

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:

SOUTHBANK, a Federal Savings Bank
William Morrow, Executive Vice President
118 Jefferson Street
Huntsville, AL 35801

Plaintiff(s)

vs.

DAVID MORRIS LIBERMAN
2334 Chandawood Drive
Pelham, AL 35124

Defendant(s)

BK Case No. 99-02503-BGC-7

AP No. 99-00262

CERTIFICATE OF JUDGMENT

I, FRANK L. MONGE, Clerk of the United States Bankruptcy Court for the Northern District of Alabama, do hereby certify that on May 18, 2000, a Judgment was rendered in the United States Bankruptcy Court for the Northern District of Alabama, Southern Division in the above-styled cause wherein it was **ORDERED** by the Court that:

SouthBank, a Federal Savings Bank obtained a Judgment against David Morris Liberman without waiver of exemptions for the sum of Sixty Thousand and 00/100 (\$60,000.00) Dollars, and also the sum of None (\$) Dollars, cost of said suit, and interest at the rate of 6.375% per annum from date of said Judgment.

Sherri Tucker Freeman is the Attorney of Record for SouthBank in said cause.

Given under my hand and seal of this Court on June 26, 2000.

FRANK L. MONGE, Clerk
United States Bankruptcy Court

By Shewana Lumbkin
Deputy Clerk

Inst # 2000-21900

06/30/2000-21900
11:05 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 CJ1 28.50

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

DAVID MORRIS LIBERMAN,

Debtor.

)
)
) **Case No. 99-02503-BGC-7**
) **Chapter 7 Proceeding**
)

SOUTHBANK, a Federal Savings Bank,

Plaintiff,

v.

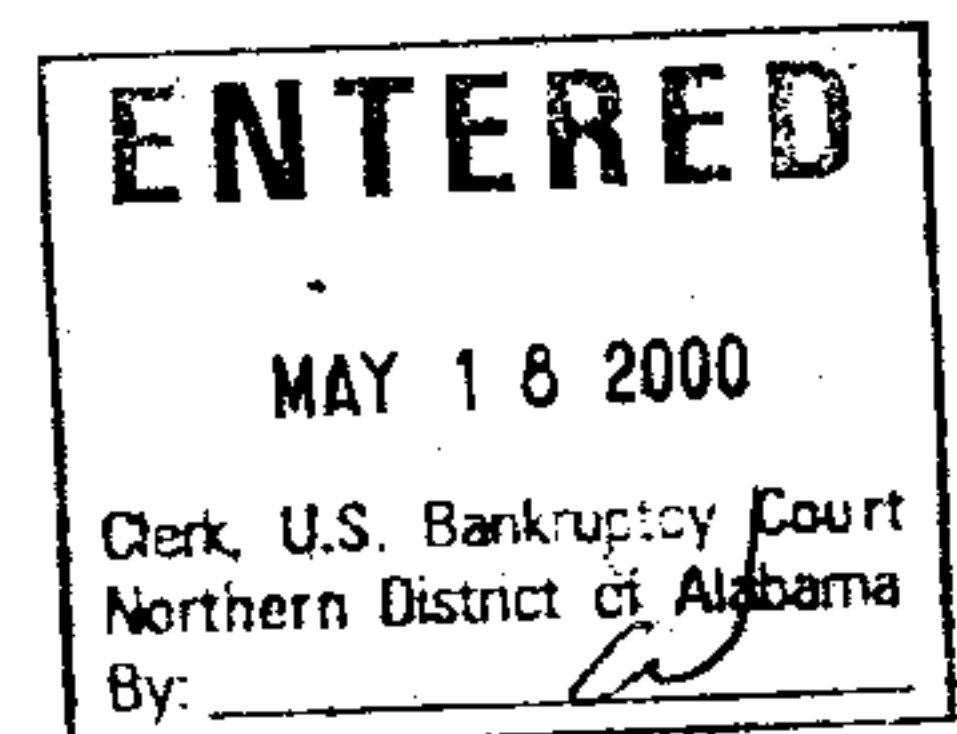
DAVID MORRIS LIBERMAN,

Defendant.

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)
) **Adversary Proceeding No. 99-00262**
)
)
)

STIPULATION AND AGREED ORDER

THIS MATTER came before the Court on the complaint (the "Complaint") brought by plaintiff, SouthBank ("SouthBank"), against defendant, David M. Liberman ("Liberman"), pursuant to 11 U.S.C. § 523(a), to determine the dischargeability of certain obligations owed by Liberman to SouthBank.



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STIPULATION

1. On April 23, 1999 (the "Filing Date"), Liberman filed before this Court a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code").

2. On or about February 1, 1995, Liberman took a job at Just for Feet, Inc. ("JFF"). In addition to his annual salary of \$80,000.00, JFF allowed Liberman to participate in JFF's employee stock option plan. JFF granted Liberman the option to purchase a certain number of shares of JFF stock each year at a fixed price. Under the stock option plan, Liberman's option vested with respect to those shares on each anniversary of his employment.

3. On February 1, 1996, the first anniversary of Liberman's employment, Liberman's rights under the stock option plan vested with respect to the purchase of 3,000 JFF shares at a purchase price of \$13.17. However, as required by the JFF stock option plan, the JFF stock Liberman was allowed to purchase was subject to a restrictive legend which provided that the stock could not be sold until one year following the date the stock was purchased under the stock option plan.

4. Liberman was interested in exercising his option to purchase the JFF shares. However, Liberman did not have sufficient funds to purchase and hold the shares for the one year

holding period. Therefore, Liberman approached SouthBank to obtain a loan to purchase the JFF shares. On or about September 17, 1996, SouthBank made a loan to Liberman in the principal amount of \$75,000.00. Liberman used a portion of the \$75,000.00 loan to purchase 3,000 shares of JFF stock at a purchase price of \$13.17 per share. Liberman pledged the stock purchased to SouthBank to secure the \$75,000 loan. The value of the stock on the open market, at that time, was approximately \$47.00 per share. SouthBank took possession of the 3,000 shares.

5. SouthBank renewed the \$75,000 loan on December 19, 1996, March 19, 1997 and June 19, 1997, while Liberman waited for the holding period to expire. SouthBank and Liberman agreed and understood that Liberman would repay the \$75,000 loan from the proceeds of the sale of the stock pledged to secure the loan.

6. The JFF stock subsequently split three to two, and Liberman acquired an additional 1,500 shares, for a total of 4,500 shares.

7. On February 1, 1997, the second anniversary of Liberman's employment with JFF, Liberman's rights under the stock option plan vested with respect to the purchase of an additional 4,500 JFF shares at a purchase price of \$8.75 per share. On or about February 1, 1997, SouthBank made an additional loan to Liberman in the amount of \$39,510. Liberman used the proceeds of the loan to purchase the additional 4,500 shares, which Liberman pledged to SouthBank to secure the \$39,510 loan. SouthBank took possession of the 4,500 shares.

8. On or about March 5, 1997, SouthBank increased the amount of the \$39,510 loan to \$62,510. Liberman used the additional \$23,000 in proceeds to refinance his home.

9. During this time JFF's stock price began to fall. Liberman began to suffer, on paper, losses with respect to the stock he purchased under the JFF stock option plan.

10. Concerned by the falling JFF stock price, Liberman requested JFF to release the restrictions on the sale of the stock Liberman purchased under the stock option plan. Liberman desired to sell the stock before the stock price fell to avoid suffering any additional losses. On or about April 29, 1997, JFF agreed to lift the restrictions on the sale of the 9,000 shares of stock purchased by Liberman. However, JFF delayed for several months in honoring its obligation to lift the restrictive legends. During this delay, JFF stock price continued to fall.

11. In July 1997, at Liberman's request, SouthBank released to Liberman the 9,000 shares of JFF stock SouthBank held as collateral. SouthBank and Liberman agreed that Liberman would sell the shares and use the proceeds to repay SouthBank.

12. Liberman sold the stock, but did not immediately use the proceeds to repay SouthBank. On or about August 11, 1997, Liberman opened an investment account at Quick & Reilly and delivered to Quick & Reilly the 9,000 shares of JFF stock. On August 14, 1997, Liberman sold 500 shares of stock for \$8,918.30. He used the proceeds to pay personal expenses. On August 29, 1997, Liberman sold 1,500 shares of JFF stock for \$19,187.50. Liberman used the

proceeds to open a separate brokerage account with Robb, Peck, McCooey. On or about September 5, 1997, Liberman sold an additional 550 shares of JFF stock for \$6,619.13. On or about that time, Liberman withdrew an additional \$7,000 from his brokerage account to pay personal expenses. On September 10, 1997, Liberman sold an additional 1,000 shares of JFF stock for \$13,790.21. Liberman subsequently withdrew an additional \$14,587.76 for his own personal use.

13. Liberman diverted proceeds from the sale of the JFF stock to his own personal use despite the fact that he did not have enough funds available to repay SouthBank.

14. Liberman used a total of approximately \$30,490.96 of the proceeds from the sale of the JFF stock for personal expenses. He used the remaining stock proceeds to trade technology stocks on the open market. On or about September 5, 1997, Liberman transferred the remaining 5,500 shares of JFF stock in his Quick & Reilly account to his account with Robb, Peck. The value of the 5,500 shares, together with the \$19,187.50, totaled approximately \$100,000. Thereafter, Liberman sold the JFF stock and used the proceeds to buy and sell additional technology stocks. Liberman's stock trading activities were not successful. As of November 12, 1997, Liberman had only \$40,512.92 in funds remaining in his investment account. On November 21, 1997, Liberman remitted the remaining \$40,512.92 in proceeds to SouthBank. The \$40,512.92 payment was applied to the \$75,000 loan.

15. SouthBank neither authorized nor consented to Liberman's stock trading activities and repeatedly attempted to contact Liberman to request that Liberman pay the proceeds from the sale of the stock over to SouthBank. Liberman avoided contact with SouthBank.

16. As of the Filing Date, the balance due on the \$75,000 loan was \$43,481.71, representing principal of \$38,801.13 and accrued interest of \$4,650.58, with a per diem of \$9.04.

17. As of the Filing Date, the balance due on the \$63,510 loan was \$71,171.48, representing principal of \$62,510.00 and accrued interest of \$8,661.48, with a per diem of \$14.56.

18. On or about July 23, 1999, SouthBank filed its Complaint thereby commencing the instant adversary proceeding against Liberman. In the Complaint, SouthBank requests the Court to enter an order determining that Liberman's obligations to SouthBank are nondischargeable pursuant to Sections 523(a)(2)(A), 523(a)(4) and 523(a)(6) of the Bankruptcy Code.

19. The parties have agreed to resolve the issues presented by the Complaint on the terms and conditions set forth herein.

20. Based upon the pleadings of record, the agreement of the parties, the foregoing stipulation of facts, the arguments and representations of counsel, and all other matters brought before the Court, it is hereby

ORDERED, ADJUDGED and DECREED that the foregoing stipulation is approved in all respects; and it is further

ORDERED, ADJUDGED and DECREED that a separate judgment will be entered against Liberman in favor of SouthBank in the amount of \$60,000; and it is further

ORDERED, ADJUDGED and DECREED that Liberman's \$60,000 obligation to SouthBank shall be nondischargeable both in this bankruptcy case and in any subsequent bankruptcy case under Chapter 7, 11 or 13 of the Bankruptcy Code; and it is further

ORDERED, ADJUDGED and DECREED that within 10 days from the date hereof, Liberman will execute a standard form SouthBank promissory note (the "Note") in the principal amount of \$60,000 bearing interest at SouthBank's conventional mortgage rate, to be paid in level monthly payments on a 30-year amortization schedule, with payments beginning on June 1, 2000, and the note due to mature on June 11, 2010; and it is further

ORDERED, ADJUDGED and DECREED that Liberman will execute a standard form SouthBank mortgage thereby conveying to SouthBank a second-priority mortgage lien against Liberman's principal residence (the "Property"); and it is further

ORDERED, ADJUDGED and DECREED that, as additional security for the Note, SouthBank will receive from Mrs. David M. Liberman, Liberman's spouse, a non-party to this

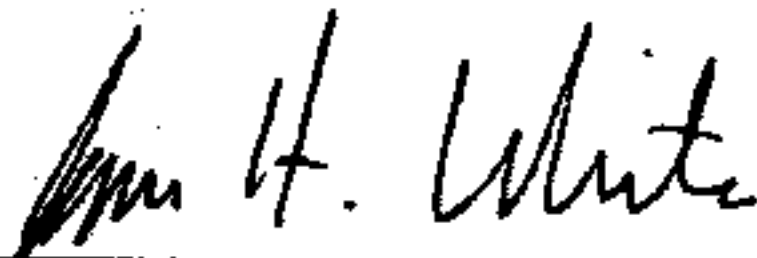
adversary proceeding, an accommodation mortgage, voluntarily given as an accommodation to Liberman, thereby conveying to SouthBank a second priority mortgage lien with respect to her interest in the Property.

SO ORDERED on this the 18th day of May, 2000.

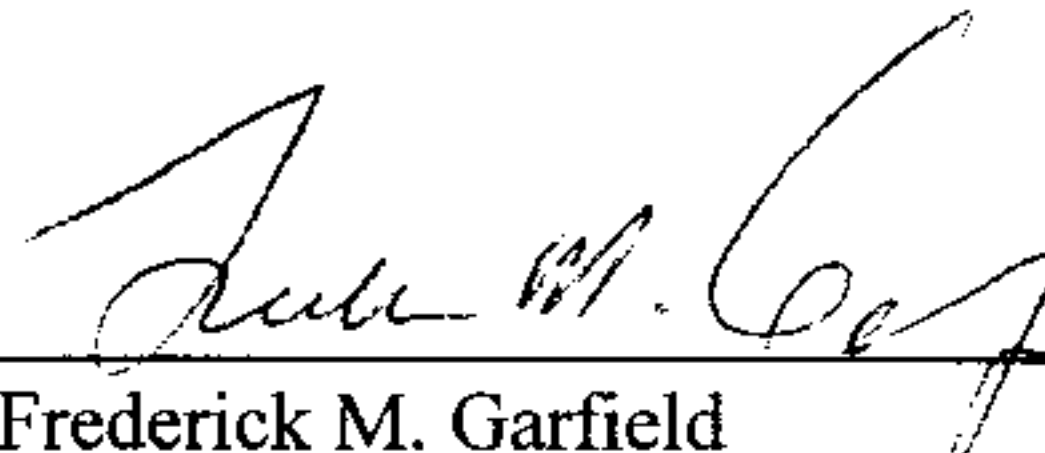


HONORABLE BENJAMIN G. COHEN
UNITED STATES BANKRUPTCY JUDGE

AGREED AS TO FORM AND CONTENT:



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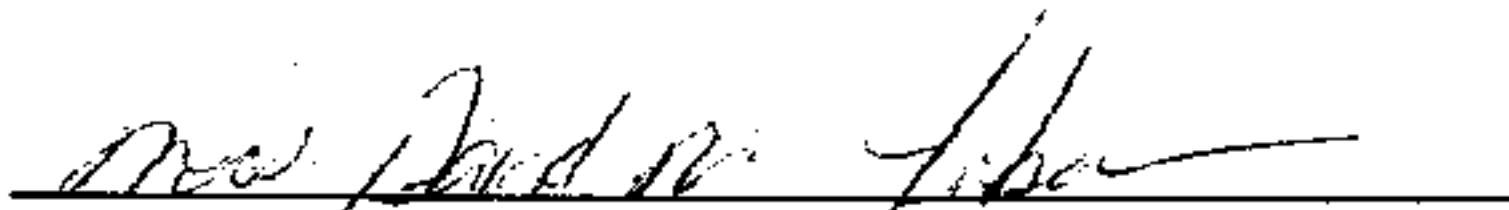


William Morrow, Executive Vice President
SouthBank



David M. Liberman

AGREED AND ACCEPTED



Mrs. David M. Liberman