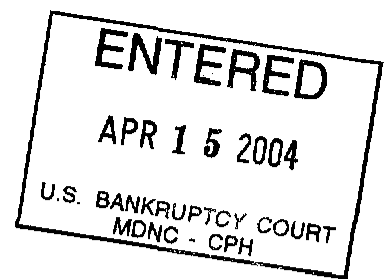


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION



IN RE:)	
)	
Zachary Chilton and)	Case No. 02-12415C-7G
Dawn D. Chilton,)	
)	
Debtors.)	
<hr/>		
)	
Branch Banking & Trust)	
Company,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 03-2073
)	
Zachary Chilton and)	
Dawn D. Chilton,)	
)	
Defendants.)	
)	

MEMORANDUM OPINION

This adversary proceeding came before the court on April 13, 2004, for hearing the Plaintiff's motion for summary judgment. For the reasons that follow, the court has concluded that the motion for summary judgment should be granted.

In Plaintiff's first claim for relief, Plaintiff asserts that the Defendants are barred by § 727(a)(8) of the Bankruptcy Code from receiving a discharge in their Chapter 7 case, Case No. 02-12415, because the Defendants have been granted a discharge under § 1141 of the Bankruptcy Code in a case commenced within six years before the date of the filing of the petition in Case No. 02-12415. Under § 727(a)(8) a debtor may not receive a discharge if "the debtor has been granted a discharge under this

section, under section 1141 of this title, or under sections 14, 371, or 476 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition" It is undisputed that the Defendants, in fact, were granted a discharge under § 1141 in a case commenced within six years before the date of the filing of the petition in Case No. 02-12415, the record reflecting that such discharge was granted in Case No. 00-10257 which was commenced in this court on February 3, 2000. It follows as a matter of law that the Defendants, therefore, may not be granted a discharge in Case No. 02-12415. See generally 6 COLLIER ON BANKRUPTCY ¶ 727.11 (15th ed. rev. 2004) ("Section 727(a)(8) provides that a debtor should be denied a discharge in the current case if the debtor has been granted a discharge under chapter 7 or 11 in a case commenced within six years before the date of the filing of the petition.").

Plaintiff's complaint also contains a dischargeability claim that is based upon § 523(a)(6) of the Bankruptcy Code in which Plaintiff seeks an adjudication that indebtedness of \$340,367.00 is nondischargeable as a result of an alleged willful and malicious injury to property by the Defendants. As a result of Plaintiff obtaining summary judgment pursuant to § 727(a)(8), there will be no discharge from which to except any indebtedness. "[A] determination of dischargeability of a debt is meaningful only in the context of a discharge. If a case is dismissed prior to the

entry of discharge or the discharge is denied or revoked, a judgment as to dischargeability of a debt becomes moot unless a subsequent bankruptcy is filed." In re Thrall, 196 B.R. 959, 968 (Bankr. D. Colo. 1996). In accord In re Unruh, 278 B.R. 796, 806-07 (Bankr. D. Minn. 2002); In re Lindley, 121 B.R. 81, 90-91 (Bankr. N.D. Okla. 1990). Since the dischargeability claim under § 523(a)(6) has become moot in this proceeding, no relief under that claim is appropriate at this time.

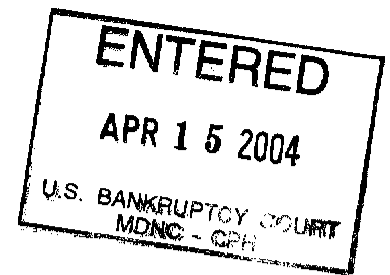
In accordance with the foregoing, a judgment will be entered contemporaneously with the filing of this memorandum opinion granting the Plaintiff's motion for summary judgment under § 727(a)(8) and denying the Defendants a discharge in Case No. 02-12415.

This 14th day of April, 2004.



WILLIAM L. STOCKS
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION



IN RE:)
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Zachary Chilton and) Case No. 02-12415C-7G
Dawn D. Chilton,)
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Debtors.)
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Branch Banking & Trust)
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Plaintiff,)
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v.) Adversary No. 03-2073
)
)
Zachary Chilton and)
Dawn D. Chilton,)
)
Defendants.)
)

JUDGMENT

In accordance with the memorandum opinion filed contemporaneously herewith, it is ORDERED, ADJUDGED AND DECREED that Plaintiff's motion for summary judgment is granted and Defendants are hereby denied a discharge in Case No. 02-12415.

This 14th day of April, 2004.



WILLIAM L. STOCKS
United States Bankruptcy Judge