

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

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HENRY O. BROOKS and MARY B.  
BROOKS, f/d/b/a Brookdale  
Farms, Inc.

Bankruptcy No.  
EF7-82-00423

Debtors

ROYAL CREDIT UNION,  
a Wisconsin credit union

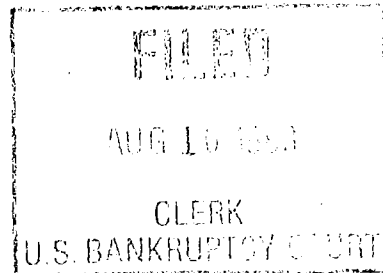
Plaintiff

vs.

Adversary No. 82-0145

HENRY O. BROOKS and MARY B.  
BROOKS, f/d/b/a Brookdale  
Farms, Inc., GEORGE GREGAR,  
THOMAS T. GREGAR and FREDRIC  
J. GREGAR, partners, d/b/a  
Gregar Acres

Defendants



FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The above named plaintiff, Royal Credit Union, a Wisconsin credit union, having filed a complaint, and later an amended complaint, objecting to the dischargeability of certain debts; and each of the defendants having filed a separate answer relative to the allegations contained in plaintiff's amended complaint; and plaintiff having alleged that it is entitled to possession of certain collateral against the defendants George Gregar, Thomas T. Gregar and Fredric J. Gregar, and that they deliver said collateral to

said plaintiff; and the matter having been set for a pre-trial conference, and the same having come on for hearing before the court; the plaintiff appearing by Mark J. Brunner of the firm of Dernbach & Brunner, its attorneys; and the debtors-defendants appearing by Steven R. Cray, their attorney; and the defendants Thomas T. Gregar and Fredric J. Gregar appearing by Thomas J. McNally, their attorney; and the court having heard the arguments of counsel, and having considered the pleadings and all of the record and file herein; and briefs having been directed to be filed by the attorneys, which were duly filed by Mr. McNally and Mr. Brunner; Mr. Cray having advised the court that he would not file a brief herein; and after careful and full consideration of the arguments of counsel and the briefs, and being fully advised in the premises, THE COURT FINDS:

1. That the complaint against the defendant George Gregar was dismissed in open court without costs.
2. That on or about the 6th day of August, 1979, the defendants Henry O. Brooks and Mary B. Brooks borrowed the sum of \$10,337.90 from the plaintiff credit union and executed a consumer chattel security agreement and other related papers; that the security therefor was one 1979 Egg-o-Matic Model No. SR-40 Candler and Feath-o-Lite Washer, and that a financing statement was duly filed on August 10, 1979, in the office of the Register of Deeds of Chippewa County, Wis-

consin, covering said unit and other collateral.

3. That on or about the 3rd day of January, 1981, the defendants Thomas T. Gregar and Fredric J. Gregar agreed to purchase the Egg-o-Matic machine and the rest of the equipment from the defendants Brooks for a total sum of \$5,000.00; that \$500.00 was paid down and the equipment was picked up on or about January 10, 1981, and the balance of said sum was paid.

4. That the filing with the Register of Deeds showed the Candler to be a 1979 No. SR-40 Model; that defendants Gregars allege they purchased a 1971 Egg-o-Matic Candler-Grader Model SR-20-L, Serial #25566, and Feath-o-Lite Washer Model #1035, Serial #771314.

5. That the description of the 1979 Egg-o-Matic Model was in error and the correct description was a 1971 Candler as above described.

6. That counsel for the Gregars contend that since the description was in error there was no valid security interest perfected on said Candler purchased by defendants Gregars.

7. The plaintiff credit union contends that the error is not a fatal error or lack of notice to defendants, and relies on the case of Milwaukee Mack Sales vs. First Wisconsin National Bank, 93 Wis. 2d 589 (1980).

8. The defendants Brooks did not have the permission of plaintiff for the sale of the Candler and equipment, and they did not apply the \$5,000.00 paid to them by the Gregars on the mortgage.

9. The defendants Brooks had other loans with the plaintiff and the exhibit attached to plaintiff's complaint shows that the Brooks made payments of \$224.82 on said equipment loan starting September 25, 1979, and after the sale continued the monthly payments of \$224.82 through February 1, 1982, making a last payment of interest in the sum of \$67.90 on April 29, 1982, leaving a balance unpaid on said equipment and Candler in the sum of \$6,203.79.

10. Counsel has raised the question of whether or not the error was a minor one or seriously misleading to the defendants Gregars because of the year model mistake.

11. That defendants Brooks raised the question they had other loans with the plaintiff and continued to make payments thereon, and that said payments all went to said plaintiff on its various loans. The record shows that the loan secured by the Candler has a balance as above stated. Had the Gregars checked the records in the Register of Deeds' office and/or the Secretary of State's office they would have found that the defendants Brooks had mortgaged the Egg-o-Matic Candler and they would have known, by these public records, of plaintiff's security interest therein.

CONCLUSIONS OF LAW

That an order be entered determining that the sum of \$6,203.79, plus interest from the 29th day of April, 1982, is not dischargeable in the bankruptcy proceedings, and that a further order be entered that the said Egg-o-Matic Candler purchased by the defendants Thomas T. Gregar and Fredric J. Gregar is subject to the claim of the plaintiff, Royal Credit Union.

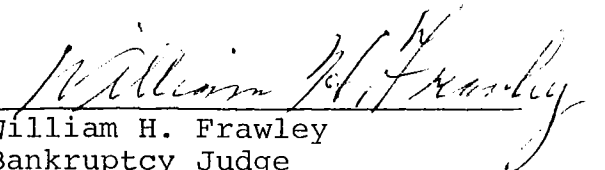
O R D E R

NOW, THEREFORE, IT IS ORDERED: That the debt due the plaintiff from the defendants Henry O. Brooks and Mary B. Brooks in the sum of \$6,203.79, plus interest from the 29th day of April, 1982, is not dischargeable in these bankruptcy proceedings.

IT IS FURTHER ORDERED: That the 1971 Egg-o-Matic Candler in the possession of the defendants Thomas T. Gregar and Fredric J. Gregar is subject to the security financing agreement of said plaintiff referred to in said proceedings.

Dated: August 16, 1983.

BY THE COURT:

  
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William H. Frawley  
Bankruptcy Judge