

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re	}	Case No. 98-62055-B-7	
Francisco Javier Leija,			
Debtor(s).			
<hr/>			
Patrick Kavanagh, Trustee of the	}	Adversary No. 99-1297	
Bankruptcy Estate of Frank Leija			
Farms, Inc.,			
Plaintiff(s),	}		
v.			
Francisco Javier Leija,			
Defendant(s).	}		
<hr/>			

MEMORANDUM OPINION

This adversary proceeding concerns the Debtor's right to a discharge under Bankruptcy Code section 727(a). It was tried before the court without a jury and taken under submission on October 9, 2001. D. Max Gardner, Esq. appeared for and with plaintiff, Patrick Kavanagh, ("Kavanagh") trustee of the bankruptcy estate of Frank Leija Farms, Inc. ("FLF"). The Debtor, Francisco Javier Leija ("Leija") appeared in pro per. This court has jurisdiction over this proceeding pursuant to 11 U.S.C. § 727 and 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). This Memorandum Opinion contains the court's findings of fact and conclusions of law.

The Debtor, Francisco Javier Leija, and his affiliated corporation, Frank Leija Farms, Inc. both filed bankruptcy petitions in December 1998. The issue decided in this adversary proceeding is whether the Debtor, who signed and verified FLF's bankruptcy schedules and statement of financial affairs *in blank* knowing that they would be subsequently completed by his attorney and filed in FLF's bankruptcy case, is entitled to his discharge. For the reasons set forth below, the Debtor's discharge is denied pursuant to 11 U.S.C. §§ 727(a)(4)(A) and 727(a)(7).

1 Background

2 Prior to this bankruptcy, Leija was president, sole shareholder and the only director
3 of Frank Leija Farms, Inc., a California Corporation. As such, FLF was an “insider” of Leija
4 within the definition of 11 U.S.C. § 101(31)(A)(iv). FLF first sought bankruptcy protection
5 under chapter 12 in 1988 (“Farms ‘88”).¹ FLF completed its chapter 12 plan and the Farms
6 ‘88 case was closed in 1994. FLF again filed for bankruptcy protection under chapter 12 in
7 September 1997 (“Farms ‘97”).² Leija signed the Farms ‘97 bankruptcy schedules as
8 President of FLF. That case was subsequently dismissed on the Debtor’s motion in August
9 1998 and was closed in January 1999.

10 FLF filed a third bankruptcy petition under chapter 12 on December 21, 1998
11 (“Farms ‘98”).³ Leija also signed the Farms ‘98 bankruptcy schedules as President of FLF.
12 On the same day, Leija commenced a personal chapter 7 proceeding in which his discharge
13 is now at issue. Farms ‘98 was converted to chapter 7 in March 1999. Kavanagh was
14 appointed trustee of the Farms ‘98 estate and brings this adversary proceeding against Leija
15 in that capacity.

16 Kavanagh objects to Leija’s discharge on several grounds under Bankruptcy Code
17 section 727(a) based on various acts and events alleged in connection with the Farms ‘98
18 bankruptcy proceeding. Kavanagh asserts, *inter alia*, that Leija transferred property of FLF
19 and attempted to conceal those transfers within one year of the Farms ‘98 bankruptcy case.
20 The schedules of assets filed in both the Farms ‘97 and the Farms ‘98 cases list various
21 tractors and harvesting and packing equipment as assets of those estates. The testimony at
22 trial confirmed that Leija had actually disposed of much of the equipment during the Farms
23 ‘88 case, more than one year prior to commencement of the Farms ‘97 case. The Farms ‘97
24 and Farms ‘98 schedules therefore contained numerous errors.

25
26

¹Case #88-13140

27 ²Case #97-17488

28 ³Case #98-62057

1 In May 1999, at the 341 meeting of creditors for the Farms '98 chapter 7, Mr. Leija
2 testified regarding various pre-petition equipment transfers. However, he was unable to
3 provide dates for and records of those transactions. He testified that the FLF offices and
4 business records had been ransacked. Kavanagh verified that when he first inspected the
5 premises, it appeared that the offices had been ransacked with documents strewn all over the
6 floor. The next time he inspected the premises, after he had demanded that Leija produce
7 the business records of FLF, he found that the business office had been damaged by a fire
8 and the records remained unavailable.

9 Kavanagh argues that the pre-petition transfer of FLF's assets, the concealment of
10 those transfers, and the failure to maintain records for FLF are grounds to deny Leija's
11 discharge under Bankruptcy Code section 727(a)(7) - - non-dischargeable acts committed
12 in connection with the Farms '98 case. Although the evidence at trial was inconclusive as
13 to what actually happened to some of the farm equipment, Mr. Leija's own testimony
14 supported the conclusion that the Farms '98 schedules were grossly inaccurate. Kavanagh
15 also argues that the filing of inaccurate bankruptcy pleadings in the Farms '98 case
16 constitutes the filing of a "false oath" - - an independent ground to deny discharge under
17 section 727(a)(7).

18 In response to these allegations, Mr. Leija attempted to explain the disposition of the
19 FLF assets and the inaccuracy of the Farms '97 and '98 schedules. Mr. Leija testified that
20 he did not actually read the Farms '97 and '98 bankruptcy schedules before he signed them
21 and they were filed. Leija had given a copy of the Farms '88 schedules to his attorney to use
22 in preparing the Farms '97 schedules, which may explain why the Farms '97 schedules still
23 showed the equipment that was sold during the Farms '88 case. After Farms '97 was
24 dismissed, Mr. Leija signed the Farms '98 Official Forms, schedules and statement of
25 financial affairs, *in blank* knowing that the attorney would again use the Farms '88 and '97
26 information to complete those forms for filing with the court. His attorney apparently
27 reproduced the Farms '97 schedules, with some minor redactions and type-over changes, for
28 filing in the Farms '98 case. Mr. Leija testified that he did not review the completed Farms

1 '98 schedules before they were filed and did not discover the error until the 341 meeting.
2 He subsequently filed amended schedules in Farms '98. However, Mr. Leija's own
3 testimony at trial confirms the inaccuracy of the original Farms '98 schedules.

4 ///

5 Applicable Law

6 Bankruptcy Code section 727(a) limits a debtor's right to receive a discharge on
7 specific grounds, including the knowing and fraudulent filing of a false oath in connection
8 with another bankruptcy case:

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

10 . . .

11 (4) the debtor *knowingly and fraudulently*, in or in connection with the case -

12 (A) *made a false oath or account . . . or*

13 . . .

14 (7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6)
15 of this subsection, on or within one year before the date of the filing of the petition or during
16 the case, in *connection with another case*, under this title . . . concerning an insider"
17 (emphasis added)

18 Discharge under Bankruptcy Code section 727 is a privilege, not a right, and may
19 only be granted to the honest debtor. *Dubrowsky v. Perlbinder (In re Dubrowsky)* 244 B.R.
20 560, 572 (D.C. E.D. N.Y. 2000) (citing *In re Sicari*, 187 B.R. 861, 880 (Bankr. S.D.N.Y.
21 1994), (citing *In re McManus*, 112 B.R. 773, 775 (Bankr. E.D.Va. 1990) and *In re Tabibian*,
22 289 F.2d 793, 794 (2nd Cir. 1961)).

23 The debtor's discharge can be denied under Bankruptcy Code section 727 (a)(4)(A),
24 only if he knowingly and fraudulently made a false oath, relating to a material fact. The
25 burden of proof rests on the trustee. *Boroff v. Tully (In re Tully)* 818 F.2d 106,110 (1st Cir.
26 1987). The standard of proof in a dischargeability action is the preponderance of evidence.
27 *Grogan v. Garner*, 498 U.S. 279, 291, 111 S. Ct. 654 (1991).

28 It has long been recognized that,

. . . the very purpose of certain sections of the law, like 11 U.S.C. § 727(a)(4)(A),
is to make certain that those who seek the shelter of the bankruptcy code do not play fast and
loose with their assets or with the reality of their affairs. The statutes are designed to insure

1 that complete, truthful, and reliable information is put forward at the outset of the
2 proceedings, so that decisions can be made by the parties in interest based on fact rather than
3 fiction '[t]he successful functioning of the bankruptcy act hinges both upon the
4 bankrupt's veracity and his willingness to make a full disclosure.' *Tully*, 818 F.2d at 110.

5 The party objecting to the discharge based on erroneous bankruptcy schedules must
6 show that the information was omitted for the specific purpose of perpetrating a fraud and
7 not simply because the debtor was careless or failed to fully understand his attorney's
8 instructions. *In re Dubrowsky*, 244 B.R. at 571-572 (citing *In re Kelly*, 135 B.R. 459, 461
9 (Bankr. S.D.N.Y. 1992), (citing *In re Seablom* 45 B.R. 445, 449 (Bankr. D.N.D. 1984))).
10 However, under Bankruptcy Code section 727(a)(4)(A), " . . . a reckless indifference to the
11 truth is sufficient to sustain an action for fraud." *Dubrowsky* at 572 (citing *In re Kaiser*, 722
12 F.2d 1574, 1583 (2d Cir.1983)).

13 "The statutory requirement of 'knowingly' mandates only that the defendant's act be
14 voluntary and intentional - - it does not require that a defendant know that the conduct
15 violates the law. The defendant's reckless indifference to the truth is sufficient to sustain a
16 cause of action under Section 727(a)(4)(A)." *Castillo v. Casado (In re Casado)* 187 B.R.
17 446, 450 (Bankr. E.D.N.Y.1995).

18 Was Leija's Unsworn Verification of the Farms '98 Schedules and Statement of Affairs
19 an "Oath" Within the Meaning of Section 727(a)(4)(A).

20 The term "oath" is defined as:

21 1. A solemn declaration, accompanied by a swearing to God or a revered person or
22 thing, that one's statement is true or that one will be bound to a promise. The person making
23 the oath implicitly invites punishment if the statement is untrue or the promise is broken .
24 . . . 2. A statement or promise made by such a declaration. 3. A form of words used for such
25 a declaration. 4. A formal declaration made solemn without a swearing to God or a revered
26 person or thing; AFFIRMATION. *Blacks Law Dictionary* (Seventh Edition) West
27 Publishing, 1999.

28 The Bankruptcy Code requires a debtor to file documents containing specific
information regarding the debtor's assets and its financial affairs. Specifically, Bankruptcy
Code section 521 states in pertinent part:

"The debtor shall -

(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets
and liabilities, a schedule of current income and current expenditures, and a statement of the

1 debtor's financial affairs”

2 Federal Rule of Bankruptcy Procedure 1008 requires that all bankruptcy petitions,
3 lists, schedules, statements and amendments thereto *shall be verified or contain an unsworn*
4 *declaration* as provided in 28 U.S.C. § 1746. The use of an unsworn declaration to verify
5 the debtor's petition, schedules, and statement of affairs must be subscribed by the declarant
6 as true under penalty of perjury and is recognized by law to have “like force and effect” as
7 a sworn verification, oath or affidavit (28 U.S.C. § 1746).

8 Federal Rule of Bankruptcy Procedure 9009 prescribes the official forms to be used
9 for bankruptcy pleadings as follows:

10 “The Official Forms prescribed by the Judicial Conference of the United States shall
11 be observed and used with alterations as may be appropriate *The forms shall be*
12 *construed to be consistent with these rules and the Code.*” (emphasis added)

13 Several of the Official Forms, specifically including the petition, schedules, and
14 statement of financial affairs at issue here, utilize an *unsworn declaration* under penalty of
15 perjury for verification in compliance with Federal Rule of Bankruptcy Procedure 1008.

16 Here, the Farms ‘98 schedules and statement of financial affairs conformed to the
17 Official Forms. Both were verified with *unsworn* declarations dated January 20, 1999. Both
18 were executed by Mr. Leija under penalty of perjury in his capacity as an officer of FLF.
19 Specifically, the Farms ‘98 schedules include a separate “DECLARATION UNDER
20 PENALTY OF PERJURY ON BEHALF OF A CORPORATION” which states,

21 “I, Francisco Javier Leija, the President of the Corporation named as debtor in this
22 case, declare under penalty of perjury that I have read the foregoing Summary and
23 Schedules, consisting of [blank] sheets, and that they are true and correct to the best
24 my knowledge, information and belief.”

25 Similarly, the Farms ‘98 statement of financial affairs contains a “DECLARATION
26 UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION” which states,

27 “I declare under penalty of Perjury that I have read the answers contained in the
28

1 foregoing statement of financial affairs and any attachments thereto and that they are true
2 and correct to the best of my knowledge, information and belief.”

3 Since the Official Forms include unsworn declarations under penalty of perjury, and
4 since they must be construed consistent with the Bankruptcy Code, the court finds and
5 concludes that the term “oath” in Bankruptcy Code section 727(a)(4)(A) necessarily includes
6 the unsworn declarations prescribed in the Official Forms. To hold otherwise would
7 virtually nullify section 727(a)(4)(A) and would render Federal Rule of Bankruptcy
8 Procedure 1008 meaningless. Accordingly, Leija’s execution of the Farms ‘98 forms
9 constituted the making of an “oath” in connection with the Farms ‘98 case for purposes of
10 section 727(a)(4)(A). Because bankruptcy pleadings must be verified by law, the court finds
11 and concludes that the verification itself is a material representation of fact -- that the debtor
12 had read the pleading and that the information was true and correct to the best of the debtor’s
13 information and belief.

14 Leija’s Signing of Blank Bankruptcy Schedules in the Farms ‘98 Case Constitutes
15 a Knowing and Fraudulent “False Oath” Under Section 727(a)(4)(A).

16 To complete the analysis of this matter, the court need look no further that Mr.
17 Leija’s own testimony given to explain the ambiguities and errors in the Farms ‘98
18 bankruptcy schedules. When confronted by the similarity between the Farms ‘97 and Farms
19 ‘98 schedules, Mr. Leija testified that he had provided his attorney with copies of the Farms
20 ‘88 and Farms ‘97 schedules containing the information about his assets and financial affairs
21 and subsequently signed the Farms ‘98 Official Forms *in blank*. As a result, the Farms ‘98
22 schedules were completed with the Farms ‘88 and ‘97 information *after* Mr. Leija signed
23 them. Mr. Leija did not review the Farms ‘98 schedules for truthfulness and accuracy before
24 they were filed.

25 The verification clauses in the Official Forms which Mr. Leija signed under penalty
26 of perjury clearly represent that Mr. Leija had read the information in the documents and that
27 they were “true and correct to the best of my information and belief.” If the Farms ‘98
28 pleadings were still blank when Mr. Leija signed them, then he could not have read them

1 and he could not have formed a reasonable belief regarding their truthfulness and accuracy.
2 The unsworn verifications themselves are therefore materially “false oaths.” Further, the
3 execution of those documents in blank was intended to perpetrate a fraud on the court - - to
4 give the appearance that the documents were truthful and accurate when they in fact were
5 not.

6 The courts have generally recognized that failure to read the schedules is not a
7 defense to an action under Bankruptcy Code section 727(a)(4)(A). *Equibank v. Ward (In re*
8 *Ward)* 92 B.R. 644, 647 (Bankr. W.D.Pa 1988). Nor is the “advice of counsel” a defense
9 when the erroneous information should have been evident to the debtor. *Tully*, 818 F.2d at
10 111 (citing *In re Mascolo* 505 F.2d 274, 277 n.4 (1st Cir. 1974)).

11 “A debtor cannot, merely by playing ostrich and burying his head deeply enough in
12 the sand, disclaim all responsibility for statements which he has made under oath.” *Id.*

13 The majority of the cases wrestling with this issue have looked to the content of the
14 schedules and statement of financial affairs and tried to determine whether the omitted or
15 erroneous disclosures rise the level of a “false oath.” This case is somewhat different since
16 Leija verified the Farms ‘98 pleadings *in blank*; the court does not need to look to the
17 truthfulness of the information in those documents and does not need to consider Leija’s
18 efforts to explain the disposition of FLF’s assets. The Farms ‘98 verifications themselves
19 were *materially false oaths*. The actual content of the documents was added later by the
20 attorney. The truthfulness and accuracy of that information, and the reason for any errors,
21 are irrelevant to the “false oath” issue when the debtor verifies the documents in blank.

22 Sworn statements filed in any court must be regarded as serious business. In
23 bankruptcy administration, the system will collapse if debtors are not forthcoming. The
24 record in this case shows, at the very least, cavalier indifference and a pattern of disdain for
the truth. Meaningful disclosure was accorded too low a priority. *Id.* at 112.

25 If Mr. Leija read the verifications before signing them, the error would have been
26 obvious. If Mr. Leija did not read the verifications before signing them, then his actions
27 were at best, recklessly indifferent. Either way, the shoddy practice of verifying *blank*
28 pleadings to be filed in a judicial proceeding cannot be condoned by this court.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: December 3, 2001

W. Richard Lee, United States Bankruptcy Judge