

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

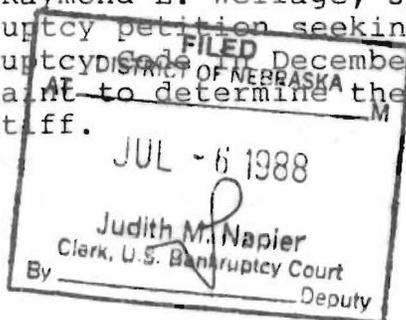
IN THE MATTER OF )  
 )  
 RAYMOND L. WEILAGE, JR., and )  
 LINDA L. WEILAGE, ) CASE NO. BK84-2537  
 )  
 DEBTORS ) A85-83  
 )  
 SAVERS FEDERAL SAVINGS AND )  
 LOAN ASSOCIATION, )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 RAYMOND L. WEILAGE, JR., )  
 )  
 Defendant )

MEMORANDUM

Trial of this adversary proceeding concerning a complaint to determine the dischargeability of a debt under Section 523(a)(2)(B) was held on March 24, 1988. Appearing on behalf of the plaintiff was David Ernst of Gaines, Mullen, Pansing, Hogan & Cotton, Omaha, Nebraska, and appearing on behalf of the defendant was Gary Dolan of Knudsen, Berkheimer, Richardson & Endacott, Lincoln, Nebraska. At the close of the evidence, the Court requested the parties to file written final arguments and post-trial briefs, if they desired. The Court has now had the opportunity to review all of the testimony and exhibits presented at the trial and the written final arguments and briefs provided by the parties. This memorandum shall be considered the Court's findings of fact and conclusions of law as required by Bankruptcy Rule 7052.

Facts

Raymond L. Weilage, Jr., (defendant) and his spouse filed a bankruptcy petition seeking relief under Chapter 7 of the Bankruptcy Code on December 11, 1984. The plaintiff timely filed a complaint to determine the dischargeability of the debt owed to plaintiff.



At one time, the defendant was a major shareholder in a number of banking institutions in Nebraska, Colorado, Wyoming and Montana, and served as president and/or a director of many of the banks. On April 25, 1984, defendant executed and delivered his promissory note to plaintiff in the face amount of \$300,000. ("Loan No. 1"). On May 2, 1984, defendant executed and delivered to plaintiff, as cosigner of a note signed by him on behalf of High Country Investment Corporation, a promissory note in the amount of \$250,000 ("Loan No. 2"). Funds were advanced by plaintiff on both notes. As of the date of the filing of the bankruptcy petition, there was a principal amount due on the two loans of \$159,948.91. It is this figure which the plaintiff seeks to have determined to be nondischargeable. In connection with the request for these loans, defendant had provided to Mr. O. V. "Buddy" Chandler ("Chandler"), a loan officer with plaintiff, a financial statement dated January 10, 1984, which has been admitted into evidence as Exhibit No. 1. It is this financial statement that plaintiff claims is the basis for nondischargeability of the above-described debts, pursuant to 11 U.S.C. § 523(a)(2)(B).

Exhibit No. 1, the defendant's financial statement provided to the plaintiff on April 25, 1984, but dated January 10, 1984, was substantially inaccurate. It failed to list several hundred thousand dollars' worth of obligations owed by the defendant on various bank loans. It also failed to list several million dollars in guarantees or contingent liabilities.

In addition to the inaccuracy of the financial statement as of January 10, 1984, the exhibit did not present the actual financial position of the defendant on April 25, 1984, or on May 2, 1984, when the loans were executed. The defendant, between January 10, 1984, and April 25, 1984, became obligated on additional bank loans.

For the plaintiff to successfully stop the discharge of the obligation owed to it, it must prove all of the elements of the appropriate statutory section, 11 U.S.C. § 523(a)(2)(B). That section provides, in pertinent part, as follows: a discharge under Section 727 ... does not discharge an individual debtor for any debt ... for money ... to the extent obtained by ... use of a statement in writing (i) that is materially false; (ii) respecting the debtor's ... financial condition; (iii) on which the creditor to whom the debtor is liable for such money ... reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive.

Based upon the facts outlined above and those which shall be discussed below, this Court finds that the creditor, although proving that the statement was in writing, the statement was materially false, the statement respected the debtor's financial condition, and that the debtor caused the statement to be published with the intent to deceive, has failed to show that it

reasonably relied upon such statement when granting the loans in question. Therefore, the debts owed by this defendant to this plaintiff are dischargeable.

At the time the loans were arranged, the defendant was not a customer of the plaintiff. The defendant was in business in several states, none of which included the State of Arkansas, the location of the plaintiff. The defendant was looking for money for two purposes. First, he needed \$300,000 to provide an additional capital contribution for two banks in which he had an interest. He was required to obtain such a capital contribution by the FDIC which had examined the banks and found that they were in trouble. In addition, he was involved in a bank holding corporation called High Country Investment Corporation which owned two banks in Colorado. That holding company had plans for raising several million dollars by a public offering of stock to enable it to obtain a charter for and funding for another bank in the State of Colorado. Apparently the holding company needed the \$250,000 loan for operating expenses related to the proposed public offering.

An individual by the name of J. R. Hodges, Sr., ("Hodges") headed a consulting company which was putting together the public offering for High Country. When the defendant mentioned to Hodges that funds would be needed, Hodges made arrangements to introduce the defendant to Mr. Chandler, the loan officer of the plaintiff. On April 25, 1984, the defendant met Chandler, not at the plaintiff's banking facility, but at the office of Mr. Hodges in Little Rock, Arkansas. The defendant and Mr. Chandler had not met prior to that date, although Mr. Chandler suggests in his deposition that he may have talked with the defendant by telephone prior to that date and may have reviewed his financial statement prior to that date.

The parties met at Hodges' office, discussed the loan requests and the financial data provided on Exhibit No. 1 and apparently discussed collateralization of one of the loans. However, the interested parties have had a difficult time in reconstructing the conversational terms on that date. The notes which resulted from the conversation do not require collateralization. However, for some reason, Mr. Weilage provided, or attempted to provide, some type of collateral to Mr. Hodges which, according to Mr. Hodges, was then to be transferred to the plaintiff bank. Mr. Chandler does not seem to recall collateralization requirements and the notes themselves do not require collateralization and one of the notes, Loan No. 2, specifically states that it is unsecured. Loan No. 1 states that it is secured by Letter of Credit, but does not define any terms of the Letter of Credit, the entity providing the Letter of Credit, or anything else about such Letter of Credit.

Before leaving the meeting on April 25, 1984, the defendant signed a promissory note to the plaintiff in the amount of \$300,000 and the note was funded within a few days by a wire transfer to defendant's accounts at another bank. Seven days later, defendant signed another note on behalf of High Country and himself in the amount of \$250,000.

The only financial information which defendant provided to plaintiff in support of his personal obligations to plaintiff is Exhibit No. 1. Exhibit No. 1 is a two-page financial statement dated January 10, 1984, which purports to list the assets and liabilities of defendant and his spouse. On the front page of Exhibit No. 1, the defendant lists as the majority of his assets, \$2,280,654, interests in varying percentages in banks, farms and cattle companies. The information is listed in three columns, consisting of the percentage of ownership, the name of the entity, and the value of the ownership interest. On page 2 of the document under the listing entitled "current liabilities" the defendant listed "due banks \$1,096,340.00." There is no itemization of the type of loans or to which entities the loans are due. There is no itemization of whether the obligations are direct or contingent. Then, the second page lists long-term liabilities and makes specific reference to three different long-term liabilities and their amounts.

At the bottom of page 2 the debtor estimates 1984 income and breaks down the sources of the income in general categories, without specifically listing the entities from which the funds are expected to be received. The total amount of income projected for 1984 is \$390,319.

Mr. Chandler, the bank loan officer, testified that he asked Mr. Weilage for more information, "including personal financial statements, income statements, references, what his past experiences had been, i.e., a resume, if you will, concerning him and who he was and what he represented." Chandler deposition, page 8, line 20 through 23. Either the additional information requested by Mr. Chandler was not provided by the debtor or it was provided in conversation only and not in writing. No other written information in addition to the January 10, 1984, financial statement was provided to the plaintiff in support of the \$550,000 in loans made between April 25, 1984, and May 2, 1984.

To verify the information provided on the financial statement, Mr. Chandler talked to several of the officers and banks that the defendant was doing business with, either through the holding company, personally, or through one of the other banks, and those officers were primarily correspondent bank officers with two different financial institutions in Denver. Mr. Chandler did not mention the names of the banks in Denver to which he was referring.

The only dispute that this Court can discern between this defendant and this plaintiff is whether or not the Bank reasonably relied upon the financial statement provided by the defendant when it granted the loans in question. The discrepancies between the defendant's actual financial condition in January of 1984 and April of 1984 and the statement he provided to the Bank is so great that the Court believes the financial statement was materially false at the time it was offered and that the defendant knew it was materially false. The exhibit on its face does not purport to limit its purpose to listing only direct obligations and not contingent obligations. It does not actually list all of the direct obligations and there is no limiting language in the document itself. It was presented for the purpose of supporting a loan or two loans and it was substantially inaccurate. The Court infers from the evidence presented with regard to the need for funds, the application to a stranger bank, the submission of a materially false financial statement, that defendant intended to deceive the Bank when he presented the financial statement to the Bank officer.

It is the burden of the Bank to prove, not only the above matters, but that it was reasonable for the Bank to rely upon the two-page financial statement provided by this brand-new customer when loaning him \$550,000. This Court finds that such reliance was not reasonable for several reasons. First, the Bank officer, Mr. Chandler, had authority to lend only up to \$100,000 without approval of superior officers in the Bank. None of those officers ever met the defendant nor, according to the evidence, ever did any investigation of the defendant. Second, the Bank did not require most of the information Mr. Chandler testified he requested before funding the loan. Third, the commercial loan checklist, Exhibit No. 101, which was obtained from the Bank loan file on this defendant, indicates numerous standard documents and approvals which could have been required prior to making the loan. According to Exhibit No. 101, no documentation was required, no written supervisory approvals were entered and the loans were not reviewed by any other loan officer except Mr. Chandler. Fourth, the defendant was a stranger to this lending institution and from a different part of the country. Exhibit No. 1, the financial statement he provided, was not on a bank form. It was not complete, in that it did not itemize the obligations owed to other banks, either in amount or in name of institution. It did not provide a listing of contingent liabilities, if any, and did not itemize the proposed source of income of this borrower for the year in which the loans were to be outstanding.

Mr. Chandler testified that he believed it was commercially reasonable for him and for the plaintiff to rely upon the financial statement because it provided basic information about the financial condition of the defendant. He attempted to investigate the defendant by making a couple of phone calls to bankers in Denver and he assumed that the financial statement was correct. He alleges that if he had known there were contingent

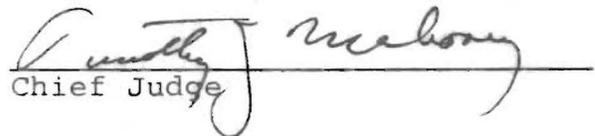
liabilities of several million dollars, he would not have recommended approval of the loans. He denies that he had any information concerning the contingent liabilities of this defendant and, therefore, was unable to make a reasoned judgment about the actual financial condition of the defendant.

This Court finds that Mr. Chandler, by his own testimony, knew about at least some of the contingent liabilities. There is nothing on Exhibit No. 1, the defendant's financial statement, which would indicate that this defendant did any business with any banks in Denver, Colorado. In order for Mr. Chandler to know who to call in Denver, he would have had to have been informed by the defendant of the existence of banking relationships in Denver, Colorado. If he actually did call two banks in Denver, Colorado, he could have easily found out about the bank stock loan guarantees. Therefore, this Court concludes that either Mr. Chandler did not bother to check out references which were openly provided to him by the defendant or, when he did check out such references, he became aware of contingent liabilities and was not concerned with them. It simply is not reasonable to this Court for a lending institution to loan \$550,000 to a stranger on the basis of one interview and a two-page incomplete financial statement.

Therefore, the Court finds that the debt is dischargeable. Separate Journal Entry shall be filed.

DATED: July 5, 1988.

BY THE COURT:

  
Chief Judge