IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

IN RE: EDWARD CHANEY	**No. 2:05-bk-72392** **Chap. 7**
FARMERS BANK	**PLAINTIFF**
AP No. 2:05-ap-07130	
EDWARD CHANEY	**DEFENDANT**

ORDER

Before the Court is the Complaint Objecting to Discharge of Debtor [Complaint] filed by Farmers Bank. Farmers Bank appeared by and through its counsel. The debtor, Edward Chaney [Chaney], appeared pro se. For the reasons stated below, the Complaint is granted and Chaney's Chapter 7 discharge is denied.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). The following order constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

LAW

Farmers Bank alleges that Chaney knowingly and fraudulently made a false oath or account when he failed to accurately account for and fully list his assets in his original schedules. The omissions included tools valued at $1500.00, a one-half interest in a 2001 Harley Davidson motorcycle and his interest in, and later the location of, a Corvette automobile. Under

§ 727(a)(4)(A):

> (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).[1]

In making a determination under § 727, this Court accepts the fundamental premise that "[o]btaining a discharge is the key component of the 'fresh start' a bankruptcy proceeding is designed to give a debtor." *Missouri ex rel. Nixon v. Foster (In re Foster)*, 335 B.R. 709, 714 (Bankr. W.D. Mo. 2006). "Accordingly, denying a discharge to a debtor is considered to be a 'harsh and drastic penalty.'" *Id*. (citing *American Bank v. Ireland (In re Ireland)*, 49 B.R. 269, 271 n.1 (Bankr. W.D. Mo. 1985)). For this reason, "the grounds for denial of discharge listed in § 727 are strictly construed in favor of the debtor." *Id.* (citing *Floret, L.L.C. v. Sendecky (In re Sendecky)*, 283 B.R. 760, 763 (B.A.P. 8th Cir. 2002)).

Under § 727(a)(4), the objecting party bears the burden of proving the following elements by a preponderance of the evidence: (1) the debtor made a statement under oath; (2) the statement was false; (3) the debtor knew it was false; (4) the debtor made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy case. *Jacoway v. Mathis (In re Mathis)*, 258 B.R. 726, 735 (Bankr. W.D. Ark. 2000).

[1] The allegations in the Complaint may have been intended to include other causes of action under § 727. However, this Court's ruling is based solely on § 727(a)(4)(A).

Present in this case is a debtor who did not accurately or fully list all of his assets in his original schedules.[2] "The debtor has an affirmative duty to list all assets and fully answer the questions in the petition, and he does so under oath." *Ray v. Graham (In re Graham),* 111 B.R. 801, 806 (Bankr. E.D. Ark. 1990). "Debtors submit bankruptcy statements and schedules on prescribed forms, which require them to verify the averments in them under penalty of perjury." *Land O'Lakes Farmland Feed LLC v. Gehl*, 325 B.R. 269, 276 (Bankr. N.D. Iowa 2005). "By statute, that has the force and effect of an oath." *Id*.

In order for a false oath to bar a discharge, "[t]he statement must be known by the debtor to be false [or omission is known] and be made [or not made] with an intent to defraud." *Mathis*, 258 B.R. at 736. "While the intent must be actual, intent may be proven by circumstantial evidence or by inferences drawn from the debtor's course of conduct." *Id*. "A series or pattern of errors or omissions may have the effect of giving rise to an inference of intent to deceive." *Foster*, 335 B.R. at 714. "Further, the existence of more than one falsehood, together with the failure to clear up all the inconsistencies when filing amended schedules, may constitute reckless indifference to the truth, and, therefore, the requisite intent to deceive." *Oldendorf v. Buckman*, 173 B.R. 99, 105 (Bankr. E.D. La. 1994). For example, a reckless indifference to the truth has been found where a debtor failed to list an asset because he thought the property was titled in his wife's name. *Butler v. Ingle (In re Ingle)*, 70 B.R. 979, 983 (Bankr. E.D.N.C. 1987). The *Ingle* court reasoned that the debtor's failure to verify the ownership of an asset such as a boat

[2] The Debtor's original petition was filed as a skeleton petition on April 4, 2005. The original schedules referred to in this opinion were actually filed on April 19, 2005, but docketed as "amended schedules." The first set of truly amended schedules were not filed until May 10, 2005.

constituted reckless indifference to the truth; if a debtor is uncertain as to whether assets are required to be included in his petition, it is the debtor's duty to disclose the assets so that the question may be resolved. *Id.*

In addition to examining intent, the Court must also find that the debtor's misrepresentation or omission was material. "A false statement 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 property." *Mathis*, 258 B.R. at 735-36. "The value of omitted assets is relevant to materiality, but materiality will not turn on value."*Gehl*, 325 B.R. at 277. The omission of a relatively modest asset will merit denial of discharge, if done with knowledge and fraudulent intent. *Id.*

DISCUSSION

SCHEDULES

Chaney filed his petition on April 4, 2005, and was represented by counsel.[3] The pertinent parts of his schedules are compared below:

Schedules dated April 19th (Ex.1)	Schedules dated May 9th, filed May10th
-House and lot valued at $15,000.00	-House and three lots valued at $15,000.00
-1994 Ford van	-1994 Ford van and 2001 Harley Davidson valued at $16,000.00
-$100.00 in household goods	-$100.00 in household goods -$1500.00 in tools
-Exempts House and lot	-Exempts House and lot, tools and Harley Davidson (lists creditor as secured with a third party as codebtor)

[3] The Court subsequently permitted the withdrawal of two attorneys for Chaney.

-Schedule I shows no income	-Schedule I shows $2006.33 in monthly income
-Schedule J shows no expenses	-Schedule J shows $2223.00 in monthly expenses
-Year to date income of $6517.00 Last year of $7560.00 (Q1)	-Year to date income of $8984.00 Last year of $7560.00
-No other income (Q2)	-Other income-Year to date of $0 Last year of $495.00 Year before of $990.00
-No property held for others (Q14)	-No property held for others
-No Corvette automobile listed or referenced	-No Corvette automobile listed or referenced

Almost all of the discrepancies evidenced by the above were elicited by the trustee at Chaney's first meeting of creditors. On that occasion, Chaney testified that he had tools that were not listed on his initial schedules. Further, Chaney said he had not reviewed his schedules. The meeting paused while Chaney consulted with his counsel who then acknowledged that there were some problems with the schedules. Notwithstanding this admission, the meeting continued. Thereafter, a question arose regarding an unlisted motorcycle. The debtor later provided the trustee with a certificate of registration in the name of the debtor and another person with an "or" reference. The Harley Davidson is reflected in the amended schedules and, if valued by one half, represents the debtor's second most valuable listed possession.

On his petition, the debtor listed his address as 316 North Clayton, Huntington, Arkansas. His driver's license reflects his residence as 2114 Pleasant Valley, Van Buren, Arkansas, as do his two 1099 forms. In this Court's opinion and order dated December 5, 2005, the Court determined that Chaney was not entitled to assert the homestead exemption on the Huntington

address. Given the facts elicited in that hearing and the Court's ruling, both of which are judicially noted herein, the debtor should have known that he was not residing at the Huntington address. His assertion of homestead was an improper and thinly veiled attempt to exempt property for his personal benefit and to the detriment of his creditors. While not necessarily conclusive on the discharge issue, it, along with the Corvette discussed below and the inadequate and at times misleading schedules, does reflect a pattern of fraud sufficient to warrant a denial of discharge.

Also at the first meeting, Chaney testified that he had possession of a Corvette that he claimed to be owned by his son. The schedules do not reflect ownership by the debtor or the debtor as holding property for another.[4] At the continuation of the first meeting, the debtor, even after consulting counsel, refused to divulge the location of the Corvette.

At trial, Chaney testified that the Corvette belonged to his son. Apparently, Chaney's son burned himself with a pan of water while at the babysitters. The babysitter did not have insurance, thus resulting in Chaney making a claim on his work policy. This claim netted Chaney $11,000.00. The money was used to buy the Corvette. The child was injured at approximately 17 months old; the Corvette was purchased when the child was about two and a half years old. The child is now twelve. The car continues to be titled in the seller, John Johnson. Clearly, the vehicle at the very least should have been disclosed as property held for another. More credibly, the vehicle is in fact owned by Chaney, and not the then seventeen month old injured son whose burns were purportedly assuaged by the future expectation of driving a Corvette.

[4] In a previous order issued by this Court dated December 9, 2005, Chaney was ordered to provide the Trustee with the title.

In an effort to explain the glaring omissions in his schedules, Chaney testified at trial that "I have left it up to attorneys and they file it -- I give them the money, they filed it. I had nothing else to do with it. I don't know what's in there. I can't tell you word for word what's in that thing because I can't read it and understand it." *Tr. P. 25.* He did provide his attorney with the information contained in the schedules. Nothing in the record reflects that Chaney is illiterate or is otherwise unable to comprehend the nature or probable consequences of his actions.

CONCLUSION

Clearly, the schedules and the debtor's statements at his first meeting are under oath. They are also material to his bankruptcy proceeding. The Court finds that the statements or omissions were false, known by the debtor to be false, and made with fraudulent intent. A clear pattern emerges of false and incomplete schedules with the express purpose of retaining improperly listed assets (e.g. the homestead), or unlisted assets for the debtor's benefit and to the detriment of his creditors. The debtor's schedules do not contain much information but, sadly, what they do contain is mostly false or misleading. Further, the Court cannot countenance the debtor's testimony as quoted above reflecting his almost complete abdication of any responsibility for the representations in his schedules. A defense of this nature, absent evidence of illiteracy or disability, is simply not acceptable.

For the reasons stated herein, the debtor's discharge is denied.

IT IS SO ORDERED.

March 27, 2006

DATE

RICHARD D. TAYLOR
UNITED STATES BANKRUPTCY JUDGE

cc: Edward Chaney
Thomas E. Robertson, Jr.
R. Ray Fulmer, II
US Trustee