

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-33384

KEVIN MATTHEW FLANNERY

Debtor

R. KELLEY GILLILAND

Plaintiff

v.

Adv. Proc. No. 00-3140

KEVIN MATTHEW FLANNERY

Defendant

**MEMORANDUM ON MOTION
TO ALTER OR AMEND JUDGMENT**

APPEARANCES: MORRISON, TYREE & DUNN. P.A.
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Attorney for Defendant

**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

Presently before the court is the Plaintiff's Motion to Alter or Amend Judgment (Motion) filed on August 3, 2001.¹ By his Motion, the Plaintiff again requests an award of attorney fees in this adversary proceeding.

On July 26, 2001, the court entered a \$15,995.00 Judgment in favor of the Plaintiff. Attorney fees were not among the damages awarded. *See Gilliland v. Flannery (In re Flannery)*, Ch. 7 Case No. 00-33384, Adv. No. 00-3140, slip op. at 12 (Bankr. E.D. Tenn. July 26, 2001).

The Plaintiff bases his Motion on Tennessee law authorizing attorney fees as an element of recovery in state law fraud actions. However, no state law fraud cause of action was incorporated into the Pretrial Order. *See id.* at 12 n.8; *see also* FED. R. CIV. P. 16(e) (The Pretrial Order "control[s] the subsequent course of the action."). Furthermore, the determination of nondischargeability under § 523(a)(2)(A) is a question of federal law, not state law. *See Brown v. Brown*, 217 B.R. 857, 860 (Bankr. S.D. Ca. 1998).

The court may award attorney fees only where authorized by contract or statute. *See, e.g., Martin v. Bank of Germantown (In re Martin)*, 761 F.2d 1163, 1168 (6th Cir. 1985). The Pretrial Order established the Bankruptcy Code as the sole governing statutory authority in this adversary proceeding. The only circumstance in which the Bankruptcy Code allows attorney fees in discharge litigation is under § 523(d), applicable only to certain prevailing § 523(a)(2) defendants. *See* 11 U.S.C.A. § 523(d) (West 1993); *see also Martin*, 761 F.2d at 1167-68.

¹ The Motion was not accompanied by a supporting brief as required by E.D. Tenn. LBR 7007-1. The court will nonetheless briefly address the issue raised by the Plaintiff.

For these reasons, the Plaintiff's Motion to Alter or Amend Judgment must be denied. An Order consistent with this Memorandum will be entered.

FILED: August 9, 2001

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in the Memorandum on Motion to Alter or Amend filed this date, the court directs that the Motion to Alter or Amend Judgment filed by the Plaintiff on August 3, 2001, is DENIED.

SO ORDERED.

ENTER: August 9, 2001

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE