

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
ELDON SVOBODA,) CASE NO. BK78-L-252
BANKRUPT)
NEBRASKA STATE BANK,)
Plaintiff)
vs.)
ELDON SVOBODA,)
Defendant)

MEMORANDUM OPINION

Plaintiff brought this action for a determination that an indebtedness due it from the defendant is nondischargeable in this bankruptcy proceeding pursuant to the false financial statement in writing exception of §17a(2) [11 U.S.C. §35a(2)].

Prior to bankruptcy, defendant had been a loan customer of the plaintiff for a number of years. Defendant was engaged in a ranching operation and plaintiff had previously made loans to defendant which were secured by the defendant's livestock and ranch machinery and equipment. On June 23, 1977, defendant signed a renewal promissory note with plaintiff which renewed a prior loan and also gave defendant some additional cash. The June 23, 1977, promissory note was in the principal amount of \$71,000.00. At the time of the renewal, representatives of plaintiff advised defendant that they considered this loan a poor risk for the bank and asked that the defendant obtain replacement financing from some other source or liquidate sufficient of his herd to eliminate the indebtedness due the plaintiff. Also at the time of the renewal, defendant executed a supplemental security agreement which indicated

that the defendant had 520 cattle in his herd with a breakdown of the various types of cattle reportedly owned by the defendant. The supplemental security agreement signed by the defendant meets the statutory requirements of a financial statement in writing. In fact, the defendant admits that the supplemental security agreement which showed that he owned 520 cattle on June 23, 1977, was false and that he did not own that number of cattle on that date. Representatives of plaintiff relied on the representation that defendant had 520 cattle on that date in deciding to renew the loan.

The information contained on the supplemental security agreement was placed there based upon information which representatives of the plaintiff obtained from the defendant.

At a later time, representatives of plaintiff made the decision to take possession of the defendant's herd and liquidate it to apply on their unpaid loan. The amount of cattle actually in the possession of the defendant at that time was minimal when compared with the representation that he owned 520 cattle on June 23, 1977. After liquidation of all security for this loan and application of the proceeds on the unpaid loan, there remains as of the date of trial an unpaid balance of \$45,241.29 plus interest to the date of trial of \$12,634.30 with interest accruing thereafter on a daily basis of \$13.5955.

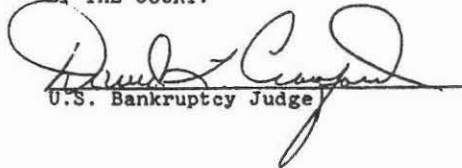
Defendant attributes the loss of a significant amount of his herd to deaths resulting from severe weather conditions and disease. However, the bulk of this loss occurred prior to June 23, 1977. At June 23, 1977, defendant admits that he was aware that if his herd were liquidated, the proceeds would be insufficient to pay off the loan at plaintiff. In addition to the significant loss of cattle, the market was apparently depressed. Defendant failed to mention to plaintiff any significant loss of cattle and, in fact, mentioned only a small loss. Having heard the evidence, this Court concludes that the defendant executed the supplemental security agreement either with the knowledge that it was not correct or with such an utter disregard for its

accuracy as to amount to the same thing. Resulting from the foregoing is the conclusion that the defendant gave the representation of his financial condition in writing with the intent to deceive the plaintiff and that the plaintiff relied upon the representation of his financial condition in making the loan renewal. Accordingly, the indebtedness is nondischargeable in this bankruptcy proceeding.

A separate order is entered in accordance with the foregoing.

DATED: December 26, 1979.

BY THE COURT:


U.S. Bankruptcy Judge

Copies mailed to each of the following:

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