

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF IOWA

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

FEB 12 1986

BARBARA A. EVERLY, CLERK

IN RE TAMIE R. KENNIKER, f/d/b/a Coach House Restaurant

AMERICAN TRUST & SAVINGS BANK,

Plaintiff,

vs.

TAMIE R. KENNIKER, now known as
Tami R. Stull,

Defendant.

Bankruptcy No. 85-02256D

Adversary Proceeding No. 85-0476D

ORDER AND JUDGMENT

The Complaint of Plaintiff, American Trust & Savings Bank, for determination of the dischargeability of a debt and for judgment having come on regularly to be heard before the Court on February 12th, 1986, on notice duly and regularly served, and Plaintiff appearing by Chad C. Leitch of O'Connor & Thomas, P.C., its counsel, and Defendant appearing by Robert L. Day, her counsel, and evidence, oral and documentary, having been adduced and the matter having been argued and submitted and good cause appearing therefor;

The Court finds:

1. That Defendant received cash in exchange for a sales slip, as opposed to merchandise or services, the sum of said cash being \$2,000.00. Said sum was obtained as a result of false pretenses and false representation made to Plaintiff that Defendant had obtained merchandise or services, as opposed to strictly cash;

2. Defendant knew at the time of said transaction that she did not receive merchandise or services in exchange for the sales slip, but rather received cash, which was in violation of her fiduciary duties and in violation of the MasterCard/Visa Merchant Agreement warranting " as to each sales slip . . . that such sales slip represents a bonafide, newly

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created sale of merchandise and/or service as itemized on such sales slip." Defendant intended to induce Plaintiff to advance the money on the basis of the representation;

3. Wherefrom the Court concludes:

- A. Defendant obtained money from Plaintiff by means of false pretenses and false representations.
- B. Said false pretenses and representations were made with an intent to induce Plaintiff to make a loan to Defendant in the amount of \$2,000.00.
- C. Defendant has made no payments to Plaintiff on account of said obligation and there is now due and owing from Defendant to Plaintiff the sum of \$2,000.00.

It is therefore ORDERED, ADJUDGED AND DECREED:

1. The obligation of Defendant to Plaintiff is not released or affected by the Order of Discharge to be granted in this case herein to Defendant;

2. Plaintiff shall have Judgment against Defendant in the sum of \$2,000.00; with interest thereon at 10% per annum from November 6, 1985; and

3. The Order of this Court restraining Plaintiff from further action to collect the debt is dissolved.

Dated this 12th day of February, 1986.

BY THE COURT:

Consented to as to form and substance:

By: Robert L. Day, Jr.
Robert L. Day

By: Chad C. Leitch
Chad C. Leitch

[Signature]

Bankruptcy Judge

JUDGE SITTING BY DESIGNATION

Copy mailed to: Chad Leitch, Atty for Plaintiff; Robert L. Day, Jr., Atty for Defendant; Daniel P. Ernst, Trustee; this February 14, 1986
Louise J. Hartman
Deputy Clerk, Bankruptcy Court
P O Box 4371, Cedar Rapids, IA 52407