

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
SHERI LYNN WHITE,)	CASE NO. 14-55512 – MHM
a/k/a SHERI COWART,)	
)	
Debtor.)	
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TRACY C. COONS,)	
)	
Plaintiff,)	ADVERSARY PROCEEDING
v.)	NO. 14-5193
)	
SHERI LYNN WHITE,)	
a/k/a SHERI COWART,)	
)	
Defendant.)	

ORDER DENYING PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT

This adversary proceeding is before the court on Plaintiff’s *Motion for Default Judgment* filed October 14, 2014 (Doc. No. 11) (the “Motion”). Plaintiff filed a complaint June 23, 2014, initiating this adversary proceeding. Plaintiff alleges Debtor made certain misrepresentations in connection with a lease agreement by which Debtor leased Plaintiff’s condominium unit at 508 Granville Ct., Atlanta, GA 30328 (the “Property”); accordingly, debts related to that lease are not dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

Summons was issued July 1, 2014, and, through the Certificate of Service filed July 9, 2014 and subsequent affidavits filed August 29, 2014 and October 14, 2014, both Plaintiff and Plaintiff's attorney represent that the summons and complaint were served upon Debtor July 1, 2014 (Docs. No. 4, 6, and 11). Plaintiff requested an entry of default August 29, 2014; the Clerk's Entry of Default was entered on the docket September 29, 2014. Plaintiff filed the Motion October 14, 2014, requesting entry of default judgment.

DISCUSSION

Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, provides that a plaintiff may obtain a default judgment against a defendant who "has failed to plead or otherwise defend[.]" FED. R. BANKR. P. 7055. Nonetheless, a defendant's lack of response does not automatically entitle a plaintiff to default judgment. *Cf. In re Trevisan*, 300 B.R. 708, 713 (E.D. Wis. 2003); *Mercantile Bank v. Canovas*, 237 B.R. 423 (Bankr. N.D. Ill. 1998). A plaintiff must provide sufficient facts to establish a *prima facie* claim for relief. *Id.*

Pursuant to 11 U.S.C. § 523(a)(2), Defendant cannot receive a discharge from a debt "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 ... financial condition;
- (B) use of a statement in writing

- (i) that is materially false;
- (ii) respecting the debtor's ... financial condition;
- (iii) on which the creditor to whom the debtor is liable ... reasonably relied;
and
- (iv) that the debtor caused to be made or published with the intent to deceive[.]”

Plaintiff alleges Debtor executed an agreement July 27, 2013, by which Debtor would lease the Property for one year and, due to missed payments on a prior lease, pay certain additional sums (the “Lease”). After Debtor failed to make payments on the Lease, Plaintiff obtained a \$14,196.00 judgment against Debtor in the Magistrate Court of DeKalb County, and now argues that the judgment is not dischargeable under § 523(a)(2)(A).

Plaintiff has failed to plead the elements of § 523(a)(2)(A) or (B). *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009). Plaintiff has failed to allege that Debtor's representations were false. Plaintiff alleges, “Debtor made certain representations and warranties in the Lease, including affirming certain information Plaintiff uncovered upon completion of a basic background check of Debtor using Debtor's purported legal name (Sheri White) [including] confirming the legal name of ... Debtor[.]” Plaintiff does *not* state which name is Debtor's “legal name” or otherwise allege that Debtor misrepresented her legal name. Plaintiff asserts that Debtor represented that she had “no prior bankruptcy petitions or judgments that would have a

material adverse effect against the ability of Debtor to make payments under the Lease.” Plaintiff asserts that Debtor *did* have prior bankruptcy petitions, but has *not* alleged that those prior bankruptcy petitions had “a material adverse effect against the ability of Debtor to make payments under the Lease.”

Plaintiff has also failed to allege that Plaintiff reasonably relied on Debtor’s representations. Plaintiff alleges, “Debtor further agreed to provisions in the Lease regarding Plaintiff’s reasonable and justified reliance upon Debtor’s representations and warranties.” Plaintiff does not provide the language of those provisions, allege their effect, or attach a copy of the lease to the complaint. Debtor and Plaintiff made some undisclosed agreement “regarding” Plaintiff’s reliance on certain provision in the lease, but Plaintiff has not alleged what the agreement was, and has not otherwise alleged whether she did rely on Debtor’s representations. Also, Plaintiff has not alleged that Debtor made any representations with the intent to deceive Plaintiff. Accordingly, it is hereby

ORDERED that the Motion is *denied*.

IT IS SO ORDERED, this the 5th day of November, 2014.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE