IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

Hong V. Nguyen, Case No. 23-11899

Debtor.

Radiance Capital Receivables Twelve, LLC,

Plaintiff,

v. Adversary Case No. 24-1004

Hong V. Nguyen,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW FOLLOWING TRIAL

The court conducted a trial on November 1, 2024, on plaintiff Radiance Capital Receivables Twelve, LLC's ("Radiance") claims for nondischargeability under Bankruptcy Codes §§ 523 and 727 against debtor-defendant Hong V. Nguyen ("Mr. Nguyen"). The court heard sworn testimony from Mr. Nguyen and his wife Phi Thi Phoung Do, and admitted plaintiff's exhibits 1-12 (including all subparts) and defendant's exhibits 1-5.

Mr. Nguyen filed for chapter 7 bankruptcy in 2023. Unfortunately, he was not honest and straightforward in his bankruptcy filings. As a result, having carefully considered the evidence and the applicable law, the court denies Mr. Nguyen a discharge.

Findings of Fact

In many ways, Mr. Nguyen has lived an exemplary life and overcome many obstacles. His father fought for South Vietnam. Mr. Nguyen was just a child when his family and he were

imprisoned in a camp after the war. They ultimately escaped to Thailand and migrated to the United States when he was ten. He has been in this country since the early 1980's.

Mr. Nguyen testified at trial and in his deposition[1] that he attended Pensacola Junior College, graduated, and went to work as an automobile mechanic in Pensacola. He met his now-wife, they moved to Mobile, and Mr. Nguyen went into the hotel business. He owned and operated two hotels, both of which closed as a result of the 2010 BP oil spill in the Gulf of Mexico. He held off filing for bankruptcy around that time due to a substantial pending BP claim. He currently lives in Mobile with his wife and three daughters in a house which he says is owned by his wife and brother.

In 2017, Radiance obtained an Alabama state court judgment of approximately $1.6 million against Mr. Nguyen and others arising out of a loan to one of the failed hotels. (*See* Radiance exs. 6, 6.1, 6.2, 6.3, and 6.4). Radiance recorded a judgment lien against Mr. Nguyen in the Probate Court of Mobile County, Alabama, in June 2017. (*See* Radiance ex. 6). Mr. Nguyen eventually filed this chapter 7 bankruptcy on August 21, 2023, after his BP claim did not pan out. Radiance filed this nondischargeability action against Mr. Nguyen under Bankruptcy Code §§ 523 and 727 in February 2024.

At the time of his bankruptcy filing, Mr. Nguyen had interests in multiple companies, including, but not limited to, the following:

- 5% interest in Healthy Hotels Inc., which was a car wash business (*see* Radiance ex. 9);
- ownership in whole or part of Global Online Direct, Inc. (*see* Radiance ex. 9.1);

[1] Deposition testimony is generally considered hearsay, but the parties agreed to the depositions of Mr. Nguyen and his wife being admitted into evidence.

- ownership in whole or part of Creating Health and Opportunity, Inc. (*see* Radiance ex. 9.2);[2]
- membership interest in Goodman's Cash & Carry LLC (*see* Radiance ex. 9.3);
- membership interest in Crab Pot of Mobile, LLC (*see* Radiance ex. 9.4);
- membership interest in Adams Construction Company, LLC (*see* Radiance ex. 9.5).

But in his sworn bankruptcy schedules filed in August 2023 and submitted under penalty of perjury Mr. Nguyen stated that he had no legal or equitable interest in any "[n]on-publicly traded stock and interests in incorporated or unincorporated businesses, including an interest in an LLC . . . ." (*See* main case, doc. 1, Schedule A/B).[3] He also answered "no" to whether he owned "other property of any kind you did not already list." (*See id.*). In January 2024, he testified that there were no "entities, businesses, companies that exist" in which he had an interest and no companies or businesses in which he owned stock. (*See* Nguyen depo., Radiance ex. 2, at 40:9-15). He added that within four years of his bankruptcy filing, he did not "have any LLC or corporation. Nothing." (*See id.*, at 43:12-15). Mr. Nguyen amended Schedule A/B (main case, doc. 23) in December 2023, but only included the following: "There are no current open corporate entities. Healthy Hotels, Inc. was closed in 2020 when Radiance Capital took over the car wash."

Radiance filed a motion (doc. 16) for summary judgment on August 26, 2024, in part on the grounds that Mr. Nguyen intentionally concealed property of the estate and knowingly made

[2] This entity is listed as "Cheating Health and Opportunity" in the certified Alabama Secretary of State record but Mr. Nguyen admitted at trial that this was a mistake and the correct name of the entity – as listed in its Articles of Incorporation – is Creating Health and Opportunity.

[3] Both parties offered the schedules (original and amended) as exhibits and the court admitted them. The court prefers to use CM/ECF document numbers for ease of reference and will refer to the "main case" when referring to document numbers in that case as opposed to this adversary proceeding.

false oaths in his bankruptcy schedules. The court scheduled a hearing on that motion for September 24, 2024. On September 20, 2024 – over a year after he filed bankruptcy and less than two months before trial – Mr. Nguyen filed amended schedules (main case, doc. 44) and SOFA (main case, doc. 45), which included the following:

- Creating Health & Opportunity Inc. – 100% ownership interest with a value of $1,347.59;
- Healthy Hotels Inc. – 100% ownership interest with a value $883.22;
- Goodman Cash & Carry – closed but not dissolved – 5% ownership with a value of $1.00;
- Global Online Direct – closed but not dissolved – 100% ownership with a value of $1.00;
- MML Luncher – closed but not dissolved – 100% ownership with a value of $1.00.

Mr. Nguyen has never listed his interests in Crab Pot of Mobile and Adams Construction Company.

The court admitted Mr. Nguyen and his wife's joint tax returns for 2018-2022 (Radiance exs. 11-11.4) without objection. Mr. Nguyen and his wife claimed a carryover loss from the downfall of the hotel business a result of the BP oil spill. But the returns also show income from various companies, and Mr. Nguyen testified that he worked for Goodman's Cash & Carry until 2021 and received at least some income from that company. (*See* Nguyen depo., Radiance ex. 2, 72:12-73:8; *see also* Radiance ex. 11.3). He also reported income of approximately $45,000 from another entity, Car Time, LLC, in 2022. (*See* Radiance ex. 11.4; Nguyen depo., Radiance ex. 2, at 74:7-17). Despite this, in his August 2023 Statement of Financial Affairs ("SOFA") (main case, doc. 1), submitted under penalty of perjury, and December 2023 amended SOFA (main case, doc. 24), also submitted under penalty of perjury, Mr. Nguyen answered "No" to the questions "Did you have any income from employment or from operating a business during this

year or the two previous calendar years?" and "Did you receive any other income during this year or the two previous calendar years?" He continued to maintain under penalty of perjury that he had no income in another amended SOFA (main case, doc. 45) even after Radiance moved for summary judgment.

Finally, there was evidence at trial of multiple transfers of real estate by Mr. Nguyen's company, Creating Health, to his wife in October 2022, less than a year before he filed for bankruptcy. (*See* Radiance exs. 8, 8.1, and 8.2). The transfers were each for a nominal $10.00 and were all signed by Mr. Nguyen as president of Creating Health. None of the transfers were disclosed in his schedules until after Radiance moved for summary judgment.

Conclusions of Law

Radiance's complaint (doc. 1) includes claims for nondischargeability under Bankruptcy Code § 523(a)(4) and (a)(6) (counts 1 and 2), as well as multiple claims under § 727. Radiance argues that Mr. Nguyen's discharge is due to be denied (1) under § 727(a)(2)(A) (count 3) because Mr. Nguyen intentionally transferred or concealed property of the estate; (2) under § 727(a)(4) (count 5) because he made multiple false oaths and accounts in his bankruptcy; and (3) under § 727(a)(3) (count 4) because he failed to preserve adequate records related to his financial condition.[4] Radiance must prove its §§ 523 and 727 claims by a preponderance of the evidence. *See PRN Real Estate & Invs. v. Cole*, 85 F.4th 1324, 1334 (11th Cir. 2023); *In re Harris*, 3 F.4th 1339, 1344-45 (11th Cir. 2021); *In re Kane*, 755 F.3d 1285, 1293 (11th Cir. 2014); *In re Jennings*, 533 F.3d 1333, 1339 (11th Cir. 2008).

[4] The complaint also includes a count (count 6) for "Nondischargeability under 11 U.S.C. § 727(5)[,]" which the court construes as a claim under Code § 727(a)(5). Radiance did not offer any evidence on this claim at trial and the court finds that Radiance has abandoned that claim.

Bankruptcy Code § 523

Section 523(a)(4) bars the discharge of a debt "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny . . . ." Radiance did not prove its § 523(a)(4) claim by a preponderance of the evidence and the court finds for Mr. Nguyen on this claim.

The court now turns to Radiance's claim under § 523(a)(6). This section bars the discharge of a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity . . . ." A debtor's actions which occurred after the debt had been incurred or after judgment on the debt had already been entered cannot support a § 523(a)(6) claim because the "injury" is the underlying debt. *See In re Gaddy*, 977 F. 3d 1051, 1058-59 (11th Cir. 2020).

Radiance identified a single transfer of property that it contends is subject to § 523(a)(6). Radiance exhibit 8.10 shows that in 2010 Joe and Rita Goodman conveyed real estate ("the Goodman property") located in Mobile County, Alabama, to Mr. Nguyen and his partner, Tuong Cong Pham, for use as a gas station. That exhibit further shows that Mr. Nguyen and Mr. Pham conveyed the Goodman property by warranty deed to Citronelle First Stop, LLC in 2021. Radiance argues that this transfer was done to avoid the Radiance judgment. But the transfer of the Goodman property occurred around four years after Radiance's judgment was entered. Eleventh Circuit law is clear "that actions taken by a debtor after a debt is incurred, even if in an effort to thwart a creditor's collection efforts by fraudulently conveying assets, [do not] create a separate injury for the purposes of § 523(a)(6)." *See In re Gaddy*, 977 F.3d at 1059.

In re Jennings, 670 F.3d 1329 (11th Cir. 2012), relied on by Radiance in its trial brief, is inapposite. There, the § 523(a)(6) claim arose from the transfer itself. The creditor had already obtained a fraudulent transfer judgment of $3.9 million before filing the § 523(a)(6) case, and it

was that fraud judgment, not the related tort claim judgment of $24.8 million, which was held nondischargeable. *See id.* at 1333-34.

At any rate, the court finds that Radiance has not proven an injury under this claim. Under the applicable Alabama law, Radiance's judgment lien survives the transfer, and Radiance still has a valid perfected judgment lien that attaches to the Goodman property, regardless of the subsequent conveyance. *See* Ala. Code § 6-9-211; *Norman v. Bozeman*, 605 So. 2d 1210, 1214 (Ala. 1992).

Bankruptcy Code § 727(a)(2)(A)

Section § 727(a)(2) provides in pertinent part that the court should deny the debtor a discharge if "the debtor, with intent to hinder, delay, or defraud a creditor . . . , has transferred or . . . concealed . . . property of the debtor, within one year before the" petition date. Radiance must prove "(1) that the act complained of was done within one year prior to the date the petition was filed, (2) with actual intent to hinder, delay, or defraud a creditor, (3) that the act was that of the debtor, and (4) that the act consisted o[f] transferring . . . or concealing any of the debtor's property." *See PRN Real Estate v. Cole*, 85 F.4th at 1334 (citation and quotation mark omitted).

"Transfer" is construed broadly, and "even a disposition of possession, custody, or control could qualify . . . ." *See In re Kessler*, No. 19-02539-TOM-7, 2021 WL 2429495, at *8 (Bankr. N.D. Ala. June 14, 2021) (citation and quotation marks omitted). Factors to consider with respect to alleged transfers include:

(1) the lack or inadequacy of consideration for the property received;

(2) the nature of the relationship between the transferor and the transferee;

(3) whether the transferor retains possession, control, benefits, or use of the property in question;

(4) whether the transfer resulted in insolvency;

(5) the cumulative effect of the debtor's transactions and course of conduct after the onset of financial difficulties or threat of suit by creditors; and

(6) the general chronology and timing of the transfer in question.

In re Jennings, 533 F.3d at 1339.

"Conceal" means "'to knowingly withhold information about property or to knowingly prevent its discovery.'" *See PRN Real Estate v. Cole*, 85 F.4th at 1334. "Numerous omissions from the schedules and statement of financial affairs may signify a reckless disregard for the truth, which in turn is generally recognized as the equivalent of fraud." *In re Savage*, No. 14-00540 TOM 7, 2016 WL 856016, at *9 (Bankr. N.D. Ala. Mar. 4, 2016).

"Since it is unlikely that a debtor will admit that he intended to hinder, delay, or defraud his creditors, the debtor's intent may be established by circumstantial evidence or inferred form the debtor's course of conduct." *In re Jennings*, 533 F.3d at 1339; *see also In re Kane*, 755 F.3d at 1298. "Once the creditor introduces circumstantial evidence indicating the debtor's intent, the debtor must respond with more than an unsupported assertion of honest intent. Additionally, courts must weigh the debtor's assertions of honest intent against the natural inferences from the admitted facts." *Hines v. Marchetti*, 436 B.R. 159, 165 (M.D. Ala. 2010), *aff'd*, 418 F. App'x 797 (11th Cir. 2011) (internal citations omitted).

The court finds that Radiance has proven this claim by a preponderance of the evidence and that Mr. Nguyen's assertions of honest intent are insufficient. Mr. Nguyen finally admitted – when faced with a motion for summary judgment – that he owned 100% of Creating Health. Less than a year before his bankruptcy, though, he transferred multiple parcels of real estate from that wholly-owned company to his wife, for nominal consideration. His only explanation was that his wife pays the taxes for these properties, which the court does not find sufficient. Rather,

the court infers from the circumstances that Mr. Nguyen transferred these properties to put them out of reach of Radiance and other creditors, and denies a discharge on this ground. *See, e.g.*, *id.*, at 166 n.2 (a debtor causing his wholly-owned corporation to transfer property can provide a basis for denial of discharge under § 727(a)(2)(A)).

Bankruptcy Code § 727(a)(4)

Under § 727(a)(4)(A), the court should deny the debtor a discharge if "the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account . . . ." "The purpose of § 727(a)(4)(A) is to ensure that sufficient facts are available to all interested persons in the administration of the estate without requiring investigations or examinations to determine whether the provided information is correct." *In re Mitchell*, 496 B.R. 625, 631 (Bankr. N.D. Fla. 2013). Radiance must show that "(1) the debtor made a false statement under oath; (2) the debtor knew the statement was false; (3) the statement was material to the bankruptcy case, and (4) the debtor made the statement with fraudulent intent." *See id.* at 631-32; *see also In re Sutton*, No. 10-72943, 2013 WL 1933015, at *3 (Bankr. N.D. Ala. May 9, 2013).

"Debtors sign their bankruptcy schedules and statement of financial affairs under penalty of perjury that the information provided and contained with the documents is true and correct." *In re Mitchell*, 496 B.R. at 637. "An omission from the debtor's SOFA or schedules may constitute false oaths under [§ 727(a)(4)(A)]." *See In re Phillips*, 476 F. App'x 813, 816 (11th Cir. 2012). "The veracity of a debtor's schedules and statement of financial affairs is paramount to the successful administration of a bankruptcy case. . . . When a debtor omits important information and does not make a full disclosure, the debtor places his right to discharge in

serious jeopardy." *In re Mitchell*, 496 B.R. at 632; *see also In re Kessler*, 2021 WL 2429495, at *13. "The need for accurate disclosure in the schedules is fairly simple, as creditors should not have to dig and independently investigate a debtor's affairs in order to get the facts; thus, a debtor does not get to decide what information is relevant and should be disclosed." *In re Kessler*, 2021 WL 2429495, at *13.

"To justify denial of discharge, the false oath must be fraudulent and material." *In re Whigham*, 770 F. App'x 540, 545 (11th Cir. 2019). "Whether a debtor knowingly and fraudulently made a false oath is a question of fact . . . ." *See id.* "The subject matter of a false oath is 'material,' and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property." *In re Chalik*, 748 F.2d 616, 618 (11th Cir. 1984). "The recalcitrant debtor may not escape a section 727(a)(4)(A) denial of discharge by asserting that the admittedly omitted or falsely stated information concerned a worthless business relationship or holding; such a defense is specious." *Id.*

"The [c]ourt can look to the totality of circumstances, including the recklessness of a debtor's behavior, to infer whether a debtor submitted a statement with intent to deceive." *In re Mitchell*, 496 B.R. at 640; *In re Phillips*, 476 F. App'x at 816 n.1. "Because debtors generally will not testify as to their own misconduct, that a false oath was made knowingly and fraudulently is generally proven by circumstantial evidence or inferences drawn from circumstances surrounding the debtor." *In re Mitchell*, 496 B.R. at 640; *In re Phillips*, 476 F. App'x at 816 n.1. A creditor "may show the debtor's fraudulent intent either by establishing that the debtor engaged in a pattern of concealment, or that the debtor possessed a reckless indifference to the truth." *In re Mitchell*, 496 B.R. at 640. If a creditor "brings forward credible

evidence establishing [the elements for a § 727(a)(4)(A) claim], the burden shifts to the debtor to convince the court not to deny discharge based on the [creditor]'s evidence." *See In re Phillips*, 476 F. App'x at 816.

Here, as to the first element and third elements, Radiance proved that Mr. Nguyen made multiple material omissions on his sworn schedules, including about his income and his interests in multiple companies, such as Creating Health and Opportunity, Inc.; Global Online Direct, Inc.; Goodman's Cash & Carry LLC; Crab Pot of Mobile, LLC; and Adams Construction Company, LLC. As to the second and fourth elements, Mr. Nguyen's conduct "evidences both a pattern of concealment and a reckless indifference to the truth." *See In re Mitchell*, 496 B.R. at 640. "'While an isolated omission may be attributed to oversight, a pattern of omissions clearly warrants the conclusion that the omissions from the [SOFA] and the [s]chedules were made with the requisite fraudulent intent.'" *Id.* (citation omitted). At a minimum, Radiance's evidence illustrates "a cavalier disregard for the truth serious enough to supply the necessary fraudulent intent required by § 727(a)(4)(A)." *See In re Eigsti*, 323 B.R. 778, 785 (Bankr. M.D. Fla. 2005) (citation and quotation marks omitted).

Radiance produced credible evidence establishing the elements of its § 727(a)(4) claim. But Mr. Nguyen did not convince the court that the discharge should not be denied. He argued that he failed to disclose certain assets because he believed they had no value, and he and his counsel repeatedly asserted an analogy to a car with no transmission. This argument lacks merit because it is not for a debtor to decide what assets have value, and even a car with no transmission would be property of the estate. *See In re Chalik*, 748 F.2d at 618; *In re Pitts*, No. 10-81454-DHW, 2011 WL 3862193, at *5 (Bankr. M.D. Ala. Sept. 1, 2011). "It is well settled in this circuit that it is not for a debtor to decide what does or does not have value; the debtor

must list all assets, leaving it to the creditors and trustees to decide for themselves what assets may benefit them." *See In re Mitchell*, 496 B.R. at 638. A "debtor may not defend himself by claiming the assets omitted were worthless." *See In re Virani*, 574 B.R. 338, 345 (Bankr. N.D. Ga. 2017); *see also In re Whigham*, 770 F. App'x at 546 ("Moreover, even assuming the account contained little money, false oaths regarding worthless assets may bar the discharge of debts."); *In re Chalik*, 748 F.2d at 617-19.

Mr. Nguyen's eleventh hour amendments to his schedules and SOFA do "not wipe [his] hands clean." *See In re Mitchell*, 496 B.R. at 638 ("Amending the Schedules and providing information three months post-petition does not wipe the Debtors' hands clean. Chapter 7 is not designed to require creditors to dig for or conduct independent examinations to get information about a case."); *In re Khanani*, 374 B.R. 878, 890 (Bankr. M.D. Fla. 2005) (late amendments to schedules do not cure the original omissions). He did not list certain assets until after Radiance moved for summary judgment and over a year after he filed for bankruptcy, and even to date he has failed to list all assets and income.

Mr. Nguyen "has crossed the line between being merely dilatory and unresponsive, but deserving of a discharge, and committing acts and omission that call for the denial of his discharge." *See In re Khanani*, 374 B.R. at 890. Section 727(a)(4)(A) "was enacted to prohibit a discharge for those who play fast and loose with their assets or with the reality of their affairs." *See In re Mitchell*, 496 B.R. at 632 (citation and quotation marks omitted). This is not a case of "technical" or "sloppy" violations, as argued by debtor's counsel. Rather, the court finds that this is a case of a debtor playing fast and loose with his assets and the reality of his affairs, and, for the reasons discussed above, rules in Radiance's favor on the § 727(a)(4)(A) claim.

Bankruptcy Code § 727(a)(3)

A debtor's discharge will also be denied under § 727(a)(3) if "the debtor has . . . 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." Radiance must show "that: (1) the debtor failed to keep or preserve adequate records, and; (2) that such failure makes it impossible to ascertain the debtor's financial condition." *See In re Yocum*, 488 B.R. 748, 755 (Bankr. N.D. Ala. 2013) (citation and quotation marks omitted). If so, "the burden shifts to the debtor to explain why the records were not kept." *See id.* (citation and quotation marks omitted). "Section 727(a)(3) has been consistently read to impose an affirmative obligation on [a debtor] to keep records appropriate to [his] circumstances. . . . The debtor's intent is not relevant." *See id.* (citations and quotation marks omitted).

Mr. Nguyen does not have any records related to his interests in multiple entities, or records pertaining to the entities themselves, and the court finds that he has not adequately explained why he does not have such records. Again, it was only after Radiance filed for summary judgment that Mr. Nguyen disclosed many of the entities at all, and he has never provided any documentation about income received. The court finds that Radiance has proven its claim under § 727(a)(3) and will also deny a discharge on this ground.

Conclusion

The court takes no pleasure in this ruling and realizes that it makes Mr. Nguyen's difficult situation even harder. But filing bankruptcy is a serious matter, not a game of "hide the ball." A bankruptcy debtor must fully and truthfully disclose all aspects of his finances, and it is

not up to the trustee or creditors to sniff out assets. The failures here go well beyond what this court can countenance, and the cumulative effect of the debtor's omissions compel this result.

The court thus finds for the plaintiff Radiance Capital Receivables Twelve, LLC and denies the debtor-defendant Hong V. Nguyen a discharge under Bankruptcy Code §§ 727(a)(2)(A), (a)(3), and (a)(4), any one of which would be sufficient. *See, e.g.*, *In re Whigham*, 770 F. App'x at 544 ("A finding against [the debtor] under any single subsection of section 727 is sufficient to deny . . . a discharge.").

The parties consented to the entry of a final judgment by this court. The court will enter a separate final judgment denying the debtor a discharge in bankruptcy case no. 23-11899.

Dated: January 8, 2025

HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE

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