In the United States Bankruptcy Court

for the Northern District of Iowa

KEVIN JOSEPH BOHNENKAMP LAURA L. BOHNENKAMP *Debtor(s).*	Bankruptcy No. 00-00101-C Chapter 7
BARBARA G. STUART *Plaintiff(s)* vs. KEVIN JOSEPH BOHNENKAMP LAURA L. BOHNENKAMP *Defendant(s)*	Adversary No. 00-9068-C

RULING

On August 29, 2000, the above-captioned matter came on for trial pursuant to assignment. Plaintiff U.S. Trustee appeared by Assistant U.S. Trustee John Schmillen. Debtor Kevin Bohnenkamp appeared in person with Attorney Michael Mollman. Evidence was presented after which the Court took the matter under advisement. No briefs were requested and this matter is ready for ruling. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(J).

STATEMENT OF THE CASE

Debtors Kevin and Laura Bohnenkamp filed a voluntary Chapter 7 petition on January 18, 2000. At the time of filing, Debtors filed all required schedules and statements. However, Debtors failed to list a substantial number of assets. Debtors filed an amended petition with amended schedules on February 18, 2000. However, the amended schedules also failed to disclose substantial estate property. The Chapter 7 Trustee held a meeting of creditors on February 22, 2000. Under questioning by the Trustee, Debtors admitted their failure to list substantial assets. The §341 Meeting was postponed. The original counsel for Debtors withdrew and substitute counsel has appeared.

On April 18, 2000, the U.S. Trustee filed the pending complaint in two counts. Count I alleges that Debtors must be denied a discharge pursuant to 11 U.S.C. §727(a)(2) because Debtors concealed valuable assets of the estate with the intent to hinder, delay, or defraud creditors. Count II asserts that Debtors must be denied a discharge pursuant to 11 U.S.C. §727(a)(4)(A) because Debtors knowingly and fraudulently, in connection with the case, made false oaths or accounts.

The case was set for trial on August 29, 2000. On August 25, 2000, Debtor Laura L. Bohnenkamp filed a consent for entry of judgment against her under 11 U.S.C. §727(a)(2) and §727(a)(4).

Therefore, trial on August 29, 2000 proceeded only against Co-Debtor and Defendant Kevin Joseph Bohnenkamp.

FINDINGS OF FACT

It is uncontested that Debtors did not list in their original schedules the following items of property:

A. John Deere skid loader
B. 16' trailer
C. Enclosed Pace trailer
D. 2000 Polaris trailblazer
E. 1999 Polaris trailblazer
F. Sears lawn tractor
G. Several bank accounts which had been closed within the previous year
H. Tax refunds for 1999

In addition, Debtors failed to list substantial debt owing on the John Deere construction equipment, a $3,100 debt to United Security, as well as additional debt claims.

Debtors filed amended schedules on February 18, 2000 prior to the §341 meeting. However, the amended schedules also failed to list the previously listed assets. It was not until questioning by the Trustee at the §341 meeting that ownership of these items was disclosed.

Mr. Bohnenkamp testified that during the time of the filing of the petition, he and his wife were separated. He testified that historically, she had handled all of the book work and he had handled the business portion of their enterprise. He testified that his wife also handled all of the paperwork for the bankruptcy petition and that he was not involved until the first meeting of creditors. He stated that he did sign the various documents but that he didn't really read them. He said that the first time he actually talked to his first bankruptcy counsel was about the time that he signed the bankruptcy petition. He said that his attorney seemed to be in a hurry and did not take the time to explain the schedules. Debtor acknowledged that he did not ask for any specific explanation. Mr. Bohnenkamp acknowledges that amendments were filed in February of 2000 but he testified that he was not sure what they contained. He stated that he saw the amendments but again did not take the time to read them.

In summary, Mr. Bohnenkamp testified that he had no part in putting together the petition or the schedules of assets or liabilities. He stated that he took for granted that his wife was providing a complete list of these various matters. He testified that the first time he took the time to examine the documents carefully was after the first meeting of creditors. Mr. Bohnenkamp takes the position that the schedules are not false as to him because he did not know that the material contained in the petition and schedules was inaccurate. He testified that since the first meeting of creditors, he has done everything possible to remedy the situation. He states that the first meeting of creditors has never been completed and creditors have not been harmed. He asks the Court to deny the complaint, grant discharge, and direct that a continued first meeting of creditors be held and the case proceed accordingly.

The Trustee read into the record a portion of a 2004 examination conducted on Mr. Bohnenkamp. In the deposition, Mr. Bohnenkamp acknowledged that he did review the schedules prior to executing them.

The only other witness to testify was Denise Blaisdall. Ms. Blaisdall is the legal assistant for Debtors' first attorney, Richard Raymon. She testified that contrary to the assertions of Mr. Bohnenkamp, she did go over the various schedules with both petitioners prior to the execution of the various documents.

CONCLUSIONS OF LAW

Under §727(a)(2)(A), Trustee must establish that Debtors (1) concealed property, (2) which was property of debtors, (3) during one year prior to filing of the bankruptcy petition, (4) with intent to defraud the Trustee or creditors. Under §727(a)(4)(A), Trustee must prove that:

1. Debtor made a statement under oath,
2. The statement was false,
3. Debtor knew the statement was false,
4. The statement was made with a fraudulent intent, and
5. The statement related materially to the bankruptcy case.

In re Chaplin, 179 B.R. 123, 127 (Bankr. E.D. Wis. 1995); In re Cook, 40 B.R. 903, 905-07 (Bankr. N.D. Iowa 1984); In re Tripp, 224 B.R. 95, 97-99 (Bankr. N.D. Iowa 1998).

Both §§727(a)(2)(A) and 727(a)(4)(A) require fraudulent intent to support denial of discharge. "Fraudulent intent" exists where one makes a representation knowing it to be false "either with a view of benefitting oneself or misleading another into a course of action." Black's Law Dictionary 662 (6th ed. 1990). An intent to deceive to gain personal benefit is sufficient to support a finding of fraudulent intent under §727(a), even in the absence of specific financial detriment to creditors.

> In return for the bankruptcy relief debtors receive through gaining a discharge, the Bankruptcy Code requires disclosure of all interests in property, the location of all assets, prior and ongoing business and personal transactions, and, foremost, honesty. The failure to comply with the requirements of disclosure and veracity necessarily affects the creditors, the application of the Bankruptcy Code, and the public's respect for the bankruptcy system as well as the judicial system as a whole.

In re Guajardo, 215 B.R. 739, 742 (Bankr. W.D. Ark. 1997). It is not for debtors to determine what assets or transactions should be disclosed; debtors must report all property interests, even if they are worthless or unavailable to creditors. Id.

The Code requires nothing less than a full and complete disclosure of any and all apparent interests of any kind. In re Craig, 195 B.R. 443, 451 (Bankr. D.N.D. 1996). A debtor has an uncompromising duty to disclose whatever ownership interests are held in property. Id. "It is not for the debtor to pick and choose or to obfuscate [the] answers." Id.

A reckless indifference to the truth is the equivalent of fraud for the purposes of deciding a case of false oath in bankruptcy. In re Tully, 818 F.2d 106, 112 (1st Cir. 1987); In re Wessels, 79 B.R. 826, 829 (N.D. Iowa 1987); In re Diodati, 9 B.R. 804, 808 (Bankr. D. Mass. 1981). An intent to deceive has been inferred from reckless disregard for the truth in cases involving false financial statements. In re Cohn, 54 F.3d 1108, 1118-19 (3rd Cir. 1995; In re Hanika, Adv. 99-9037S, slip op. at 8 (Bankr. N.D. Iowa, March 31, 2000).

CONCLUSIONS

Ultimately, the question for the Court to decide as to both Counts is the intent of Debtor. The question of a debtor's intent is one of fact. In re Sears, 246 B.R. 341, 346 (B.A.P. 8th Cir. 2000). Despite Debtor's protestations to the contrary, this Court cannot conclude that Debtor's involvement is as limited as he now asks the Court to accept. In his testimony, Debtor attempts to portray himself as being completely removed from the process until the first meeting of creditors. However, he did testify in his deposition that he read the schedules prior to their execution. This admission is much more consistent with the testimony of Ms. Blaisdall, the legal assistant for Debtor's attorney, than his trial testimony. She testified that both Debtors were present in the attorney's office and that she went over the schedules with them prior to execution. Debtor was provided adequate opportunity to ask questions or to seek clarification. This was not sought and Debtor executed the erroneous petition as it was prepared.

Based upon the record as a whole, even if the Court were to conclude that this Debtor's failure to list the assets in question was not intentional, it certainly was of a nature which constitutes reckless indifference to the truth. The bankruptcy petition and accompanying documents are sworn under oath and a debtor is bound under penalty of perjury to take these matters seriously. A debtor is not allowed to blindly close his eyes to what is or should be obvious prior to execution of a document under oath.

It is the conclusion of this Court that Mr. Bohnenkamp's involvement in the preparation of the schedules was much more substantial than he now attempts to portray. By his own admission, his deposition, and the testimony of Ms. Blaisdall, it is the conclusion of this Court that Debtor had ample opportunity to examine these documents. A cursory examination would have revealed the substantial deficiencies later uncovered by the Trustee. The Court finds as a fact that Debtor knew that the petition and schedules were inaccurate. The Court also concludes that the Trustee has established by a preponderance of evidence all of the elements necessary under both §727(a)(2) and §727(a)(4)(A) to deny a discharge in this case. For all of the reasons set forth herein, the Court concludes that Debtor, Laura L. Bohnenkamp, should be denied a discharge under 11 U.S.C. §727(a)(2) and §727(a)(4)(A) based upon her consent filed herein on August 25, 2000. The Court further finds that Debtor Kevin Joseph Bohnenkamp should be denied discharge herein under 11 U.S.C. §727(a)(2) and §727(a)(4)(A) based upon the conclusions of law and facts set forth herein.

WHEREFORE, Plaintiff's complaint objecting to discharge as to Debtor Laura L. Bohnenkamp is granted and she is denied a discharge pursuant to 11 U.S.C. §727(a)(2) and §727(a)(4)(A).

FURTHER, Plaintiff's complaint objecting to discharge as to Debtor Kevin Joseph Bohnenkamp is granted and he is denied a discharge pursuant to 11 U.S.C. §727(a)(2) and §727(a)(4)(A).

SO ORDERED this 13th day of September, 2000.

Paul J. Kilburg
Chief Bankruptcy Judge