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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

JILL GASSTER,

No. 03-11637

Debtor(s).

RICHA and LOUIS VAHLE,

Plaintiff(s),

v.

A.P. No. 03-1181

JILL GASSTER,

Defendant(s).

Memorandum on Motion for Summary Judgment

Chapter 7 debtor and defendant Jill Gasster is the former attorney of plaintiffs Richa and Louis Vahle. Prior to bankruptcy, a state court judge found that Gasster had negligently failed to communicate a settlement offer to the Vahles and had breached her fiduciary duty to them by failing to oppose a post-trial motion on their behalf. The state court entered a judgment against Gasster for \$68,300.00 plus costs. There is no evidence that the judgment is final, and Gasster’s answer alleges that it is on appeal.

After Gasster filed her bankruptcy petition, the Vahles filed a complaint to determine the dischargeability of the debt, alleging only that it was nondischargeable under § 523(a)(4) of the Bankruptcy Code as defalcation while acting in a fiduciary capacity. Gasster has filed a motion for

1 summary judgment, including a declaration that she did communicate the settlement offer and that the
2 post-trial motion was not properly served on her. The Vahles filed no counter-declarations, relying only
3 on the state court decision attached to their complaint.

4 The court begins by noting that the state court judgment does not preclude litigation of issues in
5 this court because it is not final. *In re Cantrell*, 329 F.3d 1119, 1123 (9th Cir. 2002).

6 Even if the judgment was final, it would not establish a nondischargeable debt. The law
7 regarding the attorney-client relationship and § 523(a)(4) has been clearly set forth in *In re Bigelow*,
8 271 B.R. 178, 187-88 (9th Cir. BAP 2001):

9 In the Ninth Circuit, a general fiduciary attorney-client relationship may rise to the
10 level of a fiduciary relationship for purposes of § 523(a)(4) if there are client trust funds
11 involved. . . . *Braud v. Stokes (In re Stokes)*, 142 B.R. 908, 910 n. 3
12 (Bankr.N.D.Cal.1992) (professional rule requiring client trust fund is the sole exception
13 to the general statement that no California statute elevated the attorney-client
14 relationship to trustee-beneficiary status). Accord *Watson v. Parker (In re Parker)*, 264
15 B.R. 685, 700 (10th Cir. BAP 2001) (holding that more than a general attorney-client
16 relationship is required to establish a fiduciary relationship under discharge exception
17 for fraud or defalcation while acting in fiduciary capacity). . . .

18 Since there were not trust funds involved in Bigelow's attorney-client relationship
19 with Stephens, theirs was not a "fiduciary" relationship within the narrow meaning
20 of § 523(a)(4). Nor could there have been, by definition, a "defalcation" without
21 trust funds.

22 Since the Vahles are not entitled to claim issue preclusion by the state court judgment because
23 they have not shown that it is final, they have produced no competent evidence refuting Gasster's
24 declaration. If the party moving for summary judgment meets its initial burden of presenting competent
25 evidence that there is no triable issue of fact, the burden of production then shifts so that "the nonmoving
26 party must set forth, by affidavit or as otherwise provided in Rule 56, 'specific facts showing that there is
a genuine issue for trial.' " *T.W. Elec. Service, Inc. v. Pacific Elec., Contractors Ass'n*, 809 F.2d 626,
630 (9th Cir.1987) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265
(1986)).

The Vahles have produced no evidence creating a triable issue of fact or refuting Gasster. Even
if the court were to consider the non-final judgment, it does not establish a nondischargeable debt

1 because no trust funds were involved. Gasster's motion for summary judgment will accordingly be
2 granted. Counsel for Gasster shall submit an appropriate form of order granting her motion and a form of
3 judgment declaring that her debt to the Vahles is discharged.

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6 Dated: October 25, 2003

Alan Jaroslovsky
U.S. Bankruptcy Judge

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