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Thursday, June 15, 2000

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## UNITED STATES BANKRUPTCY COURT

### NORTHERN DISTRICT OF CALIFORNIA

In re

ROBERT and GURI CLARK,

No. 99-12131

[Debtor](#) ⓘ(s).

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BRENHAM HOUSING COMPLEX,

[Plaintiff](#) ⓘ(s),

v.

A.P. No. 99-1211

ROBERT and GURI CLARK,

[Defendant](#) ⓘ(s).

\_\_\_\_\_ /

## **Memorandum of Decision**

In 1996, a limited liability company controlled by [Chapter 7](#) debtor and defendant Robert Clark purchased real property in Texas from plaintiff Brenham Housing Complex ("BHC"), the latter taking a note back as part of the purchase price. Clark personally guaranteed the note. As part of the negotiations, Clark gave BHC a financial statement showing that he had a net worth of about \$2.5 million. BHC relied upon the financial statement in agreeing to the transaction. Clark's company defaulted, and BHC obtained a judgment against Clark for about \$757,000.00. In this [adversary proceeding](#), BHC alleges that this judgment is nondischargeable pursuant to § 523(a)(2)(B) because the financial statement was false. The financial statement was grossly false. In fact, Clark had no net worth at all. Three items, given a total value of about \$2.3 million, were valueless. The largest item was \$1.167 million in "notes owned." Clark's testimony as to how he acquired these notes is confusing and contradictory, as is his explanation as to why they turned out to be worthless within a few months of the financial report. It appears that the notes were given in return for shares in partnerships formed and controlled by Clark and ostensibly secured by the partnership interest.<sup>(1)</sup> The actual amount of cash the note makers paid for the partnership interests was very small, perhaps one or two percent of the face value of the note. The notes contained no attorneys' fee clause, and any dispute had to be resolved by binding arbitration. Only a very small amount was ever paid on the notes, and no effort was ever made to enforce them. The court has no difficulty concluding that these notes were worthless or nearly worthless, that Clark knew this, and that he intentionally listed them as his principal asset without disclosing their true value with the intent to deceive BHC into believing that he had a substantial net worth when he knew that was not true. Similarly, Clark listed "partnerships" as having a value of \$529,000.00. Clark knew that they were really essentially worthless. He listed "stock, private" having a value of \$602,000.00. This value turned out to be Clark's estimate of the value of an option held by a corporation he owned. The option expired less than two months after Clark gave BHC his financial report. The court recognizes that it is not enough for BHC to show that the financial report was materially false; the court must also find that it was made with the intent to deceive. If the court thought that Clark actually believed that his assets had value, it would render judgment in his favor. However, it is far more likely than not that Clark knew that none of the listed assets had any real value and that he listed them in order to deceive BHC into thinking that his guarantee was worth something. Since BHC reasonably relied on the false statement, its judgment is nondischargeable. For the above reasons, the court will enter a judgment declaring that the state court judgment held by BHC against Clark is nondischargeable. BHC shall also recover its costs of suit. Since no evidence of any participation, wrongdoing or knowledge on the part of Guri Clark was produced, the debt shall be declared discharged as to her. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for BHC shall submit an appropriate form of judgment forthwith.

Dated: June 15, 2000

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Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

1. At least, that was Clark's testimony at trial and what the notes recite. In a previous version of the truth, the notes were given in return for stock in a corporation which was never i

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