

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

IN RE:	)	CHAPTER 13
	)	CASE NO. 05-50350-JDW
WILKIE HILL,	)	
	)	
DEBTOR.	)	
	)	
MARY ELIZABETH ROBERTS,	)	ADVERSARY PROCEEDING
	)	NO. 05-5115
PLAINTIFF,	)	
	)	
VS.	)	
	)	
WILKIE HILL,	)	
	)	
DEFENDANT.	)	

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Plaintiff: J. Allen Lawson  
Post Office Box 370  
Gray, Georgia 31032

For Defendant A.G. Knowles  
544 Mulberry Street, Suite 201  
Macon, Georgia 31201

**MEMORANDUM OPINION**

This matter comes before the Court on Defendant's motion for judgment on the pleadings. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(O). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

**Findings of Fact**

Debtor-Defendant Wilkie Hill filed a Chapter 13 petition on January 28, 2005. On August 29, 2005, Plaintiff Mary Roberts filed a complaint seeking a judgment against Debtor for \$54,000. Plaintiff's complaint made the following allegations:

5. Plaintiff shows that the Debtor was provided payment for services which included a partial renovation of her home. These payments totaled \$54,000.00 which included labor and materials.

6. Plaintiff shows that the Debtor failed to pay the monies owed by him under the contract to the suppliers of the materials. This fraudulent behavior has resulted in the filing of a materialman's lien on the residence of the Plaintiff. (Attached hereto as Exhibit A).

7. Plaintiff shows that she filed suit in the Superior Court of Jones County on or about February 25, 2005. (Suit attached hereto as Exhibit B. Civil Action No. 05-CV-20643)

8. Plaintiff shows that even after filing his Bankruptcy, Debtor continued to try to fraudulently obtain funds.

(Complaint to Recover Money, docket no. 1.) The complaint sought a recovery pursuant to 11 U.S.C. § 542. The Court notes that the complaint did not include the two attachments referenced. The Court held a pretrial hearing in the case on April 10, 2006. At the hearing, counsel for Plaintiff urged the Court to dismiss Debtor's case and award a judgment to Plaintiff on the ground that Debtor's conduct was fraudulent. On May 22, 2006, Debtor filed a motion for judgment on the pleadings. For the following reasons, the Court will grant the motion.

#### **Conclusions of Law**

A motion for judgment on the pleadings is governed by Federal Rule of Civil Procedure 12(c), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7012(b). The Court should grant a judgment on the pleadings if "no issues of material fact exist, and the movant is entitled to judgment as a matter of law." Ortega v. Christian, 85 F.3d 1521, 1524 (11th Cir. 1996). In making its decision, the Court must accept the facts in the complaint as true and view them in the light most favorable to the nonmoving party. Id. If any documents outside the complaint and answer are considered, the Court must convert the motion to one for summary judgment and allow the opposing party 10 days to supplement the record. Fed. R. Civ. P. 12(c), 56(c); see also Trustmark Ins. Co. v. ESLU, Inc., 299 F.3d 1265, 1267 (11th Cir. 2002). In this case, the only documents before the Court are the complaint, the answer, and the motion itself. Therefore, the Court

may rule on the pleadings.

The only facts before the Court are that Plaintiff paid Debtor \$54,000 for house renovations. Debtor failed to pay the company supplying materials. As a result, the supplier put a lien on the Plaintiff's house. After filing for bankruptcy, Debtor attempted to collect additional money from Plaintiff. Plaintiff has characterized Debtor's actions as fraudulent. These facts amount to little more than an allegation that Debtor failed to pay a debt, and Plaintiff has suffered as a result.

The complaint expressly sought recovery under 11 U.S.C. § 542, which requires any entity in possession of certain property of the bankruptcy estate to turn over the property to the trustee. Nothing in the statute provides for the debtor to pay damages to a creditor. It is inapplicable to these facts.

However, Plaintiff also alleged that Debtor engaged in fraud. In Chapter 7 cases and Chapter 13 cases filed on or after October 17, 2005—the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”)—a debt incurred through fraud can be the subject of a nondischargeability action pursuant to 11 U.S.C. § 523(a)(2)(A). Debtor in this case filed his Chapter 13 petition prior to the enactment of BAPCPA. Under pre-BAPCPA law, debts incurred through fraud are discharged upon completion of the Chapter 13 plan. 11 U.S.C. § 1328(a). Thus, even if the complaint in this case were sufficient to make out an allegation of fraud, no relief is available to Plaintiff based on such an allegation.<sup>1</sup>

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<sup>1</sup> This Opinion does not intend to imply that a claim for fraud cannot be asserted in a properly filed proof of claim. Assuming such a claim exists—as the Court must in considering this motion—it would not be established by this proceeding. Instead it would be asserted by a proof of claim, which would be subject to objection by Debtor, thus framing the dispute as to whether such a claim existed.

The Court notes that Plaintiff also has urged dismissal of Debtor's case. Section 1307(c) allows the Court to dismiss a Chapter 13 case "for cause." However, the Court has been unable to locate any case law that stands for the proposition that incurring a particular debt through fraud is sufficient to establish cause for dismissal. Such a conclusion cannot be reconciled with the law applicable in this case. Because the pre-BAPCPA Code allows a Chapter 13 debtor to discharge debts incurred through fraud, the existence of such debt cannot, by itself, require dismissal of the case.

Because, the law provides no basis for relief to Plaintiff under the facts alleged in her complaint, the Court will grant a judgment on the pleadings to Debtor.

An Order in accordance with this Opinion will be entered on this date.

Dated this 6th day of June, 2006.

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