

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

IN RE)
)
JOSEPH LLOYD SOELBERG,) **Case No. 15-01355-TLM**
HEATHER M. SOELBERG,)
) **Chapter 13**
Debtors.)
_____)
)
ANNETTE LLOYD DAVIDSON,)
)
Plaintiff,)
)
v.) **Adv. No. 15-06054-TLM**
)
JOSEPH LLOYD SOELBERG,)
)
Defendant.)
_____)

**SUMMARY ORDER ON (1) PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT AND (2) DEFENDANT’S
MOTION TO STRIKE DECLARATION**

Plaintiff Annette Davidson filed the complaint commencing this adversary proceeding alleging that an obligation owed her by debtor Joseph Soelberg (“Defendant”) should be held nondischargeable. On December 14, 2015, the Court entered a summary order denying Plaintiff’s motion for summary judgment. Doc. No. 22.

On February 12, 2016, Plaintiff filed another motion for summary

judgment. Doc. No. 26 (“MSJ”). Among the materials submitted in support of the MSJ was a declaration of Steven Severn, Doc. No. 26-2 (“Severn Declaration”). The MSJ was set for hearing on March 14, 2016. Doc. No. 27.

Defendant on March 4 replied to the MSJ. Doc. No. 28. That reply indicated his reliance on prior briefing and his own affidavit from the earlier summary judgment process, Doc. Nos. 20, 20-1. Defendant also that day filed a statement of disputed and undisputed facts. Doc. No. 28-1 (“Defendant’s Statement”). Additionally, Defendant filed a motion to strike the Severn Declaration. Doc. No. 29 (“Motion to Strike”).

Plaintiff responded to Defendant’s March 4 filings by an objection noting that she viewed the same as untimely under LBR 7056.1 and that they should therefore be disregarded. Doc. No. 31. This Local Rule requires that parties opposing a motion for summary judgment “shall . . . file a responsive brief, and a statement of disputed and undisputed facts, at least fourteen (14) days prior to the hearing.” LBR 7056.1(b)(2). That same rule also provides that if the party wishes to file affidavits or other materials, they also must be filed at least 14 days before the date of the hearing.

The MSJ and the Motion to Strike were heard on March 14 and, following argument, taken under advisement.¹

¹ The Court is obviously aware of the motions to convert or dismiss Defendant’s pending chapter 13 case, and the hearing scheduled on such motions on April 12. However, even
(continued...)

DISCUSSION AND DISPOSITION

Plaintiff is correct that Defendant's March 4 submissions were not timely under the Local Rule. Opposing materials, both discretionary and mandatory, were due fourteen days before the March 14 hearing, *i.e.*, by February 29. LBR 7056.1(b)(2). Defendant neither asked for nor showed cause for an extension of time.

On the other hand, the reply on March 4 effectively did nothing more than harken back to the briefing and affidavit that Defendant filed in December 2015 to Plaintiff's earlier summary judgment motion. So, in one sense, the materials relied upon were actually "filed" at least fourteen days before the March 14 hearing. As to these documents, Defendant offered nothing new, and Plaintiff was not prejudiced.

A different analysis attends Defendant's Statement filed on March 4, Doc. No. 28-1. This was new material.² And it is, as Plaintiff complains, untimely. On that basis alone, it could be disregarded. Moreover, the Court has reviewed Defendant's Statement, and concludes that it is also not in compliance with the requirements of LBR 7056.1(b)(2)(A). Defendant's Statement does not "respond

¹ (...continued)

though dismissal or conversion might moot the dispute in this adversary proceeding, the present motions for summary judgment and to strike are at issue and ripe for determination.

² Defendant did not file the required statement of disputed and undisputed facts under LBR 7056.1(b)(2) when opposing Plaintiff's first summary judgment motion in December 2015 and, thus, violated the Local Rule at that time.

to each of the moving party's asserted undisputed facts [and] specifically identify whether such fact is disputed or undisputed" and, if disputed, to provide specific evidentiary citation to support that contention. Defendant's Statement agrees that two of the facts in Plaintiff's statement (¶¶ 8, 10) are undisputed, but fails to specifically respond to the other twenty-seven paragraphs in such statement, before asserting his own allegedly undisputed facts. This not only violates the Local Rule, it defeats its intended utility.³

Ultimately, however, this is an aspect of the case with little practical consequence. The Court has carefully reviewed all the materials, and arguments, presented by the parties and finds that this matter is not appropriate for summary adjudication. Even without opposition, a movant must show summary judgment is warranted under the standards established by the case law. Under those well-accepted standards, the Court cannot weigh evidentiary submissions, evaluate credibility (which includes impeachment), draw inferences favoring the movant rather than the opponent, fill in evidentiary gaps, and the like. *See, e.g., S.D. Sanders, Inc. v. Hazard (In re Hazard)*, 2015 WL 4735658, *1–2, 7 (Bankr. D. Idaho Aug. 10, 2015); *Gugino v. Clark's Crystal Springs Ranch, LLC (In re*

³ *Pro se* litigants' summary judgment materials submitted in improper form may be considered due to precedent mandating "liberal construction" of filings by such litigants. *See, e.g., Jensen-Edwards v. Nationstar Mortg., LLC (In re Jensen-Edwards)*, 535 B.R. 336, 339 n.2 (Bankr. D. Idaho 2015) (citations omitted). Counsel are not guaranteed similar leniency. *See Financial Fed'l Credit Union, Inc. v. Walter B. Scott & Sons, Inc. (In re Walter B. Scott & Sons, Inc.)*, 436 B.R. 582, 586–87 (Bankr. D. Idaho 2010) (addressing discretion of the Court in considering consequences for violation of LBR 7056.1).

Clark), 2014 WL 2895428 *2–3 (Bankr. D. Idaho June 25, 2014); *Boise City/Ada Cty. Hous. Auth. v. O'Brien (In re O'Brien)*, 2011 WL 1457304, *2–4 (Bankr. D. Idaho Apr. 15, 2011). On this record, the Court would be required to make such inappropriate inferences, evaluations and credibility determinations and weigh the evidence in order to grant the MSJ.

In determining that summary judgment is not appropriate, the Court also concludes that whether it grants or denies the Motion to Strike the Severn Declaration would not vary the ultimate conclusion and outcome on the MSJ, and the Motion to Strike is thus rendered moot.⁴

THEREFORE, the Court being advised and cause appearing:

IT IS HEREBY ORDERED that the Motion for Summary Judgment, Doc. No. 26, is DENIED. The Motion to Strike, Doc. No. 29, is DENIED AS MOOT.

DATED: March 16, 2016



A handwritten signature in black ink, appearing to read "Terry L. Myers".

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE

⁴ See *Hazard*, 2015 WL 4735658, at *8; *O'Brien*, 2011 WL 1457304, at *4.