

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of :
ROBERT LEE LANE, : Case No. 88-1063-D H
Debtor. : Chapter 7

DANIEL J. HOUSE, :
Plaintiff, : Adv. No. 88-0175
v. :
ROBERT LANE, :
Defendant. :

**ORDER--FINDINGS OF FACT AND CONCLUSIONS OF LAW,
COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT AND DISCHARGE**

On March 13 1989, a trial was held on the complaint to determine dischargeability of debt and discharge of Debtor/Defendant. The following attorneys appeared on behalf of their respective clients: Thomas J. Yeggy for Debtor/Defendant Robert Lane (hereinafter "Debtor") and pro-se creditor Plaintiff Daniel J. House (hereinafter "House"). At the conclusion of said trial, the Court took the matter under advisement upon a briefing schedule. Both parties have submitted briefs and arguments and the Court considers the matter fully submitted. The Court has received subsequent correspondence from a witness in the trial but this correspondence does not constitute evidence and has not been considered by the Court in reaching the decision herein.

This is a core proceeding pursuant to 28 U.S.C. §§157(b)(2)(I) and (J). The Court, upon review of the pleadings, arguments of counsel,

evidence admitted, and briefs submitted now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. Debtor filed his Chapter 7 Petition on May 13, 1988, and House filed his complaint on August 15, 1988. The amended and recast complaint was filed on December 14, 1988.

2. The complaint, as amended, is in six counts. Count I alleges that the judgment debt held by House should not be discharged because of willful and malicious injury by Debtor on August 13, 1983, with resulting judgment against Debtor on August 13, 1987, as provided in 11 U.S.C. §523(a)(6).

3. Count II alleges that Debtor should not be granted a discharge because Debtor failed to schedule fire arms which constitute a violation of 11 U.S.C. §727(a)(2)(A) and/or 11 U.S.C. §727(a)(4)(A).

4. Count III alleges that Debtor should not be granted a discharge because Debtor failed to schedule a motor home which constitutes a violation of 11 U.S.C. §727(a)(2)(A) and/or 11 U.S.C. §727(a)(4)(A).

5. Count IV alleges that Debtor should not be granted a discharge because Debtor failed to schedule a motorcycle which constitutes a violation of 11 U.S.C. §727(a)(2)(A) and/or 11 U.S.C. 727(a)(4)(A).

6. Count V alleges that Debtor should not be granted a discharge because Debtor stated in his Statement of Financial Affairs that he was

making car payments which constitute a violation of 11 U.S.C. §727(a)(4)(A).

7. Count VI alleges that Debtor should not be granted a discharge because Debtor stated in his Schedule of Current Income and Current Expenditures that he was making certain expenditures which were false, constituting a violation of 11 U.S.C. §727(a)(4)(A).

8. There had been animosity by and between House and Debtor for some time, but this animosity culminated on August 13, 1983, when Debtor attacked House with a claw hammer during a confrontation of the parties on a rural road in Des Moines County, Iowa.

9. On August 13, 1983, Debtor hit House on the left side of his head with a hammer. House was unarmed at the time and was attempting to flee Debtor's approach with the hammer at the time of the first blow to the head. Debtor struck House's left side of the head, causing an open depressed skull fracture with profuse bleeding.

Debtor also struck House over the mastoid process of the skull, causing noticeable discoloration and bruising. After House fell to the ground, Debtor again struck House, fracturing the ninth and tenth ribs on the left side. This injury was compatible with being kicked in the ribs. These blows have caused permanent injuries to House.

10. The force used by Debtor against House created a

substantial risk of death.

11. After the assault, Debtor left House lying on the gravel road. Debtor went to a nearby rural residence where he watched the scene, and placed a call to the sheriff's office. He advised the sheriff's office that an assault had occurred, but told them, at that time, that an ambulance was not needed. He later told an investigator from the sheriff's office that he thought he had killed House.

12. Shortly before the incident on August 13, 1983, and probably during August 1983, Debtor drove a truck into House's rural farmyard and attempted to run over House with a truck. The attempt was unsuccessful, but the movement of the truck tore up the yard.

13. On August 9, 1985, House filed a petition in the Iowa District Court, Des Moines County, with a caption of Daniel J. House, Plaintiff, v. Robert Lane, Defendant, Law No. CL 2508-0885. House prayed for compensatory and punitive damages against Debtor as a result of the assault on August 13, 1983. This lawsuit will be referred to herein as the Iowa District Court lawsuit.

14. The Iowa District Court lawsuit proceeded to jury trial on August 4, 1987.

15. The Iowa District Court instructed the jury, in part, that "(p)unitive damages are never allowed as a matter of right. In

certain cases, the law of this state permits, but does not require, that a jury allow punitive damages." The Iowa District Court further instructed: "So in this case if you find Robert Lane used unreasonable force in defending himself from Daniel House and such force was applied as a result of actual malice against Daniel House or that Robert Lane acted in reckless disregard of the person of Daniel House, then you may allow Daniel House punitive damages in addition to his actual damages." (Emphasis supplied).

16. On August 11, 1987, the jury returned a verdict for House of \$75,000 for compensatory damages, but returned a verdict for Debtor on punitive damages.

17. On August 13, 1987, judgment was entered in the Iowa District Court, Des Moines County, in favor of House and against Debtor in the amount of \$75,000 plus interest at the rate of 10% per annum from August 9, 1985, and costs.

18. Debtor appealed this judgment, but on January 4, 1988, he dismissed the appeal.

19. During the trial of the Iowa District Court action, Debtor testified that he owned six firearms. He scheduled two firearms in Schedule B-2, Personal Property, to-wit: a Browning automatic shotgun and a Browning 257 rifle, with a combined value of \$800.00. Debtor testified in the trial *sub judice* that he traded firearms for the scheduled firearms and his wife, Martha Lane, owned the others.

20. On August 3, 1987, Debtor transferred the title to a 1976

Dodge motor home to his brother, Richard Lane. This was one day before the Iowa District Court lawsuit started. Prior to this date, the title to this vehicle had always been in Debtor's name; he had paid all of the insurance; and, had maintained the vehicle.

21. On August 12, 1987, Richard Lane signed a statement under oath that the motor home transfer was by gift or without consideration. This was one day after the verdict in the Iowa District Court lawsuit.

22. Debtor did receive \$5,000.00 from his brother in July 1987. This money came to Debtor from his mother's estate and was paid to Debtor by his brother, Richard Lane, as fiduciary for said estate.

23. On May 5, 1986, Debtor purchased a 1978 Honda motorcycle for \$400.00. On September 21, 1987, Debtor denied ownership of this motorcycle when the Des Moines County Sheriff attempted to levy on property belonging to Debtor and Debtor has not scheduled this motorcycle as an asset.

24. Debtor contends that he sold this motorcycle to one George Fielty. George Fielty did not testify at the time of trial herein; he was listed as a prospective witness for Debtor; and there was no showing that he was unavailable for trial.

25. Debtor was regularly seen riding this motorcycle after May 5, 1986, and through September 21, 1987. This motorcycle has been

regularly stored in a garage subject to the control of Debtor and not subject to the control of George Fielty. As of the date of trial, the title to this motorcycle remains in Debtor.

26. As previously stated, Debtor filed his Chapter 7 petition on May 13, 1988. In the Statement of Financial Affairs, Debtor stated that he held hand tools and miscellaneous other tools for his son, John Crear, and Bill Jarrett, Mediapolis, Iowa.

27. Debtor specifically declared that he held a horse air compressor, drill press, lawn mower, and miscellaneous carpenter tools for Martha Lane. He specifically declared that he held a mig welder, cutoff saw, air jack, "acelene" (acetylene) torch, race car parts, bench grinder, vice and chain hoist for John Crear. He declared that he held a "partsworch" (parts washer), 20 ton press, and snap-on tools cabinet for Bill Jarrett.

28. On May 13, 1988, the date the Chapter 7 petition was filed by Debtor, Debtor owned a compressor, drill press, lawn mower, welder, cut-off saw, air jack, acetylene torch, race car parts, chain hoist, parts washer, 20-ton press, and snap-on tools and cabinet, with a total value in excess of \$3,000.00.

29. On May 13, 1988, Debtor also owned a Burlington modified race car, trailer, and automobile racing equipment, with a total value in excess of \$6,000.00. Debtor never scheduled these assets.

30. Debtor stated that he had not kept books and accounts or records relating to his affairs within the two-year period preceding

the filing of the petition.

31. Debtor stated in his Statement of Financial Affairs that he had not made any gifts, other than ordinary and usual presents to family members or charitable organizations, during the year preceding the filing of the petition.

32. Debtor stated that there were no creditors having priority or secured creditors. He lists \$83,305.00 as unsecured debt, of which \$75,000.00 is listed as a disputed claim held by Daniel J. House as a result of a judgment rendered against Debtor on August 13, 1987, in the Iowa District Court for Des Moines County.

33. Debtor stated in his Statement of Financial Affairs that he is making car payments to Farmers Merchant Bank in the approximate amount of \$188.00 per month. He made this payment to pay a debt on a Chevrolet Celebrity. There is no disclosed ownership of said vehicle in Debtor.

34. Debtor amended his schedules to show that he owns a 1984 GMC truck worth \$5,000.00.

35. Debtor's schedules revealed that he is a truck driver employed by Churchill Truck Lines. He has been employed there 23 years. His net income for 1986 was \$26,000.00, and his net income for 1987 was \$26,000.00.

36. On November 5, 1984, and November 7, 1984, Martha F. Lane, Debtor's wife, purchased the real estate located at 800 North Sixth Street, Burlington, Iowa. The purchase price was \$78,000.00, and Martha F. Lane took title in her own name. Prior to this, Martha and

Debtor had held joint title in their residential property. Debtor used this residence as his own until on or about January 1, 1989, when Martha and Debtor separated.

37. The residence located at 800 North Sixth Street was completely paid off on or about September 15, 1986. Proceeds from the sale of real estate jointly owned by Martha F. Lane and Robert L. Lane, husband and wife, were used to pay for this real estate. Martha's separate income was insufficient to pay off the mortgage within that period of time.

38. On or about February 2, 1987, an order issued in the Iowa District Court lawsuit setting the House v. Lane case for trial on March 24, 1987.

39. On February 12, 1987, Debtor conveyed his interest in jointly held real estate to his wife, Martha, as her sole property. This was done anticipating a judgment against Debtor in the Iowa District Court lawsuit.

40. Debtor claims he does not know where his books and records are. However, he has not made effective efforts to gain access to books and records, although the means were available and he was represented by counsel at all relevant times.

41. House filed a claim on June 8, 1988, in the amount of \$92,964.23, plus interest, based upon the judgment in Iowa District court, Des Moines County.

DISCUSSION

During the trial, and at the conclusion of Debtor's case, House

made an oral motion to amend the complaint to allege that Debtor has concealed, destroyed or failed to keep or preserve recorded information from which Debtor's financial condition on business transactions might be ascertained, and Debtor should not be granted a discharge pursuant to 11 U.S.C. §727(a)(3). This motion was made pursuant to FED.R.Bankr.P. 7015 incorporating by reference Fed.R.Civ.P. 15(b). House's motion to amend is sustained and the complaint is amended accordingly.

House has presented a number of grounds under sections 523 and 727 of the Bankruptcy Code denying Debtor discharge on some or all of his debts. The Court will individually address each ground.

A. §523(a)(6)

Section 523(a)(6) provides:

(a) A discharge under §727...does not discharge an individual debtor from any debt--

...

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

The Bankruptcy Code does not define "willful and malicious." As a result, a split of authority exists on the interpretation of said phrase. In re Cecchini, 37 B.R. 671, 674 (B.A.P. 9th Cir. 1984). Some courts interpret the phrase to require an injury-causing intentional act, while other courts require an act performed with the intent to cause injury. Id. at 674-75. The Eighth Circuit has adopted the second line of reasoning and has ruled that under §523(a)(6), a debt based upon liability for injuries is

nondischargeable if the debtor intentionally inflicted the injury. Cassidy v. Minihan, 794 F.2d 340, 343-44 (8th Cir. 1986); see In re Long, 774 F.2d 875, 881 (8th Cir. 1985).

An objecting party has the burden of proving by clear and convincing evidence that the debtor intended to cause the injury. American Honda Finance Corp. v. Loder, 77 B.R. 213, 214-15 (N.D. Iowa 1987). However, because intentional harm is difficult to prove, the Court may consider the likelihood of harm in an objective sense in determining intent. Long, 774 F.2d at 881.

In the case *sub judice* both parties contend the doctrine of collateral estoppel precludes a rehearing of the facts pertaining to "willful and malicious injury" under §523(a)(6). Under the doctrine of collateral estoppel, a prior adjudication precludes relitigation of an issue only if the following requirements are met:

- (1) the issue sought to be precluded must be the same as that involved in the prior action;
- (2) that issue must have actually been litigated;
- (3) it must have been determined by a valid and final judgment;
- (4) the determination must have been essential to the prior judgment.

Matter of Moccio, 41 B.R. 268, 271-72 (Bankr. D.N.J. 1984) (citation omitted). This same standard applies to collateral estoppel in a nondischargeability proceeding. Id. (citations omitted).

House cites to bankruptcy court cases where the courts held

under the doctrine of collateral estoppel that a state court finding of assault and battery is also a finding of "willful and malicious injury" as defined in §523(a)(6). See, e.g., In re Bishop, 55 B.R. 687 (Bankr. W.D. Ky. 1985). House thus seeks to use collateral estoppel offensively based on the state court assault and battery judgment he received against Debtor. Debtor, on the other hand, seeks to use collateral

estoppel defensively and argues the state court jury's refusal to impose punitive damages amounts to a finding that the debtor did not willfully and maliciously injure the creditor under §523(a)(6), thus rendering the judgment for compensatory damages dischargeable.

Upon review of these arguments, the Court finds that neither party is entitled to the use of collateral estoppel. House is not entitled to the offensive use of collateral estoppel because the standard of proof used by the state court jury and this Court are different. See Brown v. Felsen, 442 U.S. 127, 139 n.10, 99 S.Ct. 2205, 2213 n.10, 60 L.Ed.2d 767 (1979) (collateral estoppel is applicable only if the state court's decision on factual issues was based on standards identical to those used by the Bankruptcy Court in determining dischargeability). The state court jury, as part of its verdict on assault and battery, found by a preponderance of the

evidence that Debtor acted with intent to cause physical injury to House. Under §523(a)(6), this Court must also determine whether Debtor acted with intent to injure House but such a finding must meet the higher clear and convincing standard of proof. Debtor, on the other hand, is not entitled to the defensive use of collateral estoppel because nothing can be inferred as to the presence of malice from the state court jury's refusal to impose punitive damages since the jury was not required to assess punitive damages even if it found malice. See Matter of Peterson, No. 86-3224-C, Adv. No. 87-0013, slip op. at 4 (Bankr. S.D. Iowa September 28, 1987). As a result, the Court cannot rely upon the state court findings and instead must make its own factual determination.

Making its own factual determination, the Court finds that House has proven by clear and convincing evidence that Debtor intended to cause the injuries to House. On August 13, 1983, Debtor struck the unarmed House numerous times, causing life-threatening and permanent injuries to House's head and ribs. Based on Debtor's conduct, the Court must find that Debtor intentionally inflicted the injuries upon House. Thus, the Iowa District Court judgment is nondischargeable under §523(a)(6).

B. §727(a)

Bankruptcy Code §727(a) sets out ten non-exclusive grounds upon which the court can deny a debtor's discharge. 11 U.S.C. §727(a). An action brought under §727 is the most serious non-criminal action a creditor can bring against a debtor in bankruptcy. In re Schermer,

59 B.R. 924 (Bankr. W.D. Ky. 1986). Discharge under §727 "is the heart of the fresh start provisions of the bankruptcy law." In re Nye, 64 B.R. 759, 762 (Bankr. E.D. N.C. 1986) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 384 (1977), U.S. CODE CONG. & ADMIN. NEWS 1978, pp. 5787, 6340). Consequently, objections to discharge are construed liberally in favor of debtors and strictly against the objecting creditor. In re Schmit, 71 B.R. 587, 590 (Bankr. D. Minn. 1987); In re Usoskin, 56 B.R. 805, 813 (Bankr. E.D. N.Y. 1985).

The burden of proof in objecting to discharge rests with the party objecting to discharge. Fed. R. Bankr. P. 4005. The grounds for denying a debtor's discharge under §727 must be established by clear and convincing evidence. In re Martin, 88 B.R. 319, 321 (D. Colo. 1988); In re Ford, 53 B.R. 444, 449 (W.D. Va. 1984), aff'd 773 F.2d 52 (9th Cir. 1985). If the party objecting to discharge does prove a ground by clear and convincing evidence, the burden of going forward with the evidence then shifts to the debtor. Ford, 53 B.R. at 449.

1. §727(a)(2)(A)

Section 727(a)(2)(A) provides the court shall grant the debtor a discharge unless:

- (2) the debtor, with intent to hinder, delay, or defraud a creditor or an office of the estate charged with custody or property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed--

(A) property of the debtor, within one year before the date of filing the petition.

11 U.S.C. §727(a)(2)(A) (emphasis added). The four elements a plaintiff must prove under §727(a)(2)(A) are:

1. A transfer of property has occurred;
2. It was property of the debtor;
3. The transfer was within one year of the date of filing the petition; and
4. The debtor had, at the time of the transfer, the intent to hinder, delay, or defraud a creditor.

Ford, 53 B.R. at 446. The first three elements are self-explanatory.

The fourth element, intent to hinder, delay or defraud, requires an actual fraudulent intent or actual intent to hinder or delay as opposed

to constructive fraudulent intent. In re Adeeb, 787 F.2d 1339, 1342-43 (9th Cir. 1986); Ford, 53 B.R. at 449. Since a debtor will not voluntarily testify that his intent was fraudulent, the court may infer fraudulent intent by circumstantial evidence. In re McNamara, 89 B.R. 648, 651 (Bankr. N.D. Ohio 1988) (citations omitted); In re Roberts, 81 B.R. 354, 379 (Bankr. W.D. Pa. 1987) (citations omitted).

In addition, the court can rely upon "badges of fraud" to establish the necessary actual intent to defraud including:

1. the lack or inadequacy of consideration;
2. the family, friendship or close associate relationship between the parties;

3. the retention of possession, benefit or use of the property in question;
4. the financial condition of the party sought to be charged both before and after the transaction in question;
5. the existence or cumulative effect of a pattern or series of transactions or course of conduct after the incurring debt, onset of financial difficulties, or pendency or threat of suits by creditors, and
6. the general chronology of events and transactions under inquiry.

McNamara, 89 B.R. at 651 (citing In re Kaiser, 722 F.2d 1574, 1582 (2nd Cir. 1983)); see Roberts, 81 B.R. at 379.

House asserts that Debtor, with the intent to hinder, delay, or defraud a creditor, concealed Debtor's firearms within one year before May 13, 1988, the date Debtor filed his Chapter 7 petition. Debtor did testify during the Iowa District Court trial that he "owned" six firearms. It was not developed during this trial what Debtor meant by "owned" and this proof is insufficient to show by clear and convincing evidence that Debtor concealed firearms. The Court finds that House has failed to prove that Debtor has concealed said firearms as described above.

House also asserts that Debtor, with the intent to hinder, delay, or defraud a creditor, transferred Debtor's motor home within one year before May 13, 1988. Debtor did transfer the title to Debtor's 1976 Dodge motor home on August 3, 1987. Thus, House has proven the first three elements of §727(a)(2)(A). Concerning the fourth element, intent to hinder, delay, or defraud a creditor,

Debtor transferred the motor home to Debtor's brother for no consideration one day prior to the beginning of the Iowa District Court lawsuit. Debtor has engaged in a course of conduct for several years whereby he and Martha F. Lane have attempted to conceal and screen assets from potential creditors, in particular Daniel House. Debtor, within a short period of time before the filing of his petition, and after the assault on August 13, 1983, has indulged himself in a state of mind whereby he transferred property and assets to conceal and screen his financial interest in the property. This is the same state of mind--an intent to hinder, delay or defraud a creditor--that was present when Debtor transferred the motor home to his brother one day before the Iowa District Court trial began. The Court finds that this conduct evidences sufficient badges of fraud to establish the intent to hinder, delay, or defraud a creditor. Therefore, House has established all four elements of §727(a)(2)(A).

House finally asserts that Debtor, with the intent to hinder, delay, or defraud a creditor, transferred or concealed Debtor's 1978 Honda motorcycle within one year before the May 13, 1988 Chapter 7 petition date. Debtor contends that he sold this motorcycle to George Fielty. Debtor was regularly seen riding this motorcycle through September 21, 1987, the date Debtor denied ownership of this motorcycle to the Des Moines County Sheriff attempting to levy on Debtor's property.

If Debtor's contention that he transferred the motorcycle is

true, and Debtor was regularly seen riding this motorcycle through September 21, 1987, the transfer must have taken place after September 21, 1987. The transfer was therefore within one year of the date of the May 13, 1988 Chapter 7 petition, and the first three elements of §727(a)(2)(A) are met. Concerning the fourth element, intent to hinder, delay, or defraud a creditor, the 1978 Honda motorcycle has been regularly stored in a garage subject to the control of Debtor and title to this motorcycle remains in Debtor. Thus, Debtor has retained possession, benefit, and use of the property in question. This retention of possession, along with the general chronology of events under inquiry, establishes badges of fraud sufficient to find that Debtor intended to hinder, delay, or defraud a creditor. Plaintiff has thus proven all four elements of §727(a)(2)(A).

If Debtor's contention that he transferred the motorcycle is not true, then Debtor concealed the 1978 Honda motorcycle within one year of the May 13, 1988 Chapter 7 petition date and the first three elements of §727(a)(2)(A) are met. Concerning the fourth element, Debtor contends that he transferred this motorcycle, and Debtor did not list this motorcycle on his Schedule B-2. However, the 1978 Honda motorcycle has been regularly stored in a garage subject to the control of Debtor and title to this motorcycle remains in Debtor. This evidences Debtor's intent to hinder, delay, or defraud a creditor. Thus, all four elements of §727(a)(2)(A) are met.

Debtor has largely fashioned his economic life since 1983 by

insulating his property interests from House. Debtor has done this by concealing his property interests. This same state of mind continues in Debtor's filing of his bankruptcy petition wherein House's judgment for \$75,000.00 constitutes 90% of the scheduled debt. Debtor in his statements and schedules, continues to conceal assets and his actions continue to be directed toward House as a creditor.

Because House has proven all four elements of §727(a)(2)(A) concerning the transfer of the motor home, and transfer or concealment of the motorcycle, the Court denies Debtor's discharge under §727(a)(2)(A).

2. §727(a)(4)(A)

Section 727(a)(4)(A) provides:

- (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.

The fundamental purpose of §727(a)(4)(A) is to ensure that dependable information is supplied to the administrators of the debtor's estate on which they can rely without the need for the trustee or other interested parties to dig out the true facts in examinations or investigations. Matter of Hussan, 56 B.R. 288, 290 (Bankr. E.D. Mich. 1985); In re McDonald, 50 B.R. 255, 259 (Bankr. D. Mass. 1985).

To sustain an objection to discharge under §727(a)(4)(A), the plaintiff must establish that the debtor knowingly made a false statement under oath with the intent to defraud his or her creditors regarding a matter material to the administration of the estate. In re Chalik, 748 F.2d 616, 618 (11th Cir. 1984); In re Hooper, 39 B.R. 324, 329 (Bankr. N.D. Ohio 1984).

The materiality of a false oath does not require that the creditors were prejudiced by the false statement; rather, the question of materiality depends on whether the false oath is pertinent to the discovery of the debtor's assets or past transactions concerning the disposition of debtor's property. Chalik, 748 F.2d at 618; Matter of Brooks, 58 B.R. 462, 467 (Bankr. W.D. Pa. 1986); In re Bailey, 53 B.R. 732, 735 (Bankr. W.D. Ky. 1985). As a result, a false oath regarding worthless assets constitutes a material omission and precludes discharge. In re Robinson, 506 F.2d 1184, 1188 (2nd Cir. 1974); In re

Mascolo, 505 F.2d 274, 277-78 (1st Cir. 1974).

A false oath may consist of a false statement or omission in the debtor's schedules or statement of affairs, or a false statement by the debtor at an examination during the proceedings. In re Bobroff, 58 B.R. 950, 953 (Bankr. E.D. Pa. 1986); In re Irving, 27 B.R. 943, 945 (Bankr. E.D. N.Y. 1983); see In re Cycle Accounting Services, 43 B.R. 264, 273 (Bankr. E.D. Tenn. 1984). If the debtor omits a material fact, the court may infer from the circumstances that the debtor acted "knowingly and fraudulently." Martin, 88 B.R. at 323; Bobroff, 58 B.R. at 953. A simple mistake or inadvertence is not sufficient to prove that a false oath was made "knowingly and fraudulently." Brooks, 58 B.R. at 467; see Cycle Accounting, 43 B.R. at 273. However, the requisite intent is established when the cumulative effect of all falsehoods together indicates a pattern of "reckless and cavalier" disregard for the truth. Bobroff, 58 B.R. at 953; In re Ligon, 55 B.R. 250, 253 (Bankr. M.D. Tenn. 1985); Cycle Accounting, 43 B.R. at 273.

House asserts that the following constitute a knowing and fraudulent false oath or account in connection with Debtor's Chapter 7 case under §727(a)(4)(A): 1) Debtor's failure to schedule certain firearms on Schedule B-2; 2) Debtor's failure to correctly schedule the transfer of the 1976 motor home from Debtor to Debtor's brother as a transfer without consideration on Debtor's Statement of Financial Affairs; 3) Debtor's failure to list the transfer of the

1978 Honda motorcycle on Debtor's Statement of Financial Affairs or failure to schedule the motorcycle on Schedule B-2; 4) Debtor's listing of car payments to Farmers Merchant Bank in the approximate amount of \$180.00 per month, while not disclosing ownership in the car; and 5) Debtor's false statement of rent and other expenditures in Debtor's Schedule of Current Income and Current Expenditures.

House has established that Debtor incorrectly scheduled the motor home transfer and did not schedule the motorcycle transfer or motorcycle. Further, Debtor incorrectly scheduled the compressor, drill press, lawn mower, welder, cutoff saw, air jack, acetylene torch, race car parts, chain hoist, parts washer, 20-ton press, and snap-on tools and cabinet, as property held for Martha Lane, Bill Jarret and John Crear, while Debtor owned said personal property. Finally, Debtor failed to schedule the Burlington modified race car, trailer, and automobile racing equipment.

These false statements and omissions in Debtor's schedules and statement of affairs constitute a false oath. The false oath regards material matter in that it pertains to the discovery of Debtor's assets or past transactions concerning the disposition of Debtor's property. Finally, the cumulative effect of all these falsehoods indicates a pattern of "reckless and cavalier" disregard for the truth and establishes that Debtor knowingly and fraudulently made the false oath. The Court thus denies Debtor's discharge under §727(a)(4)(A).

3. §727(a)(3)

Section 727(a)(3) provides:

(a) 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.

The Court has reasonably wide discretion in determining the books and records produced are sufficient to meet the requirements of the statute. In re Brown, 56 B.R. 63 (Bankr. D.N.H. 1985); Broad Nat'l Bank v. Kadison, 26 B.R. 1015 (D.N.J. 1983); In re Kottwitz, 42 B.R. 566 (W.D. Mo. 1984). The objective in bankruptcy is to secure the complete disclosure of the debtor's financial circumstances and what this requires by way of books and records is dependent on the facts of each case. In re Usoskin, 56 B.R. 805 (Bankr. E.D.N.Y. 1985); In re Brown, supra. What is required is records that are "reasonable under the circumstances." In re Brown, supra.

Even where the debtor has failed to keep and preserve the records necessary to complete disclosure, he may still qualify for a discharge where he can justify his failure. In re Usoskin, supra; In re Underhill, 82 F.2d 258 2d Cir. (1936) cert. den., 299 U.S. 546, 57

S.Ct. 9, 81 L.Ed. 402 (1936). Whether failure to keep records will be justifiable is a question of fact to be determined in each instance under the particular circumstances of the case. In re Brown, supra; In re Underhill, supra.

In the case *sub judice*, Debtor has stated that he did not keep books and accounts or records relating to his affairs within the two-year period preceding the filing of the petition, and stated that he does not know where his books and records are located. Further, he has not made effective efforts to gain access to books and records, although the means were available and he was represented by counsel at all relevant times. Finally, he has offered no justification for not providing books and records. The Court therefore denies Debtor's discharge under §727(a)(3).

CONCLUSIONS AND ORDER

WHEREFORE, based on the foregoing analysis, the Court concludes: 1) the Iowa District Court judgment is nondischargeable under §523(a)(6); and 2) Plaintiff has met its burden of proof in objecting to Debtor's discharge under §727(a)(2)(A), §727(a)(4)(A), and §727(a)(3).

IT IS ACCORDINGLY ORDERED that the Iowa District Court judgment is nondischargeable and Debtor's discharge is denied.

Dated this _____ day of October, 1989.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE