

**Dated: September 09, 2024**  
**The following is ORDERED:**



**Denise E. Barnett**  
**UNITED STATES BANKRUPTCY JUDGE**

---

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

In re:

**Michael S. Yager  
and Rebekah H. Yager,**  
Debtors.

Case No.: 23-23130  
Chapter 13

---

**Guy Kimura  
and Laurie Kimura,**  
Plaintiffs.

vs.

Adv. Proc. No.: 23-00094

**Michael S. Yager  
and Rebekah H. Yager,**  
Defendants.

---

**MEMORANDUM OPINION AND ORDER DENYING IN PART  
AND GRANTING IN PART PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT AND/OR JUDGMENT ON THE PLEADINGS, AND DENYING IN PART  
AND GRANTING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This adversary proceeding came before the Court on Guy Kimura and Laurie Kimura's ("Plaintiffs") and Michael S. Yager and Rebekah H. Yager's ("Defendants") cross-motions for

summary judgment and responses.<sup>1</sup> The parties argued their motions for summary judgment before the Court on April 23, 2024, at 1:30 p.m. The central dispute in this proceeding is whether debts arising from a jury verdict and state court judgment are excepted from the discharge pursuant to 11 U.S.C. § 523(a)(2)(A) and (B), and/or (a)(6). For the reasons explained in this Memorandum Opinion, the Court finds and concludes that the summary judgment motions are granted in part and denied in part.

## **I. PROCEDURAL AND FACTUAL BACKGROUND**

### **A. Procedural History**

On June 28, 2023, Defendants filed a voluntary petition under Chapter 13 of the Bankruptcy Code.<sup>2</sup> The deadline to file a complaint to challenge dischargeability of certain debts was October 10, 2023.<sup>3</sup> On July 27, 2023, Plaintiffs filed a *Complaint to Deny Dischargeability of Debt* (“Complaint”) to determine dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(2)(A)-(B) and (a)(6) stemming from a state court judgment.<sup>4</sup> On October 9, 2023, Plaintiffs filed a *Motion for Entry of Default*.<sup>5</sup> On October 10, 2023, the Clerk’s *Entry of Default* was entered.<sup>6</sup> On October 12, 2023, a *Motion for Default Judgment* was filed by Plaintiffs.<sup>7</sup> On

---

<sup>1</sup> Pls.’ Mot. Summ. J., Dec. 13, 2024, Adv. Proc. ECF No. 18; Defs.’ Resp. to Mot. Summ. J., Jan. 8, 2024, Adv. Proc. ECF No. 19; Defs.’ Am. Mot. Summ. J., Jan. 15, 2024, Adv. Proc. ECF No. 22; and Pls.’ Resp. to Mot. Summ. J., Jan. 30, 2024, Adv. Proc. ECF No. 23.

<sup>2</sup> Chapter 13 Pet., June 28, 2023, ECF No. 1. On December 11, 2023, an order confirming Defendants’ chapter 13 plan was entered. Order Confirming Chapter 13 Plan, ECF No. 37.

<sup>3</sup> Meeting of Creditors, June 29, 2023, ECF No. 8.

<sup>4</sup> Pls.’ Comp. to Determine Dischargeability, July 27, 2023, Adv. Proc. ECF No. 1.

<sup>5</sup> Pls. App./Mot. Default J., Oct. 9, 2023, Adv. Proc. ECF No. 6.

<sup>6</sup> Clerk’s Entry of Default, Oct. 12, 2023, Adv. Proc. ECF No. 7.

<sup>7</sup> Pls.’ Mot. Default J., Oct. 12, 2023, Adv. Proc. ECF No. 8.

that same day, Defendants filed an Answer to the Complaint. On October 24, 2023, the Court conducted a Pre-Trial Conference, at which, the Court denied Plaintiffs' *Motion for Default Judgment*.<sup>8</sup> On November 3, 2023, the Court entered an *Order Scheduling Trial*, including detailed summary judgment procedures.<sup>9</sup> On November 13, 2023, Plaintiffs filed their amended proof of claim 2-2 in the amount of \$306,968.80 for claims arising out of the Jury Verdict and Final Judgment.<sup>10</sup>

On December 13, 2023, Plaintiffs filed their *Motion for Summary Judgment and/or Judgment on the Pleadings*.<sup>11</sup> On January 8, 2024, Defendants responded to Plaintiffs' summary judgment.<sup>12</sup> On January 15, 2024, Defendants filed their *Motion for Summary Judgment*, which was amended twice.<sup>13</sup> On January 30, 2024, Plaintiffs filed a response in opposition of Defendants' motion for summary judgment.<sup>14</sup> Upon reviewing the motions for summary judgment, the Court found it necessary to schedule an oral argument on the motions. On April 23, 2024, at 1:30 p.m., the Court heard from Plaintiffs and Defendants on their respective motions for summary judgment. At the conclusion of the hearing, the Court invited both parties to submit supplemental memoranda supporting their positions. Plaintiffs and Defendants,

---

<sup>8</sup> Order Den. Mot. Default J., Sept. 4, 2024, Adv. Proc. ECF No. 28.

<sup>9</sup> Order Scheduling Trial, Nov. 3, 2023, Adv. Proc. ECF No. 16.

<sup>10</sup> Am. Proof of Claim 2-2, Claims Register.

<sup>11</sup> Pls.' Mot. Summ. J., Dec. 13, 2024, Adv. Proc. ECF No. 18.

<sup>12</sup> Defs.' Resp. to Mot. Summ. J., Jan. 8, 2024, Adv. Proc. ECF No. 19.

<sup>13</sup> Defs.' Mot. Summ. J., Jan. 15, 2024, Adv. Proc. ECF No. 20; Defs.' Am. Mot. Summ. J., Jan. 15, 2024, Adv. Proc. ECF No. 21; Defs.' Am. Mot. Summ. J., Jan. 15, 2024, Adv. Proc. ECF No. 22.

<sup>14</sup> Pls.' Resp. to Mot. Summ. J., Jan. 30, 2024, Adv. Proc. ECF No. 23.

respectively, submitted their supplemental memoranda on May 6, 2024 and May 20, 2024.<sup>15</sup>

From the summary judgment motions and responses, arguments by counsel, and memoranda, the Court outlines the material facts and positions of the parties.

### **B. The State Court Judgment**

The material facts are not in dispute. The controversy in the underlying state court action arose out of a home sale transaction that took place years before this chapter 13 case. As it was alleged in the state court action, Defendants breached their duty of good faith and fair dealing during the real estate transaction in an effort to close on the sale of their home.<sup>16</sup> It was alleged that Defendants intentionally misrepresented the condition of the house and engaged in fraud to complete the sale of their house to Plaintiffs when Defendants concealed major problems with the house.<sup>17</sup> Defendants completed a Tennessee Residential Property Condition Disclosure (“Disclosure Form”) which they signed and certified that the information disclosed was “true and correct.”<sup>18</sup> The Disclosure Form did not disclose the problem with the home.<sup>19</sup> Defendants failed to disclose several structural and foundational defects to the property.<sup>20</sup>

Plaintiffs sued Defendants, a jury trial was conducted, and the jury ruled in favor of Plaintiffs. The jury verdict form was incorporated in an Order of Judgment in Plaintiffs’ favor, which found Defendants liable for breach of contract, breach of good faith and fair dealing,

---

<sup>15</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24 and Defs.’ Mem. May 20, 2024, Adv. Proc. ECF No. 25.

<sup>16</sup> Pls.’ Comp. to Determine Dischargeability, July 27, 2023, Adv. Proc. ECF No. 1., at 2.

<sup>17</sup> *Id.*

<sup>18</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, Ex. 1 (*Tennessee Residential Property Condition Disclosure*), at 5; Hearing on Motions for Summary Judgment, Apr. 23, 2024, at 2:14 p.m.

<sup>19</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, at 2.

<sup>20</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, Ex. 2 (*Order on Granting Plaintiffs’ Motion for Summary Judgment*), at 14-20.

negligent misrepresentation, intentional misrepresentation, and fraud. Ultimately, on May 31, 2023, an Order of Final Judgment (“Final Judgment”) was entered in the amount of \$306,968.83, in the Chancery Court of Shelby County, Tennessee for the Thirteenth Judicial District at Memphis. Specifically, from the Jury Verdict Form One (“Jury Verdict”), the jury found as follows:

1. *Breach of Contract*: Defendants were found liable, and damages were assessed in the amount of \$16,180.00;
2. *Negligent Misrepresentation*: Defendants were found liable, and damages were assessed in the amount of \$15,000.00;
3. *Intentional Misrepresentation*: Defendants were found liable, and damages were assessed in the amount of \$30,000.00; and
4. *Fraud Claim*: Defendants were found liable, and damages were assessed in the amount of \$100,000.00.

### **C. Parties’ Positions**

#### **1. Plaintiffs: The Final Judgment was a Nondischargeable Debt.**

Plaintiffs, in their complaint, argued that the amounts awarded in the Final Judgment were nondischargeable under 11 U.S.C. § 523(a)(2)(A)-(B) and 523(a)(6). Plaintiffs’ summary judgment motion discussed 11 U.S.C. § 523(a)(4) although it was not plead in the complaint. At the hearing, Plaintiffs clarified that subsection 523(a)(4) was not before the Court.<sup>21</sup> Focusing on what was plead under 11 U.S.C. § 523(a)(2)(A)-(B) and 523(a)(6), Plaintiffs’ argument was three-fold. First, the “final judgment and debt of \$306,968.83 plus court costs and post-judgment interest should be declared nondischargeable” pursuant to subsection 523(a)(2)(A) because the

---

<sup>21</sup> Hearing on Motions for Summary Judgment, at 2:07 p.m.

debt was for “money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by: false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition.”<sup>22</sup> Second, under subsection 523(a)(2)(B) because the debt arose from the use of a statement in writing that was materially false, respecting the debtor’s or an insider’s financial condition, on which the creditor to whom the debtor was liable for such “money, property, services, or credit reasonably relied, and that the debtor caused to be made or published with intent to deceive.”<sup>23</sup> Plaintiffs took the position that the jury findings and verdict satisfied all the elements of subsections 523(a)(2)(A) and (B), and the Disclosure Form met the writing requirement under subsection 523(a)(2)(B)(i).<sup>24</sup> Also, the “final judgment and debt of \$306,968.83 plus court costs and post-judgment interest should be declared nondischargeable” pursuant to subsection 523(a)(6) because Defendants willfully and maliciously injured Plaintiffs.<sup>25</sup> Finally, the “judgment and debt of \$306,968.83 plus court costs and post-judgment interest should be declared nondischargeable based upon collateral estoppel and the Full Faith and Credit Statute.”<sup>26</sup>

Plaintiffs also argued that the entire \$306,968.83 should be declared nondischargeable because the jury found that Plaintiffs could fully rescind the purchase of the home (an extraordinary remedy) based on Defendants’ fraudulent conduct.<sup>27</sup> That amount was based on the sale price of around \$300,000.00, which was an amount in excess of the damages awarded by the

---

<sup>22</sup> Pls.’ Mot. Summ. J., Dec. 13, 2024, Adv. Proc. ECF No. 18, at 3.

<sup>23</sup> *Id.*

<sup>24</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, at 3.

<sup>25</sup> Pls.’ Mot. Summ. J., Dec. 13, 2024, Adv. Proc. ECF No. 18, at 3.

<sup>26</sup> *Id.*

<sup>27</sup> Pls.’ Resp. to Mot. Summ. J., Jan. 30, 2024, Adv. Proc. ECF No. 23, at 2.

Jury Verdict.<sup>28</sup> Plaintiffs, however, conceded that the “breach of contract” and “negligent misrepresentation” claims (which respectively awarded \$16,180.00 and \$15,000.00) may be dischargeable.<sup>29</sup>

## 2. Defendants: The Final Judgment was Dischargeable.

Defendants argued that: (1) The Final Judgment debt was dischargeable because the Jury Verdict and Final Judgment did not meet the essential requirements of 11 U.S.C. § 523(a)(2)(A) and (B); and (2) Subsection 523(a)(6) was inapplicable because Defendants sought a discharge under subsection 1328(a) of the Code. First, with respect to subsections 523(a)(2)(A) and (B), Defendants argued that the claims for breach of contract and negligent misrepresentation were dischargeable because they did not satisfy the elements of subsections 523(a)(2)(A) and (B).<sup>30</sup> With respect to the intentional misrepresentation and fraud claims, relying on the Supreme Court case of *Lamar v. Appling*, Defendants asserted that any statements or omissions regarding their home (their single asset) that resulted in the Jury Verdict and Final Judgment were “statement[s] respecting the debtor[s’] financial condition” which took it outside the parameters of subsection 523(a)(2)(A).<sup>31</sup> Regarding subsection 523(a)(2)(B), Defendants ultimately contended that Plaintiffs were unable to demonstrate “reasonable reliance” as required under subsection 523(a)(2)(B)(iii).<sup>32</sup> Defendants asserted that the jury found Plaintiffs “justifiably” relied on Defendants’ disclosures, a different standard than “reasonable reliance” as required by the

---

<sup>28</sup> *Id.*

<sup>29</sup> Hearing on Motions for Summary Judgment, at 2:21 p.m.

<sup>30</sup> *Id.* at 2:47 p.m.

<sup>31</sup> *Id.* at 2:39 p.m.

<sup>32</sup> *Id.* at 2:44 p.m.

Code.<sup>33</sup> Next, regarding subsection 523(a)(6), Defendants contended that they were seeking a discharge under subsection 1328(a) of the Code, and therefore, subsection 523(a)(6) did not apply, and so dischargeability of the Final Judgment could not be evaluated pursuant to subsection 523(a)(6).<sup>34</sup> Defendants explained that subsection 1328(a)(2) listed certain debts that were nondischargeable, and subsection 523(a)(6) was not listed.<sup>35</sup> Defendants argued that subsection 523(a)(6) was inapplicable because 1328(a)(2) specifically discharged claims under subsection 523(a)(6). Additionally, Defendants argued that Plaintiffs were not entitled to recover attorney's fees under subsection 523(d) because this subsection was specifically for debtors, not creditors.<sup>36</sup> Finally, responding to Plaintiffs' argument that the entire Final Judgment amount should be declared nondischargeable, Defendants asserted that the entire claim was based on the value of Defendants' home, which is a statement about their financial condition, and rendered the claim of misrepresentation and fraud dischargeable under the subsection 523(a)(2) of the Code.<sup>37</sup>

---

<sup>33</sup> *Id.* Initially, Defendants contended that a written statement was not produced as required under subsection 523(a)(2)(B)(i), which renders this subsection inapplicable. However, at the hearing and attached to Plaintiffs' Supplemental Memorandum, the Disclosure Form was provided.

<sup>34</sup> *Id.* at 2:45 p.m. *See also* Meeting of Creditors, June 29, 023, ECF No. 8, part 13, specifically stating which 523(a)(2) and (a)(4) are claims for which a creditor may file a complaint seeking nondischargeability. Subsection 523(a)(4) was not plead in this proceeding.

<sup>35</sup> Defs.' Am. Mot. Summ. J., Jan. 15, 2024, Adv. Proc. ECF No. 22, at 6.

<sup>36</sup> Defs.' Resp. to Mot. Summ. J., Jan. 8, 2024, Adv. Proc. ECF No. 19, at 4.

<sup>37</sup> Defs.' Am. Mot. Summ. J., Jan. 15, 2024, Adv. Proc. ECF No. 22. (Relying on *Lamar v. Appling*, 584 U.S. 709, 723-25 (2018)).



## **II. LEGAL DISCUSSION**<sup>38</sup>

### **A. Dischargeability of Debts in a Chapter 13 Case.**

Subsection 523(c) of the Code provides that:

[A] debtor shall be discharged from a debt of the kind specified in paragraph (2), (4), or (6) of subsection(a) of this section, unless on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from the discharge under paragraph (2), (4), (6), as the case may be, of subsection (a) of this section.

Plaintiffs are seeking to determine whether their Final Judgment is excepted from the Defendants' discharge pursuant to 11 U.S.C. § 523(a)(2)(A)-(B) or (a)(6). Exceptions to discharge must be strictly construed in favor of the debtors.<sup>39</sup> The party seeking to except a debt from discharge must prove that the debt is nondischargeable by a preponderance of the evidence.<sup>40</sup>

### **11 U.S.C. §§ 1328(a)(2) and 523(a)(6)**

In chapter 13 cases, section 1328 outlines the parameters of discharges. Subsection 1328(a)(2) of the Code states, in relevant part, that:

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant the debtor a discharge of all debts provided for by the plan . . . except any debt—  
.  
.  
.  
(2) the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a).<sup>41</sup>

---

<sup>38</sup> The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The following shall constitute the court's findings of fact and conclusions of the law in accordance with Rule 7052, Federal Rules of Bankruptcy Procedure.

<sup>39</sup> *Lowry v. Nicodemus (In re Nicodemus)*, 497 B.R. 852, 857-858 (B.A.P. 6th Cir. 2013) ("Exceptions to discharge are narrowly construed in favor of debtors in order to promote the Bankruptcy Code's policy of providing debtors with a fresh start.").

<sup>40</sup> *Grogan v. Garner*, 498 U.S. 279, 285, 111 S. Ct. 654, 658-59, 112 L. Ed. 2d 755 (1991).

<sup>41</sup> 11 U.S.C. § 1328(a)(2) (2024).

The standard chapter 13 under subsection 1328(a) provides for a broader discharge than what is provided for under chapter 7, 11, or 12, discharging some types of debts under subsection 523(a).<sup>42</sup> Subsection 523(a)(6) is noticeably omitted from subsection 1328(a), and is therefore, inapplicable to a chapter 13 debtor seeking a discharge pursuant to subsection 1328(a).<sup>43</sup> The Court now turns to whether summary judgment is appropriate for either Plaintiffs or Defendants pursuant to 11 U.S.C. § 523(a)(2)(A) and/or (B).

**B. The Preclusive Effect of the State Court Final Judgment**

Plaintiffs argued that the full amount of the Final Judgment should be declared nondischargeable “based upon collateral estoppel and the Full Faith and Credit Statue.”<sup>44</sup> The Full Faith and Credit Statute requires federal courts to give full faith and credit to judicial proceedings of state courts.<sup>45</sup> The doctrine of collateral estoppel prevents the relitigating of issues of facts and law conclusively decided in a prior suit.<sup>46</sup> The doctrine of collateral estoppel applies to bankruptcy proceedings and may be used to establish the nondischargeability of a debt.<sup>47</sup> To apply the doctrine of collateral estoppel to a state court judgment, this Court must use

---

<sup>42</sup> *In re Harris*, No. 21-11723-SDM, 2024 WL 3191682, at \*10 (Bankr. N.D. Miss. June 26, 2024) (citing *In re Winstead*, 605 B.R. 432, 442 (Bankr. S.D. Miss. 2019) (discussing the intersection of 11 U.S.C. §§ 523(a)(6) and 1328(a)).

<sup>43</sup> *Id.*

<sup>44</sup> Pls.’ Mot. Summ. J., Dec. 13, 2024, Adv. Proc. ECF No. 18, at 3.

<sup>45</sup> Section 1738 of title 28, states in part, that: “The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.” 28 U.S.C. § 1738 (2024).

<sup>46</sup> *In re Piercy*, 21 F.4th 909, 918 (6th Cir. 2021) (explaining “collateral estoppel,” also known as “issue preclusion.”).

<sup>47</sup> “[A] creditor who reduced his fraud claim to a valid and final judgment in a jurisdiction that requires proof of fraud by a preponderance of the evidence seeks to minimize additional litigation by invoking collateral estoppel. If the preponderance standard also governs the question of nondischargeability, a bankruptcy court could properly give collateral estoppel effect to those elements of the claim that are identical to the elements required for discharge and

the collateral estoppel law of the state in which the judgment was entered.<sup>48</sup> Under the laws of the State of Tennessee, collateral estoppel applies when the same issues were raised in the earlier case between the same parties, actually litigated, and necessary to the judgment of the earlier case.<sup>49</sup> In this proceeding, there was no question that the same parties actually litigated their issues and a Final Judgment resulted from such litigation. A jury trial was conducted, and a verdict was entered, which resulted in the Final Judgment. The jury verdict (that resulted in the Final Judgment) found Defendants liable for breach of contract, negligent misrepresentation, intentional misrepresentation, and fraud, at various dollar amounts. Only the “intentional misrepresentation” and “fraud” claims are within the ambit of 11 U.S.C. § 523(a)(2)(A) and/or (B). Accordingly, this Court must analyze whether elements of 11 U.S.C. § 523(a)(2)(A) and/or (B) and Tennessee’s common law “intentional misrepresentation” and “fraud” claims are the same or different, making collateral estoppel applicable or inapplicable in this proceeding.

### **C. The Summary Judgment Standard**

Plaintiffs and Defendants have each requested the entry of summary judgment in their favor. Although Plaintiffs’ motion included a request for “judgment on the pleadings,” Plaintiffs provided no discussion or argument for granting judgment on the pleadings, and so, the Court construes Plaintiffs’ request as a motion for summary judgment.<sup>50</sup> Rule 56(a) of the Federal

---

which were litigated and determined in the prior action.” *Grogan*, 498 U.S. at 284.

<sup>48</sup> *In re Bennett*, 517 B.R. 95, 100 (Bankr. M.D. Tenn. 2014) (explaining the preclusive effect federal courts must give to state court judgments under the law of the State the judgment was rendered).

<sup>49</sup> *Coolants v. Couch (In re Couch)*, 544 B.R. 867, 874 (Bankr. E.D. Ky. 2016), *aff’d*, No. 16-8009, 2017 WL 444644 (B.A.P. 6th Cir. Feb. 2, 2017), *aff’d*, 704 F. App’x 569 (6th Cir. 2017) (citations omitted and partially quoted in the original) (discussing the effect of collateral estoppel in dischargeability proceedings).

<sup>50</sup> Under the Federal Rules of Civil Procedure Rule 12(c), “after the pleadings are closed—but early enough not to delay trial—a party must move for judgment on the pleadings.” The standard for a motion for judgment on the pleadings is the same as the standard of review for a motion to dismiss under Rule 12(b)(6). The court should grant a motion for judgment on the pleadings when “no material issue of fact exists and the party making the motion is

Rules of Civil Procedure (as incorporated into bankruptcy proceedings by Bankruptcy Rule

7056, Federal Rules of Bankruptcy Procedure), reads:

A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

“Entry of summary judgment is appropriate ‘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.’”<sup>51</sup> The summary judgment motion standard is not altered when considering cross-motions for summary judgment; rather, courts must simply determine which party deserves summary judgment as matter of law on the undisputed material facts.<sup>52</sup>

**D. 11 U.S.C. § 523(a)(2)(A)**

Subsection 523(a)(2)(A) states, in relevant part, that:

(a) A discharge under section 727, 1141, 11921 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[.]<sup>53</sup>

A creditor must prove, by a preponderance of the evidence, that: (1) the debtor obtained

---

entitled to judgment as a matter of law. *In re Hartson*, No. 17-10905, Adv. No. 17-1080, 2018 WL 1887326, at \*2 (Bankr. N.D. Ohio Apr. 18, 2018).

<sup>51</sup> *In re Ichida*, 434 B.R. 852, 858 (Bankr. S.D. Ohio 2010) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)) (discussing the summary judgment standard).

<sup>52</sup> *In re Furlong*, 620 B.R. 422, 425 (Bankr. D. N.H. 2020), *aff’d sub nom. Specialized Loan Servicing, LLC v. Town of Bartlett*, No. 20-CV-1039-SM, 2021 WL 4452320 (D.N.H. Sept. 29, 2021) (citations omitted) (discussing the evaluation of cross-motions for summary judgment).

<sup>53</sup> 11 U.S.C. § 523(a)(2)(A) (2024).

money through a material misrepresentation that, at the time, the debtor knew was false or made with gross negligence as to its truth; (2) the debtor intended to deceive the creditor; (3) the creditor justifiably relied on the false representation; and (4) its reliance was the proximate cause of loss.<sup>54</sup> Every element must be satisfied.<sup>55</sup> The three terms “false pretenses,” “false representation,” and “actual fraud” under subsection 523(a)(2)(A) are common law terms, with a greater meaning than the mere text of the Code.<sup>56</sup> They are terms of art, and each embodies its own meaning under common law.<sup>57</sup> The Supreme Court reasoned that Congress intended to adopt the common law definitions of false pretenses, false representation, and fraud under subsection 523(a)(2)(A).<sup>58</sup> “False pretenses” are any intentional fraud or deceptive practices, which may be implied from conduct or may consist of concealment or non-disclosure.<sup>59</sup> “False representation” is an expressed misrepresentation that is knowingly and fraudulently made.<sup>60</sup> “Material misrepresentation” are substantial inaccuracies about a material fact that would affect someone’s decision.<sup>61</sup> For purposes of subsection 523(a)(2)(A), “actual fraud” includes fraud

---

<sup>54</sup> *Rembert v. AT&T Universal Card Servs., Inc. (In re Rembert)*, 141 F.3d 277, 280 (6th Cir. 1998) (outlining elements a creditor must satisfy to except a debt from discharge under subsection 523(a)(2)(A)); *In re Sprague*, 205 B.R. 851, 857 (Bankr. N.D. Ohio 1997) (explaining the burden of proof).

<sup>55</sup> *Fuller v. Givens (In re Givens)*, 634 B.R. 755, 761 (Bankr. E.D. Tenn. 2021).

<sup>56</sup> *Field v. Mans*, 516 U.S. 59, 70 (1995) (explaining the reasons why one must look to the common law meaning of the three terms under subsection 523(a)(2)(a) and how “justifiable reliance” is the appropriate standard to determine it).

<sup>57</sup> *Id.* at 70.

<sup>58</sup> *Id.*

<sup>59</sup> *Givens*, 634 B.R. at 761-62.

<sup>60</sup> *Id.* at 762.

<sup>61</sup> *Id.* at 761.

that does not depend on misrepresentation.<sup>62</sup> It includes any form of “deceit, artifice, trick or design” used to side step or cheat another individual or entity.<sup>63</sup>

Relevant to the analysis of both parties’ motions for summary judgment are the instructions to the jury regarding the “intentional misrepresentation” and “fraud” claims against Defendants.

*1. Intentional Misrepresentation.*

The Court now turns to whether the elements of subsection 523(a)(2)(A) are the same as the elements of “intention misrepresentation” for which the jury found Defendants liable. From the jury instructions, a finding of “intentional misrepresentation” was appropriate if:

(1) The defendant made a representation of a present or past material fact; and (2) The representation was false; and (3) The defendant knew that the representation was false when it was made [or the defendant made the representation recklessly without knowing whether it was true or false]; and (4) The defendant intended that the plaintiff rely upon the representation and act or not act in reliance on it; and (5) The plaintiff did not know that the representation was false and was justified in relying upon the truth of the representation; and (6) As a result of plaintiffs reliance upon the truth of the representation, the plaintiff sustained damage.<sup>64</sup>

Regarding “reliance,” the jury instruction states:

A party seeking recovery for [intentional] [negligent] misrepresentation must have relied upon the representation. In other words, the plaintiff would not have entered into the transaction without the representation. You must determine whether reliance upon the representation substantially influenced the party's action, even though other influences operated as well.

Reliance upon a representation may be shown by direct evidence or may be inferred from the circumstances.<sup>65</sup>

---

<sup>62</sup> *Rable v. Childers (In re Childers)*, 651 B.R. 699, 718 (Bankr. N.D. Ohio 2023) (citations omitted) (explaining that “actual fraud” is a broader ground for excepting a debt from discharge).

<sup>63</sup> *Id.* (citing *Mellon Bank, N.A. v. Vitanovich (In re Vitanovich)*, 259 B.R. 873, 877 (B.A.P. 6th Cir. 2001)).

<sup>64</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, Ex. 4 (*Jury Instructions*), at 60 (T.P.I. Civil 8.36).

<sup>65</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, Ex. 4 (*Jury Instructions*), at 68 (T.P.I. Civil 8.46).

A person claiming to have been damaged by a false representation must not only have acted in reliance on the representation but must have been justified in that reliance. That is, it must be reasonable for the person, in the light of the circumstances and that person's intelligence, experience, and knowledge, to accept the representation without making an independent inquiry or investigation.<sup>66</sup>

The elements of “intentional misrepresentation,” as the jury was instructed, are substantially the same as the elements of subsection 523(a)(2)(A). The jury concluded that (1) Defendants made materially false representations regarding the condition of their home, and Defendants knew the representations (or omissions) were false; (2) Defendants intended to deceive Plaintiffs into closing on the sale of the house; (3) Plaintiffs justifiably relied on the false representations (or omissions); and (4) Plaintiffs’ reliance on the misrepresentations resulted in Plaintiffs’ injury of purchasing a house with major defects.<sup>67</sup> The jury found Plaintiffs justifiably relied on the misrepresentations.<sup>68</sup> The Court agrees that justifiable reliance is satisfied.

## 2. The Fraud Claim.

The Court now turns to whether the elements of subsection 523(a)(2)(A) are the same as elements of the “fraud claim” for which the jury found Defendants liable. Regarding the “fraud claim,” the jury instruction reads:

[Plaintiff] seeks to recover damages for the alleged promissory fraud . . . must prove by a preponderance of the evidence each of the following: (1) [Defendant] made a promise as to a material matter to [Plaintiff]; and (2) At the time the promise was made, [Defendant] did not intend to perform it; and (3) [Defendant] made the promise with an intent to deceive, in other words, [Defendant] made the promise to induce [Plaintiff] to rely upon it and to act or not act in reliance upon it; and (4) [Plaintiff] was unaware that [Defendant] did not intend to perform the promise; and (5) [Plaintiff] acted in reliance upon the promise; and (6) [Plaintiff] was justified in relying upon the promise made by [Defendant]; and (7) As a result of the reliance upon [Defendant]'s promise, [Plaintiff]

---

<sup>66</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, Ex. 4 (*Jury Instructions*), at 69 (T.P.I. Civil 8.47).

<sup>67</sup> Pls.’ Comp. to Determine Dischargeability, July 27, 2023, Adv. Proc. ECF No. 1, Ex. A (*Jury Verdict Form One*), at 3.

<sup>68</sup> *Id.*

has sustained damage.

A person claiming to have been damaged by promissory fraud must not only have acted in reliance on the promise but must have been justified in that reliance. That is, it must be reasonable for the person, in the light of the circumstances and that person's intelligence, experience, and knowledge, to accept the promise without making an independent inquiry or investigation.<sup>69</sup>

The elements of “fraud,” as the jury was instructed are substantially the same as the elements of subsection 523(a)(2)(A). Defendants were found to have knowledge of the foundation and structural defects of their home (and even unsuccessfully attempted cover up the defects).<sup>70</sup> Defendants failed to disclose the defects in the Disclosure Form.<sup>71</sup> Plaintiffs relied on Defendants’ representations and omissions.<sup>72</sup> Defendants’ concealment or omissions of the foundation and structural defects were done to deceive Plaintiffs.<sup>73</sup> Plaintiffs were not aware of the defects and acted in reliance upon Defendants’ lack of disclosure or concealment.<sup>74</sup> The jury specifically answered “yes” as to whether Defendants intended to deceive Plaintiffs.<sup>75</sup> The jury found that Plaintiffs were justified in relying upon Defendants’ representations (or omissions) about the foundation and structural condition of the house, and because of the reliance upon Defendants’ representations (or omissions), Plaintiffs sustained damage.<sup>76</sup> The Court agrees that

---

<sup>69</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, Ex. 4 (T.P.I. Civil 8.41), at 64.

<sup>70</sup> Pls.’ Comp. to Determine Dischargeability, July 27, 2023, Adv. Proc. ECF No. 1, Ex. A (*Jury Verdict Form One*), at 4.; Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, Ex. at 22-24.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*



justifiable reliance is satisfied.

3. Statement About a Debtor's Financial Condition.

To escape the preclusive effect of the Final Judgment (in whole or in part), Defendants pointed to the language of subsection 523(a)(2)(A)—“other than a statement respecting the debtor’s or an insider’s financial condition.” Relying on *Lamar v. Appling*,<sup>77</sup> Defendants argued that the “‘statement’ at issue is respecting [Defendants’] financial condition” and therefore the elements of 11 USC § 523(a)(2)(A) were not satisfied.<sup>78</sup> In *Lamar*, the Supreme Court addressed whether a false statement about a single asset—an expected tax refund—was a statement respecting the debtor’s financial condition under subsection 523(a)(2)(A).<sup>79</sup> The Supreme Court held that a statement regarding a single asset could be a “statement respecting the debtor’s financial condition.”<sup>80</sup> Focusing on the term “respecting,” the Supreme Court explained that the statement “respecting the debtor’s financial condition” should be read broadly, and a statement was “respecting” a debtor’s financial condition if it had a direct relationship to or impacted a debtor’s overall financial status.<sup>81</sup> Thus, a statement about a single asset could relate to the debtor’s overall financial condition, and could determine whether the debtor was solvent or insolvent, and related to the debtor’s ability to repay debts.<sup>82</sup>

---

<sup>77</sup> *Lamar*, 584 U.S. at 725 (explaining the “statement respecting the debtor’s . . . financial condition” under subsection 523(a)(2)(A)).

<sup>78</sup> Defs.’ Mem. May 20, 2024, Adv. Proc. ECF No. 25, at 2.

<sup>79</sup> *Lamar*, 584 U.S. at 712.

<sup>80</sup> *Id.* at 725.

<sup>81</sup> *Id.* at 718.

<sup>82</sup> *Id.* at 720.

The Court disagrees with Defendants’ reliance on *Lamar*. Defendants argued the statement at issue (the foundation and structural defects of the property) was about the value of Defendants’ house.<sup>83</sup> Plaintiffs correctly argued that Defendants’ statement (or, more precisely, misrepresentation) was about the condition of Defendants’ home. Although the condition of a house is always a factor in determining the sale price, the primary issue before the state court was Defendants’ false representation and concealment of the foundation and structural defects of the house and Defendants’ failure to disclose the defects on the Disclosure Form.<sup>84</sup> The Jury Verdict and Final Judgment were not based on a statement respecting Defendants’ financial condition, but rather a statement (or omission) about defects affecting the condition of real property being sold. Accordingly, Defendants cannot escape the preclusive effects of subsection 523(a)(2)(A) as to the intentional misrepresentation and fraud claims in the Jury Verdict and Final Judgment.

**E. 11 U.S.C. § 523(a)(2)(B)**

Because the amounts awarded by the Jury Verdict and Final Judgment for the “intentional misrepresentation” and “fraud” claims are not dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), and 11 U.S.C. § 523(a)(6) is not applicable, the Court need not address the nondischargeability issue pursuant to 11 U.S.C. § 523(a)(2)(B).<sup>85</sup>

---

<sup>83</sup> Defs.’ Mem. May 20, 2024, Adv. Proc. ECF No. 25, at 4.

<sup>84</sup> Pls.’ Mem., May 6, 2024, Adv. Proc. ECF No. 24, Ex. 1 (*Tennessee Residential Property Condition Disclosure*).

<sup>85</sup> The Court notes, however, that Plaintiffs would not have prevailed under subsection 523(a)(2)(B). Subsection 523(a)(2)(B), in relevant part, states that: “(a) A discharge under section 727, 1141, 11921 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 . . . (B) use of a statement in writing-- (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive[.]” To satisfy the elements of 11 U.S.C. § 523(a)(2)(B), Plaintiffs must prove by preponderance of the evidence that: (1) a representation of fact by the debtor; (2) that was material; (3) that the debtor knew at the time to be false; (4) that the debtor made with the intention of deceiving the

### **III. CONCLUSION AND ORDER**

For the reasons stated above, the Court finds and concludes that the state court previously determined that Defendants were liable for “intentional misrepresentation” and “fraud.” Because the Jury Verdict and Final Judgment established that all the elements of subsection 523(a)(2)(A) were satisfied and because the Jury Verdict and Final Judgment were given a preclusive effect under Tennessee’s collateral estoppel doctrine, Defendants’ liability to Plaintiffs as to the intentional misrepresentation and fraud claims are nondischargeable. Plaintiffs are, therefore, entitled to summary judgment under subsection 523(a)(2)(A). Defendants, however, are entitled to summary judgment under subsections 523(a)(2)(B) and 523(a)(6).

Accordingly, it is **ORDERED**:

1. Plaintiffs’ Motion for Summary Judgment is GRANTED IN PART as to 11 U.S.C. § 523(a)(2)(A) and DENIED IN PART as to 11 U.S.C. § 523(a)(2)(B) and (a)(6).
2. Defendants’ Motion for Summary Judgment is GRANTED IN PART as to 11 U.S.C. § 523(a)(2)(B) and (a)(6) and DENIED IN PART as to 11 U.S.C. § 523(a)(2)(A).
3. The claims that arose from the Jury Verdict and Final Judgment in favor of

---

creditor; (5) upon which the creditor relied; (6) that the creditor’s reliance was reasonable; (7) that the damage proximately resulted from the representation. *In re Johnson*, 638 B.R. 782, 798 (Bankr. C.D. Cal. 2022). Subsection 523(a)(2)(B) does not apply to oral statements. *Melhorn v. Copeland (In re Copeland)*, 291 B.R. 740, 780 (Bankr. E.D. Tenn. 2003) (explaining “statement in writing” under 11 U.S.C. § 523(a)(2)(B)). The written statement must be materially false creating an untruthful picture of the debtor’s financial condition. *Id.* Typically, it creates an inaccurate picture that affects a creditor’s decision to extend a line of credit. *Id.* at 782.

The elements of subsection 523(a)(2)(B) are not satisfied based on the Jury Verdict and Final Judgment for two main reasons. First, the jury’s findings were based on “justifiable reliance,” not “reasonable reliance.” Subsections 523(a)(2)(A) and (B) require different reliance standards. Under subsection 523(a)(2)(A), the Code does not specifically require a reliance standard and the Supreme Court resolved this issue in *Field v. Mans* holding that subsection 523(a)(2)(A) requires “justifiable reliance.” In contrast, subsection 523(a)(2)(B) specifically requires a finding of “reasonable reliance.” “Reasonable reliance” is a heightened standard compared to “justifiable reliance.” The Supreme Court in *Field* distinguished the two standards by explaining a person is justified in relying on the misrepresentation even if they could have determined the falsity of the statement on their own investigation. In contrast, “reasonable reliance” is objective and applies the reasonable person standard, which involves a duty to investigate. *Field*, 516 U.S. at 74-77. Second, the Disclosure Form was not respecting the debtor’s financial condition. 11 U.S.C. § 523(a)(2)(B) (2024).

Plaintiffs on the “breach of contract” and “negligent misrepresentation” are dischargeable upon completion of Defendants’ chapter 13 case and entry of an Order Granting Chapter 13 Discharge pursuant to 11 U.S.C. § 1328(a).

4. The claims that arose from the Jury Verdict and Final Judgment in favor of Plaintiffs based on “intentional misrepresentation” and “fraud” for a total of \$130,00.00 (\$30,00.00 and \$100,00.00, respectively) are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

5. Plaintiffs’ Motion for Judgment on the Pleadings is DENIED.

6. The Court will enter a separate final judgment determining Plaintiffs’ claims as set forth in decretal paragraph 4, above, to be nondischargeable, consistent with Bankruptcy Rule 7058, Federal Rules of Bankruptcy Procedure.

**Copy of this Memorandum Opinion and Order to be furnished to:**

Plaintiffs Guy Kimura and Laurie Kimura  
Plaintiffs’ Attorney Gail W. Horner  
Defendants Michael S. Yager and Rebekah H. Yager  
Defendants’ Attorney Arthur Byrd  
Chapter 13 Standing Trustee Jennifer K. Crusetuerner