

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

PAUL R. HARLOW,)

BANKRUPT)

BANK OF PAPILLION, A)
Nebraska Corporation,)

Plaintiff)

vs.)

PAUL R. HARLOW,)

Defendant)

CASE NO. BK79-0-314

MEMORANDUM OPINION

In this adversary proceeding, plaintiff seeks a determination that an indebtedness due it is nondischargeable pursuant to the false financial statement in writing exception of §17a(2)[11 U.S.C. §35a(3)] and pursuant to the false representation or false pretenses exception of the same statutory subsection.

On October 4, 1978, defendant applied for a loan with plaintiff. Defendant gave the plaintiff a financial statement in writing which listed assets and liabilities. On that same date, defendant was granted a loan of \$4,500.00. Plaintiff took as security a boat and trailer. On November 30, 1978, defendant again requested an additional loan of plaintiff and was granted an additional loan of \$2,000.00. No additional financial statement was given and no additional security was taken.

At the time of the initial loan, defendant explained to a representative of plaintiff that he was experiencing problems with the manner in which his home was constructed. He was involved with a lawsuit against his contractor for construction defects. Between the time of the first and second loans, defendant apparently advised plaintiff that he was having difficulty repaying the first loan.

Plaintiff premises nondischargeability on the fact that the defendant failed to list a significant amount of debts owed to third parties. However, the bulk of the undisclosed indebtedness appears to be mechanics liens which were filed against the defendant's residence after November, 1978. The evidence discloses that at the time of the giving of the financial statement, defendant was unaware of the potential of mechanics liens. Accordingly, I conclude that the failure to list the potential liability to mechanics lienholders was unintentional and not done with intent to deceive.

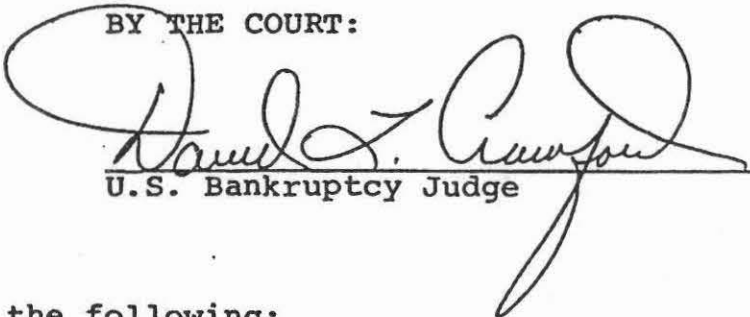
The evidence before me discloses that the security interest which the defendant gave to the plaintiff on the boat and trailer was actually a second lien on the boat and trailer. Another bank had first lien on the items of personal property. However, I accept the defendant's explanation that he believed that the other bank had released the security interest in the boat and trailer and replaced it with a security interest in a Blazer vehicle. Accordingly, I need not resolve the factual issue of whether or not defendant represented that the boat and trailer were unencumbered.

Lastly, I accept the defendant's explanation that he is unaware of how the figures regarding certain assets came to be placed on the financial statement. I note that the financial statement in large part was not actually prepared by the defendant although it is his signature.

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

DATED: November 30, 1979.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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