

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

In the matter of:

PATRICIA W. CROSBY  
(Chapter 7 Case 91-20963)

*Debtor*

DONALD F. WALTON,  
Acting United States Trustee,  
Region 21

*Plaintiff*

v.

PATRICIA W. CROSBY

*Defendant*

Adversary Proceeding

Number 92-2073

FILED

at 11 O'clock & 01 min A M

Date 6/21/93 SH

MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia

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 the parallel proceeding against Debtor's

companion, Ralph Miles, Jr., was consolidated at the April hearing. 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 her Chapter 7 bankruptcy petition on December 11, 1991. By order dated May 13, 1992, Debtor received a discharge in her Chapter 7 case. The United States Trustee moves to revoke the discharge based on Debtor's alleged fraud.

On November 5, 1991, pre-petition, Debtor transferred certain property to Ralph Miles, Jr., but failed to list the transfer in her bankruptcy schedules or in her statement of financial affairs. Debtor transferred approximately 13 acres of land to Miles by deed recorded on December 16, 1991, post-petition. See Plaintiff's Exhibit 9 in Adversary No. 92-2074. Debtor testified that she made the transfer and failed to reveal it; however, she stated that she gave a note to her former bankruptcy attorney to correct the mistake. See Defendant's Exhibit 1. The evidence showed that the note was written after this adversary proceeding was filed. Debtor, nevertheless, failed to amend her bankruptcy petition.

Ralph Miles filed his bankruptcy petition on February 6, 1992. *See* Chapter 7 Case No. 92-20115. The United States Trustee has also moved to revoke Miles' discharge for fraud. *See* Walton v. Ralph Miles, Jr., Adversary No. 92-2074. The court will enter a separate order on the United States Trustee's motion to revoke Miles' discharge.

The Trustee argues that Miles failed to list in his petition five lots worth thousands of dollars. Several tracts of the real property omitted by Miles were conveyed by Crosby to Miles. The November 5, 1991, deed in favor of Miles was recorded after Crosby filed her petition and includes a reference to several tracts omitted by Debtor. The Chapter 7 Trustee and the United States Trustee learned of the transaction after Debtor's discharge was granted. The United States Trustee has moved to revoke Crosby's discharge arguing that Crosby's inaccuracy in her petition prevented the Chapter 7 Trustee from discovering Debtor's pre-petition business transactions and from discovering Miles omitted assets.

#### 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). Although Miles failed to list assets, arguably a worse offense than Crosby's failure to reveal pre-petition transfers of property, Crosby, by supporting Miles' fraud and failing to properly answer questions on her petition has also acted fraudulently.

In light of the foregoing, I conclude that Debtor's discharge should be revoked for fraud. Debtor's failure to properly answer the questions on her petition constituted fraud. The requirement that the false oath or fraudulent representation 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 her assets, as well as the existence and disposition of property to another debtor, Ralph Miles, Jr. Debtor had full knowledge of Miles' bankruptcy case and the

effect her disclosure would have upon his case. See Chalik, supra; In re Mukerjee, 98 B.R. 627 (Bankr. D.N.Y. 1989). Debtor's material omission inhibited the Chapter 7 Trustee in his duty to determine whether these assets could be recovered for the benefit of Ms. Crosby's creditors and to locate assets for the Miles estate. I conclude that Debtor's Chapter 7 discharge is 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).



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 18<sup>th</sup> day of June, 1993.