

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2437
Summary Calendar

IN THE MATTER OF: MELVIN LANE POWERS,

Debtors.

JEFF A. COMPTON, Trustee of the
Estate of MELVIN LANE POWERS,

Appellee,

versus

MELVIN LANE POWERS,

Appellant.

Appeal from the United States District Court for the
Southern District of Texas
(CA H 89 2587)

(November 18, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Melvin Lane Powers appeals the district court's judgment affirming the bankruptcy court's denial of his discharge from

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

bankruptcy pursuant to section 727 of the Bankruptcy Code. Finding no merit in Powers's arguments, we affirm.

I

This is a case about a debtor's efforts to hide assets from his creditors. The debtor, Melvin Lane Powers, is a Houston businessman with a variety of interests. Powers's assets consisted primarily of office buildings in the Houston area that he and his employees built, leased, and managed. In order to build his empire, Powers borrowed heavily. When the real estate market slumped in the early 1980's Powers had trouble servicing his debt and on December 29, 1983, Powers filed for bankruptcy.

Before filing for bankruptcy, Powers transferred several properties to friends for less than equivalent value. These properties included Powers's interest in a condominium in California, a high rise apartment in Houston, and a partnership known as the F-M-P Joint Venture 227. Powers's misdeeds did not end once he entered bankruptcy. The Bankruptcy Code requires all debtors to file with the court a list of their assets. Powers failed to submit a complete list of assets to the court; specifically, he failed to list a thirty-six foot yacht he owned. Powers destroyed, altered, and withheld documents from the court. Powers also gave seventeen automobiles to his employees without consideration and transferred \$81,000.00 and then another \$50,000.00 to his brother, Garrett Powers. Finally, Powers failed

to account for missing construction materials and furniture that he owned.

II

Powers filed for bankruptcy on December 29, 1983, under chapter 11 of the Bankruptcy Code. The petition also included Powers d/b/a Mel Powers Investment Builder. Powers filed a plan of reorganization that the bankruptcy court approved, but Powers was not able to complete the plan. After a vigorously contested hearing, the bankruptcy court converted the case to a chapter 7 liquidation on November 12, 1986. The bankruptcy court appointed J. A. Compton the trustee of the estate in bankruptcy.

On February 10, 1987, Compton brought an action to deny Powers a discharge. Compton alleged that Powers had violated section 727 of the Bankruptcy Code on at least seven specific occasions. After a trial, the bankruptcy court concluded that Powers had violated section 727. The bankruptcy court found that before and after entering bankruptcy, Powers had transferred property for less than equivalent value with the intent to defraud his creditors. The bankruptcy court also found that Powers had concealed and falsified documents, given a false oath, and had failed to explain the loss of certain assets. Finally, the bankruptcy court noted that Powers had not complied with several of the court's orders. The bankruptcy court entered its memorandum opinion and a judgment denying Powers a discharge on June 30, 1989.

Powers appealed the bankruptcy court's decision to the district court. On April 30, 1992, the district court affirmed the bankruptcy court's judgment and dismissed Powers's appeal. Powers now appeals the bankruptcy court's denial of his discharge to this court.

III

We review the bankruptcy court's decision to deny a debtor a discharge for an abuse of discretion. Matter of Jones, 966 F.2d 169, 172 (5th Cir. 1992). We will not set aside the bankruptcy court's factual findings unless they are clearly erroneous, and we give due regard to the bankruptcy court's opportunity to judge the credibility of the witnesses. Matter of Monniq's Dept. Stores, Inc., 929 F.2d 197, 200 (5th Cir. 1991); Fed. R. Bankr. P. 8013. The bankruptcy court's legal conclusions, however, are subject to de novo review. In re Missionary Baptist, 712 F.2d 206, 209 (5th Cir. 1983).

The Bankruptcy Code provides that the court shall grant the debtor a discharge unless it finds that the debtor is guilty of certain kinds of misdeeds. 11 U.S.C. § 727. In this case, the bankruptcy court found that there were several independent grounds upon which to deny the debtor discharge. If any one of these grounds justifies the denial of discharge, we need not decide the propriety of the others. Matter of Beaubouef, 966 F.2d 174, 177 (5th Cir. 1992).

The record provides ample support for the bankruptcy court's denial of discharge pursuant to section 727(a)(2)(A) of the Bankruptcy Code. This section of the Bankruptcy Code provides that the bankruptcy court can deny a debtor discharge if:

(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.

11 U.S.C. § 727(a)(2)(A). The purpose of this Code section is to deny discharge to those debtors who, with intent to defraud their creditors, transfer property that would have become property of the estate. In order to deny discharge under this section of the Bankruptcy Code, the statute requires the party objecting to discharge to prove: 1) a transfer of property, 2) that belongs to the debtor, 3) within one year of filing for bankruptcy, 4) with the intent to hinder, delay or defraud a creditor or officer of the estate. Matter of Chastant, 873 F.2d 89, 90 (5th Cir. 1989). The party objecting to the discharge has the burden of proving, by a preponderance of the evidence, that the debtor is not entitled to discharge. Chastant, 873 F.2d 89 at 90; Beaubouef, 966 F.2d at 178.

Powers admits that he transferred property belonging to the debtor within a year of filing for bankruptcy, but he argues that the bankruptcy court erroneously required him to prove his lack of

intent to deceive his creditors. Powers misinterprets the bankruptcy court's decision. The bankruptcy court correctly recognized that Compton had the burden of proving that Powers actually intended to defraud his creditors.

Compton, however, did not have to prove intent with direct evidence. Indeed, direct evidence of a person's intent to deceive is rarely, if ever, available. Thus, circumstantial evidence is sufficient; the court can infer actual intent to defraud from the debtor's actions. Chastant, 873 F.2d at 91. Furthermore, a presumption of fraudulent intent arises when the debtor transfers property gratuitously. Id. In the instant case, Powers gratuitously transferred his interest in a condominium to Jan Nelson, a close friend, within six months of filing for bankruptcy. He also gratuitously transferred his Houston high rise apartment to Cynthia Guthrie, his girlfriend, five months before filing for bankruptcy. These transfers create a presumption that Powers intended to hinder, delay, or defraud his creditors.

Thus, Compton established a prima facie case that Powers violated section 727(a)(2)(A) of the Bankruptcy Code, which shifted the burden to Powers of establishing that he lacked fraudulent intent. Contrary to Powers's arguments, the Bankruptcy Code requires this shift in the burden of proof. Chastant, 873 F.2d at 91; In re Bateman, 646 F.2d 1220 (8th Cir. 1981). The bankruptcy court found that Powers's testimony that he was not aware of his financial difficulties was not credible and, hence, that Powers

failed to rebut the presumption of fraudulent intent that arises when property is transferred gratuitously. This conclusion is not clearly erroneous. Thus, the bankruptcy court did not abuse its discretion when it denied Powers a discharge.

IV

We, therefore, AFFIRM the judgment of the district court affirming the decision of the bankruptcy court.

A F F I R M E D.