

10-9-08

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:	:	CASE NO. G08-20186-REB
	:	
TREVOR CHADWICK LARISCY	:	
and KRISTI KAPUA LARISCY,	:	
	:	
Debtors.	:	
	:	
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BRUCE PACK,	:	ADVERSARY PROCEEDING
	:	NO. 08-2049
	:	
Plaintiff,	:	
	:	
v.	:	
	:	CHAPTER 7
TREVOR CHADWICK LARISCY,	:	
	:	
Defendant.	:	JUDGE BRIZENDINE

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Before the Court is the motion of Defendant-Debtor filed on May 21, 2009 for entry of summary judgment in his favor and against Plaintiff on Plaintiff's complaint as filed herein on July 9, 2008. Based upon a review of the motion, brief, and statement of material facts, as well as Plaintiff's response thereto, the Court concludes that Debtor's motion should be denied.

In his motion, Debtor argues that he is entitled to summary judgment on the issue of nondischargeability of an indebtedness claimed by Plaintiff in connection with Debtor's alleged breach of a contractual obligation to purchase a certain furniture business from Plaintiff. As set forth in the complaint, Plaintiff seeks relief as follows: under 11 U.S.C. § 523(a)(2)(A), contending that Debtor received title to the underlying property on which the business operated under false pretenses, false representation, and/or actual fraud; Section 523(a)(4) for fraud or

defalcation while operating in a fiduciary capacity; and Section 523(a)(6) for willful and malicious injury insofar as Debtor encumbered and transferred title to said real property without accounting for the proceeds. As a result of said actions, Plaintiff claims he lost both the business and the building in which it was located. Plaintiff also seeks damages in the amount of \$552,500.00 for breach of contract and conversion.

In his motion, Debtor contends that Plaintiff has failed to allege facts or present evidence sufficient to support his claim for relief in this matter, and that he is therefore entitled to summary judgment. Based upon a review of the record and the elements needed to establish an entitlement to a judgment under the statutory provisions cited above, however, this Court concludes that Debtor is not entitled to the relief requested in the motion.

Plaintiff has pled sufficient allegations to warrant a denial of Debtor's motion for summary judgment. Specifically, a genuine dispute exists on the issue whether Debtor harbored the requisite intent to defraud Plaintiff at the time of the transaction in question under count I of the complaint or at the time of the alleged wrongdoing with respect to the other counts. Issues of intent or state of mind or fraud are typically not appropriate for disposition on summary judgment. The Court must hear Debtor's testimony and observe his demeanor before making any findings concerning Debtor's intent.¹

In sum, upon a review of the record and the argument and citation of authority presented in the briefs, and the other materials presented, the Court concludes Debtor has not established

¹ Debtor also raises an issue regarding whether Plaintiff is the real party in interest herein based on an alleged "partner's interest in the business" or "interest as a beneficiary under a trust with his mother Rita Pack" as claimed by Plaintiff and grounded upon certain oral statements or understandings. The Court finds that a fact issue exists with respect to these assertions.

that there is no genuine issue of material fact or that he is entitled to summary judgment on the complaint herein as a matter of law, and thus entry of summary judgment in favor of Debtor on grounds of Sections 523(a)(2)(A), (a)(4), and (a)(6) is not appropriate.

Accordingly, it is

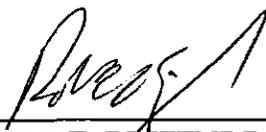
ORDERED that the motion of Defendant-Debtor for summary judgment be, and hereby is, **denied**.

All parties herein are directed to cooperate in discovery and preparation of this matter for trial, which will be set by separate written notice.

The Clerk is directed to serve a copy of this Order upon counsel for Plaintiff, counsel for Defendant-Debtor, the Chapter 7 Trustee, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 7th day of October, 2009.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE