

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

JAMES E. EVANS

Case No. 00-16183 K

Debtor

JAMES E. EVANS

Plaintiff

-vs-

AP 01-1285 K

EUROPEAN AMERICAN BANK

Defendant

Kenneth R. Hiller, Esq.
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Amherst, New York 14228

Attorney for Debtor-Plaintiff

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Attorney for Defendant

After trial, the Complaint is dismissed on the merits, for the reasons set forth in the Defendant's excellent brief.

This Complaint and the damage claims rest on the faulty premise that if no violation of the § 362 stay had occurred, the lender would have endorsed the check.

But the facts are that the lender had no duty to endorse the check; the lender did not contact the Debtor (it was the other way around); the Debtor did not have his attorney handle the matter, and so the lender was not completely at fault for what apparently became a "negotiation" for use of cash collateral; and the only damages addressed by the evidence were damages for which no one is liable - - the lender's reliance on its right to the proceeds of its collateral.

The Complaint is dismissed, each side to bear its own costs.

SO ORDERED.

Dated: Buffalo, New York
October 21, 2002

/s/ Michael J. Kaplan

U.S.B.J.