

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

*Appeal filed
12-22-81*

ROBERT JAMES CHRISTENSEN and
LORRAINE ELIZABETH CHRISTENSEN,

Debtors,

No. EF7-80-01975

MENARD, INC.

Plaintiff,

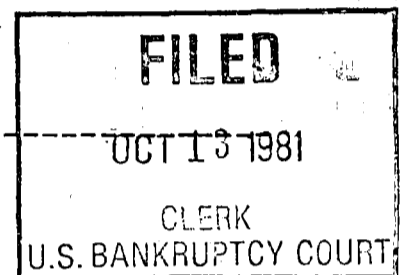
vs.

Adversary No. 81-0119

ROBERT JAMES CHRISTENSEN and
LORRAINE ELIZABETH CHRISTENSEN,

Defendants.

FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER



Menard, Inc., a creditor of the above named debtors, having duly filed a complaint in this Court praying that the discharge of the debtors from their debts be denied, or in the alternative that their discharge be revoked, and that plaintiff have other relief; and the debtors having filed an answer; and a pre-trial hearing having been held in said matter and adjourned to the further order of the Court to permit counsel to file briefs; and the plaintiff having duly filed its brief and the debtors having filed their brief; and the Court having heard the position of counsel and having considered the record, file, pleadings, and being fully informed relative to said issues, FINDS:

1. That the debtors herein filed a petition for relief on the 29th day of December, 1980.
2. That they had operated a restaurant business and had sold the same, and that as of December 15, 1980, the amount due the bank on the balance of said sale price was the sum of \$18,516.35.
3. That on December 17, 1979, the debtors assigned the payments due them from said sale, without restriction, to the Peoples State Bank of Wausau, Wisconsin.
4. That at the time of the filing of the petition said debtors were obligated to said bank on a second mortgage on their

homestead in the sum of \$6,521.93; on a third mortgage in the sum of \$13,379.43, and on a fourth mortgage in the sum of \$1,207.92.

5. That said homestead was also subject to a first mortgage in the sum of \$11,097.84.

6. That as of the date of the filing for relief on December 29, 1980, the homestead property was of the value of approximately \$50,900.00.

7. That the debtors were indebted to the Peoples State Bank of Wausau in the further sum of \$2,628.00 on a security agreement for the purchase of an automobile.

8. That the assignment does not refer to any specific mortgage and said payments were to apply on debtors' indebtedness to said bank.

9. That the assignment was executed more than one year prior to the date of filing the petition for relief.

10. That although not clearly shown, some of the funds for which the mortgages were given were used to operate the business prior to its sale.

11. That the debtors were entitled to a \$25,000.00 homestead exemption under the state law, and as the schedules show the husband had an unused exemption of \$7,650.00 for homestead and other purposes.

12. That in the event of a sale said homestead would be subject to a realtor's commission of six to ten percent depending upon the particular listing contract between the parties thereto.

13. That said debtors did not list the assignment to the bank in their schedules for the reason that said assignment was made more than one year prior to the date of filing their prayer for relief herein, and that they were not required to do so because of the lapse of time above stated.

14. That debtors' failure to list said assignment was not a fraud in the obtaining of their discharge; they did not fail to declare an asset nor did they fail to deliver to the trustee

the note referred to in the plaintiff's complaint.

15. That the discharge was properly granted to the debtors by the above named Court on May 21, 1981, and after the filing of a no asset report by the trustee herein.

16. That Am. Jur. 2d, Vol. 9, page 510, states:

"It is said in the legislative history to the Bankruptcy Code of 1978 that 'As under current law, the debtor will be permitted to convert non-exempt property into exempt property before filing a bankruptcy petition . . . The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law.' This view has been echoed in cases under the 1978 Code."

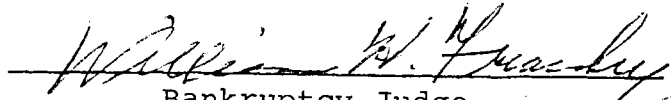
CONCLUSIONS OF LAW

That an order be entered dismissing the plaintiff's complaint upon the merits.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That plaintiff's complaint be dismissed upon the merits without costs to either party.

Dated: October 13, 1981.


Bankruptcy Judge.