

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

In Re:

WILLIAM B. SUMMER and
MAE L. SUMMER,

Debtors

JAMES W. GALLE and
EUNICE GALLE,

Plaintiffs

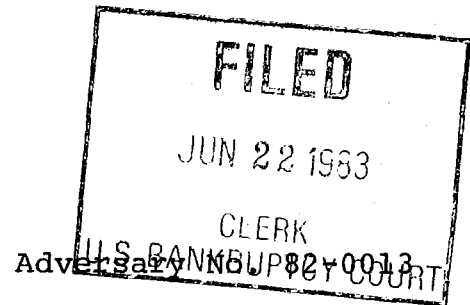
vs.

WILLIAM B. SUMMER and
MAE L. SUMMER

Defendants.

Bankruptcy No.

EF7-81-02110



FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The above named plaintiffs having filed a complaint to determine dischargeability of a certain alleged debt, and preliminary motions having been heard by the court, and the court having denied a motion for summary judgment; the plaintiffs appearing by David M. Erspamer, their attorney, and defendants appearing by Douglas R. Zilz, their attorney; and the parties having stipulated to the facts, and having agreed that the court determine the same upon said facts and the law relative thereto; and counsel having made arguments and having filed briefs, and the court being fully advised in the premises, FINDS:

1. That the plaintiffs purchased from the defendants nine cows for the sum of \$7,000.00 on May 1, 1981.

2. That said sale arose out of an ad appearing in the Indianhead Advertiser, a weekly Burnett County publication, as follows:

"FOR SALE: 9 good producing, well-uddered
2d calf Jersey cows. Two just fresh,
balance due in July and August. 866-7484."

3. That the calves that were born after the sale to the plaintiffs did not occur at the times stated by the defendants and that all of the calves born were not Jerseys but several were Holsteins.

4. That plaintiffs contend defendants intentionally misrepresented the condition of some of the cows as well as their due dates and the breed of calves they were expected to produce.

5. That the amended complaint alleges that said action is brought under Sections 523(c), 523(a)(2) and 523(a)(6).

6. That depositions were filed in said matter of the testimony of each of the plaintiffs and the defendants, and there would be no benefit to specifically summarize the testimony of each of the parties.

7. The plaintiffs were not experienced farmers and the defendants were not experienced farmers.

8. The plaintiffs answered the ad of the defendants in the newspaper and made arrangements to check and examine the cattle. They did not employ a veterinarian to check the cattle

but relied upon their own ability to do so.

9. The defendants gave the plaintiffs barn records, test charts and all available information that they had relative to the animals. Certain of the cows were bred by artificial insemination and certain ones by a bull rented from a neighbor.

10. That in order for the debt to be nondischargeable under the Bankruptcy Code the bankrupts must have known their representations were false and they must have made them with the intent to deceive the creditor. That from all of the evidence it is established that said defendants neither knew the representations were false nor did they intend to deceive the plaintiffs.

11. The ad brought the parties together; they talked over various facts and the defendants gave the plaintiffs every opportunity to have the animals checked, and the plaintiffs made their own determination as to the cattle they were buying.

12. The defendants did not act in a reckless disregard of the truth nor did they intend to deceive the plaintiffs. The defendants did not know that the representations were other than as they had given them, and the plaintiffs had every opportunity to check the condition of the cows with the aid of a veterinarian.

CONCLUSIONS OF LAW

That the court enter an order dismissing plaintiffs' complaint upon the merits and determining that the claim, if any,

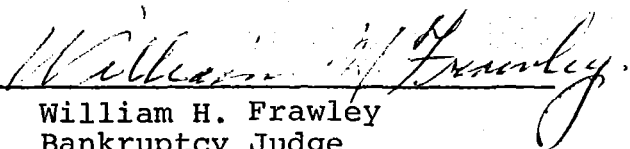
of said plaintiffs against the defendants is dischargeable in said proceedings, without costs to any of the parties.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That the debt alleged in plaintiffs' complaint be and the same is dischargeable, and said complaint is dismissed upon the merits and without costs.

Dated: June 22, 1983.

BY THE COURT:



William H. Frawley
Bankruptcy Judge