

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT**

IN RE:	)		
	)	CASE NO.	19-50392 (JAM)
ECCLESIASTES JOYNER,	)		
Debtor.	)	CHAPTER	7
	)		
WILLIAM K. HARRINGTON,	)		
UNITED STATES TRUSTEE FOR	)		
REGION 2,	)		
Plaintiff,	)		
	)		
v.	)		
	)	ADV. PRO. NO.	20-05019 (JAM)
ECCLESIASTES JOYNER,	)		
Defendant.	)	RE: ECF NO.	1
	)		

**APPEARANCES**

Holley L. Claiborn  
Office of the United States Trustee  
150 Court Street  
New Haven, CT 06510

Counsel for the Plaintiff, William K. Harrington, United States Trustee for Region 2

Joseph P. Rigoglioso  
375 Coram Avenue  
Shelton, CT 06484

Counsel for Defendant, Ecclesiastes Joyner

**MEMORANDUM OF DECISION AFTER TRIAL ON COMPLAINT  
SEEKING REVOCATION OF DISCHARGE AND DENIAL OF DISCHARGE**

Julie A. Manning, United States Bankruptcy Judge

**I. INTRODUCTION**

Before the Court is a complaint (the “Complaint”) filed by the Office of the United States Trustee (the “U.S. Trustee”) against Ecclesiastes Joyner (the “Defendant” or “Debtor”) to revoke

and deny the Debtor's Chapter 7 discharge. (ECF No. 1.)<sup>1</sup> For the reasons stated below, judgment will enter against the Plaintiff and in favor of the Defendant on all causes of action in the Complaint.

## **II. PROCEDURAL HISTORY**

On March 26, 2019, the Debtor filed a voluntary Chapter 7 petition in this Court. (Main Case, ECF No. 1.) On May 1, 2019, the Chapter 7 Trustee of the Debtor's bankruptcy estate (the "Trustee") filed a Report of No Assets which indicated that the Debtor's estate had no property available for distribution to creditors. (Main Case, ECF No. 9.) The Debtor received a discharge on July 3, 2019. (Main Case, ECF No. 10.) The Debtor's case was closed on July 24, 2019. (*See* Main Case Docket.)

After the Debtor's case was closed, the Debtor filed Amended Schedules and an Amended Summary of Assets and Liabilities (Main Case, ECF No. 12), disclosing a cause of action concerning injuries he sustained during an arrest on October 31, 2017, *Joyner v. City of Stamford, et al.*, 3:19-cv-01710-MPS (the "District Court case"). The District Court case was not previously listed as an asset in the Debtor's Chapter 7 case.

On February 25, 2020, the Debtor filed a Motion to Reopen Case, which was amended on April 16, 2020 (Main Case, ECF No. 18). The amended Motion to Reopen Case was granted on May 18, 2020 (Main Case, ECF No. 20). On May 20, 2020, the Trustee filed a Report of Assets (the "Report of Assets") citing the District Court case as an asset that may provide a dividend to creditors. (Main Case, ECF No. 22.) The Trustee then took steps to determine if the Debtor's interest in the District Court case might be available for distribution to creditors. Approximately

---

<sup>1</sup> All documents filed in the Debtor's Chapter 7 Case (Case No. 19-50392) will hereinafter be referenced to as "Main Case, ECF No. \_\_\_\_." Documents filed in the Adversary Proceeding (Case No. 20-05019) will be referenced as "ECF No. \_\_\_\_."

fourteen (14) months after the Report of Assets was filed, the Trustee filed a Report of Abandonment (Main Case, ECF No. 41) and a Final Report of No Distribution (the “Final Report,” Main Case, ECF No. 42). In the Final Report, the Trustee confirmed that the Debtor claimed an allowable exemption in the District Court case settlement proceeds and therefore there was no property of the Debtor’s estate available for distribution to creditors.

The U.S. Trustee filed the Complaint before the Trustee filed the Final Report. The Complaint includes seven causes of action seeking: (i) to revoke the Debtor’s discharge under 11 U.S.C. § 727(d)(1); and (ii) to deny the grant of a subsequent discharge to the Debtor pursuant to 11 U.S.C. §§ 727 (a)(2) and 727 (a)(4)(A) upon revocation. On August 6, 2020, the Debtor filed an answer to the Complaint. (The “Answer,” ECF No. 7.) On February 1, 2023, the parties submitted a stipulation of facts prior to trial. (The “Stipulated Facts,” ECF No. 69.)

On August 9, 2023, a trial was held. The Debtor and Attorney Bloomenthal, the Debtor’s counsel in the District Court case, were the only two witnesses who testified during the trial. The U.S. Trustee and the Debtor introduced several exhibits into evidence. The matter is ripe for decision.

### **III. JURISDICTION**

The United States District Court for the District of Connecticut has jurisdiction over the instant proceedings pursuant to 28 U.S.C. § 1334(b), and the Bankruptcy Court derives its authority to hear and determine this matter pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A) and the District Court’s General Order of Reference dated September 21, 1984.

**IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to Federal Rule of Civil Procedure 52, made applicable to this matter through Federal Rule of Bankruptcy Procedure 7052, the following are the Court's findings of fact and conclusions of law:

**A. Findings of Fact**

Based on the Stipulated Facts, the record in the Debtor's Chapter 7 case and in this adversary proceeding, and the testimony and exhibits introduced during the trial, the Court finds the following facts:

1. The Debtor graduated from Stamford High School in Stamford, Connecticut and then attended Sacred Heart University for one year. The Debtor has not obtained a college degree.

(Stipulated Facts ¶ 19.)

2. The Debtor is a journeyman in the plumbing industry and for over twenty-six years was a member of Local 777, a union for plumbers and pipefitters. (Stipulated Facts ¶ 20.) At the time of trial, the Debtor had been employed as a plumber at Marine Plumbing Mechanical for approximately one month. (ECF No. 90, Tr. 10:4–21.)

3. The Debtor has had two felony convictions for possession of narcotics, one in 2008 and one in 2012. (Stipulated Facts ¶ 49.)

4. On October 31, 2017, the Debtor was apprehended by police officers in Stamford, Connecticut for possession of narcotics and driving under the influence. (Stipulated Facts ¶ 33.)

5. In connection with his apprehension on October 31, 2017, the Debtor was assaulted by police officers of the City of Stamford and sustained injuries to his face, jaw, mouth, back, and ribs. The Debtor's injuries included, but were not limited to, a compound fracture of his jaw.

These injuries resulted in the Debtor having: (a) surgery to his jaw and his jaw being wired shut for 21 days; (b) a fractured orbital bone; (c) loss of two teeth in the front of the Debtor's mouth; (d) loss of consciousness and a concussion; and (e) a sore back. (Stipulated Facts ¶ 34.)

6. As a result of the events of October 31, 2017, the Debtor was hospitalized for four days at Stamford Hospital. (Stipulated Facts ¶ 35.)

7. As a result of the events of October 31, 2017, the Debtor was out of work for over three weeks. (Stipulated Facts ¶ 36.)

8. To this day, the Debtor can only eat soft food. (Stipulated Facts ¶ 37.)

9. The Debtor has ongoing back soreness. (Stipulated Facts ¶ 38.) The Debtor testified that his back soreness is the result of the injuries sustained on October 31, 2017. (ECF No. 90, Tr. 16:15–20.)

10. On January 25, 2018, at the suggestion of his counselor, the Debtor and Attorney Melvin Bloomenthal (“Attorney Bloomenthal”), spoke on the telephone regarding the events of October 31, 2017. (Stipulated Facts ¶ 39; ECF No. 90, Tr. 54:9–24.)

11. On February 14, 2018, through the efforts of his counselor, the Debtor met with Attorney Bloomenthal in his office regarding the events of October 31, 2017. (Stipulated Facts ¶ 40; ECF No. 90, Tr. 25:13–15, 54:9–24.) During the Debtor's deposition held on June 22, 2022, and again during the trial, the Debtor testified that when he met with Attorney Bloomenthal on February 14, 2018, “Mel [Attorney Bloomenthal] said I had a case. I never thought I had one. He said it would be hard because of my drug history.” (Stipulated Facts ¶ 42; ECF No. 90, Tr. 26:11–13, 38:23–25, 42:16–18, 46:15–18, 48:8–25, 57:18–58:5, 59:9–19; 61:1–4.)

12. The Debtor retained Attorney Bloomenthal and signed a retention agreement on March 12, 2018. (Plaintiff Ex. 20; ECF No. 90, Tr. 26:2–8.) Attorney Bloomenthal requires

clients to sign retainer agreements in order to have him investigate a case. (Stipulated Facts ¶ 45.)

13. Between the time the Debtor signed the retainer agreement on March 12, 2018, and September 4, 2019, the Debtor and Attorney Bloomenthal did not meet, and communications between the two were limited. (ECF No. 90, Tr. 32:16–32, 82:10–83:12.)

14. Attorney Bloomenthal testified he did not recall speaking to or seeing the Debtor between March 2018 and September 2019: “I didn’t see him. There may have been some email communications. I was in contact with Dr. Rattan [the Debtor’s counselor] just to find out how he [the Debtor] was doing, but I don’t believe he [the Debtor] ever appeared in my office again until September 2019.” (ECF No. 90, Tr. 82:25–83:12.)

15. Attorney Bloomenthal believed the Debtor did not have a strong case based upon the Debtor’s previous felony conviction, his race, and the race of the police officers. (ECF No. 90, Tr. 84:21–85:8.)

16. On April 25, 2018, Attorney Bloomenthal issued the notice required by C.G.S. § 7-465 (the “Notice”) to the City of Stamford regarding the events of October 31, 2017. (Stipulated Facts ¶ 47; Plaintiff Ex. 23.) During trial, Attorney Bloomenthal testified that the Debtor did not have any input with regard to the Notice. (ECF No. 90, Tr. 82:6–24.)

17. On November 18, 2018, the Debtor was sentenced in connection with his arrest on October 31, 2017. The Debtor received a seven-year suspended sentence with a three-year probation period for the narcotics charge. The Debtor received a six-month suspended sentence with an 18-month probation period for the driving under the influence charge. The Debtor completed his probation for both charges, attended outpatient rehab, and did not serve any period of incarceration. (Stipulated Facts ¶ 48.)

18. On March 26, 2019, the Debtor filed a Chapter 7 voluntary petition. (Stipulated Facts ¶ 1.)

19. The Debtor has been represented by Attorney Joseph P. Rigoglioso (“Attorney Rigoglioso”) throughout the pendency of his Chapter 7 case. (Stipulated Facts ¶ 12.)

20. On the same day the Debtor filed his Chapter 7 case, he also filed a Schedule A/B (the “Original Schedule A/B”). He answered “no” in response to question 30 which asked if the Debtor is owed any money from anyone, including, but not limited to, unpaid wages, disability insurance payments, sick pay, vacation pay, workers’ compensation or Social Security benefits. (Stipulated Facts ¶ 21; Plaintiff Ex. 1.)

21. The Debtor also answered “no” in response to question 33 on Original Schedule A/B which asked if the Debtor had any claims against third parties, or any employment disputes or rights to sue someone. (Stipulated Facts ¶ 22; Plaintiff Ex. 1.) During trial, the Debtor testified this answer was accurate. (ECF No. 90, Tr. 41:11–25.) The Debtor also testified that when completing the Original Schedule A/B, “I did not believe I had a lawsuit. My understanding was they were going to do an investigation to see if I had a lawsuit.” (ECF No. 90, Tr. 42:10–18.)

22. The Debtor also answered “no” in response to question 34 on the Original Schedule A/B which asked if the Debtor had any contingent and unliquidated claims of every nature, including counterclaims and rights of setoff. (Stipulated Facts ¶ 23; Plaintiff Ex. 1.) During trial, the Debtor testified this answer was an accurate answer. (ECF No. 90, Tr. 42:1–18.)

23. The Debtor also signed and filed a Declaration About an Individual Debtor’s Schedules which contained the following oath over his signature: “Under penalty of perjury, I declare that I have read the summary and schedules filed with this declaration and that they are true and correct.” (Stipulated Facts ¶ 24; Plaintiff Ex. 1.)

24. On May 1, 2019, the Debtor testified under oath at a Section 341 Meeting of Creditors in response to questions from the Trustee (the “Section 341 Meeting”). (Stipulated Facts ¶ 25; Plaintiff Ex. 1)

25. During the Section 341 Meeting, the Trustee asked the Debtor if anyone owed the Debtor any money and the Debtor testified in response “no.” (Stipulated Facts ¶ 26.) During trial, the Debtor testified that this response at the Section 341 Meeting was a truthful answer to the Trustee’s question because at the time, no one owed him any money. (ECF No. 90, Tr. 45:19–46:7.)

26. During the Section 341 Meeting, the Trustee asked the Debtor if he had any reason to sue anyone and the Debtor testified in response “no.” (Stipulated Facts ¶ 27.) During trial, the Debtor testified his answer to this question was an honest answer. (ECF No. 90, Tr. 47:20–48:2). The Debtor also testified he did not mention Attorney Bloomenthal during the Section 341 Meeting because it “Just didn’t–didn’t register with me” (ECF No. 90, Tr. 48:18–20), and did not mention the events of October 31, 2017 “Because I didn’t believe I had – I had one. A case at all. After what I went through.” (ECF No. 90, Tr. 48:21–25.)

27. During the Section 341 Meeting, the Trustee asked the Debtor if he had read and signed his bankruptcy documents/papers before filing them with the Court and the Debtor testified in response “yes.” (Stipulated Facts ¶ 28.)

28. During the Section 341 Meeting, the Trustee asked the Debtor if he listed all of his assets on his bankruptcy documents/papers and the Debtor testified in response “yes.” (Stipulated Facts ¶ 29.) During trial, the Debtor testified that this answer was an accurate answer. (ECF No. 90, Tr. 46:8–18.)



29. During the Section 341 Meeting, the Trustee asked the Debtor if everything in his bankruptcy documents/papers was true and the Debtor testified in response “yes.” (Stipulated Facts ¶ 30.) During trial, the Debtor testified that this statement was correct and he understood this statement. (ECF No. 90, Tr. 41:3–10.)

30. During the Section 341 Meeting, the Trustee asked the Debtor if he was aware of any errors or omissions in his bankruptcy documents/papers and the Debtor testified in response “no.” (Stipulated Facts ¶ 31.) During trial, the Debtor testified that this was an honest answer. (ECF No. 90, Tr. 47:15–19.)

31. On May 1, 2019, the Trustee filed a Report of No Distribution in the Debtor’s case, indicating that there was no property of the Debtor’s estate available for distribution to creditors. (Stipulated Facts ¶ 32; Main Case, ECF No. 9.)

32. On July 3, 2019, the Debtor received a Chapter 7 discharge. (Stipulated Facts ¶ 13.)

33. On September 4, 2019, Attorney Bloomenthal met with the Debtor regarding the events of October 31, 2017. (Stipulated Facts ¶ 51.) Attorney Bloomenthal met with the Debtor because he needed to file the District Court case before October 31, 2019 to preserve the Debtor’s rights under the applicable statute of limitations. (ECF No. 90, Tr. 84:1–17.)

34. During their meeting, Attorney Bloomenthal told the Debtor he was not able to obtain a report from the Debtor’s oral surgeon for use in the District Court case. The Debtor then explained that it might be difficult to obtain the oral surgeon’s report because the oral surgeon’s bill had been discharged in his Chapter 7 bankruptcy case. (ECF No. 90, Tr. 84:1–17.) Attorney Bloomenthal was not aware of the Debtor’s Chapter 7 case until the September 4, 2019 meeting with the Debtor. (*Id.*)

35. During the September 4<sup>th</sup> meeting, Attorney Bloomenthal asked the Debtor whether he disclosed the events of October 31, 2017 in his bankruptcy petition. The Debtor indicated he did not believe he had a case because he had not heard from Attorney Bloomenthal, and the September 4<sup>th</sup> meeting was the first time the Debtor and Attorney Bloomenthal were discussing the filing of a case. (ECF No. 90, Tr. 86:14–87:1.)

36. Attorney Bloomenthal testified that he followed up after their meeting and asked the Debtor to make sure the District Court case was disclosed in the Debtor’s Chapter 7 case. (ECF No. 90, Tr. 84:12–21.) The Debtor testified that he could not recall if he or Attorney Bloomenthal contacted Attorney Rigoglioso about the District Court case. (ECF No. 90, Tr. 74:16–75:10.)

37. On October 31, 2019, Attorney Bloomenthal filed the District Court case. (Stipulated Facts ¶ 52.) Attorney Bloomenthal testified that he filed the District Court case on October 31, 2019 so that it was filed before the applicable statute of limitations expired. (ECF No. 90, Tr. 83:22–84:17, 85:9–12.)

38. Attorney Bloomenthal testified that he did not specifically obtain consent to file the District Court case on October 31, 2019, and he does not typically obtain written authority from his clients before filing a case on their behalf. (ECF No. 90, Tr. 93:19–94:12.)

39. The Debtor testified he did not know Attorney Bloomenthal filed the District Court case until Attorney Bloomenthal told him he did. The Debtor also testified that he looked at the District Court case complaint some time in November 2019. (ECF No. 90, Tr. 21:15–22:20.)

40. On February 11, 2020, Attorney Rigoglioso filed the amended Schedule A/B (“Amended Schedule A/B,” Main Case, ECF No. 12). (Stipulated Facts ¶ 57.) The Amended Schedule A/B disclosed the District Court case in response to question 53, listing it as

“PERSONAL INJURY OF OCTOBER 31, 2017 (Joyner v. City of Stamford)” with a value of \$1.00. (Stipulated Facts ¶ 59; Plaintiff Ex. 4.)

41. The Debtor testified that he disclosed the District Court case on the Amended Schedule A/B upon the advice of his counsel. (ECF No. 90, Tr. 72:4–73:20.)

42. On February 11, 2020, the Debtor also filed an amended Schedule C in which he claimed an exemption of \$23,675.00 in the District Court case pursuant to 11 U.S.C. § 522(d)(11)(D). (Stipulated Facts ¶ 60, Plaintiff Ex. 4.)

43. The Amended Schedule A/B contained the same responses to questions 30, 33, and 34 that were contained on the Original Schedule A/B. The Amended Schedule A/B also contained the following certification: “Under penalty of perjury, I declare that I have read the summary and schedules filed with this declaration and that they are true and correct.” (Stipulated Facts ¶ 59.)

44. The Trustee first learned of the District Court case after the Amended Schedule A/B was filed with the Court. (Stipulated Facts ¶ 63.)

45. The U.S. Trustee did not know of the fraud it alleges the Debtor committed before the Debtor’s discharge was granted. (Stipulated Facts ¶¶ 73 and 74.)

46. On February 17, 2020, the Trustee notified the U.S. Trustee that the Amended Schedule A/B had been filed and that the District Court case should be administered for creditors. (Stipulated Facts ¶ 64.)

47. On February 18, 2020, the U.S. Trustee notified Attorney Rigoglioso that the Debtor should file a motion to reopen his Chapter 7 case in light of the disclosure of the District Court case on the Amended Schedule A/B. (Stipulated Facts ¶ 65.)

48. On February 25, 2020, Attorney Rigoglioso filed a motion to reopen the Chapter 7 case. (“First Motion to Reopen”). (Stipulated Facts ¶¶ 66; Main Case, ECF No. 13.)

49. On April 16, 2020, Attorney Rigoglioso filed a second motion to reopen the Debtor’s Chapter 7 case (the “Second Motion to Reopen”). (Stipulated Facts ¶¶ 68; Main Case, ECF Nos. 18 and 20.) The Second Motion to Reopen was granted on May 18, 2020. (Stipulated Facts ¶¶ 15.)

50. The District Court case was settled in 2021 for the sum of \$20,000.00. (Stipulated Facts ¶¶ 56.) Though the settlement proceeds were made payable to the Debtor, the Debtor did not receive any settlement proceeds (ECF No. 90, Tr. 34:2–11). The settlement proceeds were paid to Attorney Rigoglioso for fees incurred representing the Debtor in this adversary proceeding (ECF No. 90, Tr. 65:22–66:11).

51. On July 14, 2021, the Trustee filed the Final Report confirming that there was no property of the Debtor’s estate available for distribution to creditors because the Debtor’s claimed exemption in the District Court case exceeded the amount of the settlement proceeds. (Stipulated Facts ¶¶ 71 and 72; Plaintiff Exs. 11 and 12.)

## **B. Conclusions of Law**

### **First and Second Causes of Action: Revocation of Discharge under Section 727(d)(1)**

The Office of the United States Trustee is responsible for overseeing the administration of bankruptcy cases and is keenly concerned with maintaining the integrity of the bankruptcy system. *About the U.S. Trustee Program*, U.S. DEPT. OF JUSTICE, <https://www.justice.gov/ust>. As the U.S. Trustee correctly notes, a debtor’s failure to disclose assets or to testify truthfully about assets is a serious issue.

There is no dispute that the Debtor did not disclose the District Court case on his schedules and did not testify about the District Court case during the Section 341 Meeting. Based upon these undisputed facts, the Complaint's first and second causes of action allege the Debtor obtained his discharge through fraud by (i) failing to disclose the District Court case on the Original Schedule A/B; and (ii) failing to testify about the District Court case during the Section 341 Meeting.

It is clear that “[R]evocation of discharge is an extraordinary remedy[.]” *Saviano v. Tylee (In re Tylee)*, 512 B.R. 409, 415 (Bankr. E.D.N.Y. 2014) (citing *Pergament v. Marandos (In re Marandos)*, 391 B.R. 556, 559 (Bankr. E.D.N.Y. 2008)). To revoke the Debtor's discharge under 11 U.S.C. § 727(d)(1), the U.S. Trustee must establish two elements: (1) the discharge was obtained through the fraud of the debtor; and (2) that the U.S. Trustee did not know of such fraud until after the discharge was granted. *See U.S. Trustee v. Katona (In re Katona)*, 612 B.R. 595, 598 (Bankr. C.D. Cal. 2020); *Hopkins v. Kribs (In re Kribs)*, 523 B.R. 830, 835 (Bankr. D. Idaho 2015); *Tylee*, 512 B.R. at 415; *McCarthy v. Nandalall (In re Nandalall)*, 434 B.R. 258, 266 (Bankr. N.D.N.Y. 2010); *U.S. Trustee v. Zembko (In re Zembko)*, 367 B.R. 253, 256 (D. Conn. 2007); *Grochocinski v. Eckert (In re Eckert)*, 375 B.R. 474, 478–79 (Bankr. N.D. Ill. 2007) (decisions addressing revocation of discharge under 11 U.S.C. § 727(d)(1) after a trial); *but see Jones v. U.S. Trustee*, 736 F.3d 897 (9th Cir. 2013) (holding that to determine revocation under § 727(d)(1), a court can review grounds for denial of discharge under 11 U.S.C. § 727(a)); *Yules v. Gillis (In re Gillis)*, 403 B.R. 137, 144 (1st Cir. BAP 2009).

The party seeking to revoke a discharge bears the burden of proving the essential elements of the cause of action by a preponderance of the evidence. *Gillis*, 403 B.R. at 144; *Katona*, 612 B.R. at 599; *Kribs*, 523 B.R. at 835; *Tylee*, 512 B.R. at 415; *Nandalall*, 434 B.R. at

265; *Zembko*, 367 B.R. at 256; *Eckert*, 375 B.R. at 478 (applying the preponderance of the evidence standard to causes of action under section 727(d)(1)).<sup>2</sup> Because the parties have stipulated the U.S. Trustee did not know of the alleged fraud until after the Debtor’s discharge was granted, only the first element of section 727(d)(1) is at issue in this adversary proceeding.

To prevail on the first element of revocation of discharge under section 727(d)(1), the U.S. Trustee must prove that the Debtor’s fraud is fraud “in fact.” *Katona*, 612 B.R. at 598. Fraud in fact can be found if a debtor intentionally omits assets from the schedules and such act must involve an “*intentional wrong*.” *Tese-Milner v. Moon (In re Moon)*, 385 B.R. 541, 559 (Bankr. S.D.N.Y. 2008) (internal citation omitted) (alteration in original); 6 COLLIER ON BANKRUPTCY ¶ 727.17[2] (16th ed. 2023). The Supreme Court of the United States has held that “anything that counts as ‘fraud’ and is done with wrongful intent is ‘actual fraud.’” *Husky Intern. Electronics, Inc. v. Ritz*, 578 U.S. 355, 360 (2016) (discussing actual fraud in the context of whether an actual fraudulent transfer may be a non-dischargeable debt under 11 U.S.C. § 523(a)(2)(A)). Furthermore, “[k]nowing and intentional failure to disclose material assets on the bankruptcy schedules constitutes “fraud” within the meaning of 11 U.S.C. § 727(d)(1).” *Katona*, 612 B.R. at 599 (collecting cases).

Because it is difficult to establish actual fraud through direct evidence, the United States Court of Appeals for the Second Circuit has held actual fraud may be established through circumstantial evidence such as “badges of fraud.” *Salomon v. Kaiser (In re Kaiser)*, 722 F.2d

---

<sup>2</sup> In *Grogan v. Garner*, 498 U.S. 279 (1991), the United States Supreme Court held that the standard of proof in section 523 dischargeability actions is a preponderance of the evidence. In support of its holding, it relied on, among other things, the legislative history of section 727(a)(4). Since *Grogan*, cases in the Second Circuit since have applied the preponderance of evidence in section 727 actions. *In re Colish*, 289 B.R. 523, 526 (Bankr. E.D.N.Y. 2002); *Zembko*, 367 B.R. at 256; *Tylee*, 512 B.R. at 409. See also 6 COLLIER ON BANKRUPTCY ¶ 727.02 (16th Ed. 2023).

1574, 1582–83 (2d Cir. 1983) (discussed in the context of fraudulent transfers); *see also* *TransCare Corp. v. Tilton (In re TransCare Corp.)*, 81 F.4th 37, 54 (2d Cir. 2023) (applying *Kaiser’s* “badges of fraud” to determine whether there was fraudulent intent in the context of a fraudulent transfer). Therefore, the U.S. Trustee may present circumstantial evidence to prove the Debtor knowingly and intentionally failed to disclose the District Court case on his schedules and did not testify truthfully during the Section 341 Meeting.

The U.S. Trustee introduced several exhibits into evidence, including the Original Schedule A/B, the Debtor’s discharge, the Amended Schedule A/B, and the complaint and amended complaint in the District Court case. The U.S. Trustee examined the Debtor and cross-examined the Debtor’s witness, Attorney Bloomenthal.

Specifically, the U.S. Trustee questioned the Debtor about the truthfulness of his answers in the Original Schedule A/B, his testimony during the Section 341 Meeting, and his failure to disclose the District Court case. In response to those questions, the Debtor consistently testified—no less than six times—he believed he did not have a case at all and did not know the District Court case was filed until after his discharge was granted. When the U.S. Trustee questioned Attorney Bloomenthal about the Debtor’s failure to disclose the District Court case, Attorney Bloomenthal testified that he and the Debtor did not discuss the Debtor’s Chapter 7 case until September 4, 2019, two months after the Debtor was granted a discharge.

Attorney Bloomenthal’s testimony supports the Debtor’s testimony that he believed he did not have a case. Attorney’s Bloomenthal’s testimony also supports the Debtor’s testimony that the District Court case was not filed until months after his discharge was granted. Furthermore, Attorney Bloomenthal testified that before the Debtor’s discharge was granted, the District Court case was not actively pursued because he did not believe it was a strong case. In

September 2019, after the Debtor's discharge was granted, Attorney Bloomenthal testified that he met with the Debtor to discuss the filing of the District Court case because the applicable statute of limitations was approaching. He also testified that the District Court case was filed on October 31, 2019, because it was the final day before the applicable statute of limitations expired. His uncontroverted testimony also established that he did not show the Debtor the District Court case complaint before he filed it.

Attorney Bloomenthal's testimony, coupled with the fact that he did not know the Debtor filed a Chapter 7 case until after the Debtor was granted a discharge, does not support the conclusion the Debtor's discharge was obtained through fraud or an intentional wrong. Indeed, Attorney Bloomenthal also testified that he told the Debtor to disclose the District Court case to Attorney Rigoglioso and followed up with the Debtor to ensure he did so. The testimony of the Debtor and Attorney Bloomenthal confirmed that the Amended Schedule A/B did disclose the District Court case and that the Debtor's case was reopened to administer the District Court case as an asset of the Debtor's estate. The U.S. Trustee did not examine any other witnesses or present any evidence to call into question or contradict the Debtor's and Attorney Bloomenthal's testimony regarding the District Court case.

The Court concludes that the Debtor's testimony is credible and is supported by Attorney Bloomenthal's testimony. Although it is undisputed that the Debtor did not disclose the District Court case on the Original Schedule A/B and did not testify about it during the Section 341 Meeting, the U.S. Trustee did not establish by a preponderance of the evidence that the Debtor knowingly or intentionally did so to mislead creditors or the Trustee. *Cf. Katona*, 612 B.R. at 603. Although the Debtor's beliefs about the District Court action were mistaken, the testimony and other evidence support the conclusion that the Debtor's beliefs were based upon a



misunderstanding, and not fraud. *See In re Kempff*, 847 F.3d at 444, 451 (7th Cir. 2017) (“[the debtor’s] misstatements can just as easily be attributed to simple negligence or innocent misunderstandings—by [the debtor] or her attorney.”); *see also Katona*, 612 B.R. at 600 (“In determining whether an omission from the schedules is innocent forgetfulness or a product of a deliberate attempt to defraud and deceive, a bankruptcy court can look at all the surrounding circumstances and consider the entire record in the case.”).

The evidence does not support the conclusion that the Debtor knowingly and intentionally omitted the District Court case from his Schedules or failed to testify about it during the Section 341 Meeting. The evidence also does not support the conclusion that the Debtor committed an intentional wrong. Therefore, on the basis of the specific evidence introduced in this adversary proceeding and upon review of the record and circumstances surrounding the District Court case, the Court concludes that the U.S. Trustee did not prove by a preponderance of the evidence under 11 U.S.C. § 727(d)(1) that the Debtor’s discharge was obtained through fraud.

For all of these reasons, a judgment will enter against the Plaintiff and in favor of the Defendant on the first and second causes of action in the Complaint.

**Third through Seventh Causes of Action: Denial of Discharge under Section 727(a)**

The remaining section 727(a) causes of action also require a finding of fraud. Because the Debtor’s discharge will not be revoked based upon the conclusion that the Debtor’s discharge was not obtained through fraud, the Complaint’s remaining causes of action to deny a discharge are moot. Therefore, a judgment will enter against the Plaintiff and in favor the Defendant on the third through seventh causes of action in the Complaint.

V. **CONCLUSION**

The Plaintiff has failed to establish by a preponderance of the evidence that the Debtor's discharge should be revoked under 11 U.S.C. § 727(d)(1). Accordingly, judgment will enter against the Plaintiff and in favor of the Defendant in this matter. A separate judgment will enter in accordance with this Memorandum of Opinion.

Dated at Bridgeport, Connecticut this 20th day of October, 2023.

*Julie A. Manning*  
United States Bankruptcy Judge  
District of Connecticut

