



IT IS ORDERED as set forth below:

Date: July 1, 2016

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBERS
	:	
JARED MARTIN GREATHOUSE,	:	BANKRUPTCY CASE
ALLYSON KAYLA GREATHOUSE,	:	NO. 15-11752-WHD
Debtors.	:	
_____	:	
	:	
GEORGIA DEPARTMENT OF	:	ADVERSARY PROCEEDING
HUMAN SERVICES,	:	No. 15-1060-WHD
Plaintiffs,	:	
	:	
v.	:	
	:	IN PROCEEDINGS UNDER
ALLYSON MARTIN GREATHOUSE,	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Entry of Default Judgement filed by the Georgia Department of Human Services (hereinafter "DHS") in the above-captioned

adversary proceeding. This matter arises in connection with DHS's complaint contesting the dischargeability of a debt pursuant to § 523(a)(2) of the Bankruptcy Code.¹ This constitutes a core proceeding over which this Court has subject matter jurisdiction. See 28 U.S.C. §§ 157(b)(2)(I), 1334.

Discussion

Allyson Kayla Greathouse (hereinafter the "Debtor") filed her petition under Chapter 7 of the Bankruptcy Code on August 17, 2015. DHS filed its complaint against the Debtor on November 17, 2015. The Debtor has failed to file a responsive pleading. On May 25, 2016, DHS filed the instant Motion for Default Judgement.

In order to grant default judgement, the Court must first determine that DHS's allegations of fact serve as a sufficient basis for the entry of a judgement. See 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) (stating decisions of the Fifth Circuit prior to September 30, 1981, are binding precedent in the Eleventh Circuit). When evaluating those allegations, the Court notes that "a defaulted defendant is deemed to have admitted the movant's

¹ 11 U.S.C. § 101 *et. seq.*

well-pleaded allegations of fact, [but the defendant] 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) (quoting Cotton v. Mass. Mut. Life Ins. Co., 402 F.3d 1267, 1278 (11th Cir. 2005)). As a final note, Federal Rule of Civil Procedure 54(c) (applicable to adversary proceedings in Bankruptcy through operation of Federal Rule of Bankruptcy Procedure 7054(a)) provides, “A default judgement must not differ in kind from, or exceed in amount, what is demanded in the pleadings.” Fed. R. Civ. P. 54(c); see also Fed. R. Bankr. P. 7054(a).

In its complaint, DHS alleges that the Debtor “is liable to [DHS] for . . . food stamp overpayments in the amount of \$9,509.29.” (Complaint, Doc. No. 1, at ¶ 20). From July 13, 2010 to April 30, 2013 (hereinafter the “Benefit Months”), the Debtor received food stamps amounting to \$9,867.00.” (Id. at ¶ 9). However, during the Benefit Months, the Debtor failed to report that her employed spouse resided with her.² (Id. at ¶ 10). If the Debtor had reported that her employed spouse resided with her, the Debtor would have been ineligible to receive food stamps. After DHS discovered the Debtor’s employed spouse was residing with her, the Debtor signed a

² By failing to report an employed spouse that resided with her, the Debtor committed an Intentional Program Violation pursuant to 7 C.F.R. § 273.16(c).

Waiver of Disqualification Hearing Agreement (hereinafter the “Agreement”) that stated the Debtor would pay \$118.00 per month as repayment for the food stamps she had wrongly received.³ (Id. at ¶ 12). Since signing that agreement on December 23, 2013, the Debtor has only paid restitution to DHS in the amount of \$357.71. The Debtor’s outstanding balance for the food stamps she was ineligible to receive is \$9,509.29. (Id. at ¶ 14). DHS seeks a judgment declaring the debt nondischargeable pursuant to § 523(a)(2). (Id. at ¶ 21).

The instant Motion fails to specify whether DHS is relying on § 523(a)(2)(A) or § 523(a)(2)(B) for relief. Thus, the Court will consider both statutory provisions to determine whether DHS is entitled to relief. See In re Winston, 114 B.R. 566, 569 (Bankr. N.D. III. 1990). The Court notes that the exceptions to discharge, including § 523(a)(2), should be narrowly and strictly construed. See Gleason v. Thaw, 236 U.S. 558, 562 (1915); In re Hunter, 780 F.2d 1577, 1579 (11th Cir. 1986). Furthermore, a creditor must prove the elements of § 523(a) by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991).

³ The Agreement stated that the Debtor did not admit the facts but knowingly and voluntarily signed the Agreement.

The Court will look first at § 523(a)(2)(B). Section 523(a)(2)(B) excepts from discharge:

debts for money property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by:

- (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 the intent to deceive.

11 U.S.C. § 523(a)(2)(B). To obtain relief under § 523(a)(2)(B), the creditor is required to provide the Court with the allegedly false written statement. See In re Manning, 2015 WL 9435405, at *1 (Bankr. N.D. Ga. Dec. 4, 2015) (Drake, J.); In re Winston, 114 B.R. 566, 569 (Bankr. N.D. Ill. 1990). DHS's complaint and exhibits make no mention of a written statement in which the Debtor is alleged to have misrepresented her financial condition. Thus, DHS is prohibited from obtaining relief under § 523(a)(2)(B) because it has not provided the Court with the necessary written statement.

Nevertheless, the Court concludes that the debt to DHS is excepted from

discharge pursuant to § 523(a)(2)(A). Section 523(a)(2)(A) excepts from discharge debts “for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition.” 11 U.S.C. § 523(a)(2)(A). To establish that the debt is excepted from discharge under § 523(a)(2)(A), the creditor must prove four elements. See In re Bilzerian, 100 F.3d 886, 892 (11th Cir. 1996); In re Johannessen, 76 F.3d 347, 350 (11th Cir. 1996). These elements are as follows: (1) the debtor made a false representation, other than an oral statement respecting the debtor’s financial condition, with the intent to deceive the creditor; (2) the creditor relied on the misrepresentation; (3) the creditor’s reliance was justifiable; and (4) the misrepresentation caused a loss to the creditor. Johannessen, 76 F.3d at 350. The Court will examine each of these elements in turn.

The first element requires the creditor to prove that “the debtor made a false representation with intent to deceive the creditor.” Id. Either false representations or false pretenses suffice for this element. See In re Kendrick, 314 B.R. 468, 471 (Bankr. N.D. Ga. 2004) (Bonapfel, J.). “False pretenses may be implied from conduct or may consist of concealment or non-disclosure where there is a duty to

speak.” In re Wood, 245 F. App'x 916, 918 (11th Cir. 2007) (quoting In re Gilmore, 221 B.R. 864, 872 (Bankr. N.D. Ala. 1998)). Here, the Debtor had a duty to report that her employed spouse resided with her. By failing to fulfill this duty to report, the Debtor intentionally concealed the fact that her employed spouse resided with her, creating the false pretense that the Debtor was entitled to receive food stamps. For this reason, the first element of § 523(a)(2)(A) is established.

The second element requires the creditor to prove that it relied on the debtor's misrepresentation. Johannessen, 76 F.3d at 350. Reliance may be established by showing that a creditor made a decision based upon the debtor's statement. See, e.g., In re Montgomery, 489 B.R. 609, 629 (Bankr. N.D. Ga. 2013) (Diehl, J.). Here, the Debtor's statement to DHS concealed the fact that her employed spouse resided with her. This representation caused DHS to provide the Debtor with food stamps she was ineligible to receive. Thus, the second element is established.

The third element requires that the creditor's reliance on the debtor's statement be justifiable. Johannessen, 76 F.3d at 350. A determination whether the creditor's reliance was justifiable is a subjective test that examines the “particular qualities and characteristics of the plaintiff and circumstances of the particular case.” In re Bucciarelli, 429 B.R. 372, 376 (Bankr. N.D. Ga. 2010) (Drake, J.) (quoting In re

Simpson, 319 B.R. 256, 261 (Bankr. M.D. Fla. 2003)). Generally, a “creditor's reliance is . . . justified when there is nothing on the face of the representation that it is false or that the creditor does not have actual knowledge of the falsity of the representation.” In re Montgomery, 489 B.R. at 626 (quoting FCC Nat'l Bank v. Gilmore, 221 B.R. 864, 874 n. 10 (Bankr. N.D. Ala.1998)). The standard “does not require a duty to investigate, unless a creditor has reason to suspect that he is being deceived,” but “[r]eliance is not justifiable if a cursory investigation can reveal the representations falsity.” In re DeLong, 2014 WL 4059790 at *5 (Bankr. N.D. Ga. July 14, 2014) (Sacca, J.). Here, there is no evidence to show DHS had a reason to question the Debtor’s representation that she did not reside with her employed spouse. Therefore, DHS’s reliance on the Debtor’s representation was justified. See In re Manning, 2015 WL 9435405, at *5.

The fourth element requires a loss to the creditor. Johannessen, 76 F.3d at 350. This element is certainly established because DHS disbursed \$9,867 in food stamps it otherwise would not have. For this reason, the fourth element is established.

Conclusion

Therefore, having considered the allegations in DHS's complaint, it is hereby **ORDERED, ADJUDGED, AND DECREED** that the Motion for Default Judgement filed by DHS is **GRANTED**, and DHS's claim for \$9,509.29 is excepted from discharge in its entirety in the Debtor's Chapter 7 case.

The Clerk is **DIRECTED** to serve a copy of this order on DHS, the Debtor, and the Chapter 7 Trustee.

END OF DOCUMENT