
IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Waycross Division

In the matter of:)
) Adversary Proceeding
LINDA M. BELK)
f/k/a Linda M. Jones Owens) Number 90-5016
(Chapter 7 Case 90-50187))
)
Debtor)
)
)
THE BANK OF DODGE COUNTY)
)
Plaintiff)
)
)
v.)
)
LINDA M. BELK)
f/k/a Linda M. Jones Owens)
)
Defendant)

MEMORANDUM AND ORDER

On November 6, 1990, a trial was held on a Complaint Objecting to Discharge filed by The Bank of Dodge County (hereinafter "Bank") pursuant to 11 U.S.C. Section 727. Upon consideration of the testimony adduced at trial, the briefs and other documentation submitted by the parties, and applicable authorities I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On or about April 13, 1989, The Bank of Dodge County loaned the Debtor, Linda M. Belk, the sum of \$5,247.72 and took as security for said loan an interest in the Debtor's 1982 Pontiac Trans Am. The balance owing on the note in the amount of \$4,134.02 was renewed on January 2, 1990. Both the original note and the renewal provided that the Debtor would keep the car insured at all times against loss, damages, theft and other risks in order to protect the Bank's interests. The Debtor stated that she freely signed the security agreement without reading the contract in its entirety. She further stated that the Bank did not mention that "full coverage" insurance was required in order that she comply with the contractual agreement.

The Debt testified that she had never carried "full coverage" insurance as required by the contract but rather only carried liability insurance as required by Georgia Law. The liability insurance was canceled at some point prior to the loss of the vehicle.

Debtor was involved in an automobile accident on or about August 1, 1989, and admitted that she was "at fault." The car was damaged to the extent that the cost of repair was not economically feasible. Debtor testified that she never intended to cause the Bank any harm by not carrying "full coverage" insurance on the vehicle. The Debtor further testified that she was unaware of the insurance requirement in the security agreement.

As a result of the accident, the Debtor was sued by the other driver for damages he sustained, was left with a wrecked

vehicle, unpaid medical bills and a note owed to the Bank now secured by a practically worthless Pontiac Trans Am. The Debtor filed a petition under Chapter 7 of the Bankruptcy Code with this Court on May 23, 1990. The Bank did not learn that its collateral had been destroyed until July 9, 1990.

CONCLUSIONS OF LAW

The Bank filed its objection to discharge pursuant to 11 U.S.C. Section 727(a)(2)(A) which provides:

(a) The court shall grant the debtor a discharge, unless--

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed--

(A) property of the debtor, within one year before the date of the filing of the petition;

The dominant purpose of the bankruptcy law is to provide the debtor with comprehensive, needed relief from her financial burden by releasing her from virtually all of her debts. To accomplish this goal, the courts have narrowly construed exceptions to discharge against the creditor and in favor of the bankruptcy. Thus the burden of proof lies with the creditor to show facts sufficient to justify a denial of discharge. Exceptions to discharge were not intended and must not be allowed to override the

general rule favoring discharge. Murphy and Robinson Investment Co. v. Cross (Matter of Cross), 666 F.2d 873, 879-80 (5th Cir. 1982) (Footnotes and citations omitted). The petitioning creditor bears the burden of proving facts sufficient to deny discharge by clear and convincing evidence. Schweig v. Hunter (In re Hunter), 780 F.2d 1577, 1579 (11th Cir. 1986); Bankruptcy Rule 4005.

In order for the Bank to prevail on its 727(a)(2) objection, it must prove two elements. First, that the Debtor intended to hinder, delay, or defraud the Bank. Second, that the Debtor destroyed the automobile at issue. It has been stipulated that the automobile was destroyed. However, there is no evidence that the Debtor intentionally wrecked this automobile with intent to hinder, delay, or defraud the Bank. To the contrary, the evidence shows that the Debtor was injured in the accident which destroyed the vehicle. In the absence of very persuasive evidence, I will not find that a debtor who was herself injured in an accident in which a vehicle constituting collateral for a loan was destroyed, jeopardized her own personal safety in order to destroy the collateral with intent to hinder, delay or defraud the creditor.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the objection to discharge filed by the Bank of Dodge County is overruled.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This _____ day of January, 1991.