UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
KENT LEROY BENNETT,	)	CASE NO. BK79-0-357
	)	
BANKRUPT	)	
	)	
MAGILL & TRAILL, INC.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
KENT LEROY BENNETT,	)	
	)	
Defendant	)	

MEMORANDUM OPINION

In this adversary proceeding, plaintiff objects to the discharge of defendant pursuant to §14c(1)[11 U.S.C. §32c(1)] which incorporates the provisions of 18 U.S.C. 152. More specifically, plaintiff relies upon the second unnumbered paragraph of 18 U.S.C. §152 which provides:

> "Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; . . ."

Plaintiff alleges that defendant failed to list certain accounts receivable owing defendant on his bankruptcy schedules which were filed in this voluntary bankruptcy proceeding. It is clear from those schedules that no accounts receivable are listed.

Prior to bankruptcy, defendant operated a Texaco service center in Holdrege, Nebraska. I gather that his business consisted of selling gasoline and making repair on vehicles.

Defendant made the decision to close his station on February 23, 1979, and, in fact, closed on February 26, 1979. This bankruptcy proceeding followed on March 30, 1979.

The accounting records of the defendant were referred to at trial but never introduced. The evidence referring to them offered on behalf of the plaintiff would indicate that on February 26, 1979, there were accounts receivable on the books of the defendant of $4,944.46. However, that figure is inflated because, through testimony of defendant's wife who acted as the bookkeeper of the business, the defendant engaged in the practice of extending credit and then making purchases of materials and supplies from people who owed the defendant money. The cross

transactions were not reconciled until the end of any given month by the defendant's wife and, accordingly, this Court concludes that the $4,944.46 is not a realistic figure and is inflated.

In addition, there appear to have been collections of accounts receivable by the defendant prior to the time that he actually filed the petition in this proceeding. That evidence further reduces the amount of accounts receivable which may have been in existence on the date of the petition.

In fact, any accurate figure as to the amount of accounts receivable does not appear in evidence before me and is not ascertainable by me.

Assuming the existence of any material amount of accounts receivable, we turn now to the question of the defendant's knowing and fraudulent conduct in the preparation of his schedules. The defendant disclaims any familiarity with the bookkeeping system established by his wife. In fact, he testified to an inability to understand the system, a fact which I find.

The evidence at the trial indicated that upon consultation with the defendant's attorney, the attorney asked for and received a list of receivables which indicated those which were collectible and those which were not, in the defendant's wife's opinion. Why that information did not find its way onto the schedules is unexplained by the evidence before me.

Ultimately, the plaintiff bears the burden of proving the facts essential to his objection to discharge. Bankruptcy Rule 407. Having heard the evidence and having observed the defendant testify, the Court's conclusion is that the plaintiff has failed to sustain its burden of proving that the defendant "knowingly and fraudulently" made a false oath to the bankruptcy schedules when he signed them under oath at a time when they failed to disclose accounts receivable.

The plaintiff has made an alternative request in its complaint that a trustee be appointed to investigate the matter. Having failed to prove with any degree of specificity the amount of the receivables and whether they would be sufficient to be non exempt, I decline to accept the offer.

A separate order is entered in accordance with the foregoing.

DATED: December 17, 1979.

BY THE COURT:

U.S. Bankruptcy Judge

Copies mailed to each of the following:

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