UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA

In Re

MANUEL ANTONIO FURTADO, JR. Case No.05-31410

Debtor

EASTERN JEWELRY/JDL DESIGN

Plaintiff

vs. Adv. No. 05-03506

MANUEL ANTONIO FURTADO, JR.

Defendant

ORDER DECLARING DEBT OF MANUEL FURTADO TO EASTERN JEWELRY/JDL DESIGN NONDISCHARGEABLE

Robert Beasley, Litvak, Beasley & Wilson LLP, Pensacola, FL, Attorney for the Plaintiff
Karin A. Garvin, Pensacola, FL, Attorney for the Defendant

This case is before the Court for the trial of the issues relating to the dischargeability of the debt owed by the defendant to the plaintiff. This 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 matter 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 indicated below, the Court is declaring the debt of $125,000 owed by defendant, Manuel Furtado to plaintiff, Eastern Jewelry/JDL Design nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(B).

PROCEDURAL HISTORY

This case came before the Court on July 7, 2006 on a summary judgment motion by the defendant. The defendant sought summary judgment on two grounds. (1) The plaintiff's complaint alleges that the debt owed by the defendant is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(2)(B) and the two sections are mutually exclusive, so one must not apply to this case. (2) The plaintiff entered into a settlement agreement that the debtor asserts was not contingent upon receipt and approval of debtor's allegedly fraudulent financial statement. The debtor asserts that, since the financial statement was submitted after the case was settled, the plaintiff did not rely on the alleged fraud in the financial statement. Reliance is a necessary element of § 523(a)(2)(B), so the plaintiff's case must fail.

The Court ruled at the summary judgment hearing that it was granting the motion for summary judgment as to striking the § 523(a)(2)(A) claim. The plaintiff conceded this point during the hearing. The Court held that, reading the settlement agreement in the light most favorable to the plaintiff, it was necessary to deny the motion for summary judgment on reliance grounds. It was unclear when the financial statement was actually provided in relation to the actual settlement agreement.

FACTS

Manuel Furtado commenced an internet sales business in 1999. He sold jewelry online for some or all of the time between 1999 and 2001. Eastern Jewelry/JDL Design ("Eastern") and Manuel Furtado did business with each other at some time between 1999 and early 2001. Eastern was a jewelry wholesaler from whom Furtado bought jewelry that he sold on Ebay. After a billing dispute in 2001, Furtado returned all of Eastern's product to it and ceased doing business with Eastern.

Eastern filed a federal court suit against Furtado in the District of Rhode Island on May 23, 2003. The suit alleged Furtado had infringed Eastern's copyright on "numerous designs of jewelry" and asserted false advertising and unfair competition claims. Furtado counterclaimed that Eastern had infringed upon his copyrights. Eastern's counsel testified the damages it claimed were substantially in excess of $125,000.

The case was set for trial in January, 2005. A settlement conference was held on December 9, 2004 with a magistrate judge. At that conference, Eastern and Furtado settled the federal suit. Among other things, Furtado consented to a judgment of $125,000 that he would be allowed to satisfy at a reduced amount of $7,500, if he did so by making payments at specified times. Prior to the parties signing any settlement agreement, Furtado was to furnish to Eastern a financial statement and an affidavit declaring he had made no fraudulent transfers. Eastern's counsel was adamant the settlement was conditioned upon receipt by Eastern of a completed financial statement from Furtado. He stated "everything hinged on the representations made at the settlement conference." On December 17, 2004, Furtado provided at least the financial statement and its Addendum.[1] Furtado testified that he actually signed the affidavit about fraudulent transfers after December 17, 2004 and mailed it back to his attorney. However, the fraudulent transfer affidavit has a notarization on it dated December 17, 2004.

Eastern's counsel followed up the settlement conference with an email to his client on December 10, 2004. It stated the settlement was contingent upon the provision of the financial statement. Eastern's counsel testified that the magistrate judge gave the parties a new deadline

[1] The financial statement is dated 12/16/04 on its face but the date on the signature line is December 17, 2004.

of December 17 for filing pretrial documents because the settlement was still contingent on December 9. On December 21, 2004, the plaintiff and defendant entered into a settlement agreement embodied in a letter from Eastern's counsel to Furtado's counsel which Furtado also signed.

The settlement letter stated

> 2. With respect to the monetary payment called for in the Judgment, the parties have agreed as follows:
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> (a) Furtado's personal financial statement as of December 16, 2004, certified by him under penalty of perjury as true . . .has been provided to Eastern and JDL and has been relied upon by them in agreeing to the monetary payment on the Judgment and the terms for its satisfaction as hereinafter set forth;
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> (b) As part of his financial statment, Furtado has certified to Eastern and JDL, under penalty of perjury, that he has made no transfers of property, of any nature whatsoever, as of December 16, 2004, that would constitute fraudulent transfers . . . and Furtado acknowledges that Eastern and JDL have relied upon that certification and representation in agreeing to the monetary amount of the Judgment and the terms for its satisfaction.
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> * * * * *
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> 3. If it can be shown that Furtado has made any material misstatement on the financial statement provided by him to Plaintiffs . . . or made a fraudulent transfer that violates the certification . . .the money amount of the Judgment shall remain at $125,000 less any payments made by Furtado after entry of Judgment.

Furtado made one payment pursuant to the agreement and then defaulted due to lack of funds. On January 4, 2005, a consent judgment that embodied the terms of the settlement agreement (without the agreement about a lesser payment amount possibly satisfying the judgment) was entered in the federal suit.

Furtado testified his attorney told him completion of the personal financial statement and other forms was "no big deal," and he filled out the forms as best he could. He had no financial records with him while he was completing the forms. Furtado filled out part of the forms with his attorney in a restaurant immediately following the settlement conference. His attorney then

had questions about the forms so they terminated the meeting. Furtado's attorney and Furtado were unsure what "Cash on Hand and In Banks (personal only)" meant. Furtado filled out page one of the form relating to cash by including only the amount of cash he had in his pocket. His attorney filled out page two. Furtado's attorney asked him if he had any securities. Furtado told him that he had some in his name, but the stocks were not purchased with his money. The attorney then filled in the form indicating no stock ownership. Furtado testified that he signed the fraudulent transfer statement after he had left Rhode Island and was back in Pensacola. He did not know what a fraudulent transfer was. His attorney told him he had to sign the statement, so he did. Furtado indicated in the Addendum to the financial statement that he would have a loss of income in 2004. Furtado testified that his attorney based this statement on Furtado's financial statement.

Furtado's financial situation is a complicated one. He was married until 1993 to Sandy Furtado. They were divorced, but reconciled and have lived together most of the time since. Although divorced, they apparently filed joint income tax returns until the bankruptcy filing when they were informed that such filings would be incorrect. Their accountant (who had been filing the incorrect returns) did a tax return for Furtado alone, but incorrectly included Sandy's income in the return. The return was never filed. This return, which was introduced into evidence, if filed, would have attributed $41,208 in income to Manuel.

According to Manuel and Sandy Furtado, she has been the sole income earner in the family since 2003. Sandy Furtado sells items (mainly jewelry) on Ebay.

Between them, Sandy and Manuel Furtado have six bank accounts. All of the accounts are in Manuel Furtado's name although the funds in the accounts are not necessarily his funds.

He moved to Pensacola before Sandy did, and, because he was in Florida first and they needed a bank account, he set up the Pen Air accounts in his name. The Furtados claimed they had the Rhode Island accounts solely in Manuel's name because his status as a long time customer of BankNewport afforded him privileges, such as reduced fees, that Sandy, as a newer customer, would not receive. Because the accounts were all in Manuel Furtado's name, he was able to check the account balances if he wanted to do so.

The parties have an account at Pen Air Federal Credit Union in the name of "Manuel Furtado d/b/a KMB International." KMB International was the name of a company Manuel operated pre-2003 that imported jewelry and did online sales. That account had $44.42 in it in December 2004. Furtado testified that the money in this account also came from Sandy's business. This account is the one in which Sandy Furtado puts her Pay Pal monies that she initially receives in the BankNewport KMB International account. The reason she maintains the Rhode Island account is that BankNewport does not charge fees for incoming wire transfers and Pen Air does.

There is a second account at Pen Air which is held in the name of "Manuel Furtado d/b/a OldPortBay." The money in this account comes from Sandy's business. If Sandy needs to pay foreign manufacturers, she transfers money to this account for the payments. On December 6, 2004, $28,500 was deposited to this account from Sandy's Pay Pal monies. On December 13, 2004, there was $30,365.23 in the account. On December 16, 2004, Manuel Furtado transferred $10,000 to a Scott Trade account in Sandy Furtado's name. On December 23, 2004, he transferred $20,000 to the same account. The account had $294.23 in it on December 31, 2004.

There is a third account at Pen Air entitled "Manuel Furtado d/b/a Wholesalers Inc."

That account was opened only for deposit of two checks incorrectly made payable to Sandy Furtado as "Wholesalers, Inc." The account has not been used for 2 ½ years.

The Furtados had three bank accounts at BankNewport (Rhode Island) as well, two of which were in Manuel Furtado's name. One account was titled "Manuel A. Furtado d/b/a Oldport." It had a balance of $1048.65 in December 2004. Furtado testified that this account was used to receive his Pay Pay receipts. In 2004 and 2005 some Pay Pal monies were received by the account even though Furtado testified he was not working in online sales then.

Another account was entitled "Manuel Furtado d/b/a KMB International." This account had $23,041.78 in it on December 13, 2004. The balance dipped to $8,796.51 by the end of December 2004. Sandy Furtado testified that she exclusively deposited her Pay Pal monies into this account. On cross examination Furtado stated that this was his account.[2]

There is a third BankNewport account that is only in Sandy Furtado's name. This account is used by her to receive wire transfers from overseas. She uses this account for bills and transfers money at times to the Pen Air KMB account.

Manuel Furtado testified that he has only a tenth grade education. He has run a landscaping business and conducted on line sales, all before August 2003. Since that time he has spent time preparing for hearings in the Rhode Island federal court suit and at home in Pensacola dealing with repair of hurricane damage to their home. He has held no job outside the home since about 2003. He is responsible for the day to day care of the Furtados three children and takes care of many household jobs. In 2003 he was assaulted and had surgery in Rhode Island.

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[2] The Court believes that Furtado was actually speaking about the OldPort account in BankNewport. It received his Pay Pal monies. It is clear from Sandy's testimony and the bank records that the account contained Sandy's Pay Pal monies.

The assault, the move and Hurricane Ivan caused him to assume household jobs. Sandy Furtado pays the family bills. Manuel signs checks and Sandy completes them. Manuel Furtado has never filled out a financial statement except the one at issue in this case.

Sandy Furtado established a Scott Trade account to invest in stocks in August 2003. As per their other accounts, this account was established in Manuel Furtado's name. On November 30, 2004, the account had $26,500 in it. On December 31, 2004, the account had $5,514 in it. However, when Sandy could not execute oral trades because she was not the account holder, she set up an account in her name alone. The money in this account was transferred to it by Manuel Furtado from the Pen Air Manuel Furtado d/b/a Oldportbay account.

LAW

> Section 523(a)(2)(B) provides that a debt is nondischargeable if it is
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> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—
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> * * * * *
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> (B) use of a statement in writing—
> (i) that is materially false;
> (ii) respecting the debtor'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

Eastern must prove each element of § 523(a)(2)(B) by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). If any one of these elements is not met, the debt is dischargeable. "Courts generally construe the statutory exceptions to discharge 'liberally in favor of the debtor,' and recognize that '[t]he reasons for denying a discharge . . . must be real and substantial, not merely technical and conjectural.'" *In re Tully*, 818 F.2d 106,110 (1st Cir. 1987) (quoting *Dilworth v. Boothe*, 69 F.2d 621, 624 (5th Cir. 1934)).

The Eleventh Circuit has espoused these principles in *Equitable Bank v. Miller*, 39 F.3d 301 (11th Cir. 1994).

The parties do not seem to dispute that the financial statement and affidavit concerning fraudulent transfers were statements in writing about Furtado's financial condition. Therefore, factor two is established. They do dispute whether the financial statement and affidavit were used to obtain "property," i.e., the release of all claims of more than $125,000 against Furtado. *Shaw Steel, Inc. v. Morris (In re Morris)*, 230 B.R. 352, 358 (Bankr. N.D. Ill. 1999). They also disagree as to the falsity of the financial statements, Furtado's intent to deceive and Eastern's reasonable reliance on the documents. The Court will discuss each issue separately.

RELEASE OF CLAIM AS TRANSFER OF "PROPERTY"

The *Morris* case cited above holds that the release of legal claims constitutes an act of obtaining property under § 523(a)(2)(B). *Id.* The Court concludes this is a proper reading of the law. However, Debtor asserts that the facts of this case do not constitute such a release. Debtor's view of the facts is that Eastern agreed to settle the case in one transaction for $125,000 with satisfaction by payment of $7,500. According to Furtado, even if his financial statement was false, the settlement agreement stated that Eastern would receive only $125,000. Therefore, Eastern released no claim in reliance on Furtado's financial statement. The maximum amount Eastern would receive was $125,000 if the financial statement was false.

Upon review of the evidence, the Court concludes that the settlement in this case was not binding until December 21, 2004, when the settlement agreement was signed. That date was purposely after the receipt of Furtado's financial statements by Eastern. Both the $125,000 and $7,500 settlement amounts agreed to on December 9, 2004 were contingent upon receipt of the

financial statements. Contrary to Furtado's argument, the facts are similar to those in the Morris case and the law set forth in the case applies. *Id.* Therefore, the release of claims was obtained through use of the financial statements as required by § 523(a)(2)(B).

FALSITY OF THE WRITTEN STATEMENTS

If Furtado and his wife are believed, he, at most, failed to state that he had $1,048.65 in an account in BankNewport under the d/b/a of Oldport. If the Furtados are not believed, then Furtado failed to disclose very sizeable sums-over $50,000- that were his property as of December 16-17, 2004. The Court viewed the Furtados and listened to their testimony. They were very credible witnesses. The way they conduct business is very confusing and convoluted; however, the reasons for the numerous accounts were very believable. Mr. Furtado's name being the only one on the accounts is somewhat unusual, but the system works for the Furtados because Sandy does her internet sales work from home. Therefore, the lack of any account in her name has not caused the family any difficulty.

There are three reasons why it could be argued the Furtados were not truthful about ownership of the funds in the bank accounts. First, Manuel. Furtado stated that the KMB International account at BankNewport was his. The account had substantial sums in it. However, the Court concluded that Mr. Furtado was mistaken as to which account was being discussed. Ms. Furtado, who was a very knowledgeable and organized witness, testified that the account was used for receipt of her Pay Pal monies. This statement fits with the information about her business success and the amounts being received in the account. Second, Mr. Furtado also testified that he was not doing any internet sales at this time yet the account he termed his PayPal account at BankNewport did show some activity. The account was however receiving

only minimal deposits. Third, Mr. Furtado was in the same business as Ms. Furtado is now. Since the business of both is/was conducted from their home, there is no way to prove that, in fact, Mr. Furtado was not the one engaging in the business. After observing the parties and hearing them testify about the business, the Court concludes that Ms. Furtado is the one conducting business now and was the one conducting business in December 2004.

However, regardless of the Court's view as to the truthfulness of the Furtados' testimony, Florida law does not allow them to conveniently proclaim equitable ownership of the accounts in Sandy when Manuel Furtado is the sole listed owner of the account, especially since Manuel and Sandy are not married to each other.

Florida law does not recognize common law marriages. Fla. St. 741.211 (2006). Therefore, Sandy and Manuel are not able to claim any joint rights in funds in the accounts as husband and wife. The Eleventh Circuit has held that:

> funds in a debtor's account are generally presumed to be the debtor's property. *See Nat'l Bank of Ga. v. Kennesaw Life & Accident Ins. Co.*, 800 F.2d 1542, 1545 (11th Cir. 1986) (recognizing that in most states the name or title to a bank account creates a presumption of ownership in the titleholder).
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> *Westgate Vacation Villas, Ltd. v. Tabas (In re Int'l Pharmacy & Discount II, Inc.)*, 443 F.3d 767 (11th Cir. 2005)

There is no question Manuel Furtado held legal title to the funds. Sandy Furtado, under Florida law, had no right to withdraw the funds in the accounts. Fla. St. 655.83 (2006) (stating "Notice to any institution of an adverse claim to a deposit . . . account standing on its books to the credit of any person does not obligate the institution to recognize the adverse claimant unless the adverse claimant also either [obtains a court order or a bond]").

There is case law in Florida that allows a party to establish equitable ownership of an

account in limited instances. The *Quinn v. Phipps* case, 93 Fla. 820, 113 So. 419, 422 (Fla. 1927) states:

> From an examination of the textbooks and many English and American cases touching this question the law seems well settled that a court of equity will raise a constructive trust and compel restoration where one, through actual fraud, abuse of confidence reposed and accepted, or through other questionable means gains something for himself which in equity and good conscience he should not be permitted to hold. . . . This court has repeatedly announced the rule that a constructive trust my be proven by parol testimony, but that the evidence to establish such a trust must be so clear, strong, and unequivocal as to remove from the mind of the chancellor every reasonable doubt as to the existence of the trust.

The question in this case is whether that "clear, strong, unequivocal" proof that removes "every reasonable doubt" has been met. *Id.* According to case law in other jurisdictions, relevant factors include facts surrounding the creation and history of the account[3], the source of the funds[4], the intent of the depositor[5], and the nature of the bank's transactions with the parties.[6] The Furtados established that the money in the bank accounts was equitably Sandy's money. Their testimony was credible.

However, the Court concludes that since the accounts are legally Manuel Furtado's, the Court must view the truth or falsity of the financial statements of Furtado based on that fact. "Material falsity is an important or substantial untruth." *Morris* at p.358. To prove material falsity a creditor must prove that the untrue statement "paints a substantially untruthful picture . . . by misrepresenting information of the type which would normally affect the decision to grant

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[3] *Farrahkan v. First Pacific Bank of Chicago (Matter of Estate of Muhammad),* 463 N.E.2d 732 (Ill. App. 1994).

[4] *Id.*

[5] *Id.*

[6] *Schoenfelder v. Arizona Bank*, 796 P.2d 881 (Ariz. 1990).

credit." *Id.* (quoting *Banner Oil Co. v. Bryson (In re Bryson)*, 187 B.R. 962 (Bankr. N.D. Ill. 1995). If Sandy was the true equitable owner of the money in the accounts, Manuel Furtado should have disclosed the accounts and stated that Sandy was the true owner of the funds. Otherwise, Furtado paints an untrue picture of his financial situation. He cannot ignore the fact that the accounts are in his name. Another test sometimes employed by courts requires a creditor to prove that "'but for' the material misrepresentations, he would not have extended . . . property." *Id.* In this case, Furtado's failure to list over $50,000 in cash assets was material. These liquid assets may have changed Eastern's settlement willingness and/or what proposal it made or accepted. If Furtado had disclosed the accounts and stated that they belonged to Sandy, Eastern could have investigated that statement. Without the disclosure, Furtado's complete financial state is not shown. The Court concludes the financial statement was materially false.

INTENT TO DECEIVE

Proof of intent to deceive is almost always circumstantial. Not many debtors are likely to admit at trial that they intended to deceive a creditor. "A party can prove intent to deceive either through direct evidence or by creating an inference from a misrepresentation which the debtor knows or should know will induce another to act. *Id.* at p. 360. (cites omitted) "A debtor's intent to deceive may also be demonstrated by proving reckless indifference to, or reckless disregard for, the accuracy of the information in the financial statement." *Phillips v. Napier (In re Napier)*, 205 B.R. 900, 907 (Bankr. N.D. Ill. 1997); *Equitable Bank v. Miller (In re Miller)*, 39 F.3d 301, 305 (11th Cir. 1994); *Citizens Bank of Washington County v. Wright (In re Wright)*, 299 B.R. 648, 660-61 (Bankr. M.D. Ga. 2003); *In re Albanese*, 96 B.R. 376, 380 (Bankr. M.D. Fla. 1989).

In this case, the Court concludes that Furtado did not actively intend to deceive Eastern. He filled out the cash portion of the financial statement based upon discussions with his counsel. The form was ambiguous, at least to Furtado and his attorney, in its request for "Cash on Hand and In Banks (personal only). However, Furtado did testify that he knew Eastern requested these statements under oath and wanted them before completing the settlement. Yet, he did not check any account balances and signed a fraudulent transfer affidavit without even understanding what a fraudulent transfer was. These actions evidence at least reckless indifference or disregard for the accuracy of the statements. A person cannot blindly sign what an attorney gives them without any inquiry, particularly when the documents are signed under penalty of perjury. The "pure heart, empty head" defense does not work. *See Taunt v. Wojtala (In re Wojtala)*, 113 B.R. 332, 338 (Bankr. E.D. Mich. 1990) (holding that, in an action to deny a debtor's discharge, a debtor cannot rely solely on an advise of counsel defense to establish lack of requisite intent to deceive). Therefore, the Court concludes that Manuel Furtado acted with an intent to deceive Eastern.

REASONABLE RELIANCE

Section 523(a)(2)(B) requires that a creditor reasonably rely on the debtor's false written financial statement for the debtor's debt to be nondischargeable. The U.S. Supreme Court has held that reasonable reliance is an objective standard that requires "application of a community standard of conduct to all cases" and is not concerned with the "qualities and characteristics of the particular plaintiff." *Field v. Mans*, 516 U.S. 59, 70-71 (1995) (RESTATEMENT (SECOND) OF TORTS (1976) § 545A, Comment *b*.). *See In re Vann*, 67 F.3d 277, 280 (11th Cir. 1995). The Eleventh Circuit has also held that § 523(a)(2)(B) also requires that the creditor actually rely on

the false financial statement. The reliance cannot be theoretical. *Id.* at p. 281.

In this case, Eastern proved that it did not enter into the actual settlement with Furtado until he had provided at least the financial statement on December 17, 2004.[7] Although the parties announced a settlement on December 9, 2004 to the magistrate judge, the Court concludes that the settlement announced was contingent on the financial information. The magistrate judge did not eliminate the pretrial deadlines for the federal suit, he merely delayed them to December 17. This indicates to the Court that the matter was not fully settled until the financial information was presented. That fact, coupled with the wording of the settlement agreement, indicating that the agreement, signed on December 21, 2004, was conditioned upon the financial affidavits, provides a preponderance of the evidence that the entire agreement was only a contingent one until after December 17, 2004 and receipt of the Furtado financial statements. Also, Eastern's counsel testified that Eastern relied on the statements in accepting the $125,000 consent judgment and $7,500 payment terms. Eastern's counsel's email to his client affirms this position.

Since the settlement was only entered into upon receipt of the financial statements, and the evidence showed that Eastern waited for the statements and agreed to the amounts set forth based upon them, Eastern proved actual reliance on the statements. The only remaining issue is whether Eastern reasonably relied on the statements. According to the Eleventh Circuit, a court can determine reasonableness, at least in part by evaluating

whether there had been previous business dealings with the debtor that gave rise

[7] Manuel Furtado testified that he signed the fraudulent transfer affidavit at home in Pensacola and mailed it back to his counsel. It was not ever clarified if that affidavit was in Eastern's hands on December 17, 2004.

> to a relationship of trust; whether there were any 'red flags' that would have alerted an ordinarily prudent lender to the possibility that the representations relied upon were not accurate; and whether even minimal investigation would have revealed the inaccuracy of the debtor's representations.
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> *Vann* at p. 280-81 (citing *Coston v. Bank of Malvern (In re Coston)*, 991 F.2d 257, 261 (5th Cir. 1993) (en banc) (per curiam)).

The Court concludes that Eastern did reasonably rely on Furtado's statements. Eastern had no reason to believe that the statements would be inaccurate. Checking the truth of Furtado's statements would have involved more than checking public records. Access to bank account and brokerage accounts would have been required.

THEREFORE IT IS ORDERED that plaintiff, Eastern Jewelry/JDL Design is awarded a judgment against Manuel Antonio Furtado, Jr., declaring that the debt of $125,000 owed to it is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(B). A separate judgment in accordance with this order will be entered pursuant to Fed. R. Bankr. P. 9021.

Dated: July 26, 2006

Margaret A. Mahoney

MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE