

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
ELI PEREZ MORELL,) CASE NO. BK78-L-249
)
ESTELA PEREZ MORELL,) CASE NO. BK78-L-250
)
BANKRUPTS)
)
ASSOCIATES FINANCIAL SERVICES)
COMPANY OF NEBRASKA, INC.,)
)
Plaintiff)
)
vs.)
)
ELI PEREZ MORELL and)
ESTELA PEREZ MORELL,)
)
Defendants)

MEMORANDUM OPINION

In this adversary proceeding, plaintiff seeks a determination that an indebtedness due it is nondischargeable pursuant to each of the three sub parts of §17a(2) [11 U.S.C. §35a(2)].

On July 27, 1977, the defendants renewed a loan with the plaintiff without obtaining any fresh cash because of their difficulty in making the monthly payment. By the renewed loan, the monthly payments were reduced. The renewal was made at the suggestion of the plaintiff.

Defendants had received loans from plaintiff as early as November, 1974. At that time, the defendants pledged a number of clocks which they had collected as collateral for the loan. In August, 1975, Mr. Morell was involved in an automobile accident and, as a result, was disabled for a year. During that period of time, he had difficulty making ends meet. Insurance payments and workmen's comp payments helped but were not sufficient. As a result, Mr. Morell talked with a representative of plaintiff and advised the representative that he wanted to sell clocks in order to help make payments and provide living expenses. A representative of plaintiff authorized the sale of the clocks. Mr. Morell disposed of the clocks between the time of the automobile accident and July 27, 1977. I conclude, therefore, that because of the authorization for the sale of the clocks, there is no conversion of the clocks which were pledged for the prior loan and, specifically, no willful and malicious conversion.

Plaintiff argues that if the prior facts are found, the defendants' debt is nondischargeable pursuant to the false pretenses or false representations exception of the prior statutory section because they signed a security agreement which pledged the clocks as collateral for the July 27, 1977, renewal. There is evidence before me which would bring into question whether or not the clocks were actually listed on the security agreement at the time that

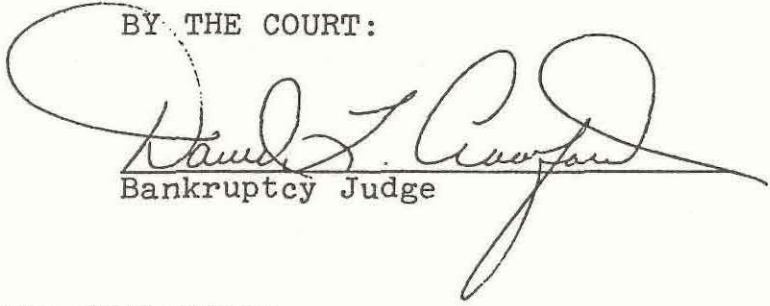
which arise from the obtaining of money or property by the use of false pretenses or false representations which are excepted from discharge. In the present case, the defendants received neither money nor property as a result of their execution of the security agreement. They received only a rewriting of their prior loan. I conclude, therefore, that this ground of the plaintiff's complaint must fail.

Lastly, plaintiff suggests that defendants obtained the renewal of the loan by the use of a false statement in writing which misrepresented their financial condition. However, the evidence before me discloses that the plaintiff itself suggested the rewriting of the loan and not the defendant. Upon the defendants' arrival at the office of the plaintiff, the renewal documents were already prepared for signature. I conclude that the plaintiff did not rely even in part in renewing this loan on the financial statement in writing which was signed by the defendants.

My finding is in favor of the defendants and against the plaintiff. A separate order is entered in accordance with the foregoing.

DATED: January 10, 1979.

BY THE COURT:



Bankruptcy Judge

Copies mailed to each of the following:

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