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[Home](#) > Memorandum of Decision Re: Denial of Discharge

Monday, March 6, 2000

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re

DONNA LEA MORSE,

No. 99-11966

[Debtor](#)  (s).

_____ /

KAREN THOMAS,

[Plaintiff](#)  (s),

v.

A.P. No. 99-1193

DONNA LEA MORSE,

[Defendant](#)  (s).

_____ /

Memorandum of Decision

In this [adversary proceeding](#), [creditor](#) Karen Thomas seeks to deny the [discharge](#) of [Chapter 7](#) debtor and defendant Donna Lea Morris. For the reasons stated below, the court finds no merit to any of the three grounds asserted by Thomas. Before bankruptcy, Morse operated a business known as the Plaza Street Café in Healdsburg, California. She was not successful. On the eve of her bankruptcy, she accepted an offer from the landlord of the business premises to surrender her lease rights for \$15,000.00. On the advice of her counsel, Morse placed the landlord's \$15,000.00 check in a safe deposit box. She scheduled the funds in her list of assets, and fully disclosed the transaction in at least two other places in her statement of affairs. Thomas urges that this conduct constitutes concealment of property with the intent to hinder creditors, such that §727(a)(2) of the [Bankruptcy Code](#) bars a discharge. The court finds no evidence to support Thomas' allegations. The funds were not concealed. Their location was freely discussed with the [trustee](#). It is true that their exact location was not scheduled, in that Morse opened the safe deposit box in the few days between the time she signed the bankruptcy papers and the time they were filed. There is no evidence, however, that the location of the money was ever a secret or that the failure to mention the safety deposit box was material. Nor does Thomas have any explanation as to how it could profit Morse to conceal the location of the funds after so fully disclosing their existence. Morse had no judgment creditors. The placing of the funds in the safe deposit box appears completely lawful. Even if the placing of the funds in the safe deposit box was somehow improper, the court finds no evidence that Morse placed the funds there with the intent to hinder or defraud anyone. She segregated the funds on the advice of counsel. That advice appears to have been lawful and proper. Even if it somehow was not, Morse's reliance on the advice was reasonable and negates any fraudulent intent. *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir.1986). Thomas' second ground for denial of the discharge relates to an *ex parte* order Thomas obtained from the state court prohibiting Morse from transferring the lease. Thomas obtained the order three days after Morse had agreed to surrender the premises to the landlord and had given him her keys. The copy of the order served on Morse did not contain the name or signature of the judge who issued it. After consulting with her counsel, Morse believed the order was ineffective, both because it had been issued after she had made her agreement with the landlord and because it was defective. Thomas argues that the violation of the state court order constitutes a "separate basis for denial of discharge." However, she provided no support for this assertion. It is clear from her own argument that violation of the order was nothing more than evidence of Morse's intent. The court is not persuaded by this evidence, in light of Morse's relative lack of sophistication in business and legal matters, limited education, and her reliance on counsel. Regardless of whether the order was defective or too late, Morse had a good faith belief that it was both. Thomas' last argument is that Morse should be denied her discharge because she falsely failed to schedule family members as creditors. Morse testified that she "morally" owed some money to family members, in an unknown amount. There was no evidence that these debts were legally enforceable. There was no evidence that any of the family members considered themselves to be creditors, or that anything more than the most vague idea exists as to how much their claims might be. There is no just basis for such vague and immaterial allegations to stand between Morse and her discharge. For the foregoing reasons, Thomas will take nothing by her complaint, which will be dismissed with prejudice. Morse shall recover her costs of suit. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for the prevailing party shall submit an appropriate form of judgment forthwith.

Dated: March 6, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

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