



**SO ORDERED.**

**SIGNED this 11 day of April, 2005.**

*Dale L. Somers*

Dale L. Somers  
UNITED STATES BANKRUPTCY JUDGE

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

**IN RE:**

**DAVID CHARLES HANEKE  
JANIS D. HANEKE,**

**Debtors.**

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**DAVE THOMAS, d/b/a/ THOMAS  
QUALITY HOMES & IMPROVEMENTS**

**Plaintiff,**

**v.**

**DAVID CHARLES HANEKE AND  
JANIS DIANE HANEKE**

**Defendants.**

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**Case No. 02-13894  
Chapter 7**

**Adv. No. 02-5244**

**MEMORANDUM AND ORDER DENYING DEBTORS' DISCHARGE  
PURSUANT TO SECTION 727(a)(4)(A)**

This is an adversary proceeding objecting to the Debtors' discharge pursuant to 11 U.S.C.A. § 727(a)(4)(A)<sup>1</sup>. Plaintiff, Dave Thomas, d/b/a Thomas Quality Homes & Improvements (Thomas), appears by W. Thomas Gilman, Redmond & Nazar, L.L.P. Defendant Debtors, David Charles Haneke and Janis Diane Haneke (collectively Debtors), appear by Steve Johnson, Law Offices of Bauer, Pike, Pike & Johnson, Chtd. There are no other appearances. This is a core proceeding<sup>2</sup> over which the Court has jurisdiction.<sup>3</sup> There is no objection to personal jurisdiction, venue, or subject matter jurisdiction.

**FINDINGS OF FACT**

David Charles Haneke (Debtor) is 47 years old and employed as the administrator of Great Plains of Ellinwood, Inc., a hospital in Ellinwood, Kansas. As administrator, he runs the operations, including overseeing of the budget and being responsible for Medicare and Medicaid compliance. In his position, he is aware of the significance of verifying accurate information when requested to do so by governmental entities. Debtor's wife, Janis Diane Haneke, operated a bath and body product shop prepetition. According to question one on the Debtors' Statement of Financial Affairs, their 2000 income tax wage income was \$83,000 and their 2001 income from wages and business was \$73,000.

Prepetition the Debtors' personal and real property in Hoisington (their homestead) was

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<sup>1</sup> Future references to the Bankruptcy Code in the text shall be to the section only.

<sup>2</sup> 28 U.S.C.A. § 157(b)(2)(J).

<sup>3</sup> 28 U.S.C.A. § 1334.

damaged or destroyed by a tornado. Insurance proceeds received to replace personal property were deposited into a savings account at Farmers Bank. Insurance proceeds for structural damage were deposited in First Kansas. After the tornado, Plaintiff Thomas Quality Homes remodeled Debtors' house and added a tornado shelter. Debtors terminated Thomas' contract before the work was completed. Plaintiff filed a mechanics lien in the amount of \$50,772.45 on the Debtors' homestead on December 26, 2001, in the District Court of Barton County, Case No. 01M L 39.

Debtors filed a voluntary petition under Chapter 7 on August 8, 2002. The Statement of Financial Affairs, question 3(a),<sup>4</sup> payments to creditors, included a \$2000 payment to Advanta Bank Corp. There was no disclosure of any gifts (question 7<sup>5</sup>), other transfers (question 10<sup>6</sup>), or closed financial accounts (question 11<sup>7</sup>). Schedule A, real property, listed the Debtors' homestead as having a market value of \$90,000, subject to a secured claim of \$105,000. Schedule B, personal property,

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<sup>4</sup> Question 3(a) requires the listing of "all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within 90 days immediately preceding the commencement of this case."

<sup>5</sup> Question 7 requires the listing of "all charitable contributions made within one year immediately preceding the commencement of this case, except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient."

<sup>6</sup> Question 10 requires a listing of "all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately preceding the commencement of this case."

<sup>7</sup> Question 11 requires the listing of "all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, association, brokerage houses and other financial institutions."

showed cash on hand of \$500, household goods and furnishings valued at \$500, clothing valued at \$500, two vehicles valued at \$22,000, and business inventory valued at \$15,000, for a total of \$38,500. The Schedule B stated that the Debtors had no financial accounts,<sup>8</sup> jewelry,<sup>9</sup> firearms,<sup>10</sup> or other personal property of any kind not already listed.<sup>11</sup> Schedule C, property claimed as exempt, enumerated the Debtors' homestead, all household goods and furnishings, all clothing, and the two vehicles. Plaintiff was listed on Schedule F as the creditor holding the largest unsecured nonpriority claim.

On September 25, 2002, Plaintiff Thomas filed an objection to Debtors' exemptions alleging that Debtors had substantially more property that was shown on Schedule B and that not all of Debtors' personal property was exempt. On September 15, 2002, Debtors filed Amended Schedules A, B, and C. Amended Schedule A listed the homestead as having a value of \$124,000, subject to a secured claim of \$105,000. Changes in Amended Schedule B, personal property, increased the value of household goods, furniture and personal property from \$500 to \$27,545.80, increased the value of clothing from \$500 to \$1500, and included ornaments of the person and jewelry valued at \$1000. Attached to Amended Schedule B was an eight page, 468 entry itemization of personal property,

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<sup>8</sup> Question 2 on Schedule B requires the listing of “[c]hecking, savings, or financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses or cooperatives.”

<sup>9</sup> Question 7 on Schedule B requires the listing of all “[f]urs and jewelry.”

<sup>10</sup> Question 8 on Schedule B requires the listing of all “[f]irearms and sports, photographic, and other hobby equipment.”

<sup>11</sup> Question 33 on Schedule B the requires the listing of “[o]ther personal property of any kind not already listed. Itemize.”

showing for each item the purchase price, the years held, depreciation, and current value. The total value of personal property on Schedule B increased from \$38,500 to \$67,045.80. On Amended Schedule C, property claimed as exempt, the Debtors listed all property included on their Amended Schedule B, with the exception of the business inventory valued at \$15,000. The Debtors did not file an amended Statement of Financial Affairs.

Plaintiff Thomas filed an objection to Debtors' Amended Schedule C, property claimed as exempt. It was alleged that 21 of the items enumerated under the classification of exempt household goods and furnishings were not exempt pursuant to K.S.A. 60-2304(a). These items included ten guns, fitness equipment, two violins, and tools. The Trustee also objected to the Debtors' exemptions with respect to nine guns and a hot tub. The objections to exemptions were resolved by agreement and a private sale of a treadmill, weight station, nine guns, two violins, power tools, a shop vac, a riding mower, a hot tub, and an entertainment unit for \$4500.<sup>12</sup>

The Debtor<sup>13</sup> Charles Haneke testified that he read the Schedules and Statement of Affairs before signing them and understood that he was signing the documents under penalty of perjury. As to the \$500 for the value of household goods and furnishings, the Debtors relied upon the value of \$500 based upon discussions with their attorney, who had not been through Debtors' house. Debtor testified that according to those discussions he believed that he had only \$500 worth of property in his house. In fact, the Debtor's testimony also established that in 2001 and 2002 he had used possibly as much as

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<sup>12</sup> Doc. Nos. 43, 49, 53, 58, and 63.

<sup>13</sup> By agreement of the parties, Debtor Janice Diane Haneke was not present at trial. She agreed to be bound by any decision regarding David Charles Haneke.

\$18,000, which had been on deposit in a savings account at Farmers Bank and Trust, to purchase a portion of the personal property which was subsequently claimed in Schedule B to have a value of \$500. The itemization of property attached to the Amended Schedule B included the year of purchase and the purchase price for each item. Those items purchased within one year had a purchase price of approximately \$23,000 and a value on the Amended Schedule of half of that amount.

The Debtors' counsel who prepared the bankruptcy pleadings, Robert Bates, testified that he usually uses a figure of \$500, \$1000, or \$2000 for household goods value and does not include an itemization on schedule B. Debtors' counsel did not discuss with his clients the nature of their property. When the initial bankruptcy schedules were prepared, Mr. Bates was not advised of the guns owned by the Debtor and was not informed that there had been a recent loss of real and personal property because of a tornado. It was Mr. Bates' practice to discuss with his clients the Kansas exemptions, telling them that clothing, personal possessions, household goods and furnishings were exempt. When preparing the schedules for the Haneke, Mr. Bates did not have a client worksheet form. Nor did he give them blank schedules to review and fill out. Rather, Mr. Bates asked questions and took "oral notes."<sup>14</sup> Debtor testified that Mr. Bates asked for information about "bank accounts, creditors, that sort of thing which I typed and then gave to him."<sup>15</sup> Nothing from Mr. Bates' file was offered as evidence at the trial. After the objection to exemptions had been filed, Mr. Bates realized it was important to get an itemization of personal property on record and contacted his clients. The guns, as well as the additional property later determined to be nonexempt, were included in the itemization on

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<sup>14</sup> Testimony of David Charles Haneke, Tr .46, l. 20.

<sup>15</sup> *Id.* at ll. 21-22.

the Amended Schedule B but were nevertheless claimed as exempt on Amended Schedule C.

Neither the Debtors' Statement of Financial Affairs nor Schedules disclosed any accounts at financial institutions. Schedule B, question 1, listed only \$500 cash. Based upon subpoenas issued in the bankruptcy proceeding, the Plaintiff became aware of five financial accounts which should have been but were not included in the Debtors' bankruptcy filings. There were two accounts at Farmers Bank & Trust, Great Bend on the date of filing. The first was checking account number 33-105-8 owned by the Debtors which had a balance of \$508.22 on August 8, 2002. The second was checking account number 81-563-9 owned by the Debtors d/b/a The Body Lobby, a bath and body product shop run by the Debtor's wife, which had a balance on August 8, 2002 of \$715.16. Neither of these accounts were disclosed on Debtors' Schedule B.

There were also two accounts which had been closed within one year prior to the filing. They were savings account number 4772913 at Farmers Bank & Trust, Great Bend, which was owned by the Debtors and was closed on July 29, 2002. The balance of \$1080 was transferred to the d/b/a Body Lobby account. That account had been opened to hold insurance proceeds for tornado damage to personal property. As discussed above, a portion greatly in excess of \$500 was used to purchase replacement personal property. In addition, \$32,000 was used to purchase The Body Lobby business.

The second account which was closed prepetition was at First Kansas Bank, Great Bend, savings account number 380881. It had been opened using the insurance proceeds for real property damage. It was closed on July 29, 2002, and the balance of \$1024.96 was transferred to an undisclosed destination. Neither of these accounts were disclosed on the Statement of Affairs, item 11. The Plaintiff also identified a fifth account, owned by Debtor Janice Haneke and her daughter, at

Farmers Bank & Trust, Great Bend, checking account No. 0100363945. It had a balance of \$2171.90 as of August 8, 2002. It was not disclosed on Schedule B.

The Debtor testified at that as of August 7, 2002 he knew that he had two bank accounts and a third in the name of his wife and daughter. He acknowledged that when signing the Schedules, he could see on Schedule B that the accounts were not disclosed. Debtor also testified that he knew on August 7, 2002 that he had closed two bank accounts within one year prior to the filing. These accounts were not included in the Debtors' Statement of Financial Affairs. The Debtor testified that he had advised his lawyer of these accounts. Debtors' lawyer testified that the Debtor disclosed that he had approximately \$500 in his personal account and did discuss bank accounts, two of which had been closed. Mr. Bates testified that his files included no documentation regarding the bank accounts. The Trustee has made demand to recover the sums in the Debtors' accounts for the benefit of the estate.

The Debtor transferred \$2500 to his stepdaughter in February 11, 2002. Although the transfer was within one year of filing, it was not disclosed in the Statement of Financial Affairs. The Trustee determined not to recover for the estate either the money transferred prepetition to the stepdaughter or the balance in the account in her name and the Debtor's wife's name on the date of filing.

The Debtors' Statement of Financial Affairs, question 3, listed \$2000 paid to Advanta Bank Corp., an unsecured creditor, in June and July, 2002. The Plaintiff's reconstruction of the Debtors' bank accounts revealed payments of \$3000 on May 21, 2002 and \$1000 on June 25, 2002 to Advanta Business Card. The Debtor acknowledged that he had the ability to verify the information on the Schedules by looking at the bank statements, but failed to do so. In addition, there was a cash payment of \$2000 six days prior to the filing which was not disclosed in response to question 10 of the



Statement of Financial Affairs.

The Debtor did not advise the Trustee at the 341 hearing that the information contained on the Statement of Financial Affairs was incorrect. Since the Trustee learned of the omitted assets, he has recovered d \$4500 cash from the sale of nonexempt personal property and has made demand to recover the funds that were in financial the institution accounts on the date of filing. The Trustee testified full disclosure of transfers within 90 days to unsecured creditors and cash payments are of interest to him in his efforts to recover assets for the benefit of creditors.

#### **ANALYSIS AND CONCLUSIONS OF LAW.**

The Plaintiff contends that Debtors should be denied a discharge pursuant to section 727 (a)(4)(A). That subsection of the Code provides, “The court shall grant the debtor a discharge, unless ... the debtor knowingly and fraudulently, in or in connection with the case made a false oath or account.” “In order to deny a debtor’s discharge pursuant to this provision, a creditor must demonstrate by a preponderance of the evidence that the debtor knowingly and fraudulently made an oath and that the oath relates to a material fact.”<sup>16</sup> In this case, it is undisputed that Debtors made incorrect entries and omitted required information on the Statement of Financial Affairs and Schedules, even though they made oaths that such documents were true and correct. The issues facing the Court are whether these statements were fraudulent and related to material facts.

Because ordinarily the debtor will be the only person able to testify directly concerning intent and is unlikely to state his intent was fraudulent, “fraudulent intent may be deduced from the facts and

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<sup>16</sup> *Gullickson v. Brown (In re Brown)*, 108 F.3d 1290, 1294 (10th Cir. 1997).

circumstances of the case.”<sup>17</sup> Although mere mistake or inadvertence, an honest error or mere inaccuracy, is not a proper basis for denial of discharge, reckless indifference to the truth is equivalent to fraud.<sup>18</sup> When there is a pattern of numerous omissions from the schedules, none of which in isolation might have been significant, the total picture may indicate a pattern of deceit and certainly would support an inference of reckless disregard for the truth.<sup>19</sup> A debtor’s business experience coupled with the presence of several omissions from the statement and schedules have been held to be evidence of fraudulent intent.<sup>20</sup> Although a debtor’s amendment of schedules on his own accord early in the process to include omitted property may evidence absence of fraud, the contrary inference arises where the debtor amends filings only after errors have been identified by another party.<sup>21</sup> “[O]nce it reasonably appears that the oath is false, the burden falls upon the bankrupt to come forward with evidence that he has not committed the offense charged.”<sup>22</sup>

A false oath is material when it concerns the existence and disposition of the debtor’s property, or his personal and business financial transactions during the relevant period.<sup>23</sup> The need for debtors to

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<sup>17</sup> *Calder v. Job (In re Calder)*, 907 F.2d 953, 956 (10th Cir. 1990).

<sup>18</sup> *Boroff v. Tully (In re Tully)*, 818 F.2d 106, 112 (1st Cir. 1987).

<sup>19</sup> *Holland v. Sausser (In re Sausser)*, 159 B.R. 352, 356 (Bankr. M.D. Fla. 1993).

<sup>20</sup> *In re Calder*, 907 F.2d at 956.

<sup>21</sup> Compare *In re Brown*, 108 F.3d at 1295 with *Sholdra v. Chilmark Financial LLP (In re Sholdra)*, 249 F.3d 380 (5th Cir. 2001).

<sup>22</sup> *In re Tully*, 818 F.2d at 110 (quoting *Matter of Mascolo*, 505 F.2d 274, 276 (1st Cir. 1974)).

<sup>23</sup> See *In re Calder*, 907 F.2d at 955.

fully disclose their financial circumstances goes to the heart of the bankruptcy process. As stated by the First Circuit,

(T)he 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 that complete, truthful, and reliable information is put forward at the outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction. As we have stated, “[t]he successful functioning of the bankruptcy act hinges both upon the bankrupt’s veracity and his willingness to make a full disclosure.” [In re] Mascolo, 505 F.2d [274,] 278 [(1st Cir. 1974)]. Neither the trustee nor the creditors should be required to engage in a laborious tug-of-war to drag the simple truth into the glare of daylight.<sup>24</sup>

A debtor’s failure to respond fully to the questions in the statement of financial affairs, the failure to disclose assets on the schedules,<sup>25</sup> and inaccurate valuations all fall within the foregoing rationale.

“[T]here is little that will prove to be immaterial for purposes of required disclosure if it aids in understanding the debtor’s financial affairs and transactions.”<sup>26</sup>

### **1. Debtors’ False Personal Property Schedules.**

Debtors’ Schedule B filed with their petition valued all household goods and furnishings at \$500

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<sup>24</sup> *In re Tully*, 818 F.2d at 110 (citations omitted).

<sup>25</sup> *E.g.*, *Gordon v. Mukerjee (In re Mukerjee)*, 98 B.R. 627 (Bankr. D. N.H. 1989) (denying discharge when debtor omitted two banks accounts and a vehicle from his schedules and he undervalued his interest in household goods and furnishings in his schedules); *Casey v. Kasal*, 223 B.R. 879 (D.E.D. Pa. 1998) (denying discharge where there was nondisclosure of the assets transferred to family members, debtor undervalued assets, and debtor failed to disclose automobiles titled in the name of his wholly owned business, of which he had beneficial use).

<sup>26</sup> *Casey v. Kasal*, 223 B.R. at 884 (quoting *In re Coombs*, 193 B.R. 557, 567 (Bankr. S.D. Cal.1996)).

and on Schedule C all such assets were claimed as exempt under Kansas law. Schedule B valued clothing at \$500. On Debtors' Schedule B "none" was checked for firearms and jewelry. After Plaintiff objected to the Debtors' exemptions, asserting that the Debtors' personal property claimed as exempt was worth in excess of \$500 and included nonexempt assets, Debtors then filed an Amended Schedule B increasing the value of household goods and furnishings from \$500 to \$27,500.80, increasing the value of clothing from \$500 to \$1,500, and adding jewelry of \$1000 value. Debtors also filed an Amended Schedule C, again claiming all household goods as exempt. Although the eight-page itemization of personal property attached to Amended Schedule B included guns, the Debtors did not separately value the guns in response to question 8, which required the listing of all firearms. The guns were included in the property claimed as exempt. Additional nonexempt property, including exercise equipment, power tools, musical instruments, and a hot tub, were also buried in the attached itemization to Schedule B and claimed as exempt in Schedule C.

The Court finds that the false oaths regarding personal property were material. The falsely low value for household goods and furnishings in the Debtors' initial Schedule B was material because it falsely represented that Debtors owned essentially no personal property, indicating to the Trustee that further inquiry as to the Debtor's circumstances and exemptions would not be fruitful. The omission of nonexempt assets and open bank accounts also misled the Trustee. Because of Plaintiff's objection to the exemptions claimed in Debtors initial Schedules, Amended Schedules were filed, making it possible to identify nonexempt personal property. As a result, the Trustee recovered \$4500 from the sale of the nonexempt property and has made demand for the assets that were in the open financial accounts.

The Court also finds that the Debtors knowingly and fraudulently the false oaths regarding their

personal property. Debtors' initial and Amended Schedules B and C were filed under oath. Debtor is employed as a hospital administrator, and his duties include preparing accurate financial reports for Medicare and Medicaid. Debtor admitted that he read the Schedules before signing under oath, understood the importance of the requirement that information be accurate, and also understood the import of signing under oath. No reasonable person in Debtors' position could have believed that the total value of their household goods and furnishings was \$500, when only a portion of that property had been purchased with one within one year of filing for the approximately \$23,000. No reasonable person in Debtors' position could have believed that the firearms should be included in the household goods and furnishings when there was a separate question requiring itemization of this property on Schedule B. No reasonable person in Debtors' position could have believed that the jewelry did not need to be listed when there was a separate question on Schedule B regarding this property. Debtors did not file Amended Schedules until an objection was made to their exemptions. Debtors' initial failure to list the jewelry and guns and the erroneously low value ascribed to Debtors' household goods and furnishings and their homestead all evidence fraudulent intent.

Although the Debtors prepared and a filed Amended Schedules, even those Schedules evidence continued intent not to make a complete, truthful, and reliable disclosure of information. In the Amended Schedules, Debtors did not list firearms in response to item 8 of Schedule B. Debtor's claimed all the Amended Schedule B household goods and furnishings, including firearms, exercise equipment, tools, musical instruments, and a hot tub, as exempt by burying these nonexempt assets in the eight-page, 468 entry itemization of personal property.

## **2. Debtor's Failure Disclose Open and Closed Accounts at Financial Institutions.**

Debtors' Schedule B failed to identify two open bank accounts at Farmers Bank & Trust. Debtors' Statement of Financial Affairs failed to disclose two bank accounts which were closed less than one year before filing a bankruptcy. The Schedules and Statement were submitted under oath and were false. No objection was made to the Debtors' Statement of Financial Affairs or the missing accounts in Schedule B. These nondisclosures were never corrected.

The omission of the open accounts was material, as the estate was entitled to the cash in the two open accounts on the date of filing. The Trustee has made demand to recover the property from the Debtors. The omission of the closed accounts was also material, as the omitted information would have been useful to the Trustee in ascertaining the Debtors' prebankruptcy transactions and the possibility of additional assets for the benefit of the estate.

The Court finds that the omissions were knowingly and fraudulently made. Debtor testified that he knew he had the accounts on the date of filing and that he reviewed the Statement and Schedules before signing the same under oath. He admits that he discussed the accounts with his counsel. His only defense is reliance upon advice of his counsel, which is discussed below.

## **3. Debtors' Failure to Disclose in their Statement of Affairs all Payments to Creditors within 90 Days before Filing and a Cash Payment Made within One Year.**

The Statement of Financial Affairs, question 3, required the Debtors to list all payments to creditors within 90 days prepetition, and question 10 required the listing of all transfers of property within one year immediately preceding the commencement of the case, other than transfers in the ordinary course or otherwise listed in the Statement. The Debtors failed to disclose all of the payments

made to Adventa in the preference period and the \$2000 cash disbursement made within one year of filing. The information was omitted from Debtors' Statement of Financial Affairs, which was signed under oath.

The omissions were material. The preferential transfer was most likely recoverable by the Trustee, and the Trustee would have further investigated the cash payment. The Debtor admitted that he could have identified the transfers if he had reviewed all of his bank statements. Given all of the circumstances of this case, including the Debtors' obvious failure to give their counsel complete, accurate information about their financial affairs and to assure that all that information was accurately included in the Schedules and Statement signed under oath, the Court finds the Debtor acted recklessly, and therefore fraudulently, when not making an accurate disclosure of the prepetition transfers to Advanta within the 90 days before filing and the \$2000 cash transfer.

#### **5. Debtors' Failure to Disclose Transactions with Janis Haneke's Daughter.**

The Debtors' Statement of Financial Affairs omitted a reportable transfer of money to Debtor Janis Haneke's daughter and Schedule B omitted an account at a financial institution held jointly by Debtor Janis Haneke and her daughter. The Trustee has determined not to pursue recovery of these assets. The Court agrees with the Trustee's decision and finds that the disclosures were not material. Denial of discharge can not be based upon such lack of such disclosures.

#### **6. Debtors' Defenses of Reliance upon the Advice of Counsel and "No Harm No Foul" are not Applicable under the Circumstances of this Case.**

Debtors' primary defense to the foregoing findings of a knowing and fraudulent making of false oaths is reliance upon the advice of counsel. The Court does not believe that an attorney is an insurer

or guarantor of the accuracy of a debtor's schedules. Likewise, debtors should not suffer, except in extreme circumstances, for the failings of their lawyer. Nevertheless, reliance upon the advice of counsel constitutes a defense only if the reliance is reasonable.<sup>27</sup> Advice of counsel is not a defense when it is transparently clear that the action contemplated did not comply with bankruptcy disclosure requirements.<sup>28</sup>

In this case, the Court believes the Debtor as to what he was advised by counsel. However the Court rejects the Debtors' advice of counsel defense. The evidence establishes that Debtors did not disclose to their counsel that a substantial portion of their personal property and household goods had been recently purchased for a sum substantially in excess of \$500 or that this property included guns and other nonexempt items worth several thousand dollars. In this case, it had to be obvious to these Debtors that the Schedules and Statement of Financial Affairs omitted information that was clearly called for, including, nine guns, five bank accounts, and payments to creditors and relatives. These Debtors are experienced in business and are not unfamiliar with intricate paper forms. These Debtors reviewed the Schedules and Statement before they signed them. They were not justified to unquestioningly "trust our lawyer" with regard to the information contained in the Schedules and Statement. The Debtors' failure to make full disclose to their counsel, coupled with their failure to file a more accurate Schedule B until objections were made and all of the deficiencies in the Schedules, Statement of Financial Affairs, and their Amended Schedules, evidence fraudulent intent which cannot

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<sup>27</sup> *American State Bank v. Montgomery (In re Montgomery)*, 86 B.R. 948, 958 (Bankr. N.D. Ind.1988) (collecting numerous cases addressing the defense).

<sup>28</sup> *See Hibernia National Bank v. Perez*, 124 B.R.704 (D.E.D La. 1991) *aff'd Matter of Perez*, 954 F.2d 1026 (5th Cir. 1992).



be blamed solely upon their counsel.

To fail to rule that the false oaths in this case are sufficient to deny discharge would be to reward a lawyer who made no inquiry and Debtors who asked no questions. It would reward irresponsible attorneys and clients who indulge in intentional apathy and punish clients who make proper disclosures to conscientious lawyers who make a reasonable effort to get accurate, not perfect, information from their clients. This the Court will not do

The Debtors' defense of "no harm, no foul" is also rejected. Debtors' false oaths did result in harm. The Trustee and the Plaintiff were required to spend a significant amount of time, effort, and money ferreting out information which should have been disclosed with the initial filings. The fact that the monetary value of the assets recovered for the estate was not particularly large does not equate to no harm. The omissions were significant and should have been obvious to the Debtors.

## **CONCLUSION.**

For the foregoing reasons, the Court sustains the motion of Plaintiff David Thomas, d/b/a Thomas Quality Homes & Improvements objecting to the Debtors' discharge pursuant to 11 U.S.C.A. § 727 (a)(4)(A). Debtors knowingly and fraudulently in this case made false oaths which related to material facts.

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