United States Bankruptcy Court
District of Delaware
824 N. Market Street
Wilmington, DE 19801

JUDGE BRENDAN LINEHAN SHANNON

824 MARKET STREET
WILMINGTON, DE 19801
(302) 252-2915

November 5, 2013

Mr. and Mrs. Brian Lee Chandler
71 London Drive
Smyrna, DE 19977

Mr. Jerzy Wirth
312 Riblett Lane
Wilmington, DE 19808

Re: In re: Brian Lee Chandler and Alminia Chandler
Case No. 13-10687 (BLS)

Dear Mr. and Mrs. Chandler and Mr. Wirth:

This letter constitutes the Court's ruling on Mr. Wirth's Motion for Denial of Discharge. [Docket No. 7]. For the reasons stated below, that Motion is denied, and the Debtors' discharge will be granted.

This bankruptcy case was filed on March 31, 2013. The meeting of creditors was held on May 10, 2013. [Docket No. 4]. On July 31, 2013, the Trustee filed a notice of no distribution. [Docket No. 21]. On May 10, 2013, Mr. Wirth filed a Motion to Dismiss this case, or, alternatively, for a determination that his claims are not subject to discharge. By Order dated July 30, 2013, the Court denied Mr. Wirth's Motion to Dismiss and scheduled trial on the non-dischargeability action. [Docket No. 19].

On October 24, 2013, the Court convened trial and heard testimony and argument from Mr. Chandler, Mrs. Chandler, Mr. Wirth, and one additional witness.[1] The Court also admitted numerous documents into evidence at trial.

The record reflects that Mr. Chandler and Mr. Wirth had a business relationship going back many years, and that the Debtors had borrowed money from Mr. Wirth on numerous different occasions. At trial, Mr. Chandler and Mr. Wirth vigorously disputed the amount of a promissory note, which was given by Mr. Chandler to Mr. Wirth on July 14, 2008. In a nutshell, Mr. Chandler contends that the amount in the promissory note was simply wrong, and should have been $2,300, not $23,000. This is the amount he claims he received (in cash) from Mr. Wirth on July 14, 2008. Mr. Wirth contends that the amount on the note is correct, and that it represents the aggregate obligations Mr. Chandler owed Mr. Wirth after years of transactions and informally documented loans. After listening to Mr. Chandler and Mr. Wirth's positions as to the

[1] The Chandlers and Mr. Wirth each appeared and ably represented themselves.

amount of the promissory note, and after considering the parties' documentation, the Court finds Mr. Wirth's argument and documentation to be more persuasive. The Court is satisfied that the July 14, 2008 promissory note properly reflects the amount due of $23,000.

The record reflects that the promissory note was to be secured by the paver and the backhoe; however, no financing statement was filed at the time of execution of the promissory note in July 2008. It is uncontested that Mr. Chandler sold the paver and the backhoe in February 2010 for an aggregate sum of $1,500. Mr. Wirth filed a UCC financing statement three months later, in May 2010, but at that time there was no collateral to which the lien could attach. It is therefore undisputed that as of the time of the bankruptcy filing, Mr. Wirth was the holder of an unsecured claim, since the Debtors had already disposed of whatever had remained of his collateral.

By this Motion, Mr. Wirth requests that this Court deny the Chandlers a discharge of his claim. He contends that the Chandlers' actions– in executing the promissory note, acknowledging their obligations to him and then selling the vehicles at what he alleges was a fraction of their value – constitute wrongful conduct that should disqualify the Chandlers from relief under the bankruptcy laws. The Court disagrees.

Case law teaches that discharge is to be broadly construed. *See, e.g.*, *In re Cohn*, 54 F.3d 1108 (3d Cir. 1995). Section 523 concerns a debtor's discharge and places the burden upon the objecting creditor to prove by a preponderance of the evidence that the elements of an exception to discharge have been met. *Grogan v. Garner*, 498 U.S. 279, 287-88 (1991). While Mr. Wirth has not expressly identified a statutory basis for his Motion, the Court will address those provisions of section 523(a) that are implicated by his Motion.

Section 523(a)(2)(A) provides that a debt may be held non-dischargeable if it was obtained under "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." 11 U.S.C. § 523(a)(2)(A). The party seeking a determination of non-dischargeability must prove that:

1. The debtor made the misrepresentations or perpetuated fraud;
2. the debtor knew at the time that the representations were false;
3. the debtor made the misrepresentations with the intention and purpose of deceiving the creditor;
4. the creditor [justifiably] relied on such misrepresentations; and,
5. the creditor sustained loss and damages as a proximate result of the misrepresentations having been made.

In re Giarratano, 299 B.R. 328, 334 (Bankr. D. Del. 2003) (citing *Field v. Mans*, 516 U.S. 59, 70–71 (1995)), *aff'd*, 358 B.R. 106 (D. Del. 2004). Put another way, the false pretenses or representation must have occurred during the making of the agreement. Mr. Wirth has not made such allegations, nor are such facts present in the record, and therefore Mr. Wirth not met his burden under section 523(a)(2)(A).

Section 523(a)(4) provides that a debt may not be discharged if it was incurred through "fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." 11 U.S.C. § 523(a)(4). This claim also fails because no fiduciary relationship existed between Mr. Wirth and Mr. Chandler, nor are there any allegations that would make out the elements of either embezzlement or larceny.

Under section 523(a)(6), a debt for "willful and malicious injury by the debtor to another entity or to the property of another entity" may be excepted from discharge. 11 U.S.C. § 523(a)(6). The Third Circuit has held that "a debtor's actions are willful and malicious within the meaning of § 523(a)(6) where those actions were substantially certain to result in injury or where

the debtor desired to cause injury." *Conte v. Gautam (In re Conte)*, 33 F.3d 303, 308-09 (3d Cir. 1994) (holding that "the Bankruptcy Code requires at least a deliberate action that is substantially certain to produce harm."); *see also In re Braen*, 900 F.2d 621, 626 (3d Cir. 1990) ("creditors asserting a 'malicious and willful injury' under § 523(a)(6) must prove that the debtor intentionally inflicted the claimed injury."). The Court finds that there is no ground for denial of discharge under section 523(a)(6): there was no injury "to the property of another" as the property in question did not belong to Mr. Wirth at the time the alleged injury occurred.

The Court is not unsympathetic to Mr. Wirth's position: he lent money to the Debtors, in the expectation that he would be repaid. Mr. and Mrs. Chandler have filed for bankruptcy, with the result that Mr. Wirth will not receive anything on his claim. That is the unfortunate but undeniable effect of the bankruptcy laws. That the Chandlers sold the vehicles (for market value, or for less) does not change the result. Mr. Wirth has an unsecured claim against the Chandlers, and that claim is discharged in the Chandlers' Chapter 7 bankruptcy case.

The Court has prepared its own order memorializing the terms of this ruling.

Very truly yours,

Brendan Linehan Shannon

BLS/jmw
Enclosure
cc: Charles M. Forman, Esquire - Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 7
	Case No. 13-10687 (BLS)
Brian Lee Chandler and Alminia Chandler	Related to Docket No. 7
Debtors.	

ORDER

For the reasons stated in the letter by this Court dated November 5, 2013, Mr. Wirth's request for denial of discharge is **DENIED**, and the Debtors' discharge shall issue forthwith.

BY THE COURT:

Dated: November 5, 2013
Wilmington, Delaware

Brendan Linehan Shannon
United States Bankruptcy Judge