IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re: MARK STEVEN ROSENBLUM and MARGARET ROSENBLUM, Debtors. RANGEN, INC. Plaintiff, vs. MARK STEVEN ROSENBLUM and MARGARET ROSENBLUM, Defendants.	Chapter 7 No. 0-02-bk-01753-JMM Adversary No. 0-03-ap-00031-JMM **MEMORANDUM DECISION** (Opinion to Post)

The trial on an adversary proceeding, concerning objections to the Debtors' discharge under § 727 and the dischargeability of a particular debt pursuant to § 523, came on regularly for hearing on December 1 and 2, 2005, and January 4, 5, and 6, 2006. The Plaintiff was represented by Julio Zapata; the Defendants were represented by Debra Hill and Ronda Fisk. At the close of the evidence, the court took the matter under advisement and now rules.

PROCEDURE

During the course of this trial, the court denied Defendants' motion to amend their answer. Additionally, at the conclusion of the Plaintiff's case in chief, the court granted involuntary dismissal (directed verdict) in favor of the Defendants on each of the counts relating to § 727, and also dismissed the causes of action relating to §§ 523(a)(2)(A) and (a)(6). The case proceeded on the single remaining count, which raised allegations concerning false financial statements pursuant to § 523(a)(2)(B).

FACTS

1. Introduction

Beginning in 1991, Rangen, Inc., a Idaho based feed company, began a relationship with certain foreign-based companies for the sale of feed for shrimp-raising operations. The principal operations were located in Mexico. The individual Debtors in this case, Mark and Margaret Rosenblum, were shareholders and/or principals in several of those related companies. The Mexican companies to which the feed was supplied were closely related to other companies which, for purposes of this discussion, will be described generally in two categories: (1) Maritech S.A. de C.V., a Mexican corporation ("Maritech"), and (2) a group of entities which was assembled under a generic heading known as a Super Shrimp Holdings Group. (See, for illustrative purposes, Ex. RRR, a chart showing the various companies.)

Mark Rosenblum was an officer, director, and shareholder of several of these entities and was one of the primary representatives for the Mexican shrimp-growing operations when it came to its dealings with Rangen. Margaret Rosenblum, Mark's wife, owned stock in the companies along with her husband, but she had no involvement in the actual operation of the businesses.

During the course of the 11-year relationship between Rangen and the Mexican companies, the Rosenblums signed several continuing guaranties, and Mark Rosenblum, on four occasions, beginning in May, 1999, presented Rangen with personal financial statements to support the guarantees. The financial statements listed the community property of both Mark and Margaret Rosenblum, who had been married since 1983.

Mark Rosenblum signed the financial statements, and his signature is binding upon himself personally, and upon the marital community consisting of himself and Margaret. Margaret never signed any of the financial statements.[1]

It is Rangen's contention that Mark Rosenblum's financial statements were intentionally misrepresented and that Rangen relied upon those written statements of financial condition in extending credit to the Mexican companies. As a result, Rangen maintains that it has suffered losses of at least $2,309,878.38 (Exs. 99, 100, and 109).

2. <u>The Rangen Credit Relationship and Maritech's International Business</u>

Maritech S.A. de C.V., a Mexican corporation ("Maritech") began purchasing shrimp feed from Rangen in 1991, on open account. (Exs. D and E.) An entity known to Rangen as Maritech, L.C., based in San Luis, Arizona, also purchased feed from 1993 to 1996 (Ex. C). Between 1999 and 2002, Rangen also supplied fish feed to an entity known as Super Shrimp, with invoices mailed to a Yuma, Arizona address (Ex. F).

During the same period of time, from the early 1990's, Maritech had intricate financial dealings with closely-related companies from which it acquired needed working capital. One of those

[1] Mark Rosenblum's action in signing the personal financial statements was an act taken on behalf of a marital community. However, the legal liability of the Rosenblums for unpaid Rangen accounts and/or promissory notes were obligations stemming only from the execution of the continuing guarantees.

lenders was Beretta, Ltd. The individual shareholders of Maritech, Ltd.[2] began pledging their shares to Beretta, Ltd.[3] to secure repayment of those loans. (See, e.g., Exs. 25, 55, and 107.) A portion of the money found its way to Maritech's Mexican shrimp-growing operation.

Mark Rosenblum was one of the shareholders of Maritech, Ltd., holding 111 shares in 1991. (Ex. 25.) His percentage share of the stock pledged to Beretta represented 20% of the total 555 shares pledged. (Ex. 25.) Maritech guaranteed a May 7, 1992 Beretta loan of $650,000. (Ex. 55.)[4]

On June 24, 1992, Maritech asked Rangen for a credit line of $100,000. (Ex. G.) On July 3, 1992, Maritech, Mark Rosenblum, and Robert Fuller supplied Rangen with financial statements for Maritech and themselves (Ex. I).

Credit was extended by Rangen in 1992, and that year's invoices were paid.

On February 19, 1993, Mark Rosenblum provided Kevin Mindock of Rangen's credit department with references and financial information. Mr. Mindock, Rangen's credit manager, then requested information about Maritech from the Idaho Department of Commerce, and received its report on April 6, 1993 (Ex. L). The report indicated, among other things, that Maritech "is considered a small-sized firm in a progressive market, competition is minimal." It also noted that "Dun & Bradstreet indicated that firm has a satisfactory reputation for paying its bills on time." (Ex. L.)

The credit extended by Rangen to Maritech for 1993 was paid.

In mid-March, 1994, Rangen sought trade references for Maritech, and received two "good" reports and one "excellent" report from Maritech's trade creditors. (Ex. N.) On April 5, 1994, Mark Rosenblum, Maritech's general manager, requested an increase in credit, to be supported by a $750,000 letter of credit. (Exs. O and A.) Trade references were supplied on April 11, 1994 (Ex. P), and

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[2] Maritech, Ltd. is a British Virgin Islands corporation.

[3] Beretta, Ltd. is an Isle of Man corporation.

[4] The Maritech guaranty, if any, was not admitted into evidence.

on April 14, 1994, Rangen sought and received a "very good customer" bank reference from Maritech's Mexican Bank (Ex. Q).

Credit was extended for 1994, and was paid.

In 1995, the only written evidence of contact between the parties occurred on May 1, 1995, when Mark Rosenblum transmitted Maritech's 1991 Articles of Incorporation and financial statements (1993-1994) to Mr. Mindock at Rangen. (Ex. 38.) The Articles reflected that Margaret McKee Rosenblum held 1,700 shares (17%) of the stock as of the incorporation date.

However, by September 15, 1994, the Rosenblums' stock had been diluted to about 4.5% of the outstanding shares (Ex. 38 at Bates No. R10563).[5]

All credit extended in 1994 was repaid.

Nothing noteworthy occurred in 1995, except that Rangen continued to extend credit, for which it was paid. (Ex. E.)

Similarly, in May, 1996, Rangen simply obtained a Dun & Bradstreet report on Maritech. (Ex. 39.) Among other information, Dun & Bradstreet reported that Margaret McKee Rosenblum was one of the "main" shareholders. Rangen made no further inquiries.

Credit was extended in 1996, and paid for by Maritech.

In 1997, the relationship proceeded as a good credit, and all outstanding invoices were paid. (Ex. A.) However, during that year, Maritech bought much of its feed from a Rangen competitor.

In 1998, Maritech elected to return to Rangen as its principal supplier of feed. Rangen requested a personal guaranty from Mark Rosenblum, which was signed on October 7, 1998 (Ex. W). All of Maritech's outstanding invoices in 1998 were paid within their credit terms. (Ex. A.) Mr. Mindock of Rangen testified that he placed "no value"on the guaranty, because he had no current financial information on file.

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[5] Because these documents are in Spanish and no translation was provided, the court relies--for these facts--upon the testimony of the parties and its rudimentary knowledge of Spanish.

In 1999, business as usual changed in a positive way for both Maritech and Rangen. During that year, Rangen had the opportunity to participate in a USDA guarantee program, wherein it could obtain a 65% government guarantee for qualified account debtors. However, as with all such programs, more paperwork was required.

Rangen requested an additional personal guaranty of the debts of Maritech, which Mark Rosenblum provided, along with a personal financial statement. (Exs. 21 and 24.) Mr. Mindock, Rangen's credit manager, testified that he valued the guaranty at $1.4 million, based on Mark Rosenblum's stock ownership in Maritech. Mr. Mindock assigned no value to the Rosenblums' Super Shrimp Holdings.

Mr. Rosenblum supplied the financial statement to Rangen on May 24, 1999, showing his net worth to be $14,022,093. (Ex. 21.) Mr. Mindock then had certain questions about the financial statement, which Mr. Rosenblum answered in writing, on June 3, 1999 (Exs. 22 and 23). No further inquiry was made by Rangen.

The evidence reflects that the 1999 invoices were paid. (Ex. AAAA.)

On June 16, 2000, Mark Rosenblum was asked for, and gave, another personal financial statement, showing a net worth of $11,051,700. (Ex. 26.) Although his net worth had declined by approximately $3 million, Rangen's representatives did not question him about it. At the same time, Maritech's financial statement reflected a $10 million net worth. (Ex. 26.)

On July 5, 2000, Maritech was asked to, and did execute a promissory note for $106,089.75. (Ex. JJ.)[6] Mark Rosenblum personally guaranteed that note (Ex. JJ). At that time, the outstanding balance owed to Rangen was $476,498 (Ex. AAAA). At about the same time, in July, 2000, Mark Rosenblum was applying to Bank of America for a loan, and reflected his ownership in Sea Marine Limited to be worth $1,423,200 (Ex. 50). This was the same figure provided to Rangen in the two earlier financial statements of 1999 and 2000 for Maritech (Exs. 21 and 21). Mr. Rosenblum testified that he

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[6] This note was apparently paid, as it was not detailed, along with later unpaid notes, in the judgment of August 23, 2003. (See Ex. 99.)

had obtained his interest in SeaMarine, the parent of Maritech, in April 1999, and he considered the two companies "interchangeable." There was no separate line item for "Maritech" anywhere on Ex. 50, so there was no "doubling up,"and thus Mr. Rosenblum's explanation is credible.

By the end of 2000, Maritech's debt to Rangen increased to $909,161 (Ex. AAAA), and Rangen's management was beginning to feel that it needed additional security, by way of either a standby letter of credit, or prepayment, because although Maritech was considered a "good account," it was felt that a tighter rein was needed. (Ex. KK.)

3. The Credit Relationship Sours in 2001

By April, 2001, Maritech had reduced its debt to Rangen to $34,845 (Ex. AAAA). Although considered a "slow pay" by Rangen, Maritech was still a large customer of its aquaculture division and its feed products.

Sensing that the credit would grow larger in 2001, Kevin Mindock, the credit manager, authored a memo to Wayne Courtney, Executive Vice President, Rick Corwin, Comptroller, and Joy Kinyon, Aquaculture Manager, concerning the "future business/credit relationship" between Rangen and Maritech. (Ex. MM.) Mr. Mindock suggested collateralizing the credit, if possible, by letters of credit. These would offset the "EXTREMELY risky" Mexican shrimp farming business (emphasis in original). Mr. Mindock also noted that although Maritech had always paid its account in the past, its credit history had been "unreliable and painfully delinquent" to the point of jeopardizing Rangen's accounts receivable eligibility requirement with its own operating line of credit. (Ex. MM.)

By May, 2001, Maritech's account balance had crept up from $34,845 to $140,945 (Ex. AAAA). In response thereto, Rangen required Maritech to sign a promissory note, on May 13, 2001, for

$130,747.50 (Ex. HHH).[7] Mark Rosenblum, on May 11, 2001, also executed another continuing guaranty in Rangen's favor, for both the Maritech and Super Shrimp accounts (Exs. 29 and OO).

By June 15, 2001, the Rangen parties to Mr. Mindock's "EXTREMELY risky" memo had agreed to impose strict payment requirements. (Ex. PP.) However, Mr. Mindock testified that Rangen had "probably not" sent these terms to Maritech.

On June 20, 2001, the "Super Shrimp Group" transmitted its financial information to Rangen. (Ex. 41.) Among other things, the statements showed that Maritech had an equity value of between $10.4 and $14.2 million. Moreover, all Super Shrimp holdings, excluding Maritech, revealed an equity position of $18.5 million. (Ex. 41.) Rangen apparently made no further inquiries at this time.

By the end of June, 2001, Maritech's debt had risen to $509,889 (Ex. AAAA). Rangen then obtained another promissory note for $70,222.50 (Ex. III).[8] It was quickly followed on July 3, 2001, with two more promissory notes for $128,992.50 (Ex. JJJ) and $497,542.50 (Ex. KKK).[9] Also, during June, Rangen's internal memos also reflected that it valued Maritech and Super Shrimp as long standing and "excellent international feed customer[s] for Rangen, Inc." (Ex. RR).

By August 15, 2001, the Maritech debt had risen to $991,077 (Ex. AAAA), yet Rich Corwin, Mr. Mindock's superior, told Mr. Mindock to raise the credit limit to $2.4 million. (Ex. GGG.)

On August 22, 2002, Rangen asked Mr. Rosenblum for an updated financial statement (Ex. 55), which was provided on September 3, 2001 (Exs. 31, 32, and 33).

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[7] Judgment for the full amount of this note, plus interest, was obtained on August 23, 2003. (Ex. 99.)

[8] This note, plus accrued interest, was part of the August 23, 2003 judgment. (Ex. 99.)

[9] These notes, plus accrued interest, were part of the August 23, 2003 judgment. (Ex. 99.)

On September 7, 2001, two more promissory notes were executed by Maritech for $423,445 and $276,421.50 (Exs. LLL and MMM).[10] The Maritech debt had now risen to $1,457,919 (Ex. AAAA).

On September 11, 2001, the world's economies were shaken by the tragic events of the World Trade Center and Pentagon attacks. As a result, sales for Maritech and Super Shrimp plummeted.

On November 16, 2001, Maritech executed its last promissory note to Rangen, for $95,623.20 (Ex. NNN).[11]

By the end of December, 2001, the Maritech debt had grown to over $1,600,000 and Super Shrimp's obligation hovered around $125,000. The combined debt to Rangen was $1,725,999 (Ex. AAAA).

No further business, other than on a cash basis, was transacted between Rangen, Maritech, and Super Shrimp thereafter.

4. <u>The Lawsuits</u>

In July, 2003, Rangen sued Maritech in federal court, and obtained a default judgment for $2,309,298.92 (seven note balances, plus interest). (Ex. 99.)

A similar judgment was entered March 8, 2005, against Super Shrimp (Mexico), Sea Marine Limited, and Marine Seed International, for $2,309,878.38 (Ex. 100).

To date, Rangen has been paid $917,811.76 pursuant to its USDA guarantees. (Ex. 109.)[12]

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[10] These notes, plus accrued interest, were part of the August 23, 2003 judgment. (Ex. 99.)

[11] This note, plus accrued interest, was part of the August 23, 2003 judgment. (Ex. 99.)

[12] Rangen maintains that it acts as agent for the USDA, to collect losses suffered by the USDA as well as itself, pursuant to Code of Federal Regulations § 1493.130. (Ex. 110.)

5. Rosenblum Bankruptcy

Mark and Margaret Rosenblum filed a chapter 7 bankruptcy case on December 26, 2002. This action, based upon § 523(a)(2)(B), is all that stands between the Rosenblums and a complete discharge of their pre-bankruptcy debts.

LAW

1. In General

The Bankruptcy Code, 11 U.S.C. § 523(a)(2)(B), provides that any debt incurred for credit extended upon a creditor's reasonable reliance upon false financial statements, the debtor who provided the false statement shall not have the debt owed to that creditor discharged.

In order to prevail on such a claim, a creditor must prove its case by a preponderance of the evidence. *Grogan v. Garner,* 498 U.S. 279, 284, 111 S.Ct. 654 (1991). The cause of action pursuant to § 523(a)(2)(B) requires a creditor to prove that the debt was obtained by the use of a statement:

(1) in writing;

(2) that is materially false;

(3) respecting the debtor's or insider's financial condition;

(4) on which the creditor to whom the debtor is liable for money, property, services or credit reasonably relied; and

(5) that the debtor caused it to be made or published with intent to deceive.

A. Statement in Writing

To come within the exception of § 523(a)(2)(B), the statement, to be "in writing," must have been either written by the debtor, or written by someone else but adopted and used by the debtor. See *Investors Credit Corp. v. Batie* (*In re Batie*), 995 F.2d 85 (6th Cir. 1993); *Engler v. Van Steinburg*, 744 F.2d 1060 (4th Cir. 1984). The requirement of a writing is a basic precondition to nondischargeability under § 523(a)(2)(B).

Here, the financial statements at issue were filled out and signed by Defendant Mark Rosenblum. (Exs. 21, 26, 32, and 33.) This element was proven by the Plaintiff.

B. Material Falsity

It is not sufficient to show that a financial statement is factually incorrect. It must be materially false. See *In the Matter of Bogstad*, 779 F.2d 370 (7th Cir. 1985). A statement is materially false for purposes of § 523(a)(2)(B) if it paints a substantially untruthful picture of financial conditions by misrepresenting information of the type that would normally affect the decision to grant credit. *In re Bailey*, 145 B.R. 919 (Bankr. N.D. Ill. 1992).

To be materially false under § 523(a)(2)(B), a false statement must be objectively material, meaning that it must misrepresent information of the type that normally affects the particular type of decision at issue. The actual reliance by the creditor on the false representation is an indicia of materiality. However, actual reliance by itself does not establish materiality and a false statement can be material even if the creditor did not actually rely on it. *In re Cohn*, 54 F.3d 1108 (3d Cir. 1995). The omission, concealment, or understatement of liabilities will ordinarily constitute a materially false statement. *First Nat'l City Bank v. Latona*, 260 F.2d 264 (2d Cir. 1958); *Kansas Fed. Credit Union v. Niemeier*, 227 F.2d 287 (10th Cir. 1955); *Morris Plan Indus. Bank v. Parker*, 143 F.2d 665 (D.C. Cir. 1944). The lapse of time between the making of the false financial statement and the granting of credit

is material only in determining whether credit was extended within the period intended and whether the creditor in fact extended the credit upon the faith of the statement. *Gerdes v. Lustgarten*, 226 U.S. 321 (1924).

C. Respecting Debtors' or Insiders' Financial Condition

Section 523(a)(2)(B) does not cover every material statement of fact made in writing to the creditor to induce the extension of credit. It is confined in its application to statements about the financial condition of the debtor or of an insider.

Generally, an insider is one who has a sufficiently close relationship with the debtor that his or her conduct is subject to closer scrutiny than those dealing at arms length with the debtor. Thus, a relative of the debtor; a corporation of which the debtor is a director, officer, or person in control; a controlling person of a corporation or a relative of such a person are all insiders. 11 U.S.C. § 101(31).

The statement, to fall withing the exception, must be with respect to the debtor's financial condition, or the financial condition of an insider. The significance of the words "or an insider's financial condition" becomes clear when considered in the light of the definition of an "insider." The definition of "insider" becomes of critical importance because, if the debtor makes a false statement respecting the financial condition of a corporation of which the debtor is a director, officer or person in control, the exception of § 523(a)(2)(B) is operative.

Nor does it matter whether the money, property, services or credit was obtained for the debtor or for another; what is important is that the statement be false respecting the debtor's financial condition or respecting the financial condition of an insider. However, § 523(a)(2)(B) does not in itself impose liability on the debtor for obtaining money for an insider. It merely holds such a debt nondischargeable if applicable state law holds the debtor personally liable for obtaining money by fraud or a false financial statement for the debtor's corporation.

D. Reliance

Under § 523(a)(2)(B), it is necessary not only for the creditor to show a false financial statement respecting the financial condition of the debtor or of an insider, but also that the creditor from whom the money, property, services or an extension, renewal or refinancing of credit was obtained "reasonably relied" on the statement. The provision is explicit that the creditor must not only have relied on a false statement in writing, but the reliance must have been reasonable. H.R. Rep. No. 595, 95th Cong., 1st Sess. 363 (1977).

Evidence that demonstrates that a loan would not have been granted if the creditor had received accurate financial information is sufficient to show reliance. *In re Coughlin*, 27 B.R. 632 (1st Cir. BAP 1983). The determination of the reasonableness of a creditor's reliance on a debtor's false statement in writing is judged in light of the totality of the circumstances, taking into consideration: (1) whether there had been previous business dealings between the debtor and the creditor; (2) whether there were any warnings that would have alerted a reasonably prudent person to the debtor's misrepresentations; (3) whether minimal investigation would have uncovered the inaccuracies in the debtor's financial statement; and (4) the creditor's standard practices in evaluating creditworthiness and the standards or customs of the creditor's industry in evaluating creditworthiness.

The actual reliance requirement of § 523(a)(2)(B)(iii) (reasonable reliance) is distinct from the reliance concept that affects the element of materiality under § 523(a)(2)(B)(I) (material falsity). The former is a factual determination while the latter is a question of law. *In re Cohn*, 54 F.3d 1108 (3d Cir. 1995).

E. Made or Published with Intent to Deceive

The final element required to bring a debt within the false financial statement exception of § 523(a)(2)(B) is that the debtor caused the statement to be made or published with intent to deceive.

(I) Causing to Be Made or Published

The word "published" is used in the same sense that it is used in defamation cases, that is, to make it known to any person other than the person defamed. The statement need not be made directly to the creditor or the creditor's representative in order for the debt to fall within the exception to discharge. It is sufficient if the creditor learns of the false statement indirectly, as long as there is reliance on it.

(ii) With Intent to Deceive

The explicit provision "with intent to deceive" merely highlights the necessity of establishing that intent to deceive is an essential element of the false financial statement exception. It must be shown that the debtor's alleged written false statement was either knowingly false or made so recklessly as to warrant a finding that the debtor acted fraudulently. *In re Batie*, 995 F.2d 85 (6th Cir. 1993); *Bank One Lexington v. Woolum* (*In re Woolum*), 979 F.2d 71 (6th Cir. 1992), *cert. denied*, 507 U.S. 1005 (1993); *Driggs v. Black* (*In re Black*), 787 F.2d 503 (10th Cir. 1986); *Matter of Ostrer*, 393 F.2d 646 (2d Cir. 1968).

The debtor's assertions of an honest intent must be weighed against natural inferences from admitted facts. *In re Eastham*, 51 F.2d 287 (N.D. Tex. 1931); *In re Adams*, 44 F.2d 670 (N.D. Tex. 1930). The bankruptcy court may consider the totality of the circumstances to make an inference as to whether the debtor submitted a financial statement with an intent to deceive, in that reckless disregard for the truth or falsity of a statement combined with the magnitude of the resulting misrepresentation may combine to support the inference of an intent to deceive. *Equitable Bank v. Miller* (*In re Miller*), 39 F.3d 301 (11th Cir. 1994).

2. Fine Tuning the Analysis

In this case, the issues concerning the four financial statements submitted by the Rosenblums between May 24, 1999 and September 4, 2001 are whether they were (1) inaccurate, (2) material to Rangen's decision to extend credit, and (3) relied upon by Rangen in making those credit decisions, and (4) if so, whether that reliance was reasonable.

During the course of the examination of the parties and their experts it was clear that the only debatable factual issues revolved around the following Rosenblums' representations:

- On the asset side: The Maritech and Super Shrimp Group Holdings.
- On the liabilities side: The stock pledges.[13]

Wayne Courtney, now a Rangen Executive Vice President, testified that Rangen relied on the statements in Rangen's decision to extend credit. Although Mr. Courtney had previously been Rangen's comptroller, he left that position for his current vice-presidency in 1999. It also appeared, from the totality of all of the evidence, that, at all pertinent times, the primary analyst of the Maritech/Super Shrimp credit was Kevin Mindock, Rangen's credit manager.

The various writings, authored by Mr. Mindock concerning this account, nowhere indicate that the Rosenblums' personal guaranty was considered to have any value separate from either Maritech or Super Shrimp. (See, e.g., Ex. B, authored in June or July, 2002, after Maritech's defaults were fully known. In addition, Ex. A nowhere lists the Rosenblum guarantees as being critical to Rangen's credit strategy.) A crucial memo, written by Mr. Mindock on June 15, 2001, describing Rangen's credit extension to Maritech as "extremely risky," did not detail the Rosenblums' personal financial position at all. That memorandum described other collateral sources of repayment, then and/or in the past, as

[13] Not at issue were the Rosenblums' representation as to their other assets and liabilities.

standby letters of credit, EXIM credit insurance, and the USDA Supplier Guarantee Program.[14] In that memo, Mr. Mindock, outlining other possible credit protection options, suggested payment guarantees (other than by the principals of Maritech), performance bonds, and new credit insurance. (Ex. MM.)

Mr. Mindock also candidly acknowledged that he was keenly aware of the fact that if Rangen's account debtors (Maritech and Super Shrimp) became unable to pay, then the Rosenblums, whose only interests in those entities were by virtue of their common stock ownership, would also find it "impossible" to pay. The rationale for his conclusion is obvious. A company's assets belong first to the common pool of its creditors; if creditors are unable to be paid in full, then there is nothing for the shareholders. Mr. Mindock realized that if neither Maritech nor Super Shrimp could perform on its promises to Rangen and other creditors, then there was no value to the Rosenblums' stock in those same entities. (See, e.g., Ex. 75, Super Shrimp, Inc.'s July 31, 2002 financial statement, reflecting liabilities of $21,946,787 and assets of only $13,737,694. The shareholders in that company were thus negative $8,209,093 or "under water.")

Mr. Mindock's well-founded credit knowledge was in fact bolstered by both expert witnesses in this case. First, Mr. James Morgan concluded that Rangen could not have relied, reasonably or otherwise, upon the Rosenblums' personal financial statement, to make the credit extensions it did, for numerous reasons:

- Rangen did not seek a personal financial statement from the Rosenblums until 1999, eight years into the relationship, and coincident with the USDA's guarantee program;
- It was unreasonable to rely at all, for repayment, on stock ownership in the same companies to which Rangen was extending credit (for the reasons noted above);

[14] Under the USDA program, any default of a participating vendee would pay Rangen 65% of the outstanding delinquency.

- Even if the personal financial statements were felt to be overstated, the "overstatement" was only in the stock values assigned to the Maritech/Super Shrimp entities, and not to any of the Rosenblums' other assets;
- The stock pledge line was not more fully inquired into; and
- If a company is truly relying on an individual's net worth for repayment, common stock assets of the very companies to whom one is extending credit should be deducted from the financial statements. In other words, Maritech and Super Shrimp should have been deducted from the net worth of the individual guarantors, to realize the Rosenblums' "true" net worth in the event of company meltdowns.

Dale Belt, Rangen's expert witness, felt that the Defendants had "materially overstated" their net worth. However, Mr. Belt felt that the Rosenblums' adjusted net worth, as of May 24, 1999 (Ex. 21) should have been $4,833,547, rather than the $14,022,093 set forth therein. (See Ex. 76 at 8.) Since the judgment and damages sustained by Rangen are $2,309,298.92 (less the $917,811.76 realized from the USDA guarantees), the almost $5,000,000 in Mr. Belt's restated net worth was not, in the opinion of this court, materially overstated. It was sufficient to cover any loss, by double.

In analyzing the July 9, 2001 financial statement (Ex. 31), the last one submitted by the Rosenblums, Mr. Belt opined that the true net worth figure should have been $5,185,213, rather than $10,816,344 (Ex. 76 at 10). Again, this difference, was not material to Rangen in its credit analysis.

Moreover, this court was not persuaded that Mark Rosenblum acted with an intent to deceive Rangen at any time. He was open to additional inquiry, and when requested, he endeavored to respond over the entire 11-year history between his companies and Rangen. (See, e.g., Exs. 22 and 23.) Had Rangen ever required greater depth of explanation, or more documentation, it would no doubt have

been provided.[15] But, as Mr. Mindock explained, it was not always requested. Thus, the Rosenblums could rightfully rely on the lack of continued Rangen questions to assume that the information which they provided was satisfactory to Rangen.

In viewing the entire history of the parties' relationship and the totality of circumstances, the court concludes that Rangen's decisions to extend credit from 1999 forward had everything to do with Maritech's past history of payments rather than any reliance whatsoever on the Rosenblum financial statements.

Based on its inability to prove its § 523(a)(2)(B) case by a preponderance of the evidence, this court must find for the Defendants, and against the Plaintiff, on the remaining claim.[16]

CONCLUSION

After analyzing the evidence in this case and concluding that the creditor did not prove its case by a preponderance of the evidence, this court must enter judgment in favor of Defendants. It will be the ruling of the court that judgment should be entered on behalf of the Defendants in this case, and that Plaintiff's case shall be dismissed with prejudice. Each party shall bear their own costs.

A separate judgment will be entered.

DATED this 17th day of January, 2006.

JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

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[15] At various times throughout their long relationship, Rangen requested and received financial statements of Maritech and the Super Shrimp Group.

[16] Based on this conclusion, it is unnecessary to detail the involvement , or lack thereof, of Margaret Rosenblum in the submission of the financial statements.

COPIES served as indicated below this 18th day of January, 2006, upon:

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