

After trial, court declined to hold debt non-dischargeable under 11 U.S.C. § 523(a)(2)(B) when former romantic partner of debtor could not prove that (i) the debtor made a materially false representation; (ii) the debtor intended to deceive the romantic partner; or (iii) the romantic partner reasonably relied on any materially false representation.

***Jones v. Owens (In re Owens)*, 2016 Bankr. Lexis 1094 (Bankr. D. Md. April 6, 2016), (Gordon, J.).**

Summary by Justin P. Fasano, McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A.

In this case, the Bankruptcy Court decided, after trial, that a loan extended to the debtor by her romantic partner was dischargeable despite the romantic partner's allegations of fraud. During the debtor's relationship with her romantic partner, the debtor revealed that her bank account had been garnished and only had nine dollars left in it, that she was struggling with significant past-due debt, and that she was severely emotionally stressed by her financial difficulties.

The debtor asked for the romantic partner's help. The debtor disclosed to the romantic partner, via e-mail, numerous financial difficulties, numerous unpaid debts, that her monthly expenses far exceeded her monthly income, and that she had a credit score of only 2. In spite of these troubles, the romantic partner agreed to pay certain of the debtor's debts. After these payments were made, the debtor disclosed additional debts. Not dissuaded, the romantic partner continued to pay the debtor's debts, and signed a lease for the debtor's benefit. While the debtor agreed to pay the lease payments, she soon fell behind. Notwithstanding these warning signs, the romantic partner paid \$3,500 toward a down payment for a BMW vehicle for the debtor.

Eventually, the romantic relationship ended. At the end of the relationship, the debtor owed the romantic partner approximately \$40,000. They discussed payment terms but were unable to come to an agreement. The romantic partner then sued the debtor in the Circuit Court for Baltimore City, and the debtor filed for Chapter 13 bankruptcy. The romantic partner thereafter filed a complaint to hold the debtor's debts to her non-dischargeable for fraud under section 523(a)(2)(B) of the Bankruptcy Code.

Section 523(a)(2)(B) of the Bankruptcy Code excepts from discharge debts obtained by fraudulent written statements of the debtor's financial condition. In order to satisfy section 523(a)(2)(B), a plaintiff must prove that the debtor made a written statement concerning her financial condition that was materially false, with the intent to deceive, and that the plaintiff reasonably relied on such statement. The crux of the romantic partner's case was that the debtor failed to list her student loans in the e-mails listing her debts. The debtor testified that she did not list the student loans because they were in deferment and not a source of immediate distress. The romantic partner testified she would not have lent the debtor any money if she had known about the student loans.

The court held that the debt was dischargeable because the plaintiff could not prove the existence of a materially false statement, could not prove intent to deceive, and could not prove reasonable reliance. First, the Court found the failure to list the student loans was not materially false. A materially false statement is one that, "paints a substantially untruthful picture of a financial condition by misrepresenting information of the type which would normally affect the decision to grant credit." In this case, the debtor provided a lengthy narrative of her financial troubles in

which the student loans would have only been a small part of her total debts. Second, the Court found that the student loans were not omitted from the debtor's e-mail with intent to deceive. The evidence showed that the debtor only intended to list debts that were past due, that had to be immediately repaid, and that were a source of stress. The student loans were not a current problem and were therefore not listed. Finally, the romantic partner could not prove reasonable reliance. The romantic partner did not rely on the truthfulness of the e-mails in lending money; rather, she used the information to relieve the debtor's stress. The student loans were not a source of stress. The romantic partner was not deterred by the debtor's increase in debts between her first and second e-mails, or by her failure to pay rent on the lease that the romantic partner signed. The evidence showed that the romantic partner would not have been deterred by the existence of the student loans. The loans were made because of a romantic relationship and not based on the debtor's financial condition.

For the foregoing reasons, the debts to the romantic partner were discharged.