

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

TOM ROTH, )

BANKRUPT )

ELIZABETH LONGLEY, )

Plaintiff )

vs. )

TOM ROTH, )

Defendant )

CASE NO. BK

MEMORANDUM OPINION

In this adversary proceeding, plaintiff seeks a determination that an indebtedness due her from the defendant is nondischargeable in this bankruptcy proceeding.

In May, 1976, plaintiff and her late husband entered into a real estate listing agreement with defendant. The plaintiff owned Lots 1 through 23, Block 2, Elmwood Addition to Lincoln, Lancaster County, Nebraska. The defendant was a licensed real estate agent. At the time of the agreement, the defendant advised the plaintiff and her late husband that he had a possible buyer for the property in Scottsbluff, Nebraska. Plaintiff and her husband were advised by the defendant that he would meet with the potential buyer regarding a sale. Defendant asked for and received a deed signed by the plaintiff and her husband which was executed in blank.

In February, 1977, plaintiff and her husband checked with the Register of Deeds Office regarding this property and found it to have been titled in the defendant and his wife's name with a mortgage executed by the defendant and his wife to Commonwealth Savings Company in the amount of \$14,000.00. Plaintiff immediately attempted to contact the defendant. Defendant did contact the plaintiffs several weeks later and advised them that he had purchased the property for himself and would make the sale price good to them. He gave the plaintiff a check postdated for March 1, 1977. Plaintiff and her husband held the check until March 1, 1977, but were advised at that time by the bank that there were insufficient funds to pay the check. By a deed dated July 26, 1977, defendant and his wife reconveyed the property to Mr. and Mrs. Longley subject, however, to the unpaid mortgage to Commonwealth. Plaintiff and her husband declined to pay the mortgage to Commonwealth and in December, 1978, Commonwealth foreclosed. At the foreclosure sale, Commonwealth bought the property for \$22,000.00 which was for more than the mortgage and the interest owed Commonwealth. Plaintiff received \$3,718.06 excess sale proceeds from Commonwealth. Plaintiff never received any funds represented by the postdated check of March 1, 1977.

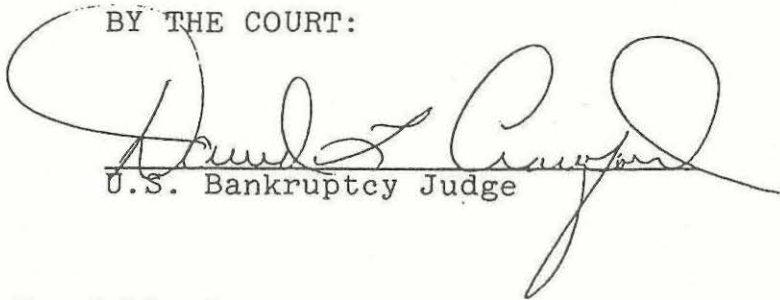
Having heard the evidence, this Court is convinced that the defendant knowingly converted the property to his own use in direct violation of the known rights of the plaintiff and her now deceased husband. There is no serious evidence before me to suggest that defendant conducted his clandestine activities with any serious hope of repayment to the plaintiffs or conducted himself in good faith. Having thus viewed the evidence, I am convinced that the defendant converted the property "willfully and maliciously" within the meaning of the statutory language of §17a(2)[11 U.S.C. §35a(2)].

In my view, the best evidence of the value of the conversion is the value at which the property sold at foreclosure sale, that being \$22,000.00. Of that amount, plaintiff received the sum of \$3,718.06 leaving a balance due from the conversion from the defendant of \$18,281.94.

A separate order is entered in accordance with the foregoing.

DATED: June 26, 1980.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies mailed to each of the following:

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