

In re:)	Chapter 7
)	Case No. 17-41215-CJP
BRADLEY DAVIDSON,)	
)	
Debtor)	
)	
MATTHEW WHITE,)	
)	
Plaintiff)	Adv. Pro. No. 18-04023-CJP
v.)	
)	
BRADLEY DAVIDSON,)	
)	
Defendant)	
)	

A. INTRODUCTION

¹ Unless otherwise noted, all section references herein are to Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended (the “Bankruptcy Code”).

former counsel, Christopher W. Parker (“Parker” or “Former Counsel”). The Court also takes judicial notice of its dockets in the Debtor’s case. The following constitutes the Court’s findings of fact and conclusions of law in accordance Federal Rule of Civil Procedure 52, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7052.

B. JURISDICTION AND LEGAL STANDARD

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334 and Rule 201 of the Local Rules of the United States District Court for the District of Massachusetts. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Both parties have acknowledged that this Court has authority to enter a final order with respect to this adversary proceeding.

Obtaining a discharge at the conclusion of a bankruptcy case is the principal goal of all eligible individual debtors and the “embodiment of the fresh-start policy of the Bankruptcy Code.” *Nickless v. Fontaine (In re Fontaine)*, 467 B.R. 267, 270 (Bankr. D. Mass. 2012). “For this reason, Rule 4005 of the Federal Rules of Bankruptcy Procedure places the burden of proof in an action objecting to a debtor’s discharge on the objecting party [and t]his burden is not easily satisfied.” *Id.* It is well-settled, therefore, that “the provisions of § 727 should be construed liberally in favor of debtors[,] . . . narrowly construed in furtherance of the Bankruptcy Code’s fresh start policy[,] and the claimant must show that its claim comes squarely within an objection enumerated in Bankruptcy Code § 727.” *Warchol v. Barry (In re Barry)*, 451 B.R. 654, 659 (B.A.P. 1st Cir. 2011) (internal citations and quotations omitted). “‘The reasons for denying a discharge to a bankrupt must be real and substantial, not merely technical and conjectural.’” *Boroff v. Tully (In re Tully)*, 818 F.2d 106, 110 (1st Cir. 1987) (quoting *Dilworth v. Boothe*, 69 F.2d 621, 624 (5th Cir. 1934)).

C. FINDINGS OF FACT²

The Debtor filed a Chapter 7 case on June 30, 2017 (the “Petition Date”). White filed this adversary proceeding on May 31, 2018, objecting to the Debtor’s discharge under § 727(a)(4).

The Debtor operated a consulting business as a “d/b/a,” Ging Management Group (“GMG”). He worked with White for approximately one year and had known him for a longer period of time. As made evident by certain allegations of harassment and the involvement of the parties in prepetition litigation before the Supreme Court of New York, the relationship of the parties deteriorated at some point. White is a creditor in the Debtor’s case. The Debtor scheduled White’s claim as a disputed, unliquidated, and contingent unsecured claim in the amount of \$1,000,000. White filed an unsecured proof of claim in the amount of \$2,000,000, the basis of which White describes as “[f]ailure to provide services.” Claim No. 6, Jan. 29, 2018.

The Debtor filed his schedules and statement of affairs on the Petition Date (the “Original Schedules”). (Ex. 1). In his Original Schedules, the Debtor did not disclose any amounts owed by any third party to him in response to Schedule A/B, Question 30,³ or any other question. The Debtor also did not disclose any interest in any incorporated or unincorporated businesses in Schedule A/B, Question 19,⁴ but he did disclose in response to Question 27 of his Statement of Financial Affairs that within four years of the Petition Date he

² To the extent any item labeled as a finding of fact is actually a conclusion of law (or the opposite), it is adopted as such.

³ Question 30 in Schedule A/B asks for disclosure of “Other amounts someone owes to you.”

⁴ Question 19 in Schedule A/B asks for information regarding “Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture.”

owned as a sole proprietor or had a membership interest in “Ginfg” Management Group and Think Say Records LLC.

The Trustee conducted the § 341 meeting of creditors (the “341 Meeting”) on July 31, 2017, at which the Trustee stated that she “was going to ask [the Debtor] to amend Schedule B regarding the consultant fee -- well, and GING Management. But I think maybe Think-Say too.” (341 Meeting Transcript (“Tr.”), Ex 4, 20:21–21:1). The 341 Meeting transcript does not reflect any testimony before this exchange that related to a consultant fee and no testimony at trial explained the reference.

Shortly after the Trustee stated the need for the Debtor to amend his Schedule B, the Plaintiff’s counsel asked the Debtor about the clients of GMG and the last time payments were received from those clients. (Tr. 22:3–23:15). The parties did not introduce the recording of the 341 Meeting testimony into evidence, but the transcript appears to show that the Debtor responded directly, without any pause noted by the transcriber, that he received in July payments of \$6,000 from Wanderset, LLC (“Wanderset”) and \$5,600 from another client. (Tr. 24:6–8). The Debtor testified that he believed that those payments (the “Payments”) were made on July 5 and July 15. (Tr. 24:16–17). He also testified that each of those payments was a prepayment for post-petition services in July and that he did not send invoices relating to the Payments. (Tr. 24:18–25:1). The Debtor stated that he had also been paid in June by those clients. (Tr. 25:5–11). Counsel to the Plaintiff expressed concern that the post-petition payments may have been on account of prepetition services. (Tr. 26:15–20). The Trustee also asked questions regarding line 8A of Schedule I, which requires a debtor to list “Net Income from . . . operating a business, profession, or farm,” and the negative business income reflected

there. (Tr. 26:21–27:17). The Trustee suggested that more information was required and that the Debtor would need to amend his response to line 8A. (Tr. 27:1–3).

On October 17, 2017, the Debtor amended his petition, Schedules A/B, G, I and J, and Statement of Financial Affairs by filing a notice of amendment in which he stated that he “discovered” that certain “information had been inadvertently omitted” (the “First Amendment”).⁵ (Exs. 5 and 6). The First Amendment added his former unincorporated business, Beacon St. Entertainment, corrected the spelling of his current business, GMG, and added a security deposit refund, among other amendments to the Original Schedules. (Schedule A/B and Statement of Financial Affairs, Oct. 17, 2017, Ex. 6). The accounts receivable relating to the Payments were not added to Schedule A/B at that time.

On or about November 1, 2017, the Debtor provided a “thumb drive” containing electronic copies of documents to the Trustee. The Debtor filed a Second Notice of Amended Schedules A/B, a Second Motion to Amend Schedule C, and Amended Schedules A/B and C on November 6, 2017, at Docket Nos. 27, 28 and 30, respectively, which were disregarded by the Clerk’s Office for procedural deficiencies. The Debtor filed corrected documents on November 13, 2017. (Ex. 11). In the November 13, 2017 filings, the Debtor amended Schedule A/B and sought to amend Schedule C (collectively, the “Second Amendment”), because, “in order to verify the accuracy of his listing of property as requested by the Trustee,” the Debtor visited his self-storage unit and discovered additional items of personal property that the Debtor asserted had no value, but which he sought to disclose: a stool, trashcan, broken TV stand, and 25 to 30 used books. (Second Amendment ¶ 4). Additionally, the Debtor added the accounts receivable associated with the Payments, stating in the Second Amendment that

⁵ The Debtor also separately sought to amend his Schedule C. (Ex. 7).

in reviewing the financial records recently supplied by the Debtor to the Trustee, the Debtor realized that two payments which he received in July 2017 from Wanderset, LLC, for whom the Debtor does work under contract, each in the amount of \$6,000, were in exchange for work done by the Debtor in the months of May 2017 and June 2017. Accordingly, these expected payments should have been listed by the Debtor as ‘amounts owed’ in Schedule A/B. Accordingly, the Debtor has amended a Schedule A/B to list these two payments in his Answer to Question 30, and the Debtor has moved to amend Schedule C to claim an exemption in these two payments.

(Second Amendment ¶ 6). Specifically, the Debtor added the following response to Question 30 of Schedule A/B:

As of the filing date, the Debtor was owed by his client Wanderset, LLC \$6000 for work done in May, 2017, and \$6000 for work done in June[,] 2017. The Debtor received payment from Wanderset[,] LLC in July, 2017 for these amounts [Total = \$12,000]. . . .

(Schedule A/B, Nov. 13, 2017, Ex. 11). The Debtor claimed an exemption in the newly scheduled accounts receivable (the “Wanderset Receivables”) in the amount of \$5,515.90 under § 522(d)(5). (Schedule C, Nov. 13, 2017, Ex. 11).

The Debtor filed a third amendment to Schedule A/B and his Statement of Financial Affairs on May 15, 2018 (the “Third Amendment”) (Ex. 12) pursuant to which he added his prepetition ownership interest in Think Say Records, LLC to Schedule A/B and clarified the dates that the business was in existence on the Statement of Financial Affairs.

The Debtor’s original counsel sought to withdraw his appearance on July 26, 2018, which the Court allowed on July 30, 2018, and successor counsel appeared. The Debtor amended Schedule A/B and Schedule C a fourth and final time on August 17, 2018 (the “Fourth Amendment”) to delete one of the Wanderset Receivables, because the Debtor determined that it was a receivable for post-petition services.⁶ (Exs. 15–17). The Debtor’s response to Question

⁶ The Debtor noted in his answer to the complaint in this matter that he recognized the Third Amendment to schedules was inaccurate and noted that “[u]pon a complete review of his filings with successor

30 of Schedule A/B now reflected the Debtor was owed \$6,000 from Wanderset as of the filing date and, in Attachment 2 to Schedule A/B, the Debtor further stated that the “work [was] done in June, 2017. The Debtor received payment from Wanderset[,] LLC for this [work in the] amount [of] \$6,000 in July, 2017.” (Schedule A/B Attach., Aug. 17, 2018, Ex. 16). The Debtor claimed an exemption in the receivable in the amount of \$5,515.80 under § 522(d)(5). (Schedule C, Aug. 17, 2018, Ex. 16).

The Trustee moved to extend the deadline to object to discharge numerous times. After the Fourth Amendment when the Debtor corrected the receivable information and exemption claimed in the Wanderset Receivables on Schedule A/B and Schedule C, the Chapter 7 Trustee determined not to pursue a § 727 discharge objection and filed her no-asset report on July 26, 2019.

At the trial, the Trustee testified that the Debtor was responsive to her requests for information and provided her with more than 1,000 documents. She also testified that to facilitate her review the Debtor voluntarily organized and re-submitted bank statements that had been provided to her electronically, but that had not been organized by date and account. She testified that in her experience it was not uncommon for debtors to file amended schedules, but could not offer any testimony about the frequency with which amendments are filed or whether the number of amendments undertaken by the Debtor were outside the norm.

The Debtor testified extensively regarding the Original Schedules and the series of amendments that he had filed with the Court. The Debtor explained that it took him more than twenty hours to complete the client questionnaire (the “Questionnaire”) provided by his Former Counsel and to provide related information for his Original Schedules, stating that he had no

counsel, he will so amend the petition to correct that error as well and other minor error errors in his petition, should any exist.” (Answer, Ex. 14, ¶ 22).

help in responding. He also testified that he believed the information he provided and that was included on his filings with the Court to be true and complete. The Debtor acknowledged in his testimony that he made “errors” in the Schedules and Statement of Affairs filed in the case, because (i) he was not used to compiling financial information as he had an assistant do this for him, personally and for his businesses, since he graduated college and he could no longer afford to pay for an assistant or for an accountant and (ii) he was feeling “overwhelmed” at the time because of the state of his business, lack of sleep and other effects of depression, and what he described as harassment by White and the burden of the ongoing litigation involving White. He credibly testified that, at the time he was completing the Schedules and Statement of Financial Affairs, he was under a physician’s care for depression and taking medication related to that condition. He continues to be treated for depression, but his condition has improved.

The Debtor testified that he attempted to provide information requested by his attorney and the Trustee and followed his attorney’s advice regarding when to file amendments or take other actions in the case. The stipulated testimony of the Debtor’s Former Counsel and the Questionnaire submitted as an exhibit thereto (Ex. 25) show that the Debtor provided information to his counsel relating to his business income and expenses (Questionnaire 36) that does not appear to directly correlate to either the bank statements later produced to the Trustee (Bank of America Statement for Account ending in 6016 from May 1, 2017 to May 31, 2017, Ex. 18) or the Original Schedules. Business interests disclosed by the Debtor in the Statement of Financial Affairs were not reflected on Schedule A/B. Consistent with the Debtor’s testimony, these discrepancies appear to reflect issues of coordination and follow up between the Debtor and his Former Counsel.⁷

⁷ In connection with her third request to extend the discharge deadline filed on December 18, 2017, the Trustee stated that the Debtor had agreed to purchase his non-exempt equity in the Wanderset

The Debtor also offered much testimony regarding alleged acts of the Plaintiff to harass the Debtor and his acquaintances, including recordings of telephone messages left for friends and business associates of the Debtor, where the Debtor and another witness, Kevin Maas, claimed to identify the Plaintiff's voice. This evidence was offered in support of the Debtor's testimony regarding his state of mind at the time he completed his schedules and filed for bankruptcy. While many of the specific acts of harassment the Debtor believes are attributable to the Plaintiff occurred in 2015, the Debtor testified that acts continued through and after the date of the bankruptcy filing. He also testified that he had a fear of harassment by the Plaintiff, even when attending the 341 Meeting. The Court need not determine whether the Plaintiff actually engaged in the alleged harassing behavior, but must assess whether the Debtor's testimony that he believed he was being harassed is credible and the impact of that belief on his state of mind in connection with the actions the Debtor took in this case. The Debtor testified that he was "emotionally and physically drowning" at the time he filed for bankruptcy protection in part because of his belief that he and his acquaintances were being harassed. The Court credits the testimony regarding the Debtor's state of mind at times relevant to this case and that anxiety regarding the alleged harassment contributed to his mental state.

D. DISCUSSION

To deny a discharge under § 727(a)(4)(A), the Court must find that the debtor "knowingly and fraudulently made a false oath," and that the oath must relate to "a material fact." *Tully*, 818 F.2d at 110. The burden lies with the plaintiff to demonstrate the foregoing by a

Receivables, which totaled \$6,484 as reflected in the Third Amendment, and the Trustee testified she was preparing settlement documents to that effect. The Debtor testified that he had disagreed at that time with his Former Counsel that he had any non-exempt accounts receivable. Ultimately, the Fourth Amendment reflected that position.

preponderance of the evidence, *Fontaine*, 467 B.R. at 271, but, once it “reasonably appears that the oath is false,” the burden falls upon the Debtor to explain the false statement to avoid an inference that the statement was knowingly and fraudulently made. *Tully*, 818 F.2d at 110.

Fraudulent intent under § 727(a)(4) must be shown by actual fraud, although reckless indifference to the truth “has consistently been treated as the functional equivalent of fraud for purposes of § 727(a)(4)(A).” *See id.* at 112. “[B]ecause a debtor rarely gives direct evidence of fraudulent intent, intent to defraud a creditor may be established by circumstantial evidence or inferred from a course of conduct.” *Singh Educ. Servs. v. McCarthy (In re McCarthy)*, 488 B.R. 814, 826 (B.A.P. 1st Cir. 2013); *see also Desmond v. Varrasso (In re Varrasso)*, 37 F.3d 760, 764 (1st Cir. 1994). However, a “debtor’s honest confusion or lack of understanding may weigh against an inference of fraudulent intent.” *McCarthy*, 488 B.R. at 827. Additionally, “an explanation by a bankrupt that he had acted upon advice of counsel who in turn was fully aware of all the relevant facts generally rebuts an inference of fraud [unless] . . . it is transparently plain that the property should be scheduled.” *Zizza v. Harrington (In re Zizza)*, 875 F.3d 728, 732 (1st Cir. 2017) (internal citations and quotations omitted).

In the discharge and dischargeability context, “a determination concerning fraudulent intent depends largely upon an assessment of the credibility and demeanor of the debtor.” *Palmacci v. Umpierrez*, 121 F.3d 781, 785 (1st Cir. 1997) (quoting *Commerce Bank & Trust Co. v. Burgess (In re Burgess)*, 955 F.2d 134, 137 (1st Cir. 1992). “A debtor’s discharge should not be denied under § 727(a)(4)(A) if the false statement or omission is the result of mistake or inadvertence . . . or if the mistake is technical and not real.” *JP Morgan chase Bank, N.A. v. Koss (In re Koss)*, 403 B.R. 191, 211 (Bankr. D. Mass. 2009) (citations and quotations omitted).

“Misstatements in a debtor’s Schedules[, Statement of Financial Affairs,] and/or in the debtor’s sworn testimony at the § 341 meeting [] qualify as false oaths within the purview of § 727(a)(4)(A).” *Fontaine*, 467 B.R. at 271 (quoting *Harrington v. Donohue (In re Donahue)*, Case No. 11-026, 2011 WL 6737074, *1, *11 (Dec. 20, 2011)). “Omissions as well as affirmative misstatements qualify as false statements for [§] 727(a)(4)(A) purposes.” *Republic Credit Corp. v. Boyer (In re Boyer)*, 367 B.R. 34, 45 (Bankr. D. Conn. 2007). A material false oath under § 727(a)(4) is one that has “a non-trivial effect upon the estate and the creditors,” *Fontaine*, 467 B.R. at 272, because it ““bears a relationship to the bankrupt’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of property.”” *Tully*, 818 F.2d at 111 (quoting *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984)).

In Counts I and II of the complaint, which are both brought under § 727(a)(4), White claims that the Debtor knowingly and fraudulently made a false oath or account in or in connection with his Chapter 7 case by: (i) stating at his 341 Meeting that his receipt of \$6,000 from Wanderset and \$5,600 from another client in July 2017 was a prepayment for services in July and (ii) not disclosing on Schedule A/B the existence of the Wanderset Receivables.

The Plaintiff contends that all of the false statements alleged in connection with both the schedules and statements and 341 Meeting testimony are material because they relate to property of the estate. The Court finds that the evidence presented at trial regarding inaccuracies in the Original Schedules and the subsequent amendments having to do with (i) missing interests in an unincorporated business and an LLC, which were, nonetheless, disclosed in the Debtor’s Statement of Affairs from the Petition Date, and (ii) the Debtor’s net business income demonstrated inadvertence and lack of attention to detail in completing the schedules that did not

rise to a reckless disregard for the truth, even taken cumulatively, and could not have misled the Trustee or creditors in any material way. As such, the Court will focus its analysis on the disclosures relating to the Wanderset Receivables and payments received by the Debtor after the Petition Date.

The Debtor disputes that he knowingly and fraudulently made any false oath or account, including as to the Wanderset Receivables. He claims that any omissions were the result of inadvertence, his inexperience with the legal process, his own lack of focus and memory issues from medication and depression, and mental issues stemming from what he perceived to be harassment by the Plaintiff. He testified credibly that he believed his statements and schedules were accurate at the time that they were filed, and when omissions were brought to his attention, he sought to correct them. The Debtor also argues that the omissions were not material, because the initially omitted Wanderset Receivable reflected in the Fourth Amendment was exempt.

The Debtor's argument that the omitted interest was exempt and that status as an exempt asset should be considered in determining materiality for purposes of § 727(a)(4)(A) is not persuasive.

Property is not exempt by fiat of the debtor[s], but only through a process of compliance with statutory disclosures. 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. It is therefore meaningless to say that [accurate] disclosure is not required because property is exempt. Property can only become exempt through a legal process that includes disclosure.

Indeed, a debtor is required to schedule all assets, whether claimed exempt or not, regardless of the debtor's perception of the asset's worth. A disclosure's materiality is not determined by whether it may financially prejudice the estate or creditors. An omitted asset may ultimately be found to have no value, but its disclosure is necessary if it aids in understanding the debtor's financial affairs and transactions.

The Cadle Co. v. Leffingwell (In re Leffingwell), 279 B.R. 328, 350 (Bankr. M.D. Fla. 2002) (internal citations and quotations omitted).

False information about non-trivial amounts owed to the Debtor on the petition date and payments received by the Debtor may have affected the creditors' and Trustee's ability to understand the Debtor's financial affairs and transactions and that is all that is required to meet the materiality threshold. *See Tully*, 818 F.2d at 111; *Fontaine*, 467 B.R. at 272. The Court therefore determines that statements about the Wanderset Receivables are material, whether such property is exempt or not.

To deny a discharge under § 727(a)(4)(A) in this case, the Court must find that the debtor "knowingly and fraudulently made a false oath" with respect to the Wanderset Receivables or that disclosures were made with reckless indifference to the truth. *Tully*, 818 F.2d at 110. There is no dispute that the statements regarding the Wanderset Receivables made on Schedule A/B and at the Section 341 meeting were made under oath and were not correct—at least as to the \$6,000 amount owed by Wanderset and disclosed by the Debtor after several amendments. (*See* Exs. 12, 15, and 16). Consequently, the Debtor must explain the circumstances of why he made those false statements to avoid the inference that the statements were knowingly and fraudulently made. *Tully*, 818 F.2d at 110.

Whether a debtor has made a false oath within the meaning of § 727(a)(4)(A) is a question of fact. *See McCarthy*, 488 B.R. at 825. The Debtor concedes that he omitted certain information and made false statements with respect to the Wanderset Receivables, but testified credibly that the omissions were inadvertent and not made with reckless indifference to the truth. This testimony is supported by evidence presented by the Debtor regarding his prior dependence on others to complete forms and handle his financial affairs and his state of mind at the time of

his bankruptcy filing. The Debtor's consistent and extensive cooperation with the Trustee in providing information also cuts against the Debtor having knowingly and fraudulently made the false oaths. He did not make any effort to keep from the Trustee bank statement information or the fact that he had received the post-petition payments that prompted further inquiry. Instead, the Debtor's testimony demonstrated his lack of competence and a lack of diligence, exacerbated by his mental state, in compiling information with his Former Counsel, which supports a finding of inadvertence with respect to the omission.

The fact that the Debtor was wrong again when he disclosed the Wanderset Receivables in his Third Amendment, disclosing two accounts receivable on Schedule A/B when in actuality only one of those receivables related to post-petition services performed by the Debtor also supports a finding of inadvertence. The Debtor does not appear to have had any incentive to have knowingly and fraudulently made this false oath with respect to the account receivable for prepetition services, given that the Debtor could have exempted all or most of the \$6,000 account receivable had he properly recognized and scheduled his interest at the time of filing. Although the fact that the account receivable was exempt is not relevant for purposes of materiality, it is reasonably considered in assessing other evidence of intent and whether the Debtor had a motive to make a false statement with respect to an asset. While the evidence presented by the Plaintiff raised questions about the Debtor's candor regarding whether invoices were sent to clients such that the Debtor could have easily determined that one account receivable was for prepetition services, the Debtor's testimony sufficiently demonstrated that he was not involved directly in the actual billing and collection of accounts receivable and that his state of mind and focus at relevant times was impaired such that the Debtor did not have the requisite intent required to bar his discharge under § 727(a)(4)(A).

The Court also notes that the Debtor meticulously listed other non-financial assets of the estate and amended his schedules to disclose even the most insignificant of assets for the sake of disclosure. This type of disclosure could be viewed to demonstrate a suspicious inconsistency in approach and an effort to portray earnestness to the Trustee to influence her review of other items, but, in this case, the Court finds that the Debtor's meticulous disclosure of tangible assets demonstrates an intent by the Debtor to honestly disclose those assets that could be easily identified by him that did not require an understanding of his business records. Consistent with this view, the Debtor credibly testified that he did not clarify his understanding of his business income and expenses and the Wanderset Receivables until an accountant became involved.

The Court finds that the Debtor has introduced sufficient evidence that the false statements made on the schedules and at the 341 Meeting were not made with the requisite fraudulent intent or reckless indifference to the truth and that the Plaintiff has not met his ultimate burden of proof.

E. CONCLUSION

Based on the foregoing, the Court finds against the Plaintiff on both counts in his complaint. Judgment shall enter in favor of the Debtor in accordance with this decision.

By the Court,

Dated: October 11, 2019

A handwritten signature in black ink, appearing to read "Christopher J. Panos", written over a horizontal line.

Christopher J. Panos
United States Bankruptcy Judge