

#2458

signed 3-12-99

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In Re:**

**JULIE A. VAN DONGE,  
RICHARD E. VAN DONGE,**

**DEBTOR(S).**

**CASE NO. 96-41628-7  
CHAPTER 7**

**ROBERT L. BAER, Trustee,**

**PLAINTIFF(S),**

**v.**

**ADV. NO. 97-7091**

**RICHARD E. VAN DONGE,  
JULIE A. VAN DONGE,**

**DEFENDANT(S).**

**ORDER GRANTING SUMMARY JUDGMENT**

This proceeding is before the Court on the chapter 7 trustee's motion for summary judgment.

The trustee appears by counsel John T. Houston. The defendant-debtors appear by counsel Mark W. Works. The Court has reviewed the relevant pleadings and is now ready to rule.

**FACTS**

The following facts have not been properly controverted. The debtors were getting a divorce when they filed a joint chapter 7 bankruptcy petition on July 16, 1996. Their 1995 federal tax return, prepared in September 1996, reported that Mr. Van Donge was in the photography business during the 1995 calendar year, and claimed depreciation deductions for photography equipment which he had bought during 1994 for over \$15,000, had placed in service during that year, and was still using in his

business at the end of 1995. The listed equipment included at least five cameras purchased for a total of \$2,700 and a computer and related equipment purchased for a total of \$2,882. The debtors did not report in their bankruptcy schedules any transfers of any of the photography equipment during the year before they filed for bankruptcy. They have never denied that they actually owned all the equipment listed on the tax return.

In their bankruptcy schedules, however, the debtors reported owning household goods consisting of “misc furniture, computer, camera, tv” with a “market value” of \$500 and photographic equipment consisting of “photography” with a “market value” of \$700, claiming all that property as exempt under K.S.A. 60-2304. In mid-August, at the creditors meeting held pursuant to 11 U.S.C.A. §341(a), the debtors testified that the “photography” property listed on their bankruptcy schedules consisted of one “medium format” camera, a flash unit, and some backgrounds. Based on their schedules and testimony at the creditors meeting, the trustee decided not to pursue collection of the debtors’ photography equipment. Toward the end of September, the debtors’ attorney gave the trustee a copy of the debtors’ 1995 tax return. On October 2, 1996, the trustee demanded that the debtors turn over to him the photography equipment listed on the tax return. To date, the debtors have given him a single camera worth no more than \$400. In November, Mr. Van Donge filed a police report indicating that his home had been burglarized and various items had been stolen, including two cameras valued at \$1,500, three sets of studio lights valued at \$1,800, a camera tripod valued at \$90, and camera accessories valued at \$500.

The trustee filed a complaint, Adversary No. 96-7126, seeking to deny the debtors a discharge pursuant to 11 U.S.C.A. §727(a)(2) and (4). In July 1997, the Court granted summary judgment on

his claim under §727(a)(4) due to the debtors' knowing and fraudulent false oaths about the photography equipment. The next month, the trustee filed this proceeding, seeking damages from the debtors for conversion or fraud. In their defense, the debtors raised various matters, but the only legitimate issue they have brought up is the value of the equipment they failed to turn over to the trustee. The Court indicated at a previous hearing that judgment would be entered for the trustee, and the only questions were the amount the judgment should be and how the debtors would pay it. The parties had some difficulty obtaining an appraisal, but have finally submitted one from a Mark D. Weber, owner of Wichers Photography, indicating that his "best guess" is that the equipment not turned over would bring about \$5,000 at auction.

#### DISCUSSION AND CONCLUSIONS

"Conversion" is the unauthorized assumption or exercise of the right of ownership over property that belongs to another to the exclusion of the other's rights. *Moore v. State Bank*, 240 Kan. 382, 386 (1986), *cert. denied* 482 U.S. 906 (1987). When the debtors filed for bankruptcy, their photography equipment became property of their bankruptcy estate. *11 U.S.C.A. §541(a)(1)*. By failing to disclose most of the equipment on their schedules and at their creditors meeting, and then failing to turn it over to the trustee on his demand, they improperly exercised the right of ownership over it. Thus, they have converted the equipment and are liable to the bankruptcy estate for its value. The only appraiser who was willing to state a value for the missing equipment valued it at \$5,000. Consequently, the Court concludes the trustee is entitled to summary judgment in that amount based on

conversion. Since the trustee's fraud claim also seeks to recover only the value of the missing equipment, the Court finds it unnecessary to consider that claim.

For these reasons, the Court hereby awards the trustee a judgment against the debtors for \$5,000.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this \_\_\_\_\_ day of March, 1999.

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JAMES A. PUSATERI  
CHIEF BANKRUPTCY JUDGE