

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In Re)	
)	In Bankruptcy
VAN SCOTT BARRIOS)	
CHRISTINE BARRIOS)	No. 95-32012
)	
Debtors.)	
)	
KAMADULSKI EXCAVATING & GRADING COMPANY, INC.,)	
)	
Plaintiff,)	
)	
v.)	Adversary No. 95-3322
)	
VAN SCOTT BARRIOS)	
CHRISTINE BARRIOS,)	
)	
Defendants.)	

OPINION

This matter came before the Court on the objection to Discharge filed by Kamadulski Excavating and Grading Company, Inc. (“Plaintiff”), which seeks to bar the discharge in bankruptcy of Van Scott Barrios and Christine Barrios (“Debtors” or “Defendants”).

Debtors filed their voluntary Chapter 7 petition on October 6, 1995, and their First Meeting of Creditors was held on October 31, 1995. On November 2, 1995, Plaintiff filed a motion to lift the automatic stay in order to allow it to proceed with a lawsuit pending in Missouri state court, which was allowed on November 29, 1995. Subsequently, Plaintiff filed the complaint seeking to bar the discharge of the Debtors under §§ 727 (a) (2) , (4) , (5) , and (6) of the Bankruptcy Code.

Plaintiff's complaint takes a "shotgun" approach to § 727. It has been this Court's experience that the Plaintiff can sustain its burden of proof in such cases on only a few points, and that is the result in this case.

Plaintiff did not sustain the burden of proof as to §§ 727(a) (5) and (6) of the Bankruptcy Code and the Court will not further address these allegations and issues. The Plaintiff has, however, raised some serious points with respect to §§ 727(a) (2) and (4).

On the date Debtors' petition was filed, Mr. Barrios was a party plaintiff in litigation pending in the Circuit Court of the City of St. Louis, State of Missouri, Cause No. 944-01441. That civil case is still pending and Mr. Barrios was and is seeking \$400,000 in actual damages for breach of contract, pre-judgment interest and punitive damages. Subsequent to the filing of the lawsuit, Mr. Barrios was named in a counterclaim seeking actual and punitive damages in the millions of dollars. Debtors did not disclose this information on their original schedules or at the First Meeting of Creditors.

Also on the date Debtors' petition was filed, Mr. Barrios was owed \$2,600 by a former employee, Janet Kopsic, as a result of a loan he had made her so that she could buy a truck. Not only did Mr. Barrios fail to disclose the loan, he also failed to disclose the fact that he received monthly payments from Ms. Kopsic post-petition.

In addition, Mr. Barrios failed to disclose several other significant matters of fact: (i) that he was an officer, director and 18% shareholder in Barrios Construction Company, Inc., (ii) that Mrs. Barrio's brother, Michael Baker, and Barrios Construction, Inc. were co-debtors on a \$176,000 loan from Central Bank of Fairview Heights, Illinois, which Debtors had scheduled in their bankruptcy, and (iii) that, contrary to Debtors' bankruptcy schedules, Debtors had given a financial statement to the

U.S. Small Business Administration approximately sixteen months prior to the bankruptcy filing.

Finally, Debtors failed to schedule a collection of Precious Moments figurines owned by Mrs. Barrios which may have been somewhat valuable.

Section 727(a) (2) of the Bankruptcy Code states in part 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 the 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(.)

...

11 U.S.C. § 727 (a) (2).

While actual fraudulent intent is required to deny a discharge on the basis that the debtor has concealed property within one year pre-petition or estate property post-petition, the required intent can be inferred from extrinsic evidence. In re Krich, 97 B.R. 919 (Bankr. N.D. Ill. 1988). A debtor's omission of assets from the bankruptcy schedules and subsequent failure to promptly amend the schedules to reflect the omitted assets is indicative of knowing and fraudulent conduct constituting at least reckless indifference to the truth, which is equivalent to fraud justifying denial of a discharge. Id.

Mr. Barrios received post-petition payments on a loan made pre-petition, which he failed to schedule in his bankruptcy. The receipt of the payments (and the corresponding failure to disclose them),

when viewed in conjunction with Debtors' failure to schedule the loan, strongly suggests that this was not a case of oversight. Otherwise, the mistake would have been rectified upon receipt by Mr. Barrios of the first payment from Ms. Kopsic. Accordingly, the Court finds that Mr. Barrios' conduct with respect to the post-petition payments received from Ms. Kopsic was in violation of § 727(a) (2) (B) of the Bankruptcy Code.

A great deal of testimony was devoted to Mrs. Barrios' collection of Precious Moments figurines. However, the Plaintiff failed to prove the value of the collection. Mrs. Barrios testified that she had never appraised or separately insured the collection, and that the collection's value was included in the aggregate value placed upon their household goods of \$4000. (Each debtor being entitled to a \$2000 exemption per person.) In view of the lack of evidence as to the value of the collection, the Court accepts this explanation and finds no concealment on either Debtor's part with respect to the Precious Moments figurines collection.

Section 727 (a) (4) of the Bankruptcy Code states in part 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;

11 U.S.C. § 727 (a) (4).

To warrant denial of a discharge for making a false oath of account, a creditor must show that a debtor made a statement under oath, that such statement was false, that the debtor knew such statement was false, that the debtor made the statement with an intent to deceive, and that the statement related materially to the bankruptcy case. In re Bailey, 145 B.R. 919 (Bankr. N.D. Ill. 1992). Where

false statements taken separately are not material enough to justify denial of a discharge for false oaths, the statements viewed together may be material and raise serious doubts about the accuracy of a debtor's schedules, warranting denial of a discharge. *Id.* The Bankruptcy Code makes complete financial disclosure by a debtor a condition precedent to the privilege of discharge in order to preserve the goal of fair dealing between a debtor and the creditors. *U.S. v. Ellis*, 50 F.3d 419 (7th Cir. 1995), *cert. den'd*, 116 S.Ct. 143 (1995).

In addition to his failure to disclose the Kopsic loan (and the corresponding post-petition payments received), Debtors failed to disclose a number of other significant items set forth above. The pending litigation, Mr. Barrios' ownership interest in a corporation, the financial statement given to the SBA, and the co-signers on the Central Bank loan were all matters which Debtors were obligated to disclose. Viewed individually, several of these omissions could be construed as oversights; however, when viewed together, the Court is unable to reach any conclusion other than finding that Mr. Barrios knowingly made a false oath when he signed the declaration stating that his bankruptcy petition was "true and correct". There was no plausible explanation offered for why these matters were ignored when the schedules were completed, and their omission from the bankruptcy schedules constituted nothing less than reckless indifference to the truth. Accordingly, Mr. Barrios' conduct is found to be in violation of § 727 (a) (4) of the Bankruptcy Code, and his discharge in bankruptcy is denied. This outcome is unfortunate in this case because most of the omissions were relatively inconsequential. However, it is a debtor's duty to be forthright with the Court and with creditors, that duty has been materially breached in this case.

As for Mrs. Barrios, although she signed the petition warranting that the schedules were

complete along with her husband, the Court is unable to discern any fraudulent intent on her part. Mrs. Barrios was not involved in the business which gave rise to most of the matters not disclosed, and her ignorance of many of these matters is plausible. While her conduct in signing the incomplete bankruptcy schedules may have been negligent, it does not rise to the level required in order to deny a discharge. Accordingly, Mrs. Barrios' discharge in bankruptcy will be allowed.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: July 16, 1996

/s/ Larry Lessen
UNITED STATES BANKRUPTCY JUDGE