NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. MW 03-086

Bankruptcy Case No. 02-46335-JBR
Adversary Proceeding No. 03-4016

NATASHA CORMIER,
Debtor.

NATASHA CORMIER,
Appellant,
v.
EDUCATIONAL CREDIT MANAGEMENT CORPORATION, NORTHSTAR GUARANTEE INC., and PEPPERDINE UNIVERSITY,
Appellees.

Appeal from the United States
for the District of Massachusetts
(Hon. Joel B. Rosenthal, U.S. Bankruptcy Judge)

Before
Carlo, Deasy, and Kornreich, United States Bankruptcy Appellate Panel Judges.

Craig T. Ornell, Esq. and Gail E. Piccolomini, Esq.,
on brief for Appellant, Natasha Cormier.

Jennifer L. Groninger, Esq.,
on brief for Appellee, Pepperdine University.

April 28, 2004

Kornreich, U.S. Bankruptcy Appellate Panel Judge.

This matter is before the U.S. Bankruptcy Appellate Panel on an appeal from an October 10, 2003 decision[1] of the United States Bankruptcy Court for the District of Massachusetts granting a motion by Pepperdine University ("Pepperdine") for summary judgment regarding the nondischargeability of educational loans under 11 U.S.C. § 523(a)(8). The appellant, Natasha Cormier (the "Debtor"), argues that the bankruptcy court committed reversible error in granting summary judgment since she offered specific evidence showing material facts in dispute.

BACKGROUND

In its Memorandum, the bankruptcy court made certain factual findings based on uncontested facts introduced by Pepperdine in support of its summary judgment motion. We recount only those facts necessary to provide context for the issue before us.

During the 1998-1999 school year, the Debtor attended Pepperdine University School of Law.[2] After her first semester of law school, the Debtor failed to meet the minimum grade point average of 72. The Debtor was placed on academic probation, but was allowed to continue for the second semester. Upon completion of her second semester, the Debtor again failed to meet the minimum grade point average. Pepperdine sent the Debtor a letter stating that she would be dismissed unless she successfully petitioned the faculty to continue as a second year student. The

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[1] On October 10, 2003, the bankruptcy court issued a Memorandum On Motion For Summary Judgment ("Memorandum") entering judgment for Pepperdine and indicating that a "separate order will issue." The Debtor filed her Notice of Appeal on October 17, 2003. The bankruptcy court did not enter a separate order on the motion until January 26, 2004.

[2] It is undisputed that Pepperdine University is a fully accredited collegiate institution of higher education and is a not-for-profit corporation.

Debtor filed a petition to continue, stating that she suffered an illness during finals that contributed to her poor marks. With the petition she submitted a letter from her physician, Dr. Lynn M. Manfred, dated July 2, 1999 that attested to the uncharacteristic nature of the Debtor's behavior and to her general well-being. Dr. Manfred further remarked that the Debtor's condition was improved and she was able to return to school. Pepperdine rejected the Debtor's petition to continue as a second year student but offered her the opportunity to repeat her first year of law school. The Debtor declined the offer and withdrew from Pepperdine. The Debtor then attended Assumption College as a full-time student, earning an M.B.A.

To fund her law school education, the Debtor signed a promissory note for a Federal Perkins Loan in the principal amount of $3,000. Under the terms of the loan, the Debtor was required to begin making monthly payments of $40 in December 2000. She failed to make payments in December 2000 and January 2001. In February 2001, the Debtor requested that Pepperdine defer her loan payments due to her status as a full-time M.B.A. student. Pepperdine agreed to defer payments until June 2001 when the Debtor graduated from her M.B.A. program. Upon obtaining her M.B.A., the Debtor defaulted in her payments with the exception of a one time payment of $140 in January 2002. In February 2002, the Debtor requested another deferment on the basis of a disability. The Debtor also submitted a Total and Permanent Disability Cancellation form dated December 28, 2001. The form did not include an original signature from her physician, so Pepperdine rejected the form, requesting an original signature. Pepperdine never received an original form and, therefore, did not grant the deferment.

In April 2002, the Debtor applied for another deferment -- this time on the basis of economic hardship rather than disability. Pepperdine granted her an economic hardship

deferment, retroactive to February 2002. Pepperdine informed the Debtor, however, that beginning in February 2003, she would be responsible for resuming payments of $40 per month.

On October 17, 2002, the Debtor filed a voluntary Chapter 7 petition. In her Schedules, the Debtor represented that she received $934 a month in Social Security benefits, and that her expenses totaled $1,650, including $725 for rent, $135 for utilities, $200 for food, $50 for clothing, $80 for transportation, $100 for recreation, $90 for car insurance and $270 in car payments.

On January 24, 2003, the Debtor filed an adversary complaint seeking, among other things, a determination that her student loan obligation to Pepperdine would impose an undue hardship on her and therefore should be discharged under § 523(a)(8). Pepperdine timely responded to the complaint. On April 30, 2003, Pepperdine served the Debtor with interrogatories and requests for production of documents. The discovery responses were due on June 2, 2003, but the Debtor failed to respond until June 29, 2003.

On or about June 30, 2003, Pepperdine filed a motion for summary judgment seeking a determination that the debt could not be discharged as an "undue hardship" pursuant to § 523(a)(8). The Debtor opposed the motion, arguing that she suffered from a total and permanent disability which prevented her from obtaining employment. To support her claims of disability, the Debtor submitted a Social Security Notice of Decision dated June 25, 1997 ("Social Security Decision"), a two-page Total and Permanent Disability Cancellation Request dated December 28, 2001, a two-page Loan Discharge Application dated June 30, 2003, and a one-page affidavit.

A hearing was held on October 2, 2003. On October 10, 2003, the bankruptcy court entered judgment in favor of Pepperdine and the Debtor appealed.

BANKRUPTCY COURT'S RULING

In its Memorandum, the bankruptcy court concluded that there was no genuine issue of material fact because the Debtor had offered no admissible evidence to support her claim that she was disabled and would suffer an "undue hardship" if the student loan obligation was not discharged. The bankruptcy court found that the Social Security Decision did not raise a genuine issue for trial because the findings were made in 1997, a year before the Debtor's entry into law school and before she borrowed money from Pepperdine, and was inadmissible since it was never certified or properly authenticated. Memorandum at 3. The bankruptcy court also dismissed the Debtor's affidavit with respect to her disabilities, stating that she was not competent to testify as to her medical prognosis. Id.

JURISDICTION

A bankruptcy appellate panel may hear appeals from "final judgments, orders and decrees [pursuant to 28 U.S.C. § 158(a)(1)] or with leave of the court, from interlocutory orders and decrees [pursuant to 28 U.S.C. § 158(a)(3)]." Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). "A decision is final if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" Id. at 646 (quoting Catlin v. United States, 324 U.S. 229, 233 (1945)). An interlocutory order "'only decides some intervening matter pertaining to the cause, and requires further steps to be taken in order to enable the court to adjudicate the cause on the merits.'" Id. (quoting In re American Colonial Broad. Corp., 758 F.2d 794, 801 (1st Cir. 1985)). A bankruptcy appellate panel is duty-

bound to determine its jurisdiction before proceeding to the merits even if not raised by the litigants. See In re George E. Bumpus, Jr. Constr. Co., 226 B.R. 724 (B.A.P. 1st Cir. 1998). Generally, a bankruptcy court's order granting a motion for summary judgment is a final order. See Weiss v. Blue Cross/Blue Shield of Delaware (In re Head Injury Recovery Ctr. at Newark, L.P.), 206 B.R. 622 (B.A.P. 1st Cir. 1997); see also DeNadai v. Preferred Capital Mkts., 272 B.R. 21 (D. Mass. 2001).

STANDARD OF REVIEW

Appellate courts reviewing an appeal from the bankruptcy court generally apply the clearly erroneous standard to findings of fact and *de novo* review to conclusions of law. See T I Fed. Credit Union v. DelBonis, 72 F.3d 921, 928 (1st Cir. 1995); Western Auto Supply Co. v. Savage Arms, Inc. (In re Savage Indus., Inc.), 43 F.3d 714, 719-20, n.8 (1st Cir. 1994). Generally, orders granting summary judgment are reviewed *de novo*. See Gosselin v. Webb, 242 F.3d 412 (1st Cir. 2001); see also Ragosa v. Canzano (In re Colarusso), 295 B.R. 166, 171 (B.A.P. 1st Cir. 2003); Beatrice v. Braunstein (In re Beatrice), 296 B.R. 576, 577 (B.A.P. 1st Cir. 2003).

DISCUSSION

The Debtor's primary argument is that genuine issues of material fact were presented to the bankruptcy court which should have precluded the granting of summary judgment to Pepperdine on its nondischargeability claims. Specifically, the Debtor claims that she introduced evidence showing that she is totally and permanently disabled and unable to obtain employment and, consequently, that repayment of her student loan would pose a hardship.

I. The Summary Judgment Standard - Fed. R. Civ. P. 56.

The standard for summary judgment is established by Fed. R. Civ. P. 56 ("Federal Rule 56"), which is made applicable to bankruptcy proceedings pursuant to Bankruptcy Rule 7056. Pursuant to Federal Rule 56(c), an order granting summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Barbour v. Dynamics Research Corp., 63 F.3d 32, 36 (1st Cir. 1995), cert. denied, 516 U.S. 1113 (1996). It is generally stated that, when considering summary judgment, the court should draw all reasonable inferences from the facts in the manner most favorable to the nonmovant. See Desmond v. Varrasso (In re Varrasso), 37 F.3d 760, 763 (1st Cir. 1994); Piccicuto v. Dwyer, 39 F.3d 37, 40 (1st Cir. 1994).

To succeed on a motion for summary judgment, the moving party must show that there is an absence of evidence to support the nonmoving party's position. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986); see also Rogers v. Fair, 902 F.2d 140, 143 (1st Cir. 1990). Once the moving party has properly supported its motion for summary judgment, the burden shifts to the non-moving party, who may not rest on mere allegations or denials of his pleading, but must set forth *specific facts* showing there is a genuine issue for trial. See Fed. R. Civ. P. 56(e);[3] see also Barbour, 63 F.3d at 37 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986));

[3] Federal Rule 56(e) provides that "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth *specific facts* showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e) (emphasis added).

Weiss v. Blue Cross/Blue Shield, 206 B.R. at 624. Moreover, to make out the requisite issue of material fact, the nonmovant must produce evidence *which would be admissible at trial*. Kelly v. United States, 924 F.2d 355, 357 (1st Cir. 1991).

Thus, the nonmovant bears the burden of placing, by admissible evidence, *at least one material fact* into dispute once the moving party offers evidence of the absence of a genuine issue. See Crawford v. Lamantia, 34 F.3d 28, 31 (1st Cir. 1994) (citations omitted) (emphasis added), cert. denied, 514 U.S. 1032 (1995). A "genuine" issue is one "that properly can be resolved only by a finder of fact because [it] may reasonably be resolved in favor of either party." Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994) (citations omitted). A fact is "material" if it "carries with it the potential to affect the outcome of the suit under the applicable law." One National Bank v. Antonellis, 80 F.3d 606, 608 (1st Cir. 1996) (citations omitted). Thus, the substantive law defines which facts are material. See Sanchez v. Alvarado, 101 F.3d 223, 227 (1st Cir. 1996).

II. Dischargeability of Student Loans.

Under § 523(a)(8), debtors are not permitted to discharge educational loans unless excepting the loans from discharge will impose an undue hardship on the debtor and the debtor's dependants.[4] In a § 523(a)(8) action, the creditor bears the initial burden of proving that the debt

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[4] Section 523(a)(8) provides:

> (a) A discharge under section 727, 1141, 1228(a), or 1328(b) of this title does not discharge an individual debtor from any debt-- [. . .]
>
> > (8) for an educational benefit, overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an

exists and that the debt is of the type excepted from discharge under § 523(a)(8). See Bloch v. Windham Prof'ls (In re Bloch), 257 B.R. 374, 377 (Bankr. D. Mass. 2001) (citations omitted). Once the creditor makes this threshold showing, the burden shifts to the debtor to prove that excepting the student loan debt from discharge will cause the debtor and her dependants "undue hardship." See id. Generally, the hardship alleged must be attributable to truly exceptional circumstances, such as illness or the existence of an unusually large number of dependents. See TI Fed. Credit Union v. DelBonis, 72 F.3d 921 (1st Cir. 1995) (citations omitted).

In this case, the Debtor confirmed the existence of the debt owed to Pepperdine and does not dispute that the debt falls within one of the exceptions to discharge stated in § 523(a)(8). Accordingly, the only issue remaining for the bankruptcy court to decide on summary judgment was whether the Debtor met her burden of introducing material facts showing that excepting her student loan obligations from discharge would cause her "undue hardship."

In determining whether nondischargeability would cause the Debtor "undue hardship," the bankruptcy court applied a "totality of the circumstances" test. See Memorandum at 4 (citing Kopf v. United States Dept. of Educ. (In re Kopf), 245 B.R. 731, 739 (Bankr. D. Me. 2000), and Dolan v. Am. Student Assistance (In re Dolan), 256 B.R. 230, 238 (Bankr. D. Mass. 2000)). Under the "totality of the circumstances" test, a debtor seeking discharge of student loans under § 523(a)(8) for undue hardship must prove by a preponderance of evidence that (1) her past,

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> obligation to repay funds received as an educational benefit, scholarship or stipend unless excepting such debt from discharge under this paragraph will imposed an undue hardship on the debtor and the debtor's dependents.

11 U.S.C. § 523(a)(8).

present, and reasonably reliable future financial resources; (2) her and her dependents' reasonably necessary living expenses, and; (3) other relevant facts or circumstances unique to the case prevent her from paying the student loans in question while still maintaining a minimal standard of living even when aided by a discharge of other pre-petition debts. See id. (citing Dolan, 256 B.R. at 239).

The Debtor argued the "totality of the circumstances" test in her opposition to the Summary Judgment Motion and does not challenge the bankruptcy court's application of that standard on appeal. The reference to the Brunner test[5] in her brief appears to have been made to bolster her claim of "undue hardship" rather than as a challenge to the "totality of the circumstances" test. Thus, the reference to Brunner has not raised a new issue on appeal, which would be, in any event, beyond our consideration. See Fleet Mortg. Group, Inc. v. Kaneb, 196 F.3d 265 (1st Cir. 1999) (holding that an appellate court will not address issues raised for the first time on appeal). Hence, the appropriateness of the "totality of the circumstances" test as opposed to the Brunner test is not before us.

Since the burden was on the Debtor to show that repayment of the educational loan would cause her "undue hardship" under the "totality of the circumstances" test, we must now examine the evidence presented by the Debtor.

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[5] The Brunner test is different than the "totality of the circumstances" test. The Brunner test requires a "three-part showing (1) that the debtor cannot, based on current income and expenses, maintain a 'minimal' standard of living for herself or her dependants if forced to repay the loans; (2) that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans." Brunner v. New York State Higher Educ. Serv. Corp., 831 F.2d 395, 396 (2d Cir. 1987).

III. The Debtor's Evidence.

A. Social Security Decision.

In opposing summary judgment, the Debtor relied upon a copy of the Social Security Decision, wherein the Administrative Law Judge found that the Debtor "has impairments which make it impossible for her to make an adjustment to any work which exists in significant numbers in the national economy." See Social Security Decision at 2, ¶3. The judge concluded that she was disabled under § 1614(a)(3)(A) of the Social Security Act, and that her disability continued at least through the date of the decision, which was June 25, 1997. Id. at 9, ¶1. According to the Debtor, the decision shows that she is totally and permanently disabled, that her disabilities render her unemployable and, therefore, she has no foreseeable future income to pay back her educational loan.

The bankruptcy court found that the Social Security Decision was not properly authenticated or certified and, therefore, was inadmissible for summary judgment purposes. We agree. As set forth above, in opposing summary judgment, the nonmovant may not rest upon mere allegations, but must produce evidence *which would be admissible at trial* to make out the requisite issue of material fact. Kelly, 924 F.2d at 357 (emphasis added); see also Smith v. City of Chicago, 242 F.3d 737, 741 (7th Cir. 2001) ("In granting summary judgment, a court may consider any material that would be admissible or usable at trial, including properly authenticated and admissible documents or exhibits"). Fed. R. Civ. P. 56(e) requires that sworn or certified copies of all papers referred to in an affidavit must be attached to or served with that affidavit. See 10A Charles A. Wright, et al., Federal Practice and Procedure: Civil 2d § 2722, at 382-84 (1998). "To be admissible, documents must be authenticated by and attached to an affidavit that

meets the requirements of [Federal] Rule 56(e) and the affiant must be a person through whom the exhibits could be admitted into evidence." Id. However, uncertified or otherwise inadmissible documents may be considered by the court if not challenged. Id.

On appeal, the Debtor argues that conclusive proof of authenticity is not required, citing Federal Rule of Evidence 901. Pursuant to Fed. R. Evid. 901, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims."[6] Accordingly, the Debtor argues that the bankruptcy court should have considered the Social Security Decision because: (1) it was produced in response to Pepperdine's interrogatories, (2) it bears the signature of J. Alan Mackey, Administrative Law Judge, (3) Pepperdine does not claim that the document is not authentic, and (4) the Debtor has acknowledged in her opposition to

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[6] Fed. R. Evid. 901 provides as follows:

> *Requirement of Authentication or Identification*
> (a) *General provision.*
> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims.
> (b) *Illustrations*
> By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:
>
> > (1) *Testimony of witness with knowledge*
> > Testimony that a matter is what it is claimed to be. [. . .]
> > (4) *Distinctive characteristics and the like*
> > Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances . [. . .]
> > (7) *Public records or reports*
> > Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a proported public record, report, statement, or data compilation, in any form, is from the public office where items of these nature are kept.

summary judgment that she had applied for social security benefits. Debtor's Brief at 6 (citing United States v. Jimenez Lopez, 873 F.2d 769, 772 (5th Cir. 1989)). The Debtor's argument is without merit. First, Pepperdine has clearly challenged the authenticity and admissibility of the Social Security Decision. Second, although the Social Security Decision was signed by an Administrative Law Judge, it was not certified by a Clerk of the Court nor was there any other evidence presented regarding the chain of custody or testimony regarding its origin. See Jimenez Lopez, 873 F.2d at 772. As a result, the Debtor has failed to produce sufficient evidence to satisfy the authenticity requirement. Because the Social Security Decision was not properly authenticated or certified, it was inadmissible evidence and the bankruptcy court properly declined to give it any consideration.

2. Loan Discharge Forms.

The Debtor also sought to introduce a two-page Total and Permanent Disability Cancellation Request dated December 28, 2001 and a two-page Loan Discharge Application dated June 30, 2003 (collectively, the "Loan Discharge Forms"). On the December 28, 2001 form, Dr. Lynn Manfred identified the Debtor's medical condition as "Marfans aortic root dilation" and, by signing the form, certified that in her professional judgment, the Debtor was unable to work and earn money as a result of an illness that is expected to continue indefinitely. On the June 30, 2003 form, Dr. Daniel Freitas similarly identified the Debtor's medical condition as "Marfans Syndrome with aortic root dilation" and gave a similar certification about the Debtor's inability to work and earn money. The bankruptcy court did not consider these documents because they were not properly authenticated. As set forth above, to be admissible, documents must be authenticated. Because the Loan Discharge Forms were not properly

authenticated or certified, they were inadmissible and the bankruptcy court properly declined to give them any consideration.

C. Debtor's Affidavit.

Finally, the Debtor submitted her own affidavit to support her opposition to the summary judgment motion. "The conventional means of documenting issues of fact to avoid summary judgment is by affidavit." Kelly, 924 F.2d at 358. To be admissible for summary judgment purposes, a supporting or opposing affidavit must meet three requirements; it must: (1) be made on personal knowledge, (2) set forth such facts as would be admissible in evidence, and (3) show affirmatively that the affiant is competent to testify to the matters stated therein. Fed. R. Civ. P. 56(e); see also Casas Office Machines, Inc. v. Mita Copystar America, Inc., 42 F.3d 668 (1st Cir. 1994). Unless a party moves to strike an affidavit under Rule 56(e), any objections are deemed waived and a court may consider the affidavit. Id. at 682. Where an affidavit includes both competent and incompetent evidence, the court should disregard only those portions of an affidavit that are inadmissible and give full consideration to that which remains. Id.

We find that certain portions of the Debtor's Affidavit contain inadmissable evidence and therefore were properly excluded from consideration on summary judgment. In Paragraph 2, the Debtor refers to the findings contained in the Social Security Decision. However, since the Social Security Decision is inadmissible, Paragraph 2 does not contain admissible evidence and was properly excluded from consideration. Moreover, in Paragraph 3, the Debtor stated: "I have been found by Dr. Daniel F. Freitas to be unable to work or earn money because of marfans syndrome with aortic root dilation that is expected to continue indefinitely or result in death." This statement is inadmissible hearsay and was also properly excluded from consideration.

We find, however, that the remaining paragraphs are admissible and should have been considered by the bankruptcy court on summary judgment. In Paragraph 1, the Debtor claimed: "I have not been able to obtain employment due to my disability." The Massachusetts bankruptcy court has allowed debtors to testify at § 523 hearings as to their inability to find employment due to their medical conditions. See Anelli v. Sallie Mae Serv. Corp., 262 B.R. 1, 4 (Bankr. D. Mass. 2000) (allowing debtor to testify at § 523 trial that several disabilities prevented her from seeking and obtaining employment). Accordingly we find that this statement is admissible for summary judgment purposes. In Paragraphs 4-7, the Debtor stated her current income and monthly expenses, that her expenses were expected to increase after the birth of her baby, and that there was no possibility of child support. In Paragraph 8, the Debtor stated that she was unable to walk or swim due to fatigue and leg pain. These paragraphs are admissible as they are based on the Debtor's personal knowledge, contain admissible evidence and the Debtor is competent to testify as to the matters contained therein.

Having determined that Paragraphs 1 and 4-8 are admissible, we must now determine whether the evidence contained therein shows the existence of a genuine issue of material fact as to whether the Debtor was disabled and unable to work.

Pepperdine argues that the Debtor merely recited conclusory allegations of disability and/or an inability to work, and that the evidence of Debtor's activities showed that she could, in fact, secure employment. Appellee's Brief at 9. "[E]vidence that is merely colorable, or not significantly probative cannot impede an otherwise deserved summary disposition." Kelly, 924 F.2d at 358. By the same token, however, a party may not exclude, on summary judgment, relevant and otherwise admissible factual evidence solely on the ground that the evidence leaves

a number of unanswered questions or that it appears somewhat less persuasive than the movant's evidence offered in rebuttal." Casas Office Machines, 42 F.3d at 683.

Viewing the Debtor's admissible evidence in the most favorable light, we are able to infer that there are genuine issues as to the Debtor's alleged disabilities and their impact upon her ability to obtain employment, which are material facts. Those issues must be determined at trial. See 10 Lawrence P. King, Collier on Bankruptcy ¶ 7056.05 (15th ed. rev. 2002) (citing Anderson, 477 U.S. at 249).

CONCLUSION

For the reasons stated, we conclude that a genuine issue for trial was presented by the Debtor in her opposition to the Summary Judgment Motion. Accordingly, the decision of the bankruptcy court is **REVERSED** and the case is **REMANDED** for further proceedings consistent with this opinion.