

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

CHERYL LANE RUBEL,)

BANKRUPT)

SOUTHWEST BANK OF OMAHA,)

Plaintiff)

vs.)

CHERYL LANE RUBEL,)

Defendant)

CASE NO. BK78-0-1586

MEMORANDUM OPINION

On June 15, 1978, Mrs. Rubel obtained a loan in the principal amount of \$450.00 from the plaintiff. On August 1, 1978, Mrs. Rubel obtained an additional loan from the plaintiff in the principal amount of \$3,200.00 for the purpose of purchasing a 1975 Chevrolet Monte Carlo. On September 26, 1978, because the 1975 Chevrolet needed repairs, Mrs. Rubel obtained additional money from plaintiff for the repairs and rewrote the August 1, 1978, note. Plaintiff took security for the first loan of the household goods owned by Mrs. Rubel. The 1975 Chevrolet was to be collateral for the second two loans. Plaintiff's position is that the loans were obtained by the use of a false financial statement in writing within the statutory language of §17a(2) and, in addition, that the defendant willfully and maliciously converted the 1975 Chevrolet automobile also within the statutory language of §17a(2).

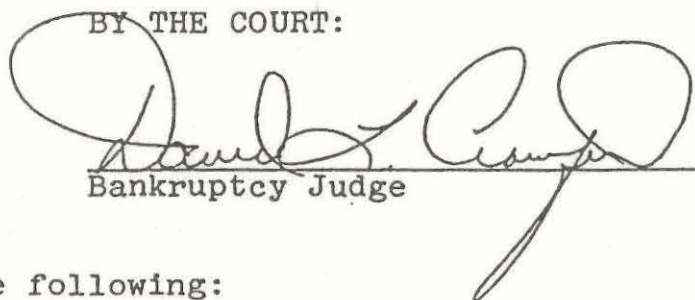
With regard to the argument with regard to false financial statements, it is true that Mrs. Rubel gave to the bank at the time of the first loan a financial statement in writing signed by her which is technically false. However, based upon the evidence before me, I conclude that Mrs. Rubel did so under the honest but mistaken belief that debts incurred in a marriage in which a divorce proceeding was pending were to be taken care of by her husband and that she would have no obligation to pay them. I make the same finding with regard to the financial statement given by Mrs. Rubel at the time of the second loan. In addition, my conclusion is that the plaintiff did not rely in any meaningful way on the financial statements in its decision to make the loan but, rather, relied upon the security interest taken in the household goods and in the 1975 Chevrolet automobile. There is no financial statement given to the plaintiff by the defendant with regard to the third loan transaction.

Alternatively, the plaintiff suggests that the defendant failed to obtain the title to the 1975 Chevrolet in her name and, subsequently, to forward the title in her name to the plaintiff so that its security interest could be perfected. The evidence before me discloses that the title was never obtained in Mrs. Rubel's name and remains to this date in the name of her seller. At one point Mrs. Rubel did send this title to the plaintiff. I have difficulty concluding that there is any act of conversion present. It is possible that there is a breach of an agreement by Mrs. Rubel but every creditor, when confronted with a bankruptcy discharge, experiences a breach of agreement either express or implied. Nevertheless, if there is some kind of conversion present in Mrs. Rubel's failure to obtain the title in her name and to send it to the plaintiff, there is no evidence before me which convinces me that her failure to do those acts was in any way motivated by the requisite guilty scienter sufficient to constitute willful and malicious conversion. I should add that the plaintiff at all times upon the failure to receive the car title was at liberty to call the loan in an effort to obtain either the automobile or the title so that its security interest could be properly noted.

My finding is in favor of the defendant and against the plaintiff. A separate order is entered in accordance with the foregoing.

DATED: May 30, 1979.

BY THE COURT:



Bankruptcy Judge

Copies mailed to each of the following:

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