

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

In the matter of:)	
)	Adversary Proceeding
JAMES THOMAS SANDERS)	
(Chapter 7 Case <u>98-41683</u>))	Number <u>98-4195</u>
)	
<i>Debtor</i>)	
)	
)	
CARMEL W. SANDERS)	
)	
<i>Plaintiff</i>)	
)	
v.)	
)	
JAMES THOMAS SANDERS)	
)	
<i>Defendant</i>)	

FILED
 at 10 O'clock & 16 min AM
 Date 2/7/00

MICHAEL F. McHUGH, CLERK
 United States Bankruptcy Court
 Savannah, Georgia *JB*

MEMORANDUM AND ORDER

The Debtor, James Thomas Sanders, filed a voluntary petition under Chapter 7 of the Bankruptcy Code on June 8, 1998. In accordance with the requirements imposed upon a debtor in bankruptcy, he filed, with his petition, the applicable schedules listing his assets and liabilities and his statement of financial affairs on June 8, 1998. On July 13, 1998, a meeting of creditors convened pursuant to 11 U.S.C. § 341 and Debtor revealed certain information which supplemented or differed from that shown in his schedule and statement of affairs. He thereafter filed amended schedules on August 25, 1998. On September 11, 1998, the Debtor's ex-wife, Carmel W. Sanders, filed this Adversary Proceeding objecting to

his discharge and seeking a determination that certain debts arising out of the order granting them a divorce were non-dischargeable. Approximately a year later, on September 8, 1999, the Debtor filed second amended schedules and statements of financial affairs.

A number of matters are at issue in this Adversary Proceeding. First, the Court will memorialize what the parties stipulate is no longer in dispute. The provisions of paragraph three of the final decree entered in the Superior Court of Chatham County, Georgia, deals with child support obligations which are acknowledged to arise under 11 U.S.C. §523(a)(5) and are agreed to be non-dischargeable obligations. The interpretation of any disputes over the provisions of paragraph three are within the exclusive jurisdiction of the Superior Court of Chatham County, Georgia. Paragraph 4 allocated debts between the parties and awarded certain items of property between the parties. An allegation in this case is that the consummation of those property division awards has not occurred. Possible reasons for this failure include the contention that some of the items awarded by the jury were no longer owned by, or in the possession of, the Debtor. Again, however, the interpretation and the enforcement of those provisions is outside the scope of this dischargeability proceeding and remains within the jurisdiction of the Superior Court.

What remains is the dischargeability of the Debtor's liabilities (1) to pay 1996 ad valorem taxes on the parties' marital residence; (2) to pay one-half of the balance on a Travelers credit card; and (3) to pay one-half of the balance on a Citibank credit card, all of which the parties stipulate shall be determined by application of 11 U.S.C. § 523(a)(15); and

(4) to pay a debt arising from his use of a First Union credit card in the parties' joint names under 11 U.S.C. § 523(a)(2), (4) and (6).

Finally, wife contends that the Debtor's schedules and statements of financial affairs are materially false and that he should be denied a discharge under 11 U.S.C. § 727. Because that contention of the wife, if sustained, would render any decision under § 523 moot, the Court will deal with that issue first.

FINDINGS OF FACT
11 U.S.C. § 727

As previously outlined, the Debtor filed original schedules, amended them shortly after his creditors' meeting and then filed second amended schedules approximately one year later. There are differences among or omissions from the three schedules which form part of the basis for the wife's objection to the Debtor's discharge.

	Original Schedules	Amended Schedules	Second Amended Schedules
Schedule B-3 Security Deposits	\$300.00	-0-	-0-
Schedule B-4 Household Goods	\$3,500.00	\$3,500.00	\$3,500.00 ¹

¹ The dispute here centers on the adequacy of the description. In the original schedules the description was generic and the assets were shown as being part of an on-going Superior Court lawsuit. In the Amended Schedules the descriptions were enhanced by attaching a copy of the Final Judgment and Decree which outlined certain personal property. In the Second Amended Schedules the Debtor added an eight-page list of items which his counsel contended had not been allocated by the jury. The Debtor acknowledged preparing this list in his handwriting and it existed no later than April 21, 1998, when his counsel transmitted it to opposing counsel. Thus the detailed listing of personal property existed as of the date of the filing of both the original and the amended schedules.

Schedule B-5 Books, Pictures, etc.	-0-	\$200.00	\$200.00
Schedule B-7 Furs and Jewelry	\$500.00	\$500.00	\$4,000.00
Schedule B-8 Firearms and Sports Equipment	-0-	-0-	-0-
Schedule B-26 Office Equipment	-0-	\$250.00	\$250.00
Schedule B-27 Machinery, Fixtures and Equipment	-0-	\$500.00	\$500.00
Schedule B-33, Other Personal Property of Any Kind	-0-	-0-	\$500.00 ²
Schedule I Current Monthly Gross Wages, etc.	\$1,711.18	\$1,849.00	\$1,849.00
Statement of Financial Affairs-3b. Payments within one year to insiders	None	Mother \$1,000.00	Sister \$1,000.00
Statement of Financial Affairs-12. Safety deposit boxes in which debtor has property	None	None	None
Statement of Financial Affairs-14. Property held for Another Person	None	None	None

² Referring to the April 21, 1998, letter from Debtor's domestic relations counsel. See Plaintiff's Exhibit 6.

Assets Revealed by Amendment

The first category of items are those which were omitted from the initial schedules but were added by amendment through the first and second amended schedules. The chart above clearly reflects the pattern of omissions that have plagued this case from its inception. In the original schedules, the Debtor failed to list items under Schedule B-5, Schedule B-26, Schedule B-27, Schedule B-33, and significantly underestimated the value of items covered by Schedule B-7. Furthermore, the Debtor in his schedules stated in his Statement of Financial Affairs item 3b that there were no payments within one year to insiders. In the first amendment to the schedules, filed on August 25, 1998, two months after filing and over a full month after the 341 hearing, the Debtor amended the Schedule B-5, Schedule B-26, and Schedule B-27, adding \$950.00 worth of assets that were admitted to have existed at the date of filing. The Debtor in this amendment also revealed a \$1000.00 payment to his mother in his Statement of Financial Affairs item 3b.

Over a full year after the filing of this First Amendment to the schedules, and after an adversary in this case had been filed by the Debtor's ex-wife objecting to the discharge and alleging that certain debts were non-dischargeable, Debtor completed a second Amendment of the Schedules. In this Second Amendment, the Debtor increased the amount of assets listed in Schedule B-7 from \$500.00 to \$4,000.00. Debtor also Amended Schedule B-33 from \$0.00 to \$500.00. In his Statement of Financial Affairs item 3b, Debtor also included a second payment of \$1,000.00 made to his sister.

The Debtor never amended his Schedules to disclose ownership of a drafting table and an office couch in Schedule B-26. Similarly, the Debtor did not list approximately \$1000.00 in savings bonds admittedly owned by the Debtor but in the possession of his parents. The Debtor also failed to disclose his access to a safety deposit box rented by his mother, in which he stored his coin collection. Therefore the value of these assets was not listed in the Schedules and included in the Bankruptcy estate, although the Debtor admitted under oath that he possessed them.

The Plaintiff contends that (1) it is implausible that all of the furnishings, equipment, and tools of his business were accurately described or truthfully valued in the amended schedules and (2) that their omission from the initial schedules is a basis for denial of discharge.

Allegedly Omitted Assets

The second category of property allegedly omitted from the original or any of the amended schedules consists of a number of items of personalty as to which there was much conflicting testimony. It included what was described as a large gun collection with thousands of rounds of ammunition, Kevlar protective vests and helmet, and hundreds of "meals ready to eat" ("MREs") being stored for survival purposes by the Debtor, on behalf of the family. As to these items, I conclude that the wife's burden of proof has not been met in light of the Debtor's denial that he maintained any interest in these goods as of the date of the filing of his case. Clearly, at one time he owned a fair to extensive collection of guns,

ammunition, and related equipment along with military style MREs. Debtor's testimony was unequivocal that he owned no guns at present, and had in fact sold all of them to pay his attorney's fees, pre-petition, during the pendency of the domestic relations action. In addition, it was clear that some of the guns stored at the Debtor's residence were in fact owned by his wife's brother, with whom he shared an interest in gun collecting. The Debtor also acknowledged that at one time he owned a shortwave radio, a 35mm camera, and a video cassette camera, all of which were disposed of prior to bankruptcy to pay litigation and other expenses.

Accepting this testimony as true, however, Debtor failed to reveal the transfer of these assets in 'response' to item 10 in his Statement of Affairs which reads:

10. Other transfers

List all other property, other than property transferred in the ordinary course of business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately preceding the commencement of the case.

I hold that these items should have been, but were not, revealed in the Debtor's schedules, as having been transferred within one year of bankruptcy. (*See* Final Judgment and Decree entered August 13, 1997, Exhibit P-1).

The Debtor also omitted a coin collection on his initial Schedule B, but did

reveal a coin collection along with “minor collectibles,” valued at \$200.00 in his Amended Schedule B. The domestic relations jury awarded the coin collection, or a cash payment in lieu of the coins, of \$5,500.00. I thus conclude that there was no material omission in the schedules relating to the coins as Debtor was clearly divested of them by the decree. Similarly, the Debtor’s testimony and that of his ex-wife differed substantially on the value, if any, of a stamp and bottle collection. The Debtor characterized the collections as being of minor value. The wife characterized them as being extensive, but was unable to quantify their value or provide any specific description. Debtor’s original and amended schedules make no reference at all to any bottle collection or any stamp collection except to the extent that they might be included in the notation that he owns “minor collectible items” valued at \$200.00.

Based on the lack of any preponderance of the evidence, I am unable to conclude that there was any omission as to these items or any failure to schedule any assets which were of material value. The description of all these items as “minor collectibles” valued at \$200.00 was not shown to be false. However, the omission of any disclosure of these items in Debtor’s original schedules evidences a consistent pattern of non-disclosure. The amended schedules cure that omission to some extent. However, the amendment was filed long after the creditors’ meeting had concluded, thus depriving creditors and the trustee of the opportunity to timely investigate the magnitude or value of these collectibles. Perhaps they were of nominal value and perhaps not. We will never know for sure, and one of the reasons is that Debtor concealed their existence at a time when their disclosure would have been the most meaningful.

Admitted Deficiencies in Debtor's Petition

Debtor admits he has never listed certain assets which he acknowledges ownership of. These include a drafting table and an office couch. Other omissions, which he admits have never been corrected by amendment, include savings bonds valued at approximately \$1,000.00, admittedly in the possession of his parents and purchased as a savings vehicle for the children of the parties. He never revealed the existence of the savings bonds in question 14 of the Statement of Affairs, nor did he list the safe deposit box rented by his mother in response to question 12 in the Statement of Affairs. He acknowledged that this safe deposit box is the place where his remaining coins are stored.

The Debtor explains omissions from his initial schedules as being caused by the fact that he filed his Chapter 7 case on an emergency basis immediately upon the eve of a hearing in Superior Court at which time his ex-wife was attempting to have him held in contempt and possibly incarcerated for failure to make child support and/or alimony payments. Despite the fact that the hearing had been known about for several weeks, he believed, until the very last moment, that he would either be able to forestall the hearing by making some partial payments or might have the matter continued. Only when it became obvious that the hearing would go forward did he consult legal counsel. As a result, he concedes that the schedules were not complete, but were the best product he could put together with his attorney in the time provided.

This contention must, however, be viewed in light of the fact that the Debtor had undergone intensive litigation in the divorce proceedings in which the couple's marital property was put directly in issue by both parties, and had prepared an extensive list of property in anticipation of that litigation. It must also be given little weight in view of the fact that it exposes this Chapter 7 case as only a continuation of the extraordinarily contentious domestic relations case between the parties. The Eleventh Circuit in Carver v. Carver, 954 F.2d 1573 (11th Cir. 1992), voiced its clear disapproval of the use of bankruptcy in this manner. The Bankruptcy Code is not to be used to "deprive dependants . . . of the necessities of life" nor is it to be used as a "weapon in an on-going battle between former spouses over the issues of alimony and child support or as a shield to avoid family obligations." Carver v. Carver, 954 F.2d at 1579. Surely the Carver court would not countenance both the filing of bankruptcy to forestall a contempt action, and the excuse that deficiencies in the schedules exist because they were prepared under extreme time pressure brought about by the very same impending contempt hearing.

CONCLUSIONS OF LAW

11 U.S.C. § 727

11 U.S.C. §727 (a)(4)(A) states in relevant part:

(a) The court shall grant the debtor a discharge, unless-

(4) The 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 false statement in a debtor's schedules is sufficient ground for denial of discharge under §727 if the statement was material and knowingly made with fraudulent intent. In re Chalik, 748 F.2d 616, 618 (11th Cir. 1984). Deliberate omissions from the schedules may constitute false oaths and result in the denial of a discharge. Id. at 618. The party objecting to the discharge has the initial burden of producing evidence establishing the basis for the objection and once that party has done so, the burden shifts to the debtor to provide a satisfactory explanation for his conduct that convinces the judge that discharge should not be denied. In re Cutts, 233 B.R. 563, 570 (Bankr. M.D. Ga. 1999).

The subject matter of a false oath is material and thus 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. In re Chalik, 748 F.2d at 618. A court may also find a material omission in circumstances where a debtor has significantly undervalued the items listed in the schedules. Swicegood v. Ginn, 924 F.2d 230, 232 (11th Cir. 1991). A court can find that a false oath regarding a worthless asset is a material omission and can therefore preclude discharge as "creditors are entitled to judge for themselves what will benefit, and what will prejudice, them." In re Chalik, 748 F.2d at 618.

Once it has been established that the false statement or omission is material, the court must then determine if it was knowingly made with fraudulent intent. A debtor's intent to defraud may be inferred by circumstantial evidence. In re Cutts, 233 B.R. 563, 571

(Bankr. M.D. Ga. 1999). All of the facts and circumstances of the case may be examined in order to determine if the debtor's intent in omitting items from the schedules was fraudulent. In re Staub, 208 B.R. 602, 605 (Bankr. S.D. Ga. 1997). The Court must find that the omission was deliberate as the debtor will not lose his discharge to an honest mistake. In re Cutts, 233 B.R. at 572. However, a series or pattern of errors or omissions may have a cumulative effect giving rise to an inference of an intent to deceive. In re Parnes, 200 B.R. 710, 714 (Bankr. N.D. Ga. 1996). See In re Phillips, 187 B.R. 363 (Bankr. M.D. Fla. 1995).

The omissions in the Debtor's original and amended schedules are material omissions as they relate directly to the Debtor's business transactions or estate, his business dealings, and also concern the discovery of his assets and the existence and disposition of his property. In re Chalik, 748 F.2d at 618. The Debtor omitted several items including tools, machinery, and equipment that relate directly to his construction business. The Debtor also completely failed to list his office furniture in the schedules and though he admitted its existence, made no affirmative steps to correct this omission. The Debtor also failed to include items on his schedules that concern the discovery of his assets and the existence and disposition of his property. The Debtor's failure to list \$1,000.00 of savings bonds, his access to a safe deposit box, and his significant undervaluing of the items listed in Schedule B-7, Furs and Jewelry, all serve to conceal or underestimate the worth of the Debtor's estate. The Debtor's omissions in the schedules, therefore, satisfy the requirements set forth above and are material.

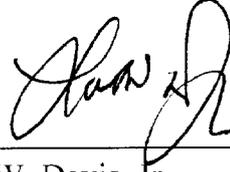
I also find that the Debtor's omissions were knowingly made with fraudulent

intent. In examining all facts and circumstances surrounding the omissions and amendments in this case, the Debtor's actions in the preparation of the various schedules have established a pattern of errors and omissions that allow this Court to infer an intent to deceive. Prior to the filing of this bankruptcy case, the Debtor was involved in an extremely contentious divorce proceeding in which the couple's marital assets and their subsequent division were put directly at issue. Debtor, due to these proceedings, had full knowledge of the contents of his estate, as evidenced by the final decree of divorce and a document drafted by the Debtor listing, in exquisite detail, property which had not been divided in the divorce proceedings. *See Plaintiff's Exhibit 6.* The intimate familiarity that the Debtor had with the contents of his estate through these previous proceedings and the pattern of multiple omissions in his schedules lead inevitably to the conclusion that they were not mere honest mistakes, made under pressure, which were quickly and comprehensively corrected but rather, a knowing and fraudulent effort to conceal.

I find that the Plaintiff in this case, Carmel Sanders, has shown through a preponderance of the evidence that the Debtor, in the preparation of his schedules for this bankruptcy case, has engaged in a consistent pattern of omissions in his schedules amounting to a false oath, made intentionally and with fraudulent intent. The Debtor has failed to satisfactorily explain those multiple, material omissions. Accordingly, the Debtor's discharge in this case will be denied. As such, this Court finds it unnecessary to examine the Section 523 dischargeability issues.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS
THE ORDER OF THIS COURT that the Debtor's discharge is denied.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 4th day of February, 2000.