The document below is hereby signed.

Dated: February 6, 2012.



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S. Martin Teel, Jr. U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLUMBIA

In re	)
BRYAN W. TALBOTT,	) ) Case No. 11-00450 ) (Chapter 7)
Debtor.	) )
SANFORD CAPITAL, LLC,	) )
Plaintiff,	)
v.	<pre>/ Adversary Proceeding No. / 11-10047</pre>
BRYAN W. TALBOTT,	)
	) Not for Publication in
Defendant.	) West's Bankruptcy Reporter

## MEMORANDUM DECISION RE MOTION FOR DEFAULT JUDGMENT

The plaintiff, Sanford Capital, LLC filed a *Motion for Default Judgment* requesting the court to enter judgment by default against the defendant, Bryan W. Talbott, determining that the judgment obtained by Sanford Capital in the Superior Court for the District of Columbia against Talbott is nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(4), and 523(a)(6). The defendant failed to file a timely answer, and has not filed a motion for leave to file an answer or a motion to set aside the entry of default. For the reasons that follow, I will grant the motion.

In a filing entitled Notice of Preclusive Effect of Res Judicata in Related Criminal Proceeding, the defendant's counsel objects that the plaintiff's dischargeability complaint is untimely under Fed. R. Bankr. Proc. 4007(c). However, Rule 4007 is not jurisdictional and can be waived. Kontrick v. Ryan, 540 U.S. 443, 124 S.Ct. 906 (2004). The defendant did not file a timely answer raising an untimeliness objection. Therefore, the defendant has waived his defense under Rule 4007(c).<sup>1</sup>

The facts set forth in the complaint are deemed admitted, and they are sufficient to establish, at a minimum, nondischargeability under 11 U.S.C. § 523(a)(4), for a debt arising from embezzlement or larceny, and under 11 U.S.C. § 523(a)(6), for a debt arising from willful and malicious injury by the debtor to the property of another entity.

Accordingly, the motion for default judgment will be granted. A separate order follows.

[Signed and dated above.]

Copies to: Defendant; All counsel of record; Office of United States Trustee.

<sup>&</sup>lt;sup>1</sup> Even if the defendant were allowed to file an answer out of time and to raise a Rule 4007 defense, the plaintiff's reply to the *Notice* suggests that the complaint could be amended to allege nondischargeability under 11 U.S.C. § 523(a)(3).