

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

JERRY B. JARRETT and
SUSAN JARRETT,

Bankruptcy Case No. 02-34237

Debtors.

CAMPER EXCHANGE, INC.,

Plaintiff,

vs.

Adversary Case No. 03-3017

JERRY B. JARRETT,

Defendant.

OPINION

This matter having come before the Court for trial on a Complaint to Determine Dischargeability under 11 U.S.C. § 523(a)(2)(A); the Court, having heard sworn testimony and arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The majority of the material facts in this matter are not in serious dispute and are in pertinent part as follows:

1. On March 31, 2001, Debtor/Defendant, Jerry B. Jarrett, entered into a letter of consignment (Plaintiff's Exhibit 3), with Plaintiff, Camper Exchange, Inc., for the purpose of authorizing the Plaintiff to sell a 1998 Terry Travel Trailer on his behalf. There was no dispute between the parties concerning the validity of the letter of consignment.

2. In addition to signing the letter of consignment, the Debtor/Defendant also signed a Power of Attorney (Plaintiff's Exhibit 4), on March 31, 2001, appointing Camper Exchange, Inc. as his lawful attorney in fact, to sign all papers and documents required to secure Illinois title and/or registration of, or transfer interest in, the 1998 Terry Travel Trailer.

3. At the time the Debtor/Defendant signed the letter of consignment, there was a valid perfected lien against the Terry Travel Trailer held by National City. In a letter dated March 20, 2001 (Plaintiff's Exhibit 10), National City directly notified Camper Exchange, Inc. that it held the lien on the Terry Travel Trailer and that the Debtor/Defendant was still responsible for making payments on the loan. The balance of the loan to National City was \$10,520.57, as of September 17, 2001.

4. On July 16, 2001, Camper Exchange, Inc. received the Debtor/Defendant's permission to sell the Terry Travel Trailer to Douglas Ryan, of New Baden, Illinois, for the sum of \$10,000 (Plaintiff's Exhibit 5).

5. Two cashier's checks totaling \$10,000 were remitted by Douglas Ryan, payable to the Debtor/Defendant, as payment for the Terry Travel Trailer. It was agreed by the parties that the Debtor/Defendant would take the \$10,000 proceeds and pay them toward the release of National City's lien, and, thereafter, deliver the Certificate of Title for the travel trailer to the Plaintiff.

6. The Debtor/Defendant does not dispute the agreement of the parties, and he does not

dispute that the National City lien was not paid from the proceeds of the \$10,000 checks delivered on July 16, 2001.

7. The evidence indicates that Plaintiff, Camper Exchange, Inc., wired funds on September 17, 2001, in the amount of \$10,520.57 for release of the lien of National City on the Terry Travel Trailer (Plaintiff's Exhibit 11).

Conclusions of Law

In order to except a debt from discharge under 11 U.S.C. § 523(a)(2)(A), the plaintiff has the burden of proof by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654 (1991). In order to meet its burden of proof, the plaintiff must establish: (1) that the debtor made a representation to the creditor; (2) that the representation was false; (3) that the debtor possessed scienter, *i.e.* an intent to deceive; (4) that the creditor relied on the debtor's misrepresentation resulting in a loss to the creditor; and (5) that the creditor's reliance was justifiable. Field v. Mans, 516 U.S. 59, 116 S.Ct. 437 (1995).

The only matter in dispute in this proceeding concerns the reason why the Debtor/Defendant failed to pay off the lien on the subject travel trailer and obtain clear title for the buyer. The Plaintiff asserts that the Debtor/Defendant was having financial difficulties and that he cashed the cashier's checks represented by Plaintiff's Exhibit 6, in the amount of \$10,000, using the proceeds for his personal use; all the while having no intent to make a payment to National City which would release the lien. The Debtor/Defendant contends that, at the time of the transaction with the Plaintiff, his business was being operated by a management consulting firm, and that the \$10,000 in funds representing the sale of the travel trailer were given to the management firm with instructions to pay off National City and obtain the release of the lien

on the title to the travel trailer. The Debtor/Defendant offers no explanation of why the management firm failed to follow his instructions, other than an unsupported assertion that he lost considerable sums of money at the hands of the management firm.

The decision in this matter turns upon the credibility of the testimony offered by the Debtor/Defendant, Jerry B. Jarrett. In observing the demeanor of the witness and considering how his testimony related to the fourteen exhibits admitted without objection, the Court finds that the Debtor/Defendant was not a credible witness. The Debtor/Defendant cannot dispute that he endorsed the two cashier's checks totaling \$10,000. See: Plaintiff's Exhibits 6 and 7. The Debtor/Defendant offered no credible proof that the cashier's checks in question were delivered to the alleged management consulting firm, nor did he offer any credible proof that the funds were ever deposited in any account which would have been necessary in order for the Debtor/Defendant's business to write a check in payment of the balance owed to National City. The Debtor/Defendant's explanation of his failure to pay National City is further weakened by the fact that the Debtor/Defendant is now unaware of the whereabouts of the management consulting firm or its employees; parties whose testimony could lend credence to the Debtor/Defendant's claims.

Pursuant to 11 U.S.C. § 523(a)(2)(A), the Court finds that the Plaintiff has met its burden of proof by a preponderance of the evidence in establishing that the Debtor/Defendant: (1) made a representation that, upon payment of the sale proceeds on the travel trailer, he would pay off the lien holder and obtain a clear title to the vehicle; (2) the representation made by the Debtor/Defendant was false; (3) the Debtor possessed scienter in that it is apparent from the credible facts in this matter that the Debtor/Defendant obtained control over the \$10,000 in proceeds from the sale of the travel trailer, using that money for his

own purpose with no intent to pay off the lien to National City; (4) Plaintiff herein did rely on the Debtor/Defendant's misrepresentation and that reliance resulted in the loss of \$10,520.57; and, (5) the Plaintiff's reliance in this situation was justifiable. In this regard, the Court finds that there were no red flags flying to alert the Plaintiff that its reliance on the Debtor/Defendant's promise to obtain a release of the lien on the subject travel trailer was unwarranted. The documentary evidence, together with the testimony of the Debtor/Defendant shows that the business relationship between the parties was very straight forward through the time of sale of the travel trailer. There was nothing shown about the parties' relationship that should have alarmed the Plaintiff prior to the time the Debtor/Defendant obtained possession of the sale proceeds.

Having found that the Plaintiff has met its burden of proof under 11 U.S.C. § 523(a)(2)(A), the Court finds that the indebtedness due to the Plaintiff in the amount of \$10,520.57 is non-dischargeable in the Debtor/Defendant's Chapter 7 bankruptcy proceeding. The Court also finds that a judgment should be entered in favor of Plaintiff and against Debtor/Defendant, with interest at the rate of 9% per annum until the judgment is fully paid.

ENTERED: July 16, 2003.

/s/Gerald D. Fines
United States Bankruptcy Judge