

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
FAY BURDETTE BENNER,)
BANKRUPT)
LIBERTY LOAN CORPORATION,)
Plaintiff)
vs.)
FAY BURDETTE BENNER,)
Defendant)

CASE NO. BK78-L-100

MEMORANDUM OPINION

Plaintiff brought this adversary proceeding for a determination that an alleged indebtedness due it from the defendant was non-dischargeable pursuant to §17a(2) and §17a(8) [11 U.S.C. §35a(2) and (8)]. Defendant answered denying the indebtedness was non-dischargeable and entered a counterclaim alleging that the plaintiff's security agreement was void under the Iowa Uniform Consumer Credit Code and further alleged a second counterclaim which alleged that the defendant was entitled to judgment against the plaintiff because of violations by the plaintiff of the Iowa Consumer Credit Protection Act. With regard to the second counterclaim, defendant prayed for damages. Attorneys fees are applied for with regard to both counterclaims.

Plaintiff filed a motion to dismiss both counterclaims for lack of jurisdiction in this Court, for the reason that the defendant's second counterclaim was barred by a statute of limitations and for the reason that the defendant was not the proper party to assert the counterclaims.

Defendant filed a motion for summary judgment based upon her first counterclaim.

One argument made by the plaintiff with regard to the lack of standing by the defendant to raise the counterclaims is that the trustee is not alleged by the defendant to have abandoned the claim based on the Iowa Consumer Credit Code. However, the Court file contains an order approving the trustee's abandonment of that claim and the defendant has moved to amend to make the allegation. That motion will be granted.

In essence, the plaintiff's complaint alleges that it loaned money to the defendant and retained a security interest in certain of the defendant's property. The complaint alleges that the defendant willfully and maliciously converted certain of the alleged secured property.

Plaintiff is a lender and the promissory note alleged by the plaintiff was a supervised loan as defined by Ia Code Annot. Section 537.1301 (24) and (43). The loan alleged in the plaintiff's complaint, therefore, is subject to Ia Code Annot. Section 537.3301(3) which provides:

"With respect to a supervised loan, a lender may not take a security interest, other than a purchase money interest, in the clothing, one dining table and set chairs, one refrigerator, one heating stove, one cooking stove, one radio, beds and bedding, one couch, two living room chairs, cooking utensils, or kitchenware used by the consumer, his dependents, or the family with which the consumer resides."

The penalty for violation of Section 537.3301 (3) is set forth in Ia Code Annot. Section 537.3301 (4), which provides:

"A security interest taken in violation of this section is void."

In the present case, the plaintiff took a security interest in "all of the household goods now located in or about borrower's residence at their address above set forth." The security described specifically includes items prohibited under Iowa law.

Resulting from the foregoing is the conclusion that the security interest taken by the plaintiff is void under applicable law. Accordingly, the defendant cannot be said to have converted any property claimed by the plaintiff.

However, the counterclaims seek affirmative relief against the plaintiff including damages and attorneys fees. To the extent that the defendant seeks affirmative relief against the plaintiff, I conclude that this Court has no jurisdiction to grant the affirmative relief because of the following language of §17c(3):

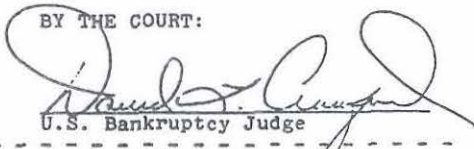
"A creditor who files such application does not submit himself to the jurisdiction of the court for any purposes other than those specified in this subdivision c." 1

Except with regard to the determination that the defendant's motion for summary judgment dismissing the plaintiff's complaint should be granted, the plaintiff's motion to dismiss should also be granted.

A separate order is entered in accordance with the foregoing.

DATED: June 28, 1979.

BY THE COURT:


U.S. Bankruptcy Judge

1. See, for example, In re Patterson, 3 Bankr. Ct. Dec. 765.