

**In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division**

In the matter of:	)	
	)	Adversary Proceeding
VICTOR ALLEN YAWN	)	
KATHY R. YAWN	)	Number <u>02-2004</u>
(Chapter 7 Case No. <u>01-21529</u> )	)	
	)	
<i>Debtors</i>	)	
	)	
	)	
ALTAMAHA BANK AND	)	
TRUST COMPANY	)	
	)	
<i>Plaintiff</i>	)	
	)	
	)	
v.	)	
	)	
VICTOR ALLEN YAWN	)	
	)	
<i>Defendant</i>	)	

**ORDER ON COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT**

Defendants Victor Allen Yawn (“Debtor”) and Kathy R. Yawn filed for Chapter 7 protection on October 5, 2001. They listed Plaintiff Altamaha Bank and Trust Company (“Bank”) as a creditor. On January 28, 2002, Bank filed this Adversary Proceeding seeking to have their debt to Bank determined non-dischargeable under 11 U.S.C. § 523(a)(2), which provides that a debt is not dischargeable if the debtor, while intending to deceive the lender, used a materially false statement of the debtor’s financial condition and obtained the money because the lender relied on that false statement.

The issues in this case arise out of a discrepancy between Debtor's valuation of certain real property on a financial statement provided to Bank and his substantially lower valuation of the same property on his bankruptcy schedules. Based on that discrepancy, Bank asserts that Debtor committed actual fraud in presenting a materially false financial statement to Bank. Bank also asserts that Debtor's credibility is lacking, in that either he lied in his bankruptcy petition when he scheduled the property at the lower value or he lied in setting the higher value on the financial statement.

The Court has jurisdiction over this matter, a core proceeding under 28 U.S.C. § 157(b)(2)(I), pursuant to § 1334 and the standing reference of cases arising under Title 11 to this Court by the District Court for the Southern District of Georgia. In conformance with the directives of Federal Rule of Bankruptcy Procedure 7052(a), the Court makes the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

Debtor purchased 14 acres of real estate five to six years ago for approximately \$1,200.00 an acre. Debtor then placed on the property a 16-by-80 foot mobile home, which he purchased for approximately \$30,000.00, and constructed on the property a carport and a shop/utility building. The land, mobile home, and improvements are hereinafter collectively referred to as "the Property."

In July 2000 Debtor applied for a loan from Bank, with which Debtor had an ongoing banking relationship and from which he had acquired several prior loans. Debtor provided financial information to Bank's loan officer, who filled in a financial statement form based on that

information. Debtor signed the form. *See* Ex. P-1.

The financial statement showed that Debtor owned real estate, that it was worth \$80,000.00, and that it was then encumbered by an outstanding debt of approximately \$30,000.00 to The Hazlehurst Bank. The \$80,000.00 figure resulted from an exchange between the loan officer and Debtor. The loan officer asked Debtor how much the real estate was worth. When Debtor replied that he was not sure, the bank officer asked him how much he would ask for the real estate if he placed it on the market. Debtor responded that if he made a decision to sell, he would ask \$80,000.00.

Bank ran a credit report and contacted a former loan officer of Bank who had had previous business dealings with Debtor. The credit report revealed nothing alarming, and the former loan officer gave Debtor a favorable recommendation. Bank took a pledge of personal property as collateral, but Bank neither requested, nor was given, a second mortgage on the real estate. Thereafter, Bank advanced \$16,047.85 to Debtor. *See* Ex. P-2.

On October 5, 2001, Debtor and his wife filed their Chapter 7 case. Debtor valued the Property at \$38,000.00 on his bankruptcy petition. Debtor credibly asserts that he arrived at that figure in consultation with his bankruptcy counsel, because a tax appraisal of the Property showed a value of \$36,562.00.

Bank asserts that Debtor's valuation on the financial statement was materially false. Bank also asserts that Debtor's credibility is in doubt because \$66,000.00 is the maximum value the Court could find the Property to have been worth at the time Debtor valued the Property

at \$80,000.00 and because of the large discrepancy between Debtor's valuation on the financial statement and his valuation on his bankruptcy schedules.

Debtor contends that the value stated on the financial statement was not materially false. An appraisal of two acres of Debtor's land made by Greentree in 1995 indicates a potential value of \$31,500.00 for the total 14-acre tract.<sup>1</sup> In April, 2002, Debtor estimated the respective values of the mobile home, the carport, and the shop-utility building at \$22,000.00, \$8,000.00 and \$6,000.00. Given that the sum of these figures brings the potential value of the land and improvements to \$66,000.00, Debtor argues that the estimated value which he provided the banker was not materially false.

In making the loan, Bank relied in part on Debtor's equity position in the real estate, in combination with the favorable recommendation by the former loan officer and the clean credit report. Bank's position is that this reliance was reasonable. Debtor contends that Bank did not reasonably rely on the alleged misrepresentation, noting while Bank took a security interest in Debtor's personal property, Bank did not request any deed to secure debt or otherwise attempt to encumber the real estate. Thus, even if the \$80,000.00 value was an overestimation, the more conservative \$66,000.00 value would have provided an equity cushion for the bank's loan had it required Debtor to grant a security interest against the Property.

Because the bank recovered some of the personalty and reduced the outstanding balance on the note, the outstanding balance on the note is currently \$12,219.36, Ex. P-3.

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<sup>1</sup> Greentree set a value of \$4,500.00 as to a two-acre tract of Debtor's land.

## CONCLUSIONS OF LAW

11 U.S.C. § 523(a) excludes from discharge in bankruptcy any debt of an individual debtor

for money . . . or an extension . . . of credit, to the extent obtained by—

. . .

- (B) use of a statement in writing—
  - (i) that is materially false;
  - (ii) respecting the debtor’s . . . financial condition;
  - (iii) on which the creditor to whom the debtor is liable for such money . . . or credit reasonably relied; and
  - (iv) that the debtor causes to be made or published with intent to deceive.

11 U.S.C. § 523(a)(2)(B).

Bank, as the party asserting the § 523(a)(2) exclusion from discharge, bears the burden to prove each of the statutory elements by a preponderance of evidence. Grogan v. Garner, 498 U.S. 279, 291, 111 S. Ct. 654, 661, 112 L. Ed. 2d 755 (1991); Equitable Bank v. Miller (In re Miller), 39 F.3d 301, 304 (11th Cir. 1994). The elements at issue are: (1) whether Debtor provided the \$80,000.00 valuation with the intent to deceive Bank; (2) whether the \$80,000.00 representation of value was materially false; and, if so, (3) whether Bank reasonably relied on the false representation in advancing funds to Debtor.

Regardless of whether or not Bank were to prevail as to the elements of material falsity or reasonable reliance, it is clear to the Court that Bank has not proven that Debtor intended to supply a false valuation to Bank. Merely showing that the valuation was, in fact, too high or that Debtor “unreasonably” believed that his valuation was correct is not sufficient. “Intent to deceive”

requires at least that Debtor knew the \$80,000.00 was too high or that he provided it “with such reckless abandon as to impute knowledge to him,” Fid. & Deposit Co. of Md. v. Browder, 291 F.2d 34, 35 (5th Cir. 1961), *quoted in* First Nat. Bank of Alma v. Lewis (In re Lewis), Adv. No. 92-5018, Ch. 7 Case No. 92-50100 (S.D. Ga. Dec. 28, 1992).

Debtor credibly testified as to why his financial statement valued the Property at \$80,000.00 – that because the loan officer asked him for what price Debtor would sell the property, Debtor answered \$80,000.00. That testimony was not disputed, even though the loan officer was available at trial for rebuttal.

The undisputed circumstances of Debtor’s valuation of the property do not evidence an intent to deceive Bank. To reiterate, those circumstances were: Bank asked what the Property was worth. Debtor asked for clarification. Bank clarified by encouraging Debtor to assign a value based on what he would ask for the property if he decided to sell it. Debtor answered \$80,000.00. Bank wrote down Debtor’s answer. Bank accepted Debtor’s financial statement and approved the loan.

Therefore, I find that Debtor did not intend to deceive Bank in providing the \$80,000.00 valuation. Because Bank has failed to prove a necessary element for excluding the debt at issue from discharge, the debt is not excludable. *See Miller*, 39 F.3d at 304. In light of this conclusion, the Court need not address the other issues presented.

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that the debt

owed Altamaha Bank and Trust Company IS DISCHARGEABLE.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of November, 2002.