

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

GEORGI ZACZAC,

Case No. 6:08-bk-11612-ABB

Chapter 7

Debtor.

_____/

MICHAEL MOECKER, CHAPTER 7
TRUSTEE,

Plaintiff,

Adv. Pro. No. 6:10-ap-00155-ABB

v.

GEORGI ZACZAC,

Defendant.

_____/

ORDER

This matter came before the Court on the Motion for Summary Judgment (Doc. No. 16) filed by the Plaintiff Michael E. Moecker, the Chapter 7 Trustee, seeking summary judgment on Counts II and III of his Complaint (Doc. No. 1) in which he objects to the discharge of the Debtor Georgi Zaczac, Sr. pursuant to 11 U.S.C. Sections 727(a)(2), (a)(6)(A), and (a)(7). The Debtor opposes the Motion (Doc. Nos. 22, 25). A hearing was held on December 14, 2010 at which counsel for Plaintiff and counsel for the Debtor appeared. The Motion is due to be denied for the reasons set forth herein.

The Debtor filed this bankruptcy case on December 6, 2008. He has ownership interests, either directly or through entities owned by him, in two hotels which filed Chapter 11 bankruptcy cases in this Court on May 1, 2008 captioned *In re CF Hospitality, Inc.*, Case No. 6:08-bk-03517-ABB, and *In re SF Hotels*, case No. 6:08-bk-

03518-ABB (collectively, “Hotel Proceedings”). This Court entered Injunction Orders in the Hotel Proceedings on September 24, 2008 pursuant to 11 U.S.C. Section 105(a) enjoining the Debtor, his wife Lourdes Zaczac, and Gramercy Investment from taking certain actions.¹ The Injunction Orders enjoin the Debtor and his wife “from transferring, assigning or disposing of any assets: i) out of the ordinary course; or ii) where any individual asset has a value in excess of \$10,000.00.”² The injunction expired on November 21, 2008 at 5:00 p.m.³

Plaintiff asserts in his Complaint the Debtor transferred assets in willful violation of the Injunction Orders. The Debtor admits in his Answer (Doc. No. 9) he made the following transfers while the Injunction Orders were in effect: (i) \$25,000.00 to his cousin George Georges; (ii) \$15,000.00 to his wife Lourdes Zaczac; and (iii) two transfers of \$10,666.66 each to the Antiochian Orthodox Christian Archdioceses of N.A. Plaintiff, based upon the Debtor’s admissions in his Answer, seeks summary judgment on his Complaint pursuant to Federal Rule of Civil Procedure 56, which is applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056.

Granting summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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(c) (2007). The moving party bears the

¹ The Injunction Orders were entered in *SF Hotels v. Gramercy Investment Trust*, Adversary Proceeding No. 6:08-ap-00127-ABB (Doc. No. 47) and *CF Hospitality v. Gramercy Investment Trust*, Adversary Proceeding No. 6:08-ap-00126 (Doc. No. 46).

² Injunction Orders at ¶ 4.

³ *Id.* at ¶ 6.

initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

The non-moving party, after a movant makes a properly supported summary judgment motion, must establish specific facts showing the existence of a genuine issue of fact for trial. Fed. R. Civ. P. 56(e). The non-moving party may not rely on the allegations or denials in its pleadings to establish a genuine issue of fact, but must come forward with an affirmative showing of evidence. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). A court determining entitlement to summary judgment must view all evidence and make reasonable inferences in favor of the party opposing the motion. Haves v. City of Miami, 52 F.3d 918, 921 (11th Cir. 1995).

Analysis

The Injunction Orders prohibit the Debtor and his wife from transferring “any assets.” This phrase is not defined in the Injunction Orders, but the plain meaning of the phrase is apparent from a reading of the Injunction Orders taken as a whole. In exchange for Gramercy Investment Trust’s promise to not take action to enforce the Debtor’s stock pledge and his personal guaranty of certain promissory notes, the Debtor and his wife agreed not to transfer any of their assets out of the ordinary course or where an asset has a value in excess of \$10,000.00. The plain meaning of “any assets” in the Injunction Orders means the Debtor’s and his wife’s personal assets.

The Debtor asserts in his responsive pleadings he did not violate the Injunction Orders because the transfers: (i) were not from the Zaczac’s assets; and (ii) the transfers were made in the ordinary course of the Zaczac’s financial affairs. The Debtor contends the funds transferred were monies received from Bom Dia Trading, LLC and United

Time Corp., two entities in which the Zaczacs have no ownership interests. He provided a signed Declaration and banking statements in support of his contentions.

The Debtor has made an affirmative showing of evidence contradicting the Trustee's allegations. The Debtor's submissions indicate the funds transferred during the injunction period were not assets of the Debtor and his wife. The submissions indicate he regularly makes contributions to Antiochian Orthodox Christian Archdioceses of N.A. and provides living expenses to his wife. He has set forth specific facts showing the existence of a genuine issue of fact for trial.

Plaintiff has not established there are no genuine issues as to material facts. He has not established he is entitled to judgment as a matter of law as to Counts II and III of the Complaint. The Motion for Summary Judgment is due to be denied pursuant to Federal Rule of Civil Procedure 56 and Federal Rule of Bankruptcy Procedure 7056.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion for Summary Judgment (Doc. No. 16) is hereby **DENIED** pursuant to Federal Rule of Civil Procedure 56 and Federal Rule of Bankruptcy Procedure 7056.

Dated this 19th day of January, 2011.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge