

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

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In Re

RONALD GEORGE HETRICK, a/k/a  
Ronald G. Hetrick, a/k/a Ron  
Hetrick, d/b/a Hetrick  
Construction

Debtor

FREDRICK SEEGER

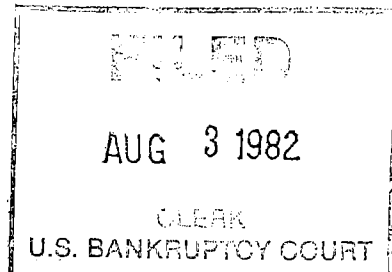
Plaintiff

vs.

RONALD GEORGE HETRICK, a/k/a  
Ronald G. Hetrick, a/k/a  
Ron Hetrick, d/b/a Hetrick  
Construction

Defendant.  
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Bankruptcy No.  
EF7-81-01841



Adversary No. 82-0012

FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER

A complaint to determine dischargeability of a certain debt within the meaning of Section 523(a)(4) of the Bankruptcy Code having been filed, and the matter having come on for trial before the court, and the court having requested briefs of counsel, and having heard the oral arguments of counsel, and being fully advised in the premises, FINDS:

1. That the above named debtor filed a petition under Chapter 7 on the 22nd day of October, 1981, and plaintiff was listed as a creditor of said debtor in the schedules.

2. That the debtor was a building contractor and on the 25th day of March, 1981, entered into a construction contract with the plaintiff to build a certain barn for the sum of \$25,568.75 with a downpayment of \$2,556.00 and the balance of \$23,011.75 being due upon completion of the barn.

3. That on April 3, 1981, plaintiff gave defendant

a check for \$2,556.00 and all of said amount was expended between the 15th day of April, 1981, and the 13th day of June, 1981, for labor or materials on the plaintiff's job.

4. That A-1 Redi-Mix Concrete, Inc. furnished the labor and materials for said job, starting on June 20, 1981, and ending on July 25, 1981, in the sum of \$3,694.00.

5. That on August 13, 1981, said subcontractor gave notice of intent to file a construction lien on plaintiff's property, and thereafter filed a lien on said property as provided by Wisconsin Statutes.

6. That on July 15, 1981, the plaintiff paid to the debtor the balance of \$23,000.00 due on said contract.

7. That defendant filed a general denial of plaintiff's complaint, claiming that said complaint does not state a cause of action.

8. That said defendant, after receiving the final payment, did not prior to the filing of bankruptcy or at any time pay the said A-1 Redi-Mix Concrete, Inc. for the labor and materials furnished on said job and the subject of said mechanics lien.

9. That Section 523(a)(4) of the Bankruptcy Code provides for certain exceptions to discharge for fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny. That Wis. Stats. 779.02(5) covers theft by contractors and provides for trust funds status of money in the hands of said contractor for any amounts due and owing for labor and materials due subcontractors.

10. That defendant relies on the case of Pacocha, Bkrty. Wis. 1980, 9 B.R. 531, which arose in this court. That this case is distinguishable from the Pacocha case in that here the subcontractor filed a mechanics lien while in the Pacocha case no mechanics lien was filed as stated in the opinion.

CONCLUSIONS OF LAW

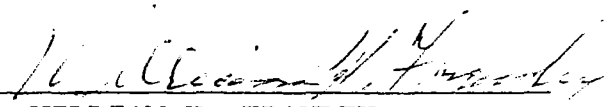
That an order be entered determining that the amount payable by the plaintiff on the mechanics lien above described, including costs and interest, and necessary for the release of the land of said plaintiff from the mechanics lien be and the same is hereby determined to be nondischargeable in this proceedings.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That the amount of the mechanics lien of A-1 Redi-Mix Concrete, Inc., including subsequent interest and costs, to be paid by said plaintiff is hereby adjudged to be nondischargeable in these proceedings without costs to either party.

Dated: August 3, 1982.

BY THE COURT:

  
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WILLIAM H. FRAWLEY  
BANKRUPTCY JUDGE