

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

THOMAS J. SOUKUP and
SHIRLEY A. SOUKUP,

DEBTORS

ALLEN D. RAMSEY, SR.,

Plaintiff

vs.

THOMAS J. SOUKUP and
SHIRLEY A. SOUKUP,

Defendants

CASE NO. BK80-2000

A81-563

MEMORANDUM

In this landlord-tenant dispute, Allen D. Ramsey, Sr., plaintiff, seeks to recover damages from Thomas J. Soukup, defendant, based upon Nebraska statutory provisions known as the "Uniform Residential Landlord and Tenant Act", §76-1401 R.R.S.

Mr. Ramsey rented his personal residence from a corporation of which Mr. Soukup was the principal owner and through whom the corporation functioned. The rental was on a month-to-month basis, there being no lease entered into between the parties. A threshold question is whether Mr. Soukup is potentially liable for the damages prayed for by the plaintiff under the applicable provisions. Section 76-1410(5) defines a landlord to include a manager of the premises who fails to disclose that he is acting as the manager. I find as fact that Mr. Soukup failed to disclose his managerial capacity and the owner and actual landlord of the premises and that, as a result, Mr. Soukup has exposure to liability if, in fact, it exists.

At various times in the landlord-tenant relationship between the parties, Mr. Ramsey had fallen behind on his rental payments. In February, 1980, Mr. Ramsey was again behind in his rental and, on February 12, 1980, Mr. Soukup gave notice to Mr. Ramsey to vacate the premises or pay the rent within three days. No money was received by Mr. Soukup after that notice to vacate or pay rent was sent to Mr. Ramsey.

On April 18, 1980, Mr. Ramsey entered the premises and entered the premises again on April 27, 1980. Apparently, certain utility service had been terminated to the premises on April 25, 1980, which Mr. Ramsey attributes to the conduct of Mr. Soukup. Mr. Soukup

denies involvement in this and, I find as fact, that the evidence fails to persuade me that Mr. Soukup exercised any initiative in terminating the utility service to the premises.

Personal property of Mr. Ramsey was removed from the premises during April, 1980, and some of the personal property was stored by Mr. Soukup in another location. Some of the personal property was disposed of as junk by Mr. Soukup.

Plaintiff's first cause of action is premised on §76-1438 R.R.S. Neb. in that plaintiff alleges an unlawful entry constituting an unreasonable harrassment of plaintiff by Mr. Soukup. I conclude, however, that the entry was not unlawful under applicable law. The notice to vacate was given on February 12, 1980. Pursuant to §76-1437, the landlord was authorized to terminate a month-to-month tenancy by written notice given to the tenant at least thirty days prior to the periodic rental date specified in the notice. This notice, given February 12, 1980, would have been effective, at the latest, on March 31, 1980. The entries by the defendant were made in April, 1980, and, accordingly, I conclude there was no unlawful entry into the premises by the defendant.

Even if the factual evidence before me were viewed in terms more favorable to the plaintiff, liability premised on the statutory provisions previously mentioned would not result in a nondischargeable debt in this bankruptcy proceeding. Defendant's possible liability to plaintiff does not meet any of the statutory provisions for exception to discharge under 11 U.S.C. §523. The unlawful entry onto the premises, in and of itself, caused no injury to the plaintiff and any statutory damages awardable to the plaintiff are simply in the nature of a breach of contract, the contract here being the rental agreement. Every creditor in a bankruptcy proceeding experiences the breach of a contract, express or implied. Something more must be shown to result in nondischargeability. This cause of action fails to meet the Bankruptcy Code statutory criteria and, as a result, my finding is in favor of the defendant and against the plaintiff on the plaintiff's first cause of action.

Plaintiff's second cause of action is based upon §76-1430 R.R.S. Neb. Under this cause of action, the plaintiff asserts that defendant is liable to plaintiff based upon the removal of the personal property from the premises in April, 1980, and upon the defendant's causing of the interruption of the utility service to the premises. As previously noted, I am unpersuaded that the evidence before me preponderates in favor of the plaintiff on the issue of the defendant's involvement in termination of utility service. Alternatively, plaintiff premises liability on the improper removal or exclusion of the plaintiff from the premises. Here plaintiff seeks statutorily prescribed liquidated damages, there being no evidence of actual damages before me. However, I conclude that the defendant's notice to vacate to the plaintiff, given February 12, 1980, properly authorized the defendant to enter the premises on April 1, 1980, and, thus, there was no unlawful removal or improper exclusion of the plaintiff from the premises after that date. No money was received by the defendant from the plaintiff after February 12, 1980, and, I conclude that there is no liability of

defendant to plaintiff.

Once again, even if the evidence were viewed more favorable to the plaintiff than previously found, the evidence fails to disclose a nondischargeable debt. This conclusion results from my conclusion that the defendant acted under the belief that its notice to vacate was properly given and that exclusion of the plaintiff from the premises was proper, at least April 1, 1980.

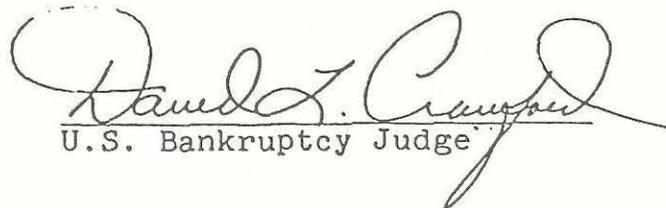
Plaintiff's third cause of action seeks damages for the unlawful conversion of the personal property of the plaintiff. Here, the evidence is that there was some conduct by the defendant which might be characterized as a technical conversion in that the defendant did exercise his dominion and control over the personal property of the plaintiff. However, something more must be shown to meet the statutory provisions of the Bankruptcy Code which excepts from discharge in §523 those acts which result in liability for willful and malicious injury to property of another, which the legislative history discloses and includes conversion.

Not every liability for conversion is nondischargeable under the Bankruptcy Code. The law was similar under the Bankruptcy Act. See Countryman, the New Dischargeability Law, 45 American Bankruptcy Law Journal 1 (1971). To be excepted, the conversion must be "willful and malicious" as opposed to "innocent" or done under the mistaken impression that it was proper. Here, the evidence is that the defendant acted after having given notice to vacate and at a time which would be proper under the applicable law. I conclude that the acts of the defendant in exercising control over the personal property of the plaintiff was done as the only method for obtaining possession of the premises for which the plaintiff had failed to pay rent. While there may be a conversion present, it is not of a type that results in a nondischargeable debt since there is no "willful and malicious" injury to the property of another as that phrase is defined in caselaw.

The conclusion resulting from the foregoing is that the plaintiff's asserted causes of action against the defendant are discharged in this bankruptcy proceeding. A separate judgment is entered in accordance with the foregoing.

DATED: August 23, 1982.

BY THE COURT:


U.S. Bankruptcy Judge

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