

3/6/79

IN THE UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In the Matter of

IN BANKRUPTCY

R & S DISCOUNT STORES, INC.

No. 76-151 Vol.

Bankrupt

CITIZENS STATE BANK & TRUST
COMPANY OF WAUSAU, a Wisconsin
Banking Corporation

Plaintiff

-vs-

R & S DISCOUNT STORES, INC.

Defendant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT

The plaintiff, Citizens State Bank & Trust Company of Wausau, a Wisconsin banking corporation, having filed its Complaint in the above entitled matter praying that the Court deny a discharge to the above named defendant, or in the alternative to determine that the indebtedness due said plaintiff to be non-dischargeable; and an Answer having been duly filed; and a trial having been held, and witnesses sworn; and the Court having heard the arguments of counsel, and being fully advised in the premises, FINDS:

1. That defendant, R & S Discount Stores, Inc., duly filed a voluntary petition in bankruptcy on the 11th day of February, 1976.
2. That on July 23, 1976, the plaintiff herein filed a Complaint in said matter praying that the discharge be denied, or in the alternative that the debt due the plaintiff be determined to be non-dischargeable; and pre-trial hearings having been held from time to time; and motions having been duly made to strike the objections to discharge; and other preliminary motions having been considered by the Court; and an Answer having been duly filed

by the defendant; and further pre-trials having been held; and trial having commenced on the 16th day of August, 1978, and completed on September 26, 1978.

3. That plaintiff's Complaint consists of eight pages of unverified allegations against defendant as to the conducting of said business prior to the bankruptcy.

4. That the Answer of defendant denies the allegations of the Complaint and alleges affirmative defenses to said Complaint and explanations thereof.

5. That the trial of said action and matter took approximately three days.

6. That plaintiff's attorney requested a transcript of the proceedings before filing his brief, as will be later found herein, which transcript consists of 555 pages. In addition there were 169 pages of other testimony and deposition filed in said proceedings and a number of voluminous exhibits consisting of business records, bank records and other documents unnecessary to itemize herein.

7. That at the end of the testimony on the 26th day of September, 1978, the transcript shows the following:

"MR. KNUDSON: We're finished.

THE COURT: All right. Now, do you want to file memorandums or don't you want to?

MR. AKEY: I very definitely think that if the Court so feels it would benefit by a brief, I'm certainly willing to file one.

THE COURT: Well --

MR. KNUDSON: If he does, I'll have to, your Honor. I'm not in favor of it, but --

THE COURT: I like to let the lawyers run their own case, if I can, and if you want to file one, you may file one within twenty days. Is that enough time or is ten enough?

MR. AKEY: Ten certainly isn't enough.

THE COURT: How about fifteen so we can get things out of the way here.

MR. AKEY: I have three briefs due this month, your Honor, and all of them are due right at the end of October, two in Circuit Court cases and one in the Supreme Court, and they all have to be done in the next twenty days. I know that the Court is anxious to resolve this matter, however, it has been three days of testimony and I would like to wait to file the brief until the reporter has the transcript finished, which I have ordered. I think it would be extremely beneficial. I am ordering it right as of this moment and the reporter tells me she can't get me a transcript for 30 days. My only point being, your Honor, if the attorneys get into what did the witness say, this way we've got an answer.

THE COURT: If the transcripts are ordered, you have time to start working. Why not say that you will have the briefs in within ten days after the transcript is received. And that gives you added time, forty days, at least. And I think you could file those at the same time, I don't think it's necessary for one to file and the other one, both file memorandums together. Mr. Kruschke is the attorney of record, and he certainly is eligible to continue on. The matter is closed then and memorandums may be filed, and I think if you each want to file a five day reply, you can have it, five days."

8. That the reporter was unable to complete the transcript of the testimony within thirty days and it was finally filed on December 5, 1978, for the September 26th testimony and on the 15th day of February 1979, for the testimony taken on August 16th and 17th, 1978.

9. That instead of forty days to prepare their briefs the attorneys have had over one hundred fifty-five days, and have not complied with the provisions to file the briefs within ten days from receipt of the transcript of testimony and no application for an extension of time has been made to the Court.

10. That the proceedings have been unnecessarily delayed from time to time as revealed by the record, the latest being an Application by plaintiff's attorney for an Order to obtain the income tax returns of the defendant, which Application was heard on January 18, 1979, at which hearing the defendant and its

attorney consented to the obtaining of the income tax records by plaintiff's attorney, although they had consented in September 1978 to said request but neglected to sign the consent.

11. That plaintiff was a secured creditor and had commenced foreclosure proceedings in the State Court with a voluntary surrender of some property to the plaintiff, and a further action in the Wisconsin State Courts for foreclosure of other secured property.

12. That the plaintiff did not file any claim in these proceedings.

13. That the defendant alleged it received no accounting relative to the property sold by the plaintiff, and on July 12, 1976, the defendant moved the Court for a complete accounting of the proceeds of the sale of the secured inventory and related matters, and an Order granting the motion, after hearing, was made on July 15, 1976.

14. That to date the Court has not received a copy of the accounting although at previous hearings the plaintiff stated they had given a copy to the Trustee and they would file the same with the Court, which has not been done, or given to the defendant as required.

15. That the record reveals that part of the time the matter was held up for the completion of the foreclosure action, but when it was not completed by the plaintiff after a reasonable time the Court went ahead and directed the trial.

16. That plaintiff's Complaint does not ask for any money damages or judgment in the alternative.

17. That because of the actions of the parties these matters have been unnecessarily delayed.

18. That unless the Court proceeds forthwith to decide the same, the matter will be unnecessarily dragged out indefinitely.

19. That there is no benefit to making an itemized line by line finding as to the specific items in plaintiff's Complaint or in defendant's Answer.

20. That no intent on the part of the officers of the defendant, R & S Discount Stores, Inc., as to the violations of the acts alleged by the plaintiff are proven.

21. That the defendant used acceptable accounting methods and cannot be charged with a higher degree of accounting testified to by the certified public accountant as claimed by the plaintiff.

22. That the car transactions described in the evidence were not violations of the Bankruptcy Act.

23. That the plaintiff did not perfect a deficiency judgment in said foreclosure actions within a reasonable time as provided in the Uniform Commercial Code.

24. That said non-compliance is a waiver of any deficiency or right to recover herein.

25. That the record herein is barren of any evidence showing indebtedness by the defendant to the plaintiff.

26. That there is no evidence upon which to base the granting of the prayer of relief in the Complaint.

27. That the record refers to an uncompleted Counterclaim in the foreclosure actions.

28. That no ruling on any claims of the defendant is made herein and is reserved to the defendant for State Court action, if necessary.

29. That generally the alleged violations were "de minimis" in nature.

30. That under the "clean start" doctrine of Congress and the Courts the discharge should be granted.

31. That in lieu of specific itemization, each of the material allegations of plaintiff's Complaint are not proven or sustained.

32. That defendant has satisfactorily explained the allegations of the plaintiff and has sustained and proven its affirmative defenses.

33. That the record herein contains a great deal of irrelevant and immaterial evidence which under the Wisconsin decisions was not considered by this Court.

34. That the words of the late Justice R. D. Marshall of the Supreme Court of Wisconsin, "Here confusion has met its masterpiece" applies to the case at bar.

CONCLUSIONS OF LAW

That an Order should be entered directing that the plaintiff's Complaint be dismissed upon the merits without costs, and that discharge be granted, and that the appropriate restraining Order relative to discharge being granted be contained therein.

J U D G M E N T

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:

1. That plaintiff's Complaint be and the same is hereby dismissed on its merits and without costs.

2. That any indebtedness claimed by said plaintiff be and the same is hereby subject to discharge and release in accordance with the provisions of the Bankruptcy Act.

3. That the aforesaid indebtedness, if any, so claimed of the bankrupt to the plaintiff be and the same is hereby discharged and released.


4. Any judgment heretofore or hereafter obtained in any Court other than this Court in respect of the aforesaid indebtedness is null and void as a determination of the personal liability of the bankrupt in connection with the said indebtedness.

5. Citizens State Bank & Trust Company of Wausau be and the same is hereby enjoined from instituting or commencing any action or employing any process to collect the aforesaid indebtedness as a personal liability of the above named bankrupt.

6. That plaintiff pay the reporters' fees herein.

BY THE COURT:

Dated: March 6, 1979.


Bankruptcy Judge