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District Court

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for the Northern Mariana Islands
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

*** BANKRUPTCY DIVISION ***

IN RE: JOO YOON YEOM,

Debtor.

Case No. 13-bk-00004

Case No. 13-ap-00003

DECISION AND ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT, DENYING DEFENDANT'S
DISCHARGE, AND DISMISSING
DEFENDANT'S CHAPTER 7 PETITION
WITH PREJUDICE

JIN MIN LEE,

Plaintiff,

vs.

JOO YOON YEOM,

Defendant.

I. INTRODUCTION

Plaintiff Jin Min Lee requests that the Court decline to discharge defendant/debtor Joo Yoon Yeom's debts as part of her underlying Chapter 7 bankruptcy proceeding because she has intentionally hidden property in the bankruptcy to evade creditors, including plaintiff. Before the Court is plaintiff's motion for summary judgment on this issue. (ECF No. 52.) Defendant never filed an opposition brief. The Court held a hearing at which the parties were present through their counsel on May 12, 2016,

1 and defendant did not make any substantive arguments on the motion. (Minutes, ECF No. 55.)

2 For the reasons that follow, plaintiff's motion for summary judgment is GRANTED.

3 II. BACKGROUND

4 Plaintiff and defendant entered into a joint venture agreement on January 12, 2011 to establish
5 and operate a coffee shop in Garapan. (Mot. for S.J. 2, ECF No. 52)¹ Under the terms of the
6 agreement, plaintiff invested \$90,000 and defendant was obligated to repay the entire sum with interest
7 on or before January 12, 2012. (*Id.*) After plaintiff made numerous inquiries about when the coffee
8 shop would open, defendant admitted in January 2012 that she could not repay the funds but offered
9 no explanation as to why. (*Id.* at 3–4.) Approximately two months later, plaintiff filed a lawsuit
10 against defendant in the Commonwealth Superior Court to recover the investment and interest owed.
11 (*Id.* at 5.) Defendant agreed to a stipulation of judgment, acknowledging that she owed plaintiff
12 \$90,000 plus interest. (*Id.*; *see also* Case No. 13-bk-00004, Stmt. of Fin. Affairs 2 (listing civil suit
13 and status as “judgment”), ECF No. 19.)

15 Following these events, defendant filed a petition for Chapter 7 bankruptcy with this Court.
16 (Case No. 13-bk-00004, Petition, ECF No. 1.) In the bankruptcy filings, defendant stated under
17 penalty of perjury that her only business interest in the six years preceding the bankruptcy filing was
18 in JSSJ, Inc., the entity used to enter into the joint venture with plaintiff.. (*See* Case No. 13-bk-00004,
19 Stmt. of Fin. Affairs ¶ 18, ECF No. 19.)

21 Plaintiff then filed an adversary complaint, seeking judgment and an order denying defendant

23 ¹ Plaintiff's motion was supported by 22 exhibits. (*See* ECF No. 51-1 to 51-33.)

1 a discharge of the \$90,000 debt owed on the grounds that she fraudulently concealed income and
2 property interests and made false statements on her bankruptcy filings to evade creditors. (Compl.,
3 ECF No. 1; Amended Compl., ECF No. 3.) Specifically, plaintiff alleges that defendant failed to
4 disclose the following: ownership or business interest in the Poseidon Bar and Poseidon Bar II,
5 ownership of a 2013 Toyota Rav 4, and income from work as a real estate broker for Shakir Realty.
6 (Amended Compl. ¶¶ 34–58.) Plaintiff seeks relief under 11 U.S.C. §§ 727(a)(2) and (4) for
7 concealment of those interests and making a false oath in connection to these non-disclosed assets.
8 (See Amended Compl. (First-Fourth Claims).) Additionally, because defendant allegedly deceived
9 plaintiff about the nature of the \$90,000 investment, plaintiff claims the debt was obtained by fraud
10 and made while defendant was acting as a fiduciary rendering the debt non-dischargeable under 11
11 U.S.C. § 523(a)(2), (a)(4). (See *id.* (Fifth and Sixth Claims).)

12
13 As part of the adversary proceedings, plaintiff has filed the instant motion for summary
14 judgment. In the motion, plaintiff submits that she is entitled to an order denying defendant discharge
15 of the \$90,000 debt because she failed to include two events in the bankruptcy filings: her interest in
16 a commercial office building in Chalan Lau Lau and her continued business or ownership interest in
17 the Poseidon Bar. (Mot. for S.J. 11, 18.) First, plaintiff submits that defendant engaged in a sham
18 transfer of the commercial office building and therefore is not entitled to a discharge of the debt
19 pursuant to 11 U.S.C. § 727(a)(2)(A). (*Id.* at 8–18.) Second, because defendant failed to disclose her
20 continued ownership or business interest in the Poseidon Bar, she alternatively is not entitled to
21 discharge pursuant to 11 U.S.C. § 727(a)(4)(A). (*Id.* at 19.)
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III. LEGAL STANDARD

“Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine dispute as to any material fact.” *Zetwick v. Cnty. of Yolo*, 850 F.3d 436, 440 (9th Cir. 2017) (quoting *United States v. JP Morgan Chase Bank Account No. Ending 8215*, 835 F.3d 1159, 1162 (9th Cir. 2016)). A genuine dispute of material fact exists if “a reasonable juror drawing all inferences in favor of the respondent could return a verdict in the respondent’s favor.” *Reza v. Pearce*, 806 F.3d 497, 505 (9th Cir. 2015). By contrast, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). When determining if a genuine dispute of material fact exists, a court may not weigh the evidence or make credibility determinations. *Zetwick*, 850 F.3d at 441 (internal quotations and citations omitted).

In cases, such as this, where the motion for summary judgment is unopposed, a court may not grant the motion on the basis that no opposition was filed. *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 950 (9th Cir. 1993) (holding it “would be inconsistent with Rule 56” for a court to grant summary judgment “because no papers opposing the motion are filed or served, and without regard to whether genuine issues of material fact exist”). Instead, a court must assess whether “the movant’s papers are themselves sufficient to support the motion and do not on their face reveal a genuine dispute of material fact.” *White v. Aramark*, 670 F. App’x 578, 579 (9th Cir. 2016) (citing *Henry*, 983 F.2d at 950)).

IV. ANALYSIS

Plaintiff contends that the Court must deny the discharge of defendant's debts in her Chapter 7 bankruptcy because defendant engaged in a sham transfer to evade creditors and made false oaths relating to the Chalan Lau Lau office building and Poseidon Bar in her bankruptcy petition.

First, with respect to defendant's alleged failure to disclose her interest or transfer of the office building, the Court cannot grant summary judgment on this ground. As set forth in the amended complaint, each of the claims for relief brought under 11 U.S.C. § 727(a)(2) and (4) are linked to concealment of defendant's ownership interest in the Poseidon Bar, Poseidon Bar II, 2013 Toyota Rav 4, and income from her work as a real estate agent. Nowhere does plaintiff identify the office building as being a basis for judgment in her favor. "[T]he Court cannot grant summary judgment on a claim that does not exist." *Santos v. Corrs. Corp. of Am.*, Case No. 08-cv-1712, 2009 WL 4439796, at *2 (D. Ariz. Nov. 30, 2009) (denying summary judgment on medical negligence claim when only negligence was included in complaint). Thus, even assuming that defendant did attempt to transfer the office building to evade her creditors, the Court cannot consider it or grant summary judgment on it.

Next, plaintiff maintains that defendant is not entitled to a discharge of her debts pursuant to 11 U.S.C. § 727(a)(4)(A) because she failed to disclose her interest in the Poseidon Bar with intent to deceive her creditors. (Mot. for S.J. 18.) To support this, plaintiff has submitted declarations from five individuals who state that defendant had an ownership interest and income from the Poseidon Bar. (Exs. 6-9, 11; ECF Nos. 51-16, 51-17, 51-18, 51-19, 51-21.)

A debtor is not entitled to discharge in a bankruptcy proceeding if "the debtor knowingly or

1 fraudulently, in or in connection with the case . . . made a false oath or account.” 11 U.S.C. §
2 727(a)(4)(A). To prevail on a claim under this section, “a plaintiff must show, by a preponderance of
3 the evidence, that: ‘(1) the debtor made a false oath in connection with the case; (2) the oath related to
4 a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently.’” *In re*
5 *Retz*, 606 F.3d 1189, 1197 (9th Cir. 2010) (quoting *Roberts v. Erhard (In re Roberts)*, 331 B.R. 876,
6 882 (9th Cir. BAP 2005)).

7 First, plaintiff must demonstrate by a preponderance of the evidence that defendant made a
8 false oath in connection with the case. “A false statement or an omission in the debtor’s bankruptcy
9 schedules or statement of financial affairs can constitute a false oath.” *In re Khalil*, 379 B.R. 163, 172
10 (9th Cir. BAP 2007).

11 Here, there is no dispute that defendant did not list an interest in or income from the Poseidon
12 Bar in her bankruptcy filings, which were signed and filed under penalty of perjury. In particular,
13 defendant did not list the Poseidon Bar under Question 18 on the Statement of Financial Affairs, which
14 required disclosure of “all businesses in which the debtor was an officer, director, partner, or managing
15 executive of a corporation, partner in a partnership, sole proprietor, or was self-employed . . . within
16 six years immediately preceding the commencement” of the bankruptcy.” (Stmt. of Fin. Affairs ¶ 18.)

17 Plaintiff has demonstrated by a preponderance of the evidence that defendant had an ownership
18 interest in Poseidon Bar beginning in 2011, which was within six years of when defendant declared
19 bankruptcy, and therefore should have disclosed it under Question 18. The former owner of Poseidon
20 Bar, Yun Jun Lee, stated that defendant held a fifty-percent ownership interest in the bar beginning in
21 2011, and that Mr. Lee sold his fifty-percent interest to defendant in June 2013. (Lee Decl. 2–3, Ex.
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1 6, ECF No. 51-16.) The 2011 partnership agreement is attached (Lee Decl. 6), and its contents are
2 sworn to by Mr. Lee and the drafter of the agreement, Hong Eui Song. (Song Decl. 2, Ex. 7, ECF No.
3 51-17.) These facts are corroborated by Darrel Salas, the former manager and head bartender of the
4 Poseidon Bar from December 2011 to May 2013, knew defendant as “one of the original owners,” and
5 after January 2013, “the primary owner.” (D. Salas Decl. 2, Ex. 8, ECF No. 51-18.) Two additional
6 declarants, Haetnim Salas and Noke Rogopes, also state that defendant profited from and “had control
7 of the money earned by the Poseidon Bar.” (Rogopes Decl. 2, Ex. 11, ECF No. 51-21; H. Salas Decl.
8 3, Ex. 9, ECF No. 51-19.) In the face of these uncontroverted facts, the Court finds that defendant had
9 an ownership interest in the Poseidon Bar in the six years preceding her Chapter 7 bankruptcy petition,
10 that the information should have been disclosed in Question 18 of the Statement of Financial Affairs,
11 and the omission therefore constitutes a false oath.

12
13 Next, plaintiff must demonstrate that the false oath related to a material fact. “A fact is material
14 ‘if it bears a relationship to the debtor’s business transactions or estate, or concerns the discovery of
15 assets, business dealings, or the existence and disposition of the debtor’s property.’” *In re Retz*, 606
16 F.3d at 1198 (quoting *In re Khalil*, 379 B.R. at 173). As set forth above, defendant’s ownership interest
17 in the Poseidon Bar should have been disclosed in the Statement of Financial Affairs. There is no
18 question that ownership of a business concerns the discovery of assets or business dealings and is
19 therefore material. Accordingly, the false oath relates to a material fact.

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21 The remaining elements are that the false oath was made knowingly and fraudulently. “A
22 debtor ‘acts knowingly if he or she acts deliberately and consciously.’” *In re Retz*, 606 F.3d at 1198
23 (quoting *In re Khalil*, 379 B.R. at 173). To demonstrate fraudulent intent, a plaintiff must demonstrate

1 that defendant (1) made the representations; (2) while knowing it was false; and (3) with the “intention
2 and purpose of deceiving the creditors.” *Id.* at 1198–99 (quoting *In re Khalil*, 379 B.R. at 173.) Intent
3 may be proven by circumstantial evidence “or by inferences drawn from a course of conduct.” *In re*
4 *Thomsen*, 172 F.3d 877, at *1 (9th Cir. 1999) (unpublished opinion) (quoting *In re Adeeb*, 787 F.2d
5 1339, 1342–43 (9th Cir. 1986)). Repeated mistakes or omissions, and even one omission or falsehood,
6 taken with subsequent failures to correct filings may be sufficient to find intent to deceive. *In re*
7 *Khalil*, 379 B.R. at 176.

8 Here, defendant acquired an interest in the Poseidon Bar in 2011. She filed a Chapter 7
9 bankruptcy petition and related filings between April 23, and May 7, 2013. (*See* Case No. 13-bk-
10 00004, ECF No. 1-24.) She gained full ownership of the Poseidon Bar in June 2013 while the
11 bankruptcy proceedings were already underway. (Lee Decl. 2–3, Ex. 6, ECF No. 51-16.) At no time
12 did she disclose this interest in any of the amended schedules filed, and she did not file an amended
13 Statement of Financial Affairs despite having time to do so.

14 This repeated failure not only demonstrates a conscious decision to omit the information from
15 the bankruptcy filing and therefore establishes the false oath was made knowingly, but it also
16 demonstrates an intent to deceive. Defendant’s interest in the business was significant—first as half-
17 owner and later as full owner—and her recurring failure to disclose it, especially given that she agreed
18 to become the full owner of the Poseidon Bar after she filed for bankruptcy, demonstrates that she
19 intended to deceive her creditors. *See In re Cummings*, 595 F. App’x 707, 709–10 (9th Cir. 2015)
20 (unpublished opinion) (affirming bankruptcy court finding that debtor knowingly and fraudulently
21 made material false oaths by failing to disclose on several amended filings an interest in First Beacon
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1 Management Co.); *In re Phillips*, 460 F. App'x 625, 626 (9th Cir. 2011) (unpublished opinion)
2 (affirming bankruptcy court finding that debtor knowingly and fraudulently made material false oaths
3 by failing to disclose disability insurance claim he was actively pursuing).

4 In sum, plaintiff has established all elements of her claim. The evidence demonstrates that
5 defendant knowingly or fraudulently, in connection with the Chapter 7 bankruptcy, made a false oath.
6 Accordingly, as a matter of law, defendant is not entitled to discharge.


7 **V. CONCLUSION**

8 For the reasons set forth above, plaintiff's unopposed motion for summary judgment (ECF No.
9 52) is GRANTED. Judgment shall enter in favor of plaintiff.

10 In 13-bk-00004, the Court denies debtor Joo Yoon Yeom her Chapter 7 discharge. It is
11 ORDERED that debtor's bankruptcy petition shall be dismissed with prejudice.

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13 IT IS SO ORDERED.

14 Dated this 18th of October, 2017.

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18 RAMONA V. MANGLONA
19 Chief Judge
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