

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: April 20 2007

A handwritten signature in blue ink, appearing to read "Mary Ann Whipple".

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No.: 04-30690
	)	
Alicia Gray,	)	Chapter 7
	)	
Debtor.	)	Adv. Pro. No. 06-3017
	)	
Alicia Gray,	)	Hon. Mary Ann Whipple
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
First National Bank of Marin,	)	
	)	
Defendant.	)	
	)	

**MEMORANDUM OF DECISION AND ORDER**  
**GRANTING MOTION FOR SUMMARY JUDGMENT**

This adversary proceeding is before the court on Defendant First National Bank of Marin's unopposed Motion for Summary Judgment [Doc. # 34]. In her Amended Complaint, Plaintiff alleges that Defendant has violated the discharge injunction imposed under 11 U.S.C. § 524 in her underlying Chapter 7 case by continuing to report a current balance owed on her credit report. The court has jurisdiction over

this adversary proceeding under 28 U.S.C. §1334(b) and the general order of reference entered in this district. *See* 28 U.S.C. § 157(a). Proceedings relating to a debtor's discharge and the adjustment of the debtor-creditor relationship are core proceedings that the court may hear and decide. 28 U.S.C. § 157(b)(1) and (b)(2)(J) and (O). For the reasons that follow, Defendant's motion will be granted in part and denied in part.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff filed her Chapter 7 bankruptcy petition on February 9, 2004. The last day to object to Plaintiff's discharge under 11 U.S.C. § 727 was May 24, 2004. No objections were filed and Plaintiff received a discharge on August 6, 2004. On January 9, 2006, Plaintiff commenced this adversary proceeding by filing a complaint alleging that Defendant violated the automatic stay and the discharge injunction by continuing to report a current balance owed on Plaintiff's credit report and seeking compensatory and punitive damages. On September 25, 2006, the court granted Defendant's motion to dismiss Plaintiff's claim for violation of the automatic stay. In that order, the court also noted with respect to her allegations of a violation of the discharge injunction that Plaintiff is limited to a cause of action for civil contempt as there is no statutory private right of action for damages under 11 U.S.C. § 524 or 11 U.S.C. § 105. *See Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 421 (6<sup>th</sup> Cir. 2000). The court further noted that there are two kinds of civil fines that the court may impose – one kind is to compensate for damages caused by the contemnor's noncompliance and must be based on evidence of actual loss, and the second kind is a fine payable to the court that can be avoided by performing the act required by the court's order. *See In re Walker*, 257 B.R. 493, 498 (Bankr. N.D. Ohio 2001). Plaintiff's original complaint requested only a compensatory fine, not a fine payable to the court. Accordingly, with respect to the action for civil contempt, the court found Plaintiff's complaint defective due to the lack of any allegations of injury in fact sufficient to establish her constitutional standing to proceed based on the compensatory relief they had requested and granted Plaintiff leave to amend her complaint.

On October 16, 2006, Plaintiff filed her Amended Complaint. The Amended Complaint included allegations that Plaintiff was damaged by Defendant's credit reporting by being denied credit or credit at a favorable rate and by incurring an increased cost of insurance. In her prayer for relief, Plaintiff requests "such penalties that this Court would find appropriate," including direct and consequential damages and legal fees. [Doc. # 26, Amended Complaint, p. 3]. Thereafter, Defendant filed a renewed motion to dismiss, which the court denied. The court nevertheless ordered that initial discovery in this proceeding be

limited to discovery relating to standing and the injury allegedly incurred by Plaintiff. To that end, on January 4, 2007, Defendant served discovery requests on Plaintiff, including, in relevant part, the following requests for admissions:

REQUEST FOR ADMISSION NO. 1: Admit that you have not suffered any damages due to the alleged acts or omissions of Defendant.

REQUEST FOR ADMISSION NO. 2: Admit that you have no evidence of sustaining any damages due [to] the alleged acts or omissions of Defendant.

.....

REQUEST FOR ADMISSION NO. 4: Admit that you have not been denied insurance coverage since February 9, 2004.

.....

REQUEST FOR ADMISSION NO. 6: Admit that no entity ever told you that it would charge you a higher insurance rate because of the Account, any credit reporting concerning the Account, or the Defendant.

.....

REQUEST FOR ADMISSION NO. 9: Admit that you have not been denied credit since February 9, 2004.

.....

REQUEST FOR ADMISSION NO. 11: Admit that no entity ever told you that it would charge you a higher interest rate for the extension of credit because of the Account, any credit reporting concerning the Account, or the Defendant.

[Def. Ex. A, Lazich Aff. and attached Exs. 1]. Plaintiff has not responded to Defendant's discovery and has not sought an extension to respond to the discovery. [*Id.*, Lazich Aff. ¶ 4].

Defendant now moves for summary judgment, arguing that Plaintiff has failed to provide any evidence to establish that she has suffered any injury or has standing to pursue her claims.

### **LAW AND ANALYSIS**

Under Rule 56 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056, summary judgment is proper only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In reviewing a motion for summary judgment, however, all inferences "must be viewed in the light most favorable to the party opposing the motion." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-88 (1986). The party moving for summary judgment always bears the initial responsibility of informing the court of the basis for its motion, "and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the moving party has met its initial burden, the adverse party "may not rest upon the mere

allegations or denials of his pleading but . . . must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue for trial exists if the evidence is such that a reasonable factfinder could find in favor of the nonmoving party. *Id.* Although a party fails to respond to a motion for summary judgment, the court must nevertheless satisfy itself that the moving party has met the demands of Rule 56 before granting the motion. *See Guarino v. Brookfield Twp. Trustees*, 980 F.2d 399, 407 (6<sup>th</sup> Cir. 1992).

Under Rule 36(a) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7036, “[a] party may serve upon any other party a written request for the admission . . . of the truth of any matters within the scope of Rule 26(b)(1). . . .” Rule 36(a) further provides that each matter set forth in the request for admissions are deemed admitted “unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter. . . .”

In this case, Plaintiff neither responded to Defendant’s request for admissions nor requested an extension of time to do so. As such, all matters set forth in Defendant’s request for admissions are deemed admitted, including facts demonstrating that Plaintiff has not suffered any of the damages alleged in the Amended Complaint due to the alleged acts or omissions of Defendant. Having suffered no damages, Plaintiff lacks standing to bring a contempt action seeking a compensatory fine. *See Coal Operators and Assocs., Inc. v. Babbitt*, 291 F.3d 912, 916 (6<sup>th</sup> Cir.2002) (citing *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982)). Defendant is, therefore, entitled to summary judgment on the issue of Plaintiff’s entitlement to a compensatory fine in this proceeding.

While Plaintiff lacks standing to seek a compensatory fine, she nevertheless has standing to ask this court to enforce the discharge injunction imposed under § 524 by imposing a penalty payable to the court. The discharge injunction is one of the central protections provided under the Bankruptcy Code in affording debtors a fresh start. Generally, unless debtors are able to bring violations of the injunction to the court’s attention, the court is unable to exercise its inherent and statutory powers under 11 U.S.C. § 105(a) to enforce its orders and remedy transgressions of the court’s authority. Plaintiff’s request in the prayer for relief in her Amended Complaint that “the Court impose such penalties that this Court would find appropriate” encompasses more than just a compensatory fine, it also encompasses imposition of a fine payable to the court if the court finds that Defendant violated the discharge injunction. Because Defendant’s

motion for summary judgment only addresses Plaintiff's lack of compensatory damages, the motion will be denied on the issue of whether a violation of the discharge injunction has actually occurred and, if so, the appropriate non-compensatory penalty.

**THEREFORE**, for the foregoing reasons, good cause appearing,

**IT IS ORDERED** that Defendant's Motion for Summary Judgment [Doc. # 34] be, and hereby is, **GRANTED** in part on the issue of Plaintiff's entitlement to a compensatory fine and **DENIED** on all other issues. A further pretrial conference will be set in a separate order.