

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re,

Whitney Michelle Goodale,

Debtor(s).

Robert Deaton,

Plaintiff(s),

v.

Whitney Michelle Goodale,

Defendant(s).

C/A No. 18-06517-HB

Adv. Pro. No. 19-80016-HB

Chapter 7

ORDER

THIS MATTER came before the Court for trial on August 6, 2019, on the Complaint filed by Robert Deaton, alleging the debt owed to him by Debtor Whitney Michelle Goodale should be excepted from her discharge.¹ Goodale and Deaton both testified and submitted documentary evidence. After careful consideration, the Court makes the following findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52,² and finds that the debt owed to Deaton is dischargeable.

FINDINGS OF FACT

Goodale previously operated a gift shop consignment business The Breezy Willow, LLC. On February 9, 2018, the parties entered a written agreement in which Deaton agreed to purchase a 20% ownership interest in business in exchange for \$15,000.00. The agreement

¹ The Court received correspondence from Deaton on March 4, 2019, which was interpreted and docketed as an adversary complaint pursuant to Fed. R. Bankr. P. 7001(6).

² Made applicable to this adversary proceeding pursuant to Fed. R. Bankr. P. 7052.

provided that amended organizational documents to reflect Deaton's ownership would be completed by an attorney and signed by the parties. After the agreement was signed, Deaton delivered \$15,000.00 to Goodale, which he asserts was to be held in escrow until the organizational documents could be completed. However, this was not reflected in the parties' agreement.

No documents amending the corporate structure were prepared and in May 2018, Deaton decided he no longer wanted an ownership interest in the business and requested a refund of the \$15,000.00. Goodale agreed to this request but did not have the funds available at that time. On May 10, 2018, Goodale signed a handwritten note that stated:

I, Whitney Goodale, majority owner of the Breezy Willow, LLC located at 1636 Ebenezer Road, plan a repayment of \$15,000.00 to Robert Deaton by July 31, 2018.

This is an official release of ownership of Robert Deaton's share of The Breezy Willow.

On the same day, Deaton drafted promissory note that both parties signed. The note provides that Goodale agreed to make monthly payments on the \$15,000.00 owed, and the entire balance would be paid by August 2, 2018. Only two payments of \$500.00 each were made before The Breezy Willow, LLC ceased operations in September 2018.

On December 28, 2018, Goodale filed a voluntary petition for Chapter 7 bankruptcy relief. Goodale's schedules admit she owes Deaton \$14,000.00 and describe the debt as "Business Debt."

DISCUSSION AND CONCLUSIONS OF LAW

Deaton's Complaint does not cite any legal authority to support his request that the debt is nondischargeable. However, given the allegations against Goodale and a review of 11 U.S.C. § 523, the Court finds it appropriate to analyze Deaton's request under § 523(a)(2)(A).

“One of the central purposes of the Bankruptcy Code is to provide the debtor with a ‘fresh start.’” *In re Thoennes*, 536 B.R. 680, 694 (Bankr. D.S.C. 2015) (citing *Grogan v. Garner*, 498 U.S. 279, 286, 111 S. Ct. 654, 659, 112 L.Ed.2d 755 (1991)). “In light of this, the Supreme Court has adopted a rule of construction that requires exceptions to discharge be interpreted narrowly.” *Id.* (citing *Kawaauhau v. Geiger*, 523 U.S. 57, 62, 118 S. Ct. 974, 140 L.Ed.2d 90 (1998)). “As the party asserting a debt owed to it is nondischargeable, Plaintiff bears the burden of proof, which is by a preponderance of the evidence.” *In re Warren*, 507 B.R. 862, 873 (Bankr. D.S.C. 2013) (citing *Grogan*, 498 U.S. at 291, 111 S. Ct. 654).

Under § 523(a)(2)(A), debts “for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition” are not dischargeable.” “The failure to perform a mere promise is not sufficient to make a debt nondischargeable, even if there is no excuse for the subsequent breach.” 4 *Collier on Bankruptcy* ¶ 523.08 (16th ed. 2019).

The Supreme Court has distinguished between ‘false pretenses and representations’ and ‘actual fraud’ as provided in § 523(a)(2)(A) and recognized two distinct paths for nondischargeability under this provision. *Husky Int’l. Elecs., Inc. v. Ritz*, 136 S. Ct. 1581, 1586, 194 L. Ed. 2d 655 (2016). For a debt to be nondischargeable based on a false pretense or a false representation, the creditor must prove:

- (1) that the debtor made a representation; (2) that at the time the representation was made, the debtor knew it was false; (3) that the debtor made the false representation with the intention of defrauding the creditor; (4) that the creditor justifiably relied upon the representation; and (5) that the creditor was damaged as the proximate result of the false representation.

In re Brush, 460 B.R. 448, 455-56 (Bankr. D.S.C. 2011). “A false pretense involves an implied misrepresentation or conduct that is intended to create and foster a false impression, while a false representation involves an express representation.” *In re Scarlata*, 127 B.R. 1004, 1009 (N.D. Ill. 1991) (citing *In re Guy*, 101 B.R. 961, 978 (Bankr. N.D. Ind. 1988), *aff’d in part sub nom. Matter of Scarlata*, 979 F.2d 521 (7th Cir. 1992)). To establish that a debt should be excepted from the discharge based on “actual fraud” under § 523(a)(2)(A), the creditor must prove: (1) the debtor committed actual fraud; (2) the debtor obtained money, property, services, or credit by the actual fraud; and (3) the debt arises from the actual fraud. *Husky Int’l. Elecs.*, 136 S. Ct. at 1587-88. For fraud to be “actual” fraud there must be wrongful intent; constructive or implied fraud is not actual fraud. *Id.*

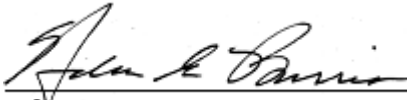
The testimony and evidence do not demonstrate that any actual fraud, false pretense, or false representation occurred here. There is no evidence to indicate that Goodale made any misrepresentations to Deaton at the time the debt was incurred or had any wrongful intent when she obtained the money from Deaton. Nothing in the record legally distinguishes this debt from any other debt owed to creditors in this case and Deaton has not met his burden of proof under § 523(a)(2)(A).

IT IS, THEREFORE, ORDERED that the debt is dischargeable pursuant to § 727.

A judgment shall be entered in favor of Debtor Whitney Michelle Goodale.

FILED BY THE COURT
08/08/2019




US Bankruptcy Judge
District of South Carolina

Entered: 08/08/2019