UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re JOHN J. MURPHY, SR., Debtor.	)	Case No. 6:04-bk-01612-KSJ Chapter 7
RIVERTREE LANDING, LLC, Plaintiff, vs. JOHN J. MURPHY, SR., Defendant.	)	Adversary No. 6:04-ap-154

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The debtor, John J. Murphy, Sr. ("Murphy"), has a long history of being less than truthful with his creditors and freely manipulates the appearance of his financial condition when he thinks it will work to his advantage. When seeking to obtain loans, he has bolstered his financial condition in order to secure funding. When trying to avoid repaying loans, he makes his financial condition appear unjustifiably bleak. For example, Murphy filed this bankruptcy case claiming assets of only $768 and debts exceeding $5 million, which is diametrically different from the financial statements he provided to potential lenders less than one year before filing this bankruptcy case reflecting a positive net worth of between $5 and $8 million, and liabilities ranging between $85,000 and $669,000. Murphy has failed to provide any credible explanation for this drastic financial swing.

One of Murphy's creditors, Rivertree Landing, LLC, the plaintiff herein ("Rivertree"), argues that Murphy is not entitled to discharge his debts, asserting in a five count complaint,[1] that Murphy, with the intent to hinder, delay, or defraud creditors, transferred property of his estate in the year prior to filing this bankruptcy case, failed to produce or to keep adequate financial records to allow his creditors to ascertain his true financial condition, knowingly and fraudulently made a false oath and withheld his financial records from the appointed Chapter 7

[1] Rivertree has asserted five counts under Sections 727(a)(2)(A), 727(a)(3), 727(a)(4)(A), 727(a)(4)(D), and 727(a)(5) of the Bankruptcy Code. Unless otherwise stated, all references to the Bankruptcy Code refer to Title 11 of the United States Code. Count six asserting a claim that Rivertree's debt was non-dischargeable was voluntarily dismissed (Doc. No. 320).

Trustee,[2] and, finally, that Murphy has failed to satisfactorily explain his loss of assets. Murphy vehemently denies these allegations, maintaining that his spiraling financial decline and lack of a paper trail is due to the failure of his businesses and not due to any fraud, concealment, or intentional failure to keep records or to explain his financial situation. The Court rejects Murphy's position and concludes that Murphy has provided false information to creditors and to this Court, has not satisfactorily explained his claimed loss of assets, and has utterly failed to provide financial records sufficient to permit creditors to assess the veracity of the grim financial posture he most recently assumes in this bankruptcy case. For the reasons explained below, Murphy's debts will not be discharged.

Murphy's Background. Murphy is an educated and sophisticated business man. He received a Bachelor of Arts degree in English and in Finance from Rollins College. He then amassed twenty years of experience in real estate development, both commercial and residential, and later started a company called Southern Apartment Specialists, Inc. ("SASI"), to focus on rehabilitating affordable housing. (Rivertree's Ex. No. 44 and 45). In addition to his real estate development experience, Murphy prided himself as proficient in obtaining capital and creative financing for his projects. The projects were large, usually requiring debt or equity contributions of several million dollars. He formed numerous corporate entities, one for each individual project, and freely transferred funds and assets between them. Murphy often acted as an officer and director in the companies or partnerships he formed. He frequently was asked to supply personal financial statements to the various lenders for his projects. He was proficient in working with attorneys, accountants, and business professionals. As Murphy's secretary and mother-in-law stated, "John's businesses were very complex." (Deposition of Judith Piersoll, p. 16, line 12).

Murphy is also familiar with the bankruptcy process and the types of records and documentation the process requires because several of his companies have been involved in bankruptcy proceedings. For example, Murphy's company SASI filed a Chapter 7 bankruptcy case on December 28, 2000. (Murphy's Ex. No. 31). Another of Murphy's companies, Cleve Development, Inc., f/k/a J. Murphy Management, Inc., filed a Chapter 7 bankruptcy case on June 29, 2001. (Murphy's Ex. No. 33). Murphy filed a Chapter 11 case on March 4, 2003, for another business, Kernan Associates, Ltd., through his company Freeport Partners, Inc., which was the general partner of Kernan Associates, Ltd. (Murphy's Ex. No. 34; 6:03-bk-02214, Doc. No. 1). Murphy was president of Medinacorp[3] Mortgage Inc., when it filed its Chapter 7 bankruptcy case on April 11, 2003. (Murphy's Ex. No. 32). Thus, Murphy was actively involved in at least four corporate bankruptcies prior to filing this personal Chapter 7 case.

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[2] Efrain Aponte was appointed as Chapter 7 Trustee on February 19, 2004.

[3] Medinacorp apparently owned an unidentified parcel of real estate. Murphy and another unidentified person owned the stock of Medinacorp.

Murphy is married but filed this Chapter 7 case on February 17, 2004 (the "Petition Date"), as an individual case and not as joint case with his wife, Julianne. Murphy and Julianne married in 1989 or 1990. Murphy has always handled the family's finances, both before and after he filed this bankruptcy case, and he is the primary earner for the family. Julianne is not responsible for the family's finances, and, unlike Murphy, she lacks any business or financial sophistication. She has a very limited education, attending a community college for a short time and receiving no degrees past high school. She had no financial training and only limited work experience prior to marrying Murphy. Following the marriage, Julianne ran a part-time gift basket service from their home, and, then, in 2001, opened a home accessory store, Traditions on Park, in an up-scale shopping district. She eventually sold the business to her sister, Jennifer Gierke, in December 2003. Julianne is now only minimally employed, working approximately eight hours per week at a stable giving horse riding lessons. She also occasionally helps a friend on various home improvement projects, completing two to three jobs per year.

Before Murphy filed this Chapter 7 case, the Murphy family resided together in a luxurious custom home located on a prestigious lake in Winter Park, Florida (the "Winter Park Home"). They purchased the Winter Park Home for $1.7 million in 2000. In June 2003, Murphy and Julianne sold the Winter Park home. In July 2003, Julianne moved to Georgia with the couple's four children.[4] She has lived in at least three residences since that time, all rentals. The initial home she rented in Georgia was located at The Ford Plantation, a very up-scale community. The family appears to have a very comfortable lifestyle in their new home.

The Murphy family enjoyed the privileges of wealth, driving expensive cars—a Jaguar, a Volvo, and a Mercedes Benz. In May of 2003, Murphy valued their art and jewelry alone at approximately $274,000. (Rivertree's Ex. Nos. 33, 172). The Murphy children attended private school. The family lived a very privileged life, probably financed, in part, by the creditors in this bankruptcy case.[5]

The plaintiff, Rivertree, became a creditor of Murphy's by virtue of an assignment of a Loan Guaranty Agreement. Murphy originally executed and delivered the Loan Guaranty Agreement to Inland Mortgage Corporation ("Inland") on October 28, 1998. Inland lent substantial monies to one of Murphy's companies to finance the construction or renovation of apartments in Tampa, Florida. In order to induce Inland to extend this loan, Murphy provided a sworn financial statement indicating that, as of June 1998, his net worth was $15,353,724.

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[4] Murphy did not initially move to Georgia; he and Julianne were having marital difficulties and resided apart for almost one year beginning in July 2003. However, Murphy frequently visited his family during this period.

[5] The debtor listed debts of almost $165,000 due to 18 separate credit card companies.

(Rivertree's Ex. No. 166). The loan went into default in October 2000, and Rivertree, as assignee, filed a foreclosure action. In order to avoid additional litigation costs, and because Murphy provided Rivertree with a financial statement indicating that, as of June 2002, he had a negative net worth of $24,545,400, Rivertree agreed to accept payments over time and the parties stipulated to an agreed settlement order. (Exhibits C and D to the Amended Complaint, Doc. No. 54; Rivertree's Ex. No. 2; Rivertree's Ex. No. 21; Murphy's Ex. No. 1). However, Murphy quickly defaulted under this settlement agreement, making only one payment of $15,000. Thus, in February 2004, a Florida state court entered a judgment in the amount of $879,776.91 against Murphy and in favor of Rivertree. That same month, Murphy filed this Chapter 7 bankruptcy case.

Murphy's Ever-Changing Financial Postures. The evidence admitted in this case demonstrates that Murphy assumes one financial posture when he is seeking to obtain a loan or demonstrate financial solvency and an entirely different posture when he is trying to shirk repayment. There are numerous and significant disparities between financial statements he provided to creditors in early and mid-2003, and the financial picture depicted in his bankruptcy case filed less than one year later. The inconsistencies between Murphy's financial statements and his bankruptcy filings are unbelievable.

Murphy supplied three financial statements to potential lenders in January, April, and May 2003, just months prior to this bankruptcy filing. (Rivertree's Ex. Nos. 170, 171, and 172). First, in January 2003, approximately six months after providing Rivertree a financial statement stating he had a negative net worth of well over $24 million, Murphy supplied a financial statement to First Chatham Bank[6] reflecting his positive net worth at $7,966,810,[7] representing a $32 million increase. On the January 2003 financial statement, Murphy listed an IRA/Profit Sharing asset valued at $54,720, cash of $300,000, unidentified stocks of $467,740, and an account receivable payable from an entity named Xethanol[8] of $175,000. He claimed 50 percent of the equity in the Winter Park Home valued at $735,000 and listed three closely held corporations, Primary Mortgage ("Primary")[9] valued at

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[6] Murphy stated he was a member of Technology Real Estate Partners of Winter Park, LLC ("TREP") when he signed a promissory note, dated June 21, 2002, obligating TREP to repay First Chatham Bank $2,335,000 for a construction loan. (Rivertree's Ex. No. 27). Murphy also signed, as a member of TREP, the Real Estate Deeds to Secure Debt, pledging certain real property to repay the loan. (Rivertree's Ex. Nos. 31 and 32).

[7] Earlier, in May, 2001, Murphy reflected his positive net worth at $10,557,025. (Rivertree's Ex. No. 48).

[8] Xethanol was a corporation formed to construct small ethanol plants, initially in the Savannah, Georgia area. Murphy's interests in Xethanol are unclear.

[9] Primary was a Florida Corporation that was administratively dissolved on September 21, 2001.

$466,100,[10] Medinacorp Mortgage ("Medina") valued at $457,250, and MLP #1, Ltd. ("MLP") valued at $1,050,000,[11] for a sum total of $1,973,350. Murphy included two substantial unexplained assets: unidentified trust accounts with a value of $3,606,000, and unidentified tax exempt bonds with a value of $1,050,000. He valued his jewelry and art at $274,000. He listed total debts of only $669,000.

Next, in April 2003, Murphy supplied a financial statement to Dolce Ventures, Inc., reflecting his positive net worth at $5,817,300. (Rivertree's Ex. No. 49 and 171). He listed cash/accounts receivable of $105,000. However, that amount was inconsistent with the supporting documentation he included with the financial statement, which reflected that he had cash of $125,000 and a single account receivable of $1,180,000, payable by Xethanol. He claimed equity of $300,000 in the Winter Park Home. He again listed jewelry and art valued at $274,000. In addition, he listed securities with a value of $5,223,300, but the schedules only reflect securities of $1,002,950, consisting of Murphy's net equity in Primary, valued again at $466,100; Medina, valued again at $457,250; and MLP, valued this time at only $79,600, $970,400 less than Murphy valued it just four months earlier. Murphy also listed relatively small debts, totaling $85,000. He did not list the IRA/Profit Sharing asset on this particular financial statement.

Lastly, as of May 29, 2003, less than ten months prior to the Petition Date, Murphy swore, in another financial statement provided to First Chatham Bank, that he had a slightly lower net worth of $5,732,460. (Rivertree's Ex. No. 172). The IRA/Profit Sharing asset reappeared on this financial statement, again valued at $54,720. However, Primary, which Murphy had previously valued at $466,100 in his January and April financial statements, did not appear on this financial statement. Murphy listed cash of $109,000, held in an account with Century Bank/Florida National Bank, and accounts receivable of almost $1.5 million. In addition to listing equity of $435,000 in the Winter Park Home, Murphy listed as assets tax exempt bonds, valued at $1,050,000, and jewelry and art, again valued at $274,000, and listed certain closely held corporations, as on previous financial statements, including Medina, again valued at $457,250, and MLP, now valued at $186,000, $106,400 more than the $79,600 value Murphy previously attributed to MLP in his April financial statement one month earlier. He also listed equity interests in two corporations that were not listed on any previous financial statement, claiming a 100 percent interest

[10] Primary Mortgage Corporation held a second mortgage on real estate located in the Cleveland area. Apparently, the holder of the first mortgage foreclosed on the property, and, inasmuch as Primary Mortgage held no other assets, was valueless.

[11] Murphy included 100 percent of the net value of MLP at $1,050,000; however, he probably owned either 40 percent or 60 percent of the company, depending upon which document one reviews. This particular financial statement lists his interest at 60 percent.

in CC Residential, Inc., valued at $656,000, and a 10 percent interest in Xethanol,[12] valued at $855,000. (Murphy now, in the bankruptcy context, contends that he erred in stating he had interests in these two companies, explaining that Julianne, or perhaps her trust, actually owns these assets). Further, in his May 2003 financial statement, Murphy indicated he had debts of $450,000 and attached a Cash Flow Statement indicating he expected a positive cash flow of $300,000 per year. As detailed and discussed below, these amounts are quite different from the amounts Murphy listed in his bankruptcy schedules ten months later showing debts exceeding $5 million, a monthly cash flow of only $6,000, and a monthly deficit of $5,120.

In summary, Murphy's financial statements, issued within four months of each other, vary dramatically. Each lists different assets. Each values the listed assets substantially differently. Yet, each statement is completed in a similar format. Each statement was prepared by Murphy's secretary and mother-in-law, Ms. Piersoll, using a computer template, and each statement was reviewed by Murphy prior to execution.

Murphy apparently created a new financial picture for each creditor, listing assets and liabilities he believed would assuage each creditor's concerns. For example, he lists accounts receivable payable from Xethanol in three ways. In January 2003, he represented that Xethanol owed him $175,000. Four months later, in April 2003, he represented that Xethanol owed him $1,180,000, an increase of $1,005,000. Yet, one month later, in May 2003, Xethanol was not listed as owing an account receivable at all, rather, he listed Xethanol as an equity interest valued at $855,000.

Some financial statements list an asset not listed elsewhere. The IRA/Profit Sharing account with a value of $54,720 appears on the January and May 2003 versions of Murphy's financial statement but does not appear on the April version of that same year. Primary, valued at $466,100 in the January and April financial statements, was omitted from the May financial statement. The Court would find that a portion of each financial statement likely <u>is</u> accurate but given the substantial differences between them, it is impossible to tell fact from fiction.

In the context of this adversary proceeding, Murphy attempted to explain the discrepancies in his financial snapshots by blaming his mother-in-law, stating that she included improper items on his financial statements that he failed to catch because he did not proofread them carefully. Even accepting that Ms. Piersoll may have included an improper item or two or, perhaps, made mathematical errors, this still does not explain how Murphy could fail to notice or to correct financial errors of this proportion. Murphy cannot credibly maintain that assets valued at $54,720

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[12] Murphy had previously listed an accounts receivable payable by Xethanol as an asset but did not earlier indicate he had any ownership interest in Xethanol.

(the IRA/Profit Sharing Account) and $466,100 (Primary) were accidentally included, accidentally omitted, or accidentally overvalued, and that he repeatedly overlooked the mistakes. These are not simple math errors or assets of insignificant value. Rather, Murphy swore that these assets were worth between tens of thousands and hundreds of thousands of dollars. Murphy's decisions on whether or not to include these assets on his financial statements and how to value these assets was calculated and intentional. The Court rejects Murphy's explanation. He cannot blame Ms. Piersoll for his misleading financial statements.

Murphy further explains that his various financial statements were merely projections and varied according to his purposes. Indeed, the Court agrees that Murphy's financial snapshots varied according to his own purposes; however, the truthfulness of all of the information Murphy supplied is dubious. Below is a chart highlighting the differences in the financial statements Murphy provided to lenders/creditors over a time period spanning approximately six years, beginning in June 1998, when he was seeking to obtain funds from Inland, and ending when he later filed this bankruptcy case in February 2004.

Murphy's Professed Net Worth

Date	Context	Assets	Liabilities	Net Worth
June 1998	Attempting to obtain a loan from Inland Mortgage Corporation	$21,202,724	$5,849,000	$15,353,724
June 2002	Attempting to avoid repayment of Inland loan to assignee Rivertree	($92,400)	$24,453,000	($24,545,400)
January 2003	Attempting to show financial solvency to First Chatham Bank	$8,635,810	$669,000	$7,966,810
April 2003	Attempting to obtain loan from Dolce Ventures, Inc.	$5,902,300	$85,000	$5,817,300
May 2003	Attempting to show financial solvency to First Chatham Bank	$6,182,460	$450,000	$5,732,460
February 17, 2004	Attempting to discharge debts in bankruptcy	$768	$5,435,182	($5,434,414)

Murphy's Bankruptcy Schedules. At the outset, the Court observes that Murphy decided to change his name when he filed this bankruptcy case. He listed his name on his bankruptcy petition as "John J. Murphy, *Sr.*"

(Rivertree's Ex. No. 3). However, Murphy had never used the title "Sr." with his name either before *or*, interestingly, even after the bankruptcy filing. Rather, he has used, and continues to use, either "John J. Murphy" or "John J. Murphy, Jr." as his legal name.[13] Indeed, it appears the *only* time Murphy called himself "Sr." was when he was completing the bankruptcy petition.

Rivertree argues that Murphy modified his name to deceive or confuse creditors, who had always known him as "John J. Murphy, Jr." In response, Murphy asserts that he decided to start using the title "Sr." after his father had died. He felt he was no longer a "Jr." and should now incorporate "Sr." into his name. The problem with this argument is that Murphy did not actually start using his new name for any purpose other than filing the bankruptcy petition. He never legally changed his name. He did not sign his name as "Sr." on any other document. Thus, it appears Murphy used a false name in filing this case. The only reasonable explanation is that he changed his name to try to confuse his creditors.[14]

Using this modified name, thirteen months after he completed the January 2003 financial statement boasting a positive net worth of $7,966,810, Murphy filed this Chapter 7 case, listing a mere $768 in personal property, an annualized income of only $72,000, a monthly cash deficit of $5,120, and total debts exceeding $5 million, a financial swing of over $12 million in approximately one year.

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[13] For example, Murphy signed a letter as "John J. Murphy, Jr." on August 1, 2003, about one year after his father died. (Rivertree's Ex. No. 127) He signed an agreement as "John J. Murphy, Jr." on February 8, 2005, long after the bankruptcy was filed. (Rivertree's Ex. No. 165).

[14] Rivertree also alleges that Murphy did not actually live in Florida when he filed this case and listed an incorrect address on his bankruptcy petition. On Murphy's bankruptcy petition, he claimed he lived at 4606 Bridgeton Circle, Orlando, Florida, which is the former home of his mother-in-law, Judy Piersoll. (Rivertree's Ex. No. 3). Without question, Murphy's family had moved to an area near Savannah, Georgia by July 2003. Murphy and Julianne were informally separated physically, if not in a domestic or marital sense.

During this period, Murphy was admittedly peripatetic. Starting in September 2003, he was working as a consultant for The Trafalgar Group, who had offices in Jacksonville, Florida. Some days he would work in Jacksonville; some days he was developing contacts in Orlando; and some days he was traveling elsewhere. On weekends and when the opportunity arose, he traveled to Georgia to visit his children. Murphy had no stable domicile, but, of all of them, Ms. Piersoll's home was his most consistent address. Moreover, Ms. Piersoll confirmed that Murphy lived in her guest room without paying rent in February 2004, at least when he was present in Orlando. As such, Murphy did not list an incorrect residence on his petition. He listed the best address available.

Murphy also has a long history as a resident in the Orlando area. His wife left for Georgia with their four children when their financial situation had deteriorated, their marriage was rocky, and their social status had collapsed. However, Murphy stayed, most days, in Florida to try to salvage as much of the financial ruin as possible. If he was trying to deceive creditors as to his residence, he certainly would have filed a bankruptcy case anywhere else other than in Orlando. He did not, and, as such, made no false oath regarding his residence on his bankruptcy petition.

Murphy listed total debts of $5,423,182.23. Some of the debts, such as that due to Rivertree/Inland, likely are listed twice;[15] some debts possibly are overstated; other debts are possibly unstated. However, without question, Murphy has incurred personal debts in connection with his business ventures exceeding several million dollars—$5 million is probably a reasonable estimate.

Turning to Murphy's assets, on his Schedule B, Murphy claimed to own a grand total of $768 in personal property. He listed some of the same property that he included in his 2003 financial statements; however, the values placed on that property were entirely different. In addition, Murphy omitted some personal property from his schedules, and grossly underrepresented the value of some assets that he did schedule. Moreover, he scheduled absolutely no personal property items that someone with his prior luxurious lifestyle would have accumulated over the years. The scant $768 in property Murphy scheduled consisted of $500 in a single bank account at Bank of America, $10 in cash, clothing valued at $50, golf clubs valued at $100, jewelry valued at $100, and interests in eight corporate entities, some of which were included and highly valued in his 2003 financial statements, but now, in bankruptcy, valued at just $1 each. Murphy also listed a single trust denoted as a "shell" trust with no value, three lawsuits with an unknown value, and accounts receivable from his listed companies with an unknown value. He claimed all of his assets exempt.[16] Some specific omissions from Murphy's schedules of assets are identified and discussed below.

<u>Murphy's Bank of America Accounts</u>. Murphy had interests in two Bank of America accounts, but only disclosed one of the accounts on his Schedule B, denoting it as being held jointly with Julianne and claiming it contained just $500 on the Petition Date, when, in fact, it contained approximately $1,885.94, a difference of $1,385.94. (Rivertree's Ex. No. 178). Thus, Murphy misrepresented the amount of cash in the account. Interestingly, the account was in Murphy's individual name until shortly before he filed this bankruptcy case. Murphy, perhaps thinking the money in the account would be better protected from his creditors if his and Julianne's

[15] Murphy listed a debt of $800,000 due to Inland Mortgage Company. Although Inland was the original lender of monies to one of the debtor's entities, Inland had assigned its interests in the debt to the plaintiff prior to filing the state court collection action. Therefore, on the Petition Date, Murphy owed no monies to Inland, only the judgment amount to Rivertree. (Rivertree's Ex. No. 22).

[16] Rivertree filed an Objection to Debtor's Claim of Exemptions (Doc. No. 55), but, at the trial of this adversary proceeding, stated that it no longer intended to pursue any relief on this Objection. As such, the Court concludes that Rivertree has withdrawn any relief sought by the Objection.

names were both on the account, added Julianne's name to the account on February 12, 2004, to create a joint account (the "Joint Account"),[17] only 5 days before he filed this bankruptcy case. (Rivertree's Ex. No. 16).

Murphy failed to adequately explain substantial deposits into the Joint Account. Deposits into the Joint Account (not including re-deposits of checks returned for non-sufficient funds and credit adjustments) total $209,575.06 from June 9, 2003,[18] to January 30, 2004, the last full month before Murphy filed this Chapter 7 case on February 17, 2004. For this eight month period, deposits into the Joint Account averaged $26,196.88 per month. Yet, in his Schedule I, Murphy reflected that he received monthly income of only $6,000, for a total of $75,000 per annum. Where did Murphy get the extra $20,000 per month?

Murphy offered some verbal explanations for these substantial deposits into the Joint Account, typically without any documentary support. (Rivertree's Ex. No. 19 and Murphy's Ex. No. 51). He testified that: (i) on June 27, 2003, he deposited $10,000 into the Joint Account as part of the net proceeds he and Julianne received from the sale of the Winter Park Home; (ii) the landlords of the rental home in Georgia transferred $30,609.03 to the Joint Account and asked Julianne to pay the real estate taxes due on the rental property;[19] and, (iii) Julianne received $13,000 from the sale of her home decorating business in Winter Park and deposited it into the Joint Account on December 19, 2003.[20] Yet, even deducting these one time deposits, the monthly deposits averaged $17,870.38, substantially more than the $6,000 per month earnings Murphy estimated on his Schedule I. Moreover, there was one single deposit of $24,027.76 made on December 30, 2003, which was totally unexplained. (Rivertree's Ex. No. 178). Where did Murphy get approximately $25,000 only weeks before filing bankruptcy?

Murphy tried to answer this question by explaining that during the year before filing for bankruptcy he borrowed money from a friend, Chris Taylor ("Taylor"), who is connected to Xethanol and who owns a company

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[17] The Joint Account number ends in "8405."

[18] The Joint Account apparently was opened on June 9, 2003, insofar as the initial bank statement reflects a beginning zero balance.

[19] The transfers were in two separate installments from Ed Conk III and David K. Reyes. One transfer was in the amount of $10,203, and the second transfer was in the amount of $20,406. Both transfers occurred on October 30, 2003. Oddly, exactly two months later, on December 30, 2003, Julianne directed Mr. Raley, the trustee of her trust, to pay Mr. Conk $22,000 and Mr. Reyes $10,000, almost exactly what they earlier had deposited in the Joint Account. (Rivertree's Ex. No. 23, pg. 2). Perhaps, the deposits really were more in the nature of a short term loan than payments for real estate taxes. Julianne, during her deposition, acknowledged that she directed Mr. Raley to make these transfers but denied knowing or ever meeting Messrs. Conk or Reyes. (Deposition of Julianne Murphy, pages 215-216). No documents produced or any testimony clarifies the purpose of these transfers.

[20] These monies possibly came from the closing of Traditions on Park, LLC, the business Julianne operated in Winter Park, which occurred on December 19, 2003. Julianne received $13,000 at the time of the sale and $2,000 beforehand, and a note to pay an additional $40,000 over time. (Murphy's Ex. No. 29).

called London Manhattan Ltd. In total, London Manhattan transferred at least $19,500 to the Joint Account between July 22, 2003, and January 30, 2004. Murphy testified that Taylor lent him money "because he knew I was suffering financially and he wanted to help me and my family." (Rivertree's Ex. No. 19, pg. 3). However, Murphy offered no documentation to support his explanation that the money was a loan.

Moreover, Taylor's testimony is diametrically contrary to Murphy's testimony. Taylor testified that, beginning in 2002, Murphy lent $40,000 to London Manhattan. (Taylor's Deposition, pp.129–133). As such, the transfers by London Manhattan into the Joint Account are attributable to loan *repayments,* not loans by London Manhattan to Murphy. London Manhattan never signed a promissory note, and it is unclear whether there is any unpaid account receivable still due by London Manhattan to Murphy's bankruptcy estate as of the Petition Date. Taylor thought the loan was fully paid by September 2005, long after this bankruptcy was filed, but was unable to substantiate the payments with documentation.

The conflicting testimony of Murphy and Taylor is irreconcilable. Murphy has failed to produce any documents that clarify whether the funds from London Manhattan are attributable to loans to Murphy from London Manhattan, or to loan repayments on a loan made previously by Murphy to London Manhattan. Whether the funds were personal loans from London Manhattan, or were London Manhattan's repayment of loans, remains unknown.

Murphy also maintained a second bank account with Bank of America titled in his name only (the "Individual Account"). Murphy did not disclose the Individual Account on his bankruptcy schedules, testifying that he opened it *after* the Petition Date. Murphy did not produce bank statements to establish the exact date the Individual Account was opened or to show what transfers were made into and out of the Individual Account around the Petition Date. However, while the exact date the Individual Account was opened is uncertain, it clearly was opened by February 26, 2004, nine days after the bankruptcy filing, because on that date a transfer was made from the Individual Account to the Joint Account in the amount of $1,000. (Rivertree's Ex. No. 178). Murphy did not explain the source of these funds.

Rather, Murphy produced only one bank statement from the Individual Account for the period of March 23 through April 21, 2004. The statement indicates that Murphy had $7,615 in his Individual Account on March 23, 2004. (Rivertree's Ex. No. 153). Of this amount, Murphy transferred $6,475 to the Joint Account, leaving only a minimal balance, $69.61, at the end of the statement period. Focusing just on these two accounts at Bank of America, Murphy understated the amount in the Joint Account, failed to establish the date he opened the Individual Account or schedule the account, and failed to explain substantial transfers into and out of both accounts within days of filing this case.

Murphy's Jewelry and Art. Murphy also failed to explain how he lost his valuable art and jewelry collection. In each of his 2003 financial statements, Murphy claimed to own jewelry and artwork valued at $274,000. (Rivertree's Ex. Nos. 170, 171, 172). Indeed, one of the few aspects of the financial statements that remained consistent was Murphy's valuation of his jewelry and art. However, in the bankruptcy context, Murphy claimed he owned only $100 worth of jewelry. (Rivertree's Ex. No. 4). Murphy never identified the jewelry in further detail or explained what happened to it.

Furthermore, there was no mention of any artwork in Murphy's personal property schedules. When trying to explain exactly what type of art comprised the $274,000 he included in his 2003 financial statements and omitted in his bankruptcy schedules, Murphy testified that it consisted of antiques and large pieces of sculpture placed outdoors, referenced as "yard art," as well as wall sconces and chandeliers. Murphy explained that he did not include this art in his bankruptcy schedules because it was sold when the Winter Park Home was transferred in June 2003; however, nothing in the closing statement from the sale or otherwise in evidence supports Murphy's position. Thus, Murphy failed to satisfactorily explain how $274,000 worth of jewelry and art was reduced to just jewelry worth only $100 in less than one year.

Murphy's Winter Park Home. Murphy failed to account in his bankruptcy schedules for $38,000 of the money he and Julianne received upon the sale of the Winter Park Home. On his Statement of Financial Affairs filed in this bankruptcy case, Murphy claims he and Julianne netted only $18,000 from the sale of the home. (Rivertree's Ex. No. 5). Yet, the closing statement from the sale (Murphy's Ex. No. 30) indicates that Murphy and Julianne actually received approximately $48,000 in cash from the sale. Murphy accounted for $10,000 deposited into the Joint Account with Bank of America. Murphy provided no explanation as to what happened to the remaining $38,000.

Murphy's Business Interests. In his bankruptcy schedules, Murphy listed interests in eight business entities, valuing his interest in each entity at just $1: Freeport Partners ("Freeport"), Cleve Development ("Cleve"), Franchise Ventures ("Franchise"), SASI, SASI Development, Medina, Primary, and MLP. Murphy claimed to own a controlling interest in all but two of these businesses; (i) MLP, in which Murphy claimed a 40 percent interest with Julianne owning the other 60 percent, and; (ii) Freeport, in which Murphy claimed a 49 percent[21] interest with Julianne holding the remaining 51 percent interest.

[21] The Freeport ownership interests differ somewhat in the parties' documentary exhibits, so the Court is uncertain as to the exact percentage of Freeport Murphy owned. For example, Schedule B says Murphy has a 51 percent interest in Freeport, and Rivertree's Exhibit Number 172 describes Murphy's interest as "51 percent (Jointly held)."

Four of the above business interests never appeared on any of Murphy's 2003 financial statements, Cleve,[22] Franchise, SASI,[23] and SASI Development. However, Murphy did list his interest in Freeport in his May 2003 financial statement, valuing his interest then at $356,490, and, ten months later, valuing his interest at $1 in his bankruptcy schedules. Interestingly, Julianne, in an affidavit signed on January 28, 2004, just twenty days prior to the Petition Date, valued her 51 percent interest in Freeport at $700,000. (Murphy's Ex. No. 15).

Murphy listed Primary on his January and April 2003 financial statements, valuing the asset consistently at $466,100, all but one dollar of which, inexplicably, apparently dissipated by the Petition Date. The last two above-named business interests, Medina and MLP, each appeared in all of Murphy's 2003 financial statements. Medina's net value was consistently represented at $457,250 in each statement, and then, in bankruptcy, at $1. Murphy's valuation of his interest in MLP, however, differed by tens of thousands of dollars between the three financial statements, being valued most recently in the May 2003 financial statement at $186,000, and, in bankruptcy, at $1.

Julianne valued her 60 percent interest in MLP at $2 million on January 28, 2004, just days prior to Murphy's bankruptcy filing. (Murphy's Ex. No. 15). MLP is a Florida limited partnership, and Murphy and Julianne are the sole owners of MLP. MLP's limited partnership status was revoked by the State of Florida on September 26, 2003, for failing to file an annual report. (Murphy's Ex. No. 19). However, post-petition, and entirely without the Chapter 7 Trustee's knowledge, Murphy and Julianne continued to conduct business through MLP. On February 8, 2005, in his capacity as President of another company, "J. Murphy Management, Inc.," which, incidentally, Murphy did not include in his bankruptcy schedules or in his statement of financial affairs, Murphy signed an Agreement, as "John J. Murphy, Jr.", settling a matter involving MLP whereby Huntington Investment Company/Huntington National Bank ("Huntington") received $225,389 held in a brokerage account owned by MLP, Murphy, and Julianne. (Murphy's Ex. No. 21). In addition, Huntington received a quit-claim deed to real property of an unstated value that MLP owned in Jackson County, West Virginia. (Murphy's Ex. No. 22). Murphy's Chapter 7 Trustee was never advised of the existence of these assets or given any opportunity to evaluate whether this settlement was in the best interest of Murphy or his estate. The Chapter 7 Trustee, who then held the right to administer Murphy's interest in MLP, as well as his interest in the unscheduled entity, J. Murphy Management, Inc.,

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However, Murphy's Exhibit Number 15 states that the Julianne C. Murphy Revocable Trust held a 51 percent interest in Freeport.

[22] Cleve Development, Inc., f/k/a J. Murphy Management, Inc., filed a Chapter 7 bankruptcy case on June 29, 2001. (Murphy's Ex. No. 33).

[23] SASI filed a Chapter 7 bankruptcy case on December 28, 2000. (Murphy's Ex. No. 31).

never saw the settlement agreement or knew of Murphy's involvement in J. Murphy Management, Inc. Rather, Murphy intentionally kept the Chapter 7 Trustee in the dark about these assets and about the true value of MLP.

Murphy's Undisclosed Century Bank Account. Question 11 on the Statement of Financial Affairs required Murphy to list all financial accounts held in his name or for his benefit which were closed, sold, or transferred within one year prior to the Petition Date. In response to this question, Murphy disclosed that he had closed two bank accounts, one with Huntington Bank and one with SunTrust Bank. (Rivertree's Ex. No. 5). However, Murphy did not disclose that he had closed an account with Century Bank in his response to Question 11, in his schedules, or at a creditor examination taken pursuant to Bankruptcy Rule of Procedure 2004 on May 7, 2004. Rivertree only learned of the Century Bank account during discovery, when reviewing Murphy's May 2003 financial statement provided to First Chatham Bank, in which Murphy stated that the account contained $109,000 in cash. (Rivertree's Ex. No. 172).

Eventually, Murphy produced two bank statements from the Century Bank account, April 10, 2003 and June 10, 2003.[24] (Rivertree's Ex. No. 15). The statements reflect that at least $50,000 was placed into the account on April 4, 2003. Other substantial deposits were later made, for example, Murphy deposited $24,500 into the Century Bank account on May 20, 2003. As of June 9, 2003, the account showed a balance of $11,235.40; however, Murphy never produced any further bank statements, explained what happened to this account, or listed the account on his bankruptcy schedules.

Murphy's Family's Trusts. Murphy failed to disclose his interest in various family trusts. Murphy created eight separate trusts for his family members, including one for each of his four children, and one for Julianne. Murphy personally has three trusts but only disclosed one of them in his bankruptcy schedules. Murphy did not produce any schedule listing assets held by any of the family trusts, all of which Murphy controlled. Murphy directed transfers of assets into and out of the trusts as he deemed beneficial to himself.

Murphy disclosed only one trust on his bankruptcy schedules—the "John J. Murphy Trust (Shell)". (Rivertree's Ex. No. 4). The actual trust agreement is titled the John J. Murphy Irrevocable Life Insurance Trust, dated October 21, 1997. (Rivertree's Ex. No. 164). Murphy testified that this trust was created to hold one asset—a life insurance policy on his life. He further testified that the insurance policy had lapsed due to non-payment long prior to the filing of the bankruptcy case, and, as such, had no value. Murphy provided no information on the details

[24] Murphy may have produced a third Century Bank Statement for May 2003 insofar as one was listed on his summary of the documents he produced to Rivertree in February 2007. (Murphy's Ex. No. 38). This third statement was not introduced during the trial.

of any such insurance policy, or its cancellation, other than the schedule attached to the trust agreement showing the policy number and that the policy was issued by Valley Forge Life Company in the amount of $700,000.

Murphy did not disclose the two additional trusts for which he was both the settlor and the beneficiary—the John J. Murphy, Jr. Irrevocable Trust, dated April 20, 1999, and the John J. Murphy, Jr. Revocable Trust, dated January 27, 1998. (Rivertree's Ex. No. 161 and 162). The assets, if any, in these trusts would certainly constitute property of the bankruptcy estate, subject to administration for the benefit of Murphy's creditors. However, Murphy never disclosed the existence of these two trusts nor has he submitted any credible evidence as to whether either of the two non-disclosed trusts contain any valuable assets. Neither trust has a schedule listing assets. Murphy just says they hold no assets.

In addition to Murphy's three trusts, in 1998, he created five other trusts, one for each of his four children[25] (Rivertree's Ex. Nos. 157 to 160) and one for his wife, titled the Julianne C. Murphy Revocable Trust, dated November 18, 1998 ("Julianne's Trust"). (Rivertree's Ex. No. 155). Julianne, at her deposition, testified that she had no substantial assets at the time her trust was created. She had a small amount of furniture but no real estate, no stock, no interests in any partnerships, no vehicles titled in her name, and no bank accounts. Julianne further testified that she never transferred any assets to her trust after its creation. Otherwise, Julianne answered the questions at her deposition ambiguously or by indicating she did not recall the details relating to trust ownership of assets. Given that Julianne did not testify at trial, the Court is unable to conclude whether Julianne's deposition testimony was evasive or confused; however, it is clear she lacks any sophisticated financial acumen and appears to have an extremely limited memory for financial transactions.

Thomas A. Thomas, an accountant, was the original trustee for all eight of the Murphy family trusts. He later was replaced by a local attorney, Patrick Raley, on June 30, 2003. (Rivertree's Ex. Nos. 18 and 156). Mr. Raley took direction both from Murphy and from Julianne on the assets in their trusts, and, typically, he would copy both Murphy and Julianne with any transfers he made. (See, e.g., Rivertree's Ex. Nos. 23, 24, 179 and Murphy's Ex. No. 16). He frequently would send checks directly to Murphy, regardless of which trust assets he liquidated. He was never given complete control of the trust assets and has never seen a schedule listing assets maintained in

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[25] Murphy testified that the children's trusts were created to fund their college costs and in anticipation of a specific project that never materialized. As such, the children's trusts never held any assets. This testimony is directly inconsistent with Murphy's later testimony that the children's trust funds were partial owners of Technology Real Estate Partners of Winter Park, LLC. ("TREP). The Court need not determine if the children's trust ever held assets but merely notes that Murphy gave directly conflicting testimony on the point.

any of the trusts. He was unable to credibly opine as to the assets currently maintained in any of the various trusts or those assets held by the trusts on the Petition Date.[26]

The main asset in dispute is whether stock of the Xethanol Corporation ("Xethanol") is, or was, owned by Julianne's Trust, by one of Murphy's trusts, or by Murphy individually. Xethanol was formed to construct small ethanol plants, initially in the Savannah, Georgia area. A substantial portion of the testimony revolved around the confusion relating to the ownership of the Xethanol stock. Of course, if the Xethanol stock was owned by one of Murphy's trusts, the Chapter 7 Trustee could administer it for the benefit of Murphy's creditors. The following background illustrates how Murphy used his family's trusts to confuse or possibly to disguise asset ownership.

On May 2, 2002, Murphy and Julianne, together with their jointly owned company, MLP, borrowed $175,000 from First Florida Bank. (Rivertree's Ex. No. 36). Murphy and Julianne personally guaranteed the repayment of this loan, and Julianne apparently is still making payments to reduce the balance of the outstanding loan. The initial purpose of the loan was to help fund Xethanol's operations. Murphy was actively involved in raising capital funds for this business, although he never held any formal position with Xethanol.

When Xethanol declined the proffered loan from the Murphys, Murphy instead decided to use a portion of the funds,[27] $50,000, to purchase 500,000 shares of Xethanol stock. (Rivertree's Ex. No. 111). Murphy previously had obtained 250,000 shares of Xethanol stock, using $15,000 from his Huntington Bank/SunTrust Account to obtain 150,000 shares on February 6, 2002, and $10,000 from his Bank of Central Florida account to obtain 100,000 shares on February 3, 2002 (Rivertree's Ex. Nos. 111 and 117). The issue is who actually purchased, and who actually holds title to, the stock. Murphy contends that the stock was purchased and is owned by Julianne's Trust. Rivertree argues that Murphy has failed to produce any credible evidence of who actually owns the stock, whether it is Julianne's Trust, Murphy's trust, or either Julianne or Murphy personally.

Each stock certificate lists the "trustee" as the owner. Specifically, the stock certificates provided by Xethanol listed the shareholder as either "Thomas A. Thomas, Trustee" or his successor, "Patrick A. Raley, as Trustee." (Rivertree's Ex. No. 124). Because both trustees administered all eight Murphy family trusts, the stock certificates reflecting the trustees as owners are not illuminating as to who actually owns the stock. Moreover, none of the trust agreements, with the exception of Murphy's insurance trust, includes a schedule listing assets held by the

[26] Raley testified that his firm has filed a claim requesting payment for his services as trustee; however, no claim by Infantino and Berman is listed in the claims register. He undoubtedly is unpaid for his work as trustee.

trust. Therefore, neither the certificates nor the trust documents help determine the question of who owns the Xethanol stock.

Both Julianne and the current trustee, Mr. Raley, assert that Julianne's Trust owns, or owned, the Xethanol stock. Julianne's deposition testimony as well as her affidavit and letter, executed by her on January 28, 2004, and January 15, 2004, respectively (Rivertree's Ex. No. 17 and Murphy's Ex. No. 14), reflects that her trust purchased the stock. The Court, however, questions the credibility of these items considering the timing of this correspondence, coming just days prior to her husband's bankruptcy filing.

Moreover, the content of Julianne's letter is inaccurate. On January 15, 2004, Julianne wrote to Franz Skryanz, Treasurer of Xethanol, and represented that the $50,000 from the First Florida Bank loan was to buy the entire 750,000 shares of Xethanol stock for Julianne's Trust. (Murphy's Ex. No. 14). Of course, as stated above, these monies only purchased 500,000 shares; Murphy individually had paid for the remaining 250,000 shares earlier in February 2002.[28]

The current trustee of Julianne's Trust, Mr. Raley, confirmed that he believed that Julianne's Trust owned the Xethanol shares and that he "received approximately 750,000 shares of Xethanol stock" on December 10, 2003. (Rivertree's Ex. 18, p. 2). He, however, had no documentation to support this belief. Moreover, as trustee, he completed "multiple transactions in which the trust sold Xethanol stock to various buyers" and in many, if not most, of these instances, took directions to sell the Xethanol shares from Murphy, not Julianne. (Rivertree's Ex. 18, p. 2). As the trustee stated, "[I]t became obvious to me that JuliAnne Murphy…looked to…her husband, for his opinion and advice before making many of her decisions on what I as Trustee should do with the Trust assets. JuliAnne Murphy often would authorize her husband to contact me…to discuss the Xethanol stock because John Murphy was friendly with one of the officers and directors of Xethanol and knowledgeable about the Trust's Xethanol investment." (Rivertree's Ex. No. 18, p. 2).

Indeed, Murphy cannot dispute that he controlled all of the trusts and could freely transfer assets in Julianne's Trust as he deemed fit. For example, on May 22, 2002, Murphy directed a reissuance of the Xethanol

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[27] Murphy transferred the balance of the monies loaned by First Florida Bank to other closely held corporations including T-REP ($23,500), Very Smart Networks ($18,300), Kernan ($22,000), and to himself personally ($25,000). (Rivertree's Ex. Nos. 112 and 113).

[28] During her deposition, Julianne was very vague on her decision to invest in Xethanol. When she was able to recall any details, she merely testified "It seemed like a good investment to me." (Deposition of Julianne Murphy, page 126, line 2). However, she was inconsistent on the source of the monies to buy the stock. At one point, she testified the monies came from her own bank account (Deposition of Julianne Murphy, page 129), and later that the purchase monies came from her trust. (Deposition of Julianne Murphy, page 136). Both of these answers are inconsistent with credible bank records and Xethanol's internal records on the receipt of the purchase monies.

shares to various parties. (Rivertree's Ex. No. 114). On August 1, 2003, Murphy specifically directed Xethanol to cancel any previously issued shares and to reissue the stock in favor of the trustee, Patrick Raley, "*for the benefit of the Trust of John J. Murphy, Jr.",* not for the benefit of Julianne's trust. (Rivertree's Ex. No. 127; emphasis added). Even after he filed this bankruptcy case, Murphy still exercised control over the Xethanol stock insofar as, on November 2, 2004, he agreed to sell 50,000 shares of Xethanol stock to a person named Scott Smith for $25,000. (Rivertree's Ex. No. 128). Murphy now maintains that his direction to transfer the stock to his own trust was some sort of mistake. However, the direction is entirely consistent with the financial books and records of Xethanol; Xethanol's Account Quick Report indicates that the $50,000 attributable to the First Florida Bank loan was "applied to *John Murphy's* purchase of 750,000 Xethanol shares ($25,000 was received previously)." (Rivertree's Ex. No. 122, emphasis added.) Apparently, Xethanol treated Murphy, not Julianne, and not her trust, as the purchaser of the shares.

The Vice-President, Treasurer, and Secretary of Xethanol, Franz Skryanz, was instructed by his boss, Taylor, a friend of Murphy's, that he should follow Murphy's instruction on the transfers of the Xethanol stock in connection with Murphy's directive to transfer the shares to his own trust and not to Julianne's, in Murphy's letter of August 1, 2003, mentioned above. Taylor directed Mr. Skryanz to comply with Murphy's request. The shares were cancelled, and then reissued, in Stock Certificate 110 to Patrick A. Raley, as Trustee, but without specifying which trust was the owner of the newly reissued shares. (Skryanz Deposition, pages 52-54). Mr. Skryanz, however, understood Mr. Raley was acting as Trustee for the benefit of Murphy's individual trust.

Later, after Murphy filed this bankruptcy case, Xethanol went public, and Murphy and Julianne traded more shares of their Xethanol stock. On December 20, 2005, the newly appointed transfer agent for Xethanol prepared a Stock Certificate indicating that Julianne's Trust held 107,703 remaining shares of Xethanol stock. Skryanz acknowledged that no other documents associated with Murphy's purchase of the Xethanol stock referenced Julianne's Trust. Indeed, Xethanol's internal records reflect that Murphy, and not Julianne's Trust, paid for all 750,000 shares. (Skryanz Deposition, page 110 and Ex. No. 31).

Murphy also asserted, in May 2003, that he individually owned the Xethanol shares in a financial statement he provided to First Chatham Bank. (Rivertree's Ex. No. 172). Therein, Murphy valued the stock at $855,000. In the bankruptcy context, Murphy now claims that this was a complete oversight and that he never actually owned the Xethanol stock.

The primary point of this lengthy discussion on who owns the Xethanol stock is to graphically illustrate the complexity of the financial transactions of Murphy and his family. Based on the evidence presented, ownership of

the Xethanol stock remains unclear. Murphy kept inadequate records and produced nothing that would assist the Court or his creditors in assessing the ownership of this particular stock or of any other asset held by the trusts. No schedules list assets owned by any of the Murphy family trusts.

Murphy clearly controlled all assets of the family, including trust assets, and appears to use the trusts to disclaim ownership of assets, when convenient, and to exercise dominion over trust assets, when convenient. Murphy was raising equity funds for Xethanol, was friends with Taylor, who was leading the equity drive, was familiar with the investment, and had already purchased 250,000 shares before Julianne became involved in any way with the purchase of the Xethanol stock. Julianne gave no credible evidence that she made any independent decision to purchase the stock and, moreover, at her deposition, gave three different answers on the source of funds used to purchase the stock. Julianne simply lacks the financial expertise to make these decisions, whereas Murphy is sophisticated enough to manipulate the circumstances surrounding such decisions as he deems appropriate. Therefore, based on the evidence, the Court concludes that Murphy likely held an interest in the Xethanol stock on the Petition Date, that he failed to schedule any such interest, and, in addition, that he failed to keep any type of minimal books and records regarding his trusts and his family's trusts that would allow creditors to assess the true ownership of relevant assets.

Murphy's Document Production. Murphy also failed to provide documents requested by his Chapter 7 Trustee. On March 23, 2004, the Chapter 7 Trustee requested that Murphy provide a very reasonable amount of documents for the three years preceding the bankruptcy, including loan and mortgage applications, credit card statements, receipts relating to the disposition of personal property, and personal and corporate tax returns. (Rivertree's Ex. No. 13). Murphy produced some of the requested information, providing ninety-nine pages of documents consisting of: (i) a revised income estimate that substantially reduced his expenses; (ii) his twenty-seven page 2001 tax return, giving a glimpse of the complexity of his business; (iii) three collection notices, two from credit card companies; (iv) a bill requesting overdue payment from the private school the Murphy children attended; and (v) sixty-seven pages of records from Murphy's closed Huntington Bank/SunTrust Account, showing no monies were in the account after June 30, 2003. (Murphy's Ex. No. 8).

Murphy's production is woefully inadequate. He did not provide the Chapter 7 Trustee with his 2002 and 2003 tax return,[29] when he later filed them. He provided no loan or mortgage applications and virtually no

[29] Murphy later did supply Rivertree with copies of his 2002 and 2003 federal tax returns, which were filed after the bankruptcy case. Rivertree did not share these returns or other financial records that they gathered during discovery with the Chapter 7 Trustee. Nor did the Trustee ask Rivertree to share these records with him.

information on his credit card accounts. However, the Chapter 7 Trustee did not follow up and did not ask Murphy for further information. Perhaps this was due, in part, to the fact that the Chapter 7 Trustee had decided to stop accepting new Chapter 7 cases, was rotating off the trustee panel, and was more interested in closing existing cases than in pursuing assets for administration. In any event, on March 20, 2005, the Chapter 7 Trustee filed a Report of No Distribution indicating that he had located no assets to administer. (Murphy's Ex. No. 7). Regardless, Murphy's failure to maintain or to produce minimal financial records to Rivertree explaining his current financial condition, even after Rivertree conducted extensive discovery, is inexcusable. A prime example of Murphy's non-production is the personal financial statements signed by Murphy within one year of his bankruptcy filing. Ms. Piersoll prepared each of these statements for Murphy's review. Murphy kept two hard copies of every financial statement he signed as well as one copy on his office computer. Yet, he did not produce a single financial statement to the Chapter 7 Trustee or to Rivertree. Rather, Rivertree gathered this information directly from the relevant lenders. Certainly, Murphy was probably not anxious to show Rivertree that he represented his positive net worth at almost $8 million to First Chatham Bank just six months after representing that his negative net worth exceeded $24 million to Rivertree when he was trying to obtain a favorable repayment plan and settle Rivertree's foreclosure action.

Nor did Murphy produce any *current* financial records relating to his business interests, his corporate entities, two of his three trust agreements, statements relating to his Individual Account, statements relating to the Century Bank account, or any meaningful documents that would illuminate or explain his financial circumstances on the Petition Date. Instead, Murphy gave Rivertree many boxes of largely irrelevant and useless records in an attempt to avoid production of meaningful documents.

To wit, at the 2004 examination, held on May 7, 2004, Murphy was asked to bring with him a number of documents. (Rivertree's Ex. No. 9). Murphy, in response, produced seven large boxes of documents to Rivertree together with a list of items contained in each box. (Rivertree's Ex. No. 12). A paralegal employed by Rivertree's attorney spent hours reviewing the documents produced by Murphy and prepared a detailed index. (Rivertree's Ex. No. 15). Based on this index, Murphy produced 3,818 pages of financial records. Of the dated documents, only 8 percent (294 pages) are from 2003 or later and some of these recent records are duplicates. The vast majority of the dated documents, approximately 80 percent, are from the year 2000 or earlier.

Murphy produced *no* financial record created in 2004 or reflecting his financial condition on the Petition Date—not one single record. Moreover, of the 2003 documents, virtually none relate to Murphy's *personal* financial affairs. For example, Murphy did not produce a single financial statement he prepared in 2003 or 2004. Instead, Rivertree had to obtain these recent financial statements via third party discovery from Murphy's lenders.

To test the accuracy of Rivertree's index of the documents produced by Murphy, the Court reviewed the document summary prepared by Murphy. (Murphy's Ex. No. 39). Even using Murphy's own summary, it is apparent that he produced little information that a creditor or the Court could use to assess his financial condition in February 2004. The majority of the produced documents relate to Murphy's businesses, many of them several years old. For example, Murphy provided the federal income tax return for Primary for 1996, which is not very helpful in determining the value of Murphy's business interests in 2004. Moreover, the financial records provided are only marginally relevant. He did not produce general ledgers, cash flow statements, balance sheets, or the normal type of financial reports that would allow creditors to ascertain a company's value.

Very, very few documents produced relate to Murphy's *personal* financial affairs, and, of those few documents, they, by and large, were generated in 2002 or earlier. The only even arguably relevant financial information consists of three months of statements for his Century Bank personal checking account for the months of April, May, and June 2003, and statements from his SunTrust trading account for a portion of 2003. Not a single document originated in 2004.

Perhaps most significant, Murphy himself did not rely on these documents at trial to support his position that a discharge should issue. If these documents were truly helpful in allowing a creditor to evaluate Murphy's worth, why didn't Murphy rely on the documents himself in presenting his case at trial? The answer, of course, is that the seven boxes of documents Murphy gave to Rivertree were largely irrelevant filler. The materials produced certainly are not the typical types of financial records someone with this level of financial sophistication would possess. Murphy has not maintained, or at least, has not produced, sufficient financial records that would explain a swing from a positive net worth of $5.7 million on May 29, 2003, to a negative worth of $5,434,414 on February 17, 2004, a difference of over $11 million in ten months, or that would reconcile or explain the dramatic fluctuations in his net worth of almost $8 million in January 2003, contrasted with his claimed negative net worth six months earlier of over $24 million, a difference of $32 million.

Murphy's argument that he has no further financial records to produce is not credible given the complex nature of his businesses. He simply has failed to explain what happened to his assets or to his financial records. Murphy is a sophisticated business man and is very familiar with the normal types of records kept by businesses and individuals who claim a net worth of several million dollars. Murphy either has disposed of these records or has failed to keep necessary records to explain his current financial circumstances.

Murphy next argues that Rivertree has failed to find even one single asset for the Chapter 7 Trustee to administer, even though discovery in this adversary proceeding lasted for several years. The Court agrees that

Rivertree was unable to show any sizeable assets justifying further administration by the Chapter 7 Trustee. However, the Court attributes Rivertree's lack of success primarily to Murphy's improper tactic of either disposing of his financial records or failing to keep any type of normal financial record in the first place that would lead a creditor to locate available assets. The Court is convinced that Murphy retained assets but chooses not to share that information with others. For that choice, Murphy will forfeit the right to receive a discharge in this Chapter 7 case on several grounds.

In sum, the Court finds that Murphy is simply unwilling to provide an accurate statement of his financial position. He has completely failed to explain the inconsistencies between his financial statements and his bankruptcy schedules, or to provide sufficient records that would permit his creditors, the Chapter 7 Trustee, or this Court to do so. Because the differences are irreconcilable, Murphy now maintains that his earlier financial statements were false, and that, in the bankruptcy context, he has been entirely truthful, and his schedules accounting for his assets and liabilities are accurate. (Hence, he was lying then but not now.) Murphy simply cannot maintain, nor can the Court accept, this explanation, or reward it by allowing Murphy to discharge his debts.

Legal Standards. The primary purpose of bankruptcy law is to provide an honest debtor with a fresh start by relieving the burden of indebtedness. Perez v. Campbell, 402 U.S. 637 (1971); In re Price, 48 B.R. 211, 213 (Bankr. S.D. Fla. 1985); Matter of Holwerda, 29 B.R. 486, 489 (Bankr.M.D.Fla.1983). "[T]he fundamental importance of discharge and [a] fresh start in the bankruptcy process dictates that exceptions to dischargeability be strictly and narrowly construed." In re Cox, 150 B.R. 807, 809 (Bankr.N.D.Fla.1992) citing In re Hunter, 780 F.2d 1577, 1579 (11th Cir.1986). The party objecting to the debtor's discharge has the burden of establishing that the debtor is not entitled to receive a discharge by the preponderance of the evidence. Grogan v. Garner, 498 U.S. 279 (1991) (Section 523 action); In re Chalik, 748 F.2d 616 (11th Cir. 1984) (burden on objecting party); In re Metz, 150 B.R. 821 (Bankr.M.D.Fla.1993) (standard of proof is preponderance of the evidence); In re Gollomp, 198 B.R. 433 (S.D.N.Y.1996) (Section 727 action).[30] Accordingly, Rivertree bears the burden of proving Murphy is not entitled to receive a discharge by a preponderance of the evidence under each of the five counts it asserts in its complaint.

In the complaint, Rivertree argues that Murphy is precluded from discharging his debts because Murphy: (i) transferred or concealed property in the year prior to filing this bankruptcy case with the intent to hinder, delay,

[30] To effectuate the fresh start policy, objections to discharge are strictly construed against an objecting creditor and liberally in favor of the debtor. Kiester v. Handy (In re Handy), 164 B.R. 355 (Bankr. M.D. Fla. 1994); Sperling v. Hoflund (In re Hoflund), 163 B.R. 879 (Bankr. N.D. Fla. 1993).

or defraud a creditor (Section 727(a)(2)(A),[31] Count 1); (ii) failed to produce or to keep adequate financial records to allow his creditors to ascertain his true financial condition (Section 727(a)(3),[32] Count 2); (iii) knowingly and fraudulently made a false oath and withheld his financial records from the Chapter 7 Trustee (Sections 727(a)(4)(A & D),[33] Counts 3 and 4); and, finally, that Murphy has failed to satisfactorily explain his loss of assets (Section 727(a)(5),[34] Count 5).

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[31] Section 727(a)(2)(A) provides:

> (a) The court shall grant the debtor a discharge, unless--. . .
>
> (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;

In order to deny Murphy his discharge under Section 727(a)(2)(A) (Count 1), Rivertree must show that: (i) a transfer occurred; (ii) the property transferred was property of the debtor; (iii) the transfer was within one year of petition; and, (iv) at the time of the transfer, the debtor possessed the requisite intent to hinder, delay or defraud a creditor. In re Allen, 210 B.R. 861, 866-867 (Bankr.M.D.Fla.1997) (citing In re Milam, 172 B.R. 371, 374 (Bankr. M.D.Fla.1994) (quoting In re More, 138 B.R. 102, 104 (Bankr.M.D.Fla.1992))). Although a debtor's intent to hinder, delay, or defraud a creditor can be ascertained from the totality of the circumstances, Allen, 210 B.R. at 867 (citing Phillips v. Nipper (In re Nipper), 186 B.R. 284, 288 (Bankr.M.D.Fla.1995), and "may be imputed to the debtor where assets of substantial value are omitted from the debtors [sic] schedules," In re Gonzalez, 92 B.R. 960, 961-962 (Bankr.S.D.Fla.1988) (citing Crews v. Topping (In re Topping), 84 B.R. 840, 842 (Bankr. M.D.Fla.1988)), the plaintiff/creditor still bears the burden of demonstrating an actionable transfer within one year of the bankruptcy filing. Here, Rivertree has failed to meet this burden. Murphy's discharge will not be denied under Section 727(a)(2)(A).

[32] Section 727(a)(3) provides:

> (a) The court shall grant the debtor a discharge, unless--. . .
>
> (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;

[33] Sections 727(a)(4)(A & D) provide:

> (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; . . .
>
> (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;

[34] Section 727(a)(5) provides:

In Count 2, Rivertree alleges that Murphy's discharge should be denied pursuant to Section 727(a)(3) because Murphy failed to maintain adequate books and records from which his true financial condition can be ascertained. The purpose of Section 727(a)(3) is to give creditors, the trustee, and the bankruptcy court, "complete and accurate information regarding the status of a debtor's affairs and to test the completeness of the [debtor's] disclosure." In re Shahid, 334 B.R. 698, 706 (Bankr.N.D.Fla.2005) (citing Grant v. Sadler (In re Sadler), 282 B.R. 254, 263 (Bankr.M.D.Fla.2002)). Providing "sufficient information to permit an effective evaluation of the debtor's estate" to those charged with administering it is "a condition precedent" to a debtor's discharge. Shahid, 334 B.R. at 706-707 (internal citations omitted). Courts have wide discretion in determining whether a debtor has maintained sufficient records. Shahid, 334 B.R. at 707 (internal citations omitted). Courts generally must decide whether the books and records produced by the debtor "are adequate to permit the court and creditors to trace the debtor's financial dealings." Id. "While perfect record keeping is not required, the creditors examining the debtor's records 'must be reasonably able to follow the debtor's business transactions, make intelligent inquiry, verify the oral statements and explanations of the bankrupt, and ascertain the present and past financial condition of the bankrupt [with] substantial completeness and accuracy.'" Id.

In Counts 3 and 4, Rivertree argues that Murphy should not receive a discharge based on Section 727(a)(4)(A) and (D)[35] because Murphy knowingly or fraudulently made a false oath or account and withheld his financial records from the Chapter 7 Trustee. Similar to Section 727(a)(3), the purpose of Section 727(a)(4) is to ensure that debtors disclose adequate information regarding their assets and financial affairs to those interested in administering the estate without the need of examinations or investigations to assess the veracity of the information in the bankruptcy petition. In re Offer, Case No. 05-28253-BKC-JKO, Adv. No. 06-1480-JKO, 2007 WL 1560131, *4 (Bankr. S.D. Fla. May 25, 2007) (citing In re Zwirm, Case No. 04-40306-BKC-AJC, Adv. No. 05-1036-AJC, 2005 WL 1978510, at *5 (Bankr. S.D. Fla. Aug. 15, 2005); In re Kaiser, 94 B.R. 779 (Bankr.S.D.Fla.1988)). To prevail under Section 727(a)(4)(A), the creditor must prove 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 the intent to

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> (a) The court shall grant the debtor a discharge, unless-- . . .
>
> (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;

[35] Given the fact that the Chapter 7 Trustee made no effort to retrieve further information from Murphy and did not join in Rivertree's complaint in this adversary proceeding, the Court cannot conclude that Murphy's failure to supply the information requested by the Chapter 7 Trustee should serve as a basis to deny his discharge under Section 727(a)(4)(D).

deceive; and (5) the statement related materially to the bankruptcy case. Offer, 2007 WL 1560131, *4 (citing Zwim, 2005 WL 1978510, at *5; In re McGovern, 215 B.R. 304, 306 (Bankr.D.Conn.1997)).

In order for a false oath to preclude discharge, it must be both "fraudulent" and "material." See, e.g., Swicegood v. Ginn, 924 F.2d 230, 232 (11th Cir. 1991). A false oath is "material" where 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 property. In re Chalik, 748 F.2d 616, 618 (11th Cir. 1984); In re Gonzalez, 92 B.R. 960 (Bankr. S.D. Fla. 1988). The objecting party also must establish the necessary intent to show that the debtor made the false oaths knowingly and fraudulently. In re Raiford, 695 F.2d 521, 522 (11th Cir.1983). A discharge must not be denied when the untruth was inadvertent or the result of a mistake. In re Beaubouef, 966 F.2d 174, 178 (5th Cir. 1992). However, even if "assets are worthless or unavailable to creditors, the debtor has an obligation of full disclosure." Gonzalez, 92 B.R. at 962 (citing In re Watkins, 84 B.R. 246, 250 (Bankr. S.D. Fla. 1988)). "The reason behind this policy of good faith disclosure is that the veracity of the bankrupt's statements is essential to the successful administration of the bankruptcy code." Gonzalez, 92 B.R. at 962 (citing Watkins, 84 B.R. at 250).

In Count 5, Rivertree alleges that Murphy has failed to satisfactorily explain his loss of assets, and, therefore, that Section 727(a)(5) precludes Murphy's discharge. In re Hawley, 51 F.3d 246, 249 (11th Cir. 1995). Rivertree has the preliminary burden of demonstrating that Murphy "formerly owned substantial, identifiable assets that are now unavailable to distribute to creditors." In re Tran, 297 B.R. 817, 836 (Bankr.N.D.Fla.2003) (citing In re Hermanson, 273 B.R. 538, 545 (Bankr.N.D.Ill.2002) (citing Banner Oil Co. v. Bryson (In re Bryson), 187 B.R. 939, 955 (Bankr.N.D.Ill.1995))). Upon such a showing, Murphy "then has the burden of establishing a 'satisfactory' explanation for the asset reduction." Id. "A [debtor's] general oral explanation for the disappearance of substantial assets without documentary corroboration" will not suffice. Tran, 297 B.R. at 836 (citing Hermanson, 273 B.R. at 549). A satisfactory explanation is one that convinces the judge; vague and indefinite explanations of losses will not suffice. Chalik, 748 F.2d at 619.

Rivertree convincingly has established that Murphy is not entitled to a discharge under Counts 2, 3, and 5. Murphy's bankruptcy petition and schedules are replete with material, false oaths made with the intent to deceive creditors. He signed the petition using a false name, incorporating the "Sr." designation for the first, and apparently only, time, likely hoping to distance himself from the bankruptcy after the case is closed and to confuse his creditors while this case is pending. Murphy listed no other name, as required, that he had used during the six years preceding the Petition Date, not "J. Murphy," "John J. Murphy," or "John J. Murphy Jr.," each of which he used at some point during the six years prior to, and, in at least one instance, after, the Petition Date. (Rivertree Ex. Nos. 171, 172, 173,

financial statements of "John J. Murphy, Jr." signed as "J. Murphy;" Murphy Ex. No. 30, closing statement for sale of Winter Park Home listing "John J. Murphy" as seller, signed by "J. Murphy"). Indeed, during the pendency of this case, unbeknownst to the Chapter 7 Trustee, Murphy continued to conduct business in his individual capacity as "John. J. Murphy, Jr.," and in a corporate capacity as "J. Murphy Management, Inc.," a corporate entity he failed to disclose in his bankruptcy schedules, signing his name in both capacities as simply "J. Murphy." (Murphy's Ex. No. 21).

Murphy also failed to schedule or concealed several assets. For example, Murphy did not disclose his Century Bank account containing at least $50,000 in April 2003. He did not disclose two of his three trusts. He scheduled the Joint Account but underrepresented the amount of cash the account contained.

Murphy also failed to satisfactorily explain his loss of assets and failed to maintain or produce sufficient records to permit anyone to ascertain his true financial condition. Less than one year prior to the Petition Date, Murphy claimed a positive net worth of between $5 and $8 million. He has failed to credibly explain where these assets went. What happened to the IRA/Profit Sharing Account valued at $54,720 in May 2003? What happened to the art/jewelry valued at $274,000? What happened to the business interests valued by Murphy at $5,223,300 in April 2003? What happened to the substantial cash deposited in the undisclosed Century Bank or the significant deposits flowing through the Joint Account with Bank of America? What happened to the unexplained $38,000 Murphy got when he sold the Winter Park Home in June 2003? These are merely examples of the numerous incidents in which Rivertree established that Murphy owned substantial, identifiable assets and for which Murphy has failed to provide a satisfactory explanation for its loss.

Certainly, the documents provided by Murphy do not explain the radical swing in his financial condition nor do they provide sufficient information to allow the Court or Murphy's creditors to evaluate his financial condition on the Petition Date. The documents produced were dated, irrelevant, and largely filler gathered for bulk, not content. He produced insufficient documents relating to the family trusts and, particularly, Murphy's two undisclosed trusts. No schedule listing trust assets was produced and, as a result, ownership of at least one significant asset, the Xethanol stock, is uncertain. No documents relating to the current value of the debtor's business interests were produced. For example, Murphy borrowed or, possibly, lent over $40,000 involving London Manhattan within one year of the bankruptcy filing—yet, no records exist.

Because Murphy produced inadequate records, it is difficult to say with certainty what property Murphy may have transferred and what property he still retains. What is certain is that Murphy listed hundreds of thousands of dollars in property in his financial statements and, less than one year later when he completed his bankruptcy

petition, swore he had assets of only $768. Perhaps he still has the assets he claimed on his financial statements. Perhaps he never had the assets. It simply is impossible to ascertain exactly what Murphy owned and its value on the Petition Date. However, given the complex nature of Murphy's businesses, he certainly was required to maintain sufficient records to allow creditors to test the accuracy of Murphy's oral, often conflicting, explanations and testimony. He did not keep these minimal records or, at least, has not produced them.

Accordingly, the Court holds that Rivertree has proven by a preponderance of the evidence that Murphy knowingly and fraudulently made false oaths and accounts when completing his bankruptcy petition and schedules, failed to satisfactorily explain his loss of assets, and failed to maintain and to produce adequate books and records from which his true financial condition could be ascertained. Therefore, Murphy has forfeited his right to receive a discharge pursuant to Bankruptcy Code Section 727(a)(3) (Count 2), Section 727(a)(4)(A) (Count 3), and Section 727(a)(5) (Count 5). A separate order consistent with this Memorandum Opinion shall be entered simultaneously herewith.

DONE AND ORDERED in Orlando, Florida, on October 16, 2007.

/s/ Karen S. Jennemann
KAREN S. JENNEMANN
United States Bankruptcy Judge

Copies provided to:

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