

IT IS SO ORDERED.

Dated: 12:17 PM March 20 2008

  
MARILYN SHEA-STONUM *JS*  
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE:	)	CASE NO. 06-50801
	)	
Tameacko A. Parns,	)	CHAPTER 7
	)	
DEBTOR(S).	)	
	)	
Richard Wilson, Trustee,	)	ADVERSARY NO. 06-5222
	)	
PLAINTIFF(S),	)	JUDGE MARILYN SHEA-STONUM
	)	
vs.	)	
	)	
Tameacko A. Parns,	)	
	)	MEMORANDUM OPINION
DEFENDANT(S).	)	

This matter is before the Court on the amended complaint of Richard Wilson, Chapter 7 Trustee (the “Trustee” or “Plaintiff”) objecting to the discharge of Tameacko A. Parns (the “Debtor”) pursuant to 11 U.S.C. § 727(a)(2), (4) and (5). The Court held a trial in this matter on November 30, 2007 and closing arguments were heard on December 19, 2007. Appearing at the trial were the Trustee, *pro se*, and James Reed, counsel for Debtor. During the trial the

parties presented evidence in the form of exhibits and testimony from Debtor, the Trustee, and Debtor's husband, Kevin Preston ("Preston"), and Stacy Datson, Administrative Advisor for the Recording Division of Summit County. In addition, prior to the commencement of the trial, counsel filed a list of facts which they agree are not in dispute [*see* docket # 36] (the "Stipulations").

This proceeding arises in a case referred to this Court by General Order No. 84 entered in this district on July 16, 1984. It is determined to be a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (J) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334. Based upon the testimony and evidence presented at the trial, the arguments of counsel and the documents of record in this adversary proceeding and the Debtor's chapter 7 case, the Court makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

Debtor is a young, articulate, seemingly intelligent and educated person. She works as a registration clerk at Akron General. In addition to working at Akron General, Debtor is working toward a college degree in respiratory therapy. She is currently enrolled at Tri-C and previously attended the University of Akron.

Debtor also has several years of experience, from approximately 1998 through March, 2006, acting as a "property manager" for various rental properties. The rental properties were owned by Preston.<sup>1</sup> But, in 1998, as the result of Preston's conviction for drug trafficking and his subsequent incarceration for eight years, he needed assistance in managing the rental

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<sup>1</sup> Debtor and Preston met in 1993 and began dating. According to their testimony, Debtor and Preston have since married, though she testified they wed on April 19, 2007 and he testified they wed on April 21, 2007.

properties and Debtor provided that assistance.

On or about October 17, 2000, during Preston's incarceration, Preston's father transferred real property located at 393 Bailey Court in Akron, Ohio ("Bailey Court") to Preston. Stipulation # 6. Debtor resided at Bailey Court from approximately 1995 through July, 2006. She testified that she did not pay Preston rent during the time she was managing the rental properties for him.

On or about November 19, 2003, Preston prepared and executed a limited power of attorney giving Debtor the power to manage his rental properties. Stipulation # 7 and Defendant's Exhibit 1. This limited power of attorney did not give Debtor power to transfer title to any of the rental properties. Stipulation # 8 and Defendant's Exhibit 1. Notwithstanding the limitation in the power of attorney, on or about June 11, 2004, Debtor executed a quit claim deed, purporting to act as attorney in fact for Preston, transferring a one-half interest in Bailey Court into Debtor's name. Stipulation # 9 and Plaintiff's Exhibit C. At her deposition, Debtor testified that she didn't think Preston "would mind in light of all the things she was doing for him." Exhibit F, p. 21-22, 32. Debtor caused the deed, which she believed to be valid, to be recorded in the Summit County, Ohio records on June 11, 2004. Exhibit F, p. 22 and Plaintiff's Exhibit C.

Preston and Debtor testified that at some point following his release from prison in March 2006, Preston became aware that Debtor had transferred the property at Bailey Court into her name. Stipulation # 11 and Plaintiff's Exhibit D. According to their testimony, he became "irate" and threatened "to prosecute her." On May 12, 2006, Debtor signed a quit claim deed transferring Bailey Court back to her husband Preston. Stipulation # 13.

In July 2000 Debtor became the owner of a 2000 Chrysler 300 Sedan (the “Car”). Plaintiff’s Exhibit H. Chrysler Financial was listed as the first lienholder until September 9, 2005. Plaintiff’s Exhibit H. As of that date, Debtor owned the Car free and clear of liens. Plaintiff’s Exhibit H.

On or about June 11, 2001, Debtor signed a land contract with her mother, Grace Parns, as co-vendees, and Kimberly Lockett, as vendor, for the purchase of property known as 3686 Campbell Street, Akron, Ohio (“Campbell Street”). Plaintiff’s Exhibit E. The land contract appears to have been recorded with the county auditor’s office on July 19, 2001. Plaintiff’s Exhibit E.

On or before April 1, 2006, Debtor became the owner of a 1987 Ford Van (the “Van”) which was previously owned by Michael Bussey. Plaintiff’s Exhibit B. On May 20, 2006, Debtor transferred ownership of the Van valued at \$100 to Kevin Preston. Stipulation # 12 (as orally amended at trial) and Plaintiff’s Exhibit B.

On May 19, 2006, Debtor filed a voluntary petition for relief under chapter 7. She had no prior bankruptcy filings. Debtor testified that she obtained the required paperwork from the computer and read and completed it herself. She said she did not have any assistance from a lawyer, or otherwise, in preparing her bankruptcy paperwork. The petition is signed by her under penalty of perjury that the information provided in the petition is true and correct. Plaintiff’s Exhibit A-1.

Debtor’s Schedule A - Real Property lists “None.” Plaintiff’s Exhibit A-1. Debtor’s Schedule B-Personal Property, wherein debtors are directed to list all personal property of whatever kind, Debtor listed “Household Goods and Clothing.” Plaintiff’s Exhibit A-1. Line

item #25 on Debtor's Schedule B - "Automobiles, trucks, trailers and other vehicles and accessories" - is marked with an "X" for "None." Plaintiff's Exhibit A-1. Debtor's Schedule C claims exemptions in clothing and furnishings by the appropriate sections of the Ohio Revised Code. Plaintiff's Exhibit A-1. Debtor's Schedule J lists \$300 per month for "Rent or home mortgage payment." Plaintiff's Exhibit A-1.

Item # 10 of the Statement of Financial Affairs instructs debtors to list "all other property, ..., transferred either absolutely or as security within two years immediately preceeding the commencement of the case." Debtor marked item # 10 on her Statement of Financial Affairs with an "X" for "None." Plaintiff's Exhibit A-1.

Debtor did not disclose the Car, Van, Bailey Court or Campbell Street anywhere in her bankruptcy petition, schedules or statement of financial affairs. Plaintiff's Exhibit A-1.

Plaintiff is the duly appointed chapter 7 trustee for Debtor's bankruptcy case. He held and concluded a § 341 meeting in Debtor's case on August 22, 2006. At the § 341 meeting, Debtor swore her schedules and statement of financial affairs were accurate. Following confrontation by the Trustee, Debtor disclosed ownership of the Car. On September 13, 2006, Debtor amended Schedule B - Personal Property and listed the Car with a value of \$6,645. Plaintiff's Exhibit A-2. On September 26, 2006, Debtor paid \$4,645 to Trustee in compromise of the equity in the Car and an Order approving the compromise was entered on December 6, 2006. Stipulation # 22 and Main Case Docket # 34.

There appears to be no equity for liquidation by the Trustee in the Van and Campbell Street. Stipulation # 32. Preston sold Bailey Court, *inter alia*, to Myron Mitchell for \$59,000 on July 28, 2006. Stipulation # 24.

On November 14, 2006, Trustee commenced the above-captioned adversary proceeding against Debtor. Stipulation # 25. Debtor retained attorney James K. Reed to represent her in the adversary proceeding. Stipulation # 26. James K. Reed filed an answer on Debtor's behalf denying Trustee's allegations regarding Debtor's failure to list the property or transfers of property discussed above. Stipulation # 27 and Adv. Pro. Docket # 6. Trustee filed an Amended Complaint on June 1, 2007. Stipulation # 28. Following the completion of discovery, Trustee filed a motion to dismiss this adversary proceeding. Stipulation # 29. Cari Struder, a creditor, filed an objection to the proposed dismissal and Trustee withdrew his motion to dismiss on October 23, 2007. Stipulation # 30 and Adv. Pro. Docket # 32.

Also on October 23, 2007, attorney Reed filed amended schedules and statement of financial affairs on Debtor's behalf disclosing the Car, Van, Bailey Court and Campbell Street. Stipulation # 31 and Plaintiff's Exhibit A-3.

## **DISCUSSION**

"A discharge is a privilege and not a right and therefore the strict requirement of accuracy is a small quid pro quo." *Hamo v. Wilson (In re Hamo)*, 233 B.R. 718, 725-26 (BAP 6<sup>th</sup> Cir. 1999) (citing *Hillis v. Martin, Martin v. Martin (In re Martin)*, 124 B.R. 542, 545, 547-48 (Bankr. N.D. Ind. 1991). In his complaint, Trustee claims Debtor should be denied a discharge pursuant to § 727(a)(2), (4) and (5)<sup>2</sup> based on Debtor's failure to disclose the Car,

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<sup>2</sup>Section 727 of the Bankruptcy Code provides, in pertinent part, The Court shall grant the Debtor a discharge, unless,

(2) the Debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed -

Van, Bailey Court, Campbell Street and the related transfers.

**727(a)(4)**

To prove his case under § 727(a)(4), the Trustee must establish by a preponderance of the evidence that,

- (1) the debtor made a statement while under oath,
- (2) the statement was false,
- (3) the statement related materially to the bankruptcy case,
- (4) the debtor knew the statement was false, and
- (5) the debtor made the statement with fraudulent intent.

*In re Hamo*, 233 B.R. 718 citing *Hunter v. Sowers (In re Sowers)*, 229 B.R. 151, 158 (Bankr. N.D. Ohio 1998).

**False Statement while under Oath**

Statements in bankruptcy schedules are given under oath. *In re Hamo*, 233 B.R. 718. Debtor's signed her Schedules and Statement of Financial Affairs under penalty of perjury and testified at her § 341 meeting that they were accurate.

Omitting material information from a bankruptcy filing may constitute a false oath under this section. *Job v. Calder (In re Calder)*, 907 F.2d 953 (10<sup>th</sup> Cir. 1990). Debtor's initial Schedules and Statement of Financial Affairs did not list any transfers, any real property or any automobiles. Her omissions made her Schedules and Statement of Financial Affairs false. Her act of amending her Schedules and Statement of Financial Affairs does not

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- (A) property of the Debtor, within one (1) year before the date of the filing of the petition; or  
(B) property of the estate, after the date of the filing of the petition; ...

(4) the Debtor knowingly and fraudulently, in or in connection with the case - (A) made a false oath or account; ... [or]

(5) the Debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the Debtor's liabilities.

negate this finding. *In re Sholdra*, 249 F.3d 380, 382-83 (5<sup>th</sup> Cir. 2001).

### **Statement Related Materially to the Bankruptcy Case**

A false oath “is material if it ‘bears a relationship to the bankrupt’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property’.” *Keeny v. Smith (In re Keeney)*, 227 F.3d. 679, 686 (6<sup>th</sup> Cir. 2000) (quoting *Beaubouef v. Beaubouef (In re Beaubouef)*, 966 F.2d 174, 178 (5<sup>th</sup> Cir. 1992)).

In determining whether or not an omission is material, the issue is not merely the value of the omitted assets or whether the omission was detrimental to creditors.” 4 *Collier on Bankruptcy*, ¶ 727.04[1], at 727-59. “The subject matter of a false oath is ‘material,’ and thus sufficient to bar discharge, if it bears a relationship to the bankrupt’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property.” *In re Chalik*, 748 F.2d 616, 617 (11<sup>th</sup> Cir.1984).

*In re Beaubouef*, 966 F.2d at 178.

Debtor argued at trial that there is no equity for liquidation in the undisclosed property. Such a defense is “specious.” *Id.* It is not the value of the property, but the complete and honest disclosure that is important. *Id.* (“The veracity of the bankrupt’s statements is essential.”). The value to the estate of the undisclosed property and transfers may have been minimal, but the omission of the information from her bankruptcy petition was material.

### **Debtor knew the statement was false**

Knowledge may be shown by demonstrating that the debtor knew the truth, but nonetheless failed to give the information or gave contradictory information.

*In re Hamo*. 233 B.R. 718 (BAP 6<sup>th</sup> Cir. 1999) citing *In re Beaubouef*, 966 F.2d 174, 178 (5<sup>th</sup>

Cir. 1992). At a minimum Debtor knew she owned her Car, but she failed to disclose the Car on Schedule B. In addition, given the proximity of the transfers of Bailey Court and the Van to the Petition Date, the Court finds the Debtor was aware of those transfers at the time she answered “None” to item # 10 on her Statement of Financial Affairs.

**Debtor made the statement with fraudulent intent**

The intent requirement is satisfied by proving either a knowing misrepresentation or reckless disregard as to the truth of a representation. *Keeney*, 227 F.3d at 685-86. Fraudulent intent may be deduced from the facts and circumstances of the case. *Keeney*, 227 F.3d at 686. A false statement or omission that is made by mistake or inadvertence is not sufficient grounds upon which to base the denial of a discharge, but a knowingly false statement or omission made by the debtor with reckless indifference to the truth will suffice as grounds for the denial of a Chapter 7 general discharge. *In re Hamo*, 233 B.R. at 725.

Debtor argues that her mistakes were the results of ignorance, not fraudulent intent. Setting aside Debtor’s failure to list Bailey Court and Campbell Street, and focusing on her failure to disclose the Car, the Court does not find the Debtor to be credible when she says she misunderstood the requirement in Schedule B to list all personal property, including “automobiles.” This omission coupled with Debtor’s failure to disclose other property interests, including two transfers which took place in close proximity to the date she filed her bankruptcy petition lead the Court to conclude that Debtor either intended to hide the property or filled out the forms with a reckless indifference to the truth. The Court finds that Debtor was capable of reading and understanding the disclosure requirements for her Schedules and the Statement of Financial Affairs, yet she chose not to make a full and accurate disclosure.

Based on the facts and circumstances of this case, the Court finds this element satisfied.

Therefore, the Court concludes that Trustee proved by a preponderance of the evidence that Debtor should be denied a discharge pursuant to § 727(a)(4).

**727(a)(2)**

To prove a case under § 727(a)(2), a trustee must demonstrate, by a preponderance of the evidence, that the debtor with intent to hinder, delay or defraud a creditor or an officer of the estate, concealed property of the debtor, within one year before the filing of the petition, or property of the estate, at some time after the date of the filing of the petition. *Barclays/American Business Credit, Inc. v. Adams (In re Adams)*, 31 F.3d 389, 394 (6<sup>th</sup> Cir. 1994). This section operates to deny a discharge to debtors who, intending to defraud, conceal property which if discovered would become property of the estate. Debtor's failure to disclose information is concealment. *See Buckeye Retirement Co., LLC, Ltd. v. Swegan (In re Swegan)*, 2008 Fed. App. 0006P (BAP 6<sup>th</sup> Cir. 2008). The question is whether Debtor intended to defraud through her concealment. For the reasons stated above, the Court finds that the evidence presented in this case shows a pattern by Debtor that demonstrates her intent to defraud creditors.

Debtor's counsel relies on the "mitigating factors" set forth in *In re McVay*, 345 B.R. 846, 851-52 (Bankr. N.D. Ohio 2006) (addressing trustee's objection to exemptions, not discharge) and referenced in *Kovacs v. McVay (In re McVay)*, 363 B.R. 824, 830 (Bankr. N.D. Ohio 2006) (addressing trustee's allegations regarding denial of debtor's discharge). The "mitigating factors" discussed in those decisions are 1) reasonable good faith reliance on advice of counsel; 2) debtor's cognitive ability; and 3) how readily debtors made a full

disclosure. In this case, Debtor did not rely on advice of counsel. Debtor is educated and reasonably intelligent. Although she may not be familiar with the bankruptcy process, the Court is confident that given her education and business experience, Debtor was able to read the schedules and statement of financial affairs and understand the request to list all of her property and all transfers of property during a certain time frame. Finally, the evidence in this case showed that Debtor did not make full disclosure or correct misinformation until confronted with specific allegations by the Trustee. The mitigating factors do not weigh in Debtor's favor.

**727(a)(5)**

Based on the evidence before the Court, including Debtor's amended schedules, the Court finds the trustee failed to prove his case pursuant to 727(a)(5).

**CONCLUSION**

The trustee has shown by a preponderance of the evidence that the Debtor's discharge should be denied pursuant to 11 U.S.C. § 727 (a)(2) and (4). A separate judgment consistent with these findings of fact and conclusions of law will be entered.

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cc: Richard Wilson

James Reed