Monday, May 1, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

RALPH and MARY PEYTON, No. 98-14848

Debtor(s).

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TUSTIN THRIFT & LOAN ASSN.,

Plaintiff(s),

v. A.P. No. 99-1070

RALPH and MARY PEYTON,

Defendant(s). .

______________________________________/

Memorandum of Decision

There are no real disputed issues of fact in this nondischargeability action brought pursuant to § 523(a)(2)(B) of the Bankruptcy Code; debtors and defendants Ralph and Mary Peyton readily concede that the financial statement they signed was not truthful. The issue is whether their concessions justify a finding that they had intent to deceive as required by § 523(a)(2)(B)(iv). In 1993, they Peytons borrowed $15,000.00 from MGM Mortgage Company. The loan was an FHA Title 1 home improvement loan, secured by a junior lien on their home. The record does not reflect how they came to apply for a loan, but MGM was represented by a very aggressive agent clearly intent on making the loan in order to earn a commission. MGM obtained a credit report, which did not reflect a debt the Peytons owed secured by a second residence which the Peytons rented to their son. The Peytons told the loan officer, Tyler Paulson, about the loan. Paulson prepared the application for the Peytons to sign; it did not mention the real estate loan. When they Peytons questioned Paulson about this, he told them that since the loan did not show up on their credit report they did not need to include it in the application. He also told them that it was a "push," in that the rental income they received from their son offset the debt. Relying on these representations and believing them to be true, the Peytons signed the application. A few days after the loan was made, MGM sold the Peyton note to plaintiff Tustin Thrift and Loan Association. Some time later, the Peytons lost their home to foreclosure and Tustin became a sold-out junior. It obtained a judgment against the Peytons in 1995. The Peytons made payments on the judgment until April, 1998. They filed their Chapter 7 petition later that year. Tustin then commenced this adversary proceeding to determine the dischargeability of its claim. One of the representations that Paulson had made to the Peytons was false. He had told them that the listing of the real estate loan was not important because it was offset by the rental income on the property. However, that was not correct. The Peytons would not have been eligible for the loan if they had disclosed the debt. The Peytons, however, did not know this and believed Paulson. The above facts establish three of the four elements of nondischargeability pursuant to § 523(a)(2)(B). Tustin argues that they establish the fourth element, intent to deceive, as well. The court disagrees. Tustin primarily relies on the Appellate Panel decision in In re Maldonado, 228 B.R. 735 (9^{th} Cir. BAP 1999). However, that case is clearly distinguishable. In that case, as here, false financial statement was prepared by a creditor's agent who knew the truth. However, the agent in that case told the debtors that the false statements were intended to deceive the creditor's internal auditors; the debtors admitted intending to deceive these auditors, just not Tustin, who purchased the contract from the original creditor. 228 B.R. at 737. On these facts, the Appellate Panel rightly found intent to deceive. Unlike the debtors in Maldonado, the Peytons appear as honest people who never intended to deceive anyone. Not only did Paulson tell them that they did not have to list the undisclosed real estate loan, he told them it was immaterial because they were not listing income from the property either. The Peytons did not know, and had no way of knowing, that this was not the truth. Because they believed these representations in good faith, there is no basis for the court to find that they had any intent to deceive anyone. The law applicable to this situation is clearly stated at 4 **Collier on Bankruptcy** (15^{th} Ed. Rev.), ¶ 523.08[2][e][ii], p. 523-51:

However, if a debtor is misled by the creditor's agent into signing the statement - as when the creditor's agent fills it out and gives it to the debtor to sign, perhaps even leaving certain blanks unfilled - the element of intention is lacking, and discharge of the debt is not barred.

For the foregoing reasons, Tustin shall take nothing by its complaint, which shall be dismissed with prejudice. Since Tustin proved three of the four elements of nondischargeability, the court will not award the Peytons attorney's fees pursuant to § 523(d). However, the Peytons shall recover their other costs of suit. This memorandum

constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052.
Counsel for the Peytons shall submit an appropriate form of judgment forthwith.
Dated: May 1, 2000

Alan Jaroslovsky

U.S. Bankruptcy Judge