UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	
	:	
STEVEN C. SOUERS and	:	Case No. 93-971-CH
MARY C. SOUERS,	:	
	:	Chapter 7
Debtors.	:	
- -	:	
ROSEN'S, INC.,	:	
	:	Adv. No. 93-93080
Plaintiff,	:	
	:	
vs.	:	
	:	
STEVEN C. SOUERS and	:	
MARY C. SOUERS,	:	
	:	
Defendant.	:	
- -	:	
STATE BANK & TRUST CO.,	:	
	:	
Intervener,	:	
	:	
vs.	:	
	:	
STEVEN C. SOUERS and	:	
MARY C. SOUERS,	:	
	:	
Defendants.	:	

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ORDER--COMPLAINT OBJECTING TO DISCHARGE

On December 5, 1994, trial was held on the Complaint Objecting to Discharge. Plaintiff, Rosen's, Inc., appeared by its attorney, James H. Cossitt. Defendants, Steven C. and Mary C. Souers, appeared with their attorney, Jerrold Wanek. Intervener, State Bank & Trust Co., appeared by its attorney, William T. Talbot.

At the conclusion of the trial, the Court took this matter under advisement upon a briefing schedule. Post-trial briefs have been filed and the matter is now considered fully submitted.

This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(J). The Court, upon review of the pleadings, briefs, and arguments of counsel, now enters its findings and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

STATEMENT OF THE CASE

1. On April 12, 1993, the Souers filed a voluntary petition for bankruptcy relief under Chapter 7 of the United States Bankruptcy Code.

2. Plaintiff filed this Complaint Objecting to Discharge and requesting a finding of contempt of court on June 22, 1993. Subsequently, on September 30, 1993, Plaintiff filed its First Amended and Substituted Complaint Objecting to Discharge adding an additional count requesting this Court to determine the dischargeability of a debt. At the trial on December 5, 1994, this count (Count VIII) was dismissed upon Plaintiff's own motion. Plaintiff's Contempt Count II has also been dismissed by the Court.

3. On September 24, 1993, Intervener filed an Application to Intervene in this Adversary Proceeding. On November 12, 1993, this Court granted Intervener's Application to Intervene as to Intervener's Counts I, II, III, and IV but denied its application as to Counts V and VI.

4. Defendant's Motion For Partial Summary Judgment as to Count VI of Plaintiff's First Amended and Substituted Complaint has been sustained and this count was dismissed.

5. On September 14, 1994, Plaintiff filed its Second Amended and Substituted Complaint and Intervener filed its First Amended and Substituted Complaint.

FINDINGS OF FACT

Failure to Appear

1. On April 16, 1993, counsel for Plaintiff, James H. Cossitt, wrote a letter to the Souers' attorney seeking to arrange an examination pursuant to Rule 2004. On April 27, 1993, a 2004 examination was arranged by the parties for 9:00 a.m. on May 27, 1993. By letter dated April 29, 1993, Plaintiff's counsel indicated that he would prepare a consent motion for the Rule 2004 exam along with a specification of documents. On May 6, 1993, Mr. Wanek confirmed the date of the 2004 exam and requested that he be given a list of the various documents needed in advance of the examination as soon as possible.

2. On May 11, 1993, an order granting consent motion pursuant to Fed.R.Bankr. P. 2004 was entered in In re Fernald Ag. Supply, Inc., Case No. 93-00761-CH. On May 12, 1993, an order granting consent motion for examination pursuant to Fed.R.Bankr.P. 2004 was entered in In re Steven C. Souers and Mary C. Souers, Case No. 93-00971-CH. Both orders provided that the Souers should appear for examination at 9:00 on May 27, 1993, at the offices of their counsel.

3. The orders contain a list of documents requested prior to the date of examination.

4. On May 12, 1993, Mr. Wanek sent a letter to Mr. Cossitt advising him of problems relating to collecting the documents and also the attendance of Mary Souers. By agreement of counsel, the examination of Mary Souers was postponed.

5. On May 26, 1993, Mr. Wanek called the attorneys for Plaintiff and Intervener and advised them that Steve Souers would not attend the examinations and would reschedule in 10 to 14 days. The reason given for his failure to attend was that he was too busy at that time with his employment.

6. Steve Souers worked substantial hours during the week of the examination.

7. A deposition of Steve Souers was taken on August 20, 1993. At that time, the Souers brought at least six to eight boxes of records to turn over to Plaintiff. These boxes of documents had been purposely blended together to create confusion. Plaintiffs eventually discovered some of the previously undisclosed assets from these boxes.

Certificate of Deposit

8. On June 1, 1989, Paul Thomas, the father of Mary Souers, deposited $2500 in Exchange State Bank for his grandson, Daniel Thomas Souers. The cash-in ticket identifies Paul Thomas as the source of funds. The funds were placed in a certificate of deposit wherein the depositor was identified as "Daniel Thomas or Mary C. Souers." The Souers have never been in possession of the original certificate.

9. The Souers received statements showing interest accruals on the CD and on June 3, 1993, when the original CD matured, Mary Souers notified Exchange State Bank that she wished to extend the maturity. The approximate value of the CD on April 12, 1993 was $3,500.

10. An officer for Exchange State Bank testified that the title of the CD enabled Mary Souers to cash in the CD at any time.

11. The CD was not placed on the schedules, statement of affairs, or related papers filed by the Souers at the time of the bankruptcy filing. The Souers also failed to reveal the existence of the CD during the depositions of August 20, 1993. No amendments to reflect the ownership of the CD have been made to the bankruptcy schedules as of the time of trial.

Pigs, Inc.

12. Steve's Pigs, Inc. was incorporated in Iowa on July 2, 1993. The corporation was formed by the Souers to conduct postpetition livestock business. Steve Souers was a shareholder and no board of director meetings or shareholder meetings were held. No shares of stock were issued and corporate formalities were disregarded by the Souers.

13. On April 5, 1993, a checking account was opened at the Exchange State Bank titled "Pigs, Inc." At the time of filing, April 12, 1993, there was a balance of $100.00 in this account. The checking account was set up to use after the date of filing of the bankruptcy petition. After making the deposit on April 5, 1993, Steve Souers obtained Mary Souers signature on the signature card and returned the completed signature card to Exchange State Bank on April 16, 1993.

14. Steve discussed opening the account with Mary prior to opening the account.

15. In an affidavit submitted to this Court in support of a summary judgment filed in this case, Steve Souers stated, "My wife, Mary Souers, did not open the Pigs, Inc. account with me." Souers also stated that postpetition proceeds of livestock have been used solely to pay expenses to maintain the livestock and that none of the proceeds have been used personally. However, a check was written for purchase of trees planted on personal, not corporate, property.

16. On April 14, 1993, a deposit in the amount of $1900 was made to the account. On April 15, 1993, another deposit in the amount of $2000 was made. Proceeds from the postpetition sale of prepetition hogs were placed in the account.

17. This account was not disclosed on the original schedules and statement of affairs filed in this case and was not disclosed at the meeting of creditors. On November 7, 1993, the Souers amended their schedules to include the Pigs, Inc. account. This amendment was made after this adversary complaint proceeding was filed and after the creditors found evidence of the account among papers and documents produced by the Souers.

18. Steve Souers has previously filed a voluntary petition for bankruptcy in Minnesota on August 14, 1978.

Ames City Employees Credit Union Accounts

19. Mary Souers had two accounts with Ames City Employees Credit Union. One account was opened on December 12, 1989, and the second share draft account was opened on February 28, 1991. Mary Souers' payroll check was deposited directly into the account each month.

20. The combined balance of these two accounts on the date of filing was $17.58. The existence of these accounts was not disclosed on the bankruptcy schedules filed at the time of the bankruptcy petition.

21. Deposits from the sale of hogs were placed in the account during late 1992 and a check was written on the account to the Souers' counsel in the amount of $2,000.00 on February 16, 1993. In April of 1993, Mary Souers continued to use the account on a regular basis.

22. The accounts were disclosed in the deposition held on August 20, 1993, and in an amendment to schedules filed November 7, 1993.

Mid Iowa Flotation

23. Steve Souers hired an attorney on February 1, 1993 to set up the corporation Mid Iowa Flotation. He stated that he did not want it to be a subchapter S corporation. Steve Souers and Marsha Wenner were listed as directors on the Articles of Incorporation filed on February 5, 1993. Steve Souers controlled Mid Iowa Flotation. There were no board of director or stockholder meetings, and, corporate records were not kept. This corporation was set up as an alter ego of Steve Souers.

24. A Mid Iowa Flotation account was opened at Norwest Bank in Mason City, Iowa on February 16, 1993.

25. Steve Souers signed the Mid Iowa Flotation Company signature card at this Norwest Bank as the president of the corporation. At his deposition on August 20, 1993, Steve Souers testified

under oath that he was not an authorized signatory on the checking account of Mid Iowa Flotation Company.

26. Bank records show an initial signature card containing Steve's signature which is superseded by a corporate authorization. The corporate authorization does not authorize Steve Souers to withdraw funds. Steve Souers has never signed a check on the account.

Soilco, Inc.

27. Soilco was a Minnesota corporation. Steve Souers, Donald Souers, father of Steve, and Marsha Wenner, Steve's sister, were officers. Marsha Wenner was given her role in the corporation by Steve and Donald Souers. Soilco conducted no shareholder or board of director meetings and Steve Souers had control of the corporate records. This corporation was merely an alter ego of Steve and Donald Souers.

28. In the spring of 1991, Soilco liquidated its machinery. Steve Souers received approximately $100,000.00 from Soilco, which was used to make the downpayment on Souers' farm. Steve Souers' father then gave Steve his 50% interest. In the spring of 1992, Steve claims to have transferred all of his rights in Soilco to his brother, David Souers, although Marsha Wenner had no memory of such a transfer.

29. One of the assets of Soilco was a lawsuit pending in the Fifth Judicial District of Minnesota captioned Soilco, Inc v. Con Agra Fertilizer Co., d/b/a/ Cropmate Co. ("Soilco lawsuit").

30. Financial statements provided by Steve Souers to State Bank and Trust Company continued to show an ownership interest in Soilco, Inc. A financial statement provided to the bank on

November 1, 1992, states that Souers claimed a continued interest in Soilco in the amount of $30,000.00.

31. Steve Souers also represented his continued ownership of the assets to Firststar Bank, Ames. In the fall of 1991, Steve Souers told an officer of this bank that a potential source of payment for Rosen's would be the Soilco lawsuit.

32. Steve Souers testified in his deposition on August 20, 1993, that he had no interest in the Soilco suit. The Souers disclosed no interest in Soilco in their bankruptcy schedules.

33. On August 4, 1993, Steve Souers, individually and as president, signed a settlement agreement regarding the Soilco lawsuit.

35. The settlement agreement provides that Steve Souers is entitled to remove electrical components, LP heaters, electric hoses, pipes, valves and other items, including a 50 horse power motorized pump.

Fernald Ag. Supply

36. Mary Souers owned 100 percent of the stock of Fernald Ag. Supply. Fernald Ag. Supply was operated by Steve Souers who was president. There were no board of director or shareholder meetings. Mary Souers did not give Steve any directions as president and the company was controlled by Steve. This corporation was an alter ego of the Souers who did not follow corporate procedures and used it for their personal use.

37. Steve and Mary Souers, as owners, officers, and persons in control, loaned money to Fernald Ag. Supply.

38. Sometime between August 1990 and August 1991, Fernald repaid these loans to the Souers. During that time period, Fernald was not paying corporate obligations.

39. On January 1993, Firststar Bank, primary lender of Fernald insisted that a liquidation sale be held. All physical assets of Fernald were sold at a public sale on February 18, 1993. Steve Souers placed advertising for the auction in the local paper, posted a handout in public locations, and sent notices to all creditors. Steve Souers represented to Intervener at the time of the sale that he was the owner and seller of Fernald.

40. Three separate parties bid on the real estate at the sale. The successful bidder at $16,500.00 was Mid Iowa Flotation, which was controlled by Steve Souers. Numbers were used to identify bidders at the sale so no one could identify Mid Iowa Flotation as a bidder. Rosens chose not to attend the sale and State Bank and Trust did not bid on the real estate.

41. A strawman, Vern Vasecka, was hired by the Souers to bid at the auction and buy the property on behalf of Mid Iowa Flotation. Vesecka was paid $100 by Donald Souers personally after the sale.

42. Steve Souers arranged to obtain loans from his father in order to buy the property. There was no corporate authority for the loans. The transfer of real estate was not scheduled in the schedules filed by Fernald Ag Supply or Steve and Mary Souers.

43. After the sale, Central Iowa FS, Inc. ("Farm Service") entered into a lease for the Fernald property. This lease had been negotiated with Steve Souers as early as February 10, 1993, and Farm Service believed that the lease was to be with Steve Souers.

44. On February 26, 1993, a lease was entered into between Farm Service and Mid Iowa Flotation. However, it was not until March 3, 1993, that a quit claim was executed on the property from Fernald Ag Supply to Mid Iowa Flotation.

Attorney Fees

45. Plaintiff accumulated $40,989.00 in attorney fees as a result of this adversary action. Furthermore, Plaintiff estimated that it would spend $6200.00 in attorney fees and expenses related to the five day trial.

46. Plaintiff's Credit Terms and Disclosure Statement states that "If any unpaid balance is referred to an attorney for collection, customers will be liable for attorney fees and any other costs incurred in collecting a past due account."

47. Intervener accumulated $12,000.00 in attorney fees and costs in this proceeding. Intervener anticipated another $3,000.00 in attorney fees and costs related to the trial.

48. The promissory notes evidencing the obligations owed to Intervener provide that the Intervener is entitled to attorney fees and costs resulting from efforts to collect upon a default.

DISCUSSION

Standing

The Souers argue that Plaintiff has no standing to object to the discharge of Mary Souers as Plaintiff is not a creditor of Mary Souers as required by § 727(c)(1) which provides that only "the trustee, a creditor, or the United States Trustee may object to the granting of a discharge." Plaintiff holds a

personal guaranty of Steve Souers of Fernald Ag. debt. It is undisputed that Mary Souers did not sign the personal guaranty.

Section 101(10) provides that a creditor means an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." Section 101(5) further provides in part that a claim means:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal equitable, secured, or unsecured.

Congress intended to adopt the broadest available definition of "claim" and an entity claiming a right to repayment that arose pre-petition is a creditor even if the debtor disputes that claim and every creditor has a right to challenge a debtor's discharge. In re Moreau, 161 B.R. 742, 745 (Bankr.D.Conn. 1993). However, a party whose claim has been conclusively disproved does not have standing and cannot object to a debtor's discharge. In re Vahlsing, 829 F.2d 565, 567 (5th Cir. 1987).

In this case, Plaintiff had alleged in Count VIII of its Second Amended Complaint that it is a creditor of Mary Souers based on repayments of insider loans to her from Fernald Ag. However, Count VIII was dismissed at trial upon Plaintiff's own motion. The Court finds that even adopting the broadest definition of the word "claim" that Plaintiff has no claim against Mary Souers and is not a creditor within the meaning of § 101(10). Therefore, neither Plaintiff nor Intervener has standing to object to the discharge of Mary Souers pursuant to § 727(c)(1) and this Complaint is dismissed as to Mary Souers only.

Objections to Discharge

Objections to discharge must be construed strictly against the objector and liberally in favor of the debtor. Bank of Pennsylvania v. Adlman, 541 F.2d 999 (2nd Cir. 1976). Prior to the U.S. Supreme Court's decision in Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654, 112 L.Ed. 2d 755 (1991), there was a split among the circuits as to whether the appropriate burden of proof for determination of denial of discharge under § 727 was the clear and convincing standard or the preponderance of the evidence standard. In Grogan, the Supreme Court held that the preponderance of the evidence standard is the appropriate standard of proof which must be met in order to prevent a discharge of a debt under § 523(a). Grogan, U.S. at 287, 111 S.Ct. at 659. The court rejected the argument that a debtor has a "fundamental right to a discharge and noted:

> Because the preponderance-of-the-evidence standard results in a roughly equal allocation of the risk of error between the litigants, we presume that this standard is applicable in civil actions between private litigants, unless particularly important individual interests or rights are at stake.

Id. (citation omitted).

The court, in dictum, went so far as to state that the standard of proof for denial of discharge pursuant to § 727(a)(4) is the preponderance-of-the-evidence standard. Grogan, 498 U.S. 287-89, 111 S.Ct. at 660. Since the Grogan decision, several courts have reversed their prior holdings on the basis of the reasoning of Grogan and held that a preponderance-of-the-evidence standard is sufficient in § 727 issues. See e.g. In re Serafini, 938 F.2d 1156, 1157 (10th Cir. 1991). Although the Eight Circuit has not yet ruled on the issue, this Court has in a prior case held that based upon the reasoning of the U.S. Supreme Court in Grogan, the preponderance-of-the-evidence standard is the proper standard of proof in

§ 727's dischargeability determinations. Kirk v. Boughner (In re Boughner), Case. No. 93-896-C, Adversary No. 93-93099 (Bankr. S.D. Iowa. Oct. 19, 1994). Therefore, the Court finds that in this case, the preponderance-of-the-evidence standard is the proper standard.

Plaintiff and Intervener argue that Steve Souers should be denied a discharge pursuant to § 727(a)(4)(A) which provides as follows:

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

Plaintiff and Intervener argue that Defendant has demonstrated a pattern of conduct that when examined as a whole, evidences his intent to make false oaths knowingly and fraudulently. Defendant argues that this alleged pattern of conduct is merely simple omissions in the schedules that were corrected by amendment and were not material.

Under § 727(a)(4), the plaintiffs bear the burden of proof in establishing that: 1) the debtor made a statement under oath, 2) such statement was false, 3) the debtor knew the statement was false, 4) the debtor made the statement with fraudulent intent, and 5) the statement related materially to the bankruptcy case. In re Sapru, 127 B.R. 306 (Bankr. E.D.N.Y. 1991).

A statement is considered to have been made with knowledge of its falsity if it was known by the debtor to be false, made without belief in its truth, or made with reckless disregard for the truth. In re Maletta, 159 B.R. 108, 112 (Bankr. D.Conn. 1993) (citations omitted).

The difficulty in determining whether a debtor has acted with fraudulent intent is that the debtor will be the only person able to testify directly concerning his intent and is unlikely to state that his intent was fraudulent. In re Calder, 907 F.2d 953, 956 (10th Cir. 1990). Therefore, fraudulent intent may be

deduced from the facts and circumstances of a case. Id. The First Circuit stated as follows:

> The very purpose of certain sections of the law, like 11 U.S.C. ' 727(a)(4)(A), is to make certain that those who seek the shelter of the Bankruptcy Code do not play fast and loose with their assets or with the reality of their affairs. The statutes are designed to ensure that complete, truthful, and reliable information is put forth at the output of the proceedings so that decisions can be made by the parties in interest based on fact rather than fiction.

In re Tully, 818 F.2d 106, 110 (First Circuit 1987). The First Circuit went on to state that "neither the trustee nor the creditors should be required to engage in a laborious tug of war to drag the simple truth into the glare of daylight." Id. In exchange for the tremendous relief afforded debtors under the Bankruptcy Code, debtors must fulfill their obligations by being candid with the court and disclosing all of their assets, debts and financial transactions. In re Robson, 154 B.R. 536, 540 (Bankr. E.D. Ark. 1993).

A debtor's disclosure of information previously omitted from schedules is some evidence of innocence of intent, but this inference is "slight where the debtor has . . . amended his schedules after the trustee or creditors have already discovered what the debtor has sought to hide. Matter of Kilson, 83 B.R. 198, 203 (Bankr. D.Conn. 1988). Furthermore, "[a] debtor cannot, merely by playing the ostrich and burying his head deeply enough in the sand, disclaim all responsibility for statements which he has made under oath." Tully, 818 F.2d at 111.

A court may infer fraudulent intent under § 727(a)(4)(A) from a debtor's reckless indifference to or cavalier disregard of the truth. In re Arcuri, 116 B.R. 873, 883 (Bankr. S.D.N.Y. 1990) (citations omitted). Furthermore, "even if each falsehood or omission considered separately may be too immaterial to warrant a denial of discharge pursuant to § 727(a)(4)(A) . . . a multitude of discrepancies, falsehoods

and omissions taken collectively . . . [may be of] sufficient materiality to bar the debtor's discharge." Sapru, 127 B.R. at 315-316. "The existence or cumulative effect or a pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties or pendency or threat of suit of creditors can be evident of a badge of fraud which may establish sufficient proof of fraudulent intent. Maletta, 159 B.R. at 112 (citations omitted). Furthermore, "where there has been a 'pattern' of falsity or a 'cumulative effect' of falsehoods, a court may find that a [fraudulent] intent has been established." Id. (citation omitted).

Over the course of this bankruptcy case, there have been many instances where Defendant neglected to disclose information regarding his assets and affairs. Several of these concern this Court. First, a certificate of deposit in the name of "Daniel Thomas or Mary C. Souers" which the Souers did not disclose on their schedules. Defendant argues that this CD is his son's property and he and his wife have never been in possession of the original certificate. However, the Souers received statements and have exerted control over it.

Second, a checking account opened in the name "Pig's, Inc." shortly before filing bankruptcy was not disclosed on the original schedules which were amended to include it only after this proceeding had been filed. Defendant argues that because there was only $100.00 in the account on the date of filing which was to be used to pay for checks that it is insignificant and he didn't think he needed to disclose it. Defendant argues that the account was opened with the intention of depositing postpetition proceeds of livestock. However, Defendant deposited proceeds from the post-petition sale of prepetition hogs. Additionally, there is some evidence that some of the money was used for personal use and that corporate formalities were ignored. Steve Souers was also less than truthful when he stated in an

affidavit to this Court that his wife did not open the account with him. In fact, Mary Souers signed a signature card which was returned to the bank after the time when the account was first opened.

Third, Mary Souers had two accounts with Ames City Employees Credit Union which were not disclosed on the original schedules. Although such accounts had only a combined balance of only $17.58 at the time of filing, such accounts had been extensively used shortly before filing. Mary Souers payroll check was regularly directly deposited into one of the accounts. A $2000.00 check was written to the Souers' counsel less than one month before filing and deposits from the sale of hogs were placed in the account. It is unlikely that the accounts were forgotten and inadvertently omitted from the schedules.

Fourth, Steve Souers testified at his deposition that he had no interest in the Soilco lawsuit. However, he represented to creditors a continued interest in Soilco after he claimed to have sold the company to his brother. After the bankruptcy filing, Steve Souers, individually and as president, signed the settlement agreement for the lawsuit. The settlement agreement also provides that Steve Souers is entitled to remove certain business assets from the building.

Fifth, the transfer of assets from Fernald Ag. Supply was not disclosed. However, it is clear that the two corporate entities known as Fernald Ag. and Mid Iowa Flotation were nothing more than shams used by Defendant for his personal use. Mary Souers owned 100% of the stock of Fernald Ag. However, Steve Souers controlled the company and took no directions from Mary. Steve Souers engineered the sale of Fernald's assets at the insistence of creditors. He set up the sale so that no one would know that Mid Iowa Flotation, another corporate sham, was buying the property. He hired a

straw man, later paid by his father, to secretly bid on the company. He borrowed money to buy Fernald from his father without any corporate authorization. Even before the sale, Steve Souers negotiated with Farm Service to lease the property. In fact, he executed a lease agreement for Mid Iowa Flotation with Farm Services before Mid Iowa Flotation even acquired title to the property. Such actions directly related to Defendant's assets and affairs.

In the five instances discussed, Defendant made false statements under oath. Taking into consideration the credibility of the witnesses, the Court finds that Steve Souers made these false oaths with full knowledge of their falsity.

A false statement is material for purposes of § 727(a)(4) if "it bears a relationship to the bankrupt's business transactions . . . or concerns discovery of assets, business dealings, or the existence and disposition of property." Mertz, 955 F.2d at 598. Using this standard set out by the Eighth Circuit, the Court finds that each of the discussed false oaths is material as each concerns the discovery of assets or property. While some of the false oaths might be argued to be insignificant because of low value, the creditors should not be required to hunt for assets. It is the debtors duty to fully disclose their affairs and this Court will not allow Defendant to play fast and loose with his bankruptcy schedules.

The last requirement for denial of discharge is that the false oaths be made with fraudulent intent. This is the most difficult determination to make. Defendant argues that these instances are merely omissions and inadvertent mistakes. The Court recognizes that these inconsistencies, if taken alone, might not constitute reason for a denial of discharge and that objections to discharge should be applied liberally in favor of debtors. However, based on the extensive evidence before the Court

including the credibility of the witnesses, this Court finds that Steve Souers has clearly displayed a cumulative pattern of discrepancies and falsehoods from which this Court may infer such fraudulent intent.

The Souers' motions to amend schedules to include some of the previously undisclosed information do not persuade this Court of their good faith as the amendments were made after creditors had already discovered the discrepancies and brought this action. Therefore, the Court finds that Steve Souers knowingly made false oaths with intent to defraud. Moreover, these false oaths were material. Accordingly, the Court finds that Steve Souers should be denied his discharge pursuant to § 727(a)(4).

Plaintiff and Intervener have also objected to Defendant's discharge pursuant to § 727(a)(6)(A). The Court finds that Steve Souers' discharge has been denied pursuant to § 727(a)(4) and the Court need not reach this argument.

Attorney Fees

Both Plaintiff and Intervener are entitled to attorney fees and expenses for collection efforts of defaulted obligations. Plaintiff has proved that it is entitled to $47,189.00 in such fees. Intervener has proven that it is entitled to $15,000.00 in fees. The Court finds that judgments should be entered in those amounts in favor of Plaintiff and Intervener, respectively, and against Steve Souers herein.

ORDER

IT IS THEREFORE ORDERED that Plaintiff and Intervener have no standing to object to the discharge of Mary Souers and this case is dismissed as to Mary Souers only.

IT IS FURTHER ORDERED that the Objections to Discharge are sustained and Steve Souers is denied a discharge pursuant to § 727(a)(4).

IT IS FURTHER ORDERED that Plaintiff, Rosen's Inc., is hereby awarded attorney fees and costs in the amount of $47,189.00 against Steve Souers.

IT IS FURTHER ORDERED that Intervener, State Bank and Trust, is hereby awarded attorney fees and costs in the amount of $15,000.00 against Steve Souers.

Dated this _____ day of June, 1996.

_____
RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT