

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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WESLEY E. WOOD

Debtor

Bankruptcy No. 93-60230LW

Chapter 7

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WAVERLY SALES CO.

Plaintiff

Adversary No. 93-6080KW

vs.

WESLEY E. WOOD

Defendant.

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GLENN W. WOOD, JR.

Debtor

Bankruptcy No. 93-60364LW

Chapter 7

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WAVERLY SALES CO.

Plaintiff

Adversary No. 93-6081KW

vs.

GLENN W. WOOD, JR.

Defendant.

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### ORDER

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The above-captioned matters came before the Court for final ruling on the parties' briefs and Joint Stipulation of Facts for Submission to Court in Lieu of Trial. Plaintiff Waverly Sales Co. seeks a determination of nondischargeability of debts allegedly owed to it from Debtors Glenn W. Wood, Jr. and Wesley E. Wood. Oral arguments are not requested and are unnecessary to a determination of the issues presented. Having considered the record, the Court makes the following ruling.

### FINDINGS OF FACT

The stipulated record establishes that CATCO Management, Inc. is in the business of operating feed lots in Fayette County, Iowa. Cattle owners place their livestock with CATCO which, in turn, provides feed and care for the livestock in the fattening process for a fee. Mr. Roger Bark was one of the principal shareholders of CATCO Management, Inc. Debtors/Defendants Wesley and Glenn Wood were employed by CATCO between 1986 and December of 1991. Neither Glenn nor Wesley Wood had any ownership or equity interest in CATCO.

Mr. James Jennings and Mr. Dixon Granstra are both in the livestock business. They owned cattle which were placed at the CATCO Fayette County facility pursuant to a contract between the respective individuals and entities. Part of the agreement required CATCO to cover death losses

which exceeded certain amounts. CATCO's death losses were excessive and it began to substitute one owner's cattle for another's in order to avoid penalties for these losses. Eventually, CATCO began to sell cattle and the proceeds were used to purchase other stock to cover these death losses. Debtors/Defendants Wesley and Glenn Wood were involved in this process at every stage including the sale of cattle. Many of the cattle were sold through the Waverly Sales Co. in Waverly, Iowa.

The stipulated evidence establishes that Mr. Bark, the principal owner of CATCO, largely controlled the activities of Debtors Glenn and Wesley Wood and directed that they sell cattle which belonged to Dixon Granstra and James Jennings. At the time of these sales, Debtors did not have the permission of Mr. Granstra or Mr. Jennings to do so. Nevertheless, Debtors represented to the Waverly Sales Co. that they were the owners and endorsed the checks for the cattle. The checks contained language which indicated that the payees, by endorsing the check, warranted that they owned the cattle which the Plaintiff was purchasing. The proceeds received by Debtors from the sale of these cattle were not turned over to the owners, Granstra or Jennings. Debtors contend that they turned over all of the proceeds to Mr. Bark or alternatively used the proceeds to purchase other cattle to cover shortages in CATCO's feedlots. Debtors assert that they did not personally profit financially from these various transactions.

Granstra and Jennings filed a state court action against CATCO, Bark, Debtors and Plaintiff to recover for the conversions and shortages in the cattle they had placed at CATCO. Plaintiff settled its liability in that lawsuit by paying Granstra and Jennings \$52,000. It also incurred more than \$52,000 in legal fees in defending the suit. Consequently, Plaintiff asserts that it sustained a total loss of \$104,695.25 in settlement and legal expenses.

Wesley Wood made five sales to Plaintiff totalling \$46,452.24. Glenn Wood made four sales totalling \$45,653.63. Plaintiff asserts that it is entitled to contribution and/or indemnity from Debtors for those amounts. Plaintiff seeks judgments that these debts are nondischargeable under § 523(a)(2)(A) (false representations) and/or § 523(a)(6) (willful injury).

Debtors admit to committing conversion when they sold cattle which did not belong to them. However, they assert that § 523(a)(2)(A) does not apply because they did not obtain the sale proceeds for themselves, but rather were acting as employees of Roger Bark. Debtors also assert that § 523(a)(6) does not apply because their acts of conversion were not willful and malicious.

## CONCLUSIONS OF LAW

Plaintiff has the burden to prove the elements of its claim under 11 U.S.C. § 523 by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 111 S. Ct. 654, 661, 112 L. Ed. 2d 755 (1991). Exceptions to discharge must be "narrowly construed against the creditor and liberally construed against the debtor. These considerations, however, 'are applicable only to honest debtors.'" In re Van Horne, 823 F.2d 1285, 1287 (8th Cir. 1987). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

Courts use a five element test to determine whether a debt will be excepted from discharge under § 523(a)(2)(A). In re Thomas, No. L-92-00524C, Adv. No. L-92-0115C, slip op. at 4 (Bankr. N.D. Iowa Sept. 22, 1993). The elements are: (1) the debtor made false representations; (2) the debtor knew the representations were false at the time they were made; (3) the debtor made the representations with the intention and purpose of deceiving the creditors; (4) the creditor relied on the representations. Id.; In re Ophaug, 827 F.2d 340, 343 (8th Cir. 1987); and (5) the creditor sustained the alleged injury as a

proximate result of the representations having been made. In re Van Horne, 823 F.2d 1285, 1287 (8th Cir. 1987).

Plaintiff bases its complaint on Debtors' representations that they were the owners of the cattle which Plaintiff purchased. Debtors admit that all five elements of a § 523(a)(2)(A) nondischargeability claim are present. They intended to deceive Plaintiff as to their ownership of the cattle and Plaintiff was injured by its reliance on Debtors' misrepresentations. Debtors, however, assert that they did not "obtain" any money or property under § 523(a)(2).

"The initial question to be answered for a § 523(a)(2) dischargeability complaint is whether the debtor actually obtained any money, property, services, or an extension, renewal or refinance of credit." In re Bonefas, 41 B.R. 74, 77 (Bankr. N.D. Iowa 1984). However, § 523(a)(2) is not limited to liability upon conveyances solely to the debtor. In re Galbreath, 112 B.R. 892, 900 n.10 (Bankr. S.D. Ohio 1990). It is not necessary that the property be actually procured for the debtor individually. Id. In this case, Debtors actually received checks from Plaintiff representing proceeds of the sale of the cattle. They deposited the checks in their personal bank accounts. This Court concludes that Debtors "obtained" money or property pursuant to § 523(a)(2). Whether Debtors ultimately profited financially is not dispositive. Plaintiff has met its burden of proof regarding nondischargeability under § 523(a)(2)(A).

Section 523(a)(6) states that a debtor is not discharged from any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity". A willful and malicious conversion is an "injury" under § 523(a)(6). In re Ewing, No. 92-11343LC, Adv. No. 92-1231LC, slip op. at 6 (Bankr. N.D. Iowa Nov. 3, 1993); In re Holtz, 62 B.R. 782, 785 (Bankr. N.D. Iowa 1986). In Holtz, the debtor's failure to apply sales proceeds against the Bank's loans constituted conversion. Id. at 786. The court focused on aggravating features of the debtor's conduct, such as the concealment of funds and the deliberateness of the sale after the creditor had attempted to assert its rights, in concluding that the debt was nondischargeable. Id.

A mere technical conversion does not satisfy § 523(a)(6). Id. at 786. Nondischargeability turns on whether the conduct is (1) headstrong and knowing ("willful") and, (2) targeted at the creditor ("malicious"), at least in the sense that the conduct is certain or almost certain to cause financial harm. In re Long, 774 F.2d 875, 881 (8th Cir. 1985). Long held that the debtor's conduct was willful because the debtor knew the diversion of funds was contrary to the collateral agreement. Id. at 882. However, the malice element was not met because the debtor did not intend or expect to harm the economic interests of the creditor. Id.

Plaintiff has met its burden of proving nondischargeability under § 523(a)(6). Debtors' conduct was willful because Debtors knowingly lied about their ownership of the cattle. Their conduct was malicious because such misrepresentation was certain to cause financial harm to Plaintiff who was accountable to the true owners of the cattle. Debtors' conversion constitutes willful and malicious injury under § 523(a)(6).

**WHEREFORE**, Plaintiff has established its complaints by a preponderance of the evidence and the Plaintiff's complaints are, therefore, GRANTED.

**FURTHER**, the debts on which Plaintiff's claims are based against Debtors are excepted from discharge pursuant to § 523(a)(2)(A).

**FURTHER**, the debts on which Plaintiff's claims are based against Debtors are excepted from discharge pursuant to § 523(a)(6).

**FURTHER**, judgment shall enter for Plaintiff and against Debtors.

**SO ORDERED** this 5th day of October, 1994.

Paul J. Kilburg  
U.S. Bankruptcy Judge