

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED
JUL 30 1985
CLERK
U.S. BANKRUPTCY COURT

In re: Case Number:
SHIRLEY ANN KREUSCHER, WF7-82-01457
Debtor.

FARMERS STATE BANK,
Plaintiff, Adversary Number:
v. 82-0285
SHIRLEY ANN KREUSCHER,
Defendant.

In re: Case Number:
PATRICIA ANN KREUSCHER, WF7-82-01477
Debtor.

FARMERS STATE BANK,
Plaintiff, Adversary Number:
v. 82-0286
PATRICIA ANN KREUSCHER,
Defendant.

In re: Case Number:
KARL CHESTER KREUSCHER WF7-82-01478
Debtor.

FARMERS STATE BANK,
Plaintiff, Adversary Number:
v. 82-0287
KARL CHESTER KREUSCHER,
Defendant.

FINDINGS OF FACT, CONCLUSION OF LAW,
AND
ORDER DISMISSING OBJECTIONS TO DISCHARGE
AND GRANTING DEBTORS' DISCHARGE HEREIN.

The Farmers State Bank of Stetsonville, Wisconsin, by its attorney, Corliss V. Jensen, having filed a complaint to deny a discharge to each of said debtors; and the defendants and debtors by their attorney, Gary L. Dreier, having answered denying the plaintiff's complaint and claiming the court has no jurisdiction under the ruling of Northern Pipeline Co. v. Marathon Pipeline Co., 73 L. Ed. No. 2d 598 (1982); and the matter coming on for hearing; and the parties appearing in person and by their above named attorneys; and the court having heard the many witnesses sworn in open court, considered the arguments of counsel, the briefs submitted, and upon the testimony, exhibits and all the records, and the court being fully advised and after careful consideration, FINDS THAT:

1. Each of the defendants duly filed a voluntary Chapter 7 proceeding as farmers.

2. The defendant Shirley Ann Kreuzcher is the mother of the defendants Patricia Ann Kreuzcher and Karl Chester Kreuzcher, and they formed an oral partnership in the spring of 1981 to farm and buy out the farm and personal property of Chester Nelson, the father of Mrs. Kreuzcher and grandfather of Patricia and Karl Kreuzcher.

3. Mrs. Kreuzcher returned to her father's farm (involved herein) two or three years after her marriage and farmed for many years with her father, each having their own separate milk checks, and Mrs. Kreuzcher was acquiring personal property, cattle, machinery and equipment. The parents occupied the farm-

house, and Mrs. Kreuzscher and children lived in a mobile home.

4. At the time of forming the partnership Mrs. Kreuzscher was 41 years of age, Patricia 18 years of age, and Karl was also a teenager.

5. They applied to the Farmers State Bank for a loan and on March 24, 1981, Mr. Kindschi, the loan officer of the bank, went to the farm and took an inventory and for inspection and to make an appraisal which is Exhibit #1. He again went to the farm in June, 1981, to check out items being sold by Chester Nelson, her father.

6. The loan was completed on June 15, 1981, for \$99,742.06 with 17.5% interest and a 30% milk assignment with pay out as follows:

1)	\$16,753.07	State Bank of Medford (previous loan)
2)	2,894.51	Thorp Finance (Karl's car)
3)	502.00	L. C. Christensen
4)	5,592.48	Farmers State Bank (previous loan)
5)	60,000.00	Chester Nelson (sale of p.p.)
6)	14,000.00	Allotment for purchase of cattle
	<u>\$99,742.06</u>	

(Exhibit 3)

7. On the same date the debtors executed a land contract with Chester E. Nelson and Gertrude Nelson for 160 acres (the farm herein) for \$113,704.95, balance now due \$53,705.95 plus interest. No bill of sale appeared to have been executed for the personal property.

8. The loan proceeds were short of sufficient working capital and almost immediately the venture began to run into hard

times with insufficient income to make payments. The 30% milk assignment was later increased to 40% to avoid legal proceedings. The debtors then became "strapped" to make a go of it.

9. In December 1981 the water pipes froze, some cattle died or had to be destroyed, and the Bank denied an additional loan for repairs. The Kreuzschers used a hose and pails to water the cattle for a number of days.

10. In early summer, the Kreuzschers and the Bank discussed the defaults and an auction was planned for July 2, 1982. Because of low auction sale prices it was postponed until September 1, 1982.

11. The auction proceeds of \$50,539.00 turned out to be a mutual disappointment because of low sales.

12. The debtors ceased farming after the sale.

13. From the time of purchase to the auction sale the Kreuzschers also accumulated \$10,964.35 of unsecured open accounts primarily for feed, veterinary bills, repairs, fertilizer, etc. (See Schedule A-3).

14. The Kreuzschers also accumulated additional secured debts of \$14,257.82 during the same time, of which \$8,400 security was returned to the sellers before the auction (see Schedule A-2).

15. The Bank called a number of witnesses who testified as to removal of property before the sale. They did not know of the dispute over the mortgage security.

16. The Kreuzschers testified as to the sale of the Jersey cows and purchase of Holsteins with the proceeds in order to increase milk checks.

17. The Kreuzschers claimed consents to sales and replacements--the Bank denies consent.

18. Prior to the sale, the attorney for the Kreuzschers advised them to remove from the farm the items not covered by the security agreement, property owned by others including the property left on the farm by her father which was not sold to her, also cattle and animals being grazed or fed and owned by others.

19. In general, the Kreuzschers claim that it is this property described in paragraph 18 that the Bank witnesses referred to in their testimony--paragraph 15.

20. A dispute arose as to what property was covered by the security agreement in that it was not an itemized listing but "a blanket description" as follows:

2. DESCRIPTION OF COLLATERAL

- All farm equipment now owned or hereafter acquired by Debtor, and all accessions to such farm equipment.
- All livestock now owned or hereafter acquired by Debtor, and the young of all livestock.
- The following products of livestock now owned or hereafter acquired by Debtor: milk and calves
- All account and contract rights now owned or hereafter acquired by Debtor arising from the sale, lease or other disposition of the following farm products: milk which Debtor hereby assigns to Secured Party.

- All crops growing or to be grown by Debtor, and the products of such crops, on property described as:
- All livestock feed now owned or hereafter acquired by Debtor.
- All farm supplies now owned or hereafter acquired by Debtor.
- Other property specifically described as:

and all proceeds of any property checked.

(Exhibit 7)

All of the following items now owned or hereafter acquired by the debtor; all farm equipment and all accessions to and spare and repair parts, special tools and equipment for such farm equipment; all livestock and the young of such livestock; all livestock feed; all farm supplies; all accounts arising from the sale of products of livestock.

(Exhibit 8)

21. The disputed items are the property that the Bank claims was removed and not sold at the auction.

22. The tractor had repairs of \$4,700 and sold for \$4,800 at the sale.

23. The haybinder broke down and was replaced by a new machine which was re-possessed prior to the auction.

24. The Kreuzschers claimed among other items that the dogs, horses and hogs were not mortgaged to the bank. The hogs were butchered for home consumption.

25. Two De Laval milk units were re-possessed in March, 1982.

26. The parents moved off the farm after the June 15, 1981 sale and bought another farm where they continue farming with a Registered Jersey Herd.

27. Mr. Nelson who testified at the trial seems to still think he owns the farm and personal property.

28. The complaint of the Bank alleges:

3. Defendant has, with intent to defraud a creditor (the Plaintiff), transferred, removed or concealed or has permitted to be transferred, removed or concealed property of the Debtor, within one year before the date of the filing of the Petition and also property of the estate after the date of the filing of the Petition.

4. Defendant has, on information and belief, without justification, failed to keep or preserve recorded information, including books, documents, records and papers from which the Debtor's financial condition or business transactions might be ascertained.

29. The plaintiff bears the burden of proving his objection to a discharge. Bankruptcy Rule 4005. In order to prevail in the allegations of paragraph 3 the Bank must demonstrate an intent to hinder, delay or defraud a creditor. 11 U.S.C. § 727 (a)(2). Further, such intent must be actual fraudulent intent as opposed to constructive intent. In re Clemons, 42 B.R. 796, at 800 (Bankr.S.D.Ohio 1984). There is insufficient evidence, direct or circumstantial, to show actual fraudulent intent.

30. The Kreuzschers had no intention of defrauding the Bank.

31. The attempted "family farm" operation by the debtors was a complete failure for many reasons including lack of operating capital, lack of business ability, inefficient operation, unexpected repairs, low farm prices, high repair bills, unexpected veterinary expenses, freezing pipes and many other items too numerous to mention. A written partnership was not made or required. Mrs. Kreuzscher did not execute an itemized bill of sale to the partnership nor Mr. Nelson, as previously stated. By failing to itemize the security and items not being sold, purchased or retained, the whole misunderstanding followed. The present bank officers acted in good faith in objecting to the discharge because of the removal of the items which turned out not to be covered by the mortgage. The Kreuzschers were acting in good faith and satisfactorily explained their conduct.

32. Apparently no analysis was made as to how the debtors could pay over \$17,500 interest per year on just the personal property loan plus interest payments on the land contract balance. There were also principal payments to be made on both loans. Every farm operation has repairs, maintenance and expenses as heretofore stated. No contingent financing was provided for and there was a complete breakdown of communication between the parties as well as not having a written agreement with Mr. Nelson of what he was retaining as his personal property. With all the foregoing problems, omissions and failure of agreements it simply had to fail, and all the parties were mutually involved.

33. The records of the debtors are very meager and consist of the 1981 and 1982 tax returns (Exhibits #16 and #17) and numerous bills, sales slips and other papers offered and received in evidence.

34. Although the records are meager, they comply with the requirements of the Bankruptcy Code. See In re Redfearn, 29 B.R. 739 (E.D.Texas 1983).

35. Upon the foregoing findings the complaint should be dismissed on the merits and discharge granted to each of the debtor defendants.

36. The objection of the debtors to jurisdiction was the only legal dispute herein and is disallowed without discussion or citations.

CONCLUSION OF LAW

That an order be entered dismissing the complaint on the merits and granting discharges to said debtors.

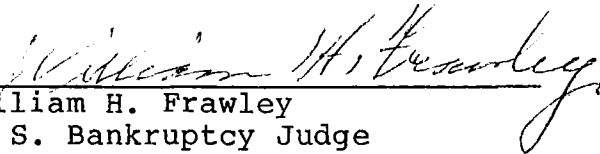
ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the complaint in this matter be dismissed upon the merits and a discharge pursuant

to the Bankruptcy Code be forthwith granted to each of said debtors.

Dated: July 30, 1985.

BY THE COURT:


William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Corliss Jensen
Attorney Gary L. Dreier
Attorney Arthur L. Eberlein *ca*