



IT IS ORDERED as set forth below:

Date: December 12, 2014

**W. Homer Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
KENNETH GAYLON STREET,	:	BANKRUPTCY CASE
	:	NO. 14-11380-WHD
Debtor.	:	
	:	
STEVEN GREENBERG,	:	ADVERSARY PROCEEDING
	:	NO. 14-1047
Plaintiff,	:	
	:	
v.	:	
	:	
KENNETH GAYLON STREET,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Judgment on the Pleadings, filed by Steven Greenberg (hereinafter the "Plaintiff"). The Motion arises in connection with a complaint

(hereinafter the “Complaint”) objecting to the bankruptcy discharge of Kenneth Gaylon Street (hereinafter the “Defendant”). This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(J); § 1334.

FACTS AND PROCEDURAL HISTORY

On June 25, 2014, the Defendant filed a voluntary petition under Chapter 7 of the Bankruptcy Code. On Schedule F, the Defendant disclosed a debt in the amount of \$60,976.91 owed to the Plaintiff. The Plaintiff filed the Complaint on October 6, 2014.

According to the Complaint, the Defendant: (1) operates a heating and air conditioning service and installation business as a sole proprietor; (2) has in the past exchanged his services for goods or other services, including chiropractic services and an air conditioning unit; (3) when asked under oath during his first meeting of creditors about whether he bartered for business as a part of his income, namely chiropractic services or other professional services, answered, “No, except for coolers and stuff.” The Plaintiff objects to the Defendant’s discharge on the basis that the Defendant made a “false oath” within the meaning of section 727(a)(4).

In response, the Defendant has filed a motion for judgment on the pleadings, essentially asserting that, even assuming all of the facts stated in the Complaint are true, the alleged false statements were not material. As the Plaintiff has failed to file a response to the Motion, the Motion is deemed unopposed. *See* BLR 7007-1(c).

CONCLUSIONS OF LAW

A. Rule 7012(b) Standard

In accordance with Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, which incorporates Federal Rule of Civil Procedure 12(c), judgment on the pleadings is appropriate when no material facts are in dispute and the moving party is entitled to judgment as a matter of law. FED. R. BANKR.P. 7012(b); *Guyen Fine Jewelry, Inc. v. Hope (In re Hope)*, 2014 WL 3529773, at * 1 (Bankr. N.D. Ga. July 14, 2014) (Murphy, J.) (citing *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001)). The Rule 12(c) standard is the same as that employed by courts when ruling on a motion under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Id.* (citing *In re Dorsey*, 497 B.R. 374, 382 (Bankr. N.D. Ga. 2013)). Under this standard, the court should grant the defendant's motion when, viewed in the light most favorable to the plaintiff, the complaint contains no set of facts that supports “a claim to relief that is plausible on its face.” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). In other words, if the complaint contains “enough facts to state a claim to relief that is plausible on its face,” it “may not be dismissed simply because the defendant (or the court) believes that the plaintiff will fail to find evidentiary support for his allegations.” *Roma Outdoor Creations, Inc. v. City of Cumming, Ga.*, 558 F. Supp. 2d 1283, 1285 (N.D. Ga. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1974 (2007)).

B. Section 727(a)(4)

Section 727(a)(4)(A) provides that the Court may deny a Chapter 7 debtor's discharge if the "debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account." 11 U.S.C. § 727(a)(4)(A). To obtain such relief, the plaintiff must show: (1) there was a false oath; (2) that the false oath was material; and (3) that the debtor made the false oath knowingly and fraudulently. *Moyer v. Geer (In re Geer)*, __ B.R. __, 2014 WL 6449991, at *13 (Bankr. N.D. Ga. Oct. 31, 2014) (Hagenau, J.).

For purposes of section 727(a)(4), an omission of information from the Bankruptcy Schedules signed under penalty of perjury can constitute a false oath, *see Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984) (citing *In re Raiford*, 695 F.2d 521, 522 (11th Cir. 1984)), as can false statements made under oath during the debtor's first meeting of creditors, *see Gargula v. Skinner (In re Skinner)*, 2014 WL 5092284, at *5 (Bankr. D. Neb. Oct. 9, 2014) ("Well-established case law holds that because the statements made by a debtor . . . at the meeting of creditors are signed under penalty of perjury and made under oath, they constitute 'oaths' for purposes of § 727(a)(4)(A)."). Further, "[t]he subject matter of a false oath is 'material,' and thus sufficient to bar discharge, 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 Chalik*, 748 F.2d at 618. The plaintiff need not demonstrate that the undisclosed or false information harmed creditors, as “[c]reditors are entitled to judge for themselves what will benefit or prejudice them.” *Geer*, 2014 WL 6449991, at *13. That being said, as the purpose of requiring disclosures is to assist the trustee and creditors in their investigation of the debtor’s affairs and the recovery of assets, false information or omissions are not material unless they “assist or impede” this effort. *Id.* (“[I]f the omission would not assist or impede the . . . creditors in this endeavor, it is not material.”).

Here, the Defendant moves for judgment on the pleadings on the basis that the information he has been accused of omitting from his Bankruptcy Schedules and the answer to the question that he is accused of answering falsely during his meeting of creditors are not material. The Court agrees. The Defendant’s having bartered for services in exchange for other services and certain equipment at some unstated time in the past does not appear to be material to the Defendant’s current financial situation. Although information regarding bartering could be relevant to the amount of income a debtor has earned and will continue to earn, the Complaint does not allege that the services and goods received by the Defendant from bartering were substantial or that the bartering was recent enough to impact the Defendant’s bankruptcy case.

The Complaint does not allege that bartering continues to inflate the Defendant’s

income beyond what he reported or that such services or goods were received recently enough to be considered for purpose of determining whether the Defendant's bankruptcy case is abusive. *See* 11 U.S.C. § 707(b); § 101(10A). Rather, Exhibits A and B to the Complaint establish that the bartering occurred "in the past," *see* Ex. A, and "[s]ome time ago," *see* Ex. B. Although creditors and the trustee are certainly entitled to accurate information regarding a debtor's earning history, there is a point beyond which a debtor's earnings history becomes too remote to assist the trustee and creditors in an investigation of the debtor's current financial condition. In this particular case, nothing in the Complaint suggests that the information at issue is material to understanding the Defendant's current income potential or financial condition.

The Defendant's acquisition of certain services or assets through bartering is also not relevant to an investigation of the assets that are or should be available to a trustee for liquidation. The means by which the Defendant acquired the assets has no bearing on whether the Defendant owned the assets at the time he filed his bankruptcy petition or on whether he disposed of those assets in a manner that would render the transfer of the assets avoidable. Further, the Plaintiff has proffered no reason why the Defendant's failure to disclose the fact that he acquired the assets through bartering hindered or otherwise impeded the Plaintiff or the Trustee from investigating the Defendant's assets or any transactions affecting his assets prior to the filing.

In short, the Court can imagine no reason why Defendant's incorrect answer to the question about his bartering would have impeded the Defendant's creditors or the trustee in their investigation of the Defendant's financial affairs. As the Plaintiff has not responded to the Defendant's motion, the Court assumes that the Plaintiff also can imagine no such reason.

CONCLUSION

For the reasons stated above, the Defendant's motion for judgment on the pleadings is hereby **GRANTED**. The Plaintiff's Complaint is **DISMISSED**. A judgment in favor of Defendant Kenneth Gaylon Street and against Plaintiff Steven Greenberg will be entered concurrently herewith.

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