UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

| | | |
|---|---|---|
| In the Matter of | : | |
| RUSSELL H. BUCHANAN, | : | Case No. 89-2774 |
| Debtor. | : | Adv. No. 90-230 |
| SULLY PETROLEUM WHOLESALERS, INC., | : | Chapter 7 |
| Plaintiff, | : | |
| v. | : | |
| RUSSELL H. BUCHANAN, | : | |
| Defendant. | : | |

- - - - - - - - - - -

**ORDER**

A trial on the Plaintiff's complaint objecting to discharge and to dischargeability of debt was held on June 17-18, 1991. The Plaintiff, Sully Petroleum Wholesalers, Inc., was represented by August B. Landis, and the Debtor/Defendant was represented by Ronald L. Hansel.

A briefing deadline was scheduled and the matter was taken under advisement. The parties have filed their post-trial briefs and the Court now considers the matter fully submitted.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I) & (J). The Court, upon review of the briefs, pleadings, arguments of counsel and the evidence presented, now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 7052.

## FINDINGS OF FACT

1) Prior to February 10, 1988, the Defendant, Russell H. Buchanan, owned at least a majority of the stock outstanding in Ma & Pa Stores, Inc.; Pothoven Oil, Inc.; Happy Haulers Ltd. (f/k/a Pothoven Transport, Inc.); Kathy Buchanan Leasing, Inc. (f/k/a RHB Leasing); and DATAGAS, Inc.

2) The various corporations in which the Defendant was the majority shareholder engaged in a number of delivery, leasing and retail functions related to the sale of gasoline.

3) The Defendant was the general partner and his children were the limited partners of the Buchanan Limited Partnership. On December 30, 1986, The Buchanan Limited Partnership filed its Certificate of Limited Partnership with the Iowa Secretary of State. [Exh. 130]. The partnership was capitalized with a contribution of real estate from the Defendant. The Defendant received all of the Class A Limited Partnership units in exchange for his contribution of real estate. As the Class A Unitholder the Defendant was entitled to receive from the profits of the partnership 100% of all distributable income up to $25,000.00 a year. The Defendant's children were the Class B Unitholders and were to receive the balance of the yearly distributable income after payment to the Class A Unitholder. The Defendant's children provided no consideration in exchange for their positions as limited partners. The limited partners executed a power of attorney

appointing the Defendant their Attorney-in-Fact. [Exh. 54].

4) The Plaintiff, Sully Petroleum Wholesalers, Inc., sold gasoline products to DATAGAS and Ma & Pa stores.

5) Between December 1987 and January 28, 1988, a large quantity of gasoline was drawn from the Plaintiff by DATAGAS and/or Ma & Pa Stores for which payment was not made.

6) On March 18, 1988, the Plaintiff commenced a state court action against DATAGAS, Russell H. Buchanan, Ma & Pa Stores, and Happy Haulers to recover payment for the gasoline. [Exh. 18].

7) Through the discovery process during the state court proceedings the Plaintiff obtained a financial statement the Defendant had prepared for use by United Federal Savings Bank. The April 1, 1988, statement indicated the Defendant and his wife owned assets worth $2,735,712.00 and had a net worth of $2,214,896.00. [Exh. 34].

8) On July 14, 1988, during a deposition taken in the state court proceedings, the Defendant stated he owned virtually all of the stock of Ma & Pa Stores, Inc., and Happy Haulers, Ltd.

9) On September 28, 1988, the Iowa District Court granted the Plaintiff a partial summary judgment against DATAGAS in the amount of $266,903.19, plus interest. [Exh. 19].

10) On March 14, 1989, in a deposition in unrelated

federal proceedings, the Defendant testified he personally owned 95% of the stock of Ma & Pa Stores, Inc.

11) On April 1, 1989, the parties to the state court action executed a settlement agreement. The agreement set forth the terms under which DATAGAS would pay the state court judgment. As part of the agreement the Plaintiff released any claims against the remaining parties; it agreed to refrain from execution on the judgment if there was compliance with the terms of the settlement agreement; and it agreed to dismiss its state court petition with prejudice. The Defendant and Ma & Pa Stores unconditionally guaranteed payment of the settlement agreement. [Exh. 42]. In entering into the settlement agreement, the Plaintiff relied on the Defendant's deposition testimony regarding his ownership of the Ma & Pa stock. [Transcript p. 12].

12) On February 10, 1988, shortly after the Defendant drew the gasoline from the Plaintiff, the Defendant transferred his stock in Ma & Pa Stores, Inc., Happy Haulers, Ltd., Pothoven Oil, Inc., and Kathy Buchanan Leasing to the Buck Grove Trust. The Defendant's wife was the trustee of the trust and his wife and children were its beneficiaries. [Exh. 15].

13) The Defendant contends the stock was transferred to the Buck Grove Trust on February 10, 1987, and relies on stockholder ledgers [Exhs. 24-28] and corporate minutes [Exhs.

59-62] as proof of the transfers. The Court rejects this contention and notes the 1986, 1987 and 1988 corporate and personal income tax returns offered into evidence support the finding that the Defendant did not transfer his stock to the trust on February 10, 1987. [Exhs. 1-15]. The tax returns indicate the Defendant owned the vast majority of each corporation's stock. The Defendant's personal income tax return for 1988 reveals he used passive income from Kathy Buchanan Leasing (an S Corporation) to offset nonpassive losses on his personal return. [Exh. 13]. Had the stock been transferred as the Defendant alleges, the corporation would no longer have been entitled to S status and the Defendant could not have offset the income. The 1988 tax return for the Buck Grove Trust indicates the entity was created February 10, 1988, and this was its initial tax return. [Exh. 15]. A document captioned "Buck Grove Trust" is attached to the return and it indicates the agreement was made on February 10, 1988. The Court notes that on February 10, 1988, Defendant also conveyed his interest in multiple tracts of real estate in Mahaska County to the Buck Grove Trust for a consideration of less than $500.00. [Exhs. 163 and 164]. The Defendant subsequently amended his tax returns to render them consistent with his assertion that he transferred the stock on February 1, 1987.

14) On June 1, 1989, the Defendant, as general partner,

and the limited partners signed an amendment to the limited partnership agreement of the Buchanan Limited Partnership. The amendment provided the name of the limited partnership would be changed to "213 L.P." [Exh. 52]. Also on June 1, 1989, the limited partners of the Buchanan Limited Partnership signed a document captioned "Consent" in which they consented to the substitution of Audrey Lynn Dunn as general partner and the admission of the Defendant as a limited partner. [Exhs. 44 and 51]. The document further provided that all partners would retain their original interest and class of partnership units.

15) On August 1, 1989, the general and limited partners of the Buchanan Limited Partnership signed an amendment to the limited partnership agreement which provided for the name change to "213 L.P." and for procedures for terminating a partnership interest. [Exh. 53].

16) An amendment to Buchanan Ltd. Partnership's Certificate of Limited Partnership was filed with the Iowa Secretary of State on September 7, 1989. [Exh. 131]. The amendment provided:

1) the partnership name would be changed to 213 L.P.;
2) Russell H. Buchanan was no longer general partner, his daughter Audrey Lynn Dunn had taken over that role; and

3) Russell H. Buchanan was now one of the seven limited partners in 213 L.P.

17) Subsequent to the transfer of his stock to the Buck Grove Trust in February 1988, the Defendant continued to control and benefit from the stock. He was the promisor on numerous promissory notes owed the corporate entities [Exh. 132, Transcript pp. 174-179] and he continued to authorize loans, notes, extensions and assignments of rents between the corporations and United Federal Savings Bank. [Exhs. 94, 96-99, 105, 123, 125, and 127]. The Defendant's own testimony indicated his belief that the transfer of the stock did not affect his retention of control over the corporations. [Transcript pp. 174, 181, and 226].

18) Copies of correspondence exchanged between the Defendant's attorney and accountant reveal one purpose behind creation of the Buchanan Limited Partnership was the intention to shield assets in the event of bankruptcy. [Exhs. 30 and 31].

19) The Defendant contends his transfers to the limited partnership and to the Buck Grove Trust were part of his estate planning. The Court finds the Defendant had no formal estate plan and the Defendant's transfers of assets were done to shield assets and minimize his exposure to liability.

20) In his testimony the Defendant conceded he received no consideration for the transfer of his stock to the Buck

Grove Trust. [Transcript p. 165].

21) The Defendant's evidence regarding his wife's lengthy illness and the expenses incurred in conjunction with her treatment was credible. The Defendant satisfactorily explained any diminishment which may have occurred in his available cash resources during the period in which he cared for his wife.

22) On December 8, 1989, the Defendant filed a voluntary Chapter 7 bankruptcy petition. On schedule B-4 he scheduled as exempt his interest in the family homestead and valued it at $50,000.00. On schedule B-2 the Defendant listed as an asset a "one-seventh limited partnership interest" in 213 L.P. The value of this interest was listed as unknown. The Defendant's original schedules revealed $1,023,250.00 in debts and $56,050.00 in assets.

23) The 1989 tax return for 213 L.P. reveals the Defendant's share of the partnership capital account was 92.105266%. [Exh. 16]. At the beginning of the year the account was valued at $93.602.00 and at the end of the year its value had increased to $102,628.00.

24) On February 17, 1990, the Defendant's wife died and he acquired his wife's interest in their home and a $20,000.00 annuity. The Defendant's amended schedules do not reflect either of these interests.

25) On his April 1, 1988, financial statement the

Defendant valued his homestead at $212,000.00 [Exh. 34]. On his bankruptcy schedules he listed his interest in the homestead at $50,000.00. After his bankruptcy filing the Debtor listed his home for sale with a $165,000.00 asking price. [Transcript p. 248]. In explaining the lower valuation included in his bankruptcy schedules, the Debtor indicated he had only scheduled his "half" interest in the home. [Transcript pp. 224, 248].

26) On May 8, 1990, during a Rule 2004 examination, the Defendant testified he had transferred his Ma & Pa stock to the Buck Grove Trust on February 10, 1987, and his prior deposition statements to the contrary were in error. The Defendant also contends his tax returns indicating continued ownership of the stock after February 10, 1987, were erroneous.

## CONCLUSIONS OF LAW

### 1. OBJECTIONS TO DISCHARGE

The Plaintiff has objected to the defendant's discharge pursuant to § 727(a)(5), § 727(a)(4)(A), and § 727(a)(2)(a). An action brought under section 727 is the most serious non-criminal action a creditor can bring against a debtor in bankruptcy. In re Schermer, 59 B.R. 924, 924 (Bankr. W.D. Ky. 1986). Discharge under section 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) 1978 U.S.C.C.A.N. 5787, 6340.). Consequentially, objections to discharge are construed liberally in favor of debtors and strictly against the objecting creditor. In re Ellingson, 63 B.R. 271, 276 (Bankr. N.D. Iowa 1986); In re Schmit, 71 B.R. 587, 589-90 (Bankr. D. Minn. 1987).

The burden of proof in objecting to discharge rests with the party objecting to discharge. Fed. R. Bankr. P. 4005. The grounds for excepting a debt from discharge under Section 727 must be established by clear and convincing evidence. In re Martin, 88 B.R. 319, 321 (D. Col. 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 has established a reasonable ground for denial by clear and convincing evidence, the burden of going forward with the evidence shifts to the debtor. Ford, 53 B.R. at 449.

(A) Section 727(a)(5)

The Plaintiff objects to discharge of the Defendant pursuant to § 727(a)(5). That statute provides:

> (a) The court shall grant the debtor a discharge unless--
>
> > (5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's

liabilities.

This section grants the court broad discretion to deny a discharge if a debtor fails to satisfactorily explain a loss of assets. In re McNamara, 89 B.R. 648, 654 (Bankr. N.D. Ohio 1988). Although what constitutes a "satisfactory explanation" has not yet been definitively stated, In re Hendren, 51 B.R. 781, 788 (Bankr. E.D. Tenn. 1985), the bottom line is that the debtor's explanation must convince the judge. In re Chalik, 748 F.2d 616, 619 (11th Cir. 1984); see also Hendren, 51 B.R. at 789 (court must determine "it is dealing with more than an unreliable remake of reality, custom-made to comport with current exigencies"); In re Wheeler, 38 B.R. 842, 846 (Bankr. E.D. Tenn. 1984) (standard is one of reasonableness of credibility.). In claiming the Defendant has not satisfactorily explained a loss of assets, the Plaintiff contends the Defendant owned stock in Ma & Pa Stores, Pothoven Oil, Happy Haulers and Kathy Buchanan Leasing, but did not include it in his bankruptcy schedules. The Plaintiff points to the 1988 tax returns and the April 1, 1988, financial statement which indicate the Defendant owned the stock in question. The Defendant argues he has satisfactorily explained the loss of these assets by virtue of his transfer of the stock to the Buck Grove Trust.

The Court agrees the Defendant has satisfactorily explained his loss of these assets for purposes of §

727(a)(5). Documentary evidence and testimony offered at trial establish the Defendant facilitated a transfer of the stock in question to the Buck Grove Trust. The Plaintiff simply has not proven by clear and convincing evidence that the Defendant has failed to "satisfactorily" explain the loss. The Court notes, however, that the Defendant's motive in transferring the assets, and whether he relinquished the benefit and control of the assets (as opposed to mere relinquishment of legal title) are matters governed by other code sections and are addressed later in this order.

The Court also finds the Defendant satisfactorily explained the decrease in cash and personal assets that occurred since the preparation of the April 1, 1988, financial statement. The illness of the Defendant's wife was a drain on the family's resources and explains the dissipation of assets. The Court also finds satisfactory the Defendant's explanation that his salary owed by DATAGAS is not collectable and is therefore no longer listed as an asset.

(B) Section 727(a)(4)(A)

The Plaintiff objects to discharge pursuant to § 727(a)(4)(A). That statute provides:

> (a) The court shall grant the debtor a discharge, unless--
>
> (4) the debtor knowingly or fraudulently, in or in

connection with the case--

(A) made a false oath or account.

The purpose of section 727(a)(4)(A) case is to facilitate full and honest disclosure by the debtor.

> The primary purpose of § 727(a)(4)(A) of the Code, and its predecessor, § 14c(1) of the Bankruptcy Act, is to insure that dependable information is supplied for those interested in administration of the bankruptcy estate from which they can rely without a need for the trustee or other interested parties to dig out the true facts in examinations or investigations. The trustee and creditors are entitled to honest and accurate signposts on the trail showing what property has passed through the debtor's hands during the period prior to his bankruptcy.

In re Cook, 40 B.R. 903, 906 (Bankr. N.D. Iowa 1984) (quoting In re Diodati, 9 B.R. 804, 807 (Bankr. D. Mass 1981)).

To sustain an objection to discharge under § 727(a)(4)(A), the Plaintiff has the burden of showing the Defendant "knowingly and fraudulently" made a false oath. The phrase "knowingly and fraudulently" means there must be an intentional untruth in a matter material to the bankruptcy. Ellingson, 63 B.R. at 276.

The Eighth Circuit has stated that while a misrepresentation must be material to bar a discharge, materiality is not solely a function of value. "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." In re Olson, 916 F.2d 481, 484 (8th Cir. 1990) (quoting In re Chalik, 748 F.2d 616, 618 (11th Cir. 1984)). The materiality of a false oath by a debtor will not depend upon whether in fact the falsehood has been detrimental to the creditors. Cook, 40 B.R. at 907.

The Court finds the Plaintiff has proven the Defendant knowingly and fraudulently made a false oath or account in connection with this case. In listing his interest in 213 LP as a 1/7th interest of unknown value, the Defendant misrepresented the extent and value of his interest. The 1989 tax return for the 213 LP limited partnership reveals the Defendant's share of the partnership capital account was 92.105266%. At the beginning of 1989 the account was valued at $93,602.00 and at the end of the year it was worth $102,628.00.

The Defendant's decision to schedule his interest as a 1/7th interest of unknown value was misleading. He owned the vast majority of the capital account of the partnership. The Defendant knowingly and fraudulently made a false oath and account in scheduling his interest in the 213 LP limited partnership as a 1/7th interest of unknown value.

The Court's finding of a false oath and account is

supported by the Defendant's failure to schedule the annuity and homestead interests he acquired upon his wife's death. The interests become property of the estate, §541(a)(5)(A), and the Defendant was required to amend his schedules and include these items regardless of their value, their encumbrances, or status as exempt property. The Defendant's testimony regarding the valuation of his homestead interest was not credible and is cumulative evidence that he knowingly made a false oath. See In re Bobroff, 58 B.R. 950, 953 (Bankr. E.D. Pa. 1986) ("[T]he requisite intent may be predicated on evidence of a pattern of reckless and cavalier disregard for the truth."), aff'd 69 B.R. 295 (E.D. Pa. 1987).

(C) § 727(a)(2)(A)

The Plaintiff's final objection to discharge is based on § 727(a)(2)(A). That statute provides:

> (a) The court shall grant the debtor a discharge, unless--
>
> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of the 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 the filing of the petition.

Under section 727(a)(2)(A) a plaintiff must prove:

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.

In order to deny a discharge, a court must find property was transferred with the actual intent to hinder, delay or defraud creditors. Constructive fraudulent intent cannot be the basis for the denial of a discharge. Ellingson, 63 B.R. at 279. Intent may be presumed from circumstances surrounding the transaction, McCormick v. Security State Bank, 822 F.2d 806, 808 (8th Cir. 1987), or by inferences drawn from a course of conduct. See Ellingson, 63 B.R. at 279. Fraudulent intent is presumed in section 727(a)(2) cases in which the debtor has gratuitously conveyed valuable property. Matter of Armstrong, 931 F.2d 1233, 1239 (8th Cir. 1991). Once a gratuitous transfer is shown, the burden shifts to the debtor to prove his intent was not to hinder, delay or defraud his creditors. Id.

While the Defendant's transfer of his stock to the Buck Grove Trust occurred February 10, 1988, over one year prior to the filing of the bankruptcy petition, the Plaintiff contends the Defendant violated § 727(a)(2)(A) by virtue of his

continuing concealment of the transferred stock. It does not appear the Eighth Circuit has addressed this doctrine, but other courts have upheld its application.

Concealing property for purposes of section 727(a)(2)(A) can be accomplished by a transfer of title coupled with the retention of the benefits of ownership. In re Olivier, 819 F.2d 550, 553 (5th Cir. 1987). The transfer of title with the continued retention of a secret beneficial interest therein may constitute a continuing concealment with the intent to hinder, delay or defraud a creditor for purposes of § 727(a)(2)(A). Id. at 555; see also In re Serafini, 113 B.R. 692, 694 (D. Col. 1990) (to take advantage of the continuing concealment doctrine a creditor must show a transfer of title coupled with a retention of the benefits of ownership, rev'd on other grounds, 938 F.2d 1156 (10th Cir. 1991). In applying the continuing concealment doctrine a court will look to the "totality of the evidence." For example, did a debtor retain control of, or an active involvement with, transferred assets? Did a debtor derive substantial benefit from the continued use of the assets? See e.g., In re Hodge, 92 B.R. 919, 922 (Bankr. D. Kan. 1988).

While the Defendant in this case may have transferred his legal title to the stock to the Buck Grove Trust in February 1988, for all practical purposes he retained control and derived a beneficial interest from it. The Defendant

testified numerous times that regardless of the transfer he continued to control the corporate operations. This control was evidenced by the numerous notes and agreements he executed on behalf of the corporations. His numerous withdrawals of money from the corporations is evidence of the beneficial interest he retained despite the transfer of the stock. The Plaintiff has established by clear and convincing evidence that the Defendant transferred and concealed assets with the intention of defrauding his creditors.

II. Objection to Dischargeability[1]

The Plaintiff has objected to the dischargeability of the debt it is owed by the defendant. The burden of proof for the dischargeability exceptions in 11 U.S.C. § 523(a) is the pre-ponderance of the evidence standard. Grogan v. Garner, U.S. ____, 111 S.Ct. 654, 661, 112 L.Ed. 2d 755 (1991). The creditor bears the burden of proving the nondischargeability of a debt. Matter of Van Horne, 823 F.2d 1285, 1287, (8th Cir. 1987). Any evidence presented in a dischargeability action must be viewed consistent with the congressional intent that exceptions to discharge be narrowly construed against the creditor and liberally against the debtors, thus effectuating

[1]For the purpose of fully disposing of each of the Plaintiff's contentions, the court will address the Plaintiff's objection to dischargeability though the Court's finding that the Defendant is not entitled to a discharge subsumes this matter.

the fresh start provisions of the Code. Id.

A) § 523(a)(2)(A)

The Plaintiff relies on § 523(a)(2)(A) which provides in relevant part:

> (a) A discharge under section 727 of this title does not discharge an individual debtor from any debt--
>
> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--
>
> (A) false pretenses, a false representation, or actual fraud, other than a statement reporting the debtor's or an insider's financial condition.

To succeed in a section 523(a)(2)(A) claim, a creditor must prove the following elements:

1) the debtor made false representations;

2) at the time made, the debtor knew them to be false;

3) the representations were made with the intention and purpose of deceiving the creditor;

4) the creditor relied on the representations; and

5) the creditor sustained the alleged injury as a proximate result of the representations having been made.

Van Horne, 823 F.2d at 1287. Section 523(a)(2)(A) does not require that a creditor prove his reliance on a debtor's fraudulent misrepresentations was reasonable. In re Ophaug, 827 F.2d 340, 342 (8th Cir. 1987).

In relying on section 523(a)(2)(A) to object to dischargeability of its claim, the Plaintiff contends it relied on the Defendant's representations during a July 14, 1988, deposition, in which he claimed ownership of the stock of Ma & Pa, Stores, Inc., and Happy Haulers, Inc. The Plaintiff asserts the misrepresentations were material to its decision to enter into the April 1, 1989, settlement agreement as it was relying on the Defendant's personal guaranty to secure payment of the settlement agreement. The Plaintiff contends that had it known the Defendant had transferred his stock it would not have executed the settlement agreement.

The Court finds the misrepresentation in this case was material and the Plaintiff relied on it to its detriment. The Plaintiff had already obtained a judgment against DATAGAS, but rather than pursue its state court action against the remaining Defendants (including Russell H. Buchanan), it entered into a settlement agreement. The Plaintiff dismissed its action against the remaining Defendants with prejudice, and it agreed to forego execution on its judgment if there was compliance with the terms of the settlement agreement. In exchange for these significant concessions on its part, the Plaintiff obtained the unconditional personal guaranty of the Defendant and Ma & Pa Stores. Ma & Pa Stores, Inc. appears to have provided the most consistent cash flow of the Defendant's many enterprises. Had the Plaintiff known the Defendant was

no longer the major shareholder of Ma & Pa, it could reasonably have perceived his guarantee to have been less valuable. The testimony of Mr. Kunce, the general manager of the Plaintiff's parent company, supports the Plaintiff's position that the Defendant's representation of ownership of the Ma & Pa stock was material to the Plaintiff's agreement to enter the settlement agreement.

However, the materiality of the misrepresentation and the Plaintiff's reliance upon it will not suffice to render this debt nondischargeable under § 523(a)(2)(A) because the misrepresentation in this case was an oral statement regarding the Defendant's "financial condition." Section 523(a)(2) divides all statements into two mutually exclusive categories. Statements concerning a debtor's financial condition are governed by subsection (B). Representations not concerning a debtor's financial condition must be considered under subsection (A). In re Simpson, 29 B.R. 202, 207-08 (Bankr. N.D. Iowa 1983). Various decisions emanating from the Bankruptcy Court for the Northern District of Iowa have held a balance sheet, Simpson, 29 B.R. at 210, a valuation of inventory, In re Anderson, 29 B.R. 184, 189 (Bankr. N.D. Iowa 1983), and a valuation of a profit sharing pension plan, In re Detling, 28 B.R. 469, 473 (Bankr. N.D. Iowa 1983), all constitute statements regarding a debtor's "financial condition."

This Court concludes a debtor's assertion regarding his ownership of the stock of various entities constitutes a statement regarding his financial condition and cannot be the basis for a nondischargeability determination under § 523(a)(2)(A). As the Plaintiff has asserted no other ground for denying discharge under § 523(a)(2), it has not met its burden of proof in objecting to the discharge of its debt under § 523.

THE COURT CONCLUDES:

1) The Plaintiff has not met its burden of proof under § 727(a)(5);

2) the Plaintiff has met its burden of proof and discharge should be denied pursuant to § 727(a)(4)(A);

3) the Plaintiff has met its burden of proof and discharge should be denied pursuant to § 727(a)(2)(A); and

4) the Plaintiff has not met its burden in proving non-dischargeability under § 523(a)(2)(A).

IT IS ACCORDINGLY ORDERED that the Defendant, Russell H. Buchanan, is not granted a discharge pursuant to 11 U.S.C. § 727 and judgment should enter accordingly.

Dated this 31st day of January, 1992.

RUSSELL J. HILL
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

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| In the Matter of | : | |
| RUSSELL H. BUCHANAN | : | Case No. 89-2774 |
| Debtor. | : | Adv. No. 90-230 |
| SULLY PETROLEUM WHOLESALERS, INC., | : | Chapter 7 |
| Plaintiff, | : | |
| v. | : | |
| RUSSELL H. BUCHANAN, | : | |
| Defendant. | : | |

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JUDGMENT

The issues of this proceeding having been duly considered by the Honorable Russell J. Hill, United States Bankruptcy Judge, and decision having been reached,

IT IS ORDERED AND ADJUDGED that the Defendant, Russell H. Buchanan, is not granted a discharge pursuant to 11 U.S.C. § 727.

Dated this 31st day of January, 1992.

Mary M. Weibel
Clerk of U.S. Bankruptcy Court

By Ellen Wobbeking
Deputy Clerk

SEAL OF THE U.S. BANKRUPTCY COURT
ENTRY OF JUDGMENT
Dated: January 31, 1992

# United States District Court

SOUTHERN DISTRICT OF IOWA --CENTRAL DIVISION

IN RE:

RUSSELL H. BUCHANAN, a/k/a RUSSELL HOWARD BUCHANAN, a/k/a RUSS BUCHANAN

JUDGMENT IN A CIVIL CASE

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SULLY PETROLEUM WHOLESALERS, INC.

V.

RUSSELL H. BUCHANAN, etc.

CASE NUMBER: 4:92-cv-70182

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the judgment appealed from is affirmed

June 30, 1992
Date

JAMES R. ROSENBAUM
Clerk

L Coughenauer
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

| | | |
|---|---|---|
| IN RE: | * | CIVIL NO. 4-92-70182 |
| | * | |
| RUSSELL H. BUCHANAN, a/k/a | * | |
| RUSSELL HOWARD BUCHANAN, a/k/a | * | |
| RUSS BUCHANAN, | * | |
| | * | **AFFIRMANCE** |
| Debtor/Appellant. | * | |
| _____ | | |
| SULLY PETROLEUM WHOLESALERS, | * | |
| INC., | * | |
| | * | Bankruptcy No. 89-02774-Ch-7 |
| Plaintiff/Appellee, | * | |
| | * | |
| v. | * | Adversary No. 90-230 |
| | * | |
| RUSSELL H. BUCHANAN, etc., | * | |
| | * | |
| Defendant/Appellant. | * | |
| _____ | | |

Russell H. Buchanan, the debtor and defendant, appeals from a judgment entered by the bankruptcy court, the Honorable Russell J. Hill, on January 31, 1992, that the debtor/defendant, Russell H. Buchanan, is not granted a discharge pursuant to 11 U.S.C. § 727. Plaintiff Sully Petroleum Wholesalers, Inc. cross-appeals in respect to one determination made by Judge Hill.

In his order, Judge Hill sets forth thorough findings of fact and extensive conclusions of law.

I am satisfied that Judge Hill's finding of fact are not clearly erroneous and that he has made no legal error in his conclusions. Accordingly, the judgment appealed from is AFFIRMED.

DATED this 29th day of June, 1992.

_____
HAROLD D. VIETOR
United States District Judge