

Defendant's defense is that the automobile was mortgaged to GMAC, that he took plaintiff's check to GMAC and asked for the release of the title and that GMAC refused to release the title for a period of two weeks. Defendant testified that he then deposited the check in a checking account at Gateway Bank but before he could do anything further, the Internal Revenue Service or another taxing authority garnished the account resulting in the loss of the money in the account.

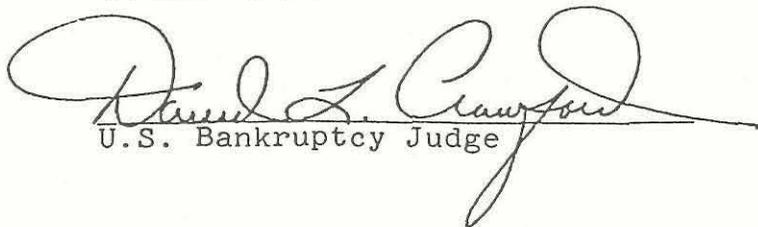
Contrary to defendant's testimony, the check itself which is in evidence discloses that on the day after the check was delivered by the plaintiff to the defendant, defendant deposited the check in a separate, little used, checking account at First National Bank and the evidence strongly suggests that it was deposited to cover previously written checks which were to be presented for payment. Additional substantiating evidence presented by the plaintiff discloses that the proper loan officer at GMAC does not recall any of the facts which defendant alleges were his dealings with GMAC and their refusal to deliver the car title.

Having heard the evidence, I conclude that the defendant's conduct is sufficient to bring him within the terms of §523a(2) and to render the indebtedness nondischargeable. This is true even though the check was made to "Gentry Limousine". The defendant himself was the acting party and completely in control of the situation. In addition, a judgment in the District Court of Lancaster County, Nebraska, at Docket 320, No. 112, concludes there is liability against the defendant personally. That judgment may not be collaterally attacked in this proceeding.

A separate order is entered in accordance with the foregoing.

DATED: May 12, 1981.

BY THE COURT:


U.S. Bankruptcy Judge

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