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Friday, December 6, 2002

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In re

DONALD O. GRACE,

No. 01-11078

[Debtor](#) (s).

ROBERT D. PRIOR, Executor,

[Plaintiff](#) (s),

v.

A.P. No. 01-1108

DONALD O. GRACE,

[Defendant](#) (s).

/

Memorandum of Decision

Debtor and defendant Donald O. Grace filed his [Chapter 7](#) petition on April 27, 2001. In the year prior to his filing, and knowing that his bankruptcy was imminent, Grace embarked on a scheme to conceal his assets from his [creditor](#) and [bankruptcy estate](#). In this [adversary proceeding](#), and based on the acts taken in furtherance of his scheme, plaintiff Robert D. Prior, Executor of the estate of creditor Jalmer Berg, objects to Grace's [discharge](#).

Grace, a real estate developer, attempted to circumvent bankruptcy laws by two means. Either attempt is more than sufficient to convince the court that he is not deserving of a discharge.

First, Grace created a Nevada corporation called MR. CDK, Inc. The nominal owners of this corporation were Grace's daughter, Megan Grace Sanchez, and his girlfriend, Cindy Scherkenbach. In reality, Grace retained undocumented ownership of the corporation. He placed at least two of his projects in this corporation's name while he continued to pay the expenses associated with the projects. Grace failed to disclose his interest in this corporation in his [schedules](#) and statement of affairs and still denies any interest in the corporation despite clear evidence to the contrary. Grace's failure to schedule any interest in MR. CDK Inc. was done knowingly and with the intent to defraud his creditors. His discharge is accordingly barred by § 727(a)(4)(a) of the [Bankruptcy Code](#).

Second, Grace improperly and with intent to defraud his creditors transferred at least \$84,000.00 to his wholly-owned corporation, Graceco Construction, Inc., in the months before his filing. These transfers included \$11,000.00 on November 9, 2000, \$30,000.00 on December 21, 2000, \$25,000.00 on January 5, 2001, \$16,753.00 on March 9, 2001, and \$2,000.00 on the date he filed his [bankruptcy petition](#).⁽¹⁾ None of these transfers was disclosed in Grace's schedules. It was Grace's intent not to file a bankruptcy petition for Graceco and to continue on in business through Graceco using funds he transferred to it.

It is clear that Grace transferred his cash to Graceco in order to defraud his creditors. Accordingly, he is barred from a discharge by § 727(a)(2)(a) of the Bankruptcy Code.

Grace's failure to disclose the transfers to Graceco is also a compelling basis for denial of his discharge pursuant to § 727(a)(4)(a). Grace explains that he did not list the payments in section 3b of his statement of affairs (payments to creditors) because Graceco was not a creditor and he did not list the transfers under section 10 (other transfers) because he says the transfers were in the ordinary course of business. Of course, the transfers were not in the ordinary course of business; Grace produced no evidence to support this argument and it is clear that they were not made with any legitimate purpose. Grace would have a defense if the court believed him when he said he thought they were in the ordinary course of business, regardless of whether they were or not. However, based on the evidence of Grace's overall conduct and his demeanor at trial the court finds it far more likely that Grace did not schedule the transfers because he wanted to conceal them from his creditors and not because he truly believed that the section 10 did not require their disclosure.

For the foregoing reasons, Grace's discharge will be denied. Plaintiff shall recover his costs of suit.

This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for plaintiff shall submit an appropriate form of judgment forthwith.

Dated: December 6, 2002

Alan Jaroslovsky
U.S. [Bankruptcy Judge](#)

1. The court would deny Grace's discharge based on the \$2,000.00 transfer

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