

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GRIGORY K. CHUSID	:	CIVIL ACTION
	:	
v.	:	
	:	
FIRST UNION NATIONAL BANK	:	NO. 97-4134

MEMORANDUM AND ORDER

Yohn, J. January , 1998

Grigory Chusid (“Chusid”) filed a bankruptcy petition requesting a discharge pursuant to Chapter 7 of the United States Bankruptcy Code on July 12, 1996. First Union National Bank (“First Union”), Chusid’s creditor, responded to Chusid’s petition by filing an objection to discharge under 11 U.S.C. § 727 and a complaint for a determination of nondischargeability of debt under 11 U.S.C. § 523. After conducting discovery, First Union filed a motion for partial summary judgment requesting that the court deny the discharge based on the debtor’s failure to comply with the requirements of § 727. The debtor now appeals the bankruptcy court’s Order granting First Union’s motion and denying the debtor a discharge. I will affirm.

Procedural and Factual Background

The following facts are uncontested.

Grigory Chusid, the debtor, is an engineer, has owned many corporations, received and guaranteed many corporate loans, operated an import-export business, worked as a consultant to foreign export businesses and invested in multi-million dollar real estate ventures. (Marra Aff. Ex. W, Debtor’s Dep. at 4-5, 10-12, 20-21; Ex. R, Chusid’s Inventory of Assets.) He now seeks to discharge his obligation on a loan he guaranteed from First Union, claiming that he has over

\$5,000,000.00 in liabilities and \$300.00 in assets. (Supplemental Certificate of Appeal [hereinafter Supp.]Ex. 11, Debtor's Bankruptcy Pet.)

The instant dispute began when, in October, 1989, Orka Associates, Inc. executed a Commercial Mortgage Note in favor of First Union for repayment of the sum of \$950,000.00. Chusid guaranteed repayment of the Note. The loan was modified in July, 1993, at which time Chusid reaffirmed the guarantee. Two days after the modification, Orka defaulted and First Union demanded the as yet unrealized repayment from Chusid. In connection with these loans, Chusid submitted and signed two financial statements, from 1989 and 1991, listing assets of over \$20,000,000.00, including approximately \$2,000,000.00 of cash on hand.¹

In an action against Chusid seeking judgment on the guarantee, in May, 1994, the New Jersey Superior Court entered judgment in favor of First Union and against Chusid for \$815,996.57. During these state court proceedings, First Union undertook numerous efforts to discover Chusid's available assets. At a deposition under New Jersey law, held in September, 1994, Chusid testified that he had no assets and no income and did not know what happened to numerous corporations identified on previous tax returns and hundreds of thousands of dollars identified in financial statements. (Marra Aff. Ex. K, Debtor's Dep.) Furthermore, he stated that he kept no business records and, to the extent that they exist, his son would have them. (Id. at 39 and 184.)

¹ At his November, 1996 deposition, conducted pursuant to 11 U.S.C. Bankr. R. 2004 (Supp. 1997), Chusid claimed he had never seen nor signed the abovementioned financial statements. (Marra Aff. Ex. W, Debtor's Dep. at 8.) However, as noted by the bankruptcy judge, (Supp. Ex. 2, Bankruptcy Ct. Hr'g Tr. at 7), the state court found that Chusid had signed and submitted these statements in connection with these loans. (Marra Aff., Ex. P, Mot. Tr. N.J. Super. Ct. at 33.)

Finally, the New Jersey Superior Court ordered Chusid to file a true, detailed and perfect inventory of all of his assets as of the date of filing. (Marra Aff. Ex. Q, Order N.J. Super. Ct., 12/1/94.) Further, the order required Chusid to provide a detailed description of the disposition of any asset identified in any financial statement previously submitted to First Union. (Id.) After finding that Chusid failed to comply with the order, the court issued a writ of *capias ad satisfaciendum* to obtain asset information and authorized the sheriff to imprison Chusid until he disclosed the location of his assets. (Marra Aff. Ex. T, Order for Writ of Capias Ad Satisfaciendum, 1/12/95.) The writ also stated that Chusid shall be released from custody upon filing a bankruptcy petition. (Id.)

After unsuccessfully appealing the state court's order, Chusid filed the instant bankruptcy petition in July, 1996. Pursuant to Bankruptcy Rule 2004, First Union deposed the debtor on November 1, 1996. At this deposition the debtor testified as follows:

- (1) He denied ever seeing a 1991 financial statement submitted to First Union in connection with the loan extended to Orka. (Marra Aff. Ex. W, Debtor's Dep. at 4-6.) He claimed that he did not know whether the 1991 financial statement was an accurate reflection of his assets and liabilities at the time. (Id. at 8.) The financial statement listed as an asset a \$2,000,000.00 Swiss bank account. (Marra Aff. Ex. F, Debtor's Financial Statement, 6/15/91.)
- (2) He admitted owning a one-half ownership interest in Belle Mead, an interest not reflected on the bankruptcy petition. (Marra Aff. Ex. W, Debtor's Dep. at 10-12.) He said that Bell Atlantic owed Belle Mead \$7,000,000.00 and admitted that this outstanding loan receivable was not on the bankruptcy petition. (Id.)
- (3) He admitted that a series of outstanding loan receivables as stated in paragraphs 3A-H in his inventory submitted to the New Jersey courts was not reflected in the bankruptcy petition. (Id. at 14-15.)
- (4) He denied knowing anything about the over \$20,000,000.00 of assets attributed to him in a May, 1994 financial statement that First Union subpoenaed from Atlantic Stewardship Bank (ASB) in connection with the state court

litigation. (Id. at 24-25.) He refused to state whether the statement accurately reflected his financial position as of May, 1994. (Id. at 18-19.)

- (5) He denied having any recollection of whether he received any income in 1992 and stated that he did not remember signing a 1992 tax return reflecting an income of \$548,000.00. (Id. at 32-33.)

Throughout both the instant and state court litigations, the debtor has not presented any corroborating records disclosing the disposition of his assets, including those assets that he admitted he owned and those that he claimed he cannot remember owning.

On March 13, 1997, First Union filed the instant motion for partial summary judgment seeking a denial of the debtor's discharge on the following grounds:

1. Failure to explain losses or insolvency satisfactorily under § 727(a)(5);
2. Failure to keep or preserve books and records under § 727(a)(3);
3. False oath or account under § 727(a)(4)(A);
4. Fraudulent transfer or concealment of property under § 727(a)(2)(A);
5. Fraudulent transfer or concealment of property under § 727(a)(2)(B).

On this same date, the debtor appeared pro se before the bankruptcy judge assigned to the adversary proceeding at a status conference. At that time, the bankruptcy judge scheduled a hearing on the motion for May 14, 1997 and urged the debtor to obtain counsel. The debtor did not file an answer to First Union's motion. Rather, the debtor's counsel appeared at the hearing and requested more time to prepare in light of his recent retention. (Supp. Ex. 2, Bankruptcy Hr'g Tr. at 3.) Although the bankruptcy judge did not issue written findings of fact and conclusions of law, he stated at the hearing that he would grant the motion for the reasons stated in the motion and First Union's brief. (Id. at 56-57). The judge then issued an order granting

First Union summary judgment as to Counts 1, 2, 3, 4, and 5 of the complaint, dismissed the debtor's answers and affirmative defenses with prejudice, and denying the debtor a discharge under Chapter 7 of the Bankruptcy Code pursuant to 11 U.S.C. § 727.

On May 23, 1997, the debtor filed the instant notice of appeal from the opinion and order entered on May 19, 1997. For the following reasons, this court affirms the bankruptcy court's order.

Discussion

Summary judgment is appropriate if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Small v. Seldows Stationery, 617 F.2d 992, 994 (3d Cir. 1980). Thus, while a district court may normally not set aside a bankruptcy court's findings of fact unless they are clearly erroneous, 11 U.S.C. Bank. R. 8013 (Supp. 1997), the unique nature of a summary judgment order requires a different standard of review. Mellon Bank, N.A. v. Metro Communications Inc., 945 F.2d 635, 641 (3d Cir. 1991); cert. denied, 503 U.S. 937 (1992). When granting summary judgment, the court's factual findings are actually legal conclusions that no genuine issue of material fact exists. Rosen v. Bezner, 996 F.2d 1527, 1530 n.2 (3d Cir. 1993). As such, the instant procedural posture dictates that the bankruptcy court's findings as to Counts 1 through 5 be subject to plenary review. Id.²

When deciding a summary judgment motion, the court does not resolve questions of disputed fact, but simply decides whether there is a genuine issue of fact which must be resolved at trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986); Ettinger v. Johnson, 556

² First Union erroneously asserts that the bankruptcy judge's findings of fact should not be set aside unless they are clearly erroneous. (First Union's Appeal Brief at 18.)

F.2d 692 (3d Cir. 1977). The facts must be viewed in the light most favorable to the opposing party, and doubt as to the existence of a genuine issue of material fact is to be resolved against the moving party. Continental Insurance Co. v. Bodie, 682 F.2d 436, 438 (3d Cir. 1982).

However, "there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson, 477 U.S. at 249-50 (citations omitted). The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury, or whether it is so one-sided that one party must prevail as a matter of law. Id. at 252.

In a summary judgment motion, "[t]he moving party has the burden to establish the lack of a triable issue of fact." 6 Jeremy C. Moore, et al., Moore's Federal Practice ¶ 56.11[3] (2d ed. 1993). "[W]ith respect to an issue on which the nonmoving party bears the burden of proof . . . the burden on the moving party may be discharged by 'showing'--that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Once the moving party has shouldered his or her burden, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Id. at 324.

A. Failure to Explain Loss of Assets under §727(a)(5)

Section 727(a)(5) of the Bankruptcy Code states that a debtor will be denied a discharge when "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."

11 U.S.C. §727(a)(5). “[T]he question of satisfactoriness turns on the nature of the debtor’s business, financial affairs, and lifestyle.” In re Gallini, 96 B.R. 491, 493 (Bankr. M.D. Pa. 1989). Once the objector to the discharge meets its burden of proving that the debtor has lost substantial assets, the burden shifts to the debtor to provide a satisfactory explanation of the loss. In re Cook, 146 B.R. 934, 941 (Bankr. E.D. Pa. 1992). To overcome the objector’s showing, a debtor must convince the court that the debtor’s explanation of the loss is worthy of belief. Id.; In re Shapiro & Ornish, 37 F.2d 403, 406 (N.D. Tex. 1929), aff’d, 37 F.2d 407 (5th Cir. 1930). Explanations of losses provided by debtors which are generalized, vague, and uncorroborated by documentation are unsatisfactory. Cook, 146 B.R. at 941.

The bankruptcy court’s finding that the debtor failed to explain satisfactorily the loss of assets is amply supported by the wealth of evidence submitted by the movant. For example, First Union presented signed financial statements submitted to First Union and ASB from October, 1989, July, 1992 and May, 1994 stating the debtor’s assets to be worth more than \$20,000,000.00, including between \$1,500,000.00 and \$2,000,000.00 in cash on hand. See Cook, 146 B.R. at 942 (requiring debtor to explain what happened to receipt of \$675,000.00 during two year period prior to filing for bankruptcy).³ First Union also presented a tax return from 1992 reflecting the debtor’s income to be approximately \$500, 000.00.

In both the state and federal proceedings, First Union undertook numerous efforts to discover what happened to these and other assets that had once belonged to the debtor. The debtor, however, failed to provide any explanation at all as to their disposition. For example,

³ The state court found that the debtor filed the 1989 and 1992 statements and, therefore, represented to First Union that he owned the assets listed in them. (Marra Aff. Ex. P, Mot. Tr. N.J. Sup. Ct. at 38-39.)

during the September, 1994 deposition held in connection with state court proceedings, the debtor testified that he did not know any financial information about various corporations in which he admitted he had or has an ownership interest. (Marra Aff. Ex. K, Debtor's Dep. at 61-63, 107-112, 133-35, 212-14.) He also testified that he did not know what happened to approximately \$500,000.00 of income reported on his 1992 tax return. (Id. at 65-66.)

Pursuant to Rule 2004, First Union again deposed the debtor in connection with the instant bankruptcy proceeding in November, 1996. Here, the debtor refused to state whether the 1991 financial statement submitted to First Union accurately reflected his assets and liabilities at the time. (Marra Aff. Ex. W, Debtor's Dep. at 8-9.) He also refused to state whether the 1994 financial statement accurately reflected his financial position at the time. (Id. at 18-19.) He again claimed he did not remember whether he had any income in 1992, the year his tax return revealed an income of approximately \$500,000.00. (Id. at 33.)⁴

The debtor has raised numerous arguments that he has complied with the statute's requirements. First, he argues that he has satisfactorily explained the loss of assets by relying on the inventory submitted to the New Jersey courts. (Debtor's Appeal Br. at 10.) However, two state courts and the bankruptcy court found that the inventory was purposefully evasive, completely unsupported by corroborating documentation and did not satisfactorily explain the disappearance of millions of dollars. (Marra Aff. Ex. S, Mot. Tr. N.J. Sup. Ct. at 21-24; Supp.

⁴ In his reply brief, Chusid claims that a language barrier caused the debtor to give what appeared to be incomplete answers in his deposition. (Debtor's Reply Brf. at 6.) The court would first note that a court appointed interpreter translated for the debtor in both the state and federal depositions. Second, even if Chusid failed to understand the questions at the deposition, this does not relieve him of his obligation to provide explanations for lost assets. If he was unable to adequately respond to the questions put forth in the deposition, he must provide alternative evidence of what happened to the assets, which he still has not done.

Ex. 2, Bankruptcy Ct. Hr'g Tr. at 16-17.) For example, the debtor lists a series of properties he sold but does not list the consideration received for them, making it impossible to determine the financial effect the sale had on the debtor. (Marra Aff. Ex. R, Chusid's Inventory of Assets.) Additionally, the inventory lists a series of expenditures made on several real estate investments but does not list the time period over which they were made. (Id.) The inventory also fails to explain what happened to \$2,000,000.00 in a Swiss bank account listed as an asset on Chusid's June, 1991 financial statement submitted to First Union. (Marra Aff. Ex. F, Debtor's Financial Statement.)

Moreover, outside of dubious assertions that he cannot remember or never knew certain information, the debtor has refused throughout all of these proceedings to produce any documentation of the alleged losses of millions of dollars in assets. Vague explanations uncorroborated by supporting documentation fail to satisfy the debtor's burden. Cook, 146 B.R. at 941.

Without offering any supporting testimony or documentation, the debtor also claims that his lack of knowledge regarding the disposition of his assets is due to the fact that his son managed all of his financial affairs in the 1990s. The law, however, forbids the debtor from absolving himself of the responsibility of explaining the loss of substantial assets by merely pointing the finger at another individual. See Meridian Bank v. Alten, 958 F.2d 1226 (3d Cir. 1992). Once the opponent to the discharge meets its burden of showing that there are substantial lost assets, it is *the debtor's* burden to show what happened to them. Id. at 1229-30.

Taking a final stab at a discharge, the debtor claims that he has satisfactorily explained the disappearance of assets because the bankruptcy schedules he filed in this litigation are

consistent with the inventory he filed in the state litigation. (Debtor's Appeal Br. at 10-11.) The discrepancy at issue, however, is the one that exists between the aforementioned financial statements, tax returns and business records and Chusid's lack of explanation for the disposition of the assets disclosed in those documents. Section 727(a)(5) requires the debtor to reveal what happened to the assets, a requirement that the debtor has blatantly failed to fulfill. As such, the bankruptcy court correctly found as a matter of law that the debtor failed to comply with the requirements of § 727(a)(5).

B. Failure to Keep or Preserve Books or Records under § 727(a)(3)

Section 727(a)(3) states that a debtor will be denied a discharge when:

. . . the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, . . . , from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all the circumstances of the case.

11 U.S.C § 727(a)(3).

In order to ensure that debtors supply creditors with dependable information regarding their financial history, the Third Circuit has held that the "records must 'sufficiently identify the transactions [so] that intelligent inquiry can be made of them.' The test is whether there is 'available written evidence made and preserved from which the present financial condition of the bankrupt, and his business transactions for a reasonable period in the past may be ascertained.'" Meridian Bank, 958 F.2d at 1230 (quoting In re Decker, 595 F.2d 185, 187 (3d Cir. 1979)).

Sophisticated businesspeople, especially those involved in complex financial affairs, are held to a higher standard of record keeping. Id. at 1231.

The bankruptcy court correctly found that the debtor concealed or failed to preserve

books or records relating to his financial dealings. (Supp. Ex. 2, Bankruptcy Ct. Hr'g Tr. at 56-57, 64, 67-71.) The record shows, and the bankruptcy judge repeatedly noted, that the debtor is an experienced businessperson who generated substantial revenue, engaged in complex real estate and import/export affairs, received many substantial loans and even acted as an international business consultant. (Marra Aff. Ex. S, Mot. Tr. N.J. Sup. Ct. at 22-23.) Despite this level of sophistication and numerous discovery requests and court orders, the debtor has not produced any documentation substantiating the loss of millions of dollars in assets.

Once it has been shown that there was a failure to keep appropriate records, it is the debtor's burden to produce evidence of adequate justification. Meridian Bank, 958 F.2d at 1233.

What will justify failure largely depends upon how extensive and complicated the bankruptcy business is Honesty is not enough; the law demands as the condition of a discharge that the bankrupt shall produce such records as are customarily kept by a person doing the same kind of business, or that he shall satisfy the bankruptcy court with adequate reasons why he was not duty bound to keep them.

Meridian, 958 F.2d at 1232 (quoting White v. Schoenfeld, 117 F.2d 131, 132 (2d Cir. 1941)).

The debtor's justification for his failure to keep records, to the extent that he offers one, is that the subsequent failure of the debtor's business excuses him from his record keeping duties. (Debtor's Reply Brf. at 7.) The debtor does not supplement his argument by providing any reason or evidence as to how his financial failures have hindered him from maintaining any documentation of his financial affairs. See Celotex Corp. v. Catrett, 477 U.S. at 324 (once the moving party has shouldered his or her burden, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial'").

Especially in light of the debtor's extensive business experience, this bald faced assertion does not rise to the level of an adequate justification. See Meridian, 958 F.2d at 1232 (refusing to excuse debtor's complete lack of record keeping based on debtor's claim that he had only a small law practice). Thus, the bankruptcy court correctly found that the debtor failed to raise any genuine issue of material fact as to the adequacy of his record keeping.

C. False Oath or Account under § 727(a)(4)(A)

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

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless -

(4) the debtor knowingly and fraudulently, in or in connection with the case
(A) made a false oath or account;

11 U.S.C. § 727(a)(4)(A). To make out a § 727(a)(4)(A) claim, the objector must demonstrate that (1) a false oath or statement was made by the debtor, (2) knowingly and fraudulently, (3) which was material to the course of the bankruptcy proceedings. In re Segal, 195 B.R. 325, 332 (Bankr. E.D. Pa. 1996). A false oath or statement is made when it occurs (1) in the debtor's schedules or (2) at an examination during the course of the proceedings. Scimeca v. Umanoff, 169 B.R. 536, 542 (D.N.J. 1993); aff'd, 30 F.3d 1488 (3d Cir. 1994); In re Tarle, 87 B.R. 376, 379 (Bank. W.D. Pa. 1990). While the initial burden lies on the objector to prove that the debtor made a false statement in connection with the proceedings, once it "reasonably appears the oath is false, the burden falls on the bankrupt" to disprove the allegation. Scimeca, 169 B.R. at 542.

To satisfy the "fraudulent" prong of § 727(a)(4)(A), there must be evidence that suggests the debtor intended to defraud his creditors or his estate. Segal, 195 B.R. at 333. Fraudulent

intent can be gleaned from “circumstantial evidence or by inferences drawn from a course of conduct established by the evidence.” Id. at 542-43 (citing In re Kisberg, 150 B.R. 354, 356 (Bankr. M.D. Pa. 1992)). Circumstantial evidence of fraudulent intent may consist of proof of the size or value of the asset or proof that the debtor knew of the asset in close proximity to the filing. In re Garcia, 88 B.R. 695, 705 n.19 (Bankr. E.D. Pa. 1988).

Turning to the facts at bar, the bankruptcy court’s decision to deny a discharge to Chusid under § 727(a)(4)(A) does not constitute reversible error. For example, the debtor failed to list his significant ownership interests in two companies, Belle Mead and Interlotto, in his bankruptcy schedules. Just several months later, however, he admitted during the Rule 2004 deposition that Belle Mead had an existing contract with Bell Atlantic under which Bell Atlantic owed Belle Mead \$7,000,000.00, half of which belonged to the debtor. (Marra Aff. Ex. W, Debtor’s Dep. at 10-11.) In fact, in February, 1996, the debtor offered to transfer his share of this interest in order to settle this litigation. (Marra Aff. Ex. X., Letter from Chusid to First Union’s CEO of 2/17/96.) He also admitted during this deposition that he retained a significant ownership interest in Interlotto. (Id.)⁵

⁵ The debtor cannot claim that he has cured his omissions by admitting to them in the Rule 2004 proceedings nor can he claim, as his counsel did at oral argument on this motion and in his appeal brief, that he will cure his omissions by submitting amended schedules to the court which accurately reveal his financial interests. See In re Garcia, 88 B.R. 695 (Bankr. E.D. Pa. 1988) (denying discharge to debtor despite filing of amended schedules).

Responding to the debtor’s request for more time to respond to First Union’s Motion, the bankruptcy court aptly noted that the time for complying with the requirements of § 727 had passed and the debtor cannot “lie as much as [he] please[s] and then, when pressed [with a summary judgment motion] tell the truth and it will all be washed away.” (Supp. Ex. 2, Bankruptcy Ct. Hr’g Tr. at 35-36.) “The existence of sanctions for failure to disclose assets would serve no purpose if deficiencies could simply be remedied any time the parties in interest call attention to them.” Garcia, 88 B.R. at 706 n.19.

The debtor also failed to list certain loan receivables in the schedules. He did, however, record those loans in the 1994 inventory filed with the state court, although without listing their amounts. (Marra Aff. Ex. R, Chusid's Inventory of Assets.) When questioned about these loans at his Rule 2004 examination, the debtor admitted that they were not listed in the petition and provided no further explanation as to whether they were still outstanding. (Marra Aff. Ex. W, Debtor's Dep. at 14-15.)

Thus, First Union met its burden in the summary judgment action by producing evidence that the debtor admitted that he had knowledge of significant assets, both before and after he filed for bankruptcy, that he failed to list in his schedules. Additionally, First Union produced evidence that the debtor admitted that he failed to list not just one asset but several businesses and several outstanding loans. Outside of vague claims of unjust treatment, the debtor, on the other hand, failed to provide any evidence contradicting the mountains of documentation produced by First Union. Therefore, the debtor failed to meet his obligation under the summary judgment standard.

It is even more apparent that Chusid's omissions were material to the bankruptcy proceedings. A material statement means that it must concern the "discovery of assets, business transactions, and/or past dealings of the debtor or the existence of property." In re Henderson, 133 B.R. 147, 160 (Bankr. E.D. Pa. 1991). The debtor argues that the fact that certain assets may not be available to creditors makes Chusid's false statements "inconsequential" to this bankruptcy proceeding. (Debtor's Reply Brf. at 8.) The case law states, however, that the debtor must make a full disclosure, "*even of seemingly worthless assets*," in order to facilitate the creditor's investigation of the debtor's financial status. Scimeca, 169 B.R. at 543 (emphasis

supplied); In re Somerville, 73 B.R. 826, 835 (Bankr. E.D. Pa. 1987).

Chusid owned a one-half interest in Belle Mead, worth at least \$3,000,000.00, a significant interest in Interlotto, and multiple loan receivables, all of which he failed to list in his schedules. Nothing can be more material to a bankruptcy case than a failure to disclose the existence of a current or recently held business because this would severely hamper the creditor's ability to investigate the debtor's financial status. Scimeca, 169 B.R. at 544-45 (relying on Somerville, 73 B.R. at 837). In light of the foregoing, the bankruptcy court's determination that the debtor had made a false oath within the meaning of § 727(a)(4)(A) warranting a grant of summary judgment was adequately supported by the wealth of evidence submitted by First Union.

D. Fraudulent Transfer or Concealment of Property under §727(a)(2)

Section 727(a)(2) provides that a debtor will be denied a discharge when:

the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, 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; or

(B) property of the estate, after the date of the filing of the petition.

11 U.S.C. § 727(a)(2). To sustain an objection pursuant to § 727(a)(2), four elements should be shown:

- (1) that the act complained of was done at a time subsequent to one year before the filing of the petition or after the date of the filing of the petition;
- (2) with intent to hinder, delay, or defraud a creditor of the property under the Bankruptcy Code;
- (3) that the act was that of the debtor or his duly authorized agent;
- (4) that the act consisted of transferring, removing, destroying, or concealing any of the debtor's property.

In re Schultz, 71 B.R. 711, 715 (Bankr. E.D. Pa. 1987) (citing 4 Collier on Bankruptcy ¶ 727.02 at 727-10 (15th ed. 1985)).

Concealment sufficient to deny a discharge under § 727(a)(2) includes preventing the discovery of or the withholding of knowledge of a property. In re Bernat, 57 B.R. 1009, 1012 (E.D. Pa. 1985); see Rosen v. Bezner, 996 F.2d 1527, 1532 (3d Cir. 1993). As already shown above, First Union presented evidence that the debtor failed to list significant and current ownership interests on his bankruptcy schedules. First Union also presented evidence that the debtor admitted he failed to list these assets, attempted to offer one of the assets in settlement of the claim, and engaged in evasive and dishonest behavior throughout the state and federal proceedings. In light of the voluminous evidence provided by the plaintiff, the debtor's complete failure to offer any explanation for these omissions forces the court to conclude that he intended to defraud his creditors by concealing his property.

Because the plaintiff has met its burden of showing that there are no genuine issues of material fact regarding the debtor's fraudulent concealment, the bankruptcy court's grant of summary judgment will be sustained.⁶

Conclusion

The court notes that § 727 is to be construed liberally in favor of the debtor because denial of a discharge is an extreme penalty. Rosen v. Bezner, 996 F.2d 1527, 1532 (3d Cir. 1993). Nevertheless, the statute imposes an obligation on the debtor to be forthright with his

⁶ As a final matter, the debtor claims that the bankruptcy court committed reversible error by failing to issue a written opinion. However, the debtor does not cite and this court is unaware of any rule, statute or decision requiring reversal of the court's order for failure to issue a written opinion.

creditors and with the court. As shown, the debtor in the instant case had clearly failed to meet many of the obligations imposed upon him by § 727. Therefore, the bankruptcy court correctly granted the plaintiff's motion for summary judgment based on counts 1 through 5 of the plaintiff's complaint. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GRIGORY K. CHUSID	:	CIVIL ACTION
	:	
v.	:	
	:	
FIRST UNION NATIONAL BANK	:	NO. 97-4134

ORDER

AND NOW, this day of January, upon consideration of the parties' briefs and the record certified for appeal, **IT IS HEREBY ORDERED** that the Order of the Honorable Joseph

L. Cosetti, Bankruptcy Judge, granting summary judgment and denying the debtor's discharge is

AFFIRMED.

William H. Yohn, Jr., J.