

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

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In Re:

VERNON H. MILLER and  
SUSAN E. MILLER

Debtors

CHAMPION COMPANIES OF  
WISCONSIN, INC., a  
Wisconsin corporation

Plaintiff

vs.

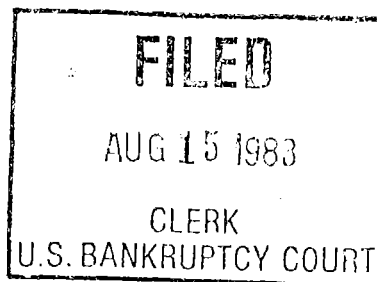
VERNON H. MILLER

Defendant.

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Bankruptcy No.

WF7-82-01856



Adversary No. 83-0006

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

Champion Companies of Wisconsin, Inc., a creditor of the above named debtor, Vernon H. Miller, having filed a complaint objecting to the dischargeability of its debt; and the debtor-defendant having filed an answer denying the allegations of nondischargeability of said debt; and the parties having stipulated as to the facts; and the court having considered the briefs of counsel, their respective arguments, and the entire record and proceedings herein, and being fully advised in the premises, FINDS:

1. That the debtors, Vernon H. Miller and Susan E.

Miller, duly filed a petition for relief on the 20th day of October, 1982.

2. That said defendant, Vernon H. Miller, was an officer of Paving Lok, Inc., a Wisconsin corporation, and engaged in the building and contracting business.

3. That no claim is made against the debtor, Susan E. Miller.

4. That said Paving Lok, Inc., from June 30, 1980, through June 25, 1981, purchased from the plaintiff certain brick paving materials on open account.

5. That all of the material purchased had been paid for by said purchasing corporation except the sum of \$2,840.61.

6. That defendant and said Paving Lok, Inc. claim that said materials were defective and said claim is in dispute.

7. That plaintiff obtained a judgment against Paving Lok, Inc. in the Circuit Court of Waukesha County, Wisconsin, on July 15, 1982, being Case No. 81-CV-2438.

8. That in November 1981, prior to the entry of said judgment, the defendant, as president of said Paving Lok, Inc., agreed to pay the balance of \$2,840.61, after applying a \$500.00 credit given by the plaintiff to said corporation, in settlement of all claims for defective pavers allegedly supplied; the parties agreed to the payment of \$1,000.00 on or before December 1, 1981, and the balance of \$1,840.61 on or before December 31, 1981.

9. That subsequent to a modification of said time schedule, the said Paving Lok, Inc. paid the sum of \$1,000.00 to the plaintiff on December 15, 1981.

10. That further negotiations were made to delay the date of the final payment.

11. That the material purchased was used for a project known as the GEF Plaza in the city of Madison, Wisconsin.

12. That said Plaza was a State of Wisconsin-owned project and said property was not subject to the filing of a construction lien thereon but plaintiff did have a remedy against the prime contractor's public works bond.

13. That the plaintiff did not take any action to enforce its claim pursuant to either Section 779.14 or 779.15, Wis. Stats.

14. That the plaintiff claims that said debt, which had been compromised after dispute, is nondischargeable under the Theft by Contractor, Section 779.16 Wis. Stats.

15. That defendant, Vernon H. Miller, contends he was not engaged in defalcation while acting in a fiduciary capacity. He further contends that said matter was a disputed claim arising over quality and quantity of materials, and that by virtue of the attempted settlement, and the plaintiff having obtained judgment against Paving Lok, Inc., the matter does not come under the Theft by Contractor Statute.

16. That defendant further contends said debt is dischargeable because there was acquiescence or knowledge by the plaintiff in the course of action taken by the defendant in attempting to settle the claim. In Re Gumieny, 8 B.R. 602 (1981).

17. That the relationship of the parties became one of debtor-creditor relationship and is controlled by In Re Pacocha, 9 B.R. 531 (1980); In Re Rabideau 1 B.C.D. 789 (W.D. Mich. 1975); In Re Visser v. Koenders, 6 Wis. 2d 535, 95 N.W. 2d 363 (1959).

18. That considering all of the evidence, the facts as stipulated, and the attempted settlement of the disputed parts of the claim, said indebtedness became a debtor-creditor relationship and is dischargeable in these proceedings.

CONCLUSIONS OF LAW

That the court enter an order adjudging the claim of the plaintiff to be dischargeable herein without costs to either of the parties.

O R D E R

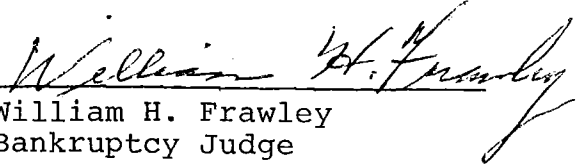
NOW, THEREFORE, IT IS ORDERED AND ADJUDGED: That the debt and claim of the plaintiff be and the same is hereby discharged.

IT IS FURTHER ORDERED AND ADJUDGED: That the plaintiff's complaint be and the same is hereby dismissed upon the merits

without costs to either of the parties.

Dated: August 15, 1983.

BY THE COURT:

  
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William H. Frawley  
Bankruptcy Judge