

[NOT FOR PUBLICATION]

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP NO. MB 97-096

**In re: MICHAEL F. MARCHESE,
Debtor.**

**CHANNEL MARINE,
Plaintiff/Appellant,**

V.

**MICHAEL F. MARCHESE,
Defendant/Appellee.**

**Appeal from the United States Bankruptcy Court
for the District of Massachusetts
[Hon. William C. Hillman, Bankruptcy Judge]**

Before

GOODMAN, HAINES and CARLO, Bankruptcy Judges.

Eugene W. Downing, Jr., Lexington, Massachusetts, was on brief for appellant.

Allen H. Roffman, Chelsea, Massachusetts, was on brief for appellee.

June 24, 1998

PER CURIAM.

Appellant, Channel Marine, challenges an order issued by the bankruptcy court in an adversary proceeding it initiated objecting to discharge of a judgment debt which arose from default of a sales contract. We affirm.

Asserting that credit had been obtained through debtor's fraudulent conduct, Channel Marine alleged that the loan application contained a forged signature of the co-obligor (debtor's spouse at the time of execution). Its position turned on the testimony of the debtor's ex-spouse, who denied that she had ever signed the loan application. In the course of trial, both the debtor and his ex-wife testified as to the facts surrounding the sale and various other instances of possible forgery in a contentious divorce.

After hearing all the evidence, the bankruptcy court credited the debtor's testimony and rejected that of his ex-spouse. As a consequence, it entered judgment for the debtor, and against Channel Marine on its dischargeability complaint. The court determined that Channel Marine had not proven fraud by a preponderance of the evidence.¹

Factual findings made by the bankruptcy court will only be disturbed on appeal if clearly erroneous. Palmacci v. Umpierrez,

¹ It is uncontested that Channel Marine must establish all the elements necessary for an exception to discharge. Century 21 Balfour Real Estate v. Menna, 16 F.3d 7, 9 (1st Cir. 1994).

121 F.3d 781 (1st Cir. 1997). The bankruptcy court's judgment was founded upon its credibility determinations, to which we properly defer. FED. R. BANKR. P. 8013.

Appellant has failed to demonstrate that the bankruptcy court clearly erred in rejecting the claim that the co-obligor's signature was forged.² Accordingly, the bankruptcy court's order denying Channel Marine's adversary complaint is AFFIRMED.

² Appellant argues that the issue on appeal is not one of credibility of the witnesses but whether debtor's testimony was sufficient to rebut the "direct" testimony of his ex-wife, indicating that appellee failed to provide corroborating evidence. While Massachusetts law provides that where authenticity of a signature is at issue, the party claiming under the signature has the burden to establish it, M.G.L.A. c. 106, §3-307(1)(a), MASS.R.CIV.P. 8(b), In re Greenberg, 212 B.R. 422, 427 (Bankr.D.Mass. 1997), no support is offered by appellant, and we have not found any, establishing that testimonial evidence is not sufficient to overcome assertions of signature forgery. We conclude that the bankruptcy court's reliance on credibility determinations was not improper.