

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
WILLIAM ALEXANDER POWELL and)	CASE NO. 04-33044 HCD
DAWN FAITH POWELL,)	CHAPTER 7
)	
DEBTORS.)	
)	
HERITAGE BANK & TRUST COMPANY,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 04-3110
)	
WILLIAM ALEXANDER POWELL and)	
DAWN FAITH POWELL,)	
)	
DEFENDANTS.)	

Appearances:

Thomas M. Walz, attorney for plaintiff, 509 West Washington Avenue, South Bend, Indiana 46601; and
Michael K. Banik, attorney for defendants, 217 South Fourth Street, Elkhart, Indiana 46516.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 29, 2005.

Before the court is the Motion for Summary Judgment filed by the plaintiff Heritage Bank & Trust Company (“Heritage” or “Bank”). The Bank seeks summary judgment of its Amended Complaint in Objection to Discharge. The debtors William Alexander Powell and Dawn Faith Powell (“Powells” or “debtors”) filed an Answer to the Complaint but did not respond to the Bank’s discovery requests or to its summary judgment motion. Once the briefing schedule had passed, the court took the matter under advisement. For the reasons that follow, the court now grants the Motion for Summary Judgment of Heritage Bank.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(I) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

The following uncontested facts were presented by the Bank. On October 27, 2000, William Powell and Philip and Mildred DeJohn executed a promissory note with Heritage in the principal amount of \$180,000 (“Note 1”).¹ They secured payment of Note 1 by executing a real estate mortgage on a parcel of real estate owned jointly by William Powell and Philip DeJohn. When Note 1 matured on April 27, 2001, the parties needed additional funds to complete a construction project. For that reason, on May 4, 2001, the Powells and the DeJohns renewed and increased their obligation with Heritage by executing another note in the principal amount of \$210,000 (“Note 2”).

At that time, the Powells owned an undivided half-interest in a parcel of real estate in Elkhart County, Indiana (“the real estate”). The owners of the other undivided half-interest are John and Doris Snedaker, the parents of Dawn Powell. The Bank had discussed with the Powells its desire to procure a real estate mortgage against the Powells’ real estate. The Bank prepared a mortgage for their signature and advised the Powells that they would need to sign it when they executed Note 2. On May 4, 2001, when they executed Note 2, the Powells

¹ Note 1 and all other Bank documents to which the court refers herein are attached to the Bank’s Memorandum in Support of Plaintiff, Heritage Bank & Trust Company’s, Motion for Summary Judgment. *See* R. 22.

also signed a mortgage contract which gave the bank a valid second mortgage lien on the Powells' one-half interest in the real estate. The Powells executed a Notice of Right of Rescission, as well. The Bank recorded the mortgage lien on May 17, 2001.

On October 2, 2001, Heritage sent the Powells written notice that Note 2 would mature one month later, on November 4, 2001. On November 4, the Powells defaulted on the note. Two months after their nonpayment on Note 2, the Powells transferred their one-half interest in the real estate to the Snedakers on January 2, 2002. The Powells did not receive any consideration for the transfer.

On February 26, 2003, Heritage filed a lawsuit against the Powells and the DeJohns in the Elkhart Circuit Court. The Bank procured a default judgment against them on July 23, 2003, in the amount of \$266,862.24. The judgment was subsequently modified on several occasions; the last amendment occurred on July 14, 2004. As of July 8, 2004, the remaining balance on the judgment was \$126,717.86 plus interest.

On June 1, 2004, the Powells filed a voluntary chapter 7 petition. *See* Case. No. 04-33044, R.1. According to the debtors' schedules, William Powell is self-employed – as a carpenter, contractor, or construction worker, it appears, since he claimed an exemption in his carpentry tools used in his business. He also works for a remodeling company. Dawn Powell is a baker for the Elkhart Community Schools. The debtors listed Heritage on their schedules as a creditor with a secured claim in the amount of \$254,492.00, holding a lien on the debtors' residential real estate. *See* R. 1, Schedule D. They also listed Philip and Millie DeJohn as claimants holding an unsecured nonpriority claim for “any and all liabilities or guarantees related to a former business (B & P Construction).” R.1, Schedule F. The Order discharging the debtors was entered on September 13, 2004, and their case was closed on October 6, 2004.

However, on August 8, 2004, Heritage initiated an adversary proceeding by filing an Amended Complaint in Objection to Discharge against the Powells. *See* Adv. Proc. No. 04-3110, R. 1. It alleged that the debtors received money and an extension, renewal or refinancing of credit by false representation. According

to the Bank, the debtors represented to it that they had an ownership interest in real estate when in fact they knew that they were going to convey the property back to the Snedakers. The Bank alleged:

That Defendants created a new debt, obtained by actual fraud, by fraudulently transferring their interest in the subject real property which had value to the parents of Defendant, Dawn F. Powell in order to hinder the collection by Plaintiff of its debt if by chance Defendants defaulted in their contractual obligations to Plaintiff which in fact occurred.

R. 1 at 3, ¶ 9. It prayed that the debt owed by the debtors to Heritage be excepted from the debtors' discharge under 11 U.S.C. § 523(a)(2)(A). Heritage also asked that the debt be excepted from discharge under § 523(a)(6) on the following ground:

That Defendants, by transferring the subject real property to Dawn F. Powell's parents, willfully and maliciously injured the security interest of Plaintiff. That Defendants intended to improperly use Plaintiff's collateral, the real estate in question, for purposes other than the payment of the debt owed to Plaintiff. Said act was a conscious disregard of Plaintiff's rights and was malicious.

Id. at 4, ¶ 11.

The Powells filed an Answer on October 1, 2004. *See* R. 5. They denied that they knowingly or intentionally executed a mortgage on any interest in any real estate. Instead, they stated, they were advised that "it was simply a personal guarantee." *Id.* at 1 ¶ 2. They admitted that they were the owners of an undivided one-half interest in real estate, but insisted that "they were not aware of the nature of their interest." *Id.* at ¶ 3. They stated that they did not pay any consideration for their interest and that they transferred their interest back to the Snedakers without consideration. *See id.* at ¶¶ 3, 6. They denied the remaining allegations of the Complaint.

On January 18, 2005, Heritage submitted discovery requests to the Powells. The Bank did not receive the Powells' Initial Disclosures or their response to its Request for Admissions, as required under Federal Rule of Civil Procedure 26(a)(1) and (2). The Powells also failed to file their portion of the Pre-Trial Order. Nevertheless, the attorneys for the Bank and the debtors appeared at a status conference on March 9, 2005, and discussed trial preparation. On May 2, 2005, the Bank filed its Motion for Summary Judgment and Memorandum in Support thereof. The debtors did not file a response. On June 23, 2005, after the briefing schedule had passed, the court took the matter under advisement.

Discussion

Heritage has brought a Motion for Summary Judgment against the debtors under 11 U.S.C. § 523(a)(2)(A) and § 523(a)(6). It asserts that, because the debtors failed to respond to its motion and discovery requests, there are no genuine issues as to any material fact. According to the Bank, the debtors' admitted responses to the request for admissions, combined with the loan documents they signed, clearly show that the debtors obtained the \$210,000 loan from Heritage based on fraud and that they transferred their interest to the Snedakers willfully and maliciously in order to cause harm to Heritage. The court now considers whether the Powells' obligation to Heritage is nondischargeable as a matter of law under § 523(a)(2)(A) or § 523(a)(6).

Under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable in this court by Rule 7056 of the Federal Rules of Bankruptcy Procedure, summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986). In order to avoid trial, the moving party bears the burden of showing that no genuine issue of material fact is in dispute. See *Anderson*, 477 U.S. at 248. "To avoid summary judgment . . . the nonmoving party [is] required to set forth 'specific facts showing that there is a genuine issue for trial,' Fed. R. Civ. P. 56(e), and, further [has] to produce more than a scintilla of evidence in support of his position." *Silk v. City of Chicago*, 194 F.3d 788, 798 (7th Cir. 1999). In order to demonstrate that real factual disputes exist, the nonmovant must produce evidence of the disputes rather than relying solely on the allegations or denials in its pleadings. See *Barber v. United States (In re Barber)*, 236 B.R. 655, 659 (Bankr. N.D. Ind. 1998); N.D. Ind. L. B. R. B-7056-1. Summary judgment must be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

Underscoring the requirement of Rule 56(e) that a nonmoving party present some evidence to demonstrate that there are triable issues before the court, Rule B-7056-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Indiana requires a nonmovant's response.

. . . Any party opposing the motion [for summary judgment] shall, within thirty (30) days of the date the motion is served upon it, serve and file a "Statement of Genuine Issues" setting forth all material facts as to which it is contended there exists a genuine issue, supported with appropriate citations to discovery responses, affidavits, depositions or other admissible evidence, together with any affidavits or other documentary material controverting the movant's position. The "Statement of Genuine Issues" may either be filed separately or as a part of the responsive brief

N.D. Ind. L.B.R. B-7056-1; *see Barber*, 236 B.R. at 663 (citing earlier local rule and Seventh Circuit case law supporting trial court's discretion concerning strictness of the rule). Under this local rule, "if a summary judgment respondent fails to file a timely statement of disputed material facts, uncontroverted statements in the moving party's statement in support of summary judgment are deemed admitted." *Barber*, 236 B.R. at 663 (citing *Giannopoulos v. Brach & Brock Confections, Inc.*, 109 F.3d 406, 412 (7th Cir. 1997)). Indeed, courts generally treat all material facts as admitted when no response is filed and the facts are thereby uncontroverted. *See, e.g., West v. Grindstaff (In re Grindstaff)*, 254 B.R. 706, 708 (Bankr. S.D. Ohio 2000); *Novartis Corp. v. Luppino (In re Luppino)* 221 B.R. 693, 696 (Bankr. S.D. N.Y. 1998). In this case, the court finds, the debtors, by not responding to the Bank's motion for summary judgment, failed to comply with the local bankruptcy rule and federal rules and thereby admitted all the material facts in the Bank's motion.

The court also finds that the debtors, by failing to answer the Bank's request for admissions, have not complied with Federal Rule of Bankruptcy Procedure 7036(a), the bankruptcy rule governing requests for admission. "If the opponent fails to consider the request, the factual issue is deemed admitted." *Household Credit Servs., Inc. v. Jacobs (In re Jacobs)*, 196 B.R. 429, 431 (Bankr. N.D. Ind. 1996), *quoted in Hasbrook v. Citibank (In re Hasbrook)*, 289 B.R. 375, 378 (Bankr. N.D. Ind. 2002). The information in the requests for admission, if admitted by failure to respond, can serve as a factual predicate for a summary judgment motion in an adversary proceeding. *See In re Vianese*, 192 B.R. 61, 66 (Bankr. N.D.N.Y. 1996). If the facts admitted by default are

dispositive of the issue, then under Bankruptcy Rule 7036 summary judgment based on those unanswered requests for admission properly may be granted. *See In re Hasbrook*, 289 B.R. at 378. In this case, the court determines that the facts set forth by the Bank, being uncontroverted by the debtors, are admitted.

The issue herein, therefore, is whether those undisputed facts demonstrate that, as a matter of law, the debtors' obligation to the Bank is excepted from their discharge under § 523(a)(2)(A) and/or § 523(a)(6) of the Bankruptcy Code. Those sections provide that an individual debtor is not discharged 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 . . . ;

. . . and . . .

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. § 523(a)(2)(A), (6). To succeed under § 523(a)(2)(A), the Bank has the burden of proving by a preponderance of the evidence that the debt owed to it by the debtors was obtained by actual fraud, false pretenses, or misrepresentation. *See McClellan v. Cantrell*, 217 F.3d 890, 893-94 (7th Cir. 2000) (stating that fraud is not limited to misrepresentations and misleading omissions); *In re Bero*, 110 F.3d 462, 465 (7th Cir. 1997) (setting forth burden of proof). The Bank must establish that (1) the debtors obtained the loan through representations that the debtors either knew to be false or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) the debtors acted with an intent to deceive the Bank; and (3) the Bank justifiably relied on the debtors' false representations to its detriment. *See In re Sheridan*, 57 F.3d 627, 635 (7th Cir. 1995); *Mayer v. Spanel Int'l, Ltd. (In re Mayer)*, 51 F.3d 670, 673 (7th Cir.), *cert. denied*, 516 U.S. 1008 (1995); *In re Maurice*, 21 F.3d 767, 774 (7th Cir. 1994); *see also Field v. Mans*, 516 U.S. 59, 74-75, 116 S. Ct. 437, 446, 133 L.Ed.2d 351 (1995) (holding that a creditor's reliance need only be justifiable, not reasonable).

To succeed under § 523(a)(6), the Bank was required to demonstrate that the debtors intended to cause harm or that there was a substantial certainty that harm would occur. *See Kawaauhau v. Geiger*, 523 U.S.

57, 61, 118 S. Ct. 974, 977, 140 L.Ed.2d 90 (1998). The Bank must establish: (1) that the debtors owe it a debt resulting from an injury the debtors caused to the Bank; (2) that the debtors' actions in causing the injury were willful; and (3) that the debtors' actions in causing the injury were malicious. *See Baker Dev. Corp v. Mulder (In re Mulder)*, 307 B.R. 637, 641 (Bankr. N.D. Ill. 2004). The term "malicious" has been defined as "'in conscious disregard of one's duties or without just cause or excuse; it does not require ill will or a specific intent to do harm.'" *In re Thirtyacre*, 36 F.3d 697, 700 (7th Cir. 1994) (quoting *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986)). The term "willful" modifies "injury"; therefore, a nondischargeable action under § 523(a)(6) "takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury." *Geiger*, 523 U.S. at 61, 118 S. Ct. at 977 (concluding that § 523(a)(6) is intended to prevent the discharge of debts incurred as a result of intentional torts). The Supreme Court held that the § 523(a)(6) exception is limited to conduct associated with intentional torts and that "debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.* at 64, 118 S. Ct. at 978. The Bank must prove each element by a preponderance of the evidence. *See Zygulski v. Daugherty*, 236 B.R. 646, 653 (N.D. Ind. 1999).

The element of intent is found in each of those exceptions to discharge of a debt. Intent usually is a question of fact and is "often not susceptible to summary judgment." *In re Kontrick*, 295 F.3d 724, 737 (7th Cir. 2002), *aff'd*, 540 U.S. 443, 124 S. Ct. 906, 157 L.Ed.2d 867 (2004). Nevertheless, fraudulent intent is usually determined by circumstantial evidence and may be inferred if the totality of the circumstances "presents a picture of deceptive conduct by the debtor which indicates he intended to deceive or cheat the creditor." *Leeb v. Guy (In re Guy)*, 101 B.R. 961, 978 (Bankr. N.D. Ind. 1988); *see also WebMD Practice Services, Inc. v. Sedlacek (In re Sedlacek)*, 327 B.R. 872, 887 (Bankr. E.D. Tenn. 2005). Likewise, since a person seldom admits that he intended to cause an injury or that he acted in a willful and malicious way, "those requirements must be inferred from the circumstances surrounding the injury at issue." *Cutler v. Lazzara (In re Lazzara)*, 287 B.R. 714, 723 (Bankr. N.D.Ill. 2002).

In this case, the court looked at the totality of the circumstances to determine first whether the debt to Heritage was incurred through willful misrepresentation with intent to deceive Heritage. It finds that the debtor William Powell, a self-employed carpenter or contractor working now for a remodeling company, borrowed \$180,000 from Heritage in October 2000. He and the DeJohns were working on a construction project. On October 27, 2000, they executed a promissory note and a real estate mortgage securing the note. Six months later, when Note 1 matured, they were still working on a construction project and needed more funds. Heritage renewed the note (Note 2) and increased their obligation to \$210,000. Once again, the Bank required a real estate mortgage to secure the note. Note 2 specified that it was given as a consumer loan for residential construction and that it was “secured by a mortgage dated May 4, 2001 and a mortgage dated October 27, 2000.” *See* R. 22, Ex.C. The signatories to Note 2, executed on May 4, 2001, were William and Dawn Powell and Philip and Mildred DeJohn. The signatories to the mortgage securing Note 2, also executed on May 4, 2001, were William and Dawn Powell. *See id.*, Ex. F. Based on the Powells’ representation that they were willing to pledge their interest in the real estate as security for the loan, Heritage agreed to lend the Powells and DeJohns the funds requested. The mortgage gave Heritage a lien on the real estate.

Note 2 is a standard promissory note. The Bank promised to pay the parties \$210,000 on May 4, 2001, and the parties promised to pay the outstanding principal balance, with accrued interest at the rate of 9.5%, on November 4, 2001. At that time they executed those documents, the Powells represented to the Bank that they had the ability to pay Note 2 under its terms. However, in Admission No. 11, the Powells admitted that they knew, when they signed Note 2, that they did not have the financial resources to make the monthly payments required under the terms of Note 2. They also represented to the Bank, by executing the real estate mortgage, that their real estate would serve as collateral for Note 2. Heritage extended the loan based on the Powells’ representations.

The Powells defaulted on the promissory note when it matured in November 2001. Although they knew that they had granted Heritage a lien on the real estate, the Powells transferred their one-half interest in the

real estate to Dawn Powell's parents, the Snedakers, for no consideration. They executed a quit-claim deed to transfer their interest in the real estate on January 2, 2002, two months after they had defaulted on Note 2.

It is undisputed that, despite their representations to the Bank, the Powells defaulted on Note 2 and transferred their interest in the real estate to Dawn Powell's parents, for no consideration, two months after their default. Based on the documentary evidence – Note 2, the mortgage, and the quit-claim deed – and on the admissions of the debtors, the court finds that it can infer that the Powells transferred their interest in the real estate in order to prevent Heritage from foreclosing on that real estate. The court focused on several crucial admissions by the debtors. First, the debtors admitted that they knew, when they signed Note 2, that they did not have the financial resources to make the payments. Based on that admission, the court finds that the Powells obtained the loan from Heritage by willful misrepresentation and with the intent to deceive Heritage. The debtors also admitted that they knew, when they transferred their interest in the real estate without consideration, that they were delinquent on their payments on Note 2 and that the bank had a lien on the property they were transferring. Based on those admissions, the court finds that the transfer was made with the intent that Heritage would not be able to foreclose on the real estate. *See McClellan v. Cantrell*, 217 F.3d at 894 (concluding that a debtor's transfer of property without adequate consideration "is deemed a fraud on the debtor's creditors"). As a result of the debtors' conduct, Heritage was not repaid the \$210,000 loan when Note 2 matured, and it also lost its security interest from which it could have attempted to recoup those losses. It appears that Heritage, in the ordinary course of its business, had given the debtors and the DeJohns the funds they needed for a construction project, with the expectation of repayment or of obtaining the collateral securing the note. The court finds that, in the totality of the circumstances, the Bank justifiably relied on the debtors' false representations, to its detriment. It determines that the Bank successfully demonstrated that the Powells obtained the funds represented by Note 2 through fraud and therefore that their obligation to Heritage is nondischargeable under § 523(a)(2)(A). *See In re Sedlacek*, 327 B.R. at 888 (noting that the debtor did not challenge plaintiff's allegations and did not rebut plaintiff's exhibits, finding that plaintiff proved elements of § 523(a)(2)(a)).

Before granting summary judgment to Heritage, however, the court must consider whether the denials in the debtors' Answer created genuine issues of material fact that would preclude summary judgment and require a trial. Even though the debtors failed to respond to the request for admissions or to the Bank's summary judgment motion, they did present two objections to the Bank's facts in their Answer. Their responses, which were more in the nature of affirmative defenses, stated (1) that they did not know they were signing a mortgage and thought they were signing a personal guarantee, and (2) that they were unaware of the nature of their interest in the real estate. It is clear that "[s]ummary judgment is not an appropriate occasion for weighing the evidence; rather, the inquiry is limited to determining if there is a genuine issue for trial." *Lohorn v. Michal*, 913 F.2d 327, 331 (7th Cir. 1990). Having considered the debtors' Answer, however, the court finds that the denials therein do not create genuine issues of material fact that preclude summary judgment.

First, the court finds from review of the documents themselves that the Powells signed the mortgage and also Note 2, which specifies that it is secured by the mortgage. Second, prior to or at the time they signed the documents, the Powells received a letter from the Bank stating that it had prepared the new note and "a mortgage for the Powells" and that the documents were ready for their signatures. R. 22, Ex. B. In addition, the debtors admitted that they had signed the mortgage and knew that they were giving Heritage a lien on the real estate. *See id.*, Ex. D, Adm. 7, 8. William Powell worked in the construction industry; he had signed Note 1 and a mortgage with the Bank six months prior to the debtors' execution of Note 2 and a mortgage. The court does not need to conduct a trial to determine whether the debtors thought they were signing a personal guarantee or a mortgage.

Nor is a trial necessary to determine whether the debtors were aware of the nature of their undivided interest in the real estate. The documents clearly demonstrate that the debtors granted Heritage a mortgage on that real estate and then quitclaimed the real estate to the Snedakers, who are family members, for no consideration. They admitted the transfer of their interest and the lack of consideration for it. The Seventh Circuit Court of Appeals has made clear that, "when a debtor transfers property to a third party without adequate

consideration, the transfer is deemed a fraud on the debtor's creditors." *McClellan v. Cantrell*, 217 F.3d at 894. In light of the debtors' admission that they made the transfer knowing that they had not paid the Bank and that the Bank held a lien on the real estate being transferred, the court determines that the debtors did not produce any evidence that material factual disputes exist.

The court finds, therefore, that there is no genuine issue as to any material fact in this case, and that Heritage, the moving party, is entitled to judgment as a matter of law. Heritage has met its burden of proving, by a preponderance of the evidence, that (1) the debtors obtained the \$210,000 loan from Heritage through their willful misrepresentation; (2) the debtors acted with intent to deceive the Bank, by promising repayment when they knew they did not have the financial resources for payments and by giving the Bank a security interest in real estate they then transferred to a family member for no consideration; and (3) the Bank justifiably relied on the debtors' false representations to its detriment. The debtors' default in payment and transfer of the real estate clearly caused harm to Heritage. The court concludes that the Powells' obligation to Heritage is nondischargeable under § 523(a)(2)(A). In light of this conclusion, it is unnecessary to consider whether the debtors' obligation to the Bank might also be excepted from discharge under § 523(a)(6).

Conclusion

For the reasons presented above, the court grants Heritage Bank & Trust Company's Motion for Summary Judgment. The obligation owed by the debtors William Alexander Powell and Dawn Faith Powell to Heritage Bank is excepted from their discharge pursuant to § 523(a)(2)(A). Judgment is entered for Heritage Bank and against the debtors in this adversary proceeding.

SO ORDERED.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT