

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re	)	
	)	
JOSEPH EMERY MITCHELL,	)	Case No. 6:04-bk-00852-KSJ
	)	Chapter 11
Debtor.	)	
_____	)	
	)	
PATRICIA HAYNIE,	)	
	)	
Plaintiff,	)	Adversary No. 04-103
	)	
vs.	)	
	)	
JOSEPH EMERY MITCHELL,	)	
	)	
Defendant.	)	
_____	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
GRANTING DEBTOR'S MOTION FOR SUMMARY JUDGMENT

This case came on for hearing on November 18, 2004, on the Motion for Summary Judgment (the "Motion") (Doc. No. 6) filed by the debtor/defendant, Joseph Emery Mitchell, and the Response (the "Response") (Doc. No. 15), filed by the plaintiff, Patricia Haynie. Upon review of the pleadings, the law, and the arguments of the parties and counsel, the Motion is granted.

The plaintiff, who is *pro se*, filed a Complaint against the debtor on May 6, 2004, seeking relief under "Statute 523 Sect 15-B"<sup>1</sup> ("Count 1"), "523 Sect 17-D"<sup>2</sup> ("Count 2"), and "523 Sect (12)"<sup>3</sup> ("Count 3"). The complaint is a one page handwritten document that contains very few

<sup>1</sup> The Court interpreted Count 1 as a request for relief under 11 U.S.C. § 523(a)(15)(B).

<sup>2</sup> The Court interpreted Count 2 as a request for relief under 11 U.S.C. § 523(a)(17)(D), however, no subsection (D) to section 523(a)(17) exists.

<sup>3</sup> The Court interpreted this as a request for relief under 11 U.S.C. § 523(a)(12).

factual allegations. In large part, the Court was unable to discern the actual infraction alleged or the relief sought by Ms. Haynie.

In the Motion, the debtor/defendant seeks summary judgment under the Complaint arguing that the Complaint raises no genuine issue as to any material fact and that he is entitled to judgment as a matter of law. Pursuant to Federal Rule of Civil Procedure 56, which is applicable under the Federal Rule of Bankruptcy Procedure 7056, a court may grant summary judgment where “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56. The moving party has the burden of establishing the right to summary judgment. Fitzpatrick v. Schlitz (In re Schlitz), 97 B.R. 671, 672 (Bankr. N.D. Ga. 1986). In determining entitlement to summary judgment, a court must view all evidence and make all reasonable inferences in favor of the party opposing the motion. Haves v. City of Miami, 52 F.3d 918, 921 (11<sup>th</sup> Cir. 1995) (citing Dibrell Bros. Int’l S.A. v. Banca Nazionale Del Lavoro, 38 F.3d 1571, 1578 (11<sup>th</sup> Cir. 1994)).

Interpreting the Complaint in a light most favorable to Ms. Haynie, she asserts three sections of the Bankruptcy Code<sup>4</sup> to deny the dischargeability of some unspecified debt due to her by the debtor. However, under no scenario could the plaintiff prevail under the statutes she cites. First, under Section 523(a)(15)(B) of the Bankruptcy Code, a plaintiff necessarily must allege that the plaintiff and the debtor at one time were married and now are either separated or divorced. Here, plaintiff’s request for relief under Bankruptcy Code Section 523(a)(15)(B) is precluded because she and the debtor were never married. She simply cannot seek relief under Section 523 (a)(15).

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<sup>4</sup> Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code.  
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Second, plaintiff next seeks relief under Bankruptcy Code Section 523(a)(17)(D). However, no subsection (D) to Bankruptcy Code Section 523(a)(17) exists. Accordingly, Ms. Haynie has failed to cite any statute or provision of the Bankruptcy Code under which relief could be granted.

Third, plaintiff seeks relief under Bankruptcy Code Section 523(a)(12), which excepts from discharge any debt “for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution...” In this case, no facts have been alleged in the one page Complaint or during the hearing on the Motion which would give rise to any grounds for relief under Bankruptcy Code Section 523(a)(12). Plaintiff’s citation to Bankruptcy Code Section 523(a)(12) is simply inapposite and erroneous.

The plaintiff has failed to articulate any reason why she is entitled to relief, as a matter of law. No factual dispute exists on the Complaint, as framed. Therefore, the debtor/defendant’s Motion is granted. Summary judgment shall be entered in favor of the debtor/defendant and against the plaintiff on the existing Complaint.

However, the Court recognizes that the plaintiff is acting *pro se*. It is possible that Ms. Haynie has some legal claim that she simply was unable to articulate. As such, the plaintiff shall have until **January 17, 2005**, to file an amended complaint, if she desires, asserting a legal basis that may entitle her to relief. If an amended complaint is *timely* filed, the debtor/defendant is directed to respond to the amended complaint within 20 days of its service, and a pretrial

conference will be held at **11 a.m. on February 17, 2005**. If an amended complaint either is not filed or untimely filed, the clerk is directed to close this adversary proceeding.

A separate order consistent with this opinion shall be entered.

DONE AND ORDERED in Orlando, Florida, on the 9th day of December, 2004.

/s/ Karen S. Jennemann

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KAREN S. JENNEMANN  
United States Bankruptcy Judge