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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

LEONARD L. DeNAEYER,

BANKRUPT

FARMERS STATE BANK, KILGORE,
NEBRASKA,

Plaintiff

vs.

LEONARD L. DeNAEYER,

Defendant

CASE NO. BK78-0-1139

MEMORANDUM OPINION

In this adversary proceeding, the plaintiff, Farmers State Bank, Kilgore, Nebraska, both objects to the discharge of the defendant and seeks a determination that an indebtedness due it is nondischargeable.

Prior to bankruptcy, the defendant, Leonard L. DeNaeyer, was a dentist in Valentine, Nebraska. In approximately 1970 or 1971, DeNaeyer started feeding cattle. From that time to 1976, his cattle feeding operation grew. DeNaeyer began a series of loan transactions with the bank in 1972. From 1972 through 1976, DeNaeyer's loans with the bank increased. In 1973 or 1974, the cattle market began a downturn. DeNaeyer began to experience difficulties and the bank concluded that it could no longer completely finance Dr. DeNaeyer's cattle feeding operation. A third party was brought in as part of a restructuring of Dr. DeNaeyer's loans with the bank. By November, 1976, the bank was very concerned with DeNaeyer's cattle feeding operation and concluded it could no longer continue financing that operation. A representative of the bank went to DeNaeyer's feeding operation, observed the cattle and attempted to count them. Subsequently, a list of DeNaeyer's cattle was prepared for his signature and dated November 18, 1976. The bank advised DeNaeyer that it could no longer continue financing of the operation and liquidation was necessary. The liquidation was left to DeNaeyer's control. At that point, the bank did not attempt to take possession of the security it held (the cattle). DeNaeyer began liquidation of the cattle but failed to pay all of the cattle proceeds to the bank. His bankruptcy followed in 1978.

Plaintiff's last note with DeNaeyer is dated prior to the execution of the November 18, 1976, financial statement.

The bank alleges that the November 18, 1976, property statement given by DeNaeyer is materially false and given by DeNaeyer with intent to deceive which should be sufficient either to bar discharge if DeNaeyer is found to be engaged in business or to be a bar to the dischargeability of the debt owed the bank in any event. However, based upon the evidence as a whole, I am unable to conclude that the incorrect matters regarding the property statement are material or that DeNaeyer gave the property statement to the bank with the requisite intent to deceive. (Intent to deceive is expressly part of the statutory provision under §17 and impliedly a part of §14c(3). See 1A Collier on Bankruptcy, paragraph 14.40 at p. 1396.)

The bank points to the fact that DeNaeyer's dental office equipment is listed on the property statement at \$55,000.00 when, in fact, his schedules show a substantially reduced amount for the equipment. The bank also points to the omission by DeNaeyer of \$13,000.00 worth of debt which existed at the time of the property statement payable for feed bills. However, the possible overvaluation of the dental office equipment was DeNaeyer's opinion only and this should have been known to the bank when it took the statement. What the dental office equipment is actually worth is far from clear to me from the evidence before me and I am unpersuaded that the bank relied on the valuation of the office equipment in any regard other than possibly the fact that it was essential to DeNaeyer's dentistry occupation and, as a result, valuable to him. The omission of the \$13,000.00 feed bill is minor and does not lead me to the conclusion that it was a material misrepresentation. All in all, I conclude that the plaintiff has failed in its burden of persuasion with regard to the foregoing allegation.

Secondly, plaintiff alleges that DeNaeyer willfully and maliciously converted the proceeds from the sale of the cattle which results in the debt arising from the conversion being nondischargeable in this bankruptcy proceeding. The evidence before me does disclose that DeNaeyer sold cattle and did not remit all of the proceeds to the bank. However, not every conversion results in a nondischargeable debt. The conversion must be willfull and malicious which has come to have an accepted meaning and is much narrower than a general conversion. The evidence does disclose that DeNaeyer remitted part of the proceeds from the sale of cattle to the bank but not all of the proceeds. He used proceeds to pay for feed bills, arrearages in rents and other operating expenses. The evidence does not suggest to me that DeNaeyer benefited personally from the conversion and was proceeding only to pay bills which he owed. Unfortunately for the bank, he did not pay the bank first. I am unable to conclude that DeNaeyer converted the proceeds willfully and maliciously. The evidence does disclose that the bank refused to advance further operating funds to DeNaeyer while, at the same time, leaving the cattle in his possession and care.

Similarly, I cannot conclude that the conversion was done with the intent to hinder, delay or defraud the bank. The evidence before me does not rise to that level which persuades me that he acted with the requisite guilty intent.

Another allegation is that the defendant has failed to satisfactorily explain losses of assets or deficiency of assets to meet liabilities. However, the evidence before me discloses


in detail the disposition of the cattle and the resulting proceeds. In my view, Dr. DeNaeyer has satisfactorily explained the disposition of the cattle and other equipment, some of which remains in his possession.

All in all, the evidence discloses a dentist who entered into a cattle feeding investment and fell victim to a declining cattle market. It does not disclose an individual who acted with guilty intent in his dealings with the bank at any time. The evidence may be said to disclose conduct which the bank does not like. Nevertheless, that is not sufficient to bar discharge. If the bank had taken possession of the cattle and equipment when it deemed itself insecure, much of the problem regarding conversion of funds might have been eliminated. The evidence does not rise to the level which, in my view, should result in denial of a discharge to this defendant.

A separate order is entered in accordance with the foregoing.

DATED: August 14, 1981.

BY THE COURT:



U.S. Bankruptcy Judge

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