

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
LARRY L. QUANDT and) Bankruptcy Case No. 01-60271
PEGGY L. QUANDT,)
)
Debtors.)
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)
FARM CREDIT LEASING)
CORPORATION,)
)
Plaintiff,)
)
vs.) Adversary Case No. 01-6018
)
LARRY L. QUANDT and)
PEGGY L. QUANDT,)
)
Defendants.)

OPINION

This matter having come before the Court for trial on Plaintiff's amended Complaint to determine dischargeability of debt under 11 U.S.C. §523(a)(2)(A) and (B) and 11 U.S.C. §523(a)(6); the Court, having heard sworn testimony and arguments of counsel and being otherwise 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.

Findings of Fact

The material facts in this matter are not in serious dispute, and are, in pertinent part, as follows:

1. On May 4, 1998, Farm Credit Leasing Corporation (Plaintiff) entered into a Lease Agreement and Transportation Addendum with the Defendant, Larry L. Quandt, Sr., and Larry L. Quandt, Jr., d/b/a Q-Farms for the lease of a 1996 Willmar 765 XT air ride post emerge sprayer, Serial No. 0079500416.

2. On May 15, 1998, the Plaintiff filed a UCC-1 financing statement in the office of the Secretary of State, State of Illinois, in Springfield, Illinois, describing the leased equipment and the transaction between the Plaintiff and the Defendant, Larry L. Quandt, Sr.

3. In March 1999, Defendant, Larry L. Quandt, Sr., held a farm auction, at which time he sold the 1996 Willmar 765 XT air ride post emerge sprayer, described above, for the sum of \$52,500.

4. Defendant, Larry L. Quandt, Sr., did not advise the Plaintiff that he intended to sell the subject sprayer, nor did he request the Plaintiff's permission to sell the leased sprayer at the March 1999 farm auction.

5. Following the sale of the subject sprayer, the Defendant, Larry L. Quandt, Sr., did not pay the proceeds from the sale of the sprayer to the Plaintiff.

6. On or about May 1, 1999, Defendant, Larry L. Quandt, Sr., did make an annual payment to the Plaintiff, pursuant to the terms of the contract between the parties, in the amount of \$11,182.83.

7. The Defendant, Larry L. Quandt, Sr., admitted that he knew he did not own the leased sprayer at the time of the March 1999 farm auction, and, in fact, indicated that he had called Plaintiff, Farm Credit Leasing Corporation, prior to the sale to ask for the payoff amount on the sprayer.

8. From the facts adduced at trial, the Court concludes that the Defendant, Larry L. Quandt, Sr., was aware at the time he sold the subject sprayer that it was wrongful to sell leased equipment and not pay the proceeds to the Lessor, Farm Credit Leasing Corporation.

9. In December 1999, Plaintiff discovered that its leased equipment had been sold at auction, and that the proceeds from the sale had not been paid to it. As a result, the Plaintiff filed a complaint against the Defendant, Larry L. Quandt, Sr., and also against Larry L. Quandt, Jr. in the Circuit Court for the Fourth Judicial Circuit, Effingham County, Illinois, in Case No. 00-L-10, seeking to recover the debt owed to the Plaintiff on the sprayer. Case No. 00-L-10 is still pending in the Circuit Court, Effingham County, Illinois.

10. On May 30, 2000, Larry L. Quandt, Sr. and Larry L. Quandt, Jr. executed a Promissory Note in the amount of \$50,648.49, payable to Farm Credit Leasing Corporation, together with a second

Mortgage on real estate owned by Debtor/Defendant, Larry L. Quandt, Sr., in an attempt to resolve the debt that was the subject of the State Court lawsuit concerning the sale of the leased sprayer and the Debtor/Defendant's failure to remit the proceeds of that sale to the Plaintiff.

11. On March 16, 2001, Defendant, Larry L. Quandt, Sr., and his wife, Peggy L. Quandt, filed a joint voluntary petition under Chapter 7 of the Bankruptcy Code, naming the Plaintiff, Farm Credit Leasing Corporation, as a creditor. At the time of the Debtors' Chapter 7 bankruptcy filing, no further sums had been paid against the debt to the Plaintiff, leaving a balance due at that time of \$56,471.22. The parties agree that the best evidence and only evidence of the fair market value of the sprayer at the time of the sale was its auction sale price of \$52,500.

12. A review of the evidence and testimony at trial causes the Court to conclude that the evidence presented by the Plaintiff was credible and complete. In regard to the testimony offered by Defendant, Larry L. Quandt, Sr., the Court finds that the Defendant was not a credible witness in that his explanations of his conduct were not believable when measured against the undisputed facts which he was aware of at the time that he sold the Plaintiff's leased equipment. The Court makes its conclusion as to the credibility of the Defendant, Larry L. Quandt, Sr., based upon his demeanor, his testimony, and how his testimony related to other evidence and documents presented in the case.

Conclusions of Law

Prior to trial, the Plaintiff was granted leave to amend its Complaint to include an allegation that the debt owed by the Defendants to the Plaintiffs was non-dischargeable pursuant to 11 U.S.C. §523(a)(6), and it was under this provision that Plaintiff proceeded at trial and in its proposed findings of fact and conclusions of law. Pursuant to 11 U.S.C. §523(a)(6), a discharge in bankruptcy does not discharge a debtor from a debt for "willful and malicious injury by the debtor to another entity or to the property of another entity." Pursuant to the Supreme Court's decision of Kawaauhau v. Geiger, 523 U.S. 57, 118 S.Ct. 974 (1998), in order for a debt to be non-dischargeable under §523(a)(6), it must be a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. The Plaintiff has the burden of proof by a preponderance of the evidence to prove the elements necessary for a finding of non-

dischargeability under 11 U.S.C. §523(a)(6). See: Grogan v. Garner, 111 S.Ct. 654 (1991). Discussing the standard to be applied in case involving conversion of collateral under §523(a)(6), after the Supreme Court's decision in Geiger, the Court, in In re Kidd, 219 B.R. 278, at 285 (Bankr. D. Mont. 1998), stated:

[A] creditor, in order to prevail under § 523(a)(6), must demonstrate by a preponderance of the evidence, that the debtor desired to cause the injury complained of, or that the debtor believed that the consequences were substantially certain to result from the debtors acts. In other words, in the case of a conversion, a creditor must show that a debtor, when converting collateral, did so with the specific intent of depriving the creditor of its collateral or did so knowing, with substantial certainty, that the creditor would be harmed by the conversion. This subjective test focuses on whether the injury was in fact anticipated by the debtor and thus insulates the innocent collateral conversions from non-dischargeability under § 523(a)(6).

The wrongful conversion by a debtor of a creditor's collateral has long been held to result in a non-dischargeable debt, pursuant to 11 U.S.C. §523(a)(6). See: In re Miceli, 1991 Westlaw 24298 (Bankr. N.D. Ill. 1991); In re Wolfson, 148 B.R. 638 (Bankr. M.D. Fla. 1992); and In re Kidd, supra, at 278. In the instant case, it is clear that a conversion of the Plaintiff's collateral has taken place, and the Court has no difficulty in finding that the Creditor has shown by a preponderance of the evidence that the Debtor/Defendant had the specific intent of depriving the Plaintiff of its collateral, or, at the very least, the Defendant sold the Plaintiff's collateral knowing, with a substantial certainty, that the Plaintiff would be harmed by the conversion. This is clearly the type of action which is meant to be covered under the clear language of 11 U.S.C. §523(a)(6), and, thus, a debt which must be excepted from the Debtors' discharge in bankruptcy.

Having found that the debt to Plaintiff is non-dischargeable, pursuant to 11 U.S.C. §523(a)(6), the Court now turns to the measure of damages to be awarded to the Plaintiff. A review of the written legal arguments submitted by the parties concerning the appropriate measure of damages leads the Court to conclude that the measure of Plaintiff's damages should be the fair market value of the subject sprayer at the time of its sale in March 1999. The Court bases this conclusion on the cases cited by both the Plaintiff and the Defendants, of In re Modicue, 926 F.2d 452 (5th Cir. 1991), and Auburndale State Bank v. Dairy Farm Leasing Corp., 890 F.2d 888 (7th Cir. 1989). Both of these cases clearly state that, in a conversion action, the injured party is to recover the value of the property at the time of the conversion, together with

interest from the time of conversion to the date of trial. As set out above, the best evidence as to the fair market value of the sprayer was its sale price in March 1999, of \$52,500. In arriving at a final judgment amount, the Court finds that the evidence indicates that, subsequent to the sale of the Plaintiff's sprayer, the Defendant, Larry L. Quandt, Sr., made a payment to the Plaintiff in the amount of \$11,182.83, and the amount of this payment must be deducted from the value of the sprayer at the time of sale. The Court concludes that the Plaintiff's measure of damages and, thus, the judgment amount should be \$41,317.17, plus interest at the rate of 9% per annum to accrue from entry of judgment until the judgment is paid in full.

ENTERED: January 23, 2002.

/s/ GERALD D. FINES
United States Bankruptcy Judge