

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of :  
:  
DANIEL JOHN GENESER and : Case No. 88-0669-C H:  
MARGARETTA A. GENESER, : Adv. No. 88-0116  
:  
Debtors. :  
\_\_\_\_\_  
:  
DEUTZ-ALLIS CREDIT CORPORATION, :  
:  
Plaintiff, :  
:  
v. :  
:  
DANIEL JOHN GENESER, :  
:  
Defendant. :  
\_\_\_\_\_  
:  
C & J LEASING II LIMITED : Case No. 88-0669-C  
PARTNERSHIP, : Adv. No. 88-0177  
:  
Plaintiff, :  
:  
v. :  
:  
DANIEL JOHN GENESER, :  
DEUTZ-ALLIS CREDIT :  
CORPORATION f/k/a ALLIS :  
CHALMERS CREDIT CORP. :  
:  
Defendants. :  
\_\_\_\_\_  
:  
DEUTZ-ALLIS CREDIT :  
CORPORATION, :  
:  
Counterclaim-Plaintiff, :  
:  
v. :  
:  
C & J LEASING II LIMITED :  
PARTNERSHIP, :  
:  
Counterclaim-Defendant. :  
\_\_\_\_\_

DEUTZ-ALLIS CREDIT CORPORATION, :  
Cross-Claim Plaintiff, :  
v. :  
DANIEL JOHN GENESER :  
Cross-Claim Defendant. :

- - - - -  
ORDER--MOTION FOR JUDGMENT ON THE PLEADINGS/  
MOTION FOR SUMMARY JUDGMENT

This proceeding pends upon the Motion for Judgment on the Pleadings, as amended, and the Motion for Summary Judgment of the Defendant/Counterclaimant, Deutz-Allis Credit Corporation. The following appearances were entered: Ronald A. Baybayan for the Plaintiff, C & J Leasing II Limited Partnership (C & J Leasing); Richard F. Stageman for the Defendant/Counterclaimant, Deutz-Allis Credit Corporation; and Donald F. Neiman for the Debtor, Daniel John Geneser.

The parties have stipulated and requested that this Court rule on the issues presented herein. The Court, upon review of the pleadings and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS

1. The Plaintiff, C & J Leasing, filed a petition in the Iowa District Court, Polk County, on September 26, 1986, naming the Debtor, Daniel John Geneser, and Deutz-Allis Credit Corporation as Defendants.

2. C & J Leasing alleged that it entered into a lease agreement with Daniel Geneser wherein C & J Leasing would purchase a tractor and combine from Daniel Geneser and lease said farm equipment back to Daniel Geneser for a period of years. Daniel Geneser failed to pay the lease payments and disposed of the equipment to another purchaser, all without the knowledge of C & J Leasing. C & J Leasing notified Deutz-Allis Credit Corporation of the transaction with Daniel Geneser. Thereafter, Deutz-Allis Credit Corporation financed the sale of the tractor by Daniel Geneser to a third party, which deprived C & J Leasing of its security.

3. Counts I and II of said petition allege causes of action against Daniel Geneser in the theories of contract and fraud, respectively.

4. Count III alleged a cause of action against Deutz-Allis Credit Corporation in tort in that Deutz-Allis Credit Corporation was negligent and was liable to C & J Leasing for damages. C & J Leasing alleged that Deutz-Allis Credit Corporation was negligent in the following particulars:

- a. Failed to remove its security;
- b. failed to notify the Plaintiff of subsequent transactions;
- c. failed to check the security agreement provided by Plaintiff; and
- d. failed to use minimum care in the transaction of a loan.

5. Deutz-Allis Credit Corporation filed an answer, affirm-

ative defenses, counterclaim and cross-claim.

6. Daniel Geneser filed his voluntary petition under Chapter 7 of Title 11, U. S. Code on March 29, 1988.

7. The State court action was removed to this Court and has been assigned Adversary Proceeding No. 88-0177.

8. The complaint in Adversary Proceeding No. 88-0116 was filed on June 7, 1988. This is a complaint to deny discharge and determine non-dischargeability of a debt.

9. The two adversary proceedings were consolidated for trial by order of October 14, 1988.

10. Adversary Proceeding No. 88-0116 has been resolved and judgment entered therein.

11. Deutz-Allis Credit Corporation filed a Motion for Judgment on the Pleadings on April 5, 1989, on the ground that there was no duty on the part of Deutz-Allis Credit Corporation to C & J Leasing as shown by the pleadings which would give rise to any liability under Count III of C & J Leasing's petition (Adversary Proceeding No. 88-0177). C & J Leasing has resisted said motion and Deutz-Allis Credit Corporation has enlarged its motion for judgment on the pleadings to be treated as a motion for summary judgment, if necessary.

12. The following facts are established without dispute:

(a) C & J Leasing is a partnership formed under the laws of the State of Iowa.

(b) Daniel Geneser was a principal officer of Geneser

Implement Store, Inc.

(c) Deutz-Allis Credit Corporation, formerly known as Allis-Chalmers Credit Corporation, is a separate and distinct corporate entity from Deutz-Allis Corporation, formerly known as Allis-Chalmers Corporation.

(d) Deutz-Allis Corporation financed the floor plan inventory of Geneser Implement Store, Inc., and Deutz-Allis Credit Corporation took assignment with recourse back to Deutz-Allis Corporation of that interest. Deutz-Allis Credit Corporation had a floor plan security interest in the inventory owned by Geneser Implement Store, Inc.

(e) Deutz-Allis Credit Corporation provided retail financing for entities that bought equipment from Geneser Implement Store, Inc., and has never had a relationship, business or otherwise, with C & J Leasing.

(f) C & J Leasing purchased a tractor and combine from Geneser Implement Store, Inc., and leased said equipment to Daniel Geneser. C & J Leasing left said equipment on the premises of Geneser Implement Store.

(g) C & J Leasing advised Deutz-Allis Credit Corporation of this purchase and lease to Daniel Geneser in December 1984.

(h) Daniel Geneser then sold the tractor to Mr. Steven Gustafson. Deutz-Allis Credit Corporation provided retail financing for the purchase of the tractor by Steven Gustafson from Geneser Implement Store, Inc.

## DISCUSSION

### I. Jurisdiction

The parties continue in their request that this Court exercise jurisdiction and determine the issues presented by this motion. The Court accordingly will proceed to determine the issues with the express consent of the parties.

### II. Motion for Judgment on the Pleadings--Motion for Summary Judgment

Fed.R.Bankr.P. 7012 incorporates by reference Fed.R.Civ.P. 12(c) in adversary proceedings. Rule 12(c) provides as follows:

Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Both parties have submitted matters outside the pleadings, and Defendant has amended its motion for judgment on the pleadings to pray in the alternative for a motion for summary judgment. The matters outside the pleadings have been received by the Court, and all parties have been given reasonable opportunity to present all materials made pertinent to a motion for summary judgment. Accordingly, Defendant's motion is treated as a motion for summary

judgment pursuant to Fed.R.Bankr.P. 7056.

### III. Summary Judgment

Bankruptcy Rule 7056 provides that Federal Rule of Civil Procedure 56, which governs motions for summary judgment, applies in bankruptcy adversary proceedings. The Eighth Circuit Court of Appeals has set forth the following standard:

Summary judgment is appropriate only when the moving party satisfies its burden of showing the absence of a genuine issue as to any material fact and that it is entitled to judgment as a matter of law. In reviewing a motion for summary judgment, the court must view the facts in the light most favorable to the opposing party and must give that party the benefit of all reasonable inferences to be drawn from the facts. This court often has noted that summary judgment is "an extreme and treacherous remedy" and should not be entered "unless the movant has established its right to a judgment with clarity as to leave no room for controversy and unless the other party is entitled to recover under any discernable circumstances."

Foster v. Johns-Manville Sales corp., 787 F.2d 390, 391-92 (8th Cir. 1986) (citations omitted).

The purpose of summary judgment is to enable a party to obtain judgment without the unnecessary delay and expense of trial where there is no genuine issue of material fact present. Anderson v. Viking Pump, 545 F.2d 1127, 1129 (8th Cir. 1979); Lyons v. Board of Education of Charleston, 523 F.2d 346, 347 (8th Cir. 1975); Fed.R.Civ.P. 56. Where a moving party establishes the absence of any

genuine issue of material fact and the opposing party submits no evidence in rebuttal, summary judgment is justified. Stovall v. City of St. Louis, 614 F.2d 619, 621 (8th Cir. 1980); Willman Poultry Co. v. Morton-Norwich Products, Inc., 520 F.2d 289, 293 (8th Cir. 1975).

The Court finds there is an absence of any genuine issue of material fact as to the issue of duty. The dispute is purely legal, and this matter may be resolved by summary judgment.

#### IV. Res Judicata--Claim Preclusion

The parties have not submitted any reported authority for the proposition that under the facts and circumstances of this case Deutz Allis Credit Corporation had a duty to C & J Leasing. Counsel have provided a slip opinion of the Hon. Carl E. Peterson, Judge, Iowa District Court, Second Judicial District, in the case of Agri Financial Services, Inc., Plaintiff, v. Steven Gustafson and C & J Leasing II Limited Partnership, Defendants, C & J II Limited Partnership, Cross-Petitioner, v. Agri Financial Services, Inc., Steven Gustafson, and Deutz-Allis Credit Corporation, Cross-Defendants, Iowa District court Boone County, Civil No. 32099, filed April 4, 1990.

In that case, C & J Leasing, as Cross-Petitioner, cross-petitioned against Agri Financial Services, Steven Gustafson, and Deutz-Allis Credit Corporation, alleged that Deutz-Allis Credit Corporation was negligent in that Deutz-Allis Credit Corporation failed to take notice that the equipment was sold to C & J Leasing

after being given notice; failed to notify C & J Leasing that the equipment was sold and disposed of; and interfered in the business transaction of C & L Leasing and Geneser Implement Store, Inc.

Deutz-Allis Credit Corporation filed a motion for summary judgment which was sustained by said district court. It was held that under the facts and circumstances of that case there was no duty imposed upon Deutz-Allis Credit Corporation to C & J Leasing.

The facts in that case were that Deutz-Allis Corporation sold a tractor to Geneser Implement Stores, Inc. and took a floor plan purchase money security interest in the tractor which was properly perfected. Geneser Implement Store, Inc. sold the tractor to Agri Financial Services who leased the tractor to the O'Haras. The O'Haras did not take possession of the tractor but left it on the premises of Geneser Implement Store, Inc. Geneser Implement Store, Inc. then sold the tractor to C & J Leasing who leased the tractor to Daniel Geneser. In December 1984, C & J Leasing sent a letter to Deutz-Allis Credit Corporation advising Deutz-Allis of the lease to Daniel Geneser. Again, the tractor remained on the premises of Geneser Implement Store, Inc. Geneser Implement Store, Inc. then sold the tractor to Steven Gustafson who financed the purchase price of the tractor with Deutz-Allis Credit Corporation.

The same law firms represented C & J Leasing and Deutz-Allis Credit Corporation in the Iowa District Court proceeding, and said Iowa District Court decision was never appealed.

It appears that the case herein deals with the same parties and

the same tractor as was involved in the Iowa District Court proceeding. It appears that there is an identity of subject matter, and C & J Leasing is asking this Court do the same thing as it asked the Iowa District Court to do in the cited case.

Res judicata, claim preclusion, applies when a party attempts to relitigate claims which have already been raised and litigated in a prior proceeding. Montana v. United States,, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1976); Brown v. Felsen, 442 U.S. 127, 131, 99 S.Ct. 2205, 60 L.Ed.2d 767 (1979); Israel v. Farmers Mutual Ins. Assn. of Iowa, 339 N.W.2d 143 (Iowa 1983).

Accordingly, the doctrine of res judicata, claim preclusion, bars this claim by C & J Leasing, as it is based upon the same cause of action previously litigated in the Iowa District Court.

#### V. Collateral Estoppel--Issue Preclusion

Collateral estoppel--issue preclusion, provides that once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent actions based on a different cause of action involving a party to the prior litigation. Montana, supra; Brown, supra.

Iowa has established definite factors for the application of the doctrine of issue preclusion. They are:

1. The issue concluded must be identical;
2. the issue must have been raised and litigated in the prior action;

3. the issue must have been material and relevant to the disposition of the prior action; and
4. the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981).

"A traditional element of the collateral estoppel doctrine also requires the Court to determine whether the party invoking this policy of judicial repose has successfully demonstrated an identity between the issues in the present cause of action and those either conclusive or supportive of the judgment in the prior proceeding."

Gear v. City of Des Moines, 514 F.Supp. 1218, 1223 (S.D. Iowa 1981).

Assuming that this Court is not dealing with the same cause of action as litigated in Iowa District Court, the issue of duty on the part of Deutz-Allis Credit Corporation to C & J Leasing was determined by a valid and final judgment of the Iowa District Court.

All of the prerequisites set forth in Hunter have been satisfied.

The material facts actually adjudicated in the Iowa District Court form the same essential facts herein. Each of those facts were fully litigated by the same parties represented by the same law firms.

Accordingly, the issue of duty by Deutz-Allis Credit Corporation to C & J Leasing has been determined adversely to C & J Leasing in the Iowa District Court and is conclusive in this action.

## VI. Duty

Under Iowa law, in order for there to be actionable negligence,

there must be a duty on the part of the person charged with negligence. Wilson v. Nepstad, 282 N.W.2d 664, 667 (Iowa 1979). Generally, each person is responsible only for his or her own conduct and a person does not have a duty to protect another from harm except when a special relationship exists. Abernathy v. United States, 773 F.2d 184, 189 (8th Cir. 1985); RESTATEMENT, SECOND, TORTS §315.

Judge Peterson's well-reasoned decision is persuasive. The material facts in that case are indistinguishable from those in this case and the principals enunciated in that case will be applied herein.

The fact that a letter was written by C & J Leasing to Deutz-Allis Credit Corporation is insufficient as a matter of law to impose a duty on Deutz-Allis Credit Corporation to protect C & J Leasing from the fraudulent conduct of Daniel Geneser. The record is barren of any evidence to establish such a special relationship between Deutz-Allis Credit Corporation and C & J Leasing that would create such a duty. Deutz-Allis Credit Corporation was the holder of a purchase money security interest in subject tractor and provided financing to entities who purchase equipment from Geneser Implement Store, Inc. Deutz-Allis Credit Corporation did not have a relationship with C & J Leasing, and C & J Leasing has not shown that Deutz-Allis Credit Corporation's conduct placed it in a perilous position. C & J Leasing has not shown any societal expectations requiring conduct other than what Deutz-Allis Credit Corporation engaged in.

Accordingly, absent duty on the part of Deutz-Allis Credit Corporation, C & J Leasing's allegations of negligence must fail as a matter of law.

ORDER

IT IS ACCORDINGLY ORDERED that the Motion for Summary Judgment of the Defendant/Counterclaimant Deutz-Allis Credit Corporation is sustained, and that the Defendant, Deutz-Allis Credit Corporation, recover judgment against the Plaintiff, C & J Leasing, dismissing Count III of the Complaint, and for the recovery of its costs. This Order shall not be construed as a resolution of the issues contained in the Counterclaim of Deutz-Allis Credit Corporation v. C & J Leasing.

LET JUDGMENT ENTER ACCORDINGLY.

Dated this 11th day of September, 1990.

---

Russell J. Hill  
U.S. Bankruptcy Judge