

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

Hong V. Nguyen,

Case No. 23-11899

Debtor.

Radiance Capital Receivables Twelve, LLC,

Plaintiff,

v.

Adversary Case No. 24-1004

Hong V. Nguyen,

Defendant.

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT

The parties have filed cross-motions for summary judgment (docs. 14 and 16) in this nondischargeability adversary proceeding brought under 11 U.S.C. §§ 523 and 727. The court has reviewed the motions, as well as the evidence and written argument submitted by the parties. The court also heard argument on the motions at a hearing held on September 24, 2024. Having carefully considered the motions, the evidence, and argument, the court denies both motions.

At the hearing, counsel for the debtor stated that the debtor was not moving forward on his motion for summary judgment. In any event, the debtor's motion is premised on the argument that the plaintiff cannot overcome its burden to establish fraud, and is supported only by an affidavit of the debtor himself. But "the summary judgment standard requires that facts and inferences be drawn in favor of the" nonmovant. *See In re Fruitticher*, 2019 WL 1082355, at *7 (N.D. Fla. Mar. 7, 2019) (citing *Raney v. Aware Woman Ctr. for Choice, Inc.*, 224 F.3d 1266, 1268 (11th Cir. 2000)). And the court cannot make credibility determinations at the summary judgment stage. *See, e.g., Stimson v. Stryker Sales Corp.*, 835 F. App'x 993, 995 (11th

Cir. 2020). Evaluating the affidavit in light of these requirements, the question of the debtor's intent for purposes of the plaintiff's claims of fraud must be left for trial. *See In re Fruitticher*, 2019 WL 1082355, at *7. Indeed, “[t]he question of intent is an intensely fact-specific inquiry, which is why it is generally not decided at the summary judgment stage.” *See id.* at *8; *see also Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472, 1476 (11th Cir. 1991).

The court now turns to the defendant's motion for summary judgment. The defendant argues that summary judgment is proper (1) under § 727(a)(2) because the debtor intentionally concealed property of the estate; (2) under § 727(a)(4) because the debtor made multiple false oaths and accounts in his bankruptcy; and (3) under § 727(a)(3) because the debtor failed to preserve adequate records regarding his financial condition.

As discussed with counsel at the summary judgment hearing, the court agrees that there is substantial evidence before it of potential concealment and/or false oaths and accounts. But the court does not weigh evidence at this juncture. *See, e.g., Stimson*, 835 F. App'x at 995. Again, the question of the debtor's intent is highly fact-specific and is better suited for trial. *See In re Fruitticher*, 2019 WL 1082355, at *7-8. The court denies summary judgment under §§ 727(a)(2) and (a)(4) on this ground. *See, e.g., In re Breedlove*, 545 B.R. 359, 392 (Bankr. M.D. Ga. 2016) (“the issue of intent under § 727(a)(2) is not an appropriate determination on summary judgment”); *In re Moss*, 2006 WL 6589913, at *4 (Bankr. N.D. Ga. Mar. 31, 2006) (“The same intent concern that prevents the [c]ourt from entering summary judgment on the § 727(a)(2) claim hampers the § 727(a)(4) claim.”).

The court now turns to the § 727(a)(3) claim. “Objections to discharge [under] § 727(a)(3) are not usually decided on summary judgment.” *See In re Lammers*, 2005 WL 1498336, at *3 (Bankr. M.D. Fla. June 9, 2005). “Generally, they require a fact intensive inquiry

regarding the adequacy of the defendant's records." *Id.* (citation and quotation marks omitted). While the allegations of the plaintiff in this respect "raise serious concerns, . . . at this stage in the proceedings, the [c]ourt must deny summary judgment as this requires a fact intensive inquiry." *See In re Brooks*, 548 B.R. 585, 594 (Bankr. S.D. Ga. 2016). The debtor "cannot rely on blanket assertions and must bring forth sufficient credible evidence to overcome this objection." *See id.* But "at this point the [c]ourt needs to consider the evidence, hear the testimony, observe the witnesses' demeanor, consider the nature of the business arrangements and sophistication of the parties."

To the extent the court has not specifically addressed any of the parties' arguments at the summary judgment hearing or in other filings with this court, it has considered them and determined that they would not alter this result. The court denies summary judgment in favor of either party. The case remains set for trial on October 25, which is a firm setting.

Dated: September 26, 2024


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE