

FILED & ENTERED

AUG 21 2012

CLERK U.S. BANKRUPTCY COURT
Central District of California
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION**

In re:

Luis and Carol Stahl,

Debtors.

Caterpillar Financial Services Corp.,

Plaintiff,

v.

Luis Stahl,

Defendant.

Case No.: 6:09-bk-30494-DS

Adversary No.: 6:11-ap-01784-DS

Chapter: 7

**STATEMENT OF DECISION AFTER TRIAL
SUBMITTED ON THE BRIEFS**

Date: [no trial held]

Time:

Location:

On June 21, 2011, Caterpillar Financial Services Corp. ("Plaintiff") filed a complaint against Luis Stahl ("Defendant") objecting to Defendant's discharge under sections 727(a)(2) and (4), and/or seeking a determination of nondischargeability of debt under section 523(a)(6). Both Plaintiff and Defendant requested a written ruling disposing of this adversary proceeding after submission of trial briefs, declarations and other documentary evidence.

1 Having considered the trial briefs and evidence, and the record in this case, the
2 court makes the following findings of fact and conclusions of law¹ pursuant to Federal Rule
3 of Civil Procedure 52(a)(1),² as incorporated by Federal Rule of Bankruptcy Procedure
4 7052.

5 I. JURISDICTION

6 The bankruptcy court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157(b)
7 and 1334(b). This trial is a core proceeding under 28 U.S.C. § 157(b)(2)(I) and (J). Venue
8 is appropriate in this court. 28 U.S.C. § 1409(a).

9 II. UNDISPUTED FACTS

10 In October 2006, Mitchum Equipment, LLC ("Mitchum") obtained a \$31,407 loan
11 (the "Loan") from Johnson Machinery Co. ("Johnson") to purchase a Caterpillar model
12 216B Skid Steer Loader (the "Loader"). Subsequently, the rights and obligations of
13 Mitchum and Johnson were assigned to Defendant and Plaintiff, respectively. Plaintiff held
14 a security interest in the Loader, which was to be used in Defendant's contracting
15 business, to secure the Loan. Defendant made all monthly debt service payments for
16 approximately three years before defaulting on the Loan.

17 Defendant and his wife filed a voluntary chapter 11 petition on September 1, 2009.³
18 On the petition date, \$7,309.01 remained outstanding on the Loan. In his bankruptcy
19 schedules, Defendant failed to list the Loader as an asset on Schedule B and failed to list
20 Plaintiff as a secured creditor on Schedule D—even though he consistently used the
21 Loader in his contracting business and stored it with other equipment near his principal
22 residence in Lake Elsinore.

23 After the bankruptcy filing, Plaintiff demanded possession and/or turnover of the
24 Loader if Defendant did not pay the amount owed by September 24, 2009. Defendant

25 ¹ To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such.
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27 ² Unless otherwise indicated, all "Code," "chapter" and "section" references are to the Bankruptcy Code, 11
28 U.S.C. §§ 101-1532 and all "Rule" references are to the Federal Rules of Bankruptcy Procedure ("FRBP")
which make applicable certain Federal Rules of Civil Procedure ("FRCP").

³ The case was converted to chapter 7 on February 2, 2011.

1 neither made full payment nor turned over possession of the Loader to Plaintiff, although
2 Defendant made partial payment to Plaintiff after the petition date, leaving a principal
3 balance of \$4,402.54. Plaintiff has never sought relief from the automatic stay to proceed
4 with repossession or other state court remedies. Based on Defendant's failure to list the
5 Loader and Plaintiff on his bankruptcy schedules and his failure to voluntarily turn over
6 possession of the Loader, Plaintiff commenced the instant adversary proceeding seeking
7 denial of Defendant's discharge under section 727(a)(2) and/or (a)(4) or, in the alternative,
8 a finding that the amount owed under the Loan (\$4,402.54 in principal plus approximately
9 \$14,950.84 in counsel fees and costs as of January 31, 2011) is nondischargeable under
10 section 523(a)(6).

11 III. DISCUSSION

12 A. Section 727(a)(2)

13 A chapter 7 discharge may be denied if, with the intent to "hinder, delay, or defraud"
14 creditors, the debtor transferred, removed, concealed, mutilated, or destroyed any property
15 within one year before filing the bankruptcy petition or any time after the petition was filed.
16 11 U.S.C. § 727(a)(2)(A) & (B); see *In re Lawson*, 122 F.3d 1237, 1240 (9th Cir. 1997)
17 (debtor concealed assets within one year before the petition date with intent to defraud,
18 hinder, or delay creditor). To warrant denial of discharge, a debtor's intent to hinder, delay,
19 or defraud creditors must be actual, rather than constructive. *In re Adeeb*, 787 F.2d 1339,
20 1342-43 (9th Cir. 1986). A denial of discharge under section 727(a)(2) does not require a
21 finding of intent to defraud; a finding of intent to either hinder or delay is sufficient. *In re*
22 *Retz*, 606 F.3d 1189, 1200 (9th Cir. 2010); *In re Beverly*, 374 B.R. 221, 235 (9th Cir. BAP
23 2007).

24 A debtor must have had a subjective intent to hinder, delay or defraud a creditor at
25 the time the property transfer, removal, concealment, mutilation, or destruction occurred.
26 *Lawson*, 122 F.3d at 1240. Intent to hinder or delay creditors may be established by
27 circumstantial evidence or by inferences drawn from a course of conduct. *Adeeb*, 787
28 F.2d at 1343. The plaintiff bears the burden of proof on all matters. Fed. R. Bankr. P.

1 4005 (“At the trial on a complaint objecting to a discharge, the plaintiff has the burden of
2 proving the objection”). The elements of section 727 must be proven by a preponderance
3 of the evidence to merit denial of discharge. See *Grogan v. Garner*, 498 U.S. 279, 289
4 (1991); *In re Lawler*, 141 B.R. 425, 428-29 (9th Cir. BAP 1992).

5 Here, Plaintiff alleges in the complaint that “with intent to hinder, delay, or defraud
6 Plaintiff,” Defendant “transferred, removed, destroyed, mutilated, or concealed” the Loader
7 “within one (1) year before the date of the filing of the petition, or alternately, after the date
8 of the filing of the petition” but provides almost no evidence in support of its claim.

9 Defendant’s unrefuted testimony is that Defendant continually used the Loader in his
10 contracting business and stored the machine with other equipment near his Lake Elsinore
11 residence when not in use. There is no evidence that Defendant attempted to transfer
12 possession of the Loader or conceal the Loader from repossession. Plaintiff never even
13 made a prepetition demand for the Loader. Unrefuted testimony submitted by the
14 Defendant shows that a postpetition payment was made to Plaintiff and also shows that
15 Defendant and Plaintiff engaged in discussions regarding the Loan and Loader through
16 counsel. This testimony, along with the record in Defendant’s bankruptcy case, further
17 shows that Plaintiff did not pursue relief from stay to repossess the Loader.

18 The only evidence offered by Plaintiff is Defendant’s failure to list the Loader in the
19 bankruptcy schedules. This does not establish a course of conduct to prove a subjective
20 intent to hinder, delay, or defraud Plaintiff. Denial of Defendant’s discharge is not
21 warranted under section 727(a)(2).

22 B. Section 727(a)(4)(A)

23 A discharge may be denied if the debtor has made a false oath in or in connection
24 with the present case. 11 U.S.C. § 727(a)(4)(A). Discharge will be denied where: (1) the
25 debtor made a false oath in connection with the bankruptcy case; (2) the oath related to
26 material facts; and (3) the oath was made knowingly and fraudulently. *In re Retz*, 606 F.3d
27 1189, 1197 (9th Cir. 2010); *Khalil v. Developers Surety and Indemnity Co. (In re Khalil)*,
28 379 B.R. 163, 172 (9th Cir. BAP 2007); *In re French*, 499 F.3d 345, 352 (4th Cir. 2007);

1 *Roberts v. Erhard* (*In re Roberts*), 331 B.R. 876, 882 (9th Cir. BAP 2005). The plaintiff
2 bears the burden of proof on all matters. Fed. R. Bankr. P. 4005. The elements of section
3 727 must be proven by a preponderance of the evidence to merit denial of discharge. See
4 *Grogan*, 498 U.S. at 289; *Lawler*, 141 B.R. at 428-29.

5 **(1) False Statement or Oath**

6 A debtor's bankruptcy schedules are signed under penalty of perjury. Thus, a false
7 oath under section 727(a)(4) can involve a false statement or omission in a debtor's
8 schedules. *Roberts*, 331 B.R. at 882; *Matter of Beaubouef*, 966 F.2d 174, 178 (5th Cir.
9 1992) (schedules omitted debtor's interest in corporation); *In re Tan*, 350 B.R. 488, 495
10 (Bankr. N.D. Cal. 2006) (schedules omitted debtor's interest in several corporations).

11 Here, Defendant did not list the Loader or Plaintiff in the bankruptcy schedules,
12 establishing the "false oath" element under section 727(a)(4)(A).

13 **(2) Material Fact**

14 The false oath must relate to a material fact. *In re Aubrey*, 111 B.R. 268, 274 (9th
15 Cir. BAP 1990). A statement is material if it bears on the debtor's business transactions,
16 the debtor's estate, the discovery of assets, or the existence and disposition of the debtor's
17 property. *In re Willis*, 243 B.R. 58, 62 (9th Cir. BAP 1999); *In re Chalik*, 748 F.2d 616, 618
18 (11th Cir. 1984). A false statement or omission may be material even if it does not cause
19 direct financial prejudice to creditors. *In re Bernard*, 96 F.3d 1279, 1281-82 (9th Cir.
20 1996). Omissions or misstatements relating to assets having little or no value are *not*
21 material. *In re Swanson*, 36 B.R. 99, 100 (9th Cir. BAP 1984) (emphasis added); see also
22 *In re Seruntine*, 46 B.R. 286, 287-88 (Bankr. C.D. Cal. 1984) (court found misstatement of
23 asset was material where the debtor scheduled real property at roughly one-half its fair
24 market value to eliminate any potential nonexempt equity).

25 Here, the evidence shows that Defendant failed to schedule a secured debt of
26 approximately \$7,900 and a corresponding asset with a value of approximately \$7,000.
27 The evidence also shows Defendant scheduled total secured debt of \$2,936,000 and total
28

1 assets of \$7,064,000. Under the principles of *Swanson*, Defendant's failure to schedule an
2 asset comprising 0.1% of the estate's total asset value is not material.

3 **(3) Knowingly and Fraudulently**

4 A debtor must have made the false statement knowingly, with fraudulent intent. 11
5 U.S.C. § 727(a)(4); *Matter of Sholdra*, 249 F.3d 380, 382 (5th Cir. 2001). A debtor's intent
6 must be actual, not constructive. *In re Willis*, 243 B.R. 58, 64 (9th Cir. BAP 1999).

7 Fraudulent intent can be proved by circumstantial evidence. *Sholdra*, 249 F.3d at 382. A
8 debtor's omissions of numerous major assets from schedules by itself can establish the
9 existence of fraudulent intent. *In re Kingdorf*, 105 B.R. 685, 690 (Bankr. M.D. Fla. 1989).

10 Here, Defendant failed to schedule the Loader as an asset and Plaintiff as a
11 secured creditor. The evidence also shows that the schedules were not amended, but
12 Plaintiff was added to the master mailing list in Defendant's bankruptcy case. Finally, as
13 discussed above, the evidence shows a partial payment by Defendant and discussions
14 between counsel for Plaintiff and Defendant regarding the Loan and the Loader. There is
15 no evidence of other omissions on the schedules and no evidence of any pattern of
16 concealment to establish that Defendant's statement was made knowingly and
17 fraudulently. Courts have found that "*multiple omissions of material assets or information*
18 *may well support an inference of fraud if the nature of the assets or transactions suggest*
19 *that the debtor was aware of them at the time of preparing the schedules and that there*
20 *was something about the assets or transactions which, because of their size or nature, a*
21 *debtor might want to conceal.*" *Khalil*, 379 B.R. at 175 citing *Garcia v. Coombs (In re*
22 *Coombs)*, 193 B.R. 557, 565-66 (Bankr. S.D. Cal. 1996) (emphasis added). Plaintiff offers
23 no evidence to support an inference of fraud. Indeed, the evidence supports the opposite
24 inference: that the misstatement was inadvertent. The size of the Loan and the Plaintiff's
25 claim were both relatively small, Defendant made partial payment after the petition date,
26 Defendant added Plaintiff to the master mailing list and engaged in discussions with
27 Plaintiff through counsel. The evidence does not show that Defendant was engaged in an
28 effort to conceal anything, but rather that Defendant made an error and was attempting to

1 negotiate with Plaintiff to correct that error. Denial of discharge is not warranted under
2 section 727(a)(4)(A).

3 C. Section 523(a)(6)

4 A discharge under section 727 may be denied for a debt attributable to a “willful and
5 malicious injury by the debtor.” 11 U.S.C. § 523(a)(6). For purposes of section 523(a)(6),
6 the bankruptcy court must find the injury inflicted by the debtor was both “willful” and
7 “malicious.” *Matter of Ormsby*, 591 F.3d 1199, 1206 (9th Cir. 2010). “Willful” within the
8 meaning of section 523(a)(6) means “deliberate or intentional.” *Kawaauhau v. Geiger*, 523
9 U.S. 57, 61 (1998). A “malicious injury” under section 523(a)(6) involves: (1) a wrongful
10 act; (2) done intentionally; (3) that necessarily causes injury; and (4) that is committed
11 without just cause or excuse. *In re Jercich*, 238 F.3d 1202, 1209 (9th Cir. 2001). A
12 plaintiff/creditor seeking to hold a particular debt nondischargeable has the burden of
13 proving its claim by a preponderance of the evidence. *Grogan*, 498 U.S. at 289.

14 A debt based on conversion by a debtor may be nondischargeable under section
15 523(a)(6). *In re Bailey*, 197 F.3d 997, 1000 (9th Cir. 1999). The elements of conversion
16 under California law are: (1) the creditor’s ownership or right to possession of the property
17 at the time of conversion; (2) the debtor’s conversion by a wrongful act or disposition of
18 property rights; and (3) damages. *In re Thiara*, 285 B.R. 420, 427 (9th Cir. BAP 2002)
19 citing *Farmers Ins. Exchange v. Zerin*, 53 Cal.App.4th 445, 451 (1997). Even where
20 conversion has been proven under California law, the court must also find that the injury
21 was both willful and malicious. *Thiara*, 285 B.R. at 429 (conversion under California law
22 “does not necessarily decide the type of wrongful intent on the part of the debtor that is
23 necessary for the damages to be a nondischargeable debt under section 523(a)(6)”).
24 Phrased differently, “a failure to prove conversion is fatal to an argument that defendant’s
25 conduct caused ‘willful and malicious injury.’ It does not mean the converse—that proof of
26 conversion necessarily establishes such injury.” *In re Peklar*, 260 F.3d 1035, 1038 (9th
27 Cir. 2001).

1 Here, Plaintiff alleges that Defendant “wrongfully refused to surrender the Collateral
2 and has converted the same,” which constitutes “willful and malicious injury by
3 [Defendant].” As outlined above, to establish conversion under California law, Plaintiff
4 must initially show it had a legal interest in the Loader by virtue of its security interest. The
5 evidence shows—and Defendant acknowledges—that Plaintiff made a postpetition
6 demand for payment and/or turnover of the Loader upon default. However, because
7 Plaintiff never asserted its legal right to possession or control of the Loader before the
8 petition date, it was precluded from doing so by virtue of the automatic stay. See 11
9 U.S.C. § 362(a)(3) (the filing of a petition “operates as a stay of any act to obtain
10 possession of property of the estate”). Absent relief from stay, Plaintiff could not (and
11 cannot) assert a legal right to possession of the Loader (i.e., property of the estate). Thus,
12 Plaintiff’s postpetition demand for possession is not sufficient to satisfy the first element of
13 conversion.

14 Notwithstanding Plaintiff’s failure to timely assert its right to possession, Defendant
15 made a partial payment on the Loan, further eroding Plaintiff’s assertions that he was
16 committing a wrongful act and/or disposing of Plaintiff’s property rights. The evidence
17 does not show any attempt by Defendant to dispose of Plaintiff’s property—either by
18 avoiding contractual repayment on the Loan or by physically discarding the Loader—or
19 that Plaintiff suffered measurable damages. There is no evidence to establish either the
20 second or third elements of a claim for conversion under California law. Because Plaintiff
21 has failed to prove conversion under applicable state law as a threshold matter, it cannot
22 show Defendant’s conduct caused a “willful and malicious injury” sufficient to deny
23 discharge as to the amount owed under the Loan under section 523(a)(6).

IV. CONCLUSION

For the reasons stated, the court finds that Plaintiff has not established grounds for denial of Defendant's discharge under sections 727(a)(2) and (a)(4)(A). The court further finds that Plaintiff failed to prove that the amounts owed under the Loan are nondischargeable under section 523(a)(6).

Defendant shall submit a proposed judgment consistent with this memorandum.

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DATED: August 21, 2012

United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled **STATEMENT OF DECISION AFTER TRIAL SUBMITTED ON THE BRIEFS** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **8/21/12**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

- Arturo Cisneros (TR) amctrustee@mclaw.org, acisneros@ecf.epiqsystems.com
- Mark D Poniatowski ponlaw@ponlaw.com
- United States Trustee (RS) ustpreion16.rs.ecf@usdoj.gov
- Stuart J Wald stuart.wald@gmail.com

☐ Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Luis Carlos Stahl,
34547 Borchard Road
Lake Elsinore, CA 92530

☐ Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

☐ Service information continued on attached page