

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division**

In re BERNARD G. WELLS,)	Case No. 06-60319-LYN
)	
Debtor,)	
_____)	
JEFFREY LEACH,)	Adv. No. 06-06116
)	
Plaintiff,)	
)	
v.)	
)	
BERNARD B. WELLS,)	
)	
Defendant,)	
_____)	

MEMORANDUM

This matter comes before the Court on a motion for summary judgment by Bernard G. Wells (“the Defendant”) and a counter-motion for summary judgment by Jeffrey Leach (“the Defendant”). For the reasons stated below, the Plaintiff’s motion will be denied and the

Defendant's motion will be granted in part.

I. Jurisdiction

This court has jurisdiction over this matter. 28 U.S.C. §§ 1334(a). This is a core proceeding. 28 U.S.C. § 157(b)(2)(A)&(B). Accordingly, this court may render a final order. This memorandum shall constitute the Court's findings of fact and conclusions of law as directed by Fed.R.Civ.P. 52 which is made applicable in this contested matter by Fed. R. Bankr. P. 9014(c) and 7052.

II. Facts

On December 5, 2002, pursuant to an asset purchase agreement, DeUahn Investments, LLC ("DeUahn") sold most of its assets to Foreign Language Service, Inc. ("Foreign") a staffing business, for \$107,000.00. The assets were transferred without any liens or encumbrances. DeUahn agreed to hold Foreign harmless with regard to all liabilities of, and claims against, DeUahn. The Plaintiff executed the agreement on behalf of DeUahn and in his individual capacity. The Defendant executed the agreement on behalf of Foreign and in his individual capacity.

In consideration for the transfer of the assets, DeUahn was paid \$25,000.00. Additionally, on that same date, the parties executed a promissory note by which the Defendant and Foreign promised to pay the Plaintiff and DeUahn an additional \$82,000.00. The Defendant granted the Plaintiff a security interest in all of the assets sold.

The Plaintiff made payments on the note reducing the amount by approximately \$10,000.00. Thereafter, he defaulted. In May of 2005, the Plaintiff obtained a default judgment against the Plaintiff in the amount of \$71,450.77, plus interest at 7% per annum, plus attorney

fees in the amount of \$28,580.31, plus costs in the amount of \$2,932.14.

On March 15, 2006, the Defendant filed a chapter 13 petition. On August 2, 2006, the case was converted to chapter 7. On November 13, 2006, the Plaintiff filed the instant complaint asserting causes of action under 11 U.S.C. §§ 523 & 727. The Defendant filed a timely answer and on December 8, 2006, the Defendant filed a motion for summary judgment. On February 1, 2007, the Plaintiff filed a counter-motion for summary judgment.

III. Discussion

This matter is before the court on counter-motions for summary judgment. A motion for summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c) as made applicable by Fed. R. Bankr. P. 7056. The parties need not formally offer their outside matter as evidence or have it marked as an exhibit at the hearing on the motion. Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d, § 2721, p. 366 (1998). The court may not try issues of fact on a Rule 56 motion but may only determine whether there are issues to be tried. Wright, Miller & Kane, Federal Practice and Procedure: Civil 3d, § 2712, p. 205-6 (1998) (Citations omitted.). Summary judgment is improper if the existence of material fact issues is uncertain. Id. at 210. If a judgment is not rendered fully resolving the dispute and a trial is necessary, the court shall, if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted and shall make an order specifying the facts that appear with substantial controversy, including the extent to which certain relief is not in controversy. Fed. R. Civ. P. 56 as made applicable by

Fed. R. Bankr. P. 7056.

The complaint asserts one count objecting to the Defendant's discharge under 11 U.S.C. § 727 and one count objecting to the dischargeability of the debt giving rise to the Plaintiff's claim under 11 U.S.C. § 523.

A. Count I: Section 727.

In the first count of the complaint the Plaintiff objects to the Defendant's discharge under 11 U.S.C. § 727(a)(4)&(7) of the Bankruptcy Code.

(a) The court shall grant the debtor a discharge, unless—

...

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) 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;

...

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

Paragraphs (2), (3), (4), (5), or (6) of Subsection 727(a) provide:

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed--

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) 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;

- (4) the debtor knowingly and fraudulently, in or in connection with the case--
 - (A) made a false oath or account;
 - (B) presented or used a false claim;
 - (C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or
 - (D) 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;
- (5) 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;
- (6) the debtor has refused, in the case--
 - (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;
 - (B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or
 - (C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

None of the Plaintiff's allegations give rise to a causes of action under Paragraphs (3), (5), or (6).

The Plaintiff has included Section 727(a)(7) in order to capture Paragraph (2), which provides a separate ground for denial of discharge. The Plaintiff asserts that the Defendant violated that paragraph when he indicated to the Sheriff that he was no longer employed by Global Staffing, a fact pleaded in the original complaint.

The Defendant has also included Section 727(a)(7) to capture certain alleged false oaths made during the one-year period pre-petition. The first count, then, alleges false oaths made after the date that was one year before the date that the Defendant filed his petition. It also asserts that the defendant, with intent to delay or defraud the Plaintiff, concealed property of the debtor within one year before the date of the filing of the petition.

1. Section 707(a)(4)(A)

Under 11 U.S.C. § 727(a)(4)(A), a debtor's discharge may be denied if he made (1) a

false oath, (2) in or in connection with their bankruptcy case, (3) knowingly, and (4) fraudulently. The false oath must relate to a material matter. A matter is material if it is related to the debtor's business transactions, or if it concerns discovery of assets, business dealings, or the existence or disposition of the debtor's property. 6 Collier on Bankruptcy, "Discharge", 727.04[1][b] (15th Ed).

If the estate would have no interest in property that was not scheduled, the omission is not material and the false oath does not constitute grounds for denying a discharge. Collier 727.04[1][b] (Citing In re Robertson v. Swanson (In re Swanson), 36 B.R. 99 (B.A.P. 9th Cir. 1984) (holding that the omission of debtor' accounting practice valued at \$1.00 was not a ground for denying a discharge since any earnings of the practice would be future earnings which are not property of the estate under section 541(a)(6)). If the omission interferes with the possibility of a preference or fraudulent conveyance action, the omission may be considered material . Collier on Bankruptcy, 727.04[1][b]. (Citing Bell v. Scales (In re Bell), 8 B.R. 110 (Bankr. E.D. Va. 1980).

Under the first count, the Plaintiff alleges that the Defendant made a false account regarding (1) his employment and compensation from Global Staffing, Inc., ("Global Staffing") in order to avoid the garnishment of his wages; (2) the amount of the Plaintiff's claim; (3) his ownership of Global Staffing; (4) the value of Global Staffing; (5) his ownership interest in a house in Charlottesville, Virginia ("the Real Property"); (6) funds received from the sale of a vehicle; (7) the amount of his income from Global Staffing; and (8) the amount of tax claims that the Defendant currently owes.¹

¹ These eight acts are listed and alleged in the complaint at ¶ 22.

1. Employment by and Compensation from Global Staffing. On November 7, 2005, the Plaintiff filed a request for writ of garnishment against the Defendant with the Clerk of the Court for the Charlottesville Circuit Court. After the writ issued, the Defendant resigned his salaried position with Global Staffing and instructed an employee to report to the Sheriff that he was no longer a salaried employee of Global Staffing.² The Plaintiff asserts that after the threat of garnishment had passed, he resumed drawing his salary from Global Staffing. The Plaintiff asserts that the Defendant knowingly and fraudulently made a false oath when he instructed an employee of Global Staffing to report to the Sheriff that he (the Defendant) was no longer employed by Global Staffing.

Even if so, it is not a kind of false oath that gives rise to a claim under Section 727(a)(4)(A) or (7). At least one court has specifically held that a false statement regarding the employment of the debtor is not material under section 727(a)(4)(A). See Coccia v. Fischer (In re Fischer), 4, B.R. 517 (Bankr. S.D.Fla. 1980). In Fischer, the debtor stated in his petition that he was unemployed on the date of petition. The statement was false. The debtor admitted that he was attempting to avoid a reduction in his social security income. The creditor filed a complaint alleging that the debtor's discharge should be denied because the debtor had made a false oath in connection with the case. The court held that the "[a] completely accurate response to the question would not have affected this bankruptcy proceeding in any way. . . ." and "[a] bankruptcy discharge may be denied under § 727(a)(4)(A) only if the false oath related to a material matter, that is to say material to the condition of the estate or to the debtor's entitlement to discharge."

² See Plaintiff's Exhibit 4.

This Court agrees with the Fischer Court. Whether or not the Defendant avoided the prosecution of the writ of garnishment by uttering a false oath had, and has, no effect on the value or administration of this bankruptcy estate. The allegation that the Defendant made a false oath when he instructed a Global Staffing employee to inform the Sheriff that he was no longer an employee of Global Staffing cannot, even if true, give rise to a cause of action under 727(a)(4)(A) because it could not affect the administration of this bankruptcy estate.

The Plaintiff's motion for summary judgment is denied to the extent that it is based on the assertion that the Defendant has made a false oath regarding his employment with and compensation from Global Staffing. This allegation of fact cannot support the Plaintiff's first cause of action. Accordingly, no evidence or argument need be given or considered at trial on the issue of whether the Defendant made a false oath regarding his employment or income.

2. The Amount of the Plaintiff's Claim. The Plaintiff asserts that the Defendant knowingly and fraudulently made a false oath when he scheduled the Plaintiff's claim in the amount of \$106,345.22. The Plaintiff asserts that the actual amount on the date of petition was \$114,216.65. The Plaintiff' assertion does not support the cause of action under Section 707(a)(4)(A) or (7). When a dispute arises regarding the amount or character of a claim during the prosecution of a bankruptcy case, the Code provides a procedural mechanism for determining the correct allowable amount and character of that claim. See 11 U.S.C. § 501-511 and Fed. R. Bankr. P. 3001-3009.

On July 20, 2006, the Plaintiff filed a proof of claim. If the Defendant does not object to the amount or character of the claim, then it will be allowed in that amount. If the court determines that the claim should be allowed in a different amount, then it will be allowed in that

amount. Even if the Plaintiff's assertion regarding the claim is factually correct, it cannot give rise to a cause of action under 727(a)(4)(A) or (7). If scheduling a claim in an amount that ultimately proved to be incorrect were grounds for denial of a discharge, then few debtors would receive a discharge.

The Plaintiff's motion for summary judgment is denied to the extent that it is based on the assertion that the Defendant has made a false oath regarding the amount of the Plaintiff's claim. This allegation of fact cannot support the Plaintiff's first cause of action. Accordingly, no evidence or argument need be given or considered at trial on the issue of whether the Defendant made a false oath regarding the Plaintiff's claim.

3./4. The Defendant's Ownership of Global Staffing, Inc./The Value of Global Staffing.

The Plaintiff asserts that the Defendant made a false oath regarding his ownership interest in Global Staffing, Inc. He further asserts, as separate support for his first count, that the Defendant made a false oath regarding the value of Global Staffing. In order to prevail on his first cause of action based on these allegations, the Plaintiff must demonstrate that both of these allegations are true and must also demonstrate that Global Staffing's value is so material as to provide money for distribution to the creditors of this estate.

On June 20, 2003, the Defendant transferred his 100% ownership interest in Global Staffing to his wife and son. The Defendant did not schedule any ownership interest in Global Staffing on Schedule B. The Plaintiff asserts that the failure to do constitutes a false oath.

The Plaintiff asserts that the Defendant's ownership interest in Global Staffing is evidenced by his response to Item 18 of the Statement of Financial Affairs. On Item 18, the Defendant disclosed that he was the president, director and CEO of Global Staffing, that he had

transferred his interest in Global Staffing to his wife and son in June of 2003 and that his wife had permitted him to claim her business loss on his tax returns.

The Plaintiff writes in the complaint that the Defendant stated in Item 18 of his statement of financial affairs that ““Debtor **is** an Individual Business: Global Staffing, Inc. [sic]””.

(Emphasis provided by Plaintiff in the complaint.) The disclosure actual states:

Debtor is an Individual:
Business: Global Staffing,
Inc.

The answer to item 18 also discloses that the Defendant is a director and officer of Global Staffing.

The format of the answer to Item 18 is determined by the format of the question. The question states: “If the debtor is an individual, list the names, address, taxpayer identification numbers, nature of business and beginning and ending dates of all business in which the debtor was an officer director, partner or managing executive of a corporation .. .” The answer in Item 18 does not disclose any ownership interest in Global Staffing. It simply discloses that the Defendant is an officer and director of Global Staffing.

The Plaintiff’s placement of the emphasis on the word “is” and the removal of the colon after word “Individual” in the complaint alter the meaning of the answer. The characterization of the Defendant’s statement in Item 18 is misleading at best. During the pendency of this case, the Defendant has consistently asserted that he owns no interest in Global Staffing. He admits nothing to the contrary by his answer in Item 18. The Defendant’S disclosure on Item 18 does not provide any support for the first cause of action.

The Plaintiff also asserts that the Defendant’s ownership interest in Global Staffing is

evidenced by his indication on his federal income tax returns for the year 2004 that he owned 100% of Global Staffing. Also, in May of 2005, the Defendant filed an application with the Department of Minority Business Enterprise for the Commonwealth of Virginia (“the Minority Business Enterprise”) in which he certified that he was the 100% owner of Global Staffing. Global Staffing was awarded minority business status.

The Defendant responds to these allegations asserting that they were incorrect statements of fact. Neither party can prevail on the issue of the Defendant’s ownership of Global Staffing on his motion for summary judgment.

The Plaintiff asserts that the Defendant made a false oath regarding the value of Global Staffing. As support for this assertion he provides an internet advertisement offering Global Staffing for sale, dated in June of 2006. The asking price in the advertisement is \$437,000.00. The Plaintiff contrasts this asking price with the fact that the Defendant did not disclose this value on his schedules or his statement of financial affairs. The Plaintiff asserts that Global Staffing was for sale both before and after the Defendant filed his petition.³ The Defendant asserts that it was for sale only before the date of petition. He also asserts that he did not own Global Staffing on the date of petition. Additionally, while the trustee in the bankruptcy case of Global Staffing has filed an asset report, the trustee in this case (the same individual) has filed a report of no assets. There is a genuine issue of material fact regarding the value of Global Staffing.

The ownership and valuation of Global Staffing constitute issues of material fact. They

³ The only evidence that the Defendant was actively soliciting purchasers of Global Staffing post-petition is a copy of the advertisement that was printed on June 24, 2006. But just because the advertisement was still posted does not mean that the Defendant was still attempting to sell Global Staffing.

cannot form the basis for either motion for summary judgment. These issues shall be considered at trial.

5. *Interest in the House in Charlottesville, Virginia.* The Plaintiff asserts that the Defendant made a false oath regarding his ownership interest in the Real Property. The Defendant testified at the first meeting of creditors that he has never held any ownership interest in the Real Property.

The Plaintiff cites the following as support for the proposition that Defendant holds an ownership interest in the real property. First he notes that the Defendant is listed as either a joint tenant or a grantor on three deeds of trust. Second, he notes that the Defendant listed the Real Property on Schedule A. Third, he asserts that the Defendant's chapter 13 plan declares that the Defendant holds a mortgage on the real property. Finally, the Plaintiff asserts that the Defendant makes, or has made, payments toward the debt secured by the Real Property.

First, the fact that the Defendant is listed as a tenant or grantor on deeds of trust does not prove that he owns the property subject to the deeds of trust. A deed of trust is not a true deed; it does not effect the transfer of ownership. Rather, it vests in a named trustee the right to sell certain property on behalf of a third party that has a security interest in the property. The fact that the Defendant is listed on a deed of trust the subject of which is the Real Property does not support the allegation that the Defendant owns the Real Property.

Second, the fact that the Defendant's "listed the [Real Property] on Schedule A" does not indicate, much less prove, that he has an ownership interest in the Real Property. On Schedule A, the Defendant discloses "1462 Monterey Drive, Charlottesville, VA- Property is owned by Debtor's wife and it is their residence." The Defendant has merely disclosed that he lives in the

Real Property and that he owes a debt that is secured by it. This is consistent with the scheduling of the claim on the debtor's Schedule D. The listing of the Real Property does not support the assertion of the Plaintiff that the Defendant owns the Real Property.

Third, the Plaintiff asserts that the Debtor declared that "he holds a mortgage" on Real Property in his chapter 13 plan. The Court cannot find that language in the Plan. The Plan provides for the payment of a debt that is secured by the Real Property. The Defendant is liable on that debt. Neither of these facts tends to prove that the Defendant owns the Real Property. There is nothing in the plan that indicates, much less proves, that the Defendant has any ownership interest in the Real Property.

Finally, the Plaintiff asserts that the Defendant makes payments toward the debt that is secured by the Real Property. The fact that the Defendant makes, or may make, payments toward the retirement of a debt secured by the Real Property does not support an allegation that he owns the Real Property. He lives in the house. He is liable on the debt. It is reasonable that he make the payments. It does not follow that he owns the Real Property.

It should additionally be noted that the chapter 7 trustee in this case, who is aware of the allegation that the Defendant owns the real property, has filed a no asset report in this case.

The Plaintiff's motion for summary judgment is denied to the extent that it is based on the assertion that the Defendant has made a false oath regarding his ownership in the Real Property. This allegation of fact cannot support the Plaintiff's first cause of action. Accordingly, no evidence or argument need be given or considered at trial on the issue of whether the Defendant made a false oath regarding his ownership in the Real Property.

6. Transfer of the 1998 Ford Explorer. On February 1, 2006, the Defendant sold a 1998

Ford Explorer for \$3,500.00. The Defendant failed to disclose this transfer on Item 10.a. of his statement of financial affairs.

The Defendant's failure to disclose the transfer of the Explorer does not support the Plaintiff's complaint because the transfer the Explorer, if recovered, would be of no value to the estate. The Defendant discussed the transfer with the chapter 7 trustee at the first meeting of creditors. The Explorer was sold at auction in an arm's length transaction to a buyer not related to the Defendant. This fact is verified by the fact that the trustee made no attempt to recover the vehicle or any part of the sales proceeds, and in fact, filed a report of no assets with the Clerk of this Court. Furthermore, the Plaintiff has provided the Court with no evidence that the transaction was not commercially reasonable or that the value of the vehicle was greater than the gross purchase price. The non-disclosure of the transfer of the Explorer did not, and cannot, affect the administration of this bankruptcy estate. It cannot support a cause of action under Section 707(a)(4)(A) or (a)(7).

The Plaintiff's motion for summary judgment is denied to the extent that it is based on the assertion that the Defendant has made a false oath regarding the transfer of the 1998 Ford Explorer. This allegation of fact cannot support the Plaintiff's first cause of action. Accordingly, no evidence or argument need be given or considered at trial on the issue of whether the Defendant made a false oath regarding the transfer of the 1998 Ford Explorer.

7. *Income from Global Staffing.* The Plaintiff asserts that the debtor has made false statement regarding his income from Global Staffing. This assertion is based on the fact that the Global Staffing made payments toward a vehicle lease, the retention of counsel, and a spa membership.

Even if it could be demonstrated that all of this is true, and even if the Defendant did not disclose it in his schedules, and even if it could be demonstrated that he failed to do so knowingly, it would not give rise to a cause of action under Section 707(a)(4)(A) or (7). Any income that the debtor received before the filing of the petition and retained as property on the date of petition would be property of the estate subject to administration by the chapter 7 trustee. See 11 U.S.C. § 541(a) & 348(f)(1)(A). If the Defendant scheduled that retained property, then it does not matter whether or not the income was disclosed as income because it was disclosed as property of the Defendant. If the Defendant retained but did not schedule the property that he received as income, then it might give rise to a cause of action under Section 707(a)(4), but only as property not scheduled under Schedule A or B, not as income not disclosed. The Plaintiff would have to prove that the Defendant knowingly and fraudulently failed to schedule that property and that the property could be administered by the trustee, something that the Plaintiff has not even alleged.

Any income that was received by the Defendant after the date of petition would not be property of the estate and would not be subject to administration by the chapter 7 trustee. Id. The failure to disclose post-petition income cannot give rise to an independent action under Section 707(a)(4)(A) or (7) because it is not material to the administration of the bankruptcy estate.

The Plaintiff's motion for summary judgment is denied to the extent that it is based on the assertion that the Defendant has made a false oath regarding his income from Global Staffing. This allegation of fact cannot support the Plaintiff's first cause of action. Accordingly, no evidence or argument need be given or considered at trial on the issue of whether the

Defendant made a false oath regarding his income from Global Staffing.

8. *Amount of Tax Debt.* The Plaintiff asserts that the Defendant made a false statement when he indicated in his chapter 13 plan that the Internal Revenue Service held an \$80,000.00 priority claim and the Commonwealth of Virginia held a \$12,500.00 priority claim against him. The Plaintiff contrasts this with statement of the Defendant at the first meeting of creditors held during the pendency of the case under chapter 13 at which he stated that the amount of the claims was closer to \$24,000.00.

As noted above, if the scheduling of a claim in an amount that ultimately proved to be incorrect were grounds for denial of a discharge, then few debtors would receive a discharge. When a dispute arises regarding the amount or character of a claim during the prosecution of a bankruptcy case, the Code provides a procedural mechanism for determining the correct allowable amount and character of that claim. See 11 U.S.C. § 501-511 and Fed. R. Bankr. P. 3001-3009.

Furthermore, in this instance the Defendant was simply echoing the amounts asserted by the taxing authorities on notices of tax liens. A statement by a debtor that he owes a creditor what the creditor asserts it is owed cannot, per force, be fraudulent. After the Defendant filed his plan, he filed objections to both claims. The record indicates that the matters have not yet been resolved.

The Plaintiff's motion for summary judgment is denied to the extent that it is based on the assertion that the Defendant has made a false oath regarding the amount or character of the claims of the Internal Revenue Service and the Commonwealth of Virginia. This allegation of fact cannot support the Plaintiff's first cause of action. Accordingly, no evidence or argument

need be given or considered at trial on the issue of whether the Defendant made a false oath regarding the amount of character of the claims of the Internal Revenue Services or the Commonwealth of Virginia.

1. Section 727(a)(7) & (a)(2)

The Plaintiff asserts that the Defendant concealed property of the estate. First, the Plaintiff asserts that the Defendant concealed property when he instructed an employee to inform the Sheriff that he was no longer employed by Global Staffing. The Defendant asserts that if Global Staffing failed to pay funds over to the Sheriff for the benefit of the Plaintiff, then the Plaintiff's remedy is against Global Staffing, not the Defendant. Neither party has demonstrated that it is entitled to summary judgment under this theory. The Court will consider the evidence on this issue at trial.

The Plaintiff also asserts that the Defendant concealed assets when he had Global Staffing pay some of his personal bills. The Defendant asserts that the payments were reflected in the books of Global Staffing, that they were disclosed to the chapter 13 trustee and the chapter 7 trustee and that the Plaintiff never inspected those records prior to the date that the Defendant filed his petition.

The Plaintiff has asserted that the Defendant caused Global Staffing to pay some of his personal expenses directly. There is no genuine issue of material fact, even if this is true. The property in question was not "transferred, removed, destroyed, mutilated, or concealed." The property in question was transferred, or removed, to the Defendant. In order prevail on this issue in the context of transfer or removal, the Plaintiff would have to transfer or remove the property

from the Defendant. In this case, he directed that it be transferred to him. The terms “destroyed” and “mutilated” do not apply in this context.

In order to conceal the property, the Defendant would have to take steps to prevent the discovery of the assets. To the contrary, the transfer of the property *to* the defendant is disclosed on the books of Global Staffing and was disclosed to the trustees. While the Defendant may received a tax benefit from the payment of these expenses by Global Staffing, the act of instructing the payments does not constitute a violation of Section 727(a)(2).

B. Count II: Section 523.

Count II of the complaint is brought under Section 523 of the Bankruptcy Code. The Plaintiff quotes the following language from Section 523:

“A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . that . . . results, before, on, or after the date on which the petition was filed, from . . . any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding.” 11 U.S.C. § 523.

If the quoted language were an accurate statement of law, it would render non-dischargeable every bankruptcy claim that had been previously reduced to judgment. In fact, the quoted language states a rule of law that does not appear anywhere in the bankruptcy code. It is, in fact, a false statement of law.

The quoted words do appear in Section 523 in the order in which they are quoted. The language is taken from Section 523(a)(19). That Section in its entirety provides.

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

...

(19) that--

(A) is for--

(I) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of

- 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or
 - (ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and
- (B) results, before, on, or after the date on which the petition was filed, from--
- (I) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;
 - (ii) any settlement agreement entered into by the debtor; or
 - (iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

The language in Section 519(a)(19) applies only to judgments entered pursuant to claims asserting violations of federal or state securities laws. The Judgment was entered pursuant to allegations of breach of contract, not to any allegations of violation of securities law. The Plaintiff's motion for summary judgment on the second count shall be denied. The Defendant's motion for summary judgment on the second count shall be granted.

ORDER

On the first cause of action brought under 11 U.S.C. § 727, the Defendant's motion for summary judgment is denied and the Plaintiff's cross-motion for summary judgment is denied.

There is a genuine issue of material fact concerning whether the Defendant owns Global Staffing, Inc., and a material issue of fact concerning the value of Global Staffing, Inc. There is also a genuine issue of whether the Defendant violated Section 727(a)(2). The Plaintiff cannot prevail on the other six bases on which he brings Count I.

The Defendant's motion for summary judgment on the second count, brought under 11 U.S.C. § 523, is granted. The Plaintiff's cross-motion for summary judgment on the second count, brought under 11 U.S.C. § 523, is denied.


The parties shall meet and confer and contact the Court to set this adversary proceeding

down for trial on the issues of (1) whether the Defendant owned Global Staffing, Inc., on the date of petition, and, if so, what the value of Global Staffing, Inc., was at that time, and (2) whether the Defendant violated Section 727(a)(2).

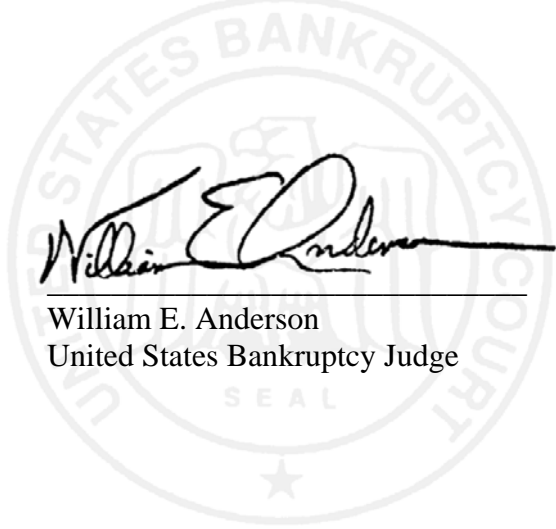
So ORDERED.

Upon entry of this Order the Clerk shall forward copies to Jeffrey A. Leach, Esq., and W. Stephen Scott, Esq., counsel for the defendant.

Entered on this 20th day of June, 2007.



William E. Anderson
United States Bankruptcy Judge

The seal of the United States Bankruptcy Court is visible in the background. It is a circular seal with the words "UNITED STATES BANKRUPTCY COURT" around the perimeter and a star at the bottom. The word "SEAL" is also visible in the center.