(A) claim, Plaintiff argues in its brief that the claim is based on the pledge of PL's accounts receivable and the alleged failure to pay the accounts receivable to Plaintiff. [Doc. No. 8, p. 6]. Plaintiff argues further that Defendant is responsible for the failure to pay these funds to Plaintiff because he was an officer and director of those companies and is charged with tortious acts of the company. *Id.* Plaintiff alleges in the Amended Complaint that Defendant is a director, member, officer, check signatory, executive vice-president and stockholder of PL, Clarity and Foundation Express and that PL pledged its accounts receivable to Plaintiff as collateral for loans to PL and Clarity. [Doc. No. 11, ¶¶ 6, 7, 9, 10]. Plaintiff alleges further that without its knowledge and in contravention of the agreements between the parties, Defendant and others transferred the accounts receivable to individuals and entities other than Plaintiff and did not pay the receivables to Plaintiff. [*Id.*, ¶¶ 18, 19]. The allegations in the Amended Complaint allow the inference that Defendant controlled PL, Clarity and Foundation Express and thus directed the diversion of accounts

receivable which is sufficient to state a claim. *See Auto Fin. Corp. v. Miles (In re Miles)*, 2007 Bankr. LEXIS 631, *5, 6 (Bankr. N.D. Ga.)(Drake, J.) (noting that if an officer, director or shareholder of a corporation has obtained money or property for the corporation through fraud he will not be shielded by the corporate form). Thus, Plaintiff has alleged sufficient facts to support a claim under § 523(a)(2)(A) and the Defendant's motion to dismiss this claim will be denied.

11 U.S.C. § 523(a)(4): Larceny

A debt is excepted from discharge if it is "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny[.]" 11 U.S.C. § 523(a)(4). Plaintiff alleges Defendant committed larceny by converting the pledged accounts receivables for his own use and that of others. [Doc. No. 11, ¶¶ 18, 19]. To prove larceny, Plaintiff must show "a felonious taking of property with the intent to convert it or to permanently deprive the owner of it." *Bennett v. Wright* (*In re Wright*), 282 B.R. 510, 516 (Bankr. M.D. Ga. 2002); *see also Vu v. Ankoanda* (*In re Ankoanda*), 495 B.R. 599, 605 (Bankr. N.D. Ga. 2013). Here, Plaintiff has alleged that Defendant, in contravention of the agreements between Plaintiff and Defendant, diverted accounts receivables of companies in which Defendant was an officer and owner and converted the funds for his own use and those of others. [Doc. No. 11, ¶¶ 16, 18, 19]. Thus, Plaintiff has alleged that Defendant wrongfully took Plaintiff's collateral and converted the same, and the allegations in the Complaint are sufficient to state a claim under 11 U.S.C. § 523(a)(4). Accordingly, the motion to dismiss this claim will be denied.

11 U.S.C. § 523(a)(6): Willful and Malicious Injury

A debt is excepted from discharge if it is "for willful and malicious injury by the Defendant to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). An injury is willful when the Defendant "commits an intentional act the purpose of which is to cause

injury or which is substantially certain to cause injury." *Maxfield v. Jennings* (*In re Jennings*), 670 F.3d 1329, 1334 (11th Cir. 2012) (internal quotation marks and citations omitted); *see also Kawaauhau v. Geiger*, 523 U.S. 57, 61-62, 118 S. Ct. 974, 977 (1998) (the Defendant must intend the injury, not just the act that results in injury). A malicious injury is one that is "wrongful and without just cause or excessive even in the absence of personal hatred, spite or ill-will." *Hope v. Walker* (*In re Walker*), 48 F.3d 1161, 1164 (11th Cir. 1995) (internal quotation marks and citations omitted). "Malice may be implied or constructive" and does not require specific intent to cause harm. *Id.* A conversion of property, "which is the unauthorized exercise of ownership over goods belonging to another to the exclusion of the owner's rights[,]" may be willfull and malicious depending on the circumstances and course of dealings between the parties. *Wolfson v. Equine Capital Corp.* (*In re Wolfson*), 56 F.3d 52, 54 (11th Cir. 1995); *Citizens Bank v. Wright* (*In re Wright*), 299 B.R. 648, 661 (Bankr. M.D. Ga. 2003).

Plaintiff has alleged that PL's account receivables were pledged as collateral for certain loans made to PL, and that it is the rightful owner of any proceeds. [Doc. No. 11, ¶ 9]. Plaintiff has further alleged that Defendant converted the account receivables using the proceeds to pay himself and others. [*Id.*, ¶ 18]. These facts are sufficient to plead willful and malicious injury because conversion of accounts receivables could support an inference that Plaintiff was substantially certain to be harmed through the resulting diminution in value of its collateral. Further, there is no just cause or excuse for the Defendant's failure to use the proceeds for Plaintiff's benefit when Plaintiff has alleged that it did not consent to such use and had no knowledge of the use of its collateral. *Thiara v. Spycher Bros.* (*In re Thiara*), 285 B.R. 420, 430-31 (B.A.P. 9th Cir. 2002); *see also Davis v. Aetna Acceptance Co.*, 293 U.S. 328, 332, 55 S. Ct.

151, 153 (1934). The Court finds that Plaintiff has plead sufficient facts to sustain a claim under § 523(a)(6) and the motion to dismiss this claim will be denied.

IV. CONCLUSION

Plaintiff has filed an Amended Complaint with counts under 11 U.S.C. §§ 727 and 523. Although the facts and allegations are somewhat scarce, Plaintiff has pleaded sufficient facts to support claims under 11 U.S.C. §§ 727(a)(2), (a)(4), 523(a)(2)(A), 523(a)(4) and 523(a)(6). Accordingly, it is

HEREBY ORDERED that Defendant's Motion is GRANTED IN PART and DENIED IN PART. It is further

ORDERED that Plaintiff's claims pursuant to 11 U.S.C. §§ 727 (a)(3), (a)(5) and §523(a)(2)(B) are DISMISSED.

END OF DOCUMENT

Distribution List

Marilyn S. Bright
PO Box 845
Atlanta, GA 30301

Jonathan D. Clements
Charles N. Kelly
PO Box 2758
Gainesville, GA 30503