**UNITED STATES BANKRUPTCY COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

In re: Case No. 3:12-5074-PMG

Lee Daniels,

Debtor. Chapter 7

William Hansard,

Plaintiff,

vs. Adv. No. 3:12-ap-775-PMG

Lee Daniels,

Defendant.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND MEMORANDUM OPINION**

**THIS CASE** came before the Court for a final evidentiary hearing in this adversary proceeding.

The Plaintiff, William Hansard, commenced the action by filing a Complaint to deny the discharge of the Debtor, Lee Daniels, pursuant to §727(a) of the Bankruptcy Code.

The discharge of a debtor may be denied under §727(a)(2)(B) of the Bankruptcy Code, if the debtor conceals property of the estate after filing a bankruptcy petition, with the intent to defraud creditors. If the concealment includes a deliberate omission from the debtor's schedules, the debtor's discharge may also be denied under §727(a)(4) of the Bankruptcy Code based on the false oath.

In this case, the Debtor did not list certain investment interests on her bankruptcy schedules, and did not disclose her post-petition receipt of a $33,199.00 distribution from one of the investments. Based on the pattern of conduct and the surrounding circumstances, the Court finds that the Debtor's discharge should be denied pursuant to §727(a)(2)(B) and §727(a)(4) of the Bankruptcy Code.

**Background**

The Debtor, Lee Daniels, is 76 years old, and is not employed. The Debtor's husband, Derick J. Daniels, passed away in February of 2005, and the Debtor was the primary beneficiary of his estate. (Exhibit 12, Deposition Transcript of Samuel Spencer Blum, p. 7). She currently lives in Cincinnati, Ohio.

**A. The Chapter 7 Case**

The Debtor filed a petition under Chapter 7 of the Bankruptcy Code on August 1, 2012. On her schedule of real property filed with the petition, the Debtor listed a residence located in Flagler Beach, Florida.

On her schedule of personal property, the Debtor listed certain financial accounts, household goods, and personal effects with a scheduled value of less than $5,000.00. Item 13 of the schedule of personal property required the Debtor to list her interests in incorporated and unincorporated businesses. In response to Item 13, the Debtor disclosed the following four assets:

1. "Stock: Playboy Enterprises" – Value $50.00
2. "Financial Account: Derick's account, has a negative balance" – Value $0.00
3. "Financial Account: hedge fund account" – Value $0.00
4. "Financial Account: Estate Account of Derick J. Daniels, deceased" – Value $150.00

(Main Case, Doc. 1). On her schedule of personal property, the Debtor stated that she had no interests in any partnerships or joint ventures (Item 14), no accounts receivable (Item 16), and no interests in the estate of a decedent (Item 20).

The only income listed on the Debtor's schedules and Statement of Financial Affairs is her social security income. (Exhibit 1).

On May 16, 2013, the Debtor filed an Amended Schedule of Personal Property, and listed an interest in an entity known as Bahama Gardens, LLC, with a scheduled value of "unknown." (Main Case, Doc. 33).

On January 31, 2014, the Chapter 7 Trustee filed a Motion for turnover of property, and asserted that the Debtor held an interest in four separate partnerships that were not disclosed on her schedules. (Main Case, Doc. 38). On May 22, 2014, the Court entered an Order on the Motion, and found that:

> [T]he Debtor's individual partnership interests in Sprout Growth II, LP ("Sprout"), WSW 1996 Buyout II, LP ("WSW Buyout"), WSW Intl. Private Equity Fund, LP ("WSW Intl.") and Bahama Gardens, LP, as well as any and all post-petition distributions, proceeds, and/or profits therefrom, are property of the estate pursuant to 11 U.S.C. §541.

(Main Case, Doc. 62). In the Order, the Court directed the Debtor to turnover to the Trustee "the sum of $33,199.00, which represents that certain distribution made to the Debtor in January 2013 from WSW Buyout," and authorized the Trustee to retain as property of the estate "the sum of $16,793.00 already in her possession, which represents that certain distribution made by WSW Intl. in May, 2013."

On February 21, 2014, the Trustee filed a Notice of Private Sale, in which she proposed to sell the Debtor's 6.25% limited partnership interest in Bahama Gardens, Ltd. for the sale price of $12,500.00.

(Main Case, Doc. 40). On May 22, 2014, the Court entered an Order approving the sale. (Main Case, Doc. 63).

**B. The Complaint**

On December 20, 2012, the Plaintiff filed a Complaint Objecting to Discharge of Defendant. (Doc. 1). In the Complaint, the Plaintiff asserts that a number of assets were omitted from the Debtor's bankruptcy schedules, including (1) her interest in the estate of Derick J. Daniels, her deceased husband; (2) her interests in Sprout, WSW Buyout, WSW Intl, and Bahama Gardens; (3) her interest in four receivables; and (4) her interests in two entities known as Dos y Dos Corp. and 22 Skidoo Corp.

The Complaint contains five Counts: (1) Count I is an action to deny the Debtor's discharge under §727(a)(2) of the Bankruptcy Code, based on the Debtor's fraudulent transfer or concealment of property; (2) Count II is an action to deny the Debtor's discharge under §727(a)(3) of the Bankruptcy Code, based on the Debtor's failure to keep or preserve books and records; (3) Count III is an action to deny the Debtor's discharge under §727(a)(4), based on the Debtor's false oath; (4) Count IV is an action to deny the Debtor's discharge under §727(a)(5), based on the Debtor's failure to explain a loss of assets; and (5) Count V is an action under §105 of the Bankruptcy Code, to enjoin the Debtor from transferring or disposing of any property of the estate.

**Discussion**

A fundamental goal of the Bankruptcy Code is to relieve the "honest but unfortunate" debtor of his indebtedness, and thereby provide him with a financial fresh start. In re Shahid, 334 B.R. 698, 705-06 (Bankr. N.D. Fla. 2005). Section 727(a) of the Bankruptcy Code, however, establishes several

bases upon which the discharge of a debtor may be denied in its entirety. In re Prevatt, 261 B.R. 54, 58 (Bankr. M.D. Fla. 2000).

At the final evidentiary hearing in this case, the Plaintiff indicated that the focus of his Complaint is §727(a)(2) and §727(a)(4) of the Bankruptcy Code. (Transcript, pp. 8, 89). Section 727(a)(2)(B) and §727(a)(4) provide as follows:

> **§727. Discharge**
>
> (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—
>
> . . .
>
> (B) property of the estate, after the date of the filing of the petition;
>
> . . .
>
> (4) the debtor knowingly and fraudulently, in or in connection with the case—
>
> (A) made a false oath or account.

11 U.S.C. §727(a)(2)(B),(a)(4). Pursuant to §727(a)(2)(B), a debtor's discharge may be denied if the debtor "fraudulently transfers, destroys or conceals property of the estate after the filing of the petition." Pursuant to §727(a)(4)(A), a deliberate omission from a debtor's schedules or statement of financial affairs may represent a false oath or account that warrants the denial of his discharge. In re Waite, 516 B.R. 1, 8-9 (Bankr. N.D.N.Y. 2014).

Both causes of action require "proof of actual intent, not merely constructive intent," although the required fraudulent intent may be shown by "all surrounding circumstances, and any evidence of a course of conduct." In re Carl, 2014 WL 4365314, at 11 (Bankr. N.D.N.Y.).

Because the same conduct may relate both to a concealment of property and to a false oath, there is often "substantial overlap between §727(a)(4)(A) and §727(a)(2) causes of action." In re Carl 2014 WL 4365314, at 11.

**A. Failure to disclose material assets**

In this case, the evidence clearly shows that the Debtor held an interest in two investment funds and a limited partnership on the petition date, that the interests were not disclosed in her Chapter 7 case, and that the nondisclosures were material to the bankruptcy estate.

**1. Incomplete schedules**

The investment funds are known as WSW 1996 Buyout Fund II, L.P. (WSW Buyout) and WSW International Private Equity Fund, L.P. (WSW Intl), and the limited partnership is known as Bahama Gardens, Ltd. The Debtor inherited her interests in the funds and partnership from her husband, Derick J. Daniels, who died on February 5, 2005, and she retained the interests as of the petition date. (Exhibit 8, Account Statements for WSW Buyout and WSW Intl; Exhibit 10, Amended Inventory of probate estate; Exhibit 12, Deposition Transcript of Samuel Spencer Blum).

The Debtor did not list any interest in WSW Buyout, WSW Intl, or Bahama Gardens on her initial schedule of assets in the bankruptcy case. Additionally, she did not list the interests on her Statement of Financial Affairs, even though the entities appear on her 2010, 2011, and 2012 income tax returns. (Exhibits 5, 6, 7).

The Court acknowledges that the Debtor listed a "hedge fund account" on her initial schedules, which she claimed was valued at $0.00 and located at Credit Suisse. The Court also acknowledges that the Debtor filed an amended schedule of personal property on May 16, 2013, and listed Bahama Gardens, LLC as a business interest of unknown value. (Main Case, Doc. 33).

The initial and amended schedules were inadequate, however, to place the Chapter 7 trustee and creditors on notice of the Debtor's investment interests in WSW Buyout, WSW Intl, and Bahama Gardens.

> The primary purpose of §727(a)(4)(A) is to ensure that dependable information is supplied to those interested in the administration of the bankruptcy estate so they can rely upon it without the need for the Trustee or other interested parties to dig out the true facts through examinations or investigations.

In re Wright, 364 B.R. 51, 72 (Bankr. D. Mont. 2007)(quoting In re Bastrom, 106 B.R. 223, 227 (Bankr. D. Mont. 1989)). See also In re Kleinman, 2011 WL 5528250, at 4-5 (Bankr. D.N.J.)(The purpose of the disclosure requirement is to ensure that "complete, truthful and reliable information is put forward at the outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction.").

The Debtor possessed specific descriptions of the investment funds, but the interests were not identified by name or properly characterized on the schedules. Debtors are not permitted to withhold information, simply because they believe or decide that an asset has no value or that the information is not necessary. In re Kleinman, 2011 WL 5528250, at 5.

Further, the schedules were amended to add Bahama Gardens only after the Debtor's discharge had been challenged, and were never amended to add the interests in WSW Buyout and WSW Intl as assets of the Debtor.

Finally, the Debtor did not disclose the investment interests to the Chapter 7 trustee at her §341 meeting of creditors on September 6, 2012. (Transcript, pp. 24, 26).

**2. Material assets**

Three post-petition distributions have been made from the investment funds: (1) a distribution from WSW Buyout in January of 2013 in the amount of $33,199.00; (2) a distribution from WSW Intl in May of 2013 in the amount of $16,793.00; and (3) a distribution from WSW Buyout shortly before trial in the amount of $19,600.00. (Main Case, Doc. 62; Transcript, pp. 28-29).

Additionally, the Trustee sold the Debtor's interest in Bahama Gardens during the bankruptcy case for the sale price of $12,500.00. (Main Case, Docs. 40, 63; Transcript, p. 25).

Consequently, WSW Buyout, WSW Intl, and Bahama Gardens have yielded the approximate total sum of $82,000.00 after the filing of the Debtor's bankruptcy petition. ($33,199.00 + $16,793.00 + $19,600.00 + $12,500.00 = $82,092.00; Transcript, p. 29). The assets owned by the Debtor on the petition date, but not disclosed to the Chapter 7 trustee, were material to the bankruptcy estate. In re Carl, 2014 WL 4365314, at 11.

**B. Fraudulent intent**

For the reasons shown above, the Court finds that the Debtor failed to disclose material assets in her bankruptcy case. The assets included her interests in WSW Buyout, WSW Intl, and Bahama Gardens.

The Court also finds that the Debtor's nondisclosures were made with the intent to hinder, delay, or defraud her creditors. To establish actual intent, the party objecting to a discharge under §727(a) generally must rely on circumstantial evidence or inferences drawn from the debtor's conduct. In re Waite, 516 B.R. at 8-9.

In this case, for example, the evidence includes the Debtor's testimony that (1) she reviewed her bankruptcy schedules before she signed them and noted corrections for her attorney, (2) she received the paperwork from her attorney and signed it, (3) she only received the signature pages from her attorney, but did not see the schedule of assets or income, (4) she only saw the summary of schedules, and (5) she could not see at the time that she received the papers, and did not review the schedules. (Transcript, pp. 35-36). In addition to the Debtor's difficult testimony regarding her signature on the schedules, the following evidence establishes the Debtor's intent:

**1. The Debtor's ability to understand her obligation to disclose**

First, the Debtor understood her obligation to disclose her assets on her schedules and in the case. Her background indicates that she is a knowledgeable businesswoman who is accustomed to managing her financial affairs.

The Amended Inventory filed in her husband's probate estate in 2007, for example, reflects a "total of all personal property and Florida real estate" valued at approximately $6,103,717.00, and includes a number of corporate and partnership interests. (Exhibit 10). The attorney for the probate estate testified that the Debtor provided much of the information about the property from her records, and that the Debtor assisted him in determining the probate estate's assets. (Exhibit 12, Deposition Transcript of Samuel Spencer Blum, pp. 21, 41, 48).

The financial affairs managed by the Debtor involve substantial business or investment matters, and not a simple consumer budget. The Debtor testified, for example, that the primary factor that led to the filing of her bankruptcy petition involved a "huge commercial property" in Daytona Beach. Further, the Debtor listed more than $9,200,000.00 in unsecured debt on her schedules, and a

significant portion of the total debt is commercial or business debt. (Transcript, p, 34; Main Case, Doc. 1).

Generally, where a debtor is a sophisticated business person, her failure to disclose certain assets indicates an intent to mislead her creditors. See In re Schwartz, 2014 WL 2621114, at 6 (Bankr. D.N.J.)(citing In re Kleinman, 2011 WL 5528250 (Bankr. D.N.J.)). Courts may consider a debtor's business experience when evaluating his knowledge of whether or not a statement was false or misleading. See Bub v. Rockstone Capital, LLC, 516 B.R. 685, *6 (E.D.N.Y. 2014).

In this case, the Debtor's background and prior management of her financial affairs evidences her ability to understand the obligation to disclose her assets and to provide the complete financial information required by the Bankruptcy Code.

**2. The Debtor's knowledge of the assets and their potential value**

Second, the Debtor knew that she held an interest in WSW Buyout, WSW Intl, and Bahama Gardens at the time that she filed her bankruptcy petition, and also knew that the investment interests had potential value for her bankruptcy estate.

She inherited the interests from her husband, and was co-personal representative of his probate estate. As co-personal representative, she signed the Amended Inventory that listed the interests on April 16, 2007. (Exhibit 10).

**A. Bahama Gardens**

The partnership interest in Bahama Gardens was listed on the Amended Inventory in her husband's probate estate. (Exhibit 10). The probate case remained open as of the date that the Debtor filed her bankruptcy petition, because the interest in Bahama Gardens was not yet resolved. (Exhibit 12, Deposition Transcript of Samuel Spencer Blum, pp. 13, 44).

Significantly, the Debtor personally had attempted to liquidate her interest in Bahama Gardens approximately fifteen months before filing her bankruptcy petition. (Exhibit 3). On April 26, 2011, the Debtor sent the following email to Steven Justi at Bahama Gardens:

> I need you to buy back my shares in Bahama Gardens plus interest. It looks like you have never paid any dividends on Derick's investment in all these years.
>
> Should you elect not to do this, then kindly and immediately forward the P & Ls and full tax returns for the past 4 years, including all receipts, disbursements and backup for the tax returns so that I may give this to IRS. If you choose not to do this I will provide the information to them and they can do their own audit after I sign the shares over to them to settle my tax obligation.

(Exhibit 3)(Emphasis in original). Bahama Gardens owns certain real property with five rental homes in Key West, and the Debtor testified that she asked for the buyback of her interest because she "knew they had to be worth something." (Exhibit 11, Deposition Transcript of Steven A. Justi; Transcript, p. 59).

The Chapter 7 trustee sold the interest in Bahama Gardens during the bankruptcy case for the sum of $12,500.00. (Main Case, Docs. 40, 63).

**B. WSW Buyout and WSW Intl**

The interests in WSW Buyout and WSW Intl were also listed on the Amended Inventory that was signed by the Debtor in her husband's probate estate. (Exhibit 10). The Debtor knew that she held an interest in the funds at the time that she filed her bankruptcy petition.

Periodic statements reflecting the status of her accounts were mailed to the Debtor from the investment funds. As an example, a "Capital Account Balance Statement for the Period Ended June 30, 2012" was mailed to the Debtor, which showed the "fund" as WSW Intl, the "investor" as the Debtor, the "ownership" as 0.326%, and the "capital call status" as current. The Ending Balance as of

June 30, 2012, was $71,020.00. (Exhibit 8, Doc. 000008). The Debtor's Chapter 7 petition was filed on August 1, 2012, approximately one month after the statement's ending date.

The Debtor does not deny that she held an interest in WSW Buyout and WSW Intl as of the petition date, and does not deny that she knew that the interests existed. In fact, she acknowledges that she had account statements, tax returns, and K-1s in her possession that reflected the interests, and claims that she provided the documents to her attorney before the petition was filed. (Transcript, pp. 45-46).

The Debtor also knew that her investment interests in WSW Buyout and WSW Intl had potential value to her bankruptcy estate. The Debtor testified that she relied on distributions from the investment funds for income after her husband died. (Transcript, pp. 11, 55). In 2008, she received three distributions from the funds that totaled the sum of $102,556.00, and on May 11, 2010, she received a distribution from WSW Intl in the amount of $21,747.00. (Exhibit 16; Transcript, pp. 48-49).

The Debtor knew of her interests in WSW Buyout and WSW Intl as of the petition date, and knew of their potential value to the estate. She did not adequately disclose her interests in the investment funds on her bankruptcy schedules, and did not otherwise disclose the interests to the Chapter 7 trustee.

**3. The Debtor's post-petition conduct**

On January 16, 2013, while her bankruptcy case was pending, the Debtor received a distribution from WSW Buyout in the amount of $33,199.00. (Exhibit 16). The Trustee was not informed of the distribution until after it was discovered in litigation. (Transcript, p. 26). On May 22, 2014, the Court entered an Order directing the Debtor to turn over the sum of $33,199.00 to the estate, but the Debtor

has not delivered the sum to the Trustee. At trial, the Debtor testified that she no longer has any of the funds from the distribution. (Transcript, pp. 28, 50).

The evidence indicates that the Debtor never intended to turn over the funds to her bankruptcy estate.

First, the funds in the amount of $33,199.00 were received into an account held jointly by the Debtor and her son on January 16, 2013. The account (PNC Bank Account #42-0813-0611) had been listed on the Debtor's schedules as an account owned by the Debtor and Joseph Wasserstrom. Two days after the deposit, on January 18, 2013, the Debtor transferred the sum of $31,300.00 from the scheduled, joint account into an account owned solely by her son. (Exhibit 15, PNC Performance Checking Statement for account # 42-0813-0611 for the period 12/20/2012 to 01/18/2013, "Tel 0700007301 0023 Transfer to XXXXXX9016"). Eventually, the funds were transferred back to the joint account and apparently used for the Debtor's living expenses. (Exhibit 13, Deposition Transcript of Joseph Wasserstrom, pp. 24-27).

Second, it appears that the Debtor was cognizant of the dischargeability deadline at the time that she received the distribution. Specifically, the Debtor testified:

> I asked [my attorney] to check when I got the check if it was within 120 days of the hearing.
>
> Well, it turned out that Mr. Johnson had gotten a 90-day extension of some sort on the – on some hearing or something, and so that wiped out my ability to have it. But at that point I was so disgusted I just kept it.

(Transcript, pp. 77-78). The last day to oppose the Debtor's discharge or dischargeability was November 6, 2012, or 60 days after the §341 meeting of creditors. (Main Case, Doc. 5). The Plaintiff

obtained a 45-day extension of the time to oppose the Debtor's discharge until December 20, 2012. The Complaint was timely filed on December 20, 2012.

In other words, the evidence shows that the Debtor received the distribution post-petition, promptly moved the funds out of her scheduled account, and later spent the money after learning that it belonged to her bankruptcy estate. Under these circumstances, the Court finds that the Debtor never intended to turn over the funds to the Chapter 7 trustee.

**4. Summary of fraudulent intent**

A claim to deny a debtor's discharge requires proof that the debtor actually intended to hinder, delay, or defraud his creditors. In re Carl, 2014 WL 4365314, at 11.

In this case, the Debtor's fraudulent intent is established by evidence that (1) she is a knowledgeable businesswoman who understood her obligation to disclose her assets; (2) she knew that she held an interest in WSW Buyout, WSW Intl, and Bahama Gardens as of the petition date, and knew that the interests had potential value to the bankruptcy estate; (3) she failed to disclose her interests in WSW Buyout, WSW Intl, and Bahama Gardens on her schedules or to the Chapter 7 Trustee; and (4) she failed to disclose or turn over the distribution that she received from WSW Buyout while her bankruptcy case was pending.

**Conclusion**

The Plaintiff, William Hansard, commenced this action by filing a Complaint to deny the Debtor's discharge pursuant to §727(a) of the Bankruptcy Code.

The discharge of a debtor may be denied under §727(a)(2)(B) of the Bankruptcy Code, if the debtor conceals property of the estate after filing a bankruptcy petition, with the intent to defraud

creditors. If the concealment includes a deliberate omission from the debtor's schedules, the debtor's discharge may also be denied under §727(a)(4) of the Bankruptcy Code based on the false oath.

In this case, the Debtor did not list certain investment interests on her bankruptcy schedules, and did not disclose her post-petition receipt of a $33,199.00 from one of the investments. Based on her pattern of conduct and the surrounding circumstances, the Court finds that the Debtor intended to defraud her creditors by the omissions and concealment, and that the Debtor's discharge should be denied pursuant to §727(a)(2)(B) and §727(a)(4) of the Bankruptcy Code.

Accordingly:

**IT IS ORDERED** that:

1. The discharge of the Debtor, Lee Daniels, is denied pursuant to §727(a)(2)(B) and §727(a)(4) of the Bankruptcy Code.

2. A separate Final Judgment in favor of the Plaintiff, William Hansard, and against the Debtor, Lee Daniels, shall be entered consistent with these Findings of Fact and Conclusions of Law.

**DATED** this 17 day of March, 2015.

**BY THE COURT**

PAUL M. GLENN
United States Bankruptcy Judge