

**UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE**

In re:
Maurice M. & Ruth H. Murphy
Debtors

BK No. 98-12704-MWV
Chapter 7

Ellen P. Trevors,
Plaintiff

v.

Adv. No. 98-1121-MWV

Ruth Murphy,
Defendant

MEMORANDUM OPINION AND ORDER

The Court has before it an uncontested motion for summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to these proceedings by Federal Rule of Bankruptcy Procedure 7056, filed by Ellen P. Trevors, Administratrix of the Estate of Elizabeth Oates (“Plaintiff”) against the Debtor/Defendant Ruth H. Murphy (“Defendant”). Plaintiff seeks an order excepting from discharge a debt owed by the Defendant to the Plaintiff pursuant to section 523(a)(4) and (a)(7) of the Bankruptcy Code, as well as an order awarding the Plaintiff costs and attorneys fees.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

Plaintiff and Defendant were appointed Co-Administratrixes of the Estate of Elizabeth D. Oates (“Estate”) by Order of the Rockingham County Probate Court. On July 8, 1992, as the result of Defendant’s conversion of monies belonging to the Estate for her own personal use, Defendant signed a

Promissory Note in the amount of \$150,000 to Plaintiff. (See Pl.'s Ex. A.) On March 25, 1994, a \$151,942.13 judgment was awarded against the Defendant as the result of a civil suit brought to secure payment of the Promissory Note. (See Pl.'s Ex. B.) On May 14, 1996, the Defendant pled guilty to three Class A Felony Theft charges involving over \$160,000 in the Rockingham County Superior Court. (See Pl.'s Ex. D.) Defendant's State Prison Sentence stated that "Restitution shall be in accord with the civil judgment previously ordered." (See Pl.'s Ex. E.)

The Defendant filed a Chapter 7 bankruptcy petition in this Court on July 10, 1998. On September 22, 1998, Plaintiff filed a Complaint to Determine Dischargeability of Debt ("Complaint"). In objection to Plaintiff's Complaint, the Defendant filed a Response on October 15, 1998. Then on February 18, 1999, Plaintiff filed the Motion for Summary Judgment ("Motion") before the Court today. On April 6, 1999, the Defendant withdrew her prior objection and filed a Notice of No Objection to Plaintiff's Motion. Summary judgment is therefore granted pursuant to section 523(a)(4) and (a)(7).

Plaintiff also requests an order granting costs and attorney's fees. The Notice of No Objection was entered five days after Defendant became aware of this Court's March 4th decision in Peerless v. Swanson, No. 98-12668-MWV, Adv. No. 98-1131-MWV, 1999 WL 147053 (Bankr. D.N.H. Mar. 4, 1999). This Court finds that the position taken by the Defendant was neither frivolous nor without merit, and that by withdrawing the objection in light of the Peerless decision, the Defendant's good faith is apparent. Consequently, the Plaintiff's request for costs and attorney's fees is denied.

This opinion and order constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

DATED this 13th day of April, 1999, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge