THIS OPINION IS NOT INTENDED
FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 02-16882
	)	
DALE ANDERSON,	)	Chapter 7
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	
CHARTER ONE AUTO FINANCE,	)	Adversary Proceeding No. 02-1377
	)	
Plaintiff,	)	
	)	
v.	)	**MEMORANDUM OF OPINION**
	)	
DALE ANDERSON,	)	
	)	
Defendant.	)	

Plaintiff Charter One Auto Finance filed this complaint to determine the dischargeability of debt owed by the defendant-debtor, Dale Anderson. Because Charter One did not meet its burden of proving that the debt is nondischargeable, judgment will be entered in favor of the debtor.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

THE POSITIONS OF THE PARTIES

Charter One proceeded to trial on count one of its complaint which asked for judgment under Bankruptcy Code § 523(a)(2)(A).[1] That section provides that a Chapter 7 debtor is not discharged of liability for a debt:

> (2) for money, property [or] . . . an extension . . . of credit, to the extent obtained by –
>
> (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's . . . financial condition[.]

11 U.S.C. § 523(a)(2)(A).

In this case, Charter One claims that the debtor obtained financing for a Cadillac Escalade by falsely representing through a Consumer Loan Note and Security Agreement that he would pay for, insure, and keep possession of the car. The debtor agrees that he did not intend to do any of these things. He denies, however, any false representation or fraud, stating that he became involved in this only to help his minister, Keith Ivy, get a car for Life Changers Ministries church. At the minister's request, he signed documents in blank. He did not read them, did not understand he would be liable on the debt, and did not profit in any way. To the dismay of both the debtor and Charter One, the minister failed to make any payments and absconded with the car. Charter One now looks to the debtor to pay the debt.

Charter One has the burden of proving its case by a preponderance of the evidence. *See Grogan v. Garner*, 498 U.S. 279, 286 (1991); *Rembert v. AT&T Universal Card Servs., Inc. (In re Rembert)*, 141 F.3d 277, 280-81 (6th Cir. 1998). Exceptions to discharge are strictly construed against the creditor. *Id.*

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[1] Charter One withdrew count two at trial.

FACTS

A.

Charter One presented its case through the testimony of Anthony Lokot and the debtor. Mr. Lokot, the national recovery manager for Charter One, testified as to Charter One documents and procedures, but did not have any personal familiarity with this transaction. The debtor presented his case through cross-examination and his own testimony. Additionally, both sides offered exhibits that were accepted into evidence.

These findings of fact reflect the Court's weighing of the evidence, including determining the credibility of witnesses. In doing so, the Court considered the witnesses' demeanor, the substance of the testimony, and the context in which the statements were made, recognizing that a transcript does not convey tone, attitude, body language or nuance of expression. *See* FED. R. BANKR. P. 7052, incorporating FED. R. CIV. P. 52(a).

B.

The debtor is a 1988 high school graduate who, after serving in the military, held various jobs in the electrical field. He is currently an electrical lineman intern with Local 71 and earns about $40,000.00 a year. He considers himself to be a religious person, which he expresses through attending church, daily prayer, and "being obedient to the man of God." In the time frame of 1999-2000, the debtor ran into Keith Ivy, who had been a childhood friend of the debtor's older brother. The debtor shared with Ivy that he was engaged to be married and looking for a "good church home." Ivy responded that he had his own church -Life Changers Ministries- and invited the debtor to visit. The debtor started to attend bible study and services at Ivy's church, while still participating in the church he had belonged to before meeting Ivy.

In about March 2001, the debtor attended a Sunday service at Life Changers Ministries which did, indeed, change his life, although not in the way he had anticipated. That Sunday, Ivy preached on the theme of "helping out the man of God and the preacher." After the service, Ivy pulled the debtor into his office and said he needed a favor. Ivy knew that the debtor had good credit. He told the debtor that the lease was almost up on his car and he needed the debtor's help to get a new one. The debtor agreed to help him, but explained he did not have the money to pay for a car. Instead, the debtor agreed to be a co-maker on a loan for the church. He understood this to mean that he would use his good credit to assist the church, which had weaker credit, to buy a car. He did not intend to become liable for the debt. Before these events the debtor had purchased vehicles for his own use. His father had co-signed for one of his car loans and the debtor had co-signed on his fiance's car loan.

While still at the church, Ivy and his associate Kef Adams gave the debtor a number of blank documents to sign in connection with the purchase of a car. The debtor did as requested. At some point, Ivy and Adams took the debtor to Great Lakes Auto Network, Inc. dealership to pick up the car, which turned out to be a Cadillac Escalade. They met at the dealership with a sales representative who seemed to know both Ivy and Adams. The sales representative did not go over any documents with the debtor or discuss the transaction with him. Ivy and Adams apparently drove off in the Escalade because the debtor never had possession of it. The Court, having observed the debtor's testimony, finds that the debtor signed the loan documents in blank, believed he was simply helping his church to get credit, did not know when he signed the

documents that he would be liable for any loan, had no discussion with the Great Lakes sales representative to the contrary, and had no reason to believe his minister would deceive him.

C.

Charter One ended up at the other end of this transaction. Charter One, a subsidiary of Charter One Bank, is an indirect auto dealer that works with about 3,000 dealers, including Great Lakes, to finance car purchases. Charter One and the dealers have written agreements governing their relationship.[2] Under the agreement, a customer selects a car, arrives at a purchase price, and fills out a loan application. The dealer faxes the signed application to Charter One. As between the dealer and Charter One, the dealer has the obligation to determine if the applicant's signature is genuine.

Charter One's loan approval process is highly computerized: When an application comes in from a dealer, it is electronically input into Charter One's system, a credit report is automatically drawn, and the computer assigns a score to the application. About 10% of applications are rejected based on the score without looking at the application itself and about 20% are approved based on the score without looking at the application. In the remaining cases, the application is reviewed before Charter One decides to accept or reject it. The testimony did not establish which category the debtor's application fell into.

Nationwide, Charter One processes an average of 1,750-1,800 applications a day, five or six days a week, using this system. On average, 45% are approved. After the buyer's credit is approved, the dealer uses a computer program to prepare a standard Charter One Consumer Loan

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[2] Debtor's counsel stated without contradiction that he had requested the agreement during discovery, but it was not produced.

Note and Security Agreement by adding the relevant information for the deal to Charter One's form. The note is then presented to the buyer for signature. The signed note is sent to Charter One and the dealer draws on a Charter One sight draft to fund the purchase.

D.

Back to the case at hand. In March 2001, Great Lakes faxed to Charter One a Second National Bank loan application with the debtor's signature requesting financing to purchase a 1999 Lexus for $44,000.00 to be repaid over 72 months. The application falsely stated that the debtor was a partner at Anderson & Baston Electric who earned $145,000.00 a year and owned his own home free and clear. The application had the debtor's correct social security number, home address, and facts relating to other loans. All of this information is written in a different handwriting than the debtor's signature. The testimony did not address or explain how this application came to be the basis for financing the purchase of the Escalade.

At some point, Charter One presumably sent a loan approval to Great Lakes for the Escalade because Charter One received from Great Lakes a signed Consumer Loan Note and Security Agreement between Charter One and the debtor. Charter One then advanced the funds to Great Lakes for the Escalade. The standard note includes representations that the debtor will make payments, keep the car in his possession in good condition and repair, and insure it. The debtor did not keep the car in his possession, did not make payments, and did not take any separate steps to insure it.[3]

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[3] The note includes property insurance information for a policy the debtor supposedly had with Progressive Insurance. Apparently, Great Lakes let Adams and Ivy take the car without verifying the insurance because the debtor testified he never asked Progressive to insure the car. The note does include a charge for VSI (Vehicle Single Interest) insurance which protects the seller.

E.

Charter One received one payment on the Escalade account, but there was no evidence as to the source of the payment. When the loan went into default, collection agencies began to call the debtor. This is when he learned he was personally liable on the loan, Ivy and Adams had not made the promised payments, and the Escalade could not be found. The debtor tried to file a stolen vehicle report with the police, but they would not accept it because the debtor had voluntarily given possession of the car to Ivy and Adams. The debtor immediately and fully cooperated with Charter One in its efforts to find the Escalade. These efforts included (1) trying to get Ivy and Adams to call him; (2) finding out where Life Changers was holding services so that Charter One could go to that location to repossess the car; (3) alerting Charter One to the fact that the car had a global positioning unit that could be used to locate it; and (4) going with Charter One to the police station to file a stolen vehicle report, at which time the police accepted the report. Shortly before trial, Charter One recovered the Escalade.

DISCUSSION

A.

Charter One requests a determination that its debt is not dischargeable under § 523(a)(2)(A). *See* 11 U.S.C. § 523(a)(2)(A). To except a debt from discharge under this section, a creditor must prove each of these elements:

> (1) the debtor obtained money through a material misrepresentation that, at the time, the debtor knew was false or made with gross recklessness as to its truth; (2) the debtor intended to deceive the creditor; (3) the creditor justifiably relied on the false representation and (4) its reliance was the proximate cause of loss.

Rembert, 141 F.3d at 280-81 (citations and footnotes omitted).

The second element, that of fraudulent intent, is dispositive here. A debtor's intent is measured subjectively. *Rembert*, 141 F.3d at 281. Because a debtor will rarely admit fraudulent intent, that intent may be inferred. *Crawford v. Monfort (In re Monfort)*, 276 B.R. 793, 796 (Bankr. N.D. Ohio 2001). A court must determine "whether all the evidence leads to the conclusion that it is more probable than not that the debtor had the requisite fraudulent intent." *Rembert,* 141 F.3d at 282 (quoting *Chase Manhattan Bank v. Murphy (In re Murphy),* 190 B.R. 327, 334 (Bankr. N.D. Ill. 1995)).

The parties agree that the Charter One note signed by the debtor states that he would pay for, insure, and keep possession of the Escalade, and that he did not intend to do so. Charter One must prove that the debtor had a fraudulent intent to deceive when he made those representations. A debtor's failure to read documents he signs may indicate disregard for their accuracy and can lead to an inference that he intended to deceive. *See for example*, *Oxford Bank & Trust v. Anzelone (In re Anzelone)*, 2003 WL 1563857 (Bankr. N.D. Ill. 2003) (finding debtor's defense of non-involvement in fraudulent scheme and professed failure to read the documents she signed unconvincing); *Buffalo Fire Dep't Fed. Credit Union v. Butski (In re Butski)*, 184 B.R. 193, 195 (Bankr. W.D. N.Y. 1993) (noting "[t]he fact that one does not read the documents he signs . . . does not relieve him . . . (absent a showing of special circumstances) from being charged with knowledge of their contents.").

The evidence here leads to the conclusion that the debtor did not have the requisite intent to defraud Charter One when he signed the note. The debtor's testimony was entirely credible. Essentially, using religion as the bait, Ivy hooked the debtor into unknowingly helping Ivy to get a car without paying for it. The debtor has a history of participating in church activities and

following church teachings. He is relatively unsophisticated in financial matters. Ivy played on those elements when he preached the sermon about assisting the "man of God" and then immediately followed it up by asking the debtor to help the church. Ivy had already investigated the debtor's credit and found out it was good enough to finance a car purchase. Because the debtor trusted his minister, he signed the documents proffered by the minister without reading them. The fact that the signature on the loan application is that of the debtor, but the other information is written in a different hand, supports the debtor's testimony that he signed the documents in blank, with the other information being added later, presumably by Ivy, Adams, or Great Lakes.

Ivy and/or Adams had some significant contact with Great Lakes dealership concerning the Escalade purchase before taking the debtor to the dealership to pick up the car. The debtor did not have any conversations with anyone at Great Lakes or Charter One about the transaction that would have led him to understand that he was doing more than helping the church to get credit. He never had possession of the car, which is consistent with his understanding that he was not buying it. Also, the debtor did not profit from the transaction, which again is consistent with his testimony that he was merely helping the church to get credit. Interestingly, the debtor's testimony about the events at the Great Lakes dealership was unchallenged; Charter One did not call any witness from Great Lakes. Finally, when the debtor later learned what had really happened, he made every effort to assist Charter One to find the car.

Generally, as noted above, an individual is charged with knowledge of the documents he signs. And a failure to read documents can lead to the inference that the individual acted with fraudulent intent to deceive by signing them. Under these unusual facts, however, the evidence

leads to the conclusion that the debtor acted naively and negligently in failing to read the note, but he did not intend to deceive Charter One by signing it.

B.

The debtor argued that this whole problem arose because of collusion between and among the Great Lakes sales representative, Ivy, and Adams. This opinion does not address that possibility, as it is beyond the scope of the proceeding. Similarly, the Court does not address the debtor's argument that Charter One's "greedy" lending practices, including its relationships with dealers, caused the problem.

CONCLUSION

Because Charter One did not meet its burden of proof, judgment will be entered in favor of the debtor Dale Anderson. A separate judgment will be entered in accordance with this memorandum of opinion.

Date: 3 June 2003

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Thomas Freeman, Esq.
William Goldstein, Esq.

By: Joyce L. Gordon, Secretary

Date: 6/3/03

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CHARTER ONE AUTO FINANCE,	)	Adversary Proceeding No. 02-1377
	)	
Plaintiff,	)	
	)	
v.	)	**JUDGMENT**
	)	
DALE ANDERSON,	)	
	)	
Defendant.	)	

For reasons stated in the Memorandum of Opinion filed this same date,

IT IS, THEREFORE, ORDERED that judgment on the complaint is entered in favor of the defendant-debtor, Dale Anderson.

Date: 3 June 2003

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Thomas Freeman, Esq.
William Goldstein, Esq.

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