

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

JERRY A. JOSLIN

Debtor(s).

Bankruptcy No. X88-01209S

Chapter 7

DONALD H. MOLSTAD Trustee

Plaintiff(s)

Adversary No. X89-0012S

vs.

JERRY A. JOSLIN

Defendant(s)

MEMORANDUM OF DECISION AND ORDER RE: OBJECTION TO DISCHARGE

Trustee Donald H. Molstad (TRUSTEE) objects to debtor's discharge. Trial was held on March 29, 1990 in Sioux City, Iowa. The court now issues this memorandum of decision and order which shall include findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding under 28 U.S.C. 157(b)(2)(J).

FINDINGS OF FACT

Jerry A. Joslin (JOSLIN) filed his chapter 7 case on August 10, 1988. His statement of affairs and schedules were executed on July 8, 1988 and were filed with the petition. Joslin listed his occupation as carpenter, horse breeder, trainer and broker.

In the statement of affairs submitted with his petition, Joslin answered "no" to the following two questions:

12a. Have you made any gifts, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description, and value of gifts.)

and

12b. Have you made any other transfer, absolute or for the purpose of security, or any other disposition of real or personal property during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative or insider, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

In his schedule B-2 under subsection (c), Joslin listed these household possessions and furnishings: bed, dresser, kitchen table & chairs, easy chair, misc., having a value of \$200.00. These items were claimed as exempt.

At a meeting of creditors on September 23, 1988, Joslin was questioned by the trustee as to his property and the disposition of his property. In response to questioning about his transfer of assets within 90 days of filing, Joslin responded that he had sold pieces of property and animals within the preceding year.

This colloquy took place between the trustee and Joslin:

Trustee: Besides the horses, have you sold any other assets during the last year?

Joslin: Not that I can recall.

Trustee: Saddles?

Joslin: No, I did not even sell any saddles. I have a little bit of horse equipment, bridles, halters, and stuff like that, and a few buckets.

Trustee: Do you have those today?

Joslin: I do, but their value would be whatever they are worth.

Trustee: You don't have any saddles at this time?

Joslin: No, I don't.

Trustee: Did you ever have any saddles?

Joslin: Yes, I did.

Trustee: Did you have a hand-tooled saddle?

Joslin: Like a custom saddle?

Trustee: Yes.

Joslin: No, they were just production-type saddle.

Trustee: Nothing fancy?

Joslin: Nothing.

* * *

Trustee: How many horses did you have in the last year?

Joslin: I suppose right around 10 or 12 horses, something like that.

Trustee: Were they registered horses?

Joslin: Some of them were.

Trustee: Do you know the names of everyone who purchased those horses?

Joslin: I could get that.

Trustee: Do you know how much was paid for those horses?

Joslin: Yes, I could get those figures to you too.

Trustee: Do you know approximately how much was paid for those horses?

Joslin: Approximately, well, there would be colts that were sold for \$150.00, and there were mares that

were sold for \$500.00, and I think one was sold for \$800.00, on the average maybe \$400.00 or \$500.00 on most horses.

Trustee: What did you do with the proceeds?

Joslin: I have been basically living off of that, that is what I have been living off of.

Portion of Plaintiff's exhibit 3, edited for punctuation.

Joslin also testified at the meeting of creditors that he had given a television set, a four-poster bed, a roll top desk to Debbie Santi.

Because of information obtained by the trustee at the meeting of creditors, the trustee asked Joslin to amend his schedules. A motion was filed by the trustee seeking amendment, but before it was ruled upon, Joslin filed amendments on November 41 1988. The amendments consisted of a cover page and nine pages of information amending his answers to questions 6, 7, 12(a), and 12(b) on the statement of affairs and amending his list of property as shown on his original Schedule B-2.

In the amendment to his original answer to question 7, he listed various items of property purportedly held by others. One of the others was Barbara Skidmore, a young woman with whom he had lived from September, 1982 to February 22, 1988. The total list of property held by Barbara Skidmore was as follows: AQHA Viking Lightning No. 1191390, one roping saddle, two blankets, two halters and ropes, one hackamore bridle set, oak bedroom set, queen size bed, mattress, dresser with mirror, two night stands, two lamps, Naugahyde davenport with matching chair and ottoman, reclining chair, two end tables, coffee table, table lamp, blanket, two sets of sheets, bath towels, portable dog kennel, dog house, bit and bridle sets. Plaintiff's exhibit 2.

At the time of the filing of the bankruptcy case, all of the above-listed items belonged to Barbara Skidmore. Some had always been hers, such as the bath towels and bit and bridle sets. The horse had been purchased with her money, and had been put in Joslin's name because he was a member of the American Quarter Horse Association. Tack was taken by her because she had brought that or other tack with her when they began their relationship. But Joslin also gave Skidmore some of his household furniture. Joslin and Skidmore treated the transfer of these items as a "settlement" in the breakup of their relationship. Skidmore had made financial contributions while the two were living partners and she felt entitled to the distribution of such property.

Joslin had also given household furniture to Debbie Santi, a subsequent girl friend. Santi moved to Kansas about the time Joslin was planning to move from Sioux City to Kansas. She needed furniture; he had no place for some of his, so he gave it to her. Since the filing of the bankruptcy case, Santi has relinquished possession of these household items, and Joslin has regained it. The items which Joslin first gave and then recovered from Santi are for the most part solid oak, and although there was some evidence introduced as to the value of the pieces, there is insufficient evidence as to the value of any of the items.

The transfers of personal property from Joslin to Skidmore and Santi all took place within one year of the filing of the bankruptcy case. Also taking place prior to the filing of the bankruptcy case were multiple transactions involving the sale of quarter horses and other horses. A true copy of the debtor's amendment showing the horse transactions is attached to this opinion. Several of these sales preceded the bankruptcy by only two to three months. Joslin used the money from these sales for living expenses. There was evidence at trial that the horses transferred may have been more valuable than the selling prices. This evidence was general and inconclusive.

Joslin's amendments showed ownership or transfer of other property. He amended his schedule of personal property (Schedule B-2) by adding a one and one-half page list of household furnishings, horse equipment and carpentry tools. Plaintiff's exhibit 2. A one-page addition showed items sold at a home rummage sale which brought proceeds of \$1,015.00 (not counting items belonging to Chet Joslin or the Chet Joslin Agency). Plaintiff's exhibit 2. A separate page in the amendments disclosed the sale for \$200.00 of a freezer owned by Joslin. The debtor also showed items sold prior to bankruptcy at the end of his amended schedule B-2. Plaintiff's exhibit 2. Some of these items, such as the firearms and a diamond ring, were sold more than one year prior to filing.

Joslin believed his hand tooled cutting horse saddle was sold at his rummage sale while he was out of town. Barbara Skidmore testified that she saw the saddle at his home in Sioux City, had asked for it, but had been refused. Joslin testified that he did not think he had the saddle either when he filed his original schedules or when questioned at the meeting of creditors, but that subsequently located the saddle in a group of items which had not been sold at the rummage sale. This trial testimony calls into question the veracity of his § 343 examination, wherein he testified that he had sold no saddles within the preceding year.

Joslin was aware when he signed his original statement of affairs and schedules that they were being signed under oath and his answers were to be truthful. The information for the statement of affairs and schedules was provided by him to his attorney for written preparation, and Joslin read the resultant documents before he signed them.

Joslin stated that the reason he did not list the transfer of horses in the year preceding bankruptcy was because he felt he did not need to list transactions which took place within the ordinary course of business. He felt he hadn't transferred any basic things that were different from what he had normally done and that he did not realize that he was supposed to have listed horse sales in responding to that question. He said he was not totally clear even at trial as to what was supposed to have been listed, and that he had thought question 12b referred to property such as real estate and other items.

Joslin did not list the transfer of household goods to Skidmore because he did not feel as though it was anything more than the settlement of a domestic matter, rather than the transfer of his assets. He failed to list other transfers because he believed that only transfers that held up or tied up his assets were to be listed. Joslin said he did not list the furniture which he had given to Santi because he did not believe he had an ownership interest in them.

The transfer of a stallion to Doug Miller was justified by Joslin because Miller had purchased three colts of the stallion, and Joslin had no place to keep it. Therefore, he felt that the stallion went with the purchased colts as a package.

The following stipulation was entered into between the parties and was accepted into evidence: The amended petition that was filed in this action on November 14, 1988, reflects property which debtor perceived that he might have an ownership interest in by virtue of the specific nature of the questions that were elicited at the first meeting of creditors; that Mr. Joslin is willing to surrender any right or any claims to any property listed in the amended petition in that he specifically does not claim an incidence of ownership at the time of filing and we are willing to cooperate with Mr. Molstad in the disposition of any assets that he currently has in his possession that he did not claim as exempt, which specifically would be the items listed under Debbie Santi. And he has a box of miscellaneous tack which includes the disputed saddle; and we have attempted to make all those items available to Mr. Molstad throughout the proceeding.

DISCUSSION

Fraudulent Transfers

Trustee objects to Joslin's discharge on the ground that within one year of the filing of the case Joslin transferred property to Debbie Santi and to Doug Miller with an intent to hinder, delay or defraud creditors. Such an allegation must be proven by clear and convincing evidence. Bologna v. Cutignola (In re Cutignola), 87 B.R. 702, 706 (Bankr. M.D. Fla. 1988). The trustee's case in this regard can be disposed of quickly. Although there were transfers of debtor's property to Santi and Miller within one year of filing, the trustee has failed to meet his burden of proof by clear and convincing evidence that the transfers were made with intent to hinder, delay or defraud creditors. Joslin has explained the transfer to Santi as motivated by his girl friend's need for furniture and his concomitant lack of need for it. These were household goods and normally could be claimed as exempt. The court feels that there is insufficient reliable evidence from knowledgeable witnesses that the furniture transferred to Santi would have exceeded the value of Iowa exemptions in these types of items. There must be more evidence of intent to hinder, delay or defraud than the transfers themselves. Such evidence is totally lacking.

False Oath

Debtor may be denied discharge under 11 U.S.C. § 727(a)(4) if he "knowingly and fraudulently, in or in connection with the case--(A) made a false oath . . ." For a discharge to be denied under this section, it must be shown that there has been an intentional untruth in a matter material to the bankruptcy case. Federal Land Bank of Omaha v. Ellingson (In re Ellingson), 63 B.R. 271, 276 (Bankr. N.D. Iowa 1986). Where assets of substantial value are omitted from the schedules, the court may conclude that they were omitted purposely and with fraudulent intent. Crews v. Topping (In re Topping), 84 B.R. 8401 842 (Bankr. M.D. Fla. 1988). However, the court should not deny a debtor a discharge under this section where matters or property omitted are of a trivial nature or of a low value. American State Bank v. Montgomery (In re Montgomery), 86 B.R. 948, 956 (Bankr. N.D. Ind. 1988); Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Simone (In re Simone), 68 B.R. 475, 478-479 (Bankr. W.D. Mo. 1983). The court should also not deny discharge if the untruth is a result of mistake or inadvertence of the debtor. Bologna v. Cutignola (In re Cutignola), 87 B.R. at 706.

In the original statement of affairs and schedules which debtor filed, he failed to disclose a transfer of furniture to Debbie Santi, a transfer of furniture to Barbara Skidmore, the sale of personal property at his rummage sale prior to his filing, and his sale or transfer of fifteen horses, the majority of which were registered quarter horses, during the year immediately preceding bankruptcy. The statements omitting these transfers were made under oath and were false. The omissions were knowing or willful in that debtor, at the time he executed his schedules, knew he had made the transfers and knew he owned certain personal property, but he decided not to disclose. However, before Joslin's discharge may be denied, the court must also find that the omission was with the intent to deceive. This also must be proven by clear and convincing evidence.

The court may infer the fraudulent intent. In re Mascolo, 505 F.2d 274, 276 (1st Cir. 1974). A reckless indifference to the truth is the equivalent of fraud. In re Montgomery, 86 B.R. at 957. It is critical that debtors provide accurate information in completing their statements of affairs and schedules so that bankruptcy estates can be properly administered. See LaVangie v. Mazzola (In re Mazzola), 4 B.R. 179, 181-182 (Bankr. D. Mass. 1980).

Joslin's initial statement of affairs and schedules were woefully inadequate. Many of the omissions dealt with household goods and furnishings and the value of these were inadequately shown at trial. If the issues facing the court involved only the transfers of household goods and horse tack and the failure to schedule the same types of items, it would be easier to excuse the omission as involving immaterial matters. The failure to show the transfers to Skidmore and Santi appear to gain Joslin nothing. This is true despite the fact that the furniture transferred to Santi was returned to Joslin post-petition. Moreover, Joslin's rummage sale, had it been disclosed, would not likely have provided the trustee or any interested creditor with information that would have led to actions benefiting the estate. Furthermore, the evidence regarding the custom longhorn cutter saddle, standing alone, is inconclusive as to fraudulent intent. The testimony as to the saddle's value was based on a hearsay declaration of an unidentified person with whom Joslin and Skidmore discussed the value of the saddle. There is little evidence as to the substance of the discussion, and this court would not be able to find a value based on such evidence. Furthermore, as to the saddle, there was no evidence that Barbara Skidmore saw the saddle at Joslin's home after, rather than before, Joslin's rummage sale. Joslin's explanation that he thought the saddle was sold at the rummage sale provides reasonable explanation for its omission as part of the personal property held at filing. It does not provide an explanation for why Joslin did not list it as an item sold prior to bankruptcy.

Joslin's omissions are symptomatic of a reckless attitude in completing the bankruptcy statement of affairs and schedules. His recklessness led to the omission of extremely important information with regard to the sale of quarter horses. Joslin was engaged for years in the purchase, breeding, and sale of horses, many of which included registered quarter horses. For him to file bankruptcy and omit from his schedules the sales of such horses during the year prior to filing is unacceptable. The court will not make a finding as to whether the values of the horses sold were in line with their sales prices. It is unnecessary to do that in this proceeding. Joslin sold nine registered quarter horses during June, 1988, less than two months prior to executing his statement of affairs, and less than three months prior to filing bankruptcy. These sales totaled approximately \$4,250.00. The disclosure of this information to the trustee and creditors by a man in Joslin's business position was essential to an accurate understanding of his pre-bankruptcy affairs.

Joslin's only justification for failing to list the transfer of these horses was not that he did not understand that he had to list the transfer of horses because such transfers were in the ordinary course of business, or in Joslin's words, "were transfers which were no different than what I had normally done."

There is some question as to whether these final transfers were in the ordinary course of business because it appears obvious that Joslin was liquidating his stable of horses and was not buying and selling as he had done in previous years. However, it is not necessary for the court to decide whether these sales were in the ordinary course of business or not. What is significant is that Joslin's sale of the horses, at a time very close to his filing, might have involved sales for inadequate consideration. It is critical that the statement of affairs advise the trustee of such sales. The omission of the transfers interferes with the proper administration of the bankruptcy estate. The information regarding these sales is not only material, it is probably the most material information that Joslin could have provided to the trustee. His failure to provide this information was reckless, and such recklessness in this case, is the equivalent of fraud. For this, the debtor should be denied his discharge.

CONCLUSIONS OF LAW

Joslin knowingly and fraudulently in this bankruptcy case has made a false oath warranting denial of discharge under 11 U.S.C. § 727(a)(4)(A).

ORDER

IT IS ORDERED that defendant Jerry A. Joslin be denied his discharge pursuant to 11 U.S.C. S 727(a)(4). Judgment shall enter accordingly.

SO ORDERED ON THIS 13th DAY OF APRIL, 1990.

William L. Edmonds
Chief Bankruptcy Judge