

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
 RANDALL LeGRANDE BARKER,) CASE NO. BK79-0-133
 CAROL LEE BARKER,) CASE NO. BK79-0-134
)
 BANKRUPTS)
)
 RALSTON BANK,)
)
 Plaintiff)
)
 vs.)
)
 RANDALL LeGRANDE BARKER and)
 CAROL LEE BARKER,)
)
 Defendants)

MEMORANDUM OPINION

In this adversary proceeding, plaintiff seeks a determination that an indebtedness due it is nondischargeable pursuant to the willful and malicious conversion of property of another exception of §17a(2)[11 U.S.C. §35a(2)].

Prior to bankruptcy, defendants borrowed money from plaintiff for the purpose of purchasing a 1977 Ford Thunderbird automobile. Defendants agreed to pledge the 1977 automobile as collateral for the loan. Plaintiff disbursed the money but the defendants failed to provide plaintiff with the title to the automobile. The automobile was subsequently pledged to the Safeway Omaha Employees Federal Credit Union in exchange for a separate loan. Upon the defendants' default on the Safeway loan, the automobile was repossessed by Safeway Omaha Employees Federal Credit Union, sold, and the balance over and above the amount of the loan sent to the plaintiff for credit upon its indebtedness. The plaintiff's theory is that when the defendants pledged the automobile to the Safeway Credit Union, the defendants converted collateral which was to be pledged to the plaintiff and that the conversion was willful and malicious within the statutory language.

The evidence before me discloses that the defendant, Randall LeGrande Barker, was not in the city at the time Mrs. Barker obtained the loan from the Safeway Credit Union. It is true that he signed certain documents but he did so at a time when he was living out of the state of Nebraska. Accordingly, there is no evidence before me to disclose that Randall LeGrande Barker acted with the requisite guilty scienter. In his case, my finding is in favor of the defendant and against the plaintiff.

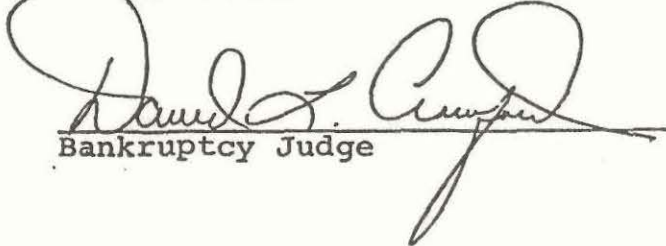
However, in the case of Carol Lee Barker, there is testimony before me which discloses that Mrs. Barker knew that the practice was for the bank to hold the title to automobiles financed through the bank. Notwithstanding that, Mrs. Barker failed to deliver the

automobile title to the plaintiff and, in fact, delivered it to Safeway Credit Union in exchange for a loan. Given Mrs. Barker's knowledge that the plaintiff was to have possession of the title, I conclude that her conduct falls within the statutory language previously quoted. In her case, my finding is in favor of the plaintiff and against the defendant.

A separate order is entered in accordance with the foregoing.

DATED: May 30, 1979.

BY THE COURT:


Bankruptcy Judge

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