

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
DAVID LYNN STACKHOUSE	)	CASE NO. 13-33499 HCD
	)	CHAPTER 7
	)	
DEBTOR	)	
	)	
	)	
	)	
KEYBANK NATIONAL ASSOCIATION	)	
	)	
PLAINTIFF	)	
	)	
vs.	)	PROC. NO. 14-3014
	)	
DAVID LYNN STACKHOUSE	)	
	)	
DEFENDANT	)	

Appearances:

William G. Lavery, Esq., Whisler & Lavery, 600 South Main Street, Suite 200, Elkhart, Indiana 46516  
attorney for plaintiff KeyBank N.A.

R. William Jonas, Jr., Esq., Hammerschmidt, Amaral & Jonas, 137 North Michigan Street, South Bend,  
Indiana 46601, attorney for defendant David Lynn Stackhouse.

MEMORANDUM OF DECISION

At South Bend, Indiana, on February 18, 2015.

Before the court is the Motion for Summary Judgment (“Motion”) filed by the plaintiff  
KeyBank N.A. (“KeyBank”) against the chapter 7 defendant David Lynn Stackhouse (“Stackhouse”). In  
its Motion, KeyBank requests the entry of a judgment of nondischargeability pursuant to 11 U.S.C.

§ 523(a)(6) and denial of discharge pursuant to 11 U.S.C. § 727(a)(4). Stackhouse, by counsel, filed a Response to KeyBank's Motion, to which KeyBank has filed a reply. For the reasons stated in this Memorandum of Decision, the court denies KeyBank's Motion.<sup>1</sup>

### BACKGROUND

Stackhouse is the sole owner of two entities, Marshall Technologies, Inc. ("Marshall") and another entity the parties call N64, neither of which are part of this adversary proceeding or underlying bankruptcy case.<sup>2</sup> KeyBank is a secured creditor of Marshall. Stackhouse has guaranteed the indebtedness of Marshall to KeyBank. Stackhouse filed a voluntary chapter 7 petition on December 16, 2013. The Notice of Meeting of Creditors set a deadline at March 24, 2014 for objecting to Stackhouse's discharge or challenging the dischargeability of certain debts. The chapter 7 case trustee is pursuing potential assets for the bankruptcy estate. Included among the potential assets is a state court action originally brought by Stackhouse and Marshall for professional malpractice and negligence against the estate of the former accountant for Marshall. The state court proceedings remain open as of the date of this decision.

On March 19, 2014, KeyBank timely filed this adversary proceeding to determine the dischargeability of debt and to object to the discharge of Stackhouse. The complaint asked the court to except from discharge pursuant to 11 U.S.C. § 523(a)(6) the debt owed by Stackhouse to KeyBank, a debt arising from loans to Marshall and guaranteed by Stackhouse. As justification, KeyBank points to activities of Stackhouse it maintains show willful and malicious injury to its property interests. KeyBank further points to omissions in Stackhouse's Statement of Financial Affairs as the basis to deny Stackhouse's discharge pursuant to 11 U.S.C. § 727(a)(4).

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<sup>1</sup> The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J).

<sup>2</sup> The PACER Case Locator does not show bankruptcy filings for either Marshall Technologies, Inc. or N64. Available at <https://pacer.login.uscourts.gov> (last visited Feb. 17, 2015).

The parties have filed a Joint Pre-Trial Statement (“Joint Statement”)<sup>3</sup> that includes a stipulation of facts and a recitation of contested facts. (ECF No. 27) Because the matter before the court is a summary judgement motion, the court will presume the factual characterizations in the Joint Statement are accurate. The Joint Statement contains the following recitations.

While not having been specifically stipulated to, the following facts have been established through the allegations of KeyBank’s Complaint, and the Answer of the Defendant to the Complaint:

- (1) Defendant is the sole shareholder, officer, and director of Marshall Technologies.
- (2) Defendant is the sole owner of all membership units of N64.
- (3) Marshall Technologies is an Indiana corporation engaged in the injection molding business.
- (4) KeyBank holds a blanket security interest in all assets of Marshall Technologies located in Bourbon, Indiana, and El Paso, Texas.
- (5) Defendant has guaranteed the indebtedness of Marshall Technologies to KeyBank.
- (6) Defendant was a participant in the operations of Marshall Technologies and N64.
- (7) On or about June 8, 2012, Defendant, through N64 entered into an Asset Purchase Agreement wherein N64 purported to sell to Bourbon Plastics Industries, LLC a portion of the El Paso Collateral for approximately \$146,794.05.
- (8) On or about October 27, 2012, Defendant, through N64, entered into an Asset Purchase Agreement wherein N64 purported to sell to Utica Leaseco, LLC (“Utica”) a portion of the El Paso Collateral for \$352,500.00.
- (9) Defendant signed his Schedules and Statements of Financial Affairs filed in this bankruptcy petition [*sic*] under the pains and penalties of perjury.

Joint Statement, ECF No.27, at ¶ 6.

In this Joint Statement the parties also list contested facts.

- (a) The amount of the indebtedness of Defendant and Marshall Technologies to KeyBank at the time of Defendant’s filing of bankruptcy.

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<sup>3</sup> Rule 56(c)(3) states “[t]he court need consider only the cited materials, but it may consider other materials in the record.” This rule affords the court discretion in ruling on summary judgment motions. *See* 2010 Advisory Committee Note to Fed. R. Civ. P. 56. In this case, the court has reviewed the items referenced by the parties and other materials in the record.

(b) Whether Defendant transferred or caused to be transferred assets of Marshall Technologies which served as collateral for the indebtedness of Marshall Technologies and Defendant to KeyBank.

(c) Whether any action of Defendant caused KeyBank's claimed losses.

(d) Whether Defendant knowingly and fraudulently failed to disclose the transfer of the El Paso Collateral, his receipt of \$109,000.00 for the conveyance of the El Paso Collateral, or that he is an officer, director, or owner of more than five percent (5%) of N64, and failed to disclose his indebtedness is secured by a mortgage on his residence, on his bankruptcy Schedules and Statement of Financial Affairs.

Joint Statement, ECF No. 27, at ¶ 7.

### DISCUSSION

Made applicable by Rule 7056 of the Federal Rules of Bankruptcy Procedure, Federal Rule of Civil Procedure 56 governs this court's review of a motion for summary judgment. "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).<sup>4</sup>

The court renders summary judgment only if the record shows that "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056. *See Celotex*, 477 U.S. at 322; *Greeno v. Daley*, 414 F.3d 645, 652 (7<sup>th</sup> Cir. 2005). The moving party bears the initial burden of showing that no genuine issue of material fact exists. *Celotex*, 477 U.S. at 323 ("[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

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<sup>4</sup> *Celotex* is part of the 1986 trilogy of Supreme Court cases that clearly encourage the use of summary judgment motions as a means to efficiently dispose of factually unsupported claims. "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Celotex*, 477 U.S. at 327. The other cases in the trilogy are *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) and *Matsushita Electric Industrial Corp. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact.”<sup>5</sup>) If the moving party satisfies its initial burden, then the nonmoving party must “go beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 324 (quoting Fed. R. Civ. P. 56(e)); *see also Matsushita Electric Industrial Co.*, 475 U.S. at 586 (stating once the movant has met its burden under Rule 56, the non-movant “must do more than simply show that there is some metaphysical doubt as to the material facts”); *Morgan v. SVT, LLC*, 724 F.3d 990, 997 (7<sup>th</sup> Cir. 213).

In reviewing a motion for summary judgment the court neither weighs the evidence nor assesses the credibility of witnesses. *See Anderson*, 477 U.S. at 249 (“[A]t the summary judgment stage the judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”); *Posey v. Skyline Corp.*, 702 F.2d 102, 106 (7<sup>th</sup> Cir. 1983), *cert. denied* 464 U.S. 960 (1983) (arguing the court does not have an obligation to hypothesize or speculate about the various implications of the facts). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson*, 477 U.S. at 248. The court will resolve any doubt as to the existence of a genuine issue of material fact against the movant. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-9 (1970); *Tolan v. Cotton*, 134 S.Ct. 1896, 1866 (2014) (a court must view evidence “in the light most favorable to the opposing party”); *Shields v. Illinois Dept. of Corrections*, 746 F.3d 783, 786 (7<sup>th</sup> Cir. 2014), *cert. denied* 83 U.S.L.W. 3579, 2015 U.S. LEXIS 443 (U.S. Jan. 12, 2015) (finding the court must give “the non-moving party the benefit of conflicts in the evidence and any reasonable inferences from the evidence”). In other words, summary judgment is not

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<sup>5</sup> “This burden has two distinct components: an initial burden of production, which shifts to the nonmoving party if satisfied by the moving party; and an ultimate burden of persuasion, which always remains on the moving party.” *Celotex*, 477 U.S. at 330 (Brennan, J., dissenting).

appropriate if the court must make “a choice of inferences.” *U.S. v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Harley-Davidson Motor Co., Inc. v. PowerSports, Inc.*, 319 F.3d 973, 989 (7<sup>th</sup> Cir. 2003).

#### Section 523(a)(6) claim

Courts narrowly construe exceptions to discharge in favor of the debtor. *See, e.g., In re Chambers*, 348 F.3d 650, 654 (7<sup>th</sup> Cir. 2003) (stating that exceptions to discharge “are confined to those plainly expressed in the Code and are narrowly construed in favor of the debtor”); *In re Reines*, 142 F.3d 970, 972-73 (7<sup>th</sup> Cir. 1998); *In re Porayko*, 443 B.R. 419, 423 (Bankr. N.D. Ill. 2010) (“[E]xceptions to discharge should be construed strictly against the creditor and liberally in favor of the debtor.”); *In re Pawlak*, 467 B.R. 462, 468 (Bankr. W.D. Wis. 2012) (“Principles of bankruptcy jurisprudence dictate that exceptions to discharge should be construed strictly against the creditor and liberally in favor of the debtor.”) In asserting a violation of § 523(a)(6), a creditor must show that the conduct of a debtor is both willful (intentional) and malicious. The debtor must be aware of the actions’ wrongfulness. “It is this knowledge of wrongdoing, not the wrongfulness of the debtor’s actions, that is the key to malicious under § 523(a)(6).” *ABF, Inc. v. Russel (In re Russel)*, 262 B.R. 449, 455 (Bankr. N.D. Ind. 2001). KeyBank has not established Stackhouse’s knowledge of wrongdoing.

#### Section 727(a)(4) claim

KeyBank also seeks to deny Stackhouse’s discharge pursuant to 11 U.S.C. § 727(a)(4). To prevail, KeyBank must show that Stackhouse “knowingly and fraudulently” misstated a material matter. “[A] false statement resulting from ignorance or carelessness does not rise to the level of knowing and fraudulent.” *In re Tauber*, 349 B.R. 540, 561 (Bankr. N.D. Ind. 2006) (citations omitted). “Whether the debtor knew the information provided in the Statement was false or whether he omitted some information with the intent to deceive, are questions of fact.” *In re Hensley*, 381 B.R. 699, 704 (Bankr. N.D. Ind. 2007).

The information presented in the record here is not so one-sided that KeyBank must prevail as a matter of law. Despite KeyBank's assertions to the contrary, it is apparent to the court that genuine disputes as to material facts are present. KeyBank has not established that the conduct of Stackhouse was willful and malicious or knowing and fraudulent. The existence of these factual disputes precludes the granting of summary judgment.

At this stage of the case, KeyBank has not convinced the court that Stackhouse acted willfully with an intent to harm its property or property interests. Additionally, the record in this proceeding also fails to convince the court that the dollar amount sought by KeyBank is undisputed. Absent is any information concerning the amounts paid, if any, by Marshall to KeyBank, and whether the loans were current. The parties agree Stackhouse guaranteed the debt of Marshall to KeyBank. Nothing in the record shows whether the principal obligor, Marshall, has made any payments or is in default sufficient to trigger KeyBank's right to pursue Stackhouse's guarantee. At this time the court is left with a question whether KeyBank is pursuing the correct defendant in this court.

#### CONCLUSION

KeyBank has not convinced the court of the propriety of concluding this adversary proceeding at the summary judgment stage. Based on the record in this matter, the court finds that it must deny KeyBank's motion for summary judgment. The court will set this adversary proceeding for trial by a separate order.

SO ORDERED.

/s/ HARRY C. DEES, JR.  
HARRY C. DEES, JR., JUDGE  
UNITED STATES BANKRUPTCY COURT