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

IN RE:	)	
	)	
KENNETH R. WYATT and	)	Bankruptcy Case No. 94-50905
LISA S. WYATT,	)	
	)	
Debtors.	)	
_____	)	
	)	
COMMUNITY TITLE & ESCROW,	)	
INC., on Behalf of Michael and	)	
Patricia Kilgore,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary Case No. 95-5017
	)	
KENNETH R. WYATT,	)	
	)	
Defendant.	)	
	)	
and	)	
	)	
STEVEN SCHARF, d/b/a	)	
SCHARF CONSTRUCTION,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adversary Case No. 95-5019
	)	
KENNETH R. WYATT,	)	
	)	
Defendant.	)	

OPINION

These matters having come before the Court for consolidated trial upon Complaints to Determine Dischargeability of Debt; 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.

Pursuant to 11 U.S.C. § 523(a)(2)(A), a debtor's bankruptcy

discharge does not include any debt for money, property, services, or an extension, renewal, or refinancing of credit to the extent obtained by false pretenses, a false representation, or actual fraud other than a statement respecting the debtor's or an insider's financial condition. The plaintiff has the burden of proof by a preponderance of the evidence to prove the elements of § 523(a)(2)(A). Grogan v. Garner, 111 S.Ct. 654 (1991). In order for a debt to be found non-dischargeable under § 523(a)(2)(A), the plaintiff must establish three elements: (1) that the debtor obtained the money through representations which he either knew to be false or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) that debtor possess scienter, i.e. an intent to deceive the plaintiff; and (3) the plaintiff actually relied on debtor's misrepresentations resulting in a loss. In re Kimzey, 761 F.2d 421 (7th Cir. 1985); In re Scarlata, 979 F.2d 521 (7th Cir. 1992); In re Maurice, 21 F.3d 767 (7th Cir. 1994); and In re Mayer, 51 F.3d 670 (7th Cir. 1995). Proof of fraudulent intent may be implied from the totality of the circumstances and circumstantial evidence which supports such a finding.

At the close of all evidence, the Court orally ruled that the Plaintiffs had failed to meet their burden of proof under § 523(a)(2)(A), resulting in a finding that the debts in question were dischargeable in the Debtors' bankruptcy proceeding. In support of this finding, the Court notes that the facts of this matter were not in serious dispute. The testimony of the witnesses presented by both sides was credible. In particular, the Court notes that the testimony of the Defendant in this matter was credible. Given the demeanor of

the Defendant, the way he answered questions, and how those answers related to other matters in the adversary proceedings, the Court found the Defendant to be a credible witness and found that his explanations were logical and plausible. In reviewing the evidence, the Court finds that the Defendant herein made only one material misrepresentation in failing to notify Plaintiff, Community Title & Escrow, Inc., of the fact that he had hired Plaintiff, Steven Scharf, d/b/a Scharf Construction, as a sub-contractor to do the rough framing on a home being built for Michael and Patricia Kilgore. Even though the Court finds this to be a material misrepresentation, the Court notes that, given the evidence presented at trial, it is unable to find that the Plaintiffs have proved that the Defendant herein possessed scienter as to either of the Plaintiffs. Given the undisputed testimony of the Defendant in relation to the evidence presented by the Plaintiffs, the Court finds that the Plaintiffs have wholly failed to prove an intent to deceive on the part of the Defendant in the instant transactions. In support of this finding is the fact that the Defendant did not conceal his hiring of Plaintiff, Scharf, from the Kilgores, nor was there any attempt on the part of the Defendant to conceal the hiring of Scharf from either the title company or the lending institution providing financing for the construction project that the parties were involved in. The Court finds it important to note that Mr. Scharf's involvement in the project was very open and anyone that had been at the construction site during the rough framing could have easily determined that the work was being done by Steven Scharf, d/b/a Scharf Construction.

In making its ruling, the Court recognizes that both Plaintiff,

Steven Scharf, and Plaintiff, Community Title & Escrow, Inc., have suffered losses. However, the Court finds that those losses were as a result of an unfortunate set of circumstances including the untimely demise of the Debtor/Defendant's construction business. Even though the losses occasioned herein were unfortunate, the Court is unable to find that, based upon the facts, the losses occurred as the result of some fraudulent, intentional design on the part of the Debtor/Defendant. As such, the Court reiterates its finding made in open Court following the close of evidence that the Complaints to determine dischargeability filed by Plaintiffs, Steven Scharf and Community Title & Escrow, Inc., must be denied.

ENTERED: October 2, 1995

/s/ Gerald D. Fines
United States Bankruptcy Judge