

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
)  
JOHN T. CONNORS and ) Bankruptcy Case No. 99-32167  
MARY L. CONNORS, )  
)  
Debtors. )  
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)  
UNION PLANTERS BANK, N.A., )  
)  
Plaintiff, )  
)  
vs. ) Adversary Case No. 00-3027  
)  
JOHN T. CONNORS and )  
MARY L. CONNORS, )  
a/k/a Lynn Connors, )  
)  
Defendants. )

OPINION

This matter having come before the Court on a Motion for Summary Judgment filed by Plaintiff, Union Planters Bank, N.A., on June 23, 2000, and Response to Motion for Summary Judgment of Union Planters Bank, N.A. filed by the Debtors/Defendants; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

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 in

bankruptcy by Rule 7056 of the Federal Rules of Bankruptcy Procedure.

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 judgment as a matter of law.

See: Donald v. Polk County, 836 F.2d 376 (7th Cir. 1988).

The United States Supreme Court has issued a series of opinions which encourage the use of summary judgment as a means of disposing of factually unsupported claims. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986). "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." Farries v. Stanadyne/Chicago Div., 832 F.2d 374 (7th Cir. 1987). The burden is on the moving party to show that no genuine issue of material fact is in dispute. Anderson, supra, at 2514. There is no genuine issue for trial if the record, taken as a whole, does not lead a rational trier of fact to find for the non-moving party. See: Matsushita, supra, at 587. "If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." Anderson, supra, at 250.

The instant adversary proceeding brought by the Plaintiff is

controlled by 11 U.S.C. § 727(a)(3), which states:

(a) The court shall grant the debtor a discharge, unless - . . .

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

Section 727(a)(3), by its very nature, requires a fact-intensive inquiry as to the Debtors/Defendants' actions as to books, documents, records, and other papers concerning their financial condition. While it is apparent in the instant case that certain of the Debtors/Defendants' records have been disposed of on the Debtors/Defendants' own admissions, it is evident that there are other records which are available to Debtors/Defendants' creditors, and a question of fact exists as to whether those other records are sufficient to allow creditors to ascertain the Debtors/Defendants' financial condition or business transactions prior to the Debtors/Defendants' bankruptcy filing under Chapter 7 of the Bankruptcy Code. Furthermore, there is a factual question as to what documentation Plaintiff herein may have had available to it through sources other than the Debtors/Defendants. With such material factual disputes remaining at issue, the Court must conclude that this matter is not ripe for summary judgment, and, as such, must deny Plaintiff's Motion for Summary Judgment as filed on June 23, 2000.

ENTERED: August 9, 2000.

/s/ GERALD D. FINES  
United States Bankruptcy Judge