

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In The Matter of

SANDRA LARKIN,

Debtor.

AVCO FINANCIAL SERVICES
OF DENISON, INC.,

Plaintiff,

V.

SANDRA LARKIN,

Defendant.

Case No. 87-1950-C

Chapter 7

Adv. No. 87-0234

MEMORANDUM OF DECISION AND ORDER

On March 22, 1988, a trial was held on complaint to determine dischargeability of debt. Glenn C. Sedgwick appeared on behalf of Avco Financial Services of Denison, Inc. (hereinafter "Avco Financial") , and R. L. Morgan appeared on behalf of defendant (hereinafter "Larkin").

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I). The Court, upon review of the file and arguments of counsel, now enters its findings and conclusions pursuant to F.R. Bankr. P. 7052.

FINDINGS OF FACT

1. On July 31, 1987, Larkin filed a voluntary Chapter 7 Petition.

2. On May 15, 1982, Larkin incurred the following debts: \$3,500.00 to Dr. Gary Marone and \$4,000.00 to Southern Nevada Memorial Hospital. Said debts were listed in Schedule A of her petition.

3. On June 27, 1984, February 13, 1985, February 26, 1987, and June 8, 1987, Avco Financial issued loans to Larkin for the following respective amounts: \$508.15; \$910.48; \$1,866.63; and \$2,548.91.

4. Each of the latter three loans constituted a refinancing of the previous loan and an extension of additional credit. The third loan was secured by collateral valued at \$500.00, and the fourth loan was secured by collateral valued at \$670.00.

5. On June 25, 1984, Larkin filled out a loan application for her first loan issued by Avco Financial. In said application, Larkin was required to indicate if any debts were past due, and she marked a box indicating "no" on a signed statement.

6. On each of the latter three loans, Larkin filled out a statement of indebtedness. On each, Larkin wrote the clause "I owe no other debts."

7. The statement of indebtedness form used in the latter three loans contains the warning "I recognize that a false 'statement of indebtedness' may prevent this loan, or refinance thereof, from being discharged in event of bankruptcy."

8. Avco Financial contends that Larkin was informed of the necessity to list all her debts on each loan application.

9. Larkin contends an employee of Avco Financial told her she would not have to list all her debts because the loans sought would be covered by collateral.

10. Based upon the evidence presented, both direct and circumstantial, Avco Financial's contention that Larkin was informed of the necessity to list all her debts on each loan application is more persuasive.

11. On November 4, 1987, the date Avco Financial filed this Adversary Complaint, Larkin owed Avco Financial \$2,657.57.

DISCUSSION

Section 523 of the Bankruptcy Code lists ten separate exceptions to the discharge of a particular debt. Section 523(a) (2) (B) states:

(a) A discharge under section 727, 11141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

...

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

...

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such

money, property, services, or credit reasonable relied; and

(iv) that the debtor caused to be made or published with intent to deceive;

The burden rests upon the creditor to prove each of the elements by clear and convincing evidence. In re Biedenharn, 30 B.R. 342, 345 (Bankr. W.D. La. 1983).

A materially false financial statement under section 523(a) (2) (B) is one containing important and substantial untruth, and what is substantial is the question of fact. Id. In addition, the failure to include outstanding obligations on a loan application renders the statement materially false. In re Whiting, 10 B.R. 687,689 (Bankr. E.D. Pa. 1981).

A creditor's reliance on a false representation must be reasonable. In re Kelley, 51 B.R. 707, 709 (Bankr. S.D. Ohio 1985). The determination of reasonableness is made on a case-by-case basis. In re Ardelean, 28 B.R. 299, 301 (Bankr. N.D. Ill. 1983). Reliance is unreasonable when a creditor knows from the outset that a financial statement is inaccurate. In re Houk, 17 B.R. 192, 195-96 (Bankr. D.S.D. 1982); see also Whiting, 10 B.R. at 690-91 (finance company loan manager told debtors it was not necessary for them to list all of their outstanding debts as was required by the financial statement).

Intent to deceive may be presumed from the use of a false financial statement to acquire credit. In re Simpson,

29 B.R. 202, 211 (Bankr. N.D. Iowa 1983). If defendant rebuts the presumption by denying the alleged intent, plaintiff then has the burden of proving the intent. Id. Proof of a debtor's intent to deceive a creditor does not need to be established by direct proof but may be inferred from the circumstances of the case. Matter of Bonanza Import and Export. Inc., 43 B.R. 570, 575 (Bankr. S.D. Fla. 1984)

In the case at bar, the Court concludes that Larkin's debt is not dischargeable under section 523(a) (2) (B) for the following reasons. First, Larkin's loan application was materially false respecting her financial condition, pursuant to sections 523(a)(2)(B)(i) and (ii), because of her failure to include the \$7,500.00 of medical debts from Nevada.

Second, Avco Financial's reliance on Larkin's materially false financial statement was reasonable pursuant to section 523(a)(2)(B)(iii) because Avco Financial proved by clear and convincing evidence that it did not know Larkin's financial statement was inaccurate. Further, Avco Financial also proved by clear and convincing evidence that it did not tell Larkin she would not have to list all her debts on each of her four loan applications.

Finally, Larkin's intent to deceive Avco Financial pursuant to section 523(a) (2) (B) (iv) has been established by Avco Financial's proof and the circumstances of the case.

CONCLUSION AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes that Avco Financial has proven each of the elements under 11 U.S.C. §523(a)(2)(B) by clear and convincing evidence.

IT IS ACCORDINGLY ORDERED that Larkin's debt of \$2,657.57 owed to Avco Financial is nondischargeable.

Dated this 22nd day of June, 1988.

RUSSELL J. HILL
U.S. BANKRUPTCY COURT