UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
LARRY J. FIBELSTAD,	)	CASE NO. BK78-0-1016
	)	
BANKRUPT	)	
	)	
AVCO FINANCIAL SERVICES OF NEBRASKA, INC., A CORPORATION,	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
LARRY J. FIBELSTAD,	)	
	)	
Defendant	)	

MEMORANDUM OPINION

In this adversary proceeding, Avco Financial Services of Nebraska, Inc., seeks a determination that an indebtedness due it from the defendant is nondischargeable in this bankruptcy proceeding pursuant to the false financial statement in writing exception of §17a(2) [11 U.S.C. §35a(2)] and also pursuant to the willful and malicious conversion of property of another exception contained in the same subsection. Plaintiff's complaint also alleges a violation of §17a(8) excepting from discharge liabilities for willful and malicious injuries to property of another.

At some time prior to April 28, 1978, the plaintiff had taken a security interest in a travel trailer owned by a Mr. Rittenbaugh. Approximately five or six days before April 28, 1978, the plaintiff was looking for the travel trailer for the purpose of replevining it. Plaintiff located the trailer at the residence of the defendant, Mr. Fibelstad. Mr. Rittenbaugh apparently owed Mr. Fibelstad money and Mr. Fibelstad was holding the trailer as security for payment.

Initially, Mr. Fibelstad refused to deliver possession of the trailer to the plaintiff. However, when plaintiff advised Mr. Fibelstad that it could replevin the trailer because of its security interest, Mr. Fibelstad expressed an interest in buying the trailer. During the next several days, negotiations as to the possible purchase price continued and, on April 28, 1978, a price of $1,000.00 was agreed upon. On April 28, 1978, a representative of the plaintiff called Mr. Fibelstad and told him to come down and sign the papers for the purchase and financing of the trailer. Mr. Fibelstad went to plaintiff's office. Upon his arrival, a loan application, promissory note, security agreement and federal disclosure statement had previously been prepared for his signature. At that time, Mr. Fibelstad was given a statement of indebtedness form to be filled out and was instructed to simply "put down a couple of debts and sign it". Following these instructions

Mr. Fibelstad did omit certain debts from the statement of indebtedness. At this time, Mr. Fibelstad told the plaintiff that he was going to Price, Utah, to search for employment and that he needed the travel trailer to live in. Mr. Fibelstad's unemployment during the period of five to six days prior to April 28, 1978, was known to plaintiff. A representative of the plaintiff advised Mr. Fibelstad that there was no problem with taking the travel trailer to Utah. The title to the travel trailer was delivered to Mr. Fibelstad with the request that he take it to the county courthouse to have the title put in his name and have the plaintiff's lien noted thereon. At that time, the title was in the name of plaintiff.

Mr. Fibelstad failed to take the title to the courthouse but did take the travel trailer to Price, Utah, where it was at the time of trial. Apparently at the time of trial it was in the hands of a third party who claimed a lien for storage charges.

Even though the statement of indebtedness is false in the sense that it omits certain debts, Mr. Fibelstad was simply following instructions to list a couple of debts and, by inference, he was not required to list all the debts. In any event, the decision to make the loan was made far in advance of the execution of the statement of indebtedness, it coming as an afterthought. As the Court of Appeals for this Circuit said, this financial statement was not the "proximate cause" of credit. Becker v. Shields, 237 F.2d 622 (8th Cir. 1956). My conclusion is that the plaintiff did not rely even in part upon this statement of indebtedness.

As to the suggestion that the defendant willfully and malicious converted the trailer by taking it to Utah, my finding that the plaintiff approved the transportation of the trailer to Utah disposes of the conversion argument. This is true notwithstanding the fact that the defendant failed to obtain a new title in his name with the plaintiff's lien noted. As the matter now stands, Avco in fact is the record owner of the trailer and the trailer has not been converted. This is true, also, even though the trailer is in the possession of a party who claims a storage lien thereon. If there could be some kind of conversion present, there is not the slightest suggestion in the evidence that the conversion is willful and malicious. Davis v. Aetna Acceptance Co., 293 U.S. 328 (1934); Robertson v. Interstate Securities Company, 435 F.2d 784 (8th Cir. 1971); In Re Elias, BK74-0-1059 (D. Neb. 1975, Hon. Robert V. Denney); 1A Collier on Bankruptcy, Section 17.09.

Nor is there any evidence to suggest that the defendant willful and maliciously damaged the property of the plaintiff.

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

DATED: January 4, 1979.

BY THE COURT:

Bankruptcy Judge