

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

THEODORE J. FELDHACKER and
DIANE FELDHACKER

Bankruptcy No. 96-50892XS

Debtor(s).

Chapter 7

AT&T UNIVERSAL CARD SERVICES

Adversary No. 96-5119XS

Plaintiff(s)

vs.

THEODORE J. FELDHACKER and
DIANE FELDHACKER

Defendant(s)

RULING RE: DEFENDANTS' MOTION FOR NEW TRIAL AND OTHER RELIEF

On September 5, 1997, the court entered a decision excepting plaintiff's claim from Theodore Feldhacker's discharge (docket no. 15). Feldhacker filed a timely motion for new trial (docket no. 17). He asks that I open the judgment, take additional testimony, amend findings and conclusions, enter new findings and conclusions and enter judgment in his favor. *Id.* He contends that I made various erroneous factual findings which led to the wrong result. AT&T Universal Card Services resists the motion. Oral arguments were heard November 4, 1997 in Sioux City.

Feldhacker contends that I made seven factual errors. One relates to the date of the bankruptcy filing. At page 1 of the decision, I correctly found that he had filed bankruptcy on April 15, 1997. However, on page 5 of the decision, I incorrectly stated that he had filed on April 17. The finding on page 5 will be amended to show the correct filing date.

The second error is as to when Feldhacker took the \$5,000 advance from AT&T. I found that he did so on February 2, 1996 (decision, pp. 3 and 6). He now says that he took the advance on January 30, 1996, and in support of his contention, he offers exhibit 1, which is a copy of the convenience check dated January 27, 1996. Notwithstanding the date of the check, the evidence at trial (including Feldhacker's testimony and answers to interrogatories) supports the February 2 finding. Exhibit 1 is merely new evidence of the date of the advance. But defendant has failed to show why the evidence could not through due diligence have been discovered by him prior to trial. However, even if January 27 or 30 were the correct date, it would not change my decision.

Feldhacker says that I incorrectly found that he took cash advances from his GM credit card during January and February 1996 (see decision, p. 3). Feldhacker says the two cash advances were taken in

December 1995 and January 1996. This contention is contrary to Feldhacker's own testimony. Even if he were correct, it would not change my decision.

Fourth, Feldhacker says that the findings appear to reflect that the cash advance from AT&T was Feldhacker's first. He contends that a prior advance was taken in April 1993, and the advance was repaid. I agree that prior to the advance which is the subject of this dispute, Feldhacker had taken other advances from AT&T. The decision found as much, and differs with Feldhacker's present argument only so far as the date is concerned. Feldhacker does not say what evidence at trial supports his contention. I believe there was no error in my finding. Even if Feldhacker were correct, the difference in dates is not material to the decision.

Fifth, he says there is error in the following finding: "On February 2, 1996, [Feldhacker] used the card to obtain a \$5,000 cash advance. At or about the same time, the First National Bank of Akron advised him that no credit would be extended for 1996 farming operations." (quoted from decision, pp. 6-7). The quoted material is a quotation of Feldhacker's response to an interrogatory. The court quoted the answer as a contradiction to Feldhacker's trial testimony. Its use does not support a new trial or an amendment to the decision.

Next, Feldhacker says the court was incorrect in finding that when he filed bankruptcy, his advance from AT&T was only 67 days old. He correctly points to an error in the decision. I had meant to find that Feldhacker signed his bankruptcy petition 67 days after he obtained the advance on February 2. Actually, he signed the petition and schedules 66 days later. If Feldhacker took the advance on January 30, he would have signed 69 days later. I will amend the finding in this regard, but the correction will not change the outcome.

Last, Feldhacker objects to the court's statement that Feldhacker was not pressured to file bankruptcy until at least April 23 when the period to cure the default with the bank expired. He argues, in effect, that the time pressure arose out of Feldhacker's need to plant crops and to cut off the bank's security interest in those crops. My discussion of pressure and the speed of filing related to my conclusion that Feldhacker's was a well planned bankruptcy. His argument arguably supports that conclusion, and it does not change my decision.

Having considered the evidence and Feldhacker's arguments,

IT IS ORDERED that the motion to amend findings is granted in part and denied in part. The motion is granted, and the decision will be amended as follows:

The last sentence of the second full paragraph, page 5 of the decision is amended to read:

"He signed his petition, statement and schedules on April 8 and filed them on April 15."

The last sentence of the first full paragraph, page 6 of the decision is amended to read:

"At the time he signed his petition, the first transaction which was part of his debt to AT&T was only 66 days old."

IT IS ORDERED that the remainder of the motion to amend findings and the remainder of defendant's motion, including the motion for new trial, are denied.

SO ORDERED THIS 1st DAY OF DECEMBER 1997.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order by U.S. mail to Mark Reed, John Harmelink U.S. Trustee.