



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In re:

ERIKA BIRGITTA LARSSON,

Debtor.

BANKRUPTCY NO. 19-06017-CL7

JAY POWELL,

Plaintiff.

ADVERSARY NO. 20-90005-CL

v.

ERIKA BIRGITTA LARSSON,

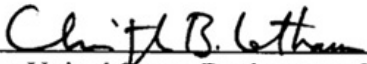
Defendant.

Name of Judge: Christopher B. Latham

FINDINGS, CONCLUSIONS, AND ORDER AFTER TRIAL

IT IS HEREBY ORDERED as set forth on the continuation page(s) attached, numbered two (2) through ten (10).

DATED: December 14, 2020



Judge, United States Bankruptcy Court

Debtor: ERIKA BIRGITTA LARSSON
POWELL V. LARSSON

Bankruptcy No. 19-06017-CL7
Adversary No. 20-90005-CL

The court held trial on Plaintiff Jay Powell's complaint against Defendant Erika Birgitta Larsson. Mr. Powell asks the court to except a \$10,000 debt from discharge under § 523(a)(2)(A). After carefully considering the testimony and other admitted evidence at trial, the court finds that Mr. Powell's debt will be held nondischargeable in the amount of **\$5,420**.

Jurisdiction and Venue

The court has jurisdiction over this adversary proceeding under **28 U.S.C. § 157(b)(2)(I)**. Venue is proper under **28 U.S.C. § 1409(a)**.

Background

This case involves a landlord-tenant dispute. The property owner, Mr. Powell, alleges that his tenant, Ms. Larsson, lied to him to secure a residential lease. After moving in, she paid no further rent. He also claims she damaged the property, which required him to make repairs and delayed its re-rental. Ms. Larsson admits some of these claims, denies others, and generally opposes Mr. Powell's suit. He seeks a nondischargeable judgment for \$10,000 to cover lost rent and repairs.

Procedural History

The Bankruptcy Case

On October 2, 2019, Ms. Larsson filed for Chapter 7 bankruptcy. *See* Case No. 19-06017-CL7. She listed \$905 in assets and scheduled Mr. Powell with a \$10,000 unsecured claim for unpaid rent (Bankr. **ECF No. 1**). She received a discharge on January 7, 2020.

The Adversary Proceeding

Mr. Powell brought the present adversary proceeding in January 2020 (**ECF No. 1**). It seeks to hold his \$10,000 claim nondischargeable under § 523(a)(2)(A) on the basis that Defendant misrepresented facts in her rental application. Ms. Larsson filed an answer (**ECF No. 9**), which generally requested dismissal although she did not make any legal arguments. *Id.* Several months later, Mr. Powell filed a proposed amended complaint (**ECF No. 24**). In it, he requested that Ms. Larsson's bankruptcy case be dismissed because she allegedly perjured herself in bankruptcy proceedings and disposed of estate property post-petition. *Id.*

At the July 6, 2020 hearing, the court noted that Mr. Powell had not submitted a motion to accompany his proposed amended complaint (**ECF No. 29**). So it directed him to file one by July 27, 2020. *Id.* He did so (**ECF No. 28**), and Ms. Larsson did not oppose. At the August 31, 2020 hearing, the court heard additional oral argument from Mr. Powell and took the matter under submission. It ultimately denied the motion for failure to satisfy the relation back doctrine (**ECF No. 38**).

Debtor: ERIKA BIRGITTA LARSSON
POWELL V. LARSSON

Bankruptcy No. 19-06017-CL7
Adversary No. 20-90005-CL

The court set the matter for trial (ECF No. 37). Both parties proceeded *pro se*.

Trial Evidentiary Rulings¹

Ms. Larsson filed all of her trial documents with the court (ECF No. 44). Mr. Powell filed an exhibit list, a copy of his discovery requests, and an objection to Ms. Larsson's documents (ECF Nos. 44 & 47).

Factual Findings

The Lease & Ensuing Breach

In early February 2019, Ms. Larsson applied to rent a house in Folsom, CA from Mr. Powell (Exhibit 1). In the application, she said the occupants would be her and her three children, one dog, and two birds. She also stated that her immediate previous address was in Pollock Pines, California and that she had been living there for the past five years. She listed Monique Cuevas as her landlord. When Mr. Powell later contacted Ms. Cuevas, she gave a glowing recommendation for Ms. Larsson, praising her as an excellent tenant current on rent (Exhibit 4). With her application, Ms. Larsson provided Mr. Powell a printed credit report, which showed zero debt (Exhibit 3). Believing all this to be true and accurate, Mr. Powell gave Ms. Larsson a 12-month lease with rent of \$2,300 and potential late fees of \$200 monthly (Exhibit 2). Ms. Larsson paid the first month's rent, a \$2,300 security deposit, and a \$500 pet deposit. She took possession at the beginning of March 2019.

Ms. Larsson never paid any rent after that, explaining that her ex-husband had gotten behind on support payments (Exhibit A). She remained in the residence for several months, however, which forced Mr. Powell to initiate eviction proceedings. Ms. Larsson eventually moved out of the property in mid-June, relocated to San Diego, and filed for Chapter 7 bankruptcy. Mr. Powell then cleaned and repaired the property over a six-week period, leasing it again in August 2019.

The Inducement

Ms. Larsson misled Mr. Powell to convince him to give her a lease. Specifically, she lied when she said Ms. Cuevas was her landlord and had her pose as such. Ms. Cuevas was not her landlord at all, but a friend. Ms. Larsson also tricked Mr. Powell by giving a false address in Pollock Pines for her then-rental and claiming she was current on rent. In fact, she lived in a different place in Folsom, California, and she was behind on rent. These falsehoods induced Mr. Powell to lease his property to Ms. Larsson. He relied on what she told him, the credit report, and Ms. Cuevas's recommendation. The court is persuaded by his testimony that he would not have rented to her if he had known the truth – and especially if he had been aware she was in arrears with her then-landlord. Ms. Larsson testified that her ex-husband last paid her support in December 2019. The

¹ All evidentiary rulings not discussed in this section may be found in the trial record.

Debtor: ERIKA BIRGITTA LARSSON
POWELL V. LARSSON

Bankruptcy No. 19-06017-CL7
Adversary No. 20-90005-CL

record is unclear as to what, if any, payment he may have made to her earlier that year. In any event, even if he paid nothing that does not negate the falsehoods she put forth.²

The court further finds that Ms. Larsson likely modified the credit report to convince Mr. Powell she had no debt and so appear to be a better credit risk. Ms. Larsson's own Schedule E/F filed in her bankruptcy shows this not to be true: it lists over \$62,000 in debts predating her lease application to Mr. Powell. So this falsehood added to the inducement. Ms. Larsson suggests that she genuinely intended to pay but lost her job. The court rejects this excuse owing to the plain indicators of fraud in her dealings with Mr. Powell. And even if true, again that would not negate the other falsehoods she employed to get possession of the property. In sum, Ms. Larsson told lies and tricked Mr. Powell into leasing his property to her. Had he known the truth, he would not have rented to her.

The Cost to Mr. Powell

When Ms. Larsson vacated, cleaning and repairs were necessary. The court rejects Mr. Powell's assertion that this required six weeks to complete. The work to be done was not so extensive or complicated. Mr. Powell apparently provided the labor, for which he has not ascribed a value or requested compensation. Thus, based on the evidence, only the following repair and cleaning expenses have been proven:

- Rent of \$6,900 due for three months (April, May, and June);
- Late fees of \$600 for those same three months;
- Replacement mirrored closet door for \$500;
- Carpet cleaning of \$100; and
- Repainting for \$300.³

In addition, the tenants left spots of nail polish on the living room floor, which had to be remedied. Mr. Powell testified that he was obliged to replace the entire 300 square feet of flooring because it is not possible to remediate only a small portion of the material. The court rejects this assertion as unreasonable and not plausible. Why should an entire room's flooring be replaced just to clean up a small area? And the floor was relatively new at that time – only two years old. A more justifiable approach (even if imperfect) would have been to remove the nail polish, then spot paint and refinish that small area. Mr. Powell's duty to mitigate his damages calls for exactly that. The court accordingly finds that Mr. Powell has proven the need for nail polish remover, paint, and overcoating for the affected area, which would not exceed \$50 in cost at the most.

² Although it does not affect the outcome here, the court rejects Mr. Powell's assertion that Ms. Larsson lied to him about the number of children she would have in the house. It credits Ms. Larsson's testimony that her ex-husband was to have custody of two of their children but reneged on that with the result that they had to move in with her.

³ Ms. Larsson admits liability as to the missed rent, late fees, and closet door.

Debtor: ERIKA BIRGITTA LARSSON
 POWELL V. LARSSON

Bankruptcy No. 19-06017-CL7
 Adversary No. 20-90005-CL

Finally, the parties agree that Ms. Larsson did not have access to the property's standalone garage until a month after she moved in. Valuing that at 10% of the rental price, Ms. Larsson is entitled to a \$230 credit for loss of access against what she owes Mr. Powell.

Legal Standards

Nondischargeable Debts

"The Bankruptcy Code is designed to provide a 'fresh start' to the discharged debtor." *In re Rodriguez*, 568 B.R. 328, 338 (Bankr. S.D. Cal. 2017) (quoting *United States v. Sotelo*, 436 U.S. 268, 280 (1978)). "As a result, the Supreme Court has interpreted exceptions to the broad presumption of discharge narrowly." *Id.* (citing *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998)). "As we have observed 'exceptions to discharge should be limited to dishonest debtors seeking to abuse the bankruptcy system in order to evade the consequences of their misconduct.'" *Id.* (quoting *Sherman v. SEC (In re Sherman)*, 658 F.3d 1009, 1015–16 (9th Cir. 2011)).

Section 523(a)(2)(A)

Section 523(a)(2)(A) excepts from discharge any debt "arising from 'false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's . . . financial condition.'" *Lamar, Archer & Cofrin, LLP, v. Appling*, 138 S. Ct. 1752, 1758 (2018) (quoting 11 U.S.C. § 523(a)(2)(A)).

The standard for nondischargeability under § 523(a)(2)(A) is well established:

[The Ninth Circuit has] consistently held that making out a claim of nondischargeability under § 523(a)(2)(A) requires the creditor to demonstrate five elements: (1) the debtor made . . . representations; (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representations; [and] (5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir. 2010) (citing *Am. Express Travel Related Servs. Co. v. Hashemi (In re Hashemi)*, 104 F.3d 1122, 1125 (9th Cir. 1996)).

Fraud for § 523(a)(2)(A) purposes "mirrors the concept of common law fraud, and requires a showing of: 1) misrepresentation of a material fact; 2) knowledge of the falsity of the representation; 3) intent to induce reliance; 4) justifiable reliance; and 5) damages." *In re Tsurukawa*, 287 B.R. 515, 520 (B.A.P. 9th Cir. 2002) (citing *In re Tobin*, 258 B.R. 199, 203 (B.A.P. 9th Cir. 2001)). These elements are virtually identical to California's cause of action for fraud. See *In re Tobin*, 258 B.R. at 203 (citing *Serv. by Medallion, Inc. v. Clorox Co.*, 52 Cal. Rptr. 2d 650, 655 (1996)); see also *Stewart v. Ragland*, 934 F.2d 1033, 1043 (9th Cir. 1991)

Debtor: ERIKA BIRGITTA LARSSON
POWELL V. LARSSON

Bankruptcy No. 19-06017-CL7
Adversary No. 20-90005-CL

(“Under California law, a fraud action requires: 1) misrepresentation; 2) knowledge of the falsity of the representation; 3) intent to induce reliance; 4) justifiable reliance; and 5) damages.”).

Knowledge of Falsity

It is well settled that “a promise made with a positive intent not to perform or without a present intent to perform satisfies [the false representation requirements of] § 523(a)(2)(A).” *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989); *accord In re Karelin*, 109 B.R. 943, 947 (B.A.P. 9th Cir. 1990). Indeed, California contract law holds much the same. See CAL. CIV. PROC. CODE § 1710(4); see also *Lazar v. Superior Court*, 49 Cal. Rptr. 2d 377, 381 (1996) (“A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud.”) (citations omitted); *Union Flower Mkt., Ltd. v. S. Cal. Flower Mkt., Inc.*, 76 P.2d 503, 506 (Cal. 1938) (“A promise made without any intention of performing it constitutes fraud.”) (citations omitted).

Now, intent may be inferred from the surrounding circumstances. See *Citibank (S.D.), N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1087 (9th Cir. 1996) (finding that a court may draw inferences “if the facts and circumstances of a particular case present a picture of deceptive conduct by the debtor”). For example, “[a] complete failure to take steps towards carrying out a promise can support an inference that the promisor never intended to perform.” *In re Arciniega*, BAP No. CC-15-1123-KiGD, 2016 Bankr. LEXIS 343, at *21 (B.A.P. 9th Cir. Feb. 3, 2016) (citations omitted).

Intent to Deceive

To find nondischargeability under § 523(a)(2)(A), the debtor must have had the subjective intent to deceive at the time of the transaction. See *Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1018 (9th Cir. 1997) (citing *In re Kurdoghlian*, 30 B.R. 500, 502 (B.A.P. 9th Cir. 1983)). This element can be the most difficult to establish. As one court noted, “[r]are indeed is the case in which the debtor broadcasts his intent to friends and neighbors, or writes a letter to his mother confessing the details of his plot to defraud his creditors.” *In re Briesse*, 196 B.R. 440, 451 (Bankr. W.D. Wis. 1996). Thus, circumstantial evidence suffices: “[t]he fact-finder must consider all of the facts and circumstances of the case to determine if the debtor lacked the requisite intent to perform.” *In re Miller*, 310 B.R. 185, 196 (Bankr. C.D. Cal. 2004). And “[f]or actual fraud, the false representation (whether express or implied) must be the vehicle for the deceit.” *Id.* That is, the plaintiff must show that the defendant intended to deceive him through the false representation. “A free-standing intent to deceive” is insufficient. *Id.*

Justifiable Reliance

Further, “[t]he United States Supreme Court has held that the proper standard under § 523(a)(2)(A) is that of justifiable reliance.” *In re Ekrem*, 192 B.R. 982, 994 (Bankr. C.D. Cal. 1996) (citing *Field v. Mans*, 516 U.S. 59, 74–75 (1995)). And while “justifiable reliance” and “reasonable reliance” are closely related terms, the former is a less demanding, intermediate level of reliance.

Debtor: ERIKA BIRGITTA LARSSON
POWELL V. LARSSON

Bankruptcy No. 19-06017-CL7
Adversary No. 20-90005-CL

Field, 516 U.S. at 73. Additionally, “the justifiable reliance standard is an *individual* standard that requires examination of the surrounding circumstances and the qualities of the *particular* plaintiff.” *In re Ekrem*, 192 B.R. at 994 (emphasis supplied) (citing *Field*, 516 U.S. at 72).

The Ninth Circuit has further clarified this standard:

The general rule is that a person may justifiably rely on a representation even if the falsity of the representation could have been ascertained upon investigation. In other words, negligence in failing to discover an intentional misrepresentation is no defense. However, a person cannot rely on a representation if he knows that it is false or its falsity is obvious to him. In sum, although a person ordinarily has no duty to investigate the truth of a representation, a person cannot purport to rely on preposterous representations or close his eyes to avoid discovery of the truth.

In re Miller, 310 B.R. 185, 198 (Bankr. C.D. Cal. 2004) (quoting *In re Eashai*, 87 F.3d at 1090-91).

Conclusions of Law

Liability on the Lease

Ms. Larsson is liable to Mr. Powell on the lease. She did not pay rent when due. And cleaning and repairs were needed after she vacated. So she owes Mr. Powell a debt based on all of that. For that debt to be held nondischargeable, however, § 523(a) must be satisfied – here § 523(a)(2)(A) fraud. The court considers that provision next.

Nondischargeability

Representation

In Ms. Larsson’s rental application, she said that she currently lived in Pollock Pines, CA and that her purported landlord, Ms. Cuevas, could confirm her tenancy. She also said she was current on rent at that property and that she had no debt. These assertions were all representations and false. See *In re Evans*, 181 B.R. 508, 512 (Bankr. S.D. Cal. 1995) (“To support a § 523(a)(2)(A) action, the creditor must establish that the debtor made a false representation with respect to an existing and ascertainable fact.”). This first element is therefore satisfied.

Knowledge of Falsity

This element requires that Ms. Larsson knew her representations were false at the time she made them – *i.e.*, when she executed the rental application. At that time, she was not living in Pollock Pines; she was living in Briarcliff. And while there, Ms. Cuevas was not her landlord, and she was not current on rent. Finally, she had significant debts then. Therefore, several of Ms. Larsson’s

Debtor: ERIKA BIRGITTA LARSSON
POWELL V. LARSSON

Bankruptcy No. 19-06017-CL7
Adversary No. 20-90005-CL

representations were false when she applied to rent Mr. Powell's property, and she must have known this at that time. This second element is thus satisfied.

Intent to Deceive

Ms. Larsson made the false representations to convince Mr. Powell to give her the lease. To that point, she devised a scheme whereby Ms. Cuevas – posing as her supposed landlord – gave a glowing account of her phony tenancy. She emailed Mr. Powell saying that Ms. Larsson was current on rent and that the neighbors had never complained about her children. The sole purpose of that email was to convince Mr. Powell that Ms. Larsson was an ideal tenant – and to ultimately offer her the lease. Ms. Larsson's assertion of solvency had the same motive: to convince Mr. Powell that she was capable of making timely payments on the lease. Ms. Larsson thus made the representations with an intent to deceive Mr. Powell. So, this element is satisfied as well.

Reliance

Mr. Powell relied on Ms. Larsson's falsehoods and that reliance was justifiable. After all, she provided him a credit report and what appeared to be a confirmation from the previous landlord that she was an exemplary tenant. Having undertaken that due diligence, his reliance was well-grounded and sufficient to satisfy this element.

Causation & Damages

Ms. Larsson's actions directly caused Mr. Powell's losses. Without that web of lies and artifice, he would not have agreed to a lease. Causation is thus amply shown.

As to damages, Mr. Powell asserts that he need not prove the amount because Ms. Larsson listed a \$10,000 liability to him in her Schedule E/F. He is not entirely correct on this point. Bankruptcy schedules may be treated as evidentiary admissions – which the trier of fact can consider in deciding a case – but they are generally not conclusive. See *In re Heath*, 331 B.R. 424, 431 (B.A.P. 9th Cir. 2005) (“[B]ankruptcy schedules can constitute admissions under Fed. R. Evid. 801(d)(2)). They may be conclusive, however, if a “court has ‘relied on, or accepted, the party’s previous inconsistent position.’” *Suter v. Goedert*, 396 B.R. 535, 541 (D. Nev. 2008) (quoting *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778 (9th Cir. 2001) (estopping the debtor from asserting a cause of action not previously listed in his bankruptcy schedules)). This is the so-called judicial admissions doctrine. See *In re Barker*, 839 F.3d 1189, 1195–96 (9th Cir. 2016) (“[Judicial admissions are] formal admissions in the pleadings which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.”). Absent an earlier court’s reliance on the schedules, they are not considered judicial admissions because they can be amended or withdrawn before the close of the case without permission from the court. See *In re Chlad*, No. 13-BK-40141, 2017 WL 1102894, at *3 (Bankr. N.D. Ill. Mar. 23, 2017); FED. R. BANKR. PROC. 1009. Thus, they are inherently non-conclusive and should not have preclusive effect.

Debtor: ERIKA BIRGITTA LARSSON
POWELL V. LARSSON

Bankruptcy No. 19-06017-CL7
Adversary No. 20-90005-CL

In this case, no court has not relied on Ms. Larsson's \$10,000 damages figure. In fact, as this is a Chapter 7 no asset case, it is really the first time the amount has been considered. Thus, there is no reason for the court to exercise its discretion in accepting the schedules as a judicial admission. See *In re Applin*, 108 B.R. 253, 258 (Bankr. E.D. Cal. 1989) ("The court has discretion to accept or reject the judicial admission."). Further consideration of the damages figure is consequently not precluded. Instead, the court will treat Ms. Larsson's schedules as a mere evidentiary admission. Therefore, Mr. Powell still bears the burden of proving both the debt and the appropriateness of nondischargeability. See *In re Feagins*, 439 B.R. 165, 174 (Bankr. D. Haw. 2010) (citing FED. R. BANKR. PROC. 4005) ("The plaintiff seeking to establish an exception to the discharge bears the burden of proof."). And he "must meet this burden by a preponderance of the evidence." *Id.* (citing *Grogan v. Garner*, 498 U.S. 279, 286 (1991)).

At trial, Ms. Larsson stated that she only listed \$10,000 as the claim total on the advice of *pro bono* counsel, who told her to round up the dollar amounts of her debts to be safe. She also testified that Mr. Powell had previously stated that she owed something around \$8,000, which accords with the gross damages he asserted at trial. Based on the foregoing, the court will look to the evidence and the factual findings above – not solely Ms. Larsson's bankruptcy schedules – to substantiate Mr. Powell's losses in this matter.

Damages thus include the following:

- \$6,900 in lost rent for April through June 2019;
- \$600 in late fees for unpaid rent due April through June 2019;
- \$500 for replacement cost of damaged closet door;
- \$100 for carpet cleaning;
- \$300 for repainting costs; and
- \$50 for repair costs to remove nail polish from floor.

This amounts to a gross sum of \$8,450. But credits are owed to Ms. Larsson for lost garage use, the security deposit, and the pet deposit. The following reduce the gross damages sum, then:

- \$230 for loss of garage use;
- \$2,300 for security deposit; and
- \$500 for pet deposit.

The total credits amount to \$3,030, which reduces the \$8,450 gross damages figure to **\$5,420** – Mr. Powell's net damages.

Conclusion

The court is sympathetic to Ms. Larsson's plight as the single mother of six children. Her ex-husband's irresponsible behavior – leaving the country and cutting off support – makes things very

Debtor: ERIKA BIRGITTA LARSSON
POWELL V. LARSSON

Bankruptcy No. 19-06017-CL7
Adversary No. 20-90005-CL

difficult for her. This apparent abdication of his fatherly duties is profoundly dishonorable. And he bears a heavy burden for that, both financial and moral.

All the same, Mr. Larsson's failings are no justification for Ms. Larsson's dishonesty toward Mr. Powell. Based upon that and the detailed explanation in this order, Ms. Larsson's nondischargeable debt to Mr. Powell is **\$5,420**. A separate judgment will issue.

IT IS SO ORDERED.