

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)	
)	
RANDY RAY BEAVERS,)	CASE NO. BK94-80058
)	
DEBTOR)	A94-8024
)	
SAC FEDERAL CREDIT UNION,)	
)	CH. 7
Plaintiff)	
vs.)	
)	
RANDY RAY BEAVERS,)	
)	
Defendant)	

MEMORANDUM

Hearing was held on January 31, 1995, on the adversary proceeding. Appearing on behalf of debtor was Carll Kretsinger of Omaha, Nebraska. Appearing on behalf of SAC Federal Credit Union was Donald A. Roberts of Lustgarten & Roberts, P.C., Omaha, Nebraska. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I).

Background

SAC Federal Credit Union (SAC) filed this complaint against the debtor alleging that two debts incurred by the debtor and due to SAC are nondischargeable under the Bankruptcy Code. The first debt, a \$10,000 unsecured loan made by SAC to the debtor in May, 1993 was determined to be dischargeable at the trial, and a separate Order addresses that claim.

The second debt, an unsecured credit card debt, was incurred because of a lengthy, expensive and apparently rancorous dissolution of marriage and child custody dispute. The expenses involved in operating two households and managing the dissolution lawsuit caused the debtor to use credit card debt to pay off other debts as they came due. By the time of the bankruptcy petition filing, the accumulated credit card debt was significant.

Issue

Whether a Visa credit card debt incurred shortly before the debtor filed bankruptcy, is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) of the Bankruptcy Code.

Legal Authority

SAC alleges that the Visa debt should be nondischargeable because the manner in which the debtor incurred the debt violated Section 523(a)(2)(A) of the Bankruptcy Code, which provides:

A discharge under section 727, ... of this title does not discharge an individual debtor from any debt --
 (2) for money, ... to the extent
 obtained by -- (A) ... actual
 fraud.

11 U.S.C. § 523(a)(2)(A).

The preponderance standard is the appropriate standard of proof to apply to Section 523(a)(2)(A) of the Bankruptcy Code. Grogan v. Garner, 498 U.S. 279, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991).

The creditor bears the burden to prove the following elements in a Section 523(a)(2)(A) nondischargeability action:

- (1) that the debtor made the representations;
- (2) that at the time he knew they were false;
- (3) that he made them with the intention and purpose of deceiving the creditor;
- (4) that the creditor relied on such representations;
- (5) that the creditor sustained the alleged loss and damage as a proximate result of the representations having been made.

Thul v. Ophaug (In re Ophaug), 827 F.2d 340, 342 n. 1 (8th Cir. Aug. 26, 1987) (citations omitted); In re Van Horne, 823 F.2d

1285, 1287 (8th Cir. July 22, 1987), reh'g denied Aug. 17, 1987.¹

In Section 523(a)(2)(A) actions where the creditor is a credit card issuer and the questionable debt arose from a transaction where the debtor used a pre-approved credit card, the "reliance" and "representation" elements of actual fraud are difficult to prove by the issuer of a credit card who preapproved a credit limit for the debtor. Citibank South Dakota v. Dougherty (In re Dougherty), 84 B.R. 653 (Bankr. 9th Cir. 1988). Bankruptcy courts have, therefore, proffered modified analyses for Section 523(a)(2)(A) nondischargeability complaints involving credit card debts. Id. at 656-57 (discussing different theories which have been advanced by different bankruptcy courts); Mercantile Bank of Illinois v. Troutman (In re Troutman), 170 B.R. 156, 156-57 (Bankr. D. Neb.) (citing Dougherty).

Many bankruptcy courts find that the use of a credit card to incur debt at a time when the debtor did not intend to repay the debt is the equivalent of a false representation. Sears, Roebuck, and Co. v. Faulk (In re Faulk), 69 B.R. 743 (Bankr. N.D. Ind. 1986). In Faulk, the bankruptcy court opined:

Where purchases are made through the use of a credit card with no intention at that time to repay the debt, that debt must be held to be nondischargeable pursuant to section 523(a)(2)(A).

69 B.R. at 753-54; Dougherty, 84 B.R. at 657 (following Faulk).

(1) Representation

The rule that credit card debt is nondischargeable if it is shown that the debtor did not intend to repay the debt at the time the debt was incurred is compatible with the Eighth Circuit's Ophaug analysis under Section 523(a)(2)(A) because a "representation" under Ophaug is impliedly made to the creditor

¹ Van Horne cites a slightly different standard than Ophaug. Under the fourth element in Van Horne for reliance, the standard is "that the creditor reasonably relied on the representation." Ophaug not only omitted the "reasonably" requirement, but also specifically rejected the argument that the reliance had to be reasonable. Neither Van Horne or Ophaug cited to each other, but the author of Van Horne was part of the unanimous panel for Ophaug. Therefore, this Court presumes that Ophaug is the proper standard because it was decided most recently. This distinction is important in the Court's discussion on reliance, infra.

that the card holder intends to repay the charge incurred each time the card holder uses the credit card. FCC Nat'l Bank/First Card v. Friend (In re Friend), 156 B.R. 257, 260 (Bankr. W.D. Mo. 1993); Boatmen's Bank v. Holmes (In re Holmes), 169 B.R. 186, 190 (Bankr. W.D. Mo. 1994); Norwest Bank Iowa v. Larson (In re Larson), 136 B.R. 540, 544 (Bankr. D.N.D. 1992); Chase Manhattan Bank v. Weiss (In re Weiss), 139 B.R. 928 (Bankr. D.S.D. 1992).

(2) Knowledge

(3) Intent

Under the second and third elements of Ophaug, the debtor knowingly makes a false representation when the debtor uses the credit card with the knowledge that he or she does not intend to repay the incurred debt. Friend, 156 B.R. at 260-61; Holmes, 169 B.R. at 190; Citicorp Credit Serv. v. Hinman (In re Hinman), 120 B.R. 1018, 1021 (Bankr. D.N.D. 1990); see also Troutman, 170 B.R. 157. Since the actual intent of the debtor is almost impossible to prove, a creditor may present circumstantial evidence to show fraudulent intent under Section 523(a)(2)(A):

Because direct proof of intent (i.e., the debtor's state of mind) is nearly impossible to obtain, the creditor may present evidence of the surrounding circumstances from which intent may be inferred. When the creditor introduces circumstantial evidence proving the debtor's intent to deceive, the debtor cannot overcome [that] inference with an unsupported assertion of honest intent. The focus is, then, on whether the debtor's actions "appear so inconsistent with [his] self-serving statement of intent that the proof leads the court to disbelieve the debtor.

Van Horne, 823 F.2d at 1287-88 (citations and quotations omitted); see also Friend, 156 B.R. at 261; Holmes, 169 B.R. at 190; FCC Nat'l Bank v. Bartlett (In re Barlett), 128 B.R. 775, 779 (Bankr. W.D. Mo. 1991).

To assist courts in analyzing the issue of intent in credit card dischargeability actions, a non-exhaustive list of circumstances has been established. These objective factors, which are evaluated as a court would otherwise examine "badges of fraud," are:

1. The length of time between the charges made and the filing of bankruptcy;

2. Whether or not an attorney has been consulted concerning the filing of bankruptcy before the charges were made;
3. The number of charges made;
4. The amount of the charges;
5. The financial condition of the debtor at the time the charges are made;
6. Whether the charges were above the credit limit of the account;
7. Whether the debtor made multiple charges on the same day;
8. Whether or not the debtor was employed;
9. The debtor's prospects for employment;
10. Financial sophistication of the debtor;
11. Whether there was a sudden change in the debtor' buying habits; and
12. Whether the purchases were made for luxuries or necessities.

Faulk, 69 B.R. at 757 (citing Chase Manhattan Bank v. Carpenter (In re Carpenter), 53 B.R. 724, 730 (Bankr. N.D. Ga. 1985); Dougherty, 84 B.R. at 657; Troutman, 170 B.R. at 157; Friend, 156 B.R. at 261; Holmes, 169 B.R. at 190; Hinman, 120 B.R. 1018, 1021-22 (Bankr. D.N.D. 1990); Larson, 136 B.R. at 544; Weiss, 139 B.R. at 930.

At least one bankruptcy court has noted that there is no set rule on how many of these factors must be present before a court will find that the debtor had an intent to deceive the creditor. Weiss, 139 B.R. at 930 ("Some courts find deceit if one factor is present, others if a significant number are present, and some courts conclude that neither a predominant number of these elements nor even all of them creates a conclusive presumption of deceit.") (citation omitted). Since the evaluation of these factors is a fact question and the factors set forth above are non-exhaustive, this Court does not believe that a firm rule should be followed, but the outcome should rest finally with the specific circumstances of the case and the severity of those circumstances.

(4) Reliance

To show reliance, the fourth element of Ophauq, a creditor must show reliance in extending credit to a debtor, but the reliance does not need to be reasonable. Norwest Bank Des Moines v. Stewart (In re Stewart), 91 B.R. 489, 495 (Bankr. S.D. Iowa 1988) (citing Ophauq, 827 F.2d at 342-43. 1987), for the proposition that reliance under § 523(a)(2)(A) need not be reasonable. See supra n.1); FCC Nat'l Bank v. Branch (In re Branch), 158 B.R. 475 (Bankr. W.D. Mo. 1993). Direct proof of reliance is not required. First Bank System v. Foley (In re Foley), 156 B.R. 645, 650 (Bankr. D.N.D. 1993) (holding reliance established when bank showed that it relied on previous history of regular monthly repayments to expect that such reliability to repay would continue into the future).

When using a credit card, the debtor tenders it to a merchant, and not to the issuing bank. Reliance, therefore, is deemed to be "inherent in the system" because the issuing bank is forced to honor the credit card and pay the merchant, and the bank is, by necessity, subrogated to the claim of reliance that the merchant possesses when accepting the offer of adequate tender in exchange for the good or service. Hinman, 120 B.R. at 1022-23 (quoting In re Senty, 42 B.R. 456, 460 (Bankr. S.D.N.Y. 1984); but see Manufacturers Hanover Trust Co. v. Marlar (In re Marlar), 142 B.R. 304 (Bankr. E.D. Ark. 1992) (holding that intent of the debtor is the only focus of a § 523(a)(2)(A) action on credit card debt, and it is not, therefore, necessary to examine reliance).

The diluted standard for reliance under Section 523(a)(2)(A) cases involving credit card debts is consistent with the observation made by the Eighth Circuit that once fraud is established with regard to a debt, the debtor should not be "entitled to the benefit of debtor rehabilitation policy considerations." Ophauq, 827 F.2d at 343.

(5) Damages

Once the creditor establishes the first four elements, the creditor must show that the injury sustained, or its claim against the estate, was the proximate result of the debtor's conduct. See, i.e., Hinman, 120 B.R. at 1023 (concluding that the debtor's conduct was the proximate cause of damages to the creditor in the amount of the debt).

Decision

The claim of SAC against the debtor for credit card charges incurred after November 16, 1993 is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

Discussion

A. Findings of Fact

The debtor, Randy Ray Beavers, filed a petition for Chapter 7 relief on January 12, 1994. Shortly before this case was filed, the debtor's marriage was dissolved in the District Court of Douglas County, Nebraska. The final hearing on the dissolution was held on November 16, 1993 (the November 16 hearing). The final decree was filed by the state district judge on January 7, 1994.

The debtor applied for and was granted a SAC Visa credit card (the card) in January of 1993. When the debtor applied for the card, the debtor had a high credit rating, and there are no allegations in this case that the debtor misrepresented his credit history or otherwise acted in bad faith when the card was procured. Through November of 1993, the debtor regularly used the card and always paid off the monthly balances in full.

Beginning on November 17, one day after the November 16 hearing, the debtor began charging numerous cash advances and other charges to the card. The billing statement issued December 14, 1993 (the statement) shows the following charges:

<u>Transaction Date</u>	<u>Description</u>	<u>Amount</u>
11/17	Cash advance	\$500.00
11/17	Cash advance	500.00
11/18	Air Force Charge	55.47
11/18	Cash advance	500.00
11/18	Cash advance	500.00
11/19	Divorce Attorney	1600.00
11/19	Cash advance	500.00
11/19	Cash advance	500.00
11/20	Cash advance	500.00
11/20	Cash advance	500.00
11/23	Cash advance	300.00
11/23	Cash advance	500.00
12/01	Cash advance	300.00
12/03	Cash advance	500.00
12/06	Cash advance	200.00
Total Purchases		1655.47
<u>Total Cash Advances</u>		<u>5800.00</u>
Total due		7455.47

Exhibit 4, Statement Date 12/14/93. The total charges made by the debtor during this billing cycle stopped just short of the debtor's \$7,500 credit limit on the card.

The regular payment due date on the statement was January 5, 1994, but SAC waived the January payment because no minimum payment was requested and the statement instead states:

NO ACTION IS NECESSARY ON YOUR PART TO SKIP
YOUR JANUARY 5TH PAYMENT. THIS IS OUR WAY OF
SAYING THANK YOU FOR CHOOSING SAC'S VISA AND
GIVE YOU ONE LESS THING TO WORRY ABOUT
**FINANCE CHARGES WILL CONTINUE TO ACCRUE &
YOUR PAYMENT WILL RESUME NEXT MONTH.

Exhibit 4, Statement Date 12/14/93. The debtor did not pay any amount that was due on the card account on or before January 5, 1994 or make any other payments prior to the debtor's petition for relief on January 12, 1994, or thereafter.

SAC alleges that when the debtor charged the cash advances and attorney payment to the card, the debtor knew that he did not intend to repay SAC for the Visa debt. SAC claims that at the November 16 hearing, the debtor was informed of his obligations that were incorporated into the decree entered January 7, 1994, and that he paid several of those obligations off with the card before filing a petition for relief.

The debtor's recollection of what debts he was aware of after the November 16 dissolution hearing changed over the course of the debtor's testimony. First, the debtor stated that he only knew about the debt to Mr. Levy, his ex-spouse's attorney, after the November 16 hearing. Later the debtor stated he was aware that his alimony and child support payments had increased after the November 16 hearing, but he was not aware of any other obligations until the final decree was issued on January 7, 1994. The debtor did not appear to be attempting to mislead the Court with his testimony, but instead, appeared to taking into consideration the fact that he had been paying some alimony and child support all along.

The debtor could not entirely explain where he applied the funds that he received from the cash advances, but admits that he used the cash advances to pay the attorney who represented him during the dissolution action, to become current on all alimony and child support payments, and to continue making current payments on alimony and child support. He also claims that he paid three month's rent with the cash advances and that he possibly paid other bills for his own living expenses.

The debtor stated that the November 16 hearing took place in the state district judge's chambers and that a stipulation between himself and his ex-spouse was read into the record. The stipulation was not introduced at the dischargeability trial, and therefore, the Court accepts as accurate the debtor's version of what he understood to have taken place at the hearing. The debtor testified that the obligations he claims that he did not know about until the decree was issued on January 7, 1994, i.e. the guardian ad litem payments, the property settlement and the moving expenses, were not part of the stipulation read at the November 16 hearing. Therefore, the debtor claims that his state of mind at the time he took the cash advances on the card was that he would be able to repay the debt incurred, and it was not until after he saw the additional obligations listed in the final decree that he realized he could not repay all of his debts and consulted a bankruptcy attorney. He emphasized that he has had perfect credit for over twenty-five (25) years, but that the lengthy and litigious dissolution action caused him severe financial problems.

The debtor's bankruptcy schedules list the unsecured obligations that were allocated to the debtor over the course of the dissolution proceeding and are still due: \$5000.00 for the ex-spouse's attorney, \$3,425.29 for the guardian ad litem, \$3,412.29 for the ex-spouse's moving expenses, and \$1,500 is listed as owed to the ex-spouse for an undisclosed reason, but the dollar amount matches the obligation due in the decree for property settlement. The schedules also show that shortly before and during 1993, the debtor incurred other unsecured debt for personal loans: \$2,436.06 for AFBA Master Card (1991-92); \$3,000.00 for personal loan from Gatha Dusch (1993); \$4,940.06 for First USA Visa (1993), \$8,836.96 for another unsecured loan from SAC (1993), \$1,973.47 for Signet Bank Visa (1993) and \$7,483.96 for the SAC card (1993). Filing 1, Schedule F (BK94-80058). However, none of these other debts were incurred during the ninety (90) days prior to the bankruptcy petition.

1. Intent to Deceive Factors under *Faulk*

The Court makes the following findings of fact with regard to the factors listed in Faulk, supra, p. 5 to determine whether the debtor knowingly intended to avoid repaying the debt charged to the card when the debtor used the card in November and December of 1993:

1. The length of time between the dates the charges were incurred and date the bankruptcy petition was filed is short. Since the debtor began charging on November 17, 1993, and the date

of the petition was January 12, all of the transactions occurred within two months of the petition.

2. The debtor testified that he did not consult an attorney concerning bankruptcy until after he received the dissolution decree on January 7, 1994. The debtor also testified that the only attorney fees that he paid with the cash advances were those of his attorney from the dissolution action. The debtor specifically stated that the attorney for the dissolution proceeding was paid partly with a \$1,600 direct credit card charge and partly with cash.

In the Statement of Financial Affairs attached to the debtor's bankruptcy schedules (BK94-80058), the debtor listed under Paragraph 9, which is entitled "Payments related to debt counseling or bankruptcy" that he made a payment to his bankruptcy attorney on December 7, 1993. The explanation accompanying Paragraph 9 clearly directs debtors to list all payments for "consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case." Statement of Financial Affairs, BK94-80058, ¶ 9, p. 2. The debtor's bankruptcy attorney was apparently paid \$500 for his fee and paid \$160 for the bankruptcy filing fee on December 7, 1993. The debtor states in the schedules that the source of the fee payment was from his earnings.

The schedules are more reliable than the debtor's testimony because the schedules were filed before SAC filed this complaint. However, the date of the bankruptcy attorney consultation listed in the schedules still occurred after the debtor made the charges on the card, and therefore, it does not appear that the debtor received bankruptcy counseling prior to making the charges on the card.

3. The debtor made fifteen charges on the card between November 17 and December 7, 1993. The majority of the charges were cash advances. The prior billing statements for the card show that the debtor periodically used the cash advance feature of the card, but during no prior month were the cash advances charged on the card as large and as numerous as the charges on the December 14 statement.

Conversely, the debtor's prior statements show that the debtor was capable of paying off large balances on his credit card prior to December. The October 14, 1993 billing statement shows that the debtor paid over \$3,000 to SAC in late September to bring the balance on the card to zero. The evidence also shows, however, that the debtor incurred large amounts of unsecured debt over the entire course of 1993, and the debtor testified that he did become

trapped in a cycle where he took on additional debt through credit cards or other unsecured loans to pay off prior loans and obligations from the dissolution as they became due.

4. The total amount of charges incurred is \$7,483.96. This amount is the highest balance on the card during 1993. However, the debtor regularly charged in excess of \$1,000 on the card, and until the December 14, 1993 statement, paid off each balance in full.

5. At the time the charges were made, the financial condition of the debtor was deteriorating. The schedules state that on January 7, 1994, his net income was \$3,616.00 per month, but that his monthly expenses, including the revised amounts for alimony and child support, totaled \$3,535.28. Since none of the "unexpected" debts that resulted from the dissolution and that the debtor testified caused him to file bankruptcy were accounted for in the portion of the schedules listing income and expenses, it appears that the debtor incurred over \$7,000 of debt on the card when his disposable income per month was less than \$100 and after a year where the debtor had already incurred large blocks of unsecured debt.

6. The credit card charges totaled slightly less than the debtor's maximum credit limit on the card.

7. On several dates, the debtor made multiple charges on the card. November 17, 18, 19, 22, and 23 all show more than one charge being incurred. In every instance of a date with a multiple charge, at least two charges were for cash advances.

8. & 9. The debtor was employed with the United States Air Force when he made the charges.

10. The debtor is not engaged in the financial or legal industries, and there is no evidence to suggest that the debtor possessed more than average knowledge about finances.

11. The debtor's need for cash may indicate that there was a sudden change in the debtor's buying habits, but this factor is difficult to address because the debtor could not completely recall how he spent the cash. The debtor testified that some of the money paid child support and alimony, and the attorney fees of the debtor. However, the debtor also testified that he paid some of his own bills. The debtor stated that he paid the rent for his residence for November, December and January, from which testimony the Court infers that the debtor was anticipating future financial difficulties.

12. There is no evidence that the debtor used the card to purchase luxury goods. It does not appear that the debtor took the cash advances to purchase any new goods or services, but instead, he used the cash advances to repay outstanding debts, primarily those for his living expenses and for the debts imposed upon him over the course of the dissolution proceeding.

2. Section 523(a)(2)(A) Elements under Ophaug

The Court holds that the debt owed to SAC for the credit card debt is nondischargeable under Section 523(a)(2)(A). The debtor was caught in a lengthy dissolution proceeding which caused the debtor to incur obligations that were beyond the debtor's means, based upon the debtor's income, expenses (including the alimony and child support payments) and lack of assets. The debtor was for some time, even prior to the November 16 hearing, unable to pay his expenses, as the large amounts of unsecured debt incurred throughout 1993 indicates, and the other evidence shows, that the debtor was using the card to roll over outstanding debts. The debtor should have been aware at the time the last month's charges were incurred, that he could not afford to pay the new credit card debt.

SAC has shown by a preponderance of the evidence that the five elements of Ophaug, as modified for credit card cases, are present in this case. The difficulty the Court has is that this case is distinguishable from a credit card case where a debtor deliberately purchases goods and incurs debt with the knowledge that he can have the debt discharged. Instead, the debtor in this case did not incur new debt, but was, instead, attempting to pay outstanding debts with the card. The Court does not believe that the debtor committed fraud, per se, and if the straight Ophaug test or regular fraud standards applied in this case, the Court could find that the debt was dischargeable. However, the fact that the debtor made these charges when his financial situation was so poor causes this debt to fall under the Faulk guidelines as discussed below.

(1) Representations to SAC

The debtor made a representation to SAC under the first element of Ophaug because when he used the card, he made an implied representation to SAC that he would repay the charges incurred.

(2) Knowledge of Inability to Repay Debt

The debtor knew at the time he used the card that he could not repay the debt. The Court did not reach this conclusion easily because a few factors appear to favor the debtor. Of all of the loans taken in 1993, it does not appear that the debtor ever used

these funds for any purpose other than to pay for the obligations and expenses of the dissolution proceeding and to pay for his ordinary expenses, to the extent the dissolution made him unable to do so without using credit. Therefore, in this case, the debtor did not necessarily take on additional debt, but instead, rearranged who his creditors were going to be and when this debt would become due. The dissolution proceeding was not friendly, and it appears that severe pressures were placed on the debtor to pay certain debts immediately. The advantage of using a credit card to pay these debts is that credit cards do not require balances to be paid in full, instead minimum payments may be made. In fact, SAC waived its right to the January minimum payment on the billing statement, so the debtor was not required, in fact, make a minimum payment until February of 1994, which was post-petition.

What caused the Court to conclude that the debtor knew he could not repay this debt is that the debtor continuously incurred debt throughout 1993, and he admitted that he incurred debt to pay other debt. It should have become apparent by November 17, 1993 that he did not have the resources to repay the card, especially since he was not meeting his own expenses due to his outstanding debt. The Court found that the disposable income of the debtor was no more than \$100.00. Therefore, the debtor knew at the time the charges were incurred that he did not have the available income to repay this debt.

(3) Intent to Deceive

SAC has shown that the representations made by the debtor were with the intent to deceive SAC. The Court reviewed the factors to consider when determining intent, supra. The circumstances of this case favor a finding that the debtor used the card with the knowledge that he could not repay the card and thus, used the credit card with an intent to deceive SAC. The following factors favor the position taken by SAC: the short time between the charges to the card and the petition; the sudden use of the card for cash advances; the large number of cash advances; the inconsistent testimony about when the debtor consulted a bankruptcy attorney; the financial condition of the debtor at the time the charges were made; and charging up to the maximum limit on the card.

(4) Reliance

SAC relied on the representations made by the debtor. As previously discussed, SAC's reliance does not have to be reasonable, and the fact that SAC had to pay all of the debtor's charges satisfies this element. SAC made the cash advances and paid the purchases charged based upon the debtor's representations

that he would repay SAC for these debts each time the debtor used the card.

(5) Proximate Cause of Injury

Because SAC relied on the debtor's representations, SAC extended \$7,455.47 of credit to the debtor that the debtor knowingly did not intend to repay, and therefore, SAC suffered damages in that amount.

C. Conclusion

The claim of SAC, which resulted from the Visa credit card, is nondischargeable because the debt was incurred in violation of Section 523(a)(2)(A) of the Bankruptcy Code. The Court believes that it is necessary to state that even though the standard in the Bankruptcy Code is "actual fraud," the legal standard for reviewing nondischargeability actions for credit card purchases pursuant to Section 523(a)(2)(A) is diluted to a standard that is less strict than actual fraud because credit card issuers could almost never prove actual "fraud" if such card issuers have already consented to a pre-approved debt level. Certainly, there are nondischargeability actions where the honesty and integrity of the debtor is questionable, but this case is not one of those cases. The circumstances of the timing and the unusual nature of the charges incurred in this case cause this debt to be nondischargeable, but the Court does not believe that the debtor acted with actual dishonesty in this instance.

Separate journal entry to be filed.

DATED: April 12, 1995

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

ROBERTS, DONALD 346-8566
KRETSINGER, CARLL 291-2964

Copies mailed by the Court to:

United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
RANDY RAY BEAVERS,) CASE NO. BK94-80058
) A94-8024

DEBTOR(S))
)
SAC FEDERAL CREDIT UNION) CH. 7
Plaintiff(s)) Filing No.
vs.) JOURNAL ENTRY
)
RANDY RAY BEAVERS,)
)

Defendant(s)) DATE: April 12, 1995
HEARING DATE: January
31, 1995

Before a United States Bankruptcy Judge for the District of
Nebraska regarding Adversary Proceeding

APPEARANCES

Carll Kretsinger, Attorney for debtor
Donald A. Roberts, Attorney for SAC

IT IS ORDERED:

The \$7,455.47 debt to SAC Federal Credit Union is
nondischargeable.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:
ROBERTS, DONALD 346-8566
KRETSINGER, CARLL 291-2964

Copies mailed by the Court to:
United States Trustee

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

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DEBTOR(S))
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SAC FEDERAL CREDIT UNION,) CH. 7
) Filing No.
Plaintiff(s))
vs.) JOURNAL ENTRY
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RANDY RAY BEAVERS,)
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Defendant(s)) DATE: April 12, 1995
HEARING DATE: January
31, 1995

Before a United States Bankruptcy Judge for the District of
Nebraska regarding ADVERSARY PROCEEDING.

APPEARANCES

Carll Kretsinger, Attorney for debtor
Donald Roberts, Attorney for SAC

IT IS ORDERED:

This order incorporates the record made at trial and the
determination made by the Court and read into the record that the
outstanding balance of the original \$10,000.00 loan made on or
about May 14, 1993, is dischargeable in this bankruptcy case.

A separate memorandum and journal entry are being filed
contemporaneously herewith concerning the dischargeability of
credit card debt.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

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KRETSINGER, CARLL 291-2964

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