**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re: THE PEOPLES BANK AND TRUST CO. c/o David B. Anderson, Attorney 505 North 20th Street, Ste 500 Birmingham, Al 35203 **Plaintiff(s)** vs. CHARLES L. DUNN, III 7560 Spencer Lane Helena, Al 35080 **Defendant(s)**	**BK Case No.** 02-01009-TOM-7 **AP No.** 02-00128

CERTIFICATE OF JUDGMENT

I, RICHARD K. MAUK, Acting Clerk of the United States Bankruptcy Court for the Northern District of Alabama, do hereby certify that on JULY 29, 2002, 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:

THE PEOPLES BANK AND TRUST CO. obtained a Judgment against CHARLES L. DUNN, III without waiver of exemptions for the sum of SIXTY FOUR THOUSAND, SIX HUNDRED NINTY THREE AND 63/00---($64,693.63) Dollars, and also the sum of ONE HUNDRED FIFTY AND NO/OO---($150.00) Dollars, cost of said suit, and interest at the rate of 1.93% per annum from date of said Judgment.

DAVID B. ANDERSON is the Attorney of Record for THE PEOPLES BANK AND TRUST CO. in said cause.

Given under my hand and seal of this Court on AUGUST 14th, 2002.

**RICHARD K. MAUK, Acting Clerk
United States Bankruptcy Court**

By Diane O. Burt
Deputy Clerk

ENTERED

JUL 29 2002

Clerk, U.S. Bankruptcy Court
Northern District of Alabama
By:

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

IN RE:	)	
	)	BANKRUPTCY CASE NO.
CHARLES L. DUNN, III,	)	
	)	02-1009-TOM-7
Debtor.	)	

THE PEOPLES BANK AND TRUST COMPANY,	)	
	)	
Plaintiff,	)	ADVERSARY PROCEEDING
	)	
vs.	)	02 - 128
	)	
CHARLES L. DUNN, III, Debtor,	)	
	)	
Defendant.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Currently before the Court is the Motion for Default Judgment filed by The Peoples Bank and Trust Company ("Peoples Bank"). Peoples Bank filed this motion requesting that this Court enter a default judgment against Charles L. Dunn, III ("Dunn"), pursuant to Bankruptcy Rule 7055(b)(1) of the Federal Rules of Civil Procedure and has supported its motion with the affidavits of Jeannette Morgan and David B. Anderson. The Court having considered the evidence before it, enters the following:

FINDINGS OF FACT

1. Dunn, was duly served with a copy of the Summons, together with a copy of the plaintiff's Complaint, in Adversary Proceeding 02-128 on the 8th day of May 2002.

2. More than thirty (30) days have elapsed since Dunn was served with the Summons and a copy of the Complaint.

7

3. The record shows that Dunn has failed to answer or otherwise defend as to plaintiff's Complaint.

4. Dunn is not an infant or an incompetent person, nor was he in the military service when served with the Summons and Complaint.

5. Dunn owns 100% of Dunn's Paint and Decorating, L.L.C. ("the LLC"), an Alabama Limited Liability Company formed by Dunn to own and operate a retail paint store. Dunn scheduled in this bankruptcy case assets and liabilities as if he were individually doing business as the LLC. Dunn scheduled $80,000.00 in paint inventory and $14,000.00 in equipment used in the LLC's business.

6. On May 11, 2001, the LLC executed an Installment Note and Security Agreement pursuant to which Peoples Bank loaned the LLC the original principal amount of $15,117.50, secured by inventory, equipment, accounts and general intangibles. In connection with his application for credit in May of 2001, Dunn represented to Peoples Bank that the LLC owned $90,000.00 in paint inventory and $24,000.00 in equipment, and that he personally owned no paint or equipment.

7. On May 11, 2001, Dunn executed an unlimited personal guaranty of all debts of the LLC to Peoples Bank.

8. On August 14, 2001, the Installment Note was renewed and increased to a principal amount of $45,075.00.

9. The indebtedness due Peoples Bank, which includes overdrafts of $1,769.23 and $3,048.16, is in default.

10. Dunn admitted that he sold Peoples Bank's collateral from his store outside the ordinary course of business and applied approximately \$3,000.00 of the proceeds from the sale of Peoples Bank's collateral towards personal debts secured by his home and car.

11. There were approximately 1200 cans of paint with a maximum value of \$16,000, not the \$90,000 represented to Peoples Bank, nor the \$80,000 scheduled by Dunn. As a consequence, Dunn either has made misrepresentations of paint inventory to Peoples Bank to procure loans and he has misrepresented the value of such paint inventory on his schedules or he has converted such missing paint inventory to his own use.

12. After contacting the manufacturer, dealers and brokers, Peoples Bank sold approximately 1200 cans of paint inventory remaining in Dunn's store for \$1,500.00.

13. Dunn represented to Peoples Bank and in the schedules that he owned equipment valued at \$24,000 and \$14,000, respectively. The supplier of the equipment and paint claims that the equipment was on loan and that at the time of commencement of this Bankruptcy Case the remaining equipment in Dunn's possession was worth less than \$4,000. The best offer received for the equipment, on which there is a landlord's lien, was \$50.

14. Dunn has failed to deliver business records accounting for these discrepancies or to appear for a 2004 examination as Ordered by the Court.

CONCLUSIONS OF LAW

1. Peoples Bank is entitled to a monetary judgment against Dunn.

2. Dunn has violated 11 U.S.C. § 727(a)(3), (5) and (6)(c) by failing to keep or preserve business records, by failing to explain the apparent loss of assets and by refusing to obey this Court's order for a Rule 2004 without justification.

3. Dunn has violated 11 U.S.C. § 523(a)(2)(B) or § 523(a)(6) by misrepresenting the value of People Bank's collateral or, if the schedules are correct, by converting to Dunn's own use amounts of paint in excess of the debt due Peoples Bank.

ORDER

Based upon the following it is hereby Ordered, Adjudged, and Decreed that:

1. Peoples Bank shall have and recover from Charles L. Dunn III the amount of $64,693.63 plus costs of this action, for which let execution issue;

2. Charles L. Dunn, III, the Debtor herein, is hereby denied a discharge in this Bankruptcy Case under 11 U.S.C. § 727.

3. The debt due Peoples Bank, represented by this judgment, is hereby declared non-dischargeable under 11 U.S.C. § 523.

Done and Ordered this the 29th day of July, 2002.

Tamara O. Mitchell

The Honorable Tamara O. Mitchell
United States Bankruptcy Judge