IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF PUERTO RICO

IN RE:	:	
	:	
EDWIN QUINONES RIVERA	:	
MARIA TERESA PORRATA	:	CASE NO. B-90-04664(ESL)
	:	
Debtors	:	
_____	:	
	:	CHAPTER 7
HECTOR SANTANA OLMO	:	
	:	
Plaintiff	:	
	:	ADV. NO. 91-0012
v.	:	
	:	
EDWIN QUINONES RIVERA	:	
MARIA TERESA PORRATA	:	
JESUS JIMENEZ, TRUSTEE	:	
Defendants	:	
_____	:	

OPINION AND ORDER

Before the Court is a Motion Requesting Entry of Summary Judgment (docket No. 47) filed on November 16, 1993 by creditor Hector Santana Olmo, objecting to the discharge of debtors, Edwin Quiñones Rivera and Maria Teresa Porrata Doria pursuant to 11 U.S.C. §§ 727(a)(4)(A) or (a)(3). The debtors filed an Opposition (docket No. 53) on January 5, 1994.

Introduction

Mr. Quiñones and Ms. Porrata filed a joint petition for bankruptcy under Chapter 7 of the Bankruptcy Code on September 6,

1990. Ms. Porrata is a housewife and Mr. Quiñones is engaged in the private practice of law.

The Schedule of Liabilities, the Statement of Financial Affairs as well as the Schedule of Income were filed jointly on November 2, 1990. Amended Schedules and Statement were completed with the assistance of an accountant and filed on April 2, 1993.

Plaintiff is a judgment creditor owed approximately three hundred and eighty-five thousand dollars ($385,000.00) judgment as a result of a breach of contract, tort and collection of monies action. Plaintiff requests summary judgment be entered denying debtors discharge pursuant to §§ 727(a)(3) & (4)(A) of the Code.

Plaintiff first asserts that debtors have knowingly and fraudulently made a false oath when signing, under penalty of perjury, and filing incomplete and inaccurate Schedules and Statement of Affairs. The list of allegations is extensive and includes: failing to list a bank account which was active during the year prior to filing the petition; failing to report payments made as well as balances due on credit cards during the year prior to filing bankruptcy; reporting zero cash on hand when a three thousand and three hundred dollar ($3,300.00) check was cashed and one hundred and twenty dollars ($120.00) withdrawn from an ATM the day before filing the petition; underestimating the value of law books

and not including the debt due for part of the law book collection; and underrepresenting the amount of monthly expenditures during the year prior to filing and the year subsequent to filing bankruptcy. In addition, plaintiff alleges that debtor listed funds in their bank account less than what was actually on deposit; submitted copies of false 1990 tax returns and did not report the correct income on those returns as compared to the amount of deposits made in their bank account.

In addition, plaintiff contends that debtors should be denied discharge for failing to keep and preserve reliable records thereby enabling assessment of their financial status. Plaintiff states that he was forced to review hundreds of checks and create a disbursement journal for 1990 and 1991 in order to determine debtors' financial condition.

Discussion

Discharge under 11 U.S.C. § 727 is at the "heart of the fresh start provisions of the bankruptcy law." H.R. Rep. No. 595, 95th Cong., 1st Sess. 384 (1977). A discharge pursuant to § 727 effectively alleviates the debtor of all legal responsibility for discharged debts[1] whereas denial of discharge in a Chapter 7

[1] See 11 U.S.C. § 524, which reads:

A discharge in the case under this title-

proceeding results in the automatic lifting of stay of actions and the creditor may seek to enforce its claim against the debtor.

Although discharge from bankruptcy is a statutory right, it is governed by strong public policy considerations. Ginsberg, R. and Martin, R., Bankruptcy: Text, Statutes, Rules, 11.02[a] (Prentice Hall, 3rd ed., 1992). Discharge is meant to benefit honest, but unfortunate, debtors. In re Tabibian, 289 F.2d 793, 795 (2nd Cir. 1961).

The plaintiff must establish his objection to discharge by a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279 (1991). Objections to discharge of a debtor in a bankruptcy proceeding shall be strictly construed against the creditor and

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(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personally liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1) of this title, or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

liberally in favor of the debtor. In re Tully, 818 F.2d 106, 110 (1st Cir. 1987).

Bankruptcy Rule 4005 requires that the party contesting discharge of the debtor bears the burden of proving the objection by establishing a prima facie case. Once this is met, the burden falls upon the debtor to show otherwise.[2] Matter of Mascolo, 505 F.2d 274, 276 (1st Cir. 1974).

Plaintiff's objection to discharge is pursued under 11 U.S.C. § 727(a)(3) & § 727(a)(4)(A) which state the following:

> The court shall grant the debtor a discharge, unless--
>
> ...
>
> (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;
>
> (4) the debtor knowingly and fraudulently, or in connection with the case--
>
> (A) made a false oath or account; ...

11 U.S.C. § 727(a)(3)

[2]The Advisory Committee Note to Rule 4005 is quoted in Collier on Bankruptcy ¶ 727.03 (15 ed. 1994) as follows:

> [T]he rule leaves to the courts the formulation of rules governing the shift of burden of going forward with the evidence in light of considerations such as the difficulty of proving nonexistence of a fact and of establishing a fact as to which the evidence is likely to be more accessible to the debtor than to the objector.

Plaintiff must establish the following factors to sustain an objection to discharge under § 727(a)(3): (1) a failure by debtor to keep or preserve any recorded information, including books, documents, records, papers, or (2) an act of destruction, mutilation, falsification, or concealment of any recorded information including books, documents, records and papers by the debtor or someone acting for him; and (3) that by failure to keep such records or books or by the act complained of it is impossible to ascertain the financial condition and material business transactions of the debtor. 4 Collier on Bankruptcy ¶ 727.03[4] (15th ed. 1994).

The first inquiry is whether the debtors' records are adequate. Upon the determination that the records are insufficient, the court considers whether debtors' failure to maintain adequate records was unjustified, thereby, precluding discharge. In re Wiess, 132 B.R. 588, 592 (Bkrtcy.E.D.Ark. 1991). The Bankruptcy Code does not dictate a standard of record keeping; rather, this determination is made on a case-by-case basis and consideration of the following factors: debtor's education, the sophistication of the debtor, debtor's business experience, size and complexity of debtor's business, debtor's personal financial structure, and any special circumstances which may exist. Wiess, 132 B.R. at 592.

Plaintiff's allegations are simply that debtors' failure to keep adequate records resulted in the review of hundreds of cancelled checks to "in essence prepare a cash disbursement journal for 1990 and 1991 in order to determine with some amount of certainty, debtors' financial position." Motion Requesting Entry of Summary Judgment, docket No. 47, p. 2.

Debtors allege that their business and personal transactions are not so complex as to require a sophisticated accounting system. The office employs Mr. Quiñones as a practicing attorney plus a secretary and messenger. A separate bank account for business purposes exists where client fees are deposited and from which business expenditures are disbursed. By plaintiff's own admission, this system was adequate insofar as debtors' financial condition could be fairly assessed from the records provided by them. Generally, discharge may not be denied even though debtor did not maintain books as long as debtors' financial condition and business transactions could be ascertained from the various records and memoranda provided by the debtors. 4 Collier on Bankruptcy ¶ 727.03[3] (15th ed. 1994).

Accordingly, plaintiff has failed to carry its burden by sufficiently establishing all the elements necessary to sustain an objection to discharge pursuant to 11 U.S.C. § 727(a)(3), thereby,

precluding summary judgment as to this objection.

11 U.S.C. § 727(a)(4)(A)

Under the Bankruptcy Code, the debtor has the duty to "file ... a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of debtor's financial affairs". 11 U.S.C. § 521(1). Section 727(a)(4)(A) insures that the information provided by the debtor to the trustee, creditors and all others involved in the administration of the estate is accurate and reliable. In re Jorge E. Pagan Lagomarsini, 89 BCO 4 (Bankr.D.P.R. 1989). When a debtor fails to meet this duty, he can be refused his discharge under § 727(a)(4)(A). Tully, 818 F.2d at 110.

Full disclosure by the debtor is necessary for the effective administration of a bankruptcy estate, thereby obviating the need for the trustee or other interested parties to delve the true facts in examinations or investigations. In re Haverland, 150 B.R. 768, 770 (Bkrtcy.S.D.Cal. 1993) (citing In re Diodati, 9 B.R. 804, 807 (Bkrtcy.D.Mass. 1981)). As articulated by the First Circuit:

> 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. As we have stated before, '[t]he successful

> functioning of the bankruptcy act hinges both upon the bankrupt's veracity and his willingness to make a full disclosure.'

Tully, 818 F.2d at 110 (citation omitted).

Plaintiff must establish that the debtor knowingly and fraudulently made a false oath relating to a material fact. In re Burgess, 955 F.2d 134, 136 (1st Cir. 1992); Tully, 818 F.2d at 110 (1st Cir. 1987). False oath or account is committed when debtor submits a schedule under oath declaring the information contained therein to be true and correct but, in fact, assets were omitted therefrom and/or false statements about books, papers, deeds and ownership in property are contained therein. 4 Collier on Bankruptcy, ¶ 727.04[1A] (15th ed. 1994).

False statements are not sufficient for denial of discharge unless it is shown that these were knowingly and fraudulently made by the debtor. Haverland, 150 B.R. at 771; 4 Collier on Bankruptcy, ¶ 727.04[1] (15th ed. 1994). It is sufficient that the debtor knows the truth while willfully and intentionally swearing to what is false. In re Kaufhold, 256 F.2d 181, 185 (3rd Cir. 1958); In re Cline, 48 B.R. 581, 584 (Bkrtcy.E.D.Tenn. 1985). However, where the omission is the result of mistake, inadvertence or upon honest advice of counsel, denial of discharge should not result. 4 Collier on Bankruptcy, ¶ 727.04[1A] (15th ed. 1994). See also In re Clawson,

119 B.R. 851, 852 (Bkrtcy.M.D.Fla. 1990).

Because a debtor is unlikely to admit that his intent was to defraud, fraudulent intent may be established by circumstantial evidence or by inferences drawn from debtor's behavior. In re Devers, 759 F.2d 751,754 (9th Cir. 1985); Matter of Reed, 700 F.2d 986, 991 (5th Cir. 1983); In re Harlow, 107 B.R. 528, 531 (Bkrtcy.W.D.Va. 1989); Cline, 48 B.R. 584. Moreover, fraudulent intent may also be inferred from a pattern of behavior exhibited by the debtor. In re Schnurr, 107 B.R. 124, 129 (Bkrtcy.W.D.Tex. 1989). Behavior exhibiting a "reckless indifference to the truth" is equivalent to fraud for purposes of § 727(a)(4)(A). Diorio v. Kreisler-Borg Construction Co., 407 F.2d 1330, 1331 (2nd Cir. 1969). See also Tully, 818 F.2d at 112; Clawson, 119 B.R. at 853. Where debtor displays a reckless disregard for the serious nature of the information sought and the necessary attention to detail and accuracy, intent to defraud is present. 4 Collier on Bankruptcy, ¶ 727.04[1] (15th ed. 1994).

Lastly, plaintiff must show that the information excluded from the schedule was material. The excluded information is material when it relates to the debtor's business transactions or estate, concerns the discovery of assets, involves business dealings or the existence and disposition of property. In re Chalik, 748 F.2d 616,

618 (11th Cir. 1984). Materiality does not depend upon whether the false statement is detrimental to the creditors. Cline, 48 B.R. at 584. The plaintiff must present evidence that is definite and certain supporting the conclusion that the property should have been included on the schedule. 4 Collier on Bankruptcy, ¶ 727.04[1A] (15th ed. 1994).

A narrow exception exists whereby discharge may not be predicated upon the exclusion of information which has trivial or no value to the estate. Mascolo, 505 F.2d at 277-78. See also 4 Collier on Bankruptcy, ¶ 727.04[1A] (15th ed. 1994). However, where withheld information is pertinent to the discovery of assets, including the bankrupt's financial transactions, it is material and should be included on the schedule even when it represents no value to the estate. Mascolo, 505 F.2d at 277-78.

While negligible value of property may be a factor in negating fraudulent intent, it does not shield debtor from an action under this provision. In re Somerville, 73 B.R. 826, 837 (Bankr.E.D.Pa. 1987). Where debtors have engaged in a pattern of deception, they are not protected from objections to discharge simply because undisclosed property may have no value. Haverland, 150 B.R. at 772.

Plaintiff asserts numerous examples of false information supplied by debtors in their Statement and Schedules signed under

oath and filed on November 2, 1990. The following are those which are uncontested or for which no viable explanation has been offered:

1. Debtors failed to list a bank account at Ponce Federal Bank (Acct. No. 24-09003652) in their answer to question No. 7 of the Statement. This account received deposits of one hundred and three thousand, one hundred and twenty-five dollars and forty-six cents ($103,125.46) during the year preceding debtors' filing for Chapter 7.

Debtors explain that because the account had been used for proceeds from a construction loan rather than income and because the account was only active for a total of six months and inactive for nine months prior to the bankruptcy proceeding, they "inadvertently excluded" the information from the Schedule. In addition, they contend that once the account was brought to the their attention by the creditor, the Schedules were amended accordingly.

Courts have looked to the level of sophistication and the educational and business background of a debtor in considering whether the explanation of the omission or false oath is credible. Schnurr, 107 B.R. at 128; Harlow, 107 B.R. at 531. While this explanation may be acceptable from a debtor who is not versed in business matters, it is incredible in this scenario.

As the facts evidence, Mr. Quiñones has considerable business acumen and has obtained a law degree. Mr. Quiñones owns his practice and it can reasonably be presumed that he has had some experience in managing the financial affairs of his office. His testimony further indicates that he completes his own taxes and has been involved in coordinating and securing financing for very lucrative investment adventures for clients although he denies being directly involved in financial planning.

Mr. Quiñones may not simply chalk up his failure to present accurate information to inadvertent omissions; it is highly unlikely that he was so far removed from his own finances so as to make the gross mistake of failing to include a bank account inactive for only nine months prior to the filing of bankruptcy which involved the deposit and withdrawal of a substantial sum of money.[3]

Furthermore, the omission of a bank account creates a substantial discrepancy even though, by itself, it may not represent significant value to the estate. Even where the account is closed and/or inactive, omission of a bank account impairs other interested parties from inquiring into the transactions to determine if

[3]As debtors point out, this account was also omitted from their tax forms which were then amended to include the proceeds of the loan which was deposited there. Rather than bolstering debtors' credibility, this fact supports the inference of disregard for the truth.

improper transfers occurred or anything else which might warrant an investigation in relation to that account. In re Mukerjee, 98 B.R. 627, 630 (Bkrtcy.D.N.H. 1989). Clearly, the history of the bankrupt's financial transactions could lead to the discovery of additional assets belonging to the estate. Fraudulent omissions of bank accounts active within a year of bankruptcy filing provide a sufficient basis for the denial of discharge. Mascolo, 505 F.2d at 277-78.

2. Debtors omitted payments made to credit cards and balances due on Ponce Federal Bank VISA and Ponce Federal Master Card as well as a Banco Popular Master Card on question No. 13 of the Statement.

Debtors response was again these payments were "inadvertently omitted" although, they assert, that the total amount due at least for those issued through Ponce Federal Bank were allegedly included in Schedule A-3 of the Statement of Liabilities in the amount of thirty-five thousand dollars ($35,000.00).

In actuality, when Schedule A-3 is examined, debtors' explanation proves vacuous. The thirty-five thousand dollar ($35,000.00) listed there is identified as a third mortgage on a foreclosed property owed to Ponce Federal Bank rather than the balance due on credit cards.

The explanation in relation to the Banco Popular VISA also

fails. While debtors justified the omission of the credit card from the Schedule allegedly because they believed that no balance was due, the deposition of Ms. Porrata during discovery reveals that she believed there to be a balance at the time of the filing although she could not state the amount.

Even if the court were to accept debtors' foregoing assertion, no explanation is given for the omission of the record of payments for all the credit cards. It is a fact that canceled checks were relied upon to recreate debtors' financial condition for the year preceding the filing of bankruptcy. Given that payments to credit cards occurred during that 12 month period, it appears that debtors selectively removed those checks used to pay the credit cards as these were interspersed among all others issued by them for both their business and personal expenses. This clearly indicates debtors' conscious intention of concealing the liability and directly contradicts the explanation that these omissions were due to inadvertence.

3. The Schedule indicated that debtors had "-0-" cash on hand at the time of filing the petition. However, debtors cashed a check for three thousand and three hundred dollars ($3,300.00) and withdrew an additional one hundred and twenty dollars ($120.00) from a ATM on the day prior to filing the petition.

Debtors merely assert that the creditor did not prove that the schedule was incorrect and that the amended Schedules and Statement prepared three years later by a C.P.A. showed the same conclusion. Although debtors were unable to deny these assertions as these transactions were confirmed by the bank record, no explanation was provided as to the use of these funds.

In considering these facts, it is apparent that one of two things occurred. First, the debtors could have cashed the check and retained the funds for their future use thereby resulting in a false oath as to the cash on hand. Alternatively, the debtors could have used the check to pay a creditor. Issuing the check in cash makes payment untraceable thereby avoiding future action by other creditors. Such action frustrates the goals bankruptcy by giving preference to one creditor over all others. In either case, absent any viable explanation, a clear violation occurred to substantiate denial of discharge under the subsection. Harlow, 107 B.R. at 531.

4. On the Schedule, debtors listed the value of the law library at fifty dollars ($50.00). Later in a deposition, the value of part of debtors' collection was estimated by Mr. Quiñones at five hundred to seven hundred dollars ($500.00-$700.00). In addition, the Schedule revealed an outstanding debt of ten thousand dollars ($10,000.00) to West Publishing although debtor admitted he made the

"involuntary mistake" of omitting the West collection as an asset of the estate. In the amended Schedule the market value of the entire collection of debtors' legal books was set at one thousand and seven hundred and fifty dollars ($1,750.00).

Debtors' explanations are contrary to all reasonable inferences drawn from their behavior. By including a portion of the book collection worth little while omitting another portion representing considerable value, debtors' actions could only have been intentional rather than "involuntary" as debtors suggest. Moreover, debtors' justification that they believed the West portion represented no value to the estate because of eventual repossession by West is not convincing especially in light of the fact that the West debt was included in the filings. Debtors' own conduct contradicts these explanations. Debtors' justifications are unacceptable given Mr. Quiñones' legal education and his ability to understand and research the law and any consequences derived therefrom.

Finally, debtors' valued the partial collection ten to fourteen times less than the value given by debtor's during his own deposition testimony. No explanation is provided for the gross undervaluation of the portion of the collection included in the original filings.

5. Debtors' Schedule of Current Income and Current Expenditures indicated that their monthly gross income was nine thousand dollars ($9,000.00) and their expenditures were nine thousand and seventy dollars ($9,070.00). However, during the first ten months of 1990 (petition was filed in September 1990), their records revealed that an average of fifteen thousand and fifty-five dollars and five cents ($15,055.05) was spent monthly.

In addition, debtor's records reveal that an average of sixteen thousand, three hundred and sixteen dollars and ninety-eight cents ($16,316.98) was utilized for monthly expenditures for the first eleven months of 1991, the year after the petition was filed.[4]

Once again, debtors' explanations are inadequate. Debtors allege that because the Schedule warrants estimates, they were not required to submit actual amounts. In addition, they link the undervaluation of expenditures with the erroneous conclusion that filing for bankruptcy would have an adverse effect on the law practice.

First, the "estimates" submitted by the debtors represent those

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[4]Plaintiff further questions debtors' estimated business expenditures estimated at three thousand five hundred dollars ($3,500.00) but which averaged three thousand seven hundred and seven dollars and forty-three cents ($3,707.43) in 1990 and five thousand seven hundred and sixty-six dollars and seventy-seven cents ($5,766.77) in 1991. It is not necessary to consider this difference apart from the general discussion as this figure is contained in the monthly expenses discussed herein.

accrued expenditures for the nine months preceding the filing of bankruptcy. Accordingly, the actual monthly expenditures were known. While it may not have been possible to complete the accounting prior to the filing, no reason exists for the inordinate delay of two and one-half years in amending the Schedule to reflect the accurate figures. Finally, even had figures not been available and a true estimate been submitted, it is an affront to lend credence to debtors' explanation that only estimates were required where these numbers were underrepresented by as much as seventy-five percent of the total.

Furthermore, debtors' justification that the rise in expenditures is somehow due to the fact that debtors' had mistakenly concluded that their income would drop as a result of the bankruptcy filing is nonsensical and disingenuous. Debtors' conclusion proposes that personal expenditures are somehow associated with and automatically increased with a rise in income.[5] Rather, these figures indicate that debtors enjoyed a comfortable lifestyle,

[5]While it is generally expected that the rise in business expenses may increase upon greater generation of income thereby lending believability to debtors' explanation, the two hundred dollars ($200.00) and two thousand and two hundred dollars ($2,200.00) difference in the estimate and actual business expenses for 1990 and 1991, respectively, does not adequately account for the gross underrepresentation of their total expenses during that same period. See, supra, footnote 2.

particularly in the later years of bankruptcy.[6]

6. In the ten months preceding the bankruptcy filing, debtors' bank records indicate that deposits were made for one hundred and fifty-three dollars, four hundred and eighty-nine dollars and thirty cents ($153,489.30). However, their 1990 tax return shows income for the full twelve months to be one hundred and twenty thousand and eighty-six dollars ($120,086.00).

By way of explanation, debtors relay the following facts: their tax return for 1990 reflected the lower figure for income and these returns were subject of an audit by the Treasury of the Commonwealth of Puerto Rico resulting in a reduction of tax liability. This explanation fails to address the point. While the audit may be indicative of the correctness of completing the forms in relation to the income claimed, debtors chose not to provide any explanation for the thirty-three thousand dollar ($33,000.00) difference between deposits and stated income.

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[6]The following compares debtors' estimate with the actual average monthly expenditures in several classifications highlighted by plaintiff:

Expense	Estimated	1990	1991
food	$ 550.00	$ 643.36	$ 712.21
utilities	$ 345.00	$ 383.75	$ 430.84
clothes	$ 350.00	$ 949.40	$1512.01
furniture/ maintenance	$ 0.00	$1342.71	$ 842.48
entertainment	$ 150.00	$ 629.51	$ 707.80

Two allegations remain which can be distinguished in that debtors have offered credulous explanations. The assertions and the responses are as follows:

1. Debtors indicated on the Schedule B-2 that on the filing date, they had three thousand seven hundred and seventy-five dollars ($3,775.00) in their bank account when the bank statement shows that on that date the balance was five thousand seven hundred and seventy-five dollars and forty-six cents ($5,775.46).

Debtors explain that the discrepancy it due to plaintiff's failure to take into account checks which were made but not yet debited against their account. While this explanation is plausible, debtors fail to present any schedule or even a copy of a check book used to determine this figure but point to a September 10, 1990 bank statement reflecting a balance of three thousand, eight hundred and eighty-one dollars and twenty-four cents ($3,881.24).[7]

2. Although testifying at the end of August, 1992 that the 1990 tax return was never amended, debtors submitted a copy of a tax return as an exhibit to the Pre-trial Report which was entirely different from a second one submitted during discovery. Plaintiff

[7]This is further complicated by the fact that debtors issued eight thousand, four hundred and ninety-six dollars and ninety-five cents ($8,496.95) in checks on the day prior to and the day of filing bankruptcy which were not all debited against the account by September 10, 1990.

further alleges that a copy of the income tax form was submitted during discovery for the year 1990, dated April 15, 1991 which reflected different figures than the other two.

The documents clearly reveal that a copy of the 1990 tax return filed with the pretrial report on June 10, 1991 was different from that one submitted during discovery which is dated August 3, 1992. Debtors allege that the first one was not signed as it was only a working draft. However, this does not explain why the draft was submitted in June when it is obvious that the income tax form, filed on April 15, 1991, was consistent with the amended form filed in August, 1992.

Finally, the 1990 income tax return is consistent with the 1990 income tax return filed on August 3, 1991 in that the taxable income is the same on both.

Even if debtors were given the benefit of the doubt as to the veracity of the second set of allegations discussed above, it is clear that the plaintiff has successfully met its burden, thereby establishing that debtors should be denied discharge under subsection (a)(4)(A). The undisputed facts prove that the debtors knowingly and fraudulently made a false oath by filing their Statement and Schedules, signed under penalty of perjury, containing incomplete information and falsehoods regarding their financial

condition.

While certain of the allegations alone may not constitute viable grounds to deny discharge, this court is satisfied that the omissions taken together support the finding that debtors made a false oath with reckless disregard for the truth concerning matters material to this case. The numerous omissions and misrepresentations stand undisputed and clearly indicate a pattern of conduct exhibiting a reckless disregard for the truth. These omissions taken together are so substantial as to permit the inference of fraudulent intent. Mukerjee, 98 B.R. at 631 ("[t]he cumulative effect of the debtor's omissions and undervaluation evidences a pattern of non-disclosure, in contradiction to the concept of honest debtor for which the protections and benefits of bankruptcy law are intended").

A finding of fraudulent intent is also supported by debtors' incredulous explanations. As revealed by the discussion above, debtors' explanations offered in response to the first set of allegations do not sufficiently rebut the allegations established by plaintiff and supported by the undisputed facts. Rather, debtors explanations are marred by unexplainable inconsistencies and devoid of logic. For example, in the case of the law book collection and the credit cards, debtors' own behavior directly rebuts their

justification of "inadvertent mistake", showing that the omissions resulted because of some conscious and deliberate act. In other instances; such as the cash obtained immediately before filing bankruptcy and bank deposits totalling more than reported income; debtors assume a cavalier attitude of "inadvertence" and fail to provide any logical explanation whatsoever. Finally, in defending their underestimation of expenditures, debtors' justification is far-fetched and makes no sense.

Under the Bankruptcy Code, the plaintiff objecting to discharge carries the burden of persuasion at all times. However, where the creditor has established his prima facie case, it is axiomatic that the debtors cannot prevail absent credible evidence supporting discharge to rebut the charge. Reed, 700 F.2d at 992. Where the facts supporting commission of false oath are undisputed and where the debtors fail to provide a satisfactory explanation for the their conduct, sufficient grounds exist for denial of discharge.

The inference of fraudulent intent is underscored and the incredible nature of debtors' explanations is highlighted when Mr. Quiñones' education and experience are considered. See, e.g., Schnurr, 107 B.R. at 128; Harlow, 107 B.R. at 531. The inquiries on the bankruptcy forms completed by the debtors are straight forward and unambiguous; one need not be versed in legal matters to complete

these forms accurately. In addition, Mr. Quiñones is much more sophisticated than the average person. Without a doubt, he has gained considerable business experience by running a business and from the nature of his practice which includes some aspects of financing and investments. However, even if the case were otherwise, a practicing attorney has numerous avenues in order to receive competent and reliable assistance ranging from colleagues to law libraries. Harlow, 107 B.R. at 531 (debtor's education and level of experience indicate ability to understand concepts of ownership and appreciate content of the schedules and statement which he signed).

Furthermore, as a practicing attorney, Mr. Quiñones surely knows the importance of signing declarations. In the legal profession, every attorney is bound by the requirement that every legal document containing his signature and submitted to the court is signed under penalty of perjury. This canon is certainly at the forefront of criminal practice which represents the majority of debtor's business.

As an attorney, debtor is well aware of the serious nature of full and honest disclosure on all documents submitted to this court. Failure to do so is fatal to effective bankruptcy management and contrary to the goals of the Bankruptcy Code. The following

observation made by the First Circuit is pertinent to the case at bar:

> Sworn statements filed in any court must be regarded as serious business. In bankruptcy administration, the system will collapse if debtors are not forthcoming. The record in this case shows, at the very least, cavalier indifference and a pattern of disdain for the truth. Meaningful disclosure was accorded much too low a priority. The law, fairly read, does not countenance a petitioner's decision to play a recalcitrant game, one where debtor hides, an the [creditor] is forced to go seek.

Tully, 818 F.2d at 112.

Whether or not these omissions and falsehoods had an adverse effect on the plaintiff is immaterial. These are a direct affront to the administration of the bankruptcy estate and may not be condoned, overlooked or taken lightly. Without a doubt, debtors' behavior is inconsistent with the spirit and intent of the statutory authority by which they are bound.

Finally, debtors' continual reference to the fact that these numerous omissions and falsehoods were rectified in the amended Schedules and Statement filed on April 2, 1993 does little to negate any inference of fraudulent intention. It is difficult to attribute credit for the amendments to the debtors where these were completed only after discovery and approximately two and one-half years after the initial filing. This is especially so where the correct

information was always available to the debtors, as in the monthly expenses, and falsely submitted.

Accordingly, plaintiff having established all the elements essential to support its objection to discharge and there being no genuine issue as to any material fact, plaintiff is entitled to summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

Conclusion

The Court finds that debtors Edwin Quiñones Rivera and Maria Teresa Porrata Doria knowingly and fraudulently made a false oath by signing and filing their Schedules and Statement, under penalty of perjury, which did not contain complete and accurate financial information. Therefore, plaintiff Hector Santana Olmo's request that summary judgment be entered denying discharge pursuant to debtors Edwin Quiñones Rivera and Maria Teresa Porrata Doria pursuant to 11 U.S.C. § 727(a)(4)(A) is hereby granted.

The Clerk of the Court shall enter final judgment.

SO ORDERED.

San Juan, Puerto Rico, this _____ day of October, 1994.

_____
ENRIQUE S. LAMOUTTE
Chief, U. S. Bankruptcy Judge