

Not Intended for Publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 13-12883)
)
SHANE ALLEN MONTGOMERY)
ANDRENETTE DESHAY LEE)
MONTGOMERY)
)
Debtors)
)
)
SERGIO S. HERNANDEZ-GUTIERREZ)
)
Plaintiff)
)
vs.)
)
ANDRENETTE DESHAY LEE)
MONTGOMERY)
)
Defendant)

PROC. NO. 13-1148

DECISION AND ORDER DENYING MOTION FOR SUMMARY JUDGMENT

On January 30, 2015.

By this adversary proceeding, the plaintiff has asked the court to declare that the debtor, Andrenette Deshay Lee Montgomery’s obligation to him constitutes a non-dischargeable debt, pursuant to § 523(a)(2)(A) of the United States Bankruptcy Code, due to fraud. The matter is before the court on the plaintiff’s motion for summary judgment and the defendant’s response thereto.

Summary judgment is appropriate where there is “no genuine dispute as to any material fact” and “the movant is entitled to a judgment as a matter of law.” See, Fed. R. Civ. P. Rule 56(a); Fed. R. Bankr. P. Rule 7056. 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 or credibility of the witnesses. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505,

2511 (1986).

Having considered the motion, together with the materials submitted in support thereof and in opposition thereto,¹ the court finds that there are genuine issues of material fact. Plaintiff's motion for summary judgment is therefore DENIED.

SO ORDERED.

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

¹In the plaintiff's reply brief, he challenges the sufficiency of the affidavits the defendant submitted in opposition to the motion, but that argument is not sufficiently developed. Instead, the plaintiff refers to a separate motion to strike for greater detail.

Except as contemplated by Rule 12(f), the purpose of a motion to strike should be limited to removing things from the docket that are so woefully inadequate they do not deserve to be filed. It is not the proper vehicle to deal with things which qualify for filing but are simply not sufficient to accomplish their ostensible purpose. See, Colodny v. Iverson, Yoakum, Papiano & Hatch, 838 F. Supp. 572, 575 (D. M.D. Fla. 1994) (motion to strike is not an appropriate way to challenge the basis of factual allegations). Such deficiencies should be addressed in one's normal response or reply to the submission, rather than by filing a separate motion asking the court to strike the offending document. Knudsen v. Liberty Mutual Ins. Co., 411 F.3d 805 (7th Cir. 2005) ("we hope that in the future [parties] will address the issues directly rather than move to strike the [opponent's] papers."). See also, S.D. Ind. L.R. 56.1(i) ("The court disfavors collateral motions – such as motions to strike – in the summary judgment process").

Plaintiff's motion to strike is based upon perceived deficiencies in the material the defendant filed in opposition to the motion for summary judgment. Those arguments should have been advanced in the plaintiff's reply, cf., N.D. Ind. L.B.R. B-7056-1(b) (surreply permitted where the movant objects to the admissibility of evidence submitted in response to the motion for summary judgment), not by filing a motion asking the court to strike the documents. The only thing a motion to strike accomplishes in this situation is to delay resolution of the issues by initiating another round of briefs, response, and replies. N.D. Ind. L.B.R. B-7007-1(a).