UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
NEAL ROBBINS STAFFORD,	)	CASE NO. 12-32781 HCD
	)	CHAPTER 7
DEBTOR.	)	
	)	
	)	
SUN ENTERPRISES, INC.,	)	
	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 12-3075
	)	
NEAL ROBBINS STAFFORD,	)	
	)	
DEFENDANT.	)	

Appearances:

Michael K. Banik, Esq., counsel for plaintiff, 217 South Fourth Street, Elkhart, Indiana 46516; and Neal Robbins Stafford, *pro se* defendant, 55779 Ash Road, Osceola, Indiana 46561.

MEMORANDUM OF DECISION

At South Bend, Indiana, on August 11, 2014.

Before the court is the Amended Motion for Summary Judgment ("Motion") filed by the plaintiff Sun Enterprises, Inc. ("Sun" or "plaintiff"), against the chapter 7 debtor Neal Robbins Stafford ("debtor" or "defendant"). The Motion and supporting Memorandum of Law request the entry of a judgment of nondischargeability pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(6) as a matter of law. The defendant filed no response. For the reasons given in this Memorandum of Decision, the court grants the Amended Motion for Summary Judgment.[1]

[1] The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the 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).

BACKGROUND

The relevant background information, presented thoroughly in the court's Memorandum of Decision of October 2, 2013, is set forth more succinctly herein. In that earlier decision the court denied the plaintiff's original summary judgment motion. This Amended Motion was filed to remedy the problems in the earlier motion.

In 2011 in the Circuit Court of Boone County, Commonwealth of Kentucky, the plaintiff brought suit against four defendants – Neal Robbins Stafford (this debtor), Donn May, Don Hoffman, and their employer, Elite RV Services, LLC.[2] Sun alleged incomplete and improper workmanship in the repair and restoration of two recreational vehicles ("RVs") owned by the plaintiff. Neither the defendants nor any counsel representing them appeared at the bench trial against them. The state court found for the plaintiff on each claim: breach of contract, negligent and intentional misrepresentation, conversion, fraud, and fraud in the inducement. On October 25, 2011, Sun obtained a judgment against the defendants jointly and severally in the amount of $194,592.47 plus court costs. *See* R. 17, Ex. 18. The plaintiff then authenticated the Kentucky judgment in Indiana for the purpose of collection.

The debtor filed a voluntary chapter 7 bankruptcy petition on August 2, 2012, and Sun timely filed its Complaint Objecting to Discharge of Debt. In the Amended Motion for Summary Judgment and accompanying Memorandum now before the court, Sun asserted that the Affidavit of Robert E. Bell, Jr., Vice President of the plaintiff, fully established that this debtor's obligation to Sun was excepted from his discharge as a matter of law. It claimed entitlement to judgment under two sections of the Bankruptcy Code: under § 523(a)(2)(A) "due to Mr. Stafford's actual fraud against Sun," R. 18 at 5, and under § 523(a)(6) on the ground that "Mr. Stafford both willfully and maliciously engaged in actions including, but not limited to fraud, conversion and breach of his fiduciary duty causing intentional injury to Sun Enterprises" and "knowingly converted assets belong[ing] to Sun while acting in a fiduciary capacity causing injury to Sun."

[2] The three individuals subsequently filed voluntary chapter 7 bankruptcy petitions in this court.

Id. at 6. Through Bell's sworn testimony in the Affidavit the plaintiff insisted it presented undisputed facts demonstrating that the debtor's actions created a nondischargeable debt.

Bell's Affidavit described the underlying circumstances. *See* R. 17, Ex. A. Bell met an Elite RV representative at an RV rally in Louisville, Kentucky. The representative told Bell that Elite RV repaired RVs in Elkhart, Indiana. Bell then contracted with Elite RV for specific repairs to two of Sun's RVs: a 1998 Country Coach Concept RV (the "Black Unit") and a 1997 Country Coach Concept RV (the "Silver Unit"). Sun paid an initial sum of $30,000.00 for the two RVs so that Elite could order the necessary parts to begin making repairs. Sun agreed to pay the final amount upon delivery of the Black Unit on December 4, 2010, and of the Silver Unit on March 5, 2011. Bell believed that Stafford, Hoffman, and May were either owners, employees, or agents of Elite, and he relied on their representation that the down payment was necessary for ordering the many needed parts.

In his Affidavit Bell attributed the following actions and conduct to the defendant Neal Stafford.[3] While in Kentucky, Stafford and Bell entered into written agreements to make specific repairs to Sun's two RVs. Stafford drove the Black Unit to Elite RV on November 2, 2010, and a wrecker towed the Silver Unit four days later. The Silver Unit remained in Elite's possession until March 12, 2011; the Black Unit remained there until April 19, 2011. However, during that time Bell received conflicting stories from Stafford, Hoffman, and May regarding the work for which he had contracted.

On December 30, 2010, Stafford called Bell and told him that, after stripping the bottom third of the Black Unit, they found Bondo, a type of automotive repair putty or filler. Stafford suggested adding new stainless steel rather than repairing the area. However, when Stafford sent Bell a quote for $5,500.00, Bell declined the quote. Stafford then agreed to paint the bottom one-third instead. However, in the end, Bell reported, the bottom one-third area was not painted the pattern they had agreed upon and he was charged

[3] With its Amended Motion, Sun proffered written exhibits that verified the contractual documents and emails between the parties. Also included were documents filed in state court, including affidavits in support of the damages claims, and the Boone County Circuit Court's Trial Order and Judgment. The copies of photographs, however, were not of a sufficient quality to be helpful to the court's review.

more for the paint and the coverage of the incorrect stripes. Moreover, he was "double billed" on some invoices while receiving a substandard quality paint job on the Black Unit and no paint work on the Silver Unit.

On February 25, 2011, Bell made an unannounced visit to the Elite RV shop. He questioned Stafford about the ordering inconsistencies he had noticed. Stafford blamed Hoffman, who was running the company, Stafford claimed. When Stafford called Hoffman in front of Bell, however, Hoffman yelled at Stafford over the phone and hung up. Stafford and May could not find any receipts for the parts they said they had ordered. Stafford had told Bell that Elite had received two skids full of parts; however, Hoffman sent an email advising Bell that the parts were on order but required a payment from Bell for their shipment.

Stafford and the other defendants told Bell that the electrical work on the Black RV was going well and later was completed. According to Bell, those statements were false. Despite Hoffman's and May's representations that the work had been done, no electrical work was completed on the Black Unit. In fact, Bell described the intentional damage that he said had been done to the electrical wiring for the Black Unit while Elite RV possessed it.

> Someone cut off the ends of 984 electrical connections on the 1998 Black Unit. I know the specific number because once I re-obtained possession of the units, I had to trace 984 electrical wires throughout the RV, one by one, to re-connect each wire in order to make the RV safe and functional. I spent eight months tracing these damaged and unmarked wires throughout the various parts of the RV and completing other repairs that Elite was contracted to do in order to make the unit saleable and functional once I took it back from Elite. I relied on the representations of Stafford, Hoffman and May regarding this electrical work. Stafford, Hoffman and May knowingly lied to me about the electrical work and repeatedly requested that I send more and more money to Elite.

Id. at 4, ¶ 16.

During the unannounced visit to the Elite RV facilities on February 25, 2011, Bell also could see that no work was done on the Silver Unit. Pieces were removed without permission and no paint work or repairs were performed. Also, the Black Unit was in great disrepair: several body panels were off, wires were hanging out, the fuel tank was removed, and expensive repairs he was told were performed clearly had

not been undertaken. Stafford left when he became aware Bell was there; when he eventually returned, he blamed Hoffman for the misrepresentations. During that visit, Stafford and May could not find the paper work to prove that the parts were ordered and paid for, but they assured Bell that everything was fine. However, when Bell returned to Kentucky, Stafford attempted to prove that the order had been made: Stafford faxed Bell an invoice from a supplier to Elite RV, listing parts totaling $24,028.12. Bell insisted that the invoice was another false representation from Stafford.

> The company that purportedly prepared this invoice had their name blacked out so that I presumably could not check with them to see whether these parts had, in fact, been ordered or paid for. Further, this invoice relates to parts that would be used on a "Prevost" RV. My units are "Country Coach" RVs. These parts could not have even been utilized on my units, but were a deliberate attempt to try to throw me off of the track on my suspicion that they never ordered parts and never used my money for the purposes that they stated it had been used.

Id. at 4-5, ¶ 19.

Bell was required to pay even more money for repairs, but he insisted that it covered only the repairs needed "just to get the units back to where they started before the Defendants caused damages." *Id.* at ¶ 20. He also maintained that he was given 11 different completion dates for the Black Unit, and that "[e]ach of these promises was a lie or misrepresentation since Stafford, May and Hoffman knew that almost no work was done and the whole electrical system had been gutted." *Id.* at ¶ 21.

Bell declared that he paid substantial sums to Elite RV ($12,790.00 on the Black Unit and $29,660.43 on the Silver Unit) based on the representations of Stafford and the others that they needed the initial payment to purchase the parts. Stafford, Hoffman, and May kept asking for money to order more parts for the two RVs. However, Bell claimed, he never received any parts and knew that his payments weren't used for the purposes that Stafford, Hoffman, and May had represented to him. Bell explained that Sun tried those facts in the Kentucky court on October 25, 2011, and obtained a judgment in favor of Sun in the amount of $194,592.47. That judgment was never challenged, and was certified for collection against the defendants in Indiana. Bell affirmed those representations to this court.

The defendant did not respond to the plaintiff's Complaint, its Amended Motion for Summary Judgment, or Bell's Affidavit. The court then took the matter under advisement.

DISCUSSION

As the court stated in its previous Memorandum of Decision, this court's review of a motion for summary judgment is governed by Rule 56 of the Federal Rules of Civil Procedure, made applicable in this court by Rule 7056 of the Federal Rules of Bankruptcy Procedure. 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(c); Fed. R. Bankr. P. 7056; *see Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). The party moving for summary judgment bears the initial burden of "inform[ing] the . . . court why a trial is not necessary." *Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir. 2013).

If the moving party satisfies its initial burden, "the nonmovant must then 'make a showing sufficient to establish the existence of an element essential to that party's case.'" *Id.* (quoting *Celotex*, 477 U.S. at 322). Moreover, the nonmoving party "must 'go beyond the pleadings' (e.g., produce affidavits, depositions, answers to interrogatories, or admissions on file), *id.* at 324, to demonstrate that there is evidence 'upon which a jury could properly proceed to find a verdict' in her favor." *Modrowski,* 712 F.3d at 1169 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986)). Summary judgment must be granted "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." *Celotex,* 477 U.S. at 322. If the party fails to respond to the motion, Rule 56(e) permits the court to "grant summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it." Fed. R. Civ. P. 56(e)(3); *see also Johnson v. Gudmundsson*, 35 F.3d 1104, 1112 (7th Cir. 1994).

In this case, the defendant did not answer or respond to the plaintiff's Complaint or to its original and amended summary judgment motions. This court therefore weighs whether the plaintiff's instant Motion and supporting materials now before the court show that Sun is entitled to judgment as a matter of law based on the undisputed material facts in Bell's Affidavit and the record evidence.

The plaintiff first claimed its right to summary judgment pursuant to § 523(a)(2)(A) of the Bankruptcy Code. Under that statute, a debtor is not discharged "from any debt –

> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by –
>
> > (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition . . . .

11 U.S.C. § 523(a)(2)(A). To succeed under § 523(a)(2)(A), a plaintiff has the burden of proving by a preponderance of the evidence that the debt owed to it by the defendant was obtained by actual fraud, false pretenses, or misrepresentation. *See McClellan v. Cantrell*, 217 F.3d 890, 893-94 (7th Cir. 2000) (stating that fraud is not limited to misrepresentations and misleading omissions); *Matter of Bero*, 110 F.3d 462, 465 (7th Cir.1997) (setting forth burden of proof). The plaintiff must establish that (1) the defendant made a false representation or omission, which he either knew was false or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) the defendant acted with an intent to deceive or defraud the plaintiff; and (3) the plaintiff justifiably relied on the defendant's false representation to its detriment. *See In re Davis*, 638 F.3d 549, 553 (7th Cir. 2011) (citing *Ojeda v. Goldberg*, 599 F.3d 712, 716-17 (7th Cir. 2010); *Matter of Maurice*, 21 F.3d 767, 774 (7th Cir. 1994)).

Bell declared that the debt Stafford owed to Sun was incurred by actual fraud and fraudulent misrepresentations. He specifically pointed to the substantial payments he made to Stafford for the purchase of parts that were never actually bought; Stafford's false statements concerning the status of electrical repairs; and the intentional damage done by Stafford and the others to the electrical wiring on the Black Unit. Bell also proffered an invoice sent by Stafford with the name of the parts supplier company blackened out

and with an order for the wrong parts for Sun's Country Coach RVs. He insisted that Stafford deliberately attempted to deceive Bell with that invoice. He also charged that the many delays on the completion dates were intentional misrepresentations made in full awareness that minimal work had been done and that the electrical system had been "gutted."

The court finds that Sun, through Bell's Affidavit and the other exhibits, established that Stafford made material false representations to the plaintiff, either knowing that they were false or made with reckless disregard for the truth. In fact, Bell's declaration of intentional deception, through the faxed invoice, was directly attributed to Stafford. The court finds that Bell's Affidavit presented sufficient misrepresentations – direct, circumstantial, and continuing – made by Stafford with an intent to deceive the plaintiff and to induce the plaintiff to pay more money for parts while never completing the repairs. *See In re Davis*, 638 F.3d at 553 (whether defendant possessed the requisite intent is a question of fact); *In re McCoskey*, 2006 WL 5217793 at *8-*9 (Bankr. D. Md. Feb. 21, 2006) (finding that similar underlying facts supported § 523(a)(2)(A) charge of intentional misrepresentation concerning repair of vehicle).

Although in retrospect it might appear that Bell should have recognized Stafford's prevarications and could have cut Sun's losses earlier, the court has no reason to doubt that, at the time, Stafford assured Bell that remedies were forthcoming and the plaintiff justifiably relied on those misrepresentations. The factual account in Bell's Affidavit provided sufficient description of Stafford's conduct to allow the court to find that Stafford's false representations caused the plaintiff to pay for parts that were not purchased and for repairs that were never made or that were incompletely or improperly made. Consequently, the court finds that the plaintiff successfully bore its initial burden of showing, through its motion and supporting materials, including the facts considered undisputed, that Sun is entitled to summary judgment under § 523(a)(2)(A).

Once the plaintiff, as movant, satisfied its initial burden, the defendant then was required to demonstrate some evidence showing that a requisite element was favorable to his position. But Stafford

failed "'to make a sufficient showing on an essential element of [his] case with respect to which [he] has the burden of proof.'" *Lujan v. National Wildlife Federation*, 497 U.S. 871, 884, 110 S. Ct. 3177, L.Ed.2d (1990) (quoting *Celotex*, 477 U.S. at 323). Stafford simply never challenged Bell's declarations or opposed Sun's Motion. The court concludes that the facts admitted by default were dispositive of the issues before the court. *See Hasbrook v. Citibank (In re Hasbrook)*, 289 B.R. 375, 378-79 (Bankr. N.D. Ind. 2002). Accordingly, the court now determines that Stafford's fraudulent conduct created the debt which Stafford owes to Sun and which is excepted from the defendant's discharge pursuant to 11 U.S.C. § 523(a)(2)(A). Therefore, summary judgment properly may be granted.

Having found that the plaintiff has established the necessary factors for proving the nondischargeability of the debtor's debt to Sun under § 523(a)(2)(A), the court has no reason to make that determination under § 523(a)(6).[4]

Accordingly, the Amended Motion for Summary Judgment filed by the plaintiff Sun Enterprises, Inc., against the defendant Neal Robbins Stafford is granted. The debt in the amount of $194,592.47 is excepted from the defendant's discharge pursuant to 11 U.S.C. § 523(a)(2)(A).

SO ORDERED.

/s/ HARRY C. DEES, JR.
Harry C. Dees, Jr., Judge
United States Bankruptcy Court

[4] The court notes that the plaintiff's Complaint Objecting to Discharge of Debt did not allege a willful and malicious injury caused by Stafford. In fact, the Complaint did not refer to any subsection of § 523(a). However, its allegations of Stafford's conduct were most closely aligned with the elements of § 523(a)(2)(A). Count I, its only count, was based upon "Stafford's misrepresentations, conversion and fraud, which acts caused damages to Sun." R. 1 at 3. The court found no allegations sufficient to demonstrate an exception to discharge under § 523(a)(6).