

The Concealed Cadillac

Spanked for Covering His Asset

Bankruptcy—although often a profound personal and/or business trauma and disappointment—offers the opportunity for a relatively fresh start and the possibility of ultimate financial resurrection. But for an individual or company to avail itself of such benefits, one must play by the rules. These rules include full and accurate disclosure, including disclosure of assets by the party seeking bankruptcy protection.

In *Weese v. Lambert*, decided on April 4, 2002, by the United States Bankruptcy Court for the Western District of Missouri, one issue was whether a debtor who filed for bankruptcy violated the requirements of the Bankruptcy Code by deliberately failing to disclose his ownership of a collector car.

According to the Court, Jerry Weese hired George Lambert to perform various construction jobs. Weese was not satisfied with Lambert's work and obtained a judgment in state small claims court for \$4,100.00. On July 25, 2001, Lambert filed a petition under Chapter 7 of the Bankruptcy Code. On his bankruptcy schedules Lambert listed a 1955 Cadillac as an asset.

On September 13, 2001, Weese appeared at Lambert's formal meeting with creditors and informed the bankruptcy trustee that Lambert also owned a 1962 Cadillac Fleetwood, which Lambert had not disclosed. On September 17, 2001, Lambert amended his schedules in various ways, but he still did not list the 1962 Fleetwood.

Weese, acting pro se (representing himself), filed a complaint objecting to Lambert's discharge (asking the court not to grant Lambert his bankruptcy). (As a "judgment creditor" by virtue of his small claims court victory, Weese obviously believed he had a better chance of collecting his money if Lambert were not allowed to declare bankruptcy.) Weese alleged, among other things, that Lambert failed to list all of his personal property on his bankruptcy schedules.

Weese and counsel for Lambert appeared by telephone at a pre-trial conference with the Court. Weese indicated that he would admit into evidence certain documents, including a copy of the Fleetwood's certificate of title, and information regarding the value of the car. At trial, Weese and counsel for Lambert appeared, but not Lambert.

The Court ruled in Weese's favor, denying Lambert his discharge in bankruptcy.


"At the hearing, Weese introduced a certified copy of an application for a Missouri title and license. The application identifies George J. Lambert as the purchaser of a 1962 Cadillac, the purchase date as September 5, 2000, and the VIN as 62M114648. Weese then called Candy Reece who testified that she knew Lambert, and had seen him driving a 1962 tan Cadillac in December of 2001. If Lambert owned the Cadillac on July 25, 2001, he failed to list it on his

bankruptcy schedules. The Code denies a discharge to a debtor who intentionally conceals assets from the bankruptcy trustee:

"(a) The court shall grant the debtor a discharge, unless-- . . . (2) the debtor, with intent to hinder, delay, or defraud a creditor or an office 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 filing of the petition.

"In the Eighth Circuit, once a plaintiff makes an allegation that a debtor concealed assets, and, thus, should be denied a discharge, the plaintiff has the burden of proving to the Court that there are reasonable grounds to believe that the debtor did, in fact, conceal assets. In this case, Weese proved that Lambert owned a 1962 Cadillac on September 5, 2000, ten months before he filed his bankruptcy petition. Weese then called a witness to testify that she personally observed Lambert driving such a car post-petition. These facts are sufficient for the Court to draw an inference that Lambert owned the car when he filed his petition, despite the fact that he did not list it as an asset. Once Weese sustained his burden by presenting facts that would allow the Court to make the natural inference that Lambert concealed assets, the burden shifted to Lambert to prove that he did not. Lambert did not even appear at the trial, let alone explain why he did not list the 1962 Cadillac on his schedules. The Court has no choice, therefore, but to find that Lambert concealed his ownership of the 1962 Cadillac from his creditors and the Chapter 7 trustee.

"But, the Code requires that the concealment be intentional. Intent may be proved, however, by circumstantial evidence or by inferences drawn from a course of conduct. Here, Lambert purchased a car pre-petition, he did not list it on his schedules, he did not report ever selling the car, and a witness saw him driving the car post-petition. Since Lambert did not offer any evidence to dispute any of the above facts, I will find that he intentionally concealed the asset.

"Based upon the evidence that Lambert concealed a car . . . , and based upon the fact that Lambert did not appear to refute any of that evidence, I will deny Lambert's discharge." 

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