United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re William D. Corrigan, Jr.

Bankruptcy No. 01 B 12705

Adversary Caption: Harris Bank Oakbrook Terrace v. William D. Corrigan, Jr.

Adversary No. 01 A 00755

Date of Issuance: February 6, 2003

Judge: John H. Squires

Appearance of Counsel:

Attorney for Plaintiff: Bryan M. Sims, Esq., James, Gustafson and Thompson, Ltd., 1001 East Chicago Avenue, Suite 103, Naperville, IL 60540

Attorney for Defendant: Tony Mankus, Esq. Mankus & Marchan, Ltd., 5950-E. Lincoln Avenue (Rt. 53), Suite 500, Lisle, IL 60532-3387

Trustee or Other Attorneys: David E. Grochocinski, Esq., Grochocinski, Grochocinski & Lloyd, Ltd.,800 Ravinia Place, Orland Park, IL 60462

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: WILLIAM D. CORRIGAN, JR., Debtor.	)	Chapter 7 Bankruptcy No. 01 B 12705 Judge John H. Squires
HARRIS BANK OAKBROOK TERRACE, Plaintiff, v. WILLIAM D. CORRIGAN, JR., Defendant.	)	Adversary No. 01 A 00755

MEMORANDUM OPINION

This matter comes before the Court on the complaint filed by Harris Bank Oakbrook Terrace (the "Creditor") against William D. Corrigan, Jr. (the "Debtor") to determine the dischargeability of a debt under 11 U.S.C. § 523(a)(2)(A) and (a)(2)(B). For the reasons set forth herein, having considered all of the evidence adduced at trial, the Court holds the debt non-dischargeable under § 523(a)(2)(A) and § 523(a)(2)(B).

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)(I).

II. FACTS AND BACKGROUND

Some of the facts and background of this matter are contained in prior Opinions of the Court. On July 18, 2002, the Court issued a Memorandum Opinion and Order denying the Debtor's motion for summary judgment for failure to comply with Local Bankruptcy Rule 402.M. See Harris Bank Oakbrook Terrace v. Corrigan (In re Corrigan), Ch. 7 Case No. 01 B 12705, Adv. No. 01 A 00755, 2002 WL 1608241 (Bankr. N.D. Ill. July 18, 2002). Thereafter, on August 6, 2002, the Debtor filed an amended motion for summary judgment. On October 1, 2002, the Court issued a second Memorandum Opinion and Order denying the Debtor's amended motion for summary judgment because material issues of fact existed. See Harris Bank Oakbrook Terrace v. Corrigan (In re Corrigan), Ch. 7 Case No. 01 B 12705, Adv. No. 01 A 00755, 2002 WL 31194583 (Bankr. N.D. Ill. Oct. 1, 2002).

The Court held a trial in this matter on November 18 and 19, 2002. A summary of the facts and evidence presented at the trial is necessary. On December 24, 1999, the Debtor, as president of Gilcor Enterprises, Inc. ("Gilcor"), executed a promissory note, loan agreement and commercial security agreement (collectively the "Loan Documents") to obtain a revolving loan from the Creditor in the principal amount of $200,000.00. See Creditor's Exhibit Nos. 1, 2 and 3. At the same time, the Debtor executed a commercial guaranty (the "Guaranty") and personally guaranteed the debt incurred by Gilcor. See Creditor's Exhibit No. 4. At all relevant times, the Debtor was an officer and director of Gilcor, was the sole shareholder of Gilcor and was the person in control of Gilcor. The revolving loan made to Gilcor was secured by the business assets of Gilcor. These assets

included the physical assets and equipment as well as the accounts receivables owed to Gilcor. See Creditor's Exhibit Nos. 2 and 3.

In order to obtain the loan, the Debtor submitted his personal financial statement as of October, 1999 to the Creditor (See Creditor's Exhibit No. 6) and corporate financial information for Gilcor, including a balance sheet dated October 19, 1999. See Creditor's Exhibit No. 12. The Debtor's personal financial statement listed his family residence valued at $335,000.00 subject to a first mortgage of $210,000.00 and also a life insurance policy in the amount of $100,000.00, with the Debtor's wife and child as the beneficiaries of the policy. See Creditor's Exhibit No. 6.

The October 19, 1999 Gilcor balance sheet included, in part, the following items listed under fixed assets: "F&F-C.L. $56,925.11; C.E.-C.I. $3,063.00; COMP SFTW-C.L. $23,323.00; and VEHICLES $7,994.02." See Creditor's Exhibit No. 12. The Debtor testified that at the time he provided this information to the Creditor, he did not know what items were actually included in the categories F&F-C.L., C.E -C.I., and COMP SFTW-C.L.

Significantly, the Debtor testified that when he provided Gilcor's balance sheet to the Creditor, Gilcor owned only six or seven desktop computers systems and one laptop computer, and that these computers did not total approximately $100,000.00 in value, as shown on Gilcor's balance sheet. Id. The Debtor "remembered" at trial a previously "forgotten" purchase of approximately $100,000.00 in computer equipment that was being utilized for technical support in St. Louis. The Court finds this explanation incredible and unsupported. The Debtor did not mention this computer equipment during

his Federal Rule of Bankruptcy Procedure 2004 examination, nor did he disclose these assets on Gilcor's schedules filed in its bankruptcy case. Additionally, the Debtor testified that at the time he provided this balance sheet to the Creditor, Gilcor did not own any vehicles. The Debtor contends that the admitted inaccuracies and errors in the financial statement and documents were a result of the accountant's errors of which the Debtor was then unaware and hence he lacked the requisite fraudulent scienter. It is undisputed that the Creditor actually relied upon these personal and corporate financial statements to determine whether to make the loan to Gilcor. See Creditor's Exhibit No. 11.

The Loan Documents required Gilcor to provide periodic detailed collateral schedules of the equipment and accounts receivable subject to the Creditor's liens granted by Gilcor, also known as borrowing base certificates ("Borrowing Base Certificates"). See Creditor's Exhibit No. 2, p. 3. These were to be furnished to the Creditor at the time of the execution of the Loan Documents and periodically thereafter by the 15th day of each month. Id. As of and effective December 28, 1999, February 8, 2000 and March 7, 2000, the Debtor provided Borrowing Base Certificates to the Creditor. See Creditor's Exhibit Nos. 8, 9 and 10. The Debtor signed each of the Borrowing Base Certificates warranting and representing that the information contained therein was true, complete and correct. Id. The Debtor did not prepare these, but apparently relied on the accountant who did. Each of the Borrowing Base Certificates included as assets, a line item for equipment value. Id. The Borrowing Base Certificates also included as assets, items that the Debtor testified he could not identify. Further, the

Borrowing Base Certificates included as assets, items not actually owned by Gilcor, including computer equipment valued at more than $100,000.00 and a vehicle valued at approximately $8,000.00. Id.

In the Borrowing Base Certificate dated December 28, 1999, the Debtor certified that Gilcor was owed current receivables in the sum of $42,880.00 from Platinum Technology, Inc. (also known as Computer Associates). See Creditor's Exhibit No. 8, p. 3. In fact, however, on December 28, 1999, Gilcor was owed receivables of only $28,270.00 from Computer Associates. See Creditor's Exhibit Nos. 56 and 57 ($7,040.00 + $4,400.00 + $9,020.00 + $7,810.00 = $28,270.00). In this same Borrowing Base Certificate, the Debtor also represented that Gilcor was owed current receivables in the sum of $38,910.00 from William Wrigley Jr., Co. ("Wrigley"). See Creditor's Exhibit No. 8, p. 3. However, on December 28, 1999, Gilcor was owed current receivables from Wrigley in the sum of $13,400.00. See Creditor's Exhibit Nos. 74, 75, 76 and 77 ($2,700.00 + $4,500.00 + $4,500.00 + $1,700.00 = $13,400.00).

On February 1, 2000, the Creditor contacted the Debtor and requested that he provide, among other things, a Borrowing Base Certificate for February 2000 and Gilcor's corporate financial statements for the year 1999. See Creditor's Exhibit No. 13. On February 10, 2000, the Debtor provided a balance sheet as of December 31, 1999. See Creditor's Exhibit No. 14. This balance sheet included the same categories of assets that were on Gilcor's October 19, 1999 balance sheet. Once again, the Debtor testified that at the time he provided this information to the Creditor, he was unable to identify what assets were contained in these categories. The Debtor testified that when he

provided this balance sheet for Gilcor to the Creditor, Gilcor owned only six or seven desktop computers systems and one laptop computer, and that these computers did not total approximately $100,000.00 in value. Additionally, the Debtor admitted that at the time he provided this balance sheet to the Creditor, Gilcor did not own any vehicles.

On February 8, 2000, the Debtor provided the Creditor with a Borrowing Base Certificate, which incorporated as equipment the fixed assets listed on the balance sheet. See Creditor's Exhibit No. 9, p. 1 and Exhibit No. 14, p. 1. Pursuant to that Borrowing Base Certificate dated February 8, 2000, the Debtor represented that Gilcor was owed receivables 1-30 days past due in the amount of $27,390.00 from Computer Associates. See Creditor's Exhibit No. 9, p. 3. In fact, however, Gilcor was owed receivables of only $16,830.00 from Computer Associates for invoices 1-30 days past due. See Creditor's Exhibit No. 57 ($9,020.00 + $7,810.00 = $16,830.00). Further, the Debtor represented in that Borrowing Base Certificate that Gilcor owed current receivables in the amount of $23,900.00 from Wrigley. See Creditor's Exhibit No. 9, p. 3. Actually, on February 8, 2000, Gilcor was owed no receivables from Wrigley for current services. The Debtor also represented in that Borrowing Base Certificate that Gilcor was owed receivables 1-30 days past due in the amount of $11,300.00 from Wrigley. See Creditor's Exhibit No. 9, p. 3. However, Gilcor was owed no receivables from Wrigley for invoices 1-30 days past due. See Creditor's Exhibit Nos. 76, 77 and 78.

The Debtor provided the Creditor a third Borrowing Base Certificate as of March 7, 2000. See Creditor's Exhibit No. 10. This Borrowing Base Certificate incorporates the same fixed assets listed on the Gilcor balance sheet as of December 31, 1999. See

Creditor's Exhibit No. 14, p. 1. The Debtor testified that when he provided this balance sheet for Gilcor to the Creditor, Gilcor owned only six or seven desktop computers systems and one laptop computer, and that these computers did not total $100,000.00 in value. Additionally, the Debtor testified that at the time he provided this balance sheet to the Creditor, Gilcor did not own any vehicles. In the March 7, 2000 Borrowing Base Certificate, the Debtor represented that Gilcor was owed receivables 1-30 days past due in the amount of $28,500.00 from Wrigley. See Creditor's Exhibit No. 10, p. 3. In fact, however, Gilcor was owed no receivables from Wrigley for invoices 1-30 days past due. See Creditor's Exhibit Nos. 64 through 78.

It is undisputed that the Creditor actually relied on the information provided in the Borrowing Base Certificates to determine whether to initially grant and continue to extend credit to Gilcor. In summary, in all of the financial records furnished by the Debtor to the Creditor, Gilcor's accounts receivable were overstated; its computer equipment was grossly overvalued; and a motor vehicle leased by Gilcor was incorrectly listed as owned. The Debtor admitted the same, but essentially places the blame on his accountant.

In April 2000, Glen Komperda ("Komperda"), a commercial loan officer with the Creditor, took over the Gilcor loan file for several months. Komperda testified that he examined the credit file documents and determined that the loan was "out of formula." See Creditor's Exhibit No. 7, entry dated 04/17/00. Komperda testified that as long as the loan balance owed by Gilcor was less than the total of 80% of the eligible accounts receivable plus 50% of the value of the fixed assets, the loan was "in formula." If the

loan balance exceeded the total of 80% of the eligible accounts receivable plus 50% of the value of the fixed assets, the loan was "out of formula." Under the terms of the Loan Documents, if the loan was out of formula, Gilcor was required to submit sufficient sums or collateral to bring the loan back in formula.

Komperda further testified that on April 26, 2000, he spoke with the Debtor about securing the overage on the line of credit with a second mortgage on the Debtor's residence. Id. According to Komperda, the Debtor agreed to secure the overage with a second mortgage on his home. See Creditor's Exhibit No. 16. During this conversation, Komperda stated that the Debtor did not tell him that he and his wife had been discussing the possibility of a marital dissolution since January 2000. See Debtor's Exhibit No. 4, ¶ 14. Komperda testified that on May 4, 2000, he met with the Debtor and he agreed to secure the overage on the line of credit with a second mortgage on his residence. See Creditor's Exhibit No. 7, entry dated 05/04/00. Komperda also stated that at this time, the Debtor did not tell him that he and his wife had been discussing the possibility of marital dissolution. On May 26, 2000, the Debtor filed a petition for dissolution of his marriage. See Creditor's Exhibit No. 34.

Komperda testified that as of July 3, 2000, the Debtor still agreed to secure the overage on the line of credit with a second mortgage on his residence. See Creditor's Exhibit No. 17. Komperda stated that at no time before July 3, 2000, did the Debtor inform him or anyone else at the Creditor that he had filed the dissolution petition. Komperda testified that had the Debtor informed the Creditor that he was unable to secure the overage on the line of credit with a second mortgage on his residence, the

Creditor would not have continued to extend credit to Gilcor. After the promised second mortgage did not materialize, Komperda met with the Debtor on July 18, 2000, and informed him that the Creditor was closing the Gilcor corporate checking account and freezing the line of credit. See Exhibit No. 7, entry dated 07/18/00.

Thereafter, the Creditor's administration of the loan was transferred to Art Gneuhs, Jr. ("Gneuhs"), a commercial loan workout specialist with the Creditor and former bank examiner. Gneuhs testified that on July 25, 2000, he wrote the Debtor, as president of Gilcor, a letter and formally gave written notice that the loan was in default. See Creditor's Exhibit No. 20. The letter also informed the Debtor that in order for the Creditor to forbear from taking legal action, the terms of any workout agreement would require the Debtor to submit, among other things: (1) a current Borrowing Base Certificate as of July 7, 2000; (2) a balance sheet and profit and loss statement as of June 30, 2000; (3) an executed mortgage on his martial residence; (4) an assignment of life insurance in an amount equal to the outstanding loan amount; and (5) a change in the loan from a revolving loan to a term loan, amortized monthly. Id.

Gneuhs testified that thereafter, on August 7, 2000, he met with the Debtor and the Debtor agreed to all of the terms of the forbearance agreement as outlined in the July 25, 2000 letter and agreed to return to Gneuhs' office to execute the requisite documents. See Creditor's Exhibit Nos. 21 and 22. Gneuhs testified that at no time during this conversation did the Debtor inform him that he had filed a petition for dissolution of his marriage or that on July 17, 2000 he had submitted an application to move from his residence into an apartment. See Creditor's Exhibit Nos. 35 and 36. Gneuhs further

testified that had the Debtor told him that he could not provide a second mortgage on his home, or that he could not provide the required life insurance policy, the Creditor would not have continued to extend credit to the Debtor or Gilcor, and that the Creditor would have immediately taken action to collect the amounts owed by the Debtor.

On August 8, 2000, the Debtor executed a lease for an apartment. See Creditor's Exhibit No. 39. On that same date, Gneuhs testified that the Debtor met with him at his office. See Creditor's Exhibit No. 21. During that meeting, the Debtor executed the forbearance agreement (the "Forbearance Agreement"). See Creditor's Exhibit No. 25. The Forbearance Agreement provided in relevant part that the Debtor agreed to pledge additional collateral on or before execution of the Forbearance Agreement as follows: " a properly executed Mortgage in an amount not less than $185,780.83 on the [Debtor's] principal residence . . . [and] a Life Insurance Policy on the life of the [Debtor] that is equal to or exceeds the balance of this loan." Id. p. 2, ¶ 3. On August 8, 2000, according to Gneuhs, the Debtor executed the mortgage, but told Gneuhs that his wife was unavailable to sign the document until later in the week and that he would then obtain her signature on the mortgage. Gneuhs further stated that the Debtor told him that his wife would sign the necessary document to collaterally assign the life insurance policy to the Creditor.

Gneuhs testified that at no time during this August 8, 2000 meeting did the Debtor ever inform him that he had signed a lease in order to move out of the marital residence or that he had filed a petition for dissolution of his marriage. Gneuhs also stated that based on the Debtor's execution of the Forbearance Agreement and his promise to obtain

his wife's signature on the mortgage and on the form necessary to assign the life insurance policy to the Creditor, the Creditor refrained from taking action to collect the amounts owed by Gilcor and the Debtor, and the Creditor continued to extend credit to them. Gneuhs testified that had the Debtor told him that he could not provide a second mortgage on his residence or that he could not provide the required life insurance policy, the Creditor would not have continued to extend credit to the Debtor or Gilcor and it would have immediately taken action to collect the amounts owed by the Debtor.

At the time the Debtor executed the Forbearance Agreement, he also provided a Borrowing Base Certificate dated August 8, 2000 and a balance sheet as of July 31, 2000. See Creditor's Exhibit Nos. 27 and 28. This balance sheet included the same categories of fixed assets found in the balance sheets dated October 29, 1999 and December 31, 1999. See Creditor's Exhibit No. 28. Again, the balance sheet included computer equipment valued at more than $100,000.00 and approximately $8,000.00 for a vehicle that the Debtor testified Gilcor did not own. Id. The Borrowing Base Certificate dated August 8, 2000, included these purported assets. See Creditor's Exhibit No. 27, p. 1.

On August 23, 2000, Gneuhs testified that he spoke to the Debtor, who admitted that he had filed for dissolution of his marriage and could not provide a second mortgage on his residence and could not provide an assignment of his life insurance policy. See Creditor's Exhibit No. 21. Shortly thereafter, on August 25, 2000, the Creditor filed a lawsuit against Gilcor and the Debtor, which was automatically stayed when Gilcor and the Debtor filed bankruptcy on April 10, 2001.

As of December 28, 2000, the unpaid principal balance owed on the Gilcor loan

and the Debtor's Guaranty was $183,044.34. See Creditor's Exhibit No. 32. Interest accrues at the rate of $49.57450 per day. Pursuant to the Loan Documents, the Creditor is entitled to recover interest as well as attorney's fees and costs from the Debtor. See Creditor's Exhibit Nos. 1, 2, 3, and 4.

III. DISCUSSION

A. Applicable Standards for Dischargeability in the Seventh Circuit

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 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 Reines, 142 F.3d 970, 972-73 (7th Cir. 1998), cert. denied, 525 U.S. 1068 (1999).

B. 11 U.S.C. § 523(a)(2)(B)

Pursuant to Count I of the complaint, the Creditor alleges that the debt should be

held non-dischargeable under § 523(a)(2)(B) because the Debtor submitted false financial statements to the Creditor with the intent to deceive it. Section 523(a)(2)(B) of the Bankruptcy Code provides in relevant part:

> (a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt–
>
> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by–
>
> (B) use of a statement in writing–
>
> (i) that is materially false;
>
> (ii) respecting the debtor's or an insider's financial condition;
>
> (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
>
> (iv) that the debtor caused to be made or published with intent to deceive.

11 U.S.C. § 523(a)(2)(B).

To prevail on a complaint under § 523(a)(2)(B), the Creditor must prove five elements: (1) the Debtor made a statement in writing; (2) the statement was materially false; (3) the statement concerned the Debtor's financial condition; (4) in making the misrepresentation, the Debtor had an intent to deceive the Creditor; and (5) the Creditor actually and reasonably relied upon the misrepresentation. In re Sheridan, 57 F.3d 627, 633 (7th Cir. 1995); Shaw Steel, Inc. v. Morris (In re Morris), 230 B.R. 352, 357 (Bankr. N.D. Ill. 1999), aff'd, 240 B.R. 553 (N.D. Ill. 1999), aff'd, 223 F.3d 548 (7th Cir. 2000);

Harasymiw, 895 F.2d at 1172; In re Bogstad, 779 F.2d 370, 372 (7th Cir. 1985). The Creditor must establish each and every element. First Security Bank of Fox Valley v. Ardelean (In re Ardelean), 28 B.R. 299, 301 (Bankr. N.D. Ill. 1983).

1. Whether the Debtor Made a Statement in Writing

It is undisputed that the Debtor made a statement in writing when he submitted the balance sheet of Gilcor as of October 19, 1999 to the Creditor to initially obtain the loan. See Creditor's Exhibit No. 12. The Debtor provided further written financial statements to the Creditor when he submitted the Borrowing Base Certificates on December 28, 1999, February 8, 2000, March 7, 2000, July 31, 2000 and August 8, 2000, along with the balance sheets of Gilcor. See Creditor's Exhibit Nos. 8, 9, 10, 27 and 28. Hence, the Creditor has demonstrated this first element.

2. Whether the Statement Was Materially False

Next, the Creditor must show that the statements were materially false. Material falsity is "an important or substantial untruth." Bogstad, 779 F.2d at 375 (citations omitted). "It is well-established that writings with pertinent omissions may qualify as materially false for purposes of § 523(a)(2)(B)." Community Bank of Homewood-Flossmoor v. Bailey (In re Bailey), 145 B.R. 919, 930 (Bankr. N.D. Ill. 1992) (citation omitted). There are two tests for determining whether a statement is materially false. Under the first, known as the "substantial untruth" test, a statement is materially false if it "paints a substantially untruthful picture . . . by misrepresenting information of the type which would normally affect the decision to grant credit." Bryson, 187 B.R. at 962 (citation omitted). An alternative test to determine "materiality" is the "but for" test.

The "but for" test requires a creditor to prove that "but for" the material misrepresentations, he would not have extended money, property, services or credit. See, e.g., Westbank v. Grossman (In re Grossman), 174 B.R. 972, 984 (Bankr. N.D. Ill. 1994). The Seventh Circuit has noted that the *sine qua non*, or "but for" test is a "recurring guidepost" for determining material falsity. Harasymiw, 895 F.2d at 1172; Bogstad, 779 F.2d at 375. However, the Seventh Circuit has not decided whether satisfaction of the "but for" test is an essential part of a claim under § 523(a)(2)(B). Harasymiw, 895 F.2d at 1172.

In this matter, the Court finds that the Creditor has demonstrated material falsity by a preponderance of the evidence under either test. First, the Debtor admitted that Gilcor did not own any vehicles, even though all balance sheets showed that Gilcor owned a vehicle valued at $7,994.02. See Creditor's Exhibit Nos. 12, 14 and 28. Moreover, the documentary evidence demonstrated that the accounts receivable listed on several of the Borrowing Base Certificates were false and inaccurate. The December 28, 1999 Borrowing Base Certificate significantly overstated the accounts receivable. See Creditor's Exhibit No. 8. These include current receivables of $42,880.00 from Computer Associates. The documentary evidence, however, revealed that Gilcor was owed only $28,270.00 in current receivables from Computer Associates. See Creditor's Exhibit Nos. 56 and 57. The current receivables of $38,910.00 owed by Wrigley were also exaggerated. See Creditor's Exhibit Nos. 74, 75, 76 and 77.

Additionally, the accounts receivable listed by the Debtor for Wrigley on the February 8, 2000 and March 7, 2000 Borrowing Base Certificates were false. See

Creditor's Exhibit Nos. 9 and 10. The Debtor admitted that the Wrigley accounts receivable were false. The February 8, 2000 Borrowing Base Certificate claimed that Wrigley owed Gilcor $41,500.00 in receivables. See Creditor's Exhibit No. 9, p. 3. In fact, however, Wrigley owed Gilcor no money in receivables. Similarly, in the March 7, 2000 Borrowing Base Certificate, Wrigley allegedly owed $28,500.00 in receivables. See Creditor's Exhibit No. 10, p. 3. The Debtor admitted at trial, however, that this information was false.

The Debtor made similar false statements regarding the receivables owed by Computer Associates. In the February 8, 2000 Borrowing Base Certificate, the Debtor reported that Gilcor was owed receivables 1-30 days past due in the amount of $27,390.00 from Computer Associates. See Creditor's Exhibit No. 9, p. 3. In fact, however, on February 8, 2000 Gilcor was owed receivables of only $16,830.00 from Computer Associates for invoices 1-30 days past due. See Creditor's Exhibit No. 57 ($9,020.00 + $7,810.00 = $16,830.00).

The Debtor testified that the invoices introduced into evidence were incomplete in that there were other invoices sent by Gilcor. However, the Debtor did not produce these other invoices. The Court is in the best position to assess the credibility of the witnesses and weigh the evidence. See Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 575 (1985) (deference given to trial court's findings that involve credibility of witnesses because only the trial judge can be aware of the variations in demeanor and tone of voice that bears so heavily on the listener's understanding of and belief in what is stated); Torres v. Wisconsin Dept. of Health & Social Servs., 838 F.2d 944, 946 (7th Cir. 1988)

(same). The Court finds the testimony of Komperda and Gneuhs credible and supported by the documentary evidence in marked contrast to some of the Debtor's less than credible and sometimes unsupported self-serving testimony.

The Court finds the Debtor's testimony regarding other invoices lacks credibility based on the documents submitted by the Creditor. The "Transaction Detail by Account" report reveals all of the invoices billed and the accounts receivable payments received for most of the year 2000. See Creditor's Exhibit No. 46. For example, the payments received by Gilcor from Wrigley in 2000 are indicated in that report on January 4, 2000 (two entries), January 11, 2000, January 26, 2000 and February 1, 2000. Id. pp. 1 and 2. These payments coincide with the current receivables due from Wrigley as of December 28, 1999. See Creditor's Exhibit No. 8. Specifically, an invoice for $2,700.00 paid by Wrigley with check number 116047 (see Creditor's Exhibit No. 74) was noted as deposited on Gilcor's transaction report on January 4, 2000. See Creditor's Exhibit No. 46, p. 1. Another invoice to Wrigley for $4,500.00 was paid with check number 115908 (see Creditor's Exhibit No. 75) and noted as deposited on Gilcor's transaction report on January 4, 2000. See Creditor's Exhibit No. 46, p. 7. Still another invoice for $1,700.00 paid by Wrigley with check number 116328 (see Creditor's Exhibit No. 77) was noted as deposited on Gilcor's report on January 11, 2000. See Creditor's Exhibit No. 46, p.1. Additionally, two invoices for $4,500.00 paid by Wrigley with check number 116752 for $9,000.00 (see Creditor's Exhibit No. 76) were noted as deposited on Gilcor's transaction report on January 26, 2000. See Creditor's Exhibit No. 46, p. 2. The final payment from Wrigley was for an invoice in the amount of $3,300.00 paid with check

number 117137 (see Creditor's Exhibit No. 78) and was noted as deposited on Gilcor's report on February 1, 2000. See Creditor's Exhibit No. 46, p. 2. Significantly, according to Gilcor's transaction report, no other deposits were made in the year 2000 for any of the alleged missing invoices.

The same is true for the invoices for Computer Associates. For example, the first payment made by Platinum/Computer Associates in 2000 of $11,400.00 was deposited by Gilcor on January 28, 2000. See Creditor's Exhibit No. 46, p. 1. This payment paid two invoices for $7,040.00 and $4,400.00, respectively. See Creditor's Exhibit No. 56. The next payment of $21,560.00 was deposited on March 8, 2000. See Creditor's Exhibit No. 46, p. 3. This paid three other invoices for $9,020.00, $7,810.00 and $4,730.00. See Creditor's Exhibit No. 57. The next payment noted on Gilcor's transaction report was on March 8, 2000 for $7,150.00 and paid the final invoice in that amount. See Creditor's Exhibit Nos. 46, p. 3 and 58. These payments made by Computer Associates cover all of the invoices sent by Gilcor to it during the period indicated on the December 28, 1999 accounts receivable aging report.

Thus, despite Corrigan's testimony that there were other invoices, Gilcor's records combined with the records produced by Computer Associates and Wrigley establish that the invoices presented by the Creditor at trial are all of the invoices generated by Gilcor to those entities during the relevant time period and that those invoices were significantly less than what the Debtor reported in the accounts receivable aging report and in the Borrowing Base Certificate.

Moreover, as noted above, each of the Borrowing Base Certificates provided to

the Creditor referred to fixed assets that were not owned by Gilcor. See Creditor's Exhibit Nos. 8, 9, 10 and 27. These assets included $7,994.02 for a vehicle that the Debtor admitted Gilcor did not own. Also included were categories of assets that neither the Debtor nor his accountant were able to identify. These included: "F&F-C.L., C.E.-C.I. and COMP SFTW-C.L." Identified assets also included the excessive total of $101,125.60 for computer equipment for six or seven desktop computers and one laptop computer.

In sum, the Debtor's actions in furnishing the inaccurate and false Borrowing Base Certificates to the Creditor and the inaccurate and false financial statements of Gilcor painted a substantially untrue picture regarding the assets of Gilcor. The Debtor falsely certified as true and correct inflated accounts receivable due and scheduled fixed assets that did not exist. Moreover, the testimony of Komperda and Gneuhs was that Gilcor's fixed assets and accounts receivable were used as collateral to secure the Creditor's loan. Their testimony demonstrated that the Creditor would not have made the loan to Gilcor "but for" the Debtor's overvaluing Gilcor's fixed assets and inflating its accounts receivable. Further, the testimony established that the Creditor would not have continued to allow the loan to remain outstanding and that it would have called the loan had not the Debtor provided false financial information. Consequently, the Creditor has demonstrated that the subject financial statements were materially false.

3. Whether the Statement Concerned the Debtor's or an Insider's Financial Condition

It is undisputed that the Borrowing Base Certificates and balance sheets

concerned Gilcor's financial condition. Gilcor is an insider of the Debtor. The Debtor was an officer, director, and sole shareholder of Gilcor. Moreover, he admittedly was the person in control of the day to day operations of Gilcor. Thus, Gilcor is an insider of the Debtor as defined by 11 U.S.C. § 101(31)(A)(iv). Consequently, the Creditor has demonstrated this element.

4. Whether the Debtor Intended to Deceive the Creditor

Next, the Creditor must demonstrate that the Debtor intended to deceive it when he submitted the false financial statements. A party can establish an intent to deceive by either direct evidence or by "creating an inference from a misrepresentation which the debtor knows or should know will induce another to act." Morris, 230 B.R. at 360 (citations omitted). An intent to deceive may also be inferred from surrounding circumstances or by demonstrating reckless disregard for the accuracy of the financial statement. Id.; see also Phillips v. Napier (In re Napier), 205 B.R. 900, 907 (Bankr. N.D. Ill. 1997).

The Court finds that the Debtor intended to deceive the Creditor when he submitted the Gilcor financial statements and Borrowing Base Certificates that contained assets that did not exist, assets that the Debtor could not readily identify and inflated accounts receivable. At a minimum, the Court finds that the Debtor acted with a reckless disregard for the accuracy of the financial statements. The Debtor admitted that Gilcor owned no vehicles. Notwithstanding this fact, the Debtor provided the Creditor financial statements that included a vehicle as an asset. The financial statements included approximately $80,000.00 worth of fixed assets that the Debtor was unable to identify.

Moreover, the computer equipment was valued far in excess of its actual value.

The Court rejects the Debtor's attempt to shift the blame for the misstatements in the financial statements to his accountant or the computer software used to prepare the documents. Cf. A.V. Reilly Int'l, Ltd. v. Rosenzweig (In re Rosenzweig), 237 B.R. 453, 457-58 (Bankr. N.D. Ill. 1999) (debtor could not rely on the defense of advice of counsel regarding errors in the schedules when the debtor declared under penalty of perjury that he read the document and that it was true and correct). After all, it was the Debtor and no one else who certified the accuracy of the financial statements to the Creditor. The Debtor was the head of Gilcor, ironically, a company that provided, among other things, computer consulting services and expertise to a number of very large corporations, and thus was or should have been aware of the significance of the computer generated financial information furnished to the Creditor.

The Debtor testified that he knew that the Creditor would use the Borrowing Base Certificates to determine the amount to loan to Gilcor and also to determine if the loan was "out of formula." The Debtor, an experienced businessman with an M.B.A. from the University of Chicago, knew that these financial statements inaccurately reflected assets he did not own and inflated Gilcor's accounts receivable. Based on this, the Court can infer an intent to deceive. See also Jaress Truck Centers, Inc. v. Hodges (In re Hodges), 116 B.R. 558, 562 (Bankr. N.D. Ohio 1990). Thus, the Creditor has demonstrated by a preponderance of the evidence that the Debtor intended to deceive it.

5. Whether the Creditor Actually and Reasonably Relied Upon the Misrepresentation

Finally, the Creditor must demonstrate that it actually and reasonably relied upon the misrepresentation. The reasonableness of a creditor's reliance should be determined on a case by case basis. In re Bonnett, 895 F.2d 1155, 1157 (7th Cir. 1990) (citation omitted). In evaluating whether a creditor's reliance was reasonable, the following factors should be considered: (1) the creditor's standard practices in evaluating credit-worthiness (absent other factors, there is reasonable reliance where the creditor follows its normal business practices); (2) the standards or customs of the creditor's industry in evaluating credit-worthiness (what is considered a commercially reasonable investigation of the information supplied by the debtor); and (3) the surrounding circumstances existing at the time of the debtor's application for credit (whether there existed a "red flag" that would have alerted an ordinarily prudent lender to the possibility that the information is inaccurate, whether there existed previous business dealings that gave rise to a relationship of trust, or whether even minimal investigation would have revealed the inaccuracy of the debtor's representations). In re Cohn, 54 F.3d 1108, 1117 (3d Cir. 1995). The requirement of "reasonable" reliance does not mean that a creditor can bury its head in the sand like an ostrich and ignore facts that are readily available to it. Bogstad, 779 F.3d at 373 n.4 (citations omitted).

Generally, however, creditors are not required to conduct an investigation before entering into agreements with prospective debtors. Morris, 223 F.3d at 554. Nor should courts use the reasonable reliance requirement to second guess a creditor's decision to lend money. E.g., In re Garman, 643 F.2d 1252, 1257-58 (7th Cir. 1980).

The Court finds that the Creditor has shown that it actually and reasonably relied

upon the false statements made by the Debtor both in providing Gilcor the original loan amount and when the Creditor continued to extend credit to Gilcor each time the Debtor provided a Borrowing Base Certificate. The Creditor required the Debtor to submit financial information before the loan was funded and subsequently required financial information on a monthly basis to determine whether the loan was "out of formula." The Creditor demonstrated reasonable reliance by showing that it followed its normal business practices and conducted significant due diligence before the loan was first extended. See Debtor's Exhibit Nos. 5, p. 1, 6, 7 and 8. The due diligence and review was performed by several former officers of the Creditor who preceded Komperda's work on the loan. Gneuhs testified that in considering loan applications, the Creditor does not require an applicant to submit the underlying financial documents demonstrating the basis for the accounts receivable aging list. Moreover, Gneuhs testified that during his approximately thirty years in the commercial banking industry, he has never seen a bank require such underlying documentation. The Creditor was reasonably entitled to rely upon the financial information provided by the Debtor because it had no reason to suspect that the Debtor had falsified the accounts receivable aging report. In short, there were no "red flags" that would have alerted the Creditor to the possibility that the information provided in the financial statements was inaccurate. Hence, the Creditor has demonstrated this element by a preponderance of the evidence.

For the foregoing reasons, the Court finds the debt owed by the Debtor to the Creditor non-dischargeable under § 523(a)(2)(B) in the principal sum of $183,044.34, plus interest from December 28, 2000 through the date of the judgment at $49.57450 per

diem. Additionally, the attorney's fees and costs incurred by the Creditor will be allowed upon the submission of a statement and bill of costs within ten days hereof showing the fees and costs incurred.

C. 11 U.S.C. § 523(a)(2)(A)

Pursuant to Count II of the complaint, the Creditor seeks to except the debt owed it by the Debtor under § 523(a)(2)(A). Specifically, the Creditor alleges that the Debtor made false representations when he told the Creditor that he and his wife would provide an executed second mortgage on his residence and that his wife would assign her interest in a life insurance policy as additional collateral for the Gilcor loan. The Creditor contends that it agreed to continue to finance amounts owed by Gilcor and the Debtor and forbear from earlier action thereby extending credit based on his false representations.

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 false representation. Bletnitsky v. Jairath (In re Jairath), 259 B.R. 308, 314 (Bankr. N.D. Ill. 2001). A single test was

applied to all three grounds even though the elements for each vary under common law. Id. (citations omitted). The Seventh Circuit, however, has made it clear that misrepresentation and reliance thereon is not always required to establish fraud. McClellan v. Cantrell, 217 F.3d 890, 894 (7th Cir. 2000).

In order to except false pretenses or a false representation from dischargeability, the creditor must show the following elements: (1) the Debtor obtained funds through representations that the Debtor either knew to be false, or made with such reckless disregard for the truth as to constitute willful misrepresentations; (2) the Debtor possessed the requisite scientier, i.e., he actually intended to deceive the Creditor; and (3) to its detriment, the Creditor justifiably relied on the Debtor's misrepresentations. Rae v. Scarpello (In re Scarpello), 272 B.R. 691, 700 (Bankr. N.D. Ill. 2002) (citing In re Mayer, 51 F.3d 670, 673 (7th Cir.), cert. denied, 516 U.S. 1008 (1995)). The Creditor must establish each of the these elements to support a finding of a false pretense or misrepresentation; failure to establish any one element is determinative of the outcome. Jairath, 259 B.R. at 314 (citation omitted). An intentional falsehood relied on under § 523(a)(2)(A) must concern a material fact. Id. (citations omitted). Misrepresentation of the type that makes a debt nondischargeable under § 523(a)(2)(A) can be shown through conduct, and does not require a spoken statement. Id. (citing Haeske v. Arlington (In re Arlington), 192 B.R. 494, 498 (Bankr. N.D. Ill. 1996) (conduct intended to create a false impression constitutes misrepresentation)).

1. Whether the Debtor Used False Pretenses or Made a False Representation in Obtaining the Funds from the Creditor

First, the Creditor must show that the Debtor obtained the funds through

representations that the Debtor either knew to be false, or made with such reckless disregard for the truth as to constitute willful misrepresentations. Komperda testified that in April 2000, he took over the Gilcor file and determined that the loan was "out of formula." See Creditor's Exhibit No. 7, entry dated 04/17/00. Komperda further testified that on April 26, 2000, he spoke with the Debtor about securing the overage on the line of credit with a second mortgage on the Debtor's residence. Id. entry dated 04/26/00. According to Komperda, the Debtor agreed to secure the overage with a second mortgage on his home. See also Creditor's Exhibit No. 16. During this conversation, Komperda stated that the Debtor did not tell him that he and his wife had been discussing the possibility of a marital dissolution since January 2000. See Debtor's Exhibit No. 4, ¶ 14. Komperda further testified that on May 4, 2000, he met with the Debtor and he agreed to secure the overage on the line of credit with a second mortgage on his residence, but that the Debtor did not tell him that he and his wife had been discussing the possibility of dissolution.

The Debtor denied that he had any such conversations with Komperda. Simply stated, the Court finds the Creditor's witnesses more credible than the Debtor. The Court finds Komperda and Gneuh's corroborated testimony supported by the documentary evidence. Komperda noted a phone conversation with the Debtor on May 1, 2000, wherein the Debtor stated he would be receiving payments from Platinum/Computer Associates and would be depositing those payments. See Creditor's Exhibit No. 7, entry dated 05/01/00. Komperda noted that on May 4, 2000, he had a meeting with the Debtor when the Debtor stopped at the Creditor bank to make a deposit. Id., entry dated

05/04/00. Gilcor's detailed transaction report shows that it received a $15,400.00 payment from Computer Associates on May 3, 2000. See Creditor's Exhibit No. 46, p. 4. In addition, Gilcor's bank records indicate that a deposit for that amount was made on May 4, 2000. See Creditor's Exhibit No. 86, p. 1. Accordingly, the Court finds Komperda's testimony regarding these conversations with the Debtor more persuasive than the Debtor's testimony denying that these conversations took place.

On May 26, 2000, the Debtor filed a petition for dissolution of marriage. See Creditor's Exhibit No. 34. Komperda testified that as of July 3, 2000, the Debtor still intended to secure the overage on the line of credit with a second mortgage on his residence. See Creditor's Exhibit No. 17. Komperda stated that at no time before July 3, 2000, did the Debtor inform him or anyone else at the Creditor that he had filed a petition to dissolve his marriage. Komperda testified that had the Debtor informed the Creditor that he was unable to secure the overage on the line of credit with a second mortgage on his residence, the Creditor would not have continued to extend credit to Gilcor or the Debtor.

The Court finds that the Debtor made false statements when he told Komperda and Gneuhs that he would provide the Creditor with a second mortgage on his residence and that his wife would assign her interest in a life insurance policy to the Creditor, when in fact the Debtor had been discussing the possibility of dissolution with his wife since January 2000. The Debtor misled and did not inform the Creditor that he had filed for dissolution of his marriage in May 2000 or that he had signed a lease on an apartment so that he could move out of his marital residence in August 2000. Consequently, the

Creditor has demonstrated the first element.

2. Whether the Debtor's Actions Constituted Actual Fraud

The Seventh Circuit Court of Appeals 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.'

McClellan, 217 F.3d at 893 (quoting Stapleton v. Holt, 207 Okla 443, 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.'" McClellan, 217 F.3d at 893 (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 was guilty of intent to defraud; 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.

For all of the reasons outlined above, which need not be repeated here, the Court finds that the Creditor also established by a preponderance of the evidence that the

Debtor's actions and conduct regarding his furnishing the second mortgage to shore up the Creditor's collateral base and his failure to timely advise the Creditor of his pending marital dissolution action, when he had indicated he would obtain the life insurance policy collateral assignment from his wife as additional collateral, constituted actual fraud.

3. Whether the Debtor Intended to Defraud the Creditor

Next, the Creditor must show that the Debtor actually intended to deceive it. The determination of whether a debtor had the requisite scienter is a factual question which is resolved by a review of all of the relevant circumstances of a particular case. Park Nat'l Bank & Trust of Chicago v. Paul (In re Paul), 266 B.R. 686, 694 (Bankr. N.D. Ill. 2001) (citations omitted). 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 makes false representations which the person knows or should know will induce another to act, the finder of fact may logically infer an intent to deceive. Glucona America, Inc. v. Ardisson (In re Ardisson), 272 B.R. 346, 357 (Bankr. N.D. Ill. 2001).

The Court finds that the evidence demonstrated that the Debtor intended to defraud the Creditor from the inception of their relationship in December 1999, when, as president and sole shareholder of Gilcor, he admittedly listed fixed assets that did not exist on a financial statement for Gilcor and overstated the accounts receivable owed to Gilcor. Further in the relationship, when the Debtor made the promises to the Creditor–to provide it a second mortgage on his home and that his wife would assign her

interest in a life insurance policy–the Debtor knew that he could not comply with these promises because he had filed a petition for dissolution of his marriage. The Debtor signed a Forbearance Agreement in August 2000 agreeing to pledge his marital residence and life insurance policy as additional collateral for the loan. The Debtor told Gneuhs that his wife would sign the mortgage when she returned from a trip the following week. All the while, the Debtor was fully aware that he had filed a dissolution petition and had even signed a lease to move out of the marital residence and was aware, or should have been aware, that his wife would neither execute the second mortgage on their residence nor collaterally assign the life insurance policy of which she was a beneficiary.

The Debtor argues that he was under no legal duty to inform the Creditor of his intent to dissolve his marriage. While the Court does not necessarily disagree with the Debtor's point in this regard, the fact remains that the Debtor signed the Forbearance Agreement wherein he agreed to pledge to the Creditor as additional collateral on the loan, a second mortgage on his residence and a life insurance policy equal to the outstanding balance on the loan. The Debtor agreed to these terms of the Forbearance Agreement so as to induce the Creditor from taking legal action to collect on the loan. In furtherance of the Debtor's scheme to defraud the Creditor, he took the additional steps of informing Gneuhs that his wife was out of town and that she would sign the second mortgage and an assignment of her interest in the life insurance policy when she returned. These statements were clearly false given the fact that the Debtor had filed a petition for dissolution of his marriage in May 2000 and his wife in fact never signed either the mortgage or assignment.

Hence, the Court reasonably infers from the Debtor's actions an intent to deceive the Creditor to forbear from then taking legal action to collect the full amount of the loan. Accordingly, the Creditor has demonstrated this element by a preponderance of the evidence.

4. Whether the Creditor Justifiably Relied on the Debtor's Representations

Lastly, the Creditor must show that to its detriment, it justifiably relied on the Debtor's representations. 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). Justifiable reliance is an intermediate level of reliance. It is less than reasonable reliance, but more than reliance in fact. 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, and not by an objective standard. Id. at 71. 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, 51 F.3d at 676 ("reliance means the conjunction of a material misrepresentation with causation in fact").

The Court finds that the Creditor justifiably relied on the Debtor's misrepresentations to its detriment. The Creditor had no reason to suspect that the Debtor was being dishonest. In fact, the Debtor had been cooperating with the Creditor by submitting monthly Borrowing Base Certificates (which were materially false and

inaccurate as noted above) and by telling the Creditor that he would provide a second mortgage on his residence when Komperda, on behalf of the Creditor, realized in April 2000 that the loan was "out of formula." Finally, the Court finds that the Creditor's reliance was detrimental because based on the Debtor's misrepresentations, it forbore from then collecting on the full amount of the loan to Gilcor.

In short, the Court finds the debt owed by the Debtor to the Creditor non-dischargeable under § 523(a)(2)(A) in the principal amount of $183,044.34, plus interest from December 28, 2000 through the date of the judgment at $49.57450 per diem. Additionally, the Creditor's reasonable attorney's fees and costs incurred in the prosecution of this matter will be allowed upon the filing of a statement and bill of costs itemizing the same within ten days hereof.

IV. CONCLUSION

For the foregoing reasons, the Court holds that the debt owed by the Debtor to the Creditor is non-dischargeable under § 523(a)(2)(A) and § 523(a)(2)(B).

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
WILLIAM D. CORRIGAN, JR.,	)	Chapter 7
	)	Bankruptcy No. 01 B 12705
Debtor.	)	Judge John H. Squires
	)	
	)	
HARRIS BANK OAKBROOK TERRACE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 01 A 00755
	)	
WILLIAM D. CORRIGAN, JR.,	)	
	)	
Defendant.	)	

O R D E R

For the reasons set forth in a Memorandum Opinion the 6th day of January 2003, the Courts finds the debt owed by the Debtor to Harris Bank Oakbrook Terrace non-dischargeable under 11 U.S.C. § 523(a)(2)(A) and § 523(a)(2)(B) in the principal sum of $183,044.34, plus interest from December 28, 2000 through the date of judgment at $49.57450 per diem. Additionally, the attorney's fees and costs incurred by Harris Bank Oakbrook Terrace will be allowed upon the submission of a statement and bill of costs within ten days hereof showing the fees and costs incurred.

ENTERED:

DATE:_____

_____
John H. Squires
United States Bankruptcy Judge

cc: See attached Service List