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

In re

Case No. 02-32555

HAROLD JAMES COX
LISA ANN COX

Debtors

TINDELL'S, INC.

Plaintiff

v. Adv. Proc. No. 02-3174

HAROLD JAMES COX and
LISA ANN COX

Defendants

M E M O R A N D U M

APPEARANCES: HAYNES, MEEK, SUMMERS & RUBLE
Edward L. Summers, Esq.
Post Office Box 1108
Knoxville, Tennessee 37901
Attorneys for Plaintiff

MOSTOLLER, STULBERG and WHITFIELD
Ann Mostoller, Esq.
136 S. Illinois Avenue
Suite 104
Oak Ridge, Tennessee 37830
Attorneys for Defendants/Debtors

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is before the court upon the Complaint Objecting to Debtors' Discharge (the Complaint) filed by the Plaintiff, Tindell's, Inc., on October 4, 2002, objecting to the Debtors' discharge under 11 U.S.C.A. §§ 727(a)(2), (3), and/or (5) (West 1993). The trial was held on June 23, 2003. The record before the court consists of seven exhibits introduced into evidence, along with the testimony of Bowden R. Ladd and the Debtors, Lisa Cox and Harold James Cox.

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

I

In 1998, the Plaintiff opened a credit account for the Debtors, d/b/a HJC & Associates, through which they purchased building supplies from the Plaintiff for use in the construction of residential homes primarily in Roane County, Tennessee.[1] In 2000, payments on the account became delinquent, and on November 13, 2000, the Plaintiff obtained a judgment in the Knox County Chancery Court against both of the Debtors, individually and d/b/a HJC Associates [sic], in the amount of $38,985.00. *See* TRIAL EX. 1.

In July 2001, HJC & Associates transferred real property in Roane County, Tennessee, to Bowden R. Ladd for $75,000.00, upon which was located an unfinished home that HJC & Associates was building. Pursuant to this transaction, a Warranty Deed dated July 6, 2001,

[1] At the time that the account was opened, HJC & Associates was not a corporation; however, it was incorporated on October 28, 1998, under the name of HJC & Associates, Inc., with Mrs. Cox owning 55% and Mr. Cox owning 45% of the business. *See* TRIAL EX. 4. In this Memorandum, all references to HJC & Associates shall be to the corporation.

evidencing the transfer between HJC & Associates and Mr. Ladd, was recorded with the Roane County Register of Deeds. *See* TRIAL EX. 3. Although HJC & Associates was the grantor, the proceeds from the sale, in the form of cashier's checks, were made payable to the Debtor, Harold Cox. Mr. Cox testified that he personally cashed the checks, using the funds to pay for subcontractor labor, to purchase materials to finish the house, and to pay some household expenses. Additionally, in November 2001, Mr. Ladd purchased a 1999 Dodge truck from Mr. Cox for $19,000.00. Mr. Ladd testified that he paid approximately $16,000.00 of this price by cashier's check, with the $3,000.00 balance paid in cash.[2]

The Debtors filed the joint voluntary petition initiating their Chapter 7 bankruptcy case on May 14, 2002. The Plaintiff filed its Complaint initiating this adversary proceeding on October 4, 2002, alleging that the Debtors failed to list their interest in real property in their bankruptcy schedules, that the Debtors failed to keep or preserve adequate books and records from which their financial condition could be ascertained, and that the Debtors transferred assets which were not bona fide transfers.

At trial, the Plaintiff presented no proof by which it could sustain a cause of action under any of the cited bases against Mrs. Cox. When questioned by the court regarding the sufficiency of the evidence against Mrs. Cox, the Plaintiff's counsel, while stopping short of conceding that no cause existed to deny Mrs. Cox her discharge, acknowledged the lack of proof. Accordingly, the Complaint shall be dismissed against Mrs. Cox.

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[2] In their statements and schedules, the Debtors listed the transfer of the truck at a value of $16,300.00. At trial, Mr. Cox testified that he was unsure of the exact amount paid for the truck but that it did not sufficiently pay off the balance he owed on the truck.

II

Chapter 7 debtors receive a general discharge of all prepetition debts under 11 U.S.C.A. § 727, unless one of ten express limitations exists. As material to this adversary proceeding, § 727 provides:

> (a) The court shall grant the debtor a discharge, unless—
>
> . . . .
>
> (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 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;
>
> . . . .
>
> (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;
>
> . . . .
>
> (5) 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[.]
>
> . . . .
>
> (b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter . . . .
>
> (c)(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

11 U.S.C.A. § 727 (West 1993). These limitations furnish creditors with ?a vehicle under which *abusive* debtor conduct can be dealt with by denial of discharge.? *Blockman v. Becker (In re Becker)*, 74 B.R. 233, 236 (Bankr. E.D. Tenn. 1987) (quoting *Harman v. Brown* (*In re Brown)*, 56 B.R. 63, 66 (Bankr. D.N.H. 1985) (emphasis in original)). Section 727(a) is liberally construed in favor of the debtor, and the party objecting to discharge bears the burden of proof by a preponderance of the evidence. *Keeney v. Smith (In re Keeney)*, 227 F.3d 679, 683 (6th Cir. 2000); *Barclays/Am. Bus. Credit, Inc. v. Adams (In re Adams)*, 31 F.3d 389, 393 (6th Cir. 1994); FED. R. BANKR. P. 4005.

A

The Plaintiff first objects to discharge under § 727(a)(2)(A), which ?encompasses two elements: 1) a disposition of property [including transfer or] concealment, and 2) ‹a subjective intent on the debtor's part to hinder, delay, or defraud a creditor through the act disposing of the property.'" *Keeney*, 227 F.3d at 683 (quoting *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997)). The Plaintiff must prove that Mr. Cox possessed an actual, and not constructive, intent to deceive. *Hunter v. Sowers (In re Sowers)*, 229 B.R. 151, 157 (Bankr. N.D. Ohio 1998). Because of the inherent difficulties in proving Mr. Cox's intentions, the Plaintiff may use circumstantial evidence, including evidence of his conduct, to establish actual intent, and ?[j]ust one wrongful act may be sufficient to show actual intent . . . [although] a continuing pattern of wrongful behavior is a stronger indication [thereof].? *Sowers*, 229 B.R. at 157. Additionally, it is not necessary for the Plaintiff to prove that Mr. Cox intended to hinder and delay and defraud

his creditors, as proof of any one satisfies § 727(a)(2)(A). *Cuervo v. Snell (In re Snell)*, 240 B.R. 728, 730 (Bankr. S.D. Ohio 1999).

The basis for the Plaintiff's contention that Mr. Cox should be denied his discharge under § 727(a)(2)(A) is that Mr. Cox has conducted all of his personal and business transactions in cash and/or cashier's checks so that his creditors would not be able to execute upon any bank accounts. The Plaintiff focused primarily upon the transaction with Mr. Ladd for the sale of the house, but also noted that Mr. Cox continues to pay cash for his rent to Mr. Ladd. With regards to the sale of the house, the parties did not enter into a written contract, and at Mr. Cox's request, Mr. Ladd paid the proceeds of the transaction with several cashier's checks, each in $5,000.00 increments. At trial, Mr. Cox testified that he had requested the smaller installments from Mr. Ladd because he did not need that much cash all at once, since he was using the proceeds to finish the house, paying for subcontractor labor and materials, with each outstanding invoice or project cost being no more than $5,000.00 a piece. Mr. Cox testified that his bank accounts were "tied up" by his creditors at the time, so he could not put the money in them, but when asked to elaborate, he explained, to the court's satisfaction, that the proceeds were necessary to finish the house, as per his agreement with Mr. Ladd, and that they were used primarily for that purpose.[3]

The fact that Mr. Cox conducted the majority of his business and personal transactions in cash does not, in and of itself, convince the court that he has transferred or concealed property with the intent to hinder, delay, and/or defraud his creditors. The proof is to the contrary. The

[3] Mr. Cox did, in fact, complete the house and now resides in it under the terms of an oral lease through which Mr. Ladd receives $750.00 rent per month.

Plaintiff has, accordingly, not met its burden of proof, and since § 727(a)(2)(A) is strictly construed in Mr. Cox's favor, the court cannot justify the denial of his discharge under this section based upon the proof presented.

B

As a second basis, the Plaintiff objects to Mr. Cox's discharge under § 727(a)(3), which requires that a debtor produce documentation **?**with enough information to ascertain [his] financial condition and track his financial dealings with substantial accuracy for a reasonable period past to present." *Wazeter v. Mich. Nat'l Bank (In re Wazeter)*, 209 B.R. 222, 227 (W.D. Mich. 1997) (quoting *In re Juzwiak*, 89 F.3d 424, 427 (7th Cir. 1996) (citations omitted)). This disclosure provides the trustee and creditors with **?**complete and accurate information concerning the status of [a debtor's] affairs and financial history." *Wazeter*, 209 B.R. at 227. Plaintiffs, however, are not responsible for investigating and acquiring documents; instead, debtors bear the burden of producing adequate and sufficient records. *Wazeter*, 209 B.R. at 227-28 (citing *Juzwiak*, 89 F.3d at 428). On the other hand, even though creditors **?**[are] not required to sift through voluminous documents, or to indulge in speculation about where the spent funds are, . . . [they are], however, burdened with proving the debtor's financial position *cannot* be ascertained." *Becker*, 74 B.R. at 237 (emphasis in original).

Adequacy of records is determined on a case by case basis. *Turoczy Bonding Co. v. Strbac (In re Strbac)*, 235 B.R. 880, 882 (B.A.P. 6th Cir. 1999). Consequently, judges have broad discretion to deny a discharge based on an inadequacy in the keeping of books and records. *Dolin*

v. N. Petrochemical Co. (In re Dolin), 799 F.2d 251, 253 (6th Cir. 1986). A debtor's records should be measured ?against the type of books and records kept by a reasonably prudent debtor with the same occupation, financial structure, education, and experience." *Wazeter*, 209 B.R. at 227 (quoting *Wynn v. Wynn (In re Wynn)*, 205 B.R. 97, 101 (Bankr. N.D. Ohio 1997)). Examples of inadequate disclosures include production of withdrawal records without indicating the disposition of funds, failure to produce checking account statements, failure to provide any household bills, and failure to account for dissemination of assets or to estimate income. *See Dolin*, 799 F.2d at 253; *Strbac*, 235 B.R. at 884; *Wazeter*, 209 B.R. at 228; *Calisoff v. Calisoff (In re Calisoff)*, 92 B.R. 346, 356 (Bankr. N.D. Ill. 1988). As with § 727(a)(2)(A), if the Plaintiff meets its burden of proof that Mr. Cox's records are inadequate, the burden shifts to Mr. Cox to prove that his failure to maintain records was justified under the specific circumstances of his case. *Strbac*, 235 B.R. at 883; *Wazeter*, 209 B.R. at 227. Intent is not an issue under § 727(a)(3). *Wazeter*, 209 B.R. at 227.

The Plaintiff argued that neither the Debtors nor HJC & Associates have filed federal income tax returns since 1999. Additionally, the Plaintiff argued that the Debtors have not utilized bank accounts, but instead have relied upon cash and cashier's checks for both personal and business transactions. The Plaintiff maintained, therefore, that because all of Mr. Cox's financial transactions with Mr. Ladd have been by cash payments, there is no paper trail by which creditors may fully ascertain the Debtors' financial affairs.

Mr. Cox confirmed that the Debtors have not filed their personal income tax returns for 2000, 2001, or 2002, and that they are delinquent in filing tax returns for HJC & Associates, but

that they are attempting to get their information together to get their returns filed in the near future. Mr. Cox explained that the Debtors had maintained adequate business records on their computer, including a spreadsheet showing the costs incurred and paid on the house sold to Mr. Ladd, which was located at the property leased by Roane Discount Tire, Inc.[4] However, an accident involving a logging truck occurred at the property, in which a portion of the building was damaged, and utility lines were torn down, causing power surges. As a result of the accident, the hard drive on the Debtors' computer was damaged, and various items inside the building incurred water damage. Mr. Cox testified that they have sent their computer hard drive to be restored, but as of yet, the information on the hard drive had not been recovered.

Additionally, both of the Debtors testified that they had maintained files for each house built by HJC & Associates, consisting of building permits, sales contracts, notes regarding conversations with clients, and other records, but that the files did not necessarily contain invoices or receipts spent on materials or labor. Mrs. Cox was the office manager for HJC & Associates, and she maintained these files, in addition to maintaining the company's bank records. When asked about whether such a file existed concerning the house sold to Mr. Ladd, Mrs. Cox testified that she could not locate such a file but explained that some of the files had sustained water damage after the logging truck accident and had been thrown away. Mr. Cox also testified that they had originally maintained very complete "historical records" for each house that was built by HJC & Associates, but that Mrs. Cox alone kept the files organized, and when she stopped working for the company, he neglected to keep them maintained and instead, simply put them in boxes that

[4] Mr. Cox testified that Roane Discount Tire, Inc., was a corporation formed in December 2000 in which he previously owned a 50% interest. This corporation leased its business property from Mr. Ladd.

were stored at the property leased by Roane Discount Tire, Inc., which was damaged in the logging truck accident.

Furthermore, both of the Debtors testified that they had the majority of their bank account records, including statements and cancelled checks, but that these documents had never been requested by either the Plaintiff or the Chapter 7 trustee. In fact, the Debtors testified that the only financial documentation requested of them was documentation showing the disposition of the proceeds from the sale of the house to Mr. Ladd requested by the Chapter 7 trustee and their tax returns requested by the Plaintiff. The Debtors testified that neither party requested bank documentation at any time during the pendency of their bankruptcy case or this adversary proceeding.

In making its determination under § 727(a)(3), the court is required to measure Mr. Cox's record keeping, or lack thereof, against "a reasonably prudent debtor with the same occupation, financial structure, education, and experience." *Wazeter*, 209 B.R. at 227. In doing so, the court recognizes Mr. Cox's shortcomings as a prudent businessman, and in fact, Mr. Cox admitted that he was not good with handling bank accounts, checks, or records, leaving those duties to Mrs. Cox. Additionally, Mr. Cox testified that he was very unorganized, but that he had kept invoices and notes regarding what he had spent on the house purchased by Mr. Ladd in a box after he entered the information on his computer spreadsheet, but that he was now unsure of this box's whereabouts. Finally, the court notes that, in a very risky move, Mr. Cox recorded the Warranty Deed conveying the property to Mr. Ladd in July 2001, without having received any payment whatsoever from Mr. Ladd towards the $75,000.00 purchase price.

The Bankruptcy Code does not require records to be maintained in any particular form, and incomplete and/or unorganized records will not bar a debtor's discharge if his financial condition can nevertheless be ascertained. *Becker*, 74 B.R. at 236-37. In *Becker*, the debtor did not keep books, records, or a checking account; however, he did tender to the trustee at his meeting of creditors a box containing invoices, receipts, bills, legal documents, and bank statements, and he later obtained and submitted copies of his cancelled checks, which he and his accountant used to create a spreadsheet showing the course of his business dealings as best his memory and the documents provided. *Becker*, 74 B.R. at 235. The court held that even though the debtor's records were **?**poor at best and lack some receipts for cash expenditures and the like, the debtor's testimony and available records establish a satisfactory explanation of his business affairs to enable his creditors to ascertain his financial condition." *Becker*, 74 B.R. at 237.

In this case, the Debtors have provided very little documentation by which their creditors may ascertain their true financial condition. However, the proof before the court evidences that the only documentation actually requested from the Debtors were their tax returns, which have not yet been filed, and documentation concerning how Mr. Cox spent the $75,000.00 received from Mr. Ladd. As for his failure to produce records concerning the disposition of these funds, Mr. Cox explained that he had been keeping a spreadsheet on his computer but that it was damaged by an accident at the Roane Discount Tire, Inc. premises. Although Mr. Cox testified that they have attempted to recover their lost computer records by sending their hard drive for repair, this alone does not excuse Mr. Cox from providing no records at all. *See, e.g.*, *Grau Contractors, Inc. v. Pierce (In re Pierce)*, 287 B.R. 457, 463 (Bankr. E.D. Mo. 2002) (holding that the debtor's failure

to attempt to reconstruct his records after they were allegedly lost when his computer mysteriously disappeared was unjustified); *Shappell's Inc. v. Perry (In re Perry)*, 252 B.R. 541, 548 (Bankr. M.D. Fla. 2000) (finding that the debtor's assertions that his computer was stolen were not credible without additional proof such as an accident report or insurance claim to collaborate).

On the other hand, in both of those cases, the debtors were sophisticated business people whose testimony regarding their failure to maintain hard copies of their computer records was not credible. In this case, both of the Debtors testified to keeping files and records concerning the houses built by HJC & Associates. Unfortunately, many of these records were also damaged in the logging truck accident, requiring their disposal.[5] Additionally, Mr. Cox evidenced a lack of business acumen and/or organization, admitting that once he received the cashier's checks from Mr. Ladd, he cashed them and paid all of his expenses, including labor and material costs, with cash, whereby he did not have receipts or cancelled checks.

The Plaintiff has not met its burden of proof that the Debtors did not produce adequate documentation by which their financial condition could be ascertained, especially in light of the fact that the Plaintiff never requested their bank account statements or cancelled checks. Nevertheless, even presuming that the Plaintiff's burden was met, based upon the totality of the circumstances, the testimony of the parties, and the proof before the court regarding Mr. Cox's clear lack of sophistication as a businessman, the court believes that Mr. Cox has met his burden of proof that

[5] As for the files that were not destroyed, Mrs. Cox testified that they have never been asked to produce any of those documents for any party in their bankruptcy case or in this adversary proceeding.

his failure to produce the requested documentation was justified under the circumstances. The court will not deny Mr. Cox's discharge pursuant to § 727(a)(3).

C

Finally, the Plaintiff objects to Mr. Cox's discharge under § 727(a)(5), alleging that he has not adequately explained a loss or deficiency of assets. The court has **?**broad power [under § 727(a)(5)] to decline to grant a discharge . . . where the debtor does not adequately explain a shortage, loss, or disappearance of assets." *In re D'Agnese*, 86 F.3d 732, 734 (7th Cir. 1996). The initial burden is on the Plaintiff to establish the loss or deficiency of assets by demonstrating that (1) at a time not too remote from the bankruptcy, Mr. Cox owned identifiable assets; (2) on the day that he commenced his bankruptcy case, Mr. Cox no longer owned the particular assets in question; and (3) his schedules and/or the pleadings in the bankruptcy case do not offer an adequate explanation for the disposition of the assets in question. *Schilling v. O'Bryan (In re O'Bryan)*, 246 B.R. 271, 279 (Bankr. W.D. Ky. 1999); *see also Ernst v. Walton (In re Walton)*, 103 B.R. 151, 155 (Bankr. W.D. Ohio 1989) (A creditor establishes a prima facie case by showing that **?**[the] debtor has listed assets in his schedules at a lower figure than he has previously presented himself to be worth, or where there was an unusual and unexplained disappearance of assets shortly before the debtor filed bankruptcy.") (internal citations omitted). The Plaintiff is not required to prove that Mr. Cox acted knowingly or fraudulently. *Walton*, 103 B.R. at 155.

The burden then shifts to Mr. Cox to provide a satisfactory explanation of the whereabouts of the assets. *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 619 (11th Cir. 1984). **?**[A]

satisfactory explanation ‹must consist of more than . . . vague, indefinite, and uncorroborated' assertions by the debtor." *D'Agnese*, 86 F.3d at 734 (quoting *Baum v. Earl Millikin, Inc. (In re Baum)*, 359 F.2d 811, 814 (7th Cir. 1966)). The explanation must be reasonable and credible, such that the court is convinced that the debtor is acting in good faith. *Fed. Deposit Ins. Corp. v. Hendren (In re Hendren)*, 51 B.R. 781, 788 (Bankr. E.D. Tenn. 1985). Furthermore, the explanation must be supported by ?at least some documentation . . . [that is] sufficient to ‹eliminate the need for the Court to speculate as to what happened to all the assets.'" *Stathopoulos v. Bostrom (In re Bostrom)*, 286 B.R. 352, 364-65 (Bankr. N.D. Ill. 2002) (quoting *Banner Oil Co. v. Bryson (In re Bryson)*, 187 B.R. 939, 956 (Bankr. N.D. Ill. 1995)).

The Plaintiff first takes issue with the Debtors' failure to list in their bankruptcy schedules the July 2001 real property transfer to Mr. Ladd, focusing primarily upon the facts that Mr. Ladd and Mr. Cox are friends, that there is inconsistent testimony as to when and how the $75,000.00 consideration was paid by Mr. Ladd, that the Debtors now rent the house sold to Mr. Ladd, paying rent each month with cash, and that Mr. Ladd has failed to insure the house or deduct it on his income tax returns.

According to the Warranty Deed, the grantor of the real property to Mr. Ladd was HJC & Associates, and not either of the Debtors. As such, they were not required to list the transfer in their statements and schedules since HJC & Associates was incorporated at the time of the transfer. And, in fact, at trial, the Debtors explained that they did not list the transfer in their schedules for that very reason. On the other hand, the cashier's checks that Mr. Ladd used to pay for the house were made to the order of Harold Cox, not HJC & Associates, and upon receipt of

these proceeds, although Mr. Cox used most of the funds to pay business expenses, he also used a portion to pay personal bills. Nevertheless, as the court has already stated, Mr. Cox was not an astute businessman, and in the court's opinion, his use of these cashier's checks in this manner was a result of his lack of knowledge, not any evidence of bad faith.

Moreover, there is nothing to constitute bad faith as to the transaction itself. Although both men acknowledged that they are friends, all three witnesses testified that the Debtors are not related to Mr. Ladd.[6] Mr. Cox and Mr. Ladd both reiterated, to the court's satisfaction, that Mr. Ladd's purchase of the real property was entirely business-motivated. At the time Mr. Ladd purchased the house, it was approximately 35% completed, having been intended by HJC & Associates to be a speculative house. At trial, Mr. Ladd estimated that if the house had not been completed, the property would have been worth approximately $50,000.00 because it consisted of two lots and the partially-completed house. Mr. Ladd testified that he has recently been offered $95,000.00 for the entire property, but that he has not had it appraised except for real property tax purposes.[7] The court recognizes that Mr. Ladd might have received a good bargain on the property, but there is no evidence to suggest that the transfer was anything other than a business opportunity.

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[6] Mrs. Cox acknowledged that her maiden name is Ladd; however, both she and Mr. Ladd testified that they are not in any way related.

[7] The court does not accept the tax appraisal value of $129,000.00 as a realistic valuation of the property, without additional proof. The court agrees with the Tennessee state courts and does not consider tax appraisals credible evidence of the market value of real property. *See, e.g., Knoxville Housing Auth., Inc. v. Bower*, 308 S.W.2d 398, 401 (Tenn. 1957) (?[E]vidence of the assessed value of . . . [real] property . . . is not competent evidence of the market value of the property at all . . . ."); *Wray v. Knoxville, LaFollette & Jellico R.R. Co.*, 82 S.W. 471, 475 (Tenn. 1904) (?This court knows judicially and as a part of the financial history of the State that land is never assessed for purposes of taxation at its real cash market value[.]"); *City of Murfreesboro v. Worthington*, No. 01A01-9703-CV-00124, 1997 WL 772137, 1997 Tenn. App. LEXIS 906 (Tenn. Ct. App. Dec. 17, 1997) (?In Tennessee, property tax valuations are not admissible to prove the value of a parcel or any portion thereof.").

Additionally, the fact that there is some inconsistent testimony as to exactly when Mr. Ladd made payments on the $75,000.00 and whether the payments were all in the form of cashier's check, personal check, and/or cash does not convince the court that anything occurred other than a good faith business transaction. The court notes that this transaction occurred almost two years ago, whereby it is reasonable that the parties thereto may not remember every detail. Additionally, at the same time that Mr. Ladd was paying the proceeds on the house, he was also purchasing a 1999 Dodge truck from Mr. Cox for $19,000.00. It is not beyond belief that the parties could become confused as to the number of cashier's checks Mr. Ladd purchased, the amounts therefor, and the dates upon which they were presented to Mr. Cox.

Furthermore, the court does not believe that the Debtors' rental of the real property purchased by Mr. Ladd evidences any bad faith or constitutes grounds for denial of Mr. Cox's discharge. The proof shows that a Warranty Deed conveying the property to Mr. Ladd was properly executed and recorded. *See* TRIAL EX. 3. Consideration in the amount of $75,000.00 was paid by Mr. Ladd. *See* TRIAL EX. 6. The fact that he now rents the property to the Debtors is not conclusive evidence of bad faith. The Debtors pay rent in the amount of $750.00 per month to Mr. Ladd, who testified that he has not given them any concessions in charging them this amount. And, although the Debtors have expressed an interest in possibly purchasing the property from him in the future, the parties have no agreement for the Debtors to buy the house, other than allowing them a first right to purchase when the time arises. It is also of little significance to the court that the parties have not entered into a written lease on the property. Mr. Ladd testified that

he has known both Mr. Cox and his family for at least twelve years and that he and Mr. Cox have been involved in business transactions for approximately three years.

Finally, the court finds that it is inconsequential that Mr. Ladd has not obtained insurance for the house or that he has not deducted any depreciation for the property on his personal income tax returns. At trial, Mr. Ladd testified that he has two joint venture rental properties and three individually owned rental properties, including the house rented to the Debtors and the business premises rented to Roane Discount Tires, Inc. He testified that he does not maintain insurance on all of these properties, nor does he deduct depreciation on his taxes with regards to all of these properties. While the court may question the prudence of this practice, how Mr. Ladd conducts his business does not weigh in favor of denying Mr. Cox a Chapter 7 discharge.[8]

Along those lines, the Plaintiff argues that Mr. Cox did not receive adequate consideration for the 1999 Dodge truck that he sold to Mr. Ladd in November 2001. The Debtors show in their statements and schedules that they received $16,300.00, but Mr. Ladd testified that he paid $19,000.00 for the truck. The Plaintiff argues that neither value was adequate, in that the fair market value of the truck was $24,000.00. At trial, Mr. Cox stated that he personally could not remember the amount paid for the truck by Mr. Ladd but that Mr. Ladd's figures were **?**probably right." Nevertheless, Mr. Cox testified that the amount he received from Mr. Ladd did not fully pay the balance due on the truck, so Mr. Cox also sold other personal items in order to raise the

[8] The Plaintiff also argues that the Debtors did not list in their statements and schedules any ownership interest in HJC & Associates, Inc., as a basis for denial of discharge under § 727(a)(5); however, that section concerns the dissipation of assets, not failure to list assets in the their statements and schedules, which is encompassed within the purview of 11 U.S.C.A. § 727(a)(4) (West 1993).

funds necessary to satisfy the remainder. The court found nothing about Mr. Cox's demeanor or testimony indicating anything other than a genuine failure to recall the correct amount he received for the truck almost two years ago. Moreover, it is irrelevant whether Mr. Cox received $16,300.00 or $19,000.00 for the truck, as the Plaintiff offered no proof, other than a hearsay statement, regarding the value of the truck.

III

In summary, the court finds that the Plaintiff has not met its burden of proof as to its objection to either of the Debtors' discharge under §§ 727(a)(2), (3), or (5). Accordingly, the Plaintiff's Complaint must be dismissed, and the Debtors' discharge shall be granted forthwith.

A judgment consistent with this Memorandum will be entered.

FILED: July 2, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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

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LISA ANN COX

Defendants

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 Objecting to Debtors' Discharge filed by the Plaintiff on October 4, 2002, is DISMISSED.

ENTER: July 2, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE