

United States Bankruptcy Court  
Northern District of Illinois  
Eastern Division

**Transmittal Sheet for Opinions for Posting**

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**Bankruptcy Caption:** *In re Amanda Kang*

**Bankruptcy No.:** 21-14041

**Adversary Caption:** *Shim v. Kang*

**Adversary No.:** 22-00095

**Date of Issuance:** February 1, 2023

**Judge:** Deborah L. Thorne

**Appearance of Counsel:**

Daniel Shim  
986 Asbury Court  
Winnetka, IL 60093

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**United States Bankruptcy Court, Northern District of Illinois**

<b>JUDGE</b>	Deborah L. Thorne	<b>Case No.</b>	21-14041
<b>DATE</b>	February 1, 2023	<b>Adversary No.</b>	22-00095
<b>CASE TITLE</b>	Daniel Shim v. Amanda Kang		
<b>TITLE OF ORDER</b>	Order Granting in Part and Denying in Part Plaintiff's Motion for Default Judgment		

**STATEMENT**

Plaintiff Daniel Shim moves for default judgment and requests that this court find Defendant Amanda Kang's debt of \$17,000 nondischargeable. For the reasons explained below, Defendant's nondischargeable debt is limited to \$15,500.

**I. Background**

This adversary proceeding concerns a \$15,000 loan from Plaintiff to Defendant. Defendant agreed to pay back the loan pursuant to a written loan agreement. (*See* Loan Agreement, Adv. Dkt. No. 20, Ex. A.) The agreement provided that, if Defendant failed to make payments, she would "pay all costs of collection, including reasonable attorney fees . . ." (*Id.*) Defendant promised to pay her debt to Plaintiff with proceeds from a home sale, but the proceeds were insufficient, and she never paid back the loan. (*See* Mot. for Default Judgment, Adv. Dkt. No. 20.)

On December 11, 2021, Defendant filed for relief under Chapter 7 of the Bankruptcy Code. (*See* Bankr. Dkt. No. 1.) Plaintiff filed this adversary complaint on June 9, 2022, alleging that Defendant obtained the loan by false pretenses and actual fraud and that the debt should be nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and (B). (*See* Compl., Adv. Dkt. No. 1.) Defendant was served with the complaint but failed to appear or file a responsive pleading; on October 6, 2022, her attorney David Siegel represented to the court that she planned on defaulting. Plaintiff then filed the instant Motion for Default Judgment.

Plaintiff seeks a determination that Defendant's nondischargeable debt totals \$17,000. This number includes the loan amount (\$15,000), litigation costs (\$500), and attorney's fees (\$1,500). Notably, Plaintiff is an attorney, and he is representing himself in this adversary proceeding. He is currently admitted to this court pro hac vice and has a pending application for admission to the Illinois bar. (*See* Bankr. Dkt. No. 14; Mot. for Default Judgment at 11.)

## II. Discussion

The court agrees that the nondischargeable debt should include the \$15,000 loan and \$500 in litigation costs. But existing law precludes an award of attorney's fees.

Under the "American Rule," "a prevailing litigant may not collect a reasonable attorney's fee from his opponent unless authorized by federal statute or an enforceable contract between the parties." *In re Sheridan*, 105 F.3d 1164, 1166 (7th Cir. 1997) (collecting cases). "[T]he allowance of claims for attorney's fees in bankruptcy generally is recognized as governed by state law." *In re Carey*, 446 B.R. 384, 390 (B.A.P. 9th Cir. 2011) (citing *Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 450–51 (2007)); *In re Olde Prairie Block Owner LLC*, 460 B.R. 201, 203 (Bankr. N.D. Ill. 2011) ("A contractual provision authorizing a creditor to recover attorneys' fees is enforceable in dischargeability actions if the provision is valid under state law.").

Under Illinois law, Plaintiff cannot recover contractual attorney's fees because he is self-represented. The Illinois Supreme Court has explained that "[a] lawyer representing himself or herself simply does not incur legal fees" and "it is contrary to public policy of Illinois to allow an attorney to become his own client and charge for professional services in his own cause." *State ex rel. Schad, Diamond & Shedden, P.C. v. My Pillow, Inc.*, 115 N.E.3d 923, 928–29 (Ill. 2018). This rule holds true "even if a contract specifically allows for the recovery of attorney fees." *In re Marriage of Tantiwongse*, 863 N.E.2d 1188, 1191 (Ill. App. 2007).

Plaintiff only cites to *McCarthy v. Taylor*, 155 N.E.3d 359 (Ill. 2019), to argue that Illinois law allows pro se attorneys to recover fees.<sup>1</sup> But any analogy to *McCarthy* is misguided. The question in *McCarthy* was “whether a court may impose sanctions in the form of attorney fees . . . against a plaintiff to compensate an attorney defending himself against a frivolous cause of action.” *Id.* at 362–63. Plaintiff has not requested sanctions, and he is not defending himself against any action. The Illinois Supreme Court explicitly distinguished cases—like the instant case and *My Pillow*—that involve “awarding attorney fees to an attorney bringing suit as a plaintiff in his own name.” *Id.* at 366.

Because Plaintiff has represented himself in this proceeding and is not merely defending against a frivolous cause of action, he has not incurred attorney’s fees. *See My Pillow*, 115 N.E.3d at 929. It would violate Illinois public policy to enforce the fee-shifting provision of his loan agreement.

### III. Conclusion

Plaintiff’s Motion for Default Judgment is granted in part and denied in part. Defendant’s debt of \$15,500 is nondischargeable.



Date: 2/1/2023

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Hon. Deborah L. Thorne  
United States Bankruptcy Judge

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<sup>1</sup> Plaintiff cites to several other cases to argue that attorney’s fees should be nondischargeable. But these cases all hold that creditors can recover attorney’s fees *only* if they have a contractual right to fees under state law. *See, e.g., In re Martin*, 761 F.2d 1163, 1168 (6th Cir. 1985). The question of dischargeability only becomes relevant *after* Plaintiff shows that he is entitled to fees under Illinois law.