

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

ROBERT EDMUND RECH,
DEBTOR

LINCOLN BANK SOUTH,
Plaintiff

vs.

ROBERT EDMUND RECH,
Defendant

CASE NO. BK80-383

A80-234

MEMORANDUM AND ORDER

Robert Edmund Rech filed a Chapter 13 petition with this Court and presently is operating under a Chapter 13 plan. In this adversary proceeding, plaintiff seeks relief from the automatic stay of §1301(a) to pursue collection of the indebtedness owed it by Robert Rech against Opal Wulf who is a non-debtor and a co-signer of the indebtedness. Plaintiff seeks relief under §1301(c)(1).

On July 22, 1977, defendant, Robert Rech, and Opal Wulf executed and delivered Exhibit 3 to plaintiff. In consideration of such execution, plaintiff advanced \$6,000.00.

On August 1, 1978, defendant, Robert Rech, and Opal Wulf executed and delivered Exhibit 1, a second promissory note, to plaintiff. At the time \$4,424.43 remained unpaid on Exhibit 3. \$4,424.43 of the second note was applied to retire the balance of the first note and \$3,575.57 in cash was advanced. Of the cash advanced for Exhibit 1, all funds were deposited in defendant's checking account. Opal Wulf had the right to sign checks on said account. In fact, when the funds were paid out of the checking account, they were applied to debts of defendant. Opal Wulf was not liable on any of the debts that the funds were applied to and she did not receive any of the funds advanced for Exhibit 1.

Plaintiff suggests that it is entitled to relief under §1301(c)(1) because Opal Wulf "received the consideration" for the claim held by plaintiff. Plaintiff suggests this is true because Opal Wulf was relieved from liability on the earlier note when the second loan was made.

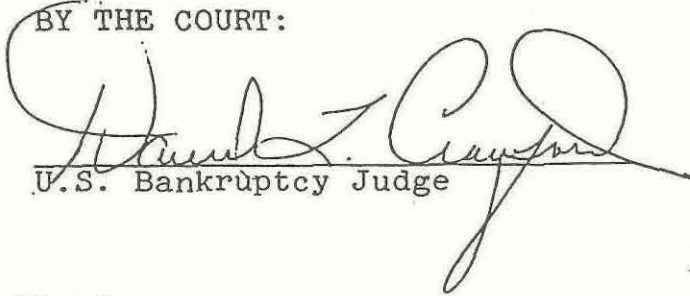
The history of §1301(a) and (c) shows that the stay was intended for that situation in which the co-debtor outside the plan merely served as a co-signator and did not receive the economic benefit of the transaction.

On the facts before me, I have been unable to conclude that Opal Wulf received any proceeds or actual economic benefit for the transaction when she remained liable on the second note. Accordingly, my conclusion is that plaintiff is not entitled to relief to proceed against Opal Wulf in view of the debtor's plan which proposes a 100% payment to unsecured creditors. Accordingly, it is

ORDERED that the complaint for relief from stay filed herein by plaintiff be, and the same hereby is, denied and dismissed.

DATED: December 2, 1980.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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