

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re

MICHAEL G. FLOWERS,

Case No. 02-16053-MAM-7

Debtor.

ESCAMBIA COUNTY CO-OP,

Plaintiff,

v.

Adv. No. 03-1247

MICHAEL G. FLOWERS,

Defendant.

ORDER DISMISSING PLAINTIFF'S COMPLAINT

Robert M. Galloway, Mobile, Alabama, Attorney for Escambia County Co-Op
James M. Orr, Jr., Mobile, Alabama, Attorney for Michael G. Flowers

This case is before the Court on Escambia County Co-Op's complaint alleging that a debt owed to it by Michael G. Flowers is excepted from discharge. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and the Court has the authority to enter a final order. For the reasons given below, as well as the reasons stated by the Court in its February 17, 2004 oral ruling, which are incorporated by reference, the Court finds that Michael G. Flowers' motion for judgment on partial findings under F.R.B.P. 7052(c) is due to be granted and Escambia County Co-Op's complaint should be dismissed.

FACTS

Michael G. Flowers bought \$5,237 worth of livestock on credit from Escambia County Co-Op ("Escambia") in June of 2001. The terms of the credit sale were that Mr. Flowers had to

pay for the livestock within 72 hours of the purchase and he had to be bonded in the event he failed to pay. Mr. Flowers was aware of these requirements because he had made prior purchases on credit from Escambia.

Mr. Flowers did not have his own bond. Instead, he entered into a bonding arrangement with a man named Mr. Summerall under which he could purchase livestock under Mr. Summerall's bond. Consistent with this arrangement, Mr. Flowers had a card listing him as authorized to make purchases under Mr. Summerall's bond. Although it is unclear if Mr. Flowers presented this card to Escambia at the June 2001 sale, both parties testified that Mr. Flowers presented it to Escambia at some point and it believed the card was valid on the date of the June 2001 sale.

Subsequent to the June 2001 sale, Mr. Flowers wrote a \$5,237 check to Escambia for the livestock he purchased. The check bounced for non-sufficient funds. Escambia notified Mr. Summerall that Mr. Flowers' check had bounced, and Mr. Summerall informed Escambia that Mr. Flowers' authorization to charge on his bond had been revoked prior to the June 2001 purchase. Escambia did not make a claim on Mr. Summerall's bond. It entered into a repayment agreement with Mr. Flowers under which he agreed to repay his \$5,237 debt over 29 months at 9.5 percent interest. Mr. Flowers made payments to Escambia under this agreement through August 2002, reducing his balance on the debt to \$2,949.03.

Mr. Flowers, filed a chapter 13 bankruptcy case in this Court on October 22, 2002. His chapter 13 case was subsequently dismissed, reinstated, and converted to a chapter 7 case. In his chapter 7 schedules, Mr. Flowers listed Escambia as holding a \$3,300 unsecured nonpriority claim against him. Escambia filed a complaint against Mr. Flowers on September 26, 2003

alleging that its claim was excepted from discharge under §523 of the Bankruptcy Code. The basis of Escambia's complaint is that Mr. Flowers wrote a bad check for his debt to Escambia and that Mr. Flowers used a bond that he knew was cancelled to purchase on credit.

The Court held a hearing on Escambia's complaint on February 17, 2004. At the hearing, Escambia argued that its claim against Mr. Flowers should be excepted from discharge because he bought livestock on credit from Escambia while using a bond that knew or should have known he was not authorized to use. Mr. Flowers argued that he was unaware that he was no longer authorized to use the bond when he purchased the livestock at issue in this case. Escambia did not argue that its claim should be excepted from discharge based on the bad check written by Mr. Flowers.¹

Mr. Flowers testified that he had previously entered into an agreement with Mr. Summerall authorizing Mr. Flowers to make purchases on Mr. Summerall's bond. He stated that he had not received any notice that he was no longer authorized to use the bond since entering into the agreement with Mr. Summerall. Mr. Flowers testified that after his check to Escambia bounced, Escambia informed him that he was not authorized to purchase under Mr. Summerall's bond. When Mr. Flowers contacted Mr. Summerall about the bond, Mr. Summerall explained that he had forgotten to renew his Alabama bond.

¹ Although Escambia did not argue that Mr. Flowers' debt should be excepted from discharge because he knew his check would bounce, the Court finds that Mr. Flowers' testimony regarding his belief that he was authorized to purchase the livestock under Mr. Summerall's bond would refute any argument by Escambia that Mr. Flowers did not expect Escambia to receive payment for the purchase because the bond would have paid Escambia had it been in place when Mr. Flowers' check bounced. Also, there was no evidence presented that showed Mr. Flowers knew his check would not be good.

Stanley Johnson testified for Escambia that Mr. Flowers' testimony regarding his conversation with Mr. Summerall about renewing his Alabama bond did not make sense. Mr. Johnson explained that the type of bond required to make livestock purchases is a federal bond issued by the United States Department of Agriculture (USDA). States, including Alabama, do not issue bonds for the purchase of livestock according to Mr. Johnson. Rather, the USDA issues a single bond to a purchaser that may be used to make livestock purchases anywhere in the United States. Therefore, Mr. Johnson testified that he believed Mr. Flowers knew that he was not authorized to use Mr. Summerall's bond because Mr. Flowers' explanation of why he was no longer authorized to use it was not credible.

LAW

Escambia argues that its claim in Mr. Flowers' bankruptcy case should be excepted from discharge under §523 of the Bankruptcy Code. Although Escambia does not cite to any of the enumerated subdivisions of §523, it is apparent to the Court that Escambia bases its argument on §523(a)(2)(A), which excepts from discharge debts for an extension of credit obtained by "false pretenses, a false representation, or actual fraud."² 11 U.S.C. §523(a)(2)(A). Therefore, the Court must consider under the preponderance of the evidence standard whether Mr. Flowers obtained an extension of credit from Escambia based on a false or fraudulent representation regarding his authority to purchase livestock under Mr. Summerall's bond. *See Grogan v.*

² The Court will not consider §523(a)(6) of the Bankruptcy Code in its analysis because Escambia did not argue that Mr. Flowers' conduct constituted a willful and malicious injury. Moreover, the facts do not prove that a nondischargeability finding under §523(a)(6) would be warranted anyway. There was insufficient proof of intent.

Garner, 498 U.S. 279, 291 (1991)(holding that the preponderance of the evidence standard applies to the exceptions to discharge enumerated in §523).

Section 523(a)(2)(A) of the Bankruptcy Code provides:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) 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--
- (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). The Eleventh Circuit Court of Appeals has held that “[t]he elements of a claim under § 523(a)(2)(A) are: the debtor made a false statement with the purpose and intention of deceiving the creditor; the creditor relied on such false statement; the creditor’s reliance on the false statement was justifiably founded; and the creditor sustained damage as a result of the false statement.” *Fuller v. Johannessen (In re Johannessen)*, 76 F.3d 347, 350 (11th Cir. 1996). This Court will not examine all four elements of Escambia’s §523(a)(2)(A) claim because it finds that Escambia has not proven by a preponderance of the evidence that Mr. Flowers intended to deceive it regarding his authorization to use Mr. Summerall’s bond. *See Grogan v. Garner*, 498 U.S. 279, 291 (1991).

Mr. Flowers testified that because he did not have his own livestock bond, he entered into an agreement with another man, Mr. Summerall, to purchase livestock on credit using Mr. Summerall’s bond. Mr. Flowers received a card with his name on it from Mr. Summerall evidencing his right to use the bond. Because Escambia had a policy requiring an individual purchasing on credit to be bonded, Mr. Flowers showed his card to Escambia at some point in time. When Mr. Flowers made the livestock purchase at issue in this case, he testified that he believed that he was authorized to use Mr. Summerall’s bond. Escambia also believed that Mr.

Flowers was authorized to purchase livestock using the bond; otherwise it would not have let him purchase on credit.


Subsequent to the credit sale, Mr. Flowers wrote Escambia a bad check for the amount of his purchase. Escambia called the bondholder, Mr. Summerall, to inform him of Mr. Flowers' failure to pay. However, when Mr. Summerall informed Escambia that Mr. Flowers was not authorized to purchase on his bond, Escambia did not make any claim on the bond. Instead, it entered into a repayment agreement with Mr. Flowers. Mr. Flowers explained that he called Mr. Summerall after Escambia told him that he was not authorized to use Mr. Summerall's bond. He stated that Mr. Summerall simply told him that the reason he was not authorized was because he had forgotten to renew his Alabama bond. Mr. Johnson, a representative from Escambia, refuted Mr. Flowers' testimony. He stated that Mr. Flowers' testimony regarding his conversation with Mr. Summerall did not make any sense because livestock bonds are issued by the USDA, not states such as Alabama.

The Court found both Mr. Flowers and Mr. Johnson to be credible witnesses. Although Mr. Johnson's testimony regarding the federal nature of livestock bonds questioned the reliability of Mr. Flowers' explanation that Mr. Summerall had merely failed to renew his Alabama livestock bond, neither party called Mr. Summerall as a witness to show his knowledge or lack thereof regarding the nature of livestock bonds. Without more, such as testimony from Mr. Summerall to show that Mr. Flowers' recollection of his conversation with Mr. Summerall was not plausible, the Court finds Mr. Flowers's testimony to be credible. Therefore, the Court finds that Mr. Flowers' lack of knowledge regarding his right to use Mr. Summerall's bond did not amount to deceit, which Escambia had to prove by a preponderance of the evidence. Instead,

the Court finds that Mr. Flowers was merely an unsophisticated livestock purchaser who did not intend to deceive Escambia.

For the reasons discussed in this opinion, as well as the reasons stated by the Court in its February 17, 2004 oral ruling, which are incorporated by reference, IT IS ORDERED that Michael G. Flowers' motion for judgment on partial findings under F.R.B.P. 7052(c) is GRANTED and Escambia County Co-Op's §523 complaint against him is DISMISSED with prejudice.

Dated: February 25, 2004


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE