UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re **JACK WILLIAM SULLENS**, Debtor.	Case No. **04-62115-7**
CRAIG D. MARTINSON, Plaintiff. -vs- **JACK WILLIAM SULLENS**, Defendant.	Adv No. **04-00133**

MEMORANDUM of DECISION

At Butte in said District this 14th day of June, 2005.

The Plaintiff, Craig D. Martinson, of Billings, Montana, who is the Chapter 7 Trustee in Debtor's main bankruptcy case, filed a Complaint on December 15, 2004, objecting to Debtor's discharge under 11 U.S.C. §§ 727(a)(2), (a)(3), (a)(4), (a)(5) and (a)(6). The Trustee is requesting: "[J]udgment against the Debtor, turnover of all antiques, collectibles, and sports memorabilia that [the] Trustee will identify as having been owned by the Debtor prior to the filing of this bankruptcy. In addition, the trustee is asking that the Discharge of the Debtor be denied for the filing of false schedules, the failure to properly account to the Trustee for property he once owned, and the failure of the Debtor to provide the trustee with adequate information and

documents to show his actual financial transactions prior to the filing of this bankruptcy."

In their Final Pre-Trial Order filed May 12, 2005, the parties set forth the following disputed factual issues:

1. Whether the Defendant has accounted for all items of personal property that he owned when he filed this bankruptcy.

2. Whether the Defendant owned property described as antiques, collectibles and sports memorabilia that were not listed on his schedules.

3. Whether the property referred to in paragraph 2 are assets of this bankruptcy estate and need to be accounted for.[1]

4. Whether, if the Defendant did liquidate items of property prior to the commencement of his bankruptcy case, he has provided the trustee with a complete accounting of these sales transactions.

5. Whether the Defendant has provided the trustee with sufficient records and documents to explain any loss of assets or deficiency of assets.

6. Whether the Defendant has attempted to conceal property of the estate.

7. Whether the Defendant has purposefully concealed, destroyed, mutilated, falsified or failed to preserve any recorded information from which the pre-bankruptcy sales transactions might be ascertained.

After due notice, trial in this matter was held in Billings on May 17, 2005. The Debtor/Defendant, Jack William Sullens ("Debtor") testified and was represented at the trial by

[1] The assets were identified more particularly at the trial in Exhibits 1 through 63 and 71 through 79.

his counsel of record, James A. Patten, of Billings, Montana. Attorney Craig D. Martinson, of Billings, Montana, the Chapter 7 Trustee ("Trustee"), was also present at the trial in his capacity as counsel for the Chapter 7 Trustee. In addition to the Debtor, the Trustee called Linda Clausing, Tracy Hoen and Carly Clausing as witnesses. The Trustee's Exhibits 1 through 82 and the Debtor's Exhibits A through Q were admitted into evidence without objection.

BACKGROUND

Debtor and Linda Clausing ("Linda") met in 2000 and became romantically involved. In May of 2001, Debtor and Linda bought a house together at 1050 Strawberry Avenue, Billings, Montana ("Strawberry home"). Linda made the down payment on the Strawberry home by contributing the proceeds from the sale of her prior home, which amounted to approximately $86,700.00. Debtor and Linda shared the house payments thereafter.

At the time Debtor and Linda met, Debtor was operating a sports memorabilia, antique and collectable retail store in Billings under the name Cracker Jacks. In 2002, Debtor acquired an interest, along with an individual named Cory Cutting, in a coffee roasting and retail coffee shop which was known as Todd's Plantation. When it became apparent that Todd's Plantation was failing, Debtor decided in 2003 to close Cracker Jacks and focus his efforts on Todd's Plantation. Debtor liquidated a substantial portion of his Cracker Jacks' inventory through an auction sale conducted by Bass Auctioneers of Lewistown. Debtor claims he used the proceeds from the auction to assist in the operation of Todd's Plantation. Debtor also obtained a loan from Stockman Bank, which loan was secured by a second and third loan against the Strawberry home. Debtor was able to use the home as collateral because of the substantial equity in the home, which equity was primarily the result of the down payment made by Linda and market

appreciation. Although Debtor was to make the payments on the second and third loans, Debtor did so for a short time and then ceased making the payments.

Linda testified that the financial demands of Todd's Plantation put a strain on Debtor's and Linda's relationship in mid-2003. Debtor eventually moved out of the Strawberry home during the summer of 2004 and sought protection under the Bankruptcy Code on July 7, 2004.

Given the deterioration of her relationship with Debtor and concerned that Debtor would walk away and leave Linda with all the bills, Linda took a substantial number of photographs of the interior of the Strawberry home. Linda remembers that she took the pictures shortly after Tracy Hoen's ("Tracy") 40th birthday, which was on May 8, 2004. Linda further testified that she took the pictures over a period of approximately two weeks. Linda's testimony was corroborated by Tracy, who testified that she was in the Strawberry home on May 8, 2004, to celebrate her 40th birthday. Tracy specifically remembered seeing a large number of the items depicted in Exhibits 1 through 63 and 71 through 79 while at the Strawberry home on May 8, 2005. Tracy described the interior of the Strawberry home as very "cluttered". Although Debtor testified that Tracy had been to the Strawberry home prior to May 8, 2004, Tracy testified that May 8, 2004, was the first time that she had been inside Debtor's and Linda's home. Tracy stated that she had been to the Strawberry home prior to that date to pickup Linda, but had never gone inside the home. Carly Clausing ("Carly"), Linda's daughter, who lived at the Strawberry home during the time in question, also remembers seeing most of the antiques, sports memorabilia and other collectibles in the home in May of 2004.

The photographs taken by Linda sometime after May 8, 2004, show a substantial number of antiques, sports memorabilia and other collectibles that belonged to Debtor. The majority of

the items depicted in the pictures were not listed in Debtor's bankruptcy schedules, and they are the items at issue in this case. Debtor testified that he disposed of most of the items between the summer of 2003 and early 2004. Linda and Carly, however, testified that some of the items were removed from the home by Debtor on June 19, 2004 and the remainder of the items were removed from the Strawberry home in August of 2004. Linda specifically remembers Debtor bringing boxes home in a Blue Water Works Truck. According to Debtor's Schedule I, Debtor began working at Blue Water Works on March 15, 2004.

Sometime after August of 2004, Linda abandoned the Strawberry home through a deed in lieu of foreclosure after Linda realized that she could no longer maintain the monthly payments on the three obligations against the home, including the second and third mortgage payments that were to be made by Debtor.

On the same date that the Trustee conducted the 341(a) Meeting of Creditors in Debtor's Chapter 7 bankruptcy case, the Trustee filed a Motion for Turnover on August 16, 2004, seeking the turnover of various antiques, sports memorabilia and other collectibles that were in the possession of Helen Bender, David Claxton or Debtor. Debtor subsequently amended his Schedules B and C on September 3, 2004, to include several antiques, sports memorabilia and other collectibles that were not previously listed in Debtor's schedules.

DISCUSSION

In a nondischargeability claim the burden of proof falls on the creditor to prove the elements by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 661, 112 L.Ed.2d 755 (1991) ("we hold that the standard of proof for the dischargeability exceptions in 11 U.S.C. § 523(a) is the ordinary preponderance-of-the-evidence standard."); *In re*

Branam, 226 B.R. 45, 52 (9th Cir. BAP 1998), *aff'd*, 205 F.3d 1350 (9th Cir. 1999). A creditor's burden, in conjunction with the "fresh start" policy of the Bankruptcy Code, creates a sizeable obstacle for creditors to overcome in order to prevail on a nondischargeability complaint. *In re Ballew*, 18 Mont. B.R. 404, 410-11 (Bankr. D. Mont. 2000).

As stated by the Ninth Circuit Court of Appeals:

> One of the fundamental policies of the Bankruptcy Code is the fresh start afforded debtors through the discharge of their debts. *In re Devers*, 759 F.2d 751, 754-55 (9th Cir. 1985). In order to effectuate the fresh start policy, exceptions to discharge should be strictly construed against an objecting creditor and in favor of the debtor. *In re Klapp*, 706 F.2d 998, 999 (9th Cir. 1983).

Snoke v. Riso (In re Riso), 978 F.2d 1151, 1154 (9th Cir. 1992); *In re Tyler*, 19 Mont. B.R. 441, 447-448 (Bankr. D. Mont. 2002); *see also In re Kidd*, 219 B.R. 278, 282, 16 Mont. B.R. 382, 386 (Bankr. D. Mont. 1998).

Likewise, under § 727, the moving party, who is the Trustee in this case, bears the burden of proof by a preponderance of the evidence, and the provisions of § 727 are to be construed liberally in favor of the debtor and strictly against those objecting to discharge. *Ballew*, 18 Mont. B.R. at 416; *In re Adeeb*, 787 F.2d 1339, 1342 (9th Cir. 1986). The evidence must, when considered in light of all the facts, lead the Court to conclude that the debtor has violated the spirit of the Code. *Ballew*, 18 Mont. B.R. at 416, citing *Grogan v. Garner.*

As the Debtor correctly states in his Trial Memorandum: "This case is largely one of contested facts." Indeed, the outcome of this case comes down almost exclusively to the weight the Court assigns to the testimony of the witnesses. Having observed Linda's, Tracy's and Carly's demeanor while testifying under oath and adverse examination, the Court finds that Linda, Tracy and Carly are credible witnesses. *In re Taylor*, 514 F.2d 1370, 1373-74 (9th Cir.

1975); *See also Casey v. Kasal*, 223 B.R. 879, 886 (E.D. Pa. 1998). Linda's, Tracy's and Carly's testimony was credible and convincing by a preponderance of the evidence.

The Court, on the other hand, assigns little probative weight to Debtor's testimony.[2] Debtor's testimony was similar to a piece of well-aged Swiss cheese–full of holes. In particular, Debtor would answer questions when it suited his fancy but upon cross-examination by the Trustee, Debtor would often claim that he could not recall when he sold various items, who purchased the items, or what was paid for the various items. Debtor's pat answer to many of the questions put forth by the Trustee was that he sold many items for cash and did not keep receipts or other records. Debtor did, however, recall giving several items to a person named Wayne. Debtor testified that he felt morally obligated to give various items to Wayne to repay Wayne for a signed item that turned out later to be a forgery. Debtor remembered what items he gave to Wayne, but could not remember when he gave various sports memorabilia and other collectibles to Wayne and could also not recall the value of the items given to Wayne.

The section of the Bankruptcy Code under which the Trustee seeks denial of Debtor's

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[2] The Court's assessment of the credibility of the witnesses is subject to the clearly erroneous standard on appeal. As explained by the Ninth Circuit Court of Appeals,:

> The Sixth Circuit attempted to convey in more earthy terms the arduousness of this endeavor in *Parts and Electric Motors, Inc. v. Sterling Electric, Inc.*:
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> > To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must, as one member of this court recently stated during oral argument, strike us as wrong with the force of a five-week old, unrefrigerated dead fish.
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> 866 F.2d 228, 233 (7th Cir.1988).

Fisher v. Roe, 263 F.3d 906, 912 (9th Cir. 2001), *abrogated on other grounds, Mancuso v. Olivarez*, 292 F.3d 939, 944 n. 1 (9th Cir.2002).

discharge provides in relevant part:

> (a) The Court shall grant the debtor a discharge, unless–
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> (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–
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> > (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.
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> (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;
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> (4) the debtor knowingly and fraudulently, in or in connection with the case--
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> > (A) made a false oath or account;
> > (B) presented or used a false claim;
> > (C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or
> > (D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;
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> (5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;
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> (6) the debtor has refused, in the case--
>
> > (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;
> > (B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or
> > (C) on a ground other than the properly invoked privilege against

> self-incrimination, to respond to a material question approved by the court or to testify[.]

I. 11 U.S.C. § 727(a)(2). In the case of *Devers v. Bank of Sheridan (In re Devers)*, 759 F.2d 751, 753 (9th Cir. 1985), the Ninth Circuit Court of Appeals held that under § 727(a)(2), a plaintiff must demonstrate a debtor's actual intent to conceal assets, or to hinder, delay, or defraud creditors. The Court in *Devers* wrote:

> Constructive fraudulent intent cannot be the basis for denial of discharge, *In re Adlman*, 541 F.2d 999, 1003 (2d Cir.1976), but fraudulent intent may be established by circumstantial evidence, or by inferences drawn from a course of conduct. *Farmers Co-op Association v. Strunk*, 671 F.2d 391, 395 (10th Cir.1982). The statute is to be construed liberally in favor of debtors and strictly against the objector. *In re Adlman*, 541 F.2d at 1003; *In re Rubin*, 12 B.R. 436, 440 (Bankr.S.D.N.Y.1981).

Id. at 753-54. In *Devers*, this Court denied the discharge based on the debtors's conduct, which was found to be in violation of § 727(a)(2). (Unpublished opinion). The conduct complained of by the creditor bank was that debtors were selling secured livestock and commingling the proceeds therefrom with other assets. In addition, the debtors were unable to explain the disappearance of missing ranch equipment.

The Ninth Circuit affirmed the decision of this Court, and of the District Court of Montana, finding that the debtors' explanation regarding the disappearance of the ranch equipment was:

> [Y]et another indication of their disregard of their responsibilities during the reorganization process. The Creditor proved that the Debtors once had owned the tractor, and that they did not produce it for repossession. While the burden of persuasion rests at all times on the creditor objecting to the discharge, it is axiomatic that the debtor cannot prevail if he fails to offer credible evidence after the creditor makes a prima facie case. *In re Reed*, 700 F.2d 986, 992-93 (5th Cir.1983). A debtor's failure to offer a satisfactory explanation when called on by the court is a sufficient ground for denial of discharge under section 727(a)(5).

Devers, 759 F.2d at 754.

In the instant case, the Court finds that Debtor had several items of sports memorabilia antiques and other collectibles in his possession on May 8, 2004; just two months before Debtor filed his Chapter 7 bankruptcy petition. Debtor has wholly failed to credibly account for the whereabouts of the various items of property or any proceeds from the sale thereof. Like the debtors in *Devers*, Debtor's failure to offer a satisfactory explanation as to the whereabouts or disposition of the items identified in Exhibits 1 through 63 and 71 through 79 warrant the denial of Debtor's discharge under § 727.

II. 11 U.S.C. § 727(a)(3). Section 727(a)(3) provides that the court shall grant the debtor a discharge, unless – "(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, and papers, from which the debtor's financial condition of business transactions might be ascertained, unless such act or failure to act was justified under all the circumstances of the case." *Lansdowne v. Cox (In re Cox)*, 41 F.3d 1294, 1296 (9th Cir. 1994). The Ninth Circuit explained in *Cox*:

> "[T]he purpose of [section 727] is to make the privilege of discharge dependent on a true presentation of the debtor's financial affairs." *In re Cox*, 904 F.2d at 1401 (internal quotations and citations omitted). The initial burden of proof under § 727(a)(3) is on the plaintiff. Fed.R.Bank.P. 4005. "In order to state a prima facie case under section 727(a)(3), a creditor objecting to discharge must show (1) that the debtor failed to maintain and preserve adequate records, and (2) that such failure makes it impossible to ascertain the debtor's financial condition and material business transactions." *Meridian Bank v. Alten*, 958 F.2d 1226, 1232 (3d Cir.1992). Once the objecting party shows that the debtor's records are absent or are inadequate, the burden of proof then shifts to the debtor to justify the inadequacy or nonexistence of the records. *Id.* at 1233; *Cox*, 904 F.2d at 1404 n. 5; *Matter of Horton*, 621 F.2d 968, 972 (9th Cir.1980); *In re Lawler*, 141 B.R. 425, 428-29 (9th Cir. BAP 1992) (stating that a debtor must "provide a credible explanation" for failure to keep records); see also *In re Wolfson*, 152 B.R. 830, 832 (S.D.N.Y.1993);

In re Folger, 149 B.R. 183, 188 (D.Kan.1992); *In re Pulos*, 168 B.R. 682, 690 (Bankr.D.Minn.1994); *In re Sausser*, 159 B.R. 352, 355-56 (Bankr.M.D.Fla.1993).

Cox, 41 F.3d at 1296-97.

Intent to conceal is not a necessary element for the denial of discharge under § 727(a)(3). *Cox*, 41 F.3d at 1297; *In re Wolfson*, 139 B.R. 279, 287 (Bankr.S.D.N.Y.1992), *aff'd*, 152 B.R. 830 (S.D.N.Y.1993); *In re Pulos*, 168 B.R. 682, 690 (Bankr.D.Minn.1994); *In re Savel*, 29 B.R. 854, 856 (Bankr.S.D.Fla.1983). Once the Trustee made a *prima facie* showing under § 727(a)(3), the burden shifted to Debtor to provide a satisfactory explanation for the disappearance of his business records. However, Debtor offered virtually no response to the Trustee's allegations, even after the Trustee had made the case that Debtor had concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained.[3] Debtor has simply failed to keep any type of recorded document regarding his business dealings. Debtor filed tax returns in 2003 and 2004. *See* Exhibits 82 and Q. Debtor's 2003 and 2004 tax returns include Schedule C, Profit or Loss From Business. Curiously, despite Debtor's ability to identify gross receipts or sales, returns and allowances and costs of goods sold for purposes of completing his tax returns, Debtor cannot produce any documentation to support the numbers provided to the Internal Revenue Service. Debtor's failure to offer a satisfactory explanation for the disappearance of his business records is sufficient grounds for denial of discharge under 11 U.S.C. § 727(a)(3).

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[3] A trustee is not required to drag information from an uncooperative debtor, nor is a trustee required to reconstruct a debtor's transactions in order to ascertain his or her financial condition. *Carlson*, 231 B.R. at 654.

III. 11 U.S.C. § 727(a)(4). This Court construed § 727(a)(4)(A) in *Torgenrud v. Schmitz (In re Schmitz)*, 224 B.R. 149, 150-51, 17 Mont. B.R. 43, 44-46 (Bankr. D. Mont. 1999):

> The Bankruptcy Code provides that a debtor under Chapter 7 shall be granted a discharge, unless "the debtor knowingly and fraudulently, in or in connection with the case--(A) made a false oath or account...." 11 U.S.C. § 727(a)(4). Thus, to succeed on a § 727(a)(4)(A) claim, the objecting party must demonstrate that: (1) a false oath or statement was made by the debtor; (2) knowingly and fraudulently; (3) which was material to the course of the bankruptcy proceedings. *First Nat'l Bank of Crosby v. Syrtveit (In re Syrtveit)*, 105 B.R. 596 (Bankr. Mont. 1989). A false oath or statement is made when it occurs (1) in the debtor's schedules or (2) at an examination during the course of the proceedings. *Scimeca v. Umanoff*, 169 B.R. 536, 542 (D.N.J.1993); *aff'd*, 30 F.3d 1488 (3d Cir.1994). The Court in *Scimeca* noted that while the initial burden lies on the objector to prove that the debtor made a false statement in connection with the proceedings, once it "reasonably appears the oath is false, the burden falls on the bankrupt" to disprove the allegation. *Scimeca*, 169 B.R. at 542; *Kramer v. Poland (In re Poland)*, 222 B.R. 374 (Bankr. M.D.Fla 1998) ("it is well established that once the Plaintiff has met the initial burden by producing evidence which establishes a basis for the objection, the Defendant has the ultimate burden of persuasion. *See, Chalik v. Morrefield (In re Chalik)*, 748 F.2d 616, 619 (11th Cir. 1984).").
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> With regard to materiality, the Eighth Circuit Court of Appeals adopted the following standard of materiality as espoused by the Eleventh Circuit Court of Appeals in *Chalik*, 916 F.2d at 484:
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> > The subject matter of a false oath is 'material,' and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property.
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> *Mertz v. Rott*, 955 F.2d 596, 598 (8th Cir. 1992). . . . This case highlights an obvious and fundamental maxim in bankruptcy–that providing false information under oath in a bankruptcy proceeding is not a matter to be taken lightly. *See e.g., Tully*, 818 F.2d 106, 112 (1st. Cir. 1987) (stressing that sworn statements in bankruptcy schedules "must be regarded as serious business" because "the system will collapse if debtors are not forthcoming"); *In re Nazarian*, 18 B.R. 143, 146 (Bankr. D.Md.1982) (noting that a creditor need not actually rely on the false statement). As previously noted by this Court,

> The primary purpose of § 727(a)(4)(A) is to ensure that dependable information is supplied to those interested in the administration of the bankruptcy estate so they can rely upon it without the need for the Trustee or other interested parties to dig out the true facts through examinations or investigations.

Bastrom, 106 B.R. at 227.

See also Ballew, 18 Mont. B.R. at 417.

All that is required for a denial of discharge under the plain language of § 727(a)(4)(A) is a single false oath or account. *In re Grondin*, 232 B.R. 274, 277 (1st Cir. BAP 1999) (*citing Torgenrud v. Schmitz*). The Court finds more than a single false oath or account by Debtor in this record. First, Debtor intentionally excluded items of property from his original Schedules and only amended his Schedules to include some omitted items after it came to light that the Trustee was seeking to recover the unidentified assets.[4] Second, Debtor has failed to account for the other items of property that were identified in Exhibits 1 through 63 and Exhibits 71 through 79, but not listed in either Debtor's original Schedules or amended Schedules.

This Court finds that Debtor made false oaths in his Chapter 7 bankruptcy case, and that his false oaths were material, and thus sufficient to bar discharge, since they bear a relationship to the Debtor's business transactions or estate, and concern the discovery of assets, business dealings, or the existence and disposition of the Debtor's property. *See Schmitz*, 224 B.R. at 151; *Chalik*, 916 F.2d at 484.

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[4] "[T]he debtor has a duty to prepare schedules carefully, completely, and accurately." *Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001); *In re Mohring*, 142 B.R. 389, 394 (Bankr.E.D.Cal.1992), *aff'd.*, 153 B.R. 601 (9th Cir. BAP 1993), *aff'd.*, 24 F.3d 247 (9th Cir. 1994). This Court must construe any ambiguities or lack of information in a debtor's schedules or statement of financial affairs against the debtor as both the drafter of the documents and as the party most familiar with the information required by them. *In re Pickering*, 15 Mont. B.R. 271, 274, 195 B.R. 759, 762-63 (Bankr. D. Mont. 1996), citing *Mohring*.

IV. 11 U.S.C. § 727(a). "Section 727(a)(5) is broadly drawn and clearly gives a court broad power to decline to grant a discharge in bankruptcy where the debtor does not adequately explain a shortage, loss, or disappearance of assets." *In re Martin*, 698 F.2d 883, 886 (7th Cir.1983). Whether a debtor has satisfactorily explained a loss of assets is a question of fact for the bankruptcy court, overturned only for clear error. *In re Hawley*, 51 F.3d 246, 248 (11th Cir.1995) (per curiam); *Farouki v. Emirates Bank Int'l, Ltd.*, 14 F.3d 244, 251 (4th Cir.1994).

As the foregoing discussion illustrates, Debtor has failed to explain in any fashion the loss of his assets. Linda testified that Debtor informed her that he was not going to "start over". That indeed appears to be the case. Debtor has obviously concealed assets with the hopes that he could discharge his financial obligations through the bankruptcy process, and when all was said and done, Debtor would still have all his assets. Such actions by Debtor do not comport with the spirit of the Bankruptcy Code. Debtor's unsubstantiated testimony regarding the disposition of his assets simply does not overcome the *prima facie* case established by the Trustee. Accordingly, the Court finds that Debtor's discharge should be denied under § 727(a)(5).

V. 11 U.S.C. § 727(a)(6). Finally, because the Court finds that Debtor had most, if not all, of the assets identified in the various Exhibits at the time he filed his bankruptcy schedules, the Court finds that Debtor failed to abide by an Order of this Court when Debtor failed to turnover his sports memorabilia, antiques and other collectibles according to the Order of Turnover entered by this Court on August 17, 2004. Consequently, the denial of Debtor's discharge is warranted under 11 U.S.C. § 727(a)(6).

In his Complaint, the Trustee continues to request turnover of the items of property identified in Exhibit 1 through 63 and 71 through 79. The Court finds that directing the Debtor

to turnover all the concealed assets at this juncture would be a pointless exercise. The discharge of Debtor's debts has been denied. Accordingly,

IT IS ORDERED a separate Judgment shall be entered in favor of Plaintiff, Craig D. Martinson, and against Debtor/Defendant, Jack W. Sullens; and pursuant to 11 U.S.C. §§ 727(a)(2), (a)(3), (a)(4), (a)(5) and (a)(6), Debtor's general discharge of debts is denied.

BY THE COURT

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana