

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

JOSEPH R. NELIPOWITZ

CASE NO. 90-02111

Debtor

MARCIA NELIPOWITZ,

Plaintiff

vs.

ADV. PRO. NO. 91-60054A

JOSEPH R. NELIPOWITZ,

Defendant

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court has before it the motion of the Defendant, Joseph R. Nelipowitz, ("Defendant") for a summary judgment dismissing complaint, together with the cross-motion of the Plaintiff, Marcia Nelipowitz, ("Plaintiff") for summary judgment, both in accordance with

Bankruptcy Rule 7056 ("Bankr.R.") and Federal Rule 56(b) of the Federal Rules of Civil Procedure ("Fed.R.Civ.P.").

Both motions were argued before this Court at its motion term held in Syracuse, New York on June 4, 1991 and this contested matter was taken under advisement at that time without the necessity of the parties submitting memoranda of law.

JURISDICTIONAL STATEMENT

The Court has jurisdiction of these contested matters pursuant to 28 U.S.C. §1334(b), §157(a), (b)(1) and (b)(2)(I).

DISCUSSION

In the adversary proceeding pending before this Court, both Plaintiff and Defendant have moved for summary judgment pursuant to Bankr.R. 7056, which incorporates by reference Fed.R.Civ.P. 56. The Court considers the motion and cross-motion for summary judgment independently. As to each motion, the Court considers the evidence submitted in the light most favorable to the non-moving party. See Arnold Pontiac-GMC, Inc. v. General Motors Corp., 700 F.Supp. 838, 840 (Bankr. W.D.Pa. 1988). In order to grant the relief sought pursuant to a summary judgment motion, the Court must find that the pleadings and the admissions on file, together with the affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c).

The Court, after reviewing the pleadings and after hearing oral argument, concludes

that there are material questions of fact, which must await the trial of this adversary proceeding.

Based upon the foregoing, it is

ORDERED that the motion of Joseph R. Nelipowitz, Defendant, for summary judgment dismissing complaint and the cross-motion of Marcia Nelipowitz, Plaintiff, for summary judgment be and they hereby denied.

Dated at Utica, New York

this day of June, 1991

STEPHEN D. GERLING
U.S. Bankruptcy Judge