

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

LOREN H. MYERS, )

CASE NO. BK78-L-280 )

BANKRUPT )

LEAFORD BURNETT, )

Plaintiff )

vs. )

LOREN H. MYERS, )

Defendant )

MEMORANDUM OPINION

In this adversary proceeding, the plaintiff filed his complaint for a determination that an alleged indebtedness due him from the defendant was nondischargeable in this bankruptcy proceeding. At this point, the parties have agreed to submit to the Court a stipulation of fact for a determination of whether or not the alleged indebtedness due the plaintiff from the defendant is provable and therefore dischargeable in this bankruptcy proceeding. That stipulation of fact has been submitted.

The alleged indebtedness due the plaintiff from the defendant arises by virtue of the plaintiff's cause of action against the defendant for negligence as a result of a motor vehicle accident. There is no evidence in the stipulation which would indicate that the plaintiff filed any lawsuit against the defendant which was pending at the time of the filing of this bankruptcy proceeding. Accordingly, the plaintiff's claim is not provable pursuant to §63(7) [11 U.S.C. §103(7)].

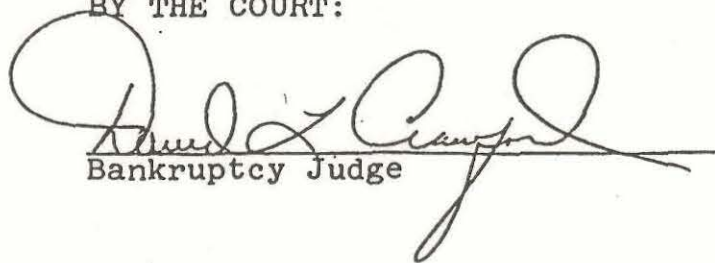
Apparently the defendant's contention is that the facts contained in the stipulation are sufficient to bring the provability of the plaintiff's claim under another portion of §63. The evidence in this regard is that the plaintiff offered to settle with defendant for \$1,000. This offer was made prior to the date this petition in bankruptcy was filed. Although defendant agreed to the amount offered by the plaintiff, his agreement to settle was conditioned upon plaintiff accepting payments on the settlement at the rate of \$100 per month without interest. Plaintiff refused to accept the \$1,000 settlement figure in installment payments. Accordingly, there clearly is no fixed liability evidenced by an instrument in writing pursuant to §63a(1) nor is there any contract, express or implied, between the parties pursuant to §63a(4).

Resulting from the foregoing is the conclusion that the indebtedness allegedly due the plaintiff from the defendant is not provable under the present Bankruptcy Act and, accordingly, is nondischargeable pursuant to §17 of the Act [11 U.S.C. §35] because that section discharges only provable debts.

A separate order is entered in accordance with the foregoing.

DATED: April 2, 1979.

BY THE COURT:

  
Bankruptcy Judge

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