IT IS ORDERED as set forth below:

Date: November 9, 2015

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBERS**
ANTONIO BURGOS,	:	BANKRUPTCY CASE
ALMA RODRIGUEZ BURGOS,	:	NO. 14-12874-WHD
Debtors.	:	
_____	:	
DEBRA R. SMITH,	:	ADVERSARY PROCEEDING
Plaintiff,	:	No. 15-1020-WHD
v.	:	
ANTONIO BURGOS,	:	IN PROCEEDINGS UNDER
ALMA RAMIREZ BURGOS,	:	CHAPTER 7 OF THE
Defendants.	:	BANKRUPTCY CODE

O R D E R

Before the Court is the Motion for Default Judgment filed by Debra R. Smith (hereinafter, the "Plaintiff") in the above-captioned adversary proceeding. The Plaintiff

seeks judgment by default against Antonio Burgos and Alma Ramirez Burgos (hereinafter, the "Debtors"). This matter arises in connection with a complaint objecting to the Debtors' receipt of a discharge pursuant to § 727 and seeking a determination of the dischargeability of a particular debt pursuant to § 523(a)(2) and § 523(a)(6). This matter constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(I) & (J), § 1334.

At the outset, the Court notes that neither the Plaintiff nor the Debtors are represented by counsel in this adversary proceeding. While the Court will afford some leniency in construing *pro se* pleadings, parties acting *pro se* are "nevertheless required…to conform to procedural rules." *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002); *accord Gordon v. Love (In re Pullen)*, 2013 WL 6000568, at *2 (Bankr. N.D. Ga. Nov. 10, 2013) (Diehl, J.). Furthermore, "this leniency does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *McWeay v. Citibank, N.A.*, 521 F. App'x 784, 788 n.3 (11th Cir. 2013). With these guiding principles in mind, the Court turns to the issues presented by the Plaintiff's motion.

Discussion

The Plaintiff filed her complaint on March 27, 2015. The Debtors filed no responsive pleading. On October 9, 2015, the Plaintiff filed the instant motion for default judgment.

In order to grant default judgment, the Court must first determine that the Plaintiff's allegations of fact serve as a sufficient basis for entry of a judgment. *Nishimatsu Construction Co., Ltd. v. Houston National Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *see also Bonner v. Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (announcing that decisions of the Fifth Circuit Court of Appeals prior to September 30, 1981, would be binding precedent in the Eleventh Circuit). In evaluating those allegations, the Court notes that "a defaulted defendant is deemed to have admitted the movant's well-pleaded allegations of fact, [but] she is not charged with having admitted 'facts that are not well-pleaded…or conclusions of law.'" *Perez v. Wells Fargo, N.A.*, 774 F.3d 1329, 1339 (11th Cir. 2014) (second alteration in original) (quoting *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005)).

In the Plaintiff's complaint, she alleges that she holds a judgment against the Debtors obtained in the Magistrate Court of Troup County, Georgia. The Plaintiff, who had been renting a house to the Debtors, brought the suit to recover back rent and the costs

of repairing damage done to the rental property. Though the lease agreement between the Plaintiff and the Debtors contained "very specific guidelines for upkeep and care for the property," the Plaintiff discovered an immense amount of "abuse and destruction" when she repossessed the house after the Debtors were evicted for failure to pay rent. Compl., Doc. No. 1. The damage included burnt and cracked countertops, scribbles in crayon on the walls, and badly stained carpets. According to the complaint, the magistrate court found the damage to be "extreme, abusive and not due to normal wear and tear for a 14 month period." *Id.* The court entered judgment for the Plaintiff in the amount of $6,123.62 plus court costs of $125. [1]

When they filed their bankruptcy petition, the Debtors listed all $6,123.62 of the Plaintiff's claim on Schedule F under the label "Back Rent." The Plaintiff alleges that only $595 of that amount is actually for back rent, and the remaining $5,528.62 is for the damage done to the house. The Plaintiff initiated this adversary proceeding to object to the Debtors receiving a discharge pursuant to § 727 and to contest the dischargeability of $5,528.62 of the debt owed to her pursuant to either § 523(a)(6) or § 523(a)(2).

Mindful that statutes allowing for the denial of a discharge under § 727 and

[1] The Plaintiff attached a copy of the Magistrate Court's judgment form to her complaint. However, the Court cannot give preclusive effect to any of the findings of fact or conclusions made by the Magistrate Court because the form gives no indication as to the nature of the suit or any reasoning the court undertook. It merely identifies that judgment was entered for the Plaintiff.

exceptions to discharge under § 523 are to be strictly construed, and that the burden is on the plaintiff to prove the applicability of such statutes by a preponderance of the evidence, *see Gen. Ret. Sys. of the City of Detroit v. Dixon (In re Dixon)*, 525 B.R. 827, 840 (Bankr. N.D. Ga. 2015) (Hagenau, J.); *Moyer v. Geer (In re Geer)*, 522 B.R. 365, 386 (Bankr. N.D. Ga. 2014) (Hagenau, J.), the Court will address each of the Plaintiff's claims in turn.

A. § 727 Objection to Discharge

According to the "Adversary Proceeding Cover Sheet" filed with her complaint, the Plaintiff's lead cause of action against the Debtors is an objection to discharge pursuant to § 727. However, whether the Plaintiff actually intended to object to the Debtors' discharge is unclear, as there is little indication in her complaint other than the mark on the cover sheet that she is in fact seeking that relief.

Section 727 enumerates twelve distinct situations in which a debtor will not receive a discharge of any of his debts at the end of his Chapter 7 case, but the Plaintiff does not cite to any of them as the grounds for her objection. *See* 11 U.S.C. § 727(a)(1)-(12). Instead, the Plaintiff simply claims that the Debtors "fraudulently mis-stated [sic]" that the entire debt owed to her was for back rent, rather than primarily for the damage to the property, in their Schedule F. This suggests that she could be relying on § 727(a)(4), which denies the grant of a discharge if "the debtor knowingly or fraudulently, in or in connection with the case – (A) made a false oath or account…." 11 U.S.C. § 727(a)(4)(A). To support a

claim under that section, however, "the plaintiff must show that there was a false oath, that it was material, and that it was made knowingly and fraudulently." *In re Geer*, 522 B.R. at 387. While the Plaintiff may have shown that there was some false oath here, she has not pleaded sufficient facts to support a conclusion that the misstatement was material or made knowingly and fraudulently. Consequently, the Court cannot grant default judgment based on § 727.

B. Dischargeability Under § 523(a)(6)

The Plaintiff's second cause of action concerns the dischargeability of the majority of the debt owed to her. Section 523(a)(6) excepts from discharge debts incurred "for 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 section's word 'willful' modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional *injury*, not merely…a deliberate or intentional *act* that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 57 (1998). Put another way, the debtor must have "desired the injury caused by his conduct." *Atlanta Contract Glazing, Inc. v. Swofford (In re Swofford)*, 2008 WL 782040, at *2 (Bankr. N.D. Ga. Dec. 29, 2008) (Brizendine, J.). Conduct that is reckless, "or even a breach of contract informed by malice, is simply not enough to obtain relief under Section 523(a)(6)." *Id.* Nevertheless, the Court may infer that the debtor had intent to injure where the debtor "had a subjective motive to inflict injury or believed his conduct was

substantially certain to cause injury." *Hot Shot Kids, Inc. v. Pervis (In re Pervis)*, 512 B.R. 348, 376 (Bankr. N.D. Ga. 2014) (Hagenau, J.). "An injury is malicious under Section 523(a)(6) when same is determined to be 'wrongful and without just cause or excessive,' or simply resulting from a bad act having no redeeming social value or purpose whatsoever." *AgGeorgia Farm Credit, ACA v. Crumley (In re Crumley)*, 2011 WL 7068913, at *3 (Bankr. N.D. Ga. Aug. 10, 2011) (Brizendine, J.).

These definitions create narrow boundaries, and the fine distinctions involved in the application of § 523(a)(6) are particularly apparent in cases involving rental property. In *Ward v. West (In re West)*, for example, a landlord claimed $2,880.73 from the debtor-tenant for damages to the rental property, including a broken toilet, a ruined bathroom floor, broken tiles, and "holes and other structural damages in the property's walls and doors." 446 B.R. 813, 813-14 (Bankr. N.D. Ohio 2010). There, the Bankruptcy Court for the Northern District of Ohio concluded "that a significant portion of the damage caused to the [landlord's] property appears to be more the result of neglect, as opposed to overt acts, thereby placing it outside the scope of § 523(a)(6)." *Id.* at 817. But, in *O'Brien v. Sintobin (In re Sintobin)*, that same court concluded that a landlord's claim against debtor-tenants for spray-painted walls, doors knocked off of hinges, and holes in the walls was not dischargeable because it was "apparent [from the evidence] that such damages were deliberately caused by the Defendants' children and friends of the

Defendants' children." 253 B.R. 826, 829, 831 (Bankr. N.D. Ohio 2000). The court in that case also noted that "much of the damage to the Plaintiff's house seems to have occurred when the relationship between the parties was deteriorating," suggesting that the tenants had a motive to cause the damage. *See id.* at 831.

Here, the damages that the Plaintiff alleges were caused to the rental home easily fall within the definition of malicious, but the Plaintiff has not alleged sufficient facts for the Court to conclude that they are willful. While the Plaintiff has shown that excessive damage has been done to the property, she makes no allegation that it was caused with the intent to injure her or any allegations as to how the damage was done at all. Instead, she refers to the Debtors' conduct as a breach of contract because they failed to maintain the premises as they had promised in the lease agreement. The Plaintiff notes that the Debtors were evicted from the house for non-payment of rent, but she never alleges that the damage to the house was in any way motivated by that eviction, or that it took place after the Debtors were informed of their eviction. On its own, evidence of burnt countertops, stained carpets, and crayon on the walls can be proof of utter recklessness or deplorable apathy, but without an allegation that the Debtors had a motive to cause her injury, acted with intent to injure, or acted with the knowledge that their conduct would inflict injury, the Plaintiff cannot prevail under the narrow exception found in § 523(a)(6). Therefore, as the Plaintiff has not made such an allegation, the Court cannot conclude that the damage to the

rental property rises to the level of willful and malicious injury, and cannot grant default judgment on that ground at this time.

C. Dischargeability Under § 523(a)(2)

Finally, the Plaintiff also objects to the dischargeability of $5,528.62 of the debt owed to her pursuant to § 523(a)(2). That section excepts from discharge any debt "for money, property, services, or refinancing of credit, to the extent obtained by" one of two means: (A) "false pretenses, a false representation, or actual fraud," or (B) use of a materially false statement in writing "respecting the debtor's or an insider's financial condition" on which a creditor relied. 11 U.S.C. § 523(a)(2)(A)-(B). Here, the Plaintiff's allegations are again insufficient, as they do not support a finding that the debt the Debtors' owe results from any misrepresentation, written or otherwise, by the Debtors or any reliance on such a misrepresentation by the Plaintiff. The only allegation of a misrepresentation in the complaint is that the Debtors mislabeled the Plaintiff's claim as one for back rent. As discussed above, this may constitute a "false oath" for the purposes of an objection to discharge under § 727, but it is not the type of "false statement" to which § 523(a)(2) applies. *See Bombardier Capital, Inc. v. Baietti (In re Baietti),* 189 B.R. 549, 555 n.9 (Bankr. D. Me. 1995) ("The operative language defines the debts that will be excepted from discharge *by the manner of their creation only*." (emphasis added)). Accordingly, the Court cannot enter default judgment based on § 523(a)(2).

Conclusion

For the reasons discussed above, the Plaintiff's motion will be denied without prejudice to the Plaintiff's right to file an amended complaint and a renewed motion for default judgment.

Having considered the allegations in the Plaintiff's complaint, it is hereby **ORDERED, ADJUDGED, AND DECREED** that the Motion for Default Judgment filed by Debra Smith is **DENIED** without prejudice;

It is **FURTHER ORDERED** that within **thirty (30) days of the entry of this Order**, the Plaintiff may amend her complaint to plead sufficient facts to support her claims. Any claim not amended or that is not supported by sufficient facts will be **DISMISSED**.

The Clerk is **DIRECTED** to serve this Order on the Plaintiff and the Debtors.

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