

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

ROBERT PETERSON,)

DEBTOR)

MATTHEWS CO., INC., d/b/a)
MATTHEWS SCAFFOLD & EQUIPMENT CO.,)

Plaintiff)

vs.)

ROBERT PETERSON,)

Defendant)

CASE NO. BK79-1614

A80-143

MEMORANDUM AND ORDER

In this adversary proceeding, plaintiff seeks a determination that its indebtedness is nondischargeable on the theory that the defendant obtained property by the use of false pretenses or false representations.

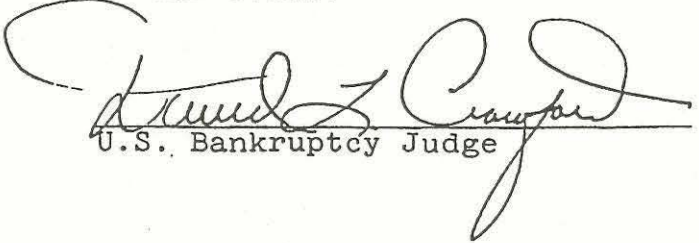
Prior to bankruptcy, defendant operated a lumberyard and construction company, the construction company being a separate corporation. On March 4, 1979, a fire destroyed the lumberyard and the equipment used by the defendant in his construction company business. Thereafter, although pressed financially, defendant attempted to continue in the construction company business and placed an order with plaintiff for replacement tools and equipment for use in that business. A dispute exists between the plaintiff and the defendant regarding whether the defendant, when he ordered the tools and equipment, represented that he was to receive fire insurance proceeds and did pay for his orders with those proceeds. It is not necessary to involve that dispute in the present case. Assuming for the purpose of argument that the defendant did make the representation, his representation was nothing more than a promise to pay in the future for credit extended with the order. If he agreed to pay from a specific fund, at most there is a breach of contract. Every creditor, when confronted with a bankruptcy discharge, experiences a breach of contract either expressed or implied.

Plaintiff suggests that the circumstances under which the defendant ordered the tools and his poor financial condition followed shortly thereafter by the bankruptcy proceeding should result in nondischargeability of this debt because it discloses the defendant's intent not to pay for the tools and equipment. However, I find as fact that the defendant's state of mind at the time he placed the order was one of a desire to continue in business and not to file bankruptcy. In accordance with the foregoing, it is

ORDERED that the plaintiff's complaint is dismissed with prejudice and the indebtedness to plaintiff from the defendant is discharged in this bankruptcy proceeding, subject to entry of a general discharge which issue is presently before the Court.

DATED: March 20, 1981.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

Bruce H. Abrahamson, Attorney, 3932 North 90th Street, Omaha, Ne. 68134

Douglas W. Marolf, Attorney, 620 North 48th Street, No. 209, Lincoln, Ne. 68508