

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In Re)
) In Bankruptcy
LLOYD MISHO)
) No. 94-30857
 Debtor.)
)
)
)
STATE BANK OF JERSEYVILLE,)
)
)
 Plaintiff,)
)
)
 v.) Adversary No. 94-3088
)
)
LLOYD MISHO,)
)
)
 Defendant.)

O P I N I O N

Before the Court is the complaint of Plaintiff, which asks the Court to declare Debtor's debt to Plaintiff nondischargeable in these proceedings pursuant to § 523(a)(2)(B) of the Bankruptcy Code.

In June 1993, Debtor sought to borrow the sum of \$1,000.00 from Plaintiff. Debtor completed and signed a credit application, which showed assets including an automobile, stock and a checking account. Debtor placed no value on any of the assets. Liabilities were also shown on the credit application, including an automobile loan and a Visa credit card. The credit application also showed a monthly take-home salary of \$2,954.00.

Plaintiff loaned Debtor the sum of \$1,000.00 on a thirty-day note with a stated interest rate of 8% per annum. The loan was paid in full by Debtor less than a week after the loan was made.

In October 1993, Debtor sought to borrow \$16,371.67 from Plaintiff. Representatives of Plaintiff were unable to locate a

corresponding credit application, although they are relatively certain that one had been completed but they do not know what was contained in the supposed statement. The loan was made; its term was three years at an annual rate of interest of 8½% with monthly payments of \$516.71. James Range, Senior Vice-President of Plaintiff, handled the loan and testified that Debtor did not advise him of any changes in his financial status at the time the loan was made. Payments on this loan were made in a timely fashion.

In February 1994, Debtor again sought to borrow funds from Plaintiff and submitted a signed credit application. The credit application, which no one admits preparing but which was signed by Debtor, contains no listing of assets and liabilities, which Plaintiff interpreted to mean that there was no material change in Debtor's financial circumstances since the more detailed credit application submitted in June 1993. Debtor's salary is shown as having remained the same throughout the relevant time period. Said loan was made in the sum of \$5,250.00, with interest at a rate of 8½% per annum. Said loan was paid in its entirety approximately ten days after it was made.

On June 8, 1994, a 30-day note was taken out for \$9,000.00. A credit application substantially identical to the one submitted in February 1994, which contained no listing of assets and liabilities, was signed and submitted. Again, no one admits to preparing the credit application. A payment of \$5,000.00 was made on July 5, 1994.

On that same day, Debtor made a request for an additional loan, which is the subject matter of these proceedings. Said loan was in the amount of \$16,291.55 and was to be a consolidation loan, consolidating amounts which remained due and owing from the October 1993 loan and the June 1994 loan. A credit application substantially similar to that

submitted in the previous two transaction was submitted by Debtor to Plaintiff. Again, no one admits having prepared the credit application; and, again, it showed no listing of assets and liabilities. It did, however, show Debtor's salary as having remained the same. The loan was made; it was for a three-year term, with monthly payments of \$516.71 and with an interest rate of 8.513% per annum. One payment was made on said note before Debtor filed for bankruptcy.

As noted above, Plaintiff's complaint against Debtor was brought pursuant to § 523(a)(2)(B) of the Bankruptcy Code, which provides as follows:

(a) A discharge under section 727...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...financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

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

To prevail on a complaint under § 523(a)(2)(B), a plaintiff must prove (1) that the debtor made a statement in writing; (2) that the statement was materially false; (3) that the statement concerned the debtor's financial condition; (4) that in making this misrepresentation, the debtor had an intent to deceive the creditor; and (5) that the plaintiff actually and reasonably relied upon the misrepresentation. In re Bogstad, 779 F.2d 370, 372 (7th Cir. 1985). Intent to deceive can be

found when a debtor has seen a financial statement and knows or should know of its falsity. In re Coughlin, 27 B.R. 632, 636 (1st Cir. BAP 1983). However, inaccuracies on a financial statement do not render an obligation nondischargeable in bankruptcy, even assuming the statement was materially false, if the creditor's reliance on the statement was neither substantial nor a significant factor in its decision to extend credit. In re Kubinski, 71 B.R. 267 (N.D. Ill. 1987).

The party seeking to establish an exception to discharge bears the burden of proof. In re Martin, 698 F.2d 883, 887 (7th Cir. 1983). The U.S. Supreme Court has held that the requisite burden of proof for establishing an exception to discharge is preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 286-287 (1991).

Plaintiff falls short of proving its case in several respects. First, Plaintiff asserts that the credit application for the subject loan is materially false in that it fails to set forth the numerous and substantial liabilities which Debtor incurred between the time of completing his first, detailed credit application in June 1993 and the time of the subject loan, being July 1994. Plaintiff argues that its policy was to presume that if a portion of the credit application was left blank, then there were no material changes in Debtor's financial condition since the time a more detailed credit application had been submitted. The Court is unable to conclude that this presumption is firmly based either in fact or in law. Certainly the Plaintiff is the more sophisticated party in these proceedings; accordingly, it would be incumbent upon Plaintiff to articulate the fact that it intended to make such a presumption until or unless Debtor provided additional relevant facts. There was no testimony that Plaintiff made Debtor aware of its intent to make such a presumption, nor was evidence presented that Debtor

understood that Plaintiff would make such a presumption. Moreover, there is no legal basis of which the Court is aware which allows Plaintiff to unilaterally make this presumption. For these reasons, the Court concludes that the July 1994 credit application was not materially false.

Second, while it is disputed which party completed the subject credit application, it is undisputed that Debtor saw the application and signed it. It is not clear, however, that Debtor intended to deceive Plaintiff with the credit application. Plaintiff had a history of accepting partially completed credit applications from Debtor, then making the requested loan. This happened at least twice and perhaps three times within the year previous to this transaction. More likely than not, Debtor concluded that the credit applications were perfunctory in nature and were not important to Plaintiff in determining whether or not to make a requested loan. Such a conclusion would not be unreasonable under these circumstances and, for that reason, the Court finds that Plaintiff has failed to prove that Debtor intended to deceive Plaintiff with the July 1994 credit application.

Finally, and most decisively, the Plaintiff has failed to prove reasonable reliance. It is clear to the Court that the facts that (i) Debtor had a history of paying notes in a timely manner, (ii) Debtor had a steady stream of income of almost \$3,000.00 per month, and (iii) Debtor was a Roman Catholic priest, were much more important to Plaintiff in making the decision to lend Debtor the subject funds than reliance upon a partially completed credit application. This finding is further supported by the fact that Plaintiff failed to obtain a credit report in order to verify the information contained (or not contained) in the July 1994 credit application. If Plaintiff had obtained a credit report, it would have learned that Debtor's liabilities had increased substantially

since the date of his first, more complete, credit application in June 1993.

For the reasons set forth above, the debt which constitutes the subject matter of Plaintiff's complaint against Debtor pursuant to 11 U.S.C. § 523(a)(2)(B) is dischargeable in these proceedings.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: January 9, 1995

/s/ LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In Re)	
)	In Bankruptcy
LLOYD MISHO)	
)	No. 94-30857
Debtor.)	
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STATE BANK OF JERSEYVILLE,)	
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Plaintiff,)	
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v.)	Adversary No. 94-3088
)	
LLOYD MISHO,)	
)	
Defendant.)	

O R D E R

For the reasons set forth in an Opinion entered this day,
IT IS THEREFORE ORDERED that the debt which constitutes the
subject matter of Plaintiff's complaint against Debtor pursuant to 11
U.S.C. § 523(a)(2)(B) be and is hereby declared dischargeable in these
proceedings.

ENTERED: January 9, 1995

/s/ LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE