

FEDERAL ELECTION COMMISSION

ROBERT HOLAS,
Complainant,

v.

RANDALL A. BOROW,
Respondent,

Case No. MUR 5175

MAR 8 2 28 PM '01

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RESPONSE TO COMPLAINT

NOW COMES Respondent, RANDALL A. BOROW, and for his response and affirmative defenses to the Complaint filed herein by ROBERT HOLAS, states under oath as follows:

1. The Complaint alleges that the Respondent allowed donations to the campaign in excess of Statutorily imposed limits.
2. None of the advances of money from Mr. Holas to the Respondent were donations to the campaign but rather were indeed personal loans.
3. The advances have always been characterized as loans as evidenced first by the Complainants own exhibits.
4. During calendar year 1996 Respondent took a leave of absence from his position of full time employment so that he could dedicate himself to the campaign itself. The donations were insufficient to run the campaign as necessary and loans were made freely by Mr. Holas to the Respondent.
5. At all times Respondent had every intention of repaying the loans whether the campaign resulted in his election or in his returning to full time employment on another basis.
6. Soon after the election the Complainant filed a complaint in the Circuit Court of Cook County Illinois.
7. The State Court proceeding ultimately resulted in an installment agreement and payment schedule. While the respondent was employed he made every effort to maintain his payment schedule and repaid the Complainant nearly \$8,000.00 before

21-04-405-17-17

once again losing his full time employment. When Respondent was unable to maintain the payment schedule due to his unemployment, the Complainant had an order entered vacating the installment agreement and reducing the claim to judgment on July 1, 1999 and the Respondent thereafter sought relief from the Bankruptcy Court.

8. On November 4, 1999, the Complainant filed an Adversary Complaint Objecting to Dischargeability of a Debt in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, Bankruptcy Number 99 B 31984, Adversary Number 99 A 01369, claiming that the indebtedness from the Respondent to the Complainant was non dischargeable as fraud under 11 USC Section 523 (a)(2)(A). A true and correct copy of the Complainant's Adversary Complaint and the Respondents Answer and Affirmative Defenses marked Respondents Group Exhibit 1 as attached hereto and made part hereof.
9. During the course of the aforesaid litigation Respondent filed his proposed Findings of Fact and Conclusions of Law on July 24, 2000. A true and correct copy of said pleadings is attached hereto as Respondents Group Exhibit 2.
10. After a complete discovery and motion process including pre-trial conference, on the eve of trial originally set for August 30, 2000 the Complainant through his counsel offered to accept \$4,000.00 in full and complete satisfaction of the Complainant's claim for these loans to the respondent for his campaign.
11. On September 8, 2000, an order was entered signed by the attorneys for both parties and by the Honorable John H. Squires in the US Bankruptcy Court that dismissed the Adversary Complaint, with a finding that any further indebtedness from RANDALL A. BOROW to ROBERT HOLAS was discharged under Chapter 7 of the Bankruptcy Court. A true and correct copy of the Agreed Order entered September 8, 2000 is attached hereto as Respondent's Exhibit 3.
12. The Respondent remitted the settlement proceeds of \$4,000.00 to the Complainant and a true and correct copy of the certified check for said amount dated August 26, 2000, in the amount of \$4,000.00 is attached hereto and made part hereof as Respondent's Exhibit 4.
13. The Complainant absolutely had the opportunity to go forward in the US Bankruptcy

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Court to present his case, if any, for fraud but opted to voluntarily dismiss in exchange for receipt of the aforesaid settlement amount. Given the fact that the Respondent sought relief in the US Bankruptcy Court as to the indebtedness from himself to the Complainant, it is clear that the Bankruptcy Court and that Adversary Proceedings were voluntarily dismissed by Complainant had exclusive jurisdiction to determine if any further monies were owed from the Respondent to the Complainant.

14. This matter has been fully litigated in the Court that had exclusive jurisdiction to resolve this matter. The Complainant excepted a sum of money in full settlement and voluntarily dismissed any further proceedings against the Respondent and he should not be allowed a third opportunity at seeking reimbursement through any proceedings in this Department.

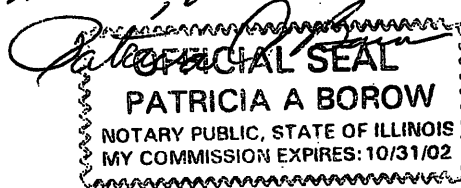
Respectfully Submitted,

By:


RANDALL A. BOROW

*State of Ill }
County of Cook }*

*Subscribed & sworn to before me
this 2nd day of March, 2001*



21-04-405-1719

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION

IN RE:

Randall A. Borow,

Debtor

Robert Holas,

Plaintiff,

v.

Randall A. Borow,

Defendant.

Chapter 7

Bankruptcy No.: 99-31984

Adversary No: 99 A 01369

Judge John H. Squires

MAR 8 2 29 PM '01

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COMMISSION
OFFICE OF GENERAL
COUNSEL

ANSWER TO COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT

NOW COMES Defendant, RANDALL A. BOROW, by and through his attorney, RAYMOND R. GEIMER, and for his Answer to the Complaint Objecting to Dischargeability of a Debt brought herein, pursuant to 11 U.S.C. Section 523(a)(2)(A), states and alleges as follows:

1. Defendant admits that the Plaintiff has brought a civil action based on 11 U.S.C. Section 523(a)(2)(A) but denies that said section and subsections are applicable to the Defendant or his course of conduct.

2. Defendant admits that there exists certain bankruptcy rules that are appropriate in governing adversarial proceedings.

3. Defendant admits the allegations contained in paragraph 3 thereof.

4. Defendant admits the allegations contained in paragraph 4 thereof.

5. Defendant admits that Plaintiff filed such a Complaint in the Circuit Court of Cook County, Illinois, but denies having committed any fraudulent acts.

6. Defendant admits that Count I of Plaintiff's State Court Complaint contained the allegations as stated but denies the contents of said allegations.

7. Defendant admits that the Plaintiff's Complaint in State Court contained the

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allegations as stated but denies the allegations therein.

8. Defendant admits the allegations contained in paragraph 8 thereof.

9. Defendant admits the allegations contained in paragraph 9 but denies that Defendant was guilty of any fraudulent conduct.

10. Defendant admits that a judgment has entered against Defendant in the State Court but affirmatively states that the indebtedness arising out of said judgment should be discharged along with the other unsecured debts as stated in Defendant's Chapter 7 Petition.

11. Defendant denies that the loans from Plaintiff were obtained by false pretenses, false representations or actual fraud within the meaning of Section 523(a)(2)(A) of the Bankruptcy Code.

WHEREFORE, Defendant respectfully prays that Judgment enter in favor of Defendant and against Plaintiff and that reasonable costs and attorney's fees be assessed against Plaintiff.

Respectfully Submitted:

RAYMOND R. GEIMER,
Attorney for Defendant

RAYMOND R. GEIMER
Attorney at Law
96 Kennedy Memorial Drive
Carpentersville, IL 60110
847/428-5477

WPDOCS/BK/Borrow.RES/RRG-ml

21-04-405-1721

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION

IN RE:

Randall A. Borow,

Debtor

Robert Holas,

Plaintiff,

v.

Randall A. Borow,

Defendant.

Chapter 7

Bankruptcy No.: 99-31984

Adversary No: 99 A 01369

Judge John H. Squires

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
JAN - 3 2000
WAYNE E. NELSON, CLERK
DEPUTY CLERK

AFFIRMATIVE DEFENSES

NOW COMES Defendant, RANDALL A. BOROW, by and through his attorney, RAYMOND R. GEIMER, and for Affirmative Defenses to the Complaint filed herein by Plaintiff states and alleges as follows:

1. There is nothing alleged in Plaintiff's Complaint nor is there any evidence that the indebtedness from Defendant to Plaintiff is anything other than a typical, dischargeable, unsecured debt.

2. There are no allegations grounded in fact regarding any representations made by Defendant to Plaintiff misstating his finances at the time the advances were made.

3. There are no allegations in Plaintiff's Complaint grounded in fact regarding any written or oral statements made by Defendant to induce Plaintiff to make the various advances as alleged in the State Court Complaint.

4. Included in the Plaintiff's own Exhibits are the following examples of language in statements signed by Plaintiff and Defendant accompanying each of the transfers and advances of funds:

A) the agreements or alleged promissory notes dated 02/22/96, 07/20/96 and 08/27/96

21-04-405-1722

indicate that the monies would be paid back to the Plaintiff "as funds become available".

- B) the documentation for 03/18/96 indicates "Mr. Holas to be reimbursed immediately upon receipt of funds appropriate to reimburse him".
- C) the documents accompanying the transfers dated 09/23/96, 10/01/96 and 10/17/96 contain the language "to be repaid at a future date as Mr. Holas deems appropriate".

5. The last promise of repayment made by Defendant to Plaintiff occurred, as indicated in Plaintiff's Complaint, on November 30, 1997 for payments to be made over a five year period of time. It cannot be construed that Defendant contemplated filing this Chapter 7 Bankruptcy at the time he made this last representation to Plaintiff. This is further evidenced by Defendant's making a good faith effort at said repayment by making the first 12 payments as indicated in paragraph 9 of Plaintiff's Complaint.

Respectfully Submitted:

RAYMOND R. GEIMER,
Attorney for Defendant

RAYMOND R. GEIMER
Attorney at Law
96 Kennedy Memorial Drive
Carpentersville, IL 60110
847/428-5477

23-04-405-1723

EXHIBIT
Respondent's
2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION

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JUL 24 2000
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
BY WAYNE E. NELSON, CLERK
DEPUTY CLERK

IN RE:)
)
Randall A. Borow,)
)
Debtor) Chapter 7
)
Robert Holas,) Bankruptcy No.: 99-31984
)
Plaintiff,) Adversary No: 99 A 01369
)
v.) Judge John H. Squires
)
Randall A. Borow,)
)
Defendant.)

DEFENDANT'S PROPOSED FINDINGS OF FACT

NOW COMES Defendant, RANDALL A. BOROW, by and through his attorney, RAYMOND R. GEIMER, and for his Proposed Findings of Fact states as follows:

A. During the Defendant's campaign for U.S. Congress during 1996, Plaintiff made a series of loans to Defendant. Ten of these loans were specifically for the Defendant's campaign and three were characterized as personal from Plaintiff to Defendant.

B. During each of these transactions Plaintiff absolutely knew that Defendant had left his full time employment to devote all of his time to the campaign and was otherwise without assets to repay the loans in the immediate future should his campaign have been unsuccessful. During the entire course of dealings between the Plaintiff and Defendant, the Defendant never made any misrepresentations to the Plaintiff regarding his financial condition and at all times was prepared to repay the indebtedness when funds became available, either through an "arrest the debt" type fund raiser after winning the election or as soon as possible once he had regained full time employment.

C. After losing the election Defendant again sought full time employment and once that was attained he intended to begin making payments to the Plaintiff.

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D. In the interim, Plaintiff filed suit in State Court which ultimately resulted in an installment agreement and payment schedule. While the Defendant was employed he made every effort to maintain his payment schedule and repaid the Plaintiff nearly \$8,000.00 before once again losing his full time employment. When Defendant was unable to maintain the payment schedule due to his unemployment, the Plaintiff had an order entered in the State Court vacating the installment agreement and reducing the claim to judgment on July 1, 1999 and the Defendant thereafter sought relief from the Bankruptcy Court.

E. More than three years elapsed from the date of the last loan transaction and the filing for Chapter 7 relief. None of these loan transactions were made in contemplation of ultimately filing bankruptcy.

Respectfully Submitted
Defendant, Randall A. Borow

By: _____
RAYMOND R. GEIMER
His Attorney

RAYMOND R. GEIMER
Attorney at Law
96 Kennedy Memorial Drive
Carpentersville, IL 60110-1698
847/428-5477

WPDOCS/BK/Borow.Findings/RRG-ml

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION

RECEIVED
JUL 24 2000
WAYNE E. NELSON, CLERK
DEPUTY CLERK

IN RE:)
Randall A. Borow,)
)
Debtor) Chapter 7
)
Robert Holas,) Bankruptcy No.: 99-31984
)
Plaintiff,) Adversary No: 99 A 01369
)
v.) Judge John H. Squires
)
Randall A. Borow,)
)
Defendant.)

DEFENDANT'S PROPOSED CONCLUSIONS OF LAW

NOW COMES Defendant, RANDALL A. BOROW, by and through his attorney, RAYMOND R. GEIMER, and for his Proposed Conclusions of Law states as follows:

A. The series of loan transactions between Plaintiff and Defendant gave rise to the typical type of indebtedness that is absolutely dischargeable in bankruptcy.

B. The Defendant did not procure these loans in contemplation of having the indebtedness discharged. Defendant never made any false representations to Plaintiff and therefore committed no acts that could be characterized as fraud as contemplated in Section 523(a)(2)(A) of the Bankruptcy Code.

Respectfully Submitted
Defendant, Randall A. Borow

By: _____
RAYMOND R. GEIMER
His Attorney

RAYMOND R. GEIMER
Attorney at Law
96 Kennedy Memorial Drive
Carpentersville, IL 60110-1698
847/428-5477

21-04-405-1726

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION

IN RE:)
)
Randall A. Borow,)
)
Debtor) Chapter 7
)
Robert Holas.) Bankruptcy No.: 99-31984
)
Plaintiff.) Adversary No: 99 A 01369
)
v.) Judge John H. Squires
)
Randall A. Borow,)
)
Defendant.)

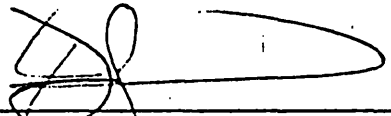
AGREED ORDER

THIS MATTER, coming to be heard for presentation of settlement order, the parties and their respective counsel being in agreement and all matters being fully compromised and settled, and the Plaintiff having acknowledged receipt of payment in full of all settlement proceeds, and the Court being further advised;

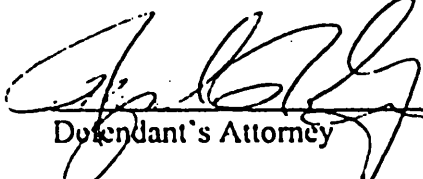
IT IS HEREBY ORDERED that this Adversary Complaint be and is hereby dismissed with prejudice and any further indebtedness from the Defendant, RANDALL A. BOROW, to the Plaintiff, ROBERT HOLAS, that arose prior to the filing of the Defendant's Petition for Chapter 7 Relief, be and is hereby discharged.

PLAINTIFF: ROBERT HOLAS

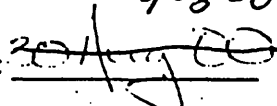
DEFENDANT: RANDALL A. BOROW



One of Plaintiff's Attorneys



Defendant's Attorney

Dated: 9-8-00


JUDGE JOHN H. SQUIRES

ENTERED

SEP - 8 2000

John H. Squires Bankruptcy Judge
UNITED STATES BANKRUPTCY COURT

21-04-405-1727

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

IN RE

Randall A. Borow,

Debtor,

Robert Holas,

Plaintiff,

v.

Randall A. Borow,

Defendant.

Chapter 7

Bankruptcy No: 99-31984

Adversary No:

Judge John H. Squires

EXHIBIT

Respondent's

1

RECEIVED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
NOV - 4 1999
WAYNE E. NELSON, CLERK
DEPUTY CLERK

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COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT

Robert Holas, ("Plaintiff") by his attorneys, DiTommaso & Associates, P.C., brings his objection to determine the dischargeability of a debt and claim against Defendant Randall A. Borow, pursuant to 11 U.S.C. Section 523 (a)(2)(A) and in support thereof, state as follows:

1. This objection is a civil action based upon 11 U.S.C. Section 523 (a)(2)(A).
2. As provided pursuant to Bankruptcy Rule 7001, this proceeding, to determine the dischargeability of a debt, is an adversarial proceeding. Accordingly, this litigation defined by this Complaint is properly governed by the Bankruptcy Rules encompassed in part VII of the Rules of Bankruptcy Procedure.
3. Plaintiff is an individual who resides in North Riverside, Illinois.
4. Defendant is the debtor in this Chapter 7 proceeding, filed October 15, 1999.

DEPOSITION
EXHIBIT

Group #1
3-8-00

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5. On March 7, 1997, Plaintiff filed a two-count complaint against Defendant in the Circuit Court of Cook County, case number 97 L 02721, alleging common law fraud and breach of contract. A copy of Plaintiff's complaint is attached and incorporated herein as Exhibit 1.

6. In Count I of the Complaint, Plaintiff alleged that over a period of time from June, 1996 through October, 1996, Plaintiff had loaned Defendant sums of money totaling in excess of forty thousand dollars (\$40,000). Plaintiff further alleged that Defendant fraudulently obtained the loans by representing to Plaintiff that he would repay the loans when they became due and that he had sufficient resources to repay the loans. Defendant made these representations with the knowledge that he did not intend to repay the loans and with the knowledge that he did not have sufficient resources to repay the loans.

7. In the complaint, Plaintiff further alleges that Defendant intended that Plaintiff rely upon the false representations and to induce Plaintiff to make the loans to Defendant, and that Plaintiff did rely upon the representations.

8. On November 30, 1997, Plaintiff and Defendant entered into a written settlement agreement in Case No. 97 L 02721 in which Defendant agreed to pay Plaintiff the sum of \$33,000 over a five year period at the rate of 7% interest per annum. Pursuant to the execution of the Settlement Agreement, Case No. 97 L 02721 was dismissed without prejudice on December 8, 1997. A copy of the Settlement Agreement is attached and incorporated herein as Exhibit 2.

9. Defendant made 12 payments to Plaintiff under the terms of the Settlement Agreement, for a total of \$7,795.60. Defendant ceased making payments in March 1999, and has

not made any payments since that time despite Plaintiff's repeated demands that he pay the monies due under the terms of the Settlement Agreement.

10. On July 1, 1999, pursuant to Plaintiff's Motion, the Circuit Court of Cook County reinstated Case No. 97 L 02721 against Defendant, and entered judgment against him in the amount of \$31,183.27. Defendant was served with notice of the court hearing on July 1, 1999, and he failed to appear. A copy of the Judgment is attached and incorporated herein as Exhibit

3.

11. Defendant obtained loans from Plaintiff by false pretenses, false representations, or actual fraud within the meaning of Section 523 (a)(2)(A) of the Bankruptcy Code.

WHEREFORE, Plaintiff prays this Honorable Court determine that Defendant's debt to Plaintiff, including interest, costs and attorneys fees be non-dischargeable.

Dated: November 2, 1999

Respectfully Submitted,

DiTOMMASO & ASSOCIATES, P.C.

BY: *Rich. A. Fawell*
One of the Attorneys for Plaintiff

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE

Randall A. Borow,

Debtor,

Robert Holas,

Plaintiff,

v.

Randall A. Borow,

Defendant.

Chapter 7

Bankruptcy No: 99-31984

Adversary No:

Judge John H. Squires

EXHIBIT
Respondent's
1

99A01369

**COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT**

Robert Holas, ("Plaintiff") by his attorneys, DiTommaso & Associates, P.C., brings his objection to determine the dischargeability of a debt and claim against Defendant Randall A. Borow, pursuant to 11 U.S.C. Section 523 (a)(2)(A) and in support thereof, states as follows:

1. This objection is a civil action based upon 11 U.S.C. Section 523 (a)(2)(A).
2. As provided pursuant to Bankruptcy Rule 7001, this proceeding, to determine the dischargeability of a debt, is an adversarial proceeding. Accordingly, this litigation defined by this Complaint is properly governed by the Bankruptcy Rules encompassed in part VII of the Rules of Bankruptcy Procedure.
3. Plaintiff is an individual who resides in North Riverside, Illinois.
4. Defendant is the debtor in this Chapter 7 proceeding, filed October 15, 1999.

**DEPOSITION
EXHIBIT**

Group #1
3-8-00

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
NOV - 4 1999
WAYNE E. NELSON, CLERK
DEPUTY CLERK

21.04.405.1731

5. On March 7, 1997, Plaintiff filed a two-count complaint against Defendant in the Circuit Court of Cook County, case number 97 L 02721, alleging common law fraud and breach of contract. A copy of Plaintiff's complaint is attached and incorporated herein as Exhibit 1.

6. In Count I of the Complaint, Plaintiff alleged that over a period of time from June, 1996 through October, 1996, Plaintiff had loaned Defendant sums of money totaling in excess of forty thousand dollars (\$40,000). Plaintiff further alleged that Defendant fraudulently obtained the loans by representing to Plaintiff that he would repay the loans when they became due and that he had sufficient resources to repay the loans. Defendant made these representations with the knowledge that he did not intend to repay the loans and with the knowledge that he did not have sufficient resources to repay the loans.

7. In the complaint, Plaintiff further alleges that Defendant intended that Plaintiff rely upon the false representations and to induce Plaintiff to make the loans to Defendant, and that Plaintiff did rely upon the representations.

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11. Defendant obtained loans from Plaintiff by false pretenses, false representations, or actual fraud within the meaning of Section 523 (a)(2)(A) of the Bankruptcy Code.

WHEREFORE, Plaintiff prays this Honorable Court determine that Defendant's debt to Plaintiff, including interest, costs and attorneys fees be non-dischargeable.

Dated: November 2, 1999

Respectfully Submitted,

DITOMMASO & ASSOCIATES, P.C.

BY:

Alit. A. Fawell

One of the Attorneys for Plaintiff

21.04.405.1733