UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	CASE No.	18-21993 (JJT)
RICHARD P. SIMONE, Debtor.	CHAPTER	7
ANDREW WOOLF, ANDREW KATZ, and ELENA VAGNEROVA, Plaintiffs	ADV. PRO. NO.	19-02005
V.	RE: ECF Nos.	394, 419, 430, 458, 469, 489, 493
RICHARD P. SIMONE, Defendant.		

RULING ON PLAINTIFFS' MOTION FOR SANCTIONS
AND MOTION TO SUPPLEMENT THE RECORD WITH DISCOVERY VIOLATION

In connection with the prosecution of their Complaint (*see* ECF Nos. 1 and 359) and Motion for Summary Judgment (*see* ECF No. 107), where Andrew Woolf, Andrew Katz, and Elena Vagnerova (collectively, "Plaintiffs") seek to have this Court deem certain debts owed to them non-dischargeable and to deny the Debtor's discharge for, among other things, the Debtor's failure to produce documents related to the Plaintiffs' collective $495,000 "Investment" in a patently fraudulent and fake real estate transaction, the Plaintiffs have filed two additional and interrelated motions assailing the Debtor's abysmal document retention and production in this case.[1]

[1] From a review of the record in several forums addressing these claims, at every turn over the years the Debtor has been noncompliant, evasive, inconsistent, and contumacious. Excuses, diversionary tactics, feigned compliance, and irreconcilable explanations have been the foundation of his course of noncompliance.

Specifically, Plaintiffs filed a Motion for Sanctions (ECF No. 394, "Sanctions Motion"), seeking the entry of adverse evidentiary inferences and the award of reasonable attorneys' fees based on the Debtor's failure to preserve, and spoliation of, various documents and records in his possession, custody and control, and a Motion for Order to Supplement the Record with Evidence of a Prejudicial Discovery Violation (ECF No. 469, "Discovery Motion") arguing that the Debtor's belated supplemental discovery production is further probative evidence of the Debtor's culpability and "how evidence becomes intentionally spoliated in [Debtor's] custody."

The Debtor objected to both Motions (*see* ECF Nos. 419 and 489, "Objections"), principally arguing: (1) that, with respect to the Sanctions Motion, the records and documents the Debtor has produced adequately demonstrate the path Plaintiffs' money took and there is no record that bespeaks of a culpable intent to fail to preserve records, and (2) that the subsequently disclosed emails that were the subject of the Discovery Motion were timely and nonetheless "did not make what was previously produced materially incomplete or inaccurate."

On October 29, 2020, and February 16, 2021, the Court held hearings on both the Sanctions Motion and Discovery Motion and the Debtor's Objections thereto (*see* ECF Nos. 433 and 505, respectively), and the parties further advanced their positions at a status conference held on May 6, 2021 (ECF No. 512). Following the hearings, both Motions were taken under advisement.

The Second Circuit has explained spoliation of evidence as "the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." *West v. Goodyear Tire & Rubber Co.,* 167 F.3d 776, 779 (2d Cir. 1999). The spoliation of evidence relevant "to proof of an issue at trial can support an

inference that the evidence would have been unfavorable to the party responsible for its destruction." *Kronisch v. United States*, 150 F.3d 112, 126 (2d Cir. 1998).

"A party seeking an adverse inference based on spoliation must establish '(1) that the party having control over the evidence had an obligation to preserve it at the time it was destroyed; (2) that the records were destroyed "with a culpable state of mind"; and (3) that the destroyed evidence was "relevant" to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.'" *Doe v. Norwalk Community College*, 248 F.R.D. 372, 376 (D. Conn. 2007) (*quoting Residential Funding Corp. v. Degeorge Fin. Corp.*, 306 F.3d 99, 107 (2d Cir. 2002)). "The determination of an appropriate sanction for spoliation, if any, is confined to the sound discretion of the trial judge, . . . and is assessed on a case-by-case basis." *Fujitsu Ltd. V. Federal Exp. Corp.,* 247 F.3d 423, 436 (2d Cir. 2001).

Consistent with the reasons set forth in the Sanctions Motion, in addition to the undisputed material facts delineated in this Court's Memorandum of Decision on Plaintiffs' Motion for Summary Judgment (ECF No. 515) and its findings and conclusions therein, the Court finds there is good, sufficient, and compelling cause to grant the Sanctions and Discovery Motions. The Debtor's feigned, strained and grossly inadequate efforts and excuses for failure to produce documents in this case—documents customarily and responsibly retained and preserved for an Investment of this nature—are neither convincing, genuine nor authentic. The Debtor's arguments are simply pure fiction and bad acting which, admittedly, is peppered with lies, concealment, delays and inconsistencies. These prevarications have occasioned multiple needless discovery disputes, persistent extraction efforts, and the incurrence of significant legal costs and expenses.

The Debtor's twisted narrative in this case and his failure to produce a single original document—whether that be a contract or a letter of default from Damac, a bank statement or other record reflecting where or how the Plaintiffs' Investment money was spent, or an invoice pursuant to any payment plan—is incontrovertible. The inconsistent tales that have accompanied his excuses are irrefutably false, woven into his thick web of lies, evasions, distractions, and embellished by incomplete or inauthentic documents. The various efforts of his capable legal counsel to remedy non-preservation and nonproduction of documents during the course of the case, while resourceful, were both unavailing and inevitably doomed to fail because the Debtor, in calculated fashion, sought to cover his trail.

The twisted narrative, inauthentic documents and failures to produce critical documents including, but not limited to, contracts for purchase, deeds, wire confirmations, receipts, closing documents, proof of payments and default notices, are simply inexcusable and unmistakably purposeful. Mr. Simone's well calculated shedding, non-preservation and/or spoliation of documents impeded the administration of this case, heightened discovery costs, and served to obfuscate critical issues.

Accordingly, the Plaintiffs' Motion for Sanctions and Motion for Order are hereby GRANTED and the Debtor's Objections are hereby OVERRULED. In connection with this case, the Court will entertain an adverse evidentiary inference that the Debtor consciously failed to keep or produce material records within his control that should have ordinarily been preserved under the facts and circumstances herein, and, in accordance therewith, (and supported by his ever changing, inconsistent and fictitious narratives on the path of Plaintiffs' Investment, and his inexcusable non-preservation of material financial records) the Court further finds, and will entertain an adverse evidentiary inference, that the Debtor indisputably lacks fundamental

credibility on the facts and circumstances related to the Plaintiffs' claims. His intentional conduct has impaired, impeded, frustrated and delayed the Plaintiffs' pursuit of their rights and remedies.

The Court will hear a supporting Motion for Plaintiffs' legal fees and expenses in connection herewith. Such Motion, and any supporting billing summaries and declarations, shall be filed within 30 days hereof.

IT IS SO ORDERED at Hartford, Connecticut this 8th day of February 2022.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut