

JAN 26 2007

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-05-1134-KPaJ
)		
CURTIS W. LINT,)	Bk. No.	ND 04-10570-RR
)		
Debtor.)	Adv. No.	ND 04-01110-RR
)		
_____)		
)		
CURTIS W. LINT,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
RUSSELL J. TRASK; BAINBRIDGE)		
MARINE SERVICES, INC.;)		
SHIPLEY, INC.,)		
)		
Appellees.)		
)		
_____)		

Argued and Submitted on January 17, 2007
at Pasadena, California

Filed - January 26, 2007

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Robin L. Riblet, Bankruptcy Judge, Presiding

Before: KLEIN, PAPPAS and JAROSLOVSKY,** Bankruptcy Judges.

*This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

**Hon. Alan Jaroslovsky, U.S. Bankruptcy Judge for the Northern District of California, sitting by designation.

1 The debtor, Curtis W. Lint, appeals from an order denying
2 his discharge under 11 U.S.C. §§ 727(a)(2)(A) and (a)(4)(A).
3 Given the unambiguous evidence in the record regarding fraudulent
4 intent and false oaths, the bankruptcy court's denial of the
5 debtor's discharge was not error. We AFFIRM.

6
7 FACTS

8 Appellant Curtis Lint filed a voluntary chapter 7 case on
9 March 3, 2004.

10 The appellee creditors filed a timely adversary proceeding
11 seeking to deny a discharge under 11 U.S.C. §§ 727(a)(2), (a)(3),
12 and (a)(4). They alleged that the debtor had not fully disclosed
13 his assets, specifically his stock ownership of a business called
14 Curt Lint, Inc., later named Neverland Group USA, Inc. The
15 debtor filed an answer claiming that he did not own any stock in
16 Curt Lint, Inc. or Neverland Group because he had transferred the
17 stock to Teresa Farmer (now Teresa Utter) in 1985.

18 Trial was held on March 30, 2005. At the trial, the debtor
19 sought to admit eleven exhibits that had not been provided to the
20 court or opposing counsel one week prior to trial, as required by
21 the court's written and oral instructions. The court initially
22 refused to admit any of the eleven exhibits. The appellees,
23 however, examined the debtor's proposed exhibits and agreed that
24 all but the two (exhibits B and F) that had not previously been
25 disclosed could be admitted.

26 At the end of the one-day trial, the court made its findings
27 of fact and conclusions of law. The court determined that the
28 debtor's credibility was "very low" and concluded that the debtor

1 "with the intent to hinder, delay and defraud his creditors,
2 transferred property within a year" of filing bankruptcy and that
3 he "knowingly and fraudulently, in connection with this case,
4 made a false oath and withheld information from the trustee with
5 respect to his ownership interests." Accordingly, it denied the
6 debtor's discharge under §§ 727(a)(2) and (a)(4).

7 This appeal timely ensued.

9 JURISDICTION

10 The bankruptcy court had jurisdiction over this core
11 proceeding via 28 U.S.C. §§ 1334 and 157(b). We have
12 jurisdiction under 28 U.S.C. § 158(a)(1).

14 ISSUES

15 1) Whether the debtor's discharge was correctly denied for
16 transferring or concealing property of the estate under
17 § 727(a)(2).

18 2) Whether the debtor's discharge was correctly denied on
19 account of false oath under § 727(a)(4).

21 STANDARD OF REVIEW

22 The bankruptcy court's determinations of historical facts
23 are reviewed for clear error, the "selection of applicable legal
24 rules" is reviewed de novo, and the application of the facts to
25 those rules is also reviewed de novo. Searles v. Riley (In re
26 Searles), 317 B.R. 368, 373 (9th Cir. BAP 2004).

1 DISCUSSION

2 The debtor makes several arguments and accusations
3 concerning the actions of the appellees, their attorneys, and the
4 bankruptcy court. The debtor alleges that he was treated
5 unfairly and that appellees' counsel "hoodwinked the trial
6 court's presiding judge with fraudulent statements[.]"

7
8 I

9 Before we focus on the substantive merits of whether the
10 bankruptcy court erred when it denied the debtor's discharge
11 under §§ 727(a)(2) and (a)(4), we address the arguments set forth
12 in the debtor's brief.

13
14 A

15 The debtor first argues that at a status conference held on
16 September 7, 2004, one of the appellees' attorneys had a " 'cozy'
17 reception to the presiding judge with 'cozy' acknowledgment."

18 Our review of the record indicates that the court and the
19 appellees' local counsel engaged in conversation, on the record
20 in open court, regarding counsel's children and about a recent
21 bicycle accident. It appears that, in effect, local counsel may
22 have been "showing off" to the out-of-town counsel who had hired
23 him that he had familiarity with the court in that locality.

24 Although we are persuaded that the dialogue between the
25 court and local counsel on the record in open court was mere
26 small talk that was not prejudicial to the debtor, it does create
27 an unfortunate appearance in the mind of someone who does not

1 The debtor filed a Motion for Protective Order on August 12,
2 2004, seeking to prohibit the appellees from questioning him and
3 others regarding the vessel "Neverland." The appellees filed a
4 written reply and the debtor filed a written response to the
5 reply. The court ruled without a hearing.

6 A status conference was held on September 7, 2004. At the
7 status conference, Judge Riblet informed the debtor that she had
8 denied his motion by written order the previous day. At the
9 status conference, the following colloquy occurred:

10 MR. LINT: - - There's an outstanding motion right now

11 THE COURT: I denied it. You can't just stonewall
12 complete discovery.

13 MR. LINT: No. I - -

14 THE COURT: There was a motion to - - for protective
15 order to prevent the Plaintiff from taking discovery of
16 a number of parties, and I have denied it because cause
17 was not shown.

18 MR. LINT: But, your honor, there's another order - -
19 there's another motion before the Court.

20 THE COURT: What's that one?

21 MR. LINT: I've got a - - I've got a - - I tried to - -
22 I didn't know that you had denied this order. So - -

23 THE COURT: Well, I just did it Sunday. I guess you
24 wouldn't have known.

25 MR. LINT: Well, there is an outstanding motion for
26 protective order of this Court and requesting the Court
27 to bar the Plaintiff's attorneys from any inquiry into
28 the Barge Neverland and - -

THE COURT: That's what I denied.

MR. LINT: Please, your Honor, may I - - I'm not - -

THE COURT: That's the motion I denied.

Transcript (9/7/04) pgs. 2-3.

1 The debtor filed his motion, and the appellees filed a
2 reply, and the debtor filed a response to the reply. The court
3 reviewed the motion and ruled on it. No hearing was required.
4 Such action was not prejudicial to the debtor and was not error.

5
6 C

7 The debtor further complains that the court's rejection of
8 some of his trial exhibits was error.

9 At a pre-trial conference held on December 14, 2004, which
10 was over three months before the trial date, the court gave the
11 parties her instructions for the presentation of evidence at
12 trial. The judge specifically stated that "all documentary
13 evidence had to be bound, premarked, and submitted to Court and
14 opposing counsel at least a week before the trial date. Also,
15 any trial brief that you might want to file has to be filed at
16 least a week before the trial date." The debtor was present at
17 that December 14 status conference and received the instructions.

18 At the trial on March 30, 2005, the debtor proffered eleven
19 exhibits not previously submitted to the court.

20 The following colloquy occurred when the debtor sought to
21 admit his exhibits at trial:

22 MR. LINT: I really - - I'm totally overwhelmed. I
23 would like to address the issue of, number one, my
24 trial exhibits which I have in my hand here that I'd
like to - - this is my trial exhibits. There are 11
exhibits.

25 THE COURT: They were due a week ago, Mr. Lint. I gave
26 instructions out that they were to be filed, including
the trial brief, if any, a week ago. You managed to
27 file a trial brief in a timely fashion.

28 MR. LINT: Your Honor, I was following, to the best of
my ability, Rule Number 9013.2, which says the tagged

1 exhibits and completed exhibit registers are to be
2 turned over in the court to the courtroom deputy or
3 court recorder prior to the beginning of the hearing.
And that was my understanding of it, and I was trying
to follow it to its exact - -

4 THE COURT: That's motion practice. That's not trials.
5 And there's always a provision, unless otherwise
ordered by the Court.

6 MR. LINT: All right.

7 THE COURT: I ordered at the hearing on December 14th
8 that all exhibits were to be submitted a week before
9 trial. An instruction sheet was given because - - I
know that to be the case because I've got my notations
that the instruction sheet was given.

10 MR. LINT: Your Honor, I read the instruction sheet, but
11 after I went through the California Rules of Court and
12 read this order here, I really honestly thought that
this superseded it, and I did in good faith - - are you
saying you will not accept my trial briefs?

13 THE COURT: That's what I'm saying. I have your trial
14 brief.

15 MR. LINT: No. My trial - - my exhibits.

16 THE COURT: That's right. You know, the reason that I
17 require trial exhibits to be exchanged a week before
18 trial, Mr. Lint, is that we don't have any surprises,
we don't have anybody sandbagged at trial, there is no,
ah-ha, look what I have.

19 MR. LINT: Your Honor, the Court is not going to accept
20 the originals and the 10 - - the 10 exhibits that I
have.

21 THE COURT: I am not going to accept - -

22 MR. LINT: Not 180 or 60, but 10.

23 THE COURT: I am not going to accept anything that they
haven't seen before.

24 MR. LINT: Well, I can hand it to them right here and
25 now.

26 THE COURT: No. That they haven't seen before.

27 MR. LINT: All right, your Honor.

1 The court, however, asked the appellees' counsel if they had
2 seen any of the exhibits sought to be admitted by the debtor.
3 Appellees' counsel reviewed the proposed exhibits and agreed that
4 all could be admitted, with two exceptions - proposed exhibits B
5 and F, which were documents that the appellees had never seen.
6 The appellees also objected to some captions on pictures labeled
7 as Exhibit A. The court then ruled that only Exhibits B, F, and
8 the captions on Exhibit A would be excluded from evidence. The
9 remainder of the exhibits were admitted.

10 On appeal, the debtor simply argues it was error for the
11 court not to admit all eleven exhibits. He does not state the
12 value or importance of the two excluded exhibits, nor does he
13 argue that the exclusion was prejudicial to his case.

14 The court informed the debtor three months in advance of
15 trial of the requirement that all exhibits be submitted a week
16 before trial both orally and in writing. Despite the fact that
17 the debtor did not timely submit the exhibits, all but two were
18 actually admitted into evidence pursuant to a stipulation of the
19 appellees. The court's rejection of the undisclosed exhibits was
20 not error.

21
22 D

23 The debtor next alludes to a portion of the September 7,
24 2004, status conference transcript where he was "cut off" by the
25 court when attempting to argue that a Washington state court did
26 not have jurisdiction over a "documented United States vessel in
27 navigable waters." The debtor's argument relates to a order
28 granting summary judgment in favor of the appellees that was

1 issued by the Superior Court for the State of Washington on
2 February 20, 2004.¹

3 The debtor attempted to make the jurisdiction argument at a
4 status conference. The court was talking to the parties about
5 her understanding of the status of the case, which included her
6 understanding of the Washington state court judgment in favor of
7 the appellees. During the court's comments, the debtor attempted
8 to interrupt her with his argument that the state court lacked
9 jurisdiction over the Neverland. The court stopped the debtor by
10 saying "Don't interrupt me."

11 The debtor does not explain on appeal how the court's
12 refusal to entertain his argument at a status conference is
13 prejudicial to him. A status conference is a time for the court
14 to acquire information from the litigants about the status of the
15 case. It is not a time to argue the merits. Thus, it was not
16 error for the court to refuse to hear the debtor's argument
17 regarding the jurisdiction of the state court at the September 7,
18 2004, status conference.

19
20 II

21 We now address the merits of this appeal. The record, which
22 we have carefully reviewed, reveals that the court did not err
23 when it denied the discharge under §§ 727(a)(2) and (a)(4).

24 _____
25 ¹The state court litigation was brought by the debtor
26 against the appellees regarding the ownership status of a barge
27 called the "Neverland." The Washington court ruled "that the
28 defendant, Russell J. Trask, shall have judgment granting him
ownership and possession of the barge NEVERLAND aka BMS-4, O/N
169520, as against any ownership or mortgage interest of the
plaintiff, Curtis W. Lint, or his company, Curt Lint, Inc."

1 Section 727(a) (2) (A) provides,

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

4 (2) the debtor, with intent to hinder, delay,
5 or defraud a creditor . . . has transferred, removed,
6 destroyed, mutilated, or concealed . . .

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

9 11 U.S.C. § 727(a) (2) (A) .

10 For a discharge to be denied under this section, there must
11 be (1) a disposition of property (i.e., transfer or concealment);
12 (2) with subjective intent to hinder, delay or defraud a
13 creditor; and (3) within one year prior to filing bankruptcy.

14 Fogal Legware of Switzerland, Inc. v. Wills (In re Wills), 243
15 B.R. 58, 65 (9th Cir. BAP 1999).

16 Section 727(a) (4) (A) provides,

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

19 (4) the debtor knowingly and fraudulently, or
20 in connection with the case -

21 (A) made a false oath or account[.]

22 11 U.S.C. § 727(a) (4) (A) .

23 To deny a debtor a discharge under this section, the
24 plaintiff must show that the debtor (1) knowingly and
25 fraudulently made a false oath and (2) the false oath related to
26 a material fact. Wills, 243 B.R. at 62; Roberts v. Erhard (In re
27 Roberts), 331 B.R. 876, 882 (9th Cir. BAP 2005).

28 At trial, and after listening to and reviewing all written
and oral evidence, the court made its findings of fact and
conclusions of law. The court found that in 1958, the debtor

1 formed a California corporation named Curt Lint, Inc. Curt Lint,
2 Inc. owned two vessels - a tugboat ("the Little Joe") and a barge
3 ("the Neverland").

4 In September 1985, the debtor borrowed \$85,000 from Teresa
5 Utter. As security for the loan, the debtor pledged 100 percent
6 of the stock of Curt Lint, Inc. as collateral to Utter. The
7 debtor also gave Utter a ships mortgage on both the Little Joe
8 and the Neverland.

9 In 2002, the debtor filed a complaint against the appellees
10 in the Superior Court for the State of Washington for conversion
11 of the Neverland.² During the state court litigation (on August
12 5, 2003), the debtor executed a bill of sale on behalf of Curt
13 Lint, Inc. of California, transferring title to the Neverland to
14 Curt Lint, Inc. of Nevada. On August 6, 2003, the debtor filed
15 articles of incorporation in Nevada for Curt Lint, Inc.

16 On February 20, 2004, the Washington state court granted the
17 appellees' motion for summary judgment and ordered that appellee
18 Russell Trask was the owner of the Neverland.

19 On February 27, 2004, the debtor amended the Nevada articles
20 of incorporation and changed the name of his corporation from
21 Curt Lint, Inc. to the Neverland Group USA, Inc.

22 The debtor then filed a chapter 7 bankruptcy petition on
23

24 ²The specifics of the state court litigation are unclear.
25 However, from what we can glean from the record, it appears that
26 the debtor alleged that in November 1985, the appellees chartered
27 the Neverland on a month to month basis for \$500 per month.
28 Appellees took possession of the Neverland, and later informed
the debtor that it was "sinking and unseaworthy." The debtor
alleges that he demanded return of the Neverland, but the
appellees refused. The debtor then brought a state court action
against the appellees for conversion in 2002.

1 March 3, 2004. The debtor did not list his interest in Curt
2 Lint, Inc. (either California or Nevada) or the Neverland Group
3 USA, Inc. on his petition. He also did not list his interest in
4 the tugboat Little Joe in his schedules.

5 When questioned about the lack of disclosure at his 11
6 U.S.C. § 341(a) meeting of creditors, the debtor testified under
7 oath that he transferred his stock interest in the corporation to
8 Utter "in excess of probably about 18 months ago." However, in
9 his response to the adversary complaint filed by the appellees
10 shortly after the meeting of creditors, the debtor claimed that
11 he transferred ownership of the stock to Utter in September 1985.

12 The court found that the debtor's "story is changing all the
13 time" and that she was "not sure what the story is." The
14 debtor's changing story was also inconsistent with his prior
15 statements in the Washington state court litigation (less than
16 one year prior) whereby he claimed to be the sole owner of the
17 Neverland and the "100 percent owner of Curt Lint, Inc."

18 The court found the debtor's credibility to be "very low"
19 and that the evidence overwhelmingly showed that the debtor owned
20 and controlled the Neverland, the Little Joe, and Curt Lint,
21 Inc./Neverland Group USA, Inc.

22 The court then found that the debtor met all the elements of
23 both §§ 727(a)(2)(A) and (a)(4)(A), and denied his discharge.

24 Under both §§ 727(a)(2)(A) and (a)(4)(A), intent may be
25 inferred from the actions of the debtor. Wills, 243 B.R. at 65.
26 The record in this case is replete with evidence that the debtor
27 intentionally omitted his ownership interest in Curt Lint, Inc.,
28 and associated business dealings, on his bankruptcy schedules.

1 replete with evidence of the debtor's attempts to cover up his
2 business dealings and his fraudulent intent to defraud his
3 creditors. AFFIRMED.

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