

statement lists 120 acres east of Tilden with a market value of \$64,000.00 which the defendant later inherited but which was not actually owned by the defendant at the time of the giving of the financial statement. In addition, when he received the inheritance, he received only a 50% interest subject to a life estate in his mother.

The statement also lists the defendant as the owner of 440 acres north of Neligh, Nebraska, at a market value of \$174,000.00. This property was never owned by the defendant and, in fact, the defendant had made a bid on the property, which bid was rejected a month before Exhibit 3 was given to the plaintiff.

The statement also lists 160 acres north of Neligh which was the property which was to be purchased by the defendant with the \$55,000.00 loan to the defendant by the plaintiff. This transaction never took place and defendant never owned this property. This property is listed as worth \$72,000.00 with a mortgage of \$55,000.00.

In fact, on December 6, 1976, plaintiff had purchased Conservative Investment Company with the result, as testified to by a representative of plaintiff, that there was no longer in existence on December 15, 1976, a takeout loan commitment.

Representatives of plaintiff testified that as a result of the loss of the takeout loan commitment, they relied solely on the financial statement dated June 24, 1976, in making their decision to renew the note on December 15, 1976. That note remains in part unpaid and is represented by a judgment as to the unpaid balance rendered by the District Court of Lancaster County, Nebraska, at Docket 310, Page 7.

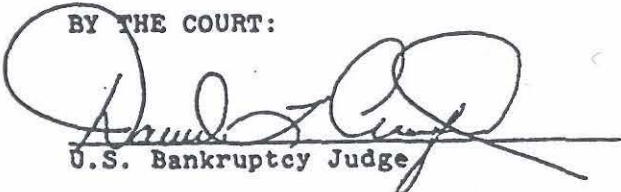
Given the testimony before me that in January, 1976, when the defendant's financial statement showed a net worth of \$120,000.00 that they would not have made an unsecured loan without the takeout loan commitment and the fact that they renewed the loan at a time when the defendant's financial statement showed a net worth of \$538,928.87 and given the large amounts of the misrepresentations, I conclude that the misrepresentations here made are material and I conclude that the plaintiff relied on the defendant's financial statement in making the loan renewal.

The defendant's defense is that although he gave the financial statement dated June 24, 1976, to the plaintiff knowing that it was false, he believed that the plaintiff was relying on the takeout loan commitment and not upon the financial statement. However, given the fact that the defendant listed on his financial statement 440 acres at a value of \$174,000.00 which he knew that he could not own because his bid had previously been rejected and especially because he listed on his financial statement the 160 acres in Neligh which the \$55,000.00 loan by the plaintiff was supposed to purchase and which the defendant never had purchased, I reject the defense offered by the defendant. Conversely, I am convinced that the defendant intended the plaintiff to rely upon the financial data supplied in the financial statement in making the decision to renew the prior loan.

A separate judgment is entered in accordance with the foregoing.

DATED: June 26, 1980.

BY THE COURT:


U.S. Bankruptcy Judge