In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

MICHAEL R. VANDERMEULEN and JODI M. VANDERMEULEN	Bankruptcy No. 96-51361XS
Debtor(s).	Chapter 7
ALMA F. HOAG	Adversary No. 96-5155XS
Plaintiff(s)	
vs.	
MICHAEL VANDERMEULEN and JODI VANDERMEULEN	
Defendant(s)	

MEMORANDUM DECISION

The matter before the court is Alma F. Hoag's objections to the debtors' discharges. Trial was held August 21, 1997 in Sioux City. This is a core proceeding under 28 U.S.C. § 157(b)(2)(J).

Alma F. Hoag contends that the court should not grant discharges to the debtors because they swore false oaths in submitting their schedules and statement of affairs. She claims that the VanderMeulens' schedules and statements were materially false in seven matters:

1. debtors did not schedule tools--drills and saws--owned by Michael VanderMeulen;
2. debtors failed to schedule their interests in a freezer, dishwasher and VCR;
3. debtors failed to schedule their interests in certain antiques--an ottoman and chair, four dining room chairs, a rocking chair and a table;
4. in the statement of affairs, debtors failed to disclose the sale of a riding lawnmower to Jodi VanderMeulen's mother;
5. in the statement of affairs, debtors failed to disclose Jodi VanderMeulen's sale of a piece of furniture to her mother and her possession of the furniture at the time of filing;
6. debtors failed in their statement to disclose a $1,000 payment to Jodi VanderMeulen's mother made within one year prior to filing; and
7. debtors failed to disclose significant gambling losses.

Pretrial Statement (docket no. 7) pp. 1-2, 2a-2g. The debtors respond that the omissions were honest mistakes. Section 727 of the Bankruptcy Code (Title 11) states in relevant part that

> 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....

11 U.S.C. § 727(a)(4). Debtors declared that the information in their schedules and statement of financial affairs was true and correct. They did so in writing and under penalty of perjury. "These written declarations have the force and effect of oaths." Golden Star Tire, Inc. v. Smith (In re Smith), 161 B.R. 989, 992 (Bankr. E.D. Ark. 1993).

For a discharge to be denied under § 727(a)(4), plaintiff must prove by a preponderance of evidence that there has been an intentional untruth in a matter material to the bankruptcy estate. Federal Land Bank of Omaha v. Ellingson (In re Ellingson), 63 B.R. 271, 276 (Bankr. N.D. Iowa 1986); see also Aronofsky v. Bostian, 133 F.2d 290, 292 (8th Cir. 1943) (false oath to justify denial of discharge must involve "intentional untruth in a matter material to an issue which is itself material").

The Eighth Circuit Court of Appeals has concluded that

> [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.

Palatine National Bank of Palatine, Illinois v. Olson (In re Olson), 916 F.2d 481, 484 (8th Cir. 1990) (quoting Chalik v. Moorefield (In re Chalik), 748 F.2d 616, 618 (11th Cir. 1984)).

Where assets of substantial value are omitted from schedules, the court may infer they were omitted intentionally. Crews v. Topping (In re Topping), 84 B.R. 840, 842 (Bankr. M.D. Fla. 1988). In order for a discharge to be denied, the plaintiff need not show detriment to creditors or an intent to injure creditors. In re Chalik, 748 F.2d at 618. Moreover, "[i]t is not necessary that one who swears falsely in a matter material to an issue before a court shall understand and appreciate at the time all of the consequences, advantageous or detrimental, that may flow from the act of false swearing. It suffices that he knows what is true and so knowing wilfully and intentionally swears to what is false." Aronofsky v. Bostian, 133 F.2d 290, 292 (8th Cir. 1943).

A debtor has an obligation to tell the truth. "A discharge is a privilege and not a right and therefore the strict requirement of accuracy is a small *quid pro quo*. The successful functioning of the Bankruptcy Code hinges upon the bankrupt's veracity and his willingness to make a full disclosure." Hillis v. Martin (In re Martin), 124 B.R. 542, 547-48 (Bankr. N.D. Ind. 1991) (quoting Britton Motor Service, Inc. v. Krich (In re Krich), 97 B.R. 919, 924 (Bankr. N.D. Ill. 1988)). "Full disclosure is a prerequisite to obtaining a discharge." American State Bank v. Montgomery (In re Montgomery), 86 B.R. 948, 956 (Bankr. N.D. Ind. 1988) (citing Secretary of Labor v. Hargis (In re Hargis), 50 B.R. 698, 700 n. 7 (Bankr. W.D. Ky. 1985)).

Complaint Against Michael VanderMeulen

Alma F. Hoag objects to Mr. VanderMeulen's discharge. However, the evidence has shown that she is not one of his creditors. The debt to Ms. Hoag is owed only by Jodi VanderMeulen, Ms. Hoag's former daughter-in-law. Section 727(c)(1) of the Code provides that "[t]he trustee, a creditor, or the United States trustee may object to the granting of a discharge under [§ 727(a)]." 11 U.S.C. § 727(c)(1). Not being a creditor of Michael VanderMeulen, Ms. Hoag is not authorized under the statute to object to his discharge. She is not a real party-in-interest. In a sense, she has failed to prove she has a claim against him upon which the court can grant relief. This result was foreseeable by her. The

deadline has passed for the filing of objections to his discharge by appropriate parties. Fed.R.Bankr.P. 4004(a). No other creditor has filed objection. I conclude that the appropriate disposition of Ms. Hoag's complaint against Michael VanderMeulen is dismissal. As to him, the complaint will be dismissed.

Complaint Against Jodi VanderMeulen

Four of the seven matters are easily disposed of in favor of Jodi VanderMeulen. As to the tools, there is insufficient evidence to show that debtor intentionally failed to disclose tools owned by her husband.

Second, I find credible and accept the explanation as to why the freezer, dishwasher and VCR were omitted as assets. Mr. VanderMeulen testified that the debtors omitted these items from their assets because they were purchasing them from Sears and believed they did not yet own them. Although they believed incorrectly, I find their omission was not an intentional untruth because of other information given by debtors in their paperwork. Sears is scheduled as an unsecured creditor with the consideration of the claim being purchase of "misc. personal items." Monthly payments to Sears are shown in debtors' Schedule J; and debtors filed a Statement of Intention indicating they would reaffirm the debt with Sears which was a consumer debt secured by property of the estate. The trustee was alerted to the existence of the collateral. The debtor's schedules indicate in these other ways that the debtor did not intentionally lie as to the ownership of the consumer goods.

Third, I find that debtor's failure to list certain furniture as "antiques" was not an intentional untruth. Debtor failed to list an ottoman and chair, four dining room chairs, a rocking chair and a table under item 5 in the schedule of personal property. This item requires a listing of antiques. The word "antique" is not defined. Definitions vary and one's choice of definition might cause a debtor to list "antique" furniture as mere household goods. "Antique" as an adjective has been defined as "of or belonging to the past" or "dating from an early period" or "old." The Random House Dictionary of the English Language 67 (1983). On the other end of the spectrum, "antique" has been defined as "ancient." Id. As a noun, the definition is more precise: "any ... piece of furniture ... created or produced in a former period, usually over 100 years ago or, according to U.S. customs laws, before 1830." Id.

There is no evidence the furniture items in question are antiques within the latter meaning. The value of these items (Exhibit B) is $1,005.00, not significantly, if at all, greater than the purchase price of contemporary furniture of the same type. There is no evidence that the items were not included by debtor in household goods. The problem, of course, is that debtors did not itemize household goods in their schedules. No one forced them to amend to do so. Nonetheless, the evidence is insufficient to show that debtor intentionally misrepresented her ownership of these furniture items.

Fourth, as to the failure to list significant gambling losses, the only evidence at trial was that gambling losses occurred more than one year prior to filing. Therefore, the debtor's answer to question 8 in her Statement of Affairs was not false.

Three other allegations of Ms. Hoag are not so easy to dispense with in favor of debtor. All involve the failure of Jodi VanderMeulen to disclose information relating to transactions with her mother within one year before filing bankruptcy.

Question 10 in the Statement of Affairs asks the debtor to

> [l]ist all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately preceding the commencement of this case.

(Exhibit A). Debtor responded "none." However, within the year prior, she had sold a riding lawnmower to her mother for $500. This was false. If this were the only omitted family transaction, I would not infer from the evidence that the failure to disclose the lawnmower transaction was intentional or fraudulent. However, there were other transactions with her mother which were not disclosed.

In addition to responding "none" to question 10, debtor responded "none" to question 3(b) in the statement of affairs. It asked debtor to

> [l]ist all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders.

(Exhibit A). The debtor answered "none." She answered "none" also to question 14 which asked her to "[l]ist all property owned by another person that the debtor holds or controls."

Her answers to these three questions failed to disclose transactions with her mother involving a piece of furniture and loan repayment. Debtor testified that she had sold a secretary to her mother within a year prior to filing. She said the same at the meeting of creditors. At trial, debtor testified that she went to her mother and asked her if she wanted to buy the secretary. Her mother, Kenna Owens, purchased it for $500 or $600, but left it with debtor. Debtor testified that she knew her mother would "never take it from me; it's mine, but technically it's hers." If the sale took place, then debtor failed to disclose the transfer in response to question 10 or that she was still holding the furniture in response to question 14.

She gave another version of the transaction in her pretrial statement. There it was stated:

> Jodi needed some money, she borrowed some money from her mother with the understanding that the Secretary would be collateral. This was an oral agreement. The Secretary always remained in Jodi's house, it is still in her house. Part of the $1,000.00 that Jodi's mother had to pay back into the bankruptcy estate was money that was loaned on the Secretary. These were informal arrangements between family members. Jodi considered the Secretary as her mother's because her mother had loaned her money. An Amendment was filed stating that Jodi had property being held for another person.

Exhibit A, page 3, 4d. If this version by debtor is true, debtor failed to disclose transferring to her mother a security interest in the secretary.

Most importantly, she failed to disclose the $1,000.00 payment on a debt to an insider creditor within one year of filing. And as she may have owed her mother $500-$600 on the loan on the secretary, additional debt was paid back. The payment of the $1,000.00 was not disclosed in debtor's answer to question 3(b) which required debtor to list payments made within one year to insider creditors.

Debtor was certainly aware of the transactions with her mother--the sale of or loan on the secretary, the payment of $1,000.00 and the sale of the mower. Knowing that they had taken place, debtor failed to disclose them in her bankruptcy. There is no evidence she did not believe them to be significant transactions. I do not accept debtor's assertion that the omissions were mistakes. The amount of the

payment is too large to reasonably forget, considering debtor's means and financial situation. There is nothing in her schedules to alert the trustee or creditors to the transactions with her mother. Transactions with relatives prior to bankruptcy are often suspect, and to fulfill his responsibility to creditors and the estate, the trustee would investigate them to ensure they were not preferential or fraudulent. The omission of all transactions with the mother appears to the court to be more than accidental and coincidental. The nature of these transactions and the fact that all three were omitted more than suggests that the omissions were intentional. She has provided no adequate explanation for the misstatements.

It is true that debtors listed Kenna (and Wayne) Owens as unsecured creditors (Exhibit A, Schedule F) and showed monthly payments to family (Exhibit A, Schedule J), but I do not find this similar to the cure of the alleged omission of the Sears' collateral. Although Ms. Hoag complained of the failure to list the freezer, dishwasher and VCR, the omission was not necessarily an omission, but rather a failure to itemize any household goods. Personalty should be itemized in schedules, at least substantially so. Debtors did not itemize any household goods. The debtors essentially admitted they did not include the three items in their gross valuation of the household goods, but as previously stated, there was sufficient information in the schedules to alert the trustee and creditors to the existence of the items and that they were collateral for a loan. This is not so with the family transactions. Although debtor listed her mother as an unsecured creditor and showed $200 monthly payments to family members for personal loans (Exhibit A, Schedule J), such listings did not disclose transfers of property interests between mother and daughter, especially a lump sum payment of $1,000.00 within one year of filing.

It is essential to the proper functioning of the bankruptcy system that debtors be forthcoming with full and accurate information regarding their debts, property and financial affairs. The price for submitting intentionally false information under oath is the loss of discharge. It is a high price, but it is necessary to the proper and equitable functioning of the bankruptcy system.

Based on the evidence, I find and conclude that Jodi VanderMeulen made a false oath in the case by submitting false answers to her statement of affairs.

IT IS ORDERED that judgment shall enter that the discharge of Jodi VanderMeulen is denied.

IT IS FURTHER ORDERED that the complaint against Michael VanderMeulen is dismissed. Judgment shall enter accordingly.

SO ORDERED THIS 25th DAY OF SEPTEMBER 1997.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and a judgment by U.S. mail to U.S. Trustee, John Moeller, Martha McMinn, and Wil Forker.