

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:)
)
SAMUEL I. BARBER,)Case No. 6:03-bk-11735-ABB
)Chapter 7
Debtor.)
_____)
)
KENOFF & MACHTINGER, LLP,)
AND KENOFF & MACHTINGER,)
A CALIFORNIA GENERAL PARTNERSHIP,)
)
Plaintiffs,)
)
vs.)Adv. Pro. No 6:04-ap-0009-ABB
)
SAMUEL I. BARBER,)
)
Defendant.)
_____)

ORDER

This matter came on Plaintiffs Kenoff & Machtinger, LLP and Kenoff & Machtinger amended complaint to object to the general discharge of Defendant Samuel I. Barber pursuant to 11 U.S.C. §§ 727 (a)(2)(A), (a)(3), (a)(4)(A), (a)(5) and (a)(7) (Doc. 1). A Final Evidentiary Hearing on the Complaint was held August 02, 2004. The following Findings of Fact and Conclusions of Law are made after reviewing the evidence.

FINDINGS OF FACT

Samuel I. Barber ("Barber/ Debtor") filed Chapter 7 on October 7, 2003. Kenoff & Machtinger, LLP, and Kenoff & Machtinger , a California General Partnership

(“K&M”) was a creditor as a result of a judgment entered against Barber on June 24, 2003 in the amount of \$102,222.78.

Debtor filed Amended Schedule B adding a 1/3 distribution of his father’s estate on November 17, 2003. Debtor did not attempt to hide or conceal the distribution from the bankruptcy estate. Probate counsel contacted Barber’s bankruptcy counsel only after the petition date. Barber did not knowingly fail to disclose the distribution on his schedules.

Barber also filed Amended Statement of Financial Affairs changing “ex-wife” to “estranged wife” and “part of divorce” to “part of property settlement agreement.” As of his petition date, Barber believed he was divorced from Sheryl Barber. A Custody, Separation and Property Settlement Agreement (“Agreement”) provided for the transfer of a ranch in Golden, Colorado to Mrs. Barber. Barber executed a Quitclaim Deed to the ranch because Sheryl Barber told him the divorce was completed. The transfer of the ranch was made to comply with the Agreement not to hinder, delay or defraud creditors.

Barber has been an actor, screenwriter and film producer. He has been out of work for quite some time. His personal effects and financial records were stored at the homes of relatives and friends. While he has not kept meticulous records, Barber did turn over all available records to Plaintiffs’ counsel. The financial records Barber produced were justified given the circumstances of his unemployment and transient lifestyle.

Barber satisfactorily explained the expenditure of settlement proceeds he received four years prior to the bankruptcy. Bank records indicate most of the proceeds were used to pay off numerous debts, while a smaller amount was used for investments. Barber disclosed both of his business entities – My Favorite Trading Company and Herbs of

China. He provided the ending date of December 2001 for My Favorite Trading Company since the company could not conduct business as a condition of the lawsuit. Although the company still had a bank account, Barber was reasonable in his belief that merely maintaining a bank account did not qualify as “operation” of a business.

CONCLUSIONS OF LAW

Plaintiffs’ objection to Debtor’s discharge is based on an intent to hinder, delay, or defraud a creditor.¹ An actual, not constructive, intent to defraud is necessary to satisfy the requisite intent.² The totality of the circumstances in this case does not establish an actual intent by Barber to hinder, delay, or defraud creditors.

Debtor did not transfer property within one year of his bankruptcy filing with the intent to hinder, delay, or defraud a creditor.³ Barber’s transfer of the ranch in Golden, Colorado to his estranged wife was not made with the intent to hinder, delay or defraud his creditors. The transfer was made to comply with the Custody, Separation and Property Settlement Agreement entered into on March 21, 2003.

Debtor has not failed to keep records of his financial condition.⁴ Although he did not keep meticulous records, Barber did keep some financial records and produced everything he had available. The financial records Barber supplied were justified under the circumstances; he was an artist, not a sophisticated business person.⁵

Barber did not knowingly and fraudulently make a false oath as to information disclosed in the schedules filed with his petition.⁶ Misstatements or omissions must be

¹ 11 U.S.C. § 727.

² *In re Pond*, 221 B.R. 29, 33 (Bankr. M.D.Fla. 1998).

³ 11 U.S.C. 727 (a)(2)(A).

⁴ 11 U.S.C. 727 (a)(3).

⁵ See *Meridian Bank v. Alten*, 958 F.2d 1226 (3rd Cir. 1992) (holding a sophisticated business person to a higher standard of accountability than less experienced debtors).

⁶ 11 U.S.C. 727 (a)(4)(A).

deliberate to justify a denial of debtor's discharge.⁷ The inaccuracies on Barber's original petition were the result of clerical error, mistaken impression or lack of specific knowledge: Barber was under the mistaken impression that he was divorced when he filed the petition; he did not know the value of his home but relied on counsel to ascertain the amount; he arguably stated the incorrect ending dates for My Favorite Trading Co.

Barber satisfactorily explained the expenditure of assets.⁸ The assets, at issue, are lawsuit proceeds received by Barber four years ago. The standard by which expenditure must be explained is one of reasonableness and credibility.⁹ The passage of time and Barber's general explanation of how the proceeds were spent is reasonable in light of the circumstances.

The Plaintiff K&M has not established the acts specified in §§727(a)(2), (3), (4) or (5). Debtor's discharge will be granted pursuant to §727(a)(7).

Dated this 6th day of October, 2004.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Court

⁷ In re Chalik, 748 F.2d 616, 617 (11th Cir. 1984).

⁸ 11 U.S.C. 727 (a)(5).

⁹ In re Bryant, 241 B.R. 756 (Bankr. M.D. Fla. 1997) (receipts do not need to be produced if the general outline of how money was spent is reasonable in light of the circumstances).