UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

MICHAEL BRUCE SEXSON,

CASE NO. BK78-0-1046

BANKRUPT

THE FIRST NATIONAL BANK AND TRUST COMPANY OF NORTH PLATTE, A CORPORATION,

Plaintiff

VS.

MICHAEL BRUCE SEXSON,

Defendant

MEMORANDUM OPINION

In this adversary proceeding, plaintiff seeks a determination that an indebtedness due it from the defendant is nondischargeable pursuant to the false statement in writing exception of 17a(2).

On February 1, 1977, the defendant gave to the plaintiff a financial statement in an effort to obtain loans from plaintiff. The financial statement called for asset and liability information and other information regarding financial condition and also called for personal and general information. One of the questions was "Have you ever taken bankruptcy? Explain:" The defendant completed the question "No." In fact, the defendant had filed a previous bankruptcy proceeding in Denver, Colorado, in approximately December of 1968.

The answer to the foregoing question is important to the plaintiff since the bank has a policy not to grant credit to anyone who has previously filed a bankruptcy proceeding unless, in the previous bankruptcy proceeding, the bankrupt had owed a debt to the plaintiff and had reaffirmed and paid in full the debt involved in the previous bankruptcy proceeding. The general policy of the bank is based on a belief in the good faith of the bankrupt if the previous debt was reaffirmed and paid in full.

A threshold question is whether answering the question "No" constitutes the making of a "materially false statement in writing respecting his financial condition. . ." My conclusion is that it does. Given the widespread reporting of previous bankruptcies on credit reports and lenders' apparent reliance on past financial history, I conclude that knowledge of a previous bankruptcy relates to the defendant's previous financial history, his possible present ability to manage his assets and liabilities, and therefore possibly bears upon his present financial condition. Given the bank's policy I conclude that the bank relied upon the information contained in the financial statement given them by the defendant when it extended the three loans subsequently made to the defendant. Those three loans were later consolidated and there was due to the plaintiff from the defendant on July 17, 1978, a principal balance of \$7,707.41 together with interest thereon from and after that date of \$2.51 per day until paid.

The explanation given by the defendant for completing the form as he did is that he received some type of letter seven years after his Colorado bankruptcy saying everything was released and the defendant apparently concluded that everything had been eliminated. Having some familiarity with the procedures of bankruptcy courts, this Court is unable to accept that explanation. In any event, the question itself was simple to understand and could have been explained by the defendant in his answer. Defendant was aware at the time of completion of the financial document of his previous bankruptcy.

A separate judgment is entered in accordance with the foregoing.

DATED: June 2 , 1980.

BY THE COURT: Bankruptcy Judge

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