

FILED & ENTERED

JAN 28 2011

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **RIVERSIDE DIVISION**

11 In re:

12 FRENCHEE LATRESE HORSLEY,

16 Debtor,

17 TANGIA DICKSON,

19 Plaintiff,

21 vs.

22 FRENCHEE LATRESE HORSLEY,

23 Defendant.

Case No.: 6:10-bk-13963-TD

Adversary No.: 6:10-ap-01366-TD

Chapter: 7

15 MEMORANDUM OF DECISION AFTER  
16 TRIAL AND DISPOSING OF DEFENDANT'S  
17 WRITTEN MOTION FOR JUDGMENT ON  
18 THE PLEADINGS

20 Date: September 30 and October 29, 2010  
21 Location: Courtroom 1345, Los Angeles

24  
25 This dispute arose between two half-sisters. Tangia Dickson ("Dickson"), the plaintiff,  
26 loaned Frenchee Latrese Horsley ("Horsley") money in 2008. Dickson timely sued Horsley  
27 seeking nondischargeability claiming that the debt was incurred fraudulently and also that  
28

1 Horsley “is precluded from discharge because she has made numerous material false oaths  
2 and accounts in her bankruptcy petition.”

3           Horsley, through her attorney, moved to dismiss Dickson’s initial complaint for lack of  
4 specificity pursuant to Federal Rule of Bankruptcy Procedure Rule 7009. In response, Dickson  
5 filed her First Amended Complaint, Horsley filed an Answer and the lawsuit was set for trial.  
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7           At trial, Horsley moved for judgment, first orally, on September 30, then in writing filed  
8 on October 1, 2010. I deferred ruling on Horsley’s motion until conclusion of the trial. Both  
9 sides rested at the end of the second day of trial, closing statements were made and the  
10 matter was taken under advisement.  
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12           Based on my review of the oral and documentary evidence of the parties and Horsley’s  
13 written motion, the following are my findings of fact and conclusions of law.

14           Dickson’s § 523(a)(2)(A) claims have been proven by a preponderance of the evidence.  
15 There was no dispute that Dickson loaned Horsley \$21,341.45 between June and August  
16 2008. The loans were made partly in justifiable reliance by Dickson on Horsley’s promise  
17 made at the time of the first of several advances that Horsley expected to receive “retroactive”  
18 payment from her employer as a result of a pending union negotiation. Although Horsley did  
19 not know the timing or the amount of the payment she might receive, she represented to  
20 Dickson that she would turn over to Dickson the “retroactive” check that she expected to  
21 receive in partial repayment of the loans to be made by Dickson. (Trial Transcript, October 29,  
22 2010, 49:19-52:12, including Exhibit 12).  
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25           The evidence established that Horsley reasonably expected a retroactive payment from  
26 her employer. Even though the amount to be received was uncertain, Dickson’s evidence was  
27 sufficient to support an inference and conclusion that Horsley reasonably expected to be paid  
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1 “retroactively” and that she promised to give Dickson the retroactive check in order to induce  
2 Dickson to loan Horsley money. (Id.)

3           Horsley also promised Dickson at the time of Dickson’s first advance that in further  
4 partial repayment Horsley would turn over to Dickson federal and state tax refunds that  
5 Horsley expected to receive based on 2008 tax withholdings for her earnings and later 2008  
6 tax returns. The evidence supports the inference and conclusion that Horsley reasonably  
7 expected substantial future tax refunds based on her 2008 earnings and income tax  
8 withholding payments. (Id.)

9           Horsley’s promises as set forth above were both false and material. Both promises  
10 were made by Horsley with an intent to deceive Dickson. Dickson justifiably relied on both  
11 promises and was proximately damaged as a result in the sum of \$7,772.36, the approximate  
12 total sum of the retroactive payment from Horsley’s employer and Horsley’s tax refunds  
13 received after filing her state and federal tax returns. As a result, Dickson is entitled to  
14 judgment against Horsley in the sum of \$7,772.36, nondischaregeable under § 523(a)(2)(A).

15           As for Dickson’s claims under § 727(a)(4)(A), Horsley’s motion for judgment filed herein  
16 on October 1 is granted. Dickson’s initial Complaint alleged vaguely, as to § 727(a)(4)(A), that  
17 “Debtor is precluded from discharge because she has made numerous false oaths or accounts  
18 in her bankruptcy petition.” Horsley responded by moving to dismiss Dickson’s suit for lack of  
19 specificity under Rule 7009. Dickson, in her First Amended Complaint, added allegations that  
20 Horsley’s [Schedule I] deductions of \$336.36 per month for health insurance were overstated  
21 since her health insurance deduction actually was only \$166.68 per month. Thus, Dickson  
22 claimed, “She lied in order to indicate that she had no net disposable . . . a fraud upon the  
23 court.” Secondly, Dickson’s First Amended Complaint alleged that Horsley “failed to list her  
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1 [credit union] bank account [one of four overdrawn bank accounts Horsley had] in her  
2 Schedules. . . . She has an account which she did not list.”

3           At trial, Horsley’s evidence demonstrated that both the health insurance deductions and  
4 the failure to list one of four overdrawn bank accounts were careless oversights that had no  
5 material effect on the administration of Horsley’s bankruptcy estate and no adverse effect on  
6 Dickson’s claim against assets of the estate. As the evidence here demonstrated, Horsley’s  
7 chapter 7 Schedule I payroll deductions from earned income postpetition did not affect  
8 creditors of her estate.  
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10           Horsley also testified and the evidence established that when Horsley filed her  
11 bankruptcy petition the omitted bank account had a negative balance. In the first place, the  
12 account was overdrawn and, secondly, Horsley claimed the account was negligently, not  
13 fraudulently, overlooked by both Horsley and her lawyer.  
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15           Dickson failed to demonstrate the materiality of either error, especially given Dickson’s  
16 extensive, detailed knowledge of Horsley’s financial affairs and records throughout the period  
17 in dispute, as demonstrated by Dickson’s exhaustive display of evidence, and her knowledge  
18 of Horsley’s financial affairs through her testimony and cross examination of Horsley.  
19 Dickson’s allegations and evidence do not establish a basis for a finding of “knowing” or  
20 “fraudulent” wrongdoing within the meaning of § 727(a)(4)(A).  
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23           Consistent with the foregoing, Horsley’s written motion for judgment, as presented in  
24 court on September 30, and filed on October 1, is granted.

25           Dickson identified many other documents and offered testimony about numerous other  
26 issues she had concerning Horsley’s conduct and asserted other omissions from Horsley’s  
27 bankruptcy schedules. Horsley’s attorney’s oral objections to such issues, testimony and  
28 documents were sustained countless times, and I had to admonish Dickson numerous times

1 after Horsley's objections were sustained that Dickson's comments and questions went  
2 beyond the scope of Dickson's First Amended Complaint and raised issues that were irrelevant  
3 and not properly before the court for determination in light of Horsley's motions and objections.  
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5 Judgment will be entered in favor of Horsley on Dickson's claims for denial of Horsley's  
6 discharge pursuant to § 727(a)(4)(A).  
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25 DATED: January 28, 2011

  
United States Bankruptcy Judge

**NOTE TO USERS OF THIS FORM:**

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) **Category I.** below: The United States trustee and case trustee (if any) will always be in this category.
- 4) **Category II.** below: List **ONLY** addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. **DO NOT** list an address if person/entity is listed in category I.

**NOTICE OF ENTERED ORDER AND SERVICE LIST**

Notice is given by the court that a judgment or order entitled (*specify*) MEMORANDUM OF DECISION was entered on the date indicated as Entered on the first page of this judgment or order and will be served in the manner indicated below:

**I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (ANEF)** Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of 1/3/11, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

David A Akintimoye on behalf of Defendant FRENCHEE HORSLEY  
attorneydavidakintimoye@yahoo.com

Sandra L Bendon (TR)  
sandra.bendon@att.net, sbendon@ecf.epiqsystems.com

United States Trustee (RS)  
ustpreion16.rs.ecf@usdoj.gov

Service information continued on attached page

**II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Plaintiff  
Tangia Dickson  
507 Lassa Way  
Perris, CA 92571

Debtor/Defendant  
FRENCHEE LATRESE HORSLEY  
24732 Moontide Lane  
Moreno Valley, CA 92537

Service information continued on attached page

**III. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an Entered stamp, the party lodging the judgment or order will serve a complete copy bearing an Entered stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.