NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

- -X
In re: NEIL L. PRUPIS, Debtor

Chapter 7
Case No. 04-48414 (RG)

- -X
THE CADLE COMPANY, Plaintiff,

v.

Adv. Pro. No: 05-2674 RTL

NEIL L. PRUPIS, Defendant.

- -X

OPINION

APPEARANCES:

SCHUMANN HANLON LLC
David K. DeLonge, Esq.
(Attorney for Plaintiff)

RAVIN GREENBERG, PC
Brian L. Baker, Esq.
(Attorney for Defendant)

RAYMOND T. LYONS, U.S.B.J.

Plaintiff objects to the Debtor's discharge under 11 U.S.C. § 727. Because the Debtor failed to keep records of his numerous borrowings from relatives and clients, concealed an asset with intent to hinder a creditor, and knowingly and fraudulently made a false oath in connection with this case, he is denied a discharge.

JURISDICTION

This court has jurisdiction of this adversary proceeding under 28 U.S.C. § 1334(b), 28

U.S.C. § 157(a) and the Standing Order of Reference by the United States District Court for the District of New Jersey dated July 23, 1984, referring all proceedings arising under Title 11 of the United States Code to the bankruptcy court. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(J) (objection to discharge).

FINDINGS OF FACT

Neil A. Prupis has been a successful tax lawyer for over thirty years. He is responsible for a significant percentage of the revenue of his law firm and has drawn personal income well into six figures for many years. In his best year, 1998, he reported over $600,000 in income from practicing law. For 2004, the year he filed bankruptcy, he reported $338,598 from practicing law.

Mr. Prupis has, also, dabbled in business ventures with some disastrous results. The demise of several ventures in the late 1980's left Mr. Prupis personally liable for large amounts of money. Rather than face these responsibilities head on by devoting his excess professional income to reducing his liabilities, Mr. Prupis lived a lavish lifestyle. He treated his family and friends to European trips, vacations in the islands, ski trips, long weekends in New York, Atlantic City and Philadelphia, dining at fine restaurants, Broadway shows and the like. The Prupises live in a nice house, no doubt drive luxury cars and educated their children at private schools.

The family income, though substantial, was not enough to support the Prupises extravagant spending, so he borrowed from family, friends and clients. Mr. and Mrs. Prupis also continually underpaid their taxes and took large tax deductions for a bogus pension plan that have left them with almost $700,000.00 owed to the IRS after they filed amended returns

reversing the ineligible pension deduction.

Several of Mr. Prupis's long ignored debts have resurfaced in the hands of the Cadle Company. Mountain Ridge State Bank had loaned money to a business with Mr. Prupis's guaranty. Both the business and the bank failed. Just prior to being placed into receivership with the FDIC, the bank had obtained a judgment in state court against Mr. Prupis in 1995. The FDIC sold the judgment in a pool of loans unloaded to an investment vehicle. The judgment was passed through a series of investors, none of whom made any effort to collect – that is until The Cadle Company acquired the judgment in 2002. Cadle also purchased a smaller judgment entered in favor of a different bank against Mr. Prupis in 1991.

The Cadle Company has put Mr. Prupis, his family and associates through the financial equivalent of a full body cavity search. They have scrutinized his earnings, expenditures, assets and liabilities. The evidence uncovered and recounted at trial paints a picture of profligacy, for which Mr. Prupis cannot account with any reasonable accuracy. Despite high earnings for many years, Mr. Prupis claims to own no non-exempt assets.

<u>Petition, Schedules and Statement of Affairs</u>

Neil Prupis filed a voluntary petition under chapter 7 of the Bankruptcy Code on December 7, 2004. Attached were Schedules A through J listing, *inter alia*, assets, creditors, income and expenses as required by Bankruptcy Code § 521(1) and Fed. R. Bankr. P. 1007(b)(1). The schedules were filed under oath by Mr. Prupis. On Schedule A, Mr. Prupis listed no real estate although he has lived in the same house since 1977. Schedule B shows cash on hand of $1,000, "shares of stock in trust" worth $4,000, clothing of unknown value, a watch and ring worth $500 and nothing else; no bank accounts, no cars, no household goods or

furnishings, no business interests or debts due to Mr. Prupis. An amendment to Schedule B was filed to add two small bank accounts with less than $100 and to reduce the value of the "shares of stock in trust" to $3,724.69. All listed assets were claimed as exempt on Schedule C. Mr. Prupis admits that he owned a digital camera that he failed to list. Income was shown as $25,000 per month on Schedule I with expenses of $17,400 per month on Schedule J.[1]

Total liabilities were scheduled at $2,541,776.35 composed of $404,810.35 secured debt, $405,000.00 priority and $1,731,966.00 general unsecured debt. Even though Mr. Prupis did not schedule his residence as an asset, he listed two mortgages as secured claims. He must be personally obligated on these mortgage debts. Mr. Prupis neglected to schedule the IRS as a secured creditor even though it has recorded a Notice of Federal Tax Lien. Also, the total IRS claim is $674,375.66, substantially more than scheduled by Mr. Prupis.

Also filed under oath by Mr. Prupis was a Statement of Financial Affairs ("SFA") as required by Section 521(1) of the Bankruptcy Code and Fed. R. Bankr. P. 1007(b)(1).

SFA question 11 requires the debtor to list any bank account that had been closed during the year before bankruptcy. Mr. Prupis swore that there had been no closed financial accounts. That answer was false. Plaintiff uncovered two bank accounts in the name of Neil Prupis that had been closed during 2004 - one as recently as a month before the petition was filed. Neither of these bank accounts was listed on the schedules or amended schedules either. Mr. Prupis's excuses for failing to list there two closed bank accounts are: (1) that he misread the question and overlooked the word "closed" before bank accounts, and (2) he was under such pressure

[1] If Mr. Prupis had filed after October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act, Public Law 109-8, 119 Stat. 23, granting relief under chapter 7 would, probably, have been presumptively abusive under Section 707(b)(2) of the Bankruptcy Code, as amended.

from the Cadle Company that he forgot about the two closed accounts. Although he failed to answer correctly on his SFA, he later made the chapter 7 trustee aware of these two accounts.

Question 4(b) requires a debtor to describe all property garnished or seized under legal process in the year prior to bankruptcy. Mr. Prupis checked the box "None". This answer was false as the State of New Jersey, Division of Taxation executed against one of his bank accounts in January 2004. That was one of the undisclosed closed accounts.

On his bankruptcy schedule of creditors, Mr. Prupis listed his mother, his cousin, his brother, a few clients and a colleague, besides the typical credit card companies and commercial lenders. When asked to produce records of his dealings with the non-commercial creditors, Mr. Prupis produced the following in discovery[2] and through testimony at trial:

1. Mother (scheduled unsecured creditor $80,000) –

Discovery – "[Mother] would loan me money when needed over the years." No other documentation of this borrowing was produced.

Neil Prupis testified that he has no records of his borrowing or repayments to his mother. Over the years, he has borrowed in the hundreds of thousands from his mother and repaid some of it. When he completed his schedules he called his mother and asked how much he owed. She said, about $80,000.

Mother testified that she has no written records of her loans to Neil but she estimates the balance due at $80,000.

2. Brother (scheduled unsecured creditor $20,000) –

Discovery – "No documentation between [Brother] and Neil Prupis." Copy of check

[2] The quotes that follow are from Mr. Prupis's response to plaintiff's requests for production of documents.

from Strategic Insurance Services Corp. (Brother's company) for $20,000 – returned unpaid marked "Uncollected Funds".

Neil Prupis testified that he had no written records of his borrowing or repayments with his brother.

3. Cousin (scheduled unsecured creditor $90,000) –

Discovery – None.

At trial, Neil Prupis copied bank statements and some cancelled checks from an account in the name of PGW Associates, the beneficial owner of which was his cousin (according to Neil Prupis). He identified checks and other withdrawals from this account paid to him totaling $88,508 – roughly corresponding to the $90,000 on his bankruptcy schedule. He had no records of his loan transactions with his cousin. Mr. Prupis testified that there were numerous checks from his cousin to him over the years. He was not certain if these were gifts or loans, but he felt a moral responsibility to his cousin. He did not include the amount of these on his schedules of creditors and had no record of them. The cousin testified that over many years he had loaned hundreds of thousands of dollars to Mr. and Mrs. Prupis, but he had no records.

4. Client AF (scheduled unsecured creditor $40,000) –

Discovery – "[AF] has loaned money to me on a short term basis. I have no documentation."

At trial, Neil Prupis testified that he had no records of his borrowing from or repayments to Client AF. He scheduled the amount of $40,000 based upon what AF told

him.

5. Client RD (scheduled unsecured creditor $6,000) –

Discovery – Copy of check from M.D. (Same last name, different first name) for $8,000 dated December 18, 2003 with the notation “Loan til Jan. 31, 04".

Mr. Prupis testified that this check was the only documentation he had regarding his borrowing from Client RD.

Mr. Prupis testified that there were many checks going back and forth between him and RD – at least a dozen transactions. The only documentation he came up with was the one check that the Plaintiff had discovered by subpoenaing Mr. Prupis’s bank.

6. Colleague (scheduled unsecured creditor $50,000) –

Discovery – “Payment made by check no notes and amount still outstanding.” Neil Prupis did not produce any further documentation, however, plaintiff subpoenaed Mr. Prupis’ bank and discovered two checks from the colleague to Neil Prupis both dated in December 2001 with the notation “loan” totaling $50,000. Also the bank records disclosed one check from Mr. Prupis to the colleague dated March 13, 2002 in the amount of $855.38 with the notation “interest payment.” Mr. Prupis testified that he thought there was a promissory note but did not have a copy. He further testified several times that the loan did not bear interest despite having written a check for interest.

7. Client WSL Corp. – (not scheduled as a creditor) –

Discovery – “Loan on short term basis notes. I have no copies of the notes.”

8. Client LR - (not scheduled as a creditor) –

Discovery – “[L] on occasion would cash checks for me. I do not have copies of any

checks."

9. Client EL – (scheduled unsecured creditor $5,000) –

Discovery – "[EL] has loaned me money in the past. The current amount outstanding is $5,000." No documentation was produced.

10. Client P and Son -

Discovery – "In prior years there have been loans and repayments. No documentation."

11. Client HO - (not scheduled as a creditor) –

Discovery – "[HO] exchanged checks with Neil Prupis when he needed to borrow money for cash flow."

Testimony revealed frequent (at least a dozen) borrowing and repayments

between

Client HO and Neil Prupis. Some records were in the folder for Client HD Corp.

12. Client HD Corp. – (owned by client HO) (scheduled secured creditor $160,000) –

Discovery – A folder with checks, correspondence and ledgers. Correspondence in the folder suggests that three smaller loans were consolidated into one $165,000 mortgage.

Neil Prupis testified that a second mortgage on the Prupis residence went into default and foreclosure proceedings were started. Client HD Corp. purchased the note and mortgage to save the house from foreclosure. The Prupises have paid HD Corp. monthly since then.

HD Corp. provided funds to Mr. Prupis to facilitate his bogus pension deductions. At Mr. Prupis's request, HD Corp. (or its retirement trust) would wire money ($146,000

in 2002) into an account for Neil Prupis's retirement trust. Mr. Prupis could use a bank statement for that month to show assets in his retirement account. Immediately after the close of the month, the money would be transferred back to HD Corp. (or its retirement trust).

13. Client RH (scheduled unsecured creditor $12,500) –

Discovery – Deposition testimony, "I don't remember all the loans. I do know that he would loan me money if I needed money so I just don't remember."

Mr. Prupis testified at trial that RH exchanged checks with him on two or three occasions. The amounts were in the $5,000 to $6,000 range. He had no documentation for this creditor.

14. Client OC (not scheduled as a creditor) –

Discovery – "Years ago I borrowed from [OC] and I paid him back. I have no documentation."

Mr. Prupis testified that he did not keep any ledgers or records pertaining to the loan. He thought there was only one loan but he did not recall the amount.

15. Client VF (scheduled unsecured creditor $35,000) –

Discovery – "VF loaned me money on a short term basis. There were no notes. It was done by check." He produced a letter enclosing a check for $30,750 for repayment of loan and interest.

Mr. Prupis testified that he repaid $30,000 principal plus 10% interest to VF. He thought there was a promissory note but did not have a copy.

Law Firm

Neil Prupis has worked at the same law firm for over 30 years. The firm is a professional corporation with the last names of four lawyers making up the firm's name. Mr. Prupis's name is among them. Mr. Prupis is, and was at the time his petition was filed, a director, officer and employee of the professional corporation. He denies any ownership of shares in the professional corporation.

In 1990, when his financial troubles began, Mr. Prupis surrendered his stock in the law firm. Mr. Prupis testified, "The people in the firm at that time were very concerned about all the litigation against me, all the judgments against me and they wanted me to . . . I needed to surrender my stock to be a non stockholder so that the firm wouldn't have additional litigation involving someone suing the firm to try to levy on my interest in the firm and try to go into the finances of the firm . . ." In other words, Mr. Prupis admitted that his intention in surrendering his stock in the law firm was to hinder his creditors.

Nevertheless, he has an agreement regarding compensation that resembles that of a half owner. All of the employees of the corporation, except Mr. Prupis and one other lawyer, receive a salary. Mr. Prupis and that one other lawyer then split the net profits 50/50. All other employees receive paychecks bi-weekly through a payroll service. Rather than take a regular paycheck along with other employees, Mr. Prupis has the bookkeeper issue him checks for round amounts several times a month. The bookkeeper refers to Mr. Prupis and the other lawyer as "equal partners" and keeps close watch over the amounts drawn by each. Twice a year, the law firm's accountant reviews the books and tells the bookkeeper how much to report to the IRS and state as compensation to each "equal partner." According to Mr. Prupis the other "equal partner" would become very upset if Mr. Prupis drew more money than he did.

In the last few years prior to filing bankruptcy, all Mr. Prupis's compensation was deposited into his wife's bank account. Mrs. Prupis estimated that she received $25,000 per month from her husband's earnings, which is consistent with his estimate of income on Schedule I filed with his bankruptcy petition. She used the money to pay the mortgage on the residence, all household expenses and the extravagances to which the Prupises treated themselves. In addition, in most months the law firm would pay a good portion of Mrs. Prupis's credit card bill.

Residence

The Prupises bought their home in 1977 and put title in the wife's name alone. The purchase price came from the proceeds of sale of a previous, jointly owned residence and a first mortgage loan. Consistent with their profligate ways, the Prupises refinanced their first mortgage at increased amounts and took out a second mortgage. Mr. Prupis's cousin has a $250,000 mortgage on the residence signed by Mrs. Prupis, however, Mrs. Prupis could recall nothing about it. Client HD Corp. also has a mortgage on the residence for $165,000 and receives monthly payments of interest only at 10% per year.

PGW Associates

PGW Associates, a/k/a PGW Investments, is an entity formed by Neil Prupis before 1990. According to Mr. Prupis, the entity was used by his relatives to make investments. Over the years, Mr. Prupis, his son, his wife, his mother, his aunt and his cousins were shown as partners in PGW. Mr. Prupis did not list any ownership in PGW on his schedules and denies that he ever was an owner.

In 1994, PGW Associates purchased a mortgage on a property in Illinois. The funds to purchase the mortgage were paid by Mr. Prupis's cousin to the assignor. The entity that owned

the real property in Illinois was controlled by the cousin's brother-in-law. Some of the documents related to the subsequent payoff of the mortgage in 2003 were signed by Neil Prupis as general partner of PGW Associates. Mr. Prupis testified that he was not at that time, nor ever was, a general partner of PGW Associates; that he signed as general partner as a matter of convenience to expedite closing the transaction; and that the beneficial ownership in PGW Associates has been owned by his cousin from 1994 to the present. His cousin corroborated this testimony.

The partnership tax returns for PGW are not consistent with this testimony. The 1995 U.S. Partnership Return of Income does not show the mortgage as an asset on the balance sheet. The most valuable asset is a loan receivable from Neil Prupis for $142,470. Cousin S.G. is shown on Schedule K and his K-1 as a partner with 0.000% ownership in profits, loss and capital, rather than the principal beneficial owner as testified by Mr. Prupis. The partnership reported S.G.'s capital account at $322,373, not the $1,130,000 he paid to purchase the mortgage. That situation was reported to the IRS for years 1996, 1997 and 1998; then in 1999 the situation changed. Cousin S.G.'s capital account of $322,373 was first reduced to zero, then a contribution of $1,025,000 was reported to his capital account. A mortgage of $1,025,000 is reported as an asset on the balance sheet at the end of 1999. Neil Prupis is listed as a partner in PGW on the 1999 tax return. His loan obligation to PGW was written down from $151,475 to zero. On his personal federal income tax return for 1999, Neil Prupis claimed an ordinary loss of $170,899 for abandonment of his partnership interest in PGW Investments. It does not appear that he reported income from the write off of his loan obligation to PGW.

In 2001 and 2002, the Neil Prupis Esq. Retirement Trust is shown as a partner along with

cousin S.G. All the other family members were removed as partners.

PGW was, also, used by Neil Prupis as a conduit for his income from practicing law in 1998. That was his highest earning year when he made over $600,000. He testified he did not want his wife to know how much he was making, so he deposited all his earnings into PGW's bank account.[3] His wife would transfer funds from PGW's account to her account to pay household bills.

The affairs of PGW are hopelessly muddled. Partners appeared then departed. Capital accounts were adjusted for no apparent reason. It would take substantial effort to determine who are the real owners of PGW.

<u>Prupis 1998 Family Trust</u>

Neil Prupis prepared a trust agreement with his mother as both Grantor and Trustee. Her address was shown as his residence although she did not live there. The beneficiaries are Neil, his wife and his issue. Neil opened a brokerage account for the trust and deposited money from his mother into that account. On his bankruptcy Schedule B, the asset described as "shares of stock in trust" refers to that brokerage account in the name of the Prupis 1998 Family Trust. Mr. Prupis testified that he considers that account as his.

<u>Prucol, LLC</u>

This entity was created by Mr. Prupis as the vehicle for his bogus pension plan. Although the entity had no business purpose, Mr. Prupis reported to the IRS that a substantial portion of his income from practicing law ($271,554.21 in 2001and $250,000 in 2000) was earned by Prucol. Prucol then supposedly made contributions to the Neil Prupis Retirement

---

[3] This rationale is implausible. A more likely reason for funneling his income through PGW was to hinder creditors.

Trust, reducing the income of Prucol and consequently Mr. Prupis. Despite these bogus deductions, Mr. Prupis neglected to pay his taxes and the IRS began collection procedures. Following his coming under scrutiny by the IRS and his filing bankruptcy, in 2005 Mr. Prupis filed amended federal income tax returns for 1998, 1999, 2000 and 2001, eliminating the deduction for the bogus pension plan and increasing his tax debt.

DISCUSSION

Failure to Keep Records.

The debtor may be denied a discharge if:

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

11 U.S.C. § 727(a)(3). Rule 4005 of the Federal Rules of Bankruptcy Procedure provides that "[a]t the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection." Fed. R. Bankr. P. 4005. In order to meet that burden, the plaintiff must prove the conduct warranting a denial of the discharge by a "preponderance of the evidence." *See PNC Bank v. Buzzelli (In re Buzzelli),* 246 B.R. 75, 95-96 (W.D. Pa. 2000). Once the creditor meets its burden, the burden is then shifted to the debtor to prove by the preponderance standard justification for its inadequacies. *Id.* As will be discussed further, the Plaintiff in the instant adversary proceeding has met its burden while the Debtor has not.

As the Third Circuit noted in *Meridian Bank v. Alten*, 958 F.2d 1226, 1232 (3d Cir. 1992), "a creditor objecting to the discharge must show (1) that the debtor failed to maintain and preserve adequate records, and (2) that such failure makes it impossible to ascertain the debtor's

financial condition and material business transactions." In clarifying the dual-part test explained in *Meridian*, the court in *Buzzelli* held that adequate records are those that allow for an "intelligent inquiry," excluding records that are either (a) chaotic or incomplete, (b) speculative, or (c) in such a condition that a creditor must organize and reconstruct the debtor's business affairs. *Buzzelli*, 246 B.R. at 96-97. With respect to the second prong in *Meridian*, the court noted the following:

> As for the requirement that an objecting creditor show that a debtor's failure to maintain and preserve adequate records makes it impossible to ascertain the debtor's financial condition and material business transactions, "no court has suggested that ... [said requirement] means that a debtor is relieved from the burden of providing records unless the creditor can show the impossibility of discovering each piece of necessary financial information." In re Wazeter, 209 B.R. 222, 229 (W.D.Mich. 1997) (interpreting the Meridian Bank decision) .... Quite obviously, the Third Circuit could not have intended, and Congress most certainly did not intend, to impose upon creditors such an insurmountable burden before they could prevail under § 727(a)(3).

Id. at 97.

Once a creditor meets its burden under § 727(a)(3), a debtor may only prevail if his failure to maintain and preserve adequate records was justified. The *Meridian* court noted that a debtor is not required to maintain an impeccable system of bookkeeping, however, in order to invoke the protection of the bankruptcy court, the debtor must maintain and preserve adequate records. *Meridian*, 958 F.2d at 1231. In making a determination as to what constitutes justification, a court should take into consideration "the education, experience, and sophistication of the debtor; the volume of the debtor's business; the complexity of the debtor's business; the amount of credit extended to debtor in his business; and any other circumstances

that should be considered in the interest of justice." *Id.*

The Plaintiff asserts that the Debtor's failure to maintain and produce records are in flagrant violation of § 727(a)(3) and, therefore, the Debtor should not be discharged. The Debtor argues that he was not required to keep and maintain complete and impeccable books and records as a precondition to obtaining a discharge. Moreover, the Debtor argues that although he admittedly did not document certain loans with promissory notes or ledgers, such failure was justified in that the Plaintiff was able to obtain all information necessary to establish the Debtor's financial condition. Thus, the Debtor asserts that a discharge is warranted.

The evidence demonstrates that the Debtor has failed to maintain and preserve adequate records of his loans and repayments with his mother, his brother, his cousin and several clients detailed above. Due to the lack of adequate records, the Plaintiff was unable to make an intelligent inquiry into the Debtor's affairs, making it impossible to ascertain the Debtor's financial condition and material business transactions. Thus, Plaintiff has met its burden and the burden consequently shifts to the Debtor.

In this case, the Debtor cannot demonstrate justification for his lack of adequate records based on the factors announced in *Meridian, supra*. Here, the Debtor is well educated, holding a bachelor's degree, a law degree, and a masters in tax law. Moreover, this is a sophisticated debtor who is very experienced in his field. Therefore, the debtor should be well aware of the importance of maintaining sufficient records of his financial transactions.

Mr. Prupis borrowed from relatives and clients on numerous occasions over many years. The amounts were large, ranging from thousands to tens of thousands and a few times exceeding one hundred thousand dollars. Almost no documentation was kept by Mr. Prupis of his

borrowing habits and Plaintiff is unable to ascertain the true state of Mr. Prupis's debt despite exhaustive inquiry. Mr. Prupis offers no justification.

False Oath

Section 727(a)(4)(A) bars a debtor's discharge where "the debtor knowingly and fraudulently, in or in connection with the case, made a false oath or account." *See* 11 U.S.C. 727.

A plaintiff objecting to a debtor's discharge under § 727(a)(4)(A) must prove two elements: (1) the debtor knowingly and fraudulently made a false oath; and (2) the false oath related to a material fact. *Scimeca v. Umanoff*, 169 B.R. 536, 542 (D.N.J. 1993). In order for a falsehood or omission to be material, it need not result in detriment to creditors. *Id.* at 543, *citing In re Mascolo,* 505 F.2d 274, 278 (1st Cir. 1974)(Knowing and fraudulent omission of a bank account, whether or not it is closed at the time of filing, warrants the denial of discharge) (additional citations omitted). As to the intent element of § 727(a)(4)(A), the court in *Office of the United States Tr. v. Zimmerman (In re Zimmerman)*, 320 B.R. 800 (Bankr. M.D. Pa. 2005) held:

> The requisite degree of fraudulent intent is shown if the debtor 'engaged in behavior which displayed a reckless and cavalier disregard for the truth.' *In re Dolata*, 306 B.R. 87 (Bankr. W.D. Pa. 2004), *citing Rafool v. Wilson (In re Wilson)*, 290 B.R. 333 (Bankr. C.D. Ill. 2002). 'A reckless disregard of both the serious nature of the information sought and the necessary attention to detail and accuracy in answering may rise to the level of fraudulent intent necessary to bar a discharge.' *In re Mazzola*, 4 B.R. 179, 182 (Bankr. D. Mass. 1980). 'Extreme carelessness of the debtor in filling out the Petition will not excuse a false oath.' *Scimeca*, 169 B.R. at 543.

Zimmerman, 320 B.R. at 810-811. The court also went on to note that "'a sworn statement filed in any court must be regarded as serious business. In bankruptcy administration, the system will

collapse if debtors are not forthcoming.'" *Id.* at 811, *citing Ford v. Jackson (In re Jackson)*, 2004 Bankr. LEXIS 1758, at *28, 2004 WL 2595900, at *9 (Bankr. D. N.H. 2004), *quoting In re Tully,* 818 F.2d 106**,** 112 (1st Cir. 1987).

In this case, Mr. Prupis filed under oath a Statement of Financial Affairs ("SFA") He did so with the assistance of eminent, knowledgeable counsel. He, also, amended his SFA once indicating that some care and attention were paid. In response to SFA question 11 requiring the debtor to list any bank accounts that had been closed during the year before bankruptcy, Mr. Prupis swore that there had been no closed financial accounts. Subsequently, however, Plaintiff uncovered two bank accounts in the name of Neil Prupis that had been closed during 2004, one as recently as a month before the petition, neither of which were listed on his SFA. Furthermore, Mr. Prupis answered that none of his assets had been garnished or seized by a creditor. This was false since the New Jersey Division of Taxation had levied on one of these bank accounts. Because the disclosure of assets is crucial to the administration of bankruptcy proceedings, it is clear that Mr. Prupis' failure to list the bank accounts at issue or the levy was a material falsehood. Moreover, Mr. Prupis' actions demonstrate a reckless disregard of the serious nature of the bankruptcy process and the necessity of full disclosure.[4] As a sophisticated debtor, he should have known the importance of detailed answers to a Statement of Financial Affairs. The failure to disclose two closed bank accounts and the levy by the State in Mr. Prupis' Statement of Financial Affairs warrants a denial of discharge under § 727(a)(4)(A).

---

[4] Any argument that Mr. Prupis' failure to list said bank accounts was merely an oversight must fail. In fact, the evidence demonstrates that the New Jersey Division of Taxation executed against one of those accounts. As such, Mr. Prupis was well aware that those bank accounts existed.

Concealed Assets

Section 727(a)(2) provides that the debtor may be denied a discharge if he concealed property within one year prior to bankruptcy with intent to hinder a creditor. “[T]hat section consists of two components: an act (i.e. a transfer or a concealment of property) and an improper intent (i.e., a subjective intent to hinder, delay, or defraud a creditor).” *Rosen v. Bezner*, 996 F.2d 1527, 1531 (3d Cir. 1993). “The party seeking to bar discharge must prove that both of these components were present during the one year period before bankruptcy; anything occurring before that one year period is forgiven.” *Id.* Under the "continuous concealment" doctrine, however, “a concealment will be found to exist during the year before bankruptcy even if the initial act of concealment took place before this one year period as long as the debtor allowed the property to remain concealed into the critical year.” *Id.* In *Bank of Chester County* v. *Cohen*, 142 B.R. 720 (E.D.P.A. 1992), the court noted specific instances of “continued concealment”:

> Examples of a retention of a beneficial interest which have warranted a denial of discharge include (1) working and managing a dairy after the Debtor's transfer of it to his wife and his receiving nominal "salary" and compensation for personal expenses. *In re Penner*, 107 Bankr. 171, 175 (Bankr. N.D. Ind. 1989) and (2) managing a corporation and deriving substantial benefit from assets of corporation after a transfer by the debtor to his wife by reaping benefit from the wife's interest. *In re Hodge*, 92 Bankr. 919, 922 (Bankr. D. Kan. 1988).

Bank of Chester County, 142 B.R. at 726. Accordingly, a typical “continuing concealment” claim involves “(1) the transfer of property by a debtor who still retains a beneficial or equitable interest in the property; and (2) the debtor's continuing to treat the property in the same manner after the transfer as before the transfer.” *Id.*

In this case, Mr. Prupis is, and was at the time his petition was filed, a director, officer

and employee of the law firm (a professional corporation) where he has worked for over 30 years. In 1990, when his financial troubles began, Mr. Prupis surrendered his stock in the law firm. In spite of the fact that Mr. Prupis denied any ownership interest in the professional corporation in his bankruptcy schedules, he has an agreement regarding compensation that resembles that of a half owner. All of the employees of the corporation, except Mr. Prupis and one other lawyer, receive a salary. Mr. Prupis and that one other lawyer then split the net profits 50/50. This Court finds that such a scheme is akin to a "continued concealment" of property. Despite the fact that Mr. Prupis transferred his ownership interest in the firm by surrendering his stock (the "property"), he continued to reap the benefits of the property by splitting the net profits from the law firm 50/50. As a "continued concealment," therefore, said transfer will be found to exist during the year before Mr. Prupis filed his bankruptcy petition despite having occurred in 1990. However, in order to be denied a discharge under § 727(a)(2), the Plaintiff must also demonstrate that it was Mr. Prupis' intent to hinder, delay, or defraud his creditors.

Once a party seeking to bar discharge establishes a "continued concealment" under § 727(a)(2), that party must then prove that the debtor possessed the requisite intent to conceal the property at issue. "In many and perhaps most case, the circumstances surrounding the concealment and the very fact that the debtor has created and retained a secret interest will be sufficient to hold as a matter of law that the debtor's intent in continuing the concealment was to hinder creditors." *Rosen*, *supra,* 996 F.2d at 1533. Additionally, in *Bank of Chester County,* the court adopted certain "badges of fraud" which, if proven, demonstrate whether an actor possessed actual intent under § 727(a)(2). 142 B.R. at 728. Those "badges of fraud" include the following:

(1) lack of inadequacy or consideration;
(2) the family, friendship or close associate relationship between the parties;
(3) the retention of possession, benefit or use of the property in question, although title exists in another entity;
(4) the financial condition of the party sought to be charged both before and after the transaction in question;
(5) conveyance of all of the debtor's property;
(6) secrecy of the conveyance;
(7) existence of a trust or trust relationship between the debtor and the person to whom the property was conveyed;
(8) the existence or cumulative effect of a pattern of series of transactions or a course of conduct after the incurring debt, onset of financial difficulties, or pendency or threat of suit by creditors;
(9) the instrument affecting the transfer suspiciously states it is in fact bona fide;
(10) the debtor makes a voluntary gift to a family member; and
(11) the general chronology of events and transactions under inquiry.

Id. Accordingly, "'[t]he accumulation of several factors can lead inescapably to the conclusion that the debtor possessed a requisite intent.'" *Id.* at 728-729*, citing In re Cook*, 126 Bankr. 261 (Bankr. E.D. Tex. 1991), *quoting In re Penner*, 107 Bankr. 171, 176 (Bankr. N.D. Ind. 1989). "However, the absence of several very significant 'badges' may disprove improper intent." *Id.* at

729.

Based upon the "badges of fraud" listed above, this Court finds that Mr. Prupis possessed the requisite intent under § 727(a)(2). Specifically, the Court finds that the following "badges of fraud" relate to the concealment of Mr. Prupis' interest in the law firm:

(1) Mr. Prupis has a close associate relationship with the members of the law firm;

(2) Mr. Prupis retained the benefit of the property by continuing to receive profits from the law firm;

(3) Mr. Prupis surrendered his stock in the law firm around the time that his financial

troubles began; and

(4) <u>All</u> of Mr. Prupis' stock in the law firm was surrendered.

Mr. Prupis admitted in his testimony the reason he concealed his interest in the law firm was to hinder his creditors. According to his schedules, Mr. Prupis owes over $2.5 million dollars yet he has no non-exempt assets despite high earnings. He has diligently avoided having any assets in his name that could be seized by creditors. He admits that he surrendered his stock in the law firm so that his "partners" would not be hounded by his creditors.

The accumulation of these factors demonstrates that Mr. Prupis intended to conceal his ownership interest in the law firm. As such, and because his surrendering of his stock in the law firm meets the elements of a "continued concealment," Mr. Prupis should be denied discharge pursuant to § 727(a)(2).

Other

Plaintiff has advanced several other arguments to deny a discharge such as:

(1) Mr. Prupis's transfer of all of his income to his wife so as to avoid creditors.

(2) His concealed interest in the residence titled in his wife's name.

(3) His concealed interest in PGW Associates.

(4) His concealed interest in household goods.

(5) His use of the Prupis 1998 Family Trust to hinder creditors.

(6) His failure to schedule his interest in Prucol, LLC as an asset.

(7) His failure to schedule the digital camera as an asset.

Some of these arguments may have merit, but the court need not consider them as there are multiple other grounds to deny a discharge. The only remedy sought by the Plaintiff is denial

of discharge. Having found at least one reason to deny discharge, no further benefit can accrue to Plaintiff from success on its other arguments.

CONCLUSION

Because Mr. Prupis failed to keep records of his numerous borrowings from relatives and clients without justification, falsely answered under oath that he had no bank accounts that had been closed or levied on in the prior year, and concealed his retained equity interest in his law firm, he is denied a discharge under 11 U.S.C. § 727.

Dated: January 24, 2007

/S/ ***Raymond T. Lyons***
United States Bankruptcy Judge