AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

WESTERN DISTRICT OF NEW YORK

DEBORAH C. MESSMER

V.

JEANETTE A. FENTI

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 93-CV-6366L

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been ~~tried or~~ heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Decision and Order of Bankruptcy Judge John C. Ninfo, II, entered in open court on May 13, 1993 and entered by written decision on May 24, 1993, is in all respects affirmed.

FILED
94 FEB 24 PM 2:22
U.S. DISTRICT COURT
WDNY ROCHESTER

February 24, 1994

Date

Rodney C. Early

Clerk

Jacqueline Lawrence

Jacqueline Lawrence

(By) Deputy Clerk

#10

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED
94 FEB 23 AM 11: 19
U.S. DISTRICT COURT
W.D. N.Y. ROCHESTER

DEBORAH C. MESSMER,

Plaintiff,

v.

JEANETTE A. FENTI,

Defendant.

DECISION AND ORDER

93-CV-6366L

Deborah C. Messmer appeals from an order of the Bankruptcy Court, Western District of New York (Ninfo, J.), that a $15,000 judgment debt owed to her by Jeanette Fenti was dischargeable in Fenti's Chapter 7 bankruptcy proceeding.

After an adversary proceeding was held to determine whether the debt was excepted from discharge under 11 U.S.C. § 523(a)(2)(A), because the loan was obtained by fraud, Judge Ninfo ruled from the bench, on May 13, 1993, and by written order entered May 24, 1993 that Messmer had failed to demonstrate that the loan was obtained by fraud and therefore the debt was dischargeable.

I have reviewed the pleadings and all the material submitted on this appeal, and it is my determination that the order appealed from should be affirmed.

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Both Judge Ninfo's oral decision and the written order contained detailed statements concerning his findings of fact and his determinations concerning issues of credibility. Judge Ninfo found as a fact that Fenti did not intend to file bankruptcy when she obtained the loan from Messmer; that the primary basis for making the loan was because of the personal relationship between the parties; that Messmer never fully investigated Fenti's personal or business financial condition; and that Fenti made no false representations to Messmer when she obtained the loan. These are all factual findings which are supported by the record. In any event, the standard for review under Bankr. Rule 8013 is whether Judge Ninfo's factual findings are clearly erroneous. I am not able to make such a finding that his factual determinations are clearly erroneous since they have support in the record. This determination alone warrants affirmance of Judge Ninfo's decision and order.

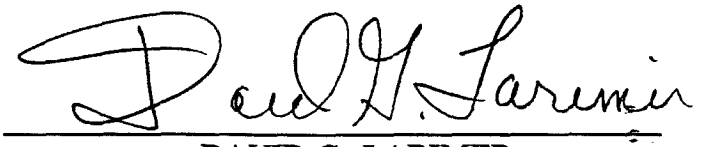
Messmer also challenges Judge Ninfo's determination that a creditor must prove that it "reasonably" relied on the false representations of the debtor as an element of its proof under § 523 that the debt should be exempt from discharge. Although I need not decide this issue since Judge Ninfo determined as a fact that there were no false or material misrepresentations, nevertheless, the weight of authority supports the reasonable-reliance standard. See In re Burgess, 955 F.2d 134, 140 (1st Cir. 1992); In re McLaren, 3 F.3d 958, 961 (6th Cir. 1993); In re Kimzey, 761 F.2d 421 (7th Cir. 1985); In re Mullet, 817 F.2d 677 (10th Cir. 1987); and In re Hunter, 780 F.2d 1577 (11th Cir. 1986).

For the reasons stated here, and for the reasons stated by Judge Ninfo in his written and oral decisions, the order appealed from should be affirmed in all respects.

CONCLUSION

The Decision and Order of Bankruptcy Judge John C. Ninfo, II, entered in open court on May 13, 1993 and entered by written decision on May 24, 1993, is in all respects affirmed.

IT IS SO ORDERED.



DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

Dated: Rochester, New York
February 23, 1994.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Messmer

Plaintiff(s)

v. 6:93-cv-06366

Fenti

Defendant(s)

PLEASE take notice of the entry of an ORDER filed on 2/23/94, of which the within is a copy, and entered 2/24/94 upon the official docket in this case. (Document No. 9 .)

Dated: Rochester, New York
February 24, 1994

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
282 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure
TO:
Deborah C. Messmer
D. Scott Young, Esq.