

In the United States Bankruptcy Court

for the Northern District of Iowa

RANDALL J. BRUNKEN

Bankruptcy No. 00-00235-S

Debtor(s).

Chapter 7

DONALD H. MOLSTAD TRUSTEE

Adversary No.00-9077-S

Plaintiff(s)

vs.

RANDALL J. BRUNKEN

Defendant(s)

ORDER

On December 1, 2000, the above captioned matter came on for trial pursuant to assignment. Plaintiff/Trustee Donald H. Molstad appeared in person. Also, present was Defendant/Debtor Randall J. Brunken and his attorney, Alvin Ford. Evidence was presented after which the Court took the matter under advisement. No briefs were requested by the Court and each party was allowed to make a closing statement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(J).

STATEMENT OF THE CASE

Debtor filed his Chapter 7 petition on February 7, 2000. Debtor failed to disclose certain assets in his Statement of Affairs and Schedules. These assets consist of:

- a) cemetery plot;
- b) Budweiser mug collection;
- c) gun case;
- d) .44 caliber pistol;
- e) .22 caliber rifle; and
- f) 410 shotgun.

Debtor's failure to disclose these assets was discovered by the Trustee during and after the §341 meeting. On May 12, 2000, the Trustee filed the presently pending complaint in two counts asserting in Count I that Debtor knowingly and fraudulently made statements in connection with this case and that he should be denied a discharge pursuant to 11 U.S.C. §727(a)(4)(A). Count II alleges that after the §341 meeting, Debtor transferred the guns to his mother with the intent to hinder, delay or defraud creditors. The Trustee asks that Debtor's discharge be denied pursuant to 11 U.S.C. §727(a)(2)(B). On July 18, 2000, the Trustee filed a Motion to Compromise this settlement for the sum of \$1,000. It was noticed to all creditors and no objection was filed of record. However, in an order dated October 10,

2000, Judge William Edmonds denied the Motion to Compromise and the matter was thereafter set for trial with the undersigned.

FINDINGS OF FACT

Debtor Randall J. Brunken lives in Sioux City, Iowa and is 51 years of age. He has a high school education and has been employed by Interbake Foods in their warehouse department since 1989. Debtor acknowledged at trial that he understood that he was responsible for providing accurate information concerning his Chapter 7 petition to his attorney. He identified the Chapter 7 petition as his own and acknowledged that it was signed by him under oath. He acknowledged that the schedules did not disclose all of his assets. He acknowledged that he did not list a cemetery plot, a mug collection, a gun case, and several guns.

Debtor testified that he has had the cemetery plot since the 1970's and has not been to see it since that time. He testified that he failed to disclose this asset because he did not remember it at the time he filled out the schedules. He testified that he has owned a Budweiser mug collection for a long time. He testified that, though he owns them, he had no room to store them in his present living quarters. He testified that they had been located at his mother's home for 8 years and he forgot to list them when he filed his petition.

The gun case is, in fact, a metal gun safe. Debtor testified that he bought it four or five years ago for approximately \$1,500. It is located in a corner of the living room and contained the guns which are also in controversy here. When asked why he did not list this gun case, he stated that he never thought about it - "out of sight, out of mind".

Debtor also failed to disclose certain guns. He did list a shotgun which he purchased for himself. However, he failed to disclose a .44 caliber handgun, a .22 caliber handgun and a 410 shotgun. He did not list the .44 caliber handgun in his schedules but did disclose his ownership of this gun to the Trustee at the §341 meeting. He did not, however, disclose the .22 caliber handgun or the 410 shotgun. Debtor testified, at trial, that they are not really his and that they are family heirlooms. He testified that he has had them in his possession since 1992 when his brother died. He testified that the 410 shotgun had been passed down from his grandfather to his father. He testified that he got the 410 shotgun when he was about 20 years old and that he has had it for 30 years. He considers the guns as his property but also considers them family heirlooms with other family members having an equal interest in them.

After being questioned by Trustee at the §341 meeting of creditors, Debtor told Trustee Molstad that he had listed everything in his schedules. However, Debtor's ex-wife's attorney was also present at the §341 meeting and asked Debtor specific questions. It was at this time that Debtor began to disclose the unlisted items.

After the §341 meeting, Debtor gave possession of the guns to his mother. He testified, at trial, that he gave the guns back to her because he did not want to lose them.

By way of defense, Debtor testified that his present job is stressful. He testified that he was also under stress from various creditors at the time he filled out the petition. Finally, he testified that he had been under stress because of a dissolution. Because of these matters, he testified that he did not intentionally fail to disclose assets but did so through oversight. He testified that, when specific questions were asked of him, he did not try to hide these assets but admitted their ownership. Debtor

testified that he did not intend to defraud his creditors but failed to list these matters as a matter of oversight.

CONCLUSIONS OF LAW

The successful functioning of the Bankruptcy Code hinges upon the debtor's veracity and willingness to make full disclosure. Mertz v. Rott, 955 F.2d 596, 598 (8th Cir. 1992). Because of the necessity for complete disclosure, "[t]he bankruptcy laws impose a strict obligation on debtors to file complete and accurate schedules." In re Dubberke, 119 B.R. 677, 680 (Bankr. S.D. Iowa 1990). This strict obligation is reflected in § 727(a)(2) which denies discharge to debtors who have fraudulently failed to comply with the disclosure requirements. Congress intended for the Code to provide relief only to the "honest but unfortunate debtor." Grogan v. Garner, 498 U.S. 279, 287 (1991).

Section 727(a) enumerates the acts that preclude discharge. This Court listed the essential elements under § 727(a) to deny discharge in In re Tripp, 224 B.R. 95, 97-98 (Bankr. N.D. Iowa 1998).

Denial of discharge under § 727(a)(2)(B), requires the following:

1. Transfer or concealment of property,
2. Such property constituted property of the estate,
3. The transfer occurred after the filing of the bankruptcy petition, and
4. The transfer or concealment was made with the intent to defraud the bankruptcy trustee.

In re Chaplin, 179 B.R. 123, 127 (Bankr. E.D. Wis. 1995); see also Tripp, 224 B.R. at 97.

Trustee has shown that denial of Debtor's discharge is appropriate under § 727(a)(2)(B). Debtor transferred property after he filed his bankruptcy petition because he was afraid that he would lose it to creditors. The guns he transferred to his mother are property of the estate. Under § 541(a)(1), property of the estate is property in which the debtor has a legal interest in as of the commencement of the case. Debtor had a legal interest in the guns at the commencement of the case. Debtor's property interest was such that he could have sold the guns. The fact that he considered the guns heirlooms does not alter the fact that he has a property interest in them.

Trustee has also shown that denial of discharge is appropriate under § 727(a)(4)(a).

Denial of discharge under § 727(a)(4)(A), requires the following:

1. Debtor made a false 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 was materially related to the bankruptcy case.

In re Chaplin, 179 B.R. at 127; Tripp, 224 B.R. at 97-98. Debtor failed to disclose ownership of property on direct examination and in schedules, both of which are representations under oath. See Molstad v. Hanika, Adv. No. 99-9037 S, slip op. 5 (Bankr. N.D. Iowa March 31, 1999). Debtor knew that the statements at the meeting of creditors and on the schedules were false, because he had the undisclosed property in his possession. These representations are materially related to the bankruptcy, because they pertain to property of the estate.

"Both §§ 727(a)(2)[(B)] and 727(a)(4)(A) require fraudulent intent to support denial of discharge." Tripp, 224 B.R. at 98. Fraudulent intent exists when a debtor makes a representation, known to be false with the intent to mislead in order to realize some gain or benefit. Id. Debtor made oral statements under oath and written representations in his schedules that he knew to be false. Debtor intended to realize a gain by maintaining possession of property that he failed to list on his schedules. Debtor's intent to benefit can be ascertained from his stated reason for transferring the guns to his mother: he did not want to lose what he considered to be heirlooms. This constitutes fraudulent intent.

The Court will deny discharge when any of the enumerated bars to discharge have been met. In this case, Trustee has shown that denial of discharge is warranted under both §§ 727(a)(2)(B) and 727(a)(4)(A). Debtor sought to conceal assets from the trustee and creditors through transfers and inaccurate representations.

WHEREFORE, Trustee's complaint to deny discharge is GRANTED.

FURTHER, discharge is denied under both §§ 727(a)(2)(B) and 727 (a)(4)(A).

SO ORDERED this 5th day of December, 2000

Paul J. Kilburg
Chief Bankruptcy Judge