

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT**



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In re: )  
 )  
JEAN M. PAGLIUGHI, )  
 )  
 Debtor. )  
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 )  
MATTHEW BROWN ET. AL., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
JEAN M. PAGLIUGHI, )  
 )  
 Defendant. )  
\_\_\_\_\_

**Chapter 13  
Case No. 22-10172**

**Adversary Proceeding  
Case No. 23-01004**

**MEMORANDUM OF DECISION AND ORDER  
DENYING SECOND MOTION FOR SUMMARY JUDGMENT**

Pending before the Court is Plaintiffs’ Second Motion for Summary Judgment. Plaintiffs renew their request for summary judgment on their claim for a determination of exception to discharge brought under § 523(a)(4) of title 11 of the United States Code (the “Bankruptcy Code”). *See* doc. # 15.

For the reasons set forth below, the Court denies summary judgment.

**JURISDICTION**

The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Order of Reference entered by the U.S. District Court on June 22, 2012. The Court declares this contested matter to be a core proceeding according to 28 U.S.C. § 157 (b)(2)(B), over which this Court has constitutional authority to enter a final judgment. The parties agree.

**BACKGROUND**

Having previously set forth the background facts in detail upon consideration of Plaintiffs’ first motion for summary judgment (docs. ## 8 and 9) (“First Motion”), the Court recounts the fact of the case only briefly here. The litigation between the parties began prior to Debtor’s petition for relief or this Adversary Proceeding. The relevant facts are not in dispute. Debtor was Trustee of a Medicaid Income Only Trust for the benefit of Ann Pagliughi. When Debtor filed an accounting with New York Surrogate’s Court, Suffolk County, Plaintiffs objected. The State Court found that Debtor breached her fiduciary duties as

Trustee. The State Court did not find that Debtor's actions exhibited knowledge, conscious behavior, or gross recklessness. The State Court awarded Plaintiffs a surcharge of \$153,391.72, plus interest, which is the basis of Plaintiffs' proof of claim against Debtor.

Plaintiffs filed the First Motion in June 2023 arguing that res judicata and collateral estoppel entitled them to judgment as a matter of law, exclusively based on the State Court Decision. The Court denied the First Motion on the basis that the summary judgment record failed to establish that the identical issue of defalcation (with the requisite culpability) was necessarily decided by the State Court. However, the Court established for trial that Debtor was acting in an express fiduciary capacity and fixed the amount of the debt.

Plaintiffs filed the Second Motion on November 27, 2023 (doc. # 15), to which Plaintiffs attached several documents not included in the First Motion, including the trust document, trial transcripts from the State Court Action, and Debtor's accounting which was at issue in that case (doc. # 15, Exhibits 1-9). Debtor objected to the Second Motion on December 18, 2023 (docs. ## 22-25), arguing that Plaintiffs had access to these documents at the time of the First Motion, but failed to include them as attachments to that document or refer to them as required by VT LBR 7056-1(c) (doc. # 22 at 2-3).

### **DISCUSSION**

Usually, a party is limited to one motion for summary judgment, and the Court has discretion whether to review a successive motion for summary judgment, as it may be procedurally improper. *Brown v. City of Syracuse*, 673 F.3d 141, 147 n. 2 (2d Cir. 2012) (successive motions for summary judgment may be procedurally improper if arguments in second motion could have been raised in first motion); *see also Frederick v. Office of Mental Health, Rochester Psychiatric Center*, 515 F.Supp.3d 29, 32 (W.D.N.Y. 2021) (permitting successive motion for summary judgment based upon new evidence presented). This discretion consists of either entertaining or not entertaining the successive motion. *Brown*, 673 F.3d at 147 n. 2. In exercising its discretion, the Court may decline to review a successive motion when it is based on facts and arguments which could have been raised in the first motion. *Campers' World Intern., Inc. v. Perry Ellis Intern., Inc.*, 221 F.R.D. 409, 409 (S.D.N.Y. 2004) (“[I]t is improper for a party to file a successive motion for summary judgment which is not based upon new facts and which seeks to raise arguments it could have raised in its original motion.”).

While this Court certainly has the discretion to review a successive summary judgment motion seeking precisely the same relief as before, the Court declines to exercise that discretion here because the Plaintiffs have failed to raise any new facts or arguments they could not have raised in the first round of briefing. *See Siemens Westinghouse Power Corp. v. Dick Corp.*, 219 F.R.D. 552, 554 (S.D.N.Y. 2004). The Second Motion contains the same legal argument on defalcation, and only adds facts which were available at the time of the First Motion, rendering the Second Motion procedurally improper. The exhibits attached

to the Second Motion all appear to have been available to Plaintiffs at the time of the filing of the First Motion because they were all connected to the underlying State Court Action to which the Plaintiffs were parties.


Further, the Second Motion contains no representations by Plaintiffs' counsel that he had discovered any new evidence which was not available at the time of the First Motion which would have altered the Court's decision. *See Frederick*, 515 F.Supp. at 33. In fact, Plaintiffs' reply memorandum acknowledges that the Second Motion uses facts which were available to the Plaintiffs at the time of the First Motion (doc. # 26 at 2). While Plaintiffs' reply speculates that the trial transcripts attached to the Second Motion will be introduced to impeach Debtor's testimony if it deviates from her testimony in the State Court Action, that does not support the piecemeal consideration of successive motions for summary judgment. *Siemens Westinghouse Power Corp.*, 219 F.R.D. at 554 (parties ought to be "held to the requirement that they present their strongest case for summary judgment when the matter is first raised." (citing *Allstate Finance Corp. v. Zimmerman*, 296 F.2d 797, 799 (5<sup>th</sup> Cir. 1961))).

Since the determination of the First Motion, no higher court has substantially altered the law of defalcation. To the extent the Second Motion resembles a motion for reconsideration of the Court's decision on the First Motion, it fails to set forth grounds for relief. *See Fed. R. Bankr. P. 9024* (incorporating Fed. R. Civ. Pro. 60(b)).

Accordingly, based upon the foregoing, the Court declines to consider Plaintiffs' Second Motion for Summary Judgment and the relief requested is DENIED.

**SO ORDERED.**

January 2, 2024  
Burlington, Vermont

  
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Heather Z. Cooper  
United States Bankruptcy Judge