

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

RICHARD KENNETH SCHULTZ,)

CASE NO. BK79-0-852

DEBTOR)

BOBBY L. UNZICKER AND ROYANN)
UNZICKER, Husband and Wife,)

Plaintiffs)

vs.)

RICHARD KENNETH SCHULTZ,)

Defendant)

MEMORANDUM OPINION

In this adversary proceeding under the old Bankruptcy Act, plaintiffs seek a determination that an indebtedness due it from the defendant is nondischargeable in this bankruptcy proceeding pursuant to §17a(2) of the Bankruptcy Act which excepts from discharge debts incurred by false pretenses or false representations.

Prior to bankruptcy, defendant was engaged in the real estate business as an agent. Plaintiffs had known defendant for approximately four years at the time of trial and for a number of years prior to the events related herein. In late July, 1978, the defendant contacted the plaintiffs and told him that he wanted to list for sale two lots which plaintiffs owned. Thereafter, defendant asked plaintiffs if he could purchase the lots. The parties agreed on a sale price of \$7,500.00 per lot for a total of \$15,000.00. On August 5, 1978, defendant delivered to plaintiffs a purchase agreement offering to purchase the two lots for the agreed upon \$15,000.00. One thousand five-hundred dollars was paid down with the balance to be paid on or before December 15, 1978.

At the request of the defendant, shortly after the purchase agreement was delivered by the defendant to the plaintiffs, the defendant requested of the plaintiffs deeds to the two lots. Defendant advised plaintiffs he needed the deeds in order to obtain a construction loan for the apartment project which he intended to build on the lots. Unknown to plaintiffs, on August 4, 1978, prior to the delivery of the purchase agreement to the plaintiffs, the defendant had executed and delivered to Scottsbluff Savings Company a mortgage on the two lots involved. The mortgage was in consideration of the loan from Scottsbluff Savings Company to the defendant for \$17,500.00. Apparently, defendant needed the deeds in order to obtain the actual cash from the lending institution. The plaintiffs delivered deeds to the defendant. Those deeds and the mortgage to Scottsbluff Savings were recorded at a subsequent time. Defendant did pay small amounts in addition to the earnest money downpayment to the plaintiffs but the entire loan proceeds obtained by the defendant were not paid to plaintiffs in payment

of the balance due them. At a subsequent time, defendant agreed to pay plaintiffs 10% interest upon the unpaid balance.

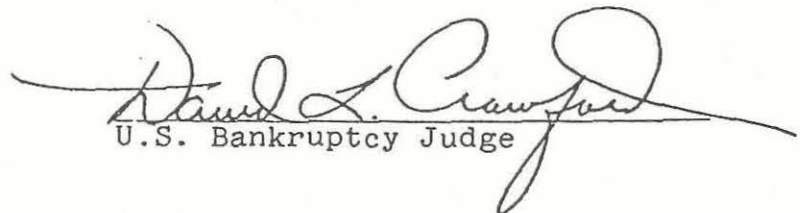
Plaintiffs eventually learned of the recording of the deed and the giving of the mortgage. Plaintiffs premised nondischargeability on the false pretenses of the defendant's statements that the deeds were needed to obtain construction financing. There remains unpaid from the defendant to the plaintiffs the sum of \$10,000.00 plus interest.

Given the fact that the defendant was engaged in the real estate agent business, the fact that he had given a mortgage to Scottsbluff Savings prior to obtaining the deeds from plaintiffs and obtained a loan commitment from Scottsbluff Savings without disclosure to the plaintiffs and the incorrect statements regarding the need for the deeds to obtain the construction financing, I find that the defendant acted with the requisite guilty scienter in obtaining the deeds from the plaintiffs and that he acted with false representations and under false pretenses in obtaining the deeds from them. My finding is in favor of the plaintiffs and against the defendant. Given the agreement to pay interest of 10% on the unpaid balance, interest will be granted in the judgment from the date the unpaid balance was due, December 15, 1978.

A separate order is entered in accordance with the foregoing.

DATED: May 12, 1981.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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