

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

In re

BILLY RAY CAMPBELL,

Debtor.

No. 01-23178

CRESS SNYDER,

Plaintiff,

vs.

BILLY RAY CAMPBELL,

Defendant.

Adv. Pro. No. 01-2071

M E M O R A N D U M

APPEARANCES :

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

In this adversary proceeding, the plaintiff, Cress Snyder, seeks a dismissal of this case for lack of good faith pursuant to 11 U.S.C. § 707(a), a denial of discharge under 11 U.S.C. § 727(a)(4)(A) due to an alleged false oath by the debtor in connection with his bankruptcy case, and a determination of nondischargeability under 11 U.S.C. § 523(a)(2) in connection with the sale of lumber by the plaintiff to the debtor. As discussed below, the court concludes that the debtor's discharge should be denied. This is a core proceeding. See 28 U.S.C. § 157(b)(2)(A), (I) and (J).

I.

The debtor, Billy Ray Campbell, filed for chapter 7 relief on September 13, 2001. The petition indicates that other names used by the debtor in the previous six years are Billy R. Campbell, BRC, and Pond Mountain Crafters. According to Schedule I, Mr. Campbell is married and is employed as a crafter for Watauga Lake Crafts earning \$1,500 gross income per month. In response to question no. 1 on the statement of financial affairs, Mr. Campbell indicated that he earned \$18,000 from Watauga Lake Crafts in both 1999 and 2000, and \$12,000 in 2001 as of the bankruptcy filing. In response to question no. 16, which requests the names and addresses of all businesses in

which the debtor has been an officer, director, partner, sole proprietor or a self-employed professional within the preceding two years, the debtor listed BRC, a craft supply business in operation from 1994 through 1996 having an address of Post Office Box 174, Mountain City, Tennessee, and Pond Mountain Crafters, a craft supplier and builder at the same address in operation from 1996 through 1997.

The debtor's petition lists his mailing address as Post Office Box 174, Mountain City, Tennessee and his street address as 197 Johnson Hollow Road in Mountain City, which according to the debtor's testimony at trial, is a house owned by his mother, Bernice Campbell. In Schedule A, the debtor stated that he was the fee owner of a building and .073 acre¹ located at 114 Piercetown Road, Butler, Johnson County, Tennessee, which he valued at \$50,000. He also listed personal assets with a value of \$21,205 including a 1998 Chevrolet 3500 truck worth \$20,000. The other personal assets consisted of a \$25 deposit at the electric company, \$1,000 in household furnishings, Louis L'Amour books valued at \$30, and \$150 in clothing. In Schedule D, the debtor listed Elizabethton Federal Savings Bank as his only

¹Although the realty is listed as being .073 acre in size throughout the debtor's schedules, this is apparently a typographical error. Documentation introduced at trial showed the acreage at .73.

secured creditor having liens on the realty and truck for claims totaling \$93,772.32. The debtor listed his unsecured claims in Schedule F totaling \$71,435.61, including an obligation to plaintiff Cress Snyder in the amount of \$38,626.61 secured by a judgment lien against the realty. With respect to question no. 17 of the statement of financial affairs which requires a debtor to "[l]ist all bookkeepers and accountants who within six years immediately preceding the filing of the bankruptcy case kept or supervised the keeping of books of accounts and records of the debtor," the debtor listed Jay Arnold in Mountain City, Tennessee as providing services from 1996 through 1997.

Plaintiff Cress Snyder filed his complaint commencing the instant adversary proceeding against the debtor on December 14, 2001, with an amended complaint being filed three days later. The plaintiff alleges that within one year prior to the filing of the bankruptcy petition, the debtor transferred certain business and personal assets to his then girlfriend and now wife, namely, the assets of the light manufacturing business previously known as BRC/Pine Mountain Crafters and now know as Watauga Lake Crafters, located at 114 Piercetown Road, Butler, Tennessee. The complaint states that the debtor failed to list these assets or disclose their transfer in connection with his bankruptcy petition. The plaintiff also alleges in the

complaint that the debtor filed for bankruptcy relief in order to stay a pending sheriff's sale of the realty in satisfaction of the plaintiff's judgment lien. Based on these allegations, the plaintiff contends that the debtor did not file for bankruptcy relief in good faith which constitutes grounds for dismissal of the bankruptcy case and that the failure to list the assets was a false oath for which the discharge should be denied. The plaintiff adds in his amended complaint the contention that the debt owed to him by the debtor is nondischargeable under 11 U.S.C. § 523(a)(2)(A) because the debtor engaged in false pretenses, false representations or actual fraud by paying plaintiff for lumber with seventeen insufficient funds checks.

II.

The trial of this adversary proceeding was held on October 16, 2003. In addition to the parties, the witnesses included Beverly Grable, who is employed by Elizabethton Federal Savings Bank, and the debtor's wife, who testified that she went by both Angela Marson and Angela Marson Campbell.

Beverly Grable. Ms. Grable testified that she is head teller and a sixteen-year employee of Elizabethton Federal. Ms. Grable testified that in connection with the present litigation,

Elizabethton Federal received a subpoena directing it to produce to attorneys for the plaintiff copies of all financial records pertaining to the debtor, including his bank statements and any loan applications with the Bank. Included with the request was an authorization purportedly signed by the debtor. Ms. Grable testified that while she was preparing the copies in order to comply with the request, Angela Marson came into the Bank and advised her that the signature on the authorization was not the debtor's. Based on this information, Ms. Grable's boss directed her not to comply with the subpoena and the documentation which had already been prepared was given to Ms. Marson.

Billy Ray Campbell. The debtor testified that in the mid-1990s he owned and operated a woodworking business that manufactured and sold to wholesalers Appalachian-style bird houses based on his original design. Although the business originally started with just the debtor and his mother, working out of the mother's garage, as business increased the debtor relocated, adding his aunt, uncle and best friend as employees. By 1993 or 1994, the business employed 50 employees, peaking in 1996. Purchasers were wholesalers, including QVC, the home shopping network, and the restaurant Cracker Barrel, which placed orders for 8,000 to 20,000 birdhouses at a time. The debtor testified that he operated the business as a sole

proprietor under the name BRC Enterprises, later changing the name at QVC's urging to Pond Mountain Crafters, a more Appalachian-sounding name and a reference to his mother's birthplace.

Notwithstanding the venture's initial success, the debtor's business began to decline in 1997, which the debtor attributed to the birdhouses going out-of-style since in his words "the arts and crafts business is one of fads." The debtor testified that in order to reduce expenses, he purchased and moved his operations to a building located at 114 Piercetown Road, Butler, Tennessee, the realty listed in his bankruptcy schedules. During this same period, the debtor's girlfriend, Angela Marson, whom he had begun living with in 1994, gradually began running the business end of his operation, having concluded that the debtor possessed few management skills. Ms. Marson's family owned retail stores in Gatlinburg which sold the debtor's products and Ms. Marson convinced the debtor that he could make twice as much money selling directly to retailers. At the end of 1997, Ms. Marson booked a retail show for the debtor, which opened, in his words, a whole new ball game.

The debtor testified that his relationship with the plaintiff began in 1994 when he began buying lumber for his business from the plaintiff's sawmill. According to the debtor,

he did a tremendous amount of business with the plaintiff, over \$400,000 worth, they talked often by phone, and he would pay the plaintiff by check or cash each time a load of lumber was delivered. The debtor stated that after a while, he started paying the plaintiff with checks only so that he would have a record of each transaction since the only documentation regarding the purchases was a notebook carried around by the plaintiff in his shirt pocket. The debtor testified that often he would not have money in the bank to pay the plaintiff but that he would write the plaintiff a check regardless because the parties used the checks as a type of informal promissory note to evidence the amount owed. According to the debtor, this arrangement occurred over several hundred times; the plaintiff would carry around in his pocket the checks which had not cleared the bank and then bring them by from time to time to obtain payment in cash.

The debtor testified that the plaintiff had him arrested on bad check charges in 1998 for the seventeen NSF checks he gave to the plaintiff in 1997, but that the criminal action was later dismissed *nolle prosequi*. The debtor testified that as a result of bad publicity generated by the arrest, his business was ruined and he wanted nothing further to do with the business. He testified that nonetheless, Ms. Marson, whom he married in

December 1998, still had faith in him, and that he agreed to work for her on the condition that she take care of the business end of the operation. The debtor stated that he gave his wife the equipment from his business because she had paid his bond and attorney fees when he was arrested. He testified that after his wife took over the business, she changed its name from Pond Mountain Crafters to Watauga Lake Crafts and continued to use his designs.

The debtor conceded that his bankruptcy filing was prompted by the plaintiff's efforts to foreclose on his real property although he stated that he had other debts for which he needed bankruptcy relief. He stated that there was no equity in the property and that he was worried that if the foreclosure sale took place, Elizabethton Federal would not be paid in full and would pursue collection efforts against his brother and mother who had cosigned the obligation.

The debtor testified that he did not list any interest in Watauga Lake Crafts or its assets in his bankruptcy schedules because the business belonged to his wife, not to him, and at the time of the bankruptcy filing the business really only consisted of his ideas plus less than \$500 worth of equipment. This equipment consisted of drill presses, a radial saw, a ban saw, a rip saw, a joiner/lathe, a broken forklift, air

compressor, staple gun, radial arm, space heater, lumber, air conditioner, filing cabinet, couch and chair. The debtor testified that the most he ever paid for a piece of equipment was \$500, that the equipment had been purchased from Home Depot or Lowe's, that no new items had been purchased since 1998, that the joiner/lathe, space heater, and air conditioner did not work, and that the rip saw is held together by duct tape. The debtor also testified that on a loan application in 1995 he listed the property as being worth \$14,000, and that the county property assessor listed the total value of the equipment at \$750 in 1997. The debtor conceded that there was no paperwork evidencing his transfer of the equipment to his wife in 1998.

On cross examination, the debtor admitted that his 2000 income tax return indicated that he was the proprietor of a craft manufacturing business known as BRC Enterprises and located at P.O. Box 174, Mountain City, Tennessee, the same address listed as his mailing address in his bankruptcy schedules, and that the business had gross receipts of \$151,184 that year. Similarly, the 2001 income tax return indicated the same information, but with gross receipts of \$43,171. The debtor explained that these returns and all tax returns filed since 1998 were mistakes which he realized during the course of this litigation, that his wife was in charge of having the tax

returns prepared, and that they were prepared by an accountant in Johnson City whom he had never met, based on information in 1997 when the accountant first began preparing their tax returns. The debtor noted that he and his wife filed joint tax returns and when asked whether the business had been listed in his name to affect the tax liability, responded, "no, we were both equally responsible for the amount of money we made and filed taxes on it."

The debtor was questioned about a loan application which he completed in April 2000 in order to obtain a loan from Elizabethton Federal for the purchase of the truck listed in his bankruptcy schedules. In the application, the debtor stated that he was employed by Pond Mountain, a wood crafting business in which he was the owner.² At trial, the debtor testified that this information was incorrect, that at that time Pond Mountain no longer existed, he was not the owner of anything, and that he had placed this information on the application because he was attempting to obtain a loan.

The debtor testified that the total presently owed to

²The court notes that the application, which was personally completed by the debtor, indicates that he owns a house in Mountain City, Tennessee valued at \$85,000 and that the debtor has annual income of \$100,000. The debtor also states in the application that the commercial building owned by him is worth \$60,000, although he listed the value in his bankruptcy schedules at \$50,000.

Elizabethton Federal for the respective loans in 1997 and 2000 for his realty and truck was approximately \$57,000. He stated that the \$93,772.32 amount listed in Schedule D as the total debt to Elizabethton Federal was an error. The debtor testified that his wife makes the \$531 monthly mortgage payment to Elizabethton Federal in lieu of rent for the building and that he pays the \$500 per month mortgage payment on his mother's home in which he and his wife reside.

The debtor also testified that he and his wife travel all over the country to retail shows for the business and that their last show was in Pennsylvania with a show before that in New York. He stated that his wife takes care of paying for their hotel and food expenses on these travels. The debtor also testified that he and his wife were married in Mexico in December 1998, although he could not recall the exact date, and that they did not have a marriage certificate.

Lastly, the debtor testified regarding his criminal record. He stated that he was a convicted felon, having been convicted of armed robbery in North Carolina in 1984 for which he served three years and that he pled guilty in federal court to interstate transportation of a stolen vehicle for which he served 21 months and then was on parole for 5 years. The debtor testified that other than the bad check charges which were

dismissed, he has not been in any other trouble with the law and that he doesn't even jaywalk now. The debtor also noted when he first started the business his hand was jerked by a table saw, causing him to lose the ends of all four fingers on his left hand, and rendering him 80% disabled. He stated that after his arrest on the bad check charges he attempted to obtain another job but could not because of his disability and convicted felon status.

Angela Marson Campbell. The testimony of Mrs. Campbell was similar to that of her husband's. She stated that she began participating in the business in 1997 and that prior to that time she had not realized the large debts that her husband had incurred to the plaintiff and another lumber company. Mrs. Campbell testified that she got involved because she thought she could help, noting that she had a business background unlike her husband although he did have a strong back and creative mind. She began taking care of the financial end of the business and fired several people that her husband had not been willing to let go. She also testified that in 1997 she applied for a business license to do retail shows outside of the state of Tennessee and that after her husband was arrested they decided that they could make a living doing retail shows. When asked what existed in the business in 1998 when she took over, she

stated "his back and her mind" along with a few pieces of furniture in the shop "left over from when we used to be big." She also said that no new equipment has been purchased since 1998.

Mrs. Campbell testified that she owns and has been running the business since 1998. She stated that all of the business' ideas were her husband's, that he did most of the manufacturing work and then they traveled together twice a month everywhere from Vermont to Texas for retail shows. When asked what she pays her husband, Mrs. Campbell responded that she gives him money and buys his clothes and food, and gives him money for gas.

Mrs. Campbell also testified that she had never seen the portion of the tax returns dealing with the business, even though they were joint returns, that they were prepared by an accountant in Johnson City, a Mr. Walls that she had been going to for four or five years, whom her husband had never met. She testified that the returns were incorrect because her husband did not own the business anymore.

Mrs. Campbell also stated that after this litigation commenced, she went to Elizabethton Federal because she had been notified that the plaintiff wanted a copy of all of their records and she thought that was incorrect. When asked whether

she told Ms. Grable at Elizabethton Federal that the signature on the authorization was forged, she stated that she told her that it did not look like her husband's signature. She admitted that she took some of the records which had been prepared by Elizabethton Federal for transmission to plaintiff's counsel.

With regard to their marriage, Mrs. Campbell testified that she and her husband were married in Sansuma, Mexico in December of 1998 by a local Mexican official. She stated that she could not remember the exact date, that she wanted to say the 13th, but that was the day her dog died so she didn't think that date was correct. She seemed to attribute the lack of recollection of an exact date to the fact that they had been celebrating before the ceremony and they continued celebrating afterwards. Mrs. Campbell conceded that they did not have a marriage certificate or anything in writing evidencing the marriage with the exception of a picture of her husband in a sombrero, but observed that she was not concerned by the lack of documentation because she had been married previously for 22 years and never had a license.

Cress Snyder. The plaintiff testified on his own behalf. Mr. Snyder was elderly and somewhat hard of hearing. He stated that he had an accident earlier this year and as a result did not remember as well as he did previously. Mr. Snyder did

testify that he lives in Mountain City, Tennessee where he operates a saw mill and that previously he and the debtor did "a right smart amount of business." He stated that the debtor would pay him a check for each load that was delivered and while initially those checks were good, after a while some of the checks started bouncing. He testified that every once in a while when a check bounced, he would take the check back to the debtor who would replace it with cash. When asked why he continued to do business with the debtor even after some of the checks began bouncing, Mr. Snyder replied that he had a bigger heart than brains and that he kept hoping that the debtor would pay him.

Mr. Snyder testified that on June 5, 2000, he obtained a judgment against the debtor in the amount of \$38,626.61 for seventeen NSF checks written to him by the debtor between June and December 1997 and that the judgment had been recorded as a lien with the register of deeds. Mr. Snyder also testified that after he obtained the judgment, the debtor was noticed, but failed to appear, for a deposition scheduled for January 22, 2001. Mr. Snyder stated that through the sheriff's office he attempted to execute on the personalty located at 114 Piercetown Road, Butler, Tennessee, but was advised that the personalty belonged to Mrs. Campbell. He also testified that a foreclosure

sale was scheduled for the debtor's realty but that the sale was stayed by the debtor's bankruptcy filing.

III.

The court will first address the plaintiff's objection to discharge based on 11 U.S.C. § 727(a)(4)(A), which provides that "[t]he court shall grant the debtor a discharge, unless ... the debtor knowingly and fraudulently, in or in connection with the case ... made a false oath or account." The Sixth Circuit Court of Appeals has held that:

[i]n order to deny a debtor discharge under this section, a plaintiff must 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). "Whether a debtor has made a false oath under section 727(a)(4)(A) is a question of fact." *Id.*

As explained by the court:

"Complete financial disclosure" is a prerequisite to the privilege of discharge.... [I]ntent to defraud "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." [Citation omitted.] A reckless disregard as to whether a representation is true will also satisfy the intent requirement. [Citation omitted.] Courts may deduce fraudulent intent from all the facts

and circumstances of a case. [Citation omitted.] However, a debtor is entitled to discharge if false information is the result of mistake or inadvertence. [Citation omitted.] The subject of a false oath is material 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." [Citation omitted.]

Id. at 685-86.

The facts of *Keeney* are particularly relevant to the facts of the present case and merit considerable discussion of the opinion. Therein, the plaintiff Mary Jean Smith had obtained a judgment against Keeney for injuries she sustained in an automobile accident. *Id.* at 682. Subsequently, a tract of real property was purchased in the names of Keeney's parents, who mortgaged the property to Mutual Federal Savings and Loan. Keeney and his wife lived on the property for about a year, paid no rent, but either Keeney or his business entity made all the mortgage payments for the property. Thereafter, Keeney borrowed approximately \$90,000 from Mutual Federal, secured by a new mortgage from Keeney's parents on the property and the assets of Keeney's business. Keeney or his business made all of these payments; the parents eventually transferred the property for \$150,000, paying the proceeds to Mutual Federal. *Id.*

Keeney placed the winning bid for a second piece of real estate, which was purchased in his parents' names, with the

majority of the purchase price being financed by Mutual Federal. Keeney and his wife lived on the real estate until they separated and thereafter Keeney continued to live there, making all of the mortgage payments and paying for all improvements but not paying rent to his parents. *Id.*

In 1996, Keeney filed for bankruptcy relief under chapter 7. Mary Jean Smith objected to Keeney's discharge, which the bankruptcy court denied under 11 U.S.C. § 727(a)(2)(A), finding that Keeney had continuously concealed his beneficial interest in the real property. *Id.* The court also denied Keeney's discharge pursuant to 11 U.S.C. § 727(a)(4), concluding that he had made a false oath when he omitted this beneficial interest from his bankruptcy schedules. *Id.* at 685. The district court affirmed.

Upon appeal to the Sixth Circuit, Keeney argued that he could not have made a false oath because he had no interest in the subject property. The appellate court disagreed, finding no error in the bankruptcy court's finding of a beneficial interest. *Id.* at 686. Keeney also claimed that even if he had made a false oath, it was not done knowingly and the bankruptcy court failed to find the intent element. This argument was also rejected, with the court observing that it was entirely proper for the court to infer from the circumstances of the case that

Keeney "knowingly (or at least with reckless disregard) omitted his interest in the property with an intent to defraud." *Id.*

Similarly, this court concludes in the present case that the debtor Billy Ray Campbell has at a minimum a beneficial interest in the business Watauga Lake Crafts operated by him and his wife and that he made a false oath when he failed to disclose this interest in connection with his bankruptcy. Notwithstanding the debtor and his wife's contention that Watauga Lake Crafts belongs solely to her, it is undisputed that the business operates in the debtor's building utilizing assets previously belonging to the debtor for which there is no documentation evidencing the transfer to the wife, that the debtor does most of the manufacturing for the business, that all of the design ideas are the debtor's, and that the debtor and his wife travel together twice a month to retail shows around the country to sell the business' products. Furthermore, the debtor and his wife's tax returns for 2000 and 2001 list him as the sole proprietor of the business at a post office box address which the debtor indicated in his bankruptcy petition was his mailing address. The debtor also stated in the loan application personally completed by him on April 5, 2000, that he was the owner of Pond Mountain, a wood craft business and that he had total income of \$100,000. The debtor signed the application,

just below a line which provides "[t]he undersigned hereby declare and represent that they have read the foregoing Application, that all statements made therein are complete and true to their knowledge"

Contrary to the debtor and his wife's assertion that he transferred the business' equipment to her in 1998, the tangible personal property schedule completed in early 1999 by the Johnson County Property Assessor lists the owner as being "Bill Campbell." The schedule is signed by "Bill Campbell" and dated "3-29-99," beneath the statement "I certify that the information contained herein, including any accompanying schedules or data, is true, correct, and complete, to the best of my knowledge and belief."

Furthermore, even if the business license for Watauga Lake Crafts is actually in Mrs. Campbell's name, the business is in many respects a continuation of the debtor's business, notwithstanding that it changed from a manufacturer which sold its products to wholesalers to a manufacturer which also acts as a wholesaler and sells directly to retailers. Although the debtor testified at his deposition that his wife's business made a whole different line of products than he had made, he also testified in the deposition that his business made "birdhouses [and] garden items" and that his wife's business made "garden

items ..., benches and planters and garden decor." At his 11 U.S.C. § 341(a) meeting of creditors, when asked what he did now with the building owned by him, the debtor replied "We build crafts in it.... Birdhouses, baskets, just a general line of crafts."

Similarly, there was some duplication of business names. The debtor indicated in his statement of financial affairs that he did business as Pond Mountain Crafters from 1996 to 1997. At trial, the debtor testified that he began operating under the name Pond Mountain Crafters when the home-shopping network QVC expressed dissatisfaction with the name BRC Enterprises. On the other hand, Mrs. Campbell testified in her deposition that Pond Mountain Crafters was hers, having been registered with the state of Tennessee Department of Revenue on March 1, 1997, with account no. 102217736. She also testified that she changed the name of Pond Mountain Crafters to Watauga Lake Crafters in 2000 and that, therefore, Watauga has the same account number as Pond Mountain.

Also indicative of the debtor's beneficial ownership interest in his wife's business is that the debtor is the sole owner of the truck which he stated in his deposition that he uses to travel. Presumably, the debtor was referring to the semi-monthly trips to craft shows which he and his wife take on

behalf of the business.

In light of all of the foregoing evidence, the court concludes that the debtor's bankruptcy statement of financial affairs and schedules were false and misleading in that the debtor failed to disclose therein the true nature of the debtor's relationship with the craft business and the income derived from the business. Even if the business Watauga Lake Crafters legally belongs to the debtor's wife as they contend, clearly the debtor is more than a "crafter" as set forth in Schedule I who earns only \$1,500 a month or \$8 per hour as the debtor testified at his deposition.³ Instead, the debtor is an integral part of his wife's crafting business, for which he supplies the building, the truck, the equipment, the creative expertise, most of the manufacturing labor, and his time and expertise to sell the products at weekend craft shows. In return, the debtor apparently shares in the profits derived from the business in the form of gifts from his wife for his living necessities and as evidenced by the fact that they file joint income tax returns and in the words of the debtor "[are] both equally responsible for the amount of money we [make] and file[]

³Even if the debtor had no interest whatsoever in his wife's business as he claims, he should have disclosed the monies he receives from his wife for food, clothes and gas, and that his wife pays the mortgage on his building in lieu of rent.

taxes on it."

The court also concludes that the evidence established that the debtor knowingly failed to make the required disclosures in his bankruptcy schedules and statement of financial affairs with a fraudulent intent. By the end of 1997, the debtor had outstanding bad checks owing to the plaintiff in excess of \$28,000. The plaintiff prosecuted the debtor on bad check charges in 1998, filed a civil action against him in 1999, obtained a judgment against the debtor in 2000, and thereafter pursued collection efforts. It was clear that the debtor was convinced that the plaintiff was not going to give up on collecting the debt as evidenced by the debtor's own testimony that he asked his attorney if he could discharge solely the obligation to plaintiff.

In the court's view, the debtor has purposely conducted business in his wife's name in order to stymie the plaintiff's collection attempts. The debtor's efforts to thwart the plaintiff are shown by the fact that the debtor failed to attend the discovery deposition after being noticed and then filed bankruptcy in order to forestall the foreclosure sale on his building, without disclosing his beneficial interest in the business. These efforts continued postbankruptcy when Mrs. Campbell disrupted the discovery process by informing

Elizabethton Federal that her husband had not authorized the disclosure of his financial information to plaintiff and Mrs. Campbell took possession of the documents which the Bank had prepared for the plaintiff.

The court simply did not find the debtor and his wife to be credible when they each testified that they had never before seen the portion of the joint income tax returns which lists the business in the debtor's name, that the tax returns were "mistakes," and that the business belongs solely to her. Similarly, the court discounts as too self-serving to be believable the debtor's testimony that he lied on his loan application about the business' ownership in order to obtain a loan from Elizabethton Federal in April 2000 but is now telling the truth about the business' true ownership.

Lastly, the court concludes that the debtor's omission of his beneficial interest in the craft business related materially to his bankruptcy case because it "[bore] a relationship to the [debtor's] business transactions or estate, [and] concern[ed] the discovery of assets, business dealings, or the existence and disposition of his property." *In re Keeney*, 227 F.3d at 686. According to the tax returns, the business produced gross income of \$151,184 in 2000 and \$43,171 in 2001, and the debtor in his April 2000 loan application advised of annual income of

\$100,000, sums substantially larger than the \$18,000 gross annual income the debtor reported in his statement of financial affairs. The fact that the tools and equipment the debtor transferred to his wife possessed little monetary value and that the business' net profits were small⁴ does not render the business' omission immaterial. See, e.g., *Carlucci & Legum v. Murray (In re Murray)*, 249 B.R. 223, 230 (E.D.N.Y. 2000) (harm to creditors or the estate, or to trustee's administration of estate, is not the test for "materiality" under the "false oath" discharge exception). Obviously, it is material that rather than being a hourly laborer earning less than \$20,000 annually, the debtor and his wife actually own and operate a craft manufacturing business which in the calendar year prior to the bankruptcy filing grossed over \$150,000. See *Cadle Co. v. Leffingwell (In re Leffingwell)*, 279 B.R. 328, 350 (Bankr. M.D. Fla. 2002)("An omitted asset may ultimately be found to have no value, but its disclosure is necessary if it aids in understanding the debtor's financial affairs and transactions."); *Bank of India v. Sapru (In re Sapru)*, 127 B.R. 306, 316 (Bankr. E.D.N.Y. 1991)(Nondisclosure of exempt or worthless assets was material because the falsehoods "relate to

⁴The 2000 tax return indicated a net profit of \$9,618 and the 2001 return indicated a net loss of \$3,689.

the Debtor's assets and business dealings, and taken as a whole are misleading to both the court and the creditors as to the nature and extent of the Debtor's business transactions and estate."); *Bensenville Comm. Ctr. v. Bailey (In re Bailey)*, 147 B.R. 157, 163 (Bankr. N.D. Ill. 1992) ("Allowing debtors the discretion to not report exempt or worthless property usurps the role of the trustee, creditors, and the court by denying them the opportunity to review the factual and legal basis of debtors' claims. It also permits dishonest debtors to shield questionable claims concerning an asset's value and status as an exemption from scrutiny.").

"Debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or unavailable to the bankruptcy estate." *In re Murray*, 249 B.R. at 231. As stated by the Sixth Circuit Bankruptcy Appellate Panel:

The very purpose of 11 U.S.C. § 727(a)(4)(A), is to make certain that those who seek the shelter of the bankruptcy code do not play fast and loose with their assets or with the reality of their affairs. The statutes are designed to insure that complete, truthful, and reliable information is put forward at the outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction. Neither the trustee nor the creditors should be required to engage in a laborious tug-of-war to drag the simple truth into the glare of daylight.

A discharge is a privilege and not a right and therefore the strict requirement of accuracy is a small quid pro quo. The successful functioning of the bankruptcy code hinges upon the bankrupt's veracity and his willingness to make a full disclosure.

Hamo v. Wilson (In re Hamo), 233 B.R. 718, 725-26 (B.A.P. 6th Cir. 1999).

IV.

In light of the foregoing findings and conclusions, it is unnecessary for this court to address dischargeability pursuant to 11 U.S.C. § 523(a)(2) or whether this bankruptcy case should be dismissed under 11 U.S.C. § 707(a) for lack of good faith. An order will be entered in accordance with this memorandum opinion denying the debtor's discharge under 11 U.S.C. § 727(a)(4)(A).

FILED: October 30, 2002

BY THE COURT

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE