United States Bankruptcy Court
Northern District of Illinois
Eastern Division

Transmittal Sheet for Opinions for Posting

Will this opinion be Published? No

Bankruptcy Caption: In re Michael Charles Mansour (Southern District of Florida)

Bankruptcy No. 04-22050 BKC RBR

Adversary Caption: Frank and Rosa Rita Bianchini

Adversary No. 04-2220 BKC RBR A

Date of Issuance: 5/26/05 (Southern District of Florida)

Judge: John H. Squires

Appearance of Counsel:

Attorney for Plaintiff: Charles B. Hernicz, Esq.

Attorney for Defendant: Roland N. Cataldo, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE:	)	Bankruptcy No. 04-22050 BKC RBR
	)	Chapter 7
MICHAEL CHARLES MANSOUR,	)	
	)	
Debtor.	)	
	)	
	)	
FRANK and ROSA RITA BIANCHINI,	)	
	)	
Plaintiffs,	)	Adv. No. 04-2220 BKC RBR A
	)	
v.	)	
	)	
MICHAEL CHARLES MANSOUR,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

This matter comes before the Court on the amended complaint filed by Frank and Rosa Rita Bianchini (the "Creditors") against Michael Charles Mansour (the "Debtor"), which seeks to except a debt owed by the Debtor to the Creditors from discharge pursuant to 11 U.S.C. § 523(a)(2).[1] For the reasons set forth herein, the Court finds that the Creditors have not established all required elements for an exception to discharge under § 523(a)(2)(A). Therefore, the Court grants judgment in favor of the Debtor and finds that the debt is dischargeable.

I. JURISDICTION AND PROCEDURE

[1] The Creditors do not specify in the amended complaint whether they seek to have the debt held non-dischargeable under § 523(a)(2)(A) or § 523(a)(2)(B). Nevertheless, based on the allegations in the amended complaint, the pretrial submissions, the evidence adduced at the trial, and the arguments of counsel, it appears that the Creditors seeks to have the debt held non-dischargeable under § 523(a)(2)(A).

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Local Rule 87.2 of the United States District Court for the Southern District of Florida. It is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

II. FACTS AND BACKGROUND

On December 18, 1990, the Creditors sold real property located at 1720 SW 120th Terrace, Davie, Florida (the "Property") to Michael and Irene Lawrenson (the "Lawrensons") for $244,000.00. The Creditors financed $50,000.00 of the Lawrensons' purchase price, which was secured by a second mortgage on the Property in favor of the Creditors. The Lawrensons defaulted under the first mortgage loan. As a result, on November 16, 1993, a mortgage foreclosure action was instituted by the first mortgage holder, NationsBanc Mortgage Corp. ("NationsBanc"), against, among others, the Lawrensons and the Creditors. *See* Debtor Ex. B. Subsequently, on June 14, 1995, NationsBanc obtained a judgment of foreclosure in its favor. *Id.* A foreclosure sale was scheduled for July 10, 1995. *Id.*

Prior to the scheduled foreclosure sale, the Lawrensons contacted the Debtor, a licensed mortgage broker, who was employed as a principal of Broward Mortgage & Financial Services, Inc. ("Broward Mortgage"), regarding a short-term or "bridge" loan to prevent the sale of the Property by foreclosure. *See* Debtor Ex. C at ¶¶ 5-7. Because of the Lawrensons' poor credit history and the fact that they were involved in a mortgage foreclosure proceeding, they were not eligible for a BC class loan.[2] *Id.* at ¶ 14. Accordingly, the Debtor, with the assistance of

[2] There are typically three different mortgage loan classifications: A class, BC class, and hard equity/private money class. *See* Debtor Ex. C at ¶¶ 18-19. An A class loan is for those applicants with the best payment and credit history, and are the least expensive loans.

Richard Obert ("Obert"), also a licensed mortgage broker, began to look for a "hard equity" loan for the Lawrensons. *Id.* at ¶ 15; Debtor Ex. D at ¶¶ 3-4, 7; Creditors Ex. No. 11 at pp. 4-6, 9.

In late June 1995, the Debtor and Obert secured a commitment for such a loan for the principal sum of $196,000.00 through Meister Financial Group, Inc. ("Meister Financial"). *See* Creditors Ex. No. 4; Debtor Ex. C at ¶ 16; Debtor Ex. D at ¶ 7. The loan that the Debtor obtained from Meister Financial required the Lawrensons to make their first payment on September 1, 1995. *See* Creditors Ex. No. 4. The Debtor testified at trial that he did not see these loan documents and was unaware of when the first payment was due from the Lawrensons to Meister Financial.

Obert, on the instructions of the Debtor, went to the Lawrensons' home and explained the terms of the Meister Financial loan to them. *See* Creditors Ex. No. 11 at pp. 12-13. Specifically, Obert told the Lawrensons that the Meister Financial loan was a structured, short-term loan. *Id.* He informed the Lawrensons of the importance of reestablishing their credit by making three to six months of payments on the Meister Financial loan, which would enable them to obtain long-term permanent financing. *Id.*; Debtor Ex. D at ¶ 8.

Id. at ¶ 19A. A BC class loan is for applicants who have had financial difficulties and present a fair risk for potential lenders. *Id.* at ¶ 19B. A hard equity/private money loan is for borrowers with a poor payment history who have been involved in a foreclosure proceeding. *Id.* at ¶ 19C. These are the most expensive loans. *Id.* In the Debtor's opinion, the Lawrensons were only able to qualify for a hard equity/private money loan because of their financial problems at the time they sought his assistance. *Id.* at ¶¶ 13-15.

The parties do not dispute that during this time period, the Debtor did not communicate with or speak directly to the Creditors. *See* Debtor Ex. C at ¶ 17; Creditors Ex. No. 9 at ¶ 9; Creditors Ex. No. 8 at ¶ 4. Rather, the Debtor dealt with the Creditors' attorney, Stephen L. Shochet ("Shochet"), who represented the Creditors during the relevant time. The Debtor communicated to Shochet that he had secured a verbal commitment from another lender for a new mortgage for the Lawrensons at a better rate in order to pay off the Meister Financial loan as well as the Creditors' second mortgage. *See* Debtor Ex. C at ¶ 29. The Debtor could not recall the name of the entity that verbally committed that it was willing to provide this mortgage loan to the Lawrensons. *Id.* at ¶¶ 40-46.

In order to finalize the Meister Financial loan, several conditions needed to be met: (1) the certificate of sale, certificate of title, and judgment of foreclosure in the pending suit on the Property had to be vacated;[3] and (2) the Creditors had to subordinate their second mortgage to Meister Financial's mortgage. *See* Debtor Ex. C. at ¶ 20. On July 7, 1995, the Creditors entered into a Subordination Agreement that subordinated their second mortgage on the Property to the new mortgage arranged by the Debtor with Meister Financial. *See* Creditors Ex. No. 1. The Creditors agreed to subordinate their second mortgage provided they were given assurances that the verbal commitment for a BC class loan for the Lawrensons would be sufficient to pay their second mortgage. *See* Debtor Ex. C at ¶ 22.

[3] The Property was sold at the foreclosure sale on July 10, 1995, and on July 28, 1995, the certificate of sale, certificate of title, and the foreclosure judgment were set aside. *See* Debtor Ex. B.

Additionally, on July 7, 1995, the Creditors, through Shochet, required the Debtor to sign, in his personal capacity and on behalf of Broward Mortgage, a Reliance and Forbearance Agreement. *See* Creditors Ex. No. 2. The Reliance and Forbearance Agreement covenanted that Broward Mortgage and the Debtor were responsible for satisfying the Creditors' junior mortgage. *Id.* The Reliance and Forbearance Agreement further provided that the Creditors would receive in satisfaction and payment of their subordinated mortgage no less than the sum of $55,000.00 "no later than Monday, October 2, 1995." *Id.* The Reliance and Forbearance Agreement also stated that "once the [P]roperty is out of foreclosure [Broward Mortgage and the Debtor] have arranged for another mortgage to be placed on the [P]roperty in the amount of $263,000.00 and that from the proceeds of this latter mortgage the [Creditors'] mortgage will be satisfied. . . ." *Id.* It is undisputed that the Debtor personally guaranteed this payment to the Creditors by the execution of the Reliance and Forbearance Agreement in his individual capacity as well as agent for Broward Mortgage. The Debtor stated that he did not participate in the preparation or drafting of the Reliance and Forbearance Agreement. *See* Debtor Ex. C at ¶ 24. Shochet, on the other hand, stated that although he drafted the Agreement, the Debtor made numerous changes and edits before he signed the document. *See* Creditors Ex. No. 9 at ¶ 8.

In November 1995, the Debtor learned that the Lawrensons had defaulted on their loan payments to Meister Financial. *See* Debtor Ex. C at ¶ 34. The Debtor testified that because the Lawrensons failed to make the payments on this short-term loan, the verbal commitment for a new, permanent loan never progressed to a written commitment. *Id.* at ¶ 35. As a consequence, the Creditors did not receive the $55,000.00 or any funds for their subordinated mortgage as represented by the Debtor in the Reliance and Forbearance Agreement.

After the Lawrensons defaulted on their payments under the loan, Meister Financial filed a mortgage foreclosure action on December 15, 1995. A final judgment of foreclosure in the sum of $254,061.55 was subsequently entered in Meister Financial's favor and against the Lawrensons, the Debtor and the Creditors on May 14, 1997. *See* Creditors Ex. No. 6.

Because they had not been paid as required by the Reliance and Forbearance Agreement, the Creditors filed a lawsuit against the Debtor. On December 10, 1997, the Circuit Court of the Seventeenth Judicial Circuit Court, in and for Broward County, Florida, entered a final default judgment for the Creditors and against the Debtor and Broward Mortgage in the sum of $58,020.00, which included interest and costs. *See* Creditors Ex. No. 7.

The Debtor filed a Chapter 7 petition on April 4, 2004. Thereafter, the instant adversary proceeding was filed. The Creditors filed an amended complaint on August 6, 2004. Therein, they seek a finding that the state court judgment be held non-dischargeable pursuant to § 523(a)(2). The Creditors allege that the Debtor made a false statement to induce them to enter into the Reliance and Forbearance Agreement. Specifically, the Creditors allege that the statement made by the Debtor in the Reliance and Forbearance Agreement that the Creditors would be paid $55,000.00 no later than October 2, 1995 was false, that the Debtor knew this representation was false, and that this representation induced the Creditors to subordinate their second mortgage on the Property to the Meister Financial mortgage. The Creditors argue that they justifiably relied on the Debtor's false representation and suffered damages as a consequence.

III. DISCUSSION

A. Exception to the Discharge of a Debt

The party seeking to establish an exception to the discharge of a debt bears the burden of proof. *K & K Ins. Group, Inc. v. Houston (In re Houston)*, 305 B.R. 111, 119 (Bankr. M.D. Fla. 2003); *Sears, Roebuck & Co. v. Davis (In re Davis)*, 134 B.R. 990, 991 (Bankr. M.D. Fla. 1991). The United States Supreme Court has held that the burden of proof required to establish an exception to discharge is a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 291 (1991); *see also Sec. & Exch. Comm'n v. Bilzerian (In re Bilzerian)*, 153 F.3d 1278, 1281 (11th Cir. 1998); *St. Laurent, II v. Ambrose (In re St. Laurent, II)*, 991 F.2d 672, 677 (11th Cir. 1993). The statutory exceptions to discharge are to be construed strictly against a creditor and liberally in favor of a debtor. *St. Laurent, II*, 991 F.2d at 680. "This narrow construction ensures that the honest but unfortunate debtor is afforded a fresh start." *Equitable Bank v. Miller (In re Miller)*, 39 F.3d 301, 304 (11th Cir. 1994) (internal quotation omitted).

B. 11 U.S.C. § 523(a)(2)(A)

Section 523 of the Bankruptcy Code enumerates specific, limited exceptions to the dischargeability of debts. Section 523(a)(2)(A) provides that:

> (a) A discharge under section 727 . . . 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–
>
> (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition[.]

11 U.S.C. § 523(a)(2)(A) (2005). Section 523(a)(2)(A) lists three separate grounds for

dischargeability: actual fraud, false pretenses, and a false representation. *Id.* These terms are common law terms that intimate elements the common law has defined them to comprise. *Fuller v. Johannessen (In re Johannessen)*, 76 F.3d 347, 349 (11th Cir. 1996).

In order to demonstrate a claim based on fraud, false pretenses or a false representation, a creditor must show that (1) the debtor made a false representation with intent to deceive the creditor; (2) the creditor relied on the representation; (3) the reliance was justified; and (4) the creditor sustained a loss as a result of the misrepresentation. *See Hoffend v. Villa (In re Villa)*, 261 F.3d 1148, 1150 (11th Cir. 2001), *cert. denied*, 535 U.S. 1112 (2002); *Bilzerian*, 153 F.3d at 1281; *Johannessen*, 76 F.3d at 350; *Donald Hanft, M.D., P.A. v. Church (In re Donald Hanft, M.D., P.A.)*, 315 B.R. 617, 621 (S.D. Fla. 2002); *Lightner v. Lohn*, 274 B.R. 545, 549 (M.D. Fla. 2002).

Fraud for purposes of § 523(a)(2)(A) may exist as a concealment of a material fact. *Mirage-Casino Hotel v. Simpson (In re Simpson)*, 319 B.R. 256, 260 (Bankr. M.D. Fla. 2003). In a matter involving an unfulfilled promise, proof of fraud requires the creditor to show that at the time the promise was made, the debtor either knew that he could not fulfill the promise or had no intention of fulfilling the promise. *Bropson v. Thomas (In re Thomas)*, 217 B.R. 650, 653 (Bankr. M.D. Fla. 1998); *Am. Sur. & Cas. Co. v. Hutchinson (In re Hutchinson)*, 193 B.R. 61, 65 (Bankr. M.D. Fla. 1996).

A false pretense involves an implied misrepresentation or conduct intended to create or foster a false impression. *Eisinger v. Zito (In re Eisinger)*, 304 B.R. 492, 497 (Bankr. M.D. Fla. 2003); *Castro v. Zeller (In re Zeller)*, 242 B.R. 84, 87 (Bankr. S.D. Fla. 1999). If the circumstances imply certain facts, and a party knows the facts to be otherwise, that party may

have a duty to correct the false impression that has been created. *Eisinger*, 304 B.R. at 497. This is the basis of the "false pretenses" ground of § 523(a)(2)(A). *Id.*

A false representation, on the other hand, requires an express misrepresentation by a debtor. *Zeller*, 242 B.R. at 87. Nondisclosure or a false statement made in reckless disregard for the truth can be construed as a misrepresentation. *Hutchinson*, 193 B.R. at 64. A debtor's silence regarding a material fact may constitute a false representation. *Eisinger*, 304 B.R. at 498. "[A]bsent a duty imposed by law to disclose facts because of a peculiar relationship of the parties or a showing that a debtor has willfully concealed or omitted material facts, mere silence and failure to disclose falls short of establishing a false representation." *Zeller*, 242 B.R. at 87.

To establish intent for purposes of § 523(a)(2)(A), the creditor must show that the debtor made misrepresentations with the intention and purpose of deceiving the creditor. *Schlenkerman v. Goldbronn (In re Goldbronn)*, 263 B.R. 347, 361 (Bankr. M.D. Fla. 2001). "Fraudulent intent need not be shown by direct evidence, but may be inferred from the totality of the circumstances." *Lyons v. Wiggins (In re Wiggins)*, 250 B.R. 131, 134 (Bankr. M.D. Fla. 2000); *see also Nat'l Tour Ass'n, Inc. v. Rodriguez*, 221 B.R. 1012, 1015 (M.D. Fla. 1998). A debtor's misrepresentation, nondisclosure of material facts, and deceptive conduct may be sufficient to establish fraudulent intent. *Smith v. Cravey (In re Cravey)*, 105 B.R. 700, 703 (Bankr. M.D. Fla. 1989). Reckless disregard for the truth or falsity of a statement combined with the magnitude of the misrepresentation may result in an inference of intent to deceive. *Miller*, 39 F.3d at 305. Because the determination of fraudulent intent depends largely upon an assessment of a debtor's credibility and demeanor, deference is given to the bankruptcy court's factual findings. *Id.*

Reliance on a false pretense or false representation under § 523(a)(2)(A) must be

"justifiable." *Field v. Mans*, 516 U.S. 59, 74-75 (1995). The justifiable reliance standard imposes no duty to investigate unless the falsity of the representation is readily apparent. *Id.* at 70-72. Whether a party justifiably relies on a misrepresentation is determined by looking at the circumstances of a particular case and the characteristics of a particular plaintiff, not by an objective standard. *Id.* at 71; *City Bank & Trust Co. v. Vann (In re Vann)*, 67 F.3d 277, 283 (11th Cir. 1995); *Simpson*, 319 B.R. at 260.

Proof that the creditor's damages were proximately caused by the debtor's misrepresentation is also required under § 523(a)(2)(A). *Bilzerian*, 153 F.3d at 1281; *Goldbronn*, 263 B.R. at 362. Proximate cause has two elements: causation in fact and foreseeability. *Lightner*, 274 B.R. at 550.

The ultimate issue the Court must determine is whether the Debtor's failure to disclose to the Creditors, through Shochet, the payment history needed from the Lawrensons under the Meister Financial loan was such a material omission as to constitute fraud, a false representation or false pretenses for purposes of § 523(a)(2)(A).

The Court finds that the Debtor made an express representation in the Reliance and Forbearance Agreement that the Creditors would be paid no less than $55,000.00 no later than October 2, 1995 in satisfaction and payment of their subordinated mortgage. *See* Creditors Ex. No. 2. Next, the Court must determine whether this representation was false and made with an intent to deceive the Creditors.

The Creditors argue that the Debtor knew at the time he made the written statement that the Creditors would be paid no later than October 2, 1995 from the proceeds of another mortgage to be placed on the Property, that the Lawrensons' short-term loan from Meister Financial could

not be refinanced by that date. According to the Creditors, this statement was false because the Debtor knew that the Lawrensons would have to make timely payments under the Meister Financial loan for at least three to six months before another lender would give the Lawrensons a new loan. The Creditors contend that the Debtor failed to disclose this critical information to them or their attorney. The Creditors maintain that had they known that the Lawrensons were required to make timely payments on the loan for several months, they never would have subordinated their junior mortgage to Meister Financial's mortgage.

The Debtor, on the other hand, argues that in order for the Lawrensons to receive a long-term, permanent loan, they were required to make timely payments under the Meister Financial loan. The Debtor contends that making these payments was a condition precedent to procuring a permanent loan, and that the Lawrensons' failure to make the payments resulted in the lender refusing to close a permanent loan, and thus pay the Creditors from the proceeds of that loan. The Debtor maintains that the Creditors seek to make the Debtor a guarantor of the Lawrensons' actions and equate their failure to make the mortgage payments under the Meister Financial loan with fraud in the inducement by the Debtor.

The Court finds that the Creditors failed to establish that the Debtor's representation in the Reliance and Forbearance Agreement that the Creditors would be paid no less than $55,000.00 by October 2, 1995 from the proceeds of another loan was knowingly and intentionally false and made with the requisite intent to deceive. The Creditors failed to show by a preponderance of the credible evidence that when the Debtor signed the Reliance and Forbearance Agreement, he either intentionally made a false statement to Shochet to induce the Creditors into subordinating their junior mortgage to the Meister Financial mortgage, or that the

Debtor made a statement in a reckless manner that constituted an intentionally false statement.

According to the Debtor, the need to make payments on the Meister Financial loan was conveyed to the Lawrensons by Obert, and they assured him that they would make their payments because they wanted to save the Property. *See* Creditors Ex. No. 10 at p. 23, lines 16-19. Thus, the Debtor relied on the Lawrensons' representation that they would "season" the Meister Financial loan in order to qualify for a long-term, "take out" mortgage to pay off the Meister Financial mortgage and the Creditors' junior mortgage. *Id.* at p. 24, lines 2-3. It also logically follows that the Creditors implicitly relied on the Lawrensons to make their payments under Meister Financial's loan at least until October. Otherwise, why would the Creditors have agreed to subordinate their mortgage to Meister Financial's mortgage? The Creditors, like the Lawrensons, were attempting to stave off the foreclosure sale by NationsBanc, which would have cut off their junior mortgage lien. The Court finds that the Debtor intended to help both the Lawrensons and the Creditors save the Property from foreclosure. Further, the Court finds that the Debtor did not intend to defraud the Creditors when he had them subordinate their junior mortgage to Meister Financial's mortgage.

The Court rejects the Creditors' argument that the Debtor knew that the Lawrensons could not have made three to six months of payments prior to the October 2, 1995 repayment date. It is undisputed that under the Meister Financial loan, the Lawrensons' first payment was due September 1, 1995. *See* Creditors Ex. No. 4. The Debtor testified, however, that he never saw the Meister Financial documents at the time they were executed, and, thus, was unaware of when the Lawrensons' first payment was due under the loan. Conceivably, the Lawrensons could have made three monthly payments on the loan (August, September and October) prior

to the October 2, 1995 date that the Creditors were to be paid. The Creditors failed to adduce any evidence to show that the Debtor knew at the time he signed the Reliance and Forbearance Agreement that the Lawrensons' first payment was not due until September 1, 1995.

Further, the Court rejects the Creditors' argument that the Debtor obtained the Creditors' subordination of their mortgage by fraud or false pretenses because he never told them that the Lawrensons had to make three to six months of payments on the Meister Financial loan before they would be eligible for a new loan. Admittedly, the Debtor did not tell the Creditors that the refinancing of the Meister Financial loan was conditioned on the Lawrensons making timely payments under the loan for a period of three to six months. The Debtor's unrebutted testimony was that he procured a verbal commitment from an unnamed lender to refinance the Meister Financial loan. That a written commitment from the lender was conditioned on the Lawrensons making three to six months of timely payments of the Meister Financial loan does not mean that the Debtor intended to deceive the Creditors when he made the representation in the Reliance and Forbearance Agreement that the Creditors would be paid by a date certain with the proceeds from another mortgage loan. The Lawrensons' performance under the Meister Financial loan was necessary to procure a written loan commitment. That written commitment did not materialize because the Lawrensons defaulted in their payments owed to Meister Financial.

The Debtor breached the promise he made in the Reliance and Forbearance Agreement when he and Broward Mortgage failed to pay the Creditors. However, that breach of a promise does not mean that the Debtor made a false representation with the intent to deceive the Creditors. The fact that the Debtor personally guaranteed that the Creditors would be paid, and they were not, although a breach of the Reliance and Forbearance Agreement by the Debtor,

does not equate with fraud, a false representation or false pretenses. Therefore, the representation that the Creditors would be paid no later than October 2, 1995 from the proceeds of another mortgage was not intentionally false or made in a reckless manner tantamount to an intentionally false statement.

In addition, the Debtor's silence regarding the Lawrensons' need to make their payments under the Meister Financial loan falls short of constituting fraud or a false representation by omission. The Debtor was the agent for the Lawrensons as one of their mortgage brokers, but was not an agent for the Creditors or Shochet. Thus, there was no special relationship between the Debtor and the Creditors that gave rise to a duty by the Debtor to disclose facts to the Creditors. *See Zeller*, 242 B.R. at 87. The Debtor's mere silence and failure to disclose the necessity of the Lawrensons seasoning the Meister Financial loan falls short of fraud, a false representation or false pretenses. In sum, after hearing all of the evidence, the Court finds and concludes that the Debtor's omission constituted negligence, but did not constitute fraud, a false representation by omission or false pretenses.

Next, the Court finds that the Creditors demonstrated that they justifiably and actually relied on the representation in the Reliance and Forbearance Agreement that the Debtor and Broward Mortgage would pay off their junior mortgage by no later than October 2, 1995 in at least the sum of $55,00.00. Based on the language in the Reliance and Forbearance Agreement, as well as the Debtor's signature on that document both personally and on behalf of Broward Mortgage, the Creditors agreed to subordinate their second mortgage on the Property to the new mortgage of Meister Financial. The Creditors relied on the Agreement, and in viewing the circumstances of this particular case and the characteristics of these Creditors, the reliance was

justified. The fact that the Creditors' attorney drafted the Agreement weighs in favor of finding that such reliance was justified. Moreover, no evidence was adduced at trial to show that the alleged falsity of the representation was readily apparent to the Creditors or Shochet. Thus, the Creditors had no duty to investigate the truthfulness of the representation for purposes of establishing justifiable reliance.

Finally, the Court finds that the Creditors established that they sustained a loss, but not as a result of the Debtor's representation. While it is true that the Creditors did not receive the $55,000.00 on October 2, 1995 from the proceeds of a new loan, as represented by the Debtor in the Reliance and Forbearance Agreement, the Creditors' actual damages were not proximately caused by the Debtor's representation. Rather, it was the Lawrensons' failure to make any of the payments on the Meister Financial loan that was the cause in fact of the Creditors being deprived of their money. The Creditors failed to show that the Debtor knew or expected that the Lawrensons would default under the Meister Financial loan, thereby precluding the prospective lender from issuing a written loan commitment and making a permanent loan to pay off both Meister Financial and the Creditors on their respective mortgages. Hence, the Creditors failed to demonstrate that their damages were proximately caused by the Debtor's representation in the Reliance and Forbearance Agreement.

IV. CONCLUSION

For the foregoing reasons the Court finds that the Creditors have not established all required elements for an exception to discharge under § 523(a)(2)(A). Accordingly, the Court enters judgment in favor of the Debtor and finds that the debt owed by the Debtor to the Creditors is dischargeable.

This Opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order shall be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

ENTERED:

DATE: _____

_____
John H. Squires
United States Bankruptcy Judge

cc: See attached Service List