UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
LESLIE DUANE WILLMOTT,	)	CASE NO. BK78-0-1103
BANKRUPT	)	
WASHINGTON COUNTY BANK,	)	
Plaintiff	)	
vs.	)	
LESLIE DUANE WILLMOTT,	)	
Defendant	)	

APPEARANCES:

for plaintiff: William J. Tighe
317 Lakin Bldg.
8990 West Dodge Rd.
Omaha, Ne. 68105

for defendant: Seb Caporale
505 Elkwood Mall
Center Shopping Center
Omaha, Ne. 68105

MEMORANDUM OPINION

In this adversary proceeding, Washington County Bank seeks a determination that an indebtedness due it from Mr. Willmott is nondischargeable in this bankruptcy proceeding pursuant to the "false pretenses or false representations" exception of §17a(2) [11 U.S.C. §35a(2)]. The indebtedness which the Bank claims is nondischargeable is a loan which the Bank made to the defendant on January 25, 1978, in the principal amount of $53,534.08. Part of the loan remains unpaid.

Prior to bankruptcy, the defendant was engaged in a farming operation. Following the harvest of his 1976 corn crop, the defendant placed in storage on properties controlled by him 9,990 bushels of corn from the 1976 corn crop. The defendant then obtained from Commodity Credit Corporation a loan in the amount of $15,184.80. As security for that loan, the defendant executed a farm storage note and security agreement covering the 1976 corn which he had previously stored.

Again in 1978, following the harvest of his 1977 corn crop, the defendant placed in storage on his property approximately 20,500 bushels of corn and reapplied to Commodity Credit Corporati for another loan. The defendant received a loan from Commodity Credit Corporation of $40,905.00 and again pledged the stored corn as collateral for the loan under a farm storage note and security agreement.

Unknown to Commodity Credit Corporation at this time, the defendant had sold most of the 1976 corn which was collateral for the previous loan to defendant to Commodity Credit Corporation The sale of the pledged corn was in direct violation of the agreement defendant had with Commodity Credit Corporation. The second loan to defendant by Commodity Credit Corporation was made December 7, 1977.

After the second loan, Commodity Credit Corporation, through its agents, discovered the missing 1976 corn and called both loans

At all times relevant hereto, defendant was experiencing serious financial difficulties. In fact, the plaintiff had at one point declined to extend further credit to defendant and demanded all loans then pending be paid on the due dates. Thereafter defendant did obtain some financing from plaintiff through the use of a co-signer.

In January, 1978, following Commodity Credit Corporation's calling of both loans, defendant approached plaintiff for the purpose of obtaining an additional loan. On his first contact with plaintiff, defendant told a representative of plaintiff that he was going to utilize the proceeds of the proposed loan from plaintiff to pay off Commodity Credit Corporation on the 1977 sealed corn and sell the corn to a local grain buyer. This proposal met with a favorable response from the plaintiff.

Thereafter, before the loan was actually made, defendant returned to the plaintiff and advised that he wanted to redeem the 1977 corn from Commodity Credit Corporation and also wanted to buy an additional 8,000 bushels of corn to add to the 20,000 bushels of corn which were sealed with Commodity Credit Corporation and sell the entire 28,000 bushels to the grain buyer in fulfillment of contracts of sale which he held with that buyer. Defendant believed that by doing much of the labor himself, he could show a profit on the additional 8,000 bushels as well as the 20,000 sealed corn. In reliance on the representations by the defendant as to his intended course of conduct, plaintiff agreed to make the loan as requested which included money to buy the additional 8,000 bushels.

Plaintiff contacted the grain buyer to verify the defendant's contracts to sell with the buyer and verified the amount due Commodity Credit Corporation on the 1977 sealed corn.

On January 25, 1978, defendant signed the promissory note to plaintiff in the amount of $54,213.55. Plaintiff prepared a check in the amount of $37,813.55 payable to Commodity Credit Corporation and mailed that check to Commodity Credit Corporation in payment of the loan balance due on the 1977 corn crop. Plaintiff also prepared a check in the amount of $16,400.00 payable to the defendant and gave the check to the defendant. This transaction would have been a secured transaction because plaintiff held a security interest in all defendant's farm property which contained a hereafter advanced clause.

Instead of using the $16,400.00 which the plaintiff advanced to defendant for the purchase of the additional 8,000 bushels of corn, defendant proceeded on the same day to another bank at which he cashed the plaintiff's check, obtained a cashier's check payable to Commodity Credit Corporation in the amount of $16,314.30 and delivered that check to Commodity Credit Corporation in the payment of the 1976 corn crop loan.

Plaintiff had no knowledge of defendant's indebtedness to Commodity Credit Corporation for the 1976 corn crop loan nor did it have knowledge that the defendant had sold most, if not all, of the 1976 corn crop which was pledged to Commodity Credit Corporation. Plaintiff never did purchase the additional 8,000 bushels of corn. Much of the defendant's corn which still remained in existence was delivered to the grain buyer previously mentioned but not all of the payments were remitted to the plaintiff.

Ultimately, plaintiff took possession of the items of security which it claimed under its security agreement, sold them and applied the proceeds on various loans with defendant. There remains unpaid to plaintiff the sum of $35,116 plus $1,470.95 interest to October 18, 1978, together with $8.6587 a day interest after October 18, 1978.

Having heard the evidence, the Court is convinced, based upon a preponderance of the evidence, that in January, 1978, when the defendant approached the plaintiff about the possibility of a loan to pay off Commodity Credit Corporation on the 1977 corn and to purchase an additional 8,000 bushels of corn for resale, the defendant intended for the plaintiff to rely on his representation of his intended course of conduct and that the plaintiff, in fact, did rely on the defendant's representation of his intended course of conduct. This finding is supported by the fact that the plaintiff had previously declined to extend credit to the defendant.

Contrary to the defendant's expressed intent, the Court concludes that the defendant did not, in fact, intend to purchase the additional 8,000 bushels of corn but intended to use the proceeds of the loan from plaintiff to clear his financial difficulties with Commodity Credit Corporation. A review of the security agreement taken by Commodity Credit Corporation on the 1976 corn supports that conclusion, particularly in view of the fact that the security agreement points out various civil and criminal penalties which might be imposed upon defendant for conversion of collateral under the agreement.

As a result of the foregoing, the Court concludes that the indebtedness incurred by defendant with plaintiff was incurred with the use of "false pretenses or false representations" and is nondischargeable in this bankruptcy proceeding.

A separate judgment is entered in accordance with the foregoing.

DATED: December 19, 1979.

BY THE COURT:

U.S. Bankruptcy Judge

Copies mailed to each of the following:

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