

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

U. S. BANKRUPTCY COURT SOUTHERN DISTRICT OF MISSISSIPPI FILED	
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IN RE: MILES J. WONSLEY

CASE NO. 9201709JC

WILLIE EVANS & GEORGE THOMAS

PLAINTIFFS

VS.

ADVERSARY NO. 9200253JC

MILES J. WONSLEY

DEFENDANT

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Chapter 7 Trustee

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This adversary proceeding came on for hearing before the Court on the Plaintiffs' Complaint Objecting To Discharge. The Plaintiffs seek an order denying the discharge of the Debtor pursuant to 11 U.S.C. § 727(a)(2)(B) and § 727(a)(4)¹. After considering the evidence presented at trial along with arguments of counsel, the Court holds that the Plaintiffs have met their burden of proof and that the relief sought in their complaint should be granted. In so holding, the Court makes the following findings of fact and conclusions of law:

¹ Hereinafter all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

FINDINGS OF FACT

The Debtor, Miles J. Wonsley, is an accountant. He has operated an accounting service under the name MJW, Inc. d/b/a Miles Accounting Service since 1970. In January of 1992, the Plaintiffs obtained a judgment in the Circuit Court of the First Judicial District of Hinds County, Mississippi against Mr. Wonsley in the amount of \$ 100,000. On May 7, 1992 Miles Wonsley filed a petition for relief under Chapter 7 of the Bankruptcy Code.

In connection with his bankruptcy petition, Mr. Wonsley filed his statement of affairs and schedules of assets and liabilities. In his schedules, Mr. Wonsley listed only the following assets:

SCHEDULE A - REAL PROPERTY

Office building - no value listed - \$ 57,000
secured claim against property.

Debtor's residence - no value listed - \$14,000
secured claim against property.

SCHEDULE B - PERSONAL PROPERTY

Household goods and furnishings, including audio, video, and computer equipment - valued at \$ 500.

Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc. and other collections or collectibles - valued at \$ 500.

Wearing apparel - valued at \$ 500.

In October 1992, the Plaintiffs commenced this adversary proceeding against Mr. Wonsley, seeking a denial of his discharge in bankruptcy. In support of their complaint, the Plaintiffs

allege that Mr. Wonsley failed to list certain assets in his bankruptcy schedules, namely, stock in a corporation known as MJW, Inc. and various items of office equipment.

On January 13, 1994, the same date this matter was tried, Mr. Wonsley amended his Schedule C - Property Claimed As Exempt to claim a personal exemption in office furniture and equipment valued at \$ 8,000. He did not file a corresponding amendment to his Schedule B - Personal Property to list the property as an asset.

At the trial of this matter, Mr. Wonsley was the sole witness. At best, his testimony was unclear and largely contradictory. Mr. Wonsley explained that he did not list his ownership of 51 % of the stock of MJW, Inc. because he did not believe it was worth anything. Conversely, Mr. Wonsley also explained that he thought he had included the stock in his schedules by listing the office building where the corporation operates.

The office equipment in question was identified by Mr. Wonsley as two computers, two printers, a copy machine, two calculators, two filing cabinets, two desks, and seven chairs and some books. Although Mr. Wonsley testified that he did not list the office equipment because the corporation owned it, he also testified that he believed it had been listed as an implicit part of the office building.²

² On direct examination by Plaintiffs' counsel, Mr. Wonsley testified as follows:

Q. Mr. Wonsley, I took your deposition back on July 22, 1992 --

A. Yes, sir.

Evidence was presented at trial showing that the corporation in which Mr. Wonsley owned 51 % of the stock was administratively dissolved by the Secretary of State of the State of Mississippi in February 1990. On May 7, 1992, the same day Mr. Wonsley filed his petition for relief, MJW, Inc. was incorporated a second time under the laws of the State of Mississippi.

CONCLUSIONS OF LAW

As previously stated, the Plaintiffs seek a denial of Mr. Wonsley's discharge pursuant to § 727(a)(2)(B) and § 727(a)(4)(A) of the Bankruptcy Code. Since the Court holds that the Debtor's discharge should be denied under § 727(a)(4)(A), the Court need not decide whether additional grounds for denying the Debtor's discharge under §727(a)(2)(B) exist.

Section 727 of the Bankruptcy Code pertains to the granting of a discharge in chapter 7 cases, and sets forth certain

Q. -- I asked you: "So you actually own the property, but the corporation is paying for it?" And your answer was, "Yes, sir." Isn't that what that transcript says?

Q. And you told me that under oath back in July of last year; did you not?

A. Yes, sir, and I said to the best of my knowledge in here, and I said I listed everything -- you said, "List the worth of the whole entire thing," and so I listed the worth. I did not itemize it. Maybe that was my mistake for not itemizing it, but I just put it into one ball and said that's what it was worth. And if you go and check it, you'd see \$ 57,000 is about 15 or \$ 20,000 over its worth.

Transcript, pp. 10-12.

exceptions to the granting of a discharge. Section 727 provides in pertinent part as follows:

11 USC § 727

§ 727. Discharge.

(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;

. . . .

In an action under § 727(a)(4)(A) the Plaintiff must prove its case by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 289 (1991).

The elements which must be proved are that the Debtor made a statement under oath; the statement was false; the Debtor knew the statement was false; the statement was made with fraudulent intent; and the statement related materially to the Debtor's bankruptcy case. Beaubouef v. Beaubouef (Matter of Beaubouef), 966 F.2d 174, 178 (5th Cir. 1992).

ELEMENT I: STATEMENT UNDER OATH

The statements upon which the Plaintiffs base their objection to discharge are found in the Mr. Wonsley's schedules of assets and liabilities.

Rule 1008 of the Federal Rules of Bankruptcy Procedure provides that "[a]ll petitions, lists, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 USC § 1746."

"False oaths sufficient to justify the denial of discharge include '(1) a false statement or omission in the debtor's schedules or (2) a false statement by the debtor at the examination during the course of the proceedings.'" Beaubouef v. Beaubouef (Matter of Beaubouef), 966 F.2d 174, 178 (5th Cir. 1992)(citing 4 Collier on Bankruptcy ¶ 727.04[1], at 727-59 (15th ed. 1992)). However, a denial of discharge cannot be based on an omission in the Debtor's schedules that is the result of an honest mistake. Id. at 178.

This Court holds that the statements contained in the Debtor's schedules of assets and liabilities constitute statements under oath.

ELEMENT II: THE STATEMENT WAS FALSE

Mr. Wonsley argues that he did not list his stock in MJW, Inc. because it had no value. However, Mr. Wonsley was required to list his stock ownership in MJW, Inc. whether or not he believed it was of any value. See Beaubouef v. Beaubouef (Matter of Beaubouef), 966 F.2d 174 (5th Cir. 1992).

While Mr. Wonsley argues that he did not list his stock because it was worthless, he testified that he believed he had listed the stock as a part of the office building where the corporation operated.³

³ Q. Is there anywhere on there, other than that you're including it in that real estate there, that that corporation is listed?

A. Well, sir, they said list everything I owned, and I said 1151 Biloxi Street, which the corporation is

As to the office equipment, Mr. Wonsley argues both that he did, in fact, include the items of office equipment within the office building listed on his schedule A, and also, that he did not list the equipment because it was owned by MJW, Inc.

In support of his contention that the office equipment is implicit in his listing of the office building, Mr. Wonsley explained that the value assigned to the building in his schedules equals the value of the building plus the value of the office equipment in question. One problem with Mr. Wonsley's explanation, however, is that in his schedules, he assigned no value for the office building. Mr. Wonsley only listed a \$ 57,000 secured claim against the property.

Mr. Wonsley also explained that he did not list the equipment because it was owned by MJW, Inc. However, on the date this matter was tried, Mr. Wonsley filed an amendment to his schedules claiming a personal exemption in office equipment valued at \$ 8,000.

This Court holds that Mr. Wonsley's stock in MJW, Inc. and the office equipment were not listed anywhere in his schedules of assets and liabilities. Mr. Wonsley admits that he owned 51 % of MJW, Inc. stock. Therefore, Mr. Wonsley was required to list

on Biloxi Street, and the corporation is only \$ 5,000 corporation, \$ 2,551 is mine, and so I put it into the \$ 57,000.

Q. But you didn't list it separately anywhere as you owning stock in a corporation?

A. No, sir, I didn't list it separately. It said everything I owned, so I listed it under the one heading.

Transcript, p. 8.

the stock in his schedules of assets and liabilities. The evidence is unclear whether he owned the office equipment in question. However, this Court need not find whether Mr. Wonsley owned the office equipment. If the equipment was owned by MJW, Inc. then his stock was not worthless as he claims. Whether Mr. Wonsley or MJW, Inc. owned the office equipment in question, Mr. Wonsley's failure to list his stock in MJW, Inc. renders his schedules false.

In light of the foregoing, this Court finds that the second element of an action under § 727(a)(4)(A), that the statement was false, has been satisfied.

ELEMENT III: THE DEBTOR KNEW THE
STATEMENT WAS FALSE

The Court also finds that the third element, the Debtor knew the statement was false, has been satisfied. On May, 7, 1992, the same day that Mr. Wonsley filed his petition for relief, MJW, Inc. was re-incorporated. Schedule B contains a specific category for listing stock owned by a debtor. Mr. Wonsley entered an "x" in the column indicating that he owned no stock. In light of the timing of the re-incorporation of MJW, Inc., this Court finds that Mr. Wonsley knew his statement in his schedules that he owned no stock was false.

Schedule B also contains a specific category for listing equipment used in business. While Mr. Wonsley's testimony is unclear from one minute to the next as to the ownership of the equipment, this Court finds Mr. Wonsley's explanation that he thought he had listed the equipment by listing the office building

where the equipment was located to be implausible. In the specific space for listing office equipment on Schedule B, Mr. Wonsley neither listed any equipment nor marked an "x" in the column indicating that the debtor owns no office equipment.

Assuming that Mr. Wonsley did not own the office equipment and, therefore, was not required to list it as an asset, his knowing failure to list the MJW, Inc. stock is sufficient to show that he knew his schedules were false. Therefore, this Court finds that the Plaintiffs have shown that Mr. Wonsley knew his statement was false.

ELEMENT IV: THE STATEMENT WAS MADE
WITH FRAUDULENT INTENT

The fourth element which the Plaintiffs must prove is that the statement was made with fraudulent intent. Fraudulent intent may be established by circumstantial evidence. March v. Sanders (In re Sanders), 128 B.R. 963, 972 (Bankr. W.D. La. 1991). Furthermore, "statements made with reckless indifference to the truth are regarded as intentionally false". Id. at 972 (citing In re Tully, 818 F.2d 106 (1st Cir. 1987)).

This Court holds that Mr. Wonsley has demonstrated, at the very least, a reckless indifference to the truth. While Mr. Wonsley maintains, at least part of the time, that the office equipment in question is owned by the corporation, on the same date this matter was tried, he amended his schedules to claim a personal exemption in \$ 8,000 worth of office equipment. This amendment came approximately 20 months after Mr. Wonsley filed his petition

for relief, and approximately 15 months after the Plaintiffs commenced this adversary proceeding. Additionally, Mr. Wonsley did not make a corresponding amendment to his schedule of personal property to reflect his ownership of the office equipment.

While Mr. Wonsley admits ownership of 51 % of the stock in MJW, Inc., he has not amended his schedules to reflect his ownership of this asset.

This Court holds that the Plaintiffs have shown by a preponderance of the evidence that Mr. Wonsley's statements contained in his schedules were made with a reckless indifference to the truth, and therefore, were made with fraudulent intent.

ELEMENT V: THE STATEMENT RELATED MATERIALLY
TO THE DEBTOR'S BANKRUPTCY CASE

The final element which the Plaintiffs must show is that the statement related materially to the Debtor's bankruptcy case. Regarding the materiality of a false statement in a debtor's schedules of assets and liabilities, the Fifth Circuit has held:

[t]he subject matter of a false oath is "material," and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property.

Beaubouef v. Beaubouef (Matter of Beaubouef), 966 F.2d 174, 178 (5th Cir. 1992) (quoting In re Chalik, 748 F.2d 616, 617 (11th Cir. 1984)).

The ownership of stock in a corporation and office equipment with a claimed value of \$ 8,000 undoubtedly bear a

relationship to the Debtor's estate and business transactions. In response to the debtor's argument in Matter of Beaubouef that he did not list his ownership of stock because it had no value, the Fifth Circuit stated:

Full disclosure of assets and liabilities in the schedules required to be filed by one seeking relief under Chapter 7 is essential, because, the schedules 'serve the important purpose of insuring that adequate information is available for the Trustee and creditors without need for investigation to determine whether the information provided is true.' In re Urban, 130 B.R. 340, 344 (Bankr. M.D. Fla. 1991). Ronald's failure to disclose his ownership interest in American Container constituted an omission of information regarding his business dealings which could have led to the discovery of assets and/or the existence and disposition of his property. Accordingly, the bankruptcy court did not err in concluding that the omission was material.

Id. at 179.

In view of the foregoing authority, this Court holds that the Mr. Wonsley's false statements were materially related to his bankruptcy case.

CONCLUSION

This Court holds that the Plaintiffs have met their burden of proof under § 727(a)(4)(A) of the Bankruptcy Code. They have demonstrated as to both the stock in MJW, Inc. and the office equipment that Mr. Wonsley has knowingly and fraudulently made a false oath or account in connection with his bankruptcy case. Therefore, the Debtor's discharge in bankruptcy will be denied.

A separate judgment consistent with this opinion will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

Dated this the 7th day of April, 1994.


UNITED STATES BANKRUPTCY JUDGE

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FINAL JUDGMENT

Consistent with the Court's opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the discharge in bankruptcy of the Debtor, Miles J. Wonsley, shall be and hereby is denied pursuant to Bankruptcy Code § 727(a)(4)(A).

This is a final judgment for the purposes of Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

ORDERED AND ADJUDGED this the 7th day of April, 1994.


UNITED STATES BANKRUPTCY JUDGE