UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

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| IN RE: CASE NO. 07-11441 | ) | |
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| CHAD MYRDDIN SEYBOLD | ) | |
| LAURA REITER SEYBOLD | ) | |
| | ) | |
| Debtors | ) | |
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| SALIN BANK AND TRUST COMPANY | ) | |
| | ) | |
| Plaintiff | ) | |
| | ) | |
| vs. | ) | PROC. NO. 07-1255 |
| | ) | |
| CHAD MYRDDIN SEYBOLD | ) | |
| LAURA REITER SEYBOLD | ) | |
| | ) | |
| Defendants | ) | |

**DECISION AND ORDER ON MOTION FOR SUMMARY JUDGMENT**

At Fort Wayne, Indiana, on April 27, 2009.

By this adversary proceeding the court has been asked to declare that the defendant/debtors' obligation to the plaintiff is a non-dischargeable debt, pursuant to § 523(a)(2), § 523(a)(4), and § 523(a)(6) of the United States Bankruptcy Code. That debt arises out of mortgages given to the plaintiff to secure loans made to purchase and/or refinance several properties. The matter is before the court on the defendants' motion for summary judgment and the plaintiff's response thereto.

Summary judgment is appropriate where there is "no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." See, Fed. R. Civ. P. Rule 56(c); Fed. R. Bankr. P. Rule 7056. The moving party must initially identify "those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact."

Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). Once it does so, the non-moving party must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact requiring trial. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct 1348, 1356 (1986). In ruling on the motion, the court accepts the non-moving party's evidence as true, draws all inferences in favor of the non-moving party, and does not weigh the evidence and credibility of the witnesses. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986).

At the time the loans in question were made, Mr. Seybold had several different business interests. The essence of the plaintiff's claim is that Mr. Seybold obtained loans for one business entity, representing that it owned or would be acquiring real property upon which the Bank would be granted a mortgage in order to secure the loan, which it was. In reality, however, based upon agreements or understandings between the investors in Mr. Seybold's different businesses, the Bank's borrower was not supposed to own or acquire the properties in question; another of Mr. Seybold's businesses was supposed to have been the owner. This error seems to have been corrected through some type of stipulation or agreement made in connection with litigation between the Seybolds and those other investors. See, Brief in Response to Defendants' Motion, filed March 23, 2009, pgs. 6-7. The Bank contends it would not have made the loans if it had known that its borrower was not supposed to be the properties' owner and claims that Mr. Seybold knowingly misrepresented those facts to the Bank. It then characterizes his actions as fraud, fraud or defalcation in a fiduciary capacity, and/or a willful and malicious injury which, if accurate, would render his liability to the Bank non-dischargeable under §§ 523(a)(2), (4) and/or (6) of the United States Bankruptcy Code. The plaintiff also contends that the defendant's actions constituted "bank fraud" under Indiana law, see, I.C. 35-43-5-8, which would entitle the plaintiff to recover treble damages and attorney fees. See, I.C. 34-24-3-1.

As for the plaintiff's claims of fraud, whether under § 523(a)(2) or I.C. 35-43-5-8, the court finds that there are genuine issues of material fact and so the defendants' motion is DENIED.

As for the plaintiff's claim that the debts owed to it are non-dischargeable pursuant to § 523(a)(4), as "fraud or defalcation in a fiduciary capacity," and/or § 523(a)(6), as a "willful and malicious injury," there is no genuine issue of material fact and the defendants' motion is GRANTED for the reasons set forth below.

Exceptions to discharge are narrowly construed in favor of the debtor, Matter of Scarlata, 979 F.2d 521, 524 (7th Cir. 1992), and the creditor bears the burden of proving that its debt falls within a particular exception by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991). Therefore, in response to the defendants' motion for summary judgment, the plaintiff was required to come forward with facts that, if believed, would satisfy each of the elements of the different exceptions upon which it bases its claim. See, Celotex Corp., 477 U.S. at 322, 106 S.Ct. at 2552 ("the plain language of Rule 56(c) mandates the entry of summary judgment . . . 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.").

To successfully prove non-dischargeability under § 523(a)(4) the plaintiff/creditor must demonstrate the existence of a fiduciary relationship between it and the debtor/defendant, and the obligation to the plaintiff must have arisen from the debtor's fraud or defalcation while acting in that capacity. In other words, the debt must arise out of the debtor's failure to fulfill fiduciary obligations which run to the creditor. See, Matter of Cross, 666 F.2d 873, 880 (5th Cir. 1980); In re Krause, 114 B.R. 582, 604 (Bankr. N.D. Ind. 1988); Matter of Good, 33 B.R. 163, 166 (Bankr. M.D. Fla. 1983).

The Bank has failed to come forward with any evidence that suggests a fiduciary relationship existed between it and the defendants. A debtor/creditor relationship is not a fiduciary one for the purposes of § 523(a)(4). See, In re Brown, 399 B.R. 44, 46-47 (Bankr. N.D. Ind. 2008); In re Hartman,, 254 B.R. 669, 672-73 (Bankr. E.D. Pa. 2000); In re Heath, 114 B.R. 310, 311 (Bankr. N.D. Ga. 1990); In re Iaquinta, 95 B.R. 576, 579 (Bankr. N.D. Ill. 1989); In re Gans, 75 B.R. 474, 489 (Bankr. S.D.N.Y. 1987). Although Mr. Seybold served as a member, officer or director of the corporation (Seytron) that borrowed money from the Bank and as such had fiduciary obligations, those obligations ran to the corporation and its shareholders, not to the Bank. In re Eisaman, 387 B.R. 219 (Bankr. N.D. Ind. 2008); Geiger & Peters, Inc. v. Berghoff, 854 N.E.2d 842, 850 (Ind. App. 2006). Yet, that is the fiduciary relationship the Bank relies upon – Mr. Seybold's obligations as a member of Seytron – for its argument that a fiduciary capacity existed here. The argument totally the ignores the fact that whatever fiduciary obligations Mr. Seybold had by virtue of his association with Seytron did not extend to the Bank. Section 523(a)(4) only applies when the debtor's fiduciary obligations run to the one complaining about the debtor's dereliction in fulfilling them.

To be non-dischargeable under § 523(a)(6) the debt must be for "a willful and malicious injury by the debtor to another entity." The actions the Bank relies upon to bring its claim within the scope of this portion of the Bankruptcy Code are the very same actions it relies upon to support its claim of fraud under § 523(a)(2): Mr. Seybold's knowing misrepresentation of the proper ownership of the real estate mortgaged to the bank.[1] Yet, if the same conduct that constitutes fraud

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[1]"Chad Seybold's actions were 'willful' because as the majority owner and person in control of Seytron, SPH and SI No.1 (though Seytron), Chad Seybold had knowledge that the Salin Bank Real Estate was to be owned and titled in the name of SPH or SI No.1, but represented to Salin Bank that Seytron was or was to be the proper owner of the Salin Bank Real Estate." Brief in Response to Defendants' Motion, filed March 23, 2009, p. 20.

under § 523(a)(2) also constitutes a willful and malicious injury under § 523(a)(6), that produces a very broad interpretation of § 523(a)(6).

The Supreme Court has observed that the wording of § 523(a)(6) brings to mind intentional torts. Kawaauhau v. Geiger, 523 U.S. 57, 61, 118 S.Ct. 974 (1998). Admittedly, fraud is an intentional tort. Yet, if fraud will make a debt non-dischargeable under § 523(a)(6), what purpose does § 523(a)(2) and its exception for "false pretenses, a false representation, or actual fraud" serve? As with the other exceptions to discharge, § 523(a)(6) is to be narrowly construed in favor of the debtor. In re Kimzey, 761 F.2d 421, 424 (7th Cir. 1985). Furthermore, it must be interpreted in a way that does not make the other exceptions of § 523 superfluous. Kawaauhau, 523 U.S. at 62, 118 S.Ct. at 977; In re Gulevsky, 362 F.3d 961, 963 (7th Cir. 2004). Consequently, §523(a)(6) does not apply to debts procured by fraud because that would render the portions of § 523(a) which address the dischargeability of various debts procured by fraud – § 523(a)(2), (4) and (11) – unnecessary. Gulevsky, 362 F.3d at 964. See also, In re Russell, 203 B.R. 303, 318 (Bankr. S.D. Cal. 1996).

Defendants' motion for summary judgment is granted, in part. Their obligations to Salin Bank are not excepted from discharge by either § 523(a)(4) or § 523(a)(6) of the United States Bankruptcy Code.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court