UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In Re:	:	**Case No. 01-3159-CH**
TAMMY RICCI,	:	
	:	**Chapter 7**
Debtor.	:	
GATEWAY SAVINGS BANK,	:	**Adv. No. 01-20129**
Plaintiff,	:	
vs.	:	
TAMMI RICCI,	:	
Defendant.	:	

ORDER— COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT

On October 17, 2002, trial was held on Plaintiff's Complaint to Determine Dischargeability of Debt. August Landis represented Plaintiff Gateway Savings Bank. Jerrold Wanek represented Defendant Tammi Ricci. At the conclusion of the trial, the court took the matter under advisement upon a briefing schedule. Post-trial briefs have been filed, and the court now considers the matter fully submitted.

The court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157(b)(1) and 1334 and order of the United States District Court for the Southern District of Iowa. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I). Upon review of the briefs, pleadings, evidence, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

FINDINGS OF FACT

1. Plaintiff is Gateway Savings Bank (hereinafter Gateway). Gateway is a federal savings bank incorporated under the laws of the United States of America.

2. Defendant is Tammy Ricci (hereinafter Debtor). Debtor was a corporate officer, director, and sole shareholder of ALX Graphics, Inc. (hereinafter ALX).

3. Debtor and Scott Daniel (hereinafter Daniel) formed ALX in 1999 to compete in the central Iowa printing and promotional products industry. They incorporated ALX as a privately held subchapter S corporation. Debtor held a 100% ownership interest in the corporation. She testified that she held the ownership interest because Daniel had a poor credit rating.

4. Prior to forming ALX, Debtor had eleven years of experience in the printing industry. She worked as sales manager for Screen Graphics, an established printer, at the time she formed ALX. Debtor and Daniels intended ALX to compete with Screen Graphics and took some of its clients along with them. Debtor was president and sales manager for ALX, and Daniel was general manager in charge of production. An investor, Cheryl Knuth (hereinafter Knuth), was the bookkeeper.

5. Daniel contributed equipment with an estimated value of $10,700.00 to ALX. Knuth invested $10,000.00. Debtor did not contribute any material assets to ALX.

6. In July 1999, Debtor applied to Gateway for a start up business loan on behalf of ALX. Debtor submitted a business plan along with the application. Debtor testified that she did not prepare the business plan; however, she read the document and was aware of its contents. Debtor also submitted several documents captioned "Letter of

Intent to Do Business" from potential clients for ALX stating that a business relationship existed between the Debtor personally and the respective business, which would continue. The letters stated the businesses' intentions to purchase products from ALX and Debtor.

7. On August 10, 1999, Gateway agreed to make a Small Business Administration loan of $75,000.00 to ALX. Debtor signed the promissory note for the loan. She testified that ALX did not exist before the loan was made.

8. On August 10, 1999, ALX granted Gateway a security interest in inventory, accounts, instruments, documents, chattel paper, equipment, general intangibles, and government payments. Debtor signed the security agreement in her capacity as ALX president.

9. Debtor testified that she understood that all of the inventory and equipment was collateral for the loan. She understood that if ALX defaulted on its loan, then these assets would go to the bank.

10. Along with the promissory note and security agreement, Debtor signed a document captioned "U.S. Small Business Administration Unconditional Guarantee." The document provided that the guarantor would make all payments due under the note upon demand from the lender. It further provided that the lender did not have to seek payment from any other party before demanding payment from the guarantor.

11. On August 13, 1999, Gateway filed a financing statement with the Iowa Secretary of State covering the financing to ALX.

12. On December 31, 1999, Knuth told Debtor that she had not been paying

ALX's state and federal taxes. Prior to this time, Debtor was unaware that the taxes were not being paid.

13. In January 2000, Debtor retained a bookkeeper/accountant to review ALX's records and determine the amount of its tax liability. Debtor testified that the unpaid taxes were between $5,000.00 and $10,000.00.

14. Debtor asked Knuth to leave the business, and Knuth complied. She did not demand the return of her $10,000.00 investment.

15. Debtor testified that she personally borrowed $20,000.00 from Gateway in February 2000. She deposited the funds in the ALX business account. Some taxes, along with accounts payable, were paid from the account.

16. In January 2001, Daniel advised Debtor that the state and federal taxes had not been paid for the entire 2000 tax year. Debtor testified that she was unaware of the failure to pay taxes. Daniels left the company and took various pieces of equipment with him. Debtor testified that Daniel was not authorized to take the equipment.

17. Other staff members also abandoned ALX, leaving only Debtor and one other employee to operate the business. Since no one remained to manufacture products, Debtor changed the operation to that of a wholesaler. Debtor took orders and contracted out the work.

18. Also in January 2001, Debtor retained the services of attorney Pete Cannon (hereinafter Cannon). The record is unclear as to the intended scope of Cannon's representation; whether he was to represent ALX or Debtor personally. However, if parties intended that Debtor and ALX were to be treated separately, such situation did not

last long, and the record bears out that any distinction between Debtor and ALX was quickly bleared with Cannon providing services for both.

19. Cannon advised Debtor of several options concerning ALX's situation:

a) She could restart the company and recommence production. However, this was not a feasible option.

b) She could file for chapter 11 and attempt to reorganize the company under the protection and supervision of the bankruptcy court.

c) She could pay ALX's delinquent taxes.

d) She could pay the secured debt held by Gateway.

e) She could commence a lawsuit against her former business associates.

20. Cannon discussed the possible risks to Debtor associated with each of the outlined options. He advised Debtor about the trust fund taxes and that she could be personally liable for the payment of these amounts. He also discussed Gateway's security interest in ALX's assets, Debtor's personal guaranty, and the risk if Gateway was not paid. Cannon also advised Debtor of Gateway's setoff rights to funds held in ALX's business account with Gateway. Debtor did not discuss turning the property over to Gateway.

21. Debtor decided to close ALX and liquidate the corporation's assets. Debtor had contacts within the printing industry and felt that she could maximize the return on the assets. ALX"s equipment was sold in two batches. Most of the equipment went to a business located in Omaha, but Debtor could not identify the business. The sales yielded $3,032.93 and $2,509.00. Debtor closed the ALX account with Gateway, and gave the sale proceeds to Cannon to deposit in his trust account. Debtor did not

advise Gateway of the sale of the equipment.

22. Cannon advised Debtor to get all of ALX's equipment out of the building that it occupied. The purpose of the move was to avoid a landlord lien from attaching to the equipment.

23. Debtor permitted General Graphics Products to take possession and control over ALX's remaining equipment that was subject to Gateway's security interest. Debtor did not advise Gateway of this transfer.

24. In February 2001, Debtor started to work for Iowa Pro Football as a market sales manager.

25. Debtor testified that ALX operated as a business until the end of February 2001.

26. Prior to Debtor filing her bankruptcy position, Cannon's trust fund held approximately $11,379.55 from the sale of ALX assets and the collection of accounts receivable.

27. Both Debtor and Cannon testified that the initial plan was wind up ALX's business affairs and turn the proceeds of the sale of its assets over to Gateway. At some point, it became apparent that the proceeds would be insufficient to pay Gateway's claim in full. The testimony provided at the trial conflicts as to when the decision was made to apply the funds to the ALX tax obligations rather than to the Gateway loan.

28. On April 27, 2001, Gateway filed a replevin action in the Iowa District Court for Polk County against ALX and Debtor seeking the turnover of the collateral securing its loan.

29. On June 21, 2001, Debtor filed a petition for chapter 7 relief.

30. Debtor did not schedule Gateway as a secured Creditor on Schedule D. On schedule E – Creditors Holding Unsecured Priority Claims, she scheduled:

> U.S. Small Business Administration
> Gateway Savings Bank
> Division of Northwest Fed. Savings Bk
> 101 W 8th St., PO Box 80

The creditor's matrix adds Spencer, IA 51301-0030 to the address. Debtor scheduled the claim as incurred on "4/27/01" with the consideration being a promissory note. The claim was valued at $75,000.00 with the full amount identified as entitled to priority. Debtor's statement of financial affairs does not disclose any transfers of property or any suits in which she is a party.

31. On July 10, 2001, Gateway obtained a judgment against ALX.

32. The first meeting of creditors in Debtor's bankruptcy case was held on August 8, 2001. A representative of Gateway attended the meeting. At the meeting, Debtor testified that she had sold the property securing the loan.

33. On November 14, 2001, Cannon sent $4,409.00 to the Iowa Department of Revenue from his trust account to satisfy ALX's tax obligation. The payment was for trust fund taxes for which Cannon had advised Debtor that she would be personally liable.

34. On February 11, 2002, Cannon sent $1,374.69 to the Iowa Department of revenue from his trust account. The payment was for ALX's trust fund tax obligation.

35. Debtor directed Cannon to use the ALX funds in his trust account to make the tax payments.

DISCUSSION

Gateway filed this adversary to determine the dischargeability of a debt arising from the alleged conversion of property securing a promissory note that debtor has personally guaranteed. Gateway alleges that Debtor, as president and sole shareholder of ALX, sold assets covered by its security agreement and financing statement. Debtor then directed the proceeds to be applied to ALX's trust fund tax liability. Gateway contends that as an officer of ALX, Debtor would have been liable for the trust fund taxes and such liability would be nondischargeable in her personal bankruptcy. Therefore, Debtor converted Gateway's property to satisfy her personal liability for the trust fund taxes. Gateway asks that the court except its claim from discharge under 11 U.S.C. § 523(a)(6).

Alternatively, Gateway argues that Debtor's conduct increased the balance of her dischargeable debt while decreasing the balance of her nondischargeable debt. Accordingly, the court should determine that Debtor incurred debt to pay off her tax liability and except the debt from discharge under 11 U.S.C. § 523(a)(14).

The Bankruptcy Code provides that discharge under section 727 does not discharge an individual from certain debts. 11 U.S.C. § 523. Section 523(a) provides in relevant part that a debtor is not discharged from any debt:

> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity;
>
> * * *
>
> (14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1).

11 U.S.C. § 523(a)(6) & (14).

Statutory exceptions to discharge are strictly construed against the party seeking the exception. Geiger v. Kawaauhau (In re Geiger), 113 F.3d 848, 853 (8th Cir. 1997) (en banc), aff'd, 523 U.S. 57 (1998); Werner v. Hofmann, 5 F.3d 1170, 1172 (8th Cir. 1993). The petitioning party has the burden of proving the right to the exception by a preponderance of the evidence. Johnson v. Logue (In re Logue), 294 B.R. 59, 63 (B.A.P. 8th Cir. 2003) citing Grogan v. Garner, 498 U.S. 279 (1991). A preponderance of evidence "is the evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate." Smith v. United States, 557 F. Supp. 42, 51 (W.D. Ark. 1982) aff'd, 726 F.2d 428 (8th Cir. 1984). The party with the burden of proof must provide evidence to prove his or her position is reasonably probable, not merely possible. Sherman v. Lawless, 298 F.2d 899, 902 (8th Cir. 1962). If the proven facts equally support each party's position, "the judgment must go against the party upon whom rests the burden of proof." Id.

Dischargeability Under 11 U.S.C. § 523(a)(6)

It is well settled that §523(a)(6) includes debts for injuries caused by willful and malicious conversion. Barclays American/Business Credit v. Long (In re Long), 774 F.2d 875, 879 (8th Cir. 1985) (noting that former 11 U.S.C. § 35(a) was deleted in the 1978 revision of the Bankruptcy Code, but reinstated by interpretation of Congressional intent through § 523(a)(6)). Iowa courts define conversion as "a distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his title or rights therein, or in derogation, exclusion or defiance of such title or rights. Blessing v.

Norwest Bank Marion, N.A., 429 N.W.2d 142, 143 (Iowa 1988); accord In re Hicks, 100 B.R. 576, 577 (Bankr. M.D. Fla. 1989); In re Pommerer, 10 B.R. 935 (Bankr. D. Minn. 1981).

However, the simple interference with legal rights in property is not sufficient to warrant excepting the debt from discharge. Section 523(a)(6) requires intentional or willful conduct along with an element of malice. In re Long, 774 F.2d at 880. Further, the elements of willfulness and malice must be analyzed separately. Id. "Willful" means intentional or deliberate. Id. "Malice" must apply to a heightened level of culpability that goes beyond recklessness if it is to have a meaning independent of willful. Johnson v. Miera (In re Miera), 926 F.2d 741, 743 (8th Cir. 1991). The Eighth Circuit Court of Appeals defines willful as "headstrong and knowing" conduct and "malicious" as conduct "targeted at the creditor . . . at least in the sense that the conduct is certain or almost certain to cause …harm." Id. at 743-44. The act must be done with the actual intent to cause injury to the creditor. Kawaauhau v. Geiger, 523 U.S. 57, 61-64 (1998). Unless the debtor takes action with malice, fully intending or expecting to injure the economic interests of the creditor, the debt is not excepted from discharge. Id.

In this case, it is undisputed that Gateway acquired a valid security interest in ALX's inventory, accounts, instruments, documents, chattel paper, equipment, general intangibles, and government payments. Debtor acknowledges that she understood that all of the inventory and equipment was collateral for the loan. She understood that if ALX defaulted on its loan, then these assets would go to Gateway.

In January 2001, Debtor was the sole remaining corporate officer, director, and

shareholder. At that time, ALX had only one other employee, and he was not employed in a management capacity. At or shortly after her meeting with Cannon, Debtor decided to close ALX. She proceeded to close ALX's business account at Gateway; liquidate ALX assets; and deposit the proceeds from the sale of the assets and the accounts receivable into Cannon's trust account. In late February 2001, ALX ceased doing business.

Debtor did not inform Gateway of ALX's financial difficulties, nor did she inform Gateway of her plan to liquidate ALX's assets. Debtor did not turnover any of the proceeds from the asset sales or from the accounts receivable to Gateway. The court does not find as credible Debtor's statement that she initially intended to turnover the proceeds of the sale to Gateway. The fact that she did not contact Gateway prior to selling its collateral belies such a contention. Further, the court finds Debtor's inability to identify the purchasers of the equipment and inventory disingenuous and damages her credibility. The court concludes that Debtor intended to use the proceeds from ALX'x liquidation to pay its trust fund tax liability.

Plaintiff has met its burden in proving the willful prong of § 523(a)(6). Gateway had recognizable property rights that were created by the loan documents and security agreement. See Security State Bank of Houston v. Nelson (In re Nelson), 67 B.R. 491, 497 (Bankr. D. Minn. 1985). Debtor knew of Gateway's interest and understood that it had a right to the collateral in case ALX defaulted on the loan. Debtor acted willfully and in derogation of Gateway's rights when she sold the collateral without Gateway's consent.

However, a willful breach of a security agreement is insufficient to prevent a debt

from being discharged. In re Logue, 294 B.R. at 63. While the debtor who willfully breaks a security agreement and converts collateral is "testing the outer bounds of [her] right to a fresh start," unless she does so with malice, fully intending or expecting to injure the economic interests of the creditor, the debt is not excepted from discharge. In re Long, 774 F.2d at 882. Retaining the proceeds from the sale of collateral in contravention of a security agreement is not enough to establish malice absent additional "aggravating circumstances." In re Logue, 294 B.R. at 63. Pivotal to the analysis in such cases is the debtor's intentions and efforts to continue the business, thereby enabling all creditors including the secured creditors to receive payment. See In re Long, 774 F.2d at 882 (debtor who knowingly diverted funds from a collateral account to a corporate account and used funds to keep a company functioning did not act with requisite malice to except debt under § 523(a)(6); In re Logue, 294 B.R. at 63 (debtor who used proceeds from sales of secured cattle for feed and expenses to maintain the herd did not act with sufficient malice to except debt from discharge); Mayfield Grain Co., Inc. v. Grump (In re Crump), 247 B.R. 1 (Bankr. W.D. Ky. 2000) (Debtor who used crop sale proceeds to keep farming operation afloat did not intend to harm secured creditor); First Nat. Bank of Fayetteville, Ark. v. Phillips (In re Phillips, 882 F.2d 302 (8th Cir. 1989) (debt discharged where debtors deposited check for lease and used funds in an attempt to keep business operating); Mercantile Bank of Arkansas, N.A., v. Speers (In re Speers), 244 B.R. 142 (Bankr. W.D. Ark. 2000) (debt not discharged where debtor sold security and used the money for his own personal use and for the use of the business); Commerce Bank v. Hammitt (In re Hammitt), 289 B.R.681 (Bamkr. C.D. Ill. 2001) (portion of collateral converted by debtors after it became apparent

that they could not save the cattle operation held nondischargeable).

In this case, there is no evidence that Debtor was attempting to salvage ALX as a going concern. To the contrary, Debtor ceased all operation and proceeded to liquidate corporate assets without contacting Gateway and gaining its consent. She placed the proceeds from the assets with Cannon to prevent Gateway from acquiring the funds, and directed him to pay ALX's trust fund tax liabilities. In essence, Debtor used Gateway's collateral to pay a debt for which she would be liable, and which would be nondischargeable in bankruptcy, thereby intentionally injuring Gateway for her own benefit.

Debtor raises two defenses on her behalf. First, she argues that all the actions that she took were in her capacity as a corporate officer. Therefore, ALX converted Gateway's collateral; she did not. Second, Debtor argues that even if the court finds that she converted the collateral, she did not have the requisite intent to injure Gateway because she acted on the advice of counsel.

As to the first argument, the court is unpersuaded by Debtor's argument that she is shielded from the consequences of her actions by her position as a corporate officer. Rather, the court finds that Debtor acted outside of her corporate capacity and for her own personal benefit. See Bombadier Capital Inc. v. Black (In re Black), 179 B.R. 509, 516 (Bankr. E.D. Tex. 1995) (identifying a line of cases where corporate officers were held liable under § 523(a)(6) for conversion of property or funds for their personal benefit).

Debtor was full aware that Gateway had rights to its collateral under the security agreement when she consulted Cannon in February 2001. She was also aware of the

consequences of selling the collateral without Gateway's consent. ALX had ceased business by April 27, 2001, when Gateway filed its replevin petition against ALX and Debtor demanding the turnover of its collateral. However, Debtor, as a corporate officer, did not turnover the collateral or the proceeds upon demand. On July 10, 2001, Gateway obtained a judgment against ALX granting the replevin of the collateral. At that time, the sale proceeds were in Cannon's trust account. Debtor did not direct Cannon to turnover the proceeds to Gateway. Rather, over three months after the entry of judgment, Cannon paid the IDR for ALX's tax liability. Cannon made the payment at Debtor's direction in order to eliminate her liability for the trust fund taxes.

Accordingly, the court finds that Debtor individually sold the property securing the loan from Gateway. She then used the proceeds from the sale to pay the IDR debt upon which she was personally liable.

As to the Debtor's second argument, there is authority for the position that a debtor who relies upon the advice of counsel may not have the requisite intent to harm required by § 523(a)(6). United Orient Bank v. Green, 215 B.R. 916, 928 (S.D.N.Y. 1997). To prevail, Debtor must show that she fully disclosed all the relevant facts to her counsel, and she reasonably relied upon his advice. Id.; see also Rimmers v. Merchants'-Laclede Nat. Bank of St. Louis, 173 F. 484, 488 (8th Cir.1909). However, a majority of cases considering the issue hold that advice of counsel is not a defense in a § 523(a)(6) proceeding. The Spring Works, Inc. v. Sarff (In re Sarff), 242 B.R. 620629 (B.A.P. 6th Cir. 2000).

In this case, Debtor cannot avail herself of the advice of counsel defense even if appropriate in the § 523(a)(6) context. The court finds that Debtor did not reasonably rely on the advice of counsel. Rather, the court finds that Cannon's version of their meeting is the more correct in that he set forth Debtor's options based on the information that she provided. He provided her with his opinion of the possible consequences of each option. However, he did not advise her on a course of action to take, nor did he advocate one option over the others. Debtor made her decision and chose a course of action after weighing the benefits and consequences of each action. Accordingly, the court does not find that Cannon advised her to convert the collateral and use the proceeds to pay the IDR debt.

Amount nondischargeable

Gateway states that the amount of its claim is not in dispute and asks the court to except $56,202.80, the amount due on the note at the time of default, from discharge. Gateway also asks for $1,139.01 for interest through April 19, 2001, interest at the rate of $11.3637 per diem from April 19, 2001, late fees, attorney fees, and court costs.

Debtor counters that the amount of money involved in the willful and malicious activities is at most $11,379.55. This amount reflects the funds paid into Cannon's trust account from the sale of the collateral and the accounts receivable.

The court has analyzed the willful and malicious injury sustained by Gateway as that of conversion. The court believes that the Eight Circuit decision of In re Long supra, supports this analysis. Accordingly, state law will provide the appropriate measure of damages.

The purpose of damages is to restore the party, as nearly as possible, to the position it would have occupied if not for the wrong done by the other party. F.S. Credit Corp. v. Shear Elevator, Inc., 377 N.W.2d 227, 234 (Iowa 1985). In an action for conversion, damages amount to the fair market value of the property at the time of the taking. Id. at 235. The recovery cannot exceed the value of the security interest in the collateral or the value of the collateral at the time of the conversion. Id. Interest is allowed from the time of the conversion at the legal rate of interest, not the contract rate. Id.

As a general rule, expenses of a civil suit are not recoverable absent specific authority providing for the same. State v. Taylor, 506 N.W.2d 767, 768 (Iowa 1992). However, conversion cases provide an exception to the rule, and the reasonable and necessary expenses incurred are proper elements of damages. Id. Such expenses would include the cost of an audit, but not the expenses of litigation or attorney fees. State of Iowa v. Bonsetter, 637 N.W.2d 161, 168-69 & n. 2, (Iowa 2001).

It is undisputed that Gateway held a security interest in ALX equipment, inventory, and accounts receivable. Debtor concedes that she sold equipment and inventory and diverted the proceeds in Cannon's trust account. Debtor testified that she felt that these assets would bring a higher sale price than they ultimately brought. Gateway has not offered evidence by way of appraisal or otherwise that the sale price did not reflect the fair market price of the collateral sold.

Accordingly, the court finds the fair market price of the collateral at the time of the conversion to be $5,541.93, the amount deposited into Cannon's trust account.

Likewise, the court finds that the fair market value of the accounts receivable at the time of conversion to be $5,837.62; again, the amount deposited in to Cannon's trust account. The total amount of $11,379.55 will be excepted from discharge.

As to the equipment that Debtor permitted General Graphics Products to take, Gateway offered no evidence of its fair market value. Therefore, the court cannot set an amount of damages for this collateral. Further, Gateway does not dispute Debtor's contention that Daniels appropriated some of the collateral. Consequently, the court will not assess damages for those items.

Finally, although the court determined that Debtor decided to liquidate ALX's assets at or shortly after her meeting with Cannon in February 2001, Gateway did not advance a specific date as to when the conversion took place for purposes of calculating interest. The court infers that upon ALX's default Gateway demanded the turnover of the collateral. ALX failed to do so in part because Debtor had taken control of the property. The earliest date of known significance is that of the replevin filing on April 27, 2001. Accordingly, the court sets the date of the conversion as April 27, 2001, for the purpose of calculating interest on the damages.

Dischargeability Under 11 U.S.C. § 523(a)(14)

Gateway argues that its claim should be nondischargeable pursuant to § 523(a)(14). The plain language of the paragraph excepts only debts "incurred to pay a tax to the United States." 11 U.S.C. § 523(a)(14). The evidence established that Debtor used the proceeds from sale of Gateway's collateral to pay Iowa state taxes, not federal

taxes. Consequently, the debt for the converted collateral is not subject to the § 523(a)(14) exception.

Further, Debtor testified that she personally borrowed $20,000.00 from Gateway in February 2000, and deposited the funds in the ALX business account. Along with accounts payable, some taxes were paid from the account. The record does not show whether Debtor repaid this loan, and she did not separately schedule the loan.

To the extent this loan is part of its claim, Gateway has failed to establish the amount of taxes paid from the loan proceeds, or that the proceeds were used to pay taxes owed to the United States. Consequently, this debt, if it is still owed, is not excepted from discharge.

ORDER

IT IS THEREFORE ORDERED as follows:

1) Gateway Savings Bank shall have judgment against Tammi Ricci in the amount of $11,379.55 and said amount plus interest is excepted from discharge.

2) Gateway Savings Bank's claim for $11,379.55 shall accrue interest at the legal rate of 3.82% from April 27, 2001.

3) The balance of Gateway Savings Bank claim is discharged.

4) Each party shall bear its own costs related to this action. .

RUSSELL J. HILL, JUDGE
U.S. BANKRUPTCY COURT