DOCKETED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN RE: JOHN R. TUCKER d/b/a
JOHN R. TUCKER ROOFING AND SIDING,

BK No. 91-21046

AMERICAN CREDIT SERVICES, INC.,

Plaintiff,

92-CV-6407T

v.

JOHN R. TUCKER d/b/a JOHN R.
TUCKER ROOFING AND SIDING,

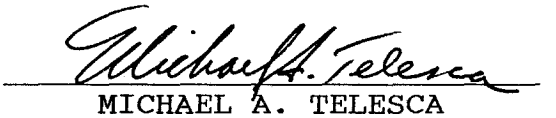
Defendant.

The creditor American Credit Services, Inc. ("ACSI") appeals from the Memorandum and Opinion of the Bankruptcy Court, Honorable Judge John C. Ninfo II, dated August 12, 1992. At oral argument the creditor argued that Judge Ninfo failed to consider the prejudice to ACSI as a result of not being permitted to participate in the administration of the bankruptcy estate.

Having heard and considered oral argument and for the reasons set forth in Judge Ninfo's thorough and well reasoned decision, I affirm the Bankruptcy Court's decision holding that the defendant's failure to properly list the indebtedness due to the plaintiff for the reasons stated therein did not render the debt non-dischargeable pursuant to §523(a)(3) of the Bankruptcy Code. Also, after a careful review of Judge Ninfo's opinion and noting specifically his reliance on In re Crum, 48 B.R. 486 (Bankr. N.D.Ill. 1985), it is my determination that Judge Ninfo duly considered all of the creditor's rights and interests in reaching

his determination that there was not "sufficient prejudice to ACSI prior to the time that it learned of the Debtor's bankruptcy case to warrant the ACSI Debt being held to be nondischargeable."

ALL OF THE ABOVE IS SO ORDERED.



MICHAEL A. TELESCA
United States District Judge

DATED: Rochester, New York
July 28, 1993