Appendix

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WISCONSIN

In re:

JOSEPH MAURICE GEIST
BARBARA JOANNE GEIST

Debtors.

Case Number:

EF7-83-02049

ROYAL CREDIT UNION,
a Wisconsin credit union,

Plaintiff,

vs.

JOSEPH MAURICE GEIST, a/k/a
Joseph M. Geist,

Defendant.

Adversary Number:

84-0036-7

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND
ORDER DECLARING DEBTS DISCHARGEABLE

Royal Credit Union, by Dernbach and Brunner, S.C., having filed a Complaint and Objection to Discharge of Debts; and Debtor Joseph Maurice Geist, Jr., by Attorney Steven C. Brist, having Answered; and a trial having been held; the Court, having considered the arguments of counsel and all the filings and proceedings herein, and being fully advised in the premises, FINDS THAT:

1. Debtors Barbara Joanne Geist and Joseph Maurice Geist, Jr., filed for relief under Chapter 7 of the Bankruptcy Code on December 16, 1983.

2. The following facts were established at the conclusion of the pleading stage of the above captioned adversary proceeding:

A. On or about the 27th day of December, 1976, Royal Credit Union (RCU) and Debtor Joseph Maurice Geist, Jr., entered into a Consumer Credit transaction, to-wit: Debtor made, executed and delivered to RCU a promissory note in writing whereby and for value received Debtor promised to pay to RCU or its order the principal sum of $3,961.40 with interest on the unpaid balance at a rate of 12 percent per annum to be paid in 20 monthly installments of $189.07 each commencing on the 27th day of January, 1977.

B. To secure said obligation said Debtor gave to RCU a security interest in a 1971 IH truck, Ident. No. 114501H088931 and a 1973 Buick Century stationwagon, Ident. No. 4K35J3Z127038 which is evidenced by a security agreement dated December 27, 1976.

C. At some time after December 27, 1976, said Debtor sold, gave away or otherwise disposed of said collateral without the authorization, knowledge or consent of RCU.

D. On March 29, 1978, said Debtor plead guilty to one count of intentionally transferring the collateral secured by said security agreement in violation of Wis-

consin Statutes Sec. 943.25; was placed on two years probation and was ordered to pay restitution in the amount of $3,573.19 to RCU.

E. Said Debtor has made no payments to RCU pursuant to said restitution order, and the Debtor was released from probation in March of 1980 and the restitution order was waived by the court.

F. On or about the 8th day of April, 1983, Debtor applied for a kwik-cash loan from RCU in the amount of $500.00 said loan to be used for personal, family or household purposes.

G. For the specific purpose of obtaining the above loan, said Debtor made, executed and delivered to RCU a written statement of his liabilities.

3. The December 27, 1976, loan remains unpaid. This fact is recorded within the memory banks of both the RCU in-house computer and the computer of RCU's independent credit reporting service, Northwest Credit Bureau.

4. The written statement of liabilities submitted to RCU by the Debtor under the name "Joseph Geist" did not include several outstanding debts--including the December 27, 1976, loan.[1]

---

[1] In light of the disposition of this case on the reasonable reliance issue, specific factual findings relating to other elements of a non-dischargeable debt need not be made. See paragraph 17 infra.

5. A computer check by RCU revealed that "Geist, Joseph" had a good credit rating and no outstanding RCU loans. Evidence was produced that a computer search under the name "Geist, Joseph M. Jr." would have revealed the December 27, 1976, RCU loan.

Discussion

6. December 27, 1976, Loan. Under 11 U.S.C. sec. 523(a)(6), any debt "for willful and malicious injury by the debtor" is not dischargeable (emphasis added).

7. RCU does not argue that the events leading up to and including the December 27, 1976, loan involved willful and malicious injury by the Debtor.

8. Assuming, without deciding, that the restitution order resulting from the subsequent violation of Wis. Stats. sec. 943.25 was a debt for a willful and malicious injury, said debt was dismissed prior to the filing of the Debtor's bankruptcy petition. Paragraph 2.E. supra.

9. April 8, 1983, Loan. Under 11 U.S.C. sec. 523(a)(2)(B) a debt incurred by the use of an intentionally and materially false financial statement is not dischargeable if the creditor reasonably relied on said statements.

10. The objecting party has the burden of proving an exception to discharge with clear and convincing evidence. In re Brink, 27 B.R. 377, 378 (Bankr.W.D.Wis. 1983); see In re Kreps, 700 F.2d 372, 375 (7th Cir. 1983).

11. "'[T]he creditor must not only have relied on a false statement in writing, the reliance must have been reasonable. This codifies case law construing [section 17(a)(2)].' H.R.Rep. No. 595, 95th Cong., 1st Sess. 364 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 77-79 (1978). U.S.Code Cong. & Admin. News 1978, pp. 5787, 5864, 6320." In re Kreps, paragraph 10 supra at 376 (brackets in original).

12. Judge Deitz has identified four situations in which reliance has been held to be unreasonable.

(a) the creditor knows that the financial information is not accurate;

(b) the statement contains obviously inadequate financial information;

(c) the creditor's investigation of the statement suggests its falsity or incompleteness; and

(d) the creditor fails to verify information on the statement.

In re Duncan, 35 B.R. 323, 325 (Bankr.W.D.Ky. 1983) (cases collected).

13. It is the first situation which has been argued in the case at bar. Has RCU presented clear and convincing evidence that it should not be charged with knowledge of its own December 27, 1976, loan?

14. This Court is of the opinion that it has not. Cf. McKinnon v. Massachusetts Bonding & Ins. Co., 213 Wis. 145, 147,

250 N.W. 503, 504 (Sup. 1933) ("The company had the same knowledge that the plaintiff had with reference to that transaction. Even though, as a practical proposition, the general agent who issued the policy did not know of the prior loss, nevertheless, in law, the company had just as complete knowledge of it as did the plaintiff. In law, the company can no more deny its knowledge of the previous transaction than a party to a marriage contract can deny knowledge thereof.")

15. That RCU did not determine the Debtor's full legal name, that the computers it used were not programmed to automatically report information relating to reasonable variations of the name "Joseph Geist" and that it did not manually enter reasonable variations of the name "Joseph Geist" into its computers, suggests that RCU chose economic expediency over reasonable prudence. In re Stout, 39 B.R. 438, 440 (Bankr.W.D.Mo. 1984) ("The courts have recognized that, when a creditor elects not to exercise the investigatory opporunities readily available to it, the ready availability of those opportunities itself negates the reasonableness of any reliance on the debtor's misrepresentation."), see In re Blatz, 37 B.R. 401, 404-405 (Bankr.E.D.Wis. 1984) (creditor could not "'assume the position of an ostrich with its head in the sand and ignore facts which were readily available to it'." (citations omitted)), cf. Medford Irrigation Dist. v. Western Bank, 676 P.2d 329, 38 UCC Rep. Serv. 411 (App.

1984) (bank's practice of not reviewing the signatures of checks for less than $5,000 was not reasonable under UCC sec. 3-406). RCU had constructive knowledge of the information contained in its electronic files.

16. RCU should have known that it could not rely on the Debtor's incomplete statement of liabilities. In re Stout, supra at 44ln.4. See In re Garman, 643 F.2d 1252, 1260 (7th Cir. 1980) (under Bankruptcy Act of 1898 section 17(a)(2), 11 U.S.C. sec. 35(a)(2)(repealed):[2] ". . . a creditor is not entitled to rely upon an obviously false representation by the debtor . . "), cert. denied, sub nom. Garman v. Northern Trust Co., 450 U.S. 910 (1981).

17. Because RCU did not reasonably rely on the Debtor's statement, this Court need not determine whether said statement was intentionally and materially false.

CONCLUSIONS OF LAW

1. The Debtor's December 27, 1976, obligation to Royal Credit Union is not for willful and malicious injury by the Debtor.

2. Royal Credit Union has not clearly and convincingly shown that it reasonably relied upon the Debtor's statement of liabilities in making the April 8, 1983, loan.

---

[2] The Garman case was applied to construe 11 U.S.C. sec. 523(a)(2)(B) in In re Kreps, paragraph 10 supra.

ORDER

IT IS ORDERED THAT the debts due Royal Credit Union from the above captioned Debtor resulting from the December 27, 1976, and April 8, 1983, transactions be, and the same hereby are, DISCHARGEABLE.

Dated: August 27, 1984.

BY THE COURT:

William H. Frawley
U. S. Bankruptcy Judge