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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

IN RE ALEJANDRO CARLOS
DUARTE,

Debtor.

Case No. 5:13-cv-905-ODW

Bankruptcy Case No. 6:10-bk-18489-MJ
Adversary Case No. 6:10-ap-1399-MJ

AMERICAN FIRST CREDIT UNION,

Appellant,

v.

ALEJANDRO CARLOS DUARTE,

Appellee.

ORDER

I. INTRODUCTION

Appellant American First Credit Union appeals an order from the bankruptcy court discharging the debt owed them by Debtor Alejandro Carlos Duarte. Duarte's debt arose because of his default on his mortgage loan with American First. American First contends that the bankruptcy court erred in failing to hold that Duarte's debts are nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(2)(B). As discussed below, the Court finds no error in the bankruptcy court's analysis and **AFFIRMS** the judgment below.¹

¹ The Court notes that Duarte failed his answering brief on August 14, 2013, five weeks after the July 10, 2013 deadline. The Court is not required "to consider any memorandum or other document not filed within the deadline set by order or local rule." L.R. 7-12.

1 **II. JURISDICTION**

2 This Court has jurisdiction to hear appeals for judgments, orders, and decrees
3 entered in intra-district bankruptcy cases referred to them under 28 U.S.C. § 157.
4 28 U.S.C. § 158. The judgment in this adversary proceeding is final, and was entered
5 in a bankruptcy proceeding within this District. Accordingly, the judgment is
6 appealable to this Court under 28 U.S.C. § 158.

7 **III. BACKGROUND**

8 In November 2007, Duarte applied for a residential mortgage loan with First
9 American in the sum of \$558,750. (Appellant’s Br. 7.) This mortgage was for the
10 purchase of a new home in Corona, California, for the purchase price of \$620,863.
11 (*Id.* 7–8.)

12 Duarte made his mortgage payments for almost 30 months after the closing of
13 the property. (Mem. Decision After Trial on Compl. for Nondischargeability of Debt
14 [“Decision”] 9.) Although some of Duarte’s mortgage payments were late, it was paid
15 current through April 2010. (*Id.* at 9–10.) Nevertheless, Duarte became unable to
16 make the mortgage payments and received a modest loan modification prior to
17 defaulting shortly thereafter. (*Id.* at 10.) Duarte filed his bankruptcy petition on
18 March 24, 2010. (*Id.*) His property was foreclosed and eventually sold for \$400,000.
19 (*Id.*) After applying the mortgage-insurance payment of \$150,000, the net loss to First
20 American on the Duarte’s mortgage was \$73,841.13. (*Id.*)

21 First American filed an adversary proceeding against Duarte seeking to have his
22 mortgage debt deemed nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and
23 523(a)(2)(B). After concluding a trial on the merits, the bankruptcy court found that
24 First American had not shown by a preponderance of the evidence that Duarte’s debts
25 should be exempt from discharge under these statutes. This appeal followed.

26 **IV. ISSUES ON APPEAL**

27 First American argues that the bankruptcy court erred by failing to hold that
28 Duarte’s debt is nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(2)(B).

V. LEGAL STANDARD

1
2 The question of whether a claim is excepted from discharge under § 523(a)(2)
3 presents mixed issues of law and fact which this Court reviews de novo. *In re*
4 *Diamond*, 285 F.3d 822, 826 (9th Cir. 2001). The bankruptcy court's conclusions of
5 law are reviewed de novo and its findings of fact are reviewed for clear error. *In re*
6 *Hamada*, 291 F.3d 645, 649 (9th Cir. 2002). A court's factual determination is clearly
7 erroneous if it is illogical or implausible, or if it lacks "support in inferences that may
8 be drawn from facts in the record." *United States v. Hinkson*, 585 F.3d 1247, 1261
9 (9th Cir. 2009) (en banc) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564,
10 577 (1985)).

VI. DISCUSSION

11
12 Section 523(a)(2)(A) provides that an individual debtor will not be discharged
13 "from any debt . . . for money, property, services . . . to the extent obtained by . . .
14 false pretenses, a false representation, or actual fraud." To demonstrate that a debt
15 should be exempt from discharge under § 523(a)(2)(A), a creditor must prove five
16 elements: (1) misrepresentation, fraudulent omission, or deceptive conduct by the
17 debtor; (2) knowledge of the falsity or deceptiveness of the debtor's statement or
18 conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's
19 statement or conduct; and (5) damage to the creditor proximately caused by her
20 reliance on the debtor's statement or conduct. *In re Weinberg*, 410 B.R. 19, 35
21 (B.A.P. 9th Cir. 2009). The creditor must establish all five elements by a
22 preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 291 (1991).

23 Section 523(a)(2)(B) is very similar to § 523(a)(2)(A) except that it pertains to a
24 statement in writing concerning a debtor's financial condition. The main difference
25 between the two sections is that under § 523(a)(2)(B), reasonable reliance is required.
26 *In re Candland*, 90 F.3d 1466, 1469 (9th Cir. 1996). Reasonable reliance is a higher
27 bar than justifiable reliance; a creditor put on inquiry by a written statement has some
28 duty to investigate the accuracy of the statement. *In re Gertsch*, 237 B.R. 160, 170

1 (B.A.P. 9th Cir. 1999). This duty to investigate does not require “detectives,” but
2 rather it should resemble the customary business practices of the industry. *Id.*

3 The Court agrees with the bankruptcy court’s findings and analysis that First
4 American failed to prove either one of its fraud theories under §§ 523(a)(2)(A) and
5 523(a)(2)(B). Notably, the bankruptcy court found that Duarte could not read English
6 (Decision 3); his loan agent at First American assisted him in filing out the loan
7 application and did not inquire nor require Duarte to prove certain financial metrics
8 that First American now complains was deficient (*id.* at 8–9); Duarte did not make
9 any oral or written material misrepresentations about his financial condition (e.g., First
10 American only asked for gross income and did not ask for net income or business
11 expenses) (*id.* at 4–9); Duarte did not lie about the source of the large sum of money
12 residing in his bank account nor required him to maintain that balance (*id.* at 13); First
13 American never asked for Duarte’s tax returns (*id.* at 7–8); and Duarte’s
14 representations on the loan application reflected the corresponding financial figures
15 filed in his tax returns (*id.* at 14). These findings support the conclusion that Duarte
16 did not make any material misrepresentations in the course of obtaining his mortgage
17 loan.

18 In addition to the lack of misrepresentation, the bankruptcy court also found
19 that Duarte did not intend to deceive First American when he applied for the mortgage
20 as evidenced by his 30-month servicing of the loan. (*Id.* at 16.) Finally, the
21 bankruptcy court found that based on First American’s mortgage-lending practices at
22 the time, “no reliance by [First American] on the information in the written statements
23 could have been reasonable.” (*Id.* at 15).

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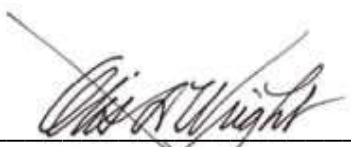
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VII. DISPOSITION

Accordingly, because Appellants did not show by a preponderance of the evidence that Duarte's debt should be exempt from discharge under §§ 523(a)(2)(A) and 523(a)(2)(B), the judgment of the bankruptcy court is **AFFIRMED**.

IT IS SO ORDERED.

August 14, 2013



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE