

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 00-12905-MWV
Chapter 7

Jeffrey M. Pratt and
Marie C. Pratt,

Debtors

Gilda A. Martineau,
Administratrix of the Estate of
John M. Gubellini,

Plaintiff

v.

Adv. No. 01-1002-MWV

Marie C. Pratt,

Defendant

ORDER ON MOTION FOR JUDGMENT ON THE PLEADINGS

The Court has before it Plaintiff Gilda M. Martineau's ("Plaintiff") Motion for Judgment on the Pleadings seeking to except a judgment debt in the amount of \$179,000 from discharge pursuant to § 523(a)(4) of the Bankruptcy Code. Rule 7012(b) of the Federal Rules of Bankruptcy Procedure makes Fed. R. Civ. P. 12(c), governing motions for judgment on the pleadings, applicable in this adversary proceeding. According to Rule 12(c), motions for judgment on the pleadings that are accompanied by exhibits are treated as motions for summary judgment. Because the instant motion relies on an exhibit in the form of a state court judgment, the Court will accordingly treat the instant motion as a motion for summary judgment.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

On January 16, 2001, the Plaintiff filed a complaint seeking to except a judgment debt in the amount of \$179,000 from discharge pursuant to § 523(a)(4) of the Bankruptcy Code.¹ The complaint was based upon a state court judgment which found that Debtor Marie Pratt (“Defendant”) engaged in self-dealing while acting in a fiduciary capacity with respect to a joint account held with her imprisoned father. The Defendant timely filed a response objecting the requested relief, but subsequently filed a motion to withdraw the objection. No further pleadings were filed by the Defendant. On March 23, 2001, the Plaintiff filed the instant motion. No responsive pleading has been filed.

Under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, summary judgment should be granted only when “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.” “Genuine,” in the context of Rule 56(c), “means that the evidence is such that a reasonable jury could resolve the point in favor of the nonmoving party.” Rodriguez-Pinto v. Tirado-Delgado, 982 F.2d 34, 38 (1st Cir. 1993)(quoting United States v. One Parcel of Real Property, 960 F.2d 200, 204 (1st Cir. 1992)). “Material,” in the context of Rule 56(c), means that the fact has “the potential to affect the outcome of the suit under applicable law.” Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Courts faced with a motion for summary judgment should read the record “in the light most flattering to the nonmovant and indulge all reasonable inferences in that party’s favor.” Maldonado-Denis v. Castillo-Rodriguez, 23 F.2d 576, 581 (1st Cir. 1994).

A debt is excepted from discharge pursuant to § 523(a)(4) when it is the result of “fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.” This Court, in previous

¹ Unless otherwise noted, all statutory references hereinafter are to Title 11 of the United States Code.

decisions, has adopted a definition of “defalcation” as “a failure to observe clear and specific restrictions and limitations upon the fiduciary in either the trust document or the applicable statutory law and does not require as an element therefore some sort of bad faith on the part of the fiduciary. . . . Defalcation also includes innocent as well as intentional or negligent default so as to reach the conduct of all fiduciaries who are short in their accounts.” Peerless Insurance v. Swanson (In re Swanson), 231 B.R. 145, 148 (Bankr.D.N.H.1999); Reilly v. Beeman (In re Beeman), 225 B.R. 522, 525 (Bankr.D.N.H.1998). See also Office of Public Guardian v. Messineo (In re Messineo), 192 B.R. 597, 600(Bankr.D.N.H.1996). In order for the Court to find a defalcation, the Plaintiff must “simply prove that a fiduciary failed to return property or account for same, even though no fraud, embezzlement, or even misappropriation on the part of the fiduciary is shown.” Beeman, 225 B.R. at 525 (citation omitted).

The Court finds that the state court judgment sufficiently establishes that the Defendant committed at least defalcation while acting in a fiduciary capacity. The state court found that the Defendant was acting as a fiduciary by serving as a joint account owner with her father. See Motion For Sum. Judgment, Ex. A at 5, 6. The court further found that the Defendant misappropriated funds, failed to provide a proper accounting and engaged in self-dealing in violation of her fiduciary duty to her principal. Id. at 7. Finally, the Court found that as a result of the self-dealing, the Defendant was unjustly enriched in the amount of \$179,000 and ordered that she pay her father’s estate that amount plus expenses. Id. The Defendant was fully represented in the state court action, and thus the Court finds that the elements of collateral estoppel are satisfied so as to give the state court’s findings full effect in this Court.² Accordingly, the Court finds the Defendant’s debt is excepted from discharge pursuant to § 523(a)(4).

CONCLUSION

² Collateral estoppel is applied in order to prevent relitigation of issues previously litigated and decided on the merits. It will apply when an issue is actually litigated, determined by a valid and final judgment, and the determination of the issue is essential to the judgment. Swanson, 231 B.R. at 148.

Summary judgment is awarded to the Plaintiff. Accordingly, the subject debt is excepted from discharge pursuant to § 523(a)(4). This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 26th day of April, 2001, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge