UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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March 19, 1990

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Re: Wesley D. and Julie A. Ginsbach
Chapter 7 89-50093
Adversary 89-5031

Dear Counsel:

In this adversary proceeding, creditor Global Financial Services, represented by Robert Morris, has filed a complaint objecting to discharge against debtors Wesley and Julie Ginsbach. Creditor Security Bank of South Dakota, represented by Gary Colwill, joins in Global's objection. This matter was tried to the Court on January 10 and 11, 1990 in Rapid City. Appearing were Attorneys Morris and Colwill, along with Robert Nash, counsel for the debtors. After reviewing the court record, applicable authority, and the facts adduced at the hearing, the Court is prepared to render its decision. This is a core proceeding under 28 U.S.C. § 157(b) (2) (J). This memorandum constitutes the Court's findings of fact and conclusions of law under Federal Rule of Civil Procedure 52 and Bankruptcy Rule 7052.

PROCEDURAL HISTORY

Debtors Wesley and Julie Ginsbach filed for relief under Chapter 7 of the United States Bankruptcy Code on April 28, 1989. An adversary complaint objecting to discharge was filed with the Court on July 31, 1989. An accompanying affidavit of mailing from Attorney Morris shows that Attorney Nash was mailed a copy of the complaint on July 28, 1989. This affidavit was filed with the Court on July 31, 1989. Another affidavit from Attorney Morris showed that Attorney Nash was sent a copy of both the summons and complaint in this adversary on August 2, 1989. This affidavit was filed with the Court on August 3, 1989.An answer to the complaint

was timely filed and a pre-trial hearing was held on October 3, 1989. At the hearing, Security Bank orally moved to join with the plaintiff Global in the adversary, which motion was granted. Pre-trial discovery was thereafter completed and the matter went to trial on January 10 and 11, 1990. The Court asked the parties to submit post-trial briefs. The arguments briefed may be condensed into the following two issues: (1) whether the complaint of Global Financial Services was timely filed, and (2) whether Ginsbachs are entitled to a discharge pursuant to 11 U.S.C. § 727.

I.

WHETHER THE COMPLAINT OF GLOBAL FINANCIAL SERVICES WAS TIMELY FILED.

As stated above, Ginsbachs filed for relief under Chapter 7 on April 28, 1989. On May 11, 1989, the Bankruptcy Clerk sent a notice of no asset bankruptcy case, meeting of creditors, times fixed for filing claims, and/or objections to discharge, and of automatic stay. The notice stated that the first meeting of creditors was scheduled for June 1, 1989, and further provided that the last day for filing a complaint objecting to discharge was sixty days after the first meeting of creditors. Global filed its complaint on July 31, 1989, the last day for filing an objection to discharge. An affidavit of mailing from Global's attorney shows that the complaint was mailed to debtors' attorney on July 28, 1989. Upon issuance of a summons from the Bankruptcy Clerk's office, the debtors, their attorney and the trustee were again served with a summons and complaint on August 2, 1989.

Rule 4004(a) of the Federal Bankruptcy Rules provides, in part:

> In a Chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a).

It must be noted that the Rule sets a time bar for the <u>filing</u> of a complaint objecting to discharge, but does not extend similar preclusive effect to <u>service</u> of the complaint. Thus Rule 4004 (a) does not bar Global's complaint. Further, even if service would

bar the action, debtors' attorney should have received notice of the complaint prior to the July 31 deadline, as Global's affidavit of mailing sets forth that the complaint was mailed to counsel on July 28. Bankruptcy rules are to be construed to secure the just, speedy, and inexpensive determination of every case and proceeding. <u>See</u> Federal Bankruptcy Rule 1001. The Court holds that Global's objection is not time barred.

II.

WHETHER GINSBACHS ARE ENTITLED TO A DISCHARGE PURSUANT TO 11 U.S.C. § 727.

Global points to two circumstances where Ginsbachs' actions prevent them from receiving a discharge. The first relates to Ginsbachs' transactions with horses that Global claims are owned by Ginsbachs. The second relates to certain excavation equipment that Global likewise claims is owned by Ginsbachs.

Section 727 provides in salient part:

> (a)The Court shall grant the debtor 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;
>
> . . .
>
> (4) the debtor knowingly and fraudulently, in or in connection with the case –
>
> (A) made a false oath or account[.]

The burden of proof is upon the plaintiff objecting to the discharge. See Bankruptcy Rule 4005. The objecting party must meet his burden by clear and convincing evidence. *In re Woerner*, 66 B.R. 964 (Bankr. E.D. Pa. 1986), *In re Kirst*, 37 B.R. 275 (Bankr. E.D. Wi. 1983) and *In re Sellers*, 33 B.R. 854 (Bankr. D. Co. 1983). Objections to the discharge of a debtor are to be construed strictly against the creditor and liberally in favor of

the debtor. *Woerner* and *Kirst*, supra.

The Court will first examine the circumstances surrounding the horses. Global claims that Ginsbachs at the time of trial owned approximately fifty horses and that they owned up to one hundred thirty horses in the past. Ginsbachs listed on their schedules, filed in April, that they currently own four horses.

Global presented registration papers from the American Quarter Horse Association, American Paint Horse Association and the American Pinto Horse Association that showed the Milliron Diamond Ranch as owners of a vast majority of the horses in question. Ginsbachs admitted that the Milliron Diamond brand is registered in their name with the South Dakota Stockgrowers Association. The horse registration papers were signed on Milliron's behalf by codebtor Julie Ginsbach and listed the address of the ranch at the same address as the debtors. Interestingly, when debtors moved from Belle Fourche, South Dakota to Nisland, and then on to Newell, the address for the Milliron Diamond Ranch moved with them.

Global also introduced an advertisement for Wesley and Julie Ginsbach from the 1989 South Dakota Paint Horse Club Directory. See Plaintiff's Exhibit 23. The advertisement shows the Milliron Diamond brand registered to the debtors and lists their address and telephone number. The advertisement showed photographs of three horses, including Scenic Buckeye, Sanduskie, and Blue Papoose. The advertisement states:

> Watch our diamonds sparkle.
> Our horses do everything . . . almost!
> Paint/Pinto horses for sale at all times.
> We guarantee color.

Also introduced by Global was the fact that both Wes and Julie Ginsbach had won national championships at various horse shows on horses that they represented to own. See Plaintiff's Exhibit 21.

Global also introduced a fictitious name certificate for the

Milliron Diamond Ranch that showed the ranch in the names of Paula Dittman (Julie's mother) and Sandy Kuene (Julie's sister). See Plaintiff's Exhibit 20. This certificate was presented by Dittman, Kuene and Julie Ginsbach to Tammy Welker Clem, a notary public, on April 29, 1989. Clem testified that the blanks on the certificate had been filled in, including the notary date, when it was presented to her. The notary date, which is customarily filled in by the notary public at the time of signing, was dated March 1, 1988, a date almost fourteen months prior to that on which the certificate was actually notarized. Clem lined through the March 1, 1988 date and inserted the correct date (April 29, 1989) prior to notarizing the document. It should be noted at this point that this certificate, showing Milliron Diamond Ranch in the names of Paula Dittman and Sandy Kuene rather than the debtors, was presented to the notary public <u>one day</u> after the debtors had filed for bankruptcy relief.

The March 1, 1988 date discussed above was also utilized by Julie Ginsbach when she completed various transfer reports for the American Paint Horse Association. Those reports transferred ownership of at least twenty horses from Wesley and Julie Ginsbach to the Milliron Diamond Ranch. Again, while the reports allegedly were filled out by Julie Ginsbach on March 1, 1988, they also show what appears to be the date received by the Association of January 5, 1989, a gap of more than ten months.

Ginsbachs claim that the various horses shown as registered to them or to the Milliron Diamond Ranch, other than those actually shown on their schedules, actually belong to Paula Dittman, Sandy Kuene, and Sandy's husband Fred. According to testimony presented for the Ginsbachs, the horses were registered in Ginsbachs' or the ranch's name for ease of registration and transfer and for purposes of showing and selling the horses. Further testimony indicated that any of the family members (Ginsbachs, Kuenes or Dittman) could show or sell any of the horses.

Ginsbachs also claim that registration of the various horses in their name or the ranch's name does not necessarily mean that they actually own the horses. In support of their contention, Ginsbachs offered a letter from an official of the American Paint Horse Association that stated that registration of a horse in a particular person's name does not constitute legal ownership of the horse, and that for ease of registration and transfer, the better practice is to have the horses registered to a ranch ownership and
have one person authorized to sign documents on behalf of the ranch. See Defendant's Exhibit A.

The Court heard testimony from Paula Dittman concerning the ownership of several of the horses. According to Mrs. Dittman, her late husband, Allen, was involved in raising horses and owned several of the horses presently in question. Cancelled checks and other documentation were entered into evidence in support of this claim. Dittman's federal income tax returns for 1984 and 1985 were also received in evidence (although as plaintiff's exhibits) and appeared to show that Dittman may have previously owned one stallion, Sanduskie. Allen Dittman issued a check for the horse to Bob Reichardt on March 10, 1984 (see defendant's Exhibit 5) and the horse is depreciated on Dittman's tax returns for 1984 and 1985 See plaintiff's Exhibits 127 and 128. However, the horse is not included in the inventory of Mr. Dittman's estate that was taken after his death. See plaintiff's Exhibits 124 and 125. Further, reports for Sanduskie filed with the American Paint Horse Association show that the horse, since birth, was owned by Reichardt, that Reichardt transferred the stallion to Mike or Patti Olic on March 24, 1979, and that Olics sold it to Julie Ginsbach on February 20, 1984. Ginsbach then claims she transferred ownership to the Milliron Diamond Ranch on March 1, 1988. See plaintiff's Exhibits 123, 123A, 123B and 123C. Thus, the evidence concerning the ownership of Sanduskie is, at best, inconclusive.

Testimony and documentary evidence concerning Sandy Kuene's ownership interest in various horses likewise proves to be inconclusive. Kuene testified that she initially loaned money to her sister, Julie Ginsbach, to purchase a horse called Bright Mandy. Defendant's Exhibit FF is a check for three thousand dollars from Kuene to Julie Ginsbach. A notation on the check states "horse loan - Mandy." Kuene testified that after seeing Bright Mandy, she decided to keep the horse for herself. However, the transfer report for the horse indicated transfer of ownership from Thomas Elliott to Milliron Diamond Ranch. The transfer shows that Bright Mandy was sold on March 20, 1988. See plaintiff's Exhibit 120. Interestingly, Kuene's "loan check" to Julie Ginsbach shows a date of March 22, 1988, two days <u>after</u> the horse was supposedly transferred to the ranch. Kuene also testified that Milliron Diamond Ranch was merely a vehicle to show and sell horses, that the horses are owned by individual family members, and that Julie Ginsbach merely handled the paper work surrounding all of the horses.

Section 727(a)(2)(A) denies the grant of a discharge to debtor, who, with the intent to hinder, delay or defraud a creditor or officer of the estate, transfers, removes, destroys, mutilates or conceals property of the debtor within one year before the date of the filing of the petition. The elements of this section are

met if Global proves that (1) the property in question belonged to Ginsbachs; (2) Ginsbachs transferred or concealed property; (3) the transfer or concealment occurred within one year of filing, and (4) Ginbachs intended to hinder, delay or defraud a creditor. *In re Tarle*, 87 B.R. 376 (Bankr. W.D. Pa. 1988).Circumstantial evidence may be used to establish a pattern of concealment and nondisclosure of assets in order to prove the element of intent. Id.

Application of each of these elements set forth above leads the Court to conclude that a discharge may not be granted. First, it is clear to this Court that Ginsbachs owned the horses in question. Paper work for the horses showed Wesley and Julie Ginsbach as the owners of the horses prior to the bulk transfer of the same to the Milliron Diamond Ranch. The Milliron Diamond brand is registered to Wesley Ginsbach in the records of the South Dakota Stockgrowers Association, an agent of the South Dakota Brand Board, which in turn is an agency of the State of South Dakota. The Milliron Diamond Ranch lists the same address as that of Wes and Julie Ginsbach. In fact, when Ginsbachs moved, the address for the ranch moved with them. Ginsbachs, in published advertisements and solicitations, held themselves out as owning and having the authority to sell or arrange breeding services for the horses advertised. This assertion is verified by plaintiff's Exhibit 21 and also by plaintiff's Exhibit 18, a purchase and sale agreement signed by Wes and Julie Ginsbach, as sellers, of a horse named Sheza Blond Sting.

The evidence offered by Ginsbachs to refute these assertions does not withstand Global's claims. While Dittman could produce certain checks to prove ownership of some horses, some of the checks were made out in blank or could not otherwise connect the check transaction with the purchase of horses. See defendant's Exhibits B, C, N, V, KK, SS, TT and VV. Further, Dittmans' 1984 tax return, signed May 5, 1986, and their 1985 tax return, signed May 10, 1986, show the depreciation of one stallion, but the exhibits appended to the pleadings and decree of distribution for Allen Dittman's estate, dated in late 1987 and early 1988, failed to list Dittman as the owner of any livestock.

Sandra Kuene's testimony also does not assist her sister and brother-in-law's case. The purchase of Bright Mandy was initially to be made by Julie Ginsbach with money loaned to her by Kuene. Kuene's check (Exhibit FF) evidences that it was to be a loan. The only evidence that Kuene later decided to keep the horse for herself was her own testimony. However, the transfer report does not show that Bright Mandy's purchaser was Sandy Kuene; rather it

shows the horse in the name of the Milliron Diamond Ranch, and is signed by Julie Ginsbach.

Having determined that Ginsbachs were the owners of the horses, the Court next will turn its attention to whether the horses were transferred or concealed. In order to prove a transfer, it must be shown that there was an actual transfer of valuable property belonging to the debtor which reduced the assets available to creditors and which was made with a fraudulent intent. 4 L. King, Collier on Bankruptcy ¶ 727.02[5] (5th ed). Conduct of concealment consists of placing assets beyond the reach of creditors or withholding knowledge thereof by failure or refusal to divulge owed information. *Tarle*, supra, at 378; Collier, supra, ¶ 727.02. The transfer reports filed with the American Paint Horse Association make it abundantly clear that Ginsbachs transferred ownership of at least twenty horses from Wesley and Julie Ginsbach to the Milliron Diamond Ranch and that the transfer of ownership of those animals was done in bulk and at one time. It is likewise clear that the horses were valuable property and reduced the assets available to creditors. Also, Ginsbachs offered no evidence to refute the fact that ownership of the horses was transferred to the ranch, leading the Court to conclude that the horses were indeed transferred. The issue of Ginsbachs' fraudulent intent will be discussed below.

The Court will consider together the final two elements, whether the transfer or concealment occurred within one year of the filing of the petition and whether Ginsbachs intended to hinder, delay or defraud a creditor. The intertwining nature of these elements in this particular case warrant this joint examination. The transfer reports, completed by Julie Ginsbach and filed with the American Paint Horse Association, and admitted as plaintiff's Exhibits 102 through 119 and 121 through 123C, all showed a transfer of ownership from Ginsbachs to Milliron Diamond Ranch on March 1, 1988, more than thirteen months prior to the filing of Ginsbachs' petition. Exhibit 120, the transfer report completed by Julie Ginsbach for Bright Mandy, is dated March 20, 1988, just more than twelve months prior to filing. However, a space on all of the transfer reports, shown as reserved for office use, shows a date of January 5, 1989 on all twenty-one of the forms. While no conclusive evidence was offered on the issue of whether the date entered by the Association was the date that the reports were received, the Court is satisfied under these circumstances that such is the apparent date of receipt. It is beyond the realm of possibility that Ginsbachs mailed the reports on March 1, 1988, but they were not received by the Paint Horse Association until January 5, 1989, and the Court believes that they were mailed

sometime shortly before their receipt. This being the case, the transfer of the horses took place within five months of the date of the petition.

The use of the March 1 date is also the key to determining whether Ginsbachs intended to hinder, delay or defraud a creditor. A finding that Ginsbachs had the actual intent to hinder, delay or defraud a creditor is sufficient under § 727(a)(2)(A). See *In re Schmit*, 71 B.R. 587 (Bankr. D. Mn. 1987) (citing *Lovell v. Mixon*, 719 F.2d 1373, 1376—77 (8th Cir. 1983)). The Court in *Schmit* set forth six indicia to determine the existence of fraudulent intent. These include (1) the lack or inadequacy of consideration; (2) the family, friendship or close associate relationship between the parties; (3) the retention of possession, benefit or use of the property in question; (4) the financial condition of the party sought to be charged both before and after the transaction in question; (5) the existence or cumulative effect of the pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors; and (6) the general chronology of events and transactions under inquiry. *Id*. at 590, (citing *Conti-Commodity Services, Inc. v. Clausen*, 44 B.R. 41 (Bankr. D. Mn. 1984)). It is not necessary to prove fraudulent intent in order to sustain an objection to discharge under § 727(a)(2)(A). Intent to hinder or delay, rather than to defraud, would be sufficient. It is necessary to show fraudulent intent in connection with the transfer of the horses. Colliers, supra, at ¶ 727.02[5].

The Court does not believe that the use of the March 1 date on the transfer reports and its attempted use on the fictitious name certificate is mere happenstance. The use of the same date on all of these documents casts all of them into doubt when one considers that the other parties to the documents, i.e., the horse association official and the notary public, dated all the documents from ten to almost fourteen months later than the dates originally inscribed on them by the debtors. These transactions fit at least five of the six factors outlined in Schmit. There was a familial relationship between the parties to the horse transactions (factor 2). Ginsbachs retained possession of the horses (factor 3). Ginsbachs suffered from poor financial health both before and after the transfer of horses (factor 4). There were at least twenty-one transfers of horses (factor 5). March 1 was used as the date to transfer the horses and to establish the ranch, a date placing the assets beyond the reach of bankruptcy (factor 6).

The Court believes that the use of the March 1 date by Ginsbachs was intended to establish Milliron Diamond Ranch and

transfer the horses from Ginsbachs to the ranch in order to prevent the horses from being included as property of Ginsbachs' bankruptcy estate. The transfer of the horses also detrimentally affected creditor Security Bank, to whom Ginsbachs are in default. The bank attempted to levy on Ginsbachs' livestock in January 1989, after other attempts to collect from Ginsbachs proved fruitless. However, the bank's attempt to levy against the horses was thwarted by the transfer of their ownership from Ginsbachs to Milliron Diamond Ranch, presumably in late December 1988. The Court believes that all of the circumstances surrounding this case indicate that Ginsbachs transferred the horses to Milliron Diamond Ranch in order to hinder and delay, and defraud Global Financial Services and Security Bank. Accordingly, all of the elements of § 727(a) (2) (A) have been met and Ginsbachs are therefore ineligible to receive a discharge.

While this entire episode involving the horses would in itself prove sufficient to deny a discharge, the Court feels compelled to go further and examine the transactions surrounding the excavation equipment owned by the debtors.

The excavation equipment, which Ginsbachs claim they no longer own, includes a 1977 Case crawler, a backhoe attachment for the crawler, a 1970 Ford dump truck, and a 1969 Chevrolet dump truck. Wesley Ginsbach testified that he used this equipment in his excavation business that, according to his testimony, grossed at least $150,000.00 from 1985 to 1989. Actual figures were not available, as Ginsbach testified that he and Julie had not filed a federal income tax return since 1985.

Evidence from the hearing indicated that Ginsbach had transferred ownership of the excavating equipment to Paula Dittman and the Paul Grosz Trust. The late Paul Grosz and his wife, Ada, are Julie Ginsbach's maternal grandparents. Ginsbachs granted a security interest in the Case crawler and other equipment to the Paul Grosz Family Trust in consideration for a loan in the amount of $17,948.99. See defendant's Exhibit RR. Testimony indicated that the loan proceeds were used to pay off a note owing in a like amount to the Bank of Belle Fourche. Ginsbachs assigned title to the crawler and other equipment to Ada Grosz on January 5, 1987 due to their inability to make payments. See plaintiff's Exhibit 2. Ginsbachs then proposed to lease the crawler and other equipment from the trust for $250.00 per month. However, since that time Ginsbachs have made only four to six of the $250.00 per month payments. Ginsbachs are still in possession of the crawler.

The backhoe attachment for the Case crawler was subject to the same transaction set forth above. It was given as collateral to the Grosz Trust, title was later assigned to the trust, and the backhoe was then leased from the trust. Again, lease payments have been rare. Exhibit 00 shows that the backhoe is now titled to Paula Dittman. However, the backhoe is still in the possession of Wesley Ginsbach.

The 1970 Ford dump truck was subject to the same transaction as the crawler. Like the crawler, it is currently leased from the Grosz Trust although lease payments have been few and far between. Wes Ginsbach still possesses the dump truck.

A 1969 Chevrolet dump truck was purchased for $1,700.00 in 1987 and titled in the name of Wesley Ginsbach and his pre-school age son, Todd. The money to purchase the truck was borrowed from Todd, who had received the money from gifts. The truck was sold to Kuenes on December 18, 1988 for $1,400.00. The sale proceeds were used to buy hay for Ginsbachs' horses. Ginsbach still has possession of the dump truck despite its sale to Kuenes, and pays no rent for its use.

Application of the same analytical framework outlined in connection with the horses leads this Court to conclude that the crawler, backhoe and two dump trucks listed above are the property of Ginsbachs' bankruptcy estate and that Ginsbachs have attempted to conceal the same from 1987 to the present. Ginsbachs have had possession of the property regardless of its claimed sale and lease back. Wesley Ginsbach has used the equipment in his excavating business, which has generated in the neighborhood of $150,000.00 in revenue over the past five years. However, "lease payments" on the equipment to Ginsbachs' lessors/relatives have been virtually non—existent.

Returning to the factors set forth in Schmit, supra, it is clear that Ginsbach possessed the requisite intent to hinder, delay or defraud their creditors. As with the horses, the transactions involving the excavating equipment all took place between members of the family. Likewise, Ginsbachs have continued to retain possession of the equipment and benefit from its use despite its transfer. Ginsbachs' financial condition, the series of transactions involving all of the equipment, and the general chronology of all of these events point to Ginsbachs' intent to defraud their creditors. See *Schmit*, supra at 590.

The Court concludes that these questionable, if not sham, transfers and the circumstances surrounding this entire series of

events violate § 727(a) (2) (A) and constitute an independent ground for the denial of a discharge to Ginsbachs.

Global and Security Bank also allege that Ginsbachs violated § 727(a) (2) (B), which prohibits a discharge when property of the estate is transferred, removed, destroyed, mutilated or concealed, with the intent to hinder, delay or defraud a creditor, after the date of the filing of the debtor's petition. Again, actual intent to hinder, delay or defraud must be shown. In re Devers, 759 F.2d 751 (9th Cir. 1985). Fraudulent intent may be established by circumstantial evidence or by inferences drawn from a course of conduct. Id.

Plaintiff's Exhibit 22 shows that Wesley Ginsbach transferred a quarter horse named Zanzabars Last on May 6, 1989. The transfer report shows that Wesley Ginsbach was the seller of the horse and that Kathy Maryott was its purchaser. The evidence reveals that the sell of Zanzabars Last was no different than any of the other transactions involving livestock owned by Ginsbachs. The transfer report shows Wesley Ginsbach as seller and a transfer date of May 6, 1989, almost two weeks after Ginsbachs had filed their bankruptcy petition.

Wesley Ginsbach's testimony concerning the sale of the horse left the Court with the impression that Ginsbachs intended to continue buying and selling horses oblivious to the fact that they had filed bankruptcy and without having obtained this Court's permission to dispose of property of the estate. The Court believes that whether Ginsbachs intended to defraud their creditors is, in this instance, a close question. The circumstances surrounding this transaction nevertheless leads the Court to believe that Ginsbachs intended to hinder or delay their creditors by selling the horse. It is clear from an examination of Plaintiff's Exhibit 22 that the transfer of the horse took place after the date of the filing of Ginsbachs' petition, leading the Court to conclude that Ginsbachs violated § 727(a) (2) (B), constituting another independent ground for denying a discharge to Ginsbachs.

The Court will next examine whether Ginsbachs violated § 727(a) (4) (A), making a false oath or account in connection with their case. Plaintiffs claim that Ginsbachs' failure to list all of the horses mentioned above on their schedules violates this section.

Plaintiffs bear the burden of proving the elements necessary to sustain this claim. B.R. 4005. In order to succeed, they must

prove that the false oath was knowingly and fraudulently made, meaning that the statement must contain a matter that Ginsbachs knew to be false and that such statement was included wilfully and with intent to defraud. See Collier's, supra at ¶ 727.04[1]. The false oath must relate to a material matter, and the omission of property of trivial value and having little effect on the estate, is immaterial. Id. See also *In re Topping*, 84 B.R. 840, 842 (Bankr. M.D. Fla. 1988). The Court may infer from circumstantial evidence, including a pattern of concealment and nondisclosure, that Ginsbachs acted with the necessary intent to defraud. In re Ingle, 70 B.R. 979 (Bankr. E.D. N.C. 1987).

As noted by plaintiffs, Ginsbachs swore that their schedules were complete and accurate at the time they filed their petition and did so again when they appeared before the trustee at the first meeting of creditors. No amendments to the petition or schedules have been filed. Schedule B-2 shows Ginsbachs as owning four horses with a total value of $1,000.00.

As noted above, the Court is convinced that Ginsbachs own well in excess of the four horses that they list on their schedules. Transfer reports and registration certificates are evidence of such ownership.

The use of the March 1 transfer date, a cornerstone to the Court's earlier finding of fraudulent intent, again serves as proof of such intent here. The Court believes that Ginsbachs knowingly and fraudulently made a false oath concerning a material matter when they signed their petition for relief. Consequently, under § 727(a) (4) (A), the Court must deny them a discharge. This finding likewise constitutes an independent ground for such denial.

CONCLUSION

The evidence in this case presents a classic example of what can happen when debtors in bankruptcy fail or refuse to keep accurate records concerning the extent of their property holdings. Here, Ginsbachs' claim of non-ownership of the horses was directly contradicted by the registration and transfer reports filled out by co-debtor Julie Ginsbach. Inter-familial transactions involving the horses and excavating equipment compounded the confusion concerning the actual state of ownership of the property. In the final analysis, however, the Court is left with no conclusion other than that the horses and equipment were owned by Ginsbachs and that their transfers were intended to hinder, delay or defraud their creditors.

The Court concludes that debtors Wesley and Julie Ginsbach are barred from receiving a discharge due to their violations of 11 U.S.C. §§ 727(a)(2)(A), 727(a)(2)(B) and 727(a)(4)(A). The Court will enter an appropriate order.

Very truly yours,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH/sh

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

IN RE:	)	CASE NO. 89-50093
	)	ADVERSARY NO. 89-5031
WESLEY D. GINSBACH and JULIE A. GINSBACH,	)	CHAPTER 7
Debtors,	)	
GLOBAL FINANCIAL SERVICES, INC.	)	ORDER DENYING DISCHARGE
Plaintiff,	)	
vs.	)	
WESLEY D. GINSBACH and JULIE A. GINSBACH,	)	
Defendants.	)	

Pursuant to the letter opinion filed in this matter and executed this same date

IT IS HEREBY ORDERED that the objections to discharge filed by Global Financial Services, Inc. and joined by Security Bank of South Dakota against debtors Wesley D. and Julie A. Ginsbach are sustained.

IT IS FURTHER ORDERED that debtors Wesley D. and Julie A. Ginsbach be and hereby are denied a discharge under §§ 727(a) (2) (A), 727 (a) (2) (B), and 727(a) (4) (A) of the United States Bankruptcy Code.

Dated this 19th day of March, 1990.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy budge

ATTEST:
PATRICIA MERRITT, CLERK
By _____
Deputy Clerk