

Court declined to hold debt non-dischargeable under 11 U.S.C. § 523(a)(2) when creditor-plaintiff could not prove (i) debtor-defendant made false representation; (ii) debtor-defendant intended to deceive creditor-plaintiff; or (iii) any damage resulted from debtor-defendant's allegedly false representation.

***Giordano v. Collins (In re Collins)*, 2015 Bankr. LEXIS 2918 (Bankr. D. Md. Sep. 1. 2015) (Rice, J.).**

Summary by Justin P. Fasano, McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A.

The Chapter 7 Debtor, Todd Collins (the “Debtor”) was the 25% owner of a used car dealership, Certified Cars, Inc. (“Certified”). The other 75% was owned by Jason Giordano (“Jason”). Certified had borrowed \$1,250,000 from Branch Bank and Trust Company (“BB&T”) pursuant to a floor-plan financing agreement. Because Certified could not obtain financing otherwise, Mr. Giordano’s mother, Donna Giordano (“Donna”) agreed to be a co-obligor to BB&T. Donna had no experience as a lender but the Court found that she was not unsophisticated. She had managed several of her husband’s businesses after her husband became disabled.

In May 2011, Certified ran into financial trouble and Donna agreed to loan Certified \$600,000. She hired an attorney to draft loan documents, and Certified signed a promissory note for \$600,000, which the Debtor and Jason guaranteed. At the bottom of the promissory note, there was a heading titled “The undersigned executed with respect to the covenants and obligations under the section titled ‘Additional Covenants’ above.” Under that heading the note contained signatures for Jason, Jason’s wife, Nicole Giordano (“Nicole”), and the Debtor’s wife, Christine Collins (“Christine”). There was a dispute as to whether or not Christine had actually signed this note, or whether the Debtor signed it on her behalf. Christine testified that she would have signed it if the Debtor asked. The Bankruptcy Court found that Christine had signed the note.

In August 2011, Certified again ran into financial trouble and Donna agreed to loan Certified an additional \$320,000. This time, Donna did not hire an attorney to draft loan documents, but used the same loan documents as before. Certified signed a promissory note for \$320,000, which the Debtor and Jason guaranteed. Again, at the bottom of the promissory note, there was a heading titled “The undersigned executed with respect to the covenants and obligations under the section titled ‘Additional Covenants’ above.” Under that heading the note contained the signatures of the Debtor, Jason, Nicole, and Christine. For this note, there was a dispute as to whether or not Todd had Christine’s authorization to sign this note. Again, Christine testified that she would have signed the note if the Debtor asked. The Bankruptcy Court found that Todd had authority to sign Christine’s name to the note.

In March 2012, Certified again ran into financial trouble, and BB&T informed Donna they planned to terminate the floor-plan financing. Donna agreed to pay the \$1,250,000 owed to BB&T in exchange for a third promissory note from Certified, guaranteed by Jason and the Debtor, but this time without the signatures of Christine or Nicole.

Donna thereafter determined the business was not viable and sued the Debtor, Jason, Nicole, and Christine. No response was filed and the Circuit Court entered a default judgment against all of the defendants for \$2,159,014.58. No one moved to vacate or appeal the judgment, which became final. The Debtor thereafter filed for bankruptcy, and Donna sued the Debtor to hold the

judgment non-dischargeable under 11 U.S.C. § 523(a)(2). After a trial in the Bankruptcy Court, the Bankruptcy Court held that the judgment was not non-dischargeable under 11 U.S.C. § 523(a)(2) for three reasons. First, Donna could not prove that the Debtor made a false representation by signing Christine's name, because the preponderance of the evidence showed that Christine had either signed the promissory notes or that the Debtor had authority to sign her name. Second, Donna could not prove the Debtor intended to deceive Donna, because the preponderance of the evidence showed that both the Debtor and Christine thought that the Debtor had authority to sign Christine's name (and he did in fact have such authority). Third, Donna could not show that any damage resulted from the Debtor's signing Christine's name. Donna still had a judgment against Christine, even though it was not entirely clear that Christine was liable under the promissory note. Because Donna could not prove three of the necessary elements to hold the judgment non-dischargeable under 11 U.S.C. § 523(a)(2) (namely, the existence of a false representation, intent to deceive, and damages resulting from the false representation), the debt was discharged.