The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically on December 29, 2006, which may be different from its entry on the record.

IT IS SO ORDERED.

Dated: December 29, 2006

Arthur I. Harris
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 05-95335
	)	
JON R. IANUCCI,	)	Chapter 7
Debtor.	)	
	)	
FIRST MERIT BANK,	)	Adversary Proceeding No. 06-1259
Plaintiff,	)	
	)	Judge Arthur I. Harris
v.	)	
	)	
JON R. IANUCCI,	)	
Defendant.	)	

MEMORANDUM OF OPINION[1]

Before the Court is the plaintiff's unopposed motion for summary judgment. At issue is whether the debts owed to the plaintiff are nondischargeable under 11 U.S.C. § 523(a)(2)(A). For the reasons that follow, the plaintiff's motion for summary judgment is granted in part, and First Merit's state court judgment dated October 13, 2005, against the debtor-defendant is nondischargeable.

---

[1]This opinion is not intended for official publication.

JURISDICTION

Determinations of dischargeability are core proceedings under 28 U.S.C. § 157(b)(2)(I). In addition to determining a debt's nondischargeability, the bankruptcy court may also render money judgment as to the amount of unliquidated debt. *See In re McLaren*, 3 F.3d 958, 966 (6th Cir. 1993). The Court has jurisdiction over core proceedings under 28 U.S.C. §§ 1334 and 157(a) and Local General Order No. 84, entered on July 16, 1984, by the United States District Court for the Northern District of Ohio.

BACKGROUND

From 1974 until 2000, the debtor worked for his father's beer distributing company. Although there is a dispute over whether the debtor worked for AB&B, Inc. or Western Reserve Distributing, this fact is immaterial because in his deposition, the debtor admitted that he was never a shareholder or officer of either company. The debtor also admitted that he was never authorized to negotiate contracts or execute documents on behalf of either company.

In 2002, the debtor obtained four loans from First Merit: (1) a March 7, 2002, loan for $22,869.05; (2) a May 9, 2002, loan for $5,202.01; (3) a July 19, 2002, loan for $21,623.90; and (4) a September 6, 2002, loan for $13,501.34. For each of the four loans, the debtor signed both the credit application and promissory

note in his individual capacity and in the space designated for the representative of AB&B, Inc. In connection with the loans, the debtor also signed documents purporting to be corporate resolutions of AB&B, Inc. authorizing the debtor to enter into agreements with First Merit on behalf of the corporation. While the debtor disputes that he filled out the information on the various forms, and that he read the documents, he admits that he signed his name on behalf of AB&B, Inc. knowing he had no authority to do so. In his deposition, the debtor stated the loans were "put in AB&B's name . . . for insurance reasons."

According to the undisputed deposition of David Wilmoth, First Merit Bank indirect loan supervisor, First Merit approved each of the four loans in reliance on the combined creditworthiness of both AB&B Inc. and the debtor.

All four loans eventually went into default, leaving a total balance, as of the October 15, 2005, petition date, of $40,892.77 owed to First Merit. *See* Docket #28, Ex. N at ¶ 39. First Merit filed a civil complaint against the debtor in the Lake County Common Pleas Court, and on October 13, 2005, a default judgment was entered against the debtor apparently representing the deficiency balances owed on the first and third loans. It is unclear whether First Merit ever sought or obtained a money judgment in state court for the deficiency balances owed on the second and fourth loans.

SUMMARY JUDGMENT STANDARD

Federal Rule of Civil Procedure 56(c), as made applicable to bankruptcy proceedings by Bankruptcy Rule 7056, provides that a court shall render summary judgment:

> if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The party moving the court for summary judgment bears the burden of showing that "there is no genuine issue as to any material fact and that [the moving party] is entitled to judgment as a matter of law." *Jones v. Union County*, 296 F.3d 417, 423 (6th Cir. 2002). *See generally Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party meets that burden, the nonmoving party "must identify specific facts supported by affidavits, or by depositions, answers to interrogatories, and admissions on file that show there is a genuine issue for trial." *Hall v. Tollett*, 128 F.3d 418, 422 (6th Cir. 1997); *see, e.g.*, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986) ("The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff."). In determining the existence or nonexistence of a material fact, a court will view the

evidence in a light most favorable to the nonmoving party. *Tennessee Dep't of Mental Health & Mental Retardation v. Paul B.*, 88 F.3d 1466, 1472 (6th Cir. 1996).

Absent such evidence from the nonmoving party in a motion for summary judgment, the Court need not excavate the entire record to determine if any of the available evidence could be construed in such a light. *See In re Morris*, 260 F.3d 654, 665 (6th Cir. 2001) (holding that the "trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact"); *Barnhart v. Pickrel, Schaeffer & Ebeling Co.*, 12 F.3d 1382, 1389 (6th Cir. 1993). "[S]ummary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56.

DISCUSSION

First Merit asserts that the debt is nondischargeable under section 523(a)(2)(A) of the Bankruptcy Code.[2] Section 523(a)(2)(A) implements the strong bankruptcy policy of only permitting an honest debtor to receive a discharge of his or her debts. *See Cohen v. de la Cruz*, 523 U.S. 213, 217-18 (1998). Section

[2] This bankruptcy case was filed prior to October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub.L. No. 109-8, 119 Stat. 23 (BAPCPA). Therefore, all references to the Bankruptcy Code are to the Bankruptcy Code as it existed prior to the effective date of BAPCPA.

523 provides in pertinent part:

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

In order to except a debt from discharge under § 523(a)(2)(A), a creditor must prove the following 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 the loss. *See In re Rembert*, 141 F. 3d 277, 280-81 (6th Cir. 1998).

In determining whether a debtor intended to deceive a creditor, a "bankruptcy court is to consider all the relevant facts and circumstances of the case, as it is highly unlikely that a debtor will ever actually admit he knowingly intended to deceive a creditor." *In re Orisine*, 254 B.R. 184, 188 (Bankr. N.D. Ohio 2000) (quoting *In re Grause*, 245 B.R. 95, 99 (B.A.P. 8th Cir. 2000)). By reviewing the relevant facts and circumstances, the court must determine whether it

is "more probable than not" that the debtor had the requisite fraudulent intent. *In re Grause*, 245 B.R. at 102.

"In addition to showing intent to defraud, an action brought under § 523(a)(2)(A) also requires establishing that the creditor relied upon the misrepresentation. For purposes of § 523(a)(2)(A), the Supreme Court has held that a creditor's reliance need only be justifiable, not reasonable." *In re Bethel*, 302 B.R. 205, 209 (Bankr. N.D. Ohio 2003) (citing *Field v. Mans*, 516 U.S. 59 (1995)). Justifiable reliance requires a showing that the creditor acted appropriately "according to his individual circumstances." *Id.* (citation omitted).

By repeatedly signing his name on loan applications, promissory notes, and corporate resolutions, the debtor misrepresented that he had the authority to transact with the bank on behalf of the corporation. This was a material misrepresentation which induced the creditor to make the loans. The debtor made this representation knowing it was false. The debtor repeatedly signed on behalf of the corporation with knowledge that he had no authority to do so, and he admitted that he put the loans in the corporation's name for insurance purposes. Under these circumstances, it is more probable than not that the debtor intended to deceive not only his insurance agent, but also First Merit. First Merit justifiably relied on this misrepresentation, and as a result suffered a loss. Therefore, the state court

judgment owed to First Merit is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

In addition to seeking a determination of nondischargeability under 11 U.S.C. § 523(a)(2)(A), First Merit also seeks a money judgment of $40,892.77. First Merit has already obtained a money judgment in state court for the deficiency balances owed on two of the four loans. It is unclear whether First Merit ever sought or obtained a money judgment in state court for the deficiency balances owed on the other two loans. Without this information, the Court is unable to determine whether First Merit is entitled to a money judgment for the unliquidated portion of its debt. *See In re Sasson*, 424 F.3d 864, 874-75 (9th Cir. 2005) (discussing potential confusion and complication caused by entry of multiple money judgments), *cert. denied*, 126 S. Ct. 2890 (2006). In addition, the balances owed on the first and third loans according to the Wilmoth affidavit – $17,825.90 and $15,581.98 – do not match the amounts due under the state court judgment – $16,880.40 and $14,654.67. *Compare* Docket #28, Ex. N at ¶¶ 11, 29, *with* Docket #28, Ex. O. Therefore, the Court declines to award such a judgment. The plaintiff's request for a money judgment for claims not included in or merged into the state court judgment will be the subject of further proceedings only if the plaintiff notifies the Court in writing within the next twenty days that it wishes to pursue such proceedings.

CONCLUSION

For the reasons stated above, the plaintiff's unopposed motion for summary judgment is granted in part. The state court judgment against the debtor-defendant dated October 13, 2005, is nondischargeable pursuant to 11 U.S.C. 523(a)(2)(A). Each party shall bear its own costs and attorney fees.

A separate judgment shall be entered in accordance with this Memorandum of Opinion.

IT IS SO ORDERED.