

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

MICHAEL LESLIE LOWE,
GAIL MARIE LOWE,

DEBTOR

ALLIANCE NATIONAL BANK
AND TRUST CO.,

Plaintiff

vs.

MICHAEL LESLIE LOWE,

Defendant

CASE NO. BK85-1778

A85-291

MEMORANDUM OPINION

Trial was held in North Platte, Nebraska, on February 3, 1987, on the complaint objecting to the dischargeability of debts owed by debtor Michael Leslie Lowe to the plaintiff. Appearing on behalf of the plaintiff were Albert Reddish of Alliance, Nebraska, and Mark Anderson of Alliance, Nebraska. Appearing on behalf of the debtor was David Nuttleman of Gering, Nebraska.

Pursuant to the Federal Rules of Civil Procedure as applied by the Bankruptcy Rules, the Court makes the following findings of fact and conclusions of law and judgment.

Facts

1. The debtor and spouse, who is not involved in this lawsuit, filed their voluntary Chapter 7 petition in bankruptcy August 8, 1985.

2. The defendant had operated businesses in several cities under the name "Record Shop" or "Sound Outlet" either as a sole proprietor or as a partnership from approximately March 1981 until the filing of the bankruptcy petition in 1985. The plaintiff was the main operating lender for the business, which, although operated in three separate locations and under various names, was treated by the plaintiff and the defendant as one business.

3. Debtor borrowed money on a regular basis from the bank and from other financial institutions. He provided financial information to the bank, including profit-and-loss statements, cashflow statements and balance sheets. All of the financial documents were requested by the bank to support the various loans.

4. The bank was not advised at any time by the debtor that the financial statements were not true and correct.

5. The bank relied upon the financial statements in extending credit and renewing credit to the debtor.

6. The debtor knew that the bank had requested financial information and knew that the bank was using the financial information in making determinations with regard to extensions of credit.

7. There were particular occasions, in 1984, at which time the bank stopped advancements and note renewals until debtor provided financial statements and a cashflow.

8. From early 1984 through the last date the debtor was in business, the financial information he provided to the bank was inaccurate. Specifically, he had overstated the inventory values. At the same time he was providing certain inventory values to the bank, he was providing other inventory values to other creditors and, when he completed his income tax returns, he based the value of inventory on the actual physical inventory taken by a store employee. However, he did not give that information to the bank.

9. In addition to providing false inventory figures to the bank, the debtor provided information to the bank which was inaccurate with regard to the amount he owed to other lending institutions.

10. Even as late as June 30, 1985, the financial information that he gave the bank was incorrect with regard to trade accounts payable. The bankruptcy schedules show that as of the date of filing, in August of 1985, the trade accounts payable were in excess of \$20,000. However, the most recent financial statements he provided the bank reflect that there were no accounts payable.

11. The result of the presentation of false financial information to the Bank is that, after liquidation of assets, there remains a deficiency of \$57,529.26 as of February 3, 1987.

Conclusions of Law

This case was brought pursuant to 11 U.S.C. § 523(a)(2)(B). That section prohibits a discharge of an individual debtor from a debt for money or an extension, renewal, or refinance of credit by use of a statement in writing that is materially false, respecting

the debtor's financial condition on which the creditor reasonably relied and that the debtor caused to be made with intent to deceive.

The Bank must prove all of the elements of the statutory section to prevent the debt being discharged. In re Schwarting, 671 F.2d 1192, 1184 (8th Cir. 1982).

This Court concludes that the bank has met its burden on all of the requirements of Section 523(a)(2)(B).

The debtor has argued that he did not ever guarantee to the bank that the financial statements he was providing were accurate. In addition, he claims that the financial information that he brought to the bank wasn't all of the financial information about his personal assets or liabilities because all he was dealing with the bank on were business debts. Therefore, it was his opinion that he was only required to provide information about the particular business to the bank and that he was not required to provide information concerning his personal obligations which weren't directly related to the business. In addition, he claims that the bank didn't reasonably rely on the financial statements. The bank could have taken actual physical inventory and the bank could have requested copies of his tax returns and that failure to do either or both should result in a finding by the Court that the bank did not reasonably rely upon the financial information they received.

This Court rejects those arguments of the debtor. What he is essentially saying is that he didn't tell the bank the truth but the bank should have been able to figure that out by requesting more information which would have aided the bank in determining that either his financial statements were inaccurate or his tax returns were inaccurate. This Court does not find that the bank has such a duty. It requested, on many occasions, financial information from the debtor. There is no evidence before the Court that it suggested to the debtor that inaccurate financial information would satisfy the requirement. The debtor intentionally provided inaccurate financial information and the bank relied upon it in making loans.

All of the elements of the statutory section are met.

The debtor then claims that only the amount the bank loaned after the inaccurate financial statements were provided and upon which the bank relied should now be found to be nondischargeable. This is probably an accurate statement of the law. However, the evidence before the Court is that the bank relied upon the financial statement of the debtor for both the business loans and the real estate loans. The bank at one point restructured a real estate loan based upon its understanding of the financial condition of the debtor and based upon a promise by the debtor that when certain real estate was sold a payment of \$15,500 would

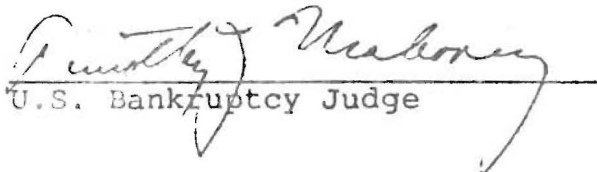
be made to the bank to bring the debt. However, when the real estate was sold, the debtor, instead of paying the bank, invested the \$15,500 in other real estate. When all of the assets of the debtor were liquidated, the bank shows a deficiency of approximately \$58,000 as of the date of the trial.

This Court finds that judgment should be entered in favor of the bank and against the debtor in the amount of \$57,529.26 as of February 3, 1987, with interest to accrue at the contractual rate from that date forward until paid and the Court further finds that such amount is not dischargeable.

Separate Journal Entry shall be issued reflecting the judgment.

DATED: May 18, 1987.

BY THE COURT:



U.S. Bankruptcy Judge

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