

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

CASE NO.: 04-6245-3P7

RICHARD LOUIS THOMANN and
LINDA KAY THOMANN

Debtors

EDDIE FINK

Plaintiff,

v. ADV. NO.: 04-307

RICHARD LOUIS THOMANN and
LINDA KAY THOMANN

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

This Proceeding is before the Court upon the Complaint seeking an exception to Defendants' discharge, pursuant to 11 U.S.C. § 523(a)(2)(a), filed by Eddie Fink. After a hearing held on March 23, 2005, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On March 23, 2003, the parties entered into a one-year residential lease Agreement. On February 9, 2004, the lease between the parties was extended.
2. On April 12, 2004, Defendant, Linda Thomann, delivered two checks to the Plaintiff. Check number 1154 in the amount of \$1,665.00 and check number 1155 in the amount of \$1,600.00, were not honored due to insufficient funds in Defendants' bank account.
3. On numerous occasions, Defendants represented to Plaintiff that they would pay him the rent he was owed pursuant to the lease agreement, once

Defendant, Richard Thomann, received his bonus from work.

4. On June 17, 2004, Defendants filed for Chapter 7 bankruptcy relief.

5. On February 18, 2005, Defendants received a discharge.

CONCLUSIONS OF LAW

11 U.S.C. § 523 (a)(2)(a) provides in pertinent part that:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition....

11 U.S.C. § 523 (a)(2)(a)

This Court has previously held that in order to except a debt from discharge under 11 U.S.C. § 523(a)(2)(a) the Plaintiff must establish that: "(1) Defendants made a false representation with the purpose and intent of deceiving Plaintiffs, (2) Plaintiffs relied upon the representation; (3) Plaintiffs' reliance on the representation was justifiably founded; and (4) Plaintiffs sustained a loss as a result of the representation." *In re Wiggins*, 250 B.R. 131 (Bankr. M.D. Fla. 2000). "Plaintiffs must prove each element by a preponderance of the evidence." *Id.*, *Grogan v. Garner*, 498 U.S. 279, 291 (1991).

At the hearing, the Court directed the parties to address the elements, listed above. The Court finds Defendants' promises to pay Plaintiff the rent owed to him as mere broken promises and not an attempt by the Defendants to intentionally defraud him. Therefore, while the Court sympathizes with Plaintiff's situation, Plaintiff was not able to establish by a preponderance of the evidence that Defendants acted with fraudulent intent.

CONCLUSION

Based upon the reasons stated above, the debt owed to Plaintiff by Defendants is not excepted from Defendants' discharge. The Court will enter a separate judgment in accordance with these Findings of Fact and Conclusions of Law.

Dated this 30 day of March, 2005 in Jacksonville, Florida.

/s/ George L. Proctor
George L. Proctor
United States Bankruptcy Judge

Copies To:
Plaintiff
Defendant
E. Warren Parker, Jr.