

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
BRENT A MOUNTS and)	CASE NO.08-22970 JPK
PATRICIA A MOUNTS,)	Chapter 7
Debtors.)	
*****)	
MB FINANCIAL BANK, N.A.,)	
)	
Plaintiff,)	
)	
v.)	ADVERSARY NO. 08-2129
)	
BRENT A MOUNTS,)	
)	
Defendant.)	

DISCOVERY DEADLINES/STATUS CONFERENCE ORDER

This matter came before the Court on March 13, 2009, for preliminary pre-trial conference. The plaintiff appears by counsel Sheila Ramacci; the defendant appears personally, *pro se*.

This adversary proceeding was initiated by a complaint filed on November 7, 2008. The certificate of service filed on November 7, 2008 establishes that service of summons and the complaint was properly made upon the defendant. A response to the complaint was due to be filed with the court and served upon the plaintiff by December 8, 2008. The plaintiff filed a motion for default judgment on December 22, 2008. The defendant filed an answer on January 9, 2009, and an objection to the plaintiff's request for default judgment. The court questioned the defendant at the hearing on March 13, 2009 as to his reasons for delay in responding to the complaint, and is satisfied that the reasons were primarily a misunderstanding with the attorney who is representing him in his underlying Chapter 7 case, case number 08-22970, and that the failure to timely respond was not attributable to an intentional disregard of the court or rules of procedure applicable to this case. While perhaps technically the plaintiff is entitled to an entry

of default pursuant to Fed.R.Bankr.P. 7055/Fed.R.Civ.P. 55(a), if the court were to enter the default, the court would set aside the entry of default based upon the facts provided by the defendant at the hearing. The court therefore declines to enter default against the defendant. The court also finds that the plaintiff's motion for default judgment should be denied. The case will proceed on the complaint and the defendant's answer.

The complaint advances three grounds for assertions of exception from discharge of the indebtedness which it asserts is owed it by the defendant: 11 U.S.C. § 523(a)(2)(A), 11 U.S.C. § 523(a)(4) and 11 U.S.C. § 523(a)(6). The factors which the court will apply to determine each of the causes of action asserted by the plaintiff are set out in cases previously decided by the court as follows: *In re Hostetter*, 320 B.R. 674 (Bankr. N.D.Ind. 2005) with respect to 11 U.S.C. § 523(a)(2)(A); the court's decision entered on October 18, 2008 in *Karner*, adversary proceeding number 05-6108 with respect to embezzlement/larceny under 11 U.S.C. § 523(a)(4); and *In re Whiters*, 337 B.R. 326 (Bankr. N.D.Ind. 2006) with respect to 11 U.S.C. § 523(a)(6).

The parties discuss the status of the case.

IT IS ORDERED as follows:

1. All discovery shall be completed by **September 18, 2009**. The parties are advised that the Court will not enforce any request for discovery, or impose any sanctions with respect to any request for discovery, with respect to any discovery having a deadline for response, as that deadline is established by applicable Rules of Procedure or otherwise by Court order, which is after the discovery deadline heretofore stated. The parties may informally agree to any extension of the discovery deadline without order of the Court, but if problems then ensue with respect to the informal extension, the Court will not enforce or impose sanctions with respect to any such discovery so extended. If discovery cannot be completed within the deadline hereby established, a party may by motion request an extension of the discovery

deadline.

2. A status conference to determine the course of further proceedings in this case will be held on **October 8, 2009, at 9:00 A.M.**

Dated at Hammond, Indiana on June 3, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger
United States Bankruptcy Court

Distribution:
Attorneys of Record
Defendant