

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
01 JAN -3 PM 12:17
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Donald Dalton Walker,

Debtor.

Robert F. Anderson, Trustee,

Plaintiff,

v.

Donald Dalton Walker,

Defendant.

C/A No. 99-09899-W

Adv. Pro. No. 00-80086-W

JUDGMENT

Chapter 7

ENTERED
JAN 5 2001
K.K.M.

Based upon the Findings of Fact and Conclusions of Law as stated in the attached Order of the Court, Plaintiff's Motion for Summary Judgment is granted and Debtor's discharge is denied pursuant to § 727(a)(2), (3) and (4). Furthermore, Debtor's Motion for Summary Judgment and request that the Court dismiss the claims pursuant to Fed. R. Bankr P. 7012 and award attorney's fees and costs for having to defend the action are denied.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
January 3, 2001

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:

JAN 5 2001

*sent to :
Downey
Griffin
UST*

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KELLEY MORGAN

Deputy Clerk

11-13-01

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
01 JAN -3 PM 12:18
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Donald Dalton Walker,

Debtor.

Robert F. Anderson, Trustee,

Plaintiff,

v.

Donald Dalton Walker,

Defendant.

C/A No. 99-09899-W

Adv. Pro. No. 00-80086-W

ORDER

Chapter 7

ENTERED
JAN 5 2001
K.K.M.

THIS MATTER comes before the Court upon the Motions of the Trustee, Robert F. Anderson ("Plaintiff"), and Donald Dalton Walker ("Debtor") for Summary Judgment pursuant to Fed. R. Civ. P. 56, made applicable in bankruptcy proceedings pursuant to Fed. R. Bankr. P. 7056. Debtor has also requested, in the alternative, that the Court dismiss the claims pursuant to Fed. R. Bankr. P. 7012 and award attorney's fees and costs for having to defend the action. After considering the pleadings in the adversary proceeding, the affidavits and evidence presented in support of the Motions, and the arguments of counsel; the Court makes the following Findings of Fact and Conclusions of Law:¹

FINDINGS OF FACT

1. Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on

¹ 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 so adopted.

November 16, 1999. Plaintiff was appointed to act as Trustee.

2. On May 12, 2000, Plaintiff filed the instant action requesting that Debtor's discharge be denied pursuant to 11 U.S.C. §727(a)(2)² for transferring and concealing assets with intent to hinder, delay, or defraud creditors; §727(a)(3) for failure to keep adequate records; §727(a)(4) for giving a false oath; and §727(a)(5)³ for failure to explain the loss of assets.
3. Debtor filed an Answer to the Trustee's Complaint denying Plaintiff's allegations.
4. Debtor is an experienced businessman. He received a Bachelor of Arts Degree in History from Francis Marion College in 1975. Debtor is involved in the construction business and, during the 2 years immediately prior to the filing of the petition, he was paid an annual salary of \$77,000 by Marlboro Construction. Debtor owned 35% of the common stock in Marlboro Construction and 90% of the common stock in a separate company known as Walker Construction.
5. There is no dispute regarding the material facts leading up to Debtor's bankruptcy. During 1996, Jane Elizabeth Walker, Debtor's ex-wife, filed an action against Debtor in the Family Court for the State of South Carolina, County of Marlboro. The issues before the Court were divorce, child custody, child visitation, child support, spousal support, property division, and attorneys' fees. It was a hotly contested case and the matter was tried before the Honorable Roger E. Henderson beginning on May 24, 1999 and continuing until May 31, 1999. On September 3, 1999, the Family Court executed an Order which was filed with the Clerk of Court for Marlboro County on September 7,

² Further references to the Bankruptcy Code shall be by section number only.

³ The Trustee has not requested Summary Judgment pursuant to § 727(a)(5).

1999. The Order required Debtor to pay \$187,232.60 to Jane Elizabeth Walker in order to effectuate and complete the equitable division of marital property. In addition, Debtor was ordered to pay his ex-wife's attorney's fees in the amount of \$25,000.00.

THE WALKER TRUST FUND

6. While the Family Court action was pending, on March 2, 1999, Debtor received a final distribution from the Tildon Walker Residuary Trust in the amount of \$43,346.87. In his Statement of Financial of Affairs, which were filed by Debtor under oath, he indicated that he only received \$30,000.00 from the Trust.
7. Debtor gave the money that he received from the Trust to his girlfriend, Joy Hill. Ms. Hill was to hold the Trust money from the fund for Debtor.⁴ The Debtor testified that Ms. Hill was "to hold it for me". On March 5, 1999, Ms. Hill deposited the \$43,346.87 into her bank account at First Federal Savings and Loan Association of Cheraw. At her Rule 2004 examination, Ms. Hill acknowledged that, despite the fact that Debtor was not a signatory on the account in which the Trust money was deposited, the money belonged solely to him.
8. Debtor did not list the Joy Hill bank account as an asset in his Schedules.
9. Between April 16, 1999 and July 26, 1999, \$14,800 in cash was withdrawn from the account by Joy Hill and given to Debtor. When asked by the Trustee at his Rule 2004 Examination what he did with the money, Debtor testified he could only guess at the

⁴ At her Rule 2004 examination, Mr. Hill explained that "[Mr. Walker] just wanted me to keep up with [the money] for him . . . He's not very good with money sometimes, so I just— he told me to put it over there and he'd have to beg for it if he got it back, as far as letting him spend it."

disposition of the funds.

10. On May 6, 1999, \$20,000.00 was paid from the Joy Hill account to Debtor's mother, Margaret Walker. In the Statement of Affairs, which was filed with Bankruptcy Court under oath, Debtor did not disclose the payment to his mother.⁵

TRANSFERS TO MARGARET WALKER

11. During the months before he filed bankruptcy, Debtor made several transfers to his mother, Margaret Walker. As indicated above, on May 6, 1999, \$20,000.00 was paid from the Joy Hill account to Margaret Walker. Furthermore, on September 10, 1999, Debtor granted his mother a mortgage on real property which he owned. Finally, on November 8, 1999, he paid her an additional \$9,000.00 in cash.
12. On September 10, 1999, three days after the Family Court judgment was filed, Debtor executed a mortgage in favor of his mother, Margaret Walker, in the amount of \$54,400.00. The mortgage, which was recorded with the Marlboro County Clerk of Court on the date it was executed, purports to grant Margaret Walker a security interest in 5.64 acres of land and a commercial office building in Marlboro County, South Carolina, which has a value of at least \$70,000.00. The property is subject to a prior mortgage in the approximate amount of \$30,000.00.
13. On November 8, 1999, eight days before Debtor filed his petition for relief, Debtor withdrew cash in the amount of \$9,620.68 from his checking account at First Capital

⁵ Debtor explained that, after having a check drawn for his mother from the Joy Hill account, he realized that he needed the money to pay the legal fees incurred in his divorce proceedings. Therefore, this mother gave him a check for the same amount, which Debtor deposited in his account on May 10, 1999.

Bank. Debtor claimed he gave the money to his mother, but he could not produce any documents regarding the transaction.

14. When Debtor filed his bankruptcy petition, he was clearly insolvent. The Schedules submitted to the Court indicate liabilities of \$1,121,602.18 and assets of only \$269,950.00. Included in the \$269,950.00 is an account receivable from one of Debtor's companies, Walker Construction, in the amount of \$180,000.00. Debtor indicated that the account was uncollectible.

CONCLUSIONS OF LAW

Plaintiff has the burden of proving an objection to discharge under §727 by a preponderance of the evidence. See e.g., Grogan v. Garner, 498 U.S. 279 (1991); Farouki v. Emirates Bank Int'l, Ltd., 14 F.3d 244 (4th Cir. 1994); First Nat'l Bank of Gordon v. Serafini, 938 F. 2d 1156, 1157 (10th Cir. 1991); In re Beaubouef, 966 F. 2d 174 (5th Cir. 1992); Fort Jackson Fed. Credit Union v. Wicker (In re Wicker), C/A No. 99-07108-W; Adv. Pro. No. 99-80392-W (Bankr. D.S.C. 5/24/2000) ("A party challenging the dischargeability of a debt has the ultimate burden of establishing, by a preponderance of the evidence, that the debt falls within one of the exceptions of §523 or §727."). Once the 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. Farouki, 14 F.3d at 244. Due to the totality of circumstances in this case and the cumulative effect of Debtor's conduct, the Court grants Plaintiff's Motion and denies Debtor's discharge. See, e.g. Filmar v. White (In re White), 63 B.R. 742, 744 (Bankr. N.D. Ill. 1986); Adams v. Filter (In re Filter), C/A No. 99-04462-W; Adv. Pro. No. 99-80370-W (Bankr D.S.C. 6/16/2000)..

A. Failure to Keep Records

Plaintiff has requested that Debtor's discharge be denied pursuant to §727(a)(3) for the failure to keep recorded information from which his financial condition or business transactions may be ascertained. Section 727(a)(3) provides as follows:

- (a) The court shall grant the debtor a discharge, unless –
- (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.

In this case, Debtor failed to keep adequate recorded information regarding the disposition of the large sums of cash he received. During the seven months prior to the filing of the petition, Debtor received at least \$24,400.00 in cash: \$14,800.00 from the Joy Hill account and \$9,600.00 from his checking account. However, at his Rule 2004 Examination, Debtor could not sufficiently account for the disposition of these funds nor could he provide any documentation as evidence of how he spent it.

In an action to deny discharge for lack of records, it is not necessary for Plaintiff to prove fraud, all that has to be proven is that the accounting is vague and uncorroborated. See, e.g., Meridian Bank v. Atlen, 958 F. 2d 1226, 1230-33 (3rd Cir. 1992); Crider v. Jordan, 255 F.2d 378, 379 (4th Cir. 1958); United States v. Trogdon (In re Trogdon), 111 B.R. 655, 658-59 (Bankr. N.D. Ohio 1990). In this case, after Plaintiff filed the Motion presently before the Court, Debtor filed a cross-Motion for Summary Judgment along with affidavits which offered various explanations for his disbursement of the cash in question. He explained that he used \$10,000 to pay his domestic attorney and further explained that approximately \$5,000 was spent on a family

vacation. While Debtor provided receipts which evidenced that he paid his attorney \$5,000 in cash and \$5,000 by check for the representation in the divorce litigation, no other documents were presented to support his explanations. The presentation of some documentation to partially explain how the money was spent was provided by Debtor only after Plaintiff filed his Motion for Summary Judgment; prior to that time, when questioned at the Rule 2004 examination, Debtor could not provide any documentation nor explanation as to how the money was spent. The Court notes that “[w]hile the debtor may justify his failure to keep records in some cases, a discharge may be granted only if the debtor presents an accurate and complete account of his financial affairs.” Meridian Bank, 958 F.2d at 1230.

The Court acknowledged the fact that §727(a)(3) “does not operate ‘in a draconian fashion to require maintenance, preservation, and production of comprehensive records of every minute detail of a debtor’s financial and business activity as a precondition to a grant of discharge.’” Fahey Banking Co. v. Irej (In re Irej), 172 B.R. 23, 26 (Bankr. N.D. Ohio 1994) (quoting James v. McCoy (In re McCoy), 114 B.R. 489, 500 (Bankr. S.D. Ohio 1990)).

However, as stated by the court in Meridian Bank:

[T]he records must ‘sufficiently identify the transactions [so] that intelligent inquiry can be made of them.’ The test is whether ‘there [is] available written evidence made and preserved from which the present financial condition of the bankrupt, and his business transactions for a reasonable period in the past may be ascertained.’ Thus, in order to invoke the protection of the bankruptcy court, the debtor must maintain and preserve adequate records. If the debtor fails to do so, there must be some justification.

Meridian Bank, 958 F.2d at 1230-31 (citation omitted). The adequacy of a debtor’s record is a determination that is made on a case-by-case basis. United States v. Trogdon (In re Trogdon),

111 B.R. 655 (Bankr N.D. Ohio 1990). “Considerations to make this determination include debtor’s occupation, financial structure, education, experience, sophistication and any other circumstances that should be considered in the interest of justice.” Id. at 658.

The present case is similar to the situation in the case of Crider v. Jordan, 255 F. 2d 378 (4th Cir. 1958). In Crider, the debtor and his wife went to Las Vegas with \$34,000.00 in cash. They claimed to have lost all the money either gambling or by losing their luggage. No records were produced. The court denied the debtors’ discharge and the Fourth Circuit Court of Appeals affirmed and held:

It is not necessary in support of an objection to a discharge to prove an intent on the part of the bankrupt to conceal his financial condition. It is sufficient to show his failure, without reasonable grounds, to keep records from which his financial condition and his business transactions may be ascertained.

Id. at 379.

In this case, Debtor has failed to keep adequate records from which the disposition of the \$24,400 might be ascertained. Despite the fact that he came up with two receipts which evidence the payment of \$10,000 to his domestic lawyer, no other evidence was presented to support his various expenditures. Considering Debtor’s education and business experience, his failure was not justified under the circumstances of the case.

B. Fraudulent Transfers

Plaintiff has also requested that Debtor’s discharge be denied pursuant to §727(a)(2) for the transfer and concealment of the \$43,346.87 distribution from the Walker Trust and for the transfer of the Mortgage to his mother, Margaret Walker. Section 727(a)(2) provides as follows:

- (a) 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 –
 - (A) property of the debtor, within one year before the date of the filing of the petition.

“Concealing property for purposes of Section 727(a)(2)(A) can be accomplished by a transfer of title coupled with the retention of the benefits of ownership.” In re Olivier, 819 F. 2d 550 (5th Cir. 1987). “The transfer of title with attendant circumstances indicating that the bankrupt continues to use the property as his own is sufficient to constitute a concealment.” Friedell v. Kauffman (In re Kauffman), 675 F. 2d 127, 128 (7th Cir. 1981).

The evidence presented to the Court in this case indicates that the transfer of the \$43,000.00 to Joy Hill and the transfer of the Mortgage to Margaret Walker were intended by the Debtor to hinder, delay, or defraud creditors. A debtor’s intent to hinder or defraud creditors is usually based “upon circumstantial evidence or upon inferences drawn from a course of conduct.” Adams v. Filter (In re Filter), C/A No. 99-04462-W; Adv. Pro. 99-80370-W (6/16/2000). Courts usually determine such intent by weighing “badges of fraud” which serve as indicia in the absence of direct evidence on a debtor’s intent to defraud his or her creditors. In enumerating the badges of fraud, the court in In re Hodge, 92 B. R. 919 (Bankr. D.Kan. 1988) stated:

Since debtors seldom testify that they have had an intent to defraud creditors, a finding of actual intent must be based on the circumstantial evidence or on the inferences drawn from a course of conduct. See *Collier on Bankruptcy* 727.03[3](15th ed. 1988). This Court will look to all the surrounding facts and circumstances, including: whether the debtor and the transferee enjoyed a family, friendship, or close relationship; whether the debtor retained the

possession, benefit, or use of the property; whether there was a judgment or a threat of a judgment at the time of the transfer; whether the debtor became insolvent as a result of the transfer; and whether the debtor received adequate consideration.

See also Adams v. Filter (In re Filter), C/A No. 99-04462-W; Adv. Pro. 99-80370-W (6/16/2000) (“Due to the fact that debtors do not usually admit to having fraudulently transferred or concealed property, courts may infer such fraudulent intentions from the following ‘badges of fraud’: ‘(1) Relationship between the debtor and the transferee; (2) Lack of consideration for conveyance; (3) Debtor’s insolvency or indebtedness; (4) Transfer of debtors’ entire estate; (5) Reservation of benefits, control or dominion by the debtor; (6) Secrecy or concealment of the transaction; and (7) Pendency or threat of litigation at the time of transfer.’”).

In this case, the Court finds that the badges of fraud weigh in favor of finding that Debtor transferred property with the actual intent to hinder, delay, or defraud his creditors. As to the transfer of the mortgage to Debtor’s mother, the Court notes that the factor considering the existence of a close relationship is present. Even though both Debtor and his mother testified at their Rule 2004 examination that the mortgage was executed for antecedent debts, no concrete documentation in the form of promissory notes or otherwise was introduced to substantiate the testimony. Furthermore, when considering the reservation of benefits, control, or dominion by Debtor over property in question, it is apparent that Debtor continued to own the commercial property and retained its possession, benefit, and use. Lastly, the mortgage was executed only three days after the Family Court entered its judgment against Debtor and less than two months prior to the filing of the bankruptcy petition.

As to the transfer of the Trust Fund proceeds to the Joy Hill account, the Court also finds that the badges of fraud weigh in favor of finding that Debtor transferred the money with intent

to defraud his creditors. Debtor and Joy Hill have a close relationship and, despite the fact that Debtor deposited the Trust money in Joy Hill's account and that he did not have signatory authority over the account, Debtor was considered the sole owner of the funds and retained the benefit of the money upon demand. Moreover, the funds were transferred to the Joy Hill account while there was a threat of judgment by the Family Court. The Court finds that Debtor has not offered credible evidence to explain his conduct and his denial of fraudulent intent is insufficient to rebut Plaintiff's *prima facie* case.

C. Misrepresentation

Lastly, Plaintiff has requested that Debtor's discharge be denied pursuant to § 727(a)(4) for making a false oath by not disclosing his interest in the Joy Hill bank account, by misrepresenting the amount of the Trust Fund distribution, and by failing to disclose the \$20,000.00 payment to his mother, Margaret Walker. Section 727(a)(4) provides as follows:

- (a) The court shall grant the debtor a discharge, unless –
- (4) the debtor knowingly and fraudulently, in or in connection with the case –
 - (A) made a false oath or account.

Both Debtor and Joy Hill admitted that Debtor was the equitable owner of the Trust money placed in the Joy Hill savings account. Despite the fact that Debtor had an interest in the account, he failed to disclose it in his bankruptcy filings.⁶ Debtor also misrepresented the

⁶ Debtor argued that because almost all of the Trust money was withdrawn from the Joy Hill account prior to the filing of the petition, it was unnecessary for the account to be disclosed in Debtor's schedules; however, when considering the other evidence presented, Debtor's overall conduct weighs in favor of denying a discharge upon these grounds.

amount he received from the Trust Fund. In paragraph 2 of his Statement of Affairs, Debtor indicated he had only received \$30,000.00 from the Trust when, in actuality, he received \$43,346.87. Lastly, Debtor made a false oath regarding the \$20,000.00 payment to his mother. In paragraph 3(b) of the Statement of Financial Affairs, in fact, he only indicated the \$9,000.00 payment to his mother. He did not indicate the \$20,000.00 which was paid from the Joy Hill account on May 10, 1999.

Bankruptcy is not a game of hide and seek that Debtor plays with the Trustee and the Court. Full disclosure is the *quid pro quo* for a debtor's discharge. The principles underlying §727(a)(4) were well stated by the court in In re McCreight, Case No.: 98-05720-B, Adversary No.: 98-80250-B (Bankr. D.S.C. 7/22/1999).

The Bankruptcy Court favors the discharge of a debtor's debts, and the bankruptcy laws should generally be construed liberally in favor of granting the discharge. *In re Weldon*, 184 B.R. 710, 712 (Bankr. D.S.C. 1995). The granting of a discharge or "fresh start," however, depends upon a debtor's "honest and forthright invocation" of bankruptcy protection. *Kestell v. Kestell*, (*In re Kestell*), 99 F. 3d 146, 149 (4th Cir. 1996). Debtors "who play 'fast and loose with their assets or with the reality of their affairs'" should not receive a discharge of their debts. *Farouki v. Emirates Bank International, Ltd.* 14 F. 3d 244, 249 (4th Cir. 1994), quoting *In re Tully*, 818 F. 2d 106, 110 (1st Cir. 1987).

The Court of Appeals for the Fourth Circuit considered a similar situation in Williamson v. Fireman's Fund Insurance Company, 828 F. 2d 249 (4th Cir. 1987). The court affirmed the denial of the debtor's discharge and held:

It is significant that Williamson made not one false oath, but three, and that the effect of false oaths was to conceal from the bankruptcy court and the trustee a pattern of gratuitous transfers of property from Williamson to Janet Cardwell. Concealment of these transfers would have been advantageous to Williamson and Ms. Cardwell and detrimental to Williamson's creditors, because it would have prevented the trustee from exercising his powers under

11 U.S.C. Section 544(b) and 548(a)(1982) to recover the transfers for the benefit of the creditors.

In the present case, Debtor made misrepresentations. All were related to the transfer of the Trust Fund to his girlfriend, Joy Hill, and the subsequent transfer of a portion of the funds to his mother, Margaret Walker. The Court notes that the misrepresentations would have been advantageous to Debtor and detrimental to the creditors because they could have prevented the Trustee from collecting assets for the benefit of creditors and from exercising the power to avoid the transfers as fraudulent. While Debtor provided explanations for the failure to disclose certain transfers or for the discrepancies in the amounts reflected in his Schedules and Statements of Affairs; when considering Debtor's overall conduct, the Court finds that the misrepresentations constituted another ground, pursuant to §727(a)(4) to deny Debtor's discharge.⁷

SUMMARY JUDGMENT

Summary judgment may be granted in favor of Plaintiff pursuant to Fed. R. Civ. P. 56, made applicable in bankruptcy proceeding pursuant to Fed. R. Bankr. P. 7056, "if there is no genuine issue of a material fact". In this case, Debtor received a large sum of cash during the seven months prior to the filing of the petition but has failed to produce adequate records regarding the disposition of these funds. In order for Debtor's discharge to be denied, there is no requirement that Plaintiff prove fraud or an intent to deceive; Debtor's discharge should be

⁷ The Court notes that it may be hesitant to grant summary judgment in favor of Plaintiff on this ground alone. However, when considering the totality of circumstances in this case and the other subsections of §727 on which Plaintiff relied on in support of his Motion for Summary Judgment and which have been ruled upon by the Court in favor of Plaintiff, the Court finds that there are sufficient grounds to grant summary judgment in Plaintiff's favor also pursuant to §727(a)(4).

denied due to his failure to keep adequate records.

Furthermore, there are no questions regarding the underlying facts regarding Debtor's transfers to his mother and to his girlfriend. Debtor simply maintains that he did not intend to defraud anyone and that he did not intend to misrepresent his financial affairs. However, a simple denial is not sufficient for a debtor to avoid summary judgment. In Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), the Court held:

More important for present purposes, summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party . . . if the evidence is merely colorable, *Dombrowski v. Eastland*, 387 U.S. 82, 18 L. Ed. 2d 577, 87 S. Ct. 1425 (1967) or is not significantly probative, *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 290, 20 L. Ed. 2d 5669, 88 S. Ct. 1575 (1968), summary judgment may be granted.

Courts have not hesitated to grant summary judgment in matters relating to fraud. In FDIC v. Anchor Properties, 13 F. 3d 27 (1st Cir. 1994) the Court of Appeals affirmed the granting of summary judgment by the lower court and held:

Given the presence of multiple badges of fraud, and Gleicher's inability to produce even a single properly documented fact casting any doubt on the FDIC's position, we too can see only one conclusion, namely, that the transfer was fraudulent.

See also Adams v. Filter (In re Filter), C/A No. 99-04462-W; Adv. Pro. 99-80370-W (6/16/2000).

Based on the totality of the circumstances surrounding this case, it appears that the Trustee's Motion for Summary Judgment should be granted and the Debtor's Motion denied. It is therefore,

ORDERED that Plaintiff's Motion for Summary Judgment is granted and Debtor's discharge is denied pursuant to § 727(a)(2), (3), and (4).

IT IS FURTHER ORDERED that Debtor's Motion for Summary Judgment and request that the Court dismiss the claims pursuant to Fed. R. Bankr P. 7012 and award attorney's fees and costs for having to defend the action are denied.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
January 3, 2008

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:

JAN 5 2001

*Sent to:
Downey
Griffin
USC*

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KELLEY MORGAN

Deputy Clerk