

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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| | | |
|-----------------|---|---------------------------------|
| In re: |) | |
| |) | |
| ROBERT J. VEGA, |) | Case No. 6:10-bk-06873-KSJ |
| |) | Chapter 7 |
| Debtor. |) | |
| _____ |) | |
| |) | |
| JAY C. CARY, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | |
| |) | |
| ROBERT J. VEGA, |) | Adv. Pro. No. 6:10-ap-00298-KSJ |
| |) | |
| Defendant. |) | |
| _____ |) | |

ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Jay Cary, the Plaintiff in this adversary proceeding, filed an amended complaint¹ objecting to the dischargeability of debts owed to him by the Defendant and Debtor, Robert Vega, under § 523(a)(2)(A) and (a)(6) of the Bankruptcy Code.² The Defendant has filed a Motion for Full or Partial Summary Judgment³ arguing the Plaintiff has no evidence to support his allegations. The Plaintiff has presented argument and sworn factual affidavits to the contrary.⁴ After reviewing the pleadings, the Court finds genuine issues of fact preclude granting the Defendant’s Motion as a matter of law.

¹ Doc. No. 11.

² All references to the Bankruptcy Code shall be to 11 U.S.C. § 101 *et seq.*

³ Doc. No. 180.

⁴ Doc. Nos. 198-203.

In order to establish the nondischargeability of a debt made under false pretenses, false representations, or actual fraud, a plaintiff must establish the traditional elements of common law fraud: (i) the debtor made a false representation with the purpose and intent to deceive the creditor; (ii) the creditor relied on the misrepresentation; (iii) the reliance was justified; and (iv) the creditor sustained a loss as a result of the misrepresentation.⁵ In this case, the evidentiary record presents questions of fact regarding the Defendant's actions and intent at the time he obtained loans from the Plaintiff. The Defendant's representations to the Plaintiff regarding each loan are ambiguous and factually disputed.

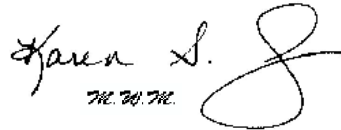
Regarding the Defendant's argument that he is entitled to summary judgment as to the applicable rate of interest, a question of fact exists as to whether the Plaintiff "willfully" violated Florida usury statutes. Consequently, at this stage of the litigation, the Court cannot determine whether the Plaintiff is entitled to the 20% interest he seeks on these loans. Again, a factual dispute precludes summary judgment.

Similarly, a factual dispute exists as to whether the Plaintiff is entitled to treble damages pursuant to Fla. Stat. § 772.11(1), § 812.014 or § 825.103. The Defendant's actual intent to deceive, the Plaintiff's justifiable reliance on any false representations, and the Plaintiff's damages arising from any alleged willful and malicious injury are material and disputed issues of fact relevant to Defendant's liability in this adversary proceeding.

⁵ *SEC v. Bilzerian (In re Bilzerian)*, 153 F.3d 1278, 1281 (11th Cir. 1998); *Fuller v. Johannessen (In re Johannessen)*, 76 F.3d 347, 350 (11th Cir. 1996).

The Defendant's Motion for Summary Judgment⁶ accordingly is DENIED. A continued Pre-trial Conference remains scheduled for **July 23, 2013, at 2:00 p.m.**, in Courtroom A, Sixth Floor, 400 West Washington Street, Orlando, Florida 32801.

DONE AND ORDERED in Orlando, Florida, on June 24, 2013

Handwritten signature of Karen S. Jennemann in cursive script. The signature includes the initials 'K.S.J.' and the date '7/11/13' written below the main signature.

KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

⁶ Doc. No. 180.