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Proving Reliance in a Section 523(a)(2)(B) Case

Lord Byron in one of his famous works, wrote “After all, what is a lie? ‘Tis but the truth in masquerade.”¹ When creditors discover the masquerade of a debtor's false writing concerning the debtor's financial condition and see that there is little truth behind the mask, they will seek to except the debtor's debts to the creditor from discharge. Section 523(a)(2)(B) excepts from discharge certain debts “for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by ... 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[.]”²

Often times the most litigated element of the [section 523\(a\)\(2\)\(B\)](#) exception to discharge is whether the creditor reasonably relied upon the debtor's false writing, as required by [section 523 \(a\)\(2\)\(B\)\(iii\)](#). To carry its burden, the creditor—and the creditor's attorney—must first carefully consider all of the traps and pitfalls that courts have found in the rather innocuous phrase “reasonably relied.”

I. What witness can prove reliance?

Before addressing the substance of the creditor's burden³ the creditor's attorney must first consider how he or she will get the evidence about the creditor's reliance before the court. When the creditor is an individual, the evidence can be straight forward: have the creditor testify as to what they relied upon when deciding to extend credit. However, when the creditor is an institution, the attorney must identify the ultimate decision-maker for the extension of credit. Several courts that have considered the issue have held that only the ultimate decision-maker has the personal knowledge required under [Fed. R. Evid. 602](#), to testify concerning the creditor's reliance.⁴

In *In re Samuel*, the Bankruptcy Court for the Northern District of Texas considered what witness could testify concerning a creditor's reliance on a debtor's writing.⁵ There, the debtor negotiated a lease for his restaurant and provided the landlord with personal financial statements.⁶ The landlord's agent negotiated on behalf of the landlord, but the agent only had authority to terminate negotiations; he did not have authority to approve the transaction. The landlord approved the transaction.⁷ In the financial statements the debtor overstated his non-exempt assets.⁸ After the debtor filed for chapter 7 bankruptcy protection the landlord commenced an adversary proceeding to except its debt from discharge.⁹

The bankruptcy court found that the landlord had not carried its burden, in part because the landlord's witness—the landlord's agent—was not able to testify concerning the landlord's decision to approve the transaction.¹⁰ The bankruptcy court reasoned

that “[the agent] was not the ultimate decision-maker with respect to a decision to enter into a lease with a prospective tenant. And, the ultimate decision-maker for [the landlord] was not identified and did not testify at trial. So, there is no evidence in the record as to what the ultimate decision-maker for [the landlord] relied upon in deciding to execute the Lease on [the landlord's] behalf.”¹¹ While the court did not reference [Fed. R. Evid. 602](#), its holding was in keeping with application of the rule.

Rule of Evidence 602 provides that “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”¹² A creditor's witness in a [section 523\(a\)\(2\)\(B\)](#) action should thus be the ultimate decision-maker. Any other witness likely does not have the personal knowledge of how or why the decision-maker approved the loan or what that witness considered when making the credit decision. To the extent the non-decision-maker witness attempts to testify as to what the decision maker considered, it would be speculation. If the decision-maker told the witness what was relied upon, the witness' testimony would likely be hearsay.¹³ Accordingly, before the creditor attempts to introduce evidence of reliance, the creditor must first identify that witness that has personal knowledge of that reliance.

II. What must the reliance evidence show?

A. The creditor must actually rely on the false writing.

One of the creditor's primary burdens when proving a [section 523\(a\)\(2\)\(B\)](#) action is to show that the creditor relied on the debtor's false writing.¹⁴ Courts analyze reliance in two respects: whether the creditor actually relied on the false writing, and whether the creditor reasonably relied on the false writing.¹⁵ Accordingly, courts first consider whether a creditor actually relied on a false writing.¹⁶ A creditor's actual reliance is a subjective inquiry and focuses on the creditor's state of mind, and what the creditor considered to be important in the credit decision.¹⁷ Because actual reliance is subjective, a creditor can prove that it actually relied on a false writing through circumstantial evidence.¹⁸

A creditor actually relies on a debtor's false writing when the debtor's false writing was a contributory cause for the creditor's decision to extend credit to the debtor and that the creditor would not have extended the credit had the debtor provided accurate information.¹⁹ While the debtor's false statement does not have to be the only factor on which the creditor actually relied, it must be a factor nonetheless.²⁰ But creditors should take care, because some writings are so blatantly incomplete that courts find that actual reliance is impossible.²¹ Even if a creditor actually relies on a false writing, the creditor still has the further burden of proving that its reliance was reasonable as well.

B. The Creditor must reasonably rely on the false writing.

Courts have increasingly scrutinized the reasonableness of a creditor's reliance on a false writing. In keeping with the general policy of narrowly construing discharge exceptions, the reasonable reliance requirement is a heightened bar for creditors who seek to except a debt from discharge.²² Under the reasonableness standard, creditors have a responsibility to ensure that there is a valid basis for relying on the debtor's written representations.²³ If the creditor cannot carry its burden as to the reasonableness of its reliance, then the debtor will be able to discharge its debt.

A court's determination of a creditor's reliance is a factual determination²⁴ that is made in light of the totality of the circumstances.²⁵ Furthermore, while a creditor's actual reliance is a subjective inquiry, the reasonableness of the creditor's reliance is an objective analysis.²⁶ That is, the reasonableness of the creditor's reliance on a debtor's false writing is judged by the degree of care which would be exercised by a reasonably cautious person in the same business transaction under similar circumstances.²⁷ Because the inquiry is objective, courts have developed certain factors for evaluating a creditor's reasonableness.

1. Reasonable reliance factors: The age of the writing.

One of the first factors that courts consider is a temporal factor for the debtor's writing. For this factor, courts evaluate how old or "stale" a debtor's writing is at the time the creditor relies on the writing. Generally speaking, the older the writing, the less reasonable the creditor's reliance on that writing. For example, "most courts in the Eleventh Circuit find that a creditor has not reasonably relied on a financial statement when it is three months or older because the information is considered stale."²⁸ Thus, where a bank relies on stale financial statements, but fails to inquire as to whether the statements are accurate for the current financial situation, the bank likely will not be able to prove that its reliance was reasonable under the circumstances.²⁹ Even if the creditor relied on current information, there are other pitfalls to the reasonableness of the creditor's reliance.

In addition to the timeliness of the debtor's information, courts have developed other objective factors to determine reasonable reliance. Those factors include:

- whether there had been previous business dealings with the debtor that gave rise to a relationship of trust;³⁰
- whether the creditor had a close personal relationship or friendship with the debtor;³¹
- the creditor's standard practices in evaluating credit-worthiness;³²
- the standards or customs of the creditor's industry in evaluating credit-worthiness;³³
- whether there were any "red flags" that would have alerted an ordinarily prudent lender to the possibility that the representations relied upon were not accurate;³⁴
- whether even minimal investigation would have revealed the inaccuracy of the debtor's representations;³⁵
- whether the debt was incurred for personal or commercial reasons.³⁶

Courts consider some or all of these factors on a case-by-case basis, and no single factor weighs more heavily than another.³⁷ Nonetheless, courts have analyzed and focused their inquiry more frequently on some factors rather than others.

2. Reasonable reliance factors: The nature and extent of the debtor-creditor relationship.

Courts analyze the relationship between a debtor and the creditor in two different lights: one where the debtor-creditor relationship is a business relationship with a history of the creditor lending the debtor money, and one where the debtor and creditor have a closer, personal, relationship. In this latter category—where there is a relationship of trust or friendship—a creditor can more reasonably rely on a debtor's writings without further inquiry.³⁸ However, in the former relationship—where there is a business relationship, even if the relationship is long-standing—the creditor's reliance on the relationship is necessarily more tempered. As one court observed, while a close, ongoing, business relationship may excuse some measure of lack of verification, a creditor with such a relationship may not "assume the position of an ostrich with its head in the sand and ignore facts which were readily available to it."³⁹ Furthermore, to allow a sophisticated lender that is in the business of lending money to circumvent its own or industry lending standards on the basis of the prior relationship would be counter-intuitive. In such a case, the creditor's decision to extend credit is more likely to be made not on the debtor's false writing, but on the basis of the relationship itself.⁴⁰

3. Reasonable reliance factors: The lending standards.

In addition to the debtor-creditor relationship, courts also consider both the creditor's and the industry's lending standards. Courts differ, however, on whether creditors are required to prove lending standards to show reasonable reliance, or lending standards are merely one potential way to prove reasonable reliance. In *In re Robinson*, the court stated that a creditor's standard business practice "needs to be ascertained."⁴¹ Similarly, in *Ins. Co. of N. Am. v. Cohn (In re Cohn)*, the court stated that a

creditor was required to prove its standard business practices.⁴² The Third Circuit in *Cohn* also mandated that creditors prove the industry lending standards.⁴³

It is with regard to lending standards—especially a creditor's lending standards—that courts walk the tightest line. Courts should not use the [section 523\(a\)\(2\)\(B\)](#) reasonableness standard to second-guess a creditor's lending standards or decisions.⁴⁴ But neither can courts blindly find reasonableness solely because creditors made a loan within their established lending standards. To do so would allow the creditor to effectively eliminate the reasonableness standard⁴⁵ and [section 523\(a\)\(2\)\(B\)](#) would become an easy bar to discharge.⁴⁶ Creditors should therefore beware that following their established lending practices or industry lending standards is not a guarantee of reasonableness. But the lending standards remain an important proof in a [section 523\(a\)\(2\)\(B\)](#) case.

4. Reasonable reliance factors: Red flags.

Another factor to which courts look is whether the debtor's writing contained red flags. A red flag can be anything in the writing that should have put the creditor on notice of the possibility of inaccurate information.⁴⁷ If the creditor possesses information that would cause a reasonable lender to question the accuracy of the debtor's writing, then the creditor cannot claim deception on the part of the debtor.⁴⁸ The most common red flags are inconsistent and incomplete information that the creditor can identify from its knowledge of the debtor or simple review of the writing. For example, courts have found red flags, among other situations, when

- the debtor provided the creditor with bank statements to support his financial statements, but the bank statements were in the name of other people or entities;⁴⁹
- the debtor provided the creditor with a personal financial statement that omitted liabilities that the debtor owed to the creditor;⁵⁰
- the debtor provided the creditor with a pay stub to prove employment, but the pay stub showed a drastically lower income than the debtor claimed on the loan application;⁵¹
- the debtor's financial statements were internally inconsistent;⁵²
- the debtor claimed a high net worth, but was seeking a high interest loan on an expedited basis.⁵³

In cases where there are red flags, creditors have a duty to conduct a further investigation, and failure to do so is typically found as a basis for concluding that the creditor lacked reasonable reliance.⁵⁴

5. Reasonable reliance factors: Minimal investigation.

Finally, creditors have some duty to conduct a minimum of investigation.⁵⁵ This does not mean that creditors are required to “hire detectives before relying on borrowers' financial statements” or “view each representation with incredulity requiring verification.”⁵⁶ But some basic level of verification is necessary. The minimal investigation analysis is often important with regard to ownership and valuation of property that the debtor claims in the false writing. If the creditor relies on the ownership or valuation of property when extending credit, the creditor has an obligation to do some investigation into the debtor's claims with regard to the property.⁵⁷ Creditors bear the burden to show that either no investigation was necessary, or that they completed a minimal level of investigation.

Conclusion

While many courts state that the reasonable reliance requirement of a [section 523\(a\)\(2\)\(B\)](#) discharge exception action is not a rigorous requirement,⁵⁸ the case law tells a slightly different story. Congress may have intended the statute to apply primarily to creditors acting in bad faith,⁵⁹ but courts have applied the statute according to its terms in all types of cases. This broad application has resulted in a multitude of pitfalls for creditors. Creditors should therefore be prepared to carry an extensive evidentiary burden with regard to reliance in order to except from discharge the debt of a somewhat less than honest debtor.

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Footnotes

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- 1 Lord Byron, *Don Juan*, canto XI, stanza 37 (1823).
- 2 11 U.S.C.A. 523(a)(2)(B).
- 3 *In re Morris*, 223 F.3d 548, 36 Bankr. Ct. Dec. (CRR) 165, Bankr. L. Rep. (CCH) P 78244 (7th Cir. 2000) (recognizing that the creditor bears the burden to demonstrate by a preponderance of the evidence that the exception applies).
- 4 *In re Samuel*, 2010 WL 2900412 (Bankr. N.D. Tex. 2010) (concluding that the ultimate decision maker for approving the loan must testify for a creditor to carry its burden); *In re Bishop*, 420 B.R. 841 (Bankr. N.D. Ala. 2009) (stating that the witness did not have authority to approve the loans and cannot know what the persons with authority relied upon in deciding to approve the loans); *In re Mitchell*, 2005 WL 6487215 (Bankr. N.D. Ga. 2005) (discussing a creditor's burden to show that the decision maker relied on the borrower's statement); *In re Kapoor*, 1991 WL 11257342 (Bankr. E.D. Va. 1991) (stating that only the employee making the decision knows what was relied upon in approving a loan application).
- 5 *In re Samuel*, 2010 WL 2900412 (Bankr. N.D. Tex. 2010).
- 6 2010 WL 2900412 at *2.
- 7 2010 WL 2900412 at *4.
- 8 2010 WL 2900412 at *3.
- 9 2010 WL 2900412 at *1.
- 10 2010 WL 2900412 at *4.
- 11 2010 WL 2900412 at *4.
- 12 Fed. R. Evid. 602.
- 13 See *In re Mitchell*, 2005 WL 6487215 (Bankr. N.D. Ga. 2005) (stating that such a witness's testimony was either hearsay or wishful thinking).
- 14 11 U.S.C.A. § 523(a)(2)(B)(iii).
- 15 *Field v. Mans*, 516 U.S. 59, 116 S. Ct. 437, 133 L. Ed. 2d 351, 28 Bankr. Ct. Dec. (CRR) 231, 33 Collier Bankr. Cas. 2d (MB) 1323, Bankr. L. Rep. (CCH) P 76700 (1995) ("Section 523(a)(2)(B) expressly requires not only reasonable reliance but also reliance itself"); *In re Siriani*, 967 F.2d 302, 23 Bankr. Ct. Dec. (CRR) 220, 26 Collier Bankr. Cas. 2d (MB) 1845, Bankr. L. Rep. (CCH) P 74689 (9th Cir. 1992), as amended, (June 29, 1992) and (rejected by, *Matter of Norris*, 70 F.3d 27, 28 Bankr. Ct. Dec. (CRR) 268, Bankr. L. Rep. (CCH) P 76723 (5th Cir. 1995)); *In re Ostosh*, 589 B.R. 319 (Bankr. W.D. Mich. 2018) ("To meet the reasonable reliance requirement, a creditor must establish two separate, but related, elements: first, that it actually relied on the alleged false statements; and second, that its reliance was reasonable.") (internal quotations omitted).
- 16 See *In re Montano*, 501 B.R. 96 (B.A.P. 9th Cir. 2013) (stating that there can be no reasonable reliance unless the creditor first proves actual reliance); *In re Freeman*, 469 B.R. 128 (Bankr. M.D. Ga. 2012) (finding that a creditor must actually rely on the false statement; if the reliance would have been reasonable, but there is no actual reliance, [section 523\(a\)\(2\)\(B\)](#) is not satisfied).

17 In re Merrill, 2014 WL 1244791 (B.A.P. 9th Cir. 2014); In re Chesson, 2012 WL 4794148 (Bankr. M.D.
N.C. 2012), as amended, (Oct. 15, 2012).

18 In re Cribbs, 327 B.R. 668 (B.A.P. 10th Cir. 2005), aff'd, 2006 WL 1875366 (10th Cir. 2006).

19 In re Goodin, 2016 WL 5874969 (Bankr. N.D. Miss. 2016) (citing In re McCarthy, 421 B.R. 550 (Bankr.
D. Colo. 2009)). Litigants, however, should not confuse this “but for” element of reliance with the similar
elements of materiality of the debtor's false statements (see In re Carlson, 2011 WL 666307 (Bankr. N.D.
Ill. 2011), decision aff'd, 2011 WL 5078121 (N.D. Ill. 2011) (recognizing the “but for” test as a means for
determining materiality of a debtor's false statement), or causation. In re Collins, 946 F.2d 815, 22 Bankr.
Ct. Dec. (CRR) 387, Bankr. L. Rep. (CCH) P 74334 (11th Cir. 1991) (rejected by, Matter of Norris, 70 F.3d
27, 28 Bankr. Ct. Dec. (CRR) 268, Bankr. L. Rep. (CCH) P 76723 (5th Cir. 1995)) (stating that a plaintiff
must establish causation—that it sustained a loss as a result of the representation).

20 In re Anzo, 562 B.R. 819 (Bankr. N.D. Ga. 2016).

21 In re Owens, 322 B.R. 411 (Bankr. E.D. Ark. 2005) (“Clearly, [the creditor] knew of the existing but
undisclosed [] indebtedness; therefore, he did not actually rely on the financial statement as to these
obligations.”); see also In re Hoefling, 2011 WL 2118226 (Bankr. D. N.J. 2011) (finding no actual reliance
when the creditor was aware of incorrect information listed in financial statement, indicating the creditor
did not rely on the statement provided); In re Merrill, 2014 WL 1244791 (B.A.P. 9th Cir. 2014).

22 Lamar, Archer & Cofrin, LLP v. Appling, 138 S. Ct. 1752, 201 L. Ed. 2d 102, 65 Bankr. Ct. Dec. (CRR) 194,
Bankr. L. Rep. (CCH) P 83247 (2018) (noting that the “text of § 523(a)(2)(B) plainly heightens the bar to
discharge” for statements “respecting the debtor's financial condition” by not only requiring such statements
to be made in writing, but also by requiring reasonable, rather than merely justifiable, reliance).

23 In re Watson, 958 F.2d 977, 22 Bankr. Ct. Dec. (CRR) 1115, Bankr. L. Rep. (CCH) P 74497 (10th Cir. 1992).

24 Matter of Coston, 991 F.2d 257, 24 Bankr. Ct. Dec. (CRR) 461, 28 Collier Bankr. Cas. 2d (MB) 1479, Bankr.
L. Rep. (CCH) P 75274 (5th Cir. 1993). See also Matter of Bonnett, 895 F.2d 1155, 22 Collier Bankr. Cas.
2d (MB) 657, Bankr. L. Rep. (CCH) P 73274 (7th Cir. 1989); In re Lansford, 822 F.2d 902, 16 Bankr. Ct.
Dec. (CRR) 496, Bankr. L. Rep. (CCH) P 71917 (9th Cir. 1987); In re Watson, 958 F.2d 977, 22 Bankr. Ct.
Dec. (CRR) 1115, Bankr. L. Rep. (CCH) P 74497 (10th Cir. 1992); In re Collins, 946 F.2d 815, 22 Bankr. Ct.
Dec. (CRR) 387, Bankr. L. Rep. (CCH) P 74334 (11th Cir. 1991) (rejected by, Matter of Norris, 70 F.3d 27,
28 Bankr. Ct. Dec. (CRR) 268, Bankr. L. Rep. (CCH) P 76723 (5th Cir. 1995)) (stating that the bankruptcy
court's finding under section 523(a)(2)(B) that lender reasonably relied on debtor's false statement is finding
of fact insulated by clearly erroneous standard); In re Ophaug, 827 F.2d 340, 16 Bankr. Ct. Dec. (CRR) 468,
17 Collier Bankr. Cas. 2d (MB) 852, Bankr. L. Rep. (CCH) P 71940, 97 A.L.R. Fed. 395 (8th Cir. 1987)
(rejected by, In re Apte, 180 B.R. 223, 33 Collier Bankr. Cas. 2d (MB) 1269, Bankr. L. Rep. (CCH) P 76517
(B.A.P. 9th Cir. 1995)) and (rejected by, In re Vann, 67 F.3d 277, 28 Bankr. Ct. Dec. (CRR) 23, Bankr. L.
Rep. (CCH) P 76668 (11th Cir. 1995)) (suggesting that, where reliance must be reasonable under section
523(a)(2), the reasonableness determination would be reviewed for clear error).

25 In re Ledford, 970 F.2d 1556, 23 Bankr. Ct. Dec. (CRR) 398, Bankr. L. Rep. (CCH) P 74797 (6th Cir. 1992)
(citations omitted).

26 In re Vann, 67 F.3d 277, 28 Bankr. Ct. Dec. (CRR) 23, Bankr. L. Rep. (CCH) P 76668 (11th Cir. 1995).

27 In re Piazza, 605 B.R. 332 (Bankr. M.D. Pa. 2019).

28 In re Strength, 562 B.R. 799 (Bankr. M.D. Ala. 2016) (citing cases).

29 In re Benore, 108 B.R. 797 (Bankr. M.D. Fla. 1989).

30 In re Vann, 67 F.3d 277, 28 Bankr. Ct. Dec. (CRR) 23, Bankr. L. Rep. (CCH) P 76668 (11th Cir. 1995);
Matter of Coston, 991 F.2d 257, 24 Bankr. Ct. Dec. (CRR) 461, 28 Collier Bankr. Cas. 2d (MB) 1479, Bankr.
L. Rep. (CCH) P 75274 (5th Cir. 1993).

31 In re Ledford, 970 F.2d 1556, 23 Bankr. Ct. Dec. (CRR) 398, Bankr. L. Rep. (CCH) P 74797 (6th Cir. 1992)
(citations omitted).

32 In re Cohn, 54 F.3d 1108, 27 Bankr. Ct. Dec. (CRR) 351, 33 Collier Bankr. Cas. 2d (MB) 849, Bankr. L.
Rep. (CCH) P 76501 (3d Cir. 1995).

33 54 F.3d at 1117.

34 54 F.3d at 1117.

35 54 F.3d at 1117.

36 54 F.3d at 1117.

37 In re Hunt, 605 B.R. 758 (Bankr. N.D. Tex. 2019).

38 See e.g. In re Movshovich, 521 B.R. 42 (Bankr. D. Mass. 2014) (finding a relationship of trust between creditor and debtor, where debtor was a friend of the creditor's wife); In re Goodwich, 517 B.R. 572 (Bankr. D. Md. 2014) (holding that an accountant who was a debtor held a relationship of trust with his clients, who were creditors).

39 In re Smigel, 90 B.R. 935, 18 Bankr. Ct. Dec. (CRR) 388 (Bankr. N.D. Ill. 1988).

40 See generally Field v. Mans, 516 U.S. 59, 116 S. Ct. 437, 133 L. Ed. 2d 351, 28 Bankr. Ct. Dec. (CRR) 231, 33 Collier Bankr. Cas. 2d (MB) 1323, Bankr. L. Rep. (CCH) P 76700 (1995) (pointing out that “the greater the distance between the reliance claimed and the limits of the objectively reasonable, the greater the doubt about reliance in fact.”).

41 In re Robinson, 192 B.R. 569 (Bankr. N.D. Ala. 1996).

42 In re Cohn, 54 F.3d at 1117 (“A determination of reasonable reliance *requires* consideration of three factors: (1) the creditor's standard practices in evaluating credit-worthiness ...”) (emphasis added).

43 54 F.3d at 1117. See also In re Cascio, 318 B.R. 567 (Bankr. D. Kan. 2004), *aff'd*, 342 B.R. 384 (B.A.P. 10th Cir. 2005) (stating that the court could not determine reasonableness of creditor's reliance because the creditor did not provide evidence regarding the general standards utilized by the banking industry).

44 In re Hudgens, 149 Fed. Appx. 480 (7th Cir. 2005) citing In re Morris, 223 F.3d 548, 36 Bankr. Ct. Dec. (CRR) 165, Bankr. L. Rep. (CCH) P 78244 (7th Cir. 2000).

45 In re Dehlin, 2011 WL 1261623 (Bankr. D. Utah 2011).

46 In re Strength, 562 B.R. 799 (Bankr. M.D. Ala. 2016); In re Wing, 96 B.R. 369, 18 Bankr. Ct. Dec. (CRR) 1396 (Bankr. M.D. Fla. 1989) (holding that reliance is unreasonable when financial statements are incomplete).

47 In re Sharp, 340 Fed. Appx. 899 (4th Cir. 2009).

48 In re Morris, 223 F.3d 548, 36 Bankr. Ct. Dec. (CRR) 165, Bankr. L. Rep. (CCH) P 78244 (7th Cir. 2000).

49 In re Adam, 406 B.R. 717 (Bankr. E.D. Va. 2009).

50 In re Gordon, 277 B.R. 805 (Bankr. M.D. Ga. 2001); In re Jones, 197 B.R. 949, Bankr. L. Rep. (CCH) P 77046 (Bankr. M.D. Ga. 1996) (finding that financial statement that omitted existing obligation to bank is a red flag).

51 In re Brooks, 392 B.R. 642 (Bankr. M.D. La. 2008).

52 In re Cunningham, 163 B.R. 657, 30 Collier Bankr. Cas. 2d (MB) 1134 (Bankr. D. Mass. 1994).

53 In re Baillio, 2010 WL 3782065 (Bankr. D. N.M. 2010).

54 Field v. Mans, 516 U.S. 59, 116 S. Ct. 437, 133 L. Ed. 2d 351, 28 Bankr. Ct. Dec. (CRR) 231, 33 Collier Bankr. Cas. 2d (MB) 1323, Bankr. L. Rep. (CCH) P 76700 (1995).

55 In re Davenport, 508 Fed. Appx. 937 (11th Cir. 2013).

56 In re Gertsch, 237 B.R. 160 (B.A.P. 9th Cir. 1999).

57 In re Jones, 197 B.R. 949, Bankr. L. Rep. (CCH) P 77046 (Bankr. M.D. Ga. 1996) (finding that the bank's failure to verify the financial statement was “inconsistent with the position the Bank takes that it relied upon the overall picture of the Debtor's finances in extending the loan” and that “[t]he Bank cannot disclaim the importance of the value of the property for the procurement of an unsecured loan and then assert that its reliance upon those valuations should render the Debtor's debt nondischargeable.”).

58 In re Morris, 223 F.3d 548, 36 Bankr. Ct. Dec. (CRR) 165, Bankr. L. Rep. (CCH) P 78244 (7th Cir. 2000); In re Bonnazio, 91 F.3d 296 (2d Cir. 1996); In re Woolum, 979 F.2d 71, Bankr. L. Rep. (CCH) P 74976 (6th Cir. 1992).

59 See H.R.Rep. No. 95-595, at 129–30 (1977), reprinted in 1978 U.S.C.A.A.N. 5963, 6090–91 (denoting that the Congress legislated a heightened, yet not a rigorous standard, in section 523(a)(2)(B) primarily aimed at protecting consumer debtors from abuse by erecting an obstacle for creditors acting in bad faith.