



Dated: June 13, 2023
The following is ORDERED:

Jennie D. Latta

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
JACK WARREN HARANG,
Debtor.

Case No. 18-24543-L
Chapter 7 (asset)

Henry T. Dart and
Henry Dart Attorneys at Law, P.C.,
Plaintiffs,
v.
Jack Warren Harang,
Defendant.

Adv. Proc. No. 21-00112

**ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT
AND
DEFENDANT'S MOTION TO DISMISS**

BEFORE THE COURT are the Plaintiffs' *Motion for Partial Summary Judgment* as to Counts I and II of the *Complaint Objecting to Discharge of Debt and Claimed Exemptions* filed April 17, 2023 [ECF No. 66], and the Defendant's *Motion to Dismiss or, in the Alternative, to*

Enter a Plenary Summary Judgment Dismissing the Instant Adversary Proceeding with Prejudice filed April 28, 2023 [ECF No. 70]. The Defendant filed a *Response in Opposition to Plaintiff's Motion for Summary Judgment* on May 18, 2023 [ECF No. 74] and the Plaintiffs filed an *Opposition* to Defendant's motion to dismiss on May 24, 2023 [ECF No. 75]. The underlying complaint alleges, among other matters, a debt owed by the Defendant to Henry T. Dart and Henry Dart Attorneys at Law, P.C. (collectively "Dart") in the amount of \$1,628,696.14, which Dart asserts should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) for obtaining money, property or services by false pretenses, false representations and/or fraud (Count I), or, 11 U.S.C. § 523(a)(4) for fraud or defalcation while acting in a fiduciary capacity (Count II). The Defendant asserts that the adversary proceeding should be dismissed, or he should be granted summary judgment as to all counts of the complaint because he says that Dart lacks standing to bring his complaint because of an alleged defect in the judgment upon which it is based. In a prior *Order Granting Motion to Strike Affirmative Defenses* entered February 9, 2022, the Court struck all of the matter included in the Defendant's answer under the label "Affirmative Defenses" including the assertion that the Plaintiff lacks standing to pursue his complaint because "the complaint attempts to have the Court adjudicate liability of Harang-Defendant on a judgment without proof that the judgment exists." [ECF No. 15]. The Defendant's motion appears to be an attempt to resurrect this previously stricken defense.

JURISDICTION, AUTHORITY, AND VENUE

Jurisdiction over an adversary proceeding arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or

arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). Determinations of the dischargeability of particular debts, objections to discharges, and allowance or disallowance of exemptions from property of the estate all arise under the Bankruptcy Code and thus are core proceedings. *See* 11 U.S.C §§ 523(a); 727(a), 522 and 28 U.S.C. § 157(b)(2)(B), (I), and (J). Venue of this adversary proceeding is proper to the Western District of Tennessee because this proceeding arises in a bankruptcy case pending in this district. *See* 28 U.S.C. §1409(a).

SUMMARY JUDGMENT STANDARD

Federal Rule of Civil Procedure 56 made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7056 provides that summary judgment is appropriate if the movant can show that there is no genuine dispute as to any material fact and thus, the movant is entitled to judgment as a matter of law. Substantive law will identify which facts are material and a genuine issue of material fact exists only when, “there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). When deciding a motion for summary judgment, the court does not weigh the evidence to determine the truth of the matter asserted but to determine whether a genuine issue for trial exists. *Id.* In reaching its decision, the court views the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986).

The moving party bears the initial burden of proof that there are no genuine issues that might affect the outcome of the action under governing law. *In re Oliver*, 414 B.R. 361, 367 (Bankr. E.D. Tenn. 2009), citing, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 126 S. Ct. 2505,

2510 (1986); *Owens Corning v. Nat'l Fire Ins. Co.*, 259 F.3d 484, 491 (6th Cir.2001); Fed. R. Civ. P. 56(a), incorporated at Fed. R. Bankr. P. 7056.

The Court of Appeals for the Sixth Circuit has described the standards for granting summary judgment as follows:

A genuine issue of material fact exists when, “there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In deciding whether this burden has been met by the movant, this court views the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). However, to survive summary judgment, the Plaintiff must present affirmative evidence sufficient to show a genuine issue for trial. *Anderson*, 477 U.S. at 249, 106 S.Ct. 2505. Therefore, “[i]f evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 249-50, 106 S.Ct. 2505.

White v. Wyndham Vacation Ownership, Inc., 617 F.3d 472, 475-76 (6th Cir. 2010). Only disputes over facts that might affect the outcome of the suit under governing law will preclude the entry of summary judgment. *Id.* ““Summary judgment is proper if the evidence, taken in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.”” *Pazdierz v. First American Title Ins. Co. (In re Pazdierz)*, 718 F.3d 582, 586 (6th Cir. 2013), quoting *Mazur v. Young*, 507 F.3d 1013, 1016 (6th Cir.2007). When cross motions for summary judgment are filed, the court must consider each motion in turn to determine whether it may be granted. *Westfield Ins. Co. v. Tech Dry, Inc.*, 336 F.3d 503, 506 (6th Cir. 2003); *Taft Broadcasting Co. v. U.S.*, 929 F.2d 240, 248 (6th Cir. 1991).

BACKGROUND FACTS

Dart and Harang are lawyers admitted to practice in the state of Louisiana. In October 1995 the parties entered upon a joint venture to act as counsel in certain litigation. The complaint alleges

that each of them agreed to share all costs of litigation and all profits realized from litigation. In 1996, Dart entered into a Master Loan Agreement with Advocate Financial, LLC (“Advocate”) for the financing of litigation expenses. Although Harang did not join in the Master Loan Agreement, he was aware that Dart used Advocate loans to finance the expenses of the litigation undertaken by the joint venture. *Motion for Partial Summary Judgment (“MPSJ”)*, Ex. 2, p. 5.

On April 3, 2007, Dart was sued in Louisiana state court by Advocate to collect the unpaid balances of loans Dart had obtained for the benefit of the joint venture. *MPSJ*, Ex. 2, p. 1. Dart filed a Third Party Demand against Harang and his law firm, Jack W. Harang, A Professional Law Corporation (collectively “Harang”), alleging that Harang was obligated to Dart for all amounts Dart paid to Advocate for debts arising from their joint venture. *Id.* Specifically, Dart alleged that he was entitled to judgment against Harang in the amount of \$806,919.72, the amount Dart had paid to Advocate, together with all amounts Dart owed to Advocate pursuant to a consent judgment entered into with Advocate in 2008. *MPSJ*, Ex. 2, p. 2. The third-party demand described this consent judgment as a “partial settlement of Advocate’s lawsuit,” but described a dispute with Advocate concerning interest owed with respect to one of the Advocate loans that had been submitted to the Louisiana court for determination. *MPSJ*, Ex. 8, ¶’s XI and XII. The third-party demand acknowledged that Harang was not directly liable to Advocate but alleged that Harang agreed to be liable for half of the Advocate loans as part of the parties’ joint venture.

After discovery, the court granted summary judgment to Dart in the amount of \$1,217,304.75 together with legal interest from date of judicial demand until paid and all costs of the proceedings. *MPSJ*, Ex. 2, p. 2. Harang appealed the grant of summary judgment, and the appellate court remanded the case to the trial court finding there were genuine issues of material fact as to: “(1) the exact terms of the oral venture agreement between Dart and Harang; (2) whether

Harang expressly acknowledged his indebtedness for the Advocate loans at issue in the principal demand and third-party demand; and (3) if Harang is indebted for the Advocate loans, the amount, if any, owed by Harang to Dart under the ‘comprehensive lending scheme’ that Dart alone entered into with Advocate.” *Advocate Financial, LLC v. Henry Dart, Attorney at Law, A Professional Corporation, and Henry Dart*, 2014-0788 (La. App. 1 Cir. March 6, 2015) (unpublished). *MPSJ*, Ex. 2, p.2.

A trial was conducted July 18-19, 2017. Following a lengthy delay to permit the parties to attempt settlement, the court made written findings of fact and conclusions of law resulting in entry of judgment in favor of Dart and against Harang in the amount of \$1,172,914.44, together with legal interest from date of judicial demand until paid and all costs of the proceedings. *MPSJ*, Exs. 1 and 2.

Among the court’s findings were the following:

The Court finds the evidence supports Dart’s testimony about the nature of the oral joint venture agreement. The Court finds there was an oral joint venture and that the parties agreed to share both profits and expenses/costs equally. The Court finds that Harang was aware of the method of financing the mass tort/class action cases and cannot avoid his responsibility for his virile share of the debt simply because he refused to sign the loan documents.

The Court finds that Harang is responsible for one half of the Advocate loans which Dart negotiated on behalf of the joint venture. In addition to the evidence of Harang’s responsibility for his virile share of the joint venture’s debts which was presented by Dart at trial and mentioned above, the Court finds that Harang acknowledged his portion of the joint venture’s debt to Advocate, in writing, on July 1, 2003. On that date, Harang executed a handwritten note which stated: “At the resolution of my arbitration [2] I/we agree to pay off the adjusted Advocate balance.” The note is signed by Harang and dated.

The Court further finds that the evidence supports Dart’s claim for reimbursement of Harang’s virile share of the joint venture’s indebtedness to Advocate, which was paid by Dart on behalf of Harang, in the amount of \$1,172,914.44.

[2] Testimony established this reference to arbitration had to do with then-pending mass tort/class action litigation in Civil District in Orleans Parish.

MPSJ, Ex. 2, p. 5. The court entered its Final Judgment on December 27, 2017. *MPSJ*, Ex. 1.

Harang individually filed his voluntary petition under Chapter 7 of the Bankruptcy Code in Memphis, Tennessee, on June 1, 2018.

Dart filed his proof of claim in the amount of \$1,628,696.14 on November 1, 2018. Harang filed an objection to the claim on March 26, 2021, which was denied for lack of standing on May 7, 2021.

Dart commenced this adversary proceeding on November 18, 2021.

ANALYSIS

Setting aside for the moment Harang's challenge to the validity of the Louisiana judgment,¹ the Court considers Dart's claims that Harang's debt to him should be excepted from discharge.

The Plaintiffs' Motion for Partial Summary Judgment

Exceptions to discharge are strictly construed against the creditor and liberally in favor of the debtor. *Rembert v. AT & T Universal Card Servs. (In re Rembert)*, 141 F.3d 277, 281 (6th Cir. 1998); *In re Livingston*, 372 Fed.Appx. 613, 618 (6th Cir. 2010). The objecting party bears the burden to prove by a preponderance of the evidence that the debt is of the type excepted from discharge. *Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 661, 112 L.Ed.2d 755 (1991).

11 U.S.C. § 523(a)(2)(A)

Dart first seeks to except from discharge the debt owed by Harang pursuant to 11 U.S.C. § 523(a)(2)(A), which provides:

- (a) A discharge under section 727 ... does not discharge an individual debtor from any debt
 - (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—
 - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

¹ See 11 U.S.C. § 502(a): "A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects." Harang did object to Dart's proof of claim, but his objection was denied for lack of standing. [Bankruptcy ECF No. 260].

To except a debt from discharge under section 523(a)(2)(A) for false pretenses or a false representation, a creditor must prove that: (1) the debtor obtained money through a material misrepresentation that, at the time, the debtor knew was false or made with gross recklessness as to its truth; (2) the debtor intended to deceive the creditor; (3) the creditor justifiably relied on the false representation; and (4) its reliance was the proximate cause of loss. *In re Rembert*, 141 F.3d at 280–81. “False representations and false pretenses encompass statements that falsely purport to depict *current or past facts*.” *Peoples Sec. Fin. Co., Inc. v. Todd (In re Todd)*, 34 B.R. 633, 635 (Bankr. W.D. Ky. 1983) (emphasis in original). A promise to pay an obligation relates to a future event and cannot fall within the definition of a false representation or false pretense. *Id.*

Section 523(a)(2)(A) also includes debts resulting from actual fraud, a concept broader than misrepresentation. *See Husky Int’l Elec. Inc. v. Ritz*, 578 U.S. 356, 359, 136 S.Ct. 1581, 1586, 104 L. Ed.2d 655 (2016); *McClellan v. Cantrell*, 217 F.3d 890 (7th Cir. 2000). “[A]ctual fraud encompasses ‘any deceit, artifice, trick, or design involving direct and active operation of the mind, used to circumvent and cheat another.’” *Mellon Bank, N.A. v. Vitanovich (In re Vitanovich)*, 259 B.R. 873, 877 (B.A.P. 6th Cir. 2001), citing *McClellan*, 217 F.3d at 893.

The question of the dischargeability of a particular debt is a matter of federal law governed by the Bankruptcy Code. *Grogan v. Garner*, 498 U.S. at 284. “If the preponderance standard also governs the question of nondischargeability, a bankruptcy court could properly give collateral estoppel effect to those elements of the claim that are identical to the elements required for discharge and which were actually litigated and determined in the prior action.” *Id.*, citing Restatement (Second) of Judgments § 27 (1982).

In support of his contention that Harang’s debt to him should be excepted from discharge pursuant to section 523(a)(2)(A), Dart relies upon Harang’s letter agreements to share with co-

counsel the expenses incurred in three mass tort/class action cases. *MPSJ*, Attachment 1, *Statement of Uncontested Material Facts* (“*SUMF*”), ¶ 8. Dart also relies upon Harang’s knowledge that Dart was using loans from Advocate to finance litigation expenses. Dart asks the Court to apply collateral estoppel to factual issues actually decided by the Louisiana court.

None of the findings of the Louisiana court discuss a misrepresentation by Harang with respect to the joint venture and none of them mentions fraud. The findings of the Louisiana court establish that Harang is responsible for his share of the debt owed by Dart to Advocate even though Harang did not sign the loan documents with Advocate because of the nature of the relationship between Dart and Harang. The Louisiana court stated that since joint ventures and partnerships share essential elements, the relationship between Dart and Harang would be governed by partnership law, which provides that “[a] partner is bound for his virile share of the debts of the partnership.” *MPSJ*, Ex. 2, p. 4, citing La. Civ. Code art. 2817. The fact that Harang did not sign the loan documents was known to Dart at the time he entered into the agreement with Advocate. By not entering into the loan agreement with Advocate, Harang made clear his intention not to obligate himself or his law firm to repay that debt. No misrepresentation occurred with respect to obtaining the loans. Dart could not have relied on an obligation from Harang to Advocate when he entered into his agreement for the loans because he knew there was none. At most, Dart relied upon Harang’s obligation for half of the venture’s expenses arising from the legal relation between them. Dart’s allegation that Harang never intended to pay his share of the Advocate loans is immaterial. Harang had a legal obligation to pay his virile share of the obligations of the joint venture. Once the Louisiana court found that this was in fact the relation between the parties, Harang’s obligation was established.²

² Harang has argued numerous times, as discussed more fully below, that the Louisiana court lacked jurisdiction to enter a judgment against him. Harang’s arguments are better made to the Louisiana court. In this

Since the facts do not support the finding of false pretenses, a false representation, or actual fraud, Dart's motion for summary judgment as to Count I of the complaint must be denied.

11 U.S.C. § 523(a)(4)

Dart also argues that Harang's debt to him should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(4), which provides:

- (a) A discharge under section 727 ... does not discharge an individual debtor from any debt
- (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

Dart argues that the relationship between himself and Harang as joint venturers gave rise to a fiduciary relationship under Louisiana law, and that Harang's failure to pay his share of the joint venture's expenses amounts to fraud or defalcation while acting in a fiduciary capacity. Dart acknowledges that "the 'fiduciary capacity' requirement will be found only in 'situations involving an express or technical trust relationship arising from placement of a specific res in the hands of the debtor.'" *Long v. Piercy*, 21 F.4th 909, 926 (6th Cir. 2021), quoting *Bd. of Trs. of the Ohio Carpenters' Pension Fund v. Bucci (In re Bucci)*, 493 F.3d 635, 639-40 (6th Cir. 2007). "To except a debt from discharge as a defalcation, the preponderance of the evidence must establish '(1) a

bankruptcy case, the question is whether Dart has a claim against the bankruptcy estate, and secondarily, whether some or all of that claim is excepted from discharge. The Court has determined that Harang does not have standing to object to the allowance of Dart's claims because his bankruptcy estate is administratively insolvent. There is no possibility that there will be a surplus returned to him after all creditors are paid. Therefore, he has no pecuniary interest in the claims allowance process. *See Order on Standing of Debtor to Object to Claims* [Bankruptcy ECF No. 260], May 7, 2021. The issue properly before the Court at this time, an issue in which Harang is vitally interested, is whether Dart's claim will be excepted from discharge, meaning that Harang will continue to be personally responsible to pay it even if he receives a discharge in bankruptcy. If the outcome of this adversary proceeding is that Harang is personally liable to pay the Louisiana judgment, then the validity of that judgment will become an issue for the parties but not for this bankruptcy court. To further complicate matters, Harang raised the issue of the validity of the Louisiana judgment among his "Affirmative Defenses" in this proceeding. Those defenses were stricken, however, on the motion of Dart. *See Order Granting Motion to Strike Affirmative Defenses*, February 9, 2022 [ECF No. 15]. The Court has already determined that Harang may not raise the validity of the Louisiana judgment as a defense in this adversary proceeding.

preexisting fiduciary relationship, (2) a breach of that fiduciary relationship, and (3) a resulting loss.” *Id.* quoting *Bucci*, 493 F.3d at 639.

Dart is correct that the relationship between joint venturers is the same of that of partners under Louisiana law. *Broadmoor, LLC v. Ernest N. Morial New Orleans Exhibition Hall Auth.*, 2004-0211, 2004-0212, p. 18 (La. 3/18/04), 867 So. 2d 651, 663; *Riddle v. Simmons*, 40,000, p. 18 (La. App. 2 Cir. 2/16/06), 922 So. 2d 1267, 1281. The Louisiana Civil Code expressly provides:

A partner owes a fiduciary duty to the partnership and to his partners. He may not conduct any activity, for himself or on behalf of a third person, that is contrary to his fiduciary duty and is prejudicial to the partnership. If he does so, he must account to the partnership and to his partners for the resulting profits.

La. Civ. Code art 2809. The Sixth Circuit has held that “a statute may create a trust for purposes of § 523(a)(4) if that statute defines the trust res, imposes duties on the trustee, and those duties exist prior to any act of wrongdoing.” *Bucci*, 493 F.3d at 640. Unlike the Tennessee Revised Uniform Partnership Act (“TRUPA”), Tenn. Code Ann. § 61-1-404(a), which the court found specifically imposes partnership property with a trust, the Louisiana statute imposes the duty to account to the partnership only upon a partner who has acted contrary to his fiduciary duty. The *Bucci* court emphasized, “We made clear in *In re Johnson* that ‘the requisite trust relationship must exist prior to the act creating the debt and without reference to it.’” *Id.*, 493 F.3d at 642, quoting *In re Johnson*, 691 F.2d 249, 252 (6th Cir. 1982). The court of appeals explains:

The court's narrow construction of the defalcation provision is consistent with the general rule that exceptions to discharge in § 523(a) must be narrowly construed. *See Meyers v. IRS (In re Meyers)*, 196 F.3d 622, 624 (6th Cir.1999); *XL/Datacomp, Inc. v. Wilson (In re Omegas Group, Inc.)*, 16 F.3d 1443, 1452 (6th Cir.1994). It is also consistent with the Supreme Court's holding in *Davis* that “[i]t is not enough that, by the very act of wrongdoing out of which the contested debt arose, the bankrupt has become chargeable as a trustee ex maleficio. He must have been a trustee before the wrong and without reference thereto.” *Davis*, 293 U.S. at 333, 55 S.Ct. at 154. *See also Quair v. Johnson*, 4 F.3d 950, 953 (11th Cir.1993) (citing *Davis* in stating that the “Supreme Court has consistently held that the term ‘fiduciary’ is not to be construed expansively” for purposes of § 523(a)(4)).

Bucci, 493 F.3d at 642. Dart's argument that Harang's debt to him is excepted from discharge because it arose out of fraud or defalcation arising out of a fiduciary relationship must fail because the Louisiana statute does not give rise to a fiduciary relationship between joint ventures unless and until there is an act contrary to the partnership.

Dart's argument must also fail because he has specified no trust res that could have been the subject of Harang's defalcation. In another part of the Louisiana court's *Reasons for Judgment* the court states:

The evidence showed that although the joint venture was successful in producing \$1,665,486.84 in attorney fees shared by Harang, Dart and Harang had written obligations to pay hundreds of thousands of dollars to finance the three mass tort/class action cases. Some of the cases did not result in recovery or the recovery was less than the expenses of the litigation.

MPSJ, Ex. 2, p. 4. The passage indicates that the venture's expenses exceeded its assets, and thus that it was not defalcation that resulted in the venture's losses, but the failure of Harang to pay his share of the expenses that exceeded the income of the joint venture. Nowhere does Dart claim that Harang came into possession of assets of the joint venture and failed to use them to pay expenses of the venture. It is true that Dart asserts that "Harang received credit through the Advocate loans and received the loan proceeds (money) to pay case expenses by virtue of his 50% interest in the Joint Venture, to satisfy his obligations to co-counsel." *Plaintiffs' Memorandum in Support of MPSJ*, p. 18. This falls short of saying that loan proceeds actually came into Harang's possession that he used for some purpose other than payment of the venture's expenses. Dart also says that "Harang benefitted by receiving attorney fees (money) in the Gaylord case, among others, which would not have been possible but for the Advocate loans, that paid his way through those cases." *Id.*, citing *Statement of Uncontested Material Facts*, ¶ 14, which states: "The Joint Venture produced \$1,665,486.64 in fees shared in by Harang, including \$113,686.34 from the Gaylord

case.” This seems to restate the comments of the Louisiana court concerning the limited success of the joint venture but falls short of showing that Harang came into possession of identifiable venture assets that he used for his own purposes. Dart has failed to establish the prima facie elements needed to except the Harang debt from discharge pursuant to section 523(a)(4).

Dart’s motion for partial summary judgment as to Counts I and II of the complaint must be denied because Dart has failed to show that he is entitled to judgment as a matter of law.

The Defendant’s Motion to Dismiss

The Court now turns to *Defendant Harang’s Motion to Dismiss or, in the Alternative, to Enter a Plenary Summary Judgment Dismissing the Instant Adversary Proceeding with Prejudice*, which is based upon Rules 12(b)(6) and 12(d) of the Federal Rules of Civil Procedure, made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 7012(b). Specifically, Harang argues that “Mr. Dart lacks standing prerequisite to vest this Court with subject matter jurisdiction to grant the relief the Dart Complaint requests, and there is no amendment to the Dart Complaint that can cure the absence of Mr. Dart’s standing” because, according to Harang, the judgment upon which Dart’s claim depends is not a judgment. *See Motion to Dismiss*, pp. 1-2.

This is the same argument that Harang has made three times previously, twice in the underlying bankruptcy case and once in this adversary proceeding. In the bankruptcy case, Harang attempted to object to the proof of claim filed by Dart on the basis that “the judgment upon which Dart bases Creditor’s Claim No. 2 and Creditor’s Claim No. 3 is nothing other than a *coram non judice* document which is purported to be a judgment but which is not a judgment for lack of subject matter jurisdiction of the court identified by the caption on the *coram non judice* document or any other court[.]” [Bankruptcy Case, ECF No. 234]. The Court denied Harang’s objection on the basis that *he* lacked standing to object to claims. [Bankruptcy Case, ECF No. 260]. Undeterred,

Harang filed “*Debtor’s Motion For Preliminary Hearing to Determine Article III Jurisdiction and Memorandum in Support*,” in which Harang move[d] “the Court to conduct a preliminary hearing for the sole purpose of the Court deciding whether claimant, Henry Dart (“Mr. Dart”), for failure to present a redressable claim for relief lacks standing essential to this Court having jurisdiction, required by the United States Constitution, Article III, to adjudicate.” [Bankruptcy Case, ECF No. 262]. This motion was summarily denied two days later. [Bankruptcy Case, ECF No. 264]. Harang sought leave to appeal the Court’s order denying his motion for preliminary hearing. Permission to appeal was denied. *In re Harang*, Civil No. 2:21-cv-02387-JTF-tmp, slip op. (W.D. Tenn. October 7, 2022.). Harang appealed this decision to the United States Court of Appeals for the Sixth Circuit, but later voluntarily dismissed his appeal. *Harang v. Bedwell*, No. 22-6001, slip op. (6th Cir. December 20, 2022).

Yet again, in this adversary proceeding, Harang raised a number of affirmative defenses, among which was the defense that, “On December 27, 2017 (date judge signed [Louisiana judgment]), over a year after the court’s subject matter jurisdiction over the subject matter of Advocate’s Dart Lawsuit, Docket 2007-11565, the court entered a *coram non judice* non-judgment naming Defendant-Harang as if Defendant-Harang was a judgment creditor to Dart.” *Answer and Affirmative Defenses of Defendant* [ECF No. 4, p. 45, ¶11]. Dart filed a *Motion to Strike Affirmative Defenses or Alternatively for Dismissal of Counterclaim Pursuant to Rule 12(b)(6), and/or for Judgment on the Pleadings* [ECF No. 9], which was granted based upon Harang’s failure to properly to respond to the motion. *Order Granting Motion to Strike Affirmative Defenses* [ECF No. 15].

Harang’s pending motion to dismiss and his response to the *Motion for Partial Summary Judgment* both rely upon his continuing argument that the Louisiana judgment is not a judgment

and thus cannot be the basis for Dart's claim. The focus of this adversary proceeding should be upon the dischargeability of Dart's proof of claim (*Complaint*, Counts I, II, and III), Harang's entitlement to discharge (Counts IV, V, VI, VII, and VIII), and Harang's entitlement to the exemptions he has claimed (Count IX). The focus of the *Motion for Partial Summary Judgment* is limited to the question of the dischargeability of the Dart claim. Harang advanced no argument to counter Dart's assertions that the claim should be excepted from discharge pursuant to 11 U.S.C. §§ 523(a)(2)(A) and (a)(4), when, in fact, legal and factual arguments might have been made. If the trustee in bankruptcy is persuaded that there are solid grounds to object to the claim itself and if a proper purpose will be served in doing so, she will raise an objection to the Dart claim at the appropriate time. The focus then will be upon the allowance of the claim against the assets of the bankruptcy estate. The Court has already found that Harang has not pecuniary interest in the claims allowance process.

If, on the other hand, Dart successfully demonstrates that his claim should be excepted from discharge or that Harang's discharge should be denied, then Harang once again will have a pecuniary interest in the validity of the Louisiana judgment. The lower federal courts, however, do not have jurisdiction to review a case litigated and decided in a state court. *Anderson v. Charter Tp. of Ypsilanti*, 266 F.3d 487, 492 (6th Cir. 2001), citing *Gottfried v. Med. Planning Servs.*, 142 F.3d 326, 330 (6th Cir. 1998). Only the United States Supreme Court has jurisdiction to correct state court judgments. *Id.* Harang's redress, if any, will be with the Louisiana courts (and perhaps the United States Supreme Court, although that seems unlikely given the passage of time since the Louisiana judgment was rendered). This bankruptcy court is without jurisdiction or authority to review the judgment of the Louisiana court.

Harang appears not to have distinguished between, on the one hand, the allowance of claims in bankruptcy, the determination of the dischargeability of a particular debt, and objections to discharge, which are matters clearly falling within the jurisdiction exercised by the bankruptcy courts (*see* 28 U.S.C. §§ 157(b)(2)(B) and (I)), and, on the other hand, the rendering and validity of a judgment between two parties not in bankruptcy, a matter clearly falling outside of bankruptcy jurisdiction. The *Reasons for Judgment* rendered by the Louisiana court clearly state that its judgment resulted from a bench trial conducted over two days. *MPSJ*, Ex. 2, p. 2. Harang participated fully in that trial. Harang argued, for example, that Dart's causes of action had expired in 2007, before his third-party demand was filed, but his argument was rejected. *Id.*, pp. 6-7. According to Dart, Harang did not appeal the Louisiana judgment. *MPSJ*, Attachment 1, *SUMF*, ¶ 47. Harang's argument concerning the validity of the Louisiana judgment may be directed to the Louisiana courts if and when this Court determines either that the claim based upon the judgment is excepted from discharge or that Harang has forfeited the discharge of all of his debts.

Harang's motion to dismiss should be denied both because his affirmative defense based upon the validity of the Louisiana judgment was stricken, and also because this bankruptcy court lacks jurisdiction and authority to review a judgment litigated and decided in a state court.

CONCLUSION

For the foregoing reasons, the *Motion for Partial Summary Judgment* is **DENIED**. The Plaintiff failed to demonstrate that he is entitled to judgment as a matter of law. The *Motion to Dismiss or, in the Alternative, to Enter a Plenary Summary Judgment Dismissing the Instant Adversary Proceeding with Prejudice* is also **DENIED**. The defense upon which it is based was stricken from the Defendant's answer as the result of the Defendant's failure to timely respond to

the motion to strike, and this Court lacks jurisdiction and authority to review a judgment rendered in a case decided by a state court.

cc: Debtor/Defendant
Attorney for Debtor/Defendant
Plaintiffs
Attorney for Plaintiffs
Chapter 7 Trustee