

Joan Dragos filed Complaint to Determine Discharge [sic] of Debt Incurred by Fraud (Doc. # 1) against Debtor/Defendant Joseph G. Heldreth. Defendant filed his Answer (Doc. # 6) on December 18, 2009.

At trial, David J. Gerchak, Esq. appeared on behalf of the Plaintiff and Irene K. Makridis, Esq. appeared on behalf of the Defendant. The Court received testimony of the Plaintiff and the Defendant. No other witnesses testified. Neither party offered any exhibits into evidence.

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 the Defendant owes to the Plaintiff is 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). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Defendant filed a voluntary petition pursuant to chapter 7 of the Bankruptcy Code on July 29, 2009. The first meeting of creditors ("341 Meeting") was originally scheduled for September 22, 2009. As a consequence, the Complaint was timely filed.

The following facts were established at the trial:

1. The Plaintiff and the Defendant met in January 2004 when the Defendant delivered a door to the Plaintiff's house. At that time, the Defendant worked as an independent contractor for Home Depot.
2. During the relevant time period, neither the Plaintiff nor the Defendant were married.
3. The Defendant (with his three minor children) lived on the same street as the Plaintiff, approximately one mile away.
4. The Plaintiff and the Defendant developed a friendly relationship, which included: (i) dating (including the Plaintiff riding with the Defendant in his truck when he made deliveries); (ii) having sex "two or three times;" (iii) the Plaintiff helping care for the Defendant's children; and (iv) discussing marriage.
5. In March 2004, the Plaintiff purchased a 1987 Monte Carlo automobile, put title to the car in her name, but gave the Monte Carlo to the Defendant to keep at his house and to drive.
6. The Plaintiff lent the Defendant money to pay his rent; the Defendant repaid the Plaintiff for this loan.
7. The Plaintiff permitted the Defendant to use her credit card(s) and lent him additional money, some of which was used by the Defendant to start a business.

8. The Plaintiff purchased three cell phones under her Sprint plan - one phone was for herself, the other two were for the Defendant and Defendant's teenage daughter.
9. The relationship between the Plaintiff and the Defendant soured at the end of May 2004.
10. In August 2004, the Defendant signed a promissory note for money the Plaintiff previously lent to him. The Defendant made several payments on the note, with the last payment being made in November 2004.
11. The Plaintiff sued the Defendant in the Mahoning County Court of Common Pleas for breach of contract and obtained a judgment, after a trial, "in excess of \$40,000."¹

The Complaint purports to be based on 11 U.S.C. § 523 without identifying any specific subsection. Despite this omission, the Complaint (i) includes the words "Debt Incurred by Fraud" in the caption; (ii) alleges that the Plaintiff was "induced by the belief of a romantic relationship that had included discussions of marriage to loan the defendant substantial sums of money" (Compl. ¶ 9); and (iii) alleges that the Defendant had "no intention of marrying the Plaintiff" (*Id.* ¶ 10). Because no allegations were made that could be construed to constitute a different cause of action, the Court determines that the Plaintiff's Complaint is based on 11 U.S.C.

¹ Neither the Judgment Entry nor the Note were introduced into evidence. The Complaint asks that the "debt to the Plaintiff in the amount of \$45,260.28" be declared non-dischargeable. (Compl. at 2.) The Plaintiff filed a proof of claim, denominated Claim No.3 in the Defendant's bankruptcy case, Case No. 09-42854, in the amount of \$48,106.86 (unsecured). There was no evidence at trial regarding the amount of the debt.

§ 523(a)(2)(A).

II. LEGAL ANALYSIS

A. Dischargeability

Section 523(a) provides several exceptions to the general rule that pre-petition debts are dischargeable under the Bankruptcy Code. A plaintiff bears the burden of proving by a preponderance of the evidence that a debt is excepted from discharge. See *Meyers v. Internal Revenue Service (In re Meyers)*, 196 F.3d 622, 624 (6th Cir. 1999) (citing *Grogan v. Garner*, 498 U.S. 279, 290-91 (1991)). Exceptions to discharge are narrowly construed. See *id.* (citing *Grogan*, 498 U.S. at 286-87). "Exceptions to discharge are strictly construed against creditors." *Steier v. Best (In re Best)*, 109 Fed. Appx. 1, 4 (6th Cir. 2004).

B. § 523(a)(2)(A)

Section 523(a)(2)(A) implements the long standing Congressional policy that a Defendant who incurs a debt through fraudulent means is not, with respect to that particular debt, entitled to the benefits of a bankruptcy discharge. *Bernard Lumber Co. v. Patrick (In re Patrick)*, 265 B.R. 913, 916 (Bankr. N.D. Ohio 2001). Section 523(a)(2)(A) provides in pertinent part:

(a) A discharge under section 727 . . . of this title does not discharge an individual Defendant 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 Defendant's or an insider's financial condition;

11 U.S.C. § 523 (West 2010).

To satisfy § 523(a)(2)(A), the Plaintiff must prove that: (i) the Defendant obtained something of value through a material misrepresentation that the Defendant knew was false or that the Defendant made with gross recklessness; (ii) the Defendant intended to deceive the Plaintiff; (iii) the Plaintiff justifiably relied on the Defendant's false representation; and (iv) the Plaintiff's reliance was the proximate cause of her loss. *Rembert v. AT&T Universal Card Servs., Inc. (In re Rembert)*, 141 F.3d 277, 280 (6th Cir. 1998).

Finally, where fraud is alleged, the concept of notice pleading is heightened by a requirement of specificity. FED. R. CIV. P. 9(b), made applicable to adversary proceedings pursuant to FED. R. BANKR. P. 7009(b), provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally." West 2010. "In complying with Rule 9(b), a plaintiff, at a minimum, must 'allege the time, place, and content of the alleged misrepresentation on which he or she relied; the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud.'" *United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 501 F.3d 493, 504 (6th Cir. 2007) (quoting *Coffey v. Foamex L.P.*, 2 F.3d 157,

161-62 (6th Cir. 1993)).

"The pleading requirements in Rule 9(b) are to provide fair notice to the defendants, such that the defendants may prepare a pleading in response to the allegations based upon fraud." *Official Comm. of Admin. v. Bricker*, 2010 U.S. Dist. LEXIS 99140, *42 (N.D. Ohio 2010) (citing *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n.*, 176 F.3d 315, 322 (6th Cir. 1999)). The complaint must enable the defendant to "'prepare an informed pleading responsive to the specific allegations of fraud.'" *United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 501 F.3d 493, 504 (6th Cir. 2007) (quoting *Advocacy Org.*, 176 F.3d at 322). "'It is certainly true that allegations of date, place and time fulfill these functions, but nothing in the rule requires them. Plaintiffs are free to use alternative means of injecting precision and some measure of substantiation into their allegations of fraud.'" *Bricker*, 2010 U.S. Dist. LEXIS 99140 at *42-43 (quoting *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 742 F.2d 786, 791 (3d Cir. 1984) (internal quotation marks omitted)).

III. DISCUSSION

Despite the heightened notice requirements for pleading fraud, the Plaintiff's Complaint is short on specific allegations. The Plaintiff alleges: (i) she and the Defendant were "romantically involved" (Compl. unnumbered second paragraph); (ii) she loaned "in excess of \$40,000.00" to the Defendant "as the result of this romantic relationship" (*id.* ¶ 4); (iii) at the 341 Meeting, the

"Defendant stated he never had a romantic relationship with the Plaintiff and all of their dealings were business matters" (*id.* ¶ 7); (iv) she was "induced by the belief of a romantic relationship that had included discussions of marriage to loan the defendant substantial sums of money" (*id.* ¶ 9); (v) the "Defendant had no intention of marrying the Plaintiff and in fact induced the Plaintiff to loan him money" (*id.* ¶ 10); and (vi) she learned at the 341 Meeting that the Defendant represented he had not been romantically involved with her (*id.* ¶ 11). Although the Plaintiff alleges that the Defendant did not intend to marry her, she fails to allege that the Defendant did not intend to repay her the money that she loaned him or that he otherwise defrauded her by obtaining the money. As set forth below, intent to defraud is a necessary element of a cause of action under § 523(a)(2)(A).

Section 523(a)(2)(A) requires the Plaintiff to show, by a preponderance of the evidence, that the Defendant incurred the debt due to "false pretenses, a false representation, or actual fraud." 11 U.S.C. § 523 (West 2010). As stated, *supra*, the Plaintiff must prove four elements of fraud. *In re Rembert*, 141 F.3d 277, 280 (6th Cir. 1998). For the reasons that follow, the Court finds that the Plaintiff failed to meet the requirements of § 523(a)(2)(A).

The essential dispute between the parties is whether the Plaintiff and the Defendant were in a business or romantic

relationship.² The Plaintiff and the Defendant both agree that the Defendant never asked to use the Plaintiff's credit cards, although the parties differ regarding whether the Defendant induced the Plaintiff to lend him money. The Plaintiff argues that she allowed the Defendant to use her credit cards based on their relationship, which included discussions of marriage. She also asserts that she gave the Defendant money because she believed they had a future together. The Defendant argues that, although he had sex two or three times with the Plaintiff and he discussed marriage with her, he never asked the Plaintiff for money and he intended to repay her the money she loaned to him.

Based on the testimony in this case, the Court cannot find that the Defendant made any material misrepresentation that was either false or made with gross recklessness. Although the Defendant received value in (i) the use of Plaintiff's credit cards, and (ii) the Monte Carlo, there was no evidence that he made any misrepresentation to the Plaintiff to obtain this value. Assuming, without finding, that the Defendant misled the Plaintiff into believing their relationship was romantic in nature and he planned a future with her, such misrepresentation under these circumstances does not satisfy the requirements of § 523(a)(2)(A). There was no

² The Plaintiff notes that it was not until the 341 Meeting that she found out the Defendant considered their relationship to be based on "business" rather than romance. After learning of the Defendant's representation regarding their relationship, the Plaintiff commenced this Adversary Proceeding. At trial, the Defendant admitted that he discussed marriage with the Plaintiff and that they were intimate, which, at the very least, indicates the parties had substantially more than a mere business relationship.

evidence that the Defendant ever promised to marry the Plaintiff. Indeed, the evidence demonstrates that the Plaintiff willingly, and on her own accord, gave monies to the Defendant without the promise of anything in return. The Plaintiff failed to demonstrate any false or reckless material misrepresentation by the Defendant.

There was no evidence that the Defendant intended to deceive the Plaintiff regarding repayment of the money loaned to him. At the trial, the Defendant acknowledged that he signed a promissory note in August 2004 - well after the relationship between the Plaintiff and the Defendant soured. The undisputed evidence showed the Defendant made several payments on this promissory note. Because (i) the promissory note was signed after the relationship ended, and (ii) the Defendant made several payments on the note, the Plaintiff failed to establish that the Defendant intended to deceive or defraud her regarding the money she gave to him.³

The Plaintiff has failed to establish: (i) the Defendant made a false material misrepresentation; and (ii) the Defendant intended to deceive her regarding repayment of the loan. The Plaintiff did establish that her reliance on her view of the Defendant's romantic intentions was the proximate cause of her loss; however, because the Plaintiff failed to establish two of the necessary elements of a cause of action under § 523(a)(2)(A), the Court does not need to determine if the Plaintiff's reliance was justified. Accordingly,

³ The evidence also established that the Defendant either returned the Monte Carlo to the Plaintiff or the Plaintiff otherwise recovered the car and sold it.

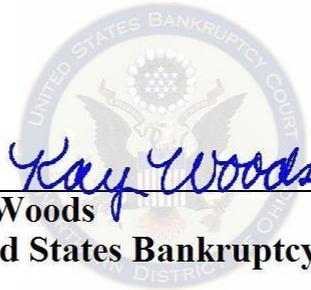
the Court finds that the Plaintiff failed to establish the requirements for excepting a debt from discharge under § 523(a)(2)(A).

IV. CONCLUSION

The Plaintiff failed to establish all of the elements of fraud, as required by § 523(a)(2)(A). As a consequence, the Court finds that the debt is dischargeable. An appropriate Order will follow.

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IT IS SO ORDERED.



Dated: March 19, 2011
11:35:22 PM

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

JOSEPH G. HELDRETH,

Debtor.

* * * * *

JOAN DRAGOS,

Plaintiff,

v.

JOSEPH G. HELDRETH,

Defendant.

CASE NUMBER 09-42854

ADVERSARY NUMBER 09-4325

HONORABLE KAY WOODS

ORDER

This cause is before the Court after a bench trial held on February 22, 2011. Debtor/Defendant Joseph G. Heldreth filed a petition pursuant to chapter 7 of the Bankruptcy Code on July 29,

2009 (Doc. # 1, Main Case). On November 22, 2009, Plaintiff Joan Dragos filed Complaint to Determine Discharge [sic] of Debt Incurred by Fraud (Doc. # 1). Defendant filed Answer (Doc. # 6) on December 18, 2009.

At trial, David J. Gerchak, Esq. appeared on behalf of the Plaintiff and Irene K. Makridis, Esq. appeared on behalf of the Defendant. The Court received testimony of the Plaintiff and the Defendant. No other witnesses testified. Neither party offered any exhibits into evidence.

For the reasons set forth in this Court's Memorandum Opinion, entered on this date, the Court finds that the debt Defendant owes to Plaintiff is dischargeable under 11 U.S.C. § 523(a)(2)(A).

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