

IN THE UNITED STATES BANKRUPTCY COURT

COUNTER COPY - DO NOT REMOVE - COURT'S AVAILABLE FOR THE DISTRICT OF UTAH

In re)	Bankruptcy Case No. 82C-00889
)	
WILLIAM N. REEVES,)	
)	
Debtor.)	Civil Proceeding No. 82PC-0709
)	
RED MOUNTAIN MINING CO.,)	
INC., a corporation;)	
D. LAVOY ADAMS,)	
)	
Plaintiffs.)	
)	
-vs-)	
)	
WILLIAM N. REEVES,)	
)	
Defendant.)	MEMORANDUM OPINION

Plaintiffs filed this action seeking a determination that their debt is non-dischargeable. On October 12, 1982 the defendant filed a motion to dismiss as to plaintiff Red Mountain Mining Co., Inc. due to its failure to allege misconduct toward it or to seek damages. At the same time defendant moved for summary judgment of dismissal with supporting affidavit based upon the alleged failure of plaintiff Adams' pleadings to state a claim which, if proven, would justify denial of defendant Reeves' discharge in bankruptcy under 11 U.S.C. § 523(a)(2) or (4).

The motion to dismiss the claim of plaintiff Red Mountain Mining Co., Inc. is granted because it is not opposed.

Plaintiff Adams alleges in his second amended complaint: (1) that defendant knowingly misrepresented the value of land to

plaintiff for the purpose of inducing plaintiff's execution of a contract and that defendant intended plaintiff to rely on his misrepresentation; (2) that plaintiff justifiably relied on defendant's misrepresentation; (3) that defendant knowingly and fraudulently concealed the land's reasonable market value from plaintiff, and that this concealment was material in inducing plaintiff to enter into the contract; (4) that these actions of defendant caused plaintiff material economic harm.

Although these allegations, if proven, are sufficient to state a claim justifying the denial of defendant's discharge in bankruptcy of plaintiff's debt under § 523(a)(2)(A), there are matters which can and should be disposed of by this order.

The parties discuss Arizona law in their briefs. This Court held in In re Huff, 1 B.R. 354 (D. Utah, N.D., 1979), that federal law, not state law, governed both the substance and procedure of a case under § 17(a) of the Bankruptcy Act. As noted in Huff, "The legislative history and content of newly-effective 11 U.S.C. § 523(a)(2) . . . suggest that the burden of proof under this new section should be similar to that of the superseded section." Id. at 357, n. 2. Huff established that plaintiffs' burden under § 17(a) was proof by clear and convincing evidence.

In Robbins v. Egan (In re Egan), Memorandum Decision and Order on Appeal, Civil No. C-82-0395, (D. Utah, 1982), the District Court for the District of Utah confirmed that this

burden does apply to claims alleging fraud under § 523(a)(2).

Moreover, the District Court held that in cases brought under § 523(a)(2)(A), once this burden has been met, the plaintiff need show only that he relied, not that his reliance was reasonable.

Defendant's motion for summary judgment of dismissal is denied as to § 523(a)(2)(A).

Clear and convincing proof that defendant intended to deceive plaintiff coupled with proof by a preponderance of the evidence that defendant's valuation of the land in question was false, that the misrepresentation was a material factor in inducing plaintiff's agreement, and that the plaintiff in fact did rely on the misrepresentation to his material harm will sustain his objection to the discharge of his debt under § 523(a)(2)(A).

Defendant's motion to dismiss plaintiff's claim under § 523(a)(4) was based on his arguments relating to fraud. For the reasons explained above, the motion is denied.

DATED this 31 day of May, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE