

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In re: Case No. A10-00465-DMD

SHAWN ANDREW RUDNICK and
AMY CHRISTINE RUDNICK,

Debtors.

Chapter 7

Filed On
5/26/11

CATHY LOUGHLIN,

Plaintiff,

v.

SHAWN ANDREW RUDNICK,

Defendant.

Adversary No. A10-90021-DMD

MEMORANDUM REGARDING PENDING MOTIONS

A motion for summary judgment can be granted when there is no dispute as to a material fact and the moving party is entitled to judgment as a matter of law. Rule 56(a), Fed. R. Civ. P. Here there are disputed facts as to whether the defendant knew he made false statements and whether or not he had an intent to deceive. Thus the plaintiff is not entitled to summary judgment on her § 523(a)(2)(A) claims. The defendant is not entitled to summary judgment on them either.

The plaintiff's § 523(a)(2)(B) claim is subject to dismissal because there are no specific and particular allegations as to the plaintiff's use of a fraudulent financial statement contained in the complaint. Fed. R. Civ. P. 9(b) required particularity. Plaintiff's § 523(a)(2)(B) claim will be dismissed without prejudice. Plaintiff will be given seven (7) days to file an amended complaint that meets the requirements of Rule 9(b) or her § 523(a)(2)(B) claim will be deemed waived. An appropriate order will be entered.

DATED: May 26, 2011.

BY THE COURT

/s/ Donald MacDonald IV
DONALD MacDONALD IV
United States Bankruptcy Judge

Serve: C. Johansen, Esq.
S. Ching, Esq.

05/26/11