

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

KENNETH C. HARGIS,

DEBTOR

YOUNKER BROS., INC., a corporation,
d/b/a Younkens Kilpatrick's,

Plaintiff

vs.

KENNETH C. HARGIS,

Defendant

CASE NO. BK80-59

A80-188

MEMORANDUM AND ORDER

Prior to bankruptcy, Kenneth C. Hargis held credit card privileges with Younker Bros., Inc. Younker Bros., believing it is the victim of a credit card spree on the eve of bankruptcy, brought this adversary proceeding for a determination that the indebtedness due it is nondischargeable in this bankruptcy proceeding pursuant to §523a(2) as an indebtedness:

"for obtaining money, property, services,
or an extension, renewal, or refinance of
credit, by--

- (a) false pretenses, a false representation,
or actual fraud. . ."

Mr. Hargis held credit card privileges for a number of years with plaintiff prior to bankruptcy. The evidence discloses that at some time prior to bankruptcy, Mr. Hargis received a divorce from his former wife and apparently by March of 1979 was experiencing some financial difficulty. However, his account with Younkens was relatively current until October 1, 1979. Mr. Hargis testified at trial that he had purchased some drapes in approximately mid-year of 1979 but that the drapes had to be fitted and he was not billed for them until they were installed. The records of Younkens indicate that he was billed for drapes and related hardware in October and November, 1979. Apparently by the time he was billed for the drapes, his financial condition had worsened and he was receiving dunning letters from the company which leased him his automobile and a credit union. However, I am persuaded by preponderance of the evidence that at the time Mr. Hargis ordered the drapes he was not acting with a state of mind sufficient to charge him with false pretenses or false representation in charging merchandise and leading Younkens to improperly believe that he would repay the debt.

In addition, during October and November, 1979, Mr. Hargis's former wife charged some \$81.52 to his account at Younkers. Deducting this amount from the total of charges together with the amount of charges for drapery purchases of \$631.15 leaves charges during the months of October and November of \$433.58.

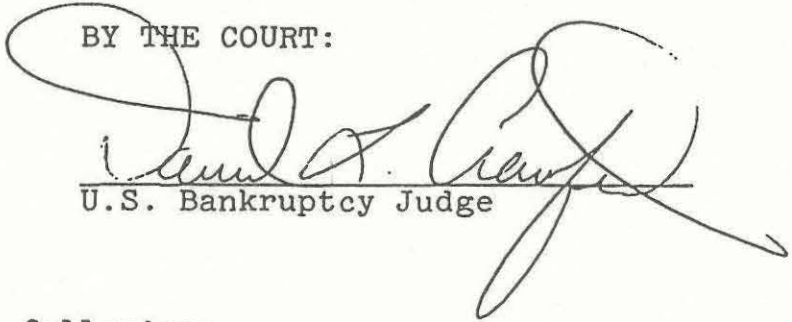
Having observed Mr. Hargis's testimony at trial and his demeanor at trial, I am unpersuaded by preponderance of the evidence that Mr. Hargis acted during any period of time up to the date of his petition in bankruptcy with the intent not to repay Younkers for the merchandise charged to him. Accordingly, I find that plaintiff has failed to meet its burden of proof and the indebtedness is dischargeable in its entirety. Accordingly, it is

ORDERED that the plaintiff's complaint be, and the same hereby is, denied and dismissed; and it is further

ORDERED that the entire indebtedness due plaintiff from the defendant in this bankruptcy proceeding be, and the same hereby is, discharged.

DATED: December 3, 1980.

BY THE COURT:


U.S. Bankruptcy Judge

copies mailed to each of the following:

Robert Beach, Attorney, 2917 Paddock Plaza, Omaha, Ne. 68124

David B. Latenser, Attorney, 13262 Millard Avenue, Omaha, Ne. 68137