

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 00-10251-JMD  
Chapter 7

Rickie and Sharon Voisine,  
Debtor

Rickie Voisine,  
Plaintiff

v.

Adv. No. 02-1137-JMD

Sperry Concrete, Inc.,  
Defendant

*Grenville Clark, Esquire*  
*CLARK, WENDELL & CLARK, PC*  
*Manchester, NH*  
*Attorney for Plaintiff*

*Cynthia Fallon, Esquire*  
*LAW OFFICE OF RODNEY STARK*  
*Manchester, NH*  
*Attorney for Defendant*

**MEMORANDUM OPINION**

**I. INTRODUCTION**

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

## II. FACTS

The facts are straight forward and undisputed. On February 4, 2000, Rickie and Sharon Voisine filed a chapter 13 bankruptcy petition. Ten months later on December 6, 2000 the Voisine's voluntarily converted to a chapter 7. On March 9, 2001, Sperry Concrete (the "Creditor") brought a complaint pursuant to section 523(a)(2)(A),<sup>1</sup> in which it objected to the dischargeability of the Rickie Voisines's (the "Debtor") obligation to it in the amount of \$6,120.56, relating to the Creditor's installation of a foundation on the Debtor's property. The Court in a memorandum opinion issued on January 25, 2002, excepted the debt from discharge because the Debtor's false statements regarding the status of their mortgage caused damage to the Creditor in that the Creditor deferred taking collection action which would have resulted in its receiving payment for services. See Sperry Concrete v. Rickie and Sharon Voisine (In re Rickie and Sharon Voisine), 2002 BNH 005.

On April 13, 2001 the Voisine's received their chapter 7 discharge. By a writ of summons dated March 29, 2002, the Creditor commenced a civil action in a New Hampshire superior court for the recovery of the \$6,120.56 and for lost revenue, interest, costs and attorney fees. The Creditor sought and was granted a real estate attachment on the Debtor's home for \$20,000. The attachment was perfected on April 2, 2002. The attachment was subsequently reduced to \$7,000 by a superior court order dated October 2, 2002.

The Debtor filed a Complaint for Contempt and Injunctive Relief for Damages for Violation of Discharge Injunction (the "Complaint") on September 27, 2002. The Debtor alleges

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<sup>1</sup> Unless otherwise indicated, all references to "section" refer to Title 11 of the United States Code.

that the Creditor violated section 524(a) by seeking a real estate attachment and damages above the nondischargeable amount of \$6,120.56. On October 24, 2002 the parties filed a stipulation for entry of final judgment with the superior court; judgment for the Creditor in the amount of \$6,120.56. Because there was no factual dispute, the issue on damages and attorney fees was submitted to the Court on a stipulated record, following a short hearing on December 12, 2002.

### **III. DISCUSSION**

The issue before the Court is whether the Creditor's actions in seeking interest, costs and attorney fees in state superior court on a nondischargeable claim violated the discharge injunction in § 524(a). The Debtor claims that only \$6,120.56 was deemed nondischargeable and anything above and beyond that number violates his discharge. While at first blush this issue might seem novel, it is in fact well settled law that a creditor who has a nondischargeable debt under section 523(a)(2)(A) may recover attorney's fees, costs, punitive damages or any other liability arising from the fraudulent action. Cohen v. De La Cruz, 523 U.S. 213, 218-19 (1998).

In 1998 the Supreme Court decided Cohen v. De La Cruz, holding that a debt owed to tenants for rent charged by the debtor in excess of that allowed under a local rent control ordinance was within the "actual fraud" exception to the discharge, thus barring the discharge of all liability arising from the debtor's fraud, including that for treble damages, attorney fees, and costs, assessed under state law on account of the fraud. 523 U.S. 213. The phrase "to the extent obtained by" in section 523(a)(2)(A) was held to modify "money, property, services, or ... credit," not "any debt," so the exception encompassed "any debt ... for money, property, [etc.], to the extent [that the money, property, etc. is] obtained by fraud." Cohen, 523 U.S. at 218. Thus, once it is established that specific money or property has been obtained by fraud, any debt arising therefrom is excepted

from discharge. Id. (finding that \$31,382.50 was obtained by fraud, but the full liability traceable to that sum was \$94,147.50 plus attorney's fees and costs, all of which falls within the discharge exception).

In the instant case the Creditor's claim was found nondischargeable under § 523(a)(2)(A). See Sperry Concrete, 2002 BNH 005. Accordingly, the Creditor may seek any debt arising from the nondischargeable claim including but not limited to attorney fees, interest and/or costs recoverable on that debt under applicable state law. Therefore, the Debtor's Complaint is hereby DENIED.

#### **IV. CONCLUSION**

This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate judgment consistent with this opinion.

DONE and ORDERED this 19<sup>th</sup> day of June, 2003, at Manchester, New Hampshire.

/s/ J. Michael Deasy  
J. Michael Deasy  
Bankruptcy Judge