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Monday, October 28, 2002

NEIL SCHAFER,

No. 01-13125

[Debtor](#) <sup>i</sup>(s).

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JEFFRY LOCKE, [Trustee](#) <sup>i</sup>,

A.P. No. 02-1132

[Plaintiff](#) <sup>i</sup>(s),

v.

NEIL SCHAFER,

[Defendant](#) <sup>i</sup>(s).

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### **Memorandum on Motion for Summary Judgment**

In this [adversary proceeding](#) <sup>i</sup>, [Chapter 7](#) <sup>i</sup> trustee and plaintiff Jeffrey Locke seeks denial of debtor Neil Schafer's [discharge](#) <sup>i</sup>. While such cases are usually not subject to summary adjudication, the motion is based on Schafer's own admissions during examination. In such cases, summary judgment denying a discharge is sometimes appropriate. In re Kontrick, 295 F.3d 724, 737 (7th Cir. 2002). Where, as here, the trial would be a bench trial without a jury, the court may summarily draw some inferences and conclusions from undisputed evidence. Schwarzer, *The Analysis and Decisions of Summary Judgment Motions* (Federal Judicial Center 1991), p. 39.

The basis for the objection to discharge is Schafer's prepetition conduct after a [creditor](#)<sup>i</sup>, Transamerica Commercial Finance Corporation, obtained a writ of attachment and attempted to seize funds in Schafer's business bank account. Schafer admits to depositing business funds into a personal bank account in order to avoid seizure by Transamerica during the three months prior to bankruptcy. He also kept up to \$65,000.00 of business funds in the form of cashier's checks to keep them from Transamerica during the same time. Schafer alleges that at all times his intent was to keep his estate together and pay his creditors. The issue is whether this intent is sufficient to deny a discharge pursuant to § 727(a)(2)(A) of the [Bankruptcy Code](#)<sup>i</sup>, which denies a discharge to a debtor who has transferred or concealed his property during the year before bankruptcy with the intent to hinder, delay or defraud a creditor.

Perhaps the most persistent myth in insolvency law is that it is legitimate for a debtor to play cat-and-mouse games with a creditor so long as the debtor's overall intent is to pay his creditors as a whole. If § 727(a)(2) referred to intent to hinder "creditors," then this sort of intent would indeed be a defense. However, a discharge is to be denied any debtor who has hindered "a creditor." Once property is concealed from a single creditor, the debtor has lost his discharge. It is no defense that he intended to use the concealed funds to pay other creditors or that his estate as a whole was not diminished. *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986).

Schafer's deposition testimony is full of frank, damning admissions. Perhaps the worst is:

Q. So because they were trying to attach your funds, when you got money in, you put it in to the Mechanics Bank and you took it out in the form of a cashier's check to keep it from being garnished or attached? A. Correct.

The rest of Schafer's testimony is entirely consistent with this terse answer. In one word, Schafer thus admitted that he concealed cash from Transamerica with the intent to thwart its attachment. Nothing more is needed to commit the offense, and none of Schafer's justification is exculpatory.

Both sides argue the meaning of the word "transfer" and whether the deposits of business funds which Schafer made into his personal account can be considered transfers. While the definition of "transfer" is expansive enough to include these deposits (see *In re Bernard*, 96 F.3d 1279, 1282-83 (9th Cir. 1996)), the key word in this case is "concealed." When Schafer turned business funds into cashier's checks, he did so with the admitted intent to hide the funds from Transamerica. There is no difference between holding funds in a cashier's check and stuffing currency into a mattress. Having concealed funds from a creditor with the intent to hinder that creditor's collection efforts, Schafer is not entitled to a discharge.

For the foregoing reasons, the trustee's motion for summary judgment will be granted and Schafer's discharge will be denied. Counsel for the trustee shall submit an appropriate form of order granting his motion and an appropriate form of judgment. The Trustee shall also recover his costs of suit.

Dated: October 28, 2002

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Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

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