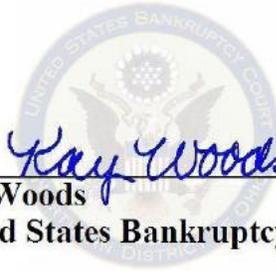


IT IS SO ORDERED.

Dated: June 9, 2016
03:25:27 PM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

VIRGINIA DUNCAN,

Debtor.

* * * * *

THE HOME SAVINGS & LOAN
COMPANY OF YOUNGSTOWN, OHIO,

Plaintiff,

v.

VIRGINIA DUNCAN,

Defendant.

CASE NUMBER 15-40842

ADVERSARY NUMBER 16-4008

HONORABLE KAY WOODS

MEMORANDUM OPINION REGARDING MOTION FOR SUMMARY JUDGMENT

This cause is before the Court on Motion for Summary Judgment
(Doc. 14) filed by Plaintiff The Home Savings and Loan Company of

Youngstown, Ohio ("Home Savings") on May 4, 2016. Home Savings seeks judgment against Debtor/Defendant Virginia Duncan based on her alleged failure to pay court-ordered restitution and requests that such judgment be deemed nondischargeable pursuant to 11 U.S.C. § 523(a). Ms. Duncan did not respond to the Motion for Summary Judgment.

For the reasons set forth herein, the Court will grant the Motion for Summary Judgment, in part, and deny the Motion for Summary Judgment, in part.

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B) and (I). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. BACKGROUND

Due to the well-documented history of Ms. Duncan's bankruptcy case, the Court will recite only those facts relevant to the Motion for Summary Judgment. For a more complete record of Ms. Duncan's bankruptcy case, refer to Memorandum Opinion Regarding Motion to Transfer Case to Proper Venue (Main Case, Doc. 175) entered by the Court on May 16, 2016.

A. Bankruptcy Case

Ms. Duncan, by and through T. Robert Bricker, Esq., filed a voluntary chapter 13 petition on May 8, 2015, which was denominated Case No. 15-40842 ("Main Case"). In Schedule F - Creditors Holding Unsecured Nonpriority Claims, Ms. Duncan listed Home Savings with a claim in the amount of \$0.00. The basis for the claim was as follows: "For Notice Only. Debtor is making payments directly to Creditor pursuant to criminal restitution order." (Main Case, Doc. 1 at 19.) On November 12, 2015, Ms. Duncan voluntarily converted her case to chapter 7 (Main Case, Doc. 64).

On February 18, 2016, Mr. Bricker filed Motion to Withdraw as Counsel (Main Case, Doc. 112), in which he stated that communications with Ms. Duncan had deteriorated to the extent that further representation was not possible. The Court held hearings on the Motion to Withdraw as Counsel on March 8, 2016 and March 24, 2016, at which Mr. Bricker and Ms. Duncan appeared. The Court granted the Motion to Withdraw as Counsel on the record at the March 24, 2016 hearing and entered an order to that effect the following day (Main Case, Doc. 145). Since that time, despite the Court's recommendation to Ms. Duncan that she obtain legal counsel, Ms. Duncan has represented herself *pro se*.

B. Complaint

On February 22, 2016, Home Savings filed Complaint to Determine Amount of Claim, for Judgment, and to Deny Discharge

Pursuant to 11 U.S.C. § 523 ("Complaint") (Doc. 1), which commenced this adversary proceeding. The following facts set forth in the Complaint are not disputed by Ms. Duncan.

On or about November 8, 2011, Ms. Duncan deposited a check in the amount of \$73,000.00 into her personal checking account maintained with Home Savings. (Compl. ¶ 8.) Upon depositing the check, Ms. Duncan submitted a request for Home Savings to transfer the sum of \$72,751.04 to the account of New House Title LLC maintained with the Bank of Tampa. (*Id.* ¶ 9.) On that same date, Home Savings sent the requested transfer. (*Id.* ¶ 10.) The \$73,000.00 check deposited by Ms. Duncan was returned to Home Savings because the account on which it was drawn had been closed. (*Id.* ¶ 11.)

Home Savings sought criminal charges against Ms. Duncan in the Mahoning County, Ohio, Court of Common Pleas ("State Court") based on the returned check. (*Id.* ¶¶ 12, 14.) Ms. Duncan ultimately pled guilty to two felony counts of passing bad checks pursuant to O.R.C. § 2913.11(B). (*Id.* ¶ 13.) On June 19, 2013, the State Court entered Judgment Entry of Sentence ("Judgment") against Ms. Duncan, which is attached to the Complaint as Exhibit A. (*Id.* ¶ 14.) As a condition of Ms. Duncan's community control, the Judgment ordered her to make restitution to Home Savings in the amount of \$70,312.21 ("Restitution Award") within one year. (*Id.*) Ms. Duncan failed to make restitution to Home

Savings as required by the Judgment, and the Restitution Award remains due and owing. (*Id.* ¶¶ 15-16.)

The Complaint contains seven requests for relief, in which Home Savings requests that the Court make the following findings:

1. Count One – the Restitution Award is nondischargeable pursuant to § 523(a)(7). (*Id.* ¶ 17.)
2. Count Two – the Restitution Award is nondischargeable pursuant to § 523(a)(2)(A). (*Id.* ¶ 20.)
3. Count Three – the Restitution Award is nondischargeable pursuant to § 523(a)(6). (*Id.* ¶ 23.)
4. Count Four – Home Savings is entitled to treble damages in the amount of \$210,936.93 (“Treble Award”) pursuant to O.R.C. §§ 2307.60 and 2307.61. (*Id.* ¶ 26.)
5. Count Five – the Treble Award should be allowed as an unsecured, nonpriority claim. (*Id.* ¶ 29.)
6. Count Six – the Treble Award is nondischargeable pursuant to § 523(a)(2)(A). (*Id.* ¶ 32.)
7. Count Seven – the Treble Award is nondischargeable pursuant to § 523(a)(6). (*Id.* ¶ 35.)

C. Answer

On March 31, 2016, Ms. Duncan filed a document in this proceeding that the Court deems to be an answer (“Answer”)

(Doc. 11).¹ Although the majority of the Answer does not address the allegations and claims asserted in the Complaint, Ms. Duncan denies that the entire Restitution Award remains due and owing and asserts several defenses. First, Ms. Duncan argues that the Restitution Award is dischargeable because she is in a chapter 7 case. (Ans. ¶ 10.) Second, Ms. Duncan contends that, because treble damages were not awarded to Home Savings in the State Court, treble damages can neither be awarded after the fact nor by another court. (*Id.* ¶ 11.) Finally, Ms. Duncan asserts that she cannot be tried or punished for the same crime twice. (*Id.*)

While Ms. Duncan admits that she pled guilty to two counts of passing bad checks and was ordered to make restitution to Home Savings, she asserts that she has tendered two restitution payments to Home Savings totaling \$3,500.00. (*Id.* ¶ 9.) Ms. Duncan states that she stopped making further restitution payments to Home Savings because Home Savings "argued [it] should be a party in the bankruptcy." (*Id.*) Ms. Duncan asserts that she scheduled Home Savings as a creditor for noticing purposes only. (*Id.*)

D. Motion for Summary Judgment

On May 4, 2015, Home Savings filed the Motion for Summary Judgment presently before the Court. Home Savings moves for

¹ Ms. Duncan also filed the Answer in *McDermott v. Duncan*, Adv. No. 16-04009. Much of the Answer addresses the allegations and claims asserted in that proceeding.

summary judgment only with respect to Counts One, Four, and Six of the Complaint.

Exhibit C to the Motion for Summary Judgment is Affidavit in Support of Plaintiff's Motion for Summary Judgment ("Affidavit") executed by Jude J. Nohra, who is Executive Vice President, General Counsel, and Secretary of Home Savings. (Aff. ¶ 1.) Mr. Nohra attests that Ms. Duncan has paid Home Savings \$3,500.00 against the \$70,312.31 Restitution Award. (*Id.* ¶ 5.) As a result, \$66,812.31 remains due and owing to Home Saving pursuant to the Judgment. (*Id.* ¶ 6.)

1. Count One

In Count One, Home Savings argues that the \$66,812.31 Restitution Award balance is nondischargeable pursuant to § 523(a)(7) because "such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss" (Mot. for Summ. J. at 6-7, quoting 11 U.S.C. § 523(a)(7) (2016).) Home Savings asserts that the Supreme Court "has determined that criminal restitution obligations are nondischargeable debts under 11 U.S.C. § 523(a)(7)." (*Id.* at 7, citing *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558-59 (1986); *Kelly v. Robinson*, 479 U.S. 36 (1986).)

2. Count Four

In Count Four, Home Savings seeks judgment against Ms. Duncan in the form of the \$207,436.93 Treble Award balance.² Home Savings alleges that, because passing bad checks is defined in the Ohio Revised Code as a "theft offense," O.R.C. § 2307.61(A)(1)(b)(ii) permits Home Savings to seek three times the value of the property subject to the theft offense – *i.e.*, three times the \$70,312.31 Restitution Award. (*Id.* at 7-8.)

3. Count Six

In Count Six, Home Savings asserts that the \$207,436.93 Treble Award balance is nondischargeable pursuant to § 523(a)(2)(A) because it is a debt for money obtained by actual fraud. Home Savings contends that Ms. Duncan necessarily committed actual fraud as a result of her guilty pleas for passing bad checks because, pursuant to O.R.C. § 2913.11(B), a necessary element of that offense is that the check be issued "with purpose to defraud." Therefore, Ms. Duncan has admitted that her debt to Home Savings is based on actual fraud.

² Home Savings calculates the treble damages as follows: \$70,312.31 (the Restitution Award) x 3 = \$210,936.93 (the Treble Award) - \$3,500.00 (the amount paid by Ms. Duncan) = \$207,436.93 (the Treble Award balance). (Mot. for Summ. J. at 7.)

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(a), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, states, in pertinent part:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

FED. R. CIV. P. 56(a) (2016). Material facts are those "that might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue of material fact exists "if a reasonable person could return a verdict for the non-moving party." *Jacob v. Twp. of W. Bloomfield.*, 531 F.3d 385, 389 (6th Cir. 2008), citing *Anderson*, 477 U.S. at 248.

"The moving party bears the burden of proving the absence of genuine issues of material fact and its entitlement to judgment as a matter of law." *Longaberger Co. v. Kolt*, 586 F.3d 459, 465 (6th Cir. 2009), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). In evaluating a motion for summary judgment, "the court must view the factual evidence and draw all reasonable inferences in favor of the nonmoving party." *Banks v. Wolfe County Bd. of Educ.*, 330 F.3d 888, 892 (6th Cir. 2003), citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. ANALYSIS

Section 523(a) identifies certain types of debt that are excepted from discharge, even if a debtor is otherwise eligible for a discharge. The creditor bears the burden of proving by a preponderance of the evidence that a debt is excepted from discharge pursuant to § 523(a). *Meyers v. I.R.S. (In re Meyers)*, 196 F.3d 622, 624 (6th Cir. 1999), citing *Grogan v. Garner*, 498 U.S. 279, 290-91 (1991).

Home Savings requests that the Court find that the Restitution Award balance and Treble Award balance are nondischargeable pursuant to § 523(a)(7) and (a)(2)(A), respectively. Those provisions state:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title 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;

* * *

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty -

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition[.]

11 U.S.C. § 523(a)(2)(A) and (a)(7) (emphasis added). “[T]hese provisions codify a long-standing bankruptcy policy that any debt which is shown to have arisen from a dishonest or otherwise wrongful act committed by a debtor is not entitled to the benefits of a bankruptcy discharge.” *Hoffman v. Anstead (In re Anstead)*, 436 B.R. 497, 500 (Bankr. N.D. Ohio 2010), citing *Cohen v. De La Cruz*, 523 U.S. 213 (1998).

As expressly stated in § 523(a), a discharge under § 727 – *i.e.*, a discharge in a chapter 7 case – does not discharge the types of debt specified therein. As a consequence, Ms. Duncan’s assertion in her Answer that a chapter 7 case “allow[s] all debts to be discharged” is without merit.

A. Count One

In Count One, Home Savings alleges that the \$66,812.31 Restitution Award balance is nondischargeable pursuant to § 523(a)(7). Based on the plain language of the statute, Count One fails as a matter of law. Section 523(a)(7) requires that the debt be “payable to and for the benefit of a governmental unit.” 11 U.S.C. § 523(a)(7). Home Savings does not allege nor does the

record establish that Home Savings is in any way a governmental unit.

This precise issue was addressed by the Sixth Circuit Court of Appeals in *Hughes v. Sanders*, 469 F.3d 475 (6th Cir. 2006). In *Hughes*, the creditor had obtained a pre-petition judgment against the debtor – his former attorney – for legal malpractice. Subsequent to the debtor filing a chapter 7 petition, the creditor sought a declaration that the judgment was nondischargeable pursuant to § 523(a)(7). The Court of Appeals upheld the district court's ruling that the judgment was not excepted from discharge pursuant to § 523(a)(7) because, *inter alia*, it was payable to a private party, as opposed to a governmental unit. The court first discussed the holding in *Kelly v. Robinson*, 479 U.S. 36 (1986), in which the Supreme Court found that "criminal restitution to be paid to the Connecticut Office of Adult Probation was nondischargeable under 11 U.S.C. § 523(a)(7)" ³ *Hughes*, 469 F.3d at 477. The Court of Appeals noted that "some courts have applied *Kelly* to penalties that are not payable to a governmental unit." *Id.* at 478 (citations omitted). However, the

³ *Kelly* was one of two cases cited by Home Savings in support of Claim One. The second, *Pennsylvania Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552 (1986), likewise involved a governmental unit as the creditor. In *Davenport*, the debtors were ordered to pay restitution to the Pennsylvania Department of Public Welfare after pleading guilty to welfare fraud. *Id.* at 555-56.

Court of Appeals was "not persuaded by the reasoning of [those] cases." *Id.*

First, the *Kelly* Court did not address the statute's requirement that the debt be payable to and for the benefit of a governmental entity, because that requirement was clearly met: the debt was a criminal restitution order, payable to the State Office of Adult Probation to recompense the defendant's theft from the State Department of Income Maintenance. The issue in *Kelly* was whether a criminal judgment ordering restitution is noncompensatory, despite its having been "calculated by reference to the amount of harm the offender has caused," *Kelly*, 479 U.S. at 52, and is therefore not dischargeable in bankruptcy. The Court concluded that criminal restitution, while for the benefit of the state, is not for the principal benefit of the victim, and therefore falls within the meaning of "not compensation for actual loss" in § 523(a)(7). *Id.* Second, the *Kelly* Court's repeated rationale for its determination that a criminal restitution judgment is not dischargeable is the importance of shielding the states from federal interference with the states' criminal justice systems. See *id.* at 44 ("Courts traditionally have been reluctant to interpret federal bankruptcy statutes to remit state criminal judgments."); *id.* at 47 ("Our interpretation of the Code also must reflect the basis for this judicial exception, a deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings."). And finally, the plain and unambiguous language of the statute requires that the "fine, penalty, or forfeiture [be] payable to and for the benefit of a governmental unit." 11 U.S.C. § 523(a)(7) (emphasis added).

We therefore hold that *Kelly* applies narrowly to criminal restitution payable to a governmental unit.

Id.

Home Savings is not a governmental unit. Accordingly, the Court finds that the \$66,812.31 Restitution Award balance is not

excepted from discharge pursuant to § 523(a)(7). The Court will deny the Motion for Summary Judgment with respect to Count One.

B. Count Four

In Count Four, Home Savings asserts that it is entitled to the \$207,436.93 Treble Award balance pursuant to O.R.C. §§ 2307.60 and 2307.61. Specifically, Home Savings contends that the crime of passing bad checks constitutes a "theft offense" that entitles Home Savings to an award of treble damages as a matter of law.

A federal court "must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which that judgment was rendered." *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). In Ohio, the following four elements must be established to assert collateral estoppel:

(1) The party against whom estoppel is sought was a party or in privity with a party to the prior action;

(2) There was a final judgment on the merits in the previous case after a full and fair opportunity to litigate the issue;

(3) The issue must have been admitted or actually tried and decided and must be necessary to the final judgment; and

(4) The issue must have been identical to the issue involved in the prior suit.

Cashelmara Villas Ltd. P'Ship v. DiBenedetto, 623 N.E.2d 213, 215-16 (Ohio Ct. App. 1993), quoting *Monahan v. Eagle Picher Indus., Inc.*, 486 N.E.2d 1165, 1168 (Ohio Ct. App. 1984).

There is no dispute that Ms. Duncan was a party before the State Court. Moreover, the Judgment establishes that Ms. Duncan appeared before the State Court at her sentencing hearing on June 13, 2013, she was "afforded all rights," and she pled guilty to the charges of passing bad checks. (Judgment at 1.) Finally, the issue before the State Court was whether Ms. Duncan committed a violation of O.R.C. § 2913.11(B), which states, "No person, with purpose to defraud, shall issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing that it will be dishonored or knowing that a person has ordered or will order stop payment on the check or other negotiable instrument." O.R.C. § 2913.11(B) (2016). Thus, the issue before this Court in Count Four – *i.e.*, whether Ms. Duncan committed a criminal act that was a theft offense – is identical to the issue before the State Court. Accordingly, this Court must honor the Judgment and the findings therein.

Ohio Revised Code § 2307.60(A)(1) states,

Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section 2315.21 or another section of the Revised Code.

O.R.C. § 2307.60(A)(1) (2016) (emphasis added). In turn, Ohio Revised Code § 2307.61(A) expressly permits Home Savings to recover three times the value of the property subject to the theft offense:

(A) If a property owner brings a civil action pursuant to division (A) of section 2307.60 of the Revised Code to recover damages from any person who willfully damages the owner's property or who commits a theft offense, as defined in section 2913.01 of the Revised Code, involving the owner's property, the property owner may recover as follows:

(1) In the civil action, the property owner may elect to recover moneys as described in division (A)(1)(a) or (b) of this section:

(a) Compensatory damages that may include, but are not limited to, the value of the property and liquidated damages in whichever of the following amounts applies:

* * *

(b) Liquidated damages in whichever of the following amounts is greater:

* * *

(ii) Three times the value of the property at the time it was willfully damaged or was the subject of a theft offense, irrespective of whether the property is recovered by way of replevin or otherwise, is destroyed or otherwise damaged, is modified or otherwise altered, or is resalable at its full market price. This division does not apply to a check, negotiable order of withdrawal, share draft, or other negotiable instrument that was returned or dishonored for insufficient funds by a financial institution if the check, negotiable order of withdrawal, share draft, or other negotiable instrument was presented by an individual borrower

to a licensee under sections 1321.35 to 1321.48 of the Revised Code for a loan transaction.

O.R.C. § 2307.61(A)(1)(b)(ii) (2016).⁴

As set forth in the Judgment and admitted by Ms. Duncan in her Answer, Ms. Duncan pled guilty to two counts of passing bad checks pursuant to O.R.C. § 2913.11(B). "In Ohio, passing a bad check is considered a theft offense." *Roseman Bldg. Co. v. Vision Power Sys., Inc.*, 2010 Ohio 229, ¶ 23 (Ct. App. Ohio 2010). Specifically, the definition of "theft offense" in O.R.C. § 2913.01(K)(1) expressly includes a "violation of section . . . 2913.11." O.R.C. § 2913.01(K)(1) (2016). Thus, it is undisputed that Ms. Duncan committed a "criminal act," as required by O.R.C. § 2307.60(A)(1), and that such criminal act was a "theft offense," as required by O.R.C. § 2307.61(A)(1)(b)(ii). Accordingly, in lieu of compensatory damages, Home Savings is entitled to damages in an amount equal to three times the value of the property subject to the theft offense.

Ms. Duncan presents two defenses to Count Four: (i) because treble damages were not awarded to Home Savings in the State Court, treble damages can neither be awarded after the fact nor by another

⁴ The exception in O.R.C. § 2307.61(A)(1)(b)(ii) regarding checks presented by an individual borrower to a licensee under O.R.C. §§ 1321.35 to 1321.48 does not apply in this case. That exception "protect[s] those individuals obtaining short-term loans whose checks in payment of those loans bounce or are otherwise dishonored." *Blue Ribbon Meats, Inc. v. Fazio*, 2015 Ohio 3146, ¶ 4 (Ohio Ct. App. 2015).

court; and (ii) she cannot be tried or punished for the same crime twice. Both defenses are without merit. The matter before the State Court was a criminal proceeding prosecuted by the State of Ohio, wherein Ms. Duncan was ordered to pay criminal restitution. This is a civil proceeding brought by a private party, wherein Home Savings seeks civil damages. Thus, neither *res judicata* nor double jeopardy is a valid defense to this proceeding. The Court will grant the Motion for Summary Judgment with respect to Count Four.

The State Court determined that the value of the property subject to the theft offense was \$70,312.31 – *i.e.*, the Restitution Award. Because Ms. Duncan has already tendered \$3,500.00 to Home Savings, the Court will enter judgment against Ms. Duncan in favor of Home Savings for treble damages in the amount of \$207,436.93.⁵

C. Count Six

In Count Six, Home Savings seeks a judgment that the \$207,436.93 Treble Award balance is nondischargeable pursuant to § 523(a)(2)(A). That provision excepts from discharge “any debt – . . . for money . . . to the extent obtained by – . . . actual fraud.” 11 U.S.C. § 523(a)(2)(A).

Ms. Duncan pled guilty to two violations of O.R.C. § 2913.11(B), which states, “No person, with purpose to defraud,

⁵ The Restitution Award balance of \$66,812.31 is subsumed by and encompassed in the Treble Award judgment of \$207,436.93. Home Savings is entitled to total recovery no greater than the Treble Award judgment of \$207,436.93.

shall issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing that it will be dishonored or knowing that a person has ordered or will order stop payment on the check or other negotiable instrument." O.R.C. § 2913.11(B) (emphasis added). As a consequence, the record establishes that Ms. Duncan committed actual fraud, as set forth in § 523(a)(2)(A). However, the remaining issue is whether the entire \$207,436.93 Treble Award balance, or only the \$66,812.31 Restitution Award balance, is a nondischargeable debt for money obtained by fraud.

This precise issue was addressed by the Supreme Court in *Cohen v. De La Cruz*, 523 U.S. 213 (1998). In *Cohen*, a rent control administration entered a pre-petition judgment against the debtor for charging rents above levels permitted by municipal ordinance. After the debtor filed a voluntary chapter 7 petition, his tenants filed an adversary proceeding seeking a determination that the rent control administration's award was nondischargeable pursuant to § 523(a)(2)(A) as a debt for actual fraud. The tenants also sought statutory treble damages and attorney fees pursuant to the state's consumer fraud act. The bankruptcy court found that the debtor had committed actual fraud and ruled in the tenants' favor. The bankruptcy court also awarded treble damages and attorney fees and found that § 523(a)(2)(A) encompassed those damages because

they arose from the fraud. The Supreme Court upheld that ruling and concluded:

In short, the text of § 523(a)(2)(A), the meaning of parallel provisions in the statute, the historical pedigree of the fraud exception, and the general policy underlying the exceptions to discharge all support our conclusion that "any debt . . . for money, property, services, or . . . credit, to the extent obtained by" fraud encompasses any liability arising from money, property, etc., that is fraudulently obtained, including treble damages, attorney's fees, and other relief that may exceed the value obtained by the debtor.

Id. at 223 (emphasis added).

Pursuant to the Supreme Court's holding in *Cohen*, this Court finds that the entire \$207,436.93 Treble Award balance is nondischargeable pursuant to § 523(a)(2)(A) as a debt arising from actual fraud. The Court will grant the Motion for Summary Judgment with respect to Count Six.

IV. CONCLUSION

The Restitution Award is not "payable to and for the benefit of a governmental unit," as expressly required by § 523(a)(7). Accordingly, the Court will deny the Motion for Summary Judgment with respect to Count One.

Pursuant to the doctrine of collateral estoppel, this Court must honor the State Court's Judgment. The Judgment establishes that Ms. Duncan committed a criminal act that was a theft offense. Pursuant to O.R.C. §§ 2307.60(A)(1) and 2307.61(A)(1)(b)(ii), Home Saving is entitled to treble damages. The Court will grant the

Motion for Summary Judgment with respect to Count Four. Because Ms. Duncan has already tendered \$3,500.00 to Home Savings, the Court will enter judgment against Ms. Duncan in favor of Home Savings for treble damages in the amount of \$207,436.93.

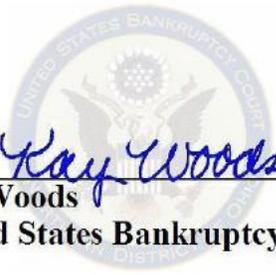
Finally, the crime of passing bad checks pursuant to O.R.C. § 2913.11(B) requires that the individual act "with purpose to defraud." Furthermore, the Supreme Court has determined that treble damages resulting from actual fraud are nondischargeable pursuant to § 523(a)(2)(A). Thus, the \$207,436.93 judgment for treble damages is nondischargeable pursuant to § 523(a)(2)(A). The Court will grant the Motion for Summary Judgment with respect to Count Six.

An appropriate order will follow.

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IT IS SO ORDERED.

Dated: June 9, 2016
03:26:18 PM



Kay Woods
 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

VIRGINIA DUNCAN,

Debtor.

* * * * *

THE HOME SAVINGS & LOAN
COMPANY OF YOUNGSTOWN, OHIO,

Plaintiff,

v.

VIRGINIA DUNCAN,

Defendant.

CASE NUMBER 15-40842

ADVERSARY NUMBER 16-4008

HONORABLE KAY WOODS

 ORDER GRANTING MOTION FOR SUMMARY JUDGMENT, IN PART, AND
 DENYING MOTION FOR SUMMARY JUDGMENT, IN PART

This cause is before the Court on Motion for Summary Judgment
(Doc. 14) filed by Plaintiff The Home Savings and Loan Company of

Youngstown, Ohio ("Home Savings") on May 4, 2016. Home Savings seeks judgment against Debtor/Defendant Virginia Duncan for her alleged failure to pay court-ordered restitution to Home Savings and requests that such judgment be deemed nondischargeable pursuant to 11 U.S.C. § 523(a). Ms. Duncan did not respond to the Motion for Summary Judgment.

On February 22, 2016, Home Savings filed Complaint to Determine Amount of Claim, for Judgment, and to Deny Discharge Pursuant to 11 U.S.C. § 523 ("Complaint") (Doc. 1), which commenced this adversary proceeding. On March 31, 2016, Ms. Duncan filed a document in this proceeding that the Court deems to be an answer (Doc. 11). Home Savings moves for summary judgment only with respect to Counts One, Four, and Six of the Complaint.

For the reasons set forth in the Court's Memorandum Opinion Regarding Motion for Summary Judgment entered on this date, the Court hereby:

1. Finds that the Restitution Award balance is not "payable to and for the benefit of a governmental unit," as expressly required by § 523(a)(7).
2. Denies the Motion for Summary Judgment with respect to Count One.
3. Finds that Ms. Duncan committed a criminal act that was a theft offense.

4. Finds that, pursuant to O.R.C. §§ 2307.60(A)(1) and 2307.61(A)(1)(b)(ii), Home Saving is entitled to treble damages.
5. Enters judgment against Ms. Duncan in favor of Home Savings for treble damages in the amount of \$207,436.93.
6. Grants the Motion for Summary Judgment with respect to Count Four.
7. Finds that the treble damages judgment in the amount of \$207,436.93 is a debt obtained by actual fraud.
8. Finds that the treble damages judgment in the amount of \$207,436.93 is nondischargeable pursuant to § 523(a)(2)(A).
9. Grants the Motion for Summary Judgment with respect to Count Six.

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