IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re Money Centers of America, Inc., et al., Debtors.	Chapter 11 Lead Case No. 14-10603 (CSS)
Andrew R. Vara, Acting United States Trustee, Plaintiff v. Christopher Wolfington, Defendant	Chapter 7 Adv. Proc. No. 16-51030 (CSS)

FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). This Court has the judicial power to enter a final order.

[1] The Court hereby makes the following findings of fact and conclusions of law pursuant to Fed. R. Bank. P. 7052, which is applicable to this matter by virtue of Fed. R. Bankr. P. 9014. To the extent any findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions or law constitute findings of fact, they are adopted as such.

II. PARTIES AND ARGUMENTS

2. Debtor, Christopher M. Wolfington ("Wolfington"), filed his Chapter 7 petition on September 16, 2015 ("Petition Date") in the Eastern District of Pennsylvania, where his bankruptcy remains pending. Wolfington is the defendant in this matter. Plaintiff is Andrew R. Vara, Acting United States Trustee ("Trustee").

3. Trustee argues that Wolfington should be denied discharge because he embarked on a program to conceal his assets from creditors in violation of 11 U.S.C. §§ 727(a)(2) and 727(a)(4).[2] Trustee asserts that Wolfington transferred his assets to companies he controlled then concealed those assets by not disclosing them when he filed for bankruptcy.[3]

4. Specifically, Trustee claims that Wolfington failed to make certain disclosures and that these omissions amounted to false accounts under § 727(a)(4) or concealments under § 727(a)(2).[4] Trustee's argument centers on his allegation that Wolfington misrepresented his 2014 income from former employer Money Centers of America, Inc. ("MCA") and failed to disclose his ownership of: FinPay, LLC ("FinPay"), Financial Payment Network, LLC ("FPN"), MCA, Microfunds, LLC ("Microfunds") and two websites, finpay.net and chriswolfington.com.[5] He also requests that the Court take judicial notice of certain documents.

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[2] Tr. 5:5-16, 141:14-18 (Mar. 11, 2019).
[3] *See e.g.* D.I. 134, ¶ 23. All D.I. are from Adv. Pro. 16-51030 in Del. Bankr.14-10603 unless otherwise indicated.
[4] Tr. 141:14-18 (Mar. 11, 2019).
[5] *Id*.

5. Wolfington counters that the entities in question were set up for legitimate business purposes and any omissions were inadvertent.[6] He further state that he did not list certain assets because he did not own them, they were worthless, or did not need to be listed.[7] Wolfington does not take issue with Trustee's judicial notice request.

III. FINDINGS OF FACT

6. Wolfington was an officer of MCA, which filed a Chapter 11 petition on March 21, 2014. Prior to its bankruptcy, MCA was fighting litigation against Native American tribes in Minnesota and Wisconsin.[8] These suits involved Wolfington and led to millions of dollars in judgments against MCA in September and December 2013.[9] Seeing the writing on the wall, Wolfington refocused his efforts from MCA and concentrated on finding other business possibilities.[10] On February 24, 2014, he formed Microfunds and made it the parent of FPN, which he had formed in 2012, but for which an operating agreement had not been adopted until he created Microfunds.[11] (Together the "FPN-Microfunds Transfer".) The creation of Microfunds and adoption of FPN's operating agreement was days after a Minnesota district court denied Wolfington's summary judgment motion against one of the Native American tribes.[12] Soon thereafter, he identified an opportunity

[6] *See e.g.* D.I. 135, ¶ 18.
[7] *Id.*
[8] Pl.'s Exs. V and Y.
[9] *Id.*
[10] Tr. 83:18-84:9 (Mar. 11, 2019).
[11] D.I. 104-5, D.I. 104-7.
[12] Pl.'s Ex. W.

in the "online lending and gaming space."[13] Though he was able to find people interested in his idea, they wanted to keep Wolfington at bay because they believed that the surrounding litigation involving MCA made him toxic.[14] With the underlying ownership structure in place, Wolfington took numerous steps to distance himself from Microfunds and FPN. On August 15, 2014, a Microfunds resolution nullified Wolfington's ownership stake in Microfunds and stated that CM Wolfington & Co., LLC ("CM Wolfington") would receive 1000 shares once it was formed.[15] ("First Attempted Transfer".) However, Wolfington stated that this approach was later abandoned because he received advice that it would result in no one owning the company.[16] Around fall of 2014, Wolfington was replaced as Microfunds' Managing Member to create more space between him and Microfunds.[17] ("Management Change"). Next, on November 26, 2014, Microfunds' operating agreement was amended to assign 10% of its ownership to MAJA, L.P. and 90% to a not-yet formed C.M. Wolfington & Co., LLC.[18] ("Second Attempted Transfer".) The Trustee does not allege that Wolfington controlled MAJA, L.P. This approach was also abandoned because CM Wolfington was not set up yet.[19] At last, Microfunds was transferred to CM Wolfington on March 24,

[13] Tr. 84:10-14 (Mar. 11, 2019).
[14] Tr. 84:17-20. 30:9-19 (Mar. 11, 2019).
[15] Def.'s Ex. 1.
[16] Tr. 61:25-62:9 (Mar. 11, 2019).
[17] D.I. 104-6, where Joseph Valandra is listed as Managing Member. *See also* Tr. 30:9-19 (Mar. 11, 2019).
[18] D.I. 104-6, stating that Wolfington receives 900 of 1000 units and contributes $25,000 – the entire capital contribution. It is unknown what MAJA is or who controls it.
[19] Tr. 64:1-7 (Mar. 11, 2019).

2015 ("March Transfer"), just days after MCA trustee sued Wolfington to recover funds he allegedly fraudulently transferred from MCA to himself. On the twenty fourth, Wolfington finally created CM Wolfington, which he owned.[20] That same day, a Microfunds resolution – signed and approved only by Wolfington – made Wolfington the sole owner of Microfunds.[21] The resolution stated "Christopher M. Wolfington can and will transfer 1000 Units representing One Hundred (100%) of the Units authorized and outstanding to C.M. Wolfington & Co., LL."[22] This resulted in a structure whereby CM Wolfington owns Microfunds, which in turn owns FPN. Upon his bankruptcy, Wolfington simply disclosed his ownership interest in CM Wolfington, and not the indirect ownership of the other entities.[23]

IV. CONCLUSIONS OF LAW

A. 11 U.S.C. §§ 727(a)(2) and (a)(4)

7. Under 11 U.S.C. § 727(a)(2),

> "(a) The court shall grant the debtor a discharge, unless…
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> (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—

[20] D.I. 104-9.
[21] D.I. 104-10.
[22] *Id.*
[23] Indeed, with respect to ownership of companies, Wolfington only disclosed his interests in Real Estate Empowered, LLC and C.M. Wolfington and Co., LLC in his personal property disclosures. D.I. 104-2, p. 9.

(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."

8. Under 11 U.S.C. §727(a)(4),

"(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;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(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."

9. The Third Circuit directs courts to construe § 727 "liberally in favor of the debtor" and views a total bar to discharge as "an extreme penalty."[24]

10. Intent is an element of both 11 U.S.C. § 727(a)(2) and 11 U.S.C. § 727(a)(4). But fraudsters rarely reveal their true intent to those who aren't in on their scheme

[24] *Rosen v. Bezner*, 996 F.2d 1527, 1534 (3d Cir. 1993).

and, in fact, may go to great lengths to hide their tracks. The reason is simple – they want to avoid getting caught. Because of their secrecy, fraudulent intent is often difficult to prove.[25] To detect such intent, courts rely not only on testimony but also on circumstantial evidence and the inferences drawn from it.[26] Among the circumstantial evidence are badges of fraud such as "1) a close relationship between the transferor and the transferee; 2) that the transfer was in anticipation of a pending suit; 3) that the transferor Debtor was insolvent or in poor financial condition at the time; 4) that all or substantially all of the Debtor's property was transferred; 5) that the transfer so completely depleted the Debtor's assets that the creditor has been hindered or delayed in recovering any part of the judgment; and 6) that the Debtor received inadequate consideration for the transfer."[27] For example, the debtor shifting assets "to a corporation wholly controlled by him is" a badge of fraud.[28] However, fraud is a fact-intensive inquiry and courts are not restricted from considering other signs.

11. Additionally, courts may consider "reckless indifference to the truth" as tantamount to fraudulent intent in a § 727(a)(4) claim.[29]

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[25] *See e.g. In re LTC Holdings, Inc.*, No. 14-11111 (CSS), 2019 WL 454074, at *7 (Bankr. D. Del. Feb. 4, 2019).
[26] *Rosen*, 996 F.2d at 1534 (citations omitted); *In re DiLoreto*, 266 F. App'x 140, 144 (3d Cir. 2008) (quotations and citations omitted).
[27] *In re von Kiel*, 550 F. App'x 105, 109 (3d Cir. 2013) (citation omitted).
[28] *DiLoreto*, 266 F. App'x at 144 (quotations and citation omitted).
[29] *In re Elian*, 659 F. App'x 104, 106 (3d Cir. 2016). *Elian* affirmed a district court rule, which in turn had affirmed a bankruptcy court's finding that "the Debtor's actions illustrate, at best, a pattern of extreme carelessness and indifference, which at the very least, supports granting the Plaintiff's motion for summary judgment with respect to the Section 727(a)(4) claim." *In re Elian*, No. 10-49482 (DHS), 2014 WL 2976295, at *7 (Bankr. D.N.J. July 1, 2014), aff'd, No. 10-49482 DHS, 2015 WL 5164796 (D.N.J. Sept. 2, 2015), aff'd, 659 F. App'x 104 (3d Cir. 2016).)

12. § 727(a)(4) does not enumerate the kind of property that debtors must disclose. However, this Court is convinced that debtors need not disclose indirectly owned assets, but must disclose even assets that they think have no value.

13. This Court is persuaded by precedent in this and other circuits that an entity's value does not affect whether it must be disclosed. The purpose of § 727(a)(4)(A) is to ensure that debtor has accurately disclosed his finances so that trustees and creditors may administer the estate without conducting costly investigations.[30] Trustees and creditors should not be forced to go to great lengths simply to uncover property the debtor himself knowingly failed to disclose.[31] It can not be the case that the Code leaves a debtor free to omit an asset from his schedules solely because he believes that the asset is worthless. It is of no consequence that the debtor himself thinks that he would get little to nothing for the asset. What matters is the sum that the market would actually support. Merely because debtor can not envision receiving much, if anything, for his asset, does not mean that creditors can not find value in the asset or locate even a single person who would pay for it. Even if the asset does turn out to be worthless, the Code does not bless the exclusion of potentially valuable assets from the schedules (at the debtor's discretion).

14. This Court adopts the rule that debtor need not write down an indirectly-owned business as an asset, so long as debtor discloses that he owns the business's

[30] *Cadle Co. v. Zofko*, 380 B.R. 375, 383 (W.D. Pa. 2007) (internal citation and quotations omitted).
[31] *In re Spitko*, 357 B.R. 272, 312 (Bankr. E.D. Pa. 2006) (internal citation and quotations omitted).

parent.[32] Though the Third Circuit has not weighed in on this at the appellate level, this Court is persuaded that this is the appropriate rule by case law in the Fifth, Ninth, and Tenth Circuits and by the text of the SOFA form.

15. The Court starts with the SOFA's instructions—and finds that they do much of the work. The SOFA requires the debtor to disclose "all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time…or in which the debtor owned 5 percent or more of the voting or equity securities…"[33] Having particularized this rather extensive list of mandatory disclosures, the form does not then require the debtor to disclose any assets of such businesses. Thus, this Court finds no reason to require further disclosure. Following the written instructions is sufficient compliance.

16. Moreover, case law from other circuits suggests that even if a debtor wholly owns an entity, that entity's assets need not be disclosed in his petition. The Fifth Circuit has affirmed a lower court ruling that a debtor's wholly-owned LLC is a separate entity and § 727(a)(3) does not require the debtor to disclose its records.[34] Similarly, § 727(a)(4) would not require the debtor to disclose its assets, either.[35] Echoing the Fifth Circuit, the Ninth Circuit has held that even wholly-owned subsidiaries are

[32] This Court also remarks that this approach accords with Sixth Circuit precedent.
[33] D.I. 104-3, p. 7.
[34] *In re Packer*, 816 F.3d 87, 94 (5th Cir. 2016).
[35] Though the Fifth Circuit case pertains to *records* and the instant case pertains to *assets*, this Court does not see reason to distinguish between these types of property here.

legally distinct from the debtor and the subsidiary's property is generally not the debtor's.[36] Finally, the rule in the Tenth Circuit is that the phrase "property of the debtor" in § 727(a)(2)(A) is not the same as "property in which the debtor has a derivative interest."[37] In explaining why § 727(a)(2)(A) doesn't consider a corporation's assets to be property of the debtor-shareholder, *Thurman* writes that the words "property of the debtor" evidence Congressional intent to "limit the reach of § 727(a)(2)(A) only to those transfers of property in which the debtor has a direct proprietary interest."[38] Put differently, the section does not apply to indirectly (or equitably) owned property. Though *Thurman* was not speaking of § 727(a)(4), its analysis is relevant insofar as it suggests that omitting indirectly controlled property from the list of controlled businesses is not a false account. However, some cases appear open to treating certain indirectly owned property as property of the debtor. For instance, the Sixth Circuit has affirmed lower courts' ruling that when a debtor controls a corporation, its assets are "property of the debtor."[39] Yet none of aforementioned cases stand for the proposition that debtors must disclose any asset of their wholly-owned companies once they disclose that they own the company.

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[36] *In re Stout*, 649 F. App'x 621, 623 (9th Cir. 2016). Though *Stout* pens that the subsidiary's property may belong to debtor when the subsidiary is debtor's alter ego, the instant case does not contain allegations that CM Wolfington is Wolfington's alter ego.

[37] *In re Thurman*, 901 F.2d 839, 841 (10th Cir. 1990).

[38] *Id*.

[39] *In re Adams*, 31 F.3d 389, 394 (6th Cir. 1994).

B. Fed. R. Evid. 201

17. Under Fed. R. Evid. 201, a court may at any time, on its own or upon party request, take judicial notice of a fact that is not subject to reasonable dispute because that fact is:

> "(1) is generally known within the trial court's territorial jurisdiction; or
>
> (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

C. The Court takes judicial notice of Trustee's exhibits.

18. The Trustee asks the Court to take judicial notice of his Exhibits V, W, and Y because they "are public records from sources whose accuracy cannot be reasonably" questioned.[40] Exhibit V purports to be a court order from the District of Minnesota and a notice regarding appeal from the same. Exhibit W purports to be a Memorandum Opinion and Order from the same Minnesota case. Exhibit Y purports to be a stipulation between the plaintiff Ho-Chunk Nation and the MCA defendants from a case in the Ho-Chunk Nation Trial Court in Black River Falls, WI. Because both Exhibits V and W have docket numbers, the exhibits' accuracy can be ascertained by entering those numbers into PACER, the court records site "whose accuracy cannot reasonably be questioned."[41] Such a PACER search yields documents identical to Exhibits V and W. Though Exhibit Y does not have a docket number, the exhibit mirrors a stipulation filed in the Ho-Chunk Nation trial.

[40] D.I. 134, ¶ 39.
[41] Fed. R. Evid. 201.

Moreover, Exhibit Y is identical to a document filed in the main MCA case. And that document's authenticity is echoed by the Declaration of Michael A. Rosow, who was the Ho-Chunk Nation's attorney at the Black River Falls trial.[42] Therefore, the Court takes judicial notice of Exhibits V, W, and Y.

D. Wolfington's disclosure of only CM Wolfington but not its assets, Microfunds and FPN, in his statement of financial affairs ("SOFA") did not violate § 727(a)(4).

19. Having promulgated the rule that a debtor need not disclose the assets or subsidiaries of his businesses, the concomitant analysis is straightforward. Wolfington listed his wholly owned company CM Wolfington, but neither its subsidiary Microfunds nor Microfunds's subsidiary FPN. This Court repeats that § 727 is construed liberally in favor of debtors to allow them to benefit from the fresh start the Code promises. Denying discharge because of such an omission undermines this public policy. Thereby, Wolfington's disclosure rises to the section's demands and is appropriate under its pro-debtor construction.

E. There is insufficient evidence to prove that Wolfington's failure to disclose his interest in MCA in his Schedules was both knowing and fraudulent in violation of § 727(a)(4).

20. Wolfington did not disclose his pecuniary interest in MCA in his Schedules.[43] Yet, there is insufficient evidence to show Wolfington omitted his MCA interest in bad faith to deceive the court system. Wolfington has hardly been concealing his ties

[42] Del. Bankr. 14-10603 D.I. 34 and D.I. 34-3, pp. 71-74.
[43] D.I. 104-13; D.I. 104-2.

to MCA. In his SOFA, which was filed simultaneously with his Schedules, he indicated that he controlled MCA.[44] His Schedules even admit that the MCA bankruptcy was a bankruptcy of his "spouse, partner, or affiliate."[45] And he listed his claims against MCA as asset both in MCA's bankruptcy and in his own.[46] In sum, the facts point to the conclusion that Wolfington was not intentionally obfuscating the nature of his relationship with MCA. Given these facts, and emphasizing that MCA dots the Schedules at issue and the simultaneously filed SOFA, the Court therefore holds that Wolfington's non-disclosure was not an intentional a false statement in violation of § 727(a)(4).

F. There is insufficient evidence to show that Wolfington owned FinPay. Therefore, his nondisclosure of the same does not violate § 727(a)(4).

21. There is not sufficient evidence to show that Wolfington owned FinPay. The Trustee's evidence to the contrary is a copy of an EIN application FinPay sent to the IRS. Under "Responsible Party", the application lists "CHRISTOPHER WOLFINGTON SOLE MBR."[47] However, Wolfington rebuts that the form indicates that he is a sole member for administrative reasons. He states that because the IRS would not know whether the applicant is a member when the applicant is filling out the form, the designation was not a reflection of ownership.[48] Though the Court does not have the operating agreement for FinPay

[44] D.I. 104-3, p. 7.
[45] D.I. 104-2, 3.
[46] Del. Bankr. 14-10603 D.I. 31; Del. Bankr. 15-16718 D.I. 13, p. 11.
[47] Pl.'s Ex. A; Def.'s Ex. 4.
[48] Tr. 127: 14-23 (Mar. 11, 2019).

or its affiliates, and thus the Court does not know their members' identities, Wolfington has testified that FinPay is owned by FinPay Holdings and that he has no interest in either.[49] He also testified that twelve of FinPay Holdings' fifteen members were third parties – i.e. not friends of his prior to their designation as members.[50] His role, according to his testimony, is to run the business.[51] Trustee also notes that Wolfington's website "identifies his interest in numerous entities including FPN, Microfunds, and MCA."[52] However, these interests are rather vague. The site states that he "founded, acquired, and /or divested… Microfunds, Financial Payment Network, MCA…" and that he is "Chairman and CEO of CM Wolfington & Co. and FinPay, L.L.C."[53] It does not speak to his controlling interest in these entities. Thus, the Court rules that Wolfington did not violate § 727(a)(4) when he did not state that he owned FinPay.

G. Wolfington's misrepresentation of his 2014 MCA income was made with reckless indifference to the truth in violation of § 727(a)(4).

22. Although MCA paid Wolfington $75,000 in 2014, he only put down $60,000 on his SOFA. [54]

23. The Trustee offers this shortfall as an example of Wolfington's false statement in violation of § 727(a)(4)(A). Wolfington, on the other hand, says that this is an

[49] Tr. 100:12-16 (Mar. 11, 2019).
[50] Tr. 100:23-102:7 (Mar 11, 2019).
[51] Tr. 101:6-8 (Mar. 11, 2019).
[52] D.I. 134, ¶ 23.
[53] D.I. 104-18.
[54] D.I. 104-3, p. 2; D.I. 104-4, p. 2. The only other income that Wolfington had that year was $50,000 for consulting and a $75,000 401(k) withdrawal.

innocent mistake and attributes this discrepancy to the manner in which he estimated his salary. He states that he did not have paystubs or access to MCA's records and could not find his W-2s.[55] And that he figured out how much he owed by multiplying his monthly salary ($20,000) by the number of months he worked for MCA.[56] Unfortunately, this approach underestimated his salary by $15,000 – a shortfall that the Wolfington says arose because either 1) he failed to account for a pay period or 2) the $15,000 represented interest that MCA owed him.[57] He states that he still does not have access to MCA's records and thus can not ascertain how it accounted for this payment.[58]

24. Yet particularly when coupled with Wolfington's past statements and evasiveness and disregard for the truth in previous proceedings, the $15,000 shortfall resembles not an honest mistake, but a part of "a pattern of extreme carelessness and indifference."[59] This stands true despite Wolfington later amending his SOFA to reflect the $75,000 payment.[60]

25. The $15,000 gap was not a mere crack in an otherwise sound system of accounting for assets. It represents 7.5% of Wolfington's total income, 20% of his employment or business operations income, and 12% of all income less 401(k) withdrawals.

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[55] Tr. 113:2-3; 114:17-115:8 (Mar. 11, 2019).
[56] Tr. 114:7-9; 113:3-7 (Mar. 11, 2019).
[57] Tr. 113:10-14 (Mar. 11, 2019). 1. For purposes of § 727(a)(4)(A) disclosure, the categorization of this money – as interest or income – is immaterial. The key consideration is that debtor failed to disclose it at all.
[58] Tr. 113:25-114:4 (Mar. 11, 2019).
[59] D.I. 104-22; D.I. 132, p. 6 (quoting the Court's finding that Wolfington was an especially unreliable witness.). *Elian*, No. 10-49482 (DHS), 2014 WL 2976295, at *7.
[60] *Elian*, 659 F. App'x at 106. (A "debtor cannot undo a false oath upon its discovery by subsequently amending his schedules.")

Given his deteriorating financial situation, Wolfington dipped into his retirement funds to help make ends meet. Thus, the $15,000 was likely a valuable addition to Wolfington assets. Though it ultimately was not enough to stave off bankruptcy, it was likely too big to have been understandably overlooked during the stress of multiple bankruptcies and litigations. This Court has a hard time believing that, with liabilities mounting and income dwindling, Wolfington missed $15,000 worth of deposits into his account.

26. Claims of ignorance or good faith error are further belied by the fact that Wolfington had earlier been able to determine his 2014 MCA income. In April 2014, Wolfington signed – under penalty of perjury – MCA's SOFA indicating that MCA paid him $75,000 that year. Over a year later, he disclosed only a $60,000 payment, despite protestation that he used the "best information" had had at the time. Though this is not proof that Wolfington lied on his SOFA, it manifests his "reckless indifference to the truth," the kind that constituted fraudulent intent under § 727.

H. Wolfington had an ownership interest in finpay.net or and his non-disclosure of both this and his own website was fraudulent in violation of § 727(a)(4).

27. The Trustee alleges that Wolfington owns two websites – his own personal website and that pertaining to FinPay, finpay.net. And contends that he falsely excluded them from his schedules, in violation of § 727(a)(4). Though the Court can not ascertain all ownership rights in finpay.net, Wolfington was the site's registered

owner. Additionally, Wolfington owned his personal site and knowingly did not list it.

28. Wolfington contends that FinPay owns its own website and that he merely registered the domain name. Trustee argues that Wolfington's omission of domain names registered to him amounts to a false account under § 727(a)(4). He points to two cases where courts denied discharge to debtors who failed to disclose that they had domain names registered to them.[61] However, neither case states that merely being a site's registrant settles disputes over all ownership rights. Here, it is not clear who has the final say over finpay.net's contents, operations, and maintenance. Nor are alienability rights apparent – it is not obvious who has the right to order the site's sale. Nevertheless, the registration of the domain name is an ownership interest that should have been disclosed.

29. The Court now comes to the issue of the personal website. Neither party disputes that Wolfington owns his personal website. However, Wolfington frames the site as a social media page that he would not need to disclose and the Trustee argues that disclosure was required because he owned the address.

30. The Trustee is correct. The site is of a different nature than social media sites such as LinkedIn, which may double as business and reputation-building tools. Unlike social media sites, Wolfington's website does not function as a platform to connect its users while retaining ultimate control over the site's content, operations,

[61] *In re Luby*, 438 B.R. 817 (Bankr. E.D. Pa. 2010); *In re Arora*, 2018 Bankr. Lexis 123 (Bankr. N.J. 2018).

maintenance, and alienability. Indeed, the site has no other users. Instead, it serves as a way for Wolfington to tell others about his personal and professional life, and lacks the quick and widespread user-to-user communication opportunities inherent to modern social media. He has final say over its content, operations, maintenance, and potential sale. Money that could be made from the site would inure to him, not to a platform.

31. With respect to his state of mind about disclosures, Wolfington admitted that his website's omission was no accident. He testified that it never occurred to him that he was required to append any social media accounts to his Schedules.[62] He thus knowingly and falsely did not disclose that he owned a personal website. However, knowledge and falsity do not alone prove fraud in violation of § 727(a)(4) – especially when the undisclosed entity appears to be of little value.[63]

32. The Court does find fraud, however, due to a proliferation of other evidence. Wolfington is a sophisticated businessman, who had helmed a multimillion-dollar company. He was familiar with the online space; he explored online ventures and registered domain names. This Court is not persuaded that his personal website – which he created and controlled and of which he is the registered owner – is indistinguishable from any social media page that requires cursory information but no registration, as Wolfington implies.[64] Nor does the Court think that

[62] Tr. 148:12-13 (Mar. 11, 2019).
[63] Even though worthless entities must still be disclosed, their non-disclosure alone is not a mark of fraud in the same way that the non-disclosure of a valuable entity is.
[64] Tr. 118:20-25, (Mar. 11, 2019); D.I. 132, p. 6.

Wolfington did not recognize these difference or appreciate their import. As a person familiar with operating and registering websites, he likely knew that his ownership of his personal web address was significant in a way that his presence on FaceBook was not. Additionally, Wolfington has prior bankruptcy experience, through MCA's bankruptcy. He was likely aware that debtors must provide "complete, truthful and reliable information" to gain the Code's shelter.[65] Such comprehensive disclosure would include that a business's website was registered to him. In fact, that Wolfington's repeatedly protested that he did not list finpay.net because he did not own it – not because he thought that he did not have to disclose any website – strongly suggests that he knew that he had to disclose websites he owned.[66] Finally, and importantly, the sites' omissions were far from the only mistakes in his SOFA and Schedules.[67] In view of these facts, the Court can conclude that the websites' omissions violated § 727(a)(4)(A).

J. The Court holds that the evidence does not show that the March Transfer, Second Attempted Transfer, and several of Wolfington's statements flowed from a scheme to hinder, delay, or defraud creditors in violation of § 727(a)(2).[68] However, Wolfington's omission of finpay.net and chriswolfington.com violated this section.

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[65] *In re Calder,* 907 F.2d 953, 955–56 (10th Cir. 1990) (quoting *In re Tully*, 818 F.2d 106, 110 (1st Cir.1987)).
[66] *See e.g.* Tr. 122:10-11, 151:8 (Mar. 11, 2019).
[67] *Id.* (citing *Williamson v. Fireman's Fund Ins. Co.*, 828 F.2d 249, 252 (4th Cir.1987) (speaking to the significance of multiple omissions.)).
[68] The First Attempted Transfer occurred outside § 727(a)(2) one-year time frame and thus was only considered for context.

33. With respect to the question of concealment of FPN and Microfunds through their exclusion from the Schedules, both Trustee and Wolfington agree that Wolfington does not own either FPN or Microfunds directly, but through his ownership of CM Wolfington.[69] However, the Trustee contends that this omission shows that Wolfington did not disclose that he owns these entities. The Trustee posits that Wolfington dishonestly did not disclose his (indirect) ownership of Microfunds and FPN in his schedules.[70] While Wolfington insists that this cuts in his favor because he does not own these entities – CM Wolfington does – and thus he was not obliged to name them.

34. As discussed earlier, Wolfington complied with the SOFA form's instructions and did not make a false statement when he listed CM Wolfington, but not its subsidiaries Microfunds and FPN, in his disclosures. Therefore, Trustee has not shown that he acted to defraud, delay, or hinder creditors.

35. To support his allegations of concealment of FPN and FinPay, the Trustee points to his Exhibit X, which the Court has admitted into evidence, as a badge of fraud. This exhibit is FPN's user agreement, as found on finpay.net on November 6, 2015. At that time, Wolfington was FPN's Managing Member and Microfunds was its sole member. In turn, the sole member and Managing Member of Microfunds was Wolfington. Consequently, Wolfington had control over FPN at the time. The contract begins by stating that it will occasionally refer to Financial Payment

[69] D.I. 134, ¶¶ 18-19; D.I. 135, ¶ 27.
[70] *See e.g.* D.I. 134, ¶ 23; Tr. 5:5-9 (Mar. 11, 2019).

Network as "FinPay" and that FPN operates its website FinPay.net. Now, Wolfington tries to convince the Court that FinPay and FPN are actually two distinct entities and FinPay – not FPN –is finpay.net's owner.[71] But even if indeed they are separate entities, then FPN had been using the name and website of another existing company.[72] At a minimum, this setup is monumentally confusing. It imagines a world where a finpay.net user is told that he is using FPN's website, when that website is actually owned by a separate entity named FinPay. As if this weren't messy enough, this contract also states that it occasionally refers to FPN as FinPay. Even the canniest consumer would be hard-pressed to figure out that the finpay.net contract to which he has agreed does not pertain to FinPay, which is a separate entity that owns the website housing the contract.[73] Hence, if FPN and FinPay are separate entities, then the language appears crafted to obscure this fact.

36. Nevertheless, this byzantine design is not enough for the Court to find that Wolfington owned FinPay. Hence the Court holds that Trustee has not shown that its omission was intended to hinder, delay, or defraud creditors.

37. Trustee also alleges that Wolfington's actions in the lead-up to his bankruptcy were part of his plot to defraud creditors by concealing his assets.[74] The Court now

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[71] Tr. 75:6-16, 103:12-16 (Mar. 11, 2019).
[72] *See* Def.'s Ex. 3, stating that FinPay was created June 4, 2015 and Pl.'s Ex. X, a printout from finpay.net dated November 6, 2015.
[73] Additionally, this appears to conflict with Wolfington's prior testimony that FPN does not own a website. D.I. 104-16.
[74] Tr. 5:5-16 (Mar. 11, 2019).

examines March Transfer, Attempted Transfers, FPN-Microfunds Transfer, and Management Change to ascertain whether they are symptomatic of fraud.

a. With respect to the effective transfer, i.e. the March Transfer, Wolfington had a close relationship with transferee CM Wolfington – he owned the company.

b. The circumstances surrounding the March Transfer and Attempted Transfers, paired with Wolfington's testimony, link them to litigation involving Wolfington. The March Transfer was completed days after the MCA trustee sued Wolfington to recover funds he allegedly fraudulently transferred from MCA to himself. The Attempted Transfers to transfer took place when the Native American suits were well underway and at least five months before the MCA trustee's suit.[75] Litigation had been both ongoing and growing at the times of the March Transfer and Attempted Transfers. And as to the Management Change, Wolfington himself testified that his potential partners wanted to distance themselves from the toxicity of the litigation swirling around him.[76] Combined with the transfers' proximity to litigation milestones, there is little doubt that the March Transfer and Second Attempted Transfer were tied to fear of litigation.

[75] The First Attempted Transfer (outlined in Def.'s Ex. 1) is outside § 727(a)(2)'s one-year period. Though it is outside the section's ambit, the Court examines it and other similarly long ago events for clues they may provide about the motivation behind subsequent behavior.
[76] Tr. 84:17-20 (Mar. 11, 2019).

c. Wolfington's financial difficulties were mounting at the time of the March Transfer. He was facing multiple suits from Native American tribes and the MCA trustee and unable to profit from his erstwhile employer MCA, which was in bankruptcy. His income was plunging and he himself would file for bankruptcy within three months. Wolfington's SOFA shows that his income was $63,750.98 for the first nine months of 2015, compared to $200,000 for 2014 and $326,654 for 2013.[77]

d. The evidence does not show that all or substantially all of Wolfington's property was transferred.

e. Nor does the evidence show that the transfer so completely depleted Wolfington's assets that the creditor has been hindered or delayed in recovering any part of the judgment. In fact, the evidence adduced either is either indeterminate about the transferred assets' value or suggests that they were worth a pittance.

f. And the evidence does not show that Wolfington received inadequate consideration for the transfer. Wolfington states that the March 2015 transfer was a correction to the earlier improper transfers.[78] Those transfers were done to assure potential business partners that his legal woes had not contaminated his business. However, his potential partners had already bailed before the transfer in response to the MCA trustee suing

[77] D.I. 104-4, pp. 1-2.
[78] Tr. 64:8-14 (Mar. 11, 2019).

Wolfington.[79] Nonetheless, Wolfington appeared to retain interest in pursuing partners for some other venture using Microfunds and FPN.[80] Though, Wolfington does not appear to have received money in exchange for the transfer, there is no evidence that Microfunds and FPN, two essentially non-operational companies were worth much money.[81] And the desire to clarify a foggy ownership structure and impetus to attract partners – even if not consideration – are sufficiently reasonable motivations to transfer the companies.

g. Last, Wolfington's ultimate disclosure of his ownership of Microfunds and FPN's parent CM Wolfington suggests that he had not been intending to deceive creditors. Once he put down parent CM Wolfington as an asset on his SOFA, the entities nestled within it were sufficiently discoverable as to not be hidden under § 727(a)(2)'s liberal pro-debtor construction.

38. Therefore, the Court holds that the March Transfers and Attempted Transfers did not reflect attempts to conceal property in violation of § 727(a)(2).

39. As to Wolfington's omission of his MCA interests, his numerous mentions of MCA in other filings, particularly contemporaneous ones, suggest that fraud did not fuel the error.

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[79] Tr. 85:1-11 (Mar. 11, 2019).
[80] Tr. 85:12-23 (Mar. 11, 2019).
[81] Despite the trouble of their repetitive restructurings, the designs for these entities apparently never materialized. Wolfington testified that those plans were scrapped by protracted litigation and attempts to keep MCA operational. Tr. 83:9-14 (Mar. 11, 2019).

40. However, as discussed earlier, the websites' omissions pose problems for Wolfington. The sophisticated businessman's deliberate omission of his ownership interests, especially in light of his falsehoods and exposure to the bankruptcy process, evidences an intent to delay, defraud, or hinder creditors.[82]

CONCLUSION

41. The Court rules that Wolfington's omission of his ownership interests in two web addresses violated 11 U.S.C. §§ 727(a)(2) and 727(a)(4) and that his misrepresentation of his 2014 MCA income violated 11 U.S.C. § 727(a)(4). Thus, the Court will deny discharge and enter judgment in favor of Trustee.

Christopher S. Sontchi
Chief United States Bankruptcy Judge

Dated: July 2, 2019

[82] D.I. 132, p. 6 (quoting the Court's finding that Wolfington was an especially unreliable witness.).