

20020730-we-Culley_Caruth

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:

CULLEY CARUTH, Chapter 7

Debtor. Bankruptcy No. 01-01975F FIRST STATE BANK
Plaintiff,

vs. Adversary No. 01-9200F

CULLEY CARUTH,
Defendant.

ORDER RE:
COMPLAINT TO DETERMINE DISCHARGEABILITY

First State Bank seeks a determination that the unpaid balances on five loans made to defendant Culley Caruth be excepted from his discharge pursuant to 11 U.S.C. §§ 523(a)(2)(B) and 523(a)(6). Final trial was held July 18, 2002 in Fort Dodge. Joseline L. Greenley represented the Bank. Debtor Culley Caruth appeared pro se. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

Findings of Fact

Culley Caruth filed a Chapter 7 bankruptcy petition on May 31, 2001. Caruth lives in Williams, Iowa. In late 1994, he became a customer of First State Bank, Webster City. At that time, Caruth had a small farming operation and also worked for his father. He has had off-farm income from hauling grain and from repairing and reselling older tractors.

The Bank's claims relate to the following loans:
Loan No. Date of Note Amount of Loan Principal Balance

153047	Oct. 5, 1998	\$ 4,700	\$4,250
153418	Jan. 12, 1999	10,000	8,524.87
154433	Sept. 17, 1999	19,648.60	7,363.78
154434	Sept. 17, 1999	4,249.64	4,249.64
155193	May 19, 2000	4,500	<u>4,500</u>
TOTAL <u>\$28,888.29</u>			

Loan 153047 was made to pay off a loan for the purchase of a 1998 Arctic Cat ZR 500cc snowmobile. Caruth gave the Bank a security interest in the snowmobile. The loan was extended on January 12, 1999 and again on February 9, 2000. In

February 2001, Caruth gave the Bank \$450 in cash. This amount was the only payment made on the loan.

Loan 153418 was a line of credit for farm operating expenses. The loan was secured by a "broad brush" security agreement dated March 27, 1996. The collateral included inventory, equipment, farm products, accounts, general intangibles, crops and vehicles. The line of credit was not fully funded. The loan was extended on February 9, 2000 and again on October 5, 2000. In March 2002, grain proceeds were applied to the loan.

Loan 154433 was made to refinance a truck and trailer loan; the loan was secured by the March 27, 1996 security agreement. In May 2001, the Bank received \$10,500 from disposition of the trailer and applied it toward the loan.

Loan 154434 was for operating expenses; it was also secured by the March 27, 1996 security agreement. The loan was extended on February 9, 2000 and again on September 11, 2000.

Loan 155193 was for the down payment on a truck; the loan was secured by the March 27, 1996 security agreement. The loan was extended on September 11, 2000.

Caruth gave the bank financial statements dated March 25, 1996, April 23, 1997, February 10, 1998, January 12, 1999, and February 9, 2000. The Bank's practice was to prepare the financial statement on a computer-generated form, with input and assistance from the debtor. The loan officer who took the information for the March 25, 1996 financial statement, David Taylor, was not a trial witness. Mike Juergens took the information for the remaining financial statements. His procedure for updating a financial statement was to print out a copy of the most recent statement and ask the debtor to review the statement and make any corrections, additions or deletions.

Each financial statement listed a 50 percent interest in a John Deere 643 corn head valued at \$2,250 and a 100 percent interest in a Tye bean drill valued at \$3,800. In his bankruptcy schedule of personal property, Caruth stated that he has never had an ownership interest in either item.

In each financial statement beginning with the statement dated April 23, 1997, Caruth stated that his farm equipment included a 1955 John Deere 70 tractor valued at \$2,500 and a 1960 John Deere 720 diesel tractor valued at \$2,200.

Caruth testified at trial that the 1955 John Deere 70 tractor is used for parts and that he paid about \$250 for it. Caruth still has the parts tractor. He stated the tractor described as a 1960 John Deere 720 was actually another 1955 model 70. He said the listed value of \$2,200 is about what he paid for it.

1998 Arctic Cat ZR 500 snowmobile	\$5,000
1941 IHC Farmall tractor	\$1,800
1954 IHC M diesel tractor	\$1,200
1955 John Deere 70 diesel tractor (listed as a 1960 720)	\$2,200
1986 John Deere 1710A disc-chisel	\$3,500

Caruth sold two of the tractors to his grandfather. He sold the

Sometime in 1999 and after January 12, 1999, Caruth sold the following items, valued as shown on his financial statements:

snowmobile at Ames Power Sports and the other two items at Lynch Auction Company in Ames. He used the proceeds to pay child support, to purchase diesel fuel and to pay for living expenses.

Caruth's February 9, 2000 financial statement still listed the five items that had been sold in 1999. The Bank did not learn that Caruth had sold the property until the summer of 1991, after he had filed his bankruptcy petition.

Discussion

First State Bank seeks a determination that its claim against Caruth is excepted from his discharge under 11 U.S.C. §§ 523(a)(2)(B) and 523(a)(6). The Bank must prove each element of its nondischargeability claims by a preponderance of the evidence. Grogan v. Garner, 111 S.Ct. 654, 659 (1991).

A Chapter 7 discharge does not discharge an individual debtor from any debt for willful and malicious injury. 11 U.S.C. § 523(a)(6). Caruth sold five items of the Bank's collateral in 1999 and did not apply the proceeds to pay down his debt to the Bank. The Bank claims this conversion constitutes willful and malicious injury.

Conduct that is "willful" is intentional or deliberate. In

re Geiger, 113 F.3d 848, 852 (8th Cir. 1997), aff'd by, Kawaauhau v.Geiger, 118 S.Ct. 974 (1998); Barclays American/Business Credit, Inc. v. Long (In re Long), 774 F.2d 875, 880 (8th Cir.

1985). "Malicious" conduct is an act done with an intent to cause injury. Geiger, 113 F.3d at 852. It is conduct "targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause financial harm." In re Long, 774 F.2d at 881. Caruth testified that he used the proceeds of the Bank's collateral to pay child support, pay bills and purchase diesel fuel. The court concludes that the Bank has failed to show that Caruth's conduct was malicious. The claim under § 523(a) (6) should be dismissed.

The Bank also contends that Caruth's debt to it is excepted from his discharge under § 523(a) (2) (B). That statute provides that a Chapter 7 discharge does not discharge an individual from debt-

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by-

. . .

(B) use of a statement in writing-

(i) that is materially false;

(ii) respecting the debtor's . . . financial condition;

(iii) on which the creditor to whom the debtor is

liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive.

11 U.S.C. § 523(a) (2) (B).

The five financial statements at issue (Exhibits 15-19) are written statements respecting Caruth's financial condition. The Bank has shown that it reasonably relied on the statements. It treated Caruth's loans in the same manner as its other agricultural loans. It reviewed equipment values and determined that they were reasonable. It searched for UCC filings and obtained credit reports.

The issues are whether the financial statements were materially false and whether Caruth made them with an intent to deceive.

The description of one of the tractors as a "1960 720 diesel" was not materially false; there was no evidence that the value was inaccurate. The listing of the tractor used for parts as having a value of \$2,500 was materially false, but the Bank has not shown the tractor was overvalued with an intent to deceive. There was no evidence as to when Caruth acquired the parts tractor. The tractor appears on the March 27, 1996 financial statement. The Bank did not generally adjust the value of items of equipment from year to year. It may have been an oversight for Caruth not to correct the value.

The court also concludes that the Bank has not shown an intent to deceive in listing the Tye bean drill and a half interest in a John Deere corn head. These items also appear on the 1996 financial statement. Caruth testified that the loan officer at that time asked him what equipment he was "using" in his farm operation. Moreover, Caruth believed he had some type of "interest" in the property; he had the use of the equipment and expected to inherit it eventually.

The court concludes, however, that debt incurred or renewed through use of the February 9, 2000 financial statement should be held nondischargeable. The 2000 statement included the five items that had been sold in 1999. The statement was materially false. The total stated value of the items was \$13,700. The Bank's loan comments show that Caruth's financial condition had deteriorated by February 2000. The Bank talked with Caruth at that time about whether he should continue farming. The Bank suggested that Caruth sell non-essential assets. Caruth knew that the Bank believed he still owned the items he had already sold. These circumstances create a strong inference that the 2000 financial statement was knowingly false and was made with an intent to deceive the Bank.

With the exception of loan number 154433, Caruth's loans were made or renewed in reliance on the February 9, 2000 financial statement. All liability on the remaining four loans should be held nondischargeable. See Cohen v. DeLaCruz, 118 S.Ct. 1212 (1998).

IT IS ORDERED that First State Bank's claim under 11 U.S.C. § 523(a)(6) is dismissed.

IT IS FURTHER ORDERED that the liability of Culley Caruth on loan numbers 153047, 153418, 154434, and 155193 is excepted from his discharge pursuant to 11 U.S.C. § 523(a)(2)(B). His liability on loan number 154433 is discharged.

SO ORDERED THIS 30th DAY OF JULY 2002.

William L. Edmonds, Bankruptcy Judge