

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re:

RICARDO PEDRO MARTINEZ
and DONILA MARIA MARTINEZ,

No. 7-08-12434JA

Debtors.

LOS ALAMOS NATIONAL BANK,

Plaintiff,

Adv. No. 08-1143 J

v.

RICARDO P. MARTINEZ,

Defendant.

ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

THIS MATTER is before the Court on Defendant’s Motion for Summary Based on the Note Having Been Paid In Full (“Motion”) filed July 24, 2009. *See* Docket No. 20. Plaintiff, Los Alamos National Bank (“LANB”) filed its Complaint to Determine Dischargeability of Debts (“Complaint”) on December 2, 2009 seeking to deny the dischargeability of its claim pursuant to 11 U.S.C. §523(a)(2)(A) and (B).

Upon review of the Motion the Court finds that Defendant, Ricardo P. Martinez, failed to properly support his Motion as required under Fed.R.Bankr.P. 7056, and therefore, denies the Motion without prejudice to Mr. Martinez filing another motion for summary judgment supported by evidence.

DISCUSSION

It is appropriate for the Court to grant summary judgment if the pleadings, discovery materials, and any affidavits before the Court show that there is no genuine issue as to any

material fact and that the movant is entitled to judgment as a matter of law. *See* Fed.R.Civ.P. 56(c) made applicable to the adversary proceeding by Fed. R. Bankr.P 7056. “[A] party seeking summary judgment always bears the initial responsibility of informing the . . . court of the basis for its motion, and . . . [must] demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Courts must review the evidentiary materials submitted in support of a motion for summary judgment to ensure that the motion is supported by evidence. If the evidence submitted in support of the summary judgment motion does not meet the movant’s burden of production, then summary judgment must be denied.¹ Hearsay evidence cannot be considered on a motion for summary judgment. *Wiley v. United States*, 20 F.3d 222, 226 (6th Cir. 1994). Any documentary evidence submitted in support of summary judgment must either be properly authenticated or self-authenticating under the Federal Rules of Evidence. *Goguen v. Textron, Inc.*, 234 F.R.D. 13, 16 (D. Mass. 2006). Furthermore, New Mexico Local Bankruptcy Rule 7056-1 provides that the movant’s statement of material facts as to which the movant contends no genuine fact exists must “refer with particularity to those portions of the record upon which the movant relies.” *NM LBR 7056-1*.

The Motion fails to demonstrate the absence of genuine issues of material fact. Mr. Martinez’s “Material Facts which are Undisputed” set forth in his Motion contains thirty-eight (38) alleged undisputed material facts. There are no affidavits, deposition transcripts or other admissible evidence presented to support these facts. The only materials Mr. Martinez submits in support of his statement of undisputed facts are unauthenticated documents, such as loan

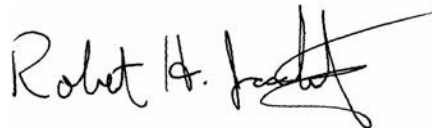
¹ *See, e.g. D.H. Blair & Co., Inc. v. Gottidiener*, 462 F.3d 95, 110 (2nd Cir. 2006) (“If the evidence submitted in support of the summary judgment motion does not meet the movant’s burden of production, then summary judgment must be denied. . . .”) (quoting *Vermont Teddy Bear Co., Inc. v. 1-800 Beargram Co.*, 373 F.3d 241, 244 (2nd Cir. 2004) (emphasis in original)); *One Piece of Real Property Located At 5800 SW 74th Avenue, Miami, Florida*, 363 F.3d 1099, 1101-02 (11th Cir. 2004).

agreements, a workout agreement, and item history reports. LANB asserts in its Response in Opposition to Defendants' Motion for Summary Judgment ("Response")(Doc.23) that facts 1, 3-8, 10, 12-15, 17, 19-26, 28-30 and 32-38 are unsupported by the record. *See* Response at p.9.

In an apparent attempt to correct defects contained in the Motion, Mr. Martinez filed Defendant's Amended Reply Brief in Support of Motion For Summary Judgment Based on the Note Having Been Paid In Full ("Reply")(Doc.27) He attaches to the Amended Reply two pages of a transcript, which does not identify who was testifying.

In the absence of any evidence to support the movant's statement of material facts, the Court cannot find that there is no genuine issue as to any of the facts. Summary judgment must, therefore, be denied.

WHEREFORE, IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is DENIED, without prejudice to the filing of another motion for summary judgment properly supported by evidence.



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Entered on Docket Date: January 8, 2010

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