

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ILLINOIS

In Re )  
 ) In Bankruptcy  
GENE ALAN KUTTIN )  
 d/b/a R & G Farms, Inc) No. 96-30454  
ROBYN REENE KUTTIN )  
 )  
 Debtors. )  
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 )  
AGRIBANK, FCB, )  
 )  
 Plaintiff, )  
 )  
v. ) Adversary No. 96-3112  
 )  
GENE ALAN KUTTIN )  
ROBYN REENE KUTTIN, )  
 )  
 Defendants. )

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come before the Court for trial in the above-captioned adversary, and the Court, having heard sworn testimony and arguments of counsel and being fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

1. Plaintiff, AgriBank, FCB, has filed a two count complaint in this cause against Defendants, Gene Alan Kuttin and Robyn Reene Kuttin, seeking denial of their discharge under various subsections of 11 U.S.C. § 727 and also exception to the Defendants' discharge under various subsections of 11 U.S.C. § 523.

2. By separate order of this Court, the Defendant, Robyn Reene Kuttin, and Plaintiff stipulated that the indebtedness to

Plaintiff as it related to Robyn Reene Kuttin will be excepted from discharge under 11 U.S.C. § 523 and Plaintiff voluntarily dismissed its complaint as to Defendant, Robyn Reene Kuttin, under 11 U.S.C. § 727.

3. The Court has entered an Order approving the stipulation as to the Defendant, Robyn Reene Kuttin, and, therefore, facts involving her conduct will only be set forth to the extent necessary for clarity in this Court's findings and conclusions of law.

4. In the 1990's, the Kuttins farmed through a solely owned corporation known as "R & G Farms, Inc.", of which the Defendant, Gene Kuttin, was the sole stockholder and president, and Robyn Kuttin was the secretary.

5. By 1991, virtually all of the assets, including farms, cattle and commodities which were involved in the Debtors' farming operation were titled and earned in the name of R & G Farms, Inc.

6. R & G Farms, Inc. and the Defendants individually were indebted to the Plaintiff on a secured note which was secured by a first lien on all real estate owned by R & G Farms, Inc. and a second lien on R & G's machinery behind the lien of the Peoples Bank of Gillespie, which also was a prior lienholder on R & G's crops.

7. In 1993, Plaintiff proceeded with a foreclosure of its mortgage and in the same state court case sought a money judgment against R & G Farms, Inc. and the Defendants individually. (See records of Madison County Case No. 92-CH-307 admitted into evidence). When the state court trial was scheduled, R & G Farms, Inc. filed a Chapter 12 bankruptcy proceeding in early 1993, which stayed the state court proceedings against R & G. A money judgment was entered in favor

of AgriBank, FCB and against Mr. and Mrs. Kuttin in the amount of \$643,847.22.

8. Thereafter, in the fall of 1993, citations to discover assets were served on the individual Defendants with the original hearing to be in October of 1993. That hearing was continued until December 2, 1993, by request of the Debtors' counsel.

9. Under Illinois law, citations to discover assets operate as an injunction against the transfer and disposal of assets belonging to the judgment defendants and also create a lien on the debtors' personal property. 735 ILCS 5/2-1402.

10. In the fall of 1993 and early 1994, while the R & G Chapter 12 bankruptcy was pending, Mr. Kuttin directed that crops belonging to R & G Farms, Inc. be paid by the elevator in checks written to his wife, Robyn. The Debtors thereafter disposed of the funds in violation of the citation injunction and subsequent sequestration order by the Circuit Court of Madison County. The Court notes that these funds were not placed in the Chapter 12 corporation's debtor-in-possession account.

11. At the Bankruptcy Rule 341 meeting in the Kuttins' personal bankruptcy, the Defendant, Gene Alan Kuttin, testified under oath that the monies paid to his wife, Robyn Reene Kuttin, were "wages" owed to her by R & G Farms. These "wages" totaled over \$89,000.00 during this period and were not declared by the Debtors as wages in their bankruptcy schedules in this case or on their federal income tax returns.

12. At trial of this adversary proceeding, Mr. Kuttin

testified that the monies paid to his wife were not wages nor were they crop monies belonging to R & G Farms. Mr. Kuttin testified at trial that the monies paid through the Walshville Elevator were gifts to his wife and himself from friends and family members. Mr. Kuttin offered no substantiation or proof that these were in fact gifts nor has he explained why the allegedly donated crop was marketed primarily in his wife's name. The Court further notes that the Plaintiff's representative who attended all prior state court hearings testified that Mr. Kuttin has previously consistently stated in open court that all crops sold at the Walshville Elevator belonged to R & G Farms, Inc.

13. The Court finds that the testimony of Defendant, Gene Alan Kuttin, at the 341 meeting and at the trial before this Court concerning the crops constitutes a false oath in violation of 11 U.S.C. § 727(a)(4).

14. The Court further finds that the Defendant, Gene Alan Kuttin, has failed to explain satisfactorily the loss or deficiency in the crop monies in violation of 11 U.S.C. § 727(a)(5).

15. Further, the transfer or disposal of these crop monies in violation of the state court citation and sequestration orders damaged the Plaintiff which had a junior lien position on these crops. The Court finds that the amount of crops disposed of by the Defendant, Gene Alan Kuttin, individually or in conjunction with his wife, exceeds the amount still remaining due Plaintiff under its judgment. This disposal or diversion of assets by the Defendant, Gene Alan Kuttin, constitutes a violation of 11 U.S.C. § 523(a)(6).

16. At the time he filed his bankruptcy proceeding, the

Defendant, Gene Alan Kuttin, and his now ex-wife, Robyn, were the record title holders of a 1990 Lincoln Town car, which the Debtors has purchased in approximately 1991 and maintained continued possession thereof thereafter. The Debtors' schedules did not disclose an ownership interest in or possession of the Lincoln although Mr. Kuttin was well aware that at a minimum he possessed said automobile. This nondisclosure constitutes a false oath on the part of the Defendant, Gene Alan Kuttin, under 11 U.S.C. § 727(a)(4)(A).

17. Within a year of filing his bankruptcy petition, the Defendant, Gene Alan Kuttin, knowingly transferred or concealed his ownership interest in a Ford pickup truck in violation of 11 U.S.C. § 727(a)(3).

18. Based upon Gene Kuttin's demeanor as a witness, what he said, how he said it, and how it related to the documentary evidence and the testimony of other witnesses, the Court concludes that he was not a credible witness. His testimony was both inconsistent and implausible.

19. Based upon the aforesaid findings the discharge of the Defendant, Gene Alan Kuttin, should be denied and an order denying said Defendant's discharge shall be entered.

20. Alternatively, the Court finds that sufficient evidence was produced to except the debt to the Plaintiff from discharge under the cited provisions of 11 U.S.C. § 523 and an order to that effect shall also be entered.

ENTERED: December 5, 1996

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/s/ LARRY LESSEN  
UNITED STATES BANKRUPTCY JUDGE