

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

IN RE:

KENNETH MARK EDDINS,

CASE NO. 00-12186

Debtor.

Chapter 7

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COLUMBUS BANK & TRUST CO. d/b/a  
SYNOVUS LEASING COMPANY,

Plaintiffs,

v.

ADV. PROC. NO. 02-01059

KENNETH MARK EDDINS, MARGARET L.  
EDDINS, M&E TRUCK LINES, L.L.C., M&E  
TRUCK LINES, INC., M&E BROKERAGE,  
SUNRISE EXPRESS, INC.,

Defendants.

**ORDER ON COMPLAINT**

Richard Gaal, Counsel for Columbus Bank & Trust Co.  
Frank Thiemonge, Counsel for Kenneth Mark Eddins, M&E Truck Lines, L.L.C., and  
M&E Truck Lines, Inc.  
James Orr, Counsel for Margaret Eddins, Sunrise Express, Inc., M&E Brokerage

This matter came on for hearing on the Plaintiff's complaint objecting to discharge. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). At the close of Plaintiff's case, the Court granted the Defendants' motion for directed verdict as to the Plaintiff's cause of action under 11 U.S.C. §727 (d)(1). After consideration of the pleadings, evidence, testimony, and arguments of counsel, the Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

Prior to his divorce in May 2000, the Debtor, Kenneth Mark Eddins (“Eddins”), served as President of M & E Truck Lines, Inc. M&E Truck Lines originally started as a proprietorship of Mark Eddins and was in the business of hauling scrap metal. M & E Truck Lines, L.L.C. was organized in March 1998 and later became M&E Truck Lines, Inc. in January 2000.<sup>1</sup> Eddins acknowledged at trial that M & E Truck Lines, Inc. and M & E Truck Lines, L.L.C. were the same business entity.<sup>2</sup> M & E Truck Lines, L.L.C. existed from 1998 to 2002. Both Mark and Margaret Eddins were shareholders in M&E Truck Lines, L.L.C. Eddins stated in his answers to interrogatories that he did not retain the corporate documents and records for M & E Truck Lines, Inc. or M & E Truck Lines, L.L.C. As president of M & E Truck Lines, Inc. and L.L.C., Eddins supervised employees, was responsible for dispatching drivers and setting hours, wrote checks, made deposits, directed loans and understood the basic financial operations of the company. M & E Brokerage was a brokerage firm that Eddins “bought out” in 1998. It had a bank account which was used at various times by M & E Truck Lines, M & E Truck Lines, Inc., M & E Truck Lines, L.L.C. and Sunrise Express, Inc. Eddins could never explain what the exact nature of the business M&E Brokerage actually was. M & E Truck Lines, L.L.C., M & E Truck Lines, Inc., M & E Brokerage and Sunrise Express, Inc. have the same post office box and physical address.

On or about July 1, 1998, Eddins, as President of M & E Truck Lines, Inc., entered into a

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<sup>1</sup>Eddins testified that M & E was incorporated for about a month and was then reorganized as a limited liability company on the advice of an accountant. Eddins’ confusion is not surprising, given that he kept no books or records for M&E Truck Lines, L.L.C. or M&E Truck Lines, Inc.

<sup>2</sup>M & E Truck Lines, Inc. filed Articles of Dissolution on June 7, 2002. M & E Truck Lines, L.L.C. was also dissolved on June 7, 2002.

master leasing agreement with the Plaintiff, Columbus Bank & Trust Co. d/b/a Synovus Leasing Company (“Synovus”). Eddins also signed a personal guarantee for the lease. The lease included 4 trucks: 1996 Peterbuilt 379 86910; 1998 Peterbuilt 379 63940; 1996 Peterbuilt 379 414201; 1996 Kenworth 379 676771. The lease also included three Great Dane trailers.

In February 2000, Mark and Margaret Eddins (“Mrs. Eddins”) assigned some of the trucks under the Synovus lease to Dick Middleton. Middleton agreed to make the lease payments to Synovus for the trucks. The Eddins used a lease agreement from Mercedes-Benz Credit Corporation as a form to execute a lease with Middleton. Mark and Margaret Eddins signed the lease for M & E Truck Lines, L.L.C. Middleton made the payments for the lease trucks with a series of money orders, made payable to M & E Truck Lines or M & E Brokerage. The Eddins also leased two of the trucks and a trailer to James R. Gullledge in March 2000. However, Gullledge returned the trucks to Eddins, who surrendered them to Synovus.

Mark and Margaret Eddins separated in late January 2000 and filed a divorce petition on April 12, 2000. The parties were not represented by attorneys, and both consented to the terms of the divorce agreement. A paralegal drafted the divorce agreement. On May 15, 2000, the Domestic Relations Division of the Circuit Court of Baldwin County, Alabama entered a judgment of divorce. Under the terms of the agreement, Mrs. Eddins received all property that the couple owned. According to Mrs. Eddins, Eddins wanted the arrangement. Eddins stated that he was left with nothing but a pistol and a pick-up as a result of the divorce judgment. Mrs. Eddins received M & E Brokerage and its bank account in the divorce judgment. Eddins stated that after the divorce, he lived in a camper at his fishing camp. However, he also stayed with Mrs. Eddins two or three nights per week. Eddins stated that he spent the night at Mrs. Eddins’

home so that her mother would not find out about the divorce. Mrs. Eddins' mother was elderly and bed-ridden; the Eddins feared that she would be upset to learn of their divorce. At the time of the trial, he lived in a trailer located on the same property as Mrs. Eddins' house, the marital home.

Eddins filed his chapter 7 bankruptcy petition on June 6, 2000 and received his discharge February 21, 2002. He testified that he first saw an attorney about filing bankruptcy in May 2000. At his § 341 meeting, Eddins stated that he was no longer in the trucking business. In his bankruptcy schedules, he listed no employer and stated that he was employed doing odd jobs.

Mrs. Eddins incorporated Sunrise Express, Inc. ("Sunrise Express") on August 14, 2000. Sunrise Express is also in the business of hauling scrap metal. It assumed certain debts originating with M & E Truck Lines, L.L.C. in August 2000. Mrs. Eddins used the M & E Brokerage account that she received under the divorce decree to deposit Sunrise Express funds and to pay expenses for Sunrise Express.<sup>3</sup> She testified that Mark Eddins' name was removed from the M & E Brokerage account after the couple's divorce.

In July or August 2000, Eddins arranged a loan for Sunrise Express from the Bank of Pensacola for \$106,816.55 which Margaret Eddins personally guaranteed. The August 2000 loan renewed two previous loans made to M & E Truck Lines<sup>4</sup>, and included an additional \$80,000.00 for Sunrise to purchase four trucks. Eddins testified that the Bank of Pensacola's representative,

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<sup>3</sup> She did not open a separate bank account for Sunrise Express until February 2001.

<sup>4</sup>In November 1999, M & E Truck Lines, through Eddins as President, obtained a loan from the Bank of Pensacola for \$10, 135.70. In January 2000, M & E Truck Lines received a second loan from the Bank of Pensacola for \$16,181.70. Eddins gave personal guarantees for both loans.

Randy Kealer, required Margaret Eddins to include the \$26,000.00 loan to M & E Truck Lines in order to get the \$80,000.00 loan. Mrs. Eddins testified that she called Kealer from her home to arrange the financing, and Kealer brought up Mark Eddins' bankruptcy. According to Mrs. Eddins, Kealer told her that Mark Eddins' debts would have to be taken care of before the Bank of Pensacola could make a loan to her. Eddins stated that he was not present when the August 2000 note was executed. Eddins claims that Mrs. Eddins hired him to look at the trucks. He traveled to Tennessee to inspect the trucks and submitted a report to Kealer and Mrs. Eddins. Matthew Johnson, Mrs. Eddins' son from a previous marriage, testified that he went with Eddins to inspect the trucks. He testified that Eddins talked with the truck owners and negotiated the deal for the trucks. Matt Johnson works part-time for his mother at Sunrise Express. Eddins wrote a letter to Kealer dated August 1, 2000 outlining the financial basis for purchasing the trucks. The letter was signed by Mrs. Eddins.

Contrary to his testimony at his §341 hearing, Eddins stated at trial that he was working at Sunrise Express at the time that he filed his petition. He denied that he manages or controls operations of Sunrise Express. However, in February 2001, Eddins did assist Mrs. Eddins in renewing contracts for Sunrise Express that had formerly belonged to M & E Truck Lines, L.L.C. Eddins said the negotiations were "delicate" and he got involved to help Mrs. Eddins get the contracts for Sunrise Express. Other evidence of Eddins' involvement with Sunrise Express follows:

- An application of Robert Lynn names Eddins as his supervisor during his employment with Sunrise Express from March, 2001 to March 2002.
- A fax cover sheet for Sunrise Express to Reliant Insurance Company from Mark Eddins. Eddins stated that he does deal with Reliant Insurance on behalf of Sunrise Express.

- AutoShred is a customer of Sunrise Express that Eddins dealt with on behalf of Sunrise Express which represents 90% of Sunrise's business. AutoShred made up more than one half of M & E Truck Lines, L.L.C.'s business. AutoShred recorded payments to M & E Truck Lines, L.L.C. until March 18, 2001; thereafter it recorded payments to Sunrise Express.

- Eddins signed a vehicle inspection report as "Carrier official" for Sunrise Express in August 2001. Eddins testified that anyone at Sunrise Express could have signed the report.

- Eddins met with an attorney on behalf of Mrs. Eddins to get information about incorporating Sunrise Express. Eddins said that he met with the attorney only to pick up documents and deliver them to Mrs. Eddins.

- In September and December 2000, checks payable to M & E Truck Lines were deposited into the M & E Brokerage account, approximately six months after M & E Truck Lines, L.L.C.. was alleged to have ceased operation.

- Funds from the M & E Brokerage account were used to pay Eddins' legal fees to his bankruptcy attorney.

- Mark Eddins made deposits for Sunrise Express to the M & E Brokerage account, but he could not write checks for Sunrise Express.

Eddins testified that he currently drives a truck and does mechanic work for Sunrise Express. Eddins originally denied that he received pay for his work at Sunrise Express, asserting that he "bartered" his service to Sunrise. He stated at trial that he received a paycheck from Sunrise. Margaret Eddins also testified that she paid Eddins for his work at Sunrise Express. Mrs. Eddins stayed at home to care for her elderly mother until November 2001. Mrs. Eddins testified that she paid Eddins to run the business for her while she was at home with her mother, but she made the business decisions for the company. She stated that she does ask for his

opinion, but she runs the business. When asked by the Court if she knew anything about the trucking business before the divorce, Mrs. Eddins said no, but her daughter and son-in-law were helping her.

Mary J. Rathburn (“Rathburn”) is the office manager for AutoShred Recycling located in Pensacola, Florida. AutoShred was a customer of M & E Truck Lines and is presently a customer of Sunrise Express. Rathburn submitted a statement indicating that AutoShred paid Sunrise Express approximately \$573, 476.48 from June 17, 2001 to August 2002. AutoShred’s records indicated that it made checks payable to M & E Truck Lines, L.L.C. until to March 2001. Rathburn testified that in late 2000 or early 2001 AutoShred discovered that it needed an insurance certificate from M & E Truck Lines, L.L.C./ Sunrise Express. She called and talked to Mark Eddins about the insurance certificate. She later realized that AutoShred had no contract with Sunrise Express. AutoShred sent the contract to Sunrise Express and Margaret Eddins signed it. The contract with Sunrise was on the same terms and for the same services as the one with M&E Truck Lines, L.L.C.

Steven Harris is a dispatcher for AutoShred and has worked there for five years. Harris testified that when he called M & E Truck Lines, L.L.C. or later Sunrise Express to arrange pick-ups, he talked to Eddins on a daily basis. In 2000, Harris said that he spoke with Eddins about 98% of the time. In 2001, Harris said that he spoke to Eddins 90-98% of the time when he called Sunrise Express. He also spoke with Cindy Lazarri (Mrs. Eddins’ daughter by another marriage), Matt Johnson and Margaret Eddins occasionally.

Johnny Harrison was an employee of M & E Truck Lines from 1995 to March 2000. He was a truck driver for M & E Truck Lines. He was familiar with Cindy Lazarri and Matt Johnson, who were also employees for M & Truck Lines. Harrison heard from Lazarri and

Johnson that the Eddins were getting a divorce, and Margaret Eddins would be taking over the trucking business. Harrison testified that they described the divorce as a “paper divorce” and that it was the only way to get out from under their financial obligations. According to Harrison, Margaret Eddins stated that she wasn’t going to lose her house over the trucks. Harrison testified that Mr. Eddins took parts off of the trucks leased from Synovus and used them for other trucks. Eddins was taking the parts before the finance company came to pick up the trucks, according to Harrison. While Harrison worked for M & E Truck Lines, Eddins discovered that he had stolen a \$700.00 piece of scrap from AutoShred and sold it back to them. Eddins deducted that amount from Harrison’s paycheck. Harrison denies this allegation.

Forrest Randall Kealer is a banker with Beach Community Bank. He formerly was with the Bank of Pensacola, and handled the loan transactions between the Bank of Pensacola and the Eddins. Kealer testified that he dealt with Mark Eddins regarding the loan to Sunrise Express for the purchase of the trucks in August 2000. Eddins provided the financial information and documents. Eddins provided the information about the trucks to be used as security. There was some confusion about the titles for the trucks. They were titled in Oklahoma, and the owner was listed as M & E Truck Lines. Kealer said that he insisted that the titles be changed to reflect Sunrise Express as the owner of the trucks. The titles were listed in M & E Truck Lines by mistake according to Eddins and Mrs. Eddins. Kealer did not meet or speak with Mrs. Eddins until the loan closing. Kealer testified that Margaret Eddins offered to take care of some of the debt of Mark Eddins and M & E Truck Lines. He did not require Mrs. Eddins to pay Mr. Eddins’ debt in order to make the new loan. Kealer testified that he learned that the Eddins were divorced in July or August 2000, but Margaret Eddins later told him that she and Mr. Eddins were back together. Mrs. Eddins denies telling Kealer that she and Mr. Eddins were back



together.

Phillip Dickerson is an assistant Vice President for Synovus Leasing. Mr. Eddins defaulted on payments under the 1998 lease prior to filing his chapter 7 petition. A deficiency of \$181,415.17 exists for the lease.<sup>5</sup> Synovus made an effort to mitigate damages. The lease provided for reasonable attorney fees and the guaranty provided for a fee of 15%; as of the date of trial, Synovus has incurred \$39,098.07 in attorney fees. Paragraph 13 of the lease provides that the lease cannot be assigned or sub-leased. Synovus did not authorize a sub-lease of the trucks to Sunrise Express. At his §341 meeting, Eddins told Synovus that he was out of the trucking business and was earning money by taking odd jobs. Synovus learned that Eddins was working for Sunrise Express in late September or early October 2000. Dickerson identified Bob Radford as a sales representative for Synovus. Radford had no authority to approve a sub-lease of the trucks subject to the M & E Truck Lines lease. Synovus did not know that Eddins had sub-leased the trucks to Middleton and Gullledge in 2000 until after Eddins defaulted under the lease.

### **CONCLUSIONS OF LAW**

Synovus filed a complaint in this matter listing five separate causes of action. Count I requested the Court to revoke the debtor's discharge. Count II sought damages for breach of contract; Count III was based on fraud; Count IV, seeking relief for unjust enrichment, was withdrawn by Synovus at the close of all the evidence; Count V was based on fraudulent transfer. The Court directed a verdict in favor of Eddins and against Synovus with regard to that portion of Count I seeking a revocation of discharge pursuant to 11 U.S.C. § 727 (d)(1). The

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<sup>5</sup>The total due under the lease was \$266,972.16. Synovus recovered \$85,556.99 from sale of the property for a balance of \$181,415.17.

remaining portion of Count I, revocation of Eddins' discharge under § 727 (d)(2) will be considered in this order.

## **I. REVOCATION OF DISCHARGE**

Section 727 (d)(2) provides, in pertinent part,

On request of the trustee, a creditor, or the United States Trustee, and after notice and a hearing, the court shall revoke a discharge granted under section (a) of this section if--

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee.

11 U.S.C. § 727(d)(2)

The purpose of a discharge in bankruptcy is to relieve an honest debtor from his financial burdens and to facilitate the debtor's fresh start. *See Local Co. v. Hunt*, 292 U.S. 234, 244, 54 S.Ct. 695, 699, 78 L.Ed. 1230 (1934). However, in limited circumstances the debtor's discharge may be revoked. Under § 727(d)(2) the plaintiff has the burden of proving that the debtor acted with the intention of defrauding the estate by failing to report the acquisition or entitlement to property of the estate, or acted so recklessly, that a finding of fraud is justified. *In re Putnam*, 85 B.R. 881, 884 (Bankr. M.D. Fla. 1988).

Whether a debtor actually received the property before or after the date of discharge is immaterial. It is the fact that the debtor became entitled to receive the property that matters. *Collier on Bankruptcy* (15th Ed.), ¶ 727.15[4]. A plaintiff must show that the debtor "knowingly and fraudulently" failed to report. *In re Putnam*, 85 B.R. at 884. "The Plaintiff may prove knowing and fraudulent behavior by showing that the debtor had access to the omitted

information and either knew that the failure to disclose it would be seriously misleading or that the debtor acted so recklessly as to imply fraudulent intent.” *Collier on Bankruptcy* (15th Ed.), ¶ 727.15[4].

In order to analyze whether a discharge should be revoked under § 727(d)(2), one must first look to 11 U.S.C. § 541 to determine what is property of the estate. Property of the bankruptcy “estate is comprised of all of the following property, wherever located and by whomever held:

(1) except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interest of the debtor in property as of the commencement of the case.”

11 U.S.C. § 541(a)(1).<sup>6</sup>

It is not disputed that Eddins failed to list in his bankruptcy schedules his interest in M&E Truck Lines, L.L.C. or M&E Truck Lines, Inc. This limited liability corporation was in existence from 1998 until 2002. Eddins was a member or shareholder in the L.L.C. until its

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<sup>6</sup>The other pertinent sections of 11 U.S.C. 541(a) are set forth as follows:

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor’s spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

dissolution as indicated by the evidence and testimony. M&E Truck Lines was operated initially by Eddins as proprietor. Eddins testified that he incorporated M&E Truck Lines, Inc. and then organized M&E Truck Lines, L.L.C. about thirty days after incorporation on advice of his accountant, although the evidence shows that M&E Truck Lines, L.L.C. was formed in 1998 and M&E Truck Lines, Inc. was incorporated in 2000. Eddins was president of M&E Truck Lines L.L.C. and the corporation. He also admitted during the course of the trial that M&E Truck Lines, Inc. and M&E Truck Lines L.L.C. were actually the same entity and he treated them as such. At the first meeting of creditors on July 17, 2000, Eddins testified that he was no longer in the trucking business and that the trucking business was being run by his ex-wife, Margaret Eddins. He also stated at the first meeting of creditors that his only employment was odd jobs and for no particular employer.

As stated in the finding of facts, Eddins transferred his interest in M&E Brokerage pursuant to a divorce settlement dated in April 2000. The divorce decree, which was entered by the Baldwin County Circuit Court on May 15, 2000, did not transfer or dispose of his interest in either M&E Truck Lines, Inc. nor M&E Truck Lines L.L.C. Eddins offered no explanation for failing to schedule his interest in either of those entities.

After Eddins filed bankruptcy on June 6, 2000, Margaret Eddins incorporated Sunrise Express, Inc. on August 14, 2000 with the assistance of Mr. Eddins. Sunrise Express was in the same business and performed the same functions and had the same customers as M&E Truck Lines, L.L.C. This included the most valuable asset of M&E Truck Lines, L.L.C., the contract for hauling with a Pensacola business named AutoShred. The evidence at trial unequivocally shows that AutoShred made checks payable to M&E Truck Lines, L.L.C. prior to the date of

bankruptcy through March 18, 2001. From the time of the divorce property settlement agreement through the date of the bankruptcy, AutoShred paid checks to M&E Truck Lines, L.L.C. in the amount of \$91,125.05. The total amount of AutoShred checks from the date of bankruptcy to March 18, 2001 was the sum of \$407,255.89. During this period of time, Margaret Eddins and Sunrise Express used the M&E Brokerage bank account for the deposit of funds for M&E Truck Lines, L.L.C. as well as Sunrise Express. Sunrise Express did not open its own bank account until February 16, 2001.

Purportedly, according to Mr. Eddins and Margaret Eddins, the checks made payable from AutoShred to M&E Truck Lines, L.L.C. were for hauls made by Sunrise Express. They maintained that Sunrise Express assumed or took over the contract after Mr. Eddins transferred M&E Brokerage to Margaret Eddins and supposedly got “out of the trucking business”. The evidence does not support that contention. Instead, the checks made payable to M&E Truck Lines, L.L.C. were deposited to the M&E Brokerage account. Eddins, as a shareholder, an officer and member of the corporation and the L.L.C., had an ownership interest which was clearly property of the estate.

The evidence reflects the debtor’s total disregard of any corporate formality. Eddins kept no corporate records of M&E Truck Lines, Inc. or M&E Truck Lines, L.L.C. He knew that AutoShred was delivering checks made payable to M&E Truck Lines, L.L.C. and that he retained an interest as a member in M&E Truck Lines, L.L.C. He also knew that M&E Truck Lines, L.L.C. continued to receive income from the checks it received which increased the value of the L.L.C. Eddins failed to schedule his ownership interests, and did not inform the trustee or take any action to correct this glaring oversight by making a corrective amendment. In fact, even

as late as the date of the trial, Eddins still never filed any amendments to schedules to accurately reflect his interest in M&E Truck Lines, Inc. or M&E Truck Lines, L.L.C.

“Debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or unavailable to the bankruptcy estate.” *In re Yonikus*, 974 F.2d 901, 904 (7th Cir. 1992). “A debtor’s fraudulent intent may be established by showing that the debtor knowingly made an omission that misleads the trustee or that the debtor engaged in a fraudulent course of contact.” *See In re Yonikus*, 974 F.2d at 905. A debtor’s fraudulent intent may be inferred from all the surrounding circumstances where the debtor’s pattern of conduct supports a finding of fraudulent intent. *In re Van Horn*, 823 F.2d 1285, 1287 (8th Cir. 1987)(other citations omitted). “The focus is on whether the debtor’s actions ‘appears so inconsistent with [his] self-serving statement of intent that the proof leads the court to disbelieve the debtor, ’ ” *Van Horn*, 823 F.2d at 1288 (quoting *In re Hunt*, 30 B.R. 425, 441 (M.D. Tenn. 1983)). “The trustee may also prove the debtor’s fraudulent intent by showing that the debtor acted so recklessly that fraud can be inferred.” *In re Kasden*, 209 B.R. 239, 244 (8th Cir. BAP 1997) (citations omitted).

In addition to checks from AutoShred received during this period, M&E Truck Lines, L.L.C. was issued checks from other customers, all of which were deposited to the M&E Brokerage bank account. These checks amounted to substantial sums and increased the value and worth of M&E Truck Lines, L.L.C. and Eddins’ ownership interest in it. Mark Eddins, individually, even had checks payable to him for the following sums both of which he deposited on July 7, 2000 in the M&E Brokerage account: check dated April 29, 2000 for \$920.00; check dated June 7, 2000 for \$195.00. This money was property of the estate for work performed or

refunds he was owed and entitled to prior to filing bankruptcy. The checks, instead of being delivered to the trustee, were held or acquired by Eddins, and he failed to report this information.

Having considered all of the facts in this case, the Court finds that Eddins' attempt to hide his acquisition of and entitlement to profits and proceeds of estate property and other property of the estate, was done deliberately, knowingly, and fraudulently. When viewed as a whole, and as will be further discussed in this opinion, the Court finds that Eddins engaged in deception to conceal assets that he acquired or became entitled to as evidenced by the checks written to M&E Truck Lines, L.L.C. on its contract with AutoShred, which would have increased the value of estate property. The Court observed the demeanor of Mr. Eddins at trial and found his testimony to lack credibility. His testimony is inconsistent with his prior testimony at the §341 hearing and at his deposition, and much of his self serving statements do not ring true.

It is also clear that he maintained at least a one-half interest in M&E Truck Lines, L.L.C. and that significant sums of money continued to be paid to the L.L.C. by AutoShred. Eddins' interest in the profits and proceeds of the limited liability corporation had value that the estate would have been entitled to. He personally received funds that the estate was entitled to. The Court finds that such dishonesty should not be rewarded with a discharge, but should result in a revocation of his discharge pursuant to § 727(d)(2).

## **II. Alabama Fraudulent Transfer Act, § 8-9A-1 et seq.**

Synovus alleges that the Eddins' divorce agreement is a violation of the Alabama Fraudulent Transfer Act, Alabama Code (1975) §8-9A-1 et seq. See *In re Dulock*, 282 B.R. 54 (Bankr. N.D. Ga. 2002) (Trustee sought to set aside debtor's transfers of real estate, stock and

IRA accounts to his ex-wife in their property settlement agreement under Georgia fraudulent conveyance law). The Alabama Fraudulent Transfer Act provides: “A transfer made by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made, if the debtor made the transfer with actual intent to hinder, delay or defraud any creditor of the debtor.” Alabama Code (1975) §8-9A-4(a). To prove a fraudulent transfer, the plaintiff must show: (1) that a creditor was defrauded; (2) that the debtor intended to defraud; and (3) that the transfer was of property out of which the creditor could have realized his claim or some portion of it. *In re Speir*, 190 B.R. 657, 662 n. 9 (Bankr. N.D. Ala. 1995) citing *Welch v. Graham*, 623 So.2d 1027, 1029 (Ala. 1993). Because it is difficult to prove actual intent to defraud by direct proof, §8-9A-4(b) lists several “badges of fraud” to prove actual fraud:

- (1) whether the transfer was to an insider;
- (2) whether the debtor retained possession or control of the property transferred after the transfer;
- (3) whether the transfer was disclosed or concealed;
- (4) whether the debtor had been sued or threatened with suit before the transfer;
- (5) whether the transfer was of substantially all of the debtor’s assets;
- (6) whether the debtor absconded;
- (7) whether the debtor removed or concealed assets;
- (8) whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred;
- (9) whether the debtor was insolvent or became insolvent shortly after the transfer was made;



(10) whether the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) whether the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Applying these badges of fraud to the present case, the Court finds that Mark Eddins' transfer of a portion of the property under the divorce agreement and directly to Mrs. Eddins qualifies as a fraudulent transfer under nine of the eleven factors (the sixth and eleventh factors are not applicable in this case). Eddins transferred M & E Brokerage to Mrs. Eddins, who is clearly an insider. There is ample evidence that Eddins retained possession and control of the trucking business and its assets. Eddins continued to supervise and manage employees at the trucking business that was incorporated under Sunrise Express. He directed the daily operations of Sunrise Express, like making deposits, dealing with the company's insurer and arranging pick up with Sunrise's customers. More importantly, Eddins handled matters that are usually reserved for officers or directors of a corporation. Eddins contacted and met with an attorney about incorporating Sunrise Express. He supervised the purchase of two trucks for Sunrise. Mrs. Eddins' son, Matthew Johnson, testified that Eddins inspected the trucks and negotiated the purchase price. Eddins arranged for financing for the trucks with the Bank of Pensacola. Eddins admitted writing the August 1, 2000 letter to Randy Kealer of the Bank of Pensacola about the loan although Margaret Eddins signed the letter. The letter contained financial information about the business of which he was familiar and she was not. Randy Kealer testified that he dealt solely with Eddins and did not meet with Mrs. Eddins until the loan was closed. It is also noteworthy that the loan from the Bank of Pensacola to Sunrise included an extra \$26,000.00 to

cover a debt owed by M & E Truck Lines and guaranteed by Eddins. Eddins also persuaded M & E Truck Lines's customers to allow their contracts to be serviced by Sunrise. AutoShred was one of M & E Truck Lines's major customers that renewed its contract with Sunrise in March 2001. For the trucking business to continue, Eddins had to maintain control of Sunrise (even though Mrs. Eddins was the actual stockholder and owner) because Mrs. Eddins had no experience in the trucking business, and testified that she stayed at home with her mother, who was elderly and very ill, until November 2001.

Although the divorce judgment was technically a matter of public record, Eddins did conceal the fact he had transferred the trucking business at his §341 hearing. At his §341 hearing in July and August 2000, he testified that he was out of the trucking business and was not employed. He was in fact running Sunrise for his former wife. The transfer of the trucking business occurred in April 2000. It is not clear that the Eddins had been sued or threatened with a suit prior to the transfer. However, their sublease of some of the Synovus trucks and trailers to Dick Middleton and James Gullledge in February and March 2000 was a breach of the lease and indicates that the Eddins were having difficulty making payments on the Synovus leases. The subleases, without written consent of Synovus, constituted a default of the leases. There was also evidence that Eddins had removed certain parts from the trucks which were also a breach of the lease.

As another indication of fraud, the divorce agreement sought to transfer substantially all of Eddins' possessions to Mrs. Eddins. Eddins was left with "a pistol and pick-up." Mrs. Eddins testified that Eddins wanted this arrangement. The Court observed the demeanor of Mrs. Eddins at trial and finds her testimony to be self-serving, lacking in credibility, contradictory and

inconsistent with her deposition testimony. Mrs. Eddins paid no consideration for M & E Brokerage. Eddins turned over his only means of earning an income to Mrs. Eddins, who had no experience in the trucking business and who was solely responsible for her elderly mother. Except for the fact that his name was taken off the bank account, he continued to run the business, but under the guise of a new corporation, Sunrise Express, Inc. which he had set up in her name. After entering into the divorce agreement in April 2000, Eddins filed the current chapter 7 petition in June 2000.

Considering the foregoing factors, the Court finds that Eddins intended to defraud Synovus by seeking to transfer all of his assets to Mrs. Eddins in their divorce agreement. As discussed below, Synovus was defrauded by the transfer of M&E Brokerage to Mrs. Eddins, and some of the property that was actually transferred was property from which Synovus could have satisfied some of Eddins' debt.

**(A) Real property and trucks**

The Court must now determine the property that was actually transferred. There is a dearth of evidence as to whether Eddins actually transferred the real and personal property outlined in the divorce agreement. Under the terms of the divorce agreement, Eddins was to execute quit claim deeds for two pieces of real estate that the couple owned. Plaintiff failed to submit any evidence that Eddins ever executed quit claims deeds to Mrs. Eddins transferring the property. The same is true for the vehicles listed in the agreement. The Court has no certificates of title as evidence that these vehicles were transferred to Mrs. Eddins or Sunrise. There was only sketchy evidence about the value of the real property or the trucks, and none at the time of transfer. There was no evidence of any liens that may have encumbered the property, nor the

extent of any equity that Eddins may have had in the real property or the trucks. There was at least some testimony that Mrs. Eddins assumed whatever debt that existed on the trucks, and therefore gave consideration for the trucks listed in the divorce decree. Due to the lack of evidence as to actual transfers and values, the Court finds no basis to conclude that the two pieces of real property and the trucks listed in the divorce decree were fraudulently transferred.

**(B) M & E Brokerage**

The remaining property listed in the divorce decree is M&E Brokerage. The actual terms of the divorce agreement state that “[t]he Wife shall retain possession of the business known as M&E Brokerage, including all interest and assets.” The testimony regarding the precise nature and function of M&E Brokerage’s business is unclear. From the bank records submitted, it appears that M&E Brokerage had a bank account for the deposit of funds. Funds from all of the M&E Truck Lines entities were deposited into the M&E Brokerage account. Sunrise deposited funds into the M&E Brokerage account until February 2001, when it opened its own corporate account. The evidence shows that Mark Eddins’ name was taken off the M&E Brokerage bank account and the name of the account was changed to Margaret Eddins d/b/a M&E Brokerage on September 13, 2000, about four months after the couple’s divorce. Eddins could no longer write checks from the account. The Court finds that Eddins fraudulently transferred the assets of M&E Brokerage to Mrs. Eddins under the terms of their divorce agreement. Financial statements for Margaret Eddins d/b/a M& E Brokerage from May 2000

and July 2000 indicate that M&E Brokerage had assets with a value of \$121,400.00<sup>7</sup> immediately after the time of the transfer. The Court therefore finds that a judgment should be entered in favor of Synovus and against Margaret Eddins individually and d/b/a M&E Brokerage for \$121,400.00, plus interest and costs.

**(C) M & E Truck Lines, L.L.C.**

As stated elsewhere in this opinion, M&E Truck Lines, Inc. (which signed the Synovus lease) and M&E Truck Lines, L.L.C. are all one and the same according to the testimony of Mark Eddins. While M&E Truck Lines, L.L.C. was not specifically mentioned in the Eddins' divorce decree, the evidence shows that Mark Eddins also transferred that company's tangible and intangible assets<sup>8</sup> to Sunrise Express. M&E Truck Lines, L.L.C.'s most significant assets were its contracts to haul scrap metal, most notably with AutoShred. Eddins testified that he stayed on at the trucking company in part to help Margaret Eddins renegotiate the hauling contracts with AutoShred because the negotiations "were delicate." After Eddins transferred M&E Brokerage to Mrs. Eddins, checks that were made payable to M&E Truck Lines, L.L.C., Sunrise Express, Inc., and other entities were deposited to the bank account of M&E Brokerage and intermingled. The initial transfer of the account helped to capitalize Sunrise. When it incorporated in August 2000, Sunrise performed exactly the same type of work that had previously been done by M&E Truck Lines, L.L.C. and M&E Truck Lines, Inc. After Eddins

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<sup>7</sup>This figure does not include the value of the trucks or the shop facility and home as listed in Margaret Eddins d/b/a M&E Brokerage financial statement from May 17, 2000. As stated above, there were no documents of title introduced to show they were transferred. See Plaintiff's exhibit 59.

<sup>8</sup>The trucks listed in the divorce decree were discussed above and are not included in the Court's consideration of M&E Truck Lines, L.L.C.'s assets.

claimed that he ceased operating as M&E Truck Lines, L.L.C., the customers, contracts and business opportunities of M&E Truck Lines, L.L.C. were all taken over by Sunrise. It is clear that Sunrise's formation following Mark Eddins' bankruptcy was calculated to protect and conceal assets from his creditors in an effort to hinder and delay them. It hauled for the same customers, accepted payments of over \$400,000.00 that were payable to M&E Truck Lines, L.L.C. and diverted the money to operate its own business. Based on the foregoing, the Court finds that Eddins intended to defraud Synovus by causing and directing the transfer of M&E Truck Lines, L.L.C.'s assets to Sunrise Express. Synovus was defrauded and the funds that were actually transferred were property from which Synovus could have satisfied at least some or all of M&E Truck Lines and Eddins' debt.

Section 8-9A- 7(a) of the Alabama Code (1975) provides the following remedies for violation of Alabama's Uniform Fraudulent Transfer Act:

- (1) Avoidance of the transfer to the extent necessary to satisfy the creditor's claim;
- (2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by any applicable provision of any other statute or the Alabama Rules of Civil Procedure;
- (3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,
  - a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

In cases involving transfers of real property or tangible personal property, the usual remedy for fraudulent conveyances is avoidance or rescission of the conveyance. See *Johns v. A.T. Stephens Enterprises, Inc.*, 815 So.2d. 511, 516 (Ala. 2001). The Court finds that Eddins intended to defraud Synovus by making the transfers discussed herein. The present case deals with the transfer of an on-going business concern with assets that are not easily identified and returned. Sunrise's most valuable assets are its profits, proceeds, cash flow and contracts to haul scrap metal. Over \$400,000.00 worth of checks from AutoShred payable to M&E Truck Lines, L.L.C., and the cash held in the M&E Brokerage account was long ago used to finance Sunrise's operations. M&E Truck Lines, Inc. and M&E Truck Lines, L.L.C. have been dissolved. The evidence presented will not allow the Court to simply order Sunrise to return the monies and contracts that were transferred. For these reasons, the Court finds that the only appropriate remedy is a money judgment under Alabama Code (1975) §8-9A-7(a)(3)(c). Therefore, a judgment for fraudulent transfer should be entered in favor of Synovus and against Sunrise Express, Inc. for the sum of \$181,415.17, plus interest and costs.

### **III. BREACH OF CONTRACT**

The parties to this action stipulated to the existence of the lease agreement for the financing of semi-trucks, tractors and trailers between M&E Truck Lines, Inc. and Synovus, as well as Mark Eddins' guaranty of the financing provided under the lease. It was also stipulated that the lease was breached due to nonpayment and that as a result, after repossession of the

equipment, a deficiency was owed to Synovus by M&E Truck Lines, Inc. and Mark Eddins as guarantor. Other acts of default consisted of numerous subleases entered into by M&E Truck Lines, Inc., M&E Truck Lines, L.L.C. or Mark Eddins with various third parties without obtaining the written consent of Synovus. There was also evidence that Eddins had removed certain parts from some of the leased trucks.

The evidence presented at trial indicated a deficiency balance of \$181,415.17 as the amount being due. The lease had a provision for reasonable attorney's fees and costs and the guaranty agreement had a provision for attorney fees limited to 15% of the amount sought to be recovered. The Court finds that 15% is a reasonable amount and awards as an attorney's fee the sum of \$27,212.28, which, when added to the deficiency, amounts to a total sum due of \$208,627.45. Therefore, the Court finds that a judgment is due to be entered in favor of Synovus and against M&E Truck Lines, Inc., M&E Truck Lines, L.L.C. and Mark Eddins, individually for the sum of \$208,627.45.

#### **IV. ALTER EGO AND SUBSTANTIVE CONSOLIDATION**

Synovus raised two separate legal theories whereby the Court should disregard the corporate entity of Sunrise Express, Inc. In its brief of law, the pretrial document, and the evidence presented at trial,<sup>9</sup> Synovus argued that the Court should pierce the corporate veil under an alter ego theory. Alternatively, Synovus suggested that the Court should consolidate the assets of the defendants under a "substantive consolidation" theory. The Court has entered a judgment against Mark Eddins on Synovus's breach of contract count, and a judgment against

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<sup>9</sup>"When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." *Fed. R. Civ. P.*, Rule 15(b).



Sunrise on the fraudulent conveyance count. The judgments against Eddins and Sunrise are substantial; it would be excessive to apply the alter ego theory in this case. Therefore, the Court determines that it is not necessary to address the issue of piercing the corporate veil between Mark Eddins and Sunrise.

As to the plaintiff's substantive consolidation theory, a court must find that it would be more equitable to all parties to allow consolidation by showing the affairs of the entities are inextricably intertwined or that creditors dealt with the party as a single economic unit and does not require a finding of fraud or intent to hinder or delay creditors. Courts, in a bankruptcy context, have enumerated various factors in order to determine whether to order a substantive consolidation. One of these factors is "(i) whether creditors dealt with the entities as a single economic unit and 'did not rely on their separate identity in extending credit,' . . . or (ii) whether the affairs of the debtors are so entangled that the consolidation will benefit all creditors . . ." *In re Munford, Inc.* 115 B.R. 390, 395 (Bankr. N.D. Ga. 1990) (citations omitted). In the instant case, there has been no showing that the creditors dealt with the debtor in this case and Sunrise as a single economic unit. Since Sunrise was not even incorporated until several months following the bankruptcy, this criteria cannot be met. Synovus had never dealt with Sunrise. The evidence has shown that M&E Truck Lines, Inc. and M&E Truck Lines, L.L.C. were all one and the same having been owned and operated by Mark Eddins which was admitted by the debtor at trial. M&E Truck Lines, Inc. and M&E Truck Lines, L.L.C. have already been dissolved as entities and do not have anything to consolidate. Therefore, the Court finds that the plaintiff has not met its burden of proof nor is the evidence sufficient to warrant a substantive consolidation in this case.

## **V. FRAUD, MISREPRESENTATION, SUPPRESSION AND DECEIT**

Count III of the complaint sought damages for fraud against Mark Eddins and Margaret Eddins. The allegations made by Synovus do not stem from any facts regarding the parties initially entering into the lease agreement between M&E Truck Lines, Inc., and Synovus or the guaranty agreement with Mark Eddins. Instead, the plaintiff loosely refers to misrepresentations of facts that Mr. Eddins made at his first meeting of creditors on July 17, 2000 and the adjourned first meeting of creditors on August 7, 2000. Synovus claims that the misrepresentations and omissions were made knowingly, recklessly and wantonly and that they relied on them. *See Ala. Code*, §§6-5-100, 6-5-104 (1975). To prevail on its claim of fraud, Synovus must prove that the defendant (1) misrepresented material facts; (2) that he did so willfully with the intent to deceive or recklessly without knowledge (and even negligently or innocently); (3) that Synovus reasonably relied on those misrepresentations under the circumstances; and (4) that Synovus incurred damage as a proximate result. *See Foremost, Ins. Co. v. Parham*, 693 So.2d 409, 422-23 (Ala. 1997). To prevail on its claim of suppression, Synovus must show that (1) defendant had a duty to disclose the facts; (2) that defendant concealed or failed to disclose material facts; (3) that Synovus was induced to act; and (4) that the induced action caused Synovus injury. *Id.* at 423.

Synovus maintains that Mark Eddins represented that he was completely insolvent and that he no longer had anything to do with the trucking business, that his divorce was real, that he had no income whatsoever from any source, and that he was not working anywhere. Later, during discovery, Synovus found out that these statements were false. Much of this is covered in

this opinion in the discussion on the revocation of discharge under 11 U.S.C. § 727(d)(2) and fraudulent transfer. The Court has already found that Mr. Eddins' discharge is due to be revoked for the reasons stated in this opinion.

Synovus has failed to point to any evidence at trial to show how it relied on the misrepresentations to its detriment, and therefore has not met its burden of proof. In addition, the damages that Synovus is entitled to recover are a result of the breach of contract and not from any misrepresentations made during the first meeting of creditors or in the schedules of the debtor. As to the allegations of suppression, Synovus has failed to show how it was induced to act, and how it was injured as a result. Further, nothing in the record indicated that Mrs. Eddins committed fraud pursuant to Count III of the complaint and as such, a judgment is due to be entered in favor of defendants and against Synovus as to Count III. The fraud alleged in this Count III is separate and distinct from the action of fraudulent conveyance and should not be confused with the Court's previous findings.

### **CONCLUSION**

Based on the foregoing, the Court finds that Count I of the complaint to revoke the Debtor's discharge should be granted and the Debtor's discharge should be revoked; Count II for breach of contract should be granted and judgment should entered in favor of Synovus and against M&E Truck Lines, Inc., M&E Truck Lines, L.L.C. and Mark Eddins individually for \$181,415.17 in damages and \$27,212.28 for attorney fees, plus interest and costs; Count III for fraud, suppression and deceit should be denied; Count V for fraudulent transfer should be granted and a judgment should be entered in favor of Synovus and against Margaret Eddins individually and d/b/a M&E Brokerage in the amount of \$121,400.00 plus interest and costs;

also under Count V for fraudulent transfer, a judgment should be entered in favor of Synovus and against Sunrise Express, Inc. for \$181,415.17 plus interest and costs. As the Court previously noted, Count IV for unjust enrichment was withdrawn by Synovus at the close of all the evidence, and the Court directed a verdict in favor of Eddins and against Synovus with regard to that portion of Count I seeking a revocation of discharge pursuant to 11 U.S.C. § 727(d)(1). It is hereby

**ORDERED** that the discharge of the Debtor, Kenneth Mark Eddins, is **REVOKED** pursuant 11 U.S.C. §727(d)(2); and it is further

**ORDERED** that the relief sought in Count II for breach of contract is **GRANTED**, and a judgment shall be entered in favor of Columbus Bank and Trust Co. d/b/a Synovus Leasing Company and against M&E Truck Lines, Inc., M&E Truck Lines, L.L.C. and Kenneth Mark Eddins individually for \$181,415.17 in compensatory damages and \$27,212.28 for attorney fees for a total judgment in the amount of \$208,627.45, plus interest and costs; and it is further

**ORDERED** that the relief sought in Count III for fraud, suppression and deceit shall be **DENIED** and a judgment is entered in favor of the Defendants; and it is further

**ORDERED** that the relief sought under Count V for violations of the Alabama Fraudulent Transfer Act, Alabama Code §8-9A-4(a) is **GRANTED**, and a judgment shall be entered in favor of Columbus Bank and Trust Co. d/b/a Synovus Leasing Company and against Margaret Eddins individually and d/b/a M&E Brokerage in the amount of \$121,400.00, plus interest and costs; and it is further

**ORDERED** that the relief sought under Count V for violations of the Alabama Fraudulent Transfer Act, Alabama Code §8-9A-4(a) is **GRANTED**, and a judgment shall be entered in favor

of Columbus Bank and Trust Co. d/b/a Synovus Leasing Company and against Sunrise Express, Inc. for \$181,415.17, plus interest and costs; and it is further

**ORDERED** that Count IV for unjust enrichment is **WITHDRAWN**; and it is further

**ORDERED** that a verdict is directed in favor of the Defendant, Kenneth Mark Eddins, and against the Plaintiff, Columbus Bank and Trust Co. d/b/a Synovus Leasing Company, on Count I of the complaint for the relief sought under 11 U.S.C. §727(d)(1).

Dated: September 8, 2003

William S. Shulman

Chief Bankruptcy Judge