United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Joseph P. Monahan, II

Bankruptcy No. 99 B 02199

Adversary Caption: The People of the State of Illinois, ex rel. James E. Ryan, Attorney General of Illinois

Adversary No. 99 A 00602

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Judge: John H. Squires

Appearance of Counsel:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: JOSEPH P. MONAHAN, II, Debtor.	)	Chapter 7 Bankruptcy No. 99 B 02199 Judge John H. Squires
THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of Illinois, Plaintiff, v. JOSEPH P. MONAHAN, II, Defendant.	)	Adversary No. 99 A 00602

MEMORANDUM OPINION

This matter comes before the Court on the cross motions for summary judgment filed by the People of the State of Illinois (the "State") and by Joseph P. Monahan, II (the "Debtor") pursuant to Federal Rule of Bankruptcy Procedure 7056. For the reasons set forth herein, the Court denies both motions.

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. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(I).

II. FACTS AND BACKGROUND

Most of the following facts are found in the Statement of Undisputed Facts and the exhibits filed by the Debtor pursuant to Local Bankruptcy Rule 402.M, which included a copy of a Memorandum Opinion, Findings of Fact, Conclusions of Law and Judgment (the "State Court Opinion") entered by the Circuit Court of Cook County, Illinois (the "State Court") on August 12, 1998. Beginning in May 1991, the Debtor began advertising and selling raffle tickets to the general public throughout the Chicago area at $10.00 per ticket. See Debtor's Exhibit A, ¶ 1. The raffle was to benefit Maryville Academy, an Illinois charity, through the net proceeds after raffle and prize expenses. Id. The winner of the raffle was to receive a dream house advertised to be worth $1,000,000.00. Id. The Debtor conducted and controlled the raffle activities. Id. at ¶ 2. The raffle proceeds were deposited into a bank account at Superior Bank, Number 008-09-3-000121, which was under the exclusive control of the Debtor. Id. The account was entitled Home Education Systems, a division of Keely Properties, Inc., the Debtor's for profit construction business. Id. at ¶s 2 and 3. The raffle drawing was to originally take place in August 1991, but due to insufficient ticket sales, it was extended to December 1991. Id. at ¶ 4.

The Debtor documented his relationship with Maryville Academy with a letter agreement dated September 16, 1991 (the "Agreement"). See Debtor's Exhibit B. The Agreement stated in part that "Maryville will be the recipient of the net proceeds of this raffle, after costs of construction and/or advertising expenses have been recovered. The amount is believed to be approximately $400,000 for construction, and approximately

$100,000 for advertising." Id.

The Debtor submitted an interim accounting of the raffle expenses for Home Education Systems for the period of June 1, 1991 through November 31, 1991. See Debtor's Exhibit C. Same included listed expenses of $12,681.69 and $4,493.96 for printing flyers. Id. Although the Debtor claimed expense payments for two individuals totaling $36,000.00 for distribution of the flyers, the State Court found this expense unreasonable. See Debtor's Exhibit A, ¶ 8. The raffle was canceled by the Debtor due to insufficient ticket sales. Id. at ¶ 4.

The State Court entered its Opinion and a judgment in the amount of $44,372.00 against the Debtor on August 12, 1998. See Debtor's Exhibit A. Specifically, the State Court held that the Debtor was a charitable trustee and owed fiduciary duties to utilize the raffle ticket proceeds for the charitable purpose of aiding Maryville Academy. Id. at ¶ 12. Further, the State Court held that the Debtor was a fiduciary of the funds involved and he breached that duty by failing to properly account for and utilize the raffle proceeds properly. Id. at ¶ 15. The State Court found that the Debtor "converted the amount of $44,372 to his own use while a fiduciary." Id.

The State filed this adversary proceeding on April 30, 1999 and alleges that the Debtor was a fiduciary trustee of the funds he collected from the raffle and breached his duty by failing to properly account for the proceeds and converted them for his own purposes. The State alleges that the debt is non-dischargeable, although it does not specify in its complaint under which subparagraph of 11 U.S.C. § 523(a) it seeks relief. In subsequent papers filed before the Court, the State seeks relief under § 523(a)(4). The State filed the

instant motion for summary judgment on January 11, 2000, which also asserts that the Debtor violated the Illinois Charitable Trust Act, 760 ILCS 55/1 et seq. and the Illinois Solicitation for Charity Act, 225 ILCS 460/1 et seq. Thereafter, on February 2, 2000, the Debtor filed his motion for summary judgment. This matter has been set for trial, scheduled to commence on March 6, 2000.

III. APPLICABLE STANDARDS

A. Summary Judgment

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).

The parties have filed cross motions for summary judgment. Each motion must be ruled on independently and must be denied if there are genuine issues of material fact. ITT Indus. Credit Co. v. D.S. America, Inc., 674 F. Supp. 1330, 1331 (N.D. Ill. 1987). Cross motions for summary judgment do not require the Court to decide the case on those motions; the Court can deny the motions if both parties have failed to meet the burden of establishing

any genuine issue of material fact exists and that they are entitled to judgment as a matter of law. Id.; Pettibone Corp. v. Ramirez (In re Pettibone Corp.), 90 B.R. 918, 922 (Bankr. N.D. Ill. 1988).

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 Rule 12(M) of the General Local Rules of the United States District Court for the Northern District of Illinois. Hence, the case law construing 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 State has not filed a 402.M statement of material facts as to which it contends there is no genuine issue. This is fatal to its 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

State's motion for failure to comply with the procedural requirements of the Rule.

The Debtor filed a Rule 402.M statement that substantially complied with the requirements of Rule 402.M. It contained numbered paragraphs setting out assertedly uncontested facts with reference to parts of the record. Additionally, the Debtor furnished other supporting materials relied upon to support the facts set forth in each paragraph.

The party opposing a summary judgment motion is required by Local Rule 402.N to respond ("402.N statement") to the movant's 402.M statement, paragraph by paragraph, and to set forth any material facts that would require denial of summary judgment, specifically referring to the record for support of each denial of fact. Local Bankr. R. 402.N. The opposing party is required to respond "to each numbered paragraph in the moving party's statement" and make "specific references to the affidavits, parts of the record, and other supporting materials relied upon." Local Bank. R. 402.N(3)(a). Most importantly, "[a]ll material facts set forth in the [402.M] statement required of the moving party will be deemed admitted unless controverted by the statement of the opposing party." Local Bank. R. 402.N(3)(b).

The State has not filed a 402.N statement in response to the Debtor's motion for summary judgment. Accordingly, all material facts set forth in the Debtor's 402.M statement are deemed admitted.

B. <u>The Standards for Dischargeability in the Seventh Circuit</u>

The party seeking to establish an exception to the discharge of a debt bears the burden of proof. <u>Selfreliance Fed. Credit Union v. Harasymiw (In re Harasymiw)</u>, 895 F.2d 1170, 1172 (7th Cir. 1990); <u>Banner Oil Co. v. Bryson (In re Bryson)</u>, 187 B.R. 939, 961 (Bankr.

N.D. Ill. 1995). The United States Supreme Court has held that the burden of proof required to establish an exception to discharge is a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991); In re McFarland, 84 F.3d 943, 946 (7th Cir.), cert. denied, 519 U.S. 931 (1996); In re Thirtyacre, 36 F.3d 697, 700 (7th Cir. 1994). To further the policy of providing a debtor a fresh start in bankruptcy, "exceptions to discharge are to be construed strictly against a creditor and liberally in favor of a debtor." Goldberg Secs., Inc. v. Scarlata (In re Scarlata), 979 F.2d 521, 524 (7th Cir. 1992) (quoting In re Zarzynski, 771 F.2d 304, 306 (7th Cir. 1985)). Accord In re Reines, 142 F.3d 970, 972-73 (7th Cir. 1998), cert. denied, 119 S. Ct. 797 (1999).

C. 11 U.S.C. § 523(a)(4)

Section 523(a)(4) of the Bankruptcy Code provides that a debtor cannot discharge any debt "for fraud or defalcation while acting in a fiduciary capacity. . . ." 11 U.S.C. § 523(a)(4). The State must establish, by a preponderance of the evidence, the existence of an express trust or fiduciary relation, and a debt caused by the Debtor's fraud or defalcation while acting as a fiduciary. Grogan, 498 U.S. at 291; In re Woldman, 92 F.3d 546, 547 (7th Cir. 1996). A threshold inquiry is whether a fiduciary obligation runs from the Debtor under the facts of this matter. Whether a debtor was acting in a fiduciary capacity for purposes of § 523(a)(4) is a question of federal law. In re Bennett, 989 F.2d 779, 784 (5th Cir. 1993). This is so despite the full faith and credit, pursuant to 28 U.S.C. § 1738, that the Court must afford the findings by the State Court that the Debtor was acting as a fiduciary.

The first requirement for application of § 523(a)(4) is that a "fiduciary" relationship exists. O'Shea v. Frain (In re Frain), 222 B.R. 835, 837 (Bankr. N.D. Ill. 1998), aff'd, 1999

WL 1269352 (N.D. Ill. Dec. 22, 1999). To qualify under § 523(a)(4), a fiduciary relation must have an existence independent of a debtor's wrongdoing. In re Marchiando, 13 F.3d 1111, 1115-16 (7th Cir.), cert. denied, 512 U.S. 1205 (1994). The hallmark of such a relationship is a:

> difference in knowledge or power between fiduciary and principal which . . . gives the former a position of ascendancy over the latter. The fiduciary may know much more by reason of professional status, or the relation may be one that requires the principal to repose a special confidence in the fiduciary. . . . These are all situations in which one party to the relation is incapable of monitoring the other's performance of his undertaking, and therefore the law does not treat the relation as a relation at arm's length between equals.

Id. at 1116 (citations omitted). Under Illinois law, a number of relationships can constitute fiduciary relationships: attorney and client, Marchiando, 13 F.3d at 1115; joint venturers or partners, Woldman, 92 F.3d at 547; corporate directors and shareholders, Marchiando, 13 F.3d at 1115; and trustee and beneficiary under an express trust. Id. Ticket sales agents for the Illinois State lottery are not fiduciaries as to the Illinois Department of the Lottery under Marchiando.

Under Illinois law, an express trust exists where there is (1) intent to create a trust; (2) definite subject matter or trust property; (3) ascertainable beneficiaries; (4) a trustee; (5) specifications of a trust purpose; and (6) delivery of trust property to the trustee. Frain, 222 B.R. at 837 (quotation and citations omitted). Moreover, the Illinois Charitable Trust Act, on which the State relies, expressly defines "trustee" to include "any person . . . holding property for or solicited for any charitable purpose. . . . See 760 ILCS 55/3.

While fiduciary relationships may arise outside of express trusts, the mere existence

of a state law fiduciary relationship may not be sufficient to except from discharge under § 523(a)(4). Woldman, 92 F.3d at 547. "[O]nly a subset of fiduciary obligations is encompassed by the word 'fiduciary' in section 523(a)(4)." Id. (citation omitted). The Seventh Circuit has made a distinction between a trust or other fiduciary relationship that has "an existence independent of the debtor's wrong and a trust or other fiduciary relation that has no existence before the wrong is committed. A lawyer's fiduciary duty to his client, or a director's duty to his corporation's shareholders, pre-exists any breach of that duty, while in the case of a constructive or resulting trust there is no fiduciary duty until a wrong is committed." Marchiando, 13 F.3d at 1115-16. Constructive, resulting and implied trusts do not fall within the confines of § 523(a)(4). Id. at 1115. The real distinction is that fiduciary relations that impose actual duties in advance of the breach generally involve a difference in knowledge or power between the fiduciary and principal. As a result, the fiduciary holds a position of ascendancy over the principal. Id. at 1116 (citation omitted). This is the critical point of the Marchiando holding, which has not been definitively answered by the limited record at this stage. In Marchiando, there was no evidence to show that the debtor lottery agent was in a dominant position over the Illinois Department of the Lottery. That is key to Marchiando's result and is understandable given the large number of authorized lottery agents and the large state bureaucracy known as the Illinois Department of the Lottery.

Establishing fraud under § 523(a)(4) requires a showing of a positive intentional act involving moral turpitude; constructive fraud is insufficient. Erie Materials, Inc. v. Oot (In re Oot), 112 B.R. 497, 500 (Bankr. N.D. N.Y. 1989). There is no hard and fast definition of "defalcation," the alternative proscribed conduct under § 523(a)(4). The Seventh Circuit,

however, has adopted the position, like the Fifth and Sixth Circuits, that mere negligence does not constitute defalcation. Meyer v. Rigdon, 36 F.3d 1375, 1382-85 (7th Cir. 1994) (construing "defalcation" under § 523(a)(11)); In re Johnson, 691 F.2d 249, 255-57 (6th Cir. 1982); Carey Lumber Co. v. Bell, 615 F.2d 370, 375-76 (5th Cir. 1980). The Seventh Circuit has not clearly defined the level of tortious conduct necessary to constitute a defalcation in the bankruptcy context; it has only required something more than a negligent breach of a fiduciary duty. Meyer, 36 F.3d at 1385. This is something less culpable than intentional fraud. One court has defined defalcation within the context of § 523(a)(4) as "the misappropriation of trust funds held in any fiduciary capacity, and the failure to properly account for such funds." Strube Celery & Vegetable Co., Inc. v. Zois (In re Zois), 201 B.R. 501, 506 (Bankr. N.D. Ill. 1996) (citation omitted). An objective standard is used to determine a defalcation, and intent or bad faith is not a requirement. See Green v. Pawlinski (In re Pawlinski), 170 B.R. 380, 389 (Bankr. N.D. Ill. 1994) (citations omitted).

IV. DISCUSSION

The Debtor argues that there was no express trust created between him and the State, and the State Court Opinion did not find that the debt was caused by fraud or defalcation. The Debtor concludes that the situation at bar is analogous to the facts in Marchiando wherein the Seventh Circuit held that a convenience store owner who sold Illinois lottery tickets did not stand in a fiduciary relation to the state, but was really in a non-fiduciary relationship of ticket agent and principal. The Court will address each of the Debtor's arguments in turn.

First, the Court rejects the Debtor's attempt to summarily apply the Marchiando situation to the case at bar. Under the Illinois Lottery Law, 20 ILCS 1605 et seq., the proceeds of the sales of lottery tickets "shall constitute a trust fund until paid to the Department. . . ." 20 ILCS 1605/10.3. The Marchiando court found this language insufficient to create an express trust between the debtor and the Illinois Department of the Lottery. Further, the court found the debtor was not in a control or dominant position over the Department of the Lottery.

This Court finds, however, that there was an express trust created between Maryville Academy and the Debtor, pursuant to the Agreement, under Illinois common law and as prescribed in the Charitable Trust Act. Under that statute, the Debtor was at all times a "trustee" of the funds he collected from the raffle. Under the Agreement, there was an intent to create a trust for the benefit of an Illinois charity. Furthermore, there was definite subject matter or trust property–the raffle ticket proceeds. Moreover, there were ascertainable beneficiaries, namely Maryville Academy and the winner of the $1,000,000 dream home. Pursuant to the Agreement, the Debtor was the trustee who the State Court found controlled and conducted the raffle activities and the bank account into which ticket sale proceeds were deposited and expenses were paid. Also, pursuant to the Agreement with Maryville Academy, there were specifications of a trust purpose, namely to benefit the charity. Maryville Academy was to be the recipient of the net proceeds of the raffle after deduction of the costs of the raffle and costs of construction of the house. Finally, there was delivery of trust property to the Debtor/trustee who controlled the ticket sale proceeds. Hence, the Court finds that under Illinois common law, an express trust was created, as codified in the

statute.

The Debtor contends that as a result of a decision rendered by a judge in the Circuit Court of Cook County Illinois on February 8, 2000, which found the Illinois Charitable Trust Act in violation of the Constitution of the United States, this Court cannot "rely on" the State Court's Opinion because that decision was based on the Charitable Trust Act. The Debtor has not provided the Court with a copy of that decision, which is not binding on this Court and is inapposite to the issues here. That determination has no effect on the issue at bar–whether the Debtor committed fraud of defalcation while acting in a fiduciary capacity for purposes of § 523(a)(4).

The Court finds that there is a material issue of fact, not clear from the record at this stage, whether the Debtor had a position of ascendancy over the ticket purchasers who entrusted their money to him. Also, there is an issue as to whether the Debtor had a similar position over Maryville Academy, who may have had access to the bank account into which the ticket sale proceeds were deposited, but who had no right to cancel the raffle per the Agreement. This is not the Marchiando situation where the debtor was an agent of probable thousands throughout the State of Illinois, and accountable to a large state department. Here, the limited record only shows one agent, the Debtor, who apparently was running the entire raffle for the benefit of the charity and the ticket purchasers. The Debtor had control of the raffle and the ticket holders and Maryville Academy had expectations in the Debtor's statements that the ticket proceeds would be applied to the stated charitable end. The limited record furnished at this stage does not establish that the Debtor had the dominance or position of ascendancy over the beneficiaries, which Marchiando requires.

Next, the Debtor argues that he is entitled to summary judgment because the State cannot prove that he committed fraud or defalcation. He points to the State Court's Opinion which makes no mention of fraud. The Court finds that even though the State Court's decision did not explicitly make a finding of fraud, the lack of such a finding does not serve as the basis for granting the Debtor's motion for summary judgment, and thus, result in depriving the State of coming forward with evidence to show that the Debtor's actions were tantamount to fraud or defalcation. Merely because the State Court Opinion did not explicitly make a finding that the Debtor's actions were fraudulent or amounted to defalcation does not, ipso facto, mean that this Court is precluded from making that determination for purposes of § 523(a)(4).

The State Court found that the Debtor had been in financial problems pre-raffle. He devised the raffle to raise money to sell the dream house and recover its construction costs. The amounts the Debtor paid the sales agents were not reasonable given the amount of ticket sales, and the Debtor breached his duty to properly account for and utilize the raffle proceeds properly. The State Court thus concluded that he converted $44,372.00 for his own use while a fiduciary. This Court cannot ignore such findings which may, upon a full record adduced at trial, be sufficient to prove defalcation under § 523(a)(4), even if not tantamount to fraud. Consequently, the Court denies the Debtor's motion for summary judgment because a genuine issue of material fact exists regarding whether the Debtor committed fraud or defalcation.

V. CONCLUSION

For the foregoing reasons, both motions for summary judgment are denied.

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: JOSEPH P. MONAHAN, II, Debtor.	)	Chapter 7 Bankruptcy No. 99 B 02199 Judge John H. Squires
THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of Illinois, Plaintiff, v. JOSEPH P. MONAHAN, II, Defendant.	)	Adversary No. 99 A 00602

O R D E R

For the reasons set forth in a Memorandum Opinion dated the 24th day of February, 2000, the Court hereby denies the cross motions of Joseph P. Monahan, II and the People of the State of Illinois for summary judgment.

ENTERED:

DATE: _____

John H. Squires
United States Bankruptcy Judge

cc: See attached Service List