

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

ROBERT WAYNE LIBOLT and
LENORA ANN LIBOLT,
d/b/a B & L Golf Cars
Debtors.

Bankruptcy No. X88-00293S

Chapter 7

SECURITY TRUST & SAVINGS BANK
Plaintiff

Adversary No. X88-0152S

vs.

ROBERT WAYNE LIBOLT and LENORA ANN
LIBOLT,
d/b/a B & L Golf Cars
Defendants.

MEMORANDUM AND ORDER RE: MOTION FOR ENTRY OF JUDGMENT

The matter before the court is a motion for entry of judgment filed by the plaintiff Security Trust & Savings Bank.

A hearing was held on June 28, 1989 in Sioux City, Iowa. The court now issues its findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding under 28 U.S.C. §157 (b)(2)(I).

FINDINGS OF FACT

Debtors Robert and Lenora Libolt filed their joint voluntary chapter 7 bankruptcy petition on February 23, 1988. On May 27, 1988, an adversary proceeding was commenced by Security Trust & Savings Bank against the debtors/defendants. The plaintiff, stating two causes of action, prayed that the court enter an order finding that the debtors' entire indebtedness to plaintiff be found to be non-dischargeable pursuant to 11 U.S.C. §523(a)(2)(A). In its first claim, the plaintiff alleges that the debtors made false representations which induced the plaintiff to cover a check to Textron Financial Corporation in the amount of \$52,473.05. Plaintiff alleges that this indebtedness is non-dischargeable. In its second claim, plaintiff alleges that the defendants incurred indebtedness by the use of false pretenses and false representations, which is non-dischargeable pursuant to 11 U.S.C. §523(a)(2)(A). Plaintiff also alleged in the second claim that the indebtedness to plaintiff is non-dischargeable because defendants incurred indebtedness and obtained its renewal and extension by the use of a written statement regarding the debtors' financial condition which was materially false and which was relied upon by plaintiff. On February 27, 1989, the plaintiff filed a dismissal of Count II.

The adversary proceeding was set for trial on February 28, 1989. At the time of trial, the parties indicated to the court that they had settled the matter and wished to file a stipulation of settlement at a later date. The terms of the settlement were read into the record on February 28, 1989. The proceeding which occurred on February 28 was recorded by the court reporter. Present at the hearing were Janet Brown, attorney for plaintiff; Lon Tullar, attorney for defendants, and the defendants Robert and Lenora Libolt.

At the hearing on February 28, 1989, the court asked each of the debtors if they agreed with the terms of the settlement. On the record, both debtors indicated to the court that they did agree with the terms of the settlement agreement.

The parties were ordered to file a stipulation of settlement and proposed judgment within twenty days of the date set for trial. On March 20, 1989, the plaintiff filed a motion for extension of time in which to file a settlement order and proposed judgment. Plaintiff's attorney stated that she had been informed by Lon Tullar, attorney for defendants, that defendant Robert Libolt had been out of town and unable to review the agreement. The court entered an order extending the time for filing a stipulation of settlement and proposed judgment to April 4, 1989. On April 4, 1989, a second motion for continuance was filed by plaintiff. Plaintiff requested a continuance of the date on which to file the settlement agreement and judgment and attached a letter from Lon Tullar, attorney for debtors, stating that he still had not been able to get in touch with the debtors. On April 5, 1989, the court entered an order extending the deadline for filing the settlement documents to May 1, 1989.

On May 15, 1989, the plaintiff filed a motion for entry of judgment. A notice setting hearing on the motion for entry of judgment was filed on May 26, 1989. The notice indicates that the debtors Robert Wayne and Lenora Ann Libolt were sent a copy of this notice. The only person to appear at the hearing on the motion for entry of judgment was Janet Brown, attorney for plaintiff.

The terms of the settlement agreement were read into the record on February 28, 1989 and which were orally agreed to by debtors. A stipulation and judgment was later drafted by the attorney for the plaintiff, Janet Brown. The terms of the stipulation are virtually identical to the terms of the settlement that were orally read into the record on February 28, 1989. The terms of the stipulation are as follows:

1. Security Trust and Savings Bank shall have a judgment against Robert Libolt and Lenora Libolt, jointly and severally, in the sum of \$24,000.00.
2. Said sum shall not draw interest.
3. Robert and Lenora Libolt agree to repay the sum of \$24,000.00 as follows:
 - a. \$1,000.00 to be paid on or before May 1, 1989;
 - b. The sum of \$200.00 to be paid on or before June 1, 1989 and the first day of each and every month thereafter until the amount owed by Libolts to Security Trust and Savings Bank under this agreement has been paid in full.
4. Libolts shall have a ten (10) days grace period in each month in which to pay the monthly payment; however, in the event that such payment is not paid on or before the tenth (10th) day of any month, Security Trust and Savings Bank shall have the immediate right to execute upon its judgment in this matter. Security Trust and Savings Bank shall not be required to give any notice of default or any other notice

prior to beginning execution procedures. Libolts furthermore agree to waive any such notice requirements in the future should such requirements be implemented under either State or Federal law.

5. Security Trust and Savings Bank shall have the immediate right to transcribe this judgment to any other county in Iowa or any other state. In the event that Libolts make any payments required pursuant to this agreement in a timely fashion, that is prior to the expiration of the grace period for every month, Libolts shall be required to pay only the total sum of \$16,400.00 to Security Trust and Savings Bank. The \$1,000.00 payment on May 1, 1989, as well as the monthly payments shall count toward the \$16,400.00 amount.

In the plaintiff's motion for entry of judgment, the plaintiff states that the settlement agreement has never been signed despite repeated requests to the debtors' attorney, Lon Tullar. The plaintiff's attorney, Janet Brown, stated that she was informed by Tullar that he attempted to contact the defendants and that they have not responded to his attempts to contact him. Plaintiff's attorney further stated that on May 1, 1989, she received a telephone call from Robert Libolt in which he informed her that defendants were no longer represented by Lon Tullar. At that time, Mr. Libolt requested that a copy of the settlement agreement and judgment be mailed directly to him at his Storm Lake address. The plaintiff's attorney further stated that Libolt told her in the May 1, 1989 telephone conversation that he would make the initial \$1,000.00 payment on Tuesday, May 2, 1989. The plaintiff's attorney further stated that she mailed a copy of the stipulation and judgment to Robert Libolt at his address in Storm Lake, Iowa. The plaintiff's attorney or plaintiff had not received any payments from the defendants and have not had any additional contact from them. In its motion for entry of judgment, plaintiff requests the court to enter a judgment in its favor so it can proceed with collection procedures.

DISCUSSION

The plaintiff argues that the debtors/defendants have failed to make the initial \$1,000.00 payment required by the settlement agreement and therefore request the court to enter a judgment so that it can proceed with collection efforts.

The court has reviewed the record. The debtors indicated to the court on February 28, 1989 that they agreed with the terms of the settlement agreement. The court finds that the terms of the stipulation which was drafted by the plaintiff are virtually identical to the terms of the settlement agreement that were read into the record. The terms of the stipulation are clear and unambiguous.

It is not necessary for this court to approve the settlement agreement reached by the parties in this adversary proceeding. The settlement of the dispute was solely in the hands of the parties. However, the court has the inherent power to specifically enforce a valid settlement agreement if the terms of the agreement are clear and unambiguous. U. S. v. Mansion House Center, North Redevelopment Co., 607 F.Supp. 392, 395 (E.D. Mo. 1985); aff'd. 796 F.2d 1039 (8th Cir. 1986) (citations omitted); Gatz v. Southwest Bank of Omaha, 836 F.2d 1089, 1095 (8th Cir. 1988).

The stipulation drafted by the plaintiff has never been signed by the defendants. However, an oral agreement of settlement was reached and read into the record on February 28, 1989. The court has the power "to enforce an agreement in settlement of litigation pending before it, even where that agreement has not been reduced to writing." Bostick Foundry Co. v. Lindberg, a Div. of Sola Basic

Industries, Inc., 797 F.2d 280, 282-83 (6th Cir. 1986) (citations omitted). "Once concluded, a settlement agreement is as binding, conclusive, and final as if it had been incorporated into a judgment and the actual merits of the antecedent claims will not thereafter be examined." 797 F.2d at 283. The actual merits of the controversy are of no consequence. In re Springpark Associates, 623 F.2d 1377, 1380 (9th Cir. 1980).

The agreement entered into by the plaintiff and defendants created a binding contract and therefore the principles of contract law apply. Press Machinery Corp. v. Smith R.P.M. Corp., 727 F.2d 781, 784 (8th Cir. 1984).

The defendants were represented by legal counsel during the negotiation of the settlement agreement. Additionally, the defendants indicated to the court at the February 28, 1989 hearing that they agreed with the terms of the settlement agreement. The terms and conditions of the settlement agreement were incorporated into the bankruptcy court record. See Bostick Foundry Co. v. Lindberg, A Division of Sola Basic Industries, Inc., 797 F.2d 280, 283 (6th Cir. 1986).

The terms of the stipulation specifically state that the debtors must pay \$1,000.00 on or before May 1, 1989. The court finds that the debtors did not make this initial payment and therefore are in breach of the settlement agreement. The defendants or their attorney were not present at the hearing held on June 29, 1989. The defendants have not indicated any reason for

their failure to comply with the terms of the settlement agreement. One court has stated: "It is beyond a district judge's discretion to alter the terms of or refuse to enforce a settlement agreement, absent special circumstances, such as a material breach of the agreement." In re Air Crash Disaster at John F. Kennedy Intern. Airport on June 24, 1975, 687 F.2d 626, 629 (2nd Cir. 1982). The defendants have shown no special circumstances which would justify breach of the agreement. The court fails to see any basis for refusing to enforce the settlement agreement.

"If a party to a settlement contract refuses to abide by the agreement, the non-breaching party may either ask the court to enforce the agreement or litigate the merits." Village of Kaktovik v. Watt, 689 F.2d 222, 231 (D.C. Cir. 1982). In this case, the plaintiff has chosen to enforce the agreement. The plaintiff requests the court to enter a judgment in this adversary proceeding so that it may proceed with collection efforts consistent with the terms of the settlement agreement. Stipulations of settlement are favored by the courts. In re North Broadway Funding Corp., 34 B.R. 620, 622 (Bankr. E.D. N.Y. 1983). A contrary result in this case would discourage the use of settlements in bankruptcy proceedings. In re Springpark Associates, 623 F.2d 1377, 1380 (9th Cir. 1980).

ORDER

IT IS ORDERED that plaintiff Security Trust and Savings Bank's motion for entry of judgment is sustained. Judgment shall enter accordingly containing the provisions of the settlement set out on pages 4 and 5 of this order.

SO ORDERED THIS 6th DAY OF JULY, 1989.

William L. Edmonds
Bankruptcy Judge