



**Opinion Title:** 06/06/2005 UNPUBLISHED James E. Love, successor trustee of the Chaille M. Love 1989 Revocable Trust v. Constance Love Norman; 03-2092, Judge Thurman.

**Body:** After a three day trial, the Court ruled that the Defendant was liable for damages in excess of \$1.0 million which were determined to be non-dischargeable pursuant to 11 U.S.C. 523(a)(4), where the Defendant defalcated while acting as a fiduciary and embezzled assets in a trust. The Court also awarded sanctions against the Defendant for improper delay of trial. The Plaintiff, who is the Defendant's brother, commenced an adversary proceeding against his sister while acting as successor trustee of their father's estate. The Defendant had taken physical control of her aged father, moved him from California to Utah, and convinced him to sign documents naming her as trustee of his estate. Thereupon, the Defendant spent virtually all of the cash and securities in the trust for her own benefit, except some modest living expenses for her father, over a period of approximately two years. In addition, she encumbered and or sold all of the real properties of the father for substantially her own benefit to the exclusion of her father. In so ruling the Court followed the Tenth Circuit BAP's definition of embezzlement in *Cousatte v. Lucas*, 300 B.R. 526 (10th Cir. BAP 2003). The Court declined to find fraud pursuant to 11 U.S.C. 523(a)(2) because there was no evidence of the Plaintiff's reliance on statements by the Defendant. The Court also declined to find willful and malicious injury pursuant to §523(a)(6) because adequate evidence of maliciousness was not presented.. Finally, the Court sanctioned the Defendant for attorneys fees for improperly seeking a continuance on the eve of trial when she purportedly needed additional time for discovery, and, once given that time, she undertook no further discovery.

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**Judge:** [Judge William T. Thurman](#) [2]

**Date:** Monday, June 6, 2005

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