United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Sohail A. Shakir

Bankruptcy No. 20 B 01252

Adversary Caption: Villa Oaks, LLC v. Sohail A. Shakir

Adversary No. 20 A 00352

Date of Issuance: January 20, 2021

Judge: Donald R. Cassling

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	
	)	Bankruptcy No. 20 B 01252
SOHAIL A. SHAKIR,	)	
	)	Chapter 7
Debtor.	)	
	)	Honorable Donald R. Cassling
	)	
	)	
VILLA OAKS, LLC,	)	
	)	
Plaintiff,	)	Adversary No. 20 A 00352
	)	
v.	)	
	)	
SOHAIL A. SHAKIR**,**	)	
	)	
Defendant.	)	

AMENDED ORDER DENYING DEBTOR'S MOTION TO DISMISS

This matter came before the Court on Debtor's motion under Federal Rule 12(b)(6) to dismiss Plaintiff's three-count complaint objecting to his discharge. Debtor argues that Plaintiff insufficiently pleaded its claims and that the pleaded facts are not actionable under Section 727(a) of the Bankruptcy Code. For the reasons discussed below, the Court denies the motion.

BACKGROUND[1]

Debtor guaranteed one of his companies'[2] 2014 contract to construct a banquet hall for Plaintiff. (Compl. ¶ 11.) Relying on that agreement, Plaintiff evicted commercial tenants and demolished a portion of its shopping center to make room for the proposed banquet hall. (*Id.* ¶¶ 12-13.) But Debtor and his company reneged on their obligation to build it. (*Id.*) Plaintiff sued on Debtor's guaranty in state court and obtained a seven-figure judgment against Debtor and his company. (*Id.* ¶ 19.) Debtor then filed for bankruptcy in January 2020, and Plaintiff filed its complaint objecting to Debtor's discharge under Sections 727(a)(2), (a)(4), and (a)(5) in October 2020. These counts assert that Debtor's

[1] In preparing its ruling, the Court has considered the complaint, motion (Adv. Dkt. No. 6), and parties' briefs (Adv. Dkt. Nos. 12-13). It has also taken judicial notice of Debtor's Chapter 7 Voluntary Petition (Dkt. No. 1); Schedules A/B, C, D, E/F, G, H, I, and J (Dkt. No. 12); Statement of Financial Affairs ("SOFA," Dkt. No. 13); and Statement of Current Monthly Income ("CMI," Dkt. No. 14). Solely for purposes of ruling on the motion, the Court takes all well-pleaded factual allegations in the complaint as true. *Silha v. ACT, Inc.*, 807 F.3d 169, 173-74 (7th Cir. 2015).

[2] Rubina Hospitality, LLC. (*See* SOFA at p. 13.)

discharge should be denied because he failed to explain his disposition of significant assets and that he deliberately arranged his finances to understate his income and assets.

Plaintiff deposed Debtor during the state-court lawsuit.[3] In that deposition, Debtor stated that he obtained his baccalaureate degree in accounting and then worked as an accountant for about a year. (DuPage Tr. at 6:13-22 & 7:2-6.) After that, he went into business for himself, developing and operating restaurants, hotels, banquet halls, gas stations, apartment complexes, and other real estate deals throughout the Midwest and even internationally. (*Id*. at 7:12-9:22.) He operated them through various companies he owned and controlled, and these businesses apparently boomed. In a joint financial statement with his wife, Debtor stated that their net worth exceeded eleven million dollars by the end of 2015. (Compl. at p. 1 of Ex. A.) In his testimony, Debtor also described his spouse as a "housewife" (DuPage Tr. at 16:8-9) and asserted that his children were uninvolved in the operation of his businesses. (*Id*. at 19:8-10.)

About two years after his first deposition in October 2018, Plaintiff examined Debtor in the bankruptcy case. As the following examples demonstrate, Debtor gave markedly different testimony here than he did in his state-court deposition:

- Contradicting his prior testimony, Debtor claimed that he retired eight years ago. (2004 Exam at 8:2-7). Later, he amended his testimony again, asserting he was only "semi-retired" and still running a construction company, Green Dot Builders, LLC. (*Id*. at 33:7:24.)
- Also contradicting his state-court deposition testimony, he now testified that his homemaking wife was really a businesswoman, specifically "a developer." (*Id*. at 12:16-18).
- Debtor testified that he kept no records for any of his personal credit cards and did not know when they were last used. (*Id*. at 55:14-21.) Nonetheless, he stated that both he and Green Dot Builders routinely paid his son's credit card debt. He testified that they did this because the family relied on Debtor's son to purchase supplies from Amazon and Costco that they needed for the projects their companies were handling. (*Id*. at 118:4-23 and 129:9-19.)
- Again contradicting his state-court testimony, he testified that his wife or children made the companies' decisions and directed their affairs. (*See, e.g., id*. at 35:14-23, 49:2-24, 110:15-24, and 114:18-23.)
- Regardless of who made the business decisions for the companies owned by Debtor or his family, he testified that they routinely shifted funds and business expenses between their personal and company accounts because their "accountant advised [them] to do it that way." (*See id*. at 56:8-57:5.)

[3] There are two transcripts in the record. Plaintiff took the first deposition in the DuPage County lawsuit and the second through a Bankruptcy Rule 2004 examination in September 2020. The Court will cite the former as "DuPage Tr. at __." and the latter as "2004 Exam at __." Plaintiff attached these transcripts to its complaint as Exhibits B and C, but it only submitted a portion of the DuPage Transcript.

- Debtor also testified that his wife funded much of the various companies' operations from her personal savings because "[s]he is a developer" and he is "just a contractor." (*Id*. at 134:1-16.)

- He also asserted that he monitored Green Dot Builders' bills to ensure that "100 percent" of the money that it spent related to "RSS Homes expenses." (*Id*. at 57:6-19.) But, when confronted with specific examples of reimbursements by Green Dot Builders of his family's personal expenses, he did not "have an answer for that." (*E.g.*, *id*. at 138:4-9.)

- Contradicting his earlier positions yet again, he subsequently testified that his family used Green Dot Builders' account like a clearing house and made all personal and business payments through it. (*Id*. at 150:22-151:16.) He also acknowledged, however, that he did not always closely monitor the financials that he managed, (*id*. at 139:1-3), and thus did not know some basic facts like compensation paid to the various members of companies that he manages. (*Id*. at 36:4-12.) Curiously, in light of the family's alleged practice of pooling everything into Green Dot Builders' account, Debtor testified that he did not keep a ledger or other financial records related to Green Dot Builders' expenses and cashflows. (*Id*. at 102:10-12, 103:16-19, and 112:4-113:4.)

While these examples do not exhaustively catalog Debtor's conflicting testimony, they highlight some of the most material inconsistencies between Debtor's testimony over time (and, indeed, within his bankruptcy testimony alone). Given Debtor's accounting background and his long run as a successful entrepreneur, Debtor's professed memory lapses concerning the most basic details of his personal affairs, business expenses, and related financial issues are surprising and of doubtful credibility.

ANALYSIS

In ruling on Debtor's Federal Rule 12(b)(6) motion, the Court must construe all well-pleaded facts (and any inferences therefrom) in Plaintiff's favor. *Silha*, 807 F.3d at 173-74. Debtor makes two arguments in support of his motion: Plaintiff inadequately pleaded its causes of action and Plaintiff's allegations are not actionable. Having studied the record and considered the parties' arguments, the Court rejects both contentions.

To pass muster under Federal Rule 12(b)(6), a complaint need only contain a "short and plain statement of the claim showing that the pleader is entitled to relief[.]" FED. R. CIV. P. 8(a)(2). It must also contain enough factual detail to provide a defendant "fair notice" of the claims and enable him to prepare a defense. *EEOC v. Concentra Health Servs.*, 496 F.3d 773, 776 (7th Cir. 2007). In addition, a plaintiff's obligation to state the grounds showing his entitlement to relief "requires more than labels and conclusions." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When a plaintiff pleads facts rather than labels or conclusions, the Court accepts as true those facts which are well-pleaded. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 249 (2009). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 614 (7th Cir. 2011).

In short, a complaint is plausible if it allows "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Most complaints fail to measure up under Federal Rule 12(b)(6) because they are conclusory. They present too little information and often fail to allege facts (as opposed to labels or conclusions) that support every element of each cause of action. But motions under Federal Rule 12(b)(6) may also be granted if a settled point of law makes the offending event unactionable. *Saiger v. City of Chi.*, 37 F. Supp. 3d 979, 985 (N.D. Ill. 2014). This is the main ground on which Debtor challenges the complaint. To that end, he basically argues that Plaintiff has pleaded itself out of court, *cf. Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008) ("A plaintiff 'pleads himself out of court when it would be necessary to contradict the complaint in order to prevail on the merits.'"), because its claims depend on a legal theory unavailable under Illinois law. (*E.g.*, Mot. at pp. 8-10.) But, as explained below, he is wrong.

A. THE REWARD OF A BANKRUPTCY DISCHARGE IS LIMITED TO HONEST DEBTORS

"The primary benefit of filing for bankruptcy under Chapter 7 is that the financial discharge gives the debtor a 'fresh start.'" *Stamat v. Neary*, 635 F.3d 974, 978 (7th Cir. 2011). But "[t]he successful functioning of the Bankruptcy Code hinges both upon the bankrupt's veracity and his willingness to make a full disclosure." *Ross v. RJM Acquisitions Funding LLC*, 480 F.3d 493, 498 (7th Cir. 2007) (quoting *In re Mascolo*, 505 F.2d 274, 278 (1st Cir. 1974)). And so, the Bankruptcy Code does not tolerate mendacity. *Disch v. Rasmussen*, 417 F.3d 769, 772 (7th Cir. 2005) (explaining that a "primary purpose" of the Bankruptcy Code is "to provide only honest debtors with relief.").

In outlining when a discharge is appropriate and when it is not, Congress crafted twelve grounds for denying a debtor's discharge. *In re Kempff*, 847 F.3d 444, 447 (7th Cir. 2017). Of relevance to the present motion, Plaintiff will prevail on its complaint at trial if it proves by a preponderance of the evidence that Debtor fraudulently transferred or concealed property of the estate within one year of the order for relief, knowingly gave a false oath or account in connection with the bankruptcy case, or inexplicably depleted his assets. 11 U.S.C. § 727(a)(2), (4), (5); *Peterson v. Scott (In re Scott)*, 172 F.3d 959, 966-67 (7th Cir. 1999). To resolve this Federal Rule 12(b)(6) motion, however, the Court need only test whether Plaintiff's allegations plausibly fit within these legal pigeonholes, not whether Plaintiff will actually prevail at trial. The Court will take up each subsection in turn.

1. Section 727(a)(2)—Concealment of Estate Property

Debtor is not entitled to a discharge if he transferred or concealed a material property interest, with the intent to hinder, delay, or defraud his creditors within the year preceding the bankruptcy filing. 11 U.S.C. § 727(a)(2). Plaintiff alleges that Debtor has fraudulently diverted the income and assets of Green Dot Builders to RSS Homes (*e.g.*, Compl. ¶¶ 41-44) and failed to disclose the value of Green Dot Builders' cost-plus construction contract (*id*. ¶¶ 52-56), a beneficial interest in a Hilton franchise (*id*. ¶¶ 64-67), a large receivable owed to Green Dot Builders (*id*. ¶ 76), and various beneficial or equitable interests in his family's companies (*id*. ¶¶ 40, 83).

Because the Code only requires actual *intent* to defraud, whether the debtor is successful in his scheme is irrelevant. *Vill. of San Jose v. McWilliams (In re McWilliams)*, 284 F.3d 785, 793-94 (7th Cir. 2002) (recording undelivered deeds to "create the appearance that [the debtors] no longer owned the property" constituted concealment). Put another way, "so long as the debtor acted with the requisite intent under section 727(a)(2), his discharge may be denied even if creditors did not suffer any harm." *In re Krehl*, 86 F.3d 737, 744 n.4 (7th Cir. 1996). The Court thus grades a debtor's misconduct on a pass-fail basis; his precise "degree of dishonesty is not measured." *See Smiley v. First Nat. Bank of Belleville (In re Smiley)*, 864 F.2d 562, 569 (7th Cir. 1989).

"The party seeking to bar discharge must prove that *both* [the act and requisite intent] were present during the one year before bankruptcy; anything occurring [earlier] is forgiven." *Kontrick v. Ryan*, 295 F.3d 724, 736 (7th Cir. 2002) (quoting *Rosen v. Bezner*, 996 F.2d 1527, 1531 (3d. Cir. 1993)), *aff'd*, 540 U.S. 443 (2004). But an important exception to this limitations period applies to actions predating the lookback period that, as alleged to have occurred here, have effects extending into the year preceding the bankruptcy filing. *See id*. at 737-38 (debtor removed himself from the bank account into which he deposited his earnings). Similarly, as also alleged to have occurred here, alienating property rights while retaining a beneficial or equitable interest during the lookback period can preclude discharge. *In re Snyder*, 152 F.3d 596, 602 (7th Cir. 1998); *see also First Federated Life Ins. Co. v. Martin (In re Martin)*, 698 F.2d 883, 887 (7th Cir. 1983).

Debtor argues that the Court should dismiss the complaint because "[w]hen a debtor owns shares of a corporation, the shares are property of the debtor that become property of the bankruptcy estate when the bankruptcy is filed, but the assets of the corporation are not assets of the debtor and do not become property of the bankruptcy estate." (Mot. at p. 7 (quoting *Trivedi v. Levine (In re Levine)*, Bankr. No. 14 B 10740, Adv. No. 14 A 00461, 2014 WL 7187007, at *2 (Bankr. N.D. Ill. Dec. 16, 2014).) And so, alienating or diverting his businesses' assets or profits to insiders cannot violate the statute because such transactions do not transfer "property of the debtor as required under § 727(a)(2)(A)." (*Id*.)

But Debtor's argument is not persuasive when applied to the allegations of this complaint. Unlike the situation in *Levine*, Debtor and his family organized their businesses as limited liability companies rather than corporations. As a result, unlike the situation in *Levine*, Debtor and his family directly own their share of those companies' profits and net worth. *See* 805 ILCS 180/1-5 & 180/30-1(b); *Pres. Holdings, LLC v. Norberg*, 139 N.E.3d 62, 69 (Ill. App. Ct. 2019). In *Levine*, by contrast, the shareholders held no direct claim to the corporation's profits. *See, e.g.*, *Alleman v. Kitson (In re Kitson)*, 341 Fed. Appx. 234, 237 (7th Cir. 2009) (shareholders of a corporation are generally not entitled to a distribution of its profits). Because Plaintiff alleges that part of Debtor's scheme was to fraudulently manipulate the profits of his limited liability companies in a way that would disadvantage his creditors, this distinction is material.

More significantly, *Levine* is also inapposite because, in this Court's opinion, it is inconsistent with the Seventh Circuit's analysis in *In re Snyder*, 152 F.3d 596 (7th Cir.

1998). While this Court is not bound by bankruptcy-court opinions,[4] it is certainly bound by decisions of the Seventh Circuit. And, as discussed below, Debtor's argument fails under *Snyder*.

In *Snyder*, the Seventh Circuit determined that the debtors violated Section 727(a)(2) when they diverted their farming operations to insider-owned corporations at below-market prices and then "began to work for the corporations, reporting incomes that sufficed only to meet their living expenses, even as the corporations themselves prospered." 152 F.3d at 601-02. This scheme permitted the debtors to cease "making payments on their debts, while retaining through their family a highly profitable farming operation." *Id*. at 599 (quoting the district court's unpublished order). The Seventh Circuit's terse but telling observation of this scheme was "that Rodel and DAR [the insider-owned corporations] were not independent corporations operating at arms length with the debtors [or their partnership], but tools that the [debtors] used to divert income from the estate." *Id*. at 601. As a result, the facts clearly supported the bankruptcy court's denial of the debtors' discharge:

> The [debtors] effectively transferred property of the estate to two corporations nominally owned and managed by members of their family by charging those corporations below-market rates for the rental of their lands and little or nothing for the use of their farming equipment. The debtors in turn began to work for the corporations, reporting incomes that sufficed only to meet their living expenses, even as the corporations themselves prospered. From these and the other circumstances noted by the courts below, one can readily and reasonably infer that the debtors were retaining through their family members income that would otherwise have been allocated to their debts.

Id. at 602.

In short, even though a businessman-debtor might only own the shares of a company he controls rather than its assets, *Snyder* directly supports the proposition that a debtor's fraudulent manipulation of the assets or cashflows of his businesses may come within the scope of Section 727(a)(2). Where, as here, the business was organized as a limited liability company and the debtor directly owns its profits through his distributional interest, proving fraudulent intent under Section 727(a)(2) is even simpler.

This conclusion is amply supported by the language of the Bankruptcy Code. Section 727(a)(2) proscribes the discharge of a debtor who transfers or permits the transfer of property that would otherwise belong to the estate. 11 U.S.C. § 727(a)(2). Transfer, in the sense relevant here, means "each mode, *direct or indirect*, . . . of disposing of or parting with[] (i) property; or (ii) an interest in property." 11 U.S.C. § 101(54)(D) (emphasis added). Read together, these provisions dictate that a business-owning debtor who (in his corporate capacity) fraudulently transfers assets or cashflows out of his businesses violates Section 727(a)(2) because he is also permitting (in his personal capacity) an indirect

[4] *E.g.*, *In re Stark*, 311 B.R. 750, 755 n.6 (Bankr. N.D. Ill. 2004) (decisions of bankruptcy judges are nonprecedential).

alienation of property interests (the value of his ownership interest) that would otherwise belong to the estate.

In sum, Plaintiff plausibly alleges that Debtor caused his companies to take actions that reduced his personal profits, which are assets of the estate, from those companies. For example, Debtor has freely admitted that his construction company does not charge insider-owned companies for its services. (*E.g.*, 2004 Exam at 41:5-16.) In consequence, Debtor also admits that he "effectively transferred property of the estate to [businesses] nominally owned and managed by members of [his] family by charging [them] below-market rates." *Snyder*, 152 F.3d at 602. Relying in part on these admissions, Plaintiff alleges that Debtor orchestrated their organization to evade his creditors. (*E.g.*, Compl. ¶¶ 40-44.) Taking Plaintiff's allegations as true, there is sufficient factual detail in the complaint to survive Debtor's motion to dismiss. *See Hauser v. Slagter (In re Slagter)*, 622 B.R. 290, 292 (Bankr. N.D. Ill. 2020).

For these reasons, the Court will not dismiss Count I.

2. Section 727(a)(4)—Knowingly False Oaths

Debtor is also ineligible for a discharge if he has made a knowing and fraudulent falsification in his bankruptcy filings or at his examination. *Layng v. Urbonas (In re Urbonas)*, 539 B.R. 533, 547 (Bankr. N.D. Ill. 2015). Reckless disregard for the truth will also suffice. *In re Hudgens*, 149 Fed. Appx. 480, 487 (7th Cir. 2005). The falsification must be material and must "relate to [a debtor's] disclosure regarding the amount or location of his assets or liabilities in this bankruptcy." *In re Hall*, 304 F.3d 743, 748-49 (7th Cir. 2002). For that linkage to exist, a misrepresentation must impede creditors' efforts to learn about the bankrupt's financial condition or stand to alter unsecured creditors' distributions. *Kitson*, 341 Fed. Appx. at 237-38. But the purpose of evasion is irrelevant. *Skavysh v. Katsman (In re Katsman)*, 771 F.3d 1048, 1050-51 (7th Cir. 2014) (debtor falsified her Schedule C to "benefit one group of creditors over another for personal reasons" rather than obtaining a "pecuniary benefit").

When completing bankruptcy forms, "[i]t is a debtor's role to carefully consider the questions posed and answer them accurately and completely." *Baccala Realty, Inc. v. Fink (In re Fink)*, 351 B.R. 511, 525 (Bankr. N.D. Ill. 2006). Failure to consult with one's bankruptcy attorney about the requirements for filing truthful and complete bankruptcy schedules demonstrates reckless indifference to truth. *See Katsman*, 771 F.3d at 1050. Debtor's testimony that he did not fully understand his petition, and that he did not ask his counsel to explain it to him is no defense. (*See* 2004 Exam at 20:4-12.)

"Debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or are unavailable to the bankruptcy estate." *In re Yonikus*, 974 F.2d 901, 904 (7th Cir. 1992). Scheduling all assets and placing "a numerical figure representing the value of the assets" satisfies this duty. *Scott*, 172 F.3d at 962-63; *In re Bell*, 179 B.R. 129, 130 (Bankr. E.D. Wis. 1995) (explaining that debtors should state an asset's value as "an approximate dollar amount.").

Debtor scheduled a legal claim against a Mr. Atlas Khan, stating that its value was unknown. (Schedule A/B at p. 8; SOFA at pp. 5, 13.) He testified that this contractual claim relates to his sale of a restaurant to Mr. Khan for $50,000. (2004 Exam at 12:6-11.)

Yet he later admitted that Mr. Khan, in fact, owes him another $1,200,000 under their agreement, and that he is suing him for that amount. (*Id*. at 47:3-24.) This omission was material because it was neither "insignificant [n]or related to assets worth nothing to the estate." *In re Chlad*, 922 F.3d 856, 863 (7th Cir. 2019) (four-figure asset was material despite liabilities that summed to seven figures). If Debtor meant to convey that his likelihood of success was unclear in stating the value was unknown, then he needed to discount the chose in action for litigation risk. *Hall*, 304 F.3d at 748. In short, appraising a breach of contract claim was not a cyclopean task for an experienced businessman and the bankruptcy counsel also representing him in that very lawsuit (2004 Exam at 48:3-5). *Chlad*, 922 F.3d at 862-63.

Other disclosures also appear incomplete or misleading in several material respects.

First, Debtor's unamended schedules report no income from 2018 to present aside from social security payments, which he only reported in Schedule I. (*E.g.*, SOFA at p. 2.) This statement is dubious given that RSS Homes' federal tax filings show that it owed Green Dot Builders nearly a million dollars at the end of 2018. (Compl. ¶ 36.) (Debtor stated he had "no idea" (2004 Exam at 105:4-11) about the contents of those filings.)

Second, amending his earlier statements that Green Dot Builders became inactive in 2018 (*e.g.*, *id*. at 34:16-23), Debtor testified that Green Dot Builders did not suspend its operations until COVID-related risks spiked in March 2020. (*Id*. at 39:18-21.) And, when pressed on Green Dot Builders' activities, Debtor admitted that his company was working on at least one cost-plus project at that time. (*Id*. at 106:21-108:6.) Debtor also said that Green Dot Builders' client was paying subcontractors directly and "holding *my* 5 percent." (*Id*. at 109:5-7 (emphasis added).) Notwithstanding these admissions, Debtor believes Green Dot Builders is worthless despite his ostensibly disguised income through his work for RSS Homes and his cost-plus contract. (*See* Schedule A/B at p. 5.)

Third, Debtor admits that he regularly uses Green Dot Builders' accounts to pay his family's expenses such as the real estate taxes on his marital home (in which he claims no interest) and his child's tuition payments. (Compl. ¶¶ 49-50; *see also* 2004 Exam at 115:14-21 and 119:20-121:22.) For reasons already discussed, these payments were at least indirect transfers of his property rights under Section 101(54)(D). But Debtor did not disclose them as the SOFA requires. *See, e.g.*, *Stamat*, 635 F.3d at 980-81 (explaining that transfers from a company to its principals' accounts are "not part of the ordinary course of business" exception to disclosure).

Fourth, Debtor's SOFA may not have disclosed two or more memberships that he held during the four years before the order for relief. (*See* Compl. ¶¶ 90-91; 2004 Exam at 89:22-94:24.) Plaintiff also alleges that Debtor failed to disclose his current interest in a hotel in Lombard, IL. (Compl. ¶¶ 57-67.)

Each of these misstatements and omissions was material because 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 (quotation omitted). Creditors (and, for that matter, the Court and officers of the estate) should not have to examine debtors to learn the basic facts that bankruptcy law requires them to make known. *E.g.*, 11 U.S.C. § 521(a). The cumulative effect of Debtor's dubious disclosures together with the plausibly alleged scheme to hide

beneficial interests in insider-owned companies shows fraudulent intent for purposes of ruling on the motion. *Lardas v. Grcic*, 847 F.3d 561, 570 (7th Cir. 2017); *Stamat*, 635 F.3d at 979. As a result, Count II will not be dismissed.

3. Section 727(a)(5)—Failure to Explain Dissipation

Debtor is also not entitled to a discharge if he "fail[s] to explain satisfactorily . . . any loss of assets or deficiency of assets to meet the debtor's liabilities[.]" 11 U.S.C. § 727(a)(5). Plaintiff alleges that Debtor netted $3,177,913.20 from selling several gas stations between 2015 and 2017,[5] and that he has inadequately explained what happened to those profits. (Compl. ¶¶ 90-91.) He ostensibly invested the proceeds from his sale of those memberships into his own or insider-owned companies. (*See* Compl. ¶¶ 90-91; 2004 Exam at 89:22-94:24.)

In his motion, however, Debtor argues that the Bankruptcy Code does not require him to divulge anything about those transactions because the sales' proceeds belonged to the companies. (*See* Mot. at pp. 11-12.) The Court has disposed of this last argument in its discussion of the Section 727(a)(2) claim. Moreover, unlike the subsection governing that count, this provision has no clause that putatively narrows its scope to actions affecting "property of the debtor." *Compare* 11 U.S.C. § 727(a)(2) *with* 11 U.S.C. § 727(a)(5). Instead, Section 727(a)(5) even permits inquiry into the reasons for a debtor's need for bankruptcy relief. *See* 6 COLLIER ON BANKRUPTCY ¶ 727.08 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2020); *accord Martin*, 698 F.2d at 886 ("Section 727(a)(5) is broadly drawn and clearly gives a court broad power to decline to grant a discharge in bankruptcy where the debtor does not adequately explain a shortage, loss, or disappearance of assets."). And so, whether he gave his assets away[6] or otherwise alienated them, Debtor must explain, among other things, how his net worth shrank from millions (*e.g.*, Compl. at p. 1 of Ex. A) to nothing over a mere few years. (*E.g.*, Schedule A/B at p. 5.)

Debtor's uncorroborated and internally inconsistent testimony at his examination about the reasons for and details of his financial collapse (or his professed inability to recall those details) is unsatisfactory; the Bankruptcy Code requires complete disclosure and explanation from a debtor seeking to obtain a discharge. *In re D'Agnese*, 86 F.3d 732, 734-35 (7th Cir. 1996) ("vague, indefinite, and uncorroborated" testimony is inadequate). He needs to show "all specific uses of the proceeds" from transactions outside "the ordinary course of business or financial affairs." *Stamat*, 635 F.3d at 981. As one leading treatise explains, it is presumably he "who has caused the loss, who has access to the facts, and who alone knows what the explanation is; let him make it, let him satisfy the court that it

[5] Debtor suggests that Count III is improper because it relies on transfers that predated his petition more than two years. (Mot. at p. 10; Reply Br. at p. 9.) While that is a common rule of thumb for assessing a transfer's remoteness, "[t]he exact time a court should look back depends on the case; there is no hard and fast rule." *Structured Asset Servs., L.L.C. v. Self (In re Self)*, 325 B.R. 224, 250 (Bankr. N.D. Ill. 2005).

[6] Lauding his own "helping nature" at the Bankruptcy Rule 2004 examination, he testified about co-purchasing a minivan for a woman who lives in his "community" but is not a family friend, and for whom he has no contact information. (*See generally* 2004 Exam at 24:17-27:4.) Given that the minivan was a 2018 model, the Court infers that the purchase postdated his "semi-retire[ment]" (*id*. at 33:7-24) and possibly his recent incomeless years. (SOFA at p. 2.) Nor did his largesse stop there—Debtor testified that he has continued to make the payments from time to time on her behalf through his construction company's account. (2004 Exam at 115:22-117:6.)

really explains. Else he will not be discharged." 6 COLLIER ¶ 727.08 (quoting *Fed. Provision Co. v. Ershowsky*, 94 F.2d 574, 575 (2d Cir. 1938)); *see also Martin*, 698 F.2d at 888 (explaining that debtors cannot "stonewall" parties in interest). In sum, being adequately alleged and opposed largely on an erroneous legal point, Plaintiff's third count will not be dismissed.

B. THE COURT'S RULING

Having denied the motion for each of the foregoing reasons, Debtor shall answer the complaint by March 1, 2021. The Court will hold a status hearing at 10:00 a.m. on March 2, 2021. The status hearing set for January 26, 2021 is stricken.

ENTERED:

DATE: _____

_____
Donald R. Cassling
United States Bankruptcy Judge