



Kaiser was appointed Trustee, and thereafter on the 23rd day of June, 1978, filed a no asset report as Trustee.

4. That the schedules in each of the cases are identical for all practical purposes and show the following summary of assets and liabilities:

DEBTS:

Secured Claims . . . . .	\$ 8,486.04
Unsecured Claims without Priority	<u>45,566.86</u>
Schedule A Total . . . . .	\$54,052.90

PROPERTY:

Deposits . . . . .	\$ 1,000.00
Household Goods . . . . .	1,290.00
Books, Pictures and Collections . . . . .	400.00
Wearing Apparel and Personal Possessions	720.00
Automobiles and Other Vehicles . . . . .	<u>6,700.00</u>
	\$10,110.00

There are no creditors listed on Schedule A-1 as having priority.

That the secured creditors are as follows:

	<u>Market Value</u>	<u>Amount Due</u>
Royal Credit Union 419 Hastings Way Eau Claire, WI 54701	\$6,500.00	\$7,017.77

Security interest in 1977 Pontiac Bonneville, #2QL9Z7X147911 purchase money loan contracted jointly 8/77, original amount \$7,127.00. Not contingent, liquidated or disputed.

Recorded: 9/1/77 in Eau Claire County Register of Deed - Doc. #371993

	<u>Market Value</u>	<u>Amount Due</u>
Wickes Corp. 5353 E. River Road Fridley, MN 55421	\$ 800.00	\$1,468.27

Security interest in living room furniture: couch, 4 tables, 4 chairs, 2 stools; original purchase price of \$1,468.27, contracted jointly in 9/77. Not contingent, liquidated or disputed.

Not recorded: Consumer credit transaction

Totals:	\$7,300.00	\$8,486.04
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That the unsecured creditors are as follows:

Affiliated Bank of Hilldale 401 N. Segoe Road Madison, WI 53705	State guaranteed student Robert & Ida 8/76 and 5/77	\$4,406.00
Brown Nat'l Bank of Kenosha 2222 63rd Street Kenosha, WI 53141	Student loans, Robert & Ida, originally con- tracted 12/68 and 12/73	17,000.00
Georgia Dept. of Education 121 State Office Building Atlanta, GA 30334	Student loan - Ida originally contracted 5/67. Co-signed by Mr. & Mrs. Roy Beal, 315 W. Roanoke Fitzgerald, GA 31750	2,398.75
Stanford University Stanford, CA 94305	NDSL student loan - Robert contracted 7/71	851.76
Stanford University Stanford, CA 94305	Rent owed for 1/72	145.83
Trust Co. of Georgia P. O. Box 4418 Atlanta, GA 30302	State guaranteed student loans, Robert & Ida, contracted 3/71 and 9/71	6,800.00
University of GA Athens, GA 30601	NDSL student loans Robert & Ida, contracted 6/72	1,176.69
University of Pittsburgh Pittsburgh, PA 15260	Student loan - Ida 11/69 co-signed by Mr. & Mrs. Roy Beal, 315 W. Roanoke, Fitzgerald, GA 31750	530.83
University of Wisconsin 750 University Avenue Madison, WI 53706	NDSL student loans - Robert & Ida, originally contracted 2/74	12,257.00

(None of these debts are contingent, liquidated  
or disputed.)

Total: \$45,566.86

5. That the bankrupts listed identical personal property  
as follows:

Deposits: \$1,000.00 deposited at Western Federal  
Savings & Loan, 829 W. Clairemont,  
Eau Claire, WI 54701 . . . . . \$ 1,000.00

Household Goods,  
Supplies &  
Furnishings: Cooking utensils - \$80.00  
Singer Sewing Machine - \$150.00  
Radio - \$10.00  
Zenith Color TV - \$100.00  
Living Room Furniture (secured by  
Wickes, see A-2) - \$800.00  
Beds and bedding - \$100.00  
Other furniture - \$50.00 . . . . . \$ 1,290.00

Books: . . . . . \$ 400.00

Wearing Apparel & Jewelry:	Clothing (Robert - \$120.00 . . \$720.00	
	Ida - \$200.00	
	Wedding ring - \$350.00	
	Watch - \$50.00	
Automobiles:	1977 Pontiac Bonneville, #2Q69Z7X147911	
	\$6,500.00 (Security interest by Royal	
	Credit Union - See A-2)	\$6,700.00
	1966 Buick Riviera, #494876H956020	
	\$200.00	<u>        </u>
	Total:	\$10,110.00

That each of the defendants claimed as exemptions the following property:

Books	All property located	815.18 (2)	\$ 400.00
Clothing	at Apt. 209, 716 W.	815.18 (5)	320.00
Jewelry	Grand Ave., Eau Claire	815.18 (5)	400.00
Zenith TV	WI 54701	815.18 (5)	100.00
Radio		815.18 (5)	10.00
Singer Sewing Maching		815.18 (9)	150.00
Beds and Bedding		815.18 (5)	100.00
Cooking Utensils		815.18 (5)	80.00
Other Furnishings		815.18 (5)	50.00
1966 Buick Riviera		815.18 (6)	200.00
	#494876H956020		
Savings Account, Western		815.18 (22)	1,000.00
	Federal Savings & Loan		
	829 W. Clairemont		
	Eau Claire, WI 54701		<u>        </u>
			\$ 2,810.00

6. That the bankrupts are husband and wife each holding a masters degree (his in finance and hers in elementary education) and that they have no dependents.

7. That with the exception of the rent debt of \$145.83 due to Stanford University all of the other debts listed arise out of various student loans in the total sum of \$45,421.03.

8. That Mr. Harding is an instructor at the University of Wisconsin-Eau Claire, and Mrs. Harding is a parttime instructor at the University of Wisconsin-Eau Claire, and that a great deal of the student loans involved in these cases arose out of defendants studying for their PhD's, which work they had completed but had not passed the requirements for said degree.

9. That the plaintiff, its representatives and its attorney have prepared and filed a meticulous and careful documentation of the student loan applications and payments made by the defendants, and several charts were offered in evidence as well as a large, easily understandable chart relative to the

applications.

10. That the plaintiff contends that the defendants understated their indebtedness on various applications as follows:

<u>Robert</u>		<u>Amount of Understatement</u>
\$2,500.00	10-23-73	\$4,080
2,000.00	9-10-74	7,485
500.00	7-21-75	5,450
1,500.00	9-25-75	10,635
300.00	4-22-75	10,203
<u>\$6,800.00</u>		

<u>Ida</u>		<u>Amount of Understatement</u>
\$2,500.00	10-8-73	\$1,200
2,000.00	10-30-74	5,600
386.00	6-21-75	6,600
2,114.00	10-11-75	8,265
2,000.00	8-23-76	4,165
249.00	4-21-77	5,245
250.00	7-8-77	7,245
<u>\$11,886.00</u>		

11. That the present law relative to student loans was amended to take effect on September 30, 1977, and which present law provides for the five year suspension as well as the provision for release upon the Court finding undue hardship on the bankrupt or his dependents. In fact, Section 439 A of the Higher Education Act of 1965, as amended, reads:

"(a) A debt which is a loan insured or guaranteed under the authority of this part may be released by a discharge in bankruptcy under the Bankruptcy Act only if such discharge is granted after the five-year period (exclusive of any applicable suspension of the repayment period) beginning on the date of commencement of the repayment period of such loan, except that prior to the expiration of that five-year period, such loan may be released only if the court in which the proceeding is pending determines that payment from future income or other wealth will impose an undue hardship on the debtor or his dependents.

(b) Subsection (a) of this section shall be effective with respect to any proceedings begun under the Bankruptcy Act on or after September 30, 1977."

Thus, with the filing of these cases on September 27, 1977, the question of time of repayment and hardship does not apply.

12. The plaintiff bases its Complaint requesting non-dischargeability of said debts by the use of false and misleading

representations, as follows:

"5. In connection with that business the above-named bankrupts obtained the principal amounts previously set forth from plaintiff's assignors by the use of false and misleading misrepresentations. Plaintiff's assignors relied upon the representations made by the bankrupts as to their intent to repay said loans."

13. That at the pre-trial hearing a discussion was held relative to including the National Direct Student Loans made by the University of Wisconsin in the objection, and counsel now disagree as to the approach agreed upon in these proceedings relative thereto, the plaintiff's position being that the NDSL loans would be included and the defendants' position being that the matter is limited to the guaranteed student loans set forth in the original objection to dischargeability.

14. The Court will consider the two loans involved in the issues tried in this case and will not leave part of the case undecided for further litigation in another Court.

15. The plaintiff has made considerable argument as to defendants' fraudulent intent from the inception of the loans, basing its position primarily on a belief that defendants did not intend to repay the loans from the start because of a concept that they had to be very successful in life; that they had no pressing financial problems and filed bankruptcy, and that said facts are enough to draw a conclusion of fraudulent intent and further arguing that mental reservation is, in fact, an intent not to repay from the outset and constitutes fraud.

16. That defendants testified they intended to repay the loans when they obtained them and there is no evidence they did not intend to repay them other than the conclusion from the circumstantial evidence above stated.

17. That the second position by the plaintiff is that the applications by the defendants were false and misleading based upon the above figures showing an understatement of debts.

18. That defendants testified they did not realize they should include the loans they had guaranteed for each other as affecting their total indebtedness.

19. That all of the debts as to the direct loans with

cross-guarantees were within the knowledge of the plaintiff and available to the original loaning banks.

20. That defendants contend there was no misleading the plaintiff or the banks and no intent to defraud relative to the loan applications.

21. The position of the plaintiff is best expressed herein by including as a quote the conclusion in its brief:

"The purpose of bankruptcy is to relieve honest debtors of the crushing burdens of debt. The Hardings, however, have turned the bankruptcy proceedings into a device to defraud the government and the lenders.

With the student loans the Hardings were able to obtain extensive education and thereby remunerative employment. At the present time the Hardings have a combined income exceeding Thirty Thousand Dollars (\$30,000.00), and no pressing creditors.

They are not honest debtors seeking relief, but are rather callous manipulators who, having taken advantage of a unique and fine government sponsored program, now seek to only escape the reasonable obligations imposed by the program."

22. The plaintiff further contends that the debts were not provable at the time of the filing of bankruptcy and cites several cases in support thereof, and defendants contend, among other things, that the indebtedness was provable, was established and was existing and "absolutely owing" at the time of the signing of the original promissory notes, and that it was not necessary as contended by the plaintiff that later "pay out" agreements be executed.

23. That after a careful consideration of all of the evidence, the various exhibits and the testimony of the respective parties, it appears to the Court that the plaintiff has not sustained its position to deny the dischargeability of the indebtedness as set forth in the schedules.

24. That the plaintiff has not carried its burden as to sufficient evidence in this case to warrant a judgment on the grounds alleged in its Complaint.

25. That the evidence is insufficient from the conclusions of the circumstantial evidence to sustain the contention of fraud.

26. That the evidence of intent not to repay the loans from the inception is not sufficiently proven.

27. That the understatement of the indebtedness as to the inclusion of the guaranteed loans as explained by the defendants is a satisfactory explanation of the claim of the plaintiff as to the mis-statement in the applications.

28. That the student loan obligations were matured prior to the bankruptcy filings and were provable.

#### CONCLUSIONS OF LAW

That judgment should be entered dismissing the plaintiff's Complaint and granting a discharge to each of the defendants herein without costs to either party.

#### J U D G M E N T

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:

1. That the plaintiff's Complaint be and the same is hereby dismissed upon the merits and without costs to either party.

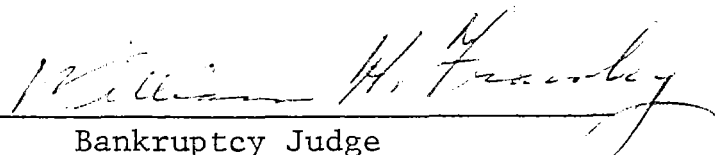
2. That any indebtedness claimed by said plaintiff be and the same is hereby subject to discharge and release in accordance with the provision of the Bankruptcy Act.

3. That the aforesaid indebtedness, if any, so claimed of the bankrupts to the plaintiff, including the National Direct Student Loans, be and the same are 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 bankrupts in connection with the said indebtedness.

5. Wisconsin Higher Educational Aids Board be, and it hereby is enjoined from instituting or commencing any action or employing any process to collect the aforesaid indebtedness as a personal liability of the above named bankrupts.

BY THE COURT:

  
Bankruptcy Judge