

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**  
2000 MAR 13 PM 1:28  
DISTRICT OF SOUTH CAROLINA

IN RE:

Allen Lamar Bailey, Jr.,

Debtor.

Irene H. Castles

Plaintiff,

v.

Allen Lamar Bailey, Jr.,

Defendant.

C/A No. 99-05056-W

Adv. Pro. No. 99-80333-W

**JUDGMENT**

Chapter 7

**ENTERED**

**MAR 14 2000**

**S. R. P.**

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Allen Lamar Bailey, Jr.'s discharge is denied pursuant to 11 U.S.C. §727(a)(4); and judgment is granted in favor of Irene H. Castles in the amount of \$25,639.50.

Columbia, South Carolina,  
March 13, 2000.

  
UNITED STATES BANKRUPTCY JUDGE



**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
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~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

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MAR 14 2000

**S. R. P.**

**ORDER**

Chapter 7

THIS MATTER comes before the Court pursuant to Irene H. Castles' ("Plaintiff") adversary proceeding filed on September 7, 2000 alleging that Allen Lamar Bailey Jr.'s ("Defendant" or "Debtor") failure to make accurate disclosures in his schedules and his attempts to conceal his assets are actions within the exceptions to discharge set forth in 11 U.S.C. §727(a)(2)-(5).<sup>1</sup> Defendant was notified of the trial in the above-captioned adversary proceeding by this Court's Order entered January 24, 2000 ("Scheduling Order") setting the trial date for February 24, 2000 at 9:30 a.m. and requesting the preparation and filing of a Joint Pretrial Order; however, he was not present at the trial on the merits held before this Court. Defendant has also failed to appear at the scheduling conference and pre-trial conference for this adversary proceeding and failed to submit a pre-trial order in this action as required by the

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<sup>1</sup> Further references to the Bankruptcy Code shall be by section number only.

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Scheduling Order. Three separate attempts were made by Plaintiff's counsel to subpoena Defendant to appear at the trial on the merits, all without success. Based on the pleadings, proffer of testimony by Plaintiff's counsel, evidence presented, and arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

1. In November 1995, Plaintiff entered into an employment agreement with Defendant d/b/a Hanwell Reporting Service, wherein Plaintiff would provide court reporting services; including but not limited to, appearances at hearings and depositions, taking of depositions, typing of transcripts, proofreading transcripts, and printing and delivering transcripts. Pursuant to the agreement, Defendant would, in turn, provide billing and invoice services, copy equipment, video equipment, and would coordinate scheduling of depositions and hearings.
2. In compensation for his services, Defendant would receive 25% of the invoices paid for his administrative services and of all fees due and owing in conjunction with the court reporting services rendered. Plaintiff was to receive 75% of the invoices paid for her services.
3. In or about September 1998, Defendant and his wife separated. At that time, Ms. Bailey ceased to be involved with the day-to-day operations of Hanwell Reporting Service.
4. Shortly after separating from his wife, Defendant began to complain to Plaintiff and Thomas and Faye Graingers (the "Graingers") (other individuals with whom Defendant had a similar employment agreement) of cash flow problems, indicating that invoices were being generated but payments were not being received.
5. During the pendency of the Baileys' divorce proceeding, Defendant was required, pursuant to a Family Court Order, to pay a lump sum of approximately \$20,000 to Ms. Bailey.

6. On or about June 14, 1999, Defendant d/b/a Hanwell Reporting Service and d/b/a Allen Bailey Legal Video filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.
7. Debtor's Statement of Financial Affairs lists 1997 income as \$4,098.00; however, Debtor's personal bank account statements from BB&T for January through June 1997 and August through November 1997 total \$12,591.71.
8. Debtor's Statement of Financial Affairs lists 1998 income as \$4,000.00; however, Debtor's personal bank account statements from BB&T for 1998 total approximately \$6,054.31.
9. On Schedule B, Debtor lists accounts receivable for himself and the two business ventures of \$4,000.00, 40% of which were estimated as uncollectible.
10. On September 29, 1999, Debtor filed Amended Schedules with the Court. Amended Schedule B still lists accounts receivable for himself and the two business ventures of \$4,000.00, 40% of which were estimated as uncollectible.
11. At his Bankruptcy Rule 2004 examination, which took place on November 24, 1999, Defendant explained that the accounts receivable figures in both the original and amended schedules were incorrect, and they should have been listed as \$40,000.00.
12. At the §341 meeting, Debtor was instructed by the Chapter 7 Trustee to provide a list of accounts receivable for collection by the Trustee's office; however, no invoices were submitted for collection.
13. Debtor's Schedule I, filed on June 14, 1999 lists his income as \$0.00; however, his personal BB&T bank account statements for 1999 show deposits totaling approximately \$16,810.72.
14. Debtors' Schedule J, filed on June 14, 1999, reflects Debtor's monthly expenses as including a \$500.00 rent payment and a \$300.00 health insurance premium. At Debtor's Rule

2004 examination, it became evident that Debtor had not paid rent for over a year, and he also admitted to canceling the health insurance in July 1999. Thus, when taking into consideration the misrepresentations as to the rent and medical insurance, Debtor's Schedule J overstates his actual monthly expenses by \$800.00. However, when assuming the truth of his testimony that he borrowed \$3,000.00 from the cash value in his life insurance policies, his Schedule I understates his 1999 monthly income by \$1,200.00.

15. Defendant paid Plaintiff \$2,951.63 in 1998 for her services performed solely for the South Carolina Department of Labor, Licensing and Regulation ("Department of Labor") and paid the Graingers \$244 for their services performed for the same entity. However, the Department of Labor provided copies of invoices submitted by Hanwell Reporting Service and copies of canceled checks in payment for same for calendar year 1998. The canceled checks total \$21,542.54.

16. Plaintiff received payment from Defendant for calendar year 1999 for services performed for the Department of Labor in the sum of \$2,000.63.

17. On Schedule F, Debtor lists debts to Plaintiff as amount unknown.

18. On or about July 2, 1999, Defendant provided Plaintiff with a list of outstanding accounts receivable totaling \$34,186.00, leaving a balance due and owing to Plaintiff of \$25,639.50.

19. Plaintiff is left with a claim against the estate in the amount of \$25,639.50.

### **CONCLUSIONS OF LAW**

Section 727(a) gives courts the authority to grant a debtors' discharge unless certain exceptions are met. The Bankruptcy Code favors discharge of an honest debtor; however, "it will not ordinarily tolerate the [debtor's] intentional departure from honest business practices

where there is a reasonable likelihood of prejudice.” Siegel v. Weldon (In re Weldon), 184 B.R. 710, 712 (Bankr. D.S.C. 1995) (quoting 4 Collier on Bankruptcy §727.01A (15th ed.)). In the Complaint, filed with the Court on September 7, 2000, Plaintiff requests that Debtor’s discharge be denied pursuant to §727(a)(2)-(5). These subsections provide that a discharge should not be granted if:

(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 ---

(A) property of the debtor, within one 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;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor’s financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case--

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor’s property or financial affairs;

(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’ liabilities.

The ultimate burden to provide grounds for denial of discharge pursuant to §727(a) lies on the creditor objecting to the debtor’s discharge. See Farouki v. Emirates Bank Int’l Ltd., 14 F.3d 244, 249-50 (4th Cir. 1994); see also In re Weldon, 184 B.R. at 712; Bankruptcy Rule 4005

“At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.”). Thus, in this action, Plaintiff has the burden to prove, by preponderance of the evidence, that Debtor’s actions fall within one of the exceptions set forth in §727(a). See, e.g. Farouki, 14 F.3d at 249 (“[T]he standard of proof in a discharge action is the preponderance of the evidence.”).

In this case, Debtor’s inaccuracies in his Schedules, dated June 14, 1999; Amended Schedules, dated September 29, 1999; and Statement of Financial Affairs, dated June 14, 1999, constitute a knowing and fraudulent oath or account. Bankruptcy law requires debtors to be honest and to disclose all relevant financial information. As set forth in the Findings of Fact, Debtor fell short of this obligation.

“A party objecting to discharge need prove only one of the grounds for non-dischargeability under §727(a) because the provisions of §727(a) are phrased in the disjunctive.” Farouki, 14 F.3d at 250. Thus, when Plaintiff meets his or her burden to prove one of the subsections, that is sufficient to justify denial of the debtor’s discharge. In this case, the Court finds that Plaintiff has met her burden, by preponderance of the evidence, to prove that Debtor’s substantial undervaluation of accounts receivable, his failure to cooperate with the Trustee in providing invoices for collection, his substantial undervaluation of income, and his substantial overvaluation of expenses, all constituted grounds to except debtor from discharge pursuant to §727(a)(4). It is therefore,

ORDERED that pursuant to §727(a)(4), Debtor’s discharge shall be denied.

IT IS FURTHER ORDERED that Plaintiff has established a claim against Debtor in the amount of \$25,639.50.

IT IS FURTHER ORDERED that Debtor’s undervaluation of assets and income and the

overvaluation of expenses in Debtor's schedules appear to be grounds for a review for "substantial abuse" under §707(b). A hearing on that issue will be set by the Court if necessary by further Order.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
March 13, 2000.

  
UNITED STATES BANKRUPTCY JUDGE

**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:

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~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

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