

\$129,305.37 and a first lien on Debtor's car wash business. Plaintiff is also listed as secured on a separate claim of \$6,000.00 based on a note with the security listed as a second lien on the car wash. Plaintiff has foreclosed on its security and asks the court to declare its \$61,248.83 deficiency balance to be non-dischargeable. Plaintiff also argues that Debtor should be denied a discharge under Section 727.

On February 1, 1990, approximately two years before Debtor filed bankruptcy, Debtor submitted a financial statement to Plaintiff Bank showing a net worth of \$174,900.00. Debtor listed the following assets on this financial statement.

<u>Assets</u>	<u>Values</u>
Cash on hand and in banks	\$24,700.00
Cash value of life insurance	\$6,600.00
1989 Mustang	\$11,000.00
1987 Volvo	\$15,000.00
1986 Chevrolet S-10 pickup truck	\$7,000.00
Real estate owned	\$78,000.00
Personal property	\$25,000.00
Other assets - car wash	\$100,000.00
Other assets - 3 acres of land (peaches)	\$3,000.00
Other assets - car wash equipment	\$20,000.00
TOTAL ASSETS	\$290,300.00

See Personal Financial Statement, Plaintiff's Exhibit "2". Of the assets listed above, only the Debtor's truck, real estate, land, car wash, and car wash equipment, were originally listed on the Debtor's petition. Debtor's truck was listed on the bankruptcy petition, but was valued at \$1,500.00 instead of \$7,000.00. Debtor amended his petition to add the Mustang, an automobile titled in Debtor's name, but paid for and used by his daughter. The debt on the Mustang has been reaffirmed.

Debtor listed \$24,700.00 cash in his financial statement in 1990, but listed zero cash in his

petition in 1992. Debtor testified that he had approximately \$600.00 in his First National Bank account at the time of filing bankruptcy and that he forgot to list the money and the account on his petition. Debtor listed the Alma Exchange Bank account balance as zero, but failed to list the First National account, a joint account with his wife, which had a balance of approximately \$649.58.

On the financial statement, Debtor listed \$6,600.00 as the cash value of life insurance. According to Plaintiff, Debtor testified at his 2004 Examination that the insurance had been cashed in at some time and that he did not remember what happened to the funds. Debtor did not testify at the September hearing as to what happened to the \$6,600.00.

Debtor testified that he traded the 1987 Volvo and purchased another automobile for his wife in June of 1991. Although the title to the Volvo was in the Debtor's name, the new automobile was titled in Debtor's wife's name only. In February 1990, Debtor owed Alma Exchange Bank approximately \$7,800.00 on the Volvo as indicated on the financial statement. When Debtor traded the Volvo he paid \$4,833.04 to satisfy the note on the car and gave an additional \$3,500.00 to purchase the new automobile for his wife. *See* Plaintiff's Exhibit "1", p. 22 and 30. Plaintiff alleges that the transfers and purchase of the new car titled in Debtor's wife's name is a transfer of assets with intent to defraud a creditor under Section 727(a)(2).

Debtor listed the value of his car wash at \$100,000.00 and the value of his equipment at \$20,000.00 on the financial statement. Plaintiff argues that this \$120,000.00 total figure was overestimated. Although it is not clear whether the \$100,000.00 figure is the value of the car wash as a going concern or just the value of the real estate, the property was sold for \$85,000.00 in a non-judicial foreclosure sale instituted by Plaintiff. According to the Superior Court Order Confirming the Sale, the \$85,000.00 was the true market value of the property. *See* Order Confirming Sale dated May 26, 1992, Plaintiff's Exhibit "6".

Debtor's annual income is listed on the financial statement as \$73,700.00. This annual income figure is comprised of salary of \$44,200.00, dividend and interest of \$1,500.00 and rental income (gross) of \$28,000.00, which represents gross receipts from the car wash. Although it is not clear from the

statement, the salary figure includes Debtor's annual salary of approximately \$24,200.00 and his wife's annual salary of approximately \$16,900.00. *See* Debtor's and his wife's 1991 tax return, Plaintiff's Exhibit "5". Debtor is employed as a police officer with the City of Alma, and Debtor's wife is a sales clerk.

In addition to the liabilities for the three automobiles, Debtor listed on the financial statement a \$3,000.00 debt to First National Bank, a real estate mortgage of \$39,000.00 on his home, and a mortgage on his car wash business of \$56,477.08. Total liabilities were listed as \$115,377.08, compared to the total assets of \$290,300.00.

At the September hearing Debtor admitted that he made a mistake on the statement by omitting the second mortgage on his home. The total amount of debt on his home should have been approximately \$70,000.00. Also, Debtor failed to indicate his wife's half interest in the home.

In reliance on this financial statement, Plaintiff Bank made a loan to Debtor on March 22, 1990, in the amount of \$116,000.00 and took a mortgage on the car wash business. The president of the Plaintiff Bank testified that the bank paid the prior mortgage on the property and acquired a first lien. The Bank president also testified that he had known Debtor for approximately 20 years and that he was the bank official who made the loan to Debtor. The Bank president admitted that the car wash was a speculative business but decided to allow Debtor to borrow money anyway based on Debtor's reputation and the personal financial statement.

Plaintiff asserts that Debtor was not honest with the Bank and that Debtor's financial statement was materially false under Section 523(a)(2)(A). Plaintiff argues that Debtor failed to show his wife's interest in any of the property and that assets and liabilities were not correctly stated, particularly the omission of the \$31,000.00 second mortgage on his home.

Plaintiff made a second loan to Debtor on November 21, 1990, taking a security interest in a lift. The Bank also filed a financing statement on the lift. *See* Plaintiff's Exhibit "3". Debtor purchased

the lift in order to do repair work and oil changes in addition to just washing cars at his business. Plaintiff claimed at the September hearing that it believed that Debtor had purchased the lift and owned it. However, the lift was actually subject to a lease-purchase agreement and was later repossessed by the lessor/seller, leaving Plaintiff unsecured on the \$6,000.00 note.

Debtor testified that the Bank officials knew of the lease-purchase agreement and made the loan anyway. The president of Plaintiff Bank testified that Bank officials did not know of the lease-purchase and relied on Debtor's assertions of ownership in making the loan.

On approximately July 29, 1990, Debtor's and his wife's home was completely destroyed by fire. On February 20, 1991, Debtor and his wife received an insurance check in the amount of \$162,191.20 for the fire loss. After paying the mortgages on the property, Debtor and his wife were left with the sum of \$90,640.24. Debtor's wife owned a half interest in the house and was entitled to a half interest in the insurance check. These funds were deposited into two separate bank accounts in Alma, one at First Georgia Savings Bank and one at Alma Exchange Bank & Trust. With the exception of a business account with First National Bank, Debtor's bank accounts were all joint accounts with his wife who is employed and earns regular income. In addition to the large insurance check in 1991, Debtor and his wife earned \$42,499.00 from wages, salaries, and interest income. Also, Debtor earned \$15,311.00 in gross receipts from the car wash. The parties stipulated to these amounts. Plaintiff also introduced into evidence Debtor's joint income tax return for 1991. *See* Plaintiff's Exhibit "5".

Considering the insurance check and salaries and not considering gross receipts from the car wash, Debtor and his wife received approximately \$133,000.00 in 1991. The apparent consumption of this \$133,000.00, Debtor's failure to list all assets on his bankruptcy petition, and Debtor's significant drop in net worth over the two year period between submitting the 1990 financing statement and Debtor's filing bankruptcy form the basis for Plaintiff's request that Debtor be denied a discharge.

Despite Debtor's and his wife's increased spending, it appears that Debtor's and his wife's

income was substantially the same for the three year period preceding Debtor's filing bankruptcy. The parties stipulated that Debtor and his wife earned approximately \$43,700.00 from wages, salaries, and interest income in the calendar year 1989. Additionally, Debtor's gross receipts from his car wash totaled \$28,717.00. In 1990, Debtor and his wife earned \$44,300.00 and an additional \$10,855.00 in gross receipts from the car wash business.

Debtor testified that the car wash had actually operated at a loss despite the amount of gross receipts. Debtor's income tax return for 1991 shows that the car wash operated at a \$6,000.00 cash loss. Debtor testified that he lost business when a new car wash opened down the street and substantially undercut his prices. Debtor testified that the downturn of the car wash business made it difficult for him to make the \$1,550.00 per month payment to Plaintiff Bank and that he frequently took sums from the joint account with his wife to put in the business account to cover expenses. Debtor testified that he did not want his wife to know about these transfers and that he was afraid she would be upset when she learned about his problems with the car wash.

Plaintiff argues that Debtor should be denied a discharge under Section 727(a)(5) for unexplained loss of assets. Of the approximately \$133,000.00 Debtor acquired in 1991, Plaintiff, its accountants, and Bank officials could trace all but approximately \$13,000.00. Many of the checks were made out to cash and difficult to trace. *See* Plaintiff's Exhibit "1", p. 1, 4, 5, 7, 12, 16, 17, 22, 23, and 33. Plaintiff's Exhibit "1", p. 1, is a worksheet prepared by Mr. John Lott, the vice-president of Plaintiff Bank. This worksheet shows amounts of checks for cash, debt payment, and purchases, which Mr. Lott could trace from the two bank accounts. Mr. Lott's worksheet shows that Debtor wrote a total of \$13,300.00 in checks made out to cash on the First Georgia account. Also, checks for cash totalling \$5,500.00 were written on the Alma Exchange Bank account. The worksheet reflects that Debtor made payments of \$29,342.50 on various debts and spent \$15,245.81 on various purchases which included furniture, a television and a VCR, and the \$3,500.00 payment to buy the new automobile. Lott testified that he could not account for approximately \$13,000.00.

Debtor testified that most of the \$133,000.00 obtained in 1991 was spent on various expenses. Debtor and his accountant testified that all of the funds Debtor received in 1991 and spent could be

accounted for except for approximately \$4,100.00.

Debtor admitted that he failed to list a tax refund totalling \$4,857.00 in his petition. However, Debtor asserted that he did not know the exact amount of the refund in February when he filed bankruptcy.

Plaintiff showed that Debtor failed to list other items on his petition including a watch, wedding ring, and golf clubs. Debtor testified that he had an old watch, which he purchased for \$29.00. Debtor testified that he also had a cheap second-hand wedding band which could have been purchased at a pawn shop for \$15.00. Also, Debtor testified that he had a set of old used golf clubs, which would be difficult to sell at a yard sale. Debtor testified that he did not think these items should be listed as they were old and not worth very much.

In summary, Plaintiff alleges that Debtor should be denied a discharge under Section 727(a)(2) for transferring property with intent to hinder a creditor. Plaintiff cites Debtor's trade of the Volvo followed by the purchase of a vehicle titled only in Debtor's wife's name as an example of such a transfer. Plaintiff also claims that Debtor's failure to properly list and value his assets on his bankruptcy petition is sufficient to deny Debtor a discharge under Section 727(a)(4) for knowingly and fraudulently making a false oath. Plaintiff contends that Debtor's consumption of approximately \$133,000.00 without proper explanation should be the basis for denying Debtor's discharge under Section 727(a)(5), which prohibits discharge based on an unexplained loss of assets. In addition to denial of discharge, Plaintiff argues that the debt owed to Plaintiff should be declared non-dischargeable under Section 523(a)(2)(A) based on Debtor's use of a materially false financial statement.

After foreclosing on the car wash and applying payments made by Debtor to the debt owed to Plaintiff, Debtor owes \$54,534.49 to payoff the car wash note. Additionally, Debtor owes \$6,714.34 to payoff the \$6,000.00 loan made to Debtor. Plaintiff argues that the entire debt of \$61,248.83 and reasonable attorney's fees should be deemed non-dischargeable.

CONCLUSIONS OF LAW

I. Discharge Under Section 727.

Under Section 727, a debtor may be denied a discharge under certain limited circumstances. The burden of proof is upon the creditor objecting to discharge to show that a discharge should be denied. Bankruptcy Rule 4005. *See generally* Chalik v. Moorefield, 748 F.2d 616 (11th Cir. 1984).

A. Transfer of Property Under Section 727(a)(2).

Section 727(a)(2) of the Bankruptcy Code provides that a discharge should be denied where:

[T]he debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated or concealed--

- (A) property of the debtor, within one year before the date of the filing of the petition . . .

11 U.S.C. §727(a)(2)(A). The intent to hinder under Section 727(a)(2)(A) must be an actual intent, which may be proved by circumstantial evidence. Future Time, Inc. v. Yates, 26 B.R. 1006 (M.D.Ga. 1983), *aff'd*, 712 F.2d 1417 (11th Cir. 1983) (Table).

The specific transfers at issue include Debtor's September 19, 1991, payment of \$4,833.04 to Alma Exchange Bank to payoff the note on the Volvo and Debtor's payment of \$3,500.00 to Durden on June 18, 1991, for partial payment of a new car titled only in Debtor's wife's name. Both checks are dated and were paid within one year of Debtor's filing bankruptcy. Although Debtor used his assets to purchase the new car, I cannot conclude that Debtor intended to defraud his creditors. Debtor's testimony revealed that the Volvo, titled in his name, belonged to his wife and that she primarily used it. This new automobile was purchased for Debtor's wife to replace the Volvo. I cannot conclude that placing title of the automobile in the wife's name, when she was primarily the person using the automobile, shows an intent to delay or defraud creditors

particularly in view of the fact that Debtor's wife is also employed and in light of the lapse of time between the transfer and Debtor's filing.

Plaintiff also alleges that the payments to Singleton's for furniture are transfers of property under Section 727(a)(2)(A). Debtor's wife wrote two checks to Singleton's totalling \$4,944.37. *See* Plaintiff's Exhibit "1", p.7 and 24. Debtor testified that his wife bought the furniture to replace what they lost in the fire. Given Debtor's explanation, I cannot conclude that Debtor intended to deceive his creditors by failing to list the items his wife purchased for their home, especially when the purchases were made to replace items lost in the house fire.

Plaintiff also argues that Debtor's purchase of a television and VCR for his children is a transfer under Section 727(a)(2)(A). Debtor wrote a check on July 21, 1991, within one year of Debtor's filing bankruptcy to Circuit City for the purchase.¹ Although the purchase appears extravagant, \$3,045.84 for a television and VCR, I cannot conclude that this gift to his children is sufficient to deny Debtor's discharge. Debtors spending habits were irresponsible but not fraudulent.

B. Unexplained Loss of Assets Under Section 727(a)(5).

Under Section 727(a)(5) a Debtor may be denied a discharge where:

The debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities . . .

11 U.S.C. §727(a)(5).

The Second Circuit has held that a creditor that shows that a debtor has made a "sudden

¹ Although Plaintiff specifically alleged that the purchase of the furniture by Debtor's wife and the television and VCR by the Debtor should be the basis for discharge under Section 727(a)(4)(A) and (a)(5), the transfer is so similar to the purchase of the Volvo that the Court construes Plaintiff's allegations to include reference to Section 727(a)(2)(A) and finds the discussion of the purchases relevant to discharge under Section 727(a)(2)(A).

and unexplained riches to rags descent from its position as one of the financially strongest concerns in the central New York area to that of a bankrupt company" in a period of eighteen months has made a *prima facie* case under Section 727(a)(5). Bartle v. Markson Bros., Inc., 314 F.2d 303, 306 (2nd Cir. 1963) (decided under identical provisions of the Bankruptcy Act). Thus, according to the Second Circuit, the burden shifts to the Debtor to explain the loss. Id. at 306. *See also* In re Tabibian, 289 F.2d 793, 795 (2nd Cir. 1961).

Plaintiff here showed that Debtor's net worth dropped to zero less than two years after submitting the financial statement showing net worth of \$174,900.00. Debtor's net worth dropped despite maintaining the same salaries and receiving the "windfall" of \$90,000.00 in insurance proceeds. Plaintiff has made a *prima facie* case of loss of assets; therefore, Debtor must produce evidence to explain his decline in financial position.

According to the Bankruptcy Court in In re Ridley, 115 B.R. 731 (Bankr. D.Mass. 1990):

A satisfactory explanation of diminution of available assets must consist of more than vague or indefinite references, evidence or explanations, or an uncorroborated hodgepodge of financial transactions. Baum v. Earl Millikin, Inc., 359 F.2d 811 (7th Cir. 1966). The debtor will be required to produce some kind of direct, specific evidence in order to defeat an objection based upon failure to explain a loss of assets. McBee v. Sliman, 512 F.2d 504 (5th Cir. 1975); *see also* In re Hirsch, 36 B.R. 643 (Bankr. S.D.Fla. 1984); Baum v. Earl Millikin, Inc., 359 F.2d 811 (7th Cir. 1966). Therefore, discharge will be denied where the debtor makes only a vague evidentiary showing that the missing assets involved have been used to pay unspecified creditors, or where the debtor fails to provide corroborative documentary evidence to confirm his explanation. *See* In re McNay, 58 F.Supp. 960 (D.C. Cal. 1945); *See also* Minella v. Phillips, 245 F.2d 687 (5th Cir. 1957).

Ridley, 115 B.R. at 737-38. Debtor explained each of the large payments made to specific creditors on outstanding debts. Debtor also explained his other expenditures represented by the checks. Debtor explained the purpose of most of the checks which were made out to cash. As noted above in the discussion of Section 727(a)(2)(A), payments made for the purchase of furniture by Debtor's wife and for the television and VCR for Debtor's children were documented and explained and did not constitute a transfer of assets under Section

727(a)(2)(A). Likewise, such transfers do not constitute an unexplained loss of assets under Section 727(a)(5). Although Debtor and his wife made several extravagant expenditures, I find that Debtor has provided a sufficient explanation of his expenditures.

Nevertheless, Debtor has failed to account for approximately \$4,100.00. Considering Debtor's numerous expenditures before filing bankruptcy, I cannot conclude that Debtor's failure to account for this relatively small sum should be the basis for denying Debtor's discharge. Debtor was cooperative with Plaintiff in producing financial records and does not appear to be dishonest, at least in connection with filing his petition. *See In re Hirsch*, 36 B.R. 643 (Bankr. S.D.Fla. 1984).

Credibility of the debtor is a very important factor in determining if debtor should be denied a discharge. *In re Tabibian*, 289 F.2d 793, 795 (2nd Cir. 1961). Debtor's demeanor during his testimony and assertions of honest intent weigh heavily in favor of granting Debtor's discharge.

C. False Oath Under Section 727(a)(4)(A).

Under 11 U.S.C. Section 727(a)(4)(A), a discharge may be denied where:

[T]he debtor knowingly and fraudulently, in or in connection with the case--

(A) made a false oath or account . . .

11 U.S.C. §727(a)(4)(A). A creditor objecting to discharge under Section 727(a)(4)(A) must prove that the false oath was made knowingly and fraudulently about a material matter. *Swicegood v. Ginn*, 924 F.2d 230 (11th Cir. 1991). *In re Raiford*, 695 F.2d 521, 522 (11th Cir. 1983). *See also Chalik v. Moorefield*, 748 F.2d 616 (11th Cir. 1984). According to the Eleventh Circuit in *Chalik*, the subject matter of a false oath is "material" and 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." *Chalik*, 748 F.2d at 618.

A discharge should not be denied where only a simple mistake or inadvertence created the false statements. In re Gondag, 27 B.R. 428, 433 (M.D.La. 1983). 4 Collier on Bankruptcy, §727.04 at 727-61 (15th Ed. 1992). However, fraudulent intent may be inferred from all the facts and circumstances of a case. In re Nazarian, 18 B.R. 143, 146 (Bankr. D.Md. 1982). *See also* Future Time, Inc. v. Yates, 26 B.R. at 1007. Under Section 727(a)(4)(A), a creditor may prove actual fraudulent intent or reckless disregard for the truth that is the equivalent of fraud. Gondag, 27 B.R. at 433.

Plaintiff alleged that several assets were omitted from Debtor's petition. First, Plaintiff argues that the furniture Debtor's wife purchased should have been listed. Debtor testified that his wife purchased the furniture and he considered the items to belong to her and not him. As Debtor's wife was entitled to half of the insurance proceeds it is not clear that Debtor's funds instead of his wife's funds were used to purchase the furniture. Although the furniture was expensive, and would have been a material omission from Debtor's petition, I cannot conclude that Debtor knowingly and fraudulently omitted the furniture from his schedules.

The same cannot be said of Debtor's purchase of the television and VCR. These purchases were for the benefit of Debtor's children. Debtor's testimony that he did not think of the television and VCR as his and therefore did not list the items is highly questionable.

The two most serious omissions on Debtor's petition involved Debtor's bank accounts and his tax refund. On his petition, Debtor listed his Alma Exchange bank account balance as zero and failed to list his First National with a account balance of \$649.50. Debtor testified that he made a mistake leaving off the bank account and the \$649.50. Despite the fact that the funds were in a joint account with his wife, the asset clearly should have been listed.

Debtor failed to list his tax refund of \$4,857.00 on his petition. Debtor testified that he was not aware of the amount of the refund in February when he filed bankruptcy and that he did not receive the tax refund until after he filed bankruptcy. However, Debtor should have revealed that the refund, in an approximate

amount, was anticipated.

Plaintiff also alleged that Debtor should be denied a discharge for failing to list his watch, wedding ring, and golf clubs. Debtor testified that the items were used and were inexpensive when originally purchased. While the assets may be of trivial value and of no benefit to the estate, that decision is for the Trustee and not the Debtor. These assets should have been revealed.

While none of the omissions, standing alone, may be sufficient to support denial of discharge, given the totality of Debtor's conduct, a very troubling pattern of activity by Debtor emerges.

II. False Financial Statement Under Section 523(a)(2)(B).

Debts incurred with intent to defraud are non-dischargeable in a bankruptcy proceeding.

Section 523(a)(2)(B) of the Bankruptcy Code provides as follows:

- (a) A discharge . . . does not discharge an individual debtor from any debt--
 - (2) for money, property, service, or an extension, renewal, or refinancing of credit, to the extent obtained by--
 - (B) use of a statement in writing--
 - (i) that is materially false;
 - (ii) respecting a debtor's or an insider's financial condition;
 - (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
 - (iv) that the debtor caused to be made or published with intent to deceive . . .

11 U.S.C. §523(a)(2)(B). The burden of proof is upon the plaintiff excepting to discharge to show by a preponderance of the evidence that a discharge is not warranted. Grogan v. Garner, __ U.S. __, 111 S.Ct. 654,

112 L.Ed. 2d 755 (1991). A material falsity is one which would naturally have an impact on the decision to extend credit. In re Bogstad, 779 F.2d 370 (7th Cir. 1985). "False" within the context of the "materially false" element of Section 523(a)(2)(B) "means more than erroneous or untrue and imparts an intention to deceive." Collier §523.09[2] at 523-64. The proper test in the Eleventh Circuit for determining whether a financial statement is "false" is whether it "was known to be false by the bankrupt or made by him with such recklessness or abandon as to impute knowledge to him." Fidelity & Deposit Co. of Maryland v. Browder, 291 F.2d 34, 35 (5th Cir. 1961).

This court has held that a "classic example of material falsity" includes the concealment of substantial debt and the exaggeration of income earned. Matter of Palmer, Chapter 7 Case No. 487-00120, Adversary No. 487-0039, slip op. at 13 (Bankr. S.D.Ga. August 30, 1988). *See also* In re Howard, 73 B.R. 694 (Bankr. N.D.Ind. 1987); In re Lambert, 64 B.R. 170, 176 (Bankr. E.D.Tenn. 1986).

Whether the second lien on the Debtor's residence was knowingly or recklessly omitted may logically be inferred if the Debtor knew or should have known that the omission would have induced the creditor to make the loan. Matter of Funderburke, Chapter 7 Case No. 687-00082, Adversary No. 687-0026, slip. op. at 9 (Bankr. S.D.Ga. January 18, 1988). *See also* Matter of Garman, 625 F.2d 755, 764 (7th Cir. 1980), cert. denied, 450 U.S. 910 (1980).² Although a debtor's allegations of honest mistake may negate the intent requirement, intent may nevertheless be inferred taking into consideration all alleged mistakes as well as the facts and circumstances of the case. This is particularly appropriate in a case such as this where a pattern of repeated conduct by Debtor in concealing or failing to reveal assets has emerged, where Debtor has not fully explained loss of assets and where Debtor has manifested an uncanny ability to interpret all questioned activity by interjection of his family members, use of cash transactions, or has pled forgetfulness.

A debtor's "personal financial statement" submitted to obtain a loan satisfies the requirement that the statement in writing is one "respecting the debtor's . . . financial condition." 11 U.S.C.

² This opinion was amended and republished at 643 F.2d 1252.

§523(a)(2)(B)(ii). Funderburke, supra, slip. op. at 10. Additionally, the creditor must have relied on the false statement, and the reliance must have been reasonable. In re Kreps, 700 F.2d 372, 376 (7th Cir. 1983). Partial reliance on a false statement is sufficient to satisfy the requirement of reliance. In re Sewell, 361 F.Supp. 516, 518 (S.D.Ga. 1973). Testimony of the lender is sufficient evidence of reliance. Palmer, supra, slip. op. at 13.

The most obvious misrepresentation is Debtor's failure to list his second mortgage. In Funderburke, supra, I concluded that the debtor's listing of only a \$23,000.00 mortgage due on his \$65,000.00 home was a false statement which led the bank to believe that debtor had approximately \$42,000.00 of equity, when, in fact, the debtor had only \$7,000.00 in equity taking into account the second mortgage omitted from the financial statement. The facts of the case at bar are similar. Debtor listed the first mortgage of \$39,000.00, but failed to list the second mortgage of approximately \$30,000.00. Considering both mortgages Debtor would have no equity in his home as opposed to the \$30,000.00 equity indicated by the financial statement. Also, Debtor failed to reveal his wife's half ownership of the home. Although the Debtor testified that he made a mistake in omitting the second mortgage, I conclude that Debtor intentionally misrepresented these facts in his statement.

Debtor listed his salary as \$44,200.00. However, the Debtor's 1991 tax return indicates that the salary figure includes the income of both the Debtor and his wife. The financial statement does not clearly reflect that the salary figure includes his wife's salary.

Debtor listed his income as "rental and lease income (gross)" \$28,000.00. This amount appears to be the gross receipts from Debtor's car wash. Although Debtor noted that the figure was "gross," the \$28,000.00 figure is misleading and inaccurate, considering that the business was operated at a loss.

In Palmer, supra, Debtor listed his income on a financial statement as \$160,000.00, which included gross receipts from rentals and cash loan proceeds, but did not deduct his expenses for debt service and maintenance of properties. Debtor's income tax return indicated that his net rental income showed Debtor's actual income was only a \$30,000.00 annual salary. Palmer, slip. op. at 12. In Palmer, I concluded that the

exaggerated income figure and other inaccuracies made the financial statement materially false.

In the case at bar, Debtor properly noted that the amount was a gross figure, but failed to accurately present his actual net income from the car wash. Although the car wash was earning more income in 1989 and 1990, when the financial statement was prepared, Debtor testified that he had been losing money in the venture. I conclude that Debtor's listing of his gross receipts, and the implied misrepresentation that he was profiting from the enterprise was materially false.

Also, Debtor listed the Mustang automobile on his financial statement, but failed to originally list the car on his petition, which was later amended to include the car. Debtor testified that his daughter used the car and paid for it. It is contradictory for Debtor to list the Mustang as an asset valued at \$11,000.00, subject to a debt of \$6,000.00, on the financial statement in order to get the benefit of an extension of credit and then claim that the car should not be listed on the bankruptcy petition as belonging to his daughter.

The president of the Plaintiff Bank testified that he relied on the false financial statement in making the loans to Debtor. Although the Bank realized its risk in making the loan and also used other factors in making the loan, I conclude that the Bank showed its reasonable reliance on the financial statement.

Despite Debtor's testimony attempting to rehabilitate his prior acts and his protestation of innocence to the contrary, I conclude that the debt owed to First National Bank of Alma is non-dischargeable in the amount of \$61,248.83. Clearly the Court is not bound to accept as conclusive such self-serving testimony. *See generally Chalik*, 748 F.2d at 619 ([T]he trial judge is best able to assess the credibility of the witnesses before him and thus the evidentiary content of their testimony). To do so in this case, with the pattern of reckless conduct and failure to disclose that has been outlined in this order, would be absurd.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the debt of Benjie Carrol Lewis to First National Bank of Alma, in the amount of \$61,248.83, is non-dischargeable.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 28th day of December, 1992.