

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

HENRY JAMES WHEELER, )

BANKRUPT )

POSTAL FINANCE COMPANY, )

Plaintiff )

vs. )

HENRY JAMES WHEELER, )

Defendant )

CASE NO. BK78-0-924

MEMORANDUM OPINION

In this adversary proceeding, plaintiff seeks a determination that an indebtedness due it is nondischargeable pursuant to the false statement in writing regarding financial condition exception of §17a(2) [11 U.S.C. §35a(2)].

On October 25, 1977, Mr. Wheeler purchased jewelry from Brodkeys on credit. This chattel paper was subsequently sold to Postal Finance Company.

On November 30, 1977, Mr. Wheeler approached Postal regarding an additional loan of \$200.00 which was granted with the previous extension of credit and the new fresh cash being combined in one loan.

On March 10, 1978, Mr. Wheeler approached Postal again for an additional advance for fresh cash and was granted the sum of \$1,139.68 with the prior note being combined with the fresh cash in a new note.

In each instance, Postal suggests that it was given a false financial statement by Mr. Wheeler which failed to disclose certain debts owed by Mr. Wheeler.

There is no evidence before me to support the allegation that any representative of plaintiff relied on any financial information given by Mr. Wheeler for the extension of credit on the initial purchase of the chattel paper or the November 30, 1977, extension of fresh cash and renewal. Accordingly, the plaintiff has failed to sustain its burden with regard to these two transactions.

The evidence, arguably, is different with regard to the third transaction. Here, the evidence is, that Mr. Wheeler gave financial information which omitted an indebtedness due the Asarco Omaha Federal Credit Union, an indebtedness due Prudential Insurance Company, and six obligations on which Mr. Wheeler had co-signed on behalf of third parties to the Asarco Federal Credit Union.

Nevertheless, the evidence before me discloses that Mr. Wheeler disclosed his personal obligation to the Asarco Federal Credit Union and was advised that he did not have to list the indebtedness since it was deducted directly from his check and the loan was based on his net income.

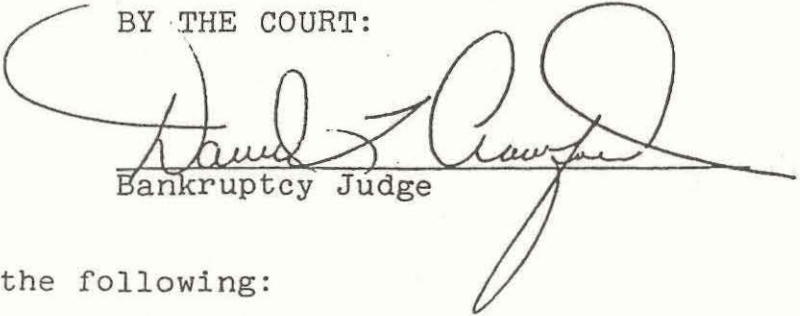
My conclusion with regard to the indebtedness due the Prudential Insurance Company is that the loan was taken out any number of years ago against the cash surrender value and that Mr. Wheeler did not think of the indebtedness as a bill. In fact, he was advised only to list his bills which I conclude led Mr. Wheeler to believe that he was obligated to list only those debts on which he owed current payments. My conclusion is that Mr. Wheeler did not omit the indebtedness due Prudential Insurance Company with the statutorily required intent to deceive.

Lastly, I conclude that Mr. Wheeler viewed his co-signing of notes with third parties as something less than a bill which he owed. Mr. Wheeler had worked for Asarco for approximately twenty-seven years and apparently had co-signed any number of loans previously. During the entire twenty-seven years, he had never been asked to pay on any loan which he had co-signed. None of the loans on which he legally was obligated on March 10, 1978, were in default on that date and I conclude that he did not view them as bills on which he had current liability. Mr. Wheeler's state of mind is important as opposed to his actual legal obligation. I conclude that his omission to list the creditors was without the requisite guilty scienter.

Resulting from the foregoing is the conclusion that the plaintiff has failed to meet its burden. A separate order is entered in accordance with the foregoing.

DATED: January 10, 1979.

BY THE COURT:

  
Bankruptcy Judge

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