


SO ORDERED.

SIGNED this 18th day of May, 2022.




BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

In re:)	
)	
James Tobias Griffin,)	Chapter 13
)	Case No. 17-10490
Debtor.)	
_____)	
)	
Angela McLean,)	
)	
Plaintiff,)	
)	Adv. No. 21-02015
v.)	
)	
James Tobias Griffin,)	
)	
Defendant.)	
_____)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This adversary proceeding is before the Court on Angela McLean's ("Plaintiff") *Motion for Summary Judgment*, [ECF No. 13] ("Motion for Summary Judgment"), and *Memorandum of Law in Support of Motion for Summary Judgment*. ECF No. 14 ("Memorandum"). Plaintiff moves for summary judgment under Fed. R. Civ. P. Rule

56, made applicable to this proceeding by Rule 7056.¹ Plaintiff asks the Court to determine that the equitable distribution claim against James T. Griffin ("Debtor") is non-dischargeable under §§ 523(a)(3)(A) and 1328(a)(2). After proper service, Defendant failed to respond. For the reasons stated herein, the Court will grant Plaintiff's Motion for Summary Judgment. The following shall constitute the Court's findings of fact and conclusions of law for purposes of Fed. R. Civ. P. 52, made applicable to this adversary proceeding by Rule 7052.

I. JURISDICTION AND AUTHORITY

The Court has subject matter jurisdiction over this proceeding under 28 U.S.C. § 1334(b). Under 28 U.S.C. § 157(a), the United States District Court for the Middle District of North Carolina has referred this case and these proceedings to this Court by its Local Rule 83.11. The Parties have expressly consented to the entry of final orders by this Court for all matters raised in the pleadings in this proceeding. ECF No. 8. This Court may enter final orders and judgments in this proceeding. Venue is proper under 28 U.S.C. § 1409.

II. STANDARD OF REVIEW

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant

¹ References to rules herein shall refer to the Federal Rules of Bankruptcy Procedure unless otherwise indicated.

is entitled to judgment as a matter of law." Fed. R. Civ. P. Rule 56(a). "If a party . . . fails to properly address another party's assertion of fact . . . the court may . . . (2) consider the fact undisputed for purposes of the motion; [or] (3) grant summary judgment if the motion and supporting materials - including the facts considered undisputed - show that the movant is entitled to it[.]" Fed. R. Civ. P. Rule 56(e). As the Fourth Circuit has said:

This failure to respond [to a motion for summary judgment], however, does not fulfill the burdens imposed on moving parties by Rule 56. Section (c) of Rule 56 requires that the moving party establish, in addition to the absence of a dispute over any material fact, that it is entitled to a judgment as a matter of law. Although the failure of a party to respond to a summary judgment motion may leave uncontroverted those facts established by the motion, the moving party must still show that the uncontroverted facts entitle the party to a judgment as a matter of law. The failure to respond to the motion does not automatically accomplish this. Thus, the court, in considering a motion for summary judgment, must review the motion, even if unopposed, and determine from what it has before it whether the moving party is entitled to summary judgment as a matter of law. This duty of the court is restated in section (e) of the rule, providing, if the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Custer v. Pan Am. Life Ins. Co., 12 F.3d 410, 416 (4th Cir. 1993).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW²

In this proceeding, Debtor filed the underlying chapter 13 bankruptcy case on April 25, 2017. Case No. 17-10490. Debtor was previously married to Plaintiff, but the parties separated on April 8, 2009. ECF No. 14, ¶ 3. Debtor did not include Plaintiff in his schedules or on his matrix of creditors, ECF No. 14, ¶¶ 4-6, and Plaintiff did not have notice or actual knowledge of the bankruptcy case in time to permit timely filing of a proof of claim. ECF No. 14, ¶¶ 6, 9-11 and p. 5; ECF No. 12, ¶¶ 1 & 2³. On April 26, 2017, the Clerk's office issued the Notice of Chapter 13 Bankruptcy Case which set the claims bar date for non-governmental creditors as September 3, 2017. ECF No. 14, ¶ 7.

Section 523(a)(3), which is made applicable to a chapter 13 discharge under § 1328(a)(2), lists exceptions to the discharge and addresses the situation where a debtor fails to list a creditor in the debtor's case:

(a) A discharge under section . . . 1328(b) of this title does not discharge an individual debtor from any debt—

(3) neither listed nor scheduled under section

² Debtor did not file any response in opposition to Plaintiff's Motion. Therefore, the facts set forth in Plaintiff's brief are deemed admitted for purposes of this motion. See Local rule 7056-1(c) ("All facts set forth in the statement of the movant shall be deemed admitted for the purpose of the motion for summary judgment unless specifically controverted by the opposing party.").

³ Under Fed. R. Civ. P. Rule 5(d)(1)(A), made applicable to this proceeding by Fed. R. Bank. P. Rule 7005, "the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: . . . interrogatories, . . . , and requests for admission." Plaintiff filed his responses to Plaintiff's Requests for Admission on the docket, and the Court has considered these admissions as part of the record for purposes of this motion.

521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A)if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B)if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request[.]

11 U.S.C. § 523. Thus, “unless a creditor has actual knowledge of the bankruptcy, a debt is automatically excepted from discharge if the debt is not scheduled . . . in time for a creditor to file a proof of claim.” In re Belding-Miller, No. 15-50154, 2018 Bankr. LEXIS 1423, at *6 (Bankr. W.D.N.C. May 10, 2018).

In this case, Plaintiff’s claim for equitable distribution arose prepetition on the date of separation. Debtor did not give notice of the case to Plaintiff nor list the equitable distribution action in his schedules. Plaintiff did not have actual knowledge of the bankruptcy case in time to file a proof of claim by the bar date set by the Clerk of Court. Thus, the equitable distribution action falls within the category of claims excepted from Debtor’s discharge under § 523(a)(3) and § 1328(a)(2). Because there is no genuine dispute as to any material fact, the movant is entitled to

judgment as a matter of law. The Court will enter judgment separately under Fed. R. Civ. P. 58, made applicable to this adversary proceeding by Rule 7058.

[END OF DOCUMENT]

Parties to be Served
Case No. 21-02015

All parties to this Adversary Proceeding.