

11 U.S.C. § 523(a)(2)(B)  
Fed. R. Civ. P. 34  
Attorney Fees

In re Lang, Case No. 389-30567-P07  
United Ass'n. N.W. Fed. C.U. v. Lang, Adv. No. 89-3205  
Civ. No. 90-923-FR

12/21/90 Judge Frye affirming Judge Luckey's ruling

The elements of a nondischargeable debt under 11 U.S.C. § 523(a)(2)(B) are: (1) a statement in writing; (2) made with intent to deceive; (3) that is materially false; (4) respecting the debtor's financial condition; and (5) on which the creditor reasonably relied. The bankruptcy judge, in finding the debt nondischargeable, made the requisite findings. Those findings were not clearly erroneous.

The bankruptcy judge's refusal to compel production of a personnel file for impeachment purposes was not prejudicial error.

P90-43(7)



1 FRYE, Judge:

2 The matter before the court is the defendants' appeal  
3 from the judgment of the United States Bankruptcy Court for  
4 the District of Oregon.

5 BACKGROUND

6 Defendants, E. Matthew Lang and Debora Ann Lang, jointly  
7 filed a petition in bankruptcy under Chapter 7 on February 10,  
8 1989. Their indebtedness includes a loan from the United  
9 Association N.W. Federal Credit Union (the Credit Union), of  
10 which the Langs are members. The bankruptcy court found that  
11 the loan from the Credit Union to the Langs is not discharge-  
12 able in bankruptcy because of the intentional misrepresenta-  
13 tions made by the Langs on the loan application they submitted  
14 to the Credit Union. The Langs contend that the bankruptcy  
15 court erred when it denied their motion for discovery at a  
16 preliminary hearing.

17 FACTS

18 In October, 1987, three months before the Langs applied  
19 to the Credit Union for a loan, the Langs applied for an unse-  
20 cured loan from Kaiperm N.W. Federal Credit Union (Kaiperm).  
21 On the loan application submitted to Kaiperm, the Langs listed  
22 several outstanding loans. Kaiperm denied the application  
23 of the Langs for a loan because of their indebtedness. In  
24 January, 1988, the Langs applied for a loan from the Credit  
25 Union. The loan application of the Credit Union requires  
26 a listing of all debts of the applicants, and requires an

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1 affirmation of the truthfulness of the disclosure. The Langs  
2 failed to list six of their debts, totaling nearly \$175,000,  
3 although the Langs had listed these debts in their loan appli-  
4 cation to Kaiperm three months earlier.

5 The Credit Union does not make unsecured loans in excess  
6 of \$2,500. The principal factor that the Credit Union uses  
7 to approve any loan application, secured or unsecured, is the  
8 ability of the applicant to repay the loan, which is deter-  
9 mined by the debt-to-income ratio of the applicant. Based  
10 on the information in the application submitted by the Langs,  
11 the Credit Union made a \$7,716.84 loan to them, secured by a  
12 second mortgage on their residence. Subsequently, the Credit  
13 Union lost its security interest in the residence.

#### 14 CONTENTIONS OF THE PARTIES

15 The Langs contend that the bankruptcy court made no  
16 affirmative finding regarding the use of a statement in writ-  
17 ing for the extension of credit, and that the extension of  
18 credit was not obtained by the use of a statement in writing  
19 because their application was for an unsecured loan and did  
20 not relate to the secured loan which was ultimately issued.

21 The Langs contend that the bankruptcy court erred in  
22 denying their motion to compel discovery of the personnel  
23 file of the loan officer who approved their loan because  
24 1) the personnel file may have provided information regarding  
25 the reliability of the work of the loan officer and may have  
26 been probative of whether the Credit Union was reasonable in

1 relying upon the judgment of the loan officer; and 2) the  
2 evidence related to the credibility of the loan officer may  
3 have been useful for impeachment of his testimony, which was  
4 a major component of the Credit Union's case-in-chief.

5 Finally, the Langs contend that the position of the  
6 Credit Union is not substantially justified, and therefore  
7 they are entitled to an award of attorney fees.

8 The Credit Union argues that the loan is not discharge-  
9 able in bankruptcy because 1) the Langs knowingly and inten-  
10 tionally submitted a materially false statement of their  
11 financial condition upon which the Credit Union reasonably  
12 relied to make the loan; 2) the court made the findings neces-  
13 sary to support its conclusions; 3) the Langs have forfeited  
14 any right to appeal the denial of their motion to compel  
15 because they failed to protect that right at trial; and  
16 4) there is no justification or authority to award attorney  
17 fees to the Langs.

#### 18 APPLICABLE STANDARD

19 The district court acts as an appellate court when it  
20 reviews a bankruptcy court judgment. In re Daniels-Head &  
21 Assocs., 819 F.2d 914, 918 (9th Cir. 1987). The district  
22 court reviews findings of fact for clear error and reviews  
23 conclusions of law de novo. Id.

24 A finding is "clearly erroneous" when the reviewing  
25 court, after reviewing the entire evidence, is "left with  
26 the definite and firm conviction that a mistake has been

1 committed," even though there is evidence to support the  
2 finding. United States v. United States Gypsum Co., 333  
3 U.S. 364, 395 (1948). A reviewing court should give greater  
4 deference to the trial court's findings if they are based on  
5 the credibility of witnesses; however, the reviewing court may  
6 find clear error if documents or objective evidence contradict  
7 the witness' story; or if the story itself is so internally  
8 inconsistent or implausible on its face that a reasonable  
9 factfinder would not credit it. Anderson v. City of Bessemer  
10 City, N.C., 470 U.S. 564, 575 (1985).

#### 11 ANALYSIS

##### 12 Findings of the Bankruptcy Court

13 11 U.S.C. § 523(a)(2) provides that a debt is not dis-  
14 chargeable to the extent it was obtained by:

- 15 (B) use of a statement in writing --  
16 (i) that is materially false;  
17 (ii) respecting the debtor's . . . financial  
18 condition;  
19 (iii) on which the creditor . . . reasonably  
20 relied; and  
(iv) that the debtor . . . made . . . with  
intent to deceive.

21 In his oral findings, the bankruptcy judge stated:

22 [T]he Court does find that the application was  
23 false, and that the debtor knew that he had not  
24 listed all of his obligations, so therefore it is  
25 knowingly false. It was made with the intention  
that the application be the basis of the extension  
of credit by the creditor, and with the intent that  
it be relied upon.

26 Tr. 134.

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1 The findings of the bankruptcy court "must stand or fall  
2 depending on whether they are supported by evidence." United  
3 States v. Crescent Amusement Co., 323 U.S. 173, 185 (1944).

4 The record supports the bankruptcy judge's findings  
5 that the initial loan application was made with the intention  
6 that it be relied on in extending the issued loan; that the  
7 statement of the Langs regarding their financial condition  
8 was materially false because the Credit Union would not have  
9 issued the loan if the Langs had truthfully stated their  
10 financial condition; that the Credit Union necessarily and  
11 reasonably relied upon the statement of the Langs regarding  
12 their financial condition; and that the Langs misstated their  
13 financial condition on the loan application knowingly. There-  
14 fore, the findings required by 11 U.S.C. § 523(a) (2)(B) are  
15 satisfied, and the bankruptcy court's conclusion of law is  
16 affirmed.

17 Motion to Compel Discovery

18 "The denial of a motion under Rule 34 of the Federal  
19 Rules of Civil Procedure is in large measure discretionary  
20 with the trial judge and will not be disturbed on appeal  
21 unless the action was improvidently taken or affected the  
22 substantial rights of the parties." Bank of Am. Nat'l Trust  
23 & Sav. Ass'n v. Hayden, 231 F.2d 595, 606 (9th Cir. 1956).

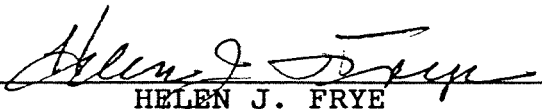
24 The court finds that the bankruptcy court did not pre-  
25 judicially err by denying the discovery motion of the Langs  
26 as overbroad.

1 Finally, there is no authority to grant the request for  
2 attorney fees of the Langs.

3 CONCLUSION

4 The defendants' appeal from the judgment of the United  
5 States Bankruptcy Court for the District of Oregon is denied  
6 in its entirety.

7 DATED this 21 day of December, 1990.

8   
9 HELEN J. FRYE  
10 United States District Judge