United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Darwin Oordt

Bankruptcy No. 04 B 16542

Adversary Caption: Dallenbach Racing, Inc. V. Darwin Oordt

Adversary No. 04 A 03403

Date of Issuance: December 16, 2004

Judge: John H. Squires

Appearance of Counsel:

Attorneys for Plaintiff: John S. Delnero and Adam R. Schaeffer

Attorney for Debtor/Defendant: Gina B. Krol

Trustee: David R. Brown

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
	)	Bankruptcy No. 04 B 16542
DARWIN OORDT,	)	Chapter 7
	)	Judge John H. Squires
Debtor.	)	
	)	
DALLENBACH RACING, INC. and WALLY DALLENBACH, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. No. 04 A 03403
	)	
DARWIN OORDT,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

This matter comes before the Court on the motion of Dallenbach Racing, Inc. and Wally Dallenbach, Jr. (collectively "Dallenbach") for judgment on the pleadings pursuant to Federal Rule of Bankruptcy Procedure 7012 and Federal Rule of Civil Procedure 12(c). For the reasons set forth herein, the Court grants the motion with respect to Count I of the complaint. The Court finds that the $11,304.976.23 debt owed by Darwin Oordt to Dallenbach is non-dischargeable under 11 U.S.C. § 523(a)(2)(A). A status hearing is set for February 4, 2005 at 10:00 a.m. on the remaining counts of the complaint.

I. JURISDICTION AND PROCEDURE

The Court has jurisdiction to entertain this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District

of Illinois. It is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (I) and (O).

II. FACTS AND BACKGROUND

In February 2001, Dallenbach filed an action in the North Carolina General Court of Justice (the "State Court Action") against, among others, Darwin Oordt (the "Debtor"). Ex. A to Compl. The four-count complaint alleged three counts of breach of contract and one count of unfair and deceptive trade practices. *Id.* Specifically, Dallenbach maintained that the Debtor and others entered into a written contract with Dallenbach wherein in exchange for services rendered by Dallenbach to the Debtor, the Debtor was to monetarily compensate Dallenbach. Ex. C to Compl. The Debtor and the other defendants filed an answer, a motion to dismiss and a counterclaim in the State Court Action. Ex. D to Compl.

On May 22, 2002, Dallenbach obtained a judgment in the State Court Action against the Debtor in the sum of $11,304,976.23 (the "State Court Judgment"). Ex. B to Compl. Specifically, the State Court found that the Debtor entered into a contract with Dallenbach under which Dallenbach would serve as the driver for the Debtor's racing team. *Id.* at ¶ 1. In addition, the State Court stated that the Debtor breached that contract by refusing to allow Dallenbach to drive during the racing season and by refusing to pay Dallenbach pursuant to the contract. *Id.* at ¶ 2. The State Court found that Dallenbach presented sufficient evidence to establish that the Debtor's conduct was unfair and a deceptive practice in violation of North Carolina law. *Id.* at ¶ 3. Moreover, the State Court concluded that the Debtor represented that certain sponsors were contractually obligated to provide sponsorship funds for a fixed term and that representation was false. *Id.* Additionally, the State Court concluded that the Debtor represented to Dallenbach that

other sponsors executed contracts promising to provide funds to the racing team for a certain period of time and that those representations were also false. *Id.* Further, the State Court noted that those representations induced Dallenbach to execute the contracts and prevented him from pursuing opportunities with other racing teams, all to the harm and detriment of Dallenbach. *Id.* Finally, the State Court found that the Debtor willfully engaged in actions that constituted an unfair and deceptive practice. *Id.* at ¶ 5.

On April 27, 2004, the Debtor filed a voluntary Chapter 7 petition. Dallenbach filed the instant adversary proceeding on August 19, 2004. Count I of the complaint alleges that the judgment debt owed by the Debtor to Dallenbach is non-dischargeable under 11 U.S.C. § 523(a)(2)(A). Count II of the complaint asserts that the debt resulted from willful and malicious injury to Dallenbach or Dallenbach's property and should be found non-dischargeable under 11 U.S.C. § 523(a)(6). Count III of the complaint alleges that the debt resulted from a breach of the Debtor's fiduciary duty to Dallenbach and should be found non-dischargeable under 11 U.S.C. § 523(a)(4).

The instant motion seeks judgment on the pleadings with respect to Count I of the complaint. Specifically, Dallenbach argues that the State Court Judgment should be given collateral estoppel effect and found non-dischargeable under § 523(a)(2)(A). The Debtor, on the other hand, contends that the State Court Action should not be afforded collateral estoppel effect because Dallenbach has not sustained the burden of showing with clarity and certainty what was determined by the State Court. Specifically, the Debtor maintains that Dallenbach failed to show that the State Court considered the requisite elements under a § 523(a)(2)(A) cause of action or that those issues were actually litigated.

III. APPLICABLE STANDARDS

A. Motion for Judgment on the Pleadings

Federal Rule of Civil Procedure 12(c), which is incorporated by reference in Federal Rule of Bankruptcy Procedure 7012, provides as follows:

> After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Fed. R.Civ. P. 12(c). Rule 12(c) permits a party to move for judgment after the parties have filed the complaint and answer. *N. Ind. Gun & Outdoor Shows, Inc. v. City of S. Bend*, 163 F.3d 449, 452 (7th Cir. 1998). "The pleadings include the complaint, the answer, and any written instruments attached as exhibits."[1] *Id.* The Seventh Circuit has interpreted "the term 'written instrument' as used in Rule 10(c) to include documents such as affidavits and letters, as well as contracts and loan documentation." *Id.* at 453 (citations omitted). When deciding a motion for judgment on the pleadings, a court may consider only the contents of the pleadings. *Alexander v. City of Chi.*, 994 F.2d 333, 335 (7th Cir. 1993); *Union Carbide Corp. v. Viskase Corp. (In re Envirodyne Indus., Inc.)*, 183 B.R. 812, 817 (Bankr. N.D. Ill. 1995). However, courts may consider documents incorporated by reference in the pleadings. *United States v. Wood*, 925 F.2d 1580, 1582 (7th Cir. 1991). Courts may also take judicial notice of matters of public record. *Id.*

A motion for judgment on the pleadings is determined by the same standard applied to

[1] Pursuant to Federal Rule of Civil Procedure 10, made applicable by Federal Rule of Bankruptcy Procedure 7010, "[a] copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes." Fed. R. Civ. P. 10(c).

a motion to dismiss for failure to state a claim. *Id.* at 1581. Pursuant to Rule 12(c), a motion for judgment on the pleadings is properly granted if the undisputed facts appearing in the pleadings, supplemented by any facts of which a court should take proper judicial notice, clearly entitle the moving party to judgment as a matter of law. *Nat'l Fid. Life Ins. Co. v. Karaganis*, 811 F.2d 357, 358 (7th Cir. 1987) (*citing Flora v. Home Fed. Sav. & Loan Ass'n*, 685 F.2d 209, 211 (7th Cir. 1982)). A moving party must unequivocally establish that no material issue of fact exists and that judgment on the pleadings is warranted by law. *Id. See also A.D.E. Inc. v. Louis Joliet Bank & Trust Co.*, 742 F.2d 395, 396 (7th Cir. 1984) (finding that judgment on the pleadings is appropriate only if it is a "certainty" that the defendant is liable).

For purposes of Rule 12(c) motions, all well-pleaded allegations contained in the non-moving party's pleadings are to be taken as true. *Gillman v. Burlington N. R.R. Co.*, 878 F.2d 1020, 1022 (7th Cir. 1989) (*citing Republic Steel Corp. v. Pa. Eng'g Corp.*, 785 F.2d 174, 177 n.2 (7th Cir. 1986)). In ruling on a motion for judgment on the pleadings, courts must view the facts in pleadings and all inferences drawn therefrom in the light most favorable to the non-movant. *Flenner v. Sheahan*, 107 F.3d 459, 461 (7th Cir. 1997); *Nat'l Fid. Life Ins.*, 811 F.2d at 358 (*citing Republic Steel*, 785 F.2d at 177 n.2). Courts are not bound, however, by the legal characterizations contained in the pleadings. *Nat'l Fid. Life Ins.*, 811 F.2d at 358*; Republic Steel*, 785 F.2d at 183. Where a written instrument incorporated in the pleadings contradicts allegations in the complaint, the exhibit "trumps the allegations." *N. Ind. Gun*, 163 F.3d at 454.

Under Rule 12(c), a court may, if it chooses, consider matters outside the pleadings and treat the motion as if it were one for summary judgment. This alternative use of the Rule, however, provides that the motion cannot be granted if a genuine issue of material fact is presented under the summary judgment standards under Rule 56 and its bankruptcy analogue,

Rule 7056.

B. 11 U.S.C. § 523(a)(2)(A)

The party seeking to establish an exception to the discharge of a debt bears the burden of proof. *In re Harasymiw*, 895 F.2d 1170, 1172 (7th Cir. 1990); *Banner Oil Co. v. Bryson (In re Bryson)*, 187 B.R. 939, 961 (Bankr. N.D. Ill. 1995). 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 In re McFarland*, 84 F.3d 943, 946 (7th Cir.), *cert. denied*, 519 U.S. 931 (1996); *In re Thirtyacre*, 36 F.3d 697, 700 (7th Cir. 1994). To further the policy of providing a debtor with a fresh start in bankruptcy, "exceptions to discharge are to be construed strictly against a creditor and liberally in favor of a debtor." *In re Scarlata*, 979 F.2d 521, 524 (7th Cir. 1992) (*quoting In re Zarzynski*, 771 F.2d 304, 306 (7th Cir. 1985)). *Accord In re Morris*, 223 F.3d 548, 552 (7th Cir. 2000); *In re Reines*, 142 F.3d 970, 972-73 (7th Cir. 1998), *cert. denied*, 525 U.S. 1068 (1999).

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

> (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). Section 523(a)(2)(A) lists three separate grounds for dischargeability: actual fraud, false pretenses and a false representation. *Id.*; *Bletnitsky v. Jairath (In re Jairath)*,

259 B.R. 308, 314 (Bankr. N.D. Ill. 2001). A single test is applied to all three grounds even though the elements for each vary under common law. *Jairath*, 259 B.R. at 314.

In order to demonstrate a claim based on false pretenses or a false representation, a creditor must show that (1) the debtor made a false representation of fact; (2) the debtor (a) either knew the representation was false or made it with reckless disregard for its truth and (b) made the representation with an intent to deceive; and (3) the creditor justifiably relied on the false representation. *Baker Dev. Corp. v. Mulder (In re Mulder)*, 307 B.R. 637, 643 (Bankr. N.D. Ill. 2004); *Bednarsz v. Brzakala (In re Brzakala)*, 305 B.R. 705, 710 (Bankr. N.D. Ill. 2004). The determination of whether the debtor had the requisite intent is a factual question that must be resolved by a review of all of the relevant circumstances of a particular case. *Park Nat'l Bank & Trust of Chi. v. Paul (In re Paul)*, 266 B.R. 686, 694 (Bankr. N.D. Ill. 2001). Proof of intent to deceive is measured by a debtor's subjective intention at the time the representation was made. *Mercantile Bank v. Canovas*, 237 B.R. 423, 428 (Bankr. N.D. Ill. 1998). Where a person knowingly or recklessly made false representations that the person knew or should have known would induce another to act, the court may logically infer an intent to deceive. *Glucona Am., Inc. v. Ardisson (In re Ardisson)*, 272 B.R. 346, 357 (Bankr. N.D. Ill. 2001).

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; *Bombardier Capital, Inc. v. Dobek (In re Dobek)*, 278 B.R. 496, 508 (Bankr. N.D. Ill. 2002). To satisfy the reliance element of § 523(a)(2)(A), the creditor must

show that the debtor made a material misrepresentation that was the cause-in-fact of the debt that the creditor wants excepted from discharge. *Mayer v. Spanel Int'l Ltd.*, 51 F.3d 670, 676 (7th Cir.), *cert. denied*, 516 U.S. 1008 (1995) ("Reliance means the conjunction of a material misrepresentation with causation in fact.").

The Seventh Circuit Court of Appeals has made it clear, however, that misrepresentation and reliance thereon are not always required to establish fraud. *McClellan v. Cantrell*, 217 F.3d 890, 894 (7th Cir. 2000). Indeed, the Seventh Circuit recently defined the term "fraud":

> 'Fraud is a generic term, which embraces all the multifarious means which human ingenuity can devise and which are resorted to by one individual to gain an advantage over another by false suggestions or by the suppression of truth. No definite and invariable rule can be laid down as a general proposition defining fraud, and it includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.'

Id. at 893 (*quoting Stapleton v. Holt*, 250 P.2d 451, 453-54 (Okla. 1952)). "Actual fraud" is not limited to misrepresentation, but may encompass "'any deceit, artifice, trick, or design involving direct and active operation of the mind, used to circumvent and cheat another.'" *Id.* (*quoting* 4 L. King, *Collier on Bankruptcy*, ¶ 523.08[1][e], at 523-45 (15th ed. rev. 2000)). Hence, a different analysis must be utilized when a creditor alleges actual fraud. *Id.* The *McClellan* court opined that because common law fraud does not always take the form of a misrepresentation, a creditor need not allege misrepresentation and reliance thereon to state a cause of action for actual fraud under § 523(a)(2)(A). *Id.* Rather, the creditor must establish the following: (1) a fraud occurred; (2) the debtor intended to defraud the creditor; and (3) the fraud created the debt that is the subject of the discharge dispute. *Id.* The fraud exception under § 523(a)(2)(A) does not reach constructive frauds, only actual ones. *Id.* at 894.

C. Collateral Estoppel

The doctrine of collateral estoppel precludes a relitigation of issues previously determined in another court. *Brown v. Felsen*, 442 U.S. 127, 139 (1979); *Jensen v. Foley*, 295 F.3d 745, 748 (7th Cir. 2002) (finding that collateral estoppel "prevents a party from relitigating an issue that it has previously litigated and lost"). The United States Supreme Court has held that collateral estoppel principles apply to proceedings involving the dischargeability of a debt under 11 U.S.C. § 523(a). *Grogan*, 498 U.S. at 285 n.11 ("[C]ollateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a)."). Hence, "where a court of competent jurisdiction has previously ruled against a debtor upon specific issues of fact that independently comprise elements of a creditor's nondischargeability claim, the debtor may not seek to relitigate those underlying facts in bankruptcy court, provided that the issues involved had been 'actually litigated.'" *French, Kezelis & Kominiarek, P.C. v. Carlson (In re Carlson)*, 224 B.R. 659, 663 (Bankr. N.D. Ill. 1998), *aff'd*, No. 99 C 6020, 2000 WL 226706 (N.D. Ill. Feb. 22, 2000).

Federal courts must give full faith and credit to the collateral estoppel effects of state court judgments under state standards. 28 U.S.C. § 1738; *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985); *Am. Nat'l Bank & Trust Co. v. Reg'l Transp. Auth.*, 125 F.3d 420, 430 (7th Cir. 1997). Bankruptcy courts are bound by this obligation. *See Gouveia v. Tazbir*, 37 F.3d 295, 300 (7th Cir. 1994). "The preclusive effect of a state court judgment in a federal case is a matter of state rather than of federal law." *A.D. Brokaw v. Weaver*, 305 F.3d 660, 669 (7th Cir. 2002) (*quoting CIGNA Healthcare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 856 (7th Cir. 2002)). Because this matter presents a question regarding the collateral estoppel effect of a North Carolina state court judgment, the Court must apply the North Carolina law of collateral estoppel. *See In re Catt*, 368 F.3d 789, 790-91 (7th Cir. 2004) ("The effect of a

judgment in subsequent litigation is determined by the law of the jurisdiction that rendered the judgment. . . .").

The North Carolina Supreme Court recently spoke to the doctrine of collateral estoppel and opined:

> Under the . . . doctrine of collateral estoppel, also known as "estoppel by judgment" or " issue preclusion," the determination of an issue in a prior judicial or administrative proceeding precludes the relitigation of that issue in a later action, provided the party against whom the estoppel is asserted enjoyed a full and fair opportunity to litigate that issue in the earlier proceeding.

Whitacre P'ship v. Biosignia, Inc., 591 S.E.2d 870, 880 (N.C. 2004). Collateral estoppel bars "the subsequent adjudication of a previously determined issue, even if the subsequent action is based on an entirely different claim." *Id.* In other words, collateral estoppel may be raised in a subsequent action although that action may involve a claim or cause of action different from the previous action. *Nationsbank of N.C., N.A. v. Am. Doubloon Corp.*, 481 S.E.2d 387, 392 (N.C. Ct. App. 1997).

Under North Carolina law, the essential elements for application of collateral estoppel are: (1) the issues decided in the prior adjudication must be identical to the issues in the current action; (2) the issues must have been raised and actually litigated in the prior action; (3) the issues must have been material and relevant to the disposition of the prior action; and (4) the determination of the issues in the prior action must have been necessary and essential to the resulting judgment. *State v. Summers*, 528 S.E.2d 17, 20 (N.C. 2000); *Williams v. City of Jacksonville Police Dep't*, 599 S.E.2d 422, 428-29 (N.C. Ct. App. 2004).

IV. DISCUSSION

Pursuant to the doctrine of collateral estoppel, the Court concludes that the debt owed

by the Debtor to Dallenbach is non-dischargeable under § 523(a)(2)(A). The Court finds that the four elements of collateral estoppel have been established. First, the issues decided in the State Court Action are identical to Count I of Dallenbach's complaint at bar. Indeed, the complaint in the State Court Action alleged three counts of breach of contract and one count of unfair and deceptive trade practices. Ex. A to Compl. The State Court Judgment (Ex. B to Compl.), however, made specific findings of false representations by the Debtor. In addition, the State Court Judgment found that the false representations induced Dallenbach to execute the contract (Ex. C to Compl.); that those false representations were to the detriment of Dallenbach; and that the Debtor willfully engaged in the actions taken. The Court finds that the issues raised in the State Court Action are the same as those raised in Count I of the complaint at bar–namely, whether the Debtor made false representations to Dallenbach in order to induce him to provide racing services to the Debtor. The same events which gave rise to Dallenbach filing the State Court Action supply the underlying factual basis for Dallenbach's claim that the Debtor's debt is non-dischargeable under § 523(a)(2)(A).

Next, Dallenbach must establish that the issues were raised and actually litigated in the State Court Action. The burden is on Dallenbach to show with clarity and certainty what was determined in the prior action. *See Miller Bldg. Corp. v. NBBJ N.C., Inc.*, 497 S.E.2d 433, 435 (N.C. Ct. App. 1998). The party opposing issue preclusion has the burden to show that there was a full and fair opportunity to litigate the issues in the prior matter. *Id.* The Debtor argues that this element of collateral estoppel has not been met because he was not represented by counsel in the State Court Action, he did not participate in the trial, and the language in the State

Court Judgment was drafted by Dallenbach.[2] The Court disagrees. The issues regarding whether the Debtor made false representations to induce Dallenbach to enter into a contract in order to provide the Debtor with racing services were raised and actually litigated even though the Debtor did not participate in the trial.[3] In North Carolina, the opportunity to litigate constitutes actual litigation for collateral estoppel purposes. *Naddeo v. Allstate Ins. Co.*, 533 S.E.2d 501, 505-06 (N.C. Ct. App. 2000). The Debtor had a full and fair opportunity to litigate the issues but chose not to participate in the trial. The State Court held a trial on the merits of the complaint, and the Debtor had a full and fair opportunity to appear and defend at the trial. The State Court made detailed findings of fact and conclusions of law in the State Court Judgment, which included the requisite elements under a § 523(a)(2)(A) cause of action. The detailed findings and conclusions contained in the State Court Judgment demonstrate with clarity and certainty which factual allegations were actually proven, litigated and found essential thereto.

Defaulting at the prior trial does not properly bar application of collateral estoppel where proof by the other side is adduced and the first tribunal makes findings of fact and conclusions of law on the evidence. *See Katahn Assocs., Inc. v. Wien (In re Wien)*, 155 B.R. 479, 485-86 (Bankr. N.D. Ill. 1993) (noting that a default judgment entered by a court with sufficient findings

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[2] In his answer to the complaint at bar, the Debtor contends that he was not represented by counsel in the State Court Action because he was unable to pay counsel to represent him. Answer at ¶ 25. The Debtor further states that no one appeared on his behalf at the trial and that he did not participate in or attend the trial. *Id.*

[3] The Debtor, through counsel, filed an answer, a counterclaim and a motion to dismiss in the State Court Action. Ex. D to Compl.; Answer at ¶s 23 & 24. Moreover, the State Court Judgment referenced that the defendants in the State Court Action, including the Debtor, were represented by counsel, received notice of the trial, and filed a stipulation that announced that they would neither defend Dallenbach's claims nor prosecute their counterclaims. Ex. B to Compl.

of fact can be given collateral estoppel effect in a dischargeability proceeding). Dallenbach should not be required to prove up its claim twice and go to the additional expense of reproving its cause of action here because the Debtor defaulted at the time of trial in the State Court Action. The Debtor does not deserve a second bite at the litigation apple at Dallenbach's expense.

Finally, Dallenbach must show that the issues were relevant and material to the disposition of the State Court Action and that the determination of the issues in the prior action was necessary and essential to the resulting judgment. The Court finds that these elements have also been established for the same reasons as previously articulated. Whether the Debtor made false representations to Dallenbach in order to induce him to provide racing services to the Debtor and whether Dallenbach relied on those representations are relevant and material to the disposition of the State Court Action as evidenced by the State Court's detailed findings and conclusions. Further, determination of those issues is crucial to the resulting State Court Judgment. Consequently, the Court finds that the doctrine of collateral estoppel bars the parties from relitigating the issues and that, as a result, the debt owed by the Debtor to Dallenbach is non-dischargeable under § 523(a)(2)(A).

Finally, the Court finds that the full amount of the State Court Judgment, including the treble damages, is non-dischargeable under § 523(a)(2)(A). The United States Supreme Court has held that § 523(a)(2)(A) encompasses all obligations arising out of fraudulent conduct, including both punitive (such as the treble damages awarded by the State Court Judgment) and compensatory damages. *Cohen v. de la Cruz*, 523 U.S. 213, 223 (1998).

V. CONCLUSION

For the foregoing reasons, the Court grants the motion for judgment on the pleadings under Count I of the complaint and finds that the $11,304,976.23 debt owed by the Debtor to Dallenbach is non-dischargeable under § 523(a)(2)(A). A status hearing is set for February 4, 2005 at 10:00 a.m. with respect to the remaining counts of the complaint.

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