UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

JOHN FRANKLIN COPPER, Case No. 02-23450-L
Chapter 7

Debtor.

ATHENA CHEN COPPER and the
ESTATE OF SUMIKO YAMAOKA,
Plaintiffs,

v. Adv. Proc. No. 02-0610

JOHN FRANKLIN COPPER
Defendant.

MEMORANDUM OPINION

This matter is before the court pursuant to an adversary proceeding brought by the Debtor's ex-wife as a creditor and as the successor in interest to the claim of the ex-wife's mother's probate estate, which ex-wife purchased from her estate. Plaintiff brings her complaint against Dr. Copper, seeking to except the debts he owes her from discharge pursuant to 11 U.S.C. §§523(a)(5) and (a)(6) and (a)(15) as well as denying his general discharge pursuant to11 U.S.C. §727(a)(2)(A), (a)(3) and (a)(4). Defendant answered and, on the eve of trial, filed a motion to convert this case to a case under Chapter 13. Because the court finds that Dr. Copper should not be granted a discharge pursuant to 11 U.S.C. §727(a)(4)(A), the court does not need to address the dischargeability of certain debts. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(J).

I. FINDINGS OF FACT

Defendant John F. Copper is a sophisticated debtor. Dr. Copper is highly educated, holding a master's degree as well as a Ph.D. in International Studies. He has written over 25 books and receives regular invitations to speak in various capacities worldwide. He is the Stanley J. Buckman Distinguished Professor of International Studies at Rhodes College. Dr. Copper's gross income from Rhodes College alone, including retirement contributions, life insurance contributions, and long term disability contributions, is at least $99,000.

Mrs. Copper and Dr. Copper were divorced in 1993. In the final decree of divorce, Dr. Copper was to pay Mrs. Copper $2000 alimony per month, indefinitely; he was to turn over a significant portion of his retirement funds to Mrs. Copper; and he was to repay funds he owed to Mrs. Copper's parents. After several years of attempting to collect all of the debt owed to her, except the alimony *in futuro,* Mrs. Copper and Dr. Copper, through counsel, entered into an order establishing payments of $450 per month on Mrs. Copper's debt. Shortly thereafter Dr. Copper filed his first of six bankruptcy cases. Dr. Copper has admittedly never made a payment to Mrs. Copper other than the monthly alimony payments. In between filings, Mrs. Copper has attempted to have Dr. Copper's wages garnished at least three times and the final judgment amount, including interest, as sworn to by Mrs. Copper's counsel in January of 2002, was $195,633.10.

At trial Dr. Copper testified that he hasn't made any payments to Mrs. Copper because he feels that if he was to pay her, he would be "paying a multi-millionaire money she doesn't deserve." The proof at trial, however, reflected that Mrs. Copper's only income is the alimony she receives from Dr.

Copper. Further, Dr. Copper testified that he would like to repay his debts by converting his case to a case under Chapter 13 if the court would allow.

Dr. Copper filed the instant Chapter 7 petition on February 25, 2002, after having filed five other cases since 1997. He has yet to receive a valid discharge, all of the other cases having been dismissed.

Dr. Copper's schedules reflect assets of $3,330 and liabilities of $234,417.01, including the debt owed to Mrs. Copper. Dr. Copper's assets include $30 cash, $2000 household goods and personal items, $300 clothes and personal items, $1000 in wages due, and an "unknown" amount in a retirement account through his employer. Dr. Copper's Schedule C reflects that all of these assets are exempt. Dr. Copper has no secured or priority creditors, all of his debts being unsecured. Two of the debts to Dr. Copper's divorce attorneys totaling $23,700 were compromised in 1996 by a consent order entered in the Coppers' divorce proceedings, for which the attorneys signed orders releasing Dr. Copper from all claims they had against him. Although admittedly not due and owing, these debts were listed on Dr. Copper's schedules.

Dr. Copper admitted that he remains in possession of a portion of the gold coin collection that was awarded to him in the divorce, despite the fact that it was omitted from his schedules.

Dr. Copper further testified that he maintains two bank accounts: one here in the United States from which he operates a checking account, and one in Singapore which contains $7000 Singapore.

As of October 10, 2003, the exchange rate of .5806 U.S. Dollars per Singapore Dollar would result in an account balance of $4064.20 U.S. Neither of these accounts were listed on his schedules.

Dr. Copper alleges that he has no ownership interest in the house in which he currently resides, his current non-debtor wife having purchased it, and that he did not own a car because his current wife purchased one for him because he has bad credit. Dr. Copper's schedule J reflects that he pays $900 a month toward his wife's house and $200 a month towards its upkeep. He further pays $300 a month for electricity and $100 a month for a telephone as well as $60 a month for auto insurance on his wife's car. Dr. Copper's schedules do not include any of his wife's income, although they clearly include her expenses.

As part of the exhibits to the Plaintiffs' complaint, all of which were admitted into evidence, Plaintiffs included Dr. Copper's Rhodes College Tax-Deferred Annuity Plan showing a balance of $139,504.57 for the period ending June 30, 2001, and his IRA Rollover Account with Securian, which contained mutual and money market funds totaling $116,029.97 as of August 30, 2001. Even though he had admittedly supplied Mrs. Copper with the information regarding the balance of his retirement accounts, Dr. Copper testified that he did not know the balance of his account, and for this reason had listed the balance as "Unknown" on his schedules. Dr. Copper further testified that the person that he deals with regarding his accounts was not in the office to talk to him the last time he had called and he had no other way of determining the balance of those accounts, even though the proof showed he had account statements from six months prior to filing this Chapter 7 petition.

Dr. Copper also testified that while he receives income in the form of royalty payments for the books he authored, it costs him more in research fees than he has received in income and so did not list the "negative income" on his schedules.

When testifying regarding the inconsistencies in his schedules, Dr. Copper stated that he was unsure of the specific amounts of debts because his young son had recently caused all of his bills to fall into a trash can and that they must have been thrown away. He further testified that he had suffered a head injury around the time of creating his petition and schedules and so couldn't remember much about what they contained.

II. CONCLUSIONS OF LAW

"It should be born in mind that denial of the Debtors' discharge is a harsh remedy. As a general rule, in making a determination whether a discharge should be denied, the statute should be construed strictly against the party objecting to discharge." *Overly v. Guthrie (In re Guthrie)*, 265 B.R. 253, 263 (Bankr. M.D. Ala. 2001)(citations omitted). This court must balance the harsh remedy of revoking a debtor's discharge with the demand that debtors approach the court in good faith and that bankruptcy is a remedy for the honest, but unfortunate, debtor. "A discharge is a privilege and not a right and therefore the strict requirement of accuracy is a small *quid pro quo*. The successful functioning of the bankruptcy code hinges upon the bankrupt's veracity and his willingness to make a full disclosure." *In re Hamo, 725-726,* quoting *Hillis v. Martin, Martin v. Martin (In re Martin)*, 124 B.R. 542, 545, 547-548 (Bankr. N. D. Ind. 1991).

> "In order to demonstrate discharge should be denied under this paragraph, a plaintiff must prove by a preponderance of the evidence that: (1) the debtor made a false statement under oath; (2) the statement was false; (3) the statement related materially to the bankruptcy case; (4) the debtor knew the statement was false; (5) the debtor made the statement with fraudulent intent. False statements as well as omissions from the schedules may qualify as false oaths if they are made knowingly and with fraudulent intent. Of course, the omissions must relate to a material matter and may be material even if they do not cause financial prejudice. An omission is material if it relates to the discovery of assets. The materiality of an omission is not lessened by the fact that an omitted asset is exempt or otherwise unavailable for distribution to the creditors." *Johnson v. Baldridge*, *(In re Baldridge),* 256 B.R. 284, 289 (E.D. Ark. 2000) (internal citations omitted).

Dr. Copper testified regarding several omissions and false statements regarding his schedules. These include the listing of at least $23,700 in debts that he admittedly did not owe; omitting two bank accounts, one of which was worth over $4000 U.S.; omitting a gold coin collection; omitting the royalty income from books he had authored; as well as omitting the balance of his significant retirement account.

At trial, the court found Dr. Copper's testimony regarding these omissions lacking any credibility whatsoever. When pressed, he stated that he didn't know why the coin collection and bank accounts were left off his schedules, and that he might have failed to read the schedules or to have the schedules read to him before signing them. When testifying about his bills and the debts of his household, Dr. Copper pleaded ignorance and forgetfulness, yet he did not hesitate to educate the court as to the financial and securities laws of Eastern Asian countries when pressed about possible assets there.

Despite the fact that he could not remember how much his income as a professor was, Dr. Copper remembered that his research costs outweighed the income he made on royalties from the books he authored. This was his reasoning for leaving the royalty income off his schedules. Courts have found that "the 'recalcitrant debtor may not escape a section 727(a)(4)(A) denial of discharge by asserting that the admittedly omitted or falsely stated information concerned a worthless business relationship or holding: such a defense is specious.'" *Hamo v. Wilson (In re Hamo)*, 233 B.R. 718, 725 (B.A.P. 6th Cir.1999), quoting *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984).

The court finds Dr. Copper's pattern of evasiveness and convenient memory loss coupled with admitted omissions from his schedules and his admitted desire to hinder Mrs. Copper's collection efforts evidence of at least a reckless disregard for the truth from which the court can infer Dr. Copper's fraudulent intent in constructing his bankruptcy petition and schedules. As such, his discharge should be barred. "[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 the fraudulent intent necessary to bar a discharge." *Guardian Industrial Products, Inc. v. Diodati (In re Diodati),* 9 B.R. 804, 808 (Bankr. D. Mass. 1981), quoting *In re Diorio,* 407 F.2d 1330, 1331 (2d Cir. 1969).

Dr. Copper's attempt to amend his schedules on the morning of the trial in order to remove the debts he admittedly did not owe did not rehabilitate Dr. Copper's credibility. As other courts have found, amendments to schedules can be found "insufficient to remove the taint of fraudulent intent...".

Phillips v. Phillips (In re Phillips), 187 B.R. 363, 372 (Bankr. M. D. Fla. 1995). As is the case here, in *Phillips*, despite amending his schedules, the Debtor "failed to correct numerous other significant and material omissions. Combined, these omissions have prevented the identification, marshaling, and liquidation of assets of the estate." *Id*.

The court finds that the Plaintiff has proven beyond a preponderance of the evidence that Dr. Copper made a false oath in submitting his bankruptcy petition and schedules and accordingly his discharge is denied.

BY THE COURT

_____
JENNIE D. LATTA
United States Bankruptcy Judge

Date:_____

cc: Debtor
Debtor's Attorney
Plaintiff
Plaintiff's Attorney
United States Trustee
Case Trustee (if any)