

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

In re

WILLIAM and MARIA DAVIS, No. 92-12308

Debtor.

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SONOMA NATIONAL BANK,

Plaintiff,

v. A.P. No. 93-1022

WILLIAM R. DAVIS,

Defendant.

_____/

Memorandum of Decision

Debtor and defendant William R. Davis was, before he filed his Chapter 7 petition, a principal in a closely-held corporation which operated a car dealership. In June, 1991, the corporation borrowed \$170,000.00 from plaintiff Sonoma National Bank. Davis and the other principals guaranteed the loan.

As part of the loan application package, Davis had submitted his personal financial statement. In it, he stated that he was not a guarantor on any debt. This statement was not correct; Davis had guaranteed \$1.5 million in corporate debt to Mercedes-Benz Credit Corporation used to floor the corporation's inventory. Based on this false statement, the Bank seeks to have the deficiency on the loan of \$67,895.61 declared a nondischargeable debt pursuant to section 523(a)(2)(B) of the Bankruptcy Code.

The court is satisfied from the evidence that, despite Davis' claims to the contrary, he knew that he had guaranteed the Mercedes-Benz obligation and that he did not disclose this in his financial statement because he was afraid that if he did the Bank would require a deed of trust to his home as additional security. This is sufficient intent to render the debt nondischargeable. The financial statement was materially false. While the Bank probably would have made the loan anyway, it would have required additional security had it known about the Mercedes-Benz guarantee. Thus, it relied on the misrepresentation, and that reliance was reasonable.

As it turned out, the corporate property taken as security by the Bank was more than sufficient to cover all of the debt, but the Bank was forced to settle for less when the perfection of its security interest was questioned in the bankruptcy proceedings of the corporation. In addition, the bank foreclosed nonjudicially on real property owned by another principal. Davis argues that the effect of both of these circumstances was to exonerate him on his guarantee. However, it appears that Davis waived the effect of these happenings as to his guarantee and that the waivers are enforceable.

For the foregoing reasons, a nondischargeable judgment will be entered in favor of the Bank in the amount of \$67,895.61. **The Bank shall also recover its costs of suit.**

This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for the Bank shall submit an appropriate form of judgment forthwith.

Dated: November 1, 1993

Alan Jaroslovsky
U.S. Bankruptcy Judge
CANB DocumentsNorthern District of California