

Dismissal of Complaint
Dismissed . 2/16/79

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

In the Matter of

IN BANKRUPTCY

RICHARD ROLAND KAUFFMAN

No. 78-00237 Vol.

Bankrupt

MADISON SILOS, Division of
Chromalloy American Corporation,
a Delaware corporation

Plaintiff

vs.

RICHARD ROLAND KAUFFMAN

Defendant.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT

Madison Silos, Division of Chromalloy American Corporation, a Delaware corporation, having filed a Complaint against the above named defendant on the 18th day of May, 1978, to determine the dischargeability of the debt owed to it which was based on a judgment of a Court of record; and the defendant having filed a Motion to Dismiss the Complaint and a Brief in support thereof as well as a Notice of Motion; and the plaintiff having amended its Complaint on the 10th day of July, 1978; and the defendant, by his attorney, having advised the Court at the trial of said matter of the admissions and denials as to said Complaint; and the trial having proceeded, and witnesses being sworn, and the Court having heard the arguments of counsel and having considered the entire record, the Briefs and Memorandums filed and the exhibits offered at said trial, FINDS:

1. That the defendant duly filed a Petition in Bankruptcy and was adjudicated a bankrupt on the 16th day of March, 1978, and at the first meeting of creditors it was determined to be a no asset case and no Trustee was appointed.

2. That on or about the 9th day of September, 1975, the above named defendant ordered a silo to be placed on a farm occupied by him, a copy of which Order is attached to plaintiff's Amended Complaint and which Order on the lower righthand corner below the signature of the defendant has printed thereon "Landowner."

3. That the plaintiff alleges and relies that said Order constitutes the making and publishing of a materially false statement in respect to defendant's financial condition under Section 17a (2) of the Bankruptcy Code.

4. That the Complaint asks for a determination of non-dischargeability of said debt, the rendering of judgment in favor of the plaintiff, and granting plaintiff such other and further relief as may be just and equitable.

5. That following the obtaining of said Order the plaintiff by its employees checked with the bank given as a reference on said statement relative to the ownership of the farm where the silo was to be erected.

6. That the bank informed plaintiff that the defendant-bankrupt owned the farm and they were requested to furnish such information in writing.

7. That said Order as herein described does not constitute a false statement under said Act.

8. That said plaintiff did not rely upon said Order which stated that the bankrupt was the owner, but instead inquired as to the ownership of the property and the bank so advised them that the bankrupt was the owner.

9. That the mere printing of the word on the form and the entire order blank is not the type of instrument to which the law refers.

10. That in addition, defendant testified that he advised the agent of the company that he was not the land owner, and the agent advised him that in order to get it going they would just

leave it because it was getting late in the fall for the building of said silo because of the weather.

11. That the agent of the plaintiff denies the conversation or remembering anything about it.

12. That the land in question at the time of the ordering and building of the silo was not owned by the defendant but by the corporation.

13. That from all of the evidence it does not appear that the defendant-bankrupt in any manner whatsoever acted with intent to deceive relative to the silo and farm ownership.

14. Other evidence is in the record relative to the conduct of the defendant in regard to a check issued to be paid in silver only, and it became the source of argument and litigation even in the United States District Court. In said matter it is not relevant to the determination of dischargeability in that Section 17c (2) limits the question of dischargeability to Sections (2) (4) and (8) of Section 17a and that said Sections (4) and (8) are not applicable to the situation herein.

15. That the allegations of the Complaint entitling the plaintiff to relief have not been sustained or proven.

CONCLUSIONS OF LAW

That judgment should be entered dismissing the plaintiff's Complaint as to the defendant, Richard Roland Kauffman, and granting his discharge 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 in said matter be and the same is hereby dismissed upon the merits.

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. Madison Silos be, and the same 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 bankrupt.

Dated: February 16, 1979.

BY THE COURT:

Bankruptcy Judge