

NOV 17 2005

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF:	:	CASE NUMBER: A04-93765-PWB
	:	
JASON WOODWARD,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
	:	
ALBERT F. NASUTI, CHAPTER 7	:	
TRUSTEE,	:	ADVERSARY PROCEEDING
	:	NO. 05-6305
Plaintiff	:	
	:	
v.	:	
	:	
JASON WOODWARD,	:	JUDGE BONAPFEL
	:	
Defendant.	:	

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

Albert F. Nasuti, the Chapter 7 Trustee for the estate of Jason Woodward, seeks denial of the Debtor's discharge in the above-styled adversary proceeding pursuant to 11 U.S.C. §§ 727(a)(2)(A), 727(a)(2)(B), 727(a)(3), 727(a)(4)(A), 727(a)(4)(D), and 727(a)(5). The Debtor has acknowledged service of the summons and complaint, but has failed to file an answer. The Trustee now seeks entry of default judgment.

Section 727(a)(2)(A)

Section 727(a)(2)(A) provides that the court shall grant the debtor a discharge unless "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 property of the debtor within one year before the date of the filing of the petition." The Trustee alleges that

the Debtor has been involved in other business and income producing transactions which have either been hidden from the Trustee or used as a conduit to divert funds which may be property of the estate (Complaint, ¶ 17). Even if such a factual allegation is true, there is no allegation that such transactions occurred within one year before the date of the filing of the petition. Accordingly, there is no basis for entering default judgment on the § 727(a)(2)(A) claim.

Section 727(a)(2)(B)

Section 727(a)(2)(B) provides that the court shall grant the debtor a discharge unless “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 property of the estate, after the date of the filing of the petition.” The Trustee alleges that the Debtor or an entity owned and operated by the Debtor executed a Deed to Secure Debt post-petition in the amount of \$1 million in favor of Northeast Yacht Sales, LLC upon real property located at 320 Wilderlake Court, Atlanta, Georgia, in order to regain possession of a luxury yacht which had been previously repossessed (Complaint, ¶ 11). The Court finds that the Trustee has alleged facts that set forth a basis for denying Debtor’s discharge under § 727(a)(2)(B). The Debtor has not controverted these assertions and as a result, Debtor’s default constitutes an admission of the complaint’s material facts under Rule 8(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure.

Section 727(a)(3)

Section 727(a)(3) provides that the Court shall grant the debtor a discharge unless “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.” The requirement to provide records to the trustee is “to protect the trustee and creditors by enabling them to determine or confirm the debtor’s financial condition and the cause of the debtor’s financial difficulty.” ALAN N. RESNICK & HENRY J. SOMMER, 6 COLLIER ON BANKRUPTCY ¶ 727.03[3][a] (15th ed. Rev. 2005). The Trustee alleges that there is an “absence of corporate records” with respect to the Debtor’s real estate transactions (Complaint, ¶ 9) and that the Debtor has failed to provide copies of 2002 and 2003 tax returns to substantiate his income (Complaint, ¶ 14). The Court finds that the Trustee has alleged facts that set forth a basis for denying Debtor’s discharge under § 727(a)(3). The Debtor has not controverted these assertions and as a result, Debtor’s default constitutes an admission of the complaint’s material facts under Rule 8(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure.

Section 727(a)(4)(A)

Section 727(a)(4)(A) provides that the 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.” 11 U.S.C. § 727(a)(4)(A). Because a debtor signs the petition and schedules under penalty of perjury, a false statement or omission of information from the debtor’s petition is a false oath within the meaning of 11 U.S.C. § 727(a)(4)(A). *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616 (11th Cir. 1984). Likewise, because testimony given by a debtor at the 11 U.S.C. § 341 meeting creditors is given under oath, false testimony given at the meeting of creditors is a false oath within the meaning of § 727(a)(4)(A). The Eleventh Circuit has found that in order to “justify denial of discharge under § 727(a)(4)(A), the false oath must be fraudulent and material.” *Swicegood v. Ginn*, 924 F.2d 230, 232 (11th Cir. 1991). “The subject matter of a

false oath is material and warrants a denial of discharge if it is related to the debtor's business transactions, or if it concerns the discovery of assets, business dealings, or the existence or disposition of the debtor's property." ALAN N. RESNICK & HENRY J. SOMMER, 6 COLLIER ON BANKRUPTCY ¶ 727.04[1][b] (15th ed. rev. 2004).

The Trustee alleges that the Debtor listed in Schedule I of the bankruptcy schedules and Question 2 of the Statement of Financial Affairs that he received no income for the year 2004. The Trustee alleges that the Debtor affirmed this with his testimony at the Meeting of Creditors. The Trustee contends that the Debtor has received an indeterminate amount of undisclosed income from various sources during this period, including income from the operation of a non-scheduled limousine business. The Trustee further contends that the Debtor is in possession of a 2002 Cadillac Escalade Limousine leased in the name of Classic Home Concepts, Inc., of which the Debtor is 100% owner (Complaint, ¶ 13).

The Court finds that the Trustee has alleged facts that set forth a basis for denying Debtor's discharge under §§ 727(a)(4)(A). The Debtor has not controverted these assertions and as a result, Debtor's default constitutes an admission of the complaint's material facts under Rule 8(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure.

Section 727(a)(4)(D)

Section 727(a)(4)(A) provides that the court shall grant the debtor a discharge unless the debtor knowingly and fraudulently in or in connection with the case "withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs." The Trustee alleges that he has requested the Debtor to provide copies of 2002 and 2003 tax

returns and other documents relating to the Debtor's assets, liabilities, and financial affairs, but that no documents have been provided by the Debtor. The Court finds that the Trustee has alleged facts that set forth a basis for denying Debtor's discharge under §727(a)(4)(D). The Debtor has not controverted these assertions and as a result, Debtor's default constitutes an admission of the complaint's material facts under Rule 8(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure.

Section 727(a)(5)

Section 727(a)(5) provides that the court shall grant the debtor a discharge unless "the debtor has failed to explain satisfactorily "any loss of assets or deficiency of assets to meet the debtor's liabilities." The plaintiff bears the initial burden of establishing the basis for denial of discharge under this provision. Once the plaintiff meets the initial burden, the burden shifts to the debtor to "satisfactorily" explain the loss of assets. *See Hawley v. Cement Indus., Inc. (In re Hawley)*, 51 F.3d 246 (11th Cir. 1995) (citing *(Chalik v. Moorefield) In re Chalik*, 748 F.2d 616, 619 (11th Cir. 1984)).

The Trustee alleges that the Debtor individually and/or through entities owned and controlled by him incurred approximately \$14,403,092.20 in unsecured debt and approximately \$1,5070,026.29 in secured debt. The Trustee contends that the Debtor's schedules reflect Debtor's personal assets as having a value of \$35,200.00 and that the real property owned by the Debtor as having a value of \$949,000.00 (Complaint, ¶ 10). The Trustee contends that the Debtor has failed to produce documentation to explain satisfactorily this loss of or deficiency of assets.

The Court finds that the Trustee has alleged facts that set forth a basis for denying Debtor's discharge under §727(a)(5). The Debtor has not controverted these assertions and as a

result, Debtor's default constitutes an admission of the complaint's material facts under Rule 8(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure.

In summary, the Court finds that entry of default judgment is appropriate on the Trustee's claims pursuant to 11 U.S.C. §§ 727(a)(2)(B), 727(a)(3), 727(a)(4)(A), 727(a)(4)(D), and 727(a)(5). The Court finds that the Trustee has failed to allege facts which support entry of default judgment on the § 727(a)(2)(A) claim. Based on the foregoing, it is

ORDERED that the Trustee's motion for default judgment is **GRANTED** in part. The Debtor's discharge is denied pursuant to 11 U.S.C. §§ 727(a)(2)(B), 727(a)(3), 727(a)(4)(A), 727(a)(4)(D), and 727(a)(5). It is

FURTHER ORDERED that the Trustee's motion for default judgment on the § 727(a)(2)(A) claim is denied without prejudice. The Trustee may amend the complaint to set forth a factual basis for the § 727(a)(2)(A) claim or, based upon the denial of the Debtor's discharge on other grounds as set forth above, the Trustee may abandon this claim. If no amended complaint is filed within ten days of the entry date of this Order, the Court will deem the § 727(a)(2)(A) claim abandoned and shall enter a final judgment on the other claims.

At Atlanta, Georgia, this 17 day of November, 2005.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

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