



The relief described hereinbelow is SO ORDERED.

Signed January 30, 2005.

A handwritten signature in cursive script that reads "Robert D. Berger".

ROBERT D. BERGER
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**DAMON LAYNE CURRY,
Debtor.**

**Case No. 03-25196
Chapter 7**

**MARIAN BONURA,
Plaintiff,**

v.

Adv. No. 04-6033

**DAMON LAYNE CURRY
Defendant.**

MEMORANDUM OPINION¹

By this adversary proceeding, the plaintiff, Marian Bonura, seeks to except from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) certain obligations she contends the defendant, Damon Layne Curry, owes her. A trial on the plaintiff's complaint was conducted on

¹ Plaintiff appears by her attorney, Robert D. DeWitt of DeWitt & Zeldin, L.L.C., Kansas City, Missouri. Defendant/debtor appears by his attorney, James M. Holmberg, Kansas City, Kansas.

December 2, 2004. Having heard the testimony presented at trial and reviewed the submitted memoranda of authority, the Court is ready to rule.

Jurisdiction

The Court has jurisdiction over this proceeding under 28 U.S.C. § 1334. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

Facts and Background

Mr. Curry filed his petition for bankruptcy relief on December 12, 2003. This adversary proceeding was filed on March 3, 2004. In her complaint, Mrs. Bonura alleges Mr. Curry is indebted to her for \$22,000.00 plus interest accruing at 15 percent per annum from January, 2002, for money or property obtained by false pretenses, false representations and actual fraud. Specifically, Mrs. Bonura's complaint alleges that Mr. Curry represented that he was the owner of certain energy stocks which he offered to sell her as an investment opportunity. The complaint further alleges that Mr. Curry represented that the stock had gained substantial market value and represented a company that was solvent and doing a large amount of business. Mrs. Bonura contends that as a result of those representations, she invested \$25,000.00 to purchase stock that ultimately had inconsequential or no value. She was able to recover only \$3,000.00 of that investment. However, at trial, Mrs. Bonura testified that in investing the \$25,000.00, it was Mr. Curry's father's statements on which she relied. Mrs. Bonura otherwise presented no testimony or evidence that Mr. Curry ever made a statement, representation, or averment eliciting an investment, capital contribution, loan, or otherwise, which would give rise to any indebtedness between them.

Discussion

To establish that a claim is nondischargeable under section 523(a)(2)(A), the creditor must prove the following elements by a preponderance of the evidence: the debtor made a false representation; the debtor made the representation with the intent to deceive the creditor; the creditor relied on the representation; the creditor's reliance was reasonable; and the debtor's representation caused the creditor to sustain a loss.² Here, there is no evidence in the record to support concluding Mr. Curry made any representation to Mrs. Bonura regarding an energy stock investment or sale. While the Court sympathizes with Mrs. Bonura's plight, she has not satisfied her evidentiary burden. Accordingly, Mr. Curry is entitled to discharge Mrs. Bonura's claim.

Conclusion

The Court finds Mrs. Bonura has failed to establish she is entitled to judgment. As a result, Mr. Curry is entitled to discharge her claim.

The forgoing discussion constitutes findings of fact and conclusions of law under Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(a). A judgment reflecting this ruling will be entered on a separate document in compliance with Fed. R. Bankr. P. 9021 and Fed. R. Civ. P. 58.

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ROBERT D. BERGER
U.S. BANKRUPTCY JUDGE
DISTRICT OF KANSAS

² *In re Young*, 91 F.3d 1367, 1373 (10th Cir. 1996) (citing *Grogan v. Garner*, 498 U.S. 279, 287 (1991)).