

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: )  
)  
GARY L. GEIGER, ) Bankruptcy Case No. 03-32103  
)  
Debtor. )  
\_\_\_\_\_)  
)  
AGRI-LAND CORPORATION and )  
ED BARTH, )  
)  
Plaintiffs, )  
)  
vs. ) Adversary Case No. 03-3201  
)  
GARY L. GEIGER, )  
)  
Defendant. )

OPINION

This matter having come before the Court for trial on a Complaint Objecting to Discharge of the Debtor; the Court, having heard sworn testimony and arguments of counsel and having reviewed the written memoranda of law submitted by the parties, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Although not specifically stated in the Complaint Objecting to Discharge of the Debtor, this matter is governed by the provisions of 11 U.S.C. § 727(a)(2)(A) and 11 U.S.C. § 727(a)(4)(A). Pursuant to 11 U.S.C. § 727(a)(2)(A), a debtor must be denied a discharge where it is found that the debtor, within one year before the date of filing bankruptcy, with the intent to hinder, delay, or defraud a creditor or an

officer of the estate has transferred, removed, destroyed, mutilated, or concealed property of the debtor. The burden of proof is upon the plaintiff to establish the elements of 11 U.S.C. § 727(a)(2)(A), by a preponderance of the evidence. Grogan v. Garner, 111 S.Ct. 654 (1991). The Court must find that the defendant acted with actual intent requiring a showing of extrinsic evidence suggesting that fraud exists. In re Smiley, 864 F.2d 562 (7th Cir. 1989). Under 11 U.S.C. § 727(a)(4)(A), plaintiff must prove by a preponderance of the evidence that the debtor knowingly and fraudulently, in or in connection with his case made a false oath or account. In re Bailey, 147 B.R. 157 (Bankr. N.D. Ill. 1992).

In the instant case, Plaintiffs allege that the Debtor transferred a vacant building lot to his mother without consideration within one year of his filing for Chapter 7 relief, and that he failed to disclose this transfer in his bankruptcy petition. A review of the uncontroverted facts leads the Court to the conclusion that the Plaintiffs have failed to meet their burden of proof under both 11 U.S.C. § 727(a)(2)(A) and 11 U.S.C. § 727(a)(4)(A).

The facts of this matter are undisputed, and the only testimony heard was the testimony of the Debtor/Defendant in this proceeding. Based upon that testimony, the Court must find that, on February 1, 2001, the Debtor signed a quit-claim deed regarding the subject real estate in favor of his mother. Although the deed was not recorded until October 15, 2002, a date within one year of Debtor's Chapter 7 bankruptcy filing on May 19, 2003, the Court finds that the Debtor delivered the quit-claim deed to his mother sometime in June 2001. The law in this case is clear, in that, in the State of Illinois, real property is transferred when the deed is physically passed from the grantor to the grantee. See: Kelly v. Bapst, 272 Ill. 239, 111 N.E. 1029 (Ill. S.Ct. 1916). Given that the deed was transferred more than one year before the filing of Debtor's Chapter 7 bankruptcy proceeding, the Court must conclude that neither 11 U.S.C.

§ 727(a)(2)(A) nor 11 U.S.C. § 727(a)(4)(A) are applicable.

In examining the testimony in this case, the Court must find that the Debtor was a credible witness. Although the Plaintiffs question the Debtor's credibility, there was no evidence submitted to impeach the Debtor's contention that the quit-claim deed in question was signed on February 1, 2001, and delivered sometime in May or June 2001. This being the case, the Court must find that the Plaintiffs have failed to meet their burden of proof. Furthermore, the Court finds that the Plaintiffs did not present any evidence as to the value of the real estate which was transferred to the Debtor/Defendant's mother. The only evidence the Court has to value is the Debtor's testimony that the vacant lot was worth no more than \$1,000 and probably less.

In addition to the Plaintiffs' request that the Debtor/Defendant's discharge be denied, the Plaintiffs also make a request that the subject transfer of real estate be set aside, and, for this request, they cite 11 U.S.C. § 548. In reviewing § 548, the Court finds that the Plaintiffs do not have standing to seek to have the transfer avoided. Even if they did have standing, they have not shown the necessary elements, in that, under the evidence which the Court must consider, the transfer was made more than one year prior to the Debtor's filing for relief under Chapter 7 of the Bankruptcy Code.

ENTERED: February 25, 2004.

/s/Gerald D. Fines  
GERALD D. FINES  
United States Bankruptcy Judge