

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In Re:

JAMES LOWELL
SNODGRASS,

Debtor.

Bankruptcy Case
No. 05-03216

UNITED STATES TRUSTEE,

Plaintiff,

vs.

JAMES LOWELL
SNODGRASS,

Defendant.

Adv. Proceeding
No. 06-6020

MEMORANDUM OF DECISION

Appearances:

James Lowell Snodgrass, Ontario, Oregon, Pro Se Plaintiff.

Jeffrey G. Howe, Boise, Idaho, Assistant U.S. Trustee, Attorney for Defendant.

The Plaintiff United States Trustee (“UST”) commenced this

adversary proceeding requesting an order denying the chapter 7¹ debtor James Lowell Snodgrass (“Defendant”) a discharge pursuant to §§ 727(a)(2)(A), (a)(2)(B), and (a)(4)(A). Docket No. 1. The Court conducted a trial in the action on December 14, 2006 at which the parties appeared and presented evidence and testimony, and submitted oral arguments. After duly considering the evidence, testimony and arguments, the Court concludes Defendant is not entitled to a discharge. The following Memorandum constitutes the Court’s findings of fact and conclusions of law. Fed. R. Bankr. P. 7052.

Findings of Fact²

I.

Defendant is an inmate incarcerated at the Oregon State Correction Institution in Ontario. He commenced his chapter 7 bankruptcy case on August 8, 2005. Bankr. Case No. 05-03216, Docket No. 1. Defendant was not represented by an attorney, and completed the required petition, schedules and statements on

¹ Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1330 and to the Federal Rules of Bankruptcy Procedure, Rules 1001– 9036, in effect prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), Pub. L. 109-8, 119 Stat. 23 (Apr. 20, 2005).

² These findings include both disputed and undisputed facts. In deciding disputed issues of fact, the Court carefully considered the testimony of the witnesses, and based upon its opportunity to observe them testify, assessed their credibility. The Court’s findings reflect its judgment on the weight to be given to that testimony.

his own. On his Schedule I, Defendant indicated he was receiving a \$428.00 monthly social security benefit and a \$389.00 monthly payment from a pension earned while employed by the State of Oregon. Sched. I, Ex. 2. In his Statement of Financial Affairs, Defendant represented that the \$428.00 social security benefit was paid directly to his two minor children. Stmt. Fin. Affairs, Ex. 2. Defendant did not disclose any additional sources of income.

Richard Crawford (“Trustee”) was appointed to serve as chapter 7 trustee in Defendant’s bankruptcy case. From his review of the schedules, Trustee determined there would be no assets available for distribution to Defendant’s creditors. Trustee conducted a § 341 meeting of creditors at which Defendant testified by telephone. During this meeting, while under oath, Defendant acknowledged he had signed the bankruptcy documents he had submitted in connection with his case, and that the documents he filed were true and correct. Meeting of Creditors Transcript 5:3-16, Ex. 7.

Trustee was later contacted by counsel for Standard Insurance Company, who indicated that Standard Insurance had been making payments to Defendant as a beneficiary under the terms of a group disability insurance policy since 1998. Standard Insurance believed the disability payments were being held for Defendant in an account at Sterling Savings Bank. Trustee investigated and

discovered Defendant indeed held a certificate of deposit in the amount of \$18,477.93, and a savings account with a balance of \$3,079.58, at that bank.

Trustee made a demand to the bank for the funds, which are now held in his trust account.

On November 18, 2005, Standard Insurance commenced an adversary proceeding against Debtor, seeking a nondischargeable judgment against Defendant in the amount of \$66,274.19, the amount of disability payments which Standard Insurance alleges Defendant wrongfully received while incarcerated under § 523(a)(2). Standard also requested that the Court deny Defendant a discharge pursuant to § 727(a). Compl., Adv. No. 05-6067, Docket No. 1.

On November 21, 2005, Melissa Parsley commenced an adversary proceeding against Defendant seeking a declaration that a pre-bankruptcy state court money judgment she holds against him constitutes a debt excepted from discharge in bankruptcy under § 523(a)(6). Pursuant to an arrangement previously negotiated between Defendant and Ms. Parsley, Defendant agreed to direct that the Public Employees Retirement System (“PERS”) pay his monthly benefits to Ms. Parsley until the money judgment was paid in full. Defendant now maintains this settlement is illegal and unenforceable, and has declined to set up the account to

pay Ms. Parsley. Preventing the collection of this money judgment appears to be the primary reason Defendant sought bankruptcy relief.

II.

Based upon the documentary and evidentiary record, and to better understand the material events that have transpired, the Court will set forth the additional facts in chronological order.

Defendant, while at work for the State of Oregon, was involved in an automobile accident on January 11, 1996. Ex. Y-3. Around the same time, and apparently unrelated to the automobile accident, serious criminal charges were filed against Defendant. Presumably to cope with his incarceration, on March 15, 1996, Defendant executed a power of attorney in favor of a friend, Joan Haller, to enable Ms. Haller to “act in all regards to my personal affairs.” Ex. 10. Defendant testified that during this time period he was suffering the effects of head injuries received in the accident that prevented him from managing his own financial affairs.

On August 27, 1996, Defendant received a letter from Standard Insurance informing him that his claim for short term disability benefits under his employer’s policy had been denied. Ex. 21A. The letter explained that, under the terms of the insurance policy, Defendant was not eligible for benefits while

incarcerated. *Id.* On August 28, 1996, Defendant responded to Standard Insurance with a letter acknowledging that he had been incarcerated from January 31, 1996 through April 26, 1996, but asserting that although he was not entitled to short term benefits, he believed he should receive long term disability benefits from the date he was released from jail. Ex. 21B. This letter was signed by both Defendant and his daughter, who Defendant testified was caring for him due to the injuries he sustained in the January accident. Of course, and contrary to the letter, Defendant had not been released from jail in April. On December 10, 1996, apparently in response to Defendant's letter request, Standard Insurance commenced payment of monthly long term disability benefits to Defendant. *See* Ex. 21C. On May 30, 1998, Defendant sent another letter to Standard Insurance requesting that his benefit checks be mailed to a new address, a post office box in Jefferson, Oregon. Ex. 21D. He did not mention in this letter that he was still in jail.

In the Spring of 1998, Defendant was sentenced by the Oregon state court to serve a prison term extending through 2012. On July 10, 1998, Defendant sent a letter, along with a power of attorney, to another friend, Randy Blair, asking him, presumably in conjunction with Ms. Haller, to handle his financial affairs. Ex. V-1. In addition, Defendant requested that Mr. Blair use the money paid to

him by Standard Insurance to repay a debt owed by Defendant to Mr. Blair and Ms. Haller. *Id.* It is not clear what role Mr. Blair played thereafter, as it was Ms. Haller who handled the disability checks from Standard Insurance when they arrived in the post office box. However, Ms. Haller testified by deposition that Defendant never owed her any money and that she simply agreed to handle financial matters while Defendant was incarcerated. Depo. of Joan Haller at 6–8, Docket No. 26.

Defendant contends that through this 1998 letter he assigned his interest in the disability payments to Haller. Defendant also points to a letter written to him in March 2005 by Ms. Haller, to support his position. In this letter, Ms. Haller indicates that she repaid the money she owed Defendant to his account. Ex. A-8. Defendant argues this indicates there was a loan between himself and Ms. Haller; however, the letter makes it clear it was Defendant who loaned money to Ms. Haller that she repaid, not the other way around. Other than the letter to Mr. Blair, there is no additional documentary evidence to support Defendant's contention that he assigned his disability payments to Ms. Haller to repay a loan she had made to him.

In August 1998, Ms. Haller, signing on behalf of Defendant, filled out and returned a Standard Insurance form indicating Defendant's medical

condition still prevented him from working, and that the post office box was still Defendant's current address. Ex. 21E. Defendant reaffirmed his disability prevented him from working in February 2001 and June 2003, when he personally filled out forms for Standard Insurance. Ex. 21F; 21G. Of course, Defendant was imprisoned in Ontario during this entire period of time, and presumably not eligible to receive insurance benefits.

In January 2003, Defendant wrote to Ms. Haller asking her about the balance in his bank account, and about the amount of the monthly disability payments from Standard Insurance. Ex. B-6. On February 21, 2003, Defendant again wrote to Ms. Haller as follows: "When you get a chance let me know the balance of my accounts [and] the amount I receive each month. I'd like to know about how much I have in my nest egg!" Ex. B-8. In March 2003, Defendant again asked Ms. Haller about the balance of his accounts and the amount of money he received each month. Ex. B-10. In March 2003, Ms. Haller responded to Defendant's letters by indicating the amount he had in his accounts and asking him how long she could tie up the funds in order to obtain a better interest rate. Ex. A-4. In June 2003, Ms. Haller sent Defendant a statement from Sterling Savings Bank indicating there was \$5,018.25 in one of Defendant's accounts. Ex. A-5.

On August 19, 2004, approximately a year before Defendant filed for bankruptcy relief, Defendant wrote to Ms. Haller and informed her that he was considering filing for bankruptcy. Ex. B-13. On September 11, 2004, Defendant requested by letter that Ms. Haller send him \$300, and then an additional \$300 in November. Ex. 11. Again in October 2004, Defendant requested that Ms. Haller send him \$300 as quickly as she could, and to send another \$300 “around the middle to the last of November.” Ex. 12. There are corresponding deposits of \$300 into Defendant’s prison trust account on October 18, 2004, November 2, 2004 and November 24, 2004. Trust Account Stmt at 3–4, Ex. 9.

On March 3, 2005, a few months prior to the filing of his bankruptcy petition, Defendant wrote to Ms. Haller, “[t]hanks also for the Standard Insurance info. This gives me a better idea of what is happening.” Ex. 13. In addition, in the letter, Defendant requests that Ms. Haller send \$500 to his trust account. *Id.* A \$500 deposit into the trust account was made on March 14, 2005. Trust Account Stmt at 6, Ex. 9.

Defendant wrote to Ms. Haller again on April 15, 2005, requesting she send him \$363 so that he could file a chapter 7 bankruptcy petition, as well as to pay additional legal fees to file a state court appeal. Ex. 14. A deposit for \$393 from Joan Haller appears in the trust account on May 2, 2005. Trust Account Stmt

at 8, Docket No. 9.

Based upon this course of events, the Court has no doubt that Defendant understood that the Sterling bank accounts contained his money, that Ms. Haller was maintaining the bank accounts on his behalf, and that when Defendant requested money, Ms. Haller sent it to him from the funds held in his bank accounts. The prison trust account statement documents the various deposits into Defendant's trust account which in turn correspond in time and amount to Defendant's requests made to Ms. Haller. *See* Trust Account Stmt, Docket No. 9.

Defendant first attempted to file his bankruptcy case in Oregon in June 2005. Defendant testified at trial that the petition and schedules were returned to him because the Oregon bankruptcy court would not accept documents filled out in pencil. Defendant, apparently correcting the problem, resubmitted his petition and schedules to the Oregon bankruptcy court, which were received on August 8, 2005. Ex. 2. Pursuant to a long-standing arrangement between the Districts of Idaho and Oregon, Defendant's bankruptcy petition and schedules were then transferred to Idaho for administration. Ex. 1.

In August, 2005, Defendant informed Ms. Haller that he would be obtaining a copy of his prison trust account statement, and that he needed to show that he was indigent so he wanted to keep the balance low, but after he received

the copy, it would be necessary for her to send him some money. Ex. 15. On September 12, 2005, Defendant sent a letter reminding Ms. Haller that he needed money to be deposited in his trust account. Ex. 17.

On September 18, 2005, Defendant sent a letter to Standard Insurance informing the company that he believed it had underpaid his disability benefits. The letter states in part:

You have been "offsetting" my Social Security Disability of \$861.00/mo. I have not received my Social Security Disability payment of \$861.00/mo since June, 1998. I have only received my Social Security Dependent payment of \$428.00/mo. My disability claim from you is \$2,036.10/mo. After the offsets you have been deducting, I receive \$747.10/mo. By my calculations you have made an error in not paying me the \$861.00/mo from June, 1998 until 9-18-2005 (87 months + 18 days). I would like this additional amount.

Ex. 21J. Of course, the contents of this letter show that, as of September 18, 2005, Defendant was fully aware of that he had been receiving a substantial benefit payment each month from Standard Insurance.

In a letter to Ms. Haller dated September 24, 2005, Defendant thanked her for "re-mailing" the September 18 letter addressed to Standard Insurance. Ex. 18. The letter goes on:

You asked me what I wanted you to do with my money in the accounts. Now that I have filed for

bankruptcy [and] it has been filed [and] is now in effect, I can go ahead [and] put my money into some type of a fairly long-term account in my name.[. . .] Save some money out that you can send me when I need a little so it all won't be tied-up in long term investments.

Ex. 18. Obviously, Defendant, at this point in time, considered the money in the bank accounts from Standard Insurance to constitute his personal funds.

Four days after sending the above letter to Ms. Haller, on September 28, 2005, the § 341 meeting of creditors was held. Defendant testified he signed and submitted his schedules to the Court and that the information regarding his assets and liabilities was true and correct. While he was aware of them at the time, Defendant did not disclose in either his schedules or his meeting testimony the existence of the on-going Standard Insurance benefit payments, nor the funds on hand in his bank accounts. Ex. 7.

On November 1, 2005, Defendant filed a motion to amend his schedules. Ex. 3. The motion consisted of explanations and documents as opposed to the filing of a new schedule. However, this information contained no reference to either the monies received from Standard Insurance nor the bank accounts.

The same day, November 1, 2005, Standard Insurance responded to Defendant's September 18, 2005 letter requesting that it pay him additional sums

each month. Ex. S-4. Standard Insurance indicated it had been unaware, but had now discovered, that Defendant had been incarcerated since April 27, 1998. It alleged that Defendant must have been aware that benefits under the disability policy were not payable to him while he was incarcerated based upon the previous correspondence sent to Defendant regarding the short term disability payments. Standard Insurance alleged that Defendant had therefore been overpaid \$66,274.19. In addition, Standard Insurance alleged that it was not aware Defendant was eligible to receive payments from his PERS account, which increased the amount of the overpayment to \$75,623.14. Defendant was notified that a quality assurance unit representative would be reviewing his claim. *Id.*

On November 18, 2005, Standard Insurance filed its adversary proceeding seeking a judgment against him for the amounts overpaid, and to deny Defendant a discharge. *See* Docket No. 14, Ex. 1. Standard Insurance again contacted Defendant by letter dated November 21, 2005 and indicated it was reserving its right to collect the overpayments. Ex. S-6. Additionally, on November 21, 2005, Ms. Parsley filed her adversary proceeding against Defendant. Docket No. 16, Ex. 1.

On November 28, 2005, Defendant wrote to Ms. Haller as follows:

Enclosed is a note you can take to [sic] Bank. Put everything in your name. We will consider it for

“other considerations” as just pay off of past debt, that should of been done many yr’s ago (over 3). Close-out anything in my name.

I have filed for bankruptcy. Started this in mid-yr to try and protect my PERS from Mellisa [sic]. Now Standard is trying to re-coup moneys paid to me. First they will have to “prove” that I owe them this debt. They are trying to find any \$ they might attach in the mean time.

Ex. 19. By this letter, it is obvious Defendant was attempting to further conceal the funds on deposit at the bank.

Finally, on January 11, 2006, Defendant wrote to Ms. Haller explaining that two adversary proceedings had been filed against him in connection with his bankruptcy case and that he wanted to protect his assets.

Defendant wrote:

I want to do what O.J. Simson [sic] did in his civil suit after his criminal case. He moved all his assets to Florida and even though he lost his civil case they could not collect anything from him in another state (especially FL which has some special rules on collection efforts). I want you to move all my assets (\$) to FL and this will put the first road-block in Standard’s efforts.

Ex. 20. The letter went on to advise, “[t]here is also some dollar amount that if you stay under this figure, you don’t have to report this transfer to the government.

We want to find out what this amount is and make all transfers under this amount

to prevent a ‘trail.’” *Id.*

The UST commenced this adversary proceeding to deny Defendant a discharge on February 28, 2006. Docket No. 1.

On July 20, 2006, Defendant filed amended schedules to reflect the Sterling Savings Bank savings account and Certificate of Deposit. Ex. 4.

III.

Simply put, the Court finds Defendant lacks credibility and declines to believe Defendant’s testimony or accept his explanations concerning the insurance benefit payments and funds in the bank accounts.

In particular, the Court finds as fact that Defendant did not assign the Standard Insurance disability payments to Ms. Haller as he suggests, but instead at all times considered the payments and money to be his own. Ms. Haller testified that she opened the Sterling Savings Bank accounts for Defendant because she had agreed to handle his financial affairs while he was unable to do so. Depo. of Joan Haller at 6–8, Docket No. 26. In addition, she testified that at no time did Defendant ever owe her any money or grant her a security interest in any of his assets. Depo. of Joan Haller at 6:17–7:14, Docket No. 26. The evidence indicates that Defendant, at least for the past several years, treated the Standard Insurance disability payments as his funds and considered the bank

accounts in which the funds were deposited to be his. He exercised control over the accounts by way of letters of instruction to Ms. Haller. Defendant was aware that he was receiving monthly disability payments from Standard Insurance in the amount of \$747.10 commencing in 1996 and continuing while he was imprisoned, the proceeds of which were maintained in Sterling Savings Bank.

IV.

Defendant contends that because of the injuries he sustained in the 1996 automobile accident, as well as the fact of his incarceration, he was not fully aware of what funds he received from Standard Insurance, where those funds were kept, nor did he know the balances of any bank accounts. Defendant testified he granted a power of attorney to Joan Haller and Randy Blair³ to allow them to handle his financial affairs. In addition, Defendant claims he assigned the money he was to receive from Standard Insurance to Ms. Haller and Mr. Blair to repay them a debt he owed in 1998. Defendant testified he believed he had assigned his interest in the Standard Insurance policy proceeds to Ms. Haller and Mr. Blair, therefore, he did not need to disclose the funds in the bank accounts or monthly benefit payments in connection with the bankruptcy case. Defendant indicated

³ Testimony suggested that there was a falling out between Defendant, Ms. Haller and Mr. Blair. The letters establish that it was Ms. Haller who handled Defendant's disability payments from Standard Insurance and the bank accounts at issue in this adversary proceeding.

that he had no knowledge or control of the Sterling Savings Bank accounts, but when he gained an understanding of what had gone on with his money and bank accounts, he amended his bankruptcy schedules.

The UST argues that Defendant concealed the true extent of his assets and income both before and after filing his bankruptcy petition, and that he knowingly and fraudulently made false oaths in connection with the bankruptcy case. The UST contends Defendant knew about the Standard Insurance disability payments from the time the payments first began, and that he knew Ms. Haller was keeping the money in bank accounts for him until he was released from prison. It is the UST's position that Defendant knew about the benefit payments and accounts, but intended that they not be discovered during the bankruptcy. On this basis the UST seeks to deny Defendant a discharge.

Conclusions of Law

A.

The UST contends Defendant is not entitled to a discharge pursuant to § 727(a)(2)(A) and (B) and § 727(a)(4)(A). The Code provides that a Debtor shall receive 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; or

(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[.]

11 U.S.C. § 727(a).

Objections to discharge under § 727 are to be liberally construed in favor of the debtor and strictly construed against the objecting party. *Bernard v. Sheaffer (In re Bernard)*, 96 F.3d 1279, 1281 (9th Cir. 1996); *Weiner v. Perry, Settles & Lawson, Inc. (In re Weiner)*, 208 B.R. 69, 71 (9th Cir. BAP 1997)). The burden of proof rests with the party objecting to the discharge. Fed. R. Bankr. P. 7005.

However, despite this favorable construction, bankruptcy discharge is equitable in nature, and is intended only for honest debtors. *Bernard*, 96 F.3d at 1283. And while this favorable construction attends, the objector must only prove the elements of the cause of action by a preponderance of the evidence; no heightened evidentiary burden is imposed.

Palmer v. Downey (In re Downey), 242 B.R. 5, 13 (Bankr. D. Idaho 1999) (citing *Grogan v. Garner*, 498 U.S. 279, 284 (1991); Fed. R. Bankr. P. 4005; *In re Lawler*, 141 B.R. 425, 429 (9th Cir. BAP 1992)).

B.

To deny Defendant a discharge under § 727(a)(2)(A), the UST must demonstrate two elements existed within the one year prior to the filing of Defendant's bankruptcy petition. It must show "1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor through the act of disposing of the property." *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997). The requisite intent may be inferred from the actions of the debtor or "may be established by circumstantial evidence, or by inferences drawn from a course of conduct." *Fogal Legware of Switzerland, Inc. v. Wills (In re Wills)*, 243 B.R. 58, 65 (9th Cir. BAP 1999) (quoting *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986)).

Although the evidence indicates Defendant was well aware of the Standard Insurance disability payments and the corresponding bank accounts, he did not disclose them in connection with filing his bankruptcy petition. However, after carefully reviewing the evidence submitted, there is no evidence to suggest that Defendant transferred the Standard Insurance payments and the bank accounts in the year prior to bankruptcy with the intent to hinder or defraud creditors.

While his post-petition conduct leaves no doubt as to his intent to conceal assets, there is no evidence that Defendant attempted or intended to conceal the assets

prior to filing, other than by his failure to disclose them in the bankruptcy schedules. Without evidence of a transfer coupled with an intent to defraud creditors beyond his failure to disclose the assets, Defendant's discharge cannot be denied on the basis of § 727(a)(2)(A).

C.

However, § 727(a)(2)(B) requires that a discharge be denied to any debtor who, “with the intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property under [title 11] . . . , has transferred, removed . . . or concealed . . . property of the estate, after the date of the filing of the petition[.]” *Devers v. Bank of Sheridan, Montana (In re Devers)*, 759 F.2d 751, 753 (9th Cir. 1985). To prove its claim under this statute, the UST must show Defendant acted with an actual intent to hinder, delay or defraud a creditor or the trustee; evidence of constructive fraud will not support a denial of discharge. *Id.* (citing *In re Adlman*, 541 F.2d 999, 1003 (2d Cir. 1976)). The “fraudulent intent may be established by circumstantial evidence, or by inferences drawn from a course of conduct.” *Id.* at 754 (citing *Farmers Co-op Assoc. v. Strunk*, 671 F.2d 391, 395 (10th Cir. 1982)). “Because a debtor is unlikely to testify directly that his intent was fraudulent, the courts may deduce fraudulent intent from all the facts and circumstances of a case.” *Id.* (citing *In re Nazarian*,

18 B.R. 143, 146 (Bankr. D. Md. 1982)).

Defendant's intent to conceal the funds he had received, and was receiving, from Standard Insurance from the bankruptcy trustee is clearly evident from his conduct. At the time of the filing of the bankruptcy, Defendant was aware that he was receiving a significant cash benefit payment each month from Standard Insurance, and that the monies were being held for him in bank accounts. This is evidenced in part by the September 18, 2005 letter he later sent to Standard Insurance, wherein he informs the company of his belief that he had been underpaid, and in which he states the amount he had been receiving each month. Ex. 21J.

Defendant wrote this letter a mere ten days prior to his § 341 meeting of creditors, yet at that meeting did not disclose he had been receiving the disability payments, or that he believed Standard Insurance owed him additional funds. In addition, just four days prior to the meeting of creditors, Defendant instructed Ms. Haller to "put my money into some type of a fairly long-term account in my name." Ex. 18. At this point in time Defendant acknowledged the money was his and that he intended to keep it from the bankruptcy estate. Defendant then fraudulently testified at the creditor's meeting that his schedules, which omit any mention of the payments or bank accounts, were true and correct.

Even when attempting to amend his bankruptcy schedules on November 1, 2005, Defendant intentionally failed to include any reference to the money Ms. Haller handled from Standard Insurance.

Defendant believed the money belonged to him. This is shown by the November 28, 2005 letter to Ms. Haller asking that she close-out all the accounts in his name because Standard Insurance was attempting to recover the disability overpayments made to Defendant. Ex. 19. Defendant told Ms. Haller to take the money and that “[w]e will consider it for ‘other considerations’ as just pay off of past debt.” *Id.* It is in this letter that Defendant mentioned for the first time that he was giving the Standard Insurance money to Ms. Haller for the express purpose of keeping the money away from Standard Insurance, a creditor. Defendant’s January 11, 2006, letter cements his intent to conceal the funds by asking Ms. Haller to transfer his money to Florida, as O.J. Simpson did, to “put the first road-block in Standard’s efforts” to recover the funds. Ex. 20. Defendant also indicated that Ms. Haller needed to make the transfer in small amounts to ensure the transfers to Florida need not be reported to the government. *Id.* From this, the Court infers and finds that Defendant intended to conceal the bank accounts from the trustee, and to hopefully prevent Standard Insurance, his creditor, from obtaining control of them.

The UST has shown by a preponderance of the evidence that Defendant knew these assets were his property, and through his conduct, he intended to conceal those assets from the bankruptcy trustee and a major creditor after the bankruptcy case had been filed. The Court therefore concludes Defendant is not entitled to a discharge pursuant to § 727(a)(2)(B).

D.

“To deny a debtor a discharge under § 727(a)(4)(A), the plaintiff must show that (1) the debtor knowingly and fraudulently made a false oath; and (2) the false oath related to a material fact.” *Fogal Legware of Switzerland, Inc. v. Wills (In re Wills)*, 243 B.R. 58, 62 (9th Cir. BAP 1999) (citing *In re Aubrey*, 111 B.R. 268, 274 (9th Cir. BAP 1990); *In re Ford*, 159 B.R. 590 (Bankr. D. Or. 1993)). “A false oath may involve a false statement or omission in the debtor’s schedules.” *Id.* (citing *In re Beaubouef*, 966 F.2d 174, 178 (5th Cir. 1992)).

“A false statement is material if it bears a relationship to the debtor’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor’s property.” *Id.* (citing *In re Chalik*, 748 F.2d 616, 618 (11th Cir. 1984)). An omission relating to an asset that may be of little value to the estate is still “material if the omission or misstatement detrimentally affects administration of the estate.” *Id.* at 63.

“A debtor’s fraudulent intent may be established by circumstantial evidence or by inferences drawn from his or her course of conduct.” *Id.*

Between 2003 and the filing of the bankruptcy petition in 2005, Defendant requested updates from Ms. Haller regarding the status of his bank accounts and Standard Insurance funds, which he referred to as his “nest egg.” Defendant often received the requested information from Ms. Haller. *See* Exs. B-6; B-8; B-10; A-4; 13. On March 3, 2005, Defendant wrote to Ms. Haller and thanked her for the information regarding Standard Insurance and acknowledged that he now understood what was happening with the funds. Ex. 13. Defendant was, at the very least, aware that he was receiving monthly benefits from Standard Insurance and that these monies were being deposited in accounts maintained on his behalf. Although Defendant knew about the Standard Insurance disability payments and bank accounts, he failed to disclose that information in his bankruptcy schedules.

Defendant personally signed his bankruptcy schedules under penalty of perjury. He testified at the § 341 creditors’ meeting, again under oath, that his schedules were true and correct and that all of his assets were disclosed.

Defendant argues he thought there was only a small amount of money, \$1,069 to be exact, in the accounts at that time. Defendant maintains he simply did not

know there was over \$20,000 in his Sterling Savings Bank accounts. However, the case law is clear that a false oath, even involving a relatively small amount of assets, is material for the purpose of measuring Defendant's entitlement to a discharge under § 727(a)(4)(A). Indeed, Defendant's own explanation demonstrates he was aware of the accounts, but that he knowingly chose not to disclose them in connection with his bankruptcy case.

The false oath impacted the administration of the case. Prior to discovery of the accounts, the chapter 7 trustee acted under the impression that the bankruptcy estate had no assets available for creditors. The trustee was required to obtain information regarding Defendant's assets from other sources to enable him to capture those assets, administer the estate, and fulfill his duties. Defendant's signature on the bankruptcy schedules omitting any reference to the benefit payments and bank accounts, coupled with his later testimony at the creditors' meeting that those schedules were correct and complete, constitute a false oath. Defendant's discharge must also be denied pursuant to § 727(a)(4)(A).

Conclusion

Defendant must be denied a bankruptcy discharge pursuant to 11 U.S.C. § 727(a)(2)(B) and § 727(a)(4). Defendant intentionally concealed assets from the trustee and his creditors after filing for bankruptcy relief. He also made

false oaths regarding the existence and extent of his assets that adversely impacted the administration of his bankruptcy estate.

A separate judgment will be entered.

Dated: January 23, 2007



Honorable Jim D. Pappas
United States Bankruptcy Judge