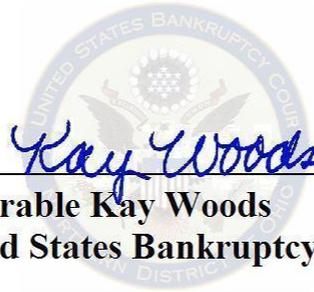


IT IS SO ORDERED.



Dated: June 26, 2009  
01:35:37 PM

Honorable Kay Woods  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
MICHELLE REESE,	*	
	*	CASE NUMBER 08-41173
Debtor.	*	
	*	
* * * * *	*	
	*	
WMS MOTOR SALES,	*	
	*	ADVERSARY NUMBER 08-4172
Plaintiff,	*	
	*	
v.	*	
	*	
MICHELLE REESE,	*	
	*	HONORABLE KAY WOODS
Defendant.	*	

\*\*\*\*\*  
MEMORANDUM OPINION REGARDING TRIAL  
\*\*\*\*\*

This cause is before the Court after a bench trial on May 26, 2009. Debtor Michelle Reese ("Debtor") filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code on April 25, 2008. Debtor received her discharge on September 4, 2008.

On August 25, 2008, Plaintiff WMS Motor Sales ("WMS") filed

Complaint to Determine Dischargeability of Debt, and, Alternatively Objecting to Discharge<sup>1</sup> ("Complaint") (Doc. # 1) against Debtor. WMS initiated this adversary proceeding to determine whether the debt Debtor owed WMS for purchase of a motor vehicle was non-dischargeable under 11 U.S.C. § 523(a)(2)(A) or (a)(4). Debtor filed Answer (Doc. # 6) on September 24, 2008. On March 3, 2009, the Court entered Trial Order (Doc. # 14), which set the instant adversary proceeding for trial on May 26, 2009.

At the conclusion of the trial, the Court took the matter under advisement. For the reasons set forth below, the Court finds that the debt Debtor owes WMS is non-dischargeable under 11 U.S.C. § 523(a)(2)(A).

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general order of reference (General Order No. 84) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The following constitutes the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

### I. FACTS

Although Debtor attempted to complicate the issues at trial,

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<sup>1</sup> Although the Complaint was captioned as seeking alternative relief, the Complaint was based solely on 11 U.S.C. § 523(a)(2)(A) and (a)(4) and sought only to have the Court hold that the debt Debtor owed to WMS was non-dischargeable.

the operative facts of this case are relatively simple.<sup>2</sup> Having considered the testimony of Debtor and Dennis James ("James"), the exhibits admitted into evidence, and the arguments of counsel, the Court makes the following findings of fact and conclusions of law.

WMS operates a used car business at 3306 State Route 5, Cortland, Ohio 44410, under the name Patriot Motors. James, who is the general manager and part owner of WMS, has been associated with WMS for five-and-a-half years; he is a licensed salesman and has twenty-one years of experience in car sales.

WMS requires customers that finance the purchase of a vehicle to sign a security agreement, but WMS does not require a security agreement from customers who tender payment-in-full. If a customer tenders a check in payment for a vehicle but informs WMS that he or she needs to and will transfer funds to cover such check, James testified that WMS relies on the word of the customer.

On February 23, 2007 ("Date of Purchase"), Debtor purchased a 1999 Ford Explorer ("Explorer") from WMS for a purchase price of \$6,343.00 ("Purchase Price"). Debtor wrote and delivered a check ("Check") to WMS for the Purchase Price on the Date of Purchase. The Check was drawn on Debtor's First Place Bank Checking Account ("FPB Checking Account"). Debtor took possession of the Explorer on the Date of Purchase.

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<sup>2</sup> Debtor's testimony focused mainly on the unfortunate circumstances in her life. Debtor testified about her incarceration, addiction to drugs, relationship with a man named Gerald (or Jerald) Jackson, a prior purchase of a vehicle from WMS, and her car trouble. However, most of these facts are not relevant to any valid defense to the non-dischargeability claim of WMS.

Debtor testified that, during negotiations for purchase of the Explorer, she informed WMS that (i) there were insufficient funds in her FPB Checking Account to cover the Purchase Price, and (ii) WMS would have to hold the Check for a week so she could transfer funds to cover the Check. Although James denied that Debtor told WMS to hold the Check, he testified that it was WMS's policy to honor a customer's request to delay cashing a check for a short period of time. Debtor was not asked to sign a security agreement for the Explorer because she tendered the Check in full satisfaction of her obligation to WMS.

Debtor had various bank accounts at First Place Bank and Seven Seventeen Credit Union ("Seven Seventeen"). According to Debtor's bank statements, Debtor had a total of \$2,775.49 in her various bank accounts on the Date of Purchase, as follows: (i) \$1,252.59 in her FPB Checking Account, (ii) \$236.55 in her Seven Seventeen Savings Account, (iii) \$1,005.00 in her Seven Seventeen Christmas Club Account, and (iv) \$281.35 in her Seven Seventeen Free Checking Account ("717 Checking Account"). As a result, Debtor did not have sufficient funds in her bank accounts to cover the Purchase Price on the Date of Purchase. However, Debtor testified that she expected to receive some money shortly after the Date of Purchase, which she intended to use to cover the Check.

The Check was presented to First Place Bank on March 1, 2007.<sup>3</sup>

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<sup>3</sup> The exact date WMS deposited the Check is not known. However, it appears that the Check, which was written on February 23, 2007, was not immediately deposited because it was not presented at First Place Bank until March 1, 2007. Thus, it appears that WMS held the Check for a few days to allow Debtor time to

Because Debtor had insufficient funds in her FPB Checking Account to cover the Check, it was returned NSF. First Place Bank mailed Debtor a notice dated March 2, 2007, regarding the NSF Check.

After the Check was given to WMS but before it was presented to First Place Bank, \$14,233.25 was deposited into Debtor's 717 Checking Account. Despite the \$14,233.25 deposit, Debtor did not (i) transfer any funds from her 717 Checking Account to her FPB Checking Account to cover the Check or (ii) make any other attempt to cover the Check.

In mid-March 2007, Debtor was arrested, which resulted in the drug task force seizing her assets, including the Explorer. Prior to Debtor's arrest and the seizure of her assets, Debtor took no action to cover the Check. For at least a couple of weeks, Debtor was in possession of the Explorer and had sufficient money to fund the Check, but she chose not to do so.

## **II. LAW**

A chapter 7 discharge does not discharge an individual from any debt "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." 11 U.S.C. § 523(a)(2)(A) (LexisNexis 2009). A creditor must prove four elements by a preponderance of the evidence to except a debt from discharge under § 523(a)(2)(A):

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transfer funds into her FPB Checking Account to cover the Check.

(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 v. AT&T Universal Card Services, Inc. (In re Rembert)*, 141 F.3d 277, 280-81 (6th Cir. 1998). The debtor's intent to deceive a creditor is determined under a subjective standard. *Id.* at 281. Exceptions to discharge are strictly construed against the creditor. *Id.* Moreover, a creditor's reliance on the debtor's false representation does not have to be reasonable; the reliance must only be justified. See *Field v. Mans*, 516 U.S. 59, 69-75 (1995).

### **III. DISCUSSION**

The essential dispute between the parties is whether Debtor intended to cover the Check or whether she tendered the Check knowing it would "bounce" due to insufficient funds. WMS argued that Debtor never intended to cover the Check. Debtor asserted that, although she intended to put funds into her FPB Checking Account to cover the Check, she never had the opportunity to do so.

Debtor represented to WMS that the Check would be "good" in a week. As a result of this representation, WMS accepted the Check and permitted Debtor to take possession of the Explorer. Three days later, \$14,233.25 was deposited into Debtor's 717 Checking Account. Despite the influx of more than twice the amount of money necessary to cover the Check, Debtor did not transfer any funds from her 717 Checking Account to her FPB Checking Account to cover the Check. As a result, Debtor's FPB Checking Account did not have sufficient

funds to cover the Check when WMS deposited the Check. Moreover, Debtor never took any action to make the Check good.

Debtor's statement to WMS that the Check would be good in a week was a material representation that the Debtor knew at the time was false. Debtor testified that (i) she expected to receive some money shortly after the Purchase Date, and (ii) she would use this money to cover the Check. Debtor received \$14,233.25 shortly after the Purchase Date, but she did not use that money (or any other source of funds) to cover the Check. The Court finds that Debtor's inaction establishes the first and second elements of the § 523(a)(2)(A) cause of action that she (i) obtained the Explorer through a material false representation and (ii) intended to deceive WMS.

WMS justifiably relied on Debtor's statement that she would deposit additional funds into her FPB Checking Account. James testified on direct examination that, "If a customer tells us that they are transferring funds, we go by their word." (Trial Tr. at 10:31:58.) When Debtor's counsel questioned James about the soundness of WMS's policy of accepting checks without requiring a security agreement, James said, "after 1,500 cars, this is the first time that we've ever had this happen." (Trial Tr. at 10:35:18.) Thus, the Court finds that WMS justifiably relied on Debtor's statement that she would transfer funds into her FPB Checking Account to cover the Check. The Court further finds that, as a result of WMS's reliance on Debtor's statement that the Check would

be good, WMS was deprived of the Purchase Price. Thus, WMS has also established elements three and four of the § 523(a)(2)(A) cause of action.

The Court does not find Debtor's testimony to be credible. Debtor testified that she did not have an opportunity to cover the Check and that she intended to pay for the Explorer. However, Debtor's own testimony establishes that, for a number of weeks, she had sufficient money to cover the Check but took no action to do so.

Debtor testified about (i) the circumstances surrounding the purchase of the Explorer, (ii) what happened after she purchased the Explorer, and (iii) alleged attempts after her incarceration to return the Explorer. However, Debtor never explained why - after the deposit of \$14,233.25 in her 717 Checking Account - she failed to transfer funds from one account to the other to cover the Check. Other than Debtor's self-serving statement regarding her intent, there is no evidence that Debtor intended to cover the Check or pay WMS the Purchase Price for the Explorer.

Debtor's counsel argued that WMS assumed the risk that the Check would be returned for insufficient funds, and therefore, WMS should have recorded a lien on the Explorer as a precaution.<sup>4</sup> WMS would have been prohibited from accepting the full Purchase Price and taking a security interest in the Explorer. In essence,

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<sup>4</sup> Debtor's counsel implicitly argues that a later acquired security interest in the Explorer is equivalent to payment-in-full at the time of purchase. This is simply not true. A security interest secures a future payment obligation. A check tendered as payment-in-full completes the transaction between the parties. Debtor would not have been relieved of her obligation to cover the Check even if she had later granted WMS a security interest in the Explorer.

Debtor's counsel makes - wholly unsupported and unsupportable - arguments that WMS's failure to take a security interest in the Explorer renders its reliance on Debtor's promise to transfer funds to cover the Check unjustified. This argument is not based on the facts or the law and must fail.

**IV. CONCLUSION**

For the reasons given above, the Court finds that: (i) Debtor obtained the Explorer through a material representation that she knew at the time was false, (ii) Debtor intended to deceive WMS, (iii) WMS justifiably relied on Debtor's false representation, and (iv) WMS's reliance on Debtor's representation caused WMS's loss. As a result, the debt Debtor owes to WMS - *i.e.*, the Purchase Price in the amount of \$6,343.00 - is non-dischargeable under 11 U.S.C. § 523(a)(2)(A).

An appropriate order will follow.

# # #



("WMS") through a material representation that Debtor knew at the time was false, (ii) Debtor intended to deceive WMS, (iii) WMS justifiably relied on Debtor's false representation, and (iv) WMS's reliance on Debtor's representation caused WMS's loss. As a result, pursuant to 11 U.S.C. § 523(a)(2)(A), the debt Debtor owes WMS for the purchase of the 1999 Ford Explorer in the amount of \$6,343.00 is excepted from discharge.

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