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

GARY J. LARSON and
CAROL W. LARSON,

Debtors

IN BANKRUPTCY
No. 80-00145

DANIEL TEPOEL and
CHERYL TEPOEL,

Plaintiffs

vs.

GARY LARSON, d/b/a G.J.'s Real Estate, Ltd., f/d/b/a G.J.'s Real Estate, G.J.'s Real Estate Ltd., Lake Nebagamon Village Square Subdivision, Ltd.,

Defendants.

Adversary Proceeding
No. 80-0061

FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER

At Eau Claire, in said district, this 26th day of October, 1981.

The plaintiffs having filed a complaint herein claiming damages against the defendants for repayment of brokerage commission, for punitive damages, and for money owed for breach of contract, and claiming fraud and other grounds for damages alleged in paragraph nine of plaintiffs' complaint; and the defendant, Gary Larson, having answered by general denial all of said allegations; and the matter coming on for trial before the Court; the plaintiffs having appeared in person and by their attorney, and the defendant, Gary Larson, having appeared in person and by his attorney; and witnesses having been sworn and testified; and counsel having stated their positions and having filed briefs; and the Court being fully advised in the premises, FINDS:

1. That the plaintiffs, Daniel TePoel and Cheryl TePoel, are husband and wife and were employed as a real estate agent

and housewife respectively; that they formerly resided at Lake Nebagamon, Wisconsin, and are now residents of the State of Arizona.

2. That the defendant, Gary Larson, is a licensed real estate broker in the State of Wisconsin; that he formerly resided at Lake Nebagamon, Wisconsin, and now resides at Madison, Wisconsin.

3. That the corporations listed as defendants in the title of said action were organized under the laws of the State of Wisconsin, and were located at the office of Mr. Larson when he resided at Lake Nebagamon, Wisconsin.

4. That on or about June 1, 1977, the plaintiffs executed a listing agreement with Gary Larson as a real estate broker, and in July 1977 an offer and acceptance to purchase the TePoel farm was executed by Betty Roe, the buyer, and the plaintiffs as sellers.

5. That the said Betty Roe was a client of O. E. Allen Realty, Inc. and the defendant, Gary Larson, and O. E. Allen Realty, Inc. had a co-broker agreement relative to the sale of said farm.

6. That the sale became a complicated transaction because of the lack of money, liens, available cash, and the tax requirements of the purchaser, Betty Roe, as to the handling of the sale.

7. That after several offers of purchase were drafted and redrafted a final method of sale was completed between the attorneys in Illinois where Mrs. Roe owned a farm and the Wisconsin attorneys representing the plaintiffs as to the sale of the Wisconsin farm.

8. That finally the sale of plaintiffs' farm was completed by a series of transactions which resulted in plaintiffs deeding their farm to said Gary Larson; then Gary Larson conveying to said Betty Roe in exchange for her interest in the Illinois farm by Gary Larson, and in which plaintiffs

acquiesced as to the sale price and disposition of said Illinois property.

9. That to recite all of the details of the complicated criss-cross transactions between the parties would accomplish no purpose in this decision but perhaps lead to more confusion.

10. That in order to complete the transaction it was necessary for the defendant, Gary Larson, to borrow the sum of $150,000.00 from an insurance company. The cash was insufficient to pay the plaintiffs in full and the defendant, Gary Larson, executed and delivered an unsecured note to the plaintiffs in the sum of $41,200.00 on November 28, 1977, to be due upon the sale of the Illinois farm or upon the expiration of one year.

11. That at the trial and in their briefs plaintiffs claimed that the note was to be secured by a mortgage. However, it is interesting to note that neither in the pleadings in the Bankruptcy Court nor in the action commenced in the Circuit Court for Douglas County, Wisconsin, prior to the bankruptcy case was there any allegation or claim that said note was to be secured. Defendant denied that there was to be a mortgage or security for the note although Betty Roe testified she had heard a telephone conversation that a mortgage was to be given.

12. That if a mortgage was to have been given the plaintiffs waived the receipt thereof by accepting the note and not refusing it and starting immediate action for their money.

13. That following the sale of the Illinois farm and on or about June 22, 1978, the defendant paid on the note the sum of $26,489.98, and the further sum of $4,000.00 on or about October 20, 1978, and that the amount due at the time of the trial was $10,710.02 plus interest at 8% from October 21, 1978.

14. That counsel for the parties have filed several masterful briefs applying the facts in this case to the Wisconsin law relative to the obligation that a realtor owes his client, who would be the plaintiffs in this particular case.

15. That the plaintiffs and defendant had been acquainted for many years, from school days; went to the same church, and the property was listed with Gary Larson after another realtor had failed for one year to sell the farm.

16. That during the negotiating period involved, being the fall of 1977 and the spring of 1978, the plaintiff, Daniel TePoel, spent a great deal of time with the defendant, Gary Larson, and became interested in becoming a real estate salesman and realtor, and thereafter in 1978 applied for a license, and after several cram courses obtained his license and then went to work for defendant, Larson. This was after the sale of his farm by Gary Larson and the subsequent sale of the Roe farm.

17. "It is the rule in this state that where a broker is authorized to sell his principal's property that for him to purchase it himself he is bound, due to the relationship of principal and agent, by additional and greater obligations and duties than are required in ordinary business transactions between buyer and seller * * *; and that a broker can neither purchase from, nor sell to, his principal unless the latter expressly assents thereto or, with full knowledge of all the facts and circumstances acquiesces in such a course." Sphatt v. Roth, 253 Wis. 339, p. 346

18. Other relative cases which will establish the Wisconsin law and the close and necessary following of the ethical principles set forth in said cases are found in Nolan v. Wisconsin Real Estate Brokers' Board, 3 Wis. 2d 510, 533, and Hilboldt v. Wisconsin Real EState Brokers' Board, 28 Wis. 2d 474, 485. See also Am. Jur. Vol 9A 2d, p. 542 relative to fiduciary fraud.

19. In this particular case, as in the above case of Sphatt v. Roth, there is no proof of any fraud, coercion or concealment on the part of the defendant, and the evidence deduced shows that a disclosure sufficient to satisfy these rules of law was made by the defendant.

20. That the acts and documents arising out of the negotiations and meetings show that the plaintiffs agreed to the method of the sale of the farm, although it certainly might not be the way somebody else would so it, just as each lawyer handles matters in a different way.

21. That it is important to remember that plaintiff, Daniel TePoel, is a licensed realtor, first becoming a licensed salesman, although not at the time of the sale herein involved.

22. That the allegation in the complaint that the plaintiffs are entitled to a refund of the sales commission in the sum of $59,800.00, as an unjustified commission paid to the defendant, cannot be sustained.

23. That the evidence relative to the Lake Nebagamon Village Square Subdivision, Ltd. does not establish a claim to the plaintiffs for fiduciary breach of contract or other basis of liability.

24. That the claim for $100,000.00 damages as set forth in the prayer for relief and paragraph nine of plaintiffs' complaint is not proven.

CONCLUSIONS OF LAW

That the Court enter an order and judgment that the indebtedness owed to the plaintiffs by the defendant, Gary Larson, is dischargeable in the bankruptcy proceedings, and that plaintiffs' complaint be dismissed upon the merits without costs to any of the parties.

ORDER AND JUDGMENT

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:

1. That the indebtedness due to the plaintiffs from the defendant, Gary Larson, be and the same is hereby determined to be dischargeable under the Bankruptcy Code and in these proceedings.

2. That the plaintiffs' complaint be dismissed upon the merits and without costs to any of the parties.

BY THE COURT:

/s/ William H. Frawley

William H. Frawley
Bankruptcy Judge