

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION**

**IN RE: DARRELL B. BRITT**

**3:07-bk-15195 E  
CHAPTER 7**

**KEITH B. MOSBY**

**PLAINTIFF**

**v.**

**AP NO.: 3:07-ap-01310**

**DARRELL B. BRITT**

**DEFENDANT**

**MEMORANDUM OPINION**

Now before the Court is a Complaint, filed by Keith B. Mosby (“**the Plaintiff**” or “**Mr. Mosby**”) pursuant to 11 U.S.C. § 523(a)(2)(A),<sup>1</sup> and an Answer filed by Darrell B. Britt (“**the Debtor**” or “**Mr. Britt**”). Trial in this adversary proceeding was held on May 8, 2008. This is a core proceeding under 28 U.S.C. § 157(b), and the Court has jurisdiction to enter a final judgment in this case. The Court finds that the Plaintiff did not meet his burden of proof under § 523(a)(2)(A), and the Debtor’s debt to Mr. Mosby will be dischargeable. The Court’s findings of fact and conclusions of law follow.

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<sup>1</sup>On the Adversary Proceeding Cover Sheet, Mr. Mosby stated that he was also bringing claims under 11 U.S.C. §§ 547–548. Mr. Mosby’s claims under §§ 547–548 fail due to lack of standing. *In re Racing Services, Inc.*, 363 B.R. 911, 915 (B.A.P. 8th Cir. 2007) (holding that “[i]n order for a creditor to assert standing under Section 548, the creditor must establish that the trustee was unable or unwilling to pursue the claims on behalf of the bankruptcy estate.”); *In re Davidson Lumber Co.*, 19 B.R. 871, 872 (Bankr. S.D. Fla. 1982) (holding that the statutory remedy under § 547 may only be asserted by a bankruptcy trustee or, under 11 U.S.C. § 1107(a), by a chapter 11 debtor-in-possession.). Furthermore, Mr. Mosby stated in the Adversary Proceeding Cover Sheet that he also wanted to bring a claim under 11 U.S.C § 727(c). However, Mr. Mosby offered no evidence at trial to support his claim under § 727(c). Thus, this Opinion will only address Mr. Mosby’s claim under 11 U.S.C. § 523(a)(2)(A).

## FACTS

In the beginning of July 2006, Mr. Mosby and Mr. Britt entered into an oral contract. Pursuant to the contract, Mr. Britt agreed to renovate four to five rooms for Mr. Mosby and his wife to prepare them for use as a beauty salon. Less than a month into the contract, a dispute arose between Mr. Mosby and Mr. Britt regarding the amount that Mr. Mosby was obligated to pay Mr. Britt under the contract. When Mr. Mosby and Mr. Britt were unable to come to a compromise, Mr. Mosby filed a Complaint Form<sup>2</sup> against Mr. Britt in the District Court of St. Francis County, Arkansas on December 19, 2006. In the Complaint Form, Mr. Mosby claimed that Mr. Britt owed him \$4,900.00 because Mr. Britt failed to complete the renovation project after Mr. Mosby had paid him more than enough money to cover the cost of all labor and all materials for the renovation project.

A hearing was held in St. Francis County District Court on February 21, 2007. The St. Francis County District Court held for Mr. Mosby, and following the hearing, Mr. Mosby received a judgment against Mr. Britt in the sum of \$3,400.00 plus costs. Mr. Britt had paid Mr. Mosby \$910.00<sup>3</sup> of the \$3,400.00 judgment at the time he filed a petition for relief under Chapter 7 of the Bankruptcy Code on September 20, 2007. Mr. Britt included the \$3,400.00

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<sup>2</sup>A copy of the Complaint Form was introduced at trial as Plaintiff's Exhibit 5.

<sup>3</sup>In the Complaint, Mr. Mosby stated, "[s]ince this judgment, I have only recovered a total of \$910.00 from [Mr. Britt]." This statement was not denied in the Answer; thus, it is deemed admitted pursuant to FED. R. CIV. P. 8(d), made applicable to bankruptcy proceedings by FED. R. BANKR. P. 7008.

judgment in Schedule F<sup>4</sup> of his bankruptcy petition so the debt would be discharged upon the completion of his bankruptcy case. On December 26, 2007, Mr. Mosby filed an adversary proceeding seeking to except the \$3,400.00 judgment from Mr. Britt's discharge pursuant to § 523(a)(2)(A). The trial on the adversary proceeding was set for May 8, 2008.

At the trial, Mr. Mosby testified that the St. Francis County District Court based the \$3,400.00 judgment<sup>5</sup> on a \$1,600.00 payment that Mr. Britt received from Mr. Mosby on July 31, 2006, and an \$1,800.00 payment that Mr. Britt received from Mr. Mosby on August 8, 2006. Mr. Mosby testified that after he paid Mr. Britt the \$1,600.00 on July 31, 2006 and the \$1,800.00 on August 8, 2006, Mr. Britt walked away from the renovation project, and he saw no further progress on the renovation project. Furthermore, Mr. Mosby repeatedly stressed during the trial that Mr. Britt did not provide him with receipts showing how he had spent the \$1,600.00 and \$1,800.00 on the renovation project. Thus, Mr. Mosby concluded that Mr. Britt "deceived" him by taking his money and not completing the renovation project.

In response to the testimony by Mr. Mosby, Mr. Britt affirmatively testified that he used all of the money he received from Mr. Mosby on labor and materials for the renovation

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<sup>4</sup>See FED. R. EVID. 201; *In re Henderson*, 197 B.R. 147, 156 (Bankr. N.D. Ala. 1996) ("The court may take judicial notice of its own orders and of records in a case before the court, and of documents filed in another court.") (citations omitted); *see also In re Penny*, 243 B.R. 720, 723 n.2 (Bankr. W.D. Ark. 2000).

<sup>5</sup>A copy of the judgment, introduced as Plaintiff's Exhibit 3, was the only evidence from the St. Francis County District Court hearing introduced at trial. No findings of fact were included within the judgment; rather, the judgment simply stated, "[t]he issues in this action were tried in this court on 2/21/07; at which time a judgment for the Plaintiff was rendered for \$3,400.00 in addition to costs in the amount of \$75.00."

project. With regard to the \$1,600.00 payment, Mr. Britt repeatedly said that he used the \$1,600.00 to purchase lumber. The receipt that was introduced into evidence as Plaintiff's Exhibit 1 stated that the \$1,600.00 was used or to be used<sup>6</sup> for lumber. Although it is unclear from Mr. Britt's testimony whether he used the \$1,600.00 to reimburse himself for previously purchased pieces of lumber or whether he used the \$1,600.00 to purchase base board trim, crown molding, and door trim, it is clear that the \$1,600.00 was spent on lumber for the renovation project. With regard to the \$1,800.00 payment, Mr. Britt testified that he gave \$600.00 to his uncle and \$600.00 to his brother-in-law for work that they had done on the renovation project. Although Mr. Britt did not account for the remaining \$600.00, given Mr. Britt's testimony that the full \$1,800.00 went towards labor for the renovation project, and his testimony that he worked extensively on the renovation project, the Court infers that Mr. Britt kept the remaining \$600.00 as payment for his labor on the renovation project.

Mr. Mosby only offered photographs, introduced as Plaintiff's Exhibit 2, to refute Mr. Britt's testimony. Mr. Mosby offered the photographs as proof that Mr. Britt did not complete the renovation project as required under the oral contract.

### **LAW AND ANALYSIS**

The Court must address two issues in this Opinion. First, does the Court have jurisdiction to determine whether Mr. Britt owes Mr. Mosby \$3,400.00 under the *Rooker-*

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<sup>6</sup>The receipt stated "Darrell Britt received from Keith Mosby \$1,600.00 for lumber on 7-31-06 . . ." Because the receipt is not dated, it is unclear from the receipt itself whether Mr. Britt was to use or had used the \$1,600.00 for lumber.

*Feldman* doctrine. Second, did Mr. Britt obtain the \$3,400.00 from Mr. Mosby under false pretenses, a false representation, or actual fraud in order to except the \$3,400.00 judgment from discharge under § 523(a)(2)(A).

**A. The Rooker-Feldman Doctrine**

Turning to the first issue, “[u]nder the *Rooker-Feldman* doctrine, because federal . . . courts are courts of original jurisdiction, they lack subject matter jurisdiction to engage in appellate review of state court decisions; review of state court decisions may be had only in the Supreme Court.” *Postma v. First Federal Savings & Loan of Sioux City*, 74 F.3d 160, 162 (8th Cir. 1996). “The *Rooker-Feldman* doctrine . . . can be raised and construed by the bankruptcy court sua sponte as a possible limitation on its jurisdiction.” 9 AM. JUR. 2D *Bankruptcy* § 843 (2008) (emphasis added).

Pursuant to the *Rooker-Feldman* doctrine, the Court lacks subject matter jurisdiction to determine whether Mr. Britt owes Mr. Mosby \$3,400.00. That issue was decided by the St. Francis County District Court when it entered the \$3,400.00 judgment in favor of Mr. Mosby. As a consequence, the only issue that remains is whether Mr. Britt obtained the \$3,400.00 from Mr. Mosby under false pretenses, a false representation, or actual fraud in order to except the \$3,400.00 judgment from discharge under § 523(a)(2)(A).

**B. Dischargeability Under 11 U.S.C. § 523(a)(2)(A)**

Turning now to the remaining issue, § 523(a)(2)(A) provides, in sum, that a discharge does not discharge an individual debtor from any debt for money, property, or services, to the extent that the debt was obtained by false pretenses, a false representation, or actual fraud,

other than a statement respecting the debtor's or an insider's financial condition. "A 'false pretense' involves implied misrepresentation or conduct intended to create and foster a false impression," while "actual fraud . . . consists of any deceit, artifice, trick or design involving direct and active operation of the mind, used to circumvent and cheat another; [that is], something said, done or omitted with the design of perpetrating what is known to be a cheat or deception." *In re Moen*, 238 B.R. 785, 790–91 (B.A.P. 8th Cir. 1999) (citations omitted). "For purposes of § 523(a)(2)(A), a 'misrepresentation' denotes not only words spoken or written but also any other conduct that amounts to an assertion not in accordance with the truth." *Id.* at 791 (citations and internal quotes omitted).

To prevail under this section of the Bankruptcy Code, "the creditor must prove the following elements by a preponderance of the evidence: (1) the debtor made a representation; (2) the debtor knew the representation was false at the time it was made; (3) the representation was deliberately made for the purpose of deceiving the creditor; (4) the creditor justifiably relied on the representation; (5) the creditor sustained the alleged loss as the proximate result of the representation having been made." *In re Maurer*, 256 B.R. 495, 500 (B.A.P. 8th Cir. 2000) (citations omitted).

In *Pleasants v. Black (In re Black)*, No. 90-2620, 1990 WL 139354, at \*1–2, (4th Cir. Sept. 25, 1990), the Fourth Circuit Court of Appeals affirmed the district court's holding that the debtor had committed actual fraud as contemplated by § 523(a)(2)(A) when the district court found that the debtor had required a prepayment of \$20,465.00 to begin construction on the plaintiff's home, "representing that he would use the money to obtain better prices on

material for the [plaintiffs' home]." However, rather than using the money in the manner that he represented to the plaintiffs, the debtor "deposited the check in his personal account and used much of the first payment to pay personal bills in order to escape bankruptcy." *Id.* at \*2.

Mr. Mosby's burden of proof is the same as that of the plaintiff in *Black*. In order for Mr. Mosby to prevail under § 523(a)(2)(A), he must prove by a preponderance of the evidence that, when Mr. Britt requested and received the \$1,600.00 on July 31, 2006 and \$1,800.00 on August 8, 2006, he did not intend to use the money for its requested purpose. The basis for Mr. Mosby's claim under § 523(a)(2)(A) is that after he gave Mr. Britt \$1,600.00 on July 31, 2006 and \$1,800.00 on August 8, 2006, Mr. Britt walked away from the renovation project, and no further work was done. Mr. Mosby repeatedly stressed during the trial that Mr. Britt did not provide him with receipts showing how he had spent the \$1,600.00 and \$1,800.00 on the renovation project. Furthermore, it is obvious from the photographs, introduced as Plaintiff's Exhibit 2, that Mr. Britt did not complete the renovation project as required under the oral contract. Thus, Mr. Mosby's evidence at trial proved that he did not receive everything that he bargained for under the contract. However, whether Mr. Mosby received everything that he bargained for under the contract is not at issue in this Opinion.

Rather, the key issue is whether Mr. Britt requested the \$1,600.00 and \$1,800.00 for one purpose while intending to use the money for another purpose. Unlike the plaintiff in *Black*, Mr. Mosby did not offer into evidence receipts, Mr. Britt's bank statements, or any other evidence to provide proof that Mr. Britt requested the \$1,600.00 and \$1,800.00 for one purpose while intending to use the money for another purpose. However, there was

circumstantial evidence introduced at trial, which supported Mr. Britt's testimony regarding how he used the \$1,600.00 payment and \$1,800.00 payment. The receipt, introduced as Plaintiff's Exhibit 1, bolstered Mr. Britt's testimony that he used the \$1,600.00 payment to purchase lumber. Furthermore, the photographs, introduced as Plaintiff's Exhibit 2, easily reflected \$1,800.00 worth of labor, which bolstered Mr. Britt's testimony that the entire \$1,800.00 payment went towards labor for the renovation project. Thus, circumstantial evidence was introduced at trial to support Mr. Britt's testimony, while no tangible evidence was introduced to support Mr. Mosby's claim under § 523(a)(2)(A).

Ultimately, the burden was on Mr. Mosby to prove his claim under § 523(a)(2)(A) by a preponderance of the evidence. He failed to meet his burden of proof. Therefore, the Court cannot find that Mr. Britt obtained the \$3,400.00 from Mr. Mosby under false pretenses, a false representation, or actual fraud pursuant to § 523(a)(2)(A), and the judgment owed to Mr. Mosby in the sum of \$3,400.00 will be dischargeable.

### **CONCLUSION**

Because the Mr. Mosby did not prove the elements § 523(a)(2)(A) by a preponderance of the evidence, the debt at issue in this case is dischargeable. A judgment in accord with this Opinion will be entered.



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HONORABLE AUDREY R. EVANS  
UNITED STATES BANKRUPTCY JUDGE

DATE: June 5, 2008

cc: Keith B. Mosby, *Pro Se*  
Davis H. Loftin, attorney for Debtor  
Warren E. Dupwe, Chapter 7 Trustee  
U.S. Trustee

EOD 6/5/2008  
by T Wilkins