

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

In re:

Case No. 9:12-bk-07133-FMD  
Chapter 7

Syed S. Rahman and  
Monica J. Rahman,

Debtors.

Ejaz Jamil, as personal representative and  
trustee for the estate of Abul Kalam,

Plaintiff,

v. Adv. No. 9:12-ap-00746-FMD

Syed S. Rahman and  
Monica J. Rahman,

Defendants.

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

THIS PROCEEDING came before the Court for consideration of Plaintiff's *Motion for Partial Summary Judgment* as to Counts II and III of the Amended Complaint (Doc. No. 31) (the "Motion"). At a hearing conducted on March 21, 2013, the Court denied the Motion as to Count III, and deferred ruling on the Motion as to Count II. (Doc. No. 35.) In Count II, Plaintiff seeks a determination that a Colorado state court judgment in its favor against one of the Debtors, Mr. Rahman, for breach of fiduciary duty is non-dischargeable pursuant to 11 U.S.C. § 523(a)(4) for fraud or defalcation while acting in a fiduciary capacity. The Court deferred its ruling on Count II because the case of *Bullock v. BankChampaign, N.A.*, Case No. 11-1158, was then pending before the United States Supreme Court. The Supreme Court has now issued its decision in that case. *See Bullock v. BankChampaign, N.A.* ---S.Ct.---, 2013 WL 1942393 (U.S. May 13, 2013).

In *Bullock*, the Supreme Court held that the term "defalcation" as used in § 523(a)(4) "includes a culpable state of mind requirement," which involves the "knowledge of, or gross recklessness in respect to, the improper nature of the relevant fiduciary behavior." 2013 WL 1942393, at \*2. The Court abrogated prior

cases holding that negligence or innocent mistakes could constitute defalcation. Thus, where the conduct at issue does not involve bad faith, moral turpitude, or other immoral conduct, defalcation requires an intentional wrong. *Id.* at \*5. Such an intentional wrong encompasses not only conduct which the fiduciary knows is improper but also reckless conduct, such as a conscious disregard or willful blindness to a substantial and unjustifiable risk that the fiduciary's conduct will result in a breach of fiduciary duty. *Id.*

The Court finds that issues of fact exist as to whether the Debtor acted with the knowledge that his conduct was improper, or whether he acted with conscious disregard or willful blindness to a substantial and unjustifiable risk that his conduct would result in a breach of his fiduciary duties. Accordingly, it is

**ORDERED:**

1. Plaintiff's Motion for Partial Summary Judgment as to Count II is **DENIED**.

2. The Adversary Proceeding is set for a continued pre-trial conference on July 18, 2013, at 10:30 a.m., in Ft. Myers, FL - Room 4-117, Courtroom E, 2110 First Street, Ft. Myers, FL.

**DONE** and **ORDERED** in Chambers at Tampa, Florida, on May 21, 2013.

/s/  
Caryl E. Delano  
United States Bankruptcy Judge

Attorney, Christopher J. DeCosta, is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.