

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
DONACIANO E. BACA, ) CASE NO. BK78-0-762  
 )  
BANKRUPT )  
 )  
MID CITY BANK, INC., )  
a Nebraska Banking )  
Corporation, )  
 )  
Plaintiff )  
 )  
vs. )  
 )  
DONACIANO E. BACA, )  
 )  
Defendant )

MEMORANDUM OPINION

In this adversary proceeding, the plaintiff seeks a determination that two debts due it from the defendant are nondischargeable pursuant to the false financial statement in writing exception of §17a(2)[11 U.S.C. §35a(2)].

On February 23, 1979, defendant, Donaciano E. Baca, was adjudicated bankrupt upon order of the Bankruptcy Court after having been in proceedings for arrangement under Chapter XI of the Bankruptcy Act. At the time of his bankruptcy, Dr. Baca was indebted to plaintiff, Mid City Bank, in the total principal amount of \$115,226.75, owing \$55,174.99 in principal on a note he signed on September 11, 1975, and \$60,051.76 in principal on a note he signed on January 9, 1976.

Referring to the September 11, 1975, note referred to above, the defendant became indebted to plaintiff in the amount of \$107,893.80, such debt to be paid in eighty-four monthly installments of \$1,284.45 each. Such debt was secured by an "assignment of all office furniture and equipment now owned and hereafter acquired", and twenty units of stock of United Service Company. The bank's security interest in this collateral was perfected by filing on September 19, 1975. This note was both a renewal of prior notes and an extension of a fresh cash advance.

Referring to the January 9, 1976, note, the bank loaned Dr. Baca \$138,751.70, which was to be repaid in one-hundred-nineteen monthly installments of \$1,156.26 each. In connection with this loan, Dr. Baca granted the bank a security interest in a 1975 Cadillac Eldorado, eighty-two shares of AT&T stock, and a real estate mortgage on Lot 5, Block 9, Papillion, Nebraska.

Prior to the making of the September 11, 1975, extension of credit, Dr. Baca had presented to the bank the statement of his financial condition dated June 1, 1974, which showed assets of \$375,920.00 and liabilities of \$140,350.00, leaving a net worth of \$235,570.00. That statement also lists machinery, fixtures and equipment of a value of \$65,000.00. Prior to the September 11, 1975, note also, Dr. Baca presented a financial statement dated April 1, 1975, to the bank which showed assets of \$570,000.00 and liabilities of \$164,000.00, leaving a net worth of \$406,000.00. That financial statement showed office furniture and equipment of \$75,000.00 and accounts receivable (current) of \$100,000.00 with an additional accounts receivable (doubtful) of \$10,000.00.

In fact, on approximately April 1, 1975, Dr. Baca's accounts receivable were in the neighborhood of \$58,000.00. In addition, on April 1, 1975, and on September 11, 1975, and, in fact, on January 9, 1976, Dr. Baca did not own his office furniture and equipment but was leasing it.

The foregoing two points are the plaintiff's main contention that the financial statement given by the defendant to the plaintiff was materially false. Given the fact that the office furniture and equipment is listed at approximately \$75,000.00 and that the accounts receivable are overstated to at least \$40,000.00, I conclude that the statements are materially misleading within the meaning of the statutory section. In addition, I am persuaded that the plaintiff relied, at least in part, on the financial statements given by the defendant to the plaintiff. Clearly they relied on the financial statement on the granting of the first loan because they took a security interest in the defendant's office furniture and equipment. In addition, plaintiff had little additional information before it in making the decision to make the second loan.

Dr. Baca's testimony indicates two defenses. With regard to the office furniture and equipment, although Dr. Baca knew that the office furniture and equipment was under lease, his testimony would indicate that he believed he entered into the lease agreement only to obtain tax deductions for the lease payments and, in fact, asserts he believed that the equipment was his. His accountant testified to a different conclusion and so showed the conclusion on the defendant's tax returns.

With regard to the amount shown as accounts receivable, Dr. Baca testified that he consulted no member of his staff in arriving at the conclusion nor did he consult his accountants. He testified that he estimated the accounts receivable based upon how hard he was working and the amount of surgery he was doing.

My conclusion with regard to the foregoing defenses is that Dr. Baca acted with such an utter disregard of the true state of facts or legal situation as to amount to the same thing as acting with intent to deceive. Dr. Baca testified that he knew that he was receiving credit from the bank and that these financial statements were to be as accurate as possible.

I should add that there is evidence before me which discloses that Dr. Baca is not an accomplished businessman. From this evidence, I gather that the argument is that Dr. Baca simply made an honest mistake and should not be held accountable. While the argument is tempting, businessmen and professional people who have access to accomplished financial advisors are generally held to higher standards than ordinary consumers. However, in

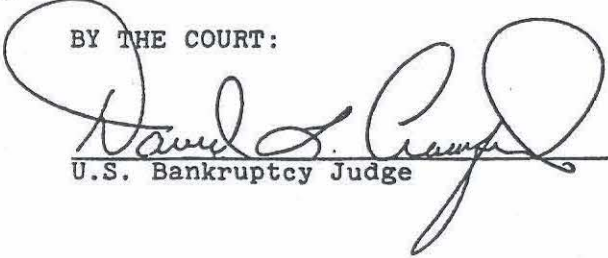


this case, I am unpersuaded that the defense can prevail.

A separate order is entered in accordance with the foregoing.

DATED: June 30, 1980.

BY THE COURT:

  
U.S. Bankruptcy Judge

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