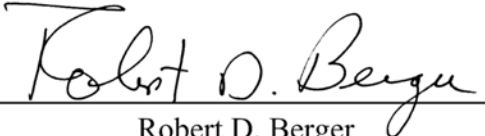


The relief described hereinbelow is **SO ORDERED**.

SIGNED this 14th day of January, 2025.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

JULIE ANN TERRY,

Case No. 17-21615
Chapter 7

Debtor

SOUTHAMPTON, LTD.,

Adv. No. 17-06080

Plaintiff,

v.

JULIE ANN TERRY,

Defendant.

**ORDER DENYING PLAINTIFF'S AMENDED MOTION
FOR SUMMARY JUDGMENT**

This issue comes before the Court on plaintiff-creditor Southampton, Ltd.’s amended motion for summary judgment¹ that its claim against defendant-debtor Julie Ann Terry² is nondischargeable under 11 U.S.C. § 523(a)(2)(A).³ This is Southampton’s second motion for summary judgment; the Court previously denied Southampton’s initial motion because the motion did not set forth a legal argument.⁴ While the amended motion addresses the Court’s prior concerns, it does not comply with procedural rules; thus, the Court will deny Southampton’s amended motion for summary judgment.

The relevant facts were discussed in the Court’s prior order, so, for brevity, it will not include a recitation of them here.⁵

¹ ECF 43. Southampton, Ltd., is represented by attorneys Stephen J. Torline, Peyton Healey, and Kevin G. Corcoran. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), and venue is appropriate under 28 U.S.C. § 1409(a).

² Julie Ann Terry is represented by attorney Jonathan Becker. She filed a response to Southampton’s amended motion for summary judgment, in which she argued that she could not adequately respond to Southampton’s amended motion because it did not comply with the particularity requirements of both Fed. R. Civ. P. 56 and D. Kan. LBR 7056.1(a). ECF 46. She also includes arguments about her homestead exemption, which is irrelevant for purposes of this adversary proceeding.

³ Section 523(a)(2)(A) exempts debt “for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition[.]” 11 U.S.C. 523(a)(2)(A). Southampton did not include its claim under § 523(a)(4) for breach of fiduciary duty, despite including it in its initial motion. Its claim under 11 U.S.C. § 727(a)(4) for knowingly making false statements was excluded from both the initial and amended motions for summary judgment.

⁴ ECF 41, order denying motion for summary judgment.

⁵ *Id.*

I. Summary Judgment Standard

Summary judgment is appropriate when the movant shows that there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).⁶ An issue is genuine if “there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way.” *Thom v. Bristol-Myers Squibb Co.*, 353 F.3d 848, 851 (10th Cir. 2003) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Similarly, an issue is material if, under the substantive law, the issue could affect the outcome of the lawsuit. *Doe v. University of Denver*, 952 F.3d 1182, 1189 (10th Cir. 2020) (quoting *Jones v. Norton*, 809 F.3d 564, 573 (10th Cir. 2015)). In weighing the issues, the Court must draw all reasonable inferences in favor of the nonmoving party. *Thom*, 353 F.3d at 851.

The burden is on Southampton, as the moving party, to establish, as a matter of law, all issues essential to its claim to show that there is no genuine dispute of material facts, and if it meets that burden, the burden shifts to Terry to show otherwise. *See Reed v. Nellcor Puritan Bennett*, 312 F.3d 1190, 1194 (10th Cir. 2002). A critical aspect in satisfying this burden requires compliance with the procedural rules for summary judgment set forth in Rule

⁶ Rule 56(a) is applicable to this adversary proceeding through Fed. R. Bankr. P. 7056.

56(c) and D. Kan. LBR 7056.1. Rule 56(c) provides, in relevant part, that a party asserting a fact is not in genuine dispute must support that assertion by citing “to particular parts of materials in the record[.]” Fed. R. Civ. P. 56(c)(1)(A). Rule 7056.1(a) reiterates the particularity requirement and provides specific instructions as to the format and contents of a motion for summary judgment:

The memorandum or brief in support of a motion for summary judgment must begin with a section containing a concise statement of material facts to which the movant contends no genuine issue exists. The facts must be numbered and must refer with particularity to those portions of the record on which the movant relies.

D. Kan. LBR 7056.1(a). Taken together, these rules require: (1) a memorandum or brief in support of the motion for summary judgment; (2) a section in the memorandum or brief containing a concise statement of materials facts and those facts must be numbered; and (3) citations to particular portions of the materials in the record to provide support to the party’s assertions of fact.

Here, however, Southampton did not provide a memorandum or brief in support of its motion. Nor did it include a material fact section that clearly and concisely set forth the undisputed facts. And, perhaps most importantly, it predominately failed to cite with particularity to portions of relevant

materials in the record. In fact, in the 30 paragraphs that contain citations to the record, only seven contain page-number or paragraph citations. *See e.g.* ¶¶ 6, 12, 22, 23, 31, 33, 34, 35. Without specific citations that direct the Court to the relevant support, it will not “scour the record’ independently, beyond those portions cited by the parties in search of record material pertinent to the pending summary judgment motion.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also Adler v. Wal-Mart Stores*, 144 F.3d 664, 672 (10th Cir. 1998); *Thomas v. Wichita Coca-Cola Bottling Co.*, 968 F.2d 1022, 1024–25 (10th Cir. 1992); *Rodgers v. City of Des Moines*, 435 F.3d 904, 908 (8th Cir. 2006); *Coleman v. Blue Cross Blue Shield of Kan., Inc.*, 287 F. App’x 631, 635 (10th Cir. 2008).

Still, Southampton argues that it is not required to provide page number citations because: “No applicable rule requires, as Terry argues, that all of the Motion’s citations must reference particular paragraphs or pages of attached exhibits or referenced documents.” But that nonsensical argument is directly contradicted by the plain language of the Rules. *See Fed. R. Civ. P.* 56(c)(1)(A) (requires “citing to *particular parts of materials* in the record”); D. Kan. LBR 7056.1(a) (facts “must refer with *particularity to those portions* of the record”). Nevertheless, if citing to an exhibit complies with the Rules, as Southampton argues, it cannot be said that citing to unlabeled exhibits (e.g.,

exhibits “F–K”) that are concealed within 466 pages of attachments satisfies the particularity requirement.

For these reasons, Southampton failed to uphold its burden to show that summary judgment is warranted as a matter of law; thus, its amended motion for summary judgment is DENIED. If Southampton wishes to file an amended motion that complies with the procedural rules and remedies the issues identified by the Court, it may do so, pursuant to Fed. R. Civ. P. 56(e), within 30 days of this order. If it chooses to refile, Southampton must label all exhibits and renumber them using the bates numbering system to ensure that it, the Court, and Terry can accurately locate supporting information in the 466-page attachment.

IT IS SO ORDERED.

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