

**FILED**

FEB 2 2006

UNITED STATES  
BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

UNITED STATES BANKRUPTCY COURT  
IN AND FOR THE DISTRICT OF ARIZONA

In re HEATHER L. STANLEY )

Debtor. )

CHRISTIAN STANLEY )

Plaintiff, )

v. )

HEATHER L. STANLEY )

Respondent. )

Chapter 7 Proceeding

Case No. BK-04-00817 CGC

Adv. Proc. 04-817

UNDER ADVISEMENT DECISION  
RE: TRIAL

**I. Introduction**

Plaintiff Christian Stanley, Debtor Heather Stanley's brother, has filed this adversary proceeding to determine the dischargeability of a debt he contends Debtor owes to himself and their deceased mother's probate estate. Plaintiff is not seeking at this time or from this Court a determination of the amount of the alleged debt owed, only a finding that any damages awarded will be nondischageable. Plaintiff intends on returning to the state court to litigate the issue of damages.

The dischargeability issue proceeded to trial on October 4, 2005, after this Court denied Plaintiff summary judgment. At the close of all testimony and evidence, the Court ordered the parties to provide post-trial briefing by October 24, 2005. That having been done, the matter is ripe for resolution.

**II. Facts**

The following facts are undisputed. On May 30, 2001, Linda L. Stanley passed away, dying intestate, and leaving Debtor and Plaintiff as her only surviving heirs. On July 24, 2001, Debtor was appointed as the Personal Representative of the Estate of Linda L. Stanley ("Estate") in Maricopa County Superior Court. Plaintiff initially filed an objection to Debtor's accountings in the probate

1 court. On December 15, 2003, Plaintiff filed a petition seeking to remove Debtor as Personal  
2 Representative of the Estate and have himself appointed as the Successor Personal Representative.  
3 Debtor admitted during those proceedings that she could not account for all the estate funds or  
4 produce documentation illustrating where the funds went. However, she denied any wrongdoing.

5 On February 28, 2004, Debtor filed for bankruptcy. On June 4, 2004, the probate court both  
6 sustained Plaintiff's objection to Debtor's accountings and removed Debtor from her position as  
7 Personal Representative of the Estate of Linda L. Stanley. The Probate Court found no basis to  
8 conclude the personal bankruptcy of Debtor should stay the probate court's proceedings. In  
9 removing Debtor from her position as personal representative, the probate court made the following  
10 findings of fact:

- 11 1. that Debtor had "commingled estate assets with those of her own";
- 12 2. that Debtor failed to "properly or adequately document expenses of the estate in  
13 violation of A.R.S. § 14-3933";
- 14 3. that Debtor "knowingly and willfully used estate assets to pay for her own personal  
15 expenses";
- 16 4. that Debtor "knowingly, wilfully and purposefully mis-reported expenses of the  
17 estate"; and
- 18 5. that Debtor failed to "timely administer decedent's estate which caused the estate to  
19 be unnecessarily depleted."

20 As a result, the court made the following conclusions of law:

- 21 1. that Debtor, "while acting as Personal Representative, mismanaged the estate and did  
22 not perform the duties of her office, and therefore did not operate in the best interests  
23 of the estate as required by A.R.S. § 14-3611;
- 24 2. that, "[p]ursuant to A.R.S. §§ 14-3701(A), 14-7301 *et seq.*, and 14-7601 *et seq.*,  
25 [Debtor] breached her fiduciary obligations to the estate and to the estate's  
26 beneficiaries"; and
- 27 3. that "pursuant to A.R.S. § 14-3709, [Debtor] did not properly protect estate assets."

28 The Court expressly struck from the section entitled Conclusions of Law, as prepared by Plaintiff's  
state court counsel, all language that Debtor had "committed fraud or defalcation while acting in a  
fiduciary capacity as Personal Representative of the estate" or had "obtained money and/or property

of the estate by her personal use by false pretenses, a false representation, or actual fraud.”

Shortly thereafter, Plaintiff filed this adversary complaint, alleging that his claims and those of his mother's Estate against Debtor are excepted from discharge under 11 U.S.C. section 523(a)(2)(A) and (a)(4). Plaintiff later sought summary judgment on both claims. The Court denied the motion without prejudice, stating that there were serious questions regarding whether the probate proceedings violated the automatic stay, at least to the extent that Plaintiff was attempting to use the probate proceedings for collateral estoppel purposes to establish Debtor's liability to him and the estate. The Court indicated that before a motion for summary judgment could lie there were certain procedural steps that had to be taken first to get it properly before the Court. Rather than battle the procedural hurdles to get the matter to the summary judgment stage, Plaintiff elected to proceed directly to trial.

In proceeding to trial, Plaintiff apparently abandoned his claim under Section 523(a)(2)(A), omitting it from his unilateral pre-trial statement and failing to present any evidence or argument on the claim during the trial or closing argument. With respect to his Section 523(a)(4) claim, Plaintiff attempted to orally amend his Complaint to add claims for both embezzlement and larceny under subsection (a)(4). The Court denied Plaintiff's request at the close of trial. The only issue remaining before the Court, therefore, is whether Debtor committed fraud or defalcation while acting in a fiduciary capacity as defined by Section 523(a)(4).

### III. Analysis

There is no dispute that Debtor was acting in a fiduciary capacity while acting as Personal Representative of her mother's probate estate. The real question is whether she committed fraud or defalcation while in that position. Debtor admits her record keeping as Personal Representative was, at best, poor or negligent. She also admits that there is at least a \$15,000 discrepancy in her accountings. Her defense, in a nutshell, is that she did her best under the circumstances. She testified that she was emotionally distraught after her mother's death and that she had no real understanding of what she was required to do as Personal Representative, relying on Gallagher and

1 Kennedy, her counsel in the probate matter, to let her know if she was not performing her duties  
2 correctly. She denies any wrongful intent.

3 Intent, however, is not necessary to prove defalcation, as Debtor herself acknowledges in her  
4 post-trial memoranda. The Ninth Circuit in *In re Lewis*, 97 F.3d 1182 (9<sup>th</sup> Cir. 1996), held that “an  
5 individual may be liable for defalcation without having the intent to defraud.” Defalcation includes  
6 the innocent failure and/or negligent failure of a fiduciary to fully account for money received.  
7 Debtor admitted at trial that she failed to account fully for all funds from the probate estate. She also  
8 admitted commingling the probate estate’s assets with her own. These admissions alone, without  
9 even considering Debtor’s intent, are enough to find any liability the probate court may impose  
10 nondischargeable.

11 In her defense, Debtor contends she produced evidence sufficient to overcome Plaintiff’s  
12 allegations of defalcation, “even under the more exacting standard of *In re Lewis*.” The Court  
13 disagrees: She admitted the very thing *Lewis* requires – an innocent or negligent failure to account  
14 fully for monies received. No further analysis is needed under the law.<sup>1</sup> What Debtor wants this  
15 Court to do is forgive her for these failures and find that, because she did not mean to do it, the debt  
16 should be dischargeable. That is not the standard, however.

17 And, even if it were, the Court could not reach that conclusion based on the evidence Plaintiff  
18 provided at trial (and that Debtor failed to provide at trial). Debtor’ provided no evidence to this  
19 Court to counter Plaintiff’s evidence and argument that Debtor did in fact intentionally fail to  
20 account properly for the assets of her mother’s estate. Debtor’s evidence amounted to nothing more  
21 than her own self-serving denials of any intentional wrongdoing.

22 Her denials were far from compelling. Without providing any evidence to counter Plaintiff’s  
23 evidence, Debtor simply asks this Court to overlook several unexplained and damning  
24 “coincidences.” Perhaps the most compelling transaction involved the \$22,468.18 payment Debtor  
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26 <sup>1</sup>The fact that the probate court struck all language finding Debtor had committed fraud or  
27 defalcation while acting as a fiduciary from its order does not persuade this Court otherwise.

1 listed in her accounting to the probate court as being made to Chandler Hospital on December 27,  
2 2001, for her mother's medical bills. The evidence provided by Plaintiff indicates that Chandler  
3 Hospital never received any such payment. Rather, on the same day Debtor says she made this  
4 payment (12/27/01), Debtor withdrew the same exact amount from her bank account and turned  
5 around within moments and had issued a cashier's check to Arizona Title for \$22,468.18 for the  
6 down payment on her new home. In addition, the withdrawal slip attached to the probate court  
7 accounting contains a handwritten note identifying the withdrawal as being made to pay Chandler  
8 Hospital, whereas the original bank copy contains no such written notation, strongly suggesting  
9 Debtor added the language upon submission to the probate court as some kind of additional proof  
10 of what the payment was for.

11 At trial, Debtor offered two explanations for this coincidence. The first was that she must  
12 have simply made a mistake in her accounting but that she thought she had over the course of time  
13 paid Chandler Hospital somewhere in the vicinity of \$22,000 for various medical bills. In light of  
14 Plaintiff's evidence, the burden shifted to Debtor to provide evidence of her own to rebut Plaintiff's  
15 allegations. She offered nothing – no copies of any medical bills owing to Chandler Hospital, no  
16 Chandler Hospital invoices showing any medical bills owing, no cancelled checks, no affidavits from  
17 representatives of Chandler Hospital, no account statements from Chandler Hospital. She made no  
18 indication that she had even attempted to collect any of this information from her bank or from the  
19 hospital.

20 Her second defense offered was that at the time she withdrew the \$22,468.18 from her  
21 account, she had an additional \$20,000 in her account that she had received from Met Life as  
22 beneficiary of her mother's life insurance policy, meaning that she did not need money from her  
23 mother's estate to make the down payment on her home. Again, however, Debtor offered no  
24 evidence to show the deposit by Met Life or her bank balance at the time of the withdrawal. She  
25 simply failed to meet her burden.

26 The same holds true for various payments Debtor admits making on her credit card account

1 with funds from her mother's estate. She testified at trial that she shared the credit card with her  
2 mother and that some, if not most, of the charges were charges her mother made. Again, Debtor  
3 never provided a single credit card statement showing the charges made such that she could identify  
4 those charges made by her mother. She never provided any document showing the card was issued  
5 in her and her mother's name or that her mother was an authorized user of the account.

6 The fact is Debtor did little in this case to defend herself, other than show up for trial and  
7 deny the allegations. It became abundantly clear during her testimony and her cross examination that  
8 she failed to comply with Plaintiff's discovery requests and provide the information she says exists  
9 explaining the large gaps in her record keeping. Throughout her cross examination she said she did  
10 not have proof of her position with her at the trial but that she had, or her former counsel Gallagher  
11 and Kennedy had, various documents to support her story. At trial, that is not good enough.

12 Last, the Court finds no merit in Debtor's argument that she relied on her counsel Gallagher  
13 and Kennedy to, essentially, save herself from herself. As was made abundantly clear at trial,  
14 Gallagher and Kennedy had its own struggles with Debtor and sought to withdraw representation  
15 based on Debtor's failure to follow through with providing it the information it needed to participate  
16 in the probate case in an informed manner. Debtor was the Personal Representative. She agreed to  
17 take on the fiduciary responsibilities imposed by law and agreed that she would be responsible as  
18 such.

19 For the foregoing reasons, the Court finds that any judgment that may be awarded by the  
20 probate court as a result of Debtor's actions as Personal Representative of her mother's probate  
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1 estate are nondischargeable under 11 U.S.C. section 523(a)(4).

2 Plaintiff is to submit a form of judgment

3 So ordered.

4 Dated: FEB 2 2006

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6  
7 CHARLES G. CASE II  
UNITED STATES BANKRUPTCY JUDGE

8  
9 **COPY** of the foregoing facsimiled and/or mailed  
this 2nd day of February, 2006, to:

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