UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

IN RE:

ALEXANDER A. THOMAS,

Debtor.
_____/

CASE NO.: 18-10041-KKS
CHAPTER: 7

SHARRON CHIAPPETTA,

Plaintiff,

v.

ALEXANDER A. THOMAS,

Defendant.
_____/

ADV. NO.: 18-01005-KKS

ORDER DENYING *PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT* (DOC. 70)

THIS MATTER came before the Court on *Plaintiff's Motion for Partial Summary Judgment* ("Motion," Doc. 70). After consideration of the Motion, it is due to be denied for the reasons that follow.

BACKGROUND

Plaintiff commenced this Adversary Proceeding on June 4, 2018, seeking denial of Defendant's discharge under 11 U.S.C. § 727 of the Bankruptcy Code, and a determination that debt allegedly owed to

Plaintiff is not dischargeable under 11 U.S.C. § 523.[1] In the Motion, Plaintiff seeks summary judgment on Counts IV and V of the Complaint. In Count IV, Plaintiff objects to Defendant's discharge under 11 U.S.C. § 727(a)(3), alleging that Defendant, in the operation of his business, concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which Debtor's financial or business transactions might be ascertained. In Count V, Plaintiff objects to Defendant's discharge under 11 U.S.C. § 727(a)(4)(A), alleging that Defendant knowingly and fraudulently, in or in connection with the case, made a false oath or account, in that he represented in his Statement of Financial Affairs that he received no income from employment or the operation of a business.

DISCUSSION

Summary judgment is governed by Fed. R. Civ. P. 56, made applicable by Fed. R. Bankr. P. 7056. The Court may grant summary judgment if there is no genuine dispute as to any material fact and the

[1] Doc. 1.

movant is entitled to judgment as a matter of law.[2] The moving party has the burden of establishing that it is entitled to summary judgment.[3] "Conclusory allegations by either party, without specific supporting facts, have no probative value."[4] "Facts are material if they 'might affect the outcome of the suit under the governing law' and disputes over material facts are genuine if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'"[5] "Hearsay, conclusory allegations, unsubstantiated assertions, and unsupported speculation are not competent summary judgment evidence."[6]

Under Rule 56 of the Federal Rules of Civil Procedure, made applicable by Fed. R. Bankr. P. 7056, ". . . [a] party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including . . . interrogatory answers . . . ."[7] Answers to interrogatories must be signed by

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[2] Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986).
[3] *Bender v. James (In re Hintze),* 525 B.R. 780, 784 (Bankr. N.D. Fla. 2015).
[4] *Id.*
[5] *Id.* (citing *FindWhat Investor Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011)).
[6] *Tesco Corp. v. Weatherford Intern., Inc.,* 904 F. Supp. 2d 622, 626 (S.D. Tex. 2012).
[7] Fed. R. Civ. P. 56(c)(1), made applicable by Fed. R. Bankr. P. 7056.

the person answering them, under the requirements of Fed. R. Civ. P. 33(b)(5), incorporated by Fed. R. Bankr. P. 7033.[8] "Verified or sworn pleadings are competent summary judgment evidence; unverified answers to interrogatories and interrogatories not based on personal knowledge are not."[9]

Plaintiff has not met her burden to establish that she is entitled to summary judgment on Counts IV and V. The Motion, like the Complaint, is replete with conclusory statements unsupported by facts. Attached to the Motion are the same documents Plaintiff attached to the Complaint which contain no facts that support denial of Defendant's discharge. The only additional document Plaintiff provides in support of the Motion is comprised of Defendant's unsigned, unverified interrogatory answers.[10] Defendant's answers to interrogatories, in addition to being unsigned and unverified, provide no more evidence that De-

[8] Fed. R. Civ. P. 33(b)(5): "**Signature.** The person who makes the answers must sign them, and the attorney who objects must sign any objections."

[9] *Tesco Corp. v. Weatherford Intern., Inc.,* 904 F. Supp. 2d 622, 636 (S.D. Tex. 2012). *See also Fowler v. S. Bell. Tel. & Tel. Co.,* 343 F.2d 150, 154 (5th Cir. 1965).

[10] Plaintiff sought answers to interrogatories for the first time on December 15, 2019, the day before the Court-imposed deadline to complete fact discovery. Docs. 62 and 65. Plaintiff also attached a document printed from the Florida Division of Corporations, but the relevance of that document is unknown.

fendant's discharge should be denied than did the Complaint or attachments. Without more, Plaintiff is not entitled to summary judgment. For the reasons stated, it is

ORDERED: *Plaintiff's Motion for Partial Summary Judgment* (Doc. 70) is DENIED.

DONE and ORDERED on February 3, 2020.

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: All interested parties.

Attorney for Plaintiff is directed to serve a copy of this Order on interested parties and file a certificate of service within three (3) business days of entry of this Order.