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JAMES J. WALDRON, CLERK

[February 19, 2013]

U.S. BANKRUPTCY COURT
CAMDEN, N.J.

BY: Christopher Fowler, Deputy

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE:

PAMELA BROWN,

Debtor.

PAUL H. BROWN, III, and
MALIK O. BROWN,

Plaintiffs,

v.

PAMELA BROWN,

Defendant.

: CHAPTER 13

: CASE NO. 11-33829 (GMB)

: ADVERSARY NO. 11-2339 (GMB)

: MEMORANDUM OPINION

APPEARANCES:

Scott H. Marcus, Esquire
Amar A. Agrawal, Esquire
Carrie J. Boyle, Esquire
SCOTT H. MARCUS & ASSOCIATES
121 Johnson Road
Turnersville, NJ 08012
Counsel for Plaintiffs

Philip F. Drinkwater, III, Esquire
230 N. Woodbury Road
P.O. Box 254
Pitman, NJ 08071
Counsel for Defendant

This matter has come before the Court upon a motion seeking the imposition of sanctions against Pamela Brown (the “Debtor” or “Defendant”) for her failure to comply with the discovery rules, Bankruptcy Rules 7026-7037, and numerous court orders in the above captioned adversary proceeding (the “Motion”). The Motion was filed by Paul H. Brown and Malik O. Brown (the “Plaintiffs”). The Motion for sanctions was initially filed on January 11, 2013 and is based on Bankruptcy Rule 7037 and was supplemented by a Certification in further support on January 28, 2013.

The Motion filed by Plaintiffs ask for the entry of an order striking the pleadings filed by Debtor in the above captioned adversary proceeding and the entry of a judgment against the Debtor and in favor of Plaintiffs. In addition, Plaintiffs seek an order directing the Debtor to reimburse Plaintiffs for costs and expenses incurred as a result of Debtor’s failure to comply with discovery rules and multiple orders relating to discovery entered by this Court. The facts relevant to the resolution of the Motion for sanctions appear from the basically uncontested record and can be summarized as follows:

I. FACTS

This matter stems from a longstanding dispute between the Debtor and her late husband’s two adult sons, the Plaintiffs herein. The Debtor’s late husband (the “Decedent”) had a life insurance policy under which he designated Debtor as the sole beneficiary. Upon Decedent’s death in 2007, a dispute arose as to who was legally entitled to the life insurance proceeds, which totaled approximately \$436,800.00. The dispute arose as a result of a property settlement agreement entered into in 1989 by the Decedent after his divorce from the Plaintiffs’ mother, Decedent’s first wife. The property settlement agreement required Decedent to name the Plaintiffs, then minors, as the sole beneficiaries of any life insurance policy held by Decedent. It was on this basis that the Plaintiffs laid claim to the life insurance proceeds after his death in 2007.

The parties were involved in extensive litigation over the life insurance proceeds in the Superior Court of New Jersey until summary judgment was entered in favor of the Plaintiffs in the amount of \$277,600. The order entered by the State Court judge on May 19, 2009 specifically stated:

...

2. the Court imposes a constructive trust as all of the insurance proceeds (total of \$438,000.00) paid to Pamela Brown by Aetna Insurance Company after the death of [decedent]...
3. Pamela Brown is hereby ordered to pay Paul H. Brown III and Malik Brown, sons of [decedent] the sum of \$277,600.00 within 30 days of this Order.

See Exhibit C to Plaintiffs' Motion for Summary Judgment, Doc. No. 21, Case No. 11-02339. The Debtor requested that the State Court Judge enter a stay pending appeal and also requested an exemption from having to post a bond pending appeal, both of which were denied by the State Court Judge on July 10, 2009.

It appears from the select bank records submitted by the Plaintiffs, whose authenticity has not been disputed by the Debtor, that very shortly after the May 19, 2009 order was entered, approximately \$195,000 was deposited into one of Debtor's bank accounts which Plaintiff has admitted came from insurance proceeds. Thus, the July bank statement for this account (the "July Statement") reflects a balance of \$197,585.59 as of July 6, 2009. After the July 10, 2009 order was entered denying Debtor's request for a stay pending appeal and exemption from bonding requirement, numerous online transfers were made out of this particular account including several transfers of significance. For example, the following transfers occurred from July 21, 2009 through July 26, 2009:

July 21, 2009	\$25,640.00 TRANSFER THRU ONLINE BANK
July 23, 2009	\$40,000.00 TRANSFER THRU ONLINE BANK
July 26, 2009	\$80,000.00 TRANSFER THRU ONLINE BANK
July 26, 2009	\$3,550.00 TRANSFER THRU ONLINE BANK

See Exhibit D to Plaintiffs' Motion for Summary Judgment, Doc. No. 21, Case No. 11-02339. The ending balance on this particular account as of July 31, 2009 was \$45,318.56.

Debtor failed to turnover any of the life insurance proceeds to Plaintiffs after entry of the May 19, 2009 Order granting summary judgment in Plaintiffs' favor. Plaintiffs continued with collection efforts and ultimately obtained a wage execution on May 11, 2011. Shortly thereafter, on August 11, 2011 the Debtor commenced a voluntary chapter 7 bankruptcy case, which was subsequently converted to a chapter 13 case on January 24, 2012. According to Debtor's testimony given at the August 30, 2012 deposition, the Debtor is a Regional Practice Manager for South Jersey HealthCare with an annual gross salary of \$85,000.00. Schedule I also indicates that Debtor collects additional monthly income from both Decedent's pension plan and certain rental property in the amount of \$1,088.90 and \$1,325.00 respectively.

The instant adversary case was commenced on September 13, 2011, alleging claims under 11 U.S.C. §523(a)(2)(A), (a)(4) and (a)(6). Default was entered on October 17, 2011 as a result of Debtor's failure to answer. Three days after default was entered, Debtor filed a motion to extend the time for her to file an answer. Before a hearing could be held with respect to Debtor's request for an extension, the Plaintiffs had already filed a request to enter default judgment on December 6, 2011. On December 7, 2011, the Debtor filed her answer and a certification in opposition to entry of default judgment. After a hearing on the motions, the request for judgment by default was denied and an amended joint scheduling order was entered.

The January 20, 2012 Joint Scheduling Order required all discovery to be completed by March 2, 2012, all dispositive motions be filed by April 16, 2012, Exhibits submitted no later than May 18, 2012 and trial was scheduled for June 7, 2012.

The first discovery related motion was filed by Debtor on February 29, 2012 requesting additional time for discovery. The Plaintiffs opposed the motion, noting that Debtor had failed to respond to any of their discovery requests, failed to appear at a scheduled Fed.R.Bankr.P. 2004 Examination, and failed to put forth any justification or reason why Debtor should be entitled to additional time. The Debtor's request for an extension was eventually denied, after Debtor's counsel failed to appear at the hearing on the contested motion.

On May 7, 2012, the Plaintiffs filed their first motion to strike answer and enter default judgment under Fed.R.Bankr.P. 7037 (hereinafter "Rule 37"). The Debtor opposed Plaintiffs' motion and asserted that discovery delays, if any, were the result of unforeseen medical

circumstances that prevented Debtor's counsel from complying, as well as difficulties encountered by Debtor's counsel in obtaining information and documents from Debtor's previous counsel in the State Court litigation. This Court ultimately denied the Plaintiffs' request to strike and enter default judgment on May 29, 2012 and entered an Amended Joint Discovery schedule which gave the parties an additional sixty (60) days to complete discovery.

On October 19, 2012, well after the discovery deadline, the Plaintiffs filed a motion for summary judgment (the "Motion for Summary Judgment") as to all counts in the adversary complaint. The Debtor filed a late response to the Motion for Summary Judgment, wherein Debtor's counsel requested a nonconsensual adjournment for an additional two weeks in which to respond to the motion. The Plaintiffs' asserted in their Motion for Summary Judgment that such relief was appropriate because Plaintiffs had sufficiently supported each of their 11 U.S.C. §523(a) causes of action with sufficient documentary evidence on record and no genuine issues of triable fact remained in dispute with respect to those claims.

This court granted Debtor's counsel's procedurally deficient request for an extension of time to respond to the Motion for Summary Judgment and a hearing date was set for December 11, 2012, making any responsive pleading due no later than December 4, 2012. On December 5, 2012 the Debtor belatedly filed her response in opposition to the Motion for Summary Judgment.

At the hearing on December 11, 2012, the parties engaged in an extensive discussion on the record over outstanding discovery matters. This court expressed its hesitation in granting summary judgment in Plaintiffs' favor due to a lack of circumstantial evidence going to Debtor's intent when she allegedly depleted the funds held by her in a constructive trust as a result of the May 19, 2009 Order. Plaintiffs noted that they had been prevented from presenting any such circumstantial evidence as a direct result of Debtor's failure to comply fully with their discovery requests. Specifically, Plaintiffs' counsel noted that the Debtor had failed to turnover financial records or receipts which showed where the Debtor spent the \$195,727.65 that was deposited after the May 19, 2009 judgment was entered in Plaintiffs' favor. A colloquy ensued at the hearing in which this Court directed Debtor's counsel to abide by Plaintiffs' discovery requests, specifically, directing Debtor to turnover any and all documents relating to the disposition of the funds which were deposited into Debtor's bank account on July 6, 2009 in the amount of

\$195,727.65. At one point, Debtor's counsel indicated that Debtor could simply stipulate that the money was spent by her; however, this Court was careful to note that Plaintiffs needed this additional documentation and information in order to establish the relevant threshold of "intent" or "reckless disregard" necessary under 11 U.S.C §523(a)(4). This Court directed the Defendant to provide the Plaintiffs with bank account statements and/or other documentation from the May 19, 2009 date of judgment through the Petition Date, with a special emphasis on the disposition of the July 6, 2009 deposit of \$195,727.56, showing where the life insurance proceeds were spent by Debtor. The parties agreed that the discovery would be produced in a timely manner and trial would go forward as scheduled in February 2013.

On January 7, 2013, Plaintiffs' counsel sent Debtor's counsel a letter asking that Debtor comply with the discovery requests and the bench order given by this Court at the December 11, 2013 hearing. Plaintiffs' counsel also indicated in the letter their intent to file a renewed Motion for Sanctions and Entry of Default Judgment against the Debtor, should Debtor fail to comply with discovery. No response was received by Plaintiffs' counsel. Thus, on January 11, 2013, the Plaintiffs filed the instant Motion for Sanctions and Entry of Default Judgment against the Debtor as a result of Debtor's continued noncompliance with discovery requests and orders of this Court. The Plaintiffs requested that the motion be heard on shortened time and a hearing date was set for January 29, 2013. The Debtor filed a certification in opposition to the Motion on January 25, 2013, and attached the following documents: Yacht Brokerage Central Listing Agreement with appraisal; an email from Debtor's prior counsel to an unrelated creditor of Debtor's asserting that Debtor's home is worth less than its mortgage and that the Decedent's boat sold for \$2,500; a certificate of title to a 2000 Chevy Impala, and a single page printout from Freedom Credit Union showing a Certificate of Deposit Purchase on July 27, 2009 in the amount of \$80,000.00 and redemption of the same on April 21, 2010.

At the hearing on January 29, 2013, this Court determined that the documents produced were not sufficient to satisfy Plaintiffs' discovery requests. This Court reiterated to Debtor's counsel that the documents sought by Plaintiffs were the "key part of the case for [Plaintiffs]" and Debtor's failure to comply was a "disadvantage to the [Plaintiffs]." See Transcript, January 29, 2013, at 11:22:30 a.m. This Court concluded the hearing by making the following statements to Debtor's counsel:

I'm going to give you one last chance. They still don't have the discovery that is the very key of the issues...

...

The reason that I denied summary judgment -because you admit that she transferred the money - was that I wanted to give her the opportunity to comply with discovery and have her day in court. And here we are, and she hasn't done that. I am giving her one last short opportunity - unless she supplies full documentation for every transfer out of that account to its ultimate conclusion to Ms. Boyle [Plaintiffs' Counsel], by next Tuesday, Ms. Boyle can send an email on Wednesday and I'm going to strike the answer because she has been in continuous noncompliance.

See Audio Transcript, January 29, 2013, at 11:28:05 A.M. With that direction, the matter was adjourned and the hearing concluded.

On February 4, 2013 the Debtor filed a Supplemental Certification in Opposition to Plaintiff's Motion, and attached several more documents. Debtor's Certification explained that on July 26, 2009 she purchased a Share Certificate from Freedom Credit Union in the amount of \$80,000 using the proceeds from the Decedent's life insurance policy. The Supplemental Certification in Opposition goes on to explain that upon maturation of the Share Certificate in April 2010, the Debtor transferred \$20,000 to her son, made two payments in the amount of \$19,965.00 each to Citibank for payment of a student loan, and used the remaining balance for regular monthly expenses. To support her assertions, Debtor attached a bank statement printout from Freedom Credit Union for the month of April 2010 which shows an initial deposit in the amount of \$79,819.05 on April 21, 2010 and the two payments to Citi Bank in the amount of \$19,965.00 each with no notation as to the nature of the transfer or payment. Aside from these transactions, the April 2010 bank statements only seem to reflect normal course transactions such as ATM withdrawals, check card purchases, and various checks clearing. Significantly absent are any documents or assertions related to the other significant transfers made by Debtor in July 2009, as referenced above. Moreover, even the ultimate disposition of the \$80,000 share certificate proceeds were not sufficiently documented, as there were no receipts or loan documents showing payment of any student loans and there is no documentation pertaining to any alleged transfer of funds to Debtor's son.

Deeming the Debtor's supplemental submission insufficient and nonresponsive, Plaintiffs' attorney sent a letter by email to Chambers, per this Court's directive, indicating that Debtor had failed to abide by the Court's order to submit all discovery within the time allotted.

On February 13, 2013, Debtor filed another supplemental certification which included a mortgage payment history from CitiMortgage from dates February 17, 2010 to June 15, 2011 showing total payments for this period in the amount of \$39,502.00. Again, no documents or other information related to the July 2009 transfers out of Debtor's bank account were included.

II. DISCUSSION

These are the relevant facts that appear from the record from which Plaintiffs claim the right to the relief they seek pursuant to Bankruptcy Rule 7037, which provides that Rule 37 of the Federal Rules of Civil Procedure applies in adversary proceedings. A court may impose sanctions pursuant to Rule 37(b) upon a party for failure to comply with a discovery order. Under Rule 37(b)(2)(C), this Court may enter a default judgment as a sanction against such a disobedient party. The Third Circuit has repeatedly stressed that defaults are drastic sanctions and should be reserved for cases comparable to the 'flagrant bad faith' and 'callous disregard' exhibited in National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976).¹ See also Harris v. City of Philadelphia, 47 F.3d 1311 (3d Cir. 1995).

When determining whether the sanction of striking an answer and entering default judgment is appropriate, this Court must weigh the following six factors: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal [or default] which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense. Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863, 868 (3d Cir. 1984). It is not necessary that all six factors weigh in favor of default judgment, rather, each case is to be considered on a case by case basis with each factor being

¹ In National Hockey League, the Supreme Court held that it was not an abuse of discretion to dismiss a case pursuant to Rule 37 where crucial interrogatories remained substantially unanswered for seventeen months despite numerous extensions, admonitions by and warnings from the court, and promises and commitments by the plaintiffs. National Hockey League, 427 U.S. at 640-41.

given due consideration where applicable. See Hoxworth v. Blinder, Robinson & Co., Inc., 980 F.2d 912, 919 (3d Cir. 1992).

Based upon the factors that have been outlined by the Third Circuit in Poullis, this Court finds that those factors have been met here, that the parties in this case have been personally responsible for the conduct of this litigation, that the Plaintiffs have been prejudiced by the failure of the Debtor in this case in many instances to meet the scheduling orders and respond to discovery, that there has been a history throughout this case of delay on the part of the Debtor, and the conduct in this regard by Debtor has been willful and in bad faith. Moreover, in view of the history of this case, no other sanction that this Court could enter would be effective.

1. Personal Responsibility

The Debtor in the instant case shoulders substantial personal responsibility for her failure to abide by discovery rules and orders in this case. Debtor's ability to produce select documents, such as a bank statement from the month of April 2010 and a single page document showing interest accrued on her \$80,000 Share Certificate shows her comprehension of the nature of documents sought and her ability to produce them at her discretion. Debtor's counsel has indicated on numerous occasions that he understood what documents the Court was ordering turned over to Plaintiffs and that he communicated these requests to the Debtor on multiple occasions. Despite the explicit and repeated warning from this Court that Debtor's Answer would be stricken and default judgment entered if the ordered discovery was not produced, Debtor remained intransigent in her defiance of those orders.

2. Prejudice to the Plaintiffs

This Court reaches a similar result with respect to the prejudice to the Plaintiffs. Plaintiffs have been required to expend significant time and costs in attempting to secure responses to their discovery requests, responses which were never adequately made. Debtor, at every stage in the litigation, has either been non-responsive or partially responsive in an untimely manner. Plaintiffs initiated a law suit in 2007, obtained a judgment against the Debtor in May of 2009 and have had to pursue the Debtor in and out of bankruptcy court for over four years. Plaintiffs have had to file two motions for sanctions for discovery violations and were hindered in making a successful motion for summary judgment due to Debtor's non-responsiveness to

discovery requests. The record in this case demonstrates that Plaintiffs were deprived of important information because of Debtor's non-compliance and delayed partial compliance with discovery orders. The prejudice flowing from Debtor's failures is apparent.

3. *History of Dilatoriness*

Examples of dilatory behavior pervade the history of this case. From the outset, Debtor failed to answer timely and the Plaintiffs' motion for default judgment prompted an untimely request for an extension of time to answer by Debtor. Thereafter, Debtor's counsel failed to appear at a hearing on her own motion for an extension of time to conduct discovery, which was opposed by Plaintiffs, requiring yet another motion and hearing regarding discovery and entry of a revised scheduling order. Plaintiffs have brought two motions for sanctions as a result of Debtor's discovery failures. Plaintiffs' ability to prevail on their motion for summary judgment was also hampered by Debtor's failure to produce discovery in a timely manner. While it is true that in the last two months, several documents have trickled in from Debtor purporting to satisfy Plaintiffs' discovery requests, such documents are far from compliant with Plaintiffs' requests and in some cases are entirely non-responsive to this Court's various discovery orders.

4. *Willingness and Bad Faith*

This Court believes that the Debtor's conduct is intentional and not the result of excusable neglect. Debtor's counsel stated on the record at the January 29, 2013 hearing the following:

Judge, the only thing I can say is that I 've had the client in my office, I've explained it to her, she was aware of the issue, I can certify as an officer of the court that I am not in possession of any documents that would shed any light or answer the discovery requests, its [*sic*] not that I'm being disrespectful to the court...

(See Audio Transcript, January 29, 2013, 11:13:20 A.M.). Moreover, Debtor's ability to obtain her financial documents from various financial institutions is evident from her own production of those documents, albeit in a very limited and select manner. For example, Debtor has chosen to provide the Plaintiffs and this Court with one bank statement from April 2010 and mortgage statements from February 2010 to June 2011. Debtor's selective production, according to her

own time table and not this Court's, is evidence of her intention to stymie Plaintiffs from being able to proceed in this litigation.

5. *Alternative Sanctions*

This Court recognizes that dismissal must be a sanction of last, not first resort. Carter v. Albert Einstein Med. Centr., 804 F.2d 805, 807 (3d Cir. 1986). It cannot be denied that the court could impose some lesser penalty than default such as imposition of costs and attorney's fees incurred in the course of Plaintiffs' numerous motions for sanctions, motion for summary judgment, and other discovery dispute related costs. Alternatively, this court could preclude the Debtor from presenting testimony at trial on issues related to her abuse of the discovery process. See Curtis T. Bedwell & Sons v. International Fidelity Ins. Co., 843 F.2d 683, 695-96 (3d Cir. 1988). It is evident, however, that in light of the history of the Debtor's conduct and in light of the explicit warning given by this Court at the December 11, 2012 and January 29, 2013 hearings on the Motion, this Court finds that no other sanction would be effective in this case.

Were this Court to impose the sanction of precluding Debtor from presenting testimony at trial on issues related to her abuse of the discovery process, this Court finds that going to trial would be an exercise in futility. As noted above, this Court did not grant summary judgment in Plaintiffs' favor initially because the Court required additional evidence related to the Debtor's "intent" when she dissipated the funds after judgment was entered against her and the constructive trust imposed. This Court sought to give Defendant every opportunity to present the Court with a legitimate reason, supported by documentary evidence, as to why or how she spent the life insurance proceeds she came into after entry of the May 19, 2009 Judgment imposing an explicit constructive trust. After summary judgment was denied the Plaintiffs were quick to point out, and this Court agreed, that the only way that the Plaintiffs would be able to present such a case would be for the Defendant to comply with Plaintiffs' discovery requests. Thus, this Court concludes that any such alternative sanction which would preclude Defendant from presenting testimony at trial on issues related to how, where, and/or why she expended the funds in question would be ineffective.

6. *Meritoriousness of the Claims and Defenses*

The Plaintiffs' claim asserted under 11 U.S.C. §523(a)(4) is meritorious.² As noted by this Court at an earlier hearing on the Plaintiffs' Motion for Summary Judgment, the only reason that the Court did not grant summary judgment on the §523(a)(4) claim was because the Plaintiffs had insufficient circumstantial evidence going to Plaintiffs' intent when she dissipated the life insurance proceeds from her account post-judgment. This Court specifically held that the discovery being sought by Plaintiffs held the "key part of the case for them and they need that... [t]hats the reason [the Court] didn't grant summary judgment..." (See Audio Transcript January 29, 2013 at 11:11:30 a.m.).

As noted above, the May 19, 2009 Order entered by the State Court Judge in Plaintiffs' favor specifically held that a constructive trust was thereby imposed over all of the insurance proceeds disbursed to Debtor. A short while after the State Court Judge denied Debtor's stay pending appeal, the Debtor transferred substantial amounts of money out of her account to undisclosed locations. The Debtor has asserted that she used these sums for her living expenses, however, in light of the fact that Debtor nets over \$6,000.00 per month, it seems unbelievable that Debtor required over \$400,000 in life insurance proceeds to pay regular monthly living expenses during the span of four to five years. Debtor has not produced any documentation in support of her bald assertions that she paid off her student loans, paid off her vehicles, or paid money over to her own adult sons, as she has asserted in her unsubstantiated certifications.

Debtor's counsel has indicated that, if given the opportunity to go to trial and take the stand, Debtor would concede to spending all of the funds at issue, much of it post-judgment, but would argue that she thought she could spend it because Plaintiffs had not yet collected said funds from her. If this Court were to permit the case to proceed to trial, any such defense would be viewed as baseless and unfounded from the outset, in light of the explicit language in the May 19, 2009 Order and the Debtor's admitted knowledge of the entry of said order. With

² At the December 11, 2012 hearing on the Plaintiffs' Motion for Summary Judgment, this Court expressed doubt as to the meritoriousness of the Plaintiffs' §523(a)(2)(A) claim and §523(a)(6) claim at the summary judgment stage. This Court recognized that the §523(a)(4) claim was the Plaintiffs' strongest case and the Plaintiffs' acknowledged that position. Because Plaintiffs would only need to succeed on one of their §523(a) claims in order to have the debt be held nondischargeable, the "meritoriousness" prong of the Poulis test will only consider the Plaintiffs' claim under §523(a)(4).

respect to the order and the Defendant's knowledge of the contents therein, the following excerpt from the Defendant's August 30, 2012 deposition is illuminating:

Mr. Agrawal [Plaintiffs' Attorney]: While off the record counsel had a colloquy where counsel agreed to stipulate to the following facts, and I invite Mr. Drinkwater to correct me if I misspeak. First, all of the life insurance proceeds were spent by the defendant, Pamela Brown, following her receipt of such proceeds. Second, an Order for Summary Judgment was entered on May 19, 2009, directing Miss Brown to pay Paul H. Brown and Malik Brown the sum of \$277,600 within 30 days of the order. Third, on July 6, 2009, Miss Brown received a payment of \$195,717.65, raising the balance of her account to \$197,585.59...

...Counsel has represented that he will provide us with an explanation as to where these proceeds were spent.

Mrs. Brown was aware of the entering of the order directing her to pay \$277,600 to the defendants, yet failed to do so, despite the receipt of \$195,717.65.

...

Mr. Drinkwater: It is so stipulated that Pamela Brown spent those monies in her personal capacity.

...

Mr. Agrawal: We'll go back on the record. To clarify, Mr. Drinkwater stated that despite the order of 19th May, 2009, directing Mrs. Brown to pay the sum of \$277,600.00 within 30 days of the order to Paul Brown and Malik Brown, who are the plaintiffs of this action, she not only failed to pay the money; however, as stated previously on the record she received a payment of \$195,717.65 on July 6th, 2009, approximately 2 months after the order was entered, and cannot account for the expenditures of this money at this time.

...

Furthermore, Mrs. Brown has also represented to all counsel present that at all times relevant hereto she was represented by counsel throughout these proceedings.

Mr. Drinkwater: So stipulated, but I still reserve my objection to further production of documents. The purpose of the stipulation is to obviate the need for further production of documents.

See Plaintiffs' Motion for Summary Judgment, Doc. 21, Exhibit F, pg. 18 of 26.

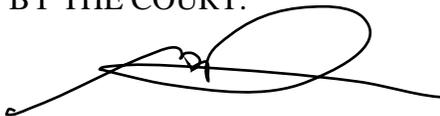
At this stage in the litigation, the **absence** of documents submitted by the Defendant is viewed as being equally, if not more, probative of her intent when she transferred and/or dissipated the funds that were subject to the judicially imposed constructive trust. Thus, this Court can conceive of no meritorious defense that could be offered in this case by Defendant that would defeat the Plaintiffs' claims asserted pursuant to §523(a)(4).

III. CONCLUSION

This Court is not unmindful that the remedies sought by the Plaintiffs are extreme, harsh, and will, when imposed, deprive the Debtor of her right to adjudication on the merits in a case where a ruling in favor of the Debtor would entitle her to pursue a fresh start. While this is a compelling consideration in arriving at a decision, it is not the only consideration. This Court is satisfied that the Debtor has intentionally and willfully abused the judicial process by refusing to comply with the Rules of Discovery and by repeatedly refusing to comply with Orders of this Court.

In light of the foregoing, this Court is constrained to conclude that the Plaintiffs' Motion for sanctions is well taken and Plaintiffs' are entitled to the entry of an order striking the Debtor's Answer in the adversary proceeding and the entry of default pursuant to Fed.R.Civ.P. 37(b). A proof hearing to establish the amount of the judgment shall be held on February 21, 2013 at 10:00 A.M. in Courtroom 4C in lieu of the previously scheduled trial.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Gloria M. Burns', with a large, stylized flourish extending to the right.

Honorable Gloria M. Burns
United States Bankruptcy Judge

Dated: February 19, 2013