

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

In the Matter of

IN BANKRUPTCY

EARL DONALD O'BRIEN, a/k/a
PAT O'BRIEN, d/b/a The Gun
Nut

No. 79-01108 Vol.

Bankrupt

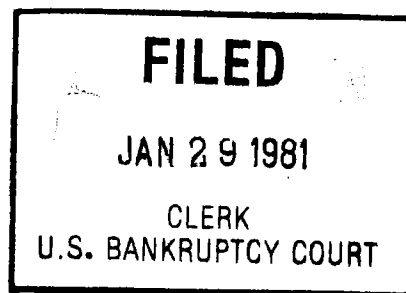
WILLIAM WALTICH

Plaintiff

vs,

EARL DONALD O'BRIEN

Defendant.



FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

At Eau Claire, in said district, this 29th day of
January, 1981.

The plaintiff herein having filed a complaint on January 15, 1980, objecting to the discharge of the defendant, and to the dischargeability of a certain judgment held by the plaintiff against the defendant; and thereafter, on March 24, 1980, the plaintiff having filed an amended complaint as to Article 17 Objections to Dischargeability and an amended complaint as to Article 14 Objections to Discharge; and the defendant-debtor by William E. Ray, Jr., his attorney, having filed his answer denying the allegations in the amended complaint as to Article 14 Objections, and having duly filed a motion to dismiss the amended complaint as to Article 17 Objections; and a pre-trial having been duly held in said proceedings; and thereafter a further examination of the bankrupt was held as requested by plaintiff's attorney; and a trial having been held on the amended complaint as to Article 14 Objections; and the Court having heard the arguments of counsel on the motion to dismiss as to the Article 17 Objections; and having duly considered the evidence, the Court record, arguments of counsel and the briefs submitted by the attorneys herein, and being fully advised in the premises, FINDS:

1. That the defendant-bankrupt duly filed a petition in bankruptcy on the 10th day of September, 1979, and thereafter amended schedules were filed; and it having been determined by the Court that the matter was a no asset case, no trustee was appointed.

2. That on the 27th day of March, 1979, the plaintiff recovered a judgment in the Circuit Court of Oneida County, Wisconsin, in an action wherein William Waltich was plaintiff and Pat O'Brien and M. J. (Mitch) Reynolds were defendants, being Case No. 79-CV-91, and that said judgment was a default judgment.

3. That the complaint in said Circuit Court action alleges that at the times material to the action the defendant, Pat O'Brien, was doing business as "The Gun Nut", being an establishment for the repair and sale of firearms and located in Oneida County, Wisconsin.

4. That the co-defendant, M. J. (Mitch) Reynolds, was at all times operating a gun repair shop in said establishment known as "The Gun Nut."

5. That during the month of January, 1978, the defendant, M. J. (Mitch) Reynolds took possession of twenty-one firearms belonging to the plaintiff.

6. That the plaintiff turned over these guns to the said Reynolds to be sold by him and the defendant-bankrupt, Pat O'Brien.

7. That judgment was demanded for the sum of \$3,535.00 plus costs.

8. That following the default judgment in said matter an execution and levy were made and a sale held on said judgment as to the property of the defendant-bankrupt, Earl Donald O'Brien, and after crediting the expenses of sale on the amount realized there was owing to the plaintiff the sum of \$2,069.50 as of January 30, 1980.

9. That plaintiff filed a proof of claim for said sum in said proceedings herein on said date.

10. That as to Article 17 Objections, the defendant contends that the complaint is an attempt to re-litigate a matter that is res adjudicata by virtue of the prior state court action, and that the plaintiff was a general unsecured creditor of the defendant at the time of said execution and sale, and obtained a voidable preference by virtue of said sale to the detriment of the other unsecured creditors.

11. That as to Article 14 of the amended complaint, plaintiff contends that the defendant transferred, removed, destroyed, concealed or permitted to be removed, destroyed or concealed his property with intent to hinder, delay or defraud his creditors as to the disposition of approximately forty-one firearms obtained from one Fred Rudy, and that the defendant has failed to satisfactorily explain a loss of assets, contrary to Section 14c (7) of the Bankruptcy Act, namely, the explanation of what happened to the forty-one firearms above referred to.

12. That as to Article 17 of the amended complaint, plaintiff contends that the defendant-debtor willfully and maliciously converted the property of the plaintiff, contrary to Section 17a (2) of the Bankruptcy Act, and disposed of said firearms and failed to deliver a specified sum from the proceeds of the sale to the plaintiff, and that his judgment is non-dischargeable.

13. That the defendant denies each of the allegations of the amended complaints above referred to.

14. That the evidence offered at the trial by the plaintiff in support of his position on both amended complaints is insufficient to sustain the burden of proof required under the Bankruptcy Law.

CONCLUSIONS OF LAW

That an order be entered dismissing the plaintiff's amended complaint as to Article 14 Objections and granting the motion of the defendant as to dismissing the amended complaint as to Article 17 Objections.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That the amended complaint as to Article 14 Objections be and the same is hereby dismissed upon the merits without costs to either party, and that the motion of the defendant to dismiss the amended complaint as to Article 17 Objections be and the same is hereby granted without costs to either party.

BY THE COURT:



William H. Frawley
Bankruptcy Judge