

1 JUDGE HERB ROSS (Recalled)

2 UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ALASKA
3 605 West 4th Avenue, Room 138, Anchorage, AK 99501-2253 — (Website: www.akb.uscourts.gov)
4 Clerk's Office: 907-271-2655 (1-800-859-8059 In-State) — Judge's Fax: 907-271-2692

5 **Filed On**
6 **4/22/11**

7 Case No. A10-00478-HAR
8 In re SAMANTHA DELAY-WILSON,
9 Debtor(s)
10 JEAN HEBERT,
11 Plaintiff(s)
12 v.
13 SAMANTHA DELAY-WILSON,
14 Defendant(s)

In Chapter 7

Adv Proc No A11-90005-HAR

**MEMORANDUM REGARDING LODGED
DEFAULT JUDGMENT FORM**

15 I have not signed the lodged judgment (copy attached). For one thing, it does not include
16 what the plaintiff seeks – a nondischargeability judgment. I would hesitate, based on the prove-
17 up declarations supplied,¹ to sign a default judgment even if it did contain a 11 USC § 523(a)
18 holding. The prove-up declarations say only that the allegations in the complaint are true.

19 For one thing, the declarations do not establish justifiable reliance required under
20 § 523(a)(2)(A). Also, the underpinning of the complaint is an oral agreement between the parties
21 if Hebert gave Delay-Wilson money – eventually \$3.7 million – she would guarantee a 14.2%
22 return on the money. Assuming that is true, it does not establish there was a present intent not to

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26 ¹Docket Nos. 4 and 6, several declarations by Mr. Hebert and one by Mr. Shier.
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1 perform, which is an element of a § 523(a)(2)(A) claim.² Nor does it explain the history of the
2 relationship, which began in August 2001, almost 11 years ago.

3 There was subsequently a lot of shucking and jiving by Delay-Wilson alleged by Hebert.³
4 If this proves Hebert's fraud or misrepresentation claim, provide the court with authority and
5 connect the factual dots to § 523(a)(2)(A).

6 Likewise, provide the court with authority that Delay-Wilson was a fiduciary under
7 Alaska law presumably to comply with § 523(a)(4). Hebert has not alleged embezzlement.

8 Finally, the § 523(a)(6) conversion claim is not sufficiently established. She could have lost
9 the money in risky investments, without having actually converted it. At least provide the court
10 some legal authority that the inference in the complaint supports a § 523(a)(6) judgment.

11 In short, the plaintiff must file an adequate prove-up declaration, with supporting legal
12 analysis, to comply with FRBP 7055, incorporating FRCP 55(b)(2). I suggest the prove-up memo
13 provide an outline, based on the well settled law in the 9th Circuit with respect to §§ 523(a)(2)(A),
14 (4), and (6), and explain how the facts and law support Hebert's claims for each element.

15 DATED: April 22, 2011

17 _____
18 /s/ Herb Ross
HERB ROSS
U.S. Bankruptcy Judge

19 Serve:

20 Matthew J. Shier, Esq., for π
21 Samantha Delay-Wilson, *pro se* Δ
22 Cheryl Rapp, Adv. Proc. Mgr.
23 Courtesy copy to Willaim Artus, Esq., for the trustee
24 Courtesy copy to David Bundy, Esq., for petitioning creditor
25 US Trustee, Anchorage

D7476

26 04/22/11

27 _____
28 ²In re Ortenzo Hayes, 315 BR 579 , 587 (Bankr CD Cal 2004).

³See, ¶ 8 of the complaint.

1 MATTHEW J. SHIER (SBN 072638)
JEREMY W. KATZ (SBN: 119418)
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5 Attorneys for Plaintiff Jean Hebert

6 UNITED STATES BANKRUPTCY COURT
7 DISTRICT OF ALASKA

8
9 In re
10 SAMANTHA DELAY-WILSON,
11 Debtor.
12 SSN xxx-xx-5066

Case No. 10-00478 HAR
Chapter 7

13
14 JEAN HEBERT,
15 Plaintiff,
16 vs.
17 SAMANTHA DELAY-WILSON,
18 Defendant.

Adversary Proceeding No. 11-90005 HAR
JUDGMENT BY DEFAULT

19
20 Upon consideration of the request for entry of default judgment against Samantha Delay-
21 Wilson (the "Request"), the accompanying declarations, the pleadings and files in this Adversary
22 Proceeding, including the Entry of Default (By Clerk), dated April 18, 2011, (docket number 5),
and good cause appearing,

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- 24 1. The Request is granted.
25 2. Judgment is hereby made in favor of Plaintiff Jean Hebert against Defendant
26 Samantha Delay-Wilson in the amount of \$3,683,705.00, plus interest thereon at the legal rate
27 from and after June 30, 2008, until paid in full, plus costs of suit herein incurred.
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Dated: April 21, 2011

/s/ _____
HERB ROSS
U.S. Bankruptcy Judge

Serve:

M. Shier, Esq. (for plaintiff)
Samantha Delay-Wilson (pro se defendant)
Cheryl Rapp, Adv. Case Mgr.
Janet Stafford, Case Closing Clerk

COURT SERVICE LIST

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Anchorage, AK 99515

Samantha Delay-Wilson
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William D. Artus on behalf of Trustee Kenneth Battley
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U.S. Trustee's Office
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