

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bky No: 04-30864

Willard Dale Dahle,

Adv. No.: 04-3328

Debtor.

Chapter 7

Robert Bartel,

Plaintiff,

AMENDED

COMPLAINT TO DETERMINE
DISCHARGABILITY OF DEBT

vs.

UNDER 11 U.S.C. §727 AND

Willard Dale Dahle,

EXCEPTIONS TO DISCHARGE

UNDER 11 U.S.C. §523

Defendant.

Robert B. Bartel, for his complaint against defendant states and alleges as follows:

JURISDICTION AND PARTIES

1. Defendant/Debtor filed a chapter 13 bankruptcy petition on February 17, 2004.

Subsequently the debtor voluntarily converted the chapter 13 case to one under chapter 7 on April 21, 2004.

2. The plaintiff is a secured creditor.

3. This adversary action is brought under Rule 7004 of the bankruptcy rules and arises under 11 U.S.C. §§523 and 527. This court has jurisdiction under 28 U.S.C. §§1334 and 157, Local Rule 1070-1 and Bankruptcy Rules 4007 and 7001. This adversary proceeding is a core proceeding under 28 U.S.C. §§157(b)(2)(I) and (J).

FACTS

4. That plaintiff cared for all of defendant's/debtor's cows and calves for the period December of 2001 through August of 2002 and then again from December of 2002 until about April 29, 2003.

5. The plaintiff had a valid Feeder's Lien on all of defendant's/debtor's cattle that was continuous from December, 2001 until at least the time of the defendant's/ debtor's chapter 13 bankruptcy filing.

6. Plaintiff properly perfected his Feeder's Lien against all of the defendant's/debtor's cattle on May 8, 2003.

7. On or about April 29, 2003, the defendant/debtor removed most of his cattle from the plaintiff's possession without the consent of the plaintiff while the plaintiff had a valid Feeder's Lien pursuant to MSA §514.966 subd. 4.

8. The plaintiff commenced a replevin proceeding against the defendant/debtor in May, 2003 in Mower County District Court, Minnesota.

9. On the defendant's/debtor's Statement of Financial Affairs (question 1) the defendant/debtor states under oath that in 2003 he received \$13,200 from the "sale/trade of cattle for feed 2003".

10. The defendant/debtor paid none of the \$13,200 he received from the sale of the cattle in spite of the fact that during this time the plaintiff was entitled to all the proceeds from the sale of any cattle up to the amount the plaintiff was owed pursuant to his care for the cattle.

11. On January 27, 2004, the Mower County District Judge issued an order prohibiting the defendant/debtor from removing his cattle from Mower County, Minnesota.

12. On February 27, 2004 the defendant/debtor attempted to sell seven (7) of those cattle by taking them to an auction barn in Fillmore County, Minnesota.

13. The plaintiff has pursued the defendant/debtor for plaintiff's debt since April 30, 2003. Since that time the defendant/debtor has: persuaded the Mower County Attorney to file felony theft and felony cattle rustling charges against the plaintiff; appeared at the first replevin proceeding and persuaded the presiding judge to continue the hearing because mediation was required by the

Minnesota Farmer-Lender Mediation Act; then, on the date of the rescheduled replevin motion, the defendant/debtor, without notice to the plaintiff, filed a chapter 13; the defendant/debtor filed chapter 13 plan was not confirmable on its face in that it paid the plaintiff, a fully secured creditor, nothing beyond what plaintiff would receive as a unsecured creditor which was about 37% of the claim without interest.

14. The plaintiff served the defendant/ debtor Requests for Production of Documents on September 24, 2003 wherein, among other things, the plaintiff asked for the defendant's/debtor's 2001 and 2002 state and federal income tax returns and any documents that the defendant/ debtor had evidencing any payments to the plaintiff during that period.

15. The defendant/debtor has never produced any of the documents requested in the Plaintiff's Request for Production of Documents served on September 24, 2003.

16. The defendant/debtor has a number of tractors and other farm equipment that was not listed in his schedule B or C.

17. The defendant/debtor has several horses and one tractor in his possession that he claims do not belong to him and that were not described in his answer to question 14 (or any other question) in his Statement of Financial Affairs.

18. Defendant's/Debtor's Statement of Financial Affairs shows no income for 2004 and further shows that in 2003 he had farm income of \$28,200.

19. Defendant's/Debtor's schedule I shows no income from the cattle or hay business and further, the schedule I filed in the chapter 7 case has no indication whatsoever of business income or expenses on the I or J schedules.

COUNT I
(Exception to discharge pursuant to 11 U.S.C. §523(a)(4))

20. Plaintiff realleges and incorporates the allegations in paragraphs 1-19 as though fully set forth herein.

21. Plaintiff is entitled to judgment that defendant's/ debtor's debt to plaintiff is excepted from discharge pursuant to 11 U.S.C. §523(a)(4) because the removal of the cattle by defendant/debtor from plaintiff's possession on or about April 29, 2003 was larceny.

22. Plaintiff is entitled to judgment because the sale of \$13,200 worth of cattle by defendant/ debtor in 2003 without paying any of the proceeds to the plaintiff was larceny.

COUNT II
(Exception to discharge pursuant to 11 U.S.C. §523(a)(6))

23. Plaintiff realleges and incorporates the allegations contained in paragraphs 1-22 as though fully set forth herein.

24. Plaintiff is entitled to judgment that defendant's/ debtor's debt to plaintiff is excepted from discharge pursuant to 11 U.S.C. §523(a)(6) because defendant's/ debtor's conversion and use of the sale proceeds from the cattle without paying any of these proceeds to the plaintiff was willful and malicious and resulted in injury to the plaintiff.

COUNT III
(Denial of discharge pursuant to 11 U.S.C. §727(a)(2))

25. Plaintiff realleges and incorporates the allegations contained in paragraphs 1-24 as though fully set forth herein.

26. The discharge of the defendant/ debtor should be denied under 11 U.S.C. §727(a)(2) because the defendant/debtor, (with intent to hinder, delay or defraud the plaintiff) transferred, moved, concealed, or permitted to be transferred, property of the defendant/debtor within 1 year before the date of the filing of the petition.

COUNT IV
(Exception to discharge pursuant to 11 U.S.C. §727(a)(3))

27. Plaintiff realleges and incorporates the allegations contained in paragraphs 1-26 as though fully set forth herein.

28. The discharge of the defendant/debtor should be denied under 11 U.S.C. §727(a)(3) because the defendant/debtor has concealed or failed to keep or preserve any recorded information from which the defendant's/ debtor's financial condition or business transaction might be ascertained without justification under all the circumstances or the case.

COUNT V
(Denial of Discharge Pursuant to 11 U.S.C. §727(a)(4))

29. Plaintiff realleges and incorporates the allegations contained in paragraphs 1-28 as though fully set forth herein.

30. The discharge of the defendant/debtor should be denied under 11 U.S.C. §727(a)(4) because the defendant/debtor knowingly and fraudulently made a false oath or account.

COUNT VI
(Denial of Discharge under 11 U.S.C. §727(a)(5))

31. Plaintiff realleges and incorporates the allegations contained in paragraphs 1-30 as though fully set forth herein.

32. That the defendant/ debtor should be denied a discharge under 11 U.S.C. §727(a)(5) because the defendant/ debtor will not satisfactorily explain, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the defendant's/ debtor's liabilities.

WHEREFORE, plaintiff demands judgment denying defendant's/ debtor discharge or alternatively excepting plaintiff's claim from discharge herein, and for such other relief as is just, including reasonable costs and attorney fees.

Dated: August 10, 2004

/e/ William L. Bodensteiner
William L. Bodensteiner #149093
Attorney for Plaintiff
309 South Main Street
Austin, MN 55912
(507) 437-7686

UNSWORN CERTIFICATE OF SERVICE

I, Keri Ann Yerhart, declare under penalty of perjury that on August 10, 2004, I mailed copies of the attached Amended Complaint to Determine Dischargability of Debt Under 11 U.S.C. §727 and Exceptions to Discharge Under 11 U.S.C. §523 by first class mail postage prepaid to each entity named below at the address stated:

**US TRUSTEE
1015 U.S. COURTHOUSE
300 SOUTH 4TH ST
MINNEAPOLIS MN 55415**

**M THOMAS LENWAY
ATTORNEY AT LAW
PO BOX 463
AUSTIN MN 55912**

**JASMINE KELLER
12 SOUTH 6 STREET STE 310
MINNEAPOLIS MN 55402**

**WILLARD DAHLE
58357 320th STREET
WALTHAM MN 55982**

Executed on: August 10, 2004

Signed: /e/ Keri Ann Yerhart
Keri Ann Yerhart
Bodensteiner Law Firm
309 South Main St.
Austin MN 55912
(507)437-7686