

523(a)(2)  
 debt not discharged  
 in come overstated  
 (vs in come tax return)  
 direction ?  
 employment overstated

THE UNITED STATES BANKRUPTCY COURT  
 FOR THE  
 SOUTHERN DISTRICT OF GEORGIA  
 Augusta Division

In the matter of: )  
 )  
 PAT WARD HAWKINS )  
 (Chapter 7 Case 185-00453) )  
 )  
 Debtor )  
 )  
 )  
 )  
 CSRA FEDERAL CREDIT UNION )  
 f/k/a Augusta Postal Federal )  
 Credit Union )  
 )  
 Plaintiff )  
 )  
 )  
 )  
 v. )  
 )  
 PAT WARD HAWKINS )  
 )  
 Defendant )

Adversary Proceeding  
 Number 185-0045

**FILED**  
 at 3 O'clock & 30 min. PM  
 Date 1-9-87  
 MARY C. BECTON, CLERK  
 United States Bankruptcy Court  
 Savannah, Georgia PCB

MEMORANDUM AND ORDER

Plaintiff filed this adversary proceeding seeking a denial of Debtor's discharge pursuant to 11 U.S.C. Section 727 or alternatively a determination that her debt owed Plaintiff is non-dischargeable pursuant to 11 U.S.C. Section 523(a)(2). After a trial on the merits I make the following findings.

## FINDINGS OF FACT

1. Debtor applied to the CSRA Federal Credit Union (hereinafter referred to as Credit Union) on January 20, 1984, for a signature loan of \$2,500.00 (amended complaint Exhibits A and C). She revealed a net income of \$500.00 per week working as an aide to State Senator Tom Allgood plus \$250.00 per week in alimony and child support. She revealed that her employment began December, 1983, and indicated no separation date. To the question "Is your income likely to reduce in the next two years?" she answered "No".

2. Debtor's loan was approved because she had a low debt to income ratio. Debtor did not disclose all of her debts on Exhibit "C", but the Credit Union obtained a credit bureau report which revealed two additional debts, neither of which were so significant as to cause her application to be rejected.

3. Thereafter on June 1, 1984, she responded to a direct mailing from the Credit Union concerning a sale of Hertz used cars that would be financed by the Credit Union. She executed a "Loanline Advance Request" in an unspecified amount by merely filling in her name and address and signing the request in

blank. (Amended Complaint Exhibit B).

4. Later she picked out the car she wanted and the precise amount financed of \$14,870.00 was inserted on the form. Debtor did not answer any of the questions in the section of the form labeled "Changes Since Last Advance". She did not check the "yes" or "no" box that sought to discover whether she had incurred any new debt, changed employment or had a loss of income since her previous advance.

5. The Credit Union failed to perfect its security interest in Debtor's car and as a result, the Trustee in the Debtor's case acquired the car as part of the estate to be administered for the benefit of unsecured creditors.

6. Debtor, in fact, was employed by Senator Allgood. She testified that her agreement was that she would be paid \$500.00 per week after expenses. She further testified that Senator Allgood fulfilled his commitment to pay her this sum.

7. She worked from January, 1984, through the end of the legislative session in March as a Senate aide and was then hired as campaign manager to Senator Allgood from April or May through November, 1984.

8. According to the agreement she testified about several different times, Debtor would have received over \$20,000.00 after expenses in 1984. Her 1984 Federal return and W-2 forms reveal, however, that she reported and paid tax on only \$1,300.00 in wages from the Georgia General Assembly (Exhibit I) and \$5,040.00 in wages paid by Allgood Health Care, Inc. (Exhibit I) which she described as Senator Allgood's business.

9. Her 1984 tax return was not prepared until April 13, 1985.<sup>1</sup> She reported the \$6,340.00 income from the sources previously mentioned. She itemized deductions, deducted her personal exemptions, and claimed an earned income credit because her income was less than \$10,000.00. The result of all this was that she reported owing no tax and claimed a refund of \$846.35.

10. When confronted with the discrepancy in her stated and reported income, Debtor lapsed into self-contradiction on the witness stand. She at first stated that the \$500.00 per week should have been shown as gross and not

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1 - Her Federal return was dated April 13, 1986, but her Georgia return was dated April 10, 1985, and I conclude that the Federal return was misdated.

net income. Later however, she repeated that Senator Allgood had paid her per their agreement, or \$500.00 per week after expenses. She stated that payments to meet her expenses of maintaining a second residence in Atlanta and for entertainment during the session were paid by Senator Allgood or by lobbyists and described these monies more than once as not "trackable", "traceable" income.

11. Debtor suffers from a lack of credibility as a witness based on the above testimony. She represents a high income to the Credit Union and reports low income to the Federal Government. She pleads a lack of understanding of the niceties of Federal Tax Law which is shared by many of us in this society. However, she filed a tax return, unaided, which meticulously and aggressively took every deduction and credit necessary to reduce her tax liability to zero. Under penalty of perjury she certified her return as correct. Based on her testimony in this case she may have actually earned much more, or she may simply have enjoyed the cash flow of expense reimbursements which were not, in fact, reportable income. From her testimony it is impossible to tell. However, she is clothed with a presumption of innocence as to any violation of the tax laws and therefore I conclude, for the purposes of this case, her return is an accurate reflection of her true income. Since she demonstrates such a clear understanding of the difference between income and

expense reimbursement on her 1984 return I conclude that her true income for 1984 was not \$500.00 per week net, but approximately \$100.00 per week net and that she knew the true figure when she applied for the loan.

12. Debtor did not affirmatively represent that her income was the same in June, 1984, as she had in January since she checked neither "yes" nor "no" on the relevant portion of Exhibit "B" (Changes Since Last Advance). The Credit Union's witness testified that they "assumed" there were no changes since none were revealed. I cannot conclude that that assumption is reasonable and I do not find that Debtor made any misrepresentation on Exhibit "B".

13. However, the information on Exhibit "C" (the original application) was relied upon by the Credit Union even on the second advance. I find that reliance to have been reasonable since Debtor affirmatively represented to the Credit Union that she knew of no separation date for her work and expected no reduction in pay for two years.

14. Debtor's schedules and statement of affairs were not entirely accurate in that one debt was omitted and her 1984 income was reported there to be \$12,400.00 which differs both from her 1984 return and from her testimony in this case.

CONCLUSIONS OF LAW

Credit Union relies on 11 U.S.C. Section  
523(a)(2)(B) which provides:

"(a) A discharge under section 727, 1141, or 1328(b) 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--

(B) use of a statement in writing--

- (i) that is materially false;
- (ii) respecting the debtor's or an insider's financial condition;
- (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
- (iv) that the debtor caused to be made or published with intent to deceive;"

I conclude that Debtor's acts fall within the exception to discharge set forth in this section. Her representation on Exhibit "C" was in her own writing and was certified to be correct. It was materially false in that it

grossly overstated the income she actually earned and the duration she would earn it. For example, she claimed to have become a Senate aide in December, 1983, when in fact she did not go on the payroll until January, 1984. She represented her work to be full time, with no termination date when in reality the aide's job ceased at the end of the legislative session three months later. While she expected to be hired as campaign manager to Senator Allgood after the session ended, she conceded that for a time his political plans were uncertain and in any event, the anticipated change from one status to another was concealed from the Credit Union. Further, even assuming that change to be immaterial, there is no evidence that she expected to be employed by Allgood after November, 1984, which called for her to reveal either a termination date or a reduced income, or both, on Exhibit "C".

The misrepresentation clearly related to her financial condition and the creditor relied on it reasonably. Partial reliance can be sufficient to sustain a finding of non-dischargeability even as to a financial statement given prior to the transaction in question. In re Sewell, 361 F.Supp. 516 (S.D. Ga., 1973). The reliance was reasonable given the independent verification undertaken by the Credit Union. See In re Bridges, 51 B.R. 85 (U.S.B.C., W.D.Ky., 1985).

The falsity of the representation and Debtor's intent to deceive, though denied under oath are established through the irrefutable documentary evidence, the totality of circumstances and her reckless disregard for the truth. See Birmingham Trust National Bank v. Case, 755 F.2d 1474 (11th Cir., 1985); 3 Collier on Bankruptcy, at 523-69. The Debtor's statements as to her honest intentions are not controlling unless supported by the natural inferences that may be drawn from her conduct. In re Moran, 456 F.2d 1030 (3rd Cir., 1972).

However, Debtor has not been shown by clear and convincing evidence to have knowingly and intentionally made false oaths in her bankruptcy schedules relating to material facts which would result in her being denied a discharge as to any debt. See 11 U.S.C. §727(a)(4). Chalik v. Moorefield, 748 F.2d 616 (11th Cir., 1984).

#### O R D E R

For the foregoing reasons IT IS THE ORDER OF THIS COURT that the balances owed the CSRA Federal Credit Union by the Debtor on the loans dated January 20, 1984, and June 1, 1984, are declared non-dischargeable in these proceedings.

FURTHER ORDERED that the complaint seeking denial of discharge as to all debts owed under 11 U.S.C. Section 727 is dismissed.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 9<sup>th</sup> day of January, 1987.