

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
STEVEN J. LEIPER & LOREE ANNE LEIPER,)	Case No. 04-02052-TLM
)	
Debtors.)	MEMORANDUM OF DECISION
)	
_____)	
)	
THOMAS E. GENTA & GENTA MANAGEMENT, INC.,)	
)	
Plaintiffs,)	
)	
vs.)	Adversary No. 04-6193
)	
STEVEN J. LEIPER & LOREE ANNE LEIPER,)	
)	
Defendants.)	
)	
_____)	

On September 2, 2004, the above Plaintiffs sued chapter 7 debtors and Defendants alleging nondischargeability of debt under § 523(a)(6). Defendants answered the complaint, representing themselves *pro se*, and the matter was set for trial. On the date of trial, May 19, 2005, counsel for Plaintiffs and Defendants

orally advised the Court that the matter had been resolved by agreement. They told the Court that they agreed a debt of \$13,000.00 would be nondischargeable, be secured by a deed of trust on Defendants' residence, bear interest at 7½% and be amortized over 10 years. They indicated that settlement pleadings and documents would be forthcoming.

When a dispute arose between the parties over the exact language of the agreement and settlement documentation, Plaintiffs moved in October, 2005, to "compel" the entry of a judgment consistent with the oral statements in May, 2005; to compel Defendants to sign a note and deed of trust in "standard form" and, if they did not do so, to appoint an individual to sign on their behalf; and for an award of attorneys' fees and costs against Defendants. *See* Doc. No. 15.

Defendants failed to appear at a scheduled and noticed hearing on this motion on October 31. The Court, however, declined to grant the motion at that time, and instead issued its own "order to show cause" to Defendants. The Court thus tried to encourage Defendants to make an appearance and deal with the several issues presented.

At hearing on the Order to Show Cause, Plaintiffs appeared through counsel, but Defendants once again failed to appear at all. Nor have they responded in writing to any of the motions, pleadings or orders over the past several months.

Defendants' elected course is risky, but the Court is required to consider not only their default and failure to appear, but also whether the relief sought by Plaintiffs is appropriate. In considering the entirety of the record, and in particular the dialogue between the Court and the parties at the time of the trial in May, 2005, the Court concludes that the settlement terms orally stated were not so clear and complete that the Court can enter judgment thereon or order a note and a deed of trust executed by someone on Defendants' behalf, as was requested in Plaintiffs' motion. The Court reaches this conclusion with full understanding of its own precedent on the importance of settlements and the enforcement of settlements. But it also does so with appreciation for the fact that exceptions to discharge are construed narrowly and must be established by creditors.

Since the Court determines Plaintiffs' motion cannot be granted, the Court can and will order this matter to again be set for trial. Plaintiffs and Defendants will be advised by the Clerk of the date of trial, and they shall then and there appear, present testimony through witnesses and present their documentary evidence, on all causes and claims. Both parties are entitled to their day in court on the merits of the matter. Defendants are specifically advised that, should they fail to appear at the time set for trial, the Court will hear the presentation of Plaintiffs' evidence and proceed to determine the merits of the nondischargeability claim under those facts and applicable law.

An order will be entered denying the motion, Doc. No. 15, and directing that a notice of trial be issued.

DATED: December 14, 2005



A handwritten signature in black ink, appearing to read "Terry L. Myers".

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE

CERTIFICATE RE: SERVICE

A “notice of entry” of this Decision, Order and/or Judgment has been served on Registered Participants as reflected by the Notice of Electronic Filing. A copy of the Decision, Order and/or Judgment has also been provided to non-registered participants by first class mail addressed to:

Steven J. Leiper
LoRee Anne Leiper
4900 N. Paynton Way
Boise, ID 83713

Case No. 04-6193 (Genta v. Leiper)

Dated: December 14, 2005

/s/ Jo Ann B. Canderan
Judicial Assistant to Chief Judge Myers