

§ 101(7)
§ 523(a)(2)(A)
§ 523(a)(2)(B)
§ 523(d)

FCC National Bank v. Gerald G. Wilson, et al., Adversary No. 89-3253
In re Gerald G. & Teresa L. Wilson, Case No. 389-32170-ELP7

2/13/90

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Unpublished

In seeking a determination that a credit card debt was nondischargeable, creditor bank alleged debtors obtained credit by fraud and by the use of a false financial statement.

At the time the application was made, the debtors operated a small business and had a reasonable expectation of paying their bills. The court found no evidence that the application for a credit card was made with the intent to defraud. In addition, the application form, which was not a true financial statement and therefore was not as complete, did not contain false information.

Because the debt was not a consumer debt as defined by § 101(7), the court denied the debtors' request for attorney fees pursuant to § 523(d).

P90-8(4)

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re:)	Case No. 389-32170-P7
)	
GERALD G. WILSON and)	
TERESA L. WILSON,)	
)	
Debtors.)	
_____)	
)	
FCC NATIONAL BANK, FIRST CARD,)	Adversary No. 89-3253
)	
Plaintiff,)	
)	
v.)	MEMORANDUM OPINION
)	
GERALD G. WILSON and)	
TERESA L. WILSON,)	
)	
Defendants.)	
_____)	

Defendants made a form application to plaintiff for a charge card. Plaintiff issued the charge card in February, 1989 with a credit limit of \$2,000. Defendants in March, 1989 made charges with the card totalling \$1,984.08. Plaintiff seeks judgment for the \$1,984.08 plus interest, attorney fees and costs and determination that the obligation is nondischargeable.

Plaintiff alleges that the credit was obtained by fraud in violation of 11 U.S.C. § 523(a)(2)(A) and by use of a false financial statement in writing in violation of 11 U.S.C. § 523(a)(2)(B).

The defendants seek determination that the debt is dischargeable and for attorney fees and costs.

Testimony of the parties and the records convinces the court that the information on the application was supplied with the reasonable belief on the part of the defendants that they were required to and did supply credit references, and was not knowingly made falsely with intent to defraud.

At the time the application was made the testimony showed that the defendants were self-employed driver-operators of a small trucking business, and although they were marginally able to keep their credit record unstained, they had a business generating income and reasonable expectation of paying their bills. A large truck repair bill some months previous to the application had strained their finances, but not to the point where the optimism of these laboring people would constitute the application being made with the intent to incur obligations that they would not or could not pay, or cause it to be made with sufficiently reckless disregard of a financial position which would prevent repayment. The charges were made on a later trucking trip on which a costly breakdown occurred, after the application for and issuance of the card. The successive truck breakdowns caused loss of the truck and the filing of the debtors' bankruptcy petition May 22, 1989.

The court cannot find the elements of actual fraud present in the application for the card made by the debtors.

The court further finds that the application submitted is not false in the submitted information. It was used by the plaintiffs' employees to seek a credit report (from what agency the plaintiff could provide no information at the trial) which from plaintiffs' witnesses' testimony showed no adverse information.

The application did not list all the debtors' obligations. It is not a true financial statement. The form does not seek a listing of assets, nor a balance sheet. From the record herein, the court cannot factually find that the application, which required the debtors' to sign below advice that credit reports could be sought was submitted as a document false, known to be false, and given with the intent that the plaintiff reasonably rely thereon to plaintiff's detriment.

The failure to pay was more the result of the truck breakdowns after the application than of the reliance, if any reasonable reliance there was, on the failure of the application, (the spaces of which were filled) to provide a list of all the debtors' debts.

This case is one in which the debtors should be entitled to the fresh start contemplated for burdened debtors who have not been shown to have engaged in proscribed conduct or dishonesty, with the burden on the plaintiff to prove such conduct not here met. In these § 523(a)(2)(A) and (B) cases the questions presented are primarily factual to divine the intent of the debtors. As such, recitation of authority is of little benefit, if any, and superfluous.

Defendants seek attorney fees. This was an application for and use of a credit card and almost wholly for business purposes.

Section 523(d) directs entry of judgment for the debtors for attorney fees if the debt is a consumer debt and the debt is discharged. "Consumer debt" is defined in 11 U.S.C. § 101(7). It means debt incurred by an individual primarily for a personal, family or household

purpose. In this proceeding, the debts were primarily incurred for business debts of applicants whose application showed them to be operating a trucking business.

Under the facts of this case, the court finds and concludes, therefore, that each party should bear his, or its own attorney fees and costs in this nondischargeability proceeding.

This Memorandum Opinion contains the court's Findings of Fact and Conclusions of Law and pursuant to Bankruptcy Rule 7052 they will not be separately stated.

Separate judgment consistent herein will be entered.

DATED this _____ day of February, 1990.

C. E. LUCKEY
Bankruptcy Judge