

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re: CHAPTER 7
THOMAS W SWENO Bky.3-88-3980
Debtor.

JOHN L KIPP and CHRISTINE A KIPP, Adv.3-89-154
Plaintiffs.

vs.

THOMAS W SWENO, FINDINGS OF FACT
Defendant. CONCLUSIONS OF LAW
ORDER FOR JUDGMENT

At St. Paul, Minnesota.

This matter was tried on August 14, 1990, on complaint of the Plaintiffs objecting to the Defendant's general discharge under 11 USC Section 727(a) (2)(A) and (4)(A). Appearances were as noted in the record. The Court, having received post-trial briefs, and having carefully reviewed and considered the evidence, now being fully advised in the matter, makes this ORDER pursuant to the Federal and Local Bankruptcy Rules.

I.

FINDINGS OF FACT

1. On October 27, 1988, a Washington County, Minnesota, jury returned a verdict against Defendant in favor of Plaintiffs for \$165,000. An order for judgment was entered on October 31, 1988, and judgment was thereafter entered on December 2, 1988, against Defendant in favor of Plaintiffs for that amount.

2. Prior to October 28, 1988, Defendant maintained all banking accounts in which he had an interest in joint tenancy with his spouse. Those accounts included the following checking Properties" at State Bank of Lake Elmo; "Thomas or Colleen J. Sweno" at State Bank of Lake Elmo; "LeHanger's Inc." (corporation wholly owned by Defendant) at State Bank of Lake Elmo. On October 28, 1988, Defendant drew down the three accounts which contained significant balances, so as to leave all four accounts with nominal balances. The accounts were thereafter left dormant. Defendant caused a substantial amount of the withdrawn proceeds to be

deposited in new accounts, ostensibly owned and controlled solely by his spouse. The transfers were made for the specific purpose of hindering and delaying Plaintiffs in their lawful attempts to collect their judgment.

3. Prior to November 1, 1988, Defendant conducted his primary business, construction, under the name of "TomCo Construction". From November 1, 1988, he did the same business under the name of "TC 2 Contracting", an entity ostensibly owned and controlled solely by his spouse. In connection therewith, Defendant transferred all projects and accounts receivable of "TomCo Construction" to "TC 2". Colleen Sweno had no knowledge of, or significant connection with, Defendant's construction business affairs, either before or after November 1, 1988. She, however, received substantial sums from "TC 2" and was listed as the sole owner and authorized signatory on the company's bank account. Additionally, Defendant represented to the public that he had no interest in the business, and caused a "certificate of trade name" to be published that identified his spouse as the sole owner of "TC 2 Contracting". Defendant's conduct regarding "TC 2" was fraudulent and was for the specific purpose of hindering and delaying Plaintiffs in their lawful attempt to collect their judgment against him.

4. On October 28, 1988, Defendant transferred to his spouse the Defendant's joint tenancy interest in the couple's 1984 Plymouth Voyager van. The transfer was for the specific purpose of delaying and hindering Plaintiffs lawful attempts to collect their judgment against him.

5. On July 19, 1988, Defendant purchased a boat and trailer with a loan from State Bank of Lake Elmo, which was secured by his truck. He placed title to the boat solely in the name of his spouse. The transaction was structured with the specific intent of placing both the boat and the truck outside the reach of Plaintiffs, should they later prevail against him in the dispute that resulted in the state court judgment.

6. The Defendant filed for relief under 11 USC Chapter 7 on December 15, 1988. He intentionally made false statements, omitted accompanying the petition in at least the following respects: Defendant falsely stated that he was conducting his construction business as "TomCo Construction"; he concealed his interest in "TC 2 Contracting"; he intentionally concealed information identifying the accounts created solely in the name of his spouse and from which he received substantial sums for personal and business purposes prior to the filing; he failed to disclose any information regarding his purchase and transfer of the boat; and, he intentionally mischaracterized the nature of the security interest in his truck as "monthly truck loan payments". The falsehoods and omissions were perpetrated for the specific purpose of obtaining a general discharge without accounting for, and surrendering to the estate, the Defendant's non-exempt assets.

II.

CONCLUSIONS OF LAW

Based on the foregoing facts, the Court makes the following conclusions of law:

1. The Defendant Debtor, Thomas Sweno, must be denied his general discharge under 11 USC Section 727(a)(2)(A) because he wrongfully transferred, removed, and concealed property, within one year prior to the bankruptcy filing, with the specific intent of hindering and delaying Plaintiffs John L. Kipp and Christine A. Kipp from lawfully attempting to collect their judgment against him from his non-exempt assets.

2. The Defendant Debtor, Thomas Sweno, must be denied his general discharge under 11 USC Section 727(a)(4)(A) because he knowingly and intentionally made false oaths in connection with material matters in this case for the specific purpose of defrauding the Court and receiving a discharge without accounting for, and surrendering, his non-exempt assets.

III.

ORDER FOR JUDGMENT

Based on the foregoing, IT IS HEREBY ORDERED:

1. Plaintiffs are entitled to judgment that Defendant Debtor, Thomas W. Sweno, be denied his general discharge under 11 USC Section 727 in connection with Bankruptcy Case No. 3-88-3980.

2. Plaintiffs are entitled to their costs and disbursements herein as allowed by law.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 8, 1990

By The Court:

DENNI D. O'BRIEN
U.S. BANKRUPTCY JUDGE

MEMORANDUM

The evidence is clear and convincing in this case that the numerous transfers made by Defendant Sweno shortly before and after Plaintiffs obtained their state court judgment, were wholly without consideration. Equally clear is that Defendant engaged in a pattern of conduct designed to fraudulently conceal his non-exempt assets, first from Plaintiffs, and later from the bankruptcy estate, the trustee, and the Court. The inescapable findings of

fact recited above needed little inference.

Defendant's own records conclusively show the sudden depletion of joint accounts and their virtual abandonment immediately following the state court verdict in favor of Plaintiffs. Thereafter, Defendant supposedly neither owned nor had an interest in any bank account anywhere, except his joint interest in the depleted and abandoned ones. Yet, clearly, withdrawals from those abandoned, provided the initial deposits for those opened solely in the name of his spouse, in which he claimed no right or interest.

Similarly, Defendant's own records conclusively show the transfer of existing ongoing projects and accounts receivable from "TomCo Construction" to "TC 2 Contracting", a company in which Defendant claimed no interest. Furthermore, his own records conclusively show that he began doing business as "TC 2" on November 1, 1988, and no longer did business under "TomCo Construction" prior to the bankruptcy filing.

Additionally, Defendant's own records regarding activity in the "TC 2" account, clearly show his substantial interest in both the business and in the income from it prior to the bankruptcy filing. Defendant received substantial sums from the account through direct payment, and indirectly through withdrawals by his spouse. Mrs. Sweno had no significant connection or involvement with this business.

Finally, the handling of the boat transaction and the transfer of interest in the van are further indications of a pattern of conduct designed to hide assets.

Unfortunately, Defendant's conduct in this regard persisted through, and in connection with, the filing of the bankruptcy case. He omitted and concealed substantial and material information: regarding his business activities in connection with "TC 2 Contracting"; regarding bank accounts from and through which he received substantial funds prior to the filing; and, regarding property he transferred wholly without consideration shortly before filing.

Even more unfortunately, Defendant's wrongful conduct did not end there. His continuing dishonesty was confirmed on the witness stand. Mr. Sweno's testimony regarding all of these matters was simply totally incredible.