

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

COUNTER COPY - DO NOT REMOVE - ~~CONFIDENTIAL~~

In re)	Bankruptcy Case No. 81C-03452
PAUL HARRY HALL,)	
)	
Debtor.)	Civil Proceeding No. 82PC-0048
)	
JAMES M. CONN,)	
)	
Plaintiff.)	
)	
vs.)	
)	
PAUL HARRY HALL,)	
)	ORDER DENYING PLAINTIFF'S MOTION
Defendant.)	FOR SUMMARY JUDGMENT

On July 8, 1982, plaintiff moved for summary judgment in this nondischargeability action based upon plaintiff's affidavit and upon admissions which became conclusive because of defendant's failure to answer requests for admission. Rule 36 Fed. R. Civ. Pro. Defendant has not opposed the motion but summary judgment appears improper at this time because the affidavit and the admissions fail to make out a cause of action under 11 U.S.C. § 523(a).

Plaintiff has not established a cause of action under Section 523(a)(2)(A) because even if the defendant knew there were no funds in his account to cover the \$1,500 check when he gave it to plaintiff, this is not proof of an intent to deceive, an essential element of plaintiff's cause of action. The defendant may have intended to cover the check by making a deposit before the check was presented for payment.

Plaintiff has not established a cause of action under Section 523(a)(A)(B) because a check is not a statement respecting the debtor's financial condition. In any event, as noted above, plaintiff has not shown an intent to deceive.

Plaintiff has not established a cause of action under Section 523(a)(4) because there is no showing of a fiduciary capacity, embezzlement or larceny.

Plaintiff has not established a cause of action under Section 523(a)(6) because neither proof of intent to hinder collection nor proof of a conveyance in contemplation of bankruptcy establishes a willful and malicious injury by the debtor to the property of the plaintiff. Plaintiff has not shown that he retained a security interest in the jeep.

IT IS THEREFORE ORDERED that plaintiff's motion for summary judgment is denied.

DATED this 11 day of October, 1982.

BY THE COURT:


GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing order to the following this 13 day of October, 1982.

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