

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

IN RE:
JOHN LOUIS SELLERS
GLORIA CHAPMAN SELLERS,
Debtors.

SOUTHEASTERN BANK,
Plaintiff,

vs.

JOHN LOUIS SELLERS,
Defendant.

* CHAPTER 7
* BANKRUPTCY CASE NO. 99-20143-LWD
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* ADVERSARY PROCEEDING
* NO. 99-2039

FILED
at 3 O'clock & 35 min P.M.
Date January 28, 2000
MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia

MEMORANDUM AND ORDER

This matter comes before the Court on a Complaint to Determine Dischargeability of a Debt of a Co-debtor, John Lewis Sellers ("Defendant") by a Creditor, Southeastern Bank ("Bank"). This is a core matter within the meaning of 28 U.S.C. Section 157(b)(2)(i) and (j). After considering the pleadings and admissions presented at trial, the Court enters the following Findings of Fact and Conclusions of Law in compliance with Rule 7052 of the Federal Rules of Bankruptcy Procedure.

FINDINGS OF FACT

On February 12, 1999 Debtors filed for Relief under Chapter 13. The case was subsequently converted to Chapter 7 on June 23, 1999.

The following allegations in the complaint are admitted by Defendant in the pleadings, specifically:

- 1) That Bank was filed its claim for \$37,929.05 in this case secured by a perfected lien on an Excavator and Backhoe ("collateral").

- 2) Schedule B of Defendant's Chapter 13 petition indicated he owned and possessed the collateral.
- 3) Defendant's Chapter 13 plan provided to retain the collateral.
- 4) Defendant was aware at the time he filed the Chapter 13 petition and plan that he had sold and relinquished possession of the collateral.
- 5) Defendant's disposal of the collateral was without the knowledge or permission of the Bank.

At the hearing on October 14, 1999, counsel for the Defendant announced that no defense would be presented nor objection to relief sought in the complaint.

CONCLUSIONS OF LAW

Bank properly filed its proof of claim under Section 501 of the Bankruptcy Code. Without objection of the Debtor or other party in interest, the claim is deemed allowed pursuant to Section 502 of the code. As such, the Bank is entitled to judgment against the Defendant upon its claim, provided such indebtedness is not discharged under applicable bankruptcy law.

Exceptions to discharge are set forth in 11 U.S.C. Section 523. A specific cause for exception to discharge under this section is the Debtor's willful and malicious injury to property of another entity. The Debtor's sale and disposal of the Bank's property interest in the collateral was admittedly intentional, without its knowledge and to its detriment.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT THAT:

- 1) Defendant John Lewis Sellers is denied a Discharge of the indebtedness to Southeastern Bank; and
- 2) That Southeastern Bank have judgment against the Defendant in the amount of \$37,929.05 plus cost.

SO ORDERED, this the 26 day of Jan, 2000.



Lamar W. Davis, Jr.
Judge, U. S. Bankruptcy Court

PREPARED BY:



Marvin L. Pipkin
Attorney for Southeastern Bank

CONSENTED TO:



William S. Orange, III
Attorney for Defendant