

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

MINUTE ENTRY/ORDER

Bankruptcy Judge: Hon. Redfield T. Baum  
Case Name: Aaron & Kirby Ingersoll, Chapter 11  
Case No.: 2:10-bk-00515-RTB  
Adversary Name: Sarah S. Stannard, vs. Aaron & Kirby Ingersoll, et al...  
Adversary No.: 2:10-000643  
Subject of Hearing: Trial on Complaint  
Date Matter Taken  
Under Advisement: February 19, 2011  
Date Ruled  
Upon: March 25, 2011

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Tried to the court were the claims by the Plaintiff that her debt owed by the Defendants/Debtors was non-dischargeable in bankruptcy pursuant to Sections 523(a)(2), (4) or (6). Set forth below are the findings of fact and conclusions of law by the court. Based thereon, the court concludes that the debt is non-dischargeable in the Ingersolls bankruptcy case.

FINDINGS OF FACT

1. Sarah Stannard ("Sarah"), the Plaintiff herein, is 73 years old and a long time Arizona resident.
2. Kirby Ingersoll ("Kirby") is the adopted daughter of Sarah and is married to Aaron Ingersoll ("Aaron")(Kirby and Aaron are collectively referred to as "Ingersoll").
3. Sarah and Kirby for many years did not have a close relationship and were estranged from each other.

4. Fred Stannard, Sarah's long time husband, died in 2006 after a lengthy period of very poor and declining health. During that time Sarah was his sole caretaker and, as a result of that role, had little contact with any other people.
5. Starting in 2007, Sarah and Kirby begin to communicate and to have a relationship with each other. Sarah also began to relate with her grandchildren, the Ingersoll's children. To a lesser extent, Sarah and Aaron began to interrelate. Collectively, they became her "world."
6. Following the death of Fred Stannard, Sarah began to have financial problems and issues. In the summer of 2008, she knew that she would lose her residence to foreclosure because she had no means to make the payments owed thereon and there was no equity in that residence.
7. Sarah did not know where she would live after the foreclosure or where she would go. She was afraid and contemplated suicide. Kirby knew that Sarah was depressed due to these circumstances.
8. Sarah owned an unencumbered parcel of real property that had been for sale for some time. That lot sold in late 2008 for \$440,000.00. The net proceeds received by Sarah were the only property she had or would have in the future.
9. Sarah's residence was foreclosed on in December 2008 and she vacated the residence in early January 2009. Sarah considered moving to Texas where she had a friend but Kirby objected to her moving and ending her renewed relationship with Kirby and her children. Sarah had no friends or other contacts in Arizona other than the Ingersolls.
10. After her husband's death, Sarah experienced radically different emotions including, but not limited to, euphoria when the lot sold, depression when she realized she was losing her home and had no place or means to move, fear of being on the street with nothing, realizing that she had no friends or other social contacts, and thoughts of suicide.

11. Other than the Ingersolls, after her husband's death, Sarah was totally alone for the first time in decades.

12. Near the end of 2008, Aaron asked Kirby to approach Sarah about a loan to allow them to acquire a large amount of used furniture in Seattle. Kirby asked Sarah who then discussed the requested loan with Aaron.

13. Sarah asked Aaron about the requested loan and specifically if it was safe and if there was any way she could get hurt because this was all the money she had and could not risk losing it. Aaron assured her the loan would be repaid, that much of the furniture was pre-sold, that he was confident about the matter, that there was no way the transactions would not be successful, and that he would see that she got repaid her money.

14. Sarah lent \$100,000.00 to the Ingersolls and the debt was evidenced by a promissory note executed by the Ingersolls and The Company Office ("TCO"). Aaron operated his used furniture business through two entities, TCO and Integrated Systems Installations ("ISI").

15. The December 31, 2008 financial statements for TCO stated that it had negative equity (assets minus liabilities) of approximately \$860,000.00 and that it had an operating loss for that year (revenue minus expenses) of about \$188,000.00. The 2008 year end financial statements for ISI stated that it had equity of \$292,000.00. However, that is based on assets of about \$1,166,000.00, which included as an asset monies owed by TCO to ISI of about \$741,000.00. Because TCO was insolvent, if that asset is not considered, ISI had a negative equity of almost \$500,000.00. ISI had an operating loss in 2008 of about \$100,000.00. Significantly, the financial statements for both TCO and ISI stated that neither company had any appreciable amount of liquid assets.

16. By December 2008, there were outstanding judgments, tax liens, and liquidated debts which would subsequently be reduced to judgment against TCO and/or Aaron for cumulatively in excess of \$500,000.00, including but not limited to a federal tax lien against Aaron for \$364,104.37.

17. There is no evidence that the Ingersolls had sufficient assets to repay the \$100,000.00 to Sarah.

18. Neither the Ingersolls, TCO, nor ISI ever paid any amount to Sarah for her loan.

19. In the months after Sarah's loan, the Ingersolls received and disbursed from their checking account tens of thousands of dollars.

20. In December 2008, Aaron knew that his business of selling used office furniture was down significantly and that the markets he operated in were flooded with inventory. The Seattle furniture transaction was very unsuccessful financially. Shortly thereafter, the Ingersolls, TCO and ISI were debtors in chapter 7 bankruptcy cases.

#### CONCLUSIONS OF LAW

1. Aaron's statements to Sarah that her loan was safe and that she would be repaid were representations. Aaron made those representations on behalf of the Ingersolls.

2. Based upon the financial condition of the Ingersolls, TCO, and ISI, Aaron knew or should have known that such representations were false because they collectively did not have the financial ability to repay the monies borrowed from Sarah.

3. Aaron made the representations to deceive Sarah and to cause her to make the loan.

4. Sarah relied on those representations and would not have made the loan but for Aaron's statements/representations.

5. Sarah has been damaged in the amount of \$100,000.00 as a result of Aaron's representations and actions.
6. Given the entire circumstances faced by Sarah as of December 14, 2008, Sarah suffered from either a physical or mental impairment as that term is used in A.R.S. § 46-451, et seq.
7. Because of her impairment, Sarah was unable to protect herself from exploitation by Aaron and Kirby, as those terms are used in A.R.S. § 46-451, et seq.
8. Accordingly, Sarah was a vulnerable adult as that term is used in A.R.S. § 46-451, et seq.
9. Based upon the totality of the circumstances presented to this court, the Ingersolls were in a position of trust and confidence with Sarah because of their close and confidential relationship, as those terms are used in A.R.S. § 46-451, et seq.
10. A.R.S. § 46-451, et seq., imposes the duties of a trustee on those who are in a position of trust and confidence with the vulnerable adult.
11. The Ingersoll's indebtedness to Sarah is non-dischargeable pursuant to both Sections 523(a)(2)[fraud] and (4)[fraud or defalcation while acting in a fiduciary capacity].
12. Based upon the provisions of A.R.S. § 46-456(B), Sarah is entitled to "additional damages" of two times her actual damages in the amount of \$200,000.00.

Counsel for plaintiff shall serve and lodge an appropriate form of judgment.

Copy of the foregoing  
e-mailed this 25 day of  
March, 2011 to:

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