

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ALLEGRO ACCEPTANCE)	
CORPORATION,)	2 CA-CV 2011-0176
)	DEPARTMENT A
Plaintiff/Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
GRANT D. BULLOCK,)	Appellate Procedure
)	
Defendant/Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20109707

Honorable Paul E. Tang, Judge

VACATED AND REMANDED

Law Offices of Mary T. Hone, PLLC
By Mary T. Hone

Scottsdale
Attorney for Plaintiff/Appellee

Grant D. Bullock

Tucson
In Propria Persona

B R A M M E R, Judge.

¶1 Grant Bullock appeals from the trial court's order entering summary judgment in favor of appellee Allegro Acceptance Corp. (Allegro) and against Bullock for \$8,250.75 plus interest, attorney fees, and costs. Bullock argues the court erred by granting Allegro's motion for summary judgment because his underlying debt to Allegro had been discharged in a Chapter 7 bankruptcy case.¹ We vacate the judgment and remand.

Factual and Procedural Background

¶2 When reviewing a grant of summary judgment, we view the facts in the light most favorable to the nonmoving party. *Williams v. Baugh*, 214 Ariz. 471, ¶ 2, 154 P.3d 373, 374 (App. 2007). In 2008, Bullock and Allegro entered into a retail installment contract and security agreement for the purchase of a piano. Bullock agreed to pay Allegro \$8,560 plus interest in monthly installments, and Allegro retained a purchase money security interest in the piano. Bullock defaulted on the agreement by failing to make payments. Although Bullock and Allegro apparently had reached an agreement to bring his payments current, Bullock filed for Chapter 7 bankruptcy relief in July 2010. Bullock filed a motion in bankruptcy court to reaffirm his debt to Allegro. The court

¹Bullock also argues the trial court erred by failing to rule on his motion to dismiss and by ruling on Allegro's motion for summary judgment before the parties had completed compulsory arbitration pursuant to A.R.S. § 12-133. Because we vacate the judgment, we do not address those issues.

denied his motion and discharged the debt,² but determined he could retain the piano if he continued to make timely payments according to the original agreement with Allegro.

¶3 In December 2010, Allegro filed a complaint alleging Bullock had failed to make payments according to the contract and asked the trial court to grant it judgment against Bullock for the amount of the unpaid principal plus interest. In his answer, Bullock contended Allegro had caused the default by failing to follow through on a payment arrangement upon which, he asserted, the parties had agreed.

¶4 Allegro filed a motion for summary judgment in April 2011. Bullock responded by reiterating his earlier arguments, asking the trial court to wait for the arbitrator to hear the matter, and arguing Allegro's relief should be limited to repossession of the collateral based on the debt having been discharged in bankruptcy.³ Allegro then amended its complaint to include a claim to recover possession of the piano in replevin as a provisional remedy in addition to its claim for monetary relief. The court later granted Allegro's summary judgment motion and ordered it to prepare and submit a

²Although the record does not contain a copy of the discharge, it does contain the bankruptcy court's order denying the motion to reaffirm, and Allegro does not dispute that Bullock's debt was discharged.

³Discharge in bankruptcy is an affirmative defense that must be set forth in the answer. Ariz. R. Civ. P. 8(c); *see also City of Phx. v. Fields*, 219 Ariz. 568, ¶ 27, 201 P.3d 529, 535 (2009). However, Rule 15(b), Ariz. R. Civ. P., provides that issues tried by implied consent "shall be treated in all respects as if they had been raised in the pleadings." Allegro never has claimed that Bullock waived this issue by not asserting it in his answer, and the record shows the parties and the trial court addressed the issue of Bullock's bankruptcy discharge. *See Hill v. Chubb Life Am. Ins. Co.*, 182 Ariz. 158, 161-63, 894 P.2d 701, 704-06 (1995) (no waiver where defendant aware of issue, did not object, responded to merits, and trial court addressed issue). We apply Rule 15(b) liberally to decide cases on their merits rather than on the pleading skills of the parties. *Id.* at 161, 894 P.2d at 704.

proposed form of judgment. *See* Ariz. R. Civ. P. 5(j). The court struck from the form of judgment submitted the provision granting special execution to recover the piano, but entered judgment against Bullock for \$8,250.75 plus interest, costs, and attorney fees. This appeal followed.

Discussion

¶5 Bullock argues the trial court erred by granting Allegro summary judgment because the underlying debt had been discharged in bankruptcy. “On appeal from a summary judgment, we must determine de novo whether there are any genuine issues of material fact and whether the trial court erred in applying the law.” *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, ¶ 8, 965 P.2d 47, 50 (App. 1998). Because Bullock’s bankruptcy discharge precluded obtaining a monetary judgment against Bullock for the debt, the court’s entry of such a judgment was improper.

¶6 The effect of a bankruptcy discharge is provided in 11 U.S.C. § 524(a)(1), which states:

A discharge in a case under this title . . . voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged . . . , whether or not discharge of such debt is waived.

See also In re Ybarra, 424 F.3d 1018, 1022 (9th Cir. 2005) (discharge provides fresh start releasing debtor from personal liability for pre-bankruptcy debts). The court in Bullock’s bankruptcy reiterated this principle in its order disapproving his motion to reaffirm the debt he owed Allegro. The order stated: “[b]ecause the reaffirmation is denied, the creditor may not take or threaten to take any action to collect its debt as a personal

liability of the debtor.” However, the court clarified that, if Bullock failed to make payments as required by the loan documents, Allegro could “collect its debt by enforcing its rights against the Collateral pursuant to applicable non-bankruptcy law.” *See Stewart v. Underwood*, 146 Ariz. 145, 146, 704 P.2d 275, 276 (App. 1985) (valid pre-bankruptcy lien survives bankruptcy).

¶7 Rather than seeking to recover the piano, Allegro’s motion for summary judgment sought monetary relief against Bullock “for the full amount owed pursuant to the Agreement.”⁴ The trial court entered judgment “against [Bullock] in the principal sum of \$8,250.75 plus interest,” which is the amount Allegro asserted Bullock owed. However, a court cannot enter a monetary judgment against a debtor for a debt that has been discharged in bankruptcy. *See* 11 U.S.C. § 524(a)(1). On appeal, Allegro continues to assert that its monetary judgment against Bullock is valid despite conceding the debt had been discharged and Bullock cannot be held personally liable for it. Allegro emphasizes that Bullock had an ongoing responsibility to make payments in order to retain the piano, but Allegro’s right to recover it from Bullock cannot validate a personal judgment on the debt against him. Therefore, the court erred by entering judgment against Bullock for the amount owed and, accordingly, we vacate it.

¶8 Bullock also argues genuine issues of material fact about whether he was in default precluded summary judgment, including whether the contract had been amended

⁴The trial court previously had ordered the sheriff to take possession of the piano as a provisional remedy. The record does not reflect whether the order was executed. The court’s judgment against Bullock included no in rem relief entitling Allegro to recover possession of the piano.

verbally. Because we vacate the judgment, we do not reach any other issue, but note Bullock also has waived this argument on appeal by failing to cite any evidence in the record or other authority supporting it. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellate brief argument shall contain “citations to the authorities, statutes and parts of the record relied on”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007).

Disposition

¶9 For the foregoing reasons, we vacate the trial court’s entry of summary judgment in favor of Allegro and remand for further proceedings consistent with this decision. Bullock requests an award of his costs and legal document preparation fees pursuant to A.R.S. § 12-341.02. In our discretion, we award him such costs and fees upon his compliance with § 12-341.02 and Rule 21, Ariz. R. Civ. App. P.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge