

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:	)	
	)	<b>CHIEF JUDGE RICHARD L. SPEER</b>
Patricia Staples	)	
	)	Case No. 99-3244
Debtor(s)	)	
	)	(Related Case: 99-33445)
Ken Ries	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	
Patricia Staples	)	
	)	
Defendant(s)	)	

**DECISION AND ORDER**

The above captioned adversary complaint comes before the Court after a Trial on the Plaintiff’s Complaint to determine the dischargeability of a debt. After considering the evidence presented at the Trial, and after reviewing the evidentiary materials submitted by the Parties, the Court finds that the following accurately portrays the relevant events which transpired in this case.

The Plaintiff and the Defendant became acquainted in 1993, and for approximately the next three (3) years saw each other on a social basis. Both the Plaintiff and the Defendant have described differently the scope and seriousness of their relationship; however, it can at the very least be gathered that the Parties’ relationship consisted of “dating.” During a majority of the time the Parties dated, the Defendant suffered from financial difficulties. The Plaintiff knowing this, offered on many different occasions to help the Defendant financially. The Defendant willingly accepted the Plaintiff’s financial assistance, which on one occasion involved the Plaintiff turning over to the Defendant just

**Ries v. Staples**  
**Case No. 99-3244**

over Eleven Thousand dollars (\$11,000.00) to enable the Defendant to purchase a car. In addition, over the course of the Parties' relationship, the Plaintiff documented that the following additional sums of money were transferred to the Defendant:

Amount	Disbursement Date
\$750.00	7/15/93
\$750.00	10/5/93
\$450.00	8/5/94
\$200.00	9/8/94
\$350.00	1/21/95
\$122.66	1/26/95
\$162.50	1/30/95

With respect to the Plaintiff's disbursement of the Eleven Thousand dollars (\$11,000.00) for the car, neither Party disputes the fact that this transaction was meant to be a loan despite the fact that nothing was put in writing, and despite the fact that no lien was placed against the car. In fact, shortly after receiving the money for the car, the Defendant paid back to the Plaintiff Four Thousand dollars (\$4,000.00) as a result of the Defendant acquiring a lump sum of Twelve Thousand dollars (\$12,000.00) in a divorce settlement. Once more, in 1996, the Defendant paid to the Plaintiff an additional Two Hundred dollars (\$200.00) on the car loan. However, with regards to the other moneys transferred to the Defendant, the Parties disagree as to the exact characterization of these transactions. Specifically, the Defendant characterized these transactions as gifts. On the other hand, and although there is nothing in writing, the Plaintiff characterized these transactions as loans. In addition, the Plaintiff contends that the Defendant had promised to pay back these "loans" once she was able to

**Ries v. Staples**  
**Case No. 99-3244**

secure a higher paying job, an event which eventually took place when the Defendant secured a position with the Whirlpool Corporation.

Sometime in 1996 it appears that for one reason or another, the Parties' relationship started to deteriorate, until finally the Parties altogether stopped seeing each another. Once this had occurred, the Defendant ceased making any payments to the Plaintiff. In her defense, the Defendant asserts that she was unable to make any further payments on her loan obligation with the Plaintiff because her salary had been intermittently diminished as a result of recurring medical problems. In any event, the Plaintiff brought an action in state court to recover the funds he had transferred to the Defendant. Although, judgment was thereafter granted in favor of the Plaintiff, the state court limited its award of damages to the money the Plaintiff had lent the Defendant for the car, the specific amount of this award being Six Thousand Eight Hundred Two dollars (\$6,802.00) plus interest at the rate of 8% annually.

On August 18, 1999, the Defendant filed in this Court a petition for relief under Chapter 7 of the United States Bankruptcy Code. The Plaintiff then brought the instant adversary proceeding seeking from this Court a judgment that all the funds transferred to the Defendant constituted a nondischargeable debt pursuant to § 523(a)(2)(A) of the Bankruptcy Code.<sup>1</sup> This section provides:

(a) A discharge under section 727, 1141, 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—

---

1

The Plaintiff in his Complaint also sought to have the Defendant's discharge denied pursuant to 11 U.S.C. § 727(a). However, the exact grounds under § 727(a) upon which the Plaintiff relies for this assertion were never specified. In addition, the evidence put forth at Trial was directed primarily at the Plaintiff's Complaint under § 523(a)(2)(A). Accordingly, that portion of the Plaintiff's Complaint brought under § 727(a) will be dismissed.

**Ries v. Staples**  
**Case No. 99-3244**

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition[.]

In opposition to the dischargeability of the moneys he advanced to the Defendant, the Plaintiff contends that in violation of § 523(a)(2)(A), the facts of this case “show that the Defendant engaged in a course of conduct and agreements with the Plaintiff for the sole purpose of obtaining money from him,” and that the Defendant had “no intentions of paying him back.” (Plaintiff’s Trial Brief, pg. 2). In support of the Defendant’s misrepresentations and fraudulent actions, the Plaintiff called this Court’s attention to the Defendant’s actions regarding the car the Plaintiff had enabled the Defendant to purchase. In particular, it was shown that this car, which had no lien against it when it was purchased, was later used by the Defendant as collateral to borrow additional money. In addition, it was shown that the Defendant continued to accept money from the Plaintiff as a “gift” even after knowing that the Parties’ relationship would not lead to anything “serious.”

**LEGAL ANALYSIS**

In the instant adversary proceeding, the Plaintiff seeks from this Court a judgment that all the funds transferred to the Defendant constitute a nondischargeable debt pursuant to § 523(a)(2)(A). Under § 523(a)(2)(A), a creditor bears the burden to establish that the following five (5) elements are met by a preponderance of the evidence: (1) the debtor made false representations; (2) the debtor knew the representations to be false; (3) the representations were made with the intention of deceiving the creditor; (4) the creditor relied on the representations; and (5) the creditor sustained the alleged injury as a proximate result of the representations having been made. *Fifth-Third Bank of Northwest Ohio, N.A. v. Spitler (In re Spitler)*, 229 B.R. 1, 4 (Bankr. N.D.Ohio 1998). With regards to these elements as they relate to the Plaintiff’s cause of action under § 523(a), the Court will consider the car loan separately from the other funds the Plaintiff transferred to the Defendant. The Court now begins its analysis with the former.

**Ries v. Staples**  
**Case No. 99-3244**

As enumerated above, in order for a creditor to sustain their burden of proof under § 523(a)(2)(A), it must be shown that the debtor made a false representation(s) “with the intention and purpose of deceiving the creditor.” As direct proof of intent (i.e., the debtor’s state of mind) is nearly impossible to obtain, evidence may be presented of the circumstances surrounding the transaction from which the debtor’s intent may be inferred. *AT & T Universal Bank v. Pennell (In re Pennell)*, 238 B.R. 737, 741 (Bankr. N.D.Ohio 1999). However, to be actionable, the Debtor’s fraudulent intent must have existed at the time the debt was incurred. *Goldberg Securities, Inc. v. Scarlata (In re Scarlata)*, 127 B.R. 1004, 1010 (Bankr. N.D.Ill. 1991). This does not mean that subsequent conduct by the debtor is irrelevant. In fact, just the opposite is true, as in many instances a debtor’s subsequent conduct will reveal the debtor’s true intentions. *Krenowsky v. Haining (In re Haining)*, 119 B.R. 460 (Bankr. D.Del. 1990). Nevertheless, subsequent misrepresentations do not have any actual bearing upon the dischargeability of a debt as long as such misrepresentations do not induce the creditor to change his position in some way with respect to the original agreement. *Standard Bank & Trust Co. v. Iaquinta (In re Iaquinta)*, 95 B.R. 576, 578 (Bankr. N.D.Ill. 1989).

In this case, after giving careful consideration to all the facts of this case, the Court is not persuaded that the Plaintiff has met his burden of proof in accordance with the above specified standard. Specifically, there is absolutely no indication in this case that at the time the Defendant borrowed money from the Plaintiff for the purchase of her car, that she did not also intend to repay the obligation. The basis for this decision rests upon the inference that a person who intends to commit a fraud in obtaining a loan will not ordinarily pay, as the Defendant has done, a significant portion of their loan back. In addition, the Court finds it entirely plausible that the medical problems the Defendant subsequently encountered significantly impeded her ability to pay back a greater amount of her debt to the Plaintiff.

**Ries v. Staples**  
**Case No. 99-3244**

This holding, however, should not be taken to mean that the Court considers the Defendant's actions vis-a-vis the Plaintiff to be exemplary. In fact, a review of the entire record of this case seriously calls into question the Defendant's motives as they pertain to her relationship with the Plaintiff. Notwithstanding, less than admirable motives in obtaining a loan are not grounds for holding a debt nondischargeable on the basis of fraud. Accordingly, the Court holds that the Defendant's obligation on the car loan is dischargeable, and thus the Court now turns its attention to the other non-auto funds transferred by the Plaintiff to the Defendant.

The Plaintiff asserts that the other moneys transferred to the Defendant were given with the understanding that such funds were intended to be a loan. The Defendant, however, contends that such funds were given to her as a gift. In situations such as this where two opposing parties give conflicting testimony, the credibility the Court attaches to each of the parties' testimony becomes a very important factor in determining which party's account of events will be given credence. In this regard, the Court is inclined to accept the Plaintiff's versions of events as many of the responses given by the Defendant at the Trial were either evasive or inconsistent with the Defendant's prior testimony or other documentary evidence. Nevertheless, the Court must still keep in mind that it is the creditor who bears the initial burden to establish the existence of their debt. *See National Motor Freight Traffic Ass'n v. Superior Fast Freight (In re Superior Fast Freight)*, 202 B.R. 485, 489 (B.A.P. 9<sup>th</sup> Cir. 1996). In this respect, three uncontested facts of this case stand out: the non-auto funds given by the Plaintiff to the Defendant were not, individually speaking, extremely large in amount; such funds were given when the Plaintiff was engaged in a relationship with the Defendant; and nothing exists in writing which memorializes the fact that such funds were given as a loan. Consequently, given these considerations together, and given the generally accepted principle that courts should stay out of matters of the heart, the Court cannot find that the Plaintiff has met his burden to establish that the funds he transferred to the Defendant constituted a loan. As such there does not exist any debt to find nondischargeable. Reinforcing this holding is the fact that the state court, which originally heard the Plaintiff's claim against the Defendant, refused to find that the non-auto funds transferred to the

**Ries v. Staples**  
**Case No. 99-3244**

Defendant constituted a debt. Thus, as the Plaintiff has already had the opportunity to litigate that issue in state court, the doctrine of res judicata is clearly implicated.

Accordingly, for the reasons stated herein, the Court finds that the Defendant is entitled to a bankruptcy discharge on all the funds the Plaintiff advanced to the Defendant. In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

**ORDERED** that the legal obligations of the Defendant, Patricia Staples, to the Plaintiff, Ken Ries, be, and are hereby, determined to be Dischargeable Debts in Bankruptcy.

It is **FURTHER ORDERED** that the Plaintiffs' Complaint to Deny Discharge be, and is hereby, DISMISSED.

Dated:

---

Richard L. Speer  
Chief Bankruptcy Judge