

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
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FEB - 1 2002
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (18)

IN RE:

Brenda W. Groomes,

Debtor.

Aiken-Augusta Auto Body, Inc.

Plaintiff,

v.

Brenda W. Groomes,

Defendant.

C/A No. 01-03492-W

Adv. Pro. No. 01-80148-W

ENTERED

FEB 05 2002

K. E. P.

JUDGMENT

Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court denies Brenda W. Groomes's discharge pursuant to 11 U.S.C. §727(a)(4)(A).


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
February 1, 2002.

YS

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to: (Enc)

FEB 5 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KIRK E. PORTH

Deputy Clerk

- Houis
- US
- McLants
- Mitchell

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ORDER

K. E. P.

Chapter 7

THIS MATTER comes before the Court upon the Complaint filed by the Plaintiff to deny the discharge of Brenda W. Groomes ("Debtor") pursuant to 11 U.S.C. §727.¹ Specifically, Plaintiff commenced the proceeding pursuant to §727(a)(4)(A) on the grounds that Debtor knowingly and fraudulently made a false oath. Plaintiff also alleged causes of action to determine the dischargeability of the debt to the Plaintiff pursuant to §523(a)(2)(A) and §523(a)(6). The parties elected to proceed first on the §727(a)(4)(A) cause of action and continue and hear at a later date the §523 causes of action should the Court find that the Debtor is entitled to a general discharge.

After considering the pleadings, the evidence presented, and counsels' arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52 made applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.²

¹ Further references to the Bankruptcy Code shall be by section number only.

² The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are

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FINDINGS OF FACT

1. Debtor filed her Voluntary Petition on April 3, 2001 and thereafter filed her Schedules and Statement of Financial Affairs.
2. Debtor has a high school degree and a two (2) year college degree in nursing.
3. Debtor was the part owner of an auto paint and body business that she and her husband sold to the Plaintiff in April 1998 for in excess of one million dollars.
4. Debtor has been a party to other civil proceedings.
5. Debtor owns an interest in Sweetwater Automotive, Inc., and Debtor owns an interest Ricky Groomes Collision Center, Inc.
6. Debtor owns real property that is not her residence and has executed mortgages with financial institutions. She rents real property to third persons.
7. Debtor has entered into several commercial loan transactions for the operation of Sweetwater Automotive, Inc. and Ricky Groomes Collision Center, Inc.
8. Debtor has a recorded interest in real estate subject to a Real Estate Installment Contract dated April 14, 1998 between Great Games of North Augusta, Inc. and Richard Groomes, Sr. (Debtor's husband) and Debtor. The real property address is 1182 Edgefield Road, North Augusta, South Carolina and was purchased by Debtor and her husband to be the place of business for Ricky Groomes Collision Center, Inc. Debtor and her husband purchased the property for the sum of \$550,000.00. A Cancellation of Real Estate Installment Contract was recorded in Aiken County, South Carolina on July 7, 2000.

9. Debtor did not list on her Statement of Financial Affairs No. 5 Repossessions, Foreclosures and Returns the return or transfer of the 1182 Edgefield Road property that purportedly occurred within one year of the filing of her bankruptcy case.

10. After the recording of the aforementioned cancellation document, Debtor and her husband continued to operate Ricky Grooms Collision Center, Inc. at 1182 Edgefield Road. Debtor was obligated to list on her Schedules and/or Statement of Financial Affairs her interest in the real estate that existed as of the filing of her bankruptcy case and any obligation to Great Games of North Augusta, Inc.

11. Debtor did not list an interest in Sweetwater Automotive, Inc. on Schedule B Personal Property No. 12 Stocks and Interest Incorporated and Unincorporated Businesses.

12. Debtor did not list her interest in Sweetwater Automotive, Inc. on her Statement of Financial Affairs No. 18 Nature, Location and Name of Business. Debtor is an officer and owns an interest in Sweetwater Automotive, Inc. Debtor contends she transferred her interest in Sweetwater Automotive, Inc. to her husband in December 1999, but the Court does not find her testimony credible, or that there was a transfer, in part, because Debtor failed to produce through discovery any proof of the transfer, and the corporate tax returns for the corporation for the period in which the transfer purportedly occurred, reflect her ownership interest. At the least, Debtor admitted that the Statement of Financial Affairs requires her to list any such interest existing in the last six (6) years, and she failed to do so.

13. Debtor did not list any income for the period 1999, 2000 and 2001 on her Statement of Financial Affairs No. 1 Income from Employment or Operation of Business. Debtor received income from Ricky Grooms Collision Center, Inc. in the amount of \$15,832.00

in 1999. Debtor received income from Sweetwater Automotive, Inc. in the amount of \$4,510.00 in 1999. Debtor received income in the amount of \$11,500.00 from the sale of a trailer in 1999.³

14. Debtor did not list income on her Schedule I Current Income of Individual Debtor(s), but conceded she owns and rents real property located at 1001 Pinion Road to two persons. Debtor's 1999 individual tax return reflects that she received rental income in the approximate amount of \$23,000.00 from the property.

15. Debtor did not list the rental income for the 1001 Pinion Road property on her Statement of Financial Affairs No. 2 Income Other than from Employment, Operation of Business.

16. Debtor did not list the lease for the 1001 Pinion Road property on her Schedule G Executory Contracts and Unexpired Leases.

17. Debtor's Schedule J Current Expenditures of Individual Debtors does not disclose her mortgage to Bank of America for the 1001 Pinion Road property.

18. Debtor did not disclose on her Voluntary Petition all other names used by her in the last six (6) years. She signed the petition as Brenda W. Groomes and reported she was also known as Brenda J. Groomes. Debtor did not disclose that in the last six (6) years she had also used the name Brenda F. Groomes on her individual federal tax returns and the corporate tax returns for Ricky Groomes Collision Center, Inc.

19. Debtor did not disclose on her Schedule of Financial Affairs No. 19(d) Books Records and Financial Statements that she had given a financial statement to Security Federal within the two (2) year period prior to filing bankruptcy.

³ Though ordered by the Court, Debtor did not produce an individual tax return for the year 2000, although she concedes the return has been prepared and filed by her. The Debtor has also not produced corporate tax returns for Sweetwater Automotive, Inc. and Ricky Groomes Collision Center, Inc. or other financial information for the same year, so the Court cannot conclude with any certainty how much Debtor received in income for the year 2000. It was Debtor's obligation to produce such information and she did not do so. Debtor has been less than truthful in the production of documents.

20. Debtor misrepresented on her Schedule A Real Property the market value of the real property consisting of 21.04 acres on Murrah Road as being \$125,000.00. Debtor purchased this property through a like kind exchange for the sum of \$150,000.00 on April 15, 1999. Debtor does not contend that the property has depreciated, but that the exchange value included other personal property. The settlement statement for the closing, however, specifically states that the value of the real property exchange alone was \$150,000.00.

21. Debtor misrepresented on her Schedule A Real Property the market value of the real property consisting of 4.3 acres known as 1001 Pinion Road as \$205,000.00. The Aiken County Property records reflect that the market value of the real property is \$301,300.00. In addition, Debtor mortgaged the property to Nationsbank on March 30, 1993 for the amount of \$270,000.00. Debtor did not give a credible explanation for the differences in the value.

CONCLUSIONS OF LAW

To frame its discussion of the issues, the Court initially notes that discharge of a debtor's debts is favored. See Castles v. Bailey (In re Bailey), C/A No. 99-05056-W, Adv. No. 99-80333-W, at 4-5 (Bankr. D.S.C. Mar. 14, 2000). However, certain provisions of §727 prohibit discharge for those debtors who "play fast and loose with their assets or with the reality of their affairs." Farouki v. Emirates Bank Int'l. Ltd., 14 F.3d 244, 249 (4th Cir. 1994) (quoting In re Tully, 818 F.2d 106, 110 (1st Cir. 1987)). To prove an objection to discharge under §727, a plaintiff must prove its case by a preponderance of the evidence. See Farouki, 14 F.3d at 249; Anderson v. Walker (In re Walker), C/A No. 99-09899-W, Adv. No. 00-80086, at 5 (Bankr. D. S.C. Jan. 5, 2001). Once a plaintiff makes a *prima facie* case, the burden of proof shifts to the debtor to offer credible evidence to satisfactorily explain his or her conduct; however, the ultimate burden remains on the plaintiff objecting to discharge. See Farouki, 14 F.3d at 249; Walker at 5.

To deny a debtor's discharge under §727(a)(4)(A), courts must find, by a preponderance of the evidence, that a debtor made a statement under oath that he or she knew to be false and that the debtor made the statement willfully with the intent to defraud. See Williamson v. Fireman's Fund Ins. Co., 828 F.2d 249, 251 (4th Cir. 1987). In addition, the false oath must relate to a material matter. See Id.

The Debtor made numerous omissions and misrepresentations on her Voluntary Petition, Schedules and Statement of Financial Affairs. These omissions and misrepresentations constitute a false oath. See Kaler v. McLaren (In re McLaren), 236 B.R. 882, 894 (Bankr. D. N.D.1999) ("For purposes of [§727(a)(4)(A)], a 'false oath' sufficient to merit a denial of discharge includes a misrepresentation or an omission in the debtor's bankruptcy Schedules or Statement of Financial Affairs."); Huntington Center Partners, Ltd. v. Dupree (In the Matter of Dupree), 197 B.R. 928, 937 (Bankr. N.D. Ala. 1996) ("For purposes of section 727(a)(4)(A), 'false oaths' include false statements or omissions in a debtor's schedules, false statements made by a debtor during the section 341 meeting of creditors, and false statements at the debtor's deposition."); Peoples Bank of Charles Town v. Colburn (In re Colburn), 145 B.R. 851, 857 (Bankr. E.D. Va. 1992) ("When a debtor signs a schedule and a statement of affairs, he does so under penalty of perjury, and such 'written declarations have the force and effect of oaths.'").

The next prong in the Court's analysis is whether Debtor made her false statements willfully with the intent to defraud. Intent can be shown by direct evidence, or courts can deduce intent by circumstantial evidence or inferences drawn from a course of conduct. See Williamson, 828 F.2d at 252. In addition, the fraudulent intent element is satisfied if a debtor has exhibited a reckless indifference to the truth⁴, and courts have found this reckless indifference where the number of

⁴ See Neugebauer v. Senese (In re Senese), 245 B.R. 565, 575 (Bankr. N.D. Ill. 2000) (finding fraudulent intent by a pattern of concealment and errors, evidenced by the debtor's failing to disclose his interests in automobiles, the transfers of automobiles, and income earned from rental property and gambling proceeds); Krudy v. Scott (In re Scott), 227 B.R. 834, 842 (Bankr. S.D. Ind. 1998) (denying a debtor's discharge because

errors in the debtor's oaths produces a cumulative effect that indicates a pattern of cavalier disregard for the truth. See Hatton v. Spencer (In re Hatton), 204 B.R. 477, 484 (E.D. Va. 1997). In this case, the Court finds that Debtor displayed a reckless disregard for the truth, and the Court reaches this conclusion in part because of the numerous omissions and misrepresentations in Debtor's Schedules and Statement of Financial Affairs.

As the Findings of Fact indicate, Debtor made numerous omissions and misrepresentations in her bankruptcy documents. The sheer number of errors convinces the Court that the omissions do not stem from mistake or oversight. Further, the Court has considered the credibility of the Debtor and does not consider her a credible witness. The Court finds that the Debtor's conduct during discovery, her demeanor, testimony and other evidence before the Court demonstrate that she knew the statements to be false, and Debtor made the statements willfully with the intent to defraud her creditors.

The final element the Court must examine is whether the false oaths relate to a material matter. A statement relates to a material matter when it bears a relationship to the existence and disposition of a debtor's property. See Williamson, 828 F.2d at 252. Debtor concedes that the stipulated and controverted misrepresentations and omissions relate directly to the liability and assets or to Debtor's property. The Court even believes Debtor's failure to list all her names is material and affects a creditor's ability to discover transfers that may be subject to a Statute of

of the cumulative effect of the debtor's omissions and misstatements where, among other things, the debtor failed to disclose his employment with one entity, his interest in one business, the existence of checking accounts and stock options, and where the debtor misstated his income); Dupree, 197 B.R. at 938 (finding reckless disregard for the truth where the debtor omitted six facts from her schedules, including a transaction that liquidated her business two months prior to filing bankruptcy as well as the existence of loans and a bank account); Colburn, 145 B.R. at 858 (finding reckless disregard for the truth where the debtor made seven false statements under oath); Nat'l Post Office Mail Handlers, Int'l Union of N. Am. v. Johnson (In re Johnson), 139 B.R. 163, 170 (Bankr. E.D. Va. 1992) (denying a debtor's discharge because of the cumulative effect of eight omissions from his schedules, including misstating his income, not disclosing his interest in a business entity, failing to disclose his residence, and failing to disclose records of his business affairs).

Elizabeth action under state law pursuant to §544. The Court rules that Debtor's omissions relate to a material matter.

Additionally, the Court responds to Debtor's defense that these glaring omissions from her bankruptcy documents stem from Debtor's ignorance of finances, not reading financial documents before signing them, and her reliance on her husband and others for information. The Court does not believe any such actions or reliance was actual, reasonable or justified by the Debtor or is it excusable. As indicated in the Findings of Facts, Debtor is not financially unsophisticated. Further, and by way of example, Debtor attempted to portray herself to this Court as being financially ignorant; yet Debtor executed an affidavit as part of an appeal by her husband pending before the South Carolina Court of Appeals to create the impression that her husband is the unsophisticated one and stating that in business matters "[Debtor's] husband always relied on [Debtor] to review documents at [a] later point in time and attempt to explain to her."

The Court rejects these specious defenses because Debtor's testimony is not credible, and would otherwise require the Court to relax standards for persons who are unfamiliar or claim to be unfamiliar with financial documents despite having assistance of counsel. Bankruptcy is a give-and-take process, and, in order for a Debtor to receive the benefits and protections of the Bankruptcy Code, a Debtor must fulfill his or her role of complete disclosure to creditors and the Trustee. See Tillery v. Hughes (In the Matter of Hughes), 184 B.R. 902, 909 (Bankr. E.D. La. 1995) ("The success of the bankruptcy system hinges upon a debtor's veracity and willingness to make full disclosure."). Moreover, "[t]he bankruptcy schedules and statements of affairs are carefully designed to elicit certain information necessary to the proper administration and adjudication of the case. To allow the Debtor to use his or her discretion in determining the relevant information to disclose would create an end-run around this strictly crafted system."

Siegel v Weldon (In re Weldon), 184 B.R. 710, 715 (Bankr. D. S.C. 1995); see also Boroff v. Tully (In re Tully), 818 F.2d 106, 110 (1st Cir. 1987) ("The statutes are designed to insure that complete, truthful, and reliable information is put forward at the outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction."). Accordingly, Debtors have a duty to respond to the questions asked of them thoroughly and thoughtfully. Submitting schedules in an incomplete and slapdash manner does not suffice as fulfillment of this role. Cf. In re Boland, C/A No. 01-03911, at 2 (Bankr. D. S.C. May 24, 2001) (recognizing the problem with inaccurate and misleading information in petitions, schedules and statement of affairs and warning "that the Court will not be placed in the position of ferreting the truth from inaccurate and misleading information supplied by debtors and their counsel.").

Because Debtor failed to meet this obligation, and Plaintiff has met its burden of proof, the Court denies her discharge pursuant to §727(a)(4)(A). It is therefore,

ORDERED that Debtor is denied her discharge pursuant to §727(a)(4)(A).

IT IS FURTHER ORDERED that Plaintiff may submit an affidavit for an award of reasonable amount of attorneys fees and costs pursuant to the Asset Purchase Agreement entered into between Plaintiff and Debtor; and the Court will issue a separate order.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia South Carolina
February 1, 2002.