Not intended for publication

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE:

ROBERT S. TAYLOR,	**CASE NO. 94-12458**
DEBTOR	**CHAPTER 7**
REELFOOT BANK,	
PLAINTIFF,	
v.	**Adv. Pro. 95-0225**
ROBERT S. TAYLOR,	
DEFENDANT.	

MEMORANDUM OPINION AND ORDER RE
COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT
PURSUANT TO 11 U.S.C. § 523 AND, IN THE ALTERNATIVE,
OBJECTION TO DISCHARGE PURSUANT TO 11 U.S.C. § 727

Over a period of two-and-a-half years, Reelfoot Bank ("Reelfoot") made fourteen separate loans to the debtor, Robert S. Taylor, for the purpose of purchasing cattle. Each loan was individually secured by the cattle purchased with the proceeds of such loan. At the time of filing bankruptcy, Taylor had outstanding balances due and owing on six of the loans. Additionally, the cattle used to secure these loans was no longer in the debtor's possession, nor was there any concrete proof as to their whereabouts. As a result of such delinquency and disappearance, Reelfoot filed this adversary proceeding requesting that the past-due amount be declared non-dischargeable under 11 U.S.C. § 523 or, in the alternative, that the Court deny Taylor's discharge under 11 U.S.C. § 727. Reelfoot's complaint also asked that a final judgment be entered in their favor against Taylor for the amount of the delinquency.

This Court conducted a hearing on this matter on November 11, 1996, pursuant to FED. R. BANKR. P. 9014. This is a core proceeding. 28 U.S.C. § 152(b)(2). After reviewing the testimony from the hearing and reviewing the record as a whole, the Court makes the following findings of fact and conclusions of law. FED. R. BANKR. P. 7052.

I. Findings of Fact

As one Bankruptcy Judge has recognized, "[C]ounting cattle may be a pacifying exercise for small children on long trips, but it makes for poor reading in judicial opinions."[1] Unfortunately for all concerned parties, counting cattle is exactly what is crucial to the determination of this proceeding. "How many cows were bought?" "How many cows were sold?" and "How many cows are unaccounted for?" are all questions which must be answered in order to decide the issue of whether or not the debtor in this case is entitled to a discharge of the debt he owes to Reelfoot Bank. As tedious as this counting task may be, there is to be no resolution of the matter without it.

The debtor in this case, Robert S. Taylor, is a 56 year old man who has been engaged in the business of buying, breeding and selling livestock for a number of years. In the late 1980s and early 1990s, Taylor was partners in a company called T & M Livestock with Barry McGinnis. The primary purpose of this partnership was the buying and selling of cattle.

During the same period of time that T & M was in existence, Taylor individually owned cattle which he kept separate and apart from the partnership's herd. In order to finance these private cattle, Taylor acquired loans from both NationsBank and the Bank of Troy. In December of 1991, Taylor owned one-hundred-fifteen (115) head of cattle pursuant to Bank of Troy loans and sixteen (16) head of cattle pursuant to NationsBank loans.[2] According to his own testimony,

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[1] Nolin Production Credit Assoc. v. Vance (In re Vance), 43 B.R. 99 (Bankr. W.D. Ky. 1984).

[2] In December of 1991, the number of NationsBank cattle was actually an unspecified number. However, because there were sixteen (16) head left on Taylor's NationsBank land as of the date of filing bankruptcy, the court is attributing sixteen head of cattle to the NationsBank loan as of December 31, 1991.

Taylor had two separate plots of land for each group of cattle. As a result, the two herds were never intermingled. Taylor also testified at trial that he did not receive any further cattle operation loans from NationsBank or the Bank of Troy after December of 1991.

Taylor and McGinnis dissolved the partnership of T & M Livestock in December of 1991. At that time, Taylor started a sole proprietorship engaged in the breeding and selling of cattle. The beginning inventory for this business was the one-hundred-fifteen (115) head of Bank of Troy cattle and the sixteen (16) head of NationsBank cattle. Wishing to expand his herd, Taylor sought, and received, a loan from defendant, Reelfoot Bank, with which he purchased ninety-seven (97) head of cattle. These additional cows and bulls were kept on a 360 acre scrubbrush farm, separate and apart from the Bank of Troy and NationsBank cattle.

Taylor's first loan as a sole proprietor from Reelfoot Bank was made on December 31, 1991. Over the next two-and-a-half years, Taylor obtained fourteen loans from Reelfoot for the exclusive purpose of purchasing cattle. According to the debtor's testimony, Reelfoot was the only bank from which Taylor obtained loans to fund his livestock business after December 31, 1991.

Upon making the first loan to Taylor, Reelfoot vice-president David Meisner visited the debtor's three farms and inventoried the cattle. The beginning head count of Taylor's entire herd (including the Bank of Troy and NationsBank livestock) was determined to be two-hundred-twenty-eight (228). At no other time did a Reelfoot official inventory the cattle or visit the land to make a specific head count. Meisner testified at trial, however, that, at various times, bank officials, including himself, would drive by Taylor's land to see if cattle were still being kept there and whether or not there was a noticeable decrease in the size of the herd. The bank did not find either of these contingencies to have occurred at any time during their relationship with Taylor.

According to the testimony at trial, both parties are in substantial agreement as to the basic procedure the debtor used to apply for a Reelfoot loan. After buying a certain number of cattle, Taylor would go to the bank and inform Meisner as to the relevant number of cattle and the dollar amount needed to make the purchase. Meisner testified that he would compare the figure submitted by Taylor to the current selling prices of similar cattle to see if Taylor's numbers were reasonable. If Meisner determined that they were, Reelfoot would lend Taylor the money.

Meisner also testified that Reelfoot loaned Taylor the money based on his good reputation as a livestock dealer and his excellent payment history with the bank.[3] As a result, Reelfoot did not require Taylor to provide them with any documentation regarding the cattle purchases. According to Meisner's testimony, at no time did Reelfoot feel it had reason to question any purchases made by Taylor.

As collateral for these loans, Reelfoot took a security interest in not only the specific cattle bought with a particular loan's proceeds, but also all offspring of such cattle. This interest was reflected both on the loan's promissory note and the filed financing statement.[4] The number of cattle used as security was always the number Taylor had said he had bought and which was reflected on the promissory note and financing statements. All promissory notes were signed by Taylor.

Meisner testified that the amount of money loaned to Taylor occasionally included a small sum in addition to the price of the cattle. This additional amount was to cover the cost of veterinary services, such as shots, that the cattle would receive upon being bought. Taylor testified that further additional money was included in the loan in order to purchase feed for the cattle. Reelfoot's Vice President, Meisner and former Vice-President, Rick Hepler, both testified that at no time was the bank aware of including additional money for feed or other expenses associated with the cattle in these loans. Meisner and Hepler also testified that they could not recall any discussion with Taylor about bumping up the loan amounts to include money for feed. As far as all parties were concerned, there was ample acreage on Taylor's farm on which the cattle could graze.

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[3] Taylor also had trucking loans, farm loans, and farm equipment loans from Reelfoot Bank.

[4] All financing statements were filed with the Obion County Register of Deeds.

As of the date of filing his chapter 7 bankruptcy petition, Taylor had successfully repaid eight of the fourteen livestock loans he had received from Reelfoot. Loan numbers 39336, 39359, 39948, 40038, 41113, 41167, 41838, and 41866 were paid in full and on time. Six of the loans, however, were either not repaid at all or had only been partially satisfied by the time the debtor sought bankruptcy protection. The total amount of principal borrowed by Taylor through these delinquent loans was $80,499.75. Prior to filing bankruptcy, Taylor had paid $12,000 towards this amount, leaving a balance of $68,499.75 outstanding on Reelfoot loans. Additionally, the cattle securing these loans was no longer in the debtor's possession nor was there any concrete evidence as to their whereabouts.

The first loan Reelfoot made to Taylor occurred on December 31, 1991, and was designated as loan number 38838. The original amount of this loan was $49,100.00. According to the promissory note and the financing statement filed by Reelfoot, a total of ninety-seven (97) head of cattle were to be purchased with this money and were to serve as security for the loan.[5] This note became due on July 1, 1992. At the time of filing bankruptcy, there was an outstanding balance of $39,100.00 on this loan.[6]

The second Reelfoot loan on which Taylor defaulted, loan number 39879, was made on September 18, 1992. The principal amount of this loan was $11,445.00 and was made for the purpose of purchasing "18 cows with calves." Both the promissory note and the filed financing statement reflect this amount of cattle as securing the loan.[7] The maturity date of this loan was

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[5] The promissory note and the financing statement both contain the following description of the collateral for this loan: "Commercial cattle including but not limited to the following description: 76 commercial cows various breeds, ages, and weights and all offspring; 19 yearling calves various weights and breeds; 2 commercial bulls various ages and weights limousin breed. Claim for proceeds also includes any proceeds from any insurance paid on the cattle."

[6] The net payoff on this loan, as of February 15, 1995, including interest, is $41,348.25.

[7] The promissory note and the security agreement read as follows: "18 cows with calves, various ages, weights & breeds; includes also any replacements for or future offspring of

March 17, 1993. As of the date of filing his chapter 7 petition, Taylor still owed $9,445.00 on this loan.[8]

The third loan Taylor failed to repay was loan number 41041 and was made on July 31, 1993. The original amount of this loan was $4044.75 and had a maturity date of January 28, 1994.[9] This loan was made for the purchase of seven head of cattle and was secured by the same.[10]

The fourth delinquent Reelfoot loan, loan number 41277, was for the principal amount of $5,800. It was made on October 5, 1993. The proceeds of this loan were for the purchase of ten (10) head of cattle. Both the promissory note and the filed financing statement reflect this amount of livestock as securing the loan.[11] This loan had a maturity date of April 2, 1994, and as of today has an outstanding balance of $5800.00.[12]

The fifth past-due loan from Reelfoot was loan number 41343 and was made on October 30, 1993. The principal amount of $1005.00 was to be used by Taylor to purchase two cows.[13] These cattle served as security for the loan according to both the promissory note and the filed financing statement. This loan had a maturity date of March 30, 1994, and has a current balance

collateral."

[8] As of February 15, 1995, the net payoff amount of this loan, with interest, is $9,823.97.

[9] As of February 15, 1995, the net payoff amount of this loan, with interest, is $4,250.03.

[10] The promissory note and security agreement read as follows: "7 mixed breed cows various ages and weights with all offspring."

[11] The promissory note and security agreement read as follows: "9 mixed breed cows, various ages and weights; 1 brangus bull; claim for security interest includes all replacements and/or offspring."

[12] As of February 15, 1995, the net payoff amount of this loan, with interest, is $5,975.45.

[13] The promissory note and security agreement read as follows: "2 mixed breed cows various ages and weights including all offspring."

of $1005.00.[14]

The final outstanding loan made by Reelfoot to Taylor, loan number 41748, occurred on March 19, 1994. This loan was for $9105.00 and was secured by eighteen (18) head of cattle.[15] This loan was due on December 19, 1994, and has yet to be repaid by Mr. Taylor.[16]

As mentioned earlier, all fourteen loans made by Reelfoot to Taylor were for the purpose of purchasing cattle. At trial, Taylor submitted all receipts and documentation he had regarding the purchase of cattle in 1992, 1993, and 1994. Over this period of time, Taylor bought three-hundred-forty-four (344) head of cattle for a total price of $140,864.11. Comparing this evidentiary material to both the promissory notes and the testimony of Meisner and Taylor, there are several discrepancies between the representations Taylor made to the bank regarding a particular loan and the purchases Taylor actually made.

The first discrepancy that exists concerns loan number 39879. This loan was made on September 18, 1992, and was for the purchase of eighteen (18) cows with calves. The amount of this loan was $11,445.00. According to the debtor's receipts and testimony, Taylor purchased eighteen (18) cows with calves on September 16, 1992, for the sum of $5,820.00 from Farmer's Livestock. These figures result in a difference of $5,625.00 between the loan amount and the purchase price. When questioned about this surplus money at trial, Taylor admitted that he could not remember what the surplus had been spent on, but surmised that it had been used to purchase feed. Despite this testimony, Taylor was not able to produce any receipts showing if and when feed was purchased or for what amount, nor could Taylor remember in which loans feed money was included or how much extra money was loaned for this purpose.

The second area of discrepancy concerns loan number 41041. This loan was made on

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[14] As of February 15, 1995, the net payoff of this loan, including interest, is $1.043.70.

[15] The promissory note and security agreement read as follows: "18 bred [pregnant] cows, mixed breed various ages and weights, together with all offspring."

[16] As of February 15, 1995, the net payoff of this loan, including interest, is $9,527.85.

July 31, 1993 and, according to the promissory note and the financing statement, was for the purchase of seven (7) cows. The amount loaned was $4,044.75. The only receipt concerning the purchase of cattle around this same time period is dated July 21, 1993, and showed that six (6) head of cattle were bought for $2,165.00 from Farmer's Livestock. Here there is a difference of $1,879.75 between the amount loaned and the actual purchase price. Also, Taylor bought one less cow than what he had told Reelfoot he was going to buy.

The third area of discrepancy concerns loan number 41277. This loan was made on October 5, 1993, and was in the amount of $5800.00. Taylor told Reelfoot he was going to buy ten (10) head of cattle with such proceeds. Three days earlier, on October 2, Taylor had purchased ten (10) cows from Brooks Farm for $5700.00. Taylor had not made any payments on this loan at the time this complaint was filed, nor were the cattle still in his possession.

The fourth area of discrepancy concerns loan number 41343, which was made on October 30, 1993. According to the promissory note and the financing statement, this loan was for the amount of $1005.00 and was to be used to purchase two (2) cows. Taylor's receipts show that one (1) cow was purchased four days earlier on October 26, 1993, for $500.00 at Farmer's Livestock. Once again, Taylor bought less cattle than what he had told Reelfoot. Also, there was a $505.00 difference between the amount loaned and the amount spent.

The final area of discrepancy concerns loan number 41748 made on March 19, 1994. This loan was in the amount of $9105.00 and was for the purchase of eighteen (18) cows. According to the debtor's receipts, Taylor purchased eighteen (18) cows for $5404.80 from Via Farms on the same day the loan was made. The difference here between what was spent and what was loaned was $3700.20.

According to this testimony and evidence, Reelfoot loaned Taylor a total of $31,399.75 for the purchase of fifty-five (55) head of cattle. Of this amount, $19,589.80 was used by Taylor to buy fifty-three (53) head of cattle. These figures result in an excess of $11,809.95 of loan money that was not used for the purchase of cattle, as well as two fewer cows being bought with such proceeds.

Ignoring the discrepancies for the moment, Taylor's receipts show that he purchased three-hundred-forty-four (344) head of cattle between December 31, 1991, and May 13, 1994. Taylor's beginning inventory, as calculated by Reelfoot's Vice-President on December 31, 1991, was two-hundred-twenty-eight (228). These two figures add up to a total of five-hundred-seventy-two (572) head of cattle. This figure, however, does not include any recognition of the offspring born to Taylor's cattle over the two-and-a-half year period. According to both the promissory notes and the filed financing statements, such offspring were to serve as collateral for the Reelfoot loans.

Meisner testified that for these type of cattle there would be a percentage of offspring somewhere in the neighborhood of ninety to ninety-five percent. Taylor testified that he thought the ratio would be a bit lower in the eighty to ninety percent range. When questioned about the number of offspring born, Taylor could not give an estimate of this figure except to say that offspring was being born continuously and, because they were too numerous to count, he took no inventory of them.

In addition to all the evidence offered regarding the purchase of cattle during his time in business as a sole proprietor, Taylor also submitted all receipts and documentation he had regarding the sale of cattle during this same time period. According to these documents, Taylor sold a total of five-hundred-six (506) head of cattle for the sum of $212,916.68 between December 31, 1991, and November 21, 1994. When subtracted from the total inventory of five-hundred-seventy-two (572) (which does not include any recognition of the numerous offspring born to Taylor's cattle during this time), the number of cattle sold by Taylor over the two-and-a-half years results in a total of sixty-six (66) cattle being unaccounted for by the debtor.[17] All

[17] Plaintiff's counsel contends the number of missing cattle to be 139, including an estimate of 73 head of cattle as representative of the number of offspring born to the debtor's cows. While this number greatly exceeds the court's finding of 66 missing cattle, the actual total number of cows, bulls and calves unaccounted for by Taylor is somewhat irrelevant. What is important to the decision today is that the 55 head of cattle securing the unpaid Reelfoot loans are no longer in the debtor's possession.

fifty-five (55) of the cattle securing the outstanding Reelfoot Bank livestock loans are included within this number.

When questioned by Reelfoot's attorney about this discrepancy of sixty-six (66) cattle, Taylor offered several explanations for the general diminution of the herd. According to Taylor, a number of missing cows were lost due to rustlers, drive-by shootings, disease, escape and predators. When questioned directly about these numbers as they related to his cattle, however, Taylor could only recall three (3) cows being shot, sixteen (16) dying in 1992 and thirty-five (35) dying in 1993, with no losses due to death in 1994. In his deposition, Taylor estimated that only between ten and twelve head a year died.

At trial, Meisner testified that Taylor never contacted Reelfoot regarding missing cattle except to notify them of death losses. In Meisner's opinion, these death losses due to disease were not unusually large numbers for someone running as many cattle as Taylor was. At no time, however, did Taylor contact Reelfoot regarding the rustling of cattle or the drive-by shootings of his cows. Reelfoot was also never contacted by law enforcement officials in relation to a drive-by shooting problem.

Despite Taylor's offered explanations for the dwindling of his herd, he was unable to produce any kind of business records or documentation regarding the loss of his cattle. When questioned about his lack of records, Taylor admitted he could not produce any because he did not keep any. Taylor testified that during the entire period of the sole proprietorship, he was also working as a truck driver. As a result, the only time Taylor had to check on his cattle was at nights and on weekends. Taylor admitted that because the cattle were being kept on three separate, rather spacious farms, it was difficult to spend a great deal of time monitoring any one herd. Taylor also failed to take any inventory of the cattle during this period.

In addition to keeping poor records and losing track of his cattle, Taylor also failed to keep proper track of the funds generated through his livestock business. Taylor testified at trial that when he sold some Reelfoot cattle he would deposit the sale proceeds into his NationsBank checking account. Besides containing the money from sales of the Bank of Troy and

NationsBank cattle, this checking account also contained the money Taylor earned from his truck driving job, his wife's salary, and money generated through the sale of personal property. Taylor admitted that this particular checking account was used for many purposes, not just his cattle business. As a result of this co-mingling of funds, it was impossible for Taylor to say which money represented the sale of Reelfoot cattle.

This mixing of money was not the only error Taylor admitted making in regards to the sale of Reelfoot cattle. On November 21, 1994, Taylor shipped a number of cattle to Brooks Farm for sale. Taylor did not accompany these cattle, nor was he present for the sale. After this livestock was sold, the sale of one Reelfoot bull was erroneously credited to one of the other bank's accounts. Taylor contends that the amount of this error was so insignificant that he did not notice it until after filing bankruptcy.

In the fall of 1994, the debtor came to the realization that he would no longer be able to continue in the cattle business. On November 22, 1994, Taylor filed his chapter 7 petition for bankruptcy relief. Upon being notified of this filing, Reelfoot Bank filed the present adversary proceeding seeking to have the outstanding loans owed to them declared nondischargeable under 11 U.S.C. § 523(a)(2)(A), § 523(a)(4), and § 523(a)(6). Reelfoot also alleged that grounds exist to deny the debtor a complete discharge under 11 U.S.C. § 727(a)(3) and § 727(a)(5). On November 11, 1994, this Court held a hearing on this adversary proceeding.

II. Conclusions of Law

Although the plaintiff in this proceeding has advanced five separate grounds for non-dischargeability, this Court is electing to decide the case solely under 11 U.S.C. § 523(a)(2)(A). Section 523(a)(2)(A) excepts from discharge 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). In order to succeed in having a debt declared nondischargeable under this section, a creditor must prove the following elements:

(1) The Debtors made a representation.
(2) At the time of making, the Debtors knew that the representation was false or was made with gross recklessness as to its truth .
(3) The Debtors made the representations with the intention and purpose of deceiving the Creditor.
(4) The Creditor relied on the representations.
(5) The Creditor sustained the alleged injury as a proximate result of the representation having been made.

Brady v. McAllister, 101 F.3d 1165, 1172 (6th Cir. 1996). The creditor bears the burden of proof in these causes of action and must prove the necessary elements by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991). Exceptions to discharge are to be strictly construed against the creditor and liberally in favor of the debtor. Meyer v. Rigdon, 36 F. 3d 1375 (7th Cir. 1994). This approach is thought to further the well-espoused bankruptcy policy of granting the honest, but unfortunate debtor a fresh start in bankruptcy. Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).

In the case at bar, it is very clear that the debtor made representations to the creditor. Both parties agree that when Taylor wished to obtain a loan from Reelfoot, Taylor would go to the bank and tell Meisner how much money he needed and how many cows were to be purchased. This fact is undisputed.

The second and third elements of a § 523(a)(2)(A) claim are somewhat more troublesome, only because it is often difficult to determine a debtor's true intent. No debtor is going to get on the stand and admit to fraudulent intent. As a result, "Plaintiff may present evidence of the surrounding circumstances from which intent may be inferred." Van Wert Nat'l. Bank v. Joseph, 1994 WL 760597 *2 (Bankr. N.D.Ohio 1994), citing Matter of Van Horn, 823 F.2d 1285, 1287 (8th Cir. 1987). This type of proof necessarily includes deciding who is the more credible witness.

Here, all the past-due loans in question were made after Taylor had purchased the cattle. As a result, Taylor knew at the time the loans were made that the cattle he had purchased cost far less than the amount the bank was loaning him. Taylor admits buying the cattle prior to applying for and getting the loans; however, he asserts that the representations regarding the amount of money needed for a particular purchase were not false because he had a clear agreement with Reelfoot that money over and above the price of the cattle was to be included in the loans for feed. Despite these assertions, Taylor failed to offer any proof as to the price of feed or as to what amount was bought with the extra funds. Also, when originally asked about where the surplus loan amounts went, Taylor responded "I don't remember." Surely, if half of a loan was made to buy feed, a debtor would have a more immediate recollection of this fact.

Taylor's assertions are also unconvincing to this Court considering the testimony of Reelfoot's loan officials. Neither Meisner nor Hepler supported Taylor's allegations. Both of these Reelfoot officials testified that there was never any additional money included in the amount of the loans for feed. In this Court's mind, it defies common economic logic to think that a bank would make a loan to someone and agree that the collateral for such loan would only need to be worth half as much as the loan itself. Such an arrangement would provide a lender with very little security.

In addition to this lack of receipts and Taylor's contradicted testimony, Taylor is simply not a very credible witness in this Court's eyes. Although he had been involved in the cattle business for many years, Taylor failed to keep any kind of business records or documentation regarding the head count of his herds. Taylor also did not make any sort of notation regarding the birth rate or death rate of such cattle. With each cow or bull being worth at least $500.00, it seems hard to believe that Taylor was not more interested in his herd.

Although the Court has determined that Taylor intentionally misrepresented the purchase price of the cattle in question, the § 523(a)(2)(A) inquiry is not complete. It must also be determined whether or not Reelfoot relied on such false representations and whether or not Reelfoot suffered the alleged injury as a proximate result.

The level of reliance which a creditor must prove in a false representation action was established in the Supreme Court case of Field v. Mans, -- U.S. --, 116 S.Ct. 437 (1995). This case changed the level of reliance in § 523(a)(2)(A) actions from a reasonable one to a justifiable one. Id. at 446. As a result, the Supreme Court stated that an inquiry of a creditor's reliance is a subjective one which depends on the facts and circumstances of each case. Under this standard, a creditor will be found to have justifiably relied on a representation even though "he might have ascertained the falsity of the representation had he made an investigation." Id. at 444. [Citing Restatement (Second) of Torts § 540 (1976)].

In the case at bar, Reelfoot did indeed rely on the representations Taylor made regarding the purchase of cattle. Both the testimony of Meisner and the promissory notes evince this fact. Taylor told Reelfoot how many cattle he was going to buy and how much the purchase was going to cost. According to Meisner's testimony, Meisner would then compare these figures with the current market rates and if they were comparable, Reelfoot would approve the loan. Although the bank did not take another inventory of the cattle after the initial one, from time to time, bank officials would drive by Taylor's land to check that the cattle was still there and that the herd had not diminished in size a great deal. Meisner also testified that Taylor had a good reputation as a cattleman and had an excellent payment history with the bank. The Sixth Circuit has found these types of facts sufficient to justify a creditor's reliance in other § 523(a)(2)(A) causes of action. Boston Mortgage Corp. v. Ledford (In re Ledford), 970 F.2d 1556, 1560 (6th Cir. 1992), Coman v. Phillips (In re Phillips), 804 F.2d 930, 933 (6th Cir. 1986). This Court agrees with this view and finds that Reelfoot was justified in relying on the representations made by Taylor regarding the purchase of cattle and the loans.

Finally, Reelfoot did suffer an injury as a proximate result of these false representations made by Taylor. The bank extended to the debtor loans which were secured by the cattle bought with such proceeds. Not only has Taylor not repaid these loans in full, but the cattle used as security is mysteriously missing. Reelfoot has neither their money nor their collateral. As a secured creditor who followed all the rules, this result is intolerable.

The bankruptcy system is supposed to give the honest, but unfortunate debtor a fresh start. Section 523(a)(2)(A) is one of the devices in place which protects creditors from a dishonest debtor. In the case at bar, Taylor purchased cattle for a certain price and then represented to the bank a figure nearly double this dollar amount as the purchase price. A more dishonest act this Court cannot conceive.

What happened to the missing cattle remains a mystery to which only the debtor holds the key. The only conclusion this Court can draw with any certainty is that Taylor made false representations to Reelfoot Bank which proximately caused the bank an injury in the amount of $68,499.75. This Court finds not only is this debt, plus interest and attorney's fees, nondischargeable under § 523(a)(2)(A), but that Reelfoot Bank is entitled to a final judgment in this amount against the debtor. Judgment shall be entered accordingly.

III. Order

It is therefore ORDERED that the debt owed by Robert S. Taylor to Reelfoot Bank is excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) in the amount of $68,499.75 and that a final judgment in that amount is awarded to Reelfoot Bank against the debtor Robert S. Taylor. The Court FURTHER ORDERS that interest and attorneys fees are awarded to Reelfoot Bank. Counsel for the bank needs to submit an appropriate application for such compensation.

IT IS SO ORDERED.

Judge G. Harvey Boswell
Date: June 18, 1997