UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

STANLEY WAYNE PERRINE,
STEPHANIE LOUISE PERRINE,

Debtors.

Case No. 86-3362

IOWA POWER AND LIGHT COMPANY,

Plaintiff,

v.

STANLEY WAYNE PERRINE,
STEPHANIE LOUISE PERRINE,

Defendants.

Adv. Pro. No. 87-0021

Chapter 7

ORDER ON MOTION FOR SUMMARY JUDGMENT

On December 15, 1987 a telephonic hearing on plaintiff's motion for summary judgment was held before this court in Des Moines, Iowa. Timothy C. Hogan appeared on behalf of the plaintiff, Iowa Power and Light Company (Iowa Power), and Norman L. Springer, Jr. appeared on behalf of the defendants (debtors). At the close of the hearing the debtors were given until January 8, 1988 to file a brief in resistance to the motion. The matter was considered fully submitted on that date.

Factual Background

On July 23, 1986 the debtor, Stanley W. Perrine, was found guilty after a criminal trial by a jury of fraudulent practice in the third degree in violation of Iowa Code sections 714.8(9) and 714.11 which provide:

714.8 Fraudulent Practices Defined

A person who does any of the following acts is guilty of a fraudulent practice--

….

(9) Alters or renders inoperative or inaccurate any meter or measuring device used in determining the value of or compensation for the purchase, use or enjoyment of property, with the intent to defraud any person.

714.11 Fraudulent Practice in the Third Degree

Fraudulent practice in the third degree is the following:

….

(2) A fraudulent practice as set forth in section 714.8, subsections 2, 8 and 9.

….

Fraudulent practice in the third degree is an aggravated misdemeanor.

On October 7, 1986 the debtor was sentenced by the Honorable Paul H. Sulhoff, a state district court judge in Pottawattamie County, Iowa. The court entered a deferred judgment pursuant to Iowa Code section 907.3 which provides:

907.3 Deferred judgment, deferred sentence or suspended sentence.

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in subsections 1 and 2 of this section. However, this section shall not apply to a forcible felony.

> 1. With the consent of the defendant, the court may defer judgment and place the defendant on probation upon such conditions as it may require, or defer sentence and assign the defendant to the judicial district department of correctional services. Upon a showing that such person is not co-operating with the program or is not responding to it, the court may withdraw the person from the program and impose any sentence authorized by law. Before taking such action, the court shall give the person an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

At the time of the sentencing the trial court indicated the existence of a civil lawsuit by the debtors against Iowa Power. This court has no information regarding that lawsuit but for a copy of Iowa Power's answer and counterclaim filed on or about July 9, 1986 and seeking a judgment in the amount of $7,273.51.

On December 24, 1986 the debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code. Iowa Power is listed on the debtors' schedules as an unsecured creditor with a claim in the amount of $7,273.51. The lawsuit against Iowa Power with an undesignated value is listed on the debtors' schedule of assets.

On February 5, 1987 Iowa Power filed a complaint to determine discharqeability of debt. The complaint alleges that the debtors diverted electric service through false

pretenses, false representations, actual fraud and through wilful and malicious injury to Iowa Power's property. The complaint requests that the court determine the debt in the amount of $7,273.51 is nondischargeable under 11 U.S.C. section 523(a)(2). [1] On October 6, 1987 Iowa Power filed an amended complaint which elaborates upon the allegations surrounding the state court criminal action and also requests that the court determine the debt in question is not dischargeable under 11 U.S.C. section 523(a)(4) as a debt for larceny.

On November 20, 1987 Iowa Power filed a motion for summary judgment with regard to dischargeability and/or damages asserting that no material issues of fact exist and that Iowa Power is entitled to judgment as a matter of law. With the motion Iowa Power filed a statement of material facts which summarizes the facts surrounding the criminal action and the verdict of guilty entered for fraudulent practice in the third degree. Iowa Power also filed the affidavit of Steve Vietz, an energy Division specialist for Iowa Power, which itemizes the losses suffered by Iowa Power by virtue of the debtors' actions.

On December 4, 1987 the debtors filed a resistance to motion for summary judgment asserting that genuine issues of

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[1] Although the complaint refers to willful and malicious injury to Iowa Power's property it does not refer to 11 U.S.C. section 523(a)(6) as a basis for determining the debt nondischargeable. The cover sheet attached to the complaint likewise does not indicate reliance on 11 U.S.C. section 523(a)(6) as a basis for the complaint.

material fact exist as to both the issue of dischargeability and the issue of damages. In this statement of material fact the debtors assert that no judgment of guilt for fraudulent practices was ever entered against Mr. Perrine since he was given a deferred judgment and successfully completed the conditions of probation. Therefore, the debtors contend that the doctrine of issue preclusion does not entitle Iowa Power to a judgment as a matter of law. The debtors also contest the amount of damages sought by Iowa Power and itemized in the affidavit of Steve Vietz.

Analysis

Bankruptcy Rule 7056 provides that Federal Rule of Civil Procedure 56 which governs summary judgments 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 such clarity as to leave no room for controversy and unless the other party is not entitled to recover under any discernible circumstances."

Foster v. Johns-Manville Sales Corp. , 787 F.2d 390, 391-92

(8th Cir. 1986) (citations omitted). Applying this standard to the case at hand reveals that an award of summary judgment is inappropriate.

Iowa Power's complaint and amended complaint seek a determination that the debtors' debt is nondischargeable under 11 U.S.C. sections 523(a)(2) and 523(a)(4) because it arose out of fraud and/or larceny. "Actual fraud" for purposes of section 523(a)(2) consists of "any deceit, artifice, trick, or design involving direct and active operation of the mind, used to circumvent and cheat another - something said, done or omitted with the design of perpetrating what is known to be a cheat or deception." 3 Collier on Bankruptcy § 523.08[5] at 523-50 (15th ed. 1978). Larceny for purposes of section 523(a)(4) is the "fraudulent and wrongful taking and carrying away of the property of another with intent to convert such property to his (the taker's) use without the consent of the owner." 3 Collier on Bankruptcy § 523.14[3] at 523-95 (15th ed. 1987).

Iowa Power asserts that the jury verdict from the state court criminal action should have collateral estoppel effect in the dischargeability proceeding. Iowa Power contends that the elements of the criminal offense are identical to the elements in this dischargeability proceeding and were established in the state court proceeding which imposed a much greater burden of proof than the standard required under the Bankruptcy Code. Iowa Power correctly states that

the doctrine of collateral estopped is applicable in bankruptcy cases and will bar relitigation of issues if the court finds the following elements:

1. the issue sought to be precluded must be the same as that involved in the prior act;

2. that issue must have actually been litigated;

3. it must have been determined by a valid and final judgment; and

4. the determination must have been essential to the prior judgment.

In re DiPierro, 69 B.R. 279, 281 (Bankr. N.D. Pa. 1987); see also In re Coover, 70 B.R. 554, 558 (Bankr. S.D. Fla. 1987).

The debtors do not dispute the application of the above standard but rather assert that the third element canno t be satisfied. As noted above Mr. Perrine received a deferred judgment at sentencing after the jury returned a verdict of guilty of fraudulent practice in the third degree. The debtors assert that no "final judgment" was ever entered upon the jury's verdict as a deferred judgment under state law does not become a judgment if the debtor completes the conditions of probation imposed.

While the parties have submitted no case law on the collateral estoppel effect of a "deferred judgment" and the court can find none, the court finds the debtors' argument persuasive. In applying issue preclusion or collateral estoppel the court must first examine the law of the state in which the court rendering the prior judgment sits. If the law of that state would not give the judgment preclusive

effect, neither should the bankruptcy court. To do otherwise would overstep the requirements of full faith and credit. Ferriell, The Preclusive Effect of State Court Decisions in Bankruptcy, 59 Am.Bankr.L.J. 55, 68 (Winter 1985). Under Iowa law the entry of a sentence constitutes a final judgment in the criminal case. State v. Dvorsky , 356 N.W.2d 609, 610 (Iowa App. 1984); State v. Farmer, 234 N.W.2d 89, 90 (Iowa 1975). If a deferred judgment and conditions of probation are imposed under Iowa Code section 907.3, no entry of judgment is made upon fulfillment of those conditions and the criminal record of the court proceeding must be expunged. Iowa Code 907.9 (1987). The only record retained is the confidential deferred judgment docket maintained by the state court administrator. Iowa Code § 907.4 (1987). Therefore, an individual who has been given a deferred judgment is assured that upon completion of probation he or she will have no "record" and that the deferred judgment will not be used against him or her in later proceedings. State v. Soppe, 374 N.W.2d 649, 652 (Iowa 1985).

Under the above authority, no final judgment exists against Mr. Perrine for purposes of applying the doctrine of collateral estoppel. Accordingly, material issues of fact exist and preclude the granting of summary judgment in favor of Iowa Power on the issue of dischargeability.

Parenthetically, the court notes that even if the state

court judgment was given preclusive effect, summary judgment would be inappropriate because the state court judgment was against Mr. Perrine alone and the dischargeability compliant names both Stanley and Stephanie Perrine as defendants. Although a joint petition filed by a debtor and the debtor's spouse is permitted under 11 U.S.C. section 302(a), the estates of the spouses are legally separate. In re McAlister, 56 B.R. 164, 166 (Bankr. D. Or. 1985); In re Estate of Barefoot, 43 B.R. 608, 609 (Bankr. C.D. N.C. 1984). The debtors have not moved to dismiss the complaint as it applies to Mrs. Perrine.

With respect to the motion for summary judgment on the issue of damages, Iowa Power does not assert that monetary damages were in issue in the state court criminal action. Rather, Iowa Power submits the affidavit of Steve Vietz in support of its calculation of the debt owing. The debtors' statement of material facts and brief in support of resistance to the motion for summary judgment sufficiently expose a genuine issue as to material facts surrounding the calculation of damages. Accordingly, Iowa Power has not established its right to a judgment on the issue of damages as a matter of law.

WHEREFORE, based on the foregoing analysis, the court hereby finds that genuine issues of material fact exist in the above adversary proceeding and preclude the entry of judgment as a matter of law.

THEREFORE, the motion for summary judgment filed on behalf of Iowa Power and Light Company is denied.

IT IS FURTHER ORDERED that a stipulated final prehearing order containing the information noted on page 4 of the stipulated scheduling order filed on September 15, 1987 be submitted within 30 days. A trial on the complaint will be scheduled thereafter as the court calendar permits.

Signed and filed this 13th day of May, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE

Place behind Dec. #116:1 in Decision Book.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

IOWA POWER AND LIGHT COMPANY,

Plaintiff,

VS. CIVIL NO. 88-108-W

STANLEY WAYNE PERRINE and STEPHANIE LOUISE PERRINE, ORDER

Defendants.

The matters now before the court are plaintiff's appeal of two orders entered by the bankruptcy court. Plaintiff first appeals an order of the bankruptcy court entered on May 13, 1988 in which the bankruptcy court denied plaintiff's motion for summary judgment. Second, plaintiff appeals the November 15, 1988 order of the bankruptcy court wherein the court granted the defendants' motion for a directed verdict. The bankruptcy court specifically ruled that plaintiff had failed to meet its burden of proof and subsequently discharged the debt owed to plaintiff by the defendants. Also before the court is defendants' appeal of the November 15, 1988 of the bankruptcy court wherein the court denied defendants' motion for sanctions against Iowa Power and Light Company. After careful consideration, it is the decision of this court to affirm the May 13, 1988 order of the bankruptcy court wherein the court denied plaintiff's motion for summary judgment. The court also affirms the November 15, 1988 order of the bankruptcy court wherein the court granted

defendants' motion for directed verdict. Further, the court affirms the bankruptcy court's decision to deny sanctions against Iowa Power and Light Company.

1. FACTS

Iowa Power and Light Company (hereinafter referred to as Iowa Power) received an anonymous letter stating that the debtor (Stanley Perrine) was stealing electricity at his residence. The letter alleged that Mr. Perrine had tapped into an incoming power line just above the usage meter. Iowa Power investigated and installed a check meter so it could determine whether any electricity was in fact being stolen. On February 3, 1986, Iowa Power and the Council Bluffs Police Department inspected the house. Plaintiff contends that there was a maze of electrical cords hooked up to all of the debtor's appliances and to space heaters.

On July 23, 1986, Stanley Perrine was tried in the Pottawattamie District Court for the State of Iowa on charges of fraudulent practice in the third degree, an aggravated misdemeanor. A jury returned a verdict of guilty against Mr. Perrine. On October 7, 1986, the state court entered a deferred judgment pursuant to the provisions of Iowa Code 907.3.

On December 24, 1986, the debtor filed a petition for relief under chapter 7 of the Bankruptcy Code. Iowa Power was listed as an unsecured creditor with a claim of $7,273.51.

Iowa Power contends that the debt was nondischargeable under the provisions of 11 U.S.C. 523(a)(4) as a debt for larceny.

Iowa Power's motion for summary judgment was based on the jury verdict in state court. The debtor resisted Iowa Power's motion, asserting that no judgment of guilt was ever entered against the debtor since he was given a deferred judgment and had successfully completed the terms of his probation.

On May 13, 1988, the bankruptcy court denied plaintiff's motion for summary judgment. Thereafter, the matter was tried to the bankruptcy court. After plaintiff presented its case in chief, the court granted defendants' motion for directed verdict.

The record indicates that the debtors herein are husband and wife. Mrs. Perrine was never prosecuted or charged in state court proceedings. The record also reveals that after Mr. Perrine completed his probation, judgment was never entered and his file was sealed (state court proceedings).

II. STANDARD OF REVIEW

Rule 8013, Rules of Bankruptcy Procedure, provides as follows:

> On an appeal the district court . . . may affirm, modify or reverse the bankruptcy judge's judgment, order or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of witnesses.

See Bankruptcy Rule 8013; see also In re Hunter, 771 F.2d 1126, 1129 (8th Cir. 1985) (district court bound to uphold all factual findings of a bankruptcy judge unless they are found to.be clearly erroneous). Said standard of review was reaffirmed in In re Euerle Farms Inc., 861 F.2d 1089, 1090 (8th Cir. 1988), wherein the court stated:

When a district court reviews a bankruptcy court's judgment, it acts as an appellate court. As with most appellate proceedings, the district court may review the bankruptcy court's legal conclusions de novo, but the bankruptcy court's findings of fact shall not be set aside unless clearly erroneous. Bankruptcy Rule 8013; see, e.g., In re Hunter, 771 F.2d 1126, 1129 n.-.3 (8th Cir. 1985); In re Martin, 761 F.2d 472, 474 (8th Cir. 1985). Furthermore, the district court may not make its own independent factual findings.

III. DISCUSSION

A. Plaintiff Is Motion for Summary Judgment.

Plaintiff contends that the jury findings in state court bars relitigation of the same issues in the bankruptcy trial. Iowa Power argues that the doctrine of collateral estoppel is applicable in cases before the bankruptcy court. See In re DiPierro, 69 Bankr. 279, 280-81 (Bankr. W.D. Pa. 1987). – In DiPierro, the court stated:

> Plaintiff avers that a court of competent jurisdiction has had an opportunity to review the particular issue of fraud by and between the parties;: accordingly, "full faith and credit" should be given to .the state final judgment, and this issue by and between the parties should be determined by this court to have been finally decided by the Ohio common pleas judgment ….
>
> The Third Circuit has had an opportunity to review this issue In the Matter of Ross, 602 F.2d 604 (3d Cir. 1979), wherein said court determined that the doctrine of collateral estoppel will bar relitigation of the dischargeability issue if the bankruptcy court finds the following elements: (1) The issue sought to be precluded must be the same as that involved in the prior act; (2) the issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; and (4) the determination must have been essential to the prior judgment.

(Citations omitted.)

The issue herein is whether or not collateral estoppel can be applied in this case. The debtor claims that in order for

collateral estoppel to bar relitigation by the bankruptcy court, a valid and final judgment must have been entered in the prior action. (See element 3 set forth in In re DiPierro above.) The debtor claims that a jury verdict in Iowa criminal cases does not amount to a final judgment. See State v. Dvorski, 356 N.W.2d 609, 610 (Iowa App. 1984). In State v. Dvorski, the court stated: "Entry of a sentence constitutes final judgment in a criminal case. State v. Aumann, 236 N.W.2d 320, 321 (Iowa 1975)." Thus, the debtor argues that since the state court entered a deferred judgment, the judgment was not final and, therefore, collateral estoppel should not apply.

In Foster v, Johns Manville Sales Corp., 787 F.2d 390, 391 (8th Cir. 1986), the court stated:

> 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. [Citations omitted]. In reviewing a motion for summary judgment, the court must view the facts in a light most favorable to the opposing party and must give that party the benefit of all reasonable inferences to be drawn from the facts. [Citations omitted]. 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 such clarity as to leave no room for controversy and unless the other party is not entitled to recover under any discernible circumstances." [Citation omitted].

In Brown v. Felsen, 442 U.S. 127, 138-39 (1979), the court stated:

> Refusing to apply res judicata here would permit the bankruptcy court to make an accurate determination whether respondent in fact committed the deceit, fraud, and malicious conversion which petitioner alleges. These questions are now, for the first time, squarely in issue. They are the type of question Congress intended that the bankruptcy court would resolve. That

court can weigh all the evidence, and it can also take into account whether or not petitioner's failure to press these allegations at an earlier time betrays a weakness in his case on the merits.

Some indication that Congress intended the fullest possible inquiry arises from the history of section 17. In the 1898 Bankruptcy Act, Congress provided that only "judgments" sounding in fraud would be accepted from a bankrupt's discharge. 30 Stat. 550. In 1903, Congress substituted "liabilities" for "judgments". , 3-2 Stat 798. The amendment, said the accompanying House report, was "in the interests of justice and honest dealing and honest conduct," and it was intended "to exclude beyond peradventure certain liabilities,-growing out of offenses against good morals." (Footnote: omitted.] This broad language suggests that all debts arising out of conduct specified in section 17 should be excepted from discharge and the mere fact that a conscientious creditor has previously reduced his claim to judgment should not bar future inquiry into the true nature of the debt. (Citation omitted].

In sum, we reject respondent's contention that res judicata applies here and we hold that the bankruptcy court is not confined to a review of the judgment and record in the prior state court proceedings when considering the dischargeability of respondent's debt. Adopting the rule respondent urges would take section 17 issues out of bankruptcy courts well suited to adjudicate them, and force those issues onto state courts concerned with other matters, all for the sake of a repose the bankrupt has long since abandoned. [Footnote omitted]. This we decline to do.

The court finds that it must affirm the bankruptcy court's decision to deny Iowa Power's motion for summary judgment. Specifically, the court relies on the following:

1. A jury verdict in Iowa criminal cases does not amount to a final judgment. See State v. Dvorski, 356 N.W.2d 609, 610 (Iowa App. 1984). Thus, the court finds that a deferred judgment does not satisfy the third element of the doctrine of collateral estoppel as set forth in In re DiPierro, 69 Bankr. 279, 281 (Bankr. W.D. Pa. 1987); and

2. The bankruptcy court is not confined to a review of the judgment and record in the prior state court proceeding when considering the dischargeability of the defendants' debt herein. See Brown v. Felsen, 442 U.S. 127, 138-39.

II. DIRECTED VERDICT

Plaintiff argues that the facts herein show that the defendants fraudulently took its electricity. Therefore, plaintiff contends that such evidence establishes a prima facie case for nondischargeability. Thus, plaintiff argues that the bankruptcy court erred in granting defendants' motion for a directed verdict.

Defendants argue that plaintiff failed to prove its damages because:

1. The figures were speculative and inconsistent with the other figures in various documents;

2. Plaintiff based part of its calculations on the presence of an air conditioner;

3. Plaintiff failed to consider the number of individuals residing in the debtors' home and failed to prove how much electricity was used by the debtors themselves;

4. Iowa Power altered the evidence for the purpose of obtaining a favorable result. The debtors specifically contend that the wires were shortened and that the ends were discarded. The debtors contend that the ends which were discarded would have demonstrated that they only made repairs to the wires;

5. The billing meter and check meter were read on different dates at the beginning of the monitoring period;

6. The exhibits from the criminal trial were destroyed. The debtors specifically charge that Iowa Power was not diligent in obtaining the evidence and preserving it for trial to the bankruptcy court. (Plaintiff's counsel insisted that he and/or his office had been in contact with the clerk's office of the state court to prevent the destruction of the evidence. However, the affidavit of the clerk of court indicates that counsel for plaintiff did not contact the clerk for the evidence until it had already been destroyed.)

In the transcript of the trial before the bankruptcy court on November 10, 1988, the court stated:

> After listening to the testimony today, it would be the court's conclusions that, first of all a bypass did exist; however, the testimony is far from clear as to when that bypass was actually done and who carried it out, and importantly for this case, it has not been established by clear and convincing evidence, even when I look at circumstantial evidence, that Mr. Perrine knew of the existence of the bypass and was actually trying to obtain free electricity under the circumstances. Now, some of the various things that are being taken into the court's conclusions here are: that, indeed, we have a prior owner who, according to the records that the plaintiff has, used even less electricity than the insider meter reflected from Mr. Perrine. No meter check has ever been done on the prior owner nor on Mr. Perrine until we learn of this anonymous tip which carries absolutely no weight with this court. . . . Neither party really explored the fluctuations in Mr. Perrine's usage but they do exist and they certainly do not support the plaintiff's proposition that he had put the bypass in place. The testimony was certainly not consistent among the various witnesses. Mr. Vietz testified at one time that when the inside meter was removed one space heater was running, and following on that lead is when he discovered the disconnector and the wiring going into the attic. Another time it was a space heater and a TV only. On the other hand, Mr. Chapman, the plaintiff's witness, testified that there were two space heaters running and a refrigerator when the meter was taken out. And although Mr. Vietz was called at the conclusion of plaintiff's case to try to persuade the

court that that would support their burden of trying to prove intent on the part of the debtor, the court can't make that conclusion. There was no testimony elicited with regard to how much, perhaps, a refrigerator, if it had been connected, would use. It would be hooked up all the time. Because of the inconsistencies in the plaintiff's own witnesses' testimony, the court is not persuaded by that offer of evidence.

Because intent is so critical, the court admittedly was quite concerned about, I suppose, what I would call limited questioning of Mr. Perrine by the plaintiff. . . .

Some other general observations. Plaintiff put a lot of reliance on what Mr. Vietz thought the heard the debtor say to the police officer when the plaintiff was conducting its search of the premises. How did they know? That is all that is in the record. Without it being developed, it could be construed to mean, simply, how did they know there was a problem, not an admission that there was a problem. That by itself is not enough.

Upon cross-examination of Mr. Vietz, he did acknowledge that it was possible if the removed wire had been shortened and if there were other tapped sections on the conductor, that that would support his [Mr. Perrine's] argument that he only had replaced the wire. Now, again, this was not something that was developed in the plaintiff's case. Mr. Perrine wasn't even asked if he had been doing any electrical work, if he had actually replaced anything. Again, replacing, and knowing the effect of that replacement in terms of electrical usage is something that has not been established. The court would have to speculate to make a finding supporting the plaintiff's position.

Based on the record, accordingly, the court finds that the debt sought to be held nondischargeable in plaintiff's complaint is, indeed, a dischargeable debt.

See Transcript pp. 172-77.

The court is persuaded that it must affirm the bankruptcy court's decision to grant the defendants' motion for directed verdict in this case. Specifically, the court relies on In re Euearle Farms, Inc., 861 F.2d 1089, 1090 (8th Cir. 1988), wherein the court stated:

> As with most appellate proceedings, the district court may review the bankruptcy court's legal conclusions de novo, but the bankruptcy court's findings of fact shall not be set aside unless clearly erroneous. [Citations omitted]. Furthermore, the district court may not make its own independent factual findings. In the instant case, the court specifically finds that the bankruptcy court's findings of fact are not clearly erroneous. Further, although this court may have viewed the evidence somewhat differently, a court may not make its own independent factual findings.

The bankruptcy court was clearly not impressed with the proof submitted by Iowa Power and Light. This court cannot conclude that that court's findings of fact are clearly erroneous.

111. DEFENDANTS' MOTION FOR SANCTIONS

The defendants specifically request that the court consider their renewed request for sanctions against Iowa Power for abuses of the judicial system for pursuing a frivolous appeal.

At the conclusion of the evidence before the bankruptcy court on November 10, 1988, the court stated:

> Now, turning to defendants' request for some form of sanctions, the court denies that, given the fact that the plaintiff was successful, at least, in the criminal action for whatever reason. I could see that they would think, perhaps, they had a shot at it in this proceeding so that motion is denied.

(Tr. 177.)

The court affirms the bankruptcy court's decision to deny defendants' motion for sanctions. The court is persuaded that the bankruptcy court ruled correctly in denying defendants' motion.

IT IS THEREFORE ORDERED that the bankruptcy court's order entered on May 13, 1988 in which the court denied plaintiff's motion for summary judgment is hereby affirmed.

IT IS FURTHER ORDERED that the November 15, 1988 order of the bankruptcy court wherein the court granted defendants' motion for a directed verdict is hereby affirmed.

IT IS FURTHER ORDERED that the bankruptcy court's November 15, 1988 order wherein the court denied the defendants' motion for sanctions is hereby affirmed.

May 19, 1989.

Donald E. O'Brien, Judge
UNITED STATES DISTRICT COURT