

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In Re:

KAREN A. WHITE,

Case No. 04-30426-PNS3

Debtor.

GULF STATES AUTO AUCTION, LLC,

Plaintiff,

vs.

Adv. No. 04-03017

KAREN A. WHITE,

Defendant.

FINAL JUDGMENT
DETERMINING CERTAIN DEBTS TO BE DISCHARGEABLE
PURSUANT TO 11 U.S.C. § 523(a)(2)

THIS MATTER came before the Court on Plaintiff, Gulf States Auto Auction, LLC's Motion For Final Judgment On the Pleadings Determining Certain Debts To Be Dischargeable Pursuant to 11 U.S.C. § 523(a)(2) and the Court having reviewed the Motion, pleadings, and otherwise being fully advised in these presents hereby makes the following findings of fact and conclusions of law:

I HEREBY CERTIFY that this is a true and correct copy of the original on file in the office of the Clerk, United States Bankruptcy Court for the Northern District of Florida.

WILLIAM W. BLEVINS, Clerk, Bankruptcy Court

By 
Deputy Clerk

1. Defendant, Karen A. White ("White"), filed a Voluntary Petition under Chapter 7 of Title 11 of the United States Code on February 24, 2004. Prior to the initiation of said Bankruptcy Petition, the Debtor was a defendant in a lawsuit pending in the Circuit Court in and for Chilton County, Alabama, styled *Gulf States Auto Auction v. Kats Wholesale Cars and Karen A. White*, Case No. CV-03-244B. Said suit alleges that Karen A. White violated Alabama Code § 6-5-285 (1975). The subject of this adversary complaint is identical to the subject of the aforementioned Chilton County, Alabama lawsuit.

2. At all times material hereto, White owned and operated an unincorporated sole proprietorship known as "Kats Wholesale Cars" and was licensed as a motor vehicle dealer in the State of Alabama.

3. On May 6, 2003, White doing business as Kats Wholesale Cars, contracted with GSAA to purchase a 1996 GMC Yukon (the "Yukon") for \$7,710.00, a 1992 Honda Accord (the "Accord") for \$2,445.00 and a 1992 Lincoln Town Car (the "Town Car") for \$2,395.00.

4. The Yukon, the Accord and the Town Car were paid by White with bank drafts. The bank drafts for the Yukon, the Accord and the Town Car were returned by the bank as unpaid.

5. White owes GSAA the principal sum of \$10,155.00, plus prejudgment interest from May 6, 2003 through and including January 7, 2005, of \$1,199.52, plus reasonable attorneys fees and costs. Interest on the principal amount continues to accrue at a per diem rate of \$1.96 after January 7, 2005.

6. White personally guaranteed the indebtedness of Kats Wholesale Cars to GSAA pursuant to a Personal Guaranty.

7. White was the sole owner and proprietor of, solely controlled and was responsible for the day-to-day operations of Kats Wholesale Cars.

8. By signing the guaranty, White personally guaranteed the obligations and indebtedness of Kats Wholesale Cars to GSAA.

9. The Town Car purchased by White was returned to GSAA and resold resulting in no loss to GSAA. The Yukon and the Accord were never returned to GSAA.

10. On March 3, 2003, White entered into a Dealer Registration Agreement (the "Agreement") with GSAA. Paragraph 9 of the Agreement provides:

Dealer agrees to honor payment of any check or draft immediately when presented to Dealer's bank for payment. Dealer will not under any circumstances, stop payment of its check or draft without the advance written approval . . . Dealer further agrees to hold Auction harmless for and indemnify and defend Auction against any claims, losses, damages and expenses as a result of a check or draft of Dealer being dishonored by the bank upon which it is drawn.

11. Furthermore, the parties Sales Contract provides in part:

That any stop payment order of a check/draft or giving a check/draft which is returned unpaid shall be deemed by the party existing at the time the transaction was consummated, and shall be construed by the parties as intent to defraud in order to consummate the transaction . . .

As stated in the Sales Contracts, when the drafts were returned to GSAA by the bank unpaid, this constituted prima facie evidence of fraud and intent to defraud on the part of White.

12. The actions of White were fraudulent, intentional, willful and malicious, caused injury to GSAA, were in direct breach and in violation of the Agreement, and were in direct breach of the Sales Contract.

13. Pursuant to Paragraph 9 of the parties' Sales Agreement, the debtor agreed to indemnify movant from the costs and expenses incurred as a result of a bad check. Plaintiff's attorneys incurred a total of \$6,249.00, in reasonable fees associated with this matter.

14. Accordingly, White's debt with GSAA is nondischargeable pursuant to 11 U.S.C. §523(a)(2) and a violation of Alabama Code § 6-5-285 (1975).

NOW THEREFORE, based on the aforestated findings of fact, it is **ADJUDGED THAT:**

1. Plaintiff, GULF STATES AUTO AUCTION, LLC, shall have a non-dischargeable judgment against Defendant, KAREN A. WHITE, in the principal amount of TEN THOUSAND ONE HUNDRED FIFTY-FIVE AND NO/100 DOLLARS (\$10,155.00), interest in the amount of ONE THOUSAND ONE HUNDRED NINETY-NINE AND 52/100 DOLLARS (\$1,199.52), reasonable attorneys fees of SIX THOUSAND TWO HUNDRED FORTY-NINE AND NO/100 DOLLARS (\$6,249.00), for a total judgment of **SEVENTEEN THOUSAND SIX HUNDRED THREE AND 52/100 DOLLARS (\$17,603.52)—for all of which let execution issue.**

2. This judgment is NON-DISCHARGEABLE pursuant to 11 U.S.C. 523(a)(2).

3. This judgment shall bear interest at the legal rate of interest from the date hereof until paid.

Dated: February 17, 2005



WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE

Plaintiff/Judgment Creditor

GULF STATES AUTO AUCTION, LLC,
6615 MOBILE HWY
PENSACOLA FL 32526-1264

Defendant/Judgment Debtor

KAREN A. WHITE
725 James Lee Road
Ft. Walton Beach, FL 32547

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