UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
Lexington Division

IN RE:	:	
	:	**Chapter 7**
RICHARD LANGFELS	:	**Case No: 10-51948**
	:	**Judge Joe Lee**
Debtor	:	
_____	:	
	:	
DANIEL M. McDERMOTT,	:	
(In his capacity as United States Trustee)	:	
	:	
Plaintiff,	:	
	:	**Adversary Proceeding**
vs:	:	**No: 10-5114**
	:	
RICHARD LANGFELS,	:	
	:	
Defendant.	:	
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ORDER GRANTING MOTION TO DISMISS

This matter is before the Court on the Motion to Dismiss (Doc. 7) filed on behalf of the Debtor, Richard Langfels, and on the Objection (Doc. 14) thereto filed by Daniel M. McDermott, United States Trustee ("UST"). A hearing was held on this matter on Thursday, March 17, 2011. Having considered all the pleadings, exhibits and arguments of counsel, we find that the Motion to Dismiss will be **GRANTED**.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334(b) and it is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The following constitutes the Court's findings of facts and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

Background

The Debtor filed a chapter 7 petition on June 16, 2010. Debtor's wife was not a co-debtor in that filing. An adversary complaint was filed against Debtor by Richard Clippard,[1] United States Trustee, on December 23, 2010. The complaint requests that the Debtor's discharge be denied pursuant to 11 U.S.C. § 727(a)(4).

At the center of the controversy is a 1979 Chevrolet Monte Carlo (the "Car"). From the late 1980's (being 1987 or 1989) to December 18, 2007, the car was owned by Debtor's wife, Ginny Langfels and was owned by her prior to the time she married the Debtor. (Depo. of Ginny Langfels, pp. 10-11). Since December 18, 2007, the Car has been owned by Debtor's daughter, Heather Langfels.[2] The complaint asserts that Debtor testified at his 2004 examination that the Car was not a show car and had never been taken to shows. He also testified that no major work or repairs had been done on the Car other than routine maintenance, a new hood, new paint job, new tires, and transmission. This testimony is contradicted by the testimony of Ginny Langfels and Heather Langfels.

The complaint also asserts that the Debtor made other false statements during his 2004 examination when Phaedra Spradlin, the Chapter 7 Trustee, indicated that she wanted an appraiser to come to Debtor's home the next day, a Friday, September 17, 2010. Debtor testified that everyone was going to be gone from his home the next day and over the weekend to visit relatives in Tennessee. Debtor indicated an appraiser could come to the house on the following Monday. The

[1]On January 3, 2011, Daniel McDermott, United States Trustee for Region 8, was substituted as party plaintiff in place of Richard F. Clippard.

[2]The Certificate of Title attached to the Motion to Dismiss as Exhibit No. 1 reflects that the Car was titled in Heather Langfel's name on December 18, 2007, approximately two and a half years prior to Debtor filing his bankruptcy.

complaint asserts that Debtor's testimony was not true because the Debtor in fact took the Car to a car show in Stanford, Kentucky, on Friday, September 17, 2010, and to another car show in Berea, Kentucky, on Sunday, September 19, 2010.

The complaint asserts that by giving false testimony at his 2004 examination, the Debtor violated 11 U.S.C. § 727(a)(4).

The Car was not listed in Debtor's schedules and the complaint does not assert that the Debtor ever owned the Car or fraudulently transferred the Car to his wife or daughter.

The Motion

The Debtor filed the Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7012. Debtor argues that the adversary complaint should be dismissed because it fails to state a claim upon which relief can be granted. He further argues that the complaint does not "state the circumstances of the alleged false oaths with particularity; that Debtor's statements are not material to his schedules, transactions of the bankruptcy estate, or concerned [with] the discovery of assets." (Motion to Dismiss, at 2).

Motion to Dismiss Standard

This Court has previously stated:

> In order "[t]o survive a motion to dismiss under [Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim of relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id*. "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'"

In defining the "plausibility" standard, the *Iqbal* Court stated,

> A claim has factual plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted lawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief.
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> . . .
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> In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity, and then determine whether they plausibly give rise to an entitlement to relief.

Id. (citations omitted).

> In determining whether a complaint states a plausible claim for relief, the Court may consider the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings, and matters of which the Court may take judicial notice. *See First Mercury Ins. Co. v. Christopher K Corp.*, 2010 WL 4683928, *2 (E.D. Mich. November 10, 2010) (citing 2 James Wm. Moore et al., *Moore's Federal Practice* § 12.34[2] (3d ed. 2000)).

Treasure Isles, Inc. v. A&W Restaurants, Inc. (In re Treasure Isles HC, Inc.), Case No. 10-50304, Adv. No. 10-5089, slip op. at 6-7 (Bankr. E.D. Ky. Dec. 10, 2010) (alterations in original). "'In reviewing a motion to dismiss, we construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff.'" *Bassett v. NCAA*, 528 F.3d 426, 430 (6th Cir. 2008) (quoting *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007)). "[W]hen determining whether the Plaintiff has pled sufficient facts to withstand the Motion [to Dismiss], the veracity of the Plaintiff's allegations is not at issue, and the court is concerned with whether the facts pled, if true, would support the claim averred and the relief

sought." *Long v. Smith (In re Smith)*, Bankr. No. 09-30474, Adv. No. 09-3051, 2009 WL 1924791, *3 (Bankr. E.D. Tenn. June 30, 2009).

Issues and Discussion

11 U.S.C. § 727(a)(4) provides that "The court shall grant the debtor a discharge, unless . . . the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account." "The elements of a violation of 11 U.S.C. § 727 must be proven by a preponderance of the evidence to merit denial of discharge." *Keeney v. Smith (In re Keeney)*, 227 F.3d 679, 683 (6th Cir. 2000).

> In order to deny a debtor discharge under [section 727(a)(4)(A)], a plaintiff must prove by a preponderance of the evidence that: 1) the debtor made a statement under oath; 2) the statement was false; 3) the debtor knew the statement was false; 4) the debtor made the statement with fraudulent intent; and 5) the statement related materially to the bankruptcy case. Whether a debtor has made a false oath under section 727(a)(4)(A) is a question of fact.
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> . . . The subject of a false oath is material if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property.

In re Keeney, 227 F.3d at 685 (internal quotations and citations omitted).

The complaint asserts that the Debtor made three false statements: 1) that the Car was not a show car when it is in fact a show car; 2) that extensive repairs had not been made to the Car when in fact extensive repairs and work have been done on the Car; and 3) that the Debtor and his family were going to be out of town visiting relatives in Tennessee the weekend of September 17, 2010, when in fact the Debtor took the Car to two different car shows in Kentucky that weekend. Even if we take all the allegations in the complaint as true, the UST cannot prove by a preponderance of the evidence all of the elements necessary to deny a discharge under § 727(a)(4) because the false statements are not material.

One's initial reaction to being presented with what appears to be a blatant lie under oath, is to be appalled that someone would have the audacity to lie under oath and to punish that individual making the false statements. However, the false statements are not all that we have to consider. The false statements have to be material. As noted above, to be material, the "subject of a false oath [must] bear[] a relationship to the bankrupt's business transactions or estate, or concern[] the discovery of assets, business dealings, or the existence and disposition of his property." *In re Keeney*, 227 F.3d at 685. In this case, the statements are not material.

The false statements relate to a vehicle which is not, and never was, owned by the Debtor. The Car has been owned by Debtor's daughter for two and a half years prior to the date of Debtor's bankruptcy filing. The UST does not assert that Debtor spent any money on repairs made to the vehicle even if repairs were made or that the Debtor finances the car shows. It is irrelevant whether the Car was a show car or not since it is not owned by the Debtor. It is irrelevant where the Debtor and his family went the weekend of September 17, 2010. The UST does not assert that the family was hiding assets during the weekend the UST was delayed in viewing Debtor's home and assets. None of the false statements related to Debtor's business transactions but rather to what might instead be a family hobby. (Depo. of Ginny Langfels, p.12). None of the false statements prevented the UST from discovering assets that belonged to the Debtor's estate. None of the false statements prevented the UST from discovering assets that had been disposed of by the Debtor.

Conclusion

IT IS HEREBY ORDERED that Motion to Dismiss shall be and hereby is **GRANTED** and this adversary complaint is hereby **DISMISSED**, with prejudice.

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The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.

Signed By:
Joe Lee
Bankruptcy Judge
Dated: Monday, March 21, 2011
(jms)
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