

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re,

Peter Jimmy Mantekas,

Debtor(s).

Randy A. Skinner,

Plaintiff(s),

v.

Peter Jimmy Mantekas,

Defendant(s).

C/A No. 13-00011-HB

Adv. Pro. No. 13-80160-HB

Chapter 7

AMENDED ORDER¹

This adversary proceeding was initiated in the bankruptcy court by the Chapter 7 Trustee, Randy A. Skinner (“Trustee”) objecting to the discharge of Debtor Peter Jimmy Mantekas. From a review of the pleadings and submissions, and after consideration of the evidence and arguments presented at trial, pursuant to Fed. R. Bankr. P. 7052, the Court makes the following findings of fact and conclusions of law.

FACTS

1. Mantekas was the defendant in a Greenville County Family Court action filed on May 28, 2010. Mantekas and his former spouse were divorced in 2011. During that proceeding, Mantekas made certain disclosures to the Family Court regarding his finances and interests in property, including real property with significant value and equity. The Family Court entered an Order on August 1, 2011 regarding division of property between Debtor and his former spouse.

¹ This order is amended to correct a typographical error in the final paragraph.

2. On November 10, 2011, Mantekas transferred his interest in the following properties to his parents, Jimmy and Bessie Mantekas, by deeds reflecting consideration for the transfers of “\$10.00..., Love and Affection”:
- a. TMS# 0228000200400. The deed includes the tax map number and the metes and bounds description of the property and past deed references, but it does not include the address of this property. In pretrial filings the parties identified the address as 1709 Old Easley Bridge Road.²
 - b. TMS# 0228000200300. The deed includes the tax map number and the metes and bounds description of the property and past deed references, but it does not include the address of this property. In pretrial filings the parties identified the address also as 1709 Old Easley Bridge Road.³
 - c. TMS# 0228000201402. The deed includes the tax map number and the metes and bounds description of the property and past deed references, but it does not include the address of this property. In pretrial filings the parties identified the address as Part of lot 33, 34 Camilla Park.⁴
 - d. TMS# 0228000201200. The deed includes the tax map number and the metes and bounds description of the property and past deed references, but it does not include the address of this property. In pretrial filings the parties identified the address as Part of lot 32, 33 Camilla Park.⁵
 - e. TMS# 0228000200100. The deed includes the tax map number and the metes and bounds description of the property and past deed references, but it does not include

² Exhibit 8. Doc. No. 15.

³ Exhibit 7. Doc. No. 15.

⁴ Exhibit 9, Doc. No. 15.

⁵ Exhibit 11, Doc. No. 15.

the address of this property. In pretrial filings the parties identified the address as 1715 Old Easley Bridge.⁶

3. Mantekas filed a petition for relief under Chapter 7 of the Bankruptcy Code on January 2, 2013.
4. Bankruptcy schedules and statements filed on January 1, 2013, indicated Mantekas owned one piece of real estate located at 401 Yorkshire Drive, Greenville, SC 29615, and included a disclosure of various transfers of real property to his parents with the “value received” indicated as \$10.
5. The first meeting of creditors was held on February 13, 2013 and Mantekas appeared and was examined. At the meeting, Trustee requested several documents from Mantekas including a complaint against his former business and financial declarations given to the Greenville County Family Court in his divorce proceedings.
6. Trustee declared the case an asset case on February 13, 2013.
7. Trustee conducted a Rule 2004 examination of Mantekas on April 9, 2013, and Mantekas provided the documents previously requested at the meeting of creditors.
8. From a review of two financial declarations submitted to the Greenville County Family Court on August 24, 2010 and May 31, 2011, Trustee discovered inconsistencies between the schedules and statements filed with the Bankruptcy Court and the financial declarations filed with the Family Court.
9. The financial declaration submitted to the Family Court on May 31, 2011 by Mantekas indicated that he owned a 1/3 interest in property located at 1605 Easley Bridge Road, Greenville, South Carolina (“the Omitted Property”) that is not included on his bankruptcy schedules as an asset nor is there disclosure of a transfer of property matching

⁶ Exhibit 10, Doc. No. 15.

that asset. At the 2004 exam, Mantekas testified that in October of 2011 he transferred this and the other property scheduled as transferred to his parents in satisfaction of a debt that had accumulated between August of 2010 and June 2011.

10. Mantekas' financial declarations for the Family Court indicate that he owed a debt to his father and uncle in the amount of \$189,000.00.
11. Mantekas' bankruptcy schedules did not disclose a debt owed to his parents, to his father individually or to his uncle.
12. At the April 9, 2013 Rule 2004 exam, Trustee requested additional documents, including but not limited to, copies of Family Court Orders entered in the divorce proceedings, copies of bank statements for his personal and business accounts from August 2010 to June 2011 to evidence the debt owed to his parents, and his 2012 business and personal tax returns.
13. The record of the Court reflects Trustee requested approval for a 2004 examination of the father, Jimmy Mantekas, to be held on August 14, 2013. The Court entered an Order approving that request on July 23, 2013.
14. As of October 3, 2013, Mantekas had not provided the additional documents requested. On that date, Trustee filed this adversary proceeding seeking a denial of Mantekas' discharge pursuant to 11 U.S.C. §§ 727(a)(3), (a)(4)(A), (a)(4)(D) and (a)(5).
15. Mantekas filed an Answer on October 24, 2013 denying he transferred any property with the intent to hinder, defraud, or delay creditors and arguing that he made a good faith effort to supply any and all financial information requested.
16. Trustee's Complaint alleged that this is a core proceeding, that jurisdiction and venue are proper and that this Court can enter a final judgment in this matter against Mantekas.

Trustee and counsel for Mantekas confirmed these facts on the record in preliminary filings.⁷

17. On May 5, 2014, Mantekas amended his Schedule A to include the Omitted Property and valued his 1/3 interest at \$250,000.00. No liens were listed.
18. On June 16, 2014, Mantekas amended his Schedule F to add an unsecured debt owed to his father, Jimmy Mantekas, in the amount of \$95,000.00.
19. At trial on July 21, 2014, Trustee offered numerous exhibits from the Family Court and public records and highlighted relevant portions of the record in this Court.
20. Mantekas' counsel offered the testimony of Defendant's father Jimmy Mantekas and of lawyer Constantine (Tyche) Christophillis.
21. Jimmy Mantekas testified that he had loaned money to his son including \$180,000.00 given to Mantekas' former spouse. Counsel presented into evidence a certified check in the amount of \$180,000.00 paid to Mantekas' former spouse for which Jimmy Mantekas testified that he funded. Jimmy Mantekas indicated he loaned additional money to his son to support his restaurant business, but he did not specify a particular amount or time frame. He further testified that he paid for all properties subsequently transferred back to him as well as for the Omitted Property with only minimal contribution, if any, by his son.
22. Christophillis testified that he prepared the deeds to the properties transferred by Mantekas to his parents in 2011. The deeds were prepared at Jimmy Mantekas' request based on descriptions and information provided by him without any further title search. Christophillis testified that his understanding from meeting with father Jimmy Mantekas

⁷ See Doc. No. 8.

was all property would be transferred for the consideration of the money owed by Debtor Mantekas to his father. However, no evidence of Mantekas' intent was presented.

23. Defendant Mantekas was not present at the trial. His attorney attended and offered a defense on his behalf.

DISCUSSION

In an action to deny discharge brought under § 727, the Trustee, as the party objecting to discharge, must prove his case by a preponderance of the evidence. Fed. R. Bankr. P. 4005; *see also Combs v. Richardson*, 838 F.2d 112, 116 (4th Cir. 1988). Once the Trustee makes a *prima facie* case, the burden of proof shifts to the Defendant to offer credible evidence to satisfactorily explain his conduct; however, the ultimate burden remains with the Trustee objecting to discharge. *Anderson v. Hooper (In re Hooper)*, 274 B.R. 210, 215 (Bankr. D.S.C. 2001) (citations omitted). Trustee asserts that the evidence indicates that a denial of Mantekas' discharge is warranted pursuant to §§ 727(a)(3), (a)(4)(A), (a)(4)(D) and (a)(5).

Section 727(a)(4)(A)

The Bankruptcy Code provides that a debtor seeking Chapter 7 relief shall be granted a discharge of his debts unless “the debtor knowingly and fraudulently, in connection with the case . . . made a false oath or account.” 11 U.S.C. § 727(a)(4)(A). To prevail and deny a debtor's discharge under § 727(a)(4)(A), the trustee must prove that “the debtor . . . made a statement under oath which he knew to be false, and he must have made the statement willfully, with intent to defraud.” *Williamson v. Fireman's Fund Ins. Co.*, 828 F.2d 249, 251 (4th Cir. 1987).

The elements of § 727(a)(4)(A) are as follows: (1) the debtor made a statement under oath; (2) the statement was false; (3) the debtor knew the statement was false; (4) the debtor

made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy case. *Keeney v. Smith (In re Keeney)*, 227 F.3d 679, 685 (6th Cir. 2000) (citations omitted).

In evaluating a claim under § 727(a)(4)(A), whether a debtor has made a false oath is a question of fact. *In re French*, 499 F.3d 345, 352 (4th Cir. 2007). “Because a debtor is unlikely to testify directly that his intent was fraudulent, the courts may deduce fraudulent intent from all the facts and circumstances of the case.” *In re Devers*, 759 F.2d 751, 754 (9th Cir.1985); *see also In re Hooper*, 274 B.R. at 219. Fraudulent intent can be inferred from circumstantial evidence or from a course of conduct. *Williamson*, 828 F.2d at 252. Additionally, a reckless indifference as to whether a representation is true is sufficient to constitute the requisite fraudulent intent. *In re Holmes*, CA 10-09065-HB, 2012 WL 3292963 (Bankr. D.S.C. Aug. 10, 2012). Furthermore, where a debtor subsequently discloses omitted information, “such later disclosure does not expunge a prior false oath.” *Lafarge N. Am., Inc. v. Poffenberger (In re Poffenberger)*, 471 B.R. 807, 819 (Bankr. D.Md. 2012) (citing *Rosenbaum v. Kilson (Matter of Kilson)*, 83 B.R. 198, 203 (Bankr. Conn. 1988)).

The subject matter of a false oath is material if it bears a relationship to the debtor’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor’s property. *Williamson*, 828 F.2d at 251-52.

The fact that a debtor may believe that omitted information concerned a worthless business relationship or holding is a *specious defense*; “[i]t makes no difference that he does not intend to injure his creditors when he makes a false statement [because c]reditors are entitled to judge for themselves what will benefit, and what will prejudice, them.”

Cesnick v. Cannon (In re Cannon), Adv. Pro. No. 09-22, 2009 WL 2209352, at *4 (Bankr. N.D.W. Va. July 24, 2009) (emphasis added) (quoting *Chalik v. Moorefiled (In re Chalik)*,

748 F.2d 616, 618 (11th Cir. 1984)). “In other words, the monetary value of the false statement or omission is not dispositive; rather, a statement or omission is material if it adversely affects the ability of the trustee or creditors to fully discover the debtor’s assets and financial condition.” *Jalajel v. Pugsley*, 2011 WL 1348312, at *2 (E.D. Va. Apr. 8, 2011) (citing *Farouki v. Emirates Bank Int’l, Ltd.*, 14 F.3d 244, 251 n.19 (4th Cir.1994)).

In the instant matter, there is no dispute that Mantekas made a false statement under oath by failing to disclose the Omitted Property, creditors and debts at issue in his Schedules. However, Mantekas’ counsel contends that he did not do so knowingly or with the intent to defraud and that the omission was not material to the bankruptcy case. Given that Mantekas did not appear at trial to explain his intent, the Court lacks sufficient evidence to support counsel’s argument. It is apparent that the monetary significance of the Omitted Property is significant and material to the bankruptcy. Further, the only conclusion that can be drawn from the evidence before the Court is that Mantekas was aware of the existence of the Omitted Property and his ownership interest therein because it is listed in his financial declarations filed in the Family Court. Even if Mantekas believed he no longer owned the Omitted Property due to a transfer, as asserted by his counsel, this information should have been reflected on his Statement of Financial Affairs, but it was not. Mantekas provided no explanation for his failure to disclose the Omitted Property until more than a year after filing, forcing Trustee to expend considerable resources to discover the existence of the Omitted Property.

Trustee has exceeded his burden of proof and if some plausible explanation exists for Mantekas’ failure to schedule significant assets and details relating thereto, Mantekas has not offered that explanation to the Court. His discharge should be denied pursuant to § 727(a)(4)(A).

Section 727(a)(4)(D)

Section 727(a)(4)(D) provides that discharge of debt should be denied if a debtor “withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor’s property or financial affairs.” The party objecting to discharge under 11 U.S.C. § 727(a)(4)(D) has the initial burden of showing that: “1) the withholding of documents was done by the debtor or someone for whose conduct the debtor is legally responsible; 2) was in connection with a case; 3) was withheld from an officer of the estate entitled to possession; 4) was done knowingly and fraudulently; and 5) relates to the debtor's property or financial affairs.” *In re Belk*, 509 B.R. 513, 521 (Bankr. W.D.N.C. 2014).

From the time this case was filed in January of 2013 until the 2004 exam held in April of 2013, Mantekas failed to disclose financial details, the Omitted Property and debt relevant to Trustee’s assessment of this case. After Mantekas delivered certain documents to Trustee in April of 2013, Trustee was able to discover the Omitted Property but lacked sufficient information to complete the assessment. Trustee therefore demanded information and documentation to evidence any debt owed to Mantekas’ parents and records from the Family Court, but they were not provided prior to the initiation of this adversary proceeding in October of 2013. Mantekas’ conduct falls clearly within the language of § 727(a)(4)(D) and as a result his discharge should be denied. If there was any reasonable explanation for his failure to provide sufficient information and documentation, it is not in the Court’s record as he failed to appear at trial to offer such explanation.

Section 727(a)(5)

A debtor's discharge may be denied if "the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities." Although Trustee has pieced together much of Mantekas' financial situation, the trial record does not include an explanation of Mantekas' lack of assets to meet liabilities. His bankruptcy schedules clearly indicate that he owned significant real estate in 2011 before he transferred various properties to his parents, and further indicate significant debt remaining after those transfers without assets or the means to meet his obligations. Although arguments and prior statements of Mantekas, and the testimony of his father, Jimmy Mantekas, indicate that the properties may have been transferred in consideration of some debt, Mantekas has not substantiated the alleged debts to his parents and he did not appear at the trial to satisfactorily explain. In his absence and in the absence of sufficient evidence, and given the facts that are in the record before the Court, Trustee has met his burden. Mantekas' discharge should be denied pursuant to § 727(a)(5).

Section 727(a)(3)

Section 727(a)(3) provides that the Court shall deny Debtor's discharge if "the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case." Therefore, Trustee "must make an initial showing that (1) the debtor failed to keep and preserve adequate financial records, and (2) such a failure makes it impossible to ascertain the debtor's financial condition." *See* 11 U.S.C. § 727(a)(3); *see also In re French*, 499 F.3d at 354. At issue here is Mantekas' failure to provide certain requested

documentation until very late in the case and only after repeated requests by Trustee. Given that documentation was eventually produced, and that Trustee does not allege insufficiency of the records eventually provided, the Court cannot find that Trustee has carried his burden to demonstrate Mantekas “concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information.” Therefore, any relief requested by Trustee as a result of that authority is denied.

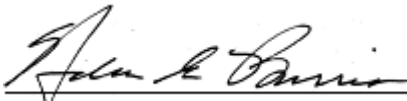
IT IS HEREBY ORDERED, THAT:

Judgment shall be granted in favor of Trustee on his causes of action asserted pursuant to 11 U.S.C. §§ 727(a)(4)(A), (a)(4)(D) and (a)(5) and as a result, discharge of Debtor Peter Jimmy Mantekas pursuant to 11 U.S.C. § 727 is hereby DENIED.

**FILED BY THE COURT
09/12/2014**



Entered: 09/12/2014


US Bankruptcy Judge
District of South Carolina