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**UNITED STATES BANKRUPTCY COURT
THE DISTRICT OF ARIZONA**

In Re)
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JULIO QUINTANA,)
)
 Debtor.)
)
_____)
)
AMERICAN EXPRESS BANK, FSB,)
)
 Plaintiff,)
)
v.)
)
JULIO QUINTANA,)
)
 Defendant.)
)
_____)

Chapter 7 Proceedings

Case No. 09-BK-09776-PHX-CGC
Adv. No. 09-0899-CGC

**UNDER ADVISEMENT
DECISION SUMMARY JUDGMENT**

18 The debtor, Julio Quintana, used his American Express card to charge his Federal income
19 taxes. Under section 523(a)(14), this debt is non-dischargeable to the extent that the tax claim
20 itself would have been non-dischargeable. Because there is no genuine issues of material of law
21 or fact, as was made clear at the time of the hearing, American Express is entitled to summary
22 judgment in its favor.

23 Summary judgment shall be granted where no genuine issue of material fact exists and
24 the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. Rule 56(c); Fed. R.
25 Bankr. P. Rule 7056(c). “[T]he mere existence of some alleged factual dispute ... will not defeat
26 [a] ... motion for summary judgment; the requirement is that there be no genuine issue of
27 material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986). A genuine issue
28 of material fact exists when “the evidence is such that a reasonable jury could return a verdict for
the nonmoving party.” *Id.* at 248. The moving party bears the initial burden of demonstrating

1 to the court that no genuine issue of material fact exists and to further show that the moving
2 party is entitled to judgment in their favor as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S.
3 317, 323 (1986). The burden then shifts to the nonmoving party to show that there are specific
4 facts creating a genuine issue for trial. *Id.* at 324. However, when the nonmoving bears the
5 burden of proof, “the burden on the moving party may be discharged by ‘showing’- that is,
6 pointing out to the district court - that there is an absence of evidence to support the nonmoving
7 party's case.” *Id.* at 325.

8 Notwithstanding the clear law and facts, Mr. Quintana argues that he has been misled
9 during the course of this proceeding by comments made during scheduling conferences
10 indicating that the lawsuit had to do with a intentionally incurring credit card charges without the
11 intent to repay them, a 523(a)(2) case, instead of of 523(a)(14) case. The Court has reviewed the
12 record and has concluded that it is not unreasonable for Mr. Quintana to believe he was misled.

13 This misunderstanding began at the initial scheduling conference in October, 2009. The
14 Court did suggest that the nature of the claim was fraudulently incurring the debt without the
15 intent to repay. Mr. Quintana refuted those allegations during the scheduling conference.
16 Counsel for American Express never corrected either the Court or Mr. Quintana.

17 The misunderstanding was a further amplified during the conference in March 2010. At
18 that conference, the issue was what discovery the Debtor needed to provide to the plaintiff.
19 Among the disputed items were his tax returns. After a Court ordered break for the parties to
20 discuss the dispute, counsel for American Express explicitly argued that she needed the tax
21 returns in order to determine if he was in a state of declining income, an issue completely
22 irrelevant to a 523(a)(14) claim, but which would be relevant to a 523(a)(2) claim.

23 Mr. Quintana now argues that summary judgment is not appropriate because he has been
24 misled. However, there are several facts that show that he should have realized what the case
25 was actually about. First, the language of the complaint itself is limited to section 523(a)(14).
26 Second, counsel for America Express has advised the Court that during the personal meetings
27 and at least one email, she advised Mr. Quintana of the nature of the claim. Finally, the summary
28 judgment motion itself was explicitly limited only to the 523(a)(14) claim.

1 The reality is that summary judgment is appropriate here. The record clearly shows that
2 Mr. Quintana used his American Express to pay his taxes. The question, however, is whether
3 there is some relief that's appropriate given the obvious confusion espoused by the Court and
4 counsel regarding what claim American Express asserted. After considering the matter, the Court
5 concludes that there is no remedy that is either necessary or appropriate. The fact is that this
6 claim does not depend upon an intent but is in the nature of "strict liability." As a result, the
7 remainder of the debt owed will be discharged and only the amount relative to the tax claim will
8 remain.

9 Mr. Quintana suggested during oral arguments that he may have taken a different
10 approach had he realized the nature of the claim. In other words, he states he may have tried to
11 settle the case rather than risk having a judgment entered which can be enforced through
12 garnishment procedures. Of course, he can still settle the claim if he can satisfy the plaintiff as to
13 his ability to pay on a payment plan that is different from what the plaintiff could recover using
14 normal garnishment procedures.

15 At the end of the day, despite the confusion, there is no remedy available here to Mr.
16 Quintana. The debt he has incurred is clearly non-dischargeable and judgment should be entered
17 to that effect. As noted, any remaining amount owed to American Express will be discharged.
18 However, given the fact that counsel for American Express not only never clarified the nature of
19 the claim on the record to the Court when the Court was discussing the matter with Mr.
20 Quintana, but she too seemed to argue that the claim was in the nature of a fraud claim, no
21 attorney's fees for the pursuit of this action will be awarded to American Express. The amount to
22 be awarded is as pled in the complaint for the actual amount used to pay taxes plus associated
23 claims and interest.

24 Counsel for plaintiff is to submit a form of judgment consistent with this decision.

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27 So ordered.
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DATED: August 16, 2010


Charles G. Case
UNITED STATES BANKRUPTCY JUDGE

COPY of the foregoing mailed by the BNC and/or sent by auto-generated mail to:

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