

In re:

Debtor.

[Chapter 7]

Plaintiff,

Adversary Proceeding Number
93PB-2034


DALE LOWELL LARSON,

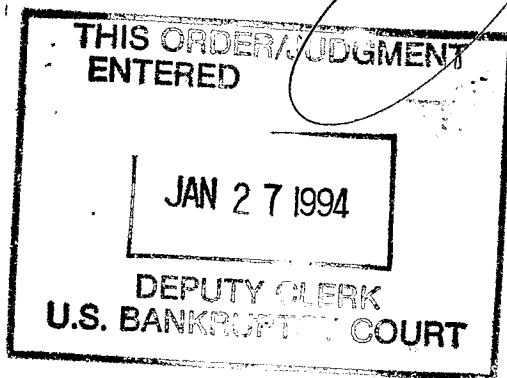
Defendant.

The Plaintiff herein filed a complaint seeking denial of the Defendant's discharge pursuant to 11 U.S.C. § 727(a)(2), (3) and (4). The court considered the credibility of the witnesses and the evidence presented, the arguments of counsel, and made an independent review of applicable case law. Having entered Findings of Fact and Conclusions of Law dated January 27, 1994, it is hereby

ORDERED, ADJUDGED and DECREED, that the Defendant, Dale Lowell Larson, is hereby denied a discharge pursuant to 11 U.S.C. § 727(a)(2), 11 U.S.C. § 727(a)(3), and 11 U.S.C. § 727(a)(4).

DATED this 27 day of January, 1994.


JUDITH A. BOULDEN
United States Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:

DALE LOWELL LARSON,

Debtor.

: Bankruptcy Number 92B-26851

: [Chapter 7]

STEPHEN W. RUPP,
Trustee,

Plaintiff,

: Adversary Proceeding Number
: 93PB-2034

v.

DALE LOWELL LARSON,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a denial of discharge proceeding brought by the chapter 7 trustee pursuant to 11 U.S.C. § 727(a)(2)(A)(B), (3) and (4). The issues are whether the Defendant's pre-petition transfer of his interest in his home, his failure to list any assets other than clothes and tools in his schedules, and his failure to either keep recorded information or turn over recorded information to the trustee, should result in denial of his discharge.

Trial was held during which the court had the opportunity to view the demeanor of the witnesses and evaluate the evidence. The matter was taken under advisement and the court has now considered the evidence adduced at trial, the arguments of counsel and has made an independent review of applicable case law. Based upon the totality of the evidence as applied to the relevant law, the court concludes that the Plaintiff has met his burden of proof and the Defendant's discharge is denied. The circumstances of the case and rational for the court's decision are as follows.

FINDINGS OF FACT

THE PARTIES

1. The Defendant, Dale Lowell Larson (Defendant) is a Debtor before this court pursuant to his *pro se* filing of a Chapter 7 petition on October 26, 1992.
2. The Plaintiff, Stephen W. Rupp (Plaintiff) is the Trustee duly appointed for the Chapter 7 estate of the Defendant.
3. Grethe Larson is the Defendant's wife of twenty seven years (collectively the Larsons).
4. On November 9, 1992, the Defendant executed under penalty of perjury and filed with the court his Statement of Financial Affairs (Financial Statement) and his Bankruptcy Schedules A through J (Schedules).
5. The First Meeting of Creditors was conducted by the Plaintiff on November 30, 1992, pursuant to 11 U.S.C. § 341.¹

¹ Future references are to Title 11 of the United States Code unless indicated.

THE REAL PROPERTY

6. The Larsons jointly acquired real property and built a home at 4845 South 3600 West, Salt Lake City, Utah (the Real Property), over twenty years ago. The Defendant and Grethe Larson reside in the Real Property and have done so for over twenty years. The Larsons held joint title to the Real Property until 1987.

7. The Larsons have continuously lived in and raised their family in the Real Property from the time of its acquisition and construction until the present. The Larsons have had the continuous use, possession, benefit, enjoyment and control of the Real Property from its acquisition and construction until the present. The Larsons' use, possession, enjoyment and control of the Real Property has not changed since the acquisition and construction of the Real Property.

8. The Larsons have always and continuously serviced the first mortgage debt now owed to Chase Home Mortgage secured by the Real Property. The Larsons have always and continuously paid the real property taxes accruing on the Real Property. They have also paid all premiums for insurance on the Real Property and the homeowner's insurance policies show the Larsons to be the parties insured. The Larsons' income has been the source of funds to service the debt, pay the taxes and the insurance.

9. The Larsons have always and continuously claimed a deduction on their tax returns for interest paid on debt secured by the Real Property. The Larsons have always and continuously claimed a deduction on their tax returns for real property taxes paid on the Real Property.

L & L WIRE

10. In or around 1984, the Defendant and his son-in-law, Robert Lucking (Lucking), commenced or expanded a business known as L & L Wire. L & L Wire was a partnership of the Defendant and Lucking as indicated by the Certificate of Partnership executed by the Defendant.

11. The business required the use of an expensive piece of equipment. Lucking and L & L Wire could not acquire the equipment through either a lease or a purchase on their own financial standing. The acquisition of the equipment required the financial backing of the Larsons.

12. The Defendant guaranteed the full performance of the lease of the equipment from P.F.C., Inc. (PFC), a lease broker. The Larsons also gave a deed of trust describing the Real Property to secure performance on the lease of the equipment from PFC. PFC subsequently assigned the lease and related documents to Overland Thrift & Loan (Overland).

13. The signature of the Defendant on the deed of trust is not his. Grethe Larson signed the Defendant's name to the deed of trust without his authority. Grethe Larson has maintained and still maintains that her obligation and pledge of the Real Property was obtained through fraud.

14. L & L Wire failed and L & L Wire, Lucking and the Defendant defaulted in their performance under the equipment lease. Overland commenced proceedings to exercise the power of sale under the deed of trust on the Real Property by recording a Notice of Default and Election to Sell on January 23, 1987.

15. The Larsons retained Royal K. Hunt (Hunt), an attorney then in good standing, to defend them and to address the issues arising from or relating to Overland's claim. Hunt retained Morris Meyers (Meyers) to perform contract legal work for Hunt on the Larsons' case. Meyers is legally trained, having practiced law until 1973 or 1974. Meyers was convicted and sentenced to jail for improper financial dealings and his license to practice law was and is revoked.

16. As a result of his contract with Hunt, Meyers has performed essentially all or a significant portion of the legal work in the Larsons' case relating to these matters since 1986. He has also prepared almost all the pleadings filed in various courts, except the execution of legal pleadings and appearances for and on behalf of the Larsons in court. Meyers directly helped the Defendant in filing this *pro se* bankruptcy. He prepared the Financial Statement, Schedules and exhibits. Meyers performed legal research and dealt with the legal issues related to the deed of trust. Meyers has also directly helped the Defendant in the prosecution of his defense and in discovery in this adversary proceeding.

OVERLAND SETTLEMENT AND TRANSFER

17. Meyers testified that the Larsons sought to settle with Overland by offering to pay \$35,000, the amount Meyers had calculated was owing, to Overland. The Larsons, however, did not have access to the necessary funds. Meyers allegedly contacted a client of Hunt's, Systematic Builders, Inc. (Systematic Builders), who agreed to provide a line of credit

up to \$35,000 for the Larsons' use. Meyers testified that he worked out the arrangements through his connection, Mike Larsen, the president of Systematic Builders.²

18. Systematic Builders at all relevant times, and from 1982 to 1991, was Hunt's client. Meyers provided contract legal services to Hunt related to the case or cases of Systematic Builders.

19. Mauri Meyers, the son of Morris Meyers, was a Secretary/Treasurer and otherwise affiliated with Systematic Builders.

20. In January of 1987, the Larsons conveyed the Real Property by warranty deed dated January 21, 1987, to Systematic Builders. The transfer occurred before any sale of the Real Property pursuant to Overland's exercise of its power of sale and before any judgment, and just before the Larsons commenced litigation with Overland. The warranty deed, notarized by Hunt, was recorded on February 5, 1987.

21. At the time of the transfer, the Real Property was worth approximately \$80,000 and the Larsons had encumbered the Real Property by a trust deed note of approximately \$15,000. The resulting equity transferred by the warranty deed was \$65,000. The Real Property was the Larsons' sole valuable asset at the time of transfer. The Larsons remained liable on the deed of trust owed to Chase Mortgage after they had transferred away their interest in the Real Property.

22. The Defendant was insolvent before or became insolvent at the time of the transfer of title to the Real Property to Systematic Builders.

² Although the spelling of the last name is similar, Mike Larsen apparently is not related to the Defendant or Grethe Larson.

23. The Larsons' depositions were taken in 1989. At that time the Larsons did not know what Systematic Builders was. They did not know who the principals of Systematic Builders were. The Larsons transferred the property to Systematic Builders due to a transaction arranged and recommended by Meyers, and pursuant to Hunt's instructions. Meyers or Hunt, or both, selected Systematic Builders as transferee.

24. Since his initial responses to examination, the Defendant now states that the Larsons have met and discussed the matter. They now recall that the transfer of the Real Property was in anticipation that Systematic Builders had credit or funds available with which a settlement might be paid to Overland, if a settlement could be reached.

25. Both the Defendant and Grethe Larson have previously stated that they transferred legal title to Systematic Builders solely at the recommendation of Hunt.

26. The court received a copy of the warranty deed in evidence. Although Hunt notarized the warranty deed, and Meyers coordinated the transaction, no other documents were received into evidence regarding the alleged line of credit with Systematic Builders, its terms or conditions of advancing funds, or any proposed repayment terms.

27. The Larsons never achieved a settlement with Overland. Nor did the Larsons receive any funds or other consideration from Systematic Builders in exchange for transfer of the Real Property. The Larsons never drew on any line of credit.

28. Despite the conveyance of the Real Property by warranty deed, the Larsons did not provide Systematic Builders with the possession, use, benefit, enjoyment or control of the Real Property. Systematic Builders has never paid any of the taxes on the Real Property or made any of the insurance premium payments. Systematic Builders has never serviced any debt

secured by the Real Property. The Defendant, Grethe Larson, and their family have the exclusive use, possession, enjoyment, benefit and control of the Real Property.

29. Systematic Builders has never reconveyed the property back to the Larsons.

STATE COURT LITIGATION

30. The Larsons commenced a state court proceeding against Overland in May, 1987, styled *Dale L. Larson, Grethe Larson, and Systematic Builders, Inc., a Utah Corporation v. Overland, et al.*, Case No. C87-3405, Third Judicial District Court, Salt Lake County, State of Utah. The Larsons commenced the proceeding in an attempt to restrain Overland from exercising its power of sale under the deed of trust and to dispute Overland's claims by alleging fraud. Hunt, with the assistance of Meyers, represented both the Larsons and Systematic Builders in the litigation.

31. The Court denied the Larsons' attempt to restrain or enjoin Overland's exercise of the power of sale under the deed of trust. As a result, Overland conducted a Trustee's sale on May 27, 1987, at which sale, Overland credit bid approximately \$52,000. The state court action subsequently evolved into claims and counterclaims between Overland and the Larsons. The allegations concerned fraud and liabilities under and related to the lease of the equipment, the guaranty and the balance of Overland's claim.

32. The initial complaint filed in state court listed Systematic Builders as a plaintiff along with the Larsons. The complaint did not disclose Systematic Builders' interest in the Real Property. After Hunt and Meyers amended the complaint for a fourth time so that it sufficiently stated a claim for relief, Overland brought a motion for summary judgment to dismiss Systematic Builders as a plaintiff. The plaintiffs did not present sufficient evidence

regarding Systematic Builders' interest in the Real Property and the court dismissed it from the litigation.

33. Despite, and subsequent to, the transfer of the title to the Real Property to Systematic Builders, Dale and Grethe Larson have admitted ownership of the Real Property. The Larsons admitted ownership of the Real Property in depositions taken in 1989 in the state court litigation. They have also pursued causes of action based upon their standing as owners of the Real Property.

34. Overland counterclaimed to, among other things, realize upon the Defendant's guaranty of L & L Wire's debt. Eventually the parties resolved all the claims for relief through summary judgment. The court also rendered judgment against the Defendant in favor of Overland on his failure to perform on his guaranty on May 14, 1990, for \$101,624.45.

35. The Defendant listed this state court judgment as an unsecured claim in his Schedules filed on November 9, 1992, but it was not designated as a contingent, disputed or unliquidated claim. On August 2, 1993, the Defendant filed an unsworn amendment to his Schedule F that listed the judgment obtained by Overland as "void", and scheduled it as contingent, disputed and unliquidated.

36. The state court's judgments were appealed. The appellate court upheld the judgment against the Defendant on his failure to perform on his guaranty, but reversed on Grethe Larson's claims for fraud and remanded for trial.

37. After the appellate court remanded the matter, Overland learned that Systematic Builders had a recorded interest in the Real Property. It filed a quiet title action that was to be heard with Grethe Larson's fraud action. At the date of trial in May of 1993, Grethe

Larson was not prepared to go forward. Overland moved for and the court granted summary judgment, quieting title in the Real Property and dismissing Grethe Larson's fraud claims. The state court has not granted a final order.³

38. The more credible evidence shows that the amount of the state court judgment on the guaranty is calculated appropriately and is not in conflict with the liquidated damages portion of the lease.

39. The testimony that the Defendant intended to transfer his interest in the Real Property in exchange for a line of credit from Systematic Builders to settle with Overland is not credible. The Defendant transferred his interest in the Real Property because of Overland's attempt to foreclose upon the property. The Defendant executed the warranty deed to Systematic Builders just two days before Overland recorded its Notice of Default and Election to Sell. Systematic Builders recorded the warranty deed within two weeks after Overland commenced to exercise its powers under the deed of trust. Systematic Builders did not transfer the Real Property back to the Defendant after Overland rejected the Larsons' settlement offer of \$35,000 and the Defendant no longer required a line of credit from Systematic Builders.

ACTIONS SUBSEQUENT TO JUDGMENT

40. Systematic Builders was involuntarily dissolved on July 1, 1990, for failure to file its annual report.

³ Overland's interest in the litigation is now held by the Resolution Trust Corporation, which organization is in the process of determining how it wishes title to appear in the judgment. Therefore, the pleadings reflecting the court's ruling have not, as of the date of this trial, been presented to the state court.

41. Meyers has been in contact with Mike Larsen, the President of Systematic Builders, both before and after the involuntary dissolution of Systematic Builders. One of the subjects of Meyers' contact with Mike Larsen was concerning the legal title and transfer of the legal title to the Real Property.

42. On or about January 8, 1991, Meyers prepared a quitclaim deed to accomplish the transfer of legal title to the Real Property from Systematic Builders to another. Grethe Larson directed Meyers to make David Larson, the brother of the Defendant, the transferee of the quitclaim deed.

43. Pursuant to the request or instructions of Meyers, Mike Larsen, as President of Systematic Builders, received the quitclaim deed in California, executed it dating it January 8, 1991, and returned it to Meyers. Meyers then notarized the quitclaim deed and recorded it on March 27, 1991.

44. No consideration evidenced by a writing or the transfer of funds passed to Systematic Builders from David Larson for the quitclaim deed. Except for the quitclaim deed, there is no writing concerning the transfer from Systematic Builders to David Larson.

45. The Defendant testified that he now enjoys a line a credit from his brother, David Larson. There is no writing concerning the second line of credit between the Defendant and David Larson. There is no evidence that the Defendant has ever drawn on the line of credit. The Defendant's testimony that he has a line of credit with David Larson is not credible.

46. The Defendant's testimony regarding the alleged line of credit with David Larson is evidence of the Defendant's knowledge of the transfer of the title to the Real Property from Systematic Builders to David Larson.

BOOKS AND RECORDS

47. Except for a copy of the deed to Systematic Builders the Defendant did not respond to the Plaintiff's broad discovery requests for documents related to the Defendant's assets, income or transactions. On November 30, 1992, the Trustee issued a directive (Trustee's Directive) which was admitted into evidence as Trustee's Exhibit 15. Among other documents, the Trustee's Directive instructed the Defendant to turn over all books and records to the Trustee. The Defendant did not produce any books or records to the Trustee. The Defendant also produced nothing in response to the Plaintiff's Subpoena issued March 8, 1993, setting forth a list of documents to be produced in relation to the Defendant's deposition scheduled for March 30, 1993.⁴ The request included documents related to the Larsons' dealings with L & L Wiring, Overland, David Larson and Systematic Builders.

48. The Trustee obtained copies of the title to Defendant's 1986 GMC-4 wheel drive pickup and an unsigned Promissory Note dated November 30, 1991 because these documents were attached to Defendant's Interrogatories and Requests for Production of Documents filed with the court on March 4, 1993. The unsigned Promissory Note shows a debt owed by the Larsons to Douglas and Susan Larson in the principal amount of \$8,500. The Defendant did not provide either the title or the Promissory Note to the Trustee in response to the Trustee's discovery requests or the Trustee's Directive dated November 30, 1992.

49. The Defendant is a house painter by trade and practices his craft under the name of Dale Larson Painting. The Defendant's Financial Statement filed with the court and

⁴ See Plaintiff's Exhibit 16, the deposition subpoena of March 30, 1993.

executed under penalty of perjury, discloses that the Defendant's year-to-date income for 1992 was \$35,721; that his income for 1990 was \$74,010.32; and for 1991 was \$53,770.44. The income listed in the Financial Statement for 1990 and 1991 is inconsistent with the Larsons' personal tax returns. It reflects instead, the amount of gross receipts or sales (line 1a) listed on the partnership tax returns for Dale Larson Painting for the respective tax years. The Larsons' individual tax returns reflect gross income for 1990 of \$31,844.90, and gross income for 1991 of \$25,985.08.

50. The testimony of the Defendant and Grethe Larson also contradicts Defendant's Financial Statement. The Financial Statement reflects that Defendant earned his highest level of income in 1990. Yet, both Defendant and Grethe Larson testified that the Defendant made substantially less income in 1990 than other years because he broke his leg and was unable to work. The Defendant noted this fact on the bottom of the first page of his tax return for the tax year 1990, stating "Income low as partner broke leg did not work for 5 months".

51. Dale Larson Painting is characterized as a partnership between the Defendant and Grethe Larson in partnership tax returns filed with the Internal Revenue Service in 1991 and 1992, for the tax years 1990 and 1991, respectively. The Defendant argues that he only effected the partnership style for future retirement tax benefits and is not a partnership in any other sense of the term. The evidence shows, however, that Grethe Larson participates in his business, including the receipt of regular draws. Both the Defendant and Grethe Larson benefit from the income of Dale Larson Painting. On the K1 forms attached to the tax returns,

the Larsons show that 50% of the partnership income is allocated to the Defendant and 50% is allocated to Grethe Larson.

52. Grethe Larson earned income from 1962 to 1966 from Beneficial Life, both before and after her marriage to the Defendant in January, 1965. Grethe Larson earned income from 1966 to 1968 from John Wiley & Sons. Beginning in 1968 and continuing for approximately ten years she was a homemaker and did not enjoy a source of income outside the home. From approximately 1991 until the present she has worked one day a week for her sister-in-law, and has received a partnership draw from revenue of Dale Larson Painting.

53. The 1990 partnership tax return for Dale Larson Painting shows gross receipts of \$74,010.32, total itemized deductions of \$14,337.72, with ordinary income of \$31,772.79. The Larsons' 1990 personal tax returns show total income of \$31,844.90, total itemized deductions of \$10,657.35, with taxable income of \$10,142.27. Cumulatively, sufficient recordation of business and personal income and expenses were available so that the gross business income of \$74,010.32 was reduced to taxable income of \$10,142.27.

54. The 1991 partnership tax return for Dale Larson Painting shows gross income of \$53,770.44, total itemized deductions of \$8,487.84, with ordinary income of \$23,135.99. The Larsons' 1991 personal tax returns show total income of \$25,985.08, total itemized deductions of \$10,126.94, with taxable income of \$4,757.20. Cumulatively, sufficient recordation of business and personal income and expenses were available so that the gross business income of \$53,770.44 was reduced to taxable income of \$4,757.20.

55. Analysis of the Larsons' tax returns in this manner produces results wholly inconsistent with the Defendant's testimony that he does not keep books or records of his business or personal transactions.

56. Further inconsistencies exist between the Larsons' Schedule A-Itemized Deductions filed with their tax returns for 1990 and 1991, and the Defendant's Financial Statement and Schedules signed under penalty of perjury and filed with this court. The Larsons' tax returns include deductions for charitable contributions, including a 1991 charitable contribution of over \$4,400. In addition, Defendant's budget contained in Schedule J lists payment of \$300 per month for charitable contributions. Although item 7 on Defendant's Financial Statement requires disclosure of all gifts or charitable contributions made within one year before bankruptcy, the Defendant has not disclosed the payment of any charitable contributions.

57. The partnership tax return for Dale Larson Painting filed in 1991 for the tax year 1990 shows a depreciation deduction of \$468.04 for undisclosed hard assets. The depreciation deduction indicates the partnership owned assets of value that may, in turn, have resulted in a positive value of the Defendant's partnership interest. Nevertheless, the Defendant did not list his partnership interest at paragraph 13 of his Schedule B-Personal Property.

58. There is no credible evidence that the Debtor's method of operating his business, his business income and expenses, or his personal income and expenses have changed from 1990 and 1991 to the date of the filing of this petition.

59. The amount of detail contained in the Larsons' tax returns shows that the Larsons kept business records in order to complete the returns, despite the Defendant's testimony

to the contrary. The Larsons' personal tax returns for 1990 and 1991 evidence a pattern of deductions for medical and dental expenses. The court finds that the Defendant kept at least some records in order to compile these expenses, as well as the other itemized deductions included in the tax returns. In addition, the tax returns show that the Defendant used the services of a bookkeeper, Guy Kimball of Guy Kimball Customized Bookkeeping, to prepare his tax returns. The Defendant also disclosed in his Financial Statement that he utilized the services of Guy Kimball to supervise the keeping of his books and records.⁵ The totality of these circumstances leads the court to find that Defendant kept books and records.

60. Revenue from Dale Larson Painting received by the Defendant is deposited in an account in Grethe Larson's name, along with Grethe Larson's income from her one-day-a-week employment, and her partnership draws from Dale Larson Painting. From the account, Grethe Larson pays the family bills. The Defendant uses his income to pay ordinary recurring family expenses such as utilities and mortgage payments on the Larsons' Real Property. Grethe Larson uses her income to purchase what personalty the couple uses. No separate records are maintained regarding the allocation of funds between the Defendant and Grethe Larson.

61. The Defendant has never provided the Plaintiff with the books and records relating to the account maintained by Grethe Larson, though the Defendant agreed to produce these documents. In response to the Trustee's Directive, the Defendant prepared and produced to the Plaintiff an amended Financial Statement. It consisted of four handwritten sheets listing

⁵ See Trustee's Exhibit 17. The Debtor listed Guy Kimball as his bookkeeper in the amended Financial Statement that the Debtor prepared for the Trustee, but did not file with the court.

withdrawals from the Dale Larson Partnership for the benefit of insiders from October 28, 1991 to October 26, 1992, the one year period prior to commencement of the bankruptcy case.⁶ The Defendant did not sign the amended Financial Statement and it was never filed with the court.

62. The Defendant admits that a complete and detailed financial record of his business and personal activities for all relevant times was always available for production by the Defendant, Grethe Larson, and the Larsons' accountant. However, the Defendant states in his Objections to Plaintiff's Pre-Trial Order filed on August 2, 1993 and in his Proposed Findings of Fact and Conclusions of Law filed on September 7, 1993, that the Defendant withheld voluntary production of his financial records as an incentive to the Plaintiff to comply with the Defendant's discovery requests.

THE DEFENDANT'S OTHER INTEREST IN PROPERTY.

63. The Defendant did not list in his Schedules any legal or equitable interest in the Real Property, or any debt related thereto.

64. As of the date of the Defendant's bankruptcy petition, he listed in his Schedules as the only and sole property the following: wearing apparel having a value of \$25; an interest in an irrevocable spendthrift trust of which the trustors are one of the Defendant's brothers and his wife; and certain tools and painting equipment having a value of \$250.

65. At the time of the First Meeting of Creditors, the Defendant indicated, under oath, that all household goods and furnishings, all of which were acquired during the Larsons' marriage, were owned by Grethe Larson.

⁶ See Trustee's Exhibit 17.

66. The Defendant's testimony at trial that Grethe Larson does not let him use personalty in the Larsons' home, except the couples' bed, is not credible.

67. In November 1991, the Defendant bought a 1986 GMC 4-wheel drive pickup that was financed by his brother, Douglas Larson. Defendant testified that the purchase price of the pickup truck was \$8,500. The Defendant drives, uses, possesses and enjoys the 1986 GMC 4-wheel drive pickup. Grethe Larson is the sole titled owner of the pickup and Douglas Larson is the listed lienholder. The Larsons make the debt payment from their income. Defendant testified on direct examination by the Trustee that the outstanding debt owed was \$7,000 and the valued of the pickup was \$8,000 at the time of his First Meeting of Creditors. On cross-examination, the Defendant stated that the debt owed was \$8,100 and the value was \$7,700, explaining that the prior valuation was a guess he made at the time of the First Meeting of Creditors. The debt owed by Defendant and the original purchase price of the pickup is consistent with the unsigned Promissory Note dated November 30, 1991, that shows a debt owed by the Larsons to Douglas Larson and his wife, Susan Larson, in the principal amount of \$8,500.⁷ Defendant never modified his Schedules to reflect the debt owing to Douglas Larson on the pickup, or the obligation reflected on the Promissory Note owed to Douglas and Susan Larson.

68. On August 2, 1993, the Defendant filed an amended Schedule C to his Schedules that attempted to claim an exemption in the 1986 GMC. The Defendant has not filed

⁷ A copy of the promissory note was introduced into evidence as Trustee's Exhibit 13.

an amendment to list the 1986 GMC as an asset or to list the corresponding debt to either Douglas Larson or Susan Larson.

69. Only after the First Meeting of Creditors, and only pursuant to a Trustee's directive, did the Defendant disclose that the Larsons are each one-half owners of the partnership known as Dale Larson Painting. The Defendant answered "none" to the questions set forth in Schedule B, Item 13, that required disclosure of all interests in partnerships. The Defendant has never filed an amended Schedule B with the court.

70. Only after the First Meeting of Creditors, and only pursuant to the Trustee's directive, did the Defendant answer Questions 16 through 21 of the Defendant's Financial Statement. The Defendant left these items blank in the Financial Statement filed on November 9, 1992. Although Plaintiff's Exhibit 17 contains the Defendant's answers to questions 16 through 21, the Defendant never filed these purported amendments with the court.

71. Question 21 requires a listing of all withdrawals from a partnership for the benefit of an insider within the year immediately preceding the bankruptcy filing. Attached to the Defendant's answer to question 21 are handwritten accounts constituting records of Defendant's withdrawals. The records do not appear to be maintained in the ordinary course of Defendant's business and are apparently extracted from records of the Defendant's partnership that were not provided to the Trustee.

72. The handwritten records attached to Defendant's response to question 21 show that the Defendant made a loan to Lucking of \$2,000 on June 11, 1992, less than five months prior to the Defendant filing this bankruptcy. Neither a debt owing from Lucking to the Defendant if one exists, nor the transfer was scheduled or disclosed by the Defendant. The

handwritten records also show that Defendant made a \$100 loan to Lucking on August 26, 1992 and a \$100 loan to Anissa Vuyk, Defendant's daughter, on July 15, 1992. Neither loan was scheduled by the Defendant in his bankruptcy Schedules.

73. The Larsons' daughter made an \$800 down-payment on a 1986 Mazda 323, as well as one or two subsequent installment payments. Thereafter, Grethe Larson has made all the payments for the purchase of the 1986 Mazda 323 from her bank account. The Defendant has represented that the Mazda is his daughter's.

74. The Defendant did not list on his Schedules the obligation he owes to Chase Home Mortgage as the first trust deed holder on the Real Property.

75. The Defendant's budget included in Schedule J shows a \$50 per month payment on a dental obligation in the total amount of \$1,000. The Defendant did not list a corresponding debt on the Schedules to reflect this obligation.

76. Item 19 on Defendant's Schedule B lists Defendant's personal property interest in The Dale and Grethe Larson Irrevocable Trust created on November 27, 1991.⁸ Schedule B and the attachment thereto explain that the trust is a spendthrift trust created for the benefit of the Larsons with the Defendant's brother and sister-in-law, Douglas and Susan Larson, acting as trustors. The trust was created within one year of the filing of the Defendant's bankruptcy petition on October 26, 1992. There has been no disclosure that the trust was ever

⁸ The court notes that the decision of the state appellate court which upheld the judgment against the Defendant on the guaranty but reversed and remanded on the issue of fraud was issued by the court in October, 1991, one month after the trust was created.

funded, and the Defendant's Financial Statement fails to list the transfer of any property to the trust within the year before bankruptcy.

77. The Defendant pays legal fees to Meyers and Meyers then pays the lawyer that is working on the Larsons' or the Defendant's case. Meyers also advances sums for and on behalf of the Defendant to the lawyers that are working on the Larsons' or the Defendant's case. As of the First Meeting of Creditors, the Defendant did not know who represented him and Grethe Larson in the State Court proceeding and could only get in touch with the State Court counsel through Meyers.

78. The Defendant testified on his own behalf and the court had the opportunity to observe his demeanor. The Defendant's answers were not straightforward and he was generally unresponsive or evasive on the witness stand. Defendant repeatedly answered questions posed to him by stating that he lacked knowledge, did not remember, or did not understand the questions. In those areas where he did answer, his responses appeared coached. The court concludes from its observations that the Defendant's testimony generally was not credible. This conclusion is further supported by the numerous inconsistencies in the Defendant's pleadings and other documents admitted into evidence by the Plaintiff.

Based upon the foregoing Findings of Fact, the court hereby enters the following

CONCLUSIONS OF LAW

The jurisdiction of this court is properly invoked under 28 U.S.C. §§ 157 and 1334 and by Rule 404 of the Rules of Practice of the United States District Court for the District of Utah. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (J) and (O), and the court may enter a final order. Venue is proper in the Central Division of the District of Utah.

The Plaintiff has the burden of proof in objecting to Defendant's discharge and must prove the elements of § 727 by a preponderance of the evidence. *First National Bank v. Serafini (In re Serafini)*, 938 F.2d 1156, 1157 (10th Cir. 1991).

The Plaintiff's Amended Complaint filed on June 11, 1993, states four claims for relief seeking to deny Defendant's discharge pursuant to Section 727(a) of the Bankruptcy Code. The first and second claims for relief are based on § 727(a)(2)(A) and (B).⁹

The party objecting to discharge pursuant to § 727(a)(2) must prove both a concealment and the requisite subjective intent to hinder, delay, or defraud a creditor. *Rosen v. Bezner*, 996 F.2d 1527, 1531 (3rd Cir. 1993). Intent must be actual and fraudulent in nature. *Marine Midland Business Loans, Inc. v. Carey (In re Carey)*, 938 F.2d 1073, 1077 (10th Cir. 1991); *American Savings & Loan Ass'n. v. Weber (In re Weber)*, 99 B.R. 1001, 1017 (Bankr. D. Utah 1989)(holding that § 727(a)(2) requires not only a deliberate act, but a specific intent to harm).

Recognizing that debtors may be reluctant to reveal the motivation for a transfer, courts have held that intent to conceal property may be inferred from the debtor's conduct. *Farmers Co-op. Ass'n v. Strunk*, 671 F.2d 391, 395 (10th Cir. 1982)("Fraudulent intent of

⁹ Section 727(a)(2) provides:

(a) The court shall grant a discharge, unless---

...
(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed---

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition; . . .

course may be established by circumstantial evidence, or by inferences drawn from a course of conduct.").

To determine if actual intent to hinder, delay, or defraud a creditor may be inferred, courts have applied certain indicia of fraud. *Marine Midland Business Loans, Inc. v. Carey (In re Carey)*, 938 F.2d 1073, 1077 (10th Cir. 1991). In *Carey* the Tenth Circuit provided a nonexclusive list of actions from which fraudulent intent could be inferred. *Carey*, 938 F.2d at 1077. The following actions listed in *Carey* are pertinent to this case:

- a. gratuitous transfers of property;
- b. concealment of prebankruptcy conversions;
- c. continued use of property;
- d. transfers of property to family members;

Carey, 938 F.2d at 1077 (citations omitted). Other indicia of fraud that the court may consider, are that conversion occurred after entry of a large judgment against the debtor and that the conversion rendered the debtor insolvent. *Carey*, 938 F.2d at 1077, n. 4. In this case the transfer of the Real Property was just prior to the commencement of litigation with Overland, and the transfer rendered the Debtor insolvent.

To demonstrate that a debtor concealed property pursuant to § 727(a)(2)(A), the trustee or creditor is not required to show that the debtor literally concealed assets. *United States v. Towe (In re Towe)*, 147 B.R. 545, 548 (Bankr. D. Mont. 1992); *see also Friedell v. Kauffman (In re Kauffman)*, 675 F.2d 127, 128 (7th Cir. 1981). Concealment can be evidenced by the debtor's transfer of legal title to property while retaining an equitable interest or control in the property. *Thibodeaux v. Olivier (In re Olivier)*, 819 F.2d 550, 553 (5th Cir. 1987).

Concealment is further evidenced when the debtor continues to use, possess, and derive equitable benefit from the property purportedly transferred. *Olivier*, 819 F.2d at 553-54. The proper focus is "not the secrecy of the transfer but the retained beneficial interest that constitutes the concealment." *Cullen Center Bank & Trust v. Lightfoot (In re Lightfoot)*, 152 B.R. 141, 146-47 (Bankr. S.D. Tex. 1993) (citations omitted).

It is a well settled principle that the concealment of an asset that continues, with the requisite intent, into the year before bankruptcy constitutes a form of concealment that occurs within one year before the date of filing of the petition for the purpose of § 727(a)(2)(A). *Olivier*, 819 F.2d at 555. The "continuing concealment" doctrine provides that an initial concealment of property that occurred outside the year before bankruptcy, but continued into that year, will be held to exist within the year before bankruptcy for the purpose of denying a discharge pursuant to § 727(a)(2)(A). *Rosen*, 996 F.2d at 1531.

The party objecting to discharge must prove that the requisite intent continued into the year before bankruptcy, or in other words, the court must decide, "why [the debtor] did not reveal his secret interest in the property to his creditors during the year preceding bankruptcy." *Rosen*, 996 F.2d at 1533. Wrongful intent in failing to disclose voluntarily a concealed asset cannot be negated by a debtor's subsequent disclosure when disclosure is made only after demand by the trustee. *Strunk*, 671 F.2d at 395-96. In determining the intent of the Defendant, the court may refer to and rely upon the conduct and circumstances surrounding the transfer.

Based upon the findings of fact, the court concludes that the transfer by the Defendant of the legal title to the Real Property to Systematic Builders, and the Defendant's subsequent acquiescence in the transfer of the Real Property from Systematic Builders to his

brother, David Larson, was with the willful intent to hinder, delay or defraud creditors. Although the Defendant could not have formed a direct intent as to the second transfer from Systematic Builders to David Larson, Defendant's acquiescence in the transfer to a family member for no consideration shows an attempt to keep continuing control over the Real Property. Though not exclusive, the court's conclusion is based upon the following:

a. The Defendant retained and continued to have the possession, use, benefit and enjoyment and control of the Real Property purportedly transferred to Systematic Builders. The Defendant's use of the Real Property was no different after the transfer than it was before the transfer.

b. The Defendant transferred the legal title to Systematic Builders for no consideration.

c. The Defendant transferred legal title to the Real Property to Systematic Builders, an entity from which it might be suspected that the Defendant could retake the property. Systematic Builders appears to have been a manipulated corporation, directly or indirectly, through the Defendant's legal counsel and advisors and associates. It was an entity through which the Defendant or Grethe Larson could control the disposition of the legal title to the Real Property and from which they could have retaken legal title.

d. The Defendant was insolvent before or was rendered insolvent due to the transfer of the legal title to the Real Property. The transfer occurred at a time when a creditor was taking steps to force its claim against property and, eventually, against the Defendant personally. The transfer of the Real Property occurred very shortly before the Defendant's initiation of litigation against the creditor in an attempt to prevent the creditor's

collection efforts. In addition, the Larsons show a pattern of either transferring or keeping assets in Grethe Larson's name.

e. The Defendant and Grethe Larson are the source for all payments of indebtedness secured by the Real Property and taxes and insurance on the Real Property.

f. The transfer of the Real Property to Systematic Builders accomplished the transfer of legal title to the single significant asset of the Defendant.

The transfer of legal title by the Defendant to Systematic Builders, and the subsequent transfer of legal title to his brother, David Larson, constitutes evidence of a concealment of property. The concealment is further evidenced by Defendant's retention of an equitable interest in the Real Property and his continued use and enjoyment of the Real Property as though it had not been transferred. Though the transfers were placed of record, and Systematic Builders was listed as a plaintiff in the state court litigation, the Defendant and his legal advisors failed to disclose the exact interest Systematic Builders had in the Real Property in response to the state court motion for summary judgment to dismiss Systematic Builders from the litigation. They preferred that Systematic Builders be dismissed rather than disclose its interest. Since both Hunt and Meyers were involved in the transfer, and were also the Defendant's legal advisors in the state court litigation, the Defendant's concealment of the transfer is proved.¹⁰ In spite of the recordation of the transfer to Systematic Builders, the court finds that the Defendant's conduct evidences a concealment of the Real Property from his creditors. The Defendant's failure to list Chase Home Mortgage as a creditor is a continuing

¹⁰ Under the circumstances of this case, the Defendant's purported reliance on the advice of his counsel was not in good faith and was not reasonable.

attempt to hide his interest in the Real Property from creditors and the Plaintiff following the filing of Defendant's bankruptcy.

Concealment is considered to be a continuing concealment when the concealment has continued into the year prior to the filing of the Defendant's bankruptcy petition. The Defendant's concealment of property began at the time of the transfer of legal title from the Defendant to Systematic Builders, continued through the time of the transfer of legal title to the Defendant's brother, David Larson, and has continued up to and since the filing of the Defendant's bankruptcy petition. Although the Defendant initially hindered, delayed or defrauded his creditors by transferring title to the Real Property while retaining a secret interest, he later extended his actions to hinder, delay or defraud an officer of the estate by failing to list his concealed interest in the Real Property, or the debt to Chase, on his bankruptcy Schedules. This result is not inconsistent with *Rosen*, because the Defendant's ability to control who holds legal title to the Real Property is ample evidence of his retention of a secret interest in the Real Property. *Rosen*, 996 F.2d at 1532 ("A legally relevant concealment can exist, however, only if there is, in fact, some secret interest in the property retained by the debtor.") (citations omitted). Defendant's actions to hinder, delay or defraud not only his creditors, but also his bankruptcy Trustee, brings the actions within the meaning of § 727(a)(2) by the continuing concealment doctrine. The Defendant's discharge shall be denied pursuant to § 727(a)(2)(A) and (B).

The Plaintiff's Amended Complaint further alleges that Defendant's discharge should be denied pursuant to § 727(a)(3).¹¹ Section 727(a)(3) provides as a prerequisite to obtaining a discharge that a debtor must first supply an "accurate and complete account of his financial affairs" or justify his failure to do so. *Meridian Bank v. Alten*, 958 F.2d 1226, 1230 (3rd Cir. 1992). The debtor must provide "available written evidence made and preserved from which the present financial condition of the [debtor], and his business transactions for a reasonable period in the past may be ascertained". *Meridian*, 958 F.2d at 1230 (citations omitted). A debtor who fails to keep records of his financial affairs must provide a satisfactory explanation to justify his failure. *Meridian*, 958 F.2d at 1231.

The Defendant has failed to produce recorded information from which his financial condition or business actions might be ascertained. Under the circumstances of this case, such failure is without justification. Although the Defendant testified that he has never kept records of his business, his testimony is inconsistent with the pleadings and exhibits in this case that imply that Defendant kept recorded information. Furthermore, if such recorded information does exist, and the detail set forth in the Defendant's tax returns indicates such information must be available to provide to the tax preparer, the Defendant has withheld such information from the Plaintiff who is entitled to receive possession under Title 11 of the Bankruptcy Code. Indeed, the Defendant has admitted in his pleadings that he intentionally

¹¹ Section 727(a)(3) provides:

(a) The court shall grant a discharge, unless---

...
(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

withheld voluntary production of his financial records as an "incentive" to the Plaintiff to comply with Defendant's discovery requests. The court finds that the Defendant kept records and has either failed to preserve these records or has concealed them from the Plaintiff without justification. The Defendant shall be denied a discharge under § 727(a)(3).

The Plaintiff's Amended Complaint also alleges that Defendant's discharge should be denied pursuant to § 727(a)(4)(A).¹² A debtor's omission of assets from his Statement of Financial Affairs or Schedules is sufficient to comprise a false oath pursuant to § 727(a)(4)(A). *Job v. Calder (In re Calder)*, 907 F.2d 953, 955 (10th Cir. 1990). The false oath must be made with willful intent to defraud and in relation to a material matter. *Calder*, 907 F.2d at 955; see *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984) ("The subject matter of a false oath is 'material,' and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property."). In *Calder*, the Tenth Circuit stated that "fraudulent intent may be deduced from the facts and circumstances of a case." *Calder*, 907 F.2d at 956.

Section 541(a)(1) of the Bankruptcy Code provides that a debtor's estate shall consist of all legal and equitable interests of the debtor in property. This provision is reflected in the language of the Schedules that each debtor is required to complete and file with the

¹² Section 727(a)(4)(A) provides:

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

...
(4) the debtor knowingly and fraudulently, in or in connection with the case---
(A) made a false oath or account;

court.¹³ The court finds in the circumstances of this case that the plain language of Schedule A is sufficient to put this Defendant, even if *pro se*, on notice that he should have disclosed his equitable interest in the Real Property evidenced by his continuing use and enjoyment of the property over many years.¹⁴

The Defendant has retained, and at the date of filing the bankruptcy petition had, an equitable ownership interest in the Real Property that he did not list on his Schedules. The facts in this case and the totality of the circumstances presented go far beyond the Defendant's failure to list his equitable interest in the Real Property. At the date of filing Defendant also had an ownership interest in a 1986 GMC pickup truck and a partnership interest in Dale Larson Painting. Defendant failed to list these assets in his Schedules. The Defendant also failed to list the debt owing to Chase on the Real Property.

The Defendant also failed to explain why he did not list as an asset the \$2,000 loan Defendant made to Lucking on June 11, 1992, just over four months before Defendant filed bankruptcy. Defendant did not list either of the \$100 loans made to his daughter, Anissa Vuyk, or Lucking on July 15, 1992 and August 26, 1992, respectively. Although the evidence is insufficient to determine if these receivables were owed as of the date of filing, neither did the

¹³ Schedule A-Real Property states in part, "list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit."

¹⁴ In so finding, the court declines to follow that portion of *Cannon v. Rupp*, (*In re Cannon*), Ch. 7 Case No. 87A-03213, Adv. No. 87AP-0765 (Bankr. D. Ut. Aug. 22, 1988)(transcript of oral ruling following trial) that excuses both a debtor and his or her counsel from determining whether the debtor holds a beneficial interest in the debtor's home and listing such an interest in the debtor's schedules. The court found, however, that "the debtor, with the intent to hinder, delay or defraud a creditor, has transferred and concealed the property of the debtor, [and] that the concealment has continued until before and after the bankruptcy." *Cannon*, Aug. 22, 1988 transcript at 6. For this reason, the court denied the debtor's discharge.

Defendant explain the transactions. The Defendant also failed to explain or disclose charitable transfers, or assets potentially transferred to the Dale and Grethe Larson Irrevocable Trust within one year of filing his petition. The totality of the circumstances including the Defendant's failure to disclose his equitable interests in the Real Property, his interest in other personal property, and his failure to disclose and schedule property and account for his assets, liabilities and financial affairs, indicate the Defendant has made a false oath or account knowingly and fraudulently in, or in connection with, material matters in this bankruptcy case. Due to the Defendant's false oath or account, the Defendant shall be denied a discharge under §727(a)(4)(A).¹⁵

The Defendant's argument that the state court judgment for \$101,000 is void is not well taken. Defendant argues that Overland's election to foreclose and sell the Real Property to satisfy the obligations under the Equipment Lease precluded Overland from seeking any other remedy, including a judgment against Defendant on Defendant's failure to perform on his guaranty of the Equipment Lease. Defendant asserts that Overland's judgment against him for \$101,000 on the guaranty is void as an attempt to obtain a double recovery in violation of the Utah one action rule because the foreclosure of the Deed of Trust on the Real Property and the judgment on the guaranty arose from the same obligation. Defendant cites as authority *Bawden & Associates v. Smith*, 646 P.2d 711 (Utah 1982). The court finds that *Bawden* is not on point because it does not address the rights of a creditor vis-a-vis a guarantor. See *SLC Limited V v.*

¹⁵ There is an argument that the Trustee may have proved a claim for relief under section 727(a)(4)(D) regarding the withholding of information from an officer of the estate. The Trustee neither pled such a claim nor made a motion to conform the pleadings to the evidence pursuant to Federal Rule of Bankruptcy Procedure 7015(b). Accordingly, the court will not address the issue of denial of discharge under section 727(a)(4)(D).

Bradford Group West, Inc. (SLC Limited V), 152 B.R. 755, 769 (Bankr. D. Utah 1993)("[T]he one-action rule does not prevent a creditor on a debt secured by real property from pursuing an action against the guarantors based on the guarantee without first foreclosing on the security".). The guaranty of a debt creates a separate contractual relationship giving rise to a distinct legal right outside the one action rule. Defendant also disputes the \$101,000 state court judgment on the basis that the liquidated damages were improperly calculated. The evidence does not support that position. The Defendant also raises a variety of arguments regarding the constitutionality of the state court judgment that are not well taken.¹⁶ Defendant never independently articulated a defense based on his belief that the state court judgment violated his constitutional rights or was void or both, despite the fact that Defendant's legal advisors raised such a defense in argument. Nor did Defendant raise this defense in his testimony to explain his intent at the time he signed his Financial Statement and Schedules under penalty of perjury.

Moreover, Defendant's arguments go to the validity of Overland's claim, an issue that is not before the court.¹⁷ Even if the state court judgment for \$101,000 was void, such a decision would be irrelevant to a determination of Defendant's intent at the time he transferred

¹⁶ Defendant's legal advisor, Morris Meyers, testified at trial that if the state court judgment is void or constitutionally defective, then the judgment is not entitled to full faith and credit in the federal courts. No evidence has been produced that the state court did not grant the "minimum procedural requirements of the Fourteenth Amendment's Due Process Clause". *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 481 (1982). Neither is there any evidence showing that the state court did not have personal or subject matter jurisdiction. See *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1020 (5th Cir. Unit B 1982) ("[F]ull faith and credit will not be given a judgment if the rendering court did not have jurisdiction over the parties and the subject matter."), cert. denied, 464 U.S. 818 (1983). Meyers also testified that he believed the validity of the state court judgment to be an "unmixed" question of law not precluded from collateral attack by the doctrine of *res judicata*, citing *United States v. Moser*, 266 U.S. 236 (1924).

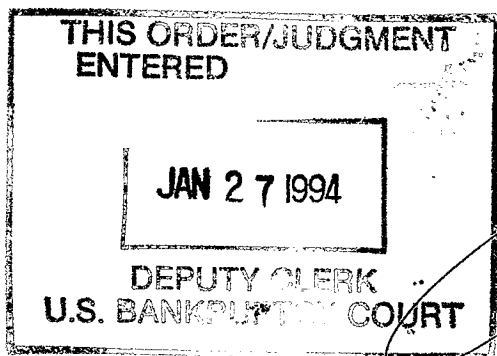
¹⁷ The validity of Overland's claim would only have bearing on this proceeding if Overland were the Debtor's only creditor, and thus the only party to benefit from the denial of Debtor's discharge. However, the court notes that Debtor has listed in his Schedules other unsecured creditors with debts in excess of \$22,000.

the Real Property to Systematic Builders. In addition, Defendant's intentional concealment of assets from the Plaintiff at the time of his bankruptcy filing postdates the Overland judgment. Even if Defendant believed that the Overland judgment violated his constitutional rights and that it affected his decision not to disclose information related to the Real Property, this argument has no bearing what so ever on Defendant's failure to disclose other information in his Financial Statement and Schedules, or to satisfactorily explain discrepancies between Defendant's Financial Statement and his tax returns.

In his Trial Brief, Defendant also argues at length that the Plaintiff cannot avoid the transfer of the Real Property to Systematic Builders under the Trustee's strong arm powers provided in § 544(a)(3). Defendant mistakes the issue of whether the Plaintiff may avoid Defendant's transfer of the Real Property to Systematic Builders with the true issue before this court: whether the Defendant is entitled to a discharge of his debts pursuant to § 727(a). The Plaintiff has not pled for relief under § 544(a)(3), and the issue of the Plaintiff's avoidance power is not before the court in this adversary proceeding.

Wherefore, the Plaintiff having carried his burden of proof on all issues and the Defendant having failed to raise any credible defenses, judgment will issues denying the Defendant's discharge based on each and every claim for relief set forth in Plaintiff's complaint.

DATED this 27 day of January, 1994.




JUDITH A. BOULDEN
United States Bankruptcy Judge