

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In the matter of JOAQUINA JADUSINGH, Debtor/Appellant,	:	
	:	
v.	:	
	:	
Universal Bank, N.A., Appellee.	:	NO. 01-259
	:	
	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, this 10th day of April, 2001, upon consideration of the record on appeal, the Brief of Appellant, Joaquina Jadusingh (Document No. 3, filed January 31, 2001), Brief of Appellee, Universal Bank, N.A. (Document No. 4, filed February 20, 2001), and Reply Brief of Appellant, Joaquina Jadusingh (Document No. 5, filed March 5, 2001), for the reasons set forth in the accompanying Memorandum, **IT IS ORDERED** that the Bankruptcy Court's Order and Opinion dated December 14, 2000 in Universal Bank, N.A. v. Joaquina L. Jadusingh, Adv. No. 00-239, are **AFFIRMED**.

MEMORANDUM

I. BACKGROUND

A. Procedural History

Appellant Joaquina Jadusingh ("Jadusingh" or "debtor") filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code on December 14, 1999. See In re Joaquina L. Jadusingh,

Bankr. No. 99-35617 SR (Bankr. E.D. Pa.). In connection with those proceedings, Universal Bank (“Universal”) filed a complaint against Jadusingh in the Bankruptcy Court seeking a judgment that the debt owed on her AT&T Universal Card (“Universal Card”) was non-dischargeable under 11 U.S.C. § 523(a)(2)(A).

After a hearing on November 2, 2000, the Bankruptcy Court, by Order and Opinion dated December 14, 2000, entered judgment in favor of plaintiff Universal and against defendant debtor, in part. In its December 14, 2000 Order and Opinion, the Bankruptcy Court declared \$3790.40—the amount charged to the Universal Card between October 25, 1999 and November 24, 1999—non-dischargeable; Universal’s request to have Jadusingh’s remaining balance declared non-dischargeable was denied. Jadusingh appeals from that Order and Opinion.

B. Facts

The underlying facts, as determined by the Bankruptcy Court are as follows: debtor opened a credit account with Universal on June 11, 1991. Her record showed a regular pattern of usage and reliable payment history until November, 1999, when her account balance nearly doubled and surpassed her credit limit by \$81.00. During the period of October 25, 1999 through November 24, 1999, debtor charged \$3,790.40 to her Universal Card—she took cash advances totaling \$1,563.00 and made purchases totaling \$2,227.40. On December 14, 1999, debtor filed a petition under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 101–1330.

At the hearing held by the Bankruptcy Court on November 2, 2000, Jadusingh testified that she suffers from multiple sclerosis and, as a result, had to cease her employment at Strawbridge and Clothier, where she worked as a fitting room clerk, in May or August of 1998, and that she has been unemployed since that time. Notwithstanding the fact that she was

unemployed, she continued regular use of her Universal Card, including the remittance of a monthly payment in the approximate amount of the minimum required payment.

Some time after leaving her job, debtor applied for long-term disability benefits through her employer; her application was ultimately denied. She testified that before the application was denied, she assumed she would eventually receive disability benefits and planned to use a portion of the benefits to pay her Universal Card balance. Jadusingh also testified at the hearing that she first considered filing a petition in bankruptcy in August of 1999. She conceded that she was insolvent, as defined by 11 U.S.C. § 101, by October 1999.

II. DISCUSSION

A. Standard of Review

This Court has jurisdiction over appeals from final judgments, orders, and decrees of the bankruptcy court. 28 U.S.C. § 158. The standard of review applied by the district court in reviewing a bankruptcy court's order is clearly erroneous as to factual questions under Bankruptcy Rule 8013.¹ The Court reviews the bankruptcy court's conclusions of law de novo. See Donaldson v. Bernstein, 104 F.3d 547, 551 (3d Cir. 1997); Trefny v. Bear Stearns Securities Corp., 243 B.R. 300, 308 (S.D. Tex. 1999).

¹ Bankruptcy Rule 8013 provides:

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

B. Issues on Appeal

In its claim that Jadusingh's debt is non-dischargeable, Universal relies on 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(2)(C). To succeed on a claim under these provisions, an objecting creditor must prove an exception to discharge by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 288, 111 S. Ct. 654, 660, 112 L. Ed. 2d 755 (1991). Specifically, in order to establish the non-dischargeability of a debt under § 523, it must be shown that the debtor made a fraudulent misrepresentation to the creditor on which the creditor justifiably relied. See Field v. Mans, 516 U.S. 59, 116 S. Ct. 437, 133 L. Ed. 2d 351 (1995) (holding that a discharge exception for debt resulting from fraud requires justifiable reliance).

There are two central issues on appeal: (1) whether Jadusingh made fraudulent material misrepresentations to Universal; and (2) whether Universal proved justifiable reliance on defendant debtor's representations such that debtor's credit card debt is non-dischargeable. The Court will address these issues in turn.

1. Fraudulent Misrepresentation

The issue of fraudulent misrepresentation requires an inquiry into the debtor's subjective state of mind at the time of the representation, i.e., when the debt was incurred. See Field v. Mans, 516 U.S. 59, 116 S. Ct. 437, 133 L. Ed. 2d 351 (1995); In re Feld, 203 B.R. 360, 365 (Bankr. E.D. Pa. 1996). After a hearing, the Bankruptcy Court wrote that it had "little difficulty in finding that the Debtor knowingly misrepresented to Universal that she had both the intent and the ability to repay those debts incurred by her from October 25 through November 24, 1999." Universal Bank, N.A. v. Joaquina L. Jadusingh, Adv. No. 00-239, at 8 (Bankr. E.D. Pa. Dec. 14, 2000). The Bankruptcy Court then listed a number of facts that it found relevant in determining

whether or not debtor's representations were fraudulently made. This Court concludes that the Bankruptcy Court's findings on these questions of fact² are supported by the evidence and are not clearly erroneous.

2. *Justifiable Reliance*

The next and final step in the inquiry as to whether the debt is non-dischargeable involves whether Universal proved justifiable reliance on Jadusingh's representations. As noted in In re Feld, 203 B.R. 360, 368 (Bankr. E.D. Pa. 1996), it is very difficult to prove reliance in the context of credit card usage due to the "inherent nature of the transaction that involves a credit analysis being made, if at all, at the inception of the relationship and the representation regarding the intent to repay with respect to the debt sought to be excepted from discharge being made sometime later."

Despite this inherent difficulty, as the Feld court concluded, "if a cardholder's use is consistent with past use, and the cardholder is paying the minimum charge and staying within credit limits, reliance on the cardholder's implied representation of intent to repay will generally be justifiable." Feld, 203 B.R. at 370. In this case, the Bankruptcy Court concluded that "[t]he Debtor's reliable payment history for an eight year period supports a finding of justified reliance on the part of Universal that the Debtor would not engage in the conduct attributable to her in October and November of 1999." Universal Bank, N.A. v. Joaquina L. Jadusingh, Adv. No. 00-239, at 9 (Bankr. E.D. Pa. Dec. 14, 2000). Again, the Bankruptcy Court's findings as to justifiable reliance are supported by the record and shall not be disturbed.

² The Bankruptcy Court below noted the difficulty of determining subjective intent and, as such, appropriately relied on certain objective factors as circumstantial evidence of intent. See In re Dougherty, 84 B.R. 653 (B.A.P. 9th Cir. 1988).

III. CONCLUSION

Upon consideration of the facts of this case as found by the Bankruptcy Court and a plenary review of the applicable law, for the reasons set forth in this Memorandum and the Opinion of the Bankruptcy Court, the Bankruptcy Court's Order and Opinion dated December 14, 2001 in Universal Bank, N.A. v. Joaquina L. Jadusingh, Advs. No. 00-239, are affirmed.

BY THE COURT:

JAN E. DUBOIS, J.