

5523(a)(5)
5523(a)(2)(A) - actual fraud.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

In the matter of:

MICHAEL EUGENE BRYANT
(Chapter 7 Case 89-20332)

Debtor

VAUGHN, ROBSON AND LAWRENCE
and
EVELYN D. BRYANT

Plaintiffs

v.

MICHAEL EUGENE BRYANT

Defendant

Adversary Proceeding

Number 89-2018

FILED

at 9 O'clock & 29 min A.M

Date 3/14/90

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *PCB*

MEMORANDUM AND ORDER

On December 13, 1989, a trial was held upon a complaint to determine dischargeability of certain debts pursuant to 11 U.S.C. Sections 523(a)(5) and 523(a)(2)(A). After consideration of the evidence adduced at trial, the documentation submitted by the

parties and review of applicable authorities I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Defendant/Debtor, Michael Eugene Bryant, and Plaintiff, Evelyn D. Bryant, met while enrolled in technical school in 1980, developed a relationship and married on April 11, 1985. At that time Ms. Bryant owned a home which was to be their marital abode. Within one month of the date of their marriage, the Defendant and Ms. Bryant arranged for a loan, the apparent purpose of which was to finance an addition to the marital home as well as to satisfy certain mutual debts. The loan amount of \$17,092.38 was arranged with Transouth Financial Services and secured by the marital home. Of the \$17,500.00, approximately \$2,000.00 was used to payoff the existing mortgage on the home. The remainder was deposited into a joint bank account. Within two weeks of the deposit of the balance of the loan, the Defendant withdrew the money and permanently left home, leaving Ms. Bryant with the now encumbered property. These funds were withdrawn without the knowledge or approval of Ms. Bryant. Thereafter, Ms. Bryant filed a petition in Charleston, South Carolina. Defendant was represented by counsel and appeared at a temporary hearing. The South Carolina Court determined that

the conduct of the Defendant was fraudulent and entered an order to that effect dated January 10, 1986. Said order required the Defendant to pay over to Transouth Financial Services a check in the amount of \$14,787.44, said check to represent the two draws obtained by the Defendant and Ms. Bryant as well as two monthly payments which were in arrears. Defendant failed to make those payments and Ms. Bryant was forced to shoulder that burden in order to avoid foreclosure on her home.

CONCLUSIONS OF LAW

This case is before the Court upon a complaint to determine dischargeability of a debt owed by the Debtor pursuant to 11 U.S.C. Section 523(a)(2)(A). In determining whether a particular debt is excepted from discharge, 11 U.S.C. should be strictly construed against the objecting creditor, and the burden is on that creditor to prove the exception. Hunter v. Schweig (In re Hunter), 780 F.2d 1577 (11th Cir. 1986). 11 U.S.C. Section 523(a)(2)(A) states in relevant part:

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- (a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt--
 - (2) for money . . . 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 financing condition;

To bar a discharge of a debt for false representation or fraud the creditor must show the following:

- 1) The debtor made a false representation with the purpose and intention of deceiving the creditor;
- 2) The creditor relied on such representation;
- 3) His reliance was reasonably founded; and
- 4) The creditor sustained a loss as a result of the representation.

Hunter, 780 F.2d at 1579; In re Mangel, 72 B.R. 516, 522 (Bankr. S.D. Fla. 1987); Matter of Carpenter, 53 B.R. 724, 729 (Bankr. N.D. Ga. 1985). The creditor must establish each and every one of these elements by clear and convincing evidence. Carpenter, supra. See generally, 3 Collier on Bankruptcy §523.09 (15th Ed. 1990).

The debtor must be guilty of positive fraud, or fraud in fact, involving moral turpitude or intentional wrong and not

implied fraud, or fraud in law, which may exist without the imputation of bad faith or immorality. Hunter at 1579.

"Therefore, a breach of contract by the debtor or a mere failure to fulfill a promise to pay for goods, is, without more, insufficient to establish non-dischargeability By the same token, however, fraud can be established from circumstantial evidence." Chase Manhattan Bank v. Flowers, CV587-036, 9-10 (S.D. Ga. January 11, 1988) (citations omitted). However, actual "fraud is 'in itself subtle' and circumstances apparently trivial or almost inconclusive, if separately considered, may by their number and joint operation be sufficient to constitute conclusive proof." Grainger v. Jackson, 122 Ga. App. 123, 176 S.E.2d 279 (1970).

As applied to the facts in this case I find that the Plaintiff has established the fraud elements of Section 523(a)(2)(A) by clear and convincing evidence.

The uncontradicted evidence of the Plaintiff Ms. Bryant is that this transaction was entered into under specific representations. Debtor wooed Ms. Bryant for a period of some five years and married her. Within weeks he induced her to obtain a loan secured by the residence which she had brought into the marital estate, then withdrew the money and fled within days after the check

cleared the bank. In light of these circumstances, it can be reasonably inferred that the Debtor made the false representation of a promise of lasting marriage with the purpose and intention of deceiving Ms. Bryant into obtaining a loan secured by the equity in her home for specific purposes agreed to by both of them. Then in violation of that agreed purpose Debtor absconded with the money. I find that Ms. Bryant's reliance upon her husband's representations was reasonably founded. Finally, Ms. Bryant has shown through uncontradicted testimony that she has sustained a substantial loss as a result of the representations of the Debtor. I therefore find that Ms. Bryant has sustained her burden of proving by clear and convincing evidence each element of 11 U.S.C. Section 523(a)(2)(A), and has proven damages in the amount of \$14,500.00 due to the actual fraud committed by the Debtor.

Plaintiffs Vaughn, Robson and Lawrence object to the discharge of the sum of \$2,010.80 which represents attorney's fees awarded pursuant to a South Carolina divorce decree. Inasmuch as I find that the attorney's fee award was in the nature of alimony, maintenance or support, the same is determined to be non-dischargeable pursuant to 11 U.S.C. Section 523(a)(5). In re Sprong, 661 F.2d 68 (2nd Cir. 1981); In re Friedland, 18 B.R. 451 (Bankr. S.D. Fla. 1982); In re Myers, 61 B.R. 891 (Bankr. N.D.Ga. 1986).

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the debt to Evelyn D. Bryant in the amount of \$14,500.00 and the debt to Vaughn, Robson and Lawrence in the amount of \$2,210.82 is non-dischargeable.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 7th day of March, 1990.

FILED

at 9 O'clock & 29 min. A M

United States Bankruptcy Court date 3/14/90

For the SOUTHERN District of GEORGIA MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *MB*

VAUGHN, ROBSON AND LAWRENCE
and
EVELYN D. BRYANT

Case No. 89-20332

v.

MICHAEL EUGENE BRYANT

Plaintiff
}
Defendant

Adversary Proceeding No. 89-2018

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable
Lamar W. Davis, Jr. , United States Bankruptcy Judge, presiding, and
the issues having been duly tried or heard and a decision having been rendered,

[OR]

This proceeding having come on for trial before the court and a jury, the Honorable
Lamar W. Davis, Jr. , United States Bankruptcy Judge, presiding, and
the issues having been duly tried and the jury having rendered its verdict,

[OR]

The issues of this proceeding having been duly considered by the Honorable
Lamar W. Davis, Jr. , United States Bankruptcy Judge, and a decision
having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED:

That the Plaintiff, EVELYN D. BRYANT, shall recover of the Defendant, MICHAEL EUGENE BRYANT, the principal sum of Fourteen Thousand Five Hundred Dollars and 00/100 Cents (\$14,500.00), together with interest at the rate of 7.97% per annum from date until paid in full.

Further, that the Plaintiff, VAUGHN, ROBSON AND LAWRENCE, shall recover of the Defendant, MICHAEL EUGENE BRYANT, the principal sum of Two Thousand Two Hundred Ten Dollars and Eighty-Two Cents (\$2,210.82), together with interest at the rate of 7.97% per annum from date until paid in full.



[Seal of the U.S. Bankruptcy Court]

Date of issuance: March 7, 1990

MARY C. BECTON

Clerk of Bankruptcy Court

By: Patsy C. Burkhalter
Deputy Clerk