

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

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**In re:**

**CASE NO. 97-20461**

**Francis A. Pierri,**

**Debtor.**

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**James Fitzpatrick,**

**Plaintiff,**

**vs.**

**A.P. NO. 97-2125**

**Francis A. Pierri,**

**Defendant.**

**DECISION & ORDER**

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**BACKGROUND**

On February 12, 1997, Francis A. Pierri ("Pierri") filed a voluntary petition initiating a Chapter 7 case as well as the schedules and statements required by Section 521 and Rule 1007 (the "Original Schedules"). The Original Schedules indicated that: (1) along with other family members, Pierri owned fractional interests with a total value of \$25,500.00 in various parcels of vacant land; (2) Pierri had personal property with a total value of \$732.00, all of which was exempt, consisting of \$200.00 on deposit in a checking account (Schedule B, Item 2), \$500.00 in personal clothing (Schedule B, Item 6) and \$32.00 in an IRA Account (Schedule B, Item 11); (3) Pierri had no: (a) household goods or furnishings (Schedule B, Item 4 showed "NONE"); (b) firearms, sports, photographic, or other hobby equipment (Schedule B, Item 8 showed "NONE"); (c) licenses, (Schedule B, Item 22 showed "NONE"); (d) automobiles (Schedule B, Item 23 showed "NONE"); (e) inventory (Schedule B, Item 28 showed "NONE"); or (f) other personal property of any kind

(Schedule B, Item 33 showed "NONE"); (4) Pierri owed taxes to the Internal Revenue Service in the amount of \$43,201.66 and to the New York State Tax Commission, for sales and use taxes, in the amount of \$281,411.48; (5) Pierri scheduled \$1,599,376.64 in unsecured, non-priority claims, including a \$312,000.00 claim held by James Fitzpatrick ("Fitzpatrick"); (6) although many of the scheduled unsecured, non-priority claims were also owed by co-debtors, there were no co-debtors listed for in excess of \$336,000.00 of these claims; (7) Pierri had been the Restaurant Manager of Pierri's Restaurant for 20 years and had been a general partner in Pierri's Motel Associates, a limited partnership which owned and operated a Days Inn in Corning, New York<sup>1</sup>; and (8) Pierri was not involved in any business as a sole proprietorship within the two years immediately preceding the commencement of his bankruptcy case (Statement of Financial Affairs, Item 16.a. showed "NONE").

On February 24, 1997, Pierri filed an Amendment to his Statement of Financial Affairs. In the Statement of Financial Affairs filed as part of the Original Schedules, Pierri had indicated, at

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<sup>1</sup> In June, 1994, Pierri's Motel Associates ("PMA"), and a related partnership, B&F Realities Partnership ("B&F"), filed voluntary petitions initiating Chapter 11 cases. The PMA Chapter 11 case was initially filed by Pierri as a general partner. The Bankruptcy Court's docket for the PMA Chapter 11 case contained 341 separate docket entries for the period from June 22, 1994 through March 26, 1996, when the case was administratively closed post-confirmation. Three of these docket entries indicated: (1) a letter was sent to the Court from the Office of the New York State Attorney General advising that it was investigating allegations that certain promoters of PMA had defrauded other investors; (2) a letter was sent to the Court from Fitzpatrick's attorney in the case alleging that Pierri was removing personal property from the motel which might belong to the debtor-in-possession rather than Pierri's Enterprises, Inc. which operated Pierri's Restaurant at the motel; and (3) objections were filed and hearings were held in connection with various claims filed by Joan Pierri, Pierri's spouse.

Item 1, that he had received no income from employment, trade or profession, or from the operation of a business for the two years immediately preceding the filing of his bankruptcy case. On his Amended Statement of Financial Affairs Pierri set forth the income that he had received for the prior two years from unemployment and from the Branding Iron Restaurant, a restaurant owned and operated by his spouse, Joan Pierri. No amendment was made, however, to Item 16.a. in order to indicate that Pierri was involved in a business as a sole proprietorship within the two years immediately preceding the filing of his bankruptcy case.

A transcript of the Section 341 hearing (Exhibit #5 at Trial) conducted by Pierri's Trustee (the "Trustee") on March 28, 1997, more than one month after the filing of the Amended Statement of Financial Affairs, showed the following questions asked by the Trustee and the answers given by Pierri:

Q. Did you list all of your debts and all of your assets on the bankruptcy schedule?

P. Yes, sir.

Q. Besides operating the restaurant and your interest in the motel, have you been self-employed in the last six years?

P. Yes, sir. I have a firearms license and I buy and sell guns, but I haven't done any active business in the last three years.

Q. Okay. Do you have any inventory at this point?

P. No.

Q. Does anybody owe you any money for this?

P. No, it was more a hobby.

On May 7, 1997, the Trustee filed a motion (the "Extension Motion") to extend his time to

file an objection to Pierri's discharge under Section 727. In his May 1, 1997 Affirmation in support of the Motion, the Trustee stated that:

"I have received an extensive letter from attorney Edward J. Degnan of Canisteo, NY concerning this debtor. Said letter alleged as follows: (a) The debtor has concealed and failed to schedule an extensive and valuable collection of guns; (b) the Debtor has concealed and failed to schedule a 1990 Cadillac.... If accurate, the above-described allegations might provide grounds for a denial of discharge to the Debtor under 11 U.S.C. Sections 727(a)(2) - (a)(5)."

On May 8, 1997, Pierri filed an Amended Schedule B - Personal Property. At Item 8, the Amended Schedule B indicated that Pierri was a one-third owner of various guns having a total value of approximately \$5,000.00 and located in Pierri's possession. The cover letter (the "Attorney Firearms Letter") from Pierri's attorney which accompanied the Amended Schedule B, stated in part that:

"When the trustee asked that my office inquire into the matter of firearms with my client he advised that approximately five thousand dollars in guns were registered jointly in his wife, daughter and his own name. He had these as inventory in a business known as Pierri's Guns & Ammo. He also had the mistaken impression that a business bankruptcy and personal bankruptcy were separate (he has previously filed a business bankruptcy with some partners)."<sup>2</sup>

On May 30, 1997, the Court granted the Extension Motion, giving the Trustee until September 15, 1997 to file a complaint objecting to Pierri's discharge.<sup>3</sup>

On May 30, 1997, the Trustee conducted an adjourned Section 341 hearing. A transcript of

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<sup>2</sup> The schedules filed by PMA and B&F in their Chapter 11 cases did not list any interest in firearms or indicate that these partnerships were involved in the purchase and sale of handguns.

<sup>3</sup> The Bankruptcy Court's docket indicates that no order was ever submitted by the Trustee in connection with the Extension Motion.

this adjourned Section 341 hearing (Exhibit #6 at Trial) showed the following questions asked by the Trustee or Fitzpatrick's attorney and the answers given by Pierri or his attorney:

Q. Now, what about these guns. You filed amended schedules indicating a one-third interest in an inventory of guns?

A. Yes, sir.

Q. These are handguns that are --

A. Handguns.

Q. -- that are on file with the county clerk's office here?

A. Yes, sir.

Q. Where is this inventory located?

A. Between my daughter's house and my house. Some are at hers, some are at mine.

Q. What is the purpose of the inventory; is that an inventory for sale?

A. It's a personally owned inventory for sale. I use the product and sell the product...If somebody came in and wanted a weapon, I would sell a weapon, use the money for whatever or buy another weapon.

THE TRUSTEE: What do you want to do about this? I'm now one-third interest in these guns. And I'll tell you, if I was a three-third interest, I would say, not that I can sell them, but I would say pay me or turn the guns over to the county sheriff's department for disposal.

MR. WELCH: I think the money would work, you would generate money and that would end up getting paid. I think the primary creditor is IRS. He's got to pay them anyway, it's a nondischargeable debt. If you want to administer all that, I guess that's what we'd have to do, pay you the value or you can sell them too, either way.

Q. You have an ATF license?

A. Yes. 07447, my code numbers.

Q. When did you first obtain an ATF license?

A. 1974.

Q. Have you continuously held a license?

A. Yes, sir.

Q. How often do you renew it?

A. I believe it's a two-year license.

Q. When did you renew it last?

A. Just renewed it recently in the last year.

Q. Did you ever value your gun collection?

A. Sure.

Q. What values have you put on your gun collection previously?

A. At one time between 20 and \$30,000.

Q. Did you file a banking statement valuing your gun collection at 20 to \$40,000?

A. I could have, yes.

Q. What guns were contained in that collection at the time?

A. Winchester 94s. Most of those were Centennials. I sold them to use the money to pay attorney fees.

Q. Was that under your gun license?

A. Those were personally owned.

Q. When you say you sold them to pay attorney fees --

A. Yes, sir.

Q. -- what was that for; was that the criminal action?

- A. Yes, sir. And before that I had mounding attorney fees from the action with Mr. Fitzpatrick, Mr. Bonnell and Mr. Coons.
- Q. Were you at one time the owner of a 1990 Cadillac?
- A. Yes and no, sir. That has been my wife's car ever since conception, but I worked for Corning Glass in the late '60s, we bought our cars through the credit union. Legally it was titled to me. I never drove it, it was hers. She made the payments. That's why I never mentioned it, I just took it that was her car.
- Q. Where is the car now?
- A. She still has it, sir.
- Q. In whose name is it currently titled?
- A. It's in my wife's name, sir.
- Q. Did you may that transfer in title interest on March 5th?
- A. Of this -- just currently?
- Q. Yes.
- A. Yes, sir.
- Q. But you just filed bankruptcy two weeks before that, three weeks before that?
- A. She wanted to register her car. I said it's your car, do what you want with it. I never thought one way or another of it, sir. It's a \$45,000 item. I wasn't trying to avoid anything. It's all recorded work.
- Q. All right. Your initial schedules indicated no automobiles.
- A. And I just never took it as mine, never took it as mine. But legally on paper is shows as mine.
- Q. How many cars do you have registered in your name?
- A. Cars registered in my name?
- Q. At this time, yes.

A. None.

Q. How many did you have registered --

A. Wait a minute, wait a minute. Before you get technical on this. My cook, Dan Courtney, and this could be all backed up, bought a junker of a Toyota valued at 4 or \$500, could not obtain insurance on it. I insured the car for him last year. That was just registered. It's not my car, never was my car. That's insured. It's my cook's car. He got picked up for DWI --

THE TRUSTEE: All right. It's not titled in your name?

A. It's titled in his name, insured in my mine.

THE TRUSTEE: Titled in his name, registered in yours?

A. Yes.

Q. Any other cars registered in your name titled to anybody else?

A. No. Say that again. The car I drive now belongs to my son-in-law David.

Q. David Dorsey?

A. David Dorsey. David was given a company car by Wegmans about six months or a year after he bought this car. I did not have a car. He doesn't know how long he's going to have his company car. He says, Dad, you take the car. I insure that and I drive it. That's the car I drive. I don't own it, it's my son-in-law's. I registered mine for insurance purposes because he couldn't afford to take the risk of me having an accident.

Q. How about household furniture, do you have any interest in household furniture?

A. Not now I don't, sir.

Q. When did you give up your interest in household furniture?

A. I don't know if I ever really had interest in household furniture.

Q. Did you ever file statements with national banks indicating that you had a \$60,000 interest in furniture and fixtures?



A. You gotta realize, the jewelry and that was jointly. That was my wife's share, she was the one that bought the furnishings.

Q. Did you ever declare you had a \$60,000 interest in furniture and fixtures?

A. Not myself.

Q. When you file with the bank you indicated it was joint?

A. On my file statement, yes.

Q. How about the Rembrandt, for instance, who's that belong to?

A. That's my wife's. It's a gift from my uncle.

Q. Did you ever declare that on your financial statement?

A. It showed up on all my financial statements and hers jointly.

On June 23, 1997, Pierri filed a Second Amended Schedule B and an Amended Schedule C - Property Claimed as Exempt, wherein he listed the 1990 Cadillac as an asset having a value of \$5,300.00 and claimed a \$2,368.00 exemption for his interest in the vehicle.

On May 27, 1997, Fitzpatrick commenced an "Adversary Proceeding" against Pierri which requested that the Court: (1) pursuant to Section 523, determine that his claim against Pierri was nondischargeable; and (2) pursuant to Section 727(a)(4)(A)<sup>4</sup>, deny Pierri a discharge because of his knowing and fraudulent failure to include in his Original Schedules his interests in firearms and the

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<sup>4</sup> Section 727(a)(4)(A) provides:

(a) The court shall grant the debtor a discharge, unless-

(4) the debtor knowingly and fraudulently, in or in connection with the case-

(A) made a false oath or account.

1990 Cadillac.<sup>5</sup> After several pretrial conferences in the Adversary Proceeding, the Court conducted a trial on March 25, 1998 at which Pierri was the sole witness. Pierri represented himself in the Adversary Proceeding, however, his bankruptcy attorney did participate in at least one of the pretrial conferences.

## DISCUSSION

### A. CASE LAW

From the cases which have been decided under Section 727(a)(4)(A), we know that for the Court to deny a debtor's discharge because of a false oath or account: (1) the false oath or account must have been knowingly and fraudulently made, *see Farouki v. Emirates Bank Int'l, Ltd.*, 14 F.3d 244 (4th Cir. 1994); (2) the required intent may be found by inference from all of the facts, *see 6 L.King, Collier on Bankruptcy*, ¶727.04[1][a] at 37 (15th ed. rev. 1996); (3) a reckless disregard of both the serious nature of the information sought and the necessary attention to detail and accuracy in answering may rise to the level of the fraudulent intent necessary to bar a discharge, *see In re Diorio*, 407 F.2d 1330 (2d Cir. 1969); (4) a false statement resulting from ignorance or carelessness is not one that is knowing and fraudulent, *see Bank of Miami v. Espino (In re Espino)*, 806 F.2d 1001

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<sup>5</sup> The request that the Court determine the dischargeability of Fitzpatrick's claim pursuant to Section 523 was subsequently withdrawn by Fitzpatrick. The Complaint in the Adversary Proceeding alleged other false oaths and accounts in Pierri's schedules, including that he held no licenses and was not in business as a sole proprietor within the two years prior to the commencement of his bankruptcy case. Although these false oaths and accounts impact on Pierri's credibility and may have otherwise prevented the Trustee from discovering assets, given the evidence produced at trial and the allegations regarding handguns and the 1990 Cadillac, they do not of themselves warrant a denial of discharge.

(11th Cir. 1986); (5) the required false oath or account must be material; (6) the required false oath or account may be a false statement or omission in the debtor's schedules or a false statement by the debtor at an examination at a creditors meeting, *see In re Ball*, 84 B.R. 410 (Bankr. D.Md. 1988); and (7) if items were omitted from the debtor's schedules because of an honest mistake or upon the honest advice of counsel, such a false declaration may not be sufficiently knowingly and fraudulently made so as to result in a denial of discharge.

**B. FIREARMS**

**1. In General**

From the testimony of Pierri and the exhibits introduced at trial, Pierri's Amended Schedule B and Pierri's March 27, 1998 post-trial submission, it is undisputed that there are at least eleven (11) handguns which Pierri has acknowledged: (1) he owns at least a one-third interest in; (2) are registered to him, even though they may be co-registered to his daughter, Michelle, and his spouse, Joan Pierri, for purposes of legal possession rather than ownership; and (3) have an aggregate value, based upon an appraisal prepared without an actual inspection by Schultheis Sporting Goods, Inc. (Exhibit #3 at Trial) and Pierri's submission, of from between \$1825.00 and \$2550.00 with an average median value of \$2,175.00.<sup>6</sup>

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<sup>6</sup> The eleven (11) handguns are identified as follows:

<u>Weapon</u>	<u>Cal.</u>	<u>Serial #</u>	<u>Low</u>	<u>High</u>	<u>Average</u>
Walther	380	A009080	250.00	350.00	300.00
Browning	9mm	72C47563	300.00	350.00	325.00
Colt	38	D70112	125.00	175.00	150.00
Ruger	22mg	65-02048	100.00	150.00	125.00
Ruger	22mg	76-07089	100.00	150.00	125.00
S&W	38	J487879	125.00	175.00	150.00
S&W	38	3K13005	125.00	175.00	150.00
S&W	357	AJS0526	175.00	225.00	200.00
S&W	9mm	TFR6618	200.00	300.00	250.00

**2. The False Oath or Account**

\_\_\_\_\_Pierri: (1) failed to list his interest in the eleven (11) handguns on his Original Schedule B of Personal Property filed on February 12, 1997; (2) failed to disclose his interest in these unscheduled handguns to his Trustee at his initial Section 341 hearing when, in response to the Trustee's direct question, he stated that he had listed all of his assets on his Schedules; (3) failed to disclose his interest in these unscheduled handguns at his initial Section 341 hearing, even after the Trustee specifically questioned him regarding firearms inventory in connection with his being a federally and state licensed firearms dealer; and (4) indicated on his Amended Schedule B and at his adjourned Section 341 hearing that he had only a one-third ownership interest in these handguns, when: (a) the Attorney Firearms Letter indicated that these handguns were initially in his business inventory; and (b) there has been absolutely no evidence produced by Pierri that either his spouse, Joan Pierri, or his daughter, Michelle, ever had any actual ownership interest in these specific handguns.

I find to be absolutely not credible, Pierri's testimony at trial and his allegations that: (1) his spouse, Joan Pierri, or his daughter, Michelle, may be the co-owners of one or more of these specific eleven handguns; (2) he simply forgot about his interest in these handguns and mistakenly failed to list them as assets on his Original Schedules; and (3) he initially mistakenly considered these as business assets which he was not required to disclose in his individual bankruptcy.

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Colt	22	344CBT	150.00	250.00	200.00
Colt	22	1398FLA	175.00	250.00	200.00
			<u>\$1825.00</u>	<u>\$2550.00</u>	<u>\$2175.00</u>

The evidence at trial, including Pierri's own testimony, established that Pierri: (1) individually as a sole proprietor, has been a federally licensed firearms dealer since 1974; (2) has purchased and sold approximately one thousand firearms since being licensed (an average of over 40 units annually); (3) made his last firearms sale within two years of the filing of this petition, contrary to his testimony at his initial Section 341 hearing and his answer to Item 16.a. in his Original Statement of Financial Affairs; (4) last renewed his federal license within two years of the filing of his petition; (5) as a licensed dealer, was required to maintain detailed records of all of his firearms transactions and inventories; and (6) originally purchased and held these unscheduled handguns in his business inventory.

**3. Knowingly and Fraudulently Made**

From the evidence produced at trial, the pleadings and proceedings in Pierri's bankruptcy case and in the Adversary Proceeding, and all of the facts and circumstances presented, I find that Pierri knowingly and fraudulently failed to schedule his ownership interest in the eleven handguns. Furthermore, at a minimum, his actions demonstrated such a reckless disregard of the serious nature of: (1) complying with his duties under Section 521<sup>7</sup> to pay the necessary attention to the detail and

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<sup>7</sup> Section 521 provides in part:

The debtor shall—

- (1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs; and
- (3) if a trustee is serving in the

accuracy required to properly complete his Original Schedules; and (2) responding correctly and completely to the questions of his Trustee and creditors at his Section 341 hearings, that fraudulent intent has been demonstrated by a preponderance of the evidence.

Pierri's failure to include his ownership interest in these eleven handguns in his Original Schedules simply could not have been an honest, careless or inadvertent mistake. There were too many questions which Pierri answered incorrectly in his Original Schedules that would have resulted in an honest debtor focusing on and disclosing an interest in the handguns, or at least bringing them to the attention of his bankruptcy attorney for further discussion<sup>8</sup>. Schedule B, Item #8, specifically requires a debtor to set forth any interest in firearms, sports or other hobby equipment. How could an honest debtor who had an interest in eleven handguns and was a federally and state licensed firearms dealer for 23 years answer "None"? At his initial Section 341 hearing, Pierri testified that he considered his firearms business to be a hobby. So why did he fail to think of these handguns as "hobby equipment"? At trial, Pierri testified that he and his family sometimes used these handguns for target shooting. So why did he fail to think of them as "sports equipment"? Of course, Pierri also falsely indicated that he held no licenses (Schedule B, Item #22) and that he had not operated a business as a sole proprietor within the two years prior to the filing of his bankruptcy case (Statement of Financial Affairs, Item 16.a.). He also indicated that he had no inventory (Schedule B, Item #23).

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case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title.

<sup>8</sup> Pierri has made no allegation that he discussed his interest in these handguns with his bankruptcy attorney before the Trustee made an inquiry about firearms.

Even when the Trustee questioned him about his firearms business at the initial Section 341 hearing, Pierri did not remember about these handguns or take the opportunity to disclose any ownership interest which he had in them. It was not until after the initial Section 341 hearing when: (1) Fitzpatrick's attorney checked the registrations and licenses at the County Clerk's Office, obtained an appraisal of the handguns still registered to Pierri and alerted the Trustee of these matters; and (2) the Trustee contacted his bankruptcy attorney, that Pierri suddenly remembered the existence of these handguns and filed his Amended Schedule B.

It is clear that it was only after he was "caught" that Pierri remembered about his interest in these handguns and elected to disclose the interest to the Court and the Trustee.

Furthermore, it is clear that Pierri is a sophisticated individual. As a businessman, he owned and operated a successful restaurant for many years and was a principal partner in a complex limited partnership which owned and operated a Days Inn in Corning, New York. Operating these entities required attention to detail, and the completion of sophisticated paperwork including sales tax returns and related reports. As a state and federally licensed firearms dealer, having sold over one thousand weapons since 1974, he was required to maintain meticulous records. In addition, Pierri was involved in many of the highly contested hearings which took place in the PMA and B&F Chapter 11 cases, and testified at his Section 341 meeting that since filing his petition he had obtained a real estate salesperson's license.

Pierri also has lived a fairly complex, somewhat unusual and in many respects sophisticated lifestyle. He: (1) registered his cook's car in his name and obtained insurance on it because his cook was uninsurable; (2) drives his son-in-law's car, which he insured and registered in his own name;

and (3) has previously completed and issued sophisticated financial statements in order to obtain financing for his business interests.<sup>9</sup>

Pierri, however, would have the Court believe that when he prepared and signed his Original Schedules and attended and testified at his initial Section 341 hearing, he mistakenly and inadvertently forgot that he had an interest in eleven handguns worth as much as \$2500.00. This is difficult to believe of such a sophisticated individual who claimed in his Original Schedules that he did not even have any household furnishings and the only personal property assets he did have were worth \$732.00. That would make his interest in the handguns three times more valuable than all of the other personal property that he owned.

#### **4. Material**

The evidence produced at trial and otherwise in the Adversary Proceeding indicates that Pierri is the sole owner of these eleven handguns which have a value of between \$1825.00 and \$2550.00. They are clearly assets which are of a material value and are not exempt.

#### **C. 1990 CADILLAC**

From the produced evidence at trial it has been established that the 1990 Cadillac was titled in Pierri's name at the time he filed his petition on February 12, 1997. It was not proved by Pierri at trial or by any post-trial submissions that his spouse, Joan Pierri, paid the downpayment, all of the

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<sup>9</sup> Interestingly, in connection with these statements, Pierri understood that, even though he claimed to have no ownership interest whatsoever in his household furnishings, including a Rembrandt which his uncle gave his wife, these furnishings could be listed on a joint financial statement with his spouse without requiring that he disclose that he had no actual joint ownership interest.



loan payments and all of the insurance and other maintenance costs for the vehicle, which might establish that it was her vehicle and held in Pierri's name for convenience only to obtain a favorable credit union purchase money loan. Therefore, it must be presumed that the vehicle was owned by Pierri at the time of the filing of his petition and was an asset of the bankruptcy estate under Section 541. Even if Joan Pierri were the equitable owner of the 1990 Cadillac, Pierri's failure to disclose the status of the title in his Original Schedules, or at his initial Section 341 hearing after he signed the title over to his spouse, post-petition, is a further example of his pattern of intentional and fraudulent non-disclosure, or, at a minimum, his reckless disregard for his duties under Sections 521(1) and (3). Once again, it was only after Fitzpatrick's attorney brought the status of the title to the vehicle to the attention of the Trustee that Pierri attempted to explain to the Court and the Trustee Joan Pierri's alleged equitable ownership of the 1990 Cadillac. I find, therefore, that Pierri made a knowing and fraudulent false oath or account regarding this material asset.

**D. OVERVIEW**

As this Court has often stated, the benefits received by an honest debtor in a bankruptcy case, including a discharge of all dischargeable debts, a "fresh start", are extraordinarily disproportionate to the few demands and expectations placed upon a debtor by the Bankruptcy Code and Rules. One of these few, but very important duties, which is seemingly easy for any debtor, even a consumer or typical individual debtor to perform, is to ensure that all of their assets are properly scheduled.

Further, as this Court has clearly stated on numerous occasions to debtors and their attorneys, notwithstanding all of the financial and perhaps personal difficulties that a debtor may be experiencing, the Bankruptcy Code expects that when debtors and their attorneys are finalizing and

signing their schedules, they will devote their full attention to them in order to ensure that they are complete and accurate to the best of the debtors' knowledge and information. If the schedules are not complete and accurate, Section 727 was enacted, in part, to prohibit a discharge and a fresh start for those who "play fast and loose with their assets or with the reality of their affairs." *In re Tully*, 818 F.2d 106, 110 (1st Cir. 1987).

### **CONCLUSION**

It has been proved by a preponderance of the evidence that Pierri has made one or more material false oaths or accounts in completing his Original Schedules and testifying at his Section 341 hearings and at the trial of the Adversary Proceeding. These false oaths or accounts were knowingly and intentionally made or were made with such reckless disregard of both the serious nature of the information being sought and the necessary attention to detail and accuracy required in completing his Schedules and answering questions asked at his Section 341 hearings and the trial of the Adversary Proceeding, that fraudulent intent is clearly indicated. Furthermore, there is no credible evidence that the false oaths or accounts were made by mistake, carelessness or inadvertence, or upon the honest advice of counsel. Pierri's discharge is hereby denied pursuant to Section 727(a)(4)(A).

**IT IS SO ORDERED.**

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/s/  
**HON. JOHN C. NINFO, II**  
**U.S. BANKRUPTCY JUDGE**

**Dated: April 21, 1998**