UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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Adversary Caption:	Richard G. Hansen v. Steven F. Soukup
Adversary No.:	18ap00764
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Appearance of Counsel:

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	
	)	Case No. 17bk16894
STEVEN F. SOUKUP,	)	Chapter 7
	)	
Debtor.	)	Honorable LaShonda A. Hunt
	)	
	)	
RICHARD G. HANSEN,	)	Adv. Proc. No. 18ap00764
	)	
Plaintiff,	)	
v.	)	
	)	
STEVEN F. SOUKUP,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Plaintiff Richard G. Hansen commenced this adversary complaint challenging the chapter 7 discharge of debtor/defendant Stephen F. Soukup. Hansen and Soukup were partners in a now defunct business, Risk, LLC. After Risk shut down suddenly in late 2015, Soukup took possession of the remaining business machinery and two company-owned vehicles. However, when Soukup filed for bankruptcy two years later, he did not disclose on his Schedule B or Statement of Financial Affairs that he was still holding assets owned by Risk. Hansen asserts that this nondisclosure is a false oath under 11 U.S.C. § 727(a)(4)(A), and that Soukup failed to notify him about the bankruptcy filing before the discharge was granted. Therefore, Hansen argues, Soukup's discharge should be revoked pursuant to section 727(d)(1). Upon consideration of the evidence presented at trial as well as the arguments of the parties, the court concludes that Hansen has not met his burden of establishing that Soukup acted with fraudulent intent.

BACKGROUND

Soukup filed a voluntary chapter 7 petition on May 31, 2017 and was granted an order of discharge on August 29, 2017. A year later, on August 28, 2018, Hansen filed this adversary complaint to revoke Soukup's discharge under section 727(d)(1). Following discovery, a half-day trial was held on Zoom, at which Soukup and Hansen were the only two witnesses to testify.

The facts are mostly undisputed and taken from the trial testimony and pretrial stipulations. The court also takes judicial notice of the dockets in the bankruptcy case and the adversary proceeding. *See Inskeep v. Grosso (In re Fin. Partners)*, 116 B.R. 629, 635 (Bankr. N.D. Ill. 1989). This decision constitutes the court's findings of fact and conclusions of law under Fed. R. Civ. P. 52(a), made applicable by Fed. R. Bankr. P. 7052.

History of Risk, LLC

In 2007, Soukup, Hansen, and Khurram Sayeed started Risk, an Illinois limited liability company that manufactured granite countertops and operated under the name "Granite Fab." All three partners were managing members of the company. Soukup owned 20% of Risk while Hansen and Sayeed each held a 40% membership interest.

Over time, Risk acquired different assets for use by the business, including two Ford F-150 trucks, a forklift boom, grinders, router, compressor, water wall, clamps, metal tables, table tools, A-frames, beds, and grinding wheels. On its 2015 federal income tax return, Risk reported $204,681 worth of buildings and other depreciable assets. The company did not own any real estate. Instead, Risk leased space for business operations from Hard Corporation, an entity owned by personal friends of Hansen.

After several years, business at Risk began to decline and relations between the partners became strained. The final blow occurred in September 2015, when Hard Corp., the landlord, filed

a state court action to evict Risk and recover money due under the lease. On October 19, 2015, the state court found in favor of Hard Corp. and entered an order of possession and money judgment of $133,575.40 against Risk and Hansen (who presumably guaranteed the lease payments). As a result, Risk had to vacate the leased premises within ten days.

Soukup testified that he was responsible for managing the daily operations at Risk. So, after his lawyer informed him about the eviction order, he immediately called Hansen and Sayeed to discuss next steps. According to Soukup, Hansen showed little interest in the business; as such, he and Sayeed proceeded to make plans to move all the company's assets. Soukup stored one of Risk's F-150 vehicles on the driveway of his own home and took the other F-150 vehicle to his uncle's home. In addition, Soukup put Risk's business records, hand tools, and small office equipment in his basement. Soukup described these assets as being in generally the same condition as when they were moved in October 2015. The F-150 at Soukup's residence has been driven on several occasions, mostly to run the motor. The other F-150 is still sitting on his uncle's driveway. Soukup stated that all those items would be immediately turned over on request.

As for the company's larger machinery and equipment, Soukup initially moved those assets to a storage unit in Chicago, and then later to a different storage facility in the suburbs. Although Soukup never signed lease agreements for storage space, he believed that storage fees might be unpaid and thus it was unclear if he would be able to retrieve Risk's property. Risk ceased operations not long after all the assets were removed from the premises.

Hansen tells a different story—that he was surprised to find the business abruptly closed and the doors locked. He said Soukup never told him what was happening with Risk and Hansen had no idea where any of the assets had been taken. Hansen complained that he repeatedly called Soukup but never received a response. Hansen filed his own voluntary chapter 7 petition in April

2016 and identified his interest in Risk as an asset, but he did not list either Soukup or Sayeed on his bankruptcy schedules as creditors. Risk was involuntarily dissolved by the state of Illinois in November 2016. Still, it does not appear that the partners have undertaken formal steps to wind down the business according to the operating agreement or state law.

Soukup's Chapter 7 Filing

Soukup fell upon hard times after the collapse of Risk, as he was making very little money and struggling with medical issues. When he sought bankruptcy protection in May 2017, Soukup listed his former business partners on Schedule E/F as creditors with potential unsecured claims. Soukup stated that he provided notice as required under the Risk operating agreement. Specifically, Soukup listed Hansen's address as 209 Second St., Unit 1, Peotone, IL 60468. But Hansen testified that his correct address is 209 N. Second St. Unit 2, Peotone, IL 60468-0717, and that all of his mail goes to a Post Office box. Due to this alleged error, Hansen said he did not receive notice about the bankruptcy filing until the landlord—one of his friends who owned Hard Corp.—informed him post-discharge that Soukup's bankruptcy proceedings were complete.

Furthermore, when Soukup filed for bankruptcy, he still possessed assets that belonged to Risk. He disclosed his ownership interest in Risk in response to question 27 of the SOFA. But with respect to question 23 of the SOFA, when asked— "Do you hold or control any property that someone else owns, include any property you borrowed from, are storing for, or holding trust for someone," Soukup checked the "no" box. Soukup characterizes that answer as an honest and innocent mistake, as he considers himself to be temporarily storing everything until the business can be wrapped up, not holding or controlling Risk assets. Hansen, on the other hand, asserts this omission is a fraud upon the court since Soukup left out a substantial amount of property that should have been included in his bankruptcy estate.

JURISDICTION

The court has jurisdiction over this matter under 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois. Actions concerning objections to discharge are core proceedings under 28 U.S.C. § 157(b)(2)(J).

DISCUSSION

Section 727(d)(1) of the Bankruptcy Code requires a court to revoke a discharge granted under section 727(a) if, "such discharge was obtained through fraud of the debtor, and the requesting party did not know of such fraud until after the granting of the discharge." 11 U.S.C. § 727(d)(1). However, revocation of a discharge is an extreme measure that contravenes the general policy of the Bankruptcy Code of giving Chapter 7 debtors a fresh start. *State Bank of India v. Kaliana (In re Kaliana)*, 202 B.R. 600, 603 (Bankr. N.D. Ill. 1996). Therefore, section 727(d) is construed against the objecting party and in favor of the debtor. *Schechter v. McAniff (In re McAniff)*, No. 02 B 38990, No. 03 A 4407, No. 03 A 4408, 2004 Bankr. LEXIS 670, at *12 (Bankr. N.D. Ill. May 21, 2004). Indeed, a challenger "must establish the debtor's ineligibility by a preponderance of the evidence." *In re Kempff*, 847 F.3d 444, 447 (7th Cir. 2017). *See also In re Yonikus*, 974 F.2d 901, 904 (7th Cir. 1992); *Steege v. Johnsson (In re Johnsson)*, 551 B.R. 384, 403 (Bankr. N.D. Ill. 2016)

Hansen asserts that Soukup made a false oath on his SOFA and intentionally failed to notify him about the bankruptcy filing before entry of the discharge order, and those are grounds for revocation under section 727(d)(1). Before turning to the merits of his argument, though, the court must first address a standing issue raised by Soukup, namely that Hansen is not a creditor eligible to challenge the discharge here.

I. Standing to Object to Discharge

Only "the trustee, a creditor or the United States Trustee" can seek to revoke a discharge. 11 U.S.C. § 727(d)(1). The Bankruptcy Code broadly defines a creditor as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. § 101(10)(A). A claim is further defined as encompassing either a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured" or a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured." 11 U.S.C. § 101(5). This definition is deliberately "expansive." *In re Van*, 612 B.R. 893, 902 (Bankr. N.D. Ill. 2020).

Soukup listed Hansen (and Sayeed) on his schedule of "creditors who have unsecured claims," identified their claims as "contingent," "unliquidated," and "disputed," and added the following descriptive language, "potential claim—former business partner." Notwithstanding that admission in a document signed under penalty of perjury, Soukup now contends that Hansen is a creditor of Risk only, not him individually. But it is too late to attempt to put such a fine tip on that point now. True, Risk was involuntarily dissolved by the state six months before Soukup's bankruptcy filing. However, the court did not hear any evidence at trial that a determination had been made that the former partners had no further financial responsibility to each other after the business terminated. References were made to an operating agreement, but neither side provided a copy of the very document that might have shed some light on partner obligations upon dissolution. Soukup may ultimately be correct in asserting that he personally owes Hansen nothing, but that was still an open question when he filed for bankruptcy.

Hansen testified that he believed Soukup owed him payment for the Risk assets that were taken. Because Hansen may have been able to bring a personal action against Soukup to recover those items or their value, he arguably has a potentially enforceable obligation—a claim—against Soukup. While that claim may be disputed, unliquidated, contingent, and unmatured, Congress intended to include "all legal obligations of the debtor no matter how remote or contingent" in the definition of a claim. *In re Energy Cooperative, Inc.*, 832 F.2d 997, 1001 (7th Cir. 1987).

Finally, Soukup argues that Hansen should be judicially estopped from claiming creditor status in Soukup's bankruptcy because Hansen did not list Soukup as a creditor in his own earlier-filed bankruptcy case. But that argument is equally unavailing. Judicial estoppel "prevents litigants from manipulating the judicial system by prevailing in different cases or phases of a case by adopting inconsistent positions." *Spaine v. Community Contacts, Inc.*, 756 F.3d 542, 547 (7th Cir. 2014). Further, "the prototypical application of judicial estoppel bars a plaintiff from pursuing a legal claim that the plaintiff deliberately failed to disclose in a bankruptcy petition." *Ellis v. Alexander*, No. 16-CV-05155, 2018 U.S. Dist. LEXIS 69354 *5 (N.D. Ill. Apr. 25, 2018).

Hansen said he did not consider Soukup to be his creditor in 2016, as he believed Risk was still up and running. However, that explanation defies logic, particularly since Hansen knew the business had been evicted from property owned by Hansen's friends in 2015. Curiously, Hansen did not list Hard Corp. as a creditor either, even though the landlord also held a personal money judgment against him. Nevertheless, Hansen's choice to omit Soukup from his April 2016 petition has no bearing on whether Soukup believed Hansen was a creditor in May 2017. By Soukup's own admission, he potentially owed his former business partners something and that is sufficient to confer creditor status on Hansen.

II. Revocation of Discharge

To prevail under section 727(d)(1), Hansen must prove by a preponderance of the evidence that (1) Soukup's discharge was obtained through fraud; and (2) Hansen lacked knowledge of such fraud until after the discharge was granted. *Grochocinski v. Eckert (In re Eckert)*, 375 B.R. 474, 478-79 (Bankr. N.D. Ill. 2007); *Zedan v. Habash (In re Habash)*, 360 B.R. 775, 778 (N.D. Ill. 2007). Hansen fails to meet either of those standards here.

A. Fraud by False Oath

A moving party seeking relief under section 727(d)(1) must establish fraud in fact and show that the debtor had an intent to deceive. *McAniff*, 2004 Bankr. LEXIS at *14; *Kaliana*, 202 B.R. at 604. However, a finding of fraudulent intent need not come from direct evidence. Rather, the court can look at "inferences drawn from a course of conduct" or from inferences of "all the surrounding circumstances." *Goldstein v. Zilberbrand (In re Zilberbrand)*, 602 B.R. 53, 57 (Bankr. N.D. Ill 2019); *Yonikus*, 974 F.2d at 905. Hansen argues that Soukup fraudulently obtained his discharge by failing to schedule his ownership, possession, and control of the assets of Risk, which amounts to a false oath under section 727(a)(4)(A).

A false oath claim is established by showing that: "(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." *Stamat v. Neary*, 635 F.3d 974, 978 (7th Cir. 2011). Relevant to this analysis, "a debtor's petition and schedules, statement of financial affairs, statements made at a § 341 meeting, and testimony at a Rule 2004 Examination all constitute statements that are made under oath." *Spohn v. Carney (In re Carney)*, 558 B.R. 250, 260 (Bankr. N.D. Ill. 2016). Furthermore, "omission in bankruptcy schedules can constitute false statements under oath supporting an objection to

discharge. . . ." *BMO Harris Bank N.A. v. Brahos (In re Brahos)*, 589 B.R. 381, 396 (Bankr. N.D. Ill. 2018); *Layng v. Urbonas (In re Urbonas)*, 539 B.R. 533, 547 (Bankr. N.D. Ill. 2015).

The first two elements are easily established. Soukup stipulated that he answered "no" to SOFA question 23 when in fact, he possessed Risk assets at the time he filed for bankruptcy. Likewise, the third element has been demonstrated. Soukup stated under oath that he did not "hold or control any property that someone else owns, includ[ing] any property you . . . are storing for . . . someone." Still, he concedes that two Risk F-150 trucks were parked at his home and his uncle's home, and other business tools were kept in his basement. Given that Soukup was openly holding visible assets that admittedly belonged to Risk, he had to know that anything other than an affirmative response to question 23 was inaccurate.

The fifth element has also been shown. A fact tends to be 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." *Stamat*, 635 F.3d at 982 (quoting *Retz v. Samson, et al. (In re Retz)*, 606 F.3d 1189, 1198 (9th Cir. 2010)). Soukup owned 20% of a dissolved business that had potentially valuable unliquidated assets. He may have been entitled to a distribution after the assets were sold and liabilities settled, and those funds would have belonged to his bankruptcy estate. While the parties dispute the significance of the assets, that is ultimately irrelevant with respect to the materiality determination. It is well established that "in determining whether or not an omission is material, the issue is not merely the value of the omitted assets or whether the omission was detrimental to creditors." *Stamat*, 635 F.3d at 982 (quotation and citation omitted). Debtors are required to report every interest that relates to their estate and assets. Thus, even if Soukup's contention that Risk would be found worthless after the final winddown is true, the omission of asset information from the SOFA is nonetheless material.

However, returning to the fourth element and final requirement, the evidence does not support a finding that Soukup acted with fraudulent intent. Courts look for proof of a debtor "knowingly intending to defraud" or engaging in "behavior that has shown a reckless disregard for the truth." *Bostrom v. Stathopoulos (in re Bostrom)*, 286 B.R. 352, 363 (Bankr. N.D. Ill. 2002) *aff'd sub nom. Stathopoulos v. Bostrom*, 02 C 9451, 2003 U.S. Dist. Lexis 2470 (N.D. Ill. 2003). For example, in *Bostrom* the court found that the debtor's omission of property in Florida, a fur coat, television sets, and a stereo system, plus the severe underreporting of income amounted to the kind of behavior where the court could either infer fraudulent intent, or at least draw the conclusion that the debtor acted with reckless disregard for the truth. *Id.* at 363.

That is not the scenario presented here. Soukup certainly erred in denying under oath that he was holding someone else's assets, but that was only one mistake on the SOFA. Otherwise, he was forthcoming in acknowledging his business interest in Risk on SOFA question 27, and he specifically included his former business partners and former landlord on Schedule E/F as creditors to receive notice of the bankruptcy case. One omission in the face of multiple accurate disclosures does not reflect an intent to hide the truth.

Soukup himself testified credibly that he has been acting in good faith and his resulting actions are consistent with that statement. In the five years that he has continued to hold and store Risk property, he has never attempted to sell those items or use them to start up a new countertop business. The assets are still sitting on a driveway, in his basement, and in storage units. And with the exception of one trip to Home Depot, he has not driven the company vehicles for personal use. Soukup undoubtedly has had ample time since the business closed in 2015 and his discharge was entered in 2017, to capitalize on his alleged "illegal taking" of company property. But this record does not reflect any questionable behavior on his part. Soukup testified that the assets remain in

good condition in identified locations, while he has continued to await disposition instructions from his former partners. Hansen has not put forth a shred of evidence that would call into question either of those contentions. Tellingly, Hansen did not mention any attempts he has made to initiate legal proceedings for turnover of Risk property from Soukup, even though he has known for several years where the company assets are located. The evidence presented here reveals Soukup's honest intentions regarding his bankruptcy filings, not fraudulent falsehoods designed to stiff creditors. As such, Hansen has failed to prove that Soukup made a false oath under section 727(d)(4).

B. Knowledge of the Discharge

Because Hansen has not met his burden of demonstrating that Soukup obtained a discharge fraudulently, the court need not decide the second requirement of section 727(d)(1). But it bears noting that even if Hansen had succeeded in establishing the false oath claim, it is highly unlikely that he would have been able to demonstrate his lack of knowledge of the fraud until after the granting of the discharge.

A creditor seeking revocation must show that "he did not know and could not have known of the fraud." *Zilerbrand,* 602 B.R. at 57; *McAniff* 2004 Bankr. LEXIS, at *4. If that creditor has any knowledge that "would put a reasonable person on notice of the alleged fraud," then he has a duty to investigate or seek remedy from the bankruptcy court. *Smith v. Seferian,* 11 C 5036, 2011 U.S. Dist. LEXIS 147049, at *7 (N.D. Ill. Dec. 21, 2011).

Hansen testified at trial on direct examination that he did not learn of Soukup's bankruptcy filing—and therefore the alleged fraudulent SOFA—until his friend/landlord called him after the discharge had been entered. A few questions later, though, Hansen could not remember if Soukup had received a discharge by the time Hansen reached out to a bankruptcy attorney to discuss his

rights. On cross-examination, Hansen waffled again and stated he could not remember the exact date, but it had to be after "the finalization."

Hansen insisted at trial that Soukup used the wrong street address—201 Second Street, Unit 1 as opposed to 201 North Second St., Unit 2—and as a result he never received any notices from the bankruptcy court about the case. But that assertion is directly belied by Hansen's sworn affidavit attached to the adversary complaint in which he avers that: "My first notice in this matter that I received was notice that the Debtor had received a discharge." According to the bankruptcy docket, the discharge order was served on Hansen at the "201 Second Street, Unit 1" address on August 29, 2017. However, the docket also shows that debtor's counsel served a copy of Soukup's schedules and SOFA on Hansen at the same exact address on August 17, 2017. That Hansen would have received one document (post-discharge) and not the other (pre-discharge) when both were sent to the same address is improbable. That unexplained detail, along with his contradictory stories, seriously calls into question the veracity of Hansen's testimony regarding his knowledge of Soukup's bankruptcy case. Hansen could have offered corroborating testimony from the landlord with whom he is personal friends, but he did not.

In sum, the court found that Hansen was generally not a credible witness. He accused Soukup of unilaterally shuttering Risk and absconding with all its assets five years ago, and yet he has not taken a single step to recover that property from Soukup's home which is listed on the bankruptcy documents. Hansen further claims that Soukup concealed information from the trustee and creditors and intentionally failed to notify him only about the bankruptcy filing three years ago. But both Sayeed and his personal friend, the landlord, received notice. It is simply far-fetched to think that their mutual acquaintances were aware of Soukup's bankruptcy filing but Hansen was left in the dark until after the discharge. Accordingly, the court believes that Hansen likely knew

or should have known about Soukup's bankruptcy filing but took no meaningful steps to timely pursue his rights.

CONCLUSION

For the foregoing reasons, judgment will be entered in favor of defendant/debtor Steven F. Soukup on the complaint and against plaintiff Richard G. Hansen. A separate judgment will be entered pursuant to Federal Rule of Bankruptcy Procedure 9021.

Dated: January 20, 2021

ENTER:

LaShonda A. Hunt

Hon. LaShonda A. Hunt
United States Bankruptcy Judge