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Tuesday, October 9, 2001  
UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In re

JERRY JOE BANDY,

No. 00-12059

[Debtor](#)  (s).

\_\_\_\_\_ /

CLEMENTS and MARIE OTT,

[Plaintiff](#)  (s),

v.

A.P. No. 00-1196

JERRY JOE BANDY,

[Defendant](#)  (s).

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## Memorandum of Decision

This is an action by creditors Clements and Marie Ott to deny debtor Jerry Bandy's [discharge](#)<sup>i</sup>. The Otts' complaint contained allegations that Bandy failed to disclose business interests in his [schedules](#)<sup>i</sup> and concealed or falsified records relating to those interests. The Otts presented no evidence at all as to these allegations. However, in the course of their examination of Bandy they found two other matters they say justify denial of the discharge: failure to account for a \$26,000.00 payment and mis-scheduling of payments to Bandy's ex-wife. They did not amend their complaint, but urge the court to deny Bandy's discharge based on these matters. Bandy objects, with good reason, to the Otts' change of theory without amending their complaint. As a legal matter, the court doubts the fairness to Bandy. As a practical matter, the Otts' conduct makes it look like they decided first to object to Bandy's discharge and figured they would find grounds for it later. The court need not rule on this issue, as it finds no basis for denial of the discharge even if the two matters had been included in the complaint. The \$26,000.00 payment was received by Bandy almost a year before he filed his [bankruptcy petition](#)<sup>i</sup>. He used a good portion to make payments to the IRS, and lived on the rest. There is no evidence, or even the slightest indication, that Bandy still had any portion of it when he filed his bankruptcy petition or did anything improper.

Bandy has been married to his ex-wife twice, for a total of almost 40 years. She has no significant skills or income. While it is true that Bandy was under not legal obligation to pay her support, it is also true that she needed the payments and Bandy intended them to be for her support. His disclosure of the payments in his schedules was proper and accurate. For the foregoing reasons the Otts shall take nothing by their complaint, which will be dismissed with prejudice. The Clerk shall be directed to enter Bandy's discharge forthwith. Bandy shall recover his costs of suit from the Otts. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for Bandy shall submit an appropriate form of judgment forthwith.

Dated: October 9, 2001

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Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)<sup>i</sup>

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