

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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MERIDEE DAVIS

Bankruptcy No. X90-01320S

Debtor.

Chapter 7

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HUGHES ANDERSON BAGLEY, JR.

Adversary No. X90-0228S

Plaintiff

vs.

MERIDEE DAVIS

Defendant.

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### **ORDER RE: COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT**

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The matter before the court is the dischargeability complaint of Hughes Anderson Bagley, Jr. (BAGLEY). Bagley alleges that debtor Meridee Ann Davis (DAVIS) obtained money from him by actual fraud. Trial was held May 27-28, 1993. The court now issues its findings of fact and conclusions of law as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

#### I.

Davis met Bagley in May of 1983. They began to date, and soon developed a sexual relationship. The relationship was not without conflict, but it continued.

Bagley worked at "Mike's Saloon", a business owned by his father or mother. Bagley worked there for deferred wages. He lived in his father's home. In January, 1984, Bagley argued with his father; consequently, he planned to move out of his father's home. Davis thought that Bagley planned to move to a motel. Davis lived with her daughter in a three-bedroom home in Plymouth County. On January 20, 1984, Davis offered to let Bagley stay with them for awhile.

Bagley accepted and began moving into Davis' home on January 21, 1984. On January 22, 1984, while Bagley and Davis were out together for a drive, police stopped the car and arrested Bagley. Davis believed he was being arrested on a drug charge. Davis thought that Bagley would be released within hours. This was not to be so. Charges were filed against Bagley; at least one conviction was obtained, and Bagley remained incarcerated. He would remain so until June, 1988. The additional accusations included a weapons charge. It was filed when police discovered weapons in a briefcase belonging to Bagley. The briefcase had been turned over to the authorities by Davis. Although Davis

was apparently unaware of the brief case's contents, the incident was a longtime source of friction between Bagley and Davis.

Bagley was imprisoned at various locations during the following periods:

<b>Date</b>	<b>Place</b>
1/22/84 to 12/10/84	Plymouth Co. Jail, Lemars, IA.
12/10/84 to 12/21/85	Monona Co. Jail, Onawa, IA.
12/21/85 to 2/12/86	In transit in custody of state and federal authorities.
2/12/86 to 10/86	Federal Correctional Institution, Sandstone, MN.
10/86	Halfway House, Waterloo, IA.
10/86 to 12/86	In transit in federal prison system.
12/86 to 8/27/87	Sandstone, MN.
8/27/87 to 6/88	Monona Co. Jail, Onawa, IA.
6/28/88	Released.

#### Exhibit K.

Over the term of Bagley's imprisonment, the parties exchanged several hundred letters. At first, they wrote to each other nearly every day. While Bagley was in the Plymouth County jail, Davis visited him every week. She renewed her offer to let him stay with her when he was released. Bagley gave Davis the money he had in his locker at the jail. She ran errands for him. Bagley was doing legal research on his own case. Davis helped him by obtaining law books for him from the Woodbury County Law Library.

In April, 1984, Bagley asked Davis to sell some of his personal property, including a milling machine, assorted precision tools, and other items. Davis advertised the property for sale and over time received the sales proceeds. The proceeds included \$700.00 from the sale of the milling machine in September, 1984. Bagley authorized Davis to use the proceeds for her personal use.

Between December, 1984 and December, 1985, while Bagley was in the Monona County jail, Davis wrote to him, visited him each week, brought him law books, and continued to run a variety of errands for him. Later, during the time that Bagley was at Sandstone, Davis wrote to him and ran errands for him. In Sandstone, Bagley continued his legal work on his own case and began charging fellow inmates for doing legal work on their cases. Bagley arranged for payment through the families of the inmates who sent the money to Davis. Davis confirmed receipt of payments by coded messages in letters to Bagley. After confirmation, Bagley began the legal work for the prisoner. Davis sent money weekly to Bagley at Sandstone in increments of \$25.00, \$50.00, or more. Exhibits J, W, 15.

In October, 1986, Bagley was moved to a "halfway house" in Waterloo, Iowa. Davis visited him there and brought him clothing and her typewriter. After Bagley was moved from Waterloo, Davis went there again to pick up Bagley's personal belongings. When Bagley was returned to the Monona County jail, Davis visited him regularly and continued to run errands for him.

When Bagley was arrested, Davis stored some of his personal belongings in her home. She continued to store things for Bagley as he sent them to her. Davis opened a savings account in Bagley's name at a bank in Sloan, Iowa. During the entire time of Bagley's imprisonment, Davis had power of attorney

to handle Bagley's banking affairs. Initially, she put all the money that she received in the account. At Bagley's direction, Davis kept just enough in the bank in order to have check cashing privileges there. She regularly sent money orders to Bagley.

In October or November of 1984, Davis decided to sell her home. She was having difficulty making mortgage payments. In June or July, 1985, she moved out of her house in anticipation of the sale. She moved in with her mother in Sloan, Iowa. Davis moved the personal belongings that she was storing for Bagley to another house her mother owned in Sloan. In August, 1985, Davis' house burned to the ground; she did not have fire insurance. Bagley was aware Davis' home had been destroyed and that Davis was living with her mother. Davis told Bagley that if he were released he could not stay at her mother's home more than a few days. The testimony is not clear regarding when Bagley and Davis first discussed his staying at her mother's house, but Bagley knew by March 18, 1987 that he would not be entirely welcome there. Exhibit C-296, page 4. Bagley continued to have money sent to Davis after that date.

In 1985, Davis was leasing an automobile. She was having difficulty paying the lease payments. Sometime in 1986, when he was at Sandstone, Bagley assured Davis he could generate money to make the payments. Bagley authorized Davis to apply some of the money she received toward the monthly lease payments of \$180.57, auto insurance and other automobile expenses.

From January, 1984 until the fall of 1984, Davis was working for General Business Equipment. From the fall of 1984 until July, 1985, she worked at a shopper newspaper. From July, 1985 until about April, 1988, Davis was not regularly employed. She did occasional housesitting and horse training, and she continued running errands for Bagley. She lived with her mother who received Social Security benefits. Her mother provided her with shelter, food and some utilities. In April, 1988, she began working for Krigsten's, a Sioux City furniture store.

In July of 1986, Davis began a friendship with Thomas Comstock. Gradually, their friendship grew. In May or June, 1988, Davis moved into Comstock's home. Two or three months before that time, they had begun a sexual relationship.

Davis admits to receiving money from Bagley on or about these dates:

Date	Amount and Source
2/1/84	\$600 cash from Bagley's property locker in Plymouth Co. jail.
2/84 to 5/84	\$720 City of Ames rent checks (\$180 for four months).
May 1, 1984	\$530 -- Proceeds of loan from Larry Noll to Bagley.
September 1, 1984	\$700--proceeds from sale of milling machine.
December 1, 1985	\$803.33--settlement of Bagley's claim against Pizza Hut.
March, 1986	\$800 from inmate at Sandstone.
Subtotal	\$4,153.33
<b>Bagley alleges that Davis received also the following amounts:</b>	
May - fall, 1984	\$3,500 from sale of Bagley's personal property, other than the milling machine.
May - August 1986	\$4,500--money from three federal prisoners.
February 1987	\$2,500--money from federal prisoner.
June 1986 - 5/1/88	\$8,250 (\$750 plus monthly payments of \$250 from federal prisoner)

Subtotal	\$18,750.00
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Bagley claims that Davis received a total of \$22,903.33. Davis disputes the latter amounts. Other than the money for the milling machine, she does not recall the amounts received in 1984 from sale of Bagley's personal property, but she states that Bagley's estimate is greatly exaggerated. Bagley did not introduce any evidence regarding the number or specific types of tools sold. The court finds that, other than as to the milling machine, there is insufficient evidence to establish the amount of the monies received by Davis for the 1984 sales of Bagley's tools and other personalty.

Davis does not remember the amount she received from prisoners, but estimates that she received \$2,500.00 in 1986, \$3,000.00 in 1987, and \$1,000.00 in 1988. Her estimate of all amounts received from January, 1984 through May, 1988 is roughly \$10,000.00. The only documentary evidence of the amounts received from prisoners are letters in which Davis confirms to Bagley that she received money. For example, in Exhibit 11 (May 22, 1987), she confirms receiving \$250.00; in Exhibit 13 (July 28, 1987), \$100.00; and in Exhibit 16 (August 19, 1987), \$100.00.

As to the money received from prisoners, the court credits the testimony of Bagley. He had personal knowledge of the fees for which he agreed to work. A system was set up whereby he would not do the work until he had received confirmation from Davis that the fee had been received. That all letters of confirmation were not introduced is not fatal to Bagley's claim that Davis received \$15,250.00 on account of Bagley's work. Davis cannot remember the amount, but thinks only that Bagley's figure is too high.

Davis admits to receiving \$4,153.33 from Bagley's assets. As stated, the evidence is insufficient on the issue of the sales proceeds of most personalty. There is sufficient evidence to show that Davis received \$19,403.33 from Bagley from early 1984 through May of 1988.

There is no question that some of the funds received by Davis were spent on Davis' running errands for Bagley and on purchases for Bagley, and it is undisputed that Davis sent Bagley money while he was in prison. Davis estimates that money spent for Bagley and money sent to him totals \$13,262.30. She is not able to document all of this amount. Exhibits do indicate that money used for Bagley's benefit totaled \$236.80 during the period of early 1984 through July 1986 (exhibits H, I, J, M); \$1,584.62 from July 1986 through February 1988 (exhibits Q, N, V, J, I, M) and \$1,234.55 from March 1988 on (exhibits P, O, L, J, I, N).

If Bagley were defrauded, he would be entitled to recover the money obtained from him by fraud. But such damages would not include the money returned to him or used for his benefit. From the evidence, the court cannot make a precise determination of the amount so used. As to which party bears the burden for proving that amount, the court need not decide, because Bagley has not proven other required elements to establish fraud.

## II.

Bankruptcy Code § 523(a)(2)(A) provides that a chapter 7 discharge does not discharge a debt:

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). To hold a debt nondischargeable, a plaintiff must prove that the debt falls within an exception to discharge by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 657-58 (1991).

False pretenses or false representations involve a false statement of present or past fact. Webster City Production Credit Ass'n v. Simpson (In re Simpson), 29 B.R. 202, 208-09 (Bankr. N.D. Iowa 1983). To prove actual fraud, a creditor must show:

1. That the debtor made the representations;
2. That at the time made, the debtor knew the representations to be false;
3. That the representations were made with the intention and purpose of deceiving the creditor;
4. That the creditor relied on such representations; and
5. That the creditor sustained the alleged loss and damage as the proximate result of the representations having been made.

Id., 29 B.R. at 209; Thul v. Ophaug (In re Ophaug), 827 F.2d 340, 342, n.1 (8th Cir. 1987). Silence regarding a material fact can constitute a false representation. Caspers v. Van Horne (In re Van Horne), 823 F.2d 1285, 1288 (8th Cir. 1987). A promise to perform a future act is an actionable representation only when made with existing real intention not to perform. Grefe v. Ross, 231 N.W.2d 863, 867 (Iowa 1975); Hagarty v. Dysart-Geneseo Comm. School District, 282 N.W.2d 92, 95 (Iowa 1979).

To find debt nondischargeable under § 523(a)(2)(A), a creditor need not prove that reliance on the debtor's fraudulent misrepresentation was reasonable. Ophaug, 827 F.2d at 343. However, "reasonableness is circumstantial evidence of actual reliance; that is, dischargeability shall not be denied where a creditor's claimed 'reliance' . . . would be so unreasonable as not to be actual reliance at all." Northern Trust Co. v. Garman (In re Garman), 643 F.2d 1252, 1256 (7th Cir. 1980), cert. denied 450 U.S. 910 (1981).

### III.

Bagley claims that he and Davis had an agreement that he would provide her with living expense money, and in exchange, she would provide him with a place to live when he got out of prison. She did not provide him with a residence upon his release, and Bagley claims that she misrepresented her intentions. He claims that in reliance on her promise, he provided her with substantial sums of money between January 1984 and May 1988. He concedes, however, that he is unable to point to any event from January, 1984 until the summer of 1985 that would show Davis had no intention to keep her word.

Davis claims she offered Bagley a temporary place to stay, but that her offer was independent of her receiving money from him. Davis admits to receiving approximately \$10,000.00 between January, 1984 and May, 1988, but claims she spent that much and more, using some of her own money, on behalf of his business and personal interests.

Certainly, Bagley supplied her with money, and some, perhaps much of it, was spent on Bagley. And Davis had offered on more than one occasion to let Bagley stay with her upon his release. However, based on the evidence and upon an assessment of the credibility of the witnesses, the court cannot find that the provision of money by Bagley and the offer of a place to stay were obligations of the parties, much less mutual obligations. Davis' first offer was made in January, 1984 after Bagley had an

argument with his father with whom he was living. Davis was sympathetic toward Bagley. She believed Bagley would otherwise have to move into a motel, so she offered to let him stay with her. Bagley testified that the offer was open ended, for no specific term. Davis testified that the offer was conditional; he could stay up to three months if her daughter agreed, and if they all got along.

While Bagley was in the process of moving in with Davis, he was arrested and imprisoned in the Plymouth County jail. The parties agree that Davis renewed her invitation shortly after Bagley's arrest. The situation of the parties was virtually unchanged from the previous offer. The nature of Davis' invitation was likely the same.

It does not seem likely that Davis' offer was in exchange for Bagley providing her with money. In January, 1984, although Davis was having difficulty paying her expenses, she was employed full-time. Bagley, on the other hand, had been working for his father for deferred wages. Bagley testified he did not have much money in the bank in January, 1984. There is no evidence he had bright prospects at the time. Most of the money at issue came from sources of which Bagley would have had no knowledge when these initial invitations were made. Moreover, the contention that Bagley promised Davis money to ensure himself a place to live when he was released from custody seems implausible. There was no indication of how much money he would provide nor of how much of a stay it would buy. How could Bagley know how long he would be in custody, or how much money he could give Davis? With those uncertainties, it is unlikely that a reasonable person would promise another person certain access to his or her home for an extended period in exchange for an unknown amount of money. If Bagley expected to be able to obtain money while incarcerated, why would his concern over a place to stay after his release prompt this alleged arrangement? Why not just save the money for rent on an apartment? The court does not accept Bagley's characterization of the situation.

It is more likely that the transfers of monies to Davis and her offers to Bagley that he could stay with her were part and parcel of their symbiotic relationship. Davis cared for Bagley and sympathized with his plight. She wanted to help him, and it appears she may have enjoyed feelings of self-worth in helping him. In other words, for her own reasons, she needed to help him or for him to need her. Bagley needed her help to accomplish things which one in prison cannot. Also, it was no doubt comforting to Bagley to have emotional support from someone while he was in prison. He apparently had no other relationship at the time he was imprisoned. He did not get along with his parents. There was also a sexual attraction between the couple. Bagley's providing money to Davis may have been based on his need to assure himself of Davis' aid and support, or it may have been based on a desire to be generous with her. But the court does not believe that it was in exchange for a promise of a place to live when he was released from prison. Bagley has not proven that Davis misrepresented her intentions regarding her providing him with living accommodations upon his release or that she had any intent to deceive him.

Although Bagley claims their "agreement" (money in exchange for a place to live) did not depend on their romantic relationship, he nonetheless testified that had Davis ever told him they had no future as a couple, he would have stopped sending money. It may be then that Bagley's actual claim is that Davis misrepresented her feelings toward him in an effort to keep the supply of money coming. If so, he did not plead it. But if he had, the court could not conclude he proved it. There is no evidence she misrepresented her feelings toward him. Her feelings changed over the course of the relationship, especially when Davis' relationship with Comstock began to blossom, but she would have been incapable of promising Bagley that she would not change her feelings. Nor did she hide her true feelings from him. She had told him of Comstock, but Bagley replied that he wanted to hear no more of him.

Davis did not misrepresent her feelings or intentions toward Bagley. She made no attempt to deceive him regarding her feelings or intentions. Bagley has failed to prove that Davis obtained money or property from him by fraud.<sup>(1)</sup>

### ORDER

IT IS ORDERED that the complaint of Hughes Anderson Bagley, Jr. against Meridee Davis is dismissed. Judgment shall enter accordingly.

SO ORDERED ON THIS 5th DAY OF APRIL, 1994.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on \_\_\_\_\_ I mailed a copy of this order and a judgment by U. S. mail to: Martha McMinn, William Keettel and U. S. Trustee.

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1. <sup>1</sup> Even if the court were to find that Davis had concealed a material fact from Bagley, the court questions whether it would find Bagley's claim nondischargeable. Bagley concedes he is unable to point to any event from January, 1984 until the summer of 1985 that would show that Davis had changed her mind in offering him a place to stay. For the most part, what is in dispute in this case is the money Bagley generated after May 1986, by doing legal work for fellow inmates in the federal prison at Sandstone. Bagley testified that there might have been a prison regulation against accepting money for legal work, but he did not think it was illegal. An inmate has no right to compensation and may be punished for accepting compensation for providing legal services. Johnson v. Avery, 393 U.S. 483, 490, 89 S.Ct. 747 (1969); see also Gometz v. Henman, 807 F.2d 113, 115 (7th Cir. 1986) ("the jailhouse lawyer may not (lawfully) charge for his services"). Minnesota law prohibits a nonlawyer from providing legal services for a fee. Minn. Stat. § 481.02(1) (1993). A person engaged in the unauthorized practice of law is guilty of a misdemeanor. Id., § 481.02(8). The court does not believe it should participate in recovering for Bagley money to which he was not entitled.