

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re:

Case Number:

ROBERT ONEAL BOGSTAD
ARLENE ROSE ALMA BOGSTAD

EF7-83-00354

Debtors.

PRODUCTION CREDIT ASSOCIATION
OF RIVER FALLS,

Plaintiff,

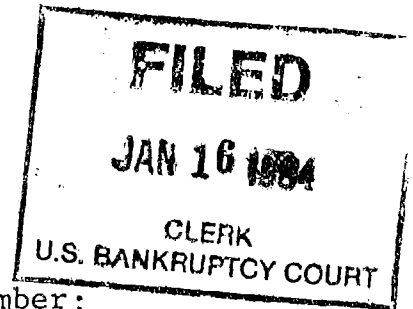
vs.

Adversary Number:

ROBERT ONEAL BOGSTAD and
ARLENE ROSE ALMA BOGSTAD,

83-0153

Defendants.



FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER DETERMINING DEBT DISCHARGEABLE

Production Credit Association of River Falls (PCA), by its attorney, Peter F. Herrell of Jordan, Herrell & Thiel, having filed a Complaint to Determine Dischargeability of Debt under 11 U.S.C. 523(a)(2)(B)(1982); and the debtors, Robert Oneal Bogstad and Arlene R. A. Bogstad, by their attorney, Mart W. Swenson, having filed an Answer; and a trial having been held; and PCA appearing by attorney; and the debtors appearing in

person and by attorney; and the Court having heard the evidence, considered the briefs and reviewed the complete record and file, and being fully advised in the premises, FINDS:

1. That debtors Robert Oneal Bogstad and Arlene R. A. Bogstad filed for relief under Chapter 7 of the Bankruptcy Code on March 9, 1983.
2. That, on September 9, 1980, the Bogstads and Adam Mock, their daughter's beau, signed a loan application, loan agreement and supplementary loan agreement with PCA; said application and agreements related to a loan of up to \$52,225 by PCA to enable Mock to set up a dairy farming operation on the Bogstad farm (Mock has been discharged in an unrelated Chapter 7 proceeding).
3. That, contemporaneous to the signing of said application and agreements, the Bogstads signed a "Balance Sheet" of their financial condition.
4. That said Balance Sheet was prepared in the following fashion: On August 28, 1980, John Wegmann of PCA, using a blank "Balance Sheet" form, interrogated Mr. Bogstad regarding his family's assets and liabilities. Mr. Wegmann's handwritten Balance Sheet was then converted to a typed Balance Sheet by the PCA office staff. Finally, on September 9, 1980, the Bogstads came into the PCA office and signed the typed Balance Sheet.

5. That the Bogstads' Balance Sheet listed, inter alia, the following assets: life insurance (\$11,000), four vehicles (\$2,650), a farm with a 30 cow barn (\$100,000) and a 10 acre plot in northern Wisconsin (\$10,000).

6. That the life insurance was term insurance and had no cash value.

7. That Bogstad told Wegmann that he was not sure whether the life insurance was whole life or term insurance. Cf. Pl.Ex.4 (Bogstad Balance Sheet line 2, preprinted "Cash Value Life Insurance", is blank).

8. That Wegmann listed the life insurance as "Life Ins. at Place of Employment (Off. farm)" on line 6 of the Balance Sheet.

9. That, at the time the Balance Sheet was prepared, the Bogstads had four vehicles in their possession. Two of said automobiles, which were not suitable for travel over extensive distances, were owned by the Bogstads; a third, in similar mechanical condition, was the property of Adam Mock; and the fourth was leased.

10. That PCA presented no other evidence regarding the value of any of said automobiles.

11. That the barn on the Bogstad farm can hold no more than 20 cows.

12. That PCA presented the following evidence of the value of said farm: The 1973 purchase price (\$31,500); the March, 1983, Bankruptcy Court (Martin, J.) finding of value in a related proceeding (\$60,000); and the March, 1983, Bankruptcy Petition claimed value (\$50,000).

13. That Mr. Bogstad testified that he based his August, 1980, valuation on a real estate advertisement for a similar farm which appeared in a local newspaper at the time of the loan application.

14. That PCA presented the following evidence of the value of the northern Wisconsin acreage: The 1968 purchase price (\$100); the March, 1983, Bankruptcy Court (Martin, J.) finding of value in a related proceeding (\$3,500); and the March, 1983, Bankruptcy Petition claimed value (\$3,500).

15. That Mr. Bogstad testified, in effect, that he based his August, 1980, valuation on the price he would set if he were approached by an unsolicited buyer.

16. That the Bogstad Balance Sheet listed no personal debts.

17. That, in 1962, Mr. Bogstad borrowed approximately \$6,000 from his brother-in-law.

18. That Mr. Bogstad has made no payment on said loan and

the balance of the brother-in-law loan now exceeds \$10,000.

19. That, in July, 1982, after PCA started an action against the Bogstads to recover on the debt at bar, Mr. Bogstad gave his brother-in-law a mortgage on the farm property.

20. That the Bogstad Balance Sheet showed assets of \$132,740, debts of \$16,531, a net worth of \$116,209 and an equity to asset ratio of .8755.

21. That PCA would not have made the loan if the Bogstads' net worth was less than \$58,105 or if their equity to asset ratio was less than .6 or .7.

22. That PCA actually relied on the Bogstad Balance Sheet to make the loan at bar.

23. That, because a man in the PCA office "seemed" to know of the Bogstads' financial condition, PCA required no independent verification of the Bogstad Balance Sheet and made no inquiry of its own.

24. That 11 U.S.C. 523(1982) provides, in pertinent part:

(a) A discharge. . . does not discharge an individual debtor from any debt—

(2) for obtaining money. . . by—

(B) use of a statement in writing—

(i) that is materially false;

- (ii) respecting the debtor's . . . financial condition;
- (iii) on which the creditor . . . reasonably relied; and
- (iv) that the debtor . . . published with intent to deceive;

25. That the party objecting to dischargeability must show all of the elements of proof with clear and convincing evidence. In re Brink, 27 B.R. 377, 378 (Bankr. W.D. Wis. 1983).

26. Obtained Money. That the Bogstads obtained money from PCA. See 3 Collier on Bankruptcy paragraph 523.08 (15th Ed. 1983) (the better view is that it is not necessary that the property be procured for the debtor himself).

27. Use of a Published Written Statement of Financial Condition. That the Bogstad Balance Sheet was a statement of financial condition in writing published to Mr. Wegmann and PCA and actually relied upon by them in making the loan at bar.

28. Material Falsehood. That PCA has presented clear and convincing evidence that the Bogstad Balance Sheet was false¹ in the following regards:

- (1) The value of the life insurance policy was overstated by \$11,000.

1. Because sec. 523(a)(2)(B)(iv) is specifically directed toward intent, "false" is used here to mean "untrue". But See 3 Collier on Bankruptcy paragraph 523.09[2][a] (15th Ed. 1983) ("'false' means more than . . . untrue and imports an intention to deceive").

- (2) The number of automobiles owned by the Bogstads was overstated by 2.
- (3) The size of the barn on the farm was overstated by 10 cows.
- (4) The northern Wisconsin acreage was valued at premium, not fair market.
- (5) The brother-in-law loan was omitted.

29. That PCA has not presented clear and convincing evidence that:

- (1) That the 2 automobiles owned by the Bogstads were worth other than \$2,650.
- (2) That the 1980 fair market value of the farm was other than \$100,000.
- (3) That the 1980 fair market value of the northern Wisconsin acreage was other than \$10,000.
- (4) That the eighteen year-old loan from Bogstad's brother-in-law was a legally recognized liability in 1980.

30. That, to determine the materiality of any falsehoods, the Court looks to the entire financial statement to see if a fair and reasonable picture of the debtors' financial condition is set forth. In re Valley, 21 B.R. 674, 680 (Bankr. D. Mass. 1982). See Wolfe v. Tri-State Ins. Co., 407 F.2d 16, 19 (10th

Cir. 1969) (under 11 U.S.C. sec. 32(c) (repealed): discharge granted where "the bank. . . would have extended such credit regardless of these errors.")

31. That, even assuming (without deciding) the fair market value of the northern Wisconsin acreage was \$3,500 in 1980, the Bogstads had an actual net worth of \$102,709 and an actual equity to asset ratio of .8614.

32. That the financial statement was not materially false. Compare findings of fact 20, 21 & 31 (suggesting that PCA would have made the loan even if the Bogstad Balance Sheet had not been false) with Cowans Bankruptcy Law and Practice, 403 (1983 Interim Edition) ("materiality. . . is often attempted to be shown by the testimony of the lending officer that if he or she had known of the [truth], he would have refused to make the loan.").

33. Other elements. That the Court does not reach the issues of reasonable reliance or intent to deceive.

CONCLUSIONS OF LAW

1. That PCA has failed to present clear and convincing evidence that the debtors obtained money by the use of a materially false written statement respecting their financial condition.

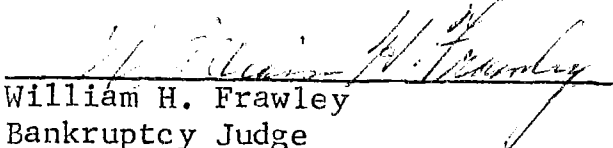
2. That the debt owed by the debtors to PCA should be found dischargeable.

ORDER

NOW, THEREFORE, IT IS ORDERED that the debt owed by Robert Oneal Bogstad and Arlene R. A. Bogstad to Production Credit Association of River Falls and evidenced by loan agreements dated September 9, 1980, should be, and the same hereby is, dischargeable.

Dated: January 16, 1984.

BY THE COURT:



William H. Frawley
Bankruptcy Judge