IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 99-34728

PATRICIA A. TEFFETELLER

Debtor

THOMAS C. MANLEY
PATRICIA I. MANLEY and
MAURICE K. GUINN, TRUSTEE

Plaintiffs

v. Adv. Proc. No. 00-3048

PATRICIA A. TEFFETELLER

Defendant

M E M O R A N D U M

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding was commenced by the filing of the Plaintiffs' Complaint on May 12, 2000. Plaintiffs Thomas and Patricia Manley are unsecured creditors and Plaintiff Maurice K. Guinn is the Chapter 7 Trustee. By their Complaint, the Plaintiffs ask the court to deny the Debtor's discharge pursuant to 11 U.S.C.A. § 727(a)(2) and (4) (West 1993). A trial was held on December 18, 2000. Nine exhibits, including audio tapes of the Debtor's § 341 meetings,[1] were stipulated into evidence at the trial.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(J) (West 1993).

I

The Debtor's Statement of Financial Affairs and Schedules[2] contains inaccuracies and omissions regarding her interests in three assisted living facilities: Our Friends House, Rose Hill Manor, and Meadowlands Supportive Living Facilities. At issue in this adversary proceeding is whether the Debtor's inaccurate disclosures are sufficient to deny her discharge pursuant to 11 U.S.C.A. § 727(a)(2) and/or (4).

The Plaintiffs focus primarily on the Debtor's failure to disclose a $40,000.00 debt ("the Note") owed to her by her brother, Michael Teffeteller. The two siblings were formerly partners in Our Friends House. On June 13, 1997, the Debtor and Mr. Teffeteller entered into a

[1] The initial creditors' meeting was held on December 28, 1999, followed by a second meeting on January 18, 2000.

[2] The Debtor's Voluntary Petition accompanied by her Statement of Financial Affairs and Schedules was filed under Chapter 7 on November 18, 1999. By an Amendment filed December 2, 1999, the Debtor amended her Summary of Schedules, Schedule B, and Statement of Financial Affairs. The Debtor filed a second Amendment on February 10, 2000, which amended Schedules B and C.

conditional agreement[3] to dissolve the partnership. By the terms of that agreement, Michael Teffeteller agreed to pay the Debtor $40,000.00 for his interest in the partnership in twenty-four monthly payments of $1,667.67 each. The Debtor never received a payment.

The Debtor failed to schedule this asset in the original statements and schedules accompanying her Chapter 7 Petition and in subsequent amendments.[4] In addition, she did not disclose the asset at the initial § 341 creditors' meeting until presented with a copy of the Note. At that time, the Debtor acknowledged that she was aware of the existence of the debt. However, she states that she did not list it because she did not think of it nor did she consider it to be an asset, as she is estranged from her brother, has received no payments from him, no longer had a copy of the agreement, and has been told by at least two attorneys that the debt is not collectable.[5]

The Plaintiffs stress the importance of the Debtor's acknowledgment that she "knew about" the Note at the time of her bankruptcy filing. Particularly relevant is the following excerpt from the Trustee's direct examination of the Debtor at trial:

> Q. Okay. Now, when you signed your original schedules and your statement of financial affairs on October the 11th, you knew about your brother Michael's agreement to pay you $40,000; didn't you?
>
> A. I did not even think about that. That did not even cross my mind one time that that was a debt owed to me. I had fought him over

[3] The agreement provided that it would not go into effect until 30 days after the Debtor received notice of the licensing of a new corporation, "Our Friends House/Farragut Colony, Inc." The parties did not address whether this condition ever occurred.

[4] *See supra* note 2.

[5] The Debtor also points to her brother's bankruptcy filing as further evidence of the non-collectable nature of the debt. However, her brother did not file his Chapter 7 petition (No. 00-32335) until June 13, 2000, almost seven months after the Debtor's filing and over one month after the initiation of this adversary proceeding.

two years on this. I knew the day that I signed it, the minute that I put my name on that piece of paper, that I would never see that money. I knew that I had to get out of that relationship.

. . . .

Q. Okay. I understand, ma'am. But I still don't believe you've answered. My question is on October the 11th of 1999, when you signed your schedules, you knew about the existence of that agreement for your brother to pay you $40,000; didn't you?

A. I did not even think about that $40,000, Mr. Guinn. Not even one time did that enter my mind. I would not intentionally lie about $40,000.

Q. Do you remember testifying at the meeting of creditors acknowledging in answer to my question that you knew about the agreement when you completed your schedules, yes, you knew about it?

A. I knew about the — I knew — I remembered — you know when I first remembered about the $40,000 is when I seen this piece of paper again. That was the first — that was the second time I'd seen it in my whole life is when Mr. Cooper presented it to me in court. I did not even get a copy of this contract that I signed on June the 13th, 1997.

. . . .

Q. Do you deny testifying under oath at your meeting of creditors that you knew about the agreement, Exhibit 6, at the time you signed your schedules and statement of financial affairs?

A. In my head I probably knew it, Mr. Guinn, but when I was writing down the – what my creditors were, I did not think about that $40,000, not one time, or I would have listed it.

Q. I want you to listen to my question very carefully, please. I'm asking you did you acknowledge at your meeting of creditors in response to my question about whether you knew about the agreement, Exhibit 6, at the time that you signed your schedules? Did you not tell me, yes –

A. Yes, sir, I told you.

Q. Thank you.

A. I told you that.

Q. Okay. Thank you, ma'am. Now, if you want to explain, you may explain any further. I don't want to cut you off. But you did tell me that; correct?

A. Yes. I did tell you that.

Q. Okay.

A. But when I went to Mr. Rickman, to my – to get him to be my attorney, when he asked me to list, you know, what I'm supposed to list on the paper, I did not list that. I did not think about that. That did not cross my mind, not once. I'm telling you honestly with all my heart and soul.

Q. But you did not list that agreement among your assets; did you, ma'am?

A. No, I did not.

Q. Okay. Now, at the first meeting of creditors, ma'am, on December 28, I asked you to take all the time you needed to assure you'd listed all your assets; didn't I?

A. Yes, you did. Yes, sir.

Q. And did I afford you ample time to consider that question?

A. Yes, you did, Mr. Guinn. And I could have sit there all day long and I still would not have thought about that $40,000.

The Debtor was also a partner in another assisted living facility, Rose Hill Manor, which was involved in a dissolution proceeding styled *Teffeteller v. Hill*, No. 12514, before the Monroe County Chancery Court in Madisonville, Tennessee. The Debtor correctly listed the lawsuit in

Paragraph 4 of her Statement of Financial Affairs as a suit to which she was a party within one year prior to her filing. However, on both her original and amended Schedule B's, the partnership interest was incorrectly listed in Paragraph 19 as a "[c]ontingent [or] non-contingent interest in estate of a decedent, death benefit plan, life insurance policy, or trust." The Plaintiffs assert that the placement of this asset in Paragraph 19 was misleading, as it should properly have been listed in Paragraph 16 of the Statement of Financial Affairs and Paragraph 19 of Schedule B. The Debtor attempted to explain the error at trial, first on cross-examination by her attorney:

> Q. And the Rose Hill Manor, you felt like that was properly scheduled on your bankruptcy petition?
>
> A. Yes, I do.
>
> Q. And you put it under contingent and liquidated interest because why?
>
> A. At that time we had no idea. I was just assuming amounts of money when we put it down because we hadn't really settled anything. We were still in court and doing depositions and stuff like that.

Later, on redirect examination by the Trustee, the discrepancy was again addressed:

> Q. Okay. You see Item 19 there, ma'am, where it says contingent and non-contingent interest in estate of a decedent?
>
> A. Yes, sir.
>
> Q. Okay. Now, is this where you've attempted to disclose your interest in Rose Hill Manor partnership?
>
> A. I don't understand what you're asking me.
>
> Q. Okay. I think you had – you acknowledged that you had some interest in Rose Hill as of your bankruptcy petition date; don't [sic] you, ma'am?
>
> A. Yes.

Q. And what I'm asking is[,] is this where you attempted to disclose that interest?

A. Yes. And I think the reason we did that was 'cause it was tied up in court.

Q. Okay. But this speaks to interests in the estate of a decedent or a death benefit plan or a life insurance policy or a trust. Do you know – do you have any idea why you've disclosed it there?

A. No. No, sir.

Finally, the Plaintiffs cite inaccuracies in the Debtor's disclosures regarding her interest in Meadowland Supportive Living Facilities. In Paragraph 12 of her original Schedule B, the Debtor lists a stock interest in Meadowlands valued at $1.00.[6] However, this asset is not included in the Debtor's amended Schedule B's. Additionally, Paragraphs 16 and 19 of both the original and amended Statements of Financial Affairs incorrectly indicate that the Debtor herself is a corporation named Meadowlands Supportive Living Facilities Residential Care.

II

The Plaintiffs contend that the Debtor's omissions and inaccuracies are sufficient to deny her discharge pursuant to either 11 U.S.C.A. § 727(a)(2) or (4). Section 727(a)(2) provides in material part:

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

. . . .

[6] The Plaintiffs do not challenge this valuation.

> (2) the 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 . . . concealed, or has permitted to be . . . concealed–
>
> > (A) property of the debtor, within one year before the date of the filing of the petition; or
> >
> > (B) property of the estate, after the date of the filing of the petition[.]

11 U.S.C.A. § 727(a)(2) (West 1993). The Plaintiffs bear the burden of proof by a preponderance of the evidence. *See Barclays/American Bus. Credit, Inc. v. Adams (In re Adams),* 31 F.3d 389, 394 (6th Cir. 1994). Objections to discharge are construed liberally in favor of debtors and strictly against objecting creditors. *See Comprehensive Accounting Corp. v. Morgan (In re Cycle Accounting Servs.),* 43 B.R. 264, 270 (Bankr. E.D. Tenn. 1984).

A debtor's failure to disclose an asset at a § 341 meeting is a concealment of property of the estate. *See Hunter v. Sowers (In re Sowers),* 229 B.R. 151, 157 (Bankr. N.D. Ohio 1998). In addition, the omission of assets from bankruptcy schedules may be construed as concealment of assets occurring both before and after the bankruptcy filing for purposes of § 727(a)(2)(A) and (B). *See id.*; *see also Allied Domecq Retailing USA v. Schultz (In re Schultz),* No. 99-12928, 2000 WL 575505, at *6 (Bankr. N.D. Ohio Apr. 21, 2000).

The Plaintiffs are also required to prove an intent to delay, hinder, or defraud. By the disjunctive language of § 727(a)(2), it is clear that proof of intent to delay or hinder is sufficient without having to show actual fraud. *See* 11 U.S.C.A. § 727(a)(2) (West 1993); *see also Cycle Accounting Servs.*, 43 B.R. at 271.

Because a debtor will rarely admit to an objectionable intent, such purpose may be inferred from the circumstances of the concealment. *See Sowers*, 229 B.R. at 157; *see also Cycle Accounting Servs.*, 43 B.R. at 271. The Plaintiffs are required to demonstrate either actual intent or a reckless disregard for the truth.[7] *See Sowers*, 229 B.R. at 157. A continuing pattern of wrongful conduct strongly indicates actual intent. *See id.; see also Youngblood v. Hembree (In re Hembree)*, 186 B.R. 530, 534 (Bankr. M.D. Fla. 1995) (A series of omissions can combine to "create a pattern of false statements which are indicative of a reckless disregard for the truth.").

The Plaintiffs have not met their burden of proof on the issue of intent. The court, after considering the Debtor's testimony both at trial and in the § 341 meetings, finds her to be a credible witness. While the Debtor acknowledges that she "knew about" the existence of the Note, the court is satisfied that she did not recall its existence at the time she provided the information necessary to prepare her schedules nor did she consider it an asset because of its uncollectible nature. Furthermore, the court is satisfied that it was when Mr. Cooper, the Manleys' attorney, showed her the agreement with her brother at the December 28, 1999 creditors' meeting that she first recalled the Note. The court accordingly finds that the Debtor did not intentionally or with "reckless disregard for the truth" exclude the Note from her schedules. Further, the scheduling inaccuracies regarding Rose Hill Manor and Meadowlands Supportive Living Facilities are not indicative of a reckless disregard for the truth or an intent to hinder or delay. The Debtor's recurring disclosures, though far from the model of clarity, were sufficient to alert the Trustee and creditors of the existence of these two assets.

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[7] "Reckless disregard for the truth" has been defined as "not caring whether some representation is true or false." *In re Chavin*, 150 F.3d 726, 728 (7th Cir. 1998).

While appreciating the Plaintiffs' frustrations with the disorder of this case, the court finds the Debtor's shortcomings in disclosure to be the result of her unfamiliarity with bankruptcy documentation coupled, perhaps, with insufficient guidance from counsel. Accordingly, as the Plaintiffs have failed to demonstrate the intent to hinder, delay, or defraud, the Debtor's discharge will not be denied pursuant to 11 U.S.C.A. § 727(a)(2).

III

The Plaintiffs also rely on § 727(a)(4), which is designed to assure that "adequate information is available to those interested in the administration of the bankruptcy estate without the need of examinations or investigations to determine whether the information is true." *Friedman v. Kaiser (In re Kaiser)*, 94 B.R. 779, 781 (Bankr. S.D. Fla. 1988). Section 727(a)(4) provides in material 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.A. § 727(a)(4)(A) (West 1993). The Sixth Circuit interprets § 727(a)(4)(A) as requiring a plaintiff to prove, by a preponderance of the evidence, that:

1) the debtor made a statement under oath;

2) the statement was false;

3) the debtor knew the statement was false;

4) the debtor made the statement with fraudulent intent; and

5) the statement related materially to the bankruptcy case.

Keeney v. Smith (In re Keeney), 227 F.3d 679, 685 (6th Cir. 2000).

The first element of the *Keeney* test is clearly satisfied, as statements in bankruptcy schedules are made under oath. *See Hamo v. Wilson (In re Hamo)*, 233 B.R. 718, 725 (6th Cir. B.A.P. 1999). There is also little question that the omission of the Note from the Debtor's schedules constitutes a false statement. *See Keeney*, 227 F.3d at 686. Further, the false statement relates materially to this bankruptcy case, as it concerns the discovery of an asset. *See id.* A debtor's knowledge that a statement is false can be proven by

> demonstrating that the debtor knew the truth, but nonetheless failed to give the information or gave contradictory information. A false statement or omission that is made by mistake or inadvertence is not sufficient grounds upon which to base the denial of a discharge, but a knowingly false statement or omission made by the [d]ebtor with reckless indifference to the truth will suffice as grounds for the denial of a Chapter 7 general discharge.

Hamo, 233 B.R. at 725 (internal citations and quotations omitted). Similarly, fraudulent intent "involves a material representation that you know to be false, or, what amounts to the same thing, an omission that you know will create an erroneous impression." *Keeney*, 227 F.3d at 685 (quoting *In re Chavin*, 150 F.3d 726, 728 (7th Cir. 1998)). Reckless disregard as to whether a statement is true will also satisfy the intent requirement. *Keeney*, 227 F.3d at 686.

As with their § 727(a)(2) Complaint, the Plaintiffs have failed to meet their burden of proof on the issue of intent. The Plaintiffs have also failed to establish that the Debtor knew that the

statements in question were false. False statements and omissions based on mistake or inadvertence are insufficient to deny the Debtor's discharge. *See Keeney*, 227 F.3d at 686.

The Plaintiffs' Complaint will be dismissed. An appropriate judgment will be entered.

FILED: January 10, 2001

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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Debtor

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Plaintiffs

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PATRICIA A. TEFFETELLER

Defendant

J U D G M E N T

For the reasons stated in the Memorandum filed this date containing findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure, it is ORDERED, ADJUDGED, and DECREED that the Complaint filed by the Plaintiffs on May 12, 2000, objecting to the Defendant's discharge, is DISMISSED.

ENTER: January 10, 2001

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE