

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

In Re

GARY T. ISAACSON and
MARYE R. ISAACSON,

Debtors

CITIZENS BANK & TRUST,
a Wisconsin banking
corporation

Plaintiff

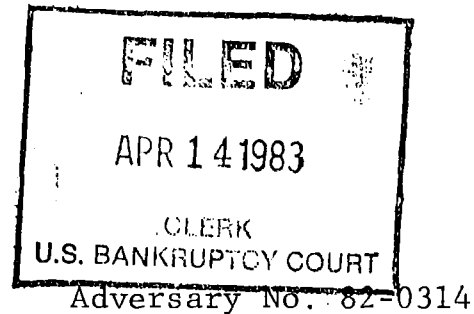
vs.

GARY T. ISAACSON

Defendant

Bankruptcy No.

WF7-82-01630



FINDINGS OF FACT,
CONCLUSIONS OF LAW and ORDER

The plaintiff having filed a complaint to determine a certain debt owed to it by the defendant to be nondischargeable and for judgment in the sum of \$14,343.88; and defendant having filed his answer denying the material allegations of the plaintiff's complaint; and said matter having come on for trial, after due notice; the plaintiff having appeared by Rhea A. Myers, its attorney, and the defendant having appeared by Arthur L. Eberlein, his attorney; and the court having heard the evidence offered at said trial and the arguments of counsel, and having considered all of the record and file

herein, and being fully advised in the premises, FINDS:

1. That the defendant duly filed a petition for relief herein on the 20th day of September, 1982.

2. That the plaintiff is a bank engaged in the general banking business at Wausau, Wisconsin.

3. That the debtor, Marye R. Isaacson, is the wife of said Gary T. Isaacson, and is not a defendant in this adversary proceedings.

4. That the defendant was the president of Den-Jan, Inc. and in the fall of 1979 was having business problems and had overdrafts with the plaintiff in the approximate sum of \$10,000.00.

5. That it was expected that the Christmas business would be sufficient to take care of the overdrafts and time was extended by the bank until after the Christmas holidays.

6. That on or about the 1st day of February, 1980, after negotiations between the defendant and the bank, it was agreed that the bank would take a mortgage on two certain lots in the Town of Kronenwetter; that said lots were appraised for \$4,500.00 and \$4,800.00, which appraisal was obtained by the defendant.

7. That said defendant was also to arrange to have his wife place her automobile as collateral security to the loan, which would be in the sum of \$12,651.00.

8. That said loan papers were dated February 1, 1980, and the note is Exhibit #6 in these proceedings. That the mortgage securing said loan, being Exhibit #9, is signed by George C. Isaacson and Shirley M. Isaacson, and their signatures were notarized by an employee of the bank, Raymond O. Schewe, and the same was drafted by Van E. Driessen, a senior vice-president of the bank, and who made the negotiations with the defendant relative to the mortgage to secure the antecedent debt.

9. The evidence discloses that the signatures of the parents of the defendant are forgeries, and that they did not sign either the mortgage or separate guaranties of the loan.

10. That the wife of the defendant gave a consumer chattel security agreement on February 1, 1980, covering one 1974 Toyota coupe, serial #RA21129781, and which states on the date of the security agreement that it is collateral as guaranty for the guaranty of Den-Jan, Inc., dated February 1, 1980.

11. The evidence reveals that the notary did not see George C. Isaacson or Shirley M. Isaacson sign said mortgage. George C. Isaacson and Shirley M. Isaacson testified under examination on March 14, 1983, that the first time they were aware that their lots had a lien as described in said mortgage was on August 20, 1982, and each of them denied that they had signed said mortgage.

12. The defendant denied on examination and at the trial that he had signed said names on said mortgage.

13. The plaintiff paid off a mortgage in the sum of \$2,551.27 to the River Valley State Bank, \$5.00 to the Register of Deeds for recording the mortgage, \$89.00 for a title insurance policy, and \$10,000.00 was deposited to the account of Den-Jan, Inc. with the bank to cover the overdrafts. This occurred on or about February 4, 1980.

14. The defendant denies that he stated he was the owner of the lots but rather stated that he could use them as had been done for the original loan to the River Valley State Bank.

15. George C. Isaacson denied that he had ever told Gary T. Isaacson that he could use the lots in the Town of Kronenwetter for security in addition to the loan from the River Valley State Bank.

16. Shirley M. Isaacson testified that Gary T. Isaacson had never approached her requesting that the Kronenwetter lots be used as security for a loan from the Citizens Bank & Trust.

17. It is clear from all of the evidence that the bank did not rely on the security of the lots for the advances of \$10,000.00 in overdrafts in the fall of 1979, and that said mortgage in that amount was security for an antecedent debt and could not be the subject of the misrepresent-

ation claimed by the plaintiff.

18. That the sum of \$2,551.27 paid to the River Valley State Bank and the sum of \$94.00 paid for recording and title insurance, in the total sum of \$2,645.27, was money advanced by the plaintiff upon the belief that it was getting a first mortgage on the lots.

19. That the bank was put in this position by the negotiations of the defendant relative to attempting to secure the overdrafts.

20. That the sum of \$10,000.00 for the overdrafts is a dischargeable debt and dischargeable in these proceedings. That the sum of \$2,645.27 is not dischargeable herein.

21. That the plaintiff is entitled to judgment against the defendant in the sum of \$2,645.27 without interest to date and without costs in these proceedings.

CONCLUSIONS OF LAW

That an order be entered determining that the sum of \$10,000.00 and any claim of accumulated interest is dischargeable in these proceedings, and that the sum of \$2,645.27 is nondischargeable.

That judgment be entered against the defendant for the sum of \$2,645.27 without interest or costs herein.

O R D E R

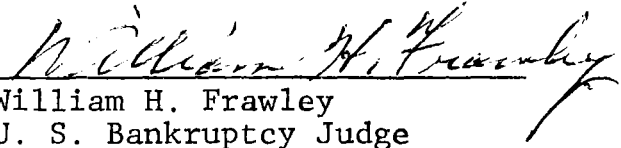
NOW, THEREFORE, IT IS ORDERED:

1. That the sum of \$10,000.00 plus any claim for interest is determined to be dischargeable, and that the sum of \$2,645.27 is determined to be nondischargeable.

2. That judgment be entered in favor of the plaintiff and against the defendant in the sum of \$2,645.27 without interest or costs herein.

Dated: April 14, 1983.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge