



IT IS ORDERED as set forth below:

Date: March 24, 2016

A handwritten signature in black ink, appearing to read "Barbara Ellis-Monro".

**Barbara Ellis-Monro
U.S. Bankruptcy Court Judge**

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

IN RE:

LISA RENEE STRIPLING,

Debtor.

GEORGIA DEPARTMENT OF HUMAN
SERVICES,

Plaintiff,

v.

LISA RENEE STRIPLING,

Defendant.

CASE NO. 15-70747-BEM

CHAPTER 7

ADVERSARY PROCEEDING NO.
15-5454-BEM

ORDER

This matter comes before the Court on Plaintiff's Motion for Default Judgment. [Doc. 6]. On December 14, 2015, Plaintiff filed a complaint to determine dischargeability of a debt under 11 U.S.C. § 523(a)(2), which excepts from discharge debts incurred by fraud, and a

summons was issued. [Doc. 1, 2]. The complaint and summons were properly served, and Defendant failed to answer within the time required by Fed. R. Bankr. P. 7012(a). Upon request of Plaintiff, the clerk entered default on February 10, 2016, which was followed by the motion at issue.

I. Default Judgment Standard

Default judgments are governed by Federal Rule of Civil Procedure 55(b), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7055. Whether to enter default judgment is within the discretion of the Court. *Hays v. Wellborn Forest Prods., Inc. (In re Spejcher)*, No. 06-62501, Adv. No. 06-6347, 2006 WL 6592065, at *1 (Bankr. N.D. Ga. Oct. 30, 2006) (Massey, J.) (citing *Hamm v. DeKalb County*, 774 F.2d 1567, 1576 (11th Cir. 1985)). A technical default is not, by itself, sufficient to warrant entry of a default judgment. *Id.* (quoting *Ganther v. Ingle*, 75 F.3d 207, 212 (5th Cir. 1996)). “There must be a sufficient basis in the pleadings for the judgment entered.” *Nishimatsu Constr. Co. Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)). When the defendant fails to answer, the plaintiff’s well-pleaded factual allegations are deemed admitted. *Id.* Facts that are not well pleaded and conclusions of law are not deemed admitted. *Id.* Therefore, the Court must determine whether Plaintiff’s complaint sets forth sufficient facts to support a judgment. *See EFS Inc. v. Mercer (In re Mercer)*, No. 13-30006, AP No. 13-3031, 2013 WL 3367253, at *1 (Bankr. M.D. Ala. July 5, 2013).

II. Factual Allegations

The complaint alleges Defendant previously received overpayment of food stamps from Plaintiff. [Doc. 1 ¶ 8]. From October 1, 2010 to July 31, 2011 (the “Benefit Months”), Debtor received food stamp benefits, including an overpayment of benefits in the

amount of \$4,208. *Id.* ¶ 9. During the Benefit Months, Defendant failed to provide complete and accurate information regarding her employment and wages. *Id.* ¶ 10. Because of her income, Defendant was ineligible to receive all or a portion of the food stamp benefits for the Benefit Months. *Id.* ¶ 11.

On October 17, 2012, Defendant signed a Waiver of Disqualification Hearing Form (the “Waiver”), in which she admitted that she received an over issuance of food stamp benefits in the amount of \$4,208. *Id.* ¶ 12. Pursuant to the Waiver, Defendant admitted that she received benefits to which she was not entitled because she intentionally failed to report that she returned to work at UPS and earned wages as a result. *Id.* ¶ 13. By signing the Waiver, Defendant acknowledged that she was disqualified from participating in the Food Stamp Program for a period of twelve months. *Id.* ¶ 14.

Pursuant to the Waiver, Defendant also agreed to reimburse Plaintiff for the overpayment in monthly payments of \$71, beginning on November 16, 2012 and continuing until the overpayment amount was repaid in full. *Id.* ¶ 15. Defendant made payments consistent with the Waiver until she filed her bankruptcy petition on October 19, 2015. *Id.* ¶ 16. The current balance of Defendant’s indebtedness to Plaintiff is \$2,333. *Id.* ¶ 17.

Plaintiff attached a copy of the Waiver to its complaint. On page one, the Waiver states: “You received benefit to which you were not entitled because you intentionally failed to report the following information as required by program regulations: Failure to report she had returned to work & employment wages timely.” *Id.* Exhibit A. On the second page of the Waiver, Defendant initialed the statement that by signing the Waiver she “Knowingly and voluntarily admits to the facts as presented.” *Id.* Defendant signed the Waiver on page three. *Id.*

Defendant affirmatively misrepresented her income to receive food stamp benefits. *Id.* ¶ 18. Defendant failed to disclose material facts to Plaintiff by failing to accurately report her wages from her employment at UPS. *Id.* ¶ 19. Defendant has a statutory duty to report any difference in income or resources in excess of the amount reported in order to receive food stamp benefits. *Id.* ¶ 20. For all or a portion of the Benefit Months, Defendant defrauded Plaintiff by misrepresenting her employment and wages to obtain food stamp benefits. *Id.* ¶ 21. Defendant is liable to Plaintiff for the food stamp overpayments. *Id.* ¶ 22. Defendant has repaid a portion of the overpayment of benefits. *Id.* ¶ 23. Defendant is currently indebted to Plaintiff in the amount of \$2,333.

III. Legal Analysis

Plaintiff seeks a default judgment on a determination of dischargeability of its debt. Exceptions to discharge are strictly construed in favor of the debtor. *United States v. Mitchell (In re Mitchell)*, 633 F.3d 1319, 1327 (11th Cir. 2011). Pursuant to 11 U.S.C. § 523(a)(2), a debt is nondischargeable if it is one

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of 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[.]

In this case, Plaintiff has alleged Debtor misrepresented her employment status and income. The applicable subparagraph of § 523(a)(2) depends on whether a statement

regarding income is a statement of the debtor's financial condition. If it is a statement of financial condition, subparagraph (B) applies; otherwise subparagraph (A) applies. Courts are split on the scope of the phrase "respecting the debtor's financial condition." Some courts apply a broad definition that "includes any communication that has a bearing on the debtor's financial position," including statements "addressing the status of a single asset or liability" *Prim Capital Corp. v. May (In re May)*, 368 B.R. 85, 2007 WL 2052185, at *6 (B.A.P. 6th Cir. July 19, 2007) (unpublished) (citing *Cadwell v. Joelson (In re Joelson)*, 427 F.3d 700, 705 (10th Cir. 2005)). Other courts apply a narrow or strict interpretation, limiting it to statements addressing "overall net worth, overall financial health, or equation of assets and liabilities." *Id.* The Eleventh Circuit has not ruled on the question, but bankruptcy courts in this circuit have generally applied the strict interpretation. *Allen v. Morrow (In re Morrow)*, 508 B.R. 514, 525 (Bankr. N.D. Ga. 2014) (Massey, J); *Lamar, Archer & Cofrin, LLP v. Appling (In re Appling)*, 500 B.R. 246, 251 (Bankr. M.D. Ga. 2013); *Generac Power Sys. v. Dato (In re Dato)*, 410 B.R. 106, 111 (Bankr. S.D. Fla. 2009); *The Cit Group/Sales Fin'g, Inc. v. Kim (In re Kim)*, No. 04-94694, AP No. 04-6521, 2005 WL 6488240, at *4 (Bankr. N.D. Ga. Sept. 29, 2005) (Murphy, J).

This Court has previously declined to decide whether information provided for purposes of obtaining food stamps is a statement of financial condition when it was unclear what information was provided. *Georgia Dep't of Human Servs. v. Jackson-Carmona (In re Jackson-Carmona)*, No. 14-53879, AP No. 14-5129, 2015 WL 728666, at *4 n.1 (Bankr. N.D. Ga. January 20, 2015) (Ellis-Monro, J.). Here, Plaintiff has specifically identified a misrepresentation as to income and employment status. The Court finds that such information is too limited to constitute a statement of the debtor's financial condition. Accordingly, the Court concludes that Plaintiff is proceeding under subparagraph (a)(2)(A) rather than (a)(2)(B).

To state a claim under § 523(a)(2)(A), Plaintiff must allege facts to show: “(1) the debtor made a false representation to deceive the creditor, (2) the creditor relied on the misrepresentation, (3) the reliance was justified, and (4) the creditor sustained a loss as a result of the misrepresentation.” *SEC v. Bilzerian (In re Bilzerian)*, 153 F.3d 1278, 1281 (11th Cir. 1998). Plaintiff has alleged facts to show that Defendant admitted to knowingly making a false representation as to income and employment status, that Plaintiff provided benefits to which Defendant was not entitled based on the false representation, and that \$2,333 of the excess benefit remains outstanding. The Court concludes these allegations are sufficient to state a claim under § 523(a)(2)(A) for purposes of default judgment. Plaintiff has identified the specific acts that constituted fraud and that overpayments were based on the misrepresentation. The Court can reasonably infer that the Plaintiff relied on the misrepresentation in determining the amount of benefits to provide to Defendant and that such reliance was justified. Furthermore, the Court can reasonably infer that by paying out excess benefits, Plaintiff was harmed to the extent of the excess benefit. Accordingly, Plaintiff is entitled to a default judgment. The Court will enter a separate judgment excepting \$2,333 from discharge pursuant to 11 U.S.C. § 523(a).

END OF ORDER

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