

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT

-----	)		
IN RE:	)	CASE NO.	05-31997(LMW)
	)		
CAROL A. MORRISON aka	)	CHAPTER	7
CAROLANNE MORRISON,	)		
	)		
DEBTOR.	)		
-----	)		
ULLMAN, PERLMUTTER &	)	ADV. PRO. NO.	05-3100(LMW)
SKLAVER,	)		
	)		
PLAINTIFF	)	DOC. I.D. NO.	1
	)		
vs.	)		
	)		
CAROL A. MORRISON aka	)		
CAROLANNE MORRISON,	)		
	)		
DEFENDANT.	)		
-----	)		

**APPEARANCES**

Irving H. Perlmutter, Esq.  
Ullman & Perlmutter  
47 Trumbull Street  
New Haven, CT 06510

Counsel for Plaintiff

Robert W. Lynch, Esq  
Lynch, Traub, Keefe & Errante  
P.O. Box 1612  
52 Trumbull Street  
New Haven, C T 06506-1612

Counsel for Debtor/Defendant

Ronald I. Chorches, Esq.  
Law Offices of Ronald I. Chorches LLC  
433 Silas Deane Highway, 2<sup>nd</sup> Floor  
Wethersfield, CT 06109

Chapter 7 Trustee

**MEMORANDUM OF DECISION RE: COMPLAINT OBJECTING TO DISCHARGE**

Lorraine Murphy Weil, United States Bankruptcy Judge

The matter before the court is the above-referenced plaintiff's (the "Plaintiff") complaint (A.P. Doc. I.D. No. 1, the "Complaint")<sup>1</sup> objecting to the discharge of the above-referenced debtor (the "Debtor") in this chapter 7 case pursuant to 11 U.S.C. § 727(a)(4)(A).<sup>2</sup> This court has jurisdiction over this adversary proceeding as a core matter pursuant to 28 U.S.C. §§ 157(b) and 1334(b), and that certain Order dated September 21, 1984 of the District Court (Daly, C.J.).<sup>3</sup>

**I. BACKGROUND**

**A. The Chapter 7 Case**

The Debtor commenced this chapter 7 case by filing a petition (included in Case Doc. I.D. No. 2, the "Petition") on April 21, 2005. Ronald I. Chorches (the "Trustee") was appointed and is serving as chapter 7 trustee in this case. Together with the Petition (dated April 19, 2005 on its face),

---

<sup>1</sup> References herein to the docket of this chapter 7 case appear in the following form: "Case Doc. I.D. No. \_\_\_\_." References herein to the docket of this adversary proceeding appear in the following form: "A.P. Doc. I.D. No. \_\_\_\_." References herein to the transcript of the November 21, 2005 trial (the "Trial") in this adversary proceeding appear in the following form: "Trial Transcript at \_\_\_\_." References herein to the transcript of the June 1, 2005 meeting of creditors pursuant to Bankruptcy Code § 341 (the "Meeting") in this chapter 7 case appear in the following form: "Meeting Transcript at \_\_\_\_."

<sup>2</sup> References herein to title 11 or to the Bankruptcy Code are references to the same as it existed prior to amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

<sup>3</sup> That order referred to the "Bankruptcy Judges for this District" *inter alia* "all proceedings arising under Title 11, U.S.C. . . ."

the Debtor filed a full set of schedules (included in Case Doc. I.D. No. 2, the “Schedules”) and a Statement of Financial Affairs (included in Case Doc. I.D. No. 2, the “Original SOFA”). The Schedules disclosed \$285,000.00 in real property (the Debtor’s residence), and personal property in the aggregate value of \$20,820.00 (including an automobile valued at \$14,000.00). (*See* Schedule A. Real Property and Schedule B. Personal Property.) The Debtor’s equity in her residence and all her personal property were claimed as exempt pursuant to Bankruptcy Code § 522(b)(2) and Conn. Gen. Stat. § 52-352b. (*See* Schedule C. Property Claimed as Exempt.) The Schedules disclosed a \$15,345.00 lien on the Debtor’s automobile and a \$245,090.00 mortgage on her residence. (*See* Schedule D. Creditors Holding Secured Claims.) The Schedules also disclosed personal property taxes for 2005 in the nominal amount of \$1.00. (*See* Schedule E. Creditors Holding Unsecured Priority Claims.) The Schedules further disclosed \$40,915.00 in general unsecured claims which in the main related to “[r]evolving [c]redit” arrangements but also included an \$8,490.00 claim (the “Legal Fee Claim”) of the Plaintiff against the Debtor for “[l]egal [f]ees.”<sup>4</sup> (*See* Schedule F. Creditors Holding Unsecured Nonpriority Claims.)

Schedule I (Current Income of Individual Debtor(s)) disclosed that, as of the Petition filing date, the Debtor had dependent children aged 14 years, 17 years and 4 years. Schedule I also disclosed that the Debtor had monthly income of \$2,200.00<sup>5</sup> and was entitled to alimony and child support payments from her former husband in the aggregate of \$2,600.00 per month.<sup>6</sup> Schedule J (Current Expenditures of Individual Debtor(s)) disclosed that the Debtor had aggregate monthly expenses of \$4,788.00.

---

<sup>4</sup> It is a fair inference that those legal fees were incurred by the Debtor with respect to the dissolution of her marriage with her former husband. *See* Trial Transcript at 5.

<sup>5</sup> The Debtor operates a day care business out of her home. (Original SOFA, item 1.)

<sup>6</sup> As of the Trial, the Debtor’s former husband was \$8,000.00 in arrears on those payments but the Debtor has not instituted collection actions against him. (Trial Transcript at 36-37.)

Item 3.a (“Item 3.a”) of the Original SOFA requested the following information: “List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor<sup>[7]</sup>, made within **90 days** immediately preceding the commencement of this case.” The Debtor responded that there had been no such payments. ( *See* Original SOFA, item 3.a.) Item 3.b (“Item 3.b”) of the Original SOFA requested the following information: “List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders.”<sup>8</sup> The Debtor responded that there had been no such payments. (*See* Original SOFA, item 3.b.) The Debtor signed (on April 19, 2005) the following declaration with respect to the Original SOFA: “I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs . . . and that they are true and correct.” (*See* Original SOFA, “Declaration Under Penalty of Perjury by Individual Debtor.”)

The Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines (Case Doc. I.D. No. 3) set August 1, 2005 as the last date upon which complaints objecting to the Debtor’s discharge could be filed timely, and set June 1, 2005 as the date for the Meeting. (*See* Case Doc. I.D. No. 3.) The Meeting was convened as scheduled and the Debtor was questioned under oath there. (Relevant portions of the Debtor’s sworn testimony at the Meeting and her subsequent responses to the Trustee are set forth below.) On June 20, 2005, the Trustee filed a Report of No Distribution in this case to the effect that “there is no property available for distribution from the estate over and above that exempted

---

<sup>7</sup> In relevant part, the Bankruptcy Code defines “creditor” to mean an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor . . .” 11 U.S.C.A. § 101(10)(A) (West 2005). The filing of the Petition constituted the “order for relief” in this case. *See* 11 U.S.C.A. § 301.

<sup>8</sup> The term “insider” is defined in the Bankruptcy Code in relevant part as follows: “[I]nsider” includes – (A) if the debtor is an individual – (i) relative of the debtor . . .” 11 U.S.C.A. § 101(31)(A) (West 2005).

by law.” (Case Doc. I.D. No. 7.) The Trustee has not initiated any recovery actions against creditors and/or transferees in this case. (*See* Case Docket.)

On November 16, 2005, the Debtor filed an amended Statement of Financial Affairs (Case Doc. I.D. No. 15, the “Amended SOFA”). The Amended SOFA changed the Debtor’s response to Item 3.a to read as follows:

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
GMAC Mortgage P.O. Box 4622 Waterloo, IA 50704-4622	normal monthly payments of principal and interest in the amount of \$1,650.00 plus one additional payment of \$1,650.00 on 4/1/2005	\$1,650.00 [the “Mortgage Payment”]	\$245,000.00

The Amended SOFA also changed the Debtor’s response to Item 3.b to read as follows:

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
Donald Struzinski 26 Valley Road Clinton, CT 06413 father	3/20/2005	\$2,500.00 [the “Insider Payment”]	\$0.00

**B.     The Adversary Proceeding**

The Plaintiff timely filed the Complaint which initiated this adversary proceeding on July 14, 2005. The Complaint alleges that the Debtor “knowingly and fraudulently made a false oath” with respect to the Original SOFA and her responses to Item 3.a and Item 3.b thereof and should be denied a discharge pursuant to Bankruptcy Code § 727(a)(4)(A). The Debtor filed an answer to the Complaint on September 28, 2005. (*See* A.P. Doc. I.D. No. 21.) A trial in this adversary proceeding was held on November 21, 2005. The only testimony at the Trial was that of the Debtor. Both the Plaintiff and the

Debtor introduced documentary evidence into the Trial record.<sup>9</sup> The court permitted the parties to rely upon their respective oral arguments at the Trial and no briefing was ordered. The matter now is ripe for decision.

## **II. FACTS**<sup>10</sup>

The Debtor attended college for three and one-half years. (Trial Transcript at 6.) As noted above, since 2000 the Debtor has run a small day care business out of her home. (Trial Transcript at 6-7; Amended SOFA, item 18.) At some time previous to that, the Debtor worked as a personal lines insurance client service representative at an insurance office or agency. (Trial Transcript at 37.) The Plaintiff represented the Debtor in her marital dissolution proceedings. (Trial Transcript at 5.) As a settlement in those proceedings, the Debtor was to receive a payment (the “Pension Payment”) from her former husband’s pension account. (Trial Transcript at 4.) The Debtor began contemplating bankruptcy around the middle of February, 2005. (*Id.*) At that time the Debtor did not know when she would receive the Pension Payment other than that she expected to receive it “much later.” (Trial Transcript at 4, 28.) The Debtor met with her bankruptcy attorney two or three times before the Schedules and the Original SOFA were filed. (Trial Transcript at 7.) The Plaintiff made at least one written query (in March of 2005) of the Debtor concerning her receipt of the Pension Payment. (Trial Transcript at 5.) The Plaintiff has not claimed that it had a lien on the Pension Payment but it is a fair inference that the Plaintiff at least expected that the Legal Fee Claim would be paid from the proceeds of the Pension Payment. The Debtor filled out (but did not sign) the Schedules and the Original SOFA

---

<sup>9</sup> References to those exhibits appear in the following form: “Plaintiff’s Trial Exh. \_\_\_\_.” A certified copy of the Meeting Transcript is in the record as Plaintiff’s Trial Exh. D.

<sup>10</sup> The facts set forth below and elsewhere in this opinion have been taken from the Trial record and the record of this entire chapter 7 case.

prior to when she received the Pension Payment and prior to March 13, 2005. (Trial Transcript at 14.) Schedule B (Personal Property) to the Petition required the Debtor to disclose any “[a]limony, maintenance, support, and property settlements to which the debtor is or may be entitled.” (Schedule B, item 16 (“Item 16”).) The Debtor checked “None.” (*See id.*) The Original SOFA did disclose that the Debtor had just “[c]oncluded” divorce proceedings. (*See* Original SOFA, item 4.) On or about March 13, 2005, the Debtor received the Pension Payment in the amount of \$11,221.62. (Trial Transcript at 14.)

In about a month, all or substantially all of the Pension Payment was gone. (Meeting Transcript at 5.) The Debtor used the proceeds of the Pension Payment to “catch up on some of [her] . . . household [expenses]” (*id.*) and to make two other payments: the Mortgage Payment (on or about April 1, 2005) and the Insider Payment (on or about March 20, 2005). (*See* Amended SOFA). The Debtor’s mortgage was not in default when she made the Mortgage Payment. (Trial Transcript at 12.) In fact, the check for the Mortgage Payment bore the notation: “extra pymt [sic] principal/interest.” (Plaintiff’s Trial Exh. B.) The Debtor had never made an advance payment on her mortgage before. (Meeting Transcript at 3.)<sup>11</sup>

The Debtor made the Insider Payment to her father because he “had been giving me money to help me support my kids and I just thought that I should give him some back in case I ever had to borrow money from him again.” (Trial Transcript at 24:24 – 25:1.) In making the Insider Payment, the Debtor intended to pay her father before her other creditors. (Trial Transcript at 14, 36.) The check for the Insider Payment bore the notation: “Repayment of loan.” (Plaintiff’s Trial Exh. A.) The Debtor further claims that she did not think that the term “creditor” (as that term was used in Item 3.a) applied

---

<sup>11</sup> The Debtor testified at the Meeting that she had owned her home for approximately two years. (*Id.* at 3-4.)

to her father. (Trial Transcript at 9, 29.) The Debtor also claims that she did not understand what the term “insider” (as that term was used in Item 3.b) meant, that the term never was explained to her by her attorney and that she never asked him for an explanation. (Trial Transcript at 10-11.)

The Debtor returned to her attorney’s office once or twice on or before April 19, 2005 to review the Schedules and Original SOFA. (Trial Transcript at 7, 29.) When she ultimately signed the Schedules and the Original SOFA, the Debtor claims that she did not “go over the questions as thoroughly the second time as [she] . . . did the first time.” (Trial Transcript at 29:24 – 30:1.)

As noted above, the Meeting was convened on June 1, 2005. The Trustee and the Debtor (under oath) engaged in the following exchange:

MR. CHORCHES: You recently divorced, right?  
MS. MORRISON: Yes.  
MR. CHORCHES: And – does your husband owe you anything from the divorce?  
MS. MORRISON: No.  
MR. CHORCHES: Did you receive his pension plan or – IRA – any retirement account from your husband?  
MS. MORRISON: Yes.  
MR. CHORCHES: And did you receive it in the form of a (indiscernible).  
MS. MORRISON: Yes.  
MR. CHORCHES: Do you have it right now?  
MS. MORRISON: No.  
MR. CHORCHES: What happened to it?  
MS. MORRISON: I used it to catch up on some of my household --  
MR. CHORCHES: How much did you receive?  
MS. MORRISON: I think it was a little over 10,000.  
MR. CHORCHES: And when did you receive it?  
MS. MORRISON: March – I’m not sure of the date in March.  
MR. CHORCHES: Do you have any idea?  
MS. MORRISON: I think it was around the middle of March.  
MR. CHORCHES: Did you receive any other assets from the divorce?  
MS. MORRISON: I get alimony and child support.  
MR. CHORCHES: And what did you do with \$10,000 in a month?  
MS. MORRISON: I paid household bills.  
MR. CHORCHES: But you pay household bills anyway, right?  
MS. MORRISON: No – yeah, but I had gotten really behind because of all of the credit cards.



MR. CHORCHES: I want to see your bank – I want to see your bank statement going back showing the money going in – Did you write checks?  
 MS. MORRISON: Yes, I did.

...

MR. CHORCHES: All right. I want to see the money going in and I want to see the money going out --  
 MS. MORRISON: Okay.  
 MR. CHORCHES: – to the penny, all right?  
 MS. MORRISON: Okay.  
 MR. CHORCHES: And I also want to see the check that you wrote to the mortgage company.  
 MS. MORRISON: Okay.  
 MR. CHORCHES: Otherwise, I – I think it goes to your intents . . . .

...

MR. CHORCHES: Did you read the petition before you signed it and filed it with the report?  
 MS. MORRISON: Yes.  
 MR. CHORCHES: Did you list all the people you owe money to?  
 MS. MORRISON: Yes.  
 MR. CHORCHES: Did you – loans – have values, did you put that on your schedules list accurately?  
 MS. MORRISON: Yes.  
 MR. CHORCHES: All right. And your – the money was what you need to provide me with?  
 MS. MORRISON: Yes.

(Meeting Transcript at 4-10.) In compliance with the Trustee’s instructions, the Debtor subsequently produced to the Trustee copies of the checks for the Mortgage Payment and the Insider Payment (among other things).

### **III. ANALYSIS**

#### **A. Legal Standards**

One of the most important objectives of the chapter 7 bankruptcy process is a fresh start for the debtor in the form of a discharge of past debts. With the ultimate objective of a fresh start for honest debtors in mind, this court does not deny discharge lightly.

Appreciative that denial of a debtor’s discharge “imposes an extreme penalty for wrongdoing,” the United States Court of Appeals for the Second Circuit in *In re Chalasani*, 92 F.3d 1300, 1310 (2d Cir. 1996), has instructed that Section 727 “must be

construed strictly against those who object to the debtor's discharge and 'liberally in favor of the bankrupt.'" *Id.* Nevertheless, the relief of a bankruptcy discharge is not an absolute right, but rather, a privilege accorded honest debtors who provide full and honest disclosure to creditors and otherwise satisfy bankruptcy statutory obligations.

*Casa Investments Co. v. Brenes (In re Brenes)*, 261 B.R. 322, 329 (Bankr. D. Conn. 2001) (Dabrowski, J.).

The Plaintiff seeks denial of discharge pursuant to Bankruptcy Code § 727(a)(4)(A). Section 727(a)(4)(A) provides in relevant part:

(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.A. § 727(a)(4)(A) (West 2005). In order to deny discharge under Section 727(a)(4)(A), the plaintiff must establish that: (1) the debtor made the statement under oath; (2) the statement was false; (3) the debtor knew the statement was false; (4) the statement was made with fraudulent intent; and (5) the statement related materially to the bankruptcy case. *In re Brenes*, 261 B.R. at 334. A Section 727(a) objection to discharge must be established by a preponderance of the evidence. *Cf. Grogan v. Garner*, 498 U.S. 279 (1991); *see also Peterson v. Scott (In re Scott)*, 172 F.3d 959, 966-67 (7th Cir. 1999). Statements made by a debtor on her petition, schedules and statement of financial affairs fall within the purview of Section 727(a)(4)(A) as statements made under oath. *In re Brenes*, 261 B.R. at 334.

A statement is deemed to be made with knowledge of its falsity if it was known by the debtor to be false or if it was made with reckless disregard for the truth. *D.A.N. Joint Venture, L.P. v. Cacioli (In re Cacioli)*, 285 B.R. 778, 784 (Bankr. D. Conn. 2002) (Dabrowski, J.), *aff'd*, 332 B.R. 514 (D. Conn. 2005). Once the party objecting to discharge meets its burden of proof by providing persuasive

evidence of a false statement, the burden of production shifts to the debtor credibly to explain the reason for the false statement. *In re Brenes*, 262 B.R. at 334. However, the risk of nonpersuasion remains upon the plaintiff. *In re Brenes*, 261 B.R. at 328.

With respect to materiality to the bankruptcy case, this court accepts the following formulation: “The subject matter of a false oath is ‘material,’ and thus sufficient to bar discharge, 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.” *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984).

Since a plaintiff rarely can produce direct evidence of fraudulent intent, a court may infer fraudulent intent from circumstantial evidence. *Neugebauer v. Senese (In re Senese)*, 245 B.R. 565, 575 (Bankr. N.D. Ill. 2000). A court may infer fraudulent intent from a “pattern of concealment.” *In re Senese*, 245 B.R. at 575. Fraudulent intent may be inferred if the false statement is not satisfactorily explained by the debtor. *Id.*

**B. Application of Law to Fact**

It is undisputed that the Debtor’s statements in Item 3.a and Item 3.b of the Original SOFA were false when sworn to. It also is undisputed that the Original SOFA was a “statement under oath” within the meaning of Section 727(a)(4)(A). The Debtor’s responses to Item 3.a and Item 3.b of the Original SOFA were “material” because they related to the “existence and disposition of . . . [her] property.”<sup>12</sup> *Chalik v. Moorefield, supra*. Thus, the only two elements of a Section 727(a)(4)(A) discharge objection disputed here are the Debtor’s knowledge of the falsity of her statements and her fraudulent intent.

---

<sup>12</sup> The purpose behind the information required by Item 3.a and Item 3.b is to identify potential voidable (recoverable) transfers.

The Debtor argues that the Original SOFA was true when she filled it out because that was before she received the Pension Payment and before she made the Mortgage Payment and the Insider Payment. After those events occurred, the Debtor argues, she reviewed the Original SOFA prior to signing it without understanding and/or appreciating that her responses to Item 3.a and Item 3.b needed to be changed. Thus, the Debtor argues, her misstatements were the result of ignorance and/or inadvertence rather than fraudulent intent.

With respect to the Insider Payment, the Debtor asserts that she did not know that her father was an “insider” within the meaning of Item 3.b and her false statement in respect of Item 3.b and the Insider Payment was innocent. The problem with that argument is that Item 3.a also required disclosure of the Insider Payment. Item 3.a specifically referred to “payment on loans.” The check for the Insider Payment described that payment as a “[r]epayment of loan.” In light of the foregoing, the court does not find the Debtor’s testimony that she did not consider her father to be a “creditor” credible.

The only remaining explanation for the Debtor’s false statement in respect of the Insider Payment and the Mortgage Payment would be inadvertence. However, neither the Mortgage Payment nor the Insider Payment was an ordinary course payment and both would be difficult for the Debtor to forget. Moreover, if the false statements in the Original SOFA were merely a result of the Debtor’s innocent failure to bring the pre-Pension Payment version of the Original SOFA forward in time to April 19, 2005, one would expect to find the Debtor’s right to receive the Pension Payment disclosed on Schedule B (Personal Property) in response to Item 16 in the Original SOFA. That would have been reflective of the state of things when the Debtor first filled out the Original SOFA as the Pension Payment had not been received yet. However, as noted above, the Debtor’s response on Schedule B (Personal Property) to Item 16 (which specifically referred to “[a]limony, maintenance, support, and property settlements *to which the debtor is or may be entitled*”) was “[n]one.” That is not consistent

with an innocent failure to bring the Original SOFA forward in time. The Debtor has not satisfactorily explained her misstatements.

The Debtor argues that fraudulent intent is negated by her responses to the Trustee at the Meeting and afterwards. However, the Debtor's decision to "fess up" to the Trustee when he began to ask pertinent questions does not negate an intent to conceal when she signed the Original SOFA. Likewise, the belated filing of the Amended SOFA (five days before the Trial) is not helpful to the Debtor here.

Based upon all of the foregoing circumstances, the court is persuaded that the Debtor knew that her statement in the Original SOFA that the Mortgage Payment and the Insider Payment had never been made was false when she swore to it and that such false statement under oath was made with fraudulent intent.

#### **IV. CONCLUSION**

For the reasons set forth above, no discharge will be granted to the Debtor in this chapter 7 case. Judgement will enter for the Plaintiff accordingly.

Dated: April 28, 2006

BY THE COURT

  
Lorraine Murphy Weil  
United States Bankruptcy Judge