

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: VIRGINIA P. HAMMOND

CASE NO. 07-13141-DWH

CHASE BANK, U.S.A., N.A.

PLAINTIFF

VERSUS

ADV. PROC. NO. 07-1209-DWH

VIRGINIA P. HAMMOND

DEFENDANT

OPINION

On consideration before the court is the amended motion for summary judgment filed in the above adversary proceeding by Chase Bank, U.S.A., N.A., (“Chase”); no response having been filed thereto by the debtor/defendant, Virginia P. Hammond, (“Hammond”); and the court, having considered said motion, finds as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (I).

II.

On September 5, 2007, Hammond filed a voluntary petition for bankruptcy pursuant to Chapter 7 of the Bankruptcy Code. In this proceeding, Chase asserts that Hammond is indebted to it pursuant to a VISA credit card account with the number ending in “6932.” As of the filing date, the net payoff on the account was \$27,366.64. Chase seeks a non-dischargeable judgment pursuant to 11 U.S.C. §523(a)(2)(A) and §523(a)(2)(C) in the amount of \$4,758.84, plus interest

at the contract rate after September 5, 2007, in addition to costs and attorney fees to be determined by the court.

Chase alleges that Hammond made the purchases and charges to the account under false pretenses or by actual fraud with knowledge that she lacked the ability to repay because of her poor financial condition.

### III.

Summary judgment is properly granted when pleadings, depositions, answers to interrogatories, and admissions on file, together with 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. Bankruptcy Rule 7056; Uniform Local Bankruptcy Rule 18. The court must examine each issue in a light most favorable to the nonmoving party. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Phillips v. OKC Corp., 812 F.2d 265 (5th Cir. 1987); Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). The moving party must demonstrate to the court the basis on which it believes that summary judgment is justified. The nonmoving party must then show that a genuine issue of material fact arises as to that issue. Celotex Corporation v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Leonard v. Dixie Well Service & Supply, Inc., 828 F.2d 291 (5th Cir. 1987), Putman v. Insurance Co. of North America, 673 F.Supp. 171 (N.D. Miss. 1987). An issue is genuine if “there is sufficient evidence favoring the nonmoving party for a fact finder to find for that party.” Phillips, 812 F.2d at 273. A fact is material if it would “affect the outcome of the lawsuit under the governing substantive law.” Phillips, 812 F.2d at 272.

#### IV.

On February 6, 2008, Chase served Hammond with requests for admission. The thirty day period for answering the requests as set forth in Rule 7036(a), Federal Rules of Bankruptcy Procedure, and Rule 36(a), Federal Rules of Civil Procedure, expired without Hammond answering or objecting to the requests.

“The matter is admitted unless, within thirty days after service of the request...the party to whom the request is directed serves upon the party requesting the admission a written objection or answer addressed to the matter, signed by the party or his attorney...” Fed. Rule Civ. Proc. 36(a). “Any matter admitted under this rule is conclusively established...” Fed. Rule Civ. Proc. 36(b). *See, In re Carney*, 258 F.3d 415 (5<sup>th</sup> Cir. 2001). Hammond’s failure to serve a timely answer or objection to Chase’s requests for admission requires that those matters set forth in the requests be deemed admitted. Consequently, the following matters, which are excerpted from the requests for admission, are conclusively established:

1. For the reasons stated in plaintiff’s complaint, the indebtedness to plaintiff is non-dischargeable in bankruptcy pursuant to 11 U.S.C. §523(a)(2)(A) and/or 11 U.S.C. §523(a)(2)(C).
2. Online/telemarketer account application was opened and completed to obtain a credit card from plaintiff Chase Bank USA, N.A.
3. The total amount owed to creditor for the credit card listed in request for admission no. 1, including interest through and including September 5, 2007, is \$27,366.64.

4. Interest continues to accrue on the amount stated in request for admission no. 1 above at the contract rate.
5. The debtor in Bankruptcy Case No. 07-13141-DWH is also the defendant in Adversary Proceeding No. 07-1209-DWH.
6. Debtor/defendant has heretofore received copies of each statement of account attached to plaintiff's complaint and the plaintiff's requests for admission.
7. The documents attached to plaintiff's complaint is a genuine original document or a true copy hereof.
8. That debtor/defendant either directly or indirectly received the proceeds of each charge described in the attachments.
9. Debtor/defendant is not entitled to any credits, offsets, or deductions.
10. There are no facts upon which debtor/defendant relies as a basis for any defense in this action.
11. That between the dates of March 2007 through July 2007, debtor/defendant used said credit card to obtain cash advances or other purchases totaling \$4,758.84.
12. That debtor/defendant made these purchases on the account when debtor/defendant was unable to meet her existing financial obligations as they became due.
13. Debtor/defendant made the charges or purchases referenced above, debtor/defendant represented to plaintiff that she had the ability to repay the charges or loan.

14. Debtor/defendant made the charges or purchases referenced above, debtor/defendant represented to plaintiff that she had the intent to repay the charges or loan.
15. Every statement or allegation contained in plaintiff's complaint is true and correct.
16. Debtor/defendant made the purchases referenced above, debtor/defendant did not have the ability to repay the charges or loan to plaintiff.
17. Debtor/defendant made the purchases referenced above, debtor/defendant did not have the intent to repay the charges or loan to plaintiff.
18. Debtor/defendant made the purchases referenced above, debtor/defendant was contemplating the filing of bankruptcy.
19. Debtor/defendant contacted an attorney prior to making said purchases referenced above.
20. Debtor/defendant obtained said funds in the amount of \$4,758.84 from plaintiff by false pretenses.
21. Debtor/defendant obtained said funds in the amount of \$4,758.84 from plaintiff by false representations.

V.

As a result of Hammond's admissions, there are no longer any genuine material factual issues in dispute. Chase is entitled to a judgment as a matter of law. The \$4,758.84 debt owed to Chase by Hammond is non-dischargeable pursuant to 11 U.S.C. §523(a)(2)(A). The court will enter a judgment in favor of Chase once the attorney for Chase has submitted an itemization of

attorney's fees and costs related to this proceeding. Chase's attorney will be given two weeks from the entry of this opinion to submit said itemization.

This the 11<sup>th</sup> day of June, 2008.

/s/ David W. Houston, III  
DAVID W. HOUSTON, III  
UNITED STATES BANKRUPTCY JUDGE