

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

|                      |   |                       |
|----------------------|---|-----------------------|
| IN THE MATTER OF     | ) |                       |
|                      | ) |                       |
| MELODIE SUE SLUSSER, | ) | CASE NO. 05-38249 HCD |
|                      | ) | CHAPTER 7             |
|                      | ) |                       |
| DEBTOR.              | ) |                       |
|                      | ) |                       |
|                      | ) |                       |
| JACK BECKER,         | ) |                       |
|                      | ) |                       |
| PLAINTIFF,           | ) |                       |
| vs.                  | ) | PROC. NO. 06-3005     |
|                      | ) |                       |
| MELODIE SUE SLUSSER, | ) |                       |
|                      | ) |                       |
| DEFENDANT.           | ) |                       |

Appearances:

Matthew D. Barrett, Esq., counsel for plaintiff, Starr Austen Tribbett Myers & Miller, 201 South Third Street, Logansport, Indiana 46947; and

Melodie Sue Slusser, appearing pro se, 7082 North State Road 25, Lucerne, Indiana 46950.

MEMORANDUM OF DECISION

At South Bend, Indiana, on March 22, 2007.

Before the court is the Plaintiff's Motion for Summary Judgment, filed August 24, 2006, by Jack Becker ("plaintiff" or "Becker"), a creditor of chapter 7 debtor Melodie Sue Slusser ("defendant" or "Slusser"). The plaintiff seeks summary judgment on his Complaint Objecting to Discharge Pursuant to § 523 of the Bankruptcy Code. The defendant did not respond to the summary judgment motion. For the reasons that follow, the court grants the Plaintiff's Motion for Summary Judgment.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and

determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(I) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

### Background

The plaintiff filed a Complaint Objecting to Discharge Pursuant to § 523 of the Bankruptcy Code on January 9, 2006, and a First Amended Complaint on July 14, 2006. The complaint was brought under 11 U.S.C. § 523, not 11 U.S.C. § 727. The court therefore construes it to be a complaint to determine the dischargeability of the debt owed to the plaintiff rather than an objection to the defendant's discharge.

On February 8, 2006, the defendant, *pro se*, filed an Answer to Complaint, but failed to serve it on the plaintiff. After prompting from the court, the defendant filed a certificate of service and served the answer on the plaintiff. During pre-trial discovery, the plaintiff deposed the defendant. On August 24, 2006, the plaintiff filed a Motion for Summary Judgment, a brief in support of the motion, and a designation of the evidence in support of it. The defendant did not respond to the motion. The court therefore took the plaintiff's summary judgment motion under advisement on October 20, 2006.

The court notes that the plaintiff has filed numerous documents in this court responding to documents he believed were filed by the defendant. The court assumes that the plaintiff received the documents directly from the defendant. However, the defendant has not filed in this court a motion to dismiss, an objection to the plaintiff's motion for summary judgment, an affidavit, or a motion to strike. For that reason, the court finds that the following documents filed by the defendant in response to documents not in this record are moot: (1) Plaintiff's Motion to Strike and Response to Defendant's Motion to Dismiss, with supporting brief, filed

September 21, 2006; (2) Plaintiff's Reply to Defendant's Objection to Plaintiff's Motion for Summary Judgment, filed on September 21, 2006; (3) Plaintiff's Motion to Strike "Affidavit of Melody [*sic*] Slusser, Defendant, in Adversary Proceeding Brought By Jack Becker, Plaintiff," filed November 13, 2006; and (4) Plaintiff's Motion to Strike "Defendant's Response to Plaintiff's Motion to Strike Affidavit of Melody [*sic*] Slusser, Defendant, in Adversary Proceeding brought by Jack Becker, Plaintiff," filed on December 14, 2006. *See* R. 35, 37, 40, and 41; *see also* R. 38, Order of October 20, 2006 (finding that Plaintiff's Motion to Strike and Response to Defendant's Motion to Dismiss was moot).

### Discussion

The plaintiff asserts that there is no genuine issue of material fact concerning Plaintiff's First Amended Complaint, which alleges that the defendant engaged in acts of false pretenses, false representations and/or actual fraud under § 523(a)(2)(A) of the Bankruptcy Code. He claims that the debts owed by the defendant to him are nondischargeable.

The plaintiff can prevail on his summary judgment motion only if he meets the criteria for summary judgment. Under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable in this court by Rule 7056 of the Federal Rules of Bankruptcy Procedure, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986). In order to avoid trial, the moving party bears the burden of showing that no genuine issue of material fact is in dispute. *See Anderson*, 477 U.S. at 256; *Celotex*, 477 U.S. at 322.

"To avoid summary judgment . . . the nonmoving party [is] required to set forth 'specific facts showing that there is a genuine issue for trial,' Fed. R. Civ. P. 56(e), and, further [has] to produce more than a

scintilla of evidence in support of his position.” *Silk v. City of Chicago*, 194 F.3d 788, 798 (7th Cir. 1999). In order to demonstrate that real factual disputes exist, the nonmovant must produce evidence of the disputes rather than relying solely on the allegations or denials in its pleadings. *See Barber v. United States (In re Barber)*, 236 B.R. 655, 659 (Bankr. N.D. Ind. 1998); N.D. Ind. L.B.R. B-7056-1. Summary judgment must be granted “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322.

The plaintiff herein, as the moving party, based his claim that there was no genuine issue of material fact on the fact that the defendant failed to respond to the summary judgment motion. The defendant, as the nonmoving party, failed in her responsibility under Rule 56(e). Although she filed an answer telling her version of the “facts” in the complaint, *see* R. 5, the defendant did not oppose the motion for summary judgment. Rule 56(e) and this court’s Local Rule B-7056-1 require a nonmovant’s response. Indeed, “if a summary judgment respondent fails to file a timely statement of disputed material facts, uncontroverted statements in the moving party’s statement in support of summary judgment are deemed admitted.” *Barber*, 236 B.R. at 663 (citing *Giannopoulos v. Brach & Brock Confections, Inc.*, 109 F.3d 406, 412 (7th Cir. 1997)). The court finds that the defendant, by not responding to the plaintiff’s motion for summary judgment, failed to comply with the local bankruptcy rule and federal rules. Therefore, all the material facts in the plaintiff’s motion are deemed admitted. As a result of her failure to respond, the defendant has effectively admitted that the debt is not dischargeable under § 523(a)(2)(A).

Nevertheless, the court does not grant summary judgment automatically, merely because the nonmovant failed to respond. The movant is required to demonstrate his entitlement to summary judgment as a matter of law by proving the required elements of the cause of action. He has the initial burden of production and therefore has the responsibility of demonstrating the basis for his claim that there are no material facts in dispute. If the facts admitted by default are dispositive of the issues before the court, then summary judgment

properly may be granted. *See Hasbrook v. Citibank (In re Hasbrook)*, 289 B.R. 375, 378-79 (Bankr. N.D. Ind. 2002); *see also* N.D. Ind. L. B. R. B-7056-1.

In this case, the undisputed facts must demonstrate as a matter of law that the defendant's obligation to the plaintiff is excepted from her discharge under § 523(a)(2)(A) of the Bankruptcy Code. That section provides that an individual debtor is not discharged from any debt —

(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.

11 U.S.C. § 523(a)(2)(A).

To succeed under § 523(a)(2)(A), therefore, the plaintiff has the burden of proving by a preponderance of the evidence that the debt owed to him by the defendant was obtained by actual fraud, false pretenses, or misrepresentation. *See McClellan v. Cantrell*, 217 F.3d 890, 893-94 (7th Cir. 2000) (stating that fraud is not limited to misrepresentations and misleading omissions); *In re Bero*, 110 F.3d 462, 465 (7th Cir. 1997) (setting forth burden of proof). The plaintiff must establish that (1) the defendant obtained the plaintiff's loan through representations that the defendant either knew to be false or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) the defendant acted with an intent to deceive the plaintiff; and (3) the plaintiff justifiably relied on the defendant's false representations to his detriment. *See In re Sheridan*, 57 F.3d 627, 635 (7th Cir. 1995); *Mayer v. Spanel Int'l, Ltd. (In re Mayer)*, 51 F.3d 670, 673 (7th Cir.), *cert. denied*, 516 U.S. 1008 (1995); *In re Maurice*, 21 F.3d 767, 774 (7th Cir. 1994); *see also Field v. Mans*, 516 U.S. 59, 74-75, 116 S. Ct. 437, 446, 133 L.Ed.2d 351 (1995) (holding that a creditor's reliance need only be justifiable, not reasonable).

The element of intent is found in the § 523(a)(2)(A) exception to discharge. Intent usually is a question of fact and is "often not susceptible to summary judgment." *In re Kontrick*, 295 F.3d 724, 737 (7th Cir. 2002), *aff'd*, 540 U.S. 443, 124 S. Ct. 906, 157 L.Ed.2d 867 (2004). In addition, the plaintiff has alleged fraud,

and the seriousness of such an allegation requires a plaintiff to plead more than general, conclusory allegations of fraudulent conduct. *See In re Halverson*, 330 B.R. 291, 301 (Bankr. M.D. Fla. 2005) (citing cases). Rule 9(b) of the Federal Rules of Civil Procedure, made applicable in adversary proceedings by Rule 7009 of the Federal Rules of Bankruptcy Procedure, requires that “the circumstances constituting fraud or mistake shall be stated with particularity.” Fed. R. Civ. P. 9(b); Fed. R. Bankr. P. 7009.

The material facts of this case, as presented by the plaintiff in his brief supporting the summary judgment motion, have come from the defendant’s deposition, the plaintiff’s affidavit, the state court complaint, the state court Order on Default Judgment, and the First Amended Complaint filed in the bankruptcy court. The defendant, by not responding to the motion for summary judgment, has admitted all the facts set forth by the plaintiff. The uncontested relevant facts follow.

The defendant’s financial circumstances have never been good; Slusser has held only low-paying jobs and has had ongoing financial problems. Between July 1999 and October 2001, she worked at Samuel Mancino’s Italian Eatery (“Mancino’s”) in Logansport, Indiana. She was a cashier, a server, and a night supervisor at the restaurant. While she was working at Mancino’s, the plaintiff Jack Becker and his friend Larry Hunt ate lunch there every Friday on a regular basis. She sometimes would be their server. In the early fall of 2001, the defendant told Becker and Hunt of her interest in purchasing and operating the Mancino’s franchise in Logansport. Becker made weekly visits to the defendant’s home between March and June 2002 to discuss the possible purchase of that franchise. He wanted to ascertain details about the purchase and the defendant’s business experience. The defendant said she thought the franchise would be a good business investment because it was a valuable business that could make a profit. She said she was qualified and very experienced to run a restaurant, as well. Based on those representations, the plaintiff agreed to provide the necessary financing for the defendant to purchase the Mancino’s franchise. It was agreed that the defendant would operate the restaurant and manage the day-to-day functions, including absolute control over the finances.

On June 12, 2002, Slusser signed a purchase agreement for the franchise. Becker made three loans to the defendant: \$5,000 on June 11, 2002 (which was used for earnest money); \$120,000 on June 26, 2002 (which was used to purchase the franchise); and \$15,000 on June 26, 2002 (which was used for start-up costs). The defendant signed a typed promissory note for the first two loans and a hand-written promissory note for the \$15,000 debt. The plaintiff stated, without contradiction, that the defendant knew the loans were to be repaid. The plaintiff relied on her representations that the restaurant would generate a profit. The defendant agreed to repay the plaintiff on a monthly basis from the profits generated from the restaurant. Slusser paid Becker \$1,000 a month for the loan repayments beginning in August 2002 and continuing until May 2003.

The defendant opened the Mancino's franchise on July 1, 2002. It began operating at a loss shortly after she opened the restaurant, and it never made a profit during her entire operation. In 2003 and 2004, she took home an annual income of approximately \$5,000. She missed rent payments to the restaurant's landlord, but did not tell the plaintiff because she said she was embarrassed. In the second year, because of cash flow problems, she also was behind on her payments to Mancino's for its percentage of the profits every month.

The plaintiff later found out that this restaurant was the first business the defendant had operated; she never had prior training in managing a business or handling finances. She did not obtain background records or financial documents on the restaurant before purchasing it. Nor did she investigate the franchise. Even though she simply assumed that the restaurant would be a valuable investment, she told that assumption to Becker as a fact. Other than operating the cash register as an employee, the defendant admitted in her deposition, she was not qualified to operate the Mancino's restaurant. She did not understand the financial aspects of operating a small business, and she sought no help. Becker stated that he would not have made the loans to her if he had been aware of her lack of qualifications and if he knew the restaurant would not generate a profit.

The plaintiff continued to come in the restaurant every Friday for lunch, but they did not speak often. The defendant said she did not want to tell Becker about her severe financial problems.

In the late fall or early winter of 2003, NIPSCO contacted Becker and told him that they were going to shut off the gas at the restaurant due to nonpayment by Slusser. When he asked the defendant why the gas bill had not been paid, she asked him for \$50,000 to pay delinquent taxes and penalties of the restaurant. She said she did not have the necessary business acumen to know that she had to pay the taxes. Becker gave her a check for \$50,000 on December 19, 2003.

The defendant closed the restaurant on June 28, 2004. She was several months behind on the rent. The defendant never told the plaintiff in advance; he found out by driving past the restaurant and seeing it closed. She never asked the previous owners, before she bought the franchise, about the high overhead costs. She admitted in her deposition that she did not know what she was getting into when she purchased the franchise.

On July 15, 2005, Becker filed a complaint against Slusser in the Cass Superior Court in Logansport, Indiana. He was awarded a default judgment against her in the amount of \$190,000. The defendant then filed her chapter 7 voluntary petition on October 13, 2005. The plaintiff initiated an adversary proceeding by filing this complaint on January 6, 2006, asserting that the debts owed to him by the plaintiff were nondischargeable because they were incurred by false pretenses, false representations, or actual fraud under § 523(a)(2)(A).

The Seventh Circuit Court of Appeals has enunciated a three-pronged standard for sustaining a prima facie case under § 523(a)(2)(A): A plaintiff must establish that (1) the defendant obtained the plaintiff's loan through representations that the defendant either knew to be false or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) the defendant acted with an intent to deceive the plaintiff; and (3) the plaintiff justifiably relied on the defendant's false representations to his detriment. *See In re Maurice*, 21 F.3d 767, 774 (7th Cir. 1994) (modified by *Field v. Mans*, 516 U.S. 59, 74, 116 S. Ct. 437, 133 L.Ed.2d 351 (1995), which held that reliance need only be justifiable); *see also In re Sheridan*, 57 F.3d at 635; *In re Mayer*, 51 F.3d at 673. Other circuits have expanded the criteria into a five-part test. Under this standard, the creditor must establish that: (1) the debtor made a representation to the creditor; (2) at the time of the representation, the debtor knew it to be false or made with such reckless disregard for the truth as to constitute willful

misrepresentation; (3) the debtor made the representation with the intent and purpose of deceiving the creditor; (4) the creditor relied on the representation; and (5) the creditor sustained damages as the proximate result of the representation. See *In re Rountree*, \_\_\_ F.3d \_\_\_, 2007 WL 586568 at \*2 (4th Cir. 2007); *American Express Travel Related Servs. v. Hashemi (In re Hashemi)*, 104 F.3d 1122, 1125 (9th Cir. 1996). It is obvious that the two standards are in all material ways identical. See *Heptacore, Inc. v. Luster (In re Luster)*, 50 Fed. Appx. 781, 2002 WL 31470382 at \*\*3 (7th Cir. 2002) (finding the two standards substantially identical). The plaintiff, following the five-part test, demonstrated each of the elements by reference to the admitted material facts.

Becker first showed that the defendant made representations to him that she could operate the Mancino's franchise, that it would be a valuable business that could make a definite profit, and that she could repay the loans. She also told Becker that she was qualified to operate the franchise and that she had the necessary business and financial acumen to run it on a day-to-day basis. The defendant made a written representation to Becker, as well, in the form of promissory notes, that she would repay the debt. She testified in her deposition that she told Becker that she would repay him on a monthly basis from all the profits generated by the franchise.

According to the plaintiff, the defendant knew that the representations she made were false or were made with direct disregard for the truth. She admitted in her deposition that she was not qualified to operate the franchise, since she did not know exactly what a franchise entailed. She had no prior experience or training in operating a business and did not obtain any guidance from a financial advisor. She made a completely fraudulent representation to Becker that the franchise would generate a profit and was in good financial health – without reviewing past financial and tax documents involving the franchise, and with the knowledge that the Mancino's in Wabash carried the Logansport restaurant financially. The plaintiff insisted that it was reckless for the defendant to represent that the restaurant would make a profit when she knew that the Logansport franchise had experienced financial difficulties and needed the support of its Wabash counterpart.

The plaintiff next demonstrated that the defendant's representations were made with the intent to deceive Becker. With her past history of financial problems, she knew that her prospect of repaying the loaned monies was completely unrealistic. She realized that she did not have the resources or ability to repay Becker for the loans, and she intentionally set out to deceive him. The plaintiff financed 100% of the restaurant, since the defendant did not have the financial ability to contribute any capital. Also, the defendant intentionally deceived Becker after the business opened by representing to him that the business was healthy when it was not. The defendant's meager \$5,000 annual salary, the continuous cash flow problems, the total lack of profit during the entire operation of the business, and the defendant's consistent inability to keep current on the restaurant's rent, franchise payments and income taxes – all this evidence makes clear that the restaurant did not turn a profit. Nevertheless, the defendant represented to Becker that profit would in fact be generated. According to the plaintiff, those facts clearly established that, at the time the defendant incurred her indebtedness to Becker, she had no ability to repay it, a fact she either knew or recklessly disregarded when she incurred the debt. The plaintiff demonstrated that the unchallenged facts showed that the defendant intended to deceive Becker when she obtained the loans.

He also presented facts to show that he relied on the defendant's representations when he made the loans. Slusser said that she was qualified to own and operate the franchise. Becker talked to her at the restaurant and at her residence on many occasions in order to discuss the nature of the franchise and the amount of money necessary for the purchase. She gave Becker oral and written promises to repay the loans. She admitted in her deposition that the loans were to be repaid to Becker from the profits generated from the restaurant. According to the plaintiff, the defendant induced him to make the loans by falsely representing that the restaurant would generate a profit. In reliance on these representations, Becker loaned Slusser \$190,000. He said he would not have made the loans to the defendant if he knew that she lacked the business experience necessary to operate the restaurant and if he knew that the restaurant would not generate a profit.

Becker showed, through the undisputed evidence, that he sustained a loss as a result of the defendant's representations. After Mancino's went out of business in 2004, the defendant refused to pay back the money Becker had loaned her. He filed a complaint for damages against her in state court and the court entered a default judgment against the defendant for \$190,000. After she filed bankruptcy, he filed a complaint in this court. He insists the debt is excepted from her discharge, because she engaged in acts of false pretense, misrepresentation and fraud concerning her ability to operate the restaurant, the ability of the restaurant to generate a profit, and her own ability to repay the loans. Those misrepresentations induced Becker to make the loans to the defendant. Based on the totality of the circumstances in this record, Becker contends he has established, as a matter of law, a prima facie case that the defendant's debt was incurred by false pretenses, false representation, or actual fraud under § 523(a)(2)(A) and that the debt is not dischargeable.

The court finds that the material facts show, without contradiction, that the \$190,000 debt Slusser owes to Becker is excepted from discharge. The plaintiff first established that the defendant obtained the plaintiff's loans through representations that the defendant either knew to be false or made with such reckless disregard for the truth as to constitute willful misrepresentation. The plaintiff lent the defendant \$140,000 to start the restaurant and \$50,000 to rescue it. The defendant assured the plaintiff, by signing promissory notes and by making oral commitments to repay him monthly, that she would and could repay the loans. She told him that she had the knowledge and skills to operate the franchise and to make it a profitable business, even though she did not know what a franchise entailed and had no experience or training in operating a business. She recklessly did not examine the restaurant's finances before buying the franchise and did not consult with a financial advisor after the investment was made. Even after she learned that the Mancino's restaurant in Wabash carried the Logansport restaurant financially, she continued to represent to the plaintiff that the restaurant would make a profit.

The facts also support the conclusion that the defendant acted with an intent to deceive the plaintiff. She was well aware that, after years of meager salaries and financial problems, she had no resources from which to repay the loans when she induced the plaintiff to make them. Because she also had no background for running

a restaurant, her statements that she could manage that business were intentionally deceptive. The defendant said the franchise was a valuable business and would be a good investment, one that would make a profit. She convinced the plaintiff to finance 100% of the restaurant. *See In re Sheridan*, 57 F.3d at 633 (“[W]rongful intent may ‘logically be inferred from a false representation which the debtor knows or should know will induce another to make a loan.’”) (quoting *In re Kimzey*, 761 F.2d 421, 424 (7th Cir. 1985), *abrogated on other grounds*). The defendant then continued to deceive him into believing the restaurant was doing well, after the business opened, when it was not. *See Metropolitan Real Estate Corp. v. Gard (In re Gard)*, 327 B.R. 372, 376 (Bankr. N.D. Ind. 2003) (finding that debtor acted with requisite intent to defraud when he allowed the transaction to proceed, knowing the checks to close the purchase would not be honored and knowing he did not have the resources to make the checks good). The court finds that the facts demonstrate, without contradiction, that the defendant knew she had no ability to repay the loans and intended to deceive the plaintiff in order to obtain the loans. *See American Express Travel Related Servs. Co., Inc., v. Nahas (In re Nahas)*, 181 B.R. 930, 934 (Bankr. S.D. Ind. 1994) (“Intent to repay requires some factual underpinnings which lead a person to a degree of certainty that he or she would have the ability to repay. Mere hope, or unrealistic or speculative sources of income, are insufficient.”) (quoting *In re Clagg*, 150 B.R. 697, 698 (Bankr. C.D. Ill. 1993)).

The court also finds that the plaintiff has presented material facts to demonstrate that he justifiably relied on the defendant’s false representations to his detriment. Becker was convinced, after many discussions with the plaintiff, that she was qualified to own and operate a restaurant. She signed promissory notes and gave him oral assurances that she would repay the loans. He relied on her statements that she had the skills to run the business and could make the restaurant generate a profit. Such representations induced Becker to make the loans. Despite her continued representations that Mancino’s could succeed, it never made a profit. It went out of business in 2004, and the defendant could not pay back the plaintiff’s loans. The plaintiff lost \$190,000. He had believed her false statements. He didn’t check further, but he didn’t need to: Fraud “does not have any reasonable-investigation requirement.” *In re Mayer*, 51 F.3d 670, 675 (7th Cir. 1995) (“Debts attributable to

fraud may not be discharged, 11 U.S.C. § 523(a)(2)(A), and intentional deceit concerning a material proposition is fraud whether or not a more-alert target would have smelled a rat.”); *see also In re Gard*, 327 B.R. at 376 (“One may justifiably rely upon a representation even though its falsity could have been determined had an investigation be made.”).

The court determines that the plaintiff, as the moving party, met his burden of showing that no genuine issue of material fact is in dispute. The facts herein, admitted by the defendant, clearly show that the defendant’s debt to the plaintiff was obtained by false pretenses, false representation or actual fraud under 11 U.S.C. § 523(a)(2)(A). Accordingly, the court finds the debt to be nondischargeable.

#### Conclusion

For the reasons presented above, the court grants the Plaintiff’s Motion for Summary Judgment filed by plaintiff Jack Becker, creditor of the defendant Melodie Sue Slusser. The debt the defendant owes to the plaintiff is excepted from discharge. In addition, the following documents filed by the plaintiff are declared to be moot:

- (1) Plaintiff’s Motion to Strike and Response to Defendant’s Motion to Dismiss, with supporting brief, filed September 21, 2006;
- (2) Plaintiff’s Reply to Defendant’s Objection to Plaintiff’s Motion for Summary Judgment, filed on September 21, 2006;
- (3) Plaintiff’s Motion to Strike “Affidavit of Melody [*sic*] Slusser, Defendant, in Adversary Proceeding Brought By Jack Becker, Plaintiff,” filed November 13, 2006; and
- (4) Plaintiff’s Motion to Strike “Defendant’s Response to Plaintiff’s Motion to Strike Affidavit of Melody [*sic*] Slusser, Defendant, in Adversary Proceeding brought by Jack Becker, Plaintiff,” filed on December 14, 2006.

SO ORDERED.

/s/ Harry C. Dees, Jr.  
HARRY C. DEES, JR., CHIEF JUDGE  
UNITED STATES BANKRUPTCY COURT