UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

IN RE
PATRICIA A. WORDLOW,
Debtor.

Case No. 97-30594-whb
Chapter 7

FIRST AMERICAN NATIONAL BANK,
Plaintiff,

v.

Adversary Proceeding 97-1193

PATRICIA A. WORDLOW,
Defendant.

MEMORANDUM OPINION AND
ORDER DENYING COMPLAINT

The plaintiff First American National Bank ("Bank") filed its complaint objecting to the debtor's general discharge pursuant to 11 U.S.C. § 727(a)(4)(A) and (B), alleging that the debtor made a false oath in connection with her bankruptcy petition by scheduling the Bank as an unsecured rather than secured creditor, and the complaint also relies upon § 727(a)(4)(C). In addition to the allegations of grounds for a general denial of discharge, the complaint alleges that the debtor's fraud under § 523(a)(2) provides a basis to except the debt to this Bank from her general discharge. The debtor's answer denied grounds for either a § 727(a) denial of general discharge or a § 523(a)(2) exception from discharge. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and (J), and this opinion contains findings of fact and conclusions of law. Based upon the Court's findings of fact and conclusions of law the complaint will be denied, and the debtor will receive her general discharge, including a discharge of her debt to this Bank.

The trial of this proceeding did not answer all of the questions that the Court or counsel for

the parties had about the transactions underlying this complaint; however, the Bank's proof failed to carry its burden of showing by a preponderance of evidence that the plaintiff should prevail. The debtor borrowed $34,612.50 from the Bank for the purpose of purchasing a Lexus vehicle, and that vehicle was purchased when the debtor's husband and one Terry Stevenson went to Texas and bought it at auction. Mr. Stevenson was a "car locator," who had some type of connection with C.J. Benn Motors in Memphis.[1] For reasons that can only be explained by Mr. Stevenson's neglect or fraud, the car was never titled properly in Tennessee, although the Texas title shows this Bank as the lien holder. Some payments were made by the debtor or her husband on the Bank's loan, but they then decided that they could not afford the Lexus, at which point they contacted Mr. Stevenson about selling the car. Mr. Stevenson went with them to a Honda dealership in Memphis, and he told the Wordlows that the car had been sold and that the Honda dealership would be paying off the Bank's secured debt. Patricia Wordlow testified that she received no money from this sale, which apparently was for $30,000. No explanation was given to the Court on how the title was transferred without satisfying the Bank's lien, other than the introduction of a document purporting to be a release of the Bank's lien, although there was no proof that this debtor participated in the fabrication of that release. Again, Mr. Stevenson's hand appears to have been directing this fabrication.

In a most bizarre transaction, Mr. Stevenson kept $3,000 from the sale and delivered the balance of the sale proceeds to Mr. C. J. Benn, on the representation that the Wordlows were loaning that money to allow the Benn business to repave its car lot. Mr. Benn actually made some monthly

[1] C. J. Benn testified that Mr. Stevenson, who did not appear at trial or testify otherwise, had been an "independent contractor" at Mr. Benn's auto sales business.

payments to the Bank on this debtor's loan, until Mr. Wordlow came to him and complained that the Bank was sending late notices. In another bizarre transaction, Mr. Benn then testified that he gave Mr. Wordlow a motorcycle, valued at $8,000 to $9,000, free and clear of liens. Mr. Wordlow testified that he paid Mr. Benn at a later time $6,000 for the motorcycle. There is no proof that this debtor participated in or consented to any of these transactions with Mr. Benn.

In addition to the documents, which were undisputed, this is the essential proof that was presented to the Court, along with some proof that the Wordlows had previously sued Mr. Benn in Chancery Court. The Wordlows, at the first hearing, said that they knew nothing of any such suit and that they had never authorized an attorney to sue for them. The trial of this proceeding was reset for conclusion on July 7, 1998, in order to hear more about that suit, at which time John C. Wagner, an attorney, testified that two people representing themselves to be the Wordlows employed him to sue Mr. Benn and that he did so. At this point, one might think that this debtor did execute a false oath by omitting the law suit from her bankruptcy schedules; however, Mr. Wagner could not identify this debtor as being the Patricia Wordlow who came to see him, and this debtor denied knowledge of previously seeing or employing Mr. Wagner. She did admit that she and her husband went to see several attorneys concerning suit against Mr. Benn, but she stated that no one was willing to file suit. It was obvious to the Court that the signature of "Patricia Wordlow" on Mr. Wagner's employment contract was not the same signature as the debtor's on her bankruptcy petition. Unfortunately, Mr. Marcellus Wordlow did not attend the July 7 hearing, and the Court was left to wonder if Mr. Wordlow took someone else with him to employ Mr. Wagner;[2] if this

[2] A peculiar event, if it occurred, since the Wordlows who employed Mr. Wagner used this debtor's mother's telephone number and address.

debtor simply forgot that she had employed Mr. Wagner;[3] or whether the real "Patricia Wordlow" is the person who appeared as this debtor or the person who employed Mr. Wagner. Despite such questions, the ultimate issue is whether the Bank established by a preponderance of the evidence that this debtor should not receive a discharge.

The Court can find that someone did the Bank harm, but there is insufficient proof that it was at the direction or action of this debtor. It would appear that Mr. Stevenson knew of the Bank's secured position, since he took the debtor and Mr. Wordlow to this Bank for the loan. The Bank may have engaged in poor practice by trusting Mr. Stevenson or the Wordlows to properly perfect the Bank's lien; nevertheless, there is no proof that Mrs. Wordlow intentionally defrauded the Bank. She said that she never saw the title, and the testimony established that Mr. Stevenson was guiding the Wordlows in all of their transactions concerning the Lexus. When the Lexus was sold to the Honda dealership, there is no proof that Mrs. Wordlow had knowledge that the Bank would not be paid from the sale proceeds, and there is no proof that she knew that Mr. Stevenson had made the unauthorized "loan" to Mr. Benn with the Bank's money.

[3] This would not explain the significant variation in signatures on the employment contract and bankruptcy petition.

The Court is left to wonder why Mr. Stevenson and Mr. Benn have not been sued by the Bank, as the only proof before this Court was that they received the benefit of the sale proceeds. There was no proof concerning the Honda dealership's failure to name the Bank as a payee on the sale's proceeds. Also, one must ponder the meaning of Mr. Benn "giving" a motorcycle to Mr. Wordlow. It may very well be that Mr. Wordlow should be obligated to the Bank for at least the amount of the value of that motorcycle, but Mr. Wordlow is not the debtor in this case, nor is he a defendant in this complaint.[4]

As to this debtor, the complaint alleges a false oath concerning the secured status of the Bank, but there was no proof that she made such a false oath in her bankruptcy case; in fact, the Bank very well may be unsecured in the bankruptcy case due to the lack of perfection of its security interest in Tennessee. There is no proof that this debtor acted to prevent the Bank from being paid from the sale proceeds. There was an unexplained "affidavit of alteration" of the Texas title, purporting to delete Patricia Wordlow as the owner, but there was no proof that she knew of or participated in this affidavit, which was not signed by her. There was a falsely executed discharge of the Bank's lien, but there was no proof that Patricia Wordlow knew of or participated in this instrument. There is an allegation in the complaint that C. J. Benn Motors executed the paperwork to transfer good title to Courtesy Honda, but there was no proof that this debtor knew of or participated in this paperwork. Despite many unexplained events in this proceeding, the debtor's

[4] This Court may not have had subject matter jurisdiction as to Mr. Wordlow, absent his consent.

testimony supports a finding that Patricia Wordlow thought, like a typical consumer seller of a vehicle, that the dealer would pay off the secured lender. The fact that Patricia Wordlow made some payments to the Bank supports a finding that she was aware of the Bank's intended secured position. The Court is not persuaded that Patricia Wordlow intended to deprive the Bank of its secured position, nor was there sufficient proof that she intended to defraud the Bank in any other way. The lingering doubt in the Court's mind is whether this debtor knew of and knowingly omitted from her schedules the Chancery Court suit against C. J. Benn and others. The proof did not establish by a preponderance of the evidence that she did so. If, however, the Bank, the case trustee, or the United States trustee could establish that Patricia Wordlow was untruthful in her testimony concerning the Chancery Court suit or the employment of Mr. Wagner, or if it could be established that this debtor has otherwise testified falsely, grounds would then exist to seek revocation of the discharge. 11 U.S.C. § 727(d),(e). As to § 727(a)(4)(A) , (B), and (C), as well as § 523(a)(2), the proof did not satisfy the statutory elements required to either deny a general discharge or to except this particular debt from discharge. The Court did not find Mr. Wordlow to be a credible witness, nor was the Court impressed with Mr. Benn's testimony, and it is anticipated that Mr. Stevenson would have been an incredible witness. Patricia Wordlow's testimony, on the other hand, was consistent with someone who was uninformed and misled by others.

Based upon these findings and conclusions, IT IS THEREFORE ORDERED that the relief sought in the Bank's complaint is denied. The debtor shall be given a general discharge, which discharge shall include the particular debt to this Bank. Each party shall bear their own costs for this proceeding. The debtor's interest in the unscheduled but pending Chancery Court litigation is property of this bankruptcy estate, and Mr. Wagner is requested to confer with the case trustee to

determine if the trustee wishes to pursue or abandon that suit.

SO ORDERED this July 22, 1998.

_____

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE

Miles Mason (Notice of this Order will be mailed only to Mr. Mason)
Alan G. Crone
James R. Becker, Jr.
Wilder, Crone, Johnston, Mason & Goodwin, P.C.
Attorneys for First American National Bank
8 S. Third Street, Fifth Floor
Memphis, TN 38103

Thomas C. Fila
Attorney for Debtor
200 Jefferson Avenue, Suite 925
Memphis, TN 38103

United States trustee
200 Jefferson Avenue, Suite 400
Memphis, TN 38103

George W. Stevenson
Chapter 7 trustee
200 Jefferson Avenue, Suite 1113
Memphis, TN 38103

John C. Wagner
Attorney in Chancery Court suit
44 N. Second Street, Suite 401
Memphis, TN 38103