

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
BRUCE DEAN KNAPP and)
JOY LYNNE KNAPP,) CASE NO. BK98-82956
) A99-8031
)
DEBTOR(S).)
_____) CH. 7
GREATER OMAHA FEDERAL)
CREDIT UNION,)
Plaintiff(s),)
vs.)
)
BRUCE DEAN KNAPP and)
JOY LYNNE KNAPP,)
)
Defendant(s).)

MEMORANDUM

Hearing was held on November 3, 199, on the adversary complaint. Appearances: Howard Duncan for the debtors and John J. Jolley for the plaintiff. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I).

Background

Debtors filed a joint Chapter 7 petition on November 23, 1998. Plaintiff, Greater Omaha Federal Credit Union, timely filed this adversary proceeding against both debtors requesting a determination of nondischargeability on a debt of \$11,515.87 plus accruing interest from and after November 17, 1998. Plaintiff asserts that the debt is nondischargeable for two reasons. First, the debt represents money and a renewal of credit obtained by the use of a statement in writing that is materially false, and that concerns the debtors' financial condition, on which the plaintiff reasonably relied and which the debtors made with the intent to deceive. See 11 U.S.C. § 523(a)(2)(B). Second, the plaintiff asserts that the obligation should be nondischargeable under 11 U.S.C. § 523(a)(6) for willful and malicious injury caused to the plaintiff's collateral. The defendants deny all the substantive allegations and request costs and attorney fees

under 11 U.S.C. § 523(d) on the theory that the position of the plaintiff is not substantially justified.

The Facts

This dispute concerns a loan obtained by the defendants on, or about, November 10, 1997. The defendants owned a 1992 GMC pickup which was the subject of a prior personal loan from, and a security agreement in favor of the plaintiff. In November of 1997, defendant Bruce Knapp, who was in the wholesale and retail tire sales business, needed additional funds for business purposes. He approached the plaintiff about obtaining a business loan but was informed that the plaintiff did not make loans for business purposes. However, the plaintiff was willing to provide him with an additional \$4,000.00 of new money by rewriting the original personal loan agreement and taking a new security interest in the vehicle.

An employee of the plaintiff prepared the loan application by filling in the names and addresses of the parties, the defendants' employment status and their income, which was apparently provided by the defendants. No debts are shown on the application, except that a \$472.00 monthly payment on the defendants' home is shown. A question on the loan application was "Are you a co-signer or guarantor on any loan?" The word "No" was circled.

Mr. Knapp picked up the loan application and had Mrs. Knapp sign it at home. The security documents were also signed. The plaintiff apparently obtained a credit report, approved the loan and advanced the \$4,000.00 in new money.

At the time that the loan application was signed by the defendants, they were guarantors of a business loan from another financial institution. Therefore, the loan application was incorrect because it stated that they were not guarantors of any other loan.

Although the loan application does not list any personal or business debts, one or both of the defendants had incurred debts on behalf of Mr. Knapp's business prior to the date of this loan application. Mr. Knapp testified and this court finds that employees of the plaintiff were aware of his business operation, had declined to loan him funds for the business, and had informed him that they were not concerned about business debt, although they were concerned about

personal debt. He, therefore, did not list any business debt on the loan application.

At trial, when Mrs. Knapp was asked whether she had a personal guaranty on some of the business debt, she admitted that she had signed such a guaranty prior to signing the loan application. However, even though she had signed the loan application, and perhaps had read it prior to signing it, she was not aware of the significance of the question concerning a guarantor as it was stated on the loan application.

The credit report, which apparently is always obtained prior to approving a loan, is not a part of this record. However, it is, according to the testimony of plaintiff's employees, a mandatory part of the loan process. Since the credit report is not in evidence, it cannot be determined whether the business debt was listed on the credit report.

The loan application stated that the current mileage on the 1992 vehicle was 60,000 miles. A year later, when the debtors filed bankruptcy, the mileage on the vehicle was 122,000 miles and the vehicle was in such poor condition that the plaintiff, after a voluntary repossession, was able to sell it for less than \$700.00.

It is not the practice of the plaintiff to inspect motor vehicles prior to loaning money when such vehicles are collateral. The practice is to check the "Blue Book" value of the vehicle and, if the prior loan history, current loan application, and credit report are satisfactory, the plaintiff loans the retail value of the vehicle, as shown on the "Blue Book." In this case, the plaintiff had a loan history with these defendants and the defendants had always made timely payments. The credit report apparently showed that they had good credit and there were no oral or written representations concerning the condition of or value of the vehicle made by the defendants, except for the mileage of 60,000 which is shown on the loan agreement.

The condition of the vehicle when it was surrendered to the credit union was deplorable. The front bumper was missing, the space where a radio would normally have been found was empty. The tires were bad, the radiator had been replaced with one of an incorrect size, the body was extremely damaged and the interior was torn up. The plaintiff presented no evidence that Mr. or Mrs. Knapp caused the damage. Mr.

Knapp testified that the vehicle had been used in his business for many years. It was driven by various employees for the purpose of delivering tires and other inventory to customers. It had, at surrender date, significant mileage and wear and tear, but all of it was business related.

From all of the evidence presented, it appears, as a fact, that neither defendant intentionally presented a materially false financial statement to the plaintiff and there is insufficient evidence to find that, even if they had intentionally provided materially false financial information, that the plaintiff reasonably relied upon it. Mr. Knapp adequately explained that he had previously informed employees of the plaintiff of his business and the fact that he had business debt. Those employees had told him that the plaintiff was not interested in the business or a business debt and that all that needed to be listed was his personal debt.

Next, Mrs. Knapp provided no false information. She signed a loan application which had an incorrect statement with regard to her personal guaranty of a business debt. However, there is absolutely no evidence that she intended to deceive the plaintiff or that she even understood the significance of the statement concerning the loan guaranty.

If the plaintiff actually obtained a credit report, as was its normal practice, such credit report, depending upon the detail requested, should have listed at least one or more of the personal and/or business debts of the parties. That being so, the fact that no personal or business debts were listed on the loan application itself, should have led the plaintiff's employees to at least inquire concerning the accuracy of the statements, or lack thereof, on the loan application. Therefore, there is no basis for a finding that the plaintiff reasonably relied upon the affirmative statement that there were no loan guarantees or the omission of any debt on the loan application.

There is absolutely no evidence that Mrs. Knapp had anything to do with the operation of or care for the 1992 GMC pickup. Therefore, there is no evidence upon which one could find that any damage to the vehicle was willfully, intentionally, or maliciously caused by Mrs. Knapp.

Mr. Knapp had a reasonable explanation concerning the cause of the damage, and there is no evidence that any of the damage caused was done with a willful or malicious intent to harm the interest of the plaintiff regarding its collateral. Mr. Knapp was in business and hoped to stay in business and pay the debt secured by the vehicle. There is no evidence that he had any other intent.

The Law

11 U.S.C. § 523(a)(2)(B)

In order to succeed on a claim under 11 U.S.C. § 523(a)(2)(B), the plaintiff must prove each and every element, including the fact of the writing, concerning the financial condition of the debtors, materially false information, reasonable reliance and intent to deceive by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 286, 111 S.Ct. 656, 659, 109 L.Ed.2d 755 (1991).

The plaintiff in this case has failed to prove by a preponderance of the evidence that plaintiff's employees reasonably relied on the representations of the defendants. The plaintiff, if it conformed to usual business practice, obtained a credit report which would have listed all of the defendants' debts regardless of what was or was not omitted from the loan application.

Further, there is a lack of evidence regarding the defendants' intent to deceive. No evidence was presented showing that the defendants intentionally omitted debt from the loan application in order to obtain the loan funds.

11 U.S.C. § 523(a)(6)

For the plaintiff to succeed on a claim under 11 U.S.C. § 523(a)(6), the plaintiff must prove that the debtors not only willfully and intentionally caused an injury, but that they intended to cause the injury that occurred to the plaintiff. Kawaauhau v. Geiger, 521 U.S. 1153, 118 S.Ct. 31, 138 L.Ed.2d 1061 (1998). Here, the injury to the plaintiff is the loss of value to the collateral resulting from the damage to the vehicle. Under Geiger, it is not sufficient to show that the debtors failed to keep the vehicle in good condition or that they negligently acted, thus damaging the vehicle. To succeed, under Geiger, the plaintiff must show that such

damage was intentionally inflicted for the purpose of injuring the property rights of the plaintiff. In this case, there is no evidence that the defendants intentionally caused any damage, let alone that they intended to injure the property rights of the plaintiff. At most, the defendants acted negligently in taking care of the collateral. Negligent behavior, according to Geiger, is not enough to satisfy the wilful and malicious injury standard of Section 523(a)(6).

The defendants have requested a finding that the complaint filed in this adversary proceeding was not substantially justified and that, therefore, they should be awarded the costs of, and reasonable attorney fees for, the proceeding. Such an award will not be made in this case. The plaintiff, although losing on the merits, had a reasonable basis for bringing the action. There was incomplete and incorrect information on the loan application. The vehicle was in terrible shape, without any explanation having been proffered concerning the cause of the damage. At the first meeting of creditors, Mr. Knapp testified incorrectly with regard to the approximate dates when various debts were incurred. These three items alone, provide substantial justification for bringing the action.

Conclusion

Judgment will be entered in favor of the debtors and their financial obligation to the plaintiff shall be discharged in this bankruptcy case.

Separate journal entry shall be filed.

DATED: December 6, 1999.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

20 DUNCAN, HOWARD T.

29 JOLLEY, JOHN JAY

Copies mailed by the Court to:

United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
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BRUCE DEAN KNAPP and)
JOY LYNNE KNAPP,) CASE NO. BK98-82956
) A99-8031

DEBTOR(S).)
)
GREATER OMAHA FEDERAL) CH. 7
CREDIT UNION,) Filing No.
Plaintiff(s),)
vs.) JOURNAL ENTRY
)
BRUCE DEAN KNAPP and)
JOY LYNNE KNAPP,)

Defendant(s).) DATE: December 6, 1999
HEARING DATE: November
10, 1999

Before a United States Bankruptcy Judge for the District of
Nebraska regarding Adversary Complaint.

APPEARANCES

Howard Duncan, Attorney for debtors
John J. Jolley, Attorney for plaintiff

IT IS ORDERED:

Judgment will be entered in favor of the debtors and
their financial obligation to the plaintiff shall be
discharged in this bankruptcy case. See memorandum entered
this date.

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

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