CT Bankruptcy Beat
Legal Developments in Restructuring and Creditors' Rights

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Default Judgment Is Not Automatic Following Entry Of Default

by Jessica Grossarth
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On May 12, 2016, the Honorable Julie A. Manning issued a decision in an adversary proceeding entitled *Law Office of W. Martyn Philpot, Jr., LLC v. Day*, which addressed two issues. The first issue was whether the plaintiff was entitled to a default judgment as a matter of right following entry of a default. The second issue was whether the plaintiff's evidence was sufficient to prove that legal fees due to it from the defendant should be deemed nondischargeable pursuant to 11 U.S.C. §523(a)(2)(A).

On August 11, 2014, the Law Office of W. Martyn Philpot, Jr., LLC (the "Plaintiff") commenced the adversary proceeding against the debtor, Robbie William Day (the "Defendant"). The Plaintiff alleged in an amended complaint that legal fees due to it from the Defendant should be deemed nondischargeable pursuant to 11 U.S.C. §523(a)(2)(A). The Defendant failed to answer the complaint. As such, on July 2, 2015, the Plaintiff filed a Motion for Default for Failure to Plead, and on July 8, 2015, a default entered against the Defendant. The Court held an evidentiary hearing on the Motion for Judgment on February 24, 2016.

As to the first issue, the Court held that although the Defendant failed to respond to the Complaint, the Plaintiff is not entitled to a default judgment as a matter of right. The Court stated that even though the effect of a default is to deem allegations in a complaint admitted, the court may decide to conduct a hearing requiring proof of the facts that must be established in order to determine a defendant's liability. The Plaintiff was therefore required to present a prima facie case of nondischargeable debt at the evidentiary hearing.

A prima facie nondischargeability case under Section 523(a)(2)(A) requires a plaintiff to prove that: (1) a defendant made representations; (2) knowing them to be false; (3) with the intent and purpose of deceiving the plaintiff; (4) upon which representations the plaintiff actually and justifiably relied; and (5) which proximately caused the alleged loss or damage sustained. *Michalek v Ochs (In re Ochs)*, 516 B.R. 213, 218 (Bankr. D. Conn. 2014).

The Court held that no evidence was presented to support the conclusion that the Defendant made false representations to the Plaintiff when it was retained or when the Defendant agreed to pay the final bill in monthly installments. Rather, the evidence demonstrated that the Defendant's failure to pay the final bill resulted from personal financial difficulties. The Court held that the Plaintiff failed to establish a prima facie case of a nondischargeable debt under 11 U.S.C. §523(a)(2)(A) because the Defendant's payment of the initial retainer and the two subsequent checks demonstrated that he intended to pay for the legal services rendered by the Plaintiff.

This case highlights a few points for bankruptcy litigators. Failure to honor a promise, which is what the Court found that the Defendant did here, is simply a breach of contract and does not equate to fraud. The evidence must show that the defendant made a promise that he or she did not intend to keep. Last, when you are pursuing a default on behalf of your client, you must be prepared to prove your case with evidence to secure the default judgment.