United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re William D. Corrigan, Jr.

Bankruptcy No. 01 B 01275

Adversary Caption: Harris Bank Oakbrook Terrace v. William D. Corrigan, Jr.

Adversary No. 01 A 00755

Date of Issuance: July 18,2002

Judge: John H. Squires

Appearance of Counsel:

Attorney for Plaintiff: Bryan M. Sims, Esq., James, Gustafson and Thompson, Ltd., 1001 East Chicago Avenue Suite 103, Naperville, IL 60540

Attorney for Defendant: Tony Mankus, Esq., Mankus & Marchan, Ltd., 5950-E Lincoln Avenue (Rt. 53), Suite 500, Lisle, IL 60532-3387

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
WILLIAM D. CORRIGAN, JR.,	)	Chapter 7
	)	Bankruptcy No. 01 B 12705
Debtor.	)	Judge John H. Squires
	)	
	)	
HARRIS BANK OAKBROOK TERRACE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 01 A 00755
	)	
WILLIAM D. CORRIGAN, JR.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

This matter comes before the Court on the motion of William D. Corrigan, Jr. (the "Debtor") for summary judgment pursuant to Federal Rule of Civil Procedure 56 and Federal Rule of Bankruptcy Procedure 7056 on the complaint filed by Harris Bank Oakbrook Terrace (the "Creditor") against the Debtor to determine the dischargeability of a debt under 11 U.S.C. § 523(a)(2)(A) and (a)(2)(B). For the reasons set forth herein, the Court denies the motion.

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. It is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

II. FACTS AND BACKGROUND

On July 23, 2001, the Creditor filed this adversary proceeding against the Debtor. In its complaint, the Creditor alleges that a debt owed to it by the Debtor was procured by fraud, and thus is non-dischargeable under 11 U.S.C. § 523(a)(2)(A) and (a)(2)(B). On January 18, 2002, the Court entered a default judgment in favor of the Creditor and against the Debtor. Subsequently, on the Debtor's motion, the Court vacated the default judgment on the condition that the Debtor file an answer to the complaint. On February 15, 2002, the Debtor filed his answer. On March 1, 2002, the Court entered its Preliminary Pretrial Order setting this matter for pretrial conference on June 28, 2002. On June 26, 2002, two days before the pretrial conference, the Debtor filed the instant motion for summary judgment, which was scheduled to be presented before the Court on July 12, 2002. At the pretrial conference, the Court entered its Final Pretrial Order setting this matter for trial beginning on October 7, 2002; struck the July 12, 2002 hearing date on the motion for summary judgment; and set a briefing schedule regarding the motion for summary judgment.

III. DISCUSSION

In order to prevail on a motion for summary judgment, the movant must meet the statutory criteria set forth in Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7056. Rule 56(c) reads in part:

> [T]he judgment sought shall be rendered forthwith 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 that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). See also Dugan v. Smerwick Sewerage Co., 142 F.3d 398, 402 (7th Cir. 1998). The primary purpose for granting a summary judgment motion is to avoid unnecessary trials when there is no genuine issue of material fact in dispute. Trautvetter v. Quick, 916 F.2d 1140, 1147 (7th Cir. 1990); Farries v. Stanadyne/Chicago Div., 832 F.2d 374, 378 (7th Cir. 1987) (quoting Wainwright Bank & Trust Co. v. Railroadmen's Federal Sav. & Loan Ass'n of Indianapolis, 806 F.2d 146, 149 (7th Cir. 1986)). Where the material facts are not in dispute, the sole issue is whether the moving party is entitled to a judgment as a matter of law. ANR Advance Transp. Co. v. International Bhd. of Teamsters, Local 710, 153 F.3d 774, 777 (7th Cir. 1998).

In 1986, the United States Supreme Court decided a trilogy of cases which encourage the use of summary judgment as a means to dispose of factually unsupported claims. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Matsushita Electric Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The burden is on the moving party to show that no genuine issue of material fact is in dispute. Anderson, 477 U.S. at 248; Matsushita, 475 U.S. at 585-86; Celotex, 477 U.S. at 322.

All reasonable inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. Parkins v. Civil Constructors of Ill., Inc., 163 F.3d 1027, 1032 (7th Cir. 1998). The existence of a material factual dispute

is sufficient only if the disputed fact is determinative of the outcome under applicable law. Anderson, 477 U.S. at 248; Frey v. Fraser Yachts, 29 F.3d 1153, 1156 (7th Cir. 1994). "Summary judgment is not an appropriate occasion for weighing the evidence; rather the inquiry is limited to determining if there is a genuine issue for trial." Lohorn v. Michal, 913 F.2d 327,

331 (7th Cir. 1990).

Local Bankruptcy Rule 402.M of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Northern District of Illinois, which deals with summary judgment motions, was modeled after LR56.1 of the Local Rules of the United States District Court for the Northern District of Illinois. Hence, the case law construing LR56.1 and its predecessor Local Rule 12(M) applies to Local Bankruptcy Rule 402.M.

Pursuant to Local Bankruptcy Rule 402, a motion for summary judgment imposes special procedural burdens on the parties. Specifically, Rule 402.M requires the moving party to supplement its motion and supporting memorandum with a statement of undisputed material facts. Rule 402.M provides in relevant part:

> With each motion for summary judgment filed pursuant to Fed.R.Civ. P. 56 (Fed.R.Bankr.P. 7056), the moving party shall serve and file--
>
> (1) any affidavits and other materials referred to in Fed.R.Civ.P. 56(e);
> (2) a supporting memorandum of law; and
> (3) a statement of material facts as to which the moving party contends there is no genuine issue and that entitles the moving party to judgment as a matter of law that includes:
>
> (a) a description of the parties; and
> (b) all facts supporting venue

> and jurisdiction in this Court.
>
> The statement of facts referred to in (3) shall consist of short numbered paragraphs, including within each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph. *Failure to submit such a statement constitutes grounds for denial of the motion.*

Local Bankruptcy Rule 402.M. (emphasis supplied).

The Debtor has not filed a 402.M statement of material facts as to which he contends there is no genuine issue. This is fatal to his motion. The Seventh Circuit has upheld strict application of local rules regarding motions for summary judgment. See Dade v. Sherwin-Williams Co., 128 F.3d 1135, 1140 (7th Cir. 1997); Feliberty v. Kemper Corp., 98 F.3d 274, 277-78 (7th Cir. 1996); Bourne Co. v. Hunter Country Club, Inc., 990 F.2d 934, 938 (7th Cir.), cert. denied, 510 U.S. 916 (1993); Schulz v. Serfilco, Ltd., 965 F.2d 516, 519 (7th Cir. 1992); Maksym v. Loesch, 937 F.2d 1237, 1240-41 (7th Cir. 1991). Compliance with Local Rule 402.M is not a mere technicality. See generally Brasic v. Heinemann's Inc., 121 F.3d 281, 283 (7th Cir. 1997). Courts rely greatly upon the information presented in this statement in separating the facts about which there is a genuine dispute from those about which there is none. American Ins. Co. v. Meyer Steel Drum, Inc., No. 88 C 0005, 1990 WL 92882, at *7 (N.D. Ill. June 27, 1990); Deberry v. Sherman Hosp. Ass'n, 769 F. Supp. 1030, 1033 n.2 (N.D. Ill. 1991). The objective is

also designed to insure the nonmoving party an opportunity to respond to such statement. Pasant v. Jackson Nat. Life Ins. Co. of America, 768 F. Supp. 661, 664 n.2 (N.D. Ill. 1991).

As Local Rule 402.M specifically provides, the movant's failure to file a statement of material facts is grounds for denial for the motion. See Deberry, 769 F. Supp. at 1033 n.2. The rigorous requirements of the Rule are not arbitrary or petty, but rather were enacted in order to aide the Court in ascertaining the factually supported claims from those which are defenseless. See Bell, Boyd & Lloyd v. Tapy, 896 F.2d 1101, 1103-04 (7th Cir. 1990). Based on Local Bankruptcy Rule 402.M and the applicable case law, the Court denies the Debtor's motion for failure to comply with the procedural requirements of the Rule.

IV. CONCLUSION

For the foregoing reasons, the Court denies the Debtor's motion for summary judgment. The Court's Final Pretrial Order remains in full force and effect. This matter is scheduled for trial beginning on October 7, 2002.

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order shall be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

ENTERED:

DATE: _____ _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
WILLIAM D. CORRIGAN, JR.,	)	Chapter 7
	)	Bankruptcy No. 01 B 12705
Debtor.	)	Judge John H. Squires
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HARRIS BANK OAKBROOK TERRACE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 01 A 00755
	)	
WILLIAM D. CORRIGAN, JR.,	)	
	)	
Defendant.	)	

O R D E R

For the reasons set forth in a Memorandum Opinion dated the 18th day of July, 2002, the Court hereby denies the Debtor's motion for summary judgment.

ENTERED:

DATE: _____

_____
John H. Squires
United States Bankruptcy Judge

cc: See attached Service List