

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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MICHAEL C. WONG and  
MELANIE F. WONG,  
a/k/a MELANIE F. LYONS  
Debtors.

Bankruptcy No. 92-22051LD

Chapter 7

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MERCANTILE BANK OF ILLINOIS  
Plaintiff

Adversary No. 93-2025LD

vs.

MICHAEL C. WONG and  
MELANIE F. WONG,  
a/k/a MELANIE F. LYONS  
Defendants.

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### ORDER RE: MOTION FOR SUMMARY JUDGMENT

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This matter came on for hearing before the undersigned on July 29, 1993 on Debtors' Motion for Summary Judgment after which the Court took the matter under advisement. The complaint filed by Plaintiff Mercantile Bank of Illinois in this adversary proceeding asserts that Debtors' Mastercard debt to Plaintiff should be excepted from discharge pursuant to 11 U.S.C. sec. 523(a)(2)(A). Plaintiff claims that Debtors Michael and Melanie Wong obtained extensions of credit through false pretenses and misrepresentations regarding their ability to repay. Debtors deny the complaint and counterclaim for attorney fees.

Debtors move for summary judgment. They assert that Plaintiff has alleged no facts to support its claim. They argue that they had made substantially all their monthly payments and continuously had the intent to repay until a Social Security claim arose against Debtor Michael Wong which precipitated bankruptcy.

Plaintiff argues that the issue of fraudulent intent is a fact issue in dispute. Its claim rests on Debtors' intent to deceive which may not be adjudicated on motion for summary judgment.

Debtors must show the absence of any genuine issue of material fact in order to succeed in their motion for summary judgment under Bankruptcy Rule 7056 (Fed. R. Civ. P. 56), In re Earhart, 68 B.R. 14, 15 (Bankr. N.D. Iowa 1986). In considering a motion for summary judgment, the Court must view the facts in the light most favorable to the party opposing the motion, giving that party the benefit of all reasonable inferences to be drawn from the facts. United States v. One 1989 Jeep Wagoneer, 976 F.2d 1172, 1176 (8th Cir. 1992). Where mental state or intent is at issue, summary judgment must be granted with caution, as usually such issues raise questions for determination by a factfinder. Id.

In order to hold a credit card debt nondischargeable under sec. 523(a)(2)(A), "the court must find that (1) the debtor knowingly made a false representation; (2) the debtor intended to deceive the creditor; and (3) the creditor relied upon the false representation." In re Stewart, 91 B.R. 489, 494 (Bankr. S.D. Iowa 1988). Sec. 523(a)(2)(A) invokes the common law elements of fraud. Earhart, 68 B.R. at 16. Fraud is not generally susceptible to summary judgment. In re Shelnutt, 150 B.R. 436, 438 (Bankr. E.D. Ark. 1992) (considering debtor's motion for summary judgment on adversary complaint under sec. 523(a)(2)(A) and (B)). "[T]he trial judge must accept as true the nonmovant's evidence, must draw all legitimate inferences in the nonmovant's favor, and must not weigh the evidence on the credibility of witnesses. . . . Were the Court simply to accept the assertions in the defendant's affidavit, that he committed no fraud, the Court would be improperly weighing the credibility of the witness." Id. (citations omitted). This Court noted in Earhart that it is "highly unlikely that a situation would ever arise under which summary judgment would be appropriate in adversary proceedings brought under section 523(a)(2)." Earhart, 68 B.R. at 17.

Debtors argue that the circumstances surrounding their credit card debt prove their lack of intent to deceive. Plaintiff argues that these same circumstances raise an inference of fraudulent intent. Thus, the parties dispute a genuine issue of material fact and summary judgment is inappropriate. Debtors' motion must be denied.

**WHEREFORE**, Debtors' Motion for Summary Judgment is DENIED.

**FURTHER**, Scheduling Conference Re: Trial Date is hereby set for the **27th** day of **August, 1993**, at **9:15 A.M.** by telephonic hearing. **ATTORNEY CLEMENS IS TO INITIATE THE TELEPHONE CALL**. Parties should be ready and available to accept said call. The telephone number for Judge Kilburg's chambers is **(319) 365-9507**. **NOTE: THIS HEARING WILL BE TAPED ON ELECTRONIC RECORD EQUIPMENT**.

**SO ORDERED** this 9th day of August, 1993.

Paul J. Kilburg, Judge  
U.S. Bankruptcy Court