

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No Bky: 03-37857

Adv Pro: 04-3068

Alan and Debra Sheldon  
306 8<sup>th</sup> Avenue SW  
Pipestone MN 56164

CHAPTER 7

Bank One Delaware, N.A.,

Plaintiff,

vs.

Debra Ann Sheldon,

Defendant.

**MEMORANDUM IN OPPOSITION OF  
OBJECTION TO DISCHARGE OF DEBT**

Debra Ann Sheldon, the Defendant in the above action and a debtor in the bankruptcy filing, by Christopher M. Kennedy, Kennedy & Kennedy, 99 Navaho Avenue, suite 104, Mankato MN 56002, 507/345-4582, submits this memorandum in opposition of the motion the Plaintiff seeking to except it's debt from discharge.

**FACTS**

Bank One Delaware, N.A. f/k/a First USA is a banking corporation that is in the business of providing credit. Debra Sheldon is an individual. She and her husband filed for protection under 11 United States Code Chapter on November 20, 2003. This bankruptcy filing was voluntary. Ms. Sheldon received a solicitation from Bank One offering her additional credit. The stated purpose of the solicitation was to offer, Ms. Sheldon lower interest, and to encourage her to transfer her other credit card balances. Ms. Sheldon accepted the offer of the Plaintiff. She accepted \$14,500.00. She used this money to pay \$11,000.00 to MBNA; \$1,015.57 to First National Bank; \$420.00; \$300.00 to Discover Card; and \$600.00 to Capital One. Ms. Sheldon made the balance transfers in an attempt to lower the interest and with the belief that the lower payment would allow her to pay off all of her and her husband's debts. Ms. Sheldon made payments of \$315.00 on July 19, 2003 and \$25.00 on August 13, 2003. Ms. Sheldon found after several months that this only delayed the inevitable. She and her husband then met with a bankruptcy attorney and determined that they would not be able to pay off the debt that they had accumulated.

It is also important to note that Ms. Sheldon has a long-standing relationship with the Plaintiff. She has also been having financial difficulties for a long period of time. It was not uncommon for her to use one card to pay the balance of another card in an effort to lower her interest and payments. The Plaintiff's own records show that she made a payment \$14,900.00 on her account on July 8, 2003. During this entire period both Mr. Sheldon and her husband were employed.

## LAW AND LEGAL ARGUMENT

The Plaintiff has brought this action to request that the Court exempt its debt from Discharge pursuant to 11 United States Code Section 523 (a)(2)(A). The text of that section prevents the discharge of debts that are incurred by false pretenses, false representations or actual fraud. The facts of this case show that the defendant was experiencing financial problems and was attempting to take actions to cure those problems. It is clear that those actions failed. It may be even argued that the chance of success was limited. What cannot be argued is that the defendant committed these acts with the intent to defraud the Plaintiff. For the debt to be discharged the Plaintiff must show that the defendant knew her representation to the pay the account was false and that the Plaintiff relied on those representations. *In Re Richards*, 196 B.R. 481, Bankr E.D. Ark 1996.

In order for the debt to be nondischargeable under 11 USC 523 (a)(2)(A), the court must find that the debtor knew that the representations were false at the time that they were made. "This standard is derived from the requirement that only actual fraud, and not fraud implied in law, satisfies Section 11 USC 523 (a)(2)(A). *In re Gramolino*, 183 B.R. 565, Bankr E.D. MO 1995. The United States Supreme Court clarified the standard in *Field v. Mans*, 116 S Ct 437 (1995) stating that the standard is justifiable reliance not reasonable reliance on the part of the creditor. The elements of such a claim must show that the debtor made a representation; that at the time that the debtor made the representation that she knew it to be false; the representation was made with the intent and purpose to deceive the creditor; the creditor relied on the representation; the creditor sustaining the alleged loss as a result of the false representation being made. *AT&T Universal Card Services v. Mercer*, 211 F3rd 214,216 (5<sup>th</sup> Cir 2000). The Plaintiff cannot prove any of the elements of this action. The facts show that the Defendant accepted an offer of credit from the Plaintiff. She did not make any representation to the Plaintiff to induce it to offer the additional loan. The Plaintiff induced the Defendant to take out the loan by offering a lower interest rate.

All exceptions to discharge are to be construed narrowly. The Creditor has the burden of proof on these issues and that a preponderance of evidence is the standard. *Kawaauhau v. Geiger*, 523 U.S.57, 118 S. Ct. 188 974, 140 L. Ed 2d 90 (1998).

## CONCLUSION

The debtor and her husband filed for Protection of 11 United States Code Chapter 7. At the time that they filed their petition and schedules they owed over \$90,000.00 in unsecured debt. They had experienced financial problems for several years and had attempted to avoid bankruptcy. In order to do this they had used credit cards with lower interest rates to pay off other accounts. They made a payment to Bank One in July of 2003 paying off the account. BankOne later that month offered Ms. Sheldon credit card checks with a solicitation offering lower interest rates. Ms. Sheldon reviewed the offer and determined that this would reduce the amount her and her husband would have to pay and would hopefully help rectify the situation that they were in. She took BankOne up on its offer of credit. She did not solicit the offer nor did she make any statement regarding her financial condition. She and her husband went on for a few months. They finally came to the realization that they were not making headway with their debts. It was only at this time, did they consider their other legal options. At the time the debt was incurred, Ms. Sheldon had every intent to re-pay the debt. The Plaintiff has not shown any evidence to the contrary. Therefore the action of the

Plaintiff should be dismissed.

Respectfully submitted,

Dated: August 27, 2004

Signed: /e/ Christopher M. Kennedy  
Attorney Number: 0258854  
99 Navaho Avenue Suite 104  
PO Box 3223  
Mankato, MN 56002  
Telephone: 507/345-4582