NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. WW-05-1218-KrSR
CHRISTOPHER SCOTT WIRKKALA,	Bk. No. 04-23707-KAO
Debtor.	Adv. No. 05-01081-KAO
CHRISTOPHER SCOTT WIRKKALA,	
Appellant,	**MEMORANDUM**[1]
v.	
FIRST MUTUAL BANK,	
Appellee.	

Argued and Submitted on March 24, 2006,
at Seattle, Washington

Filed - July 12, 2006

Appeal from the United States Bankruptcy Court
for the Western District of Washington at Seattle

Honorable Karen A. Overstreet, Chief Bankruptcy Judge, Presiding.

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Before: KIRSCHER,[2] SMITH, and RUSSELL,[3] Bankruptcy Judges.

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[1] This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, res judicata or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

[2] Hon. Ralph B. Kirscher, Chief United States Bankruptcy Judge for the District of Montana, sitting by designation.

[3] Hon. Barry Russell, Chief United States Bankruptcy Judge for the Central District of California, sitting by designation.

INTRODUCTION

At a hearing on cross motions for summary judgment, the bankruptcy court denied Debtor's request for a continuance of the hearing and granted summary judgment against him pursuant to 11 U.S.C. § 523(a)(2)(B). Debtor appeals both the denial of the continuance and the granting of summary judgment. We REVERSE in part and AFFIRM in part.

FACTS AND PROCEDURAL HISTORY

On November 1, 1999, Debtor and Appellant, Christopher Scott Wirkkala ("Debtor") submitted to First Mutual Bank ("Bank"), a "Business Loan & Line of Credit Application" ("Business Application") on behalf of his wholly owned company, theWirks Network, Inc., for a line of credit in the amount of $100,000. The sole asset listed on the Business Application was a parcel of real property located at 733 2nd Street, Kirkland, WA, ("2nd Street Property"), valued at $1,400,000 with an encumbrance of $300,000.

In connection with the Business Application, Debtor also provided a "Personal Financial Statement" ("PFS") wherein he listed his net worth at $2,450,000, which amount included real estate valued by Debtor at $2,570,000. In addition to real property, Debtor's PFS reflected that Debtor also had total deposits valued at $80,000, stocks, bonds and mutual funds valued at $10,000, an IRA or other vested pension valued at $50,000, a 1998 Porsche valued at $70,000, a 1998 Mastercraft ski boat valued at $30,000, personal and household property valued at $25,000, and a grand piano valued at $50,000. Debtor's PFS also disclosed that Debtor was then separated from his spouse.

Pursuant to a "Small Business Credit Line Agreement" dated November 5, 1999, theWirks Network, Inc. was issued a line of credit with a limit of $35,000.

According to a property settlement agreement dated November 11, 1999 and filed in Washington state court on November 19, 1999 ("Settlement Agreement"), Debtor voluntarily agreed to quitclaim all of his interest in three pieces of real property, including the 2nd Street Property. The only real property Debtor retained under the Settlement Agreement was a condominium valued at $170,000. Thus, the net effect of the Settlement Agreement was to reduce Debtor's gross real estate holdings by $2,400,000. Notwithstanding provisions in the loan documents requiring disclosure of any change in Debtor's financial condition, Debtor did not advise the Bank of the transfer of property to his former spouse.

theWirks Network, Inc. drew money from the line of credit. The Bank does not allege that Debtor used the money taken against the line of credit for anything other than in connection with theWirks Network, Inc. Debtor indicated that theWirks Network, Inc. began struggling with the "'dot.com' crash" and the events of September 11, 2001, and was eventually administratively dissolved in December of 2002. Debtor used the remaining capital in theWirks Network, Inc. to pay down the balance on the line of credit but, after the corporate dissolution, theWirks Network, Inc. still owed the Bank in excess of $13,000. Debtor subsequently filed a personal bankruptcy in 2004.

The Bank filed a complaint against Debtor on February 17, 2005, seeking a determination that Debtor's personal guaranty on

the balance owed on the line of credit should be excepted from Debtor's discharge pursuant to 11 U.S.C. § 523(a)(2)(B).[4] Debtor filed an answer to the Bank's complaint on March 18, 2005, denying all allegations set forth in the Bank's complaint. Bank proceeded to file its motion for summary judgment on April 13, 2005. On that same date, Bank also filed a "Notice of Motion and Hearing on Summary Judgment," noticing a hearing on Bank's summary judgment motion for May 6, 2005, at 9:30 a.m., and further providing Debtor notice that the deadline for filing a response to the motion for summary judgment was May 2, 2005. Bank's motion for summary judgment was accompanied by a declaration of Ron Miller, who declared that:

> First Mutual approved The Wirks Network's loan application based on the representations Christopher Wirkkala made in his personal financial statement as to his assets and liabilities.
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> * * *
>
> First Mutual would not have approved The Wirks Network's loan application had it known that Christopher Wirkkala would be transferring away all his claimed real estate, except his $170,000 condominium unit, ten days after submitting the loan application and financial statement.

Debtor timely filed, on April 27, 2005, a combined "Response and Opposition to First Mutual's Motion and Hearing on Summary Judgment; Request for Motion of Counter-Summary Judgment in Favor of Defendant; [and] Request for Reschedule of Counter-Summary Judgment Hearing." The last sentence of this pleading reads: "[T]his response respectfully requests the hearing of May 6 be

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[4] Unless otherwise indicated, all Code, chapter and section references are to the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330 prior to its amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005).

rescheduled as Mr. Wirkkala will be traveling for business."

Attached to Debtor's response was a document entitled "Mr. Wirkkala's Counter-Motion for Summary Judgment" ("Counter Motion"). In the Counter Motion, Debtor stated under penalty of perjury that his "net worth was arguably understated when [theWirks Network, Inc.] applied for and received the line of credit." The statement was premised on an uncertified copy of an undated "Private Placement Memorandum." The author and target audience of the memorandum were not identified. Debtor further declared that:

> I was told that "even the car I was driving was enough for the loan." The inexperienced, albeit unprofessional, bank employees at First Mutual were joking that my Porsche was worth more than twice the line of credit and suggested the Corporation take a larger business loan. While these comments may have been made in jest however unprofessional, it goes to show that my car was enough for the loan, much less the other assets I owned and truthfully disclosed on the application[.] . . . That said, the business could have gotten a larger line of credit or loan[.]
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> * * *
>
> [theWirks, Network, Inc.] was more than credit-worthy with the collateral to support this line of credit; I was more than credit-worthy with the collateral to support this line of credit. First Mutual verbalized this to me over and over, still, they communicated that the application needed to be reviewed and analyzed by their underwriting department before the line of credit could be issued.

Bank filed a reply to Debtor's response on May 5, 2006, arguing, in part, that Debtor's professional requirements were not grounds for continuance of the hearing. Bank also maintained that Debtor had "known about this motion since April 13, and has had since then to make alternate traveling arrangements." Additionally, Bank filed a Second Declaration of Ron Miller, wherein he again declared that: "The Wirks Networks[']s credit

line application was approved based on Wirkkala's representations regarding his real estate assets. His personal financial statement reflects that he owned $2,570,000 in real estate assets, with liabilities of only $440,000, for a net real estate holding of $2,130,000. First Mutual made its decision to approve the Wirks Networks' loan application based on that real estate, not the value of Wirkkala's automobiles or stock in the Wirks Networks."

The bankruptcy court proceeded with the May 6, 2005, summary judgment hearing. Debtor did not attend. At the conclusion of the hearing, the bankruptcy court granted the Bank's motion and formally denied Debtor's request for a continuance of the hearing.[5] The denial of the request was memorialized by a handwritten notation on the "Order Granting Motion for Summary Judgment" entered May 6, 2005 ("May 6 Order"). The May 6 Order also reflects the court's conclusion that there was "no genuine issue of material fact and that [the Bank was] entitled to judgment as a matter of law declaring [Debtor's] debt non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(B)."[6]

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[5] In the hearing transcript from May 6, 2005, Judge Overstreet explained:

> Well, I'm going to deny - - I already - - [Debtor] was already advised that his motion for a continuance was denied[.]
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> * * *
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> And I will say on the record that I believe [Debtor] called my secretary yesterday and advised her that he was not going to appear today.

[6] That same Order denied Debtor's cross motion for fees. The issue of fees was not addressed by Debtor in his Statement of Issues to be Presented on Appeal filed with the Panel.

On May 20, 2005, Debtor filed a notice of appeal with respect to the May 6 Order. The Bank filed a motion to dismiss the appeal as untimely. We denied the motion to dismiss because a final judgment had not yet been entered and we remanded the matter to the bankruptcy court with instructions to enter a judgment fully and finally disposing of the adversary proceeding. A final judgment was entered by the bankruptcy court on October 7, 2005.

ISSUES

1. Did the bankruptcy court abuse its discretion by denying Debtor's request for a continuance of the hearing on the Bank's motion for summary judgment?

2. Did the bankruptcy court err in granting summary judgment to the Bank, and holding, as a matter of law, that Debtor's debt to the Bank was nondischargeable under 11 U.S.C. § 523(a)(2)(B)?

STANDARD OF REVIEW

The bankruptcy court's findings of fact are reviewed under the "clearly erroneous" standard and its conclusions of law de novo. Neilson v. United States (In re Olshan), 356 F.3d 1078, 1083 (9th Cir. 2004); Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1380 (9th Cir. 1986) (citations omitted). A bankruptcy court's summary judgment order is reviewed de novo. Paulman v. Gateway Venture Partners III, LP (In re Filtercorp, Inc.), 163 F.3d 570, 578 (9th Cir. 1998). Similarly, whether the debt owed to the Bank under Debtor's personal guaranty is nondischargeable is a mixed issue of law and fact reviewed de novo. See Murray v. Bammer (In re Bammer), 131 F.3d 788, 792

(9th Cir. 1997) (en banc). The decision to grant or deny a request for a continuance "lies within the broad discretion of the trial court" and "will not be disturbed on appeal absent clear abuse of that discretion." United States v. Flynt, 756 F.2d 1352, 1358 (9th Cir. 1985), amended on other grounds, 764 F.2d 675 (9th Cir. 1985). Clear abuse of discretion will only be found where, upon review of all relevant factors, the decision to deny the request was arbitrary or unreasonable. Id.

DISCUSSION

A court may take judicial notice of proceedings in the same case. Additionally, "'[a]n appellate court can properly take judicial notice of any matter of which the court of original jurisdiction may properly take notice.'" Nev-Cal Elec. Sec. Co. v. Imperial Irr. Dist., 85 F.2d 886, 905 (9th Cir. 1936) (quoting Varcoe v. Lee, 180 Cal. 338, 343, 181 P. 223, 225 (1919)). Consistent with the foregoing, the Ninth Circuit, in O'Rourke v. Seaboard Surety Co . (In re E.R. Fegert, Inc.), 887 F.2d 955, 958 (9th Cir. 1989), held that it was not improper for an appellate court to take judicial notice of underlying records. Accordingly, we may properly take judicial notice of all pleadings filed in the underlying Adversary Proceeding.

Did the bankruptcy court abuse its discretion by denying Debtor's request for a continuance of the May 6, 2005, hearing on the Bank's motion for summary judgment?

It is well-settled that trial courts have broad discretion in the regular management of their own calendars. See, e.g., Agcaoili v. Gustafson, 844 F.2d 620, 624 (9th Cir. 1988) ("A trial court has the power to control its own calendar."); Mediterranean Enterprises, Inc. v. Ssangyong, 708 F.2d 1458, 1465

(9th Cir. 1983) ("The trial court possesses the inherent power to control its own docket and calendar."); United States v. Gay, 567 F.2d 916, 919 (9th Cir. 1978), cert. denied, 435 U.S. 999, 98 S.Ct. 1655, 56 L.Ed.2d 90 (1978) (district court has broad discretion as an aspect of its inherent right and duty to manage its own calendar).

The Ninth Circuit has adopted four factors to consider when determining whether a trial court's denial of a motion for a continuance constitutes an abuse of discretion: (1) the appellant's diligence in its efforts to ready its defense prior to the date beyond which a continuance is sought; (2) whether the continuance would have served a useful purpose if granted; (3) the extent to which granting the continuance would have inconvenienced the court, opposing parties, and witnesses; and (4) the amount of prejudice suffered by the appellant due to the denial of the continuance. United States v. Flynt, 756 F.2d at 1359; Armant v. Marquez, 772 F.2d 552, 556 (9th Cir. 1985), cert. denied, 475 U.S. 1099 (1986). "[T]he weight given to any one [factor] may vary from case to case. At a minimum, however, in order to succeed, the appellant must show some prejudice resulting from the court's denial." Armant, 772 F.2d at 556-57 (citations omitted).

We find that the bankruptcy court did not abuse its discretion in denying Debtor's request for a continuance. In opposition to the request, Bank argued that although Debtor had known about the May 6 hearing since April 13, he had made no

effort to make alternate travel arrangements.[7]

Given the vagueness of the request, the lack of any showing by Debtor that he made every effort to ready his defense prior to the date beyond which a continuance was sought, the lack of any articulated prejudice to Debtor, and the fact that the Bank appeared at the hearing ready to proceed with its witnesses, we cannot find that the court's exercise of discretion in denying the request was arbitrary, unreasonable, or otherwise abusive.

Did the bankruptcy court err in granting summary judgment to the Bank and holding, as a matter of law, that Debtor's debt to the Bank is non-dischargeable under 11 U.S.C. § 523(a)(2)(B)?

Summary judgment is governed by FED. R. BANKR. P. 7056. Rule 7056, incorporating FED. R. CIV. P. 56(C), states that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "The proponent of a summary judgment motion bears a heavy burden to show that there are no disputed facts warranting disposition of the case on the law without trial." Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (9th Cir. BAP 1997) (quoting Grzybowski v. Aquaslide "N" Dive Corp. (In re Aquaslide "N" Dive Corp.), 85 B.R. 545, 547

[7] According to both Debtor and the Bank, Debtor filed his request for a continuance on May 5, one day prior to the hearing. However, we could find nothing in the record referencing the request other than that made in responsive pleadings filed by Debtor on April 27, 2005, and the court's statement at the May 6 hearing that Debtor had contacted the court by telephone the day before to advise that he would be appearing at the hearing.

(9th Cir. BAP 1987)). The manner in which this burden is proven depends on which party has the burden on a particular claim or defense at the time of trial.

> If the moving party will bear the burden of persuasion at trial, that party must support its motion with credible evidence–using any of the materials specified in Rule 56(c)–that would entitle it to a directed verdict if not controverted at trial. Such an affirmative showing shifts the burden of production to the party opposing the motion and requires that party either to produce evidentiary materials that demonstrate the existence of a "genuine issue" for trial or to submit an affidavit requesting additional time for discovery. If the burden of persuasion at trial would be on the non-moving party, the party moving for summary judgment may satisfy Rule 56's burden of production in either of two ways. First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the Court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.

Celotex Corp. v. Catrett, 477 U.S. 317, 330-34, 106 S.Ct. 2548, 2557, 91 L.Ed.2d 265 (1986) (Brennan dissent) (citations omitted). See also Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210 F.3d 1099, 1102-06 (9th Cir. 2000) (discussing burdens for withstanding summary judgment).

When seeking summary judgment, the moving party must initially identify those portions of the record before the Court which it believes establish an absence of material fact. T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n., 809 F.2d 626, 630 (9th Cir. 1987). If the moving party adequately carries its burden, the party opposing summary judgment must then "set forth specific facts showing that there is a genuine issue for trial." Kaiser Cement Corp. v. Fischback & Moore, Inc., 793 F.2d 1100, 1103-04 (9th Cir. 1986), cert. denied, 469 U.S. 949 (1986); Fed. R. Civ. P. 56(e). See also Frederick S. Wyle Prof'l. Corp.

v. Texaco, Inc., 764 F.2d 604, 608 (9th Cir. 1985) ("the opponent must affirmatively show that a material issue of fact remains in dispute"). That is, the opponent cannot assert the "mere existence of some alleged factual dispute between the parties." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). Moreover, "[a] party opposing summary judgment may not simply question the credibility of the movant to foreclose summary judgment." Far Out Prods., Inc. v. Oskar, 247 F.3d 986, 997 (9th Cir. 2001).

To demonstrate that a genuine factual issue exists, the objector must produce affidavits which are based on personal knowledge and the facts set forth therein must be admissible in evidence. Aquaslide, 85 B.R. at 547. All reasonable doubt as to the existence of genuine issues of material fact must be resolved against the moving party. Liberty Lobby, 477 U.S. at 247-48, 106 S.Ct. at 2509. However, "[d]isputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." T.W. Elec. Serv., 809 F.2d at 630 (citing Liberty Lobby, 477 U.S. at 248, 106 S.Ct. at 2510). "A 'material' fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. The materiality of a fact is thus determined by the substantive law governing the claim or defense." Id.

If a rational trier of fact might resolve disputes raised during summary judgment proceedings in favor of the nonmoving party, summary judgment must be denied. T.W. Elec. Serv., 809 F.2d at 630; Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 202 (1986).

Thus, the Court's ultimate inquiry is to determine whether the "specific facts" set forth by the nonmoving party, viewed along with the undisputed background or contextual facts, are such that a rational or reasonable jury might return a verdict in its favor based on that evidence. T.W. Elec. Serv., 809 F.2d at 631. In the absence of any disputed material facts, the inquiry shifts to whether the moving party is entitled to judgment as a matter of law. Celotex, 477 U.S. at 323, 106 S.Ct. at 2552-53.

With regard to the particular matter at issue, § 523(a)(2)(B) excepts from discharge debt for money obtained by the use of a written statement concerning a debtor's (or insider's) financial condition. The statute reads:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt–
>
> * * *
>
> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--
>
> * * *
>
> (B) use of a statement in writing–
> (i) that is materially false;
> (ii) respecting the debtor's or an insider's financial condition;
> (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
> (iv) that the debtor caused to be made or published with intent to deceive[.]

The Ninth Circuit has reworded these requirements as follows:

> (1) a representation of fact by the debtor,
> (2) that was material,
> (3) that the debtor knew at the time to be false,
> (4) that the debtor made with the intention of deceiving the creditor,
> (5) upon which the creditor relied,
> (6) that the creditor's reliance was reasonable,
> (7) that damage proximately resulted from the representation.

Siriani v. Northwestern Nat'l Ins. Co., of Milwaukee, Wis. (In re Siriani), 967 F.2d 302, (9th Cir. 1992); In re Gertsch, 237 B.R. 160, 167 (9th Cir. BAP 1999) (adopting the elements required under the companion section 523(a)(2)(A), with the additional and obvious requirement that the alleged fraud stem from a false statement in writing); Candland v. Insurance Co. of N. Am. (In re Candland), 90 F.3d 1466, 1469 (9th Cir. 1996); Avco Fin. Services of Billings v. Kidd (In re Kidd), 219 B.R. 278, 282 (Bankr. D. Mont. 1998); In re Osborne, 257 B.R. 14, 20 (Bankr. C.D. Cal. 2000).

In discussing the difference between §§ 523(a)(2)(A) and 523(a)(2)(B), the Supreme Court instructs that § 523(a)(2)(B) applies where the debt at issue "follows a transfer or extension induced by a materially false and intentionally deceptive written statement of financial condition upon which the creditor reasonably relied." Field v. Mans, 516 U.S. 59, 66, 116 S.Ct. 437, 133 L.Ed.2d 351 (1995). On the issue of materiality, a financial statement that leaves "any discrepancy" between the overall impression left by the statement and the endorser's true financial status gives rise to a material falsehood for purposes of § 523(a)(2)(B). North Park Credit v. Harmer (In re Harmer), 61 B.R. 1, 5 (Bankr. D.Utah 1984) (citing cases); accord Texas Am. Bank, Tyler, N.A. v. Barron, (In re Barron), 126 B.R. 255 (Bankr. E.D. Texas 1991) (citing cases). A "long line of cases" has held that in a personal financial statement, the "omission, concealment, or understatement of any of [a] debtor's material liabilities constitutes a 'materially false' statement." Harmer, 61 B.R. at 5.

Moreover, even if a debtor does not know of inaccuracies contained in a written financial statement, the Ninth Circuit has held that reckless disregard for the truth satisfies the knowledge element of § 523 and its predecessor. Anastas v. American Sav. Bank (In re Anastas), 94 F.3d 1280, 1286 (9th Cir. 1996). See also Knoxville Teachers Credit Union v. Parkey, 790 F.2d 490, 492 (6th Cir. 1986) (gross recklessness to the truth also satisfies the fourth element of intention of deceiving).

By completing the Business Application and the PFS, Debtor clearly made written representations of material fact concerning his and an insider's (theWirks Network, Inc.) financial condition. Less clear, however, is Bank's satisfaction of the remaining elements: that Debtor made a representation he knew to be false at the time he made it; that Debtor made the representation with the intent to deceive Bank; and that Bank reasonably relied on the representation to its detriment.

Even though Debtor and his spouse separated on September 14, 1998, more than one year prior to the date Debtor completed the Application and PFS, and even though Debtor wrote in his Reply Brief that the division of marital property in a divorce proceeding is not taken "lightly," Bank failed to show that Debtor knew or should have known, as of November 1, 1999, that he would be transferring on November 11, 1999, his right, title and interest in real estate valued at $2,400,000 to his former spouse. In fact, the record provides no indication as to when Debtor and his former spouse began negotiating the division of their marital estate. Bank even in its complaint at paragraph ("¶") 4.3, references at the time Debtor submitted the PFS, that

his wife and he were separated. Did such disclosure raise an inquiry concerning a possible division of marital assets affecting Debtor's ability to repay any loan? Bank does not address this factual issue. Debtor further states in his Counter Motion, at ¶ 2.1.1, that he "truthfully disclosed on the [loan] application" his assets. For all we know, the negotiations between Debtor and his former spouse could have been started and completed between November 1st and November 11th of 1999. Debtor did not offer a confession of deceitful intent. Therefore, it was incumbent upon the Bank to offer undisputed facts sufficient to permit the bankruptcy court and this Panel to infer Debtor's intent as of November 1, 1999. Bank's evidence relating to when Debtor knew what he would receive through the Property Settlement Agreement is speculative at best. Bank's failure to provide adequate factual evidence to establish Debtor's intent on November 1, 1999, precludes entry of summary judgment.

Similarly, we are not convinced that Debtor's real estate holdings factored into the Bank's decision to issue theWirks Network, Inc. a line of credit in the sum of $35,000. The dialogue between the bankruptcy court and counsel for the Bank at the May 6, 2005, hearing reflects the bankruptcy court's concern with the reliance issue. However, attorney argument is not admissible in evidence and therefore not relevant. United States v. Velarde-Gomez, 224 F.3d 1062, 1073 (9th Cir. 2000); Exeter Bancorporation v. Kemper Securities Group, Inc., 58 F.3d 1306, 1312 n.5 (Statements of counsel are not evidence and do not create issues of fact), citing United States v. Fetlow, 21 F.3d

243, 248 (8th Cir. 1994), cert. denied, 513 U.S. 977, 115 S.Ct. 456, 130 L.Ed.2d 365 (1994). Bank, in its Reply Brief, did acknowledge Debtor's denial of any intent to deceive Bank.

Bank submitted affidavits that Bank personnel would not have issued a line of credit to theWirks Network, Inc. had Bank personnel known that Debtor was contemplating transferring all his real estate holdings, except a $170,000 condominium, within days of signing the Application and PFS. See Candland, 90 F.3d at 1470 (holding that a statement is materially false if it "would affect the creditor's decision[-]making process"). "Lenders do not have to hire detectives before relying on borrowers' financial statements. . . . [W]e have noted that, when there is evidence of materially fraudulent statements, little investigation is required for a creditor to have reasonably relied on the representations." Gertsch v. Johnson & Johnson Fin. Corp. (In re Gertsch), 237 B.R. 160, 170 (9th Cir. BAP 1999) (citations and internal quotation marks omitted); see also La Trattoria, Inc. v. Lansford (In re Lansford), 822 F.2d 902, 904 (9th Cir.1987). We note that Bank submitted a declaration signed by Ron Miller, who is a collection supervisor, but who fails to affirm any personal knowledge as the originating loan officer or as an underwriting department member of what transpired during the negotiation, drafting and signing of the loan documentation between the Bank and Debtor. Is Mr. Miller able to state upon personal knowledge what the originating loan officer or the underwriting department relied upon when approving the loan? See RUSSELL, BANKRUPTCY EVIDENCE MANUAL, 1999 Ed., §§ 602.1 and 602.2.

Contrary to the declarations submitted by Bank, Debtor maintains that Bank personnel told him that his Porsche was enough to secure the loan and also suggested that he take a larger business loan because his car was worth more than twice the line of credit. Debtor, however, proceeds to concede that the same Bank personnel also told Debtor that the Application would need to be reviewed and analyzed by the Bank's underwriting department before the line of credit could be issued. After review and analysis, Bank issued theWirks Network, Inc. a $35,000 line of credit. The alleged statements made by Bank personnel raise doubt as to whether the Bank did indeed rely on Debtor's real estate holdings at the time it issued a line of credit to theWirks Network, Inc. Bank's evidence is insufficient to permit this Panel to conclude that Bank relied on Debtor's real estate holdings in issuing the line of credit.

CONCLUSION

The bankruptcy court did not abuse its discretion when it denied Debtor's request for a continuance of the May 6, 2005, hearing on the Bank's motion for summary judgment. Although Debtor clearly made written representations of material fact concerning his and an insider's financial condition, Bank failed to prove the other elements required under § 523(a)(2)(B) that: Debtor made a representation he knew to be false at the time he made it; Debtor made the representation with the intent to deceive Bank; and Bank reasonably relied on the representation to its detriment, and thus, the bankruptcy court erred by granting summary judgment in favor of Bank.

Accordingly, the decision of the bankruptcy court is

AFFIRMED, in part, and REVERSED, in part.