

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
 JACK LEEROY SHELTON,) CASE NO. BK79-0-152
)
 BARBARA ANN SHELTON,) CASE NO. BK79-0-153
)
 BANKRUPTS)
)
 FREMONT HORMEL EMPLOYEES)
 CREDIT UNION,)
)
 Plaintiff)
)
 vs.)
)
 JACK LEEROY SHELTON and)
 BARBARA ANN SHELTON,)
)
 Defendants)

MEMORANDUM OPINION

In this adversary proceeding, the plaintiff seeks a determination that an indebtedness due it from the defendants is nondischargeable pursuant to §17a(4) [11 U.S.C. §35a(4)] which excepts from discharge debts which:

" . . . were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity. . . "

On April 16, 1974, the defendants obtained a loan from the plaintiff in the sum of \$10,876.82 and pledged as collateral a mobile home. On June 30, 1977, the defendants entered into an agreement with Sheridine Leichleiter whereby Mrs. Leichleiter agreed to purchase the mobile home which the defendants had previously pledged to the plaintiff. The plaintiff consented in writing to the sale. However, the plaintiff continued to look to the defendants for the payments on the loan. The plaintiff suggests that because the defendants received certain payments from Mrs. Leichleiter and failed to make payments to the plaintiff, there is a breach of a fiduciary duty. However, there is no evidence before me from which I can conclude that the defendants had any kind of fiduciary relationship with the plaintiff. Their relationship was simply that of debtor-creditor and nothing more. The term "fiduciary" as used in the statutory provision has a narrow meaning, referring to technical or express trusts which exist apart from the particular transaction giving rise to the liabilities claimed to be nondischargeable and not referring to trusts implied by law from contract or trusts ex maleficio. Davis v. Aetna Acc. Co., 293 U.S. 298 (1934); 1A Collier on Bankruptcy, Section 17.24; 8 Remington on Bankruptcy, Section 3364-3367; Cowans Bankruptcy Law and Practice, Section 478. See also Bryant v. Wilson, 26 U.S.C. 2611

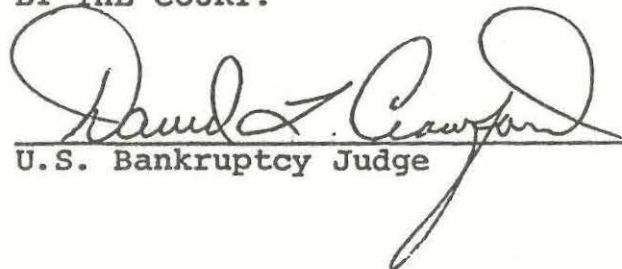
Having concluded that there is no fiduciary relationship between the defendants and the plaintiff, my finding is in favor of the defendants and against the plaintiff.

I should add that the complaint filed by the plaintiff also prays that the discharge of all the debts be denied. Section 17 of the Bankruptcy Act [11 U.S.C. §35] speaks only to certain debts being nondischargeable. In order for the entire discharge to be denied, the plaintiff must prove facts pursuant to Section 14 of the Act [11 U.S.C. §32]. There is no proof before me which is sufficient under Section 14 to deny the defendants' discharge.

A separate order is entered in accordance with the foregoing.

DATED: June 20, 1979.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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