

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

SUSAN LYNETTE COBB,

DEBTOR

BRADFORD, COENEN & ASHFORD,

Plaintiff

vs.

SUSAN LYNETTE COBB,

Defendant

CASE NO. BK81-1372

A81-661

MEMORANDUM

In this adversary proceeding, plaintiff seeks a determination that an indebtedness due it for legal services and expenses incurred is nondischargeable under 11 U.S.C. §523a(2) for obtaining services by "false pretenses, a false representation. . . ."

Prior to bankruptcy, plaintiff, a law firm, performed services for the defendant in representation of her in a dissolution of marriage proceeding in state court. Following trial to the trial court, a discussion occurred between a partner in the firm of the plaintiff and the defendant. That discussion involved the prospects for success of appeal and payment for previous services and services in connection with the proposed appeal.

The evidence presented by plaintiff would indicate that defendant told plaintiff that if a bankruptcy proceeding were filed, defendant would reaffirm the debt to plaintiff for the trial court expenses and the appeal expenses and services or that defendant's mother would pay for the services and expenses.

Evidence presented by the defendant would indicate that defendant believed that services, at least on appeal, would be paid for by defendant's mother.

Having heard the testimony, my conclusion is that plaintiff has failed to bear the burden of proving by preponderance of the evidence that at the time discussions occurred between the defendant and the plaintiff regarding the proposed appeal, defendant had the requisite intent not to pay for the services or the necessary costs. In addition, any representation by defendant to plaintiff that, in the event of bankruptcy, defendant would reaffirm the

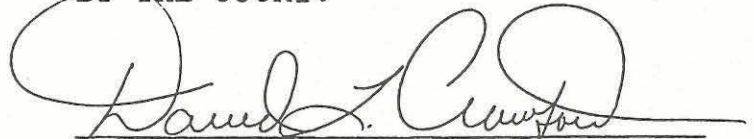
debt has not been proven by preponderance of the evidence to have been untrue when made by the defendant. The fact that she, at trial, evidences no desire to reaffirm the debt in this bankruptcy proceeding does not lead me to the conclusion that she had that intent when the representation was made if, in fact, it was made.

Section 524c provides protection for debtors who believe they want to reaffirm debts to creditors. That provision was enacted for debtors' protection and renders reaffirmations unenforceable unless approved by this Court. It is, in effect, a warning to debtors and provides them with a safeguard against inadvertent reaffirmation.

A separate order is entered in accordance with the foregoing.

DATED: March 19, 1982.

BY THE COURT:


U.S. Bankruptcy Judge

Copies to:

Eric Kruger, Attorney, 300 So. 19th Street, Omaha, Ne. 68102

Thomas Prohaska, Attorney, 1212 1st Nat'l. Bank, Omaha, Ne. 68102