

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division

In the matter of:	)	
	)	Adversary Proceeding
RALPH MILES, JR. )	)	
(Chapter 7 Case <u>92-20115</u> )	)	Number <u>92-2074</u>
	)	
<i>Debtor</i>	)	
	)	
	)	
	)	
DONALD F. WALTON,	)	
Acting United States Trustee,	)	
Region 21	)	
	)	
<i>Plaintiff</i>	)	
	)	
	)	
v.	)	
	)	
RALPH MILES, JR. )	)	
	)	
<i>Defendant</i>	)	

**MEMORANDUM AND ORDER**

The United States Trustee filed a complaint to revoke Debtor's Chapter 7 discharge. A hearing on the complaint was held April 29, 1993. The evidence in this adversary proceeding and in the parallel proceeding against Debtor's companion, Patricia Crosby, was consolidated at the April hearing. *See* Adversary Proceeding Number 92-2073. Upon consideration of the evidence adduced at the April hearing, the briefs submitted by the

parties, and the applicable authorities, I make the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

Debtor filed his Chapter 7 bankruptcy petition on February 6, 1992. By order dated July 29, 1992, Debtor received a discharge in his Chapter 7 case. The United States Trustee moves to revoke the discharge based on Debtor's alleged fraud.

In his petition, Debtor listed two parcels of real estate, a house and lot valued at \$32,800.00, and a shop and lot valued at \$16,000.00. *See* Schedule "A" of Debtor's petition. Debtor testified that he was told the house would bring \$32,800.00 if sold at an auction sale and that he used that figure to value the property on his petition.

After the discharge, the Chapter 7 Trustee learned that Debtor owned other property not listed on the petition. The tax records of Appling County, Georgia, indicate that Debtor owns seven tracts of land instead of just the two lots listed in his petition. These seven lots are valued by the Tax Commissioner of Appling County at a figure in excess of \$140,000.00.

On November 7, 1991, prior to filing bankruptcy Debtor delivered a deed to secure debt to Montgomery County Bank ("Bank"), The deed recorded December 16, 1991, grants the Bank an interest in five lots with the following acreage: (1) 0.439 acres;

(2) 3.61 acres; (3) 0.544 acres; (4) 1.214 acres; and (5) 26.324 acres less (a) 1.214 acres; (b) 3.00 acres; (c) 3.732 acres; (d) 0.637 acres; and (e) 3.621 acres. The Bank has filed a claim in Debtor's case asserting its interest in the five lots. *See* Proof of Claim filed by Montgomery County Bank in Debtor's Chapter 7 case. *See also* Plaintiff's Exhibits 4, 5, 6, 7, 8, 9, and 11. The sixth and seventh lots were conveyed to Debtor by deed from Robert Thornton dated July 10, 1990. *See* Plaintiff's Exhibit 10. Terry Hansford, an appraiser, testified that he located the seven tracts of land and valued the land between \$99,270.00 and \$110,300.00. Debtor testified that he was unaware of the large tax value placed on his property and that he had not appealed or questioned the tax values. According to the Chapter 7 Trustee, Debtor testified at his 341 meeting that his schedules were accurate; however, the individual lots were omitted although the house and lot and shop and lot were listed in the petition. Debtor claimed that he considered the lots to be contiguous and part of the "house and lot" or "shop and lot" real property listed in his petition. However, the lots are separated from the house and lot by a pond and roads.

The Debtor testified that he did not know the value of any of his property. Debtor testified that he did not remember testifying at his deposition as to the purchase price of his house. Debtor did not remember when the house was purchased. Debtor previously listed the house for sale but did not know the asking price or value of the home. Debtor testified that he did not fill out the loan application for the Montgomery County Bank loan, but that he signed the document after it was presented to him. The loan application lists as assets the residence valued at \$65,000.00 and the shop and four acres of land valued at \$75,000.00. *See* Plaintiff's Exhibit 12. Patricia Crosby, Debtor's live-in companion, testified

that the house was insured for \$50,000.00.

Crosby has also filed a Chapter 7 petition and received a discharge. Several tracts of the real property omitted by Debtor were conveyed by Crosby to Debtor. Crosby failed to list on her petition a November 5, 1991, transfer to the Debtor. The November 5, 1991, deed in favor of Debtor was recorded after Crosby filed bankruptcy and includes a reference to several tracts omitted by Debtor. *See* Plaintiff's Exhibit 9. The United States Trustee has moved to revoke Crosby's discharge arguing that Crosby's inaccuracy on her petition prevented the Trustee from discovering Debtor's omitted assets.

Crosby testified that she made the transfer to Debtor and failed to reveal it; however, she stated that she gave a note to George Argo, Debtor's and her own former bankruptcy attorney, to correct the mistake. *See* Debtor's Exhibit 1, Adversary Number 92-2073. The evidence showed that the note was written after the adversary proceeding was filed against her. Neither Crosby nor Debtor have amended their petitions. Mr. Argo withdrew as Debtor's counsel and was relieved as attorney for Debtor by order of this court filed December 16, 1992, in Debtor's bankruptcy case.

The United States Trustee argues that Debtor failed to reveal the true value of his assets and failed to accurately and completely list on his petition the property he owned. According to the United States Trustee the inaccurate information relied upon by the Chapter 7 Trustee induced the Trustee to abandon property which could have benefitted the estate. The United States Trustee claims Debtor's low value and high debt figure placed

on the property lead the Chapter 7 Trustee to conclude that the property should have been abandoned. The United States Trustee argues that if accurate information had been supplied, Debtor would not have been granted a discharge. The Chapter 7 Trustee and the United States Trustee learned of Debtor's alleged fraud after the discharge was granted. The United States Trustee asks the court to revoke Debtor's discharge under 11 U.S.C. Section 727(d) for fraud. The court will enter a separate order in Adversary Number 92-2073 on the Trustee's Motion to Revoke Patricia Crosby's discharge.

#### CONCLUSIONS OF LAW

Under 11 U.S.C. Section 727(d)(1), the court may revoke a debtor's discharge:

On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing . . . if--

- (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge.

11 U.S.C. §727(d). The trustee, a creditor, or the United States Trustee may request a revocation of a discharge under subsection (d)(1) of this section within one year after such discharge is granted. 11 U.S.C. §727(e)(1).

The current Section 727(d)(1) is derived from Section 15 of the Bankruptcy

Act, which required fraud in fact, such as the intentional omission of assets from the debtor's schedules. 4 Collier on Bankruptcy, ¶727.15[2] at p. 727-109. (15th Ed. 1993).

A false statement in a debtor's schedules is sufficient ground for denial of discharge under Section 727 if the statement was material and knowingly made with fraudulent intent. 11 U.S.C. §727(a)(4). In re Chalik, 748 F.2d 616, 618 (11th Cir. 1984). A statement on the debtor's petition is material if it concerns the existence and disposition of property. Id. at 618. *See also* In re Magnuson, 113 B.R. 555, 558 (Bankr. D.N.D. 1989).

Debtors are under an affirmative duty to read their bankruptcy schedules and to satisfy themselves that they are true and correct to the best of their knowledge, information and belief. Id. at 559. *See also* Matter of Lila Young, Chapter 13 Case No. 92-41728 (Bankr. S.D.Ga. April 19, 1993) (Debtor's Chapter 13 petition filed in bad faith converted to a Chapter 7 proceeding where debtor failed to list over \$60,000.00 in assets). Failure on the part of debtor to promptly amend incorrect schedules is equivalent of fraud which would warrant revocation of discharge under Section 727(d)(1). Magnuson, 113 B.R. at 539. A debtor's intent to defraud may be established by circumstantial evidence. In re Sims, 148 B.R. 553, 557 (Bankr. E.D.Ark. 1992).

In Chalik, supra, the debtor omitted from his schedules twelve corporations in which he held a substantial interest. The debtor subsequently revealed the interest at a Rule 2004 examination, but maintained that the omission was immaterial because the corporations were worthless. The Eleventh Circuit affirmed denial of discharge, finding that

the omission interfered with the investigation of the debtor's financial condition, prior dealings, and the disposition of his property. Id. The property should have been listed even if worthless. *See also In re Raiford*, 695 F.2d 521, 522 (11th Cir. 1983).

In In re James, 77 B.R. 174 (Bankr. S.D. Ohio 1987), debtor concealed assets and failed to cooperate with the trustee in furnishing accurate information about assets. The debtor in James also delayed the trustee from learning about the concealed assets until after discharge was granted. The court revoked debtor's discharge. *See also In re Bennett*, 126 B.R. 869 (Bankr. N.D.Tex. 1991).

In this case, Debtor's omission from his schedules of the various tracts of land constitute a false oath and fraud which warrant revocation of discharge under 11 U.S.C. Section 727(d)(1). The requirement that the false oath be material under Section 727 is satisfied as the false oath bears a relationship to the Debtor's business transactions and estate, concerns the discovery of assets, business dealings, and the existence and disposition of the Debtor's property. *See Chalik, supra; In re Mukerjee*, 98 B.R. 627 (Bankr. D.N.H. 1989). Debtor's omission was certainly material as it inhibited the Chapter 7 Trustee in his duty to locate assets for the benefit of the estate and induced the Trustee to abandon property which should have been retained for the benefit of Debtor's creditors. In light of the foregoing I conclude that Debtor's Chapter 7 discharge is hereby revoked pursuant to 11 U.S.C. Section 727(d)(1). Revocation of a Chapter 7 discharge has the effect of denying Debtor all benefits of the discharge previously entered. Bennett, 126 B.R. at 876.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Debtor's discharge is revoked pursuant to 11 U.S.C. Section 727(d)(1).

---

Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_ day of June, 1993.