IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

IN RE: DAVID EARL Christain and
REBECCA JEAN Christain, Debtors **No. 3:10-bk-75927**
Ch. 7

JAMES DAVID BOROUGHS **PLAINTIFF**
v. **3:11-ap-7096**
REBECCA JEAN CHRISTAIN **DEFENDANT**

CENTRAL BANK, Savannah, Tennesee **PLAINTIFF**
v. **3:11-ap-7097**
REBECCA JEAN CHRISTAIN **DEFENDANT**

JAMES DAVID BOROUGHS,
CENTRAL BANK, Savannah, Tennessee
and BANK OF WAYNESBORO,
Waynesboro, Tennessee **PLAINTIFFS**
v. **3:11-ap-7098**
DAVID EARL Christain and
REBECCA JEAN Christain **DEFENDANTS**

ORDER

Before the Court are three related adversary proceedings: 3:11-ap-7096, 3:11-ap-7097, and 3:11-ap-7098. The first case, 3:11-ap-7096, is the complaint filed by James David Boroughs [Boroughs] on June 30, 2011, and the answer filed by debtor Rebecca Jean Christain [Becky] on July 29, 2011. Boroughs seeks to determine the dischargeability of Becky's debt to him under 11 U.S.C. § 523(a)(2)(A). The second case, 3:11-ap-7097, is the amended complaint filed by Central Bank, Savannah, Tennessee [Central Bank], on August 19, 2011, and the answer filed by Becky on August 26, 2011. Central Bank seeks to determine the dischargeability of two of Becky's debts under § 523(a)(2)(A). The third case, 3:11-ap-7098, is the complaint filed by Boroughs, Central Bank, and the Bank of Waynesboro, Waynesboro, Tennessee [Bank of Waynesboro], on June 30, 2011,

and the joint answer filed by the debtors, David Earl Christain [David] and Becky [also referenced together as the debtors] on July 27, 2011. Boroughs, Central Bank, and Bank of Waynesboro [the creditors], object to the debtors' discharge under § 727(a)(2), (a)(4)(A), and (a)(5).

Upon request of the parties, the three adversary proceedings were heard in one three-day trial beginning on February 29, 2012. At the conclusion of the proceeding, the parties agreed to present their arguments in post-trial briefs and the Court took the matters under advisement. For the reasons stated below, the Court grants the relief requested in the creditors' complaint under § 727(a)(2) and (a)(4)(A) in case 3:11-ap-7098, and denies the debtors' chapter 7 discharge. The Court finds that Boroughs and Central Bank failed to prove the elements necessary to prevail under § 523(a)(2)(A); therefore, the Court denies the relief requested in cases 3:11-ap-7096 and 3:11-ap-7097. Because the debtors' discharge is denied under § 727(a)(2) and (a)(4)(A), the Court will not engage in a discussion of § 523(a)(2)(A).

Jurisdiction

This Court has jurisdiction over these matters under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and they are core proceedings under 28 U.S.C. § 157(b)(2)(I) and (J). This Order contains findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy 7052.

Background

David and Becky have owned or held a majority interest in nine companies since 2002.[1] David and Becky jointly owned Pulmonary Solutions, LLC [Pulmonary Solutions], C & C Consultants, LLC [C & C], and Christain, Christain & Riggs, Inc. Becky owned Sleep Analysts, Inc. [Sleep Analysts], Legacy Hospice, and Trinity Southeast Holdings,

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[1] Prior to 2002, David was in management at Southwestern Bell. From 1991 to 2002, Becky was the national marketing director of Rotech, a medical supply corporation.

Inc. [Trinity Southeast]. Although it was unclear at trial whether SEMO Medical, Inc. [SEMO Medical], Mitchell Oxygen, and Thicker Partners, L.P. were jointly owned by the debtors, their Statement of Financial Affairs [SOFA] stated that Becky and David each owned 50% of all listed entities.

The debtors testified that beginning in 2006, most of their income came from C & C, their ultrasound business. Both Becky and David testified that C & C produced an average monthly income of $60,000 to $80,000. Becky testified that she took distributions from C & C in 2008, 2009, and 2010.[2] David testified that he and Becky used the C & C account for living expenses. The debtors treated the C & C account as a personal account. From 2008 to 2010, the debtors used funds from the C & C bank account to pay for their daughter's plastic surgery ($3400), their daughter's pool ($42,000), and Becky's brother's divorce-related legal fees ($2500). The debtors consistently paid personal credit card bills out of the C & C account and at least twice wrote $1000 checks to their son out of the C & C account.

Additionally, the debtors' personal bank statements reflect that they methodically

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[2] At trial, plaintiffs' counsel questioned Becky about C & C:

Q. Did you ever take any distributions from C & C Consultants?
A. Yes, ma'am.
Q. Did you take distributions from C & C in 2008?
A. Yes, ma'am.
Q. Did you take distributions from C & C in 2009?
A. Yes, ma'am.
Q. Did you take distributions from C & C in 2010?
A. Yes, ma'am.

(Trial Tr. vol II, 324.) Although much of Becky's trial testimony was confusing and noncommital, the Court notes that when Becky testified that she took distributions from C & C in 2008, 2009, and 2010, she was direct, succinct, and unequivocal. Becky only expressed uncertainty about whether she had taken distributions from C & C when plaintiffs' counsel asked her to identify where she had disclosed her 2008 and 2010 income from C & C on her SOFA. Becky then testified that "[she] may not have taken any in 2008" and "[she] may not have taken any in 2010." (Trial Tr. vol II, 325.)

transferred thousands of dollars each month from C & C into their personal account throughout 2008, 2009, and 2010.[3] In October 2010--the month immediately before the debtors filed their voluntary chapter 7 petition--the debtors deposited $60,000 into C & C's bank account and transferred over $17,000 from C & C's account to their personal account.

In 2002, Becky bought Sleep Analysts, Inc. [Sleep Analysts] and remained the sole shareholder of the corporation until it ceased operating in 2010. Sleep Analysts was a Missouri corporation that set up, equipped, and staffed pulmonary rehabilitation facilities [pulmonary rehabs] and sleep study laboratories [sleep labs] for physicians in Missouri.[4] Pulmonary Solutions became part of Sleep Analysts on August 1, 2007.

Sometime in 2007, Becky approached Boroughs about buying Riverside Medical, Inc. [Riverside Medical], a Tennessee corporation owned by Boroughs and Thomas Harvill [Harvill]. Riverside Medical was an established company that supplied durable medical equipment [DME] such as oxygen tanks, nebulizers, and respiratory apparatus to patients for home use. Boroughs testified that Becky was unable to obtain the financing to buy Riverside Medical because her companies were relatively new and lacked the credit history necessary to obtain loans in Tennessee. In August 2007, Becky, Boroughs, and Harvill met to discuss combining Sleep Analysts, SEMO Medical, and Riverside Medical to form a holding company that would utilize Becky's marketing experience and Boroughs's and Harvill's borrowing power to expand their collective businesses into Tennessee under one corporate name.[5] Thus, the parties agreed to form Trinity Southeast

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[3] At trial, the plaintiffs introduced numerous exhibits derived from the debtors' and C & C's bank statements from 2008, 2009, and 2010 reflecting the transfers.

[4] Sleep Analysts owned one "free-standing" sleep lab in Cape Girardeau, Missouri; the rest of Sleep Analysts' pulmonary rehabs and sleep labs were operated within physicians' offices.

[5] Boroughs testified that David also participated in the initial meetings to discuss forming Trinity Southeast. (Trial Tr. vol II, 251.)

Holdings, Inc. [Trinity Southeast].

Sleep Analysts, SEMO Medical, and Riverside Medical, through Becky, Boroughs, and Harvill, entered into a management agreement on January 2, 2008. The management agreement allowed the parties to proceed under the Trinity Southeast umbrella until corporate shares could be issued.[6] The management agreement authorized the parties to operate as if the merger into Trinity Southeast had already taken place. Becky, Boroughs, and Harvill agreed that they would all have equal management power and further agreed to share the responsibility for the day to day operations of Sleep Analysts, SEMO Medical, and Riverside Medical. Before the management agreement was executed, the parties began incurring debt together.

In October 2007, Boroughs approached Chris Jerrolds [Jerrolds], the president and CEO of Central Bank, about borrowing funds to set up sleep labs and pulmonary rehabs in Tennessee. Prior to his employment with Central Bank, Jerrolds was a partner in Riverside Medical with Boroughs and Harvill. Boroughs, Harvill, and Riverside Medical had a good loan history with Jerrolds and Central Bank. Jerrolds testified that the Central Bank loans were for Sleep Analysts, but that it was his understanding that Boroughs and Harvill were combining their company with Sleep Analysts.

As part of Central Bank's normal loan procedure, Sleep Analysts submitted a loan application that Harvill had signed. Jerrolds requested and received financial information about Sleep Analysts, as well as financial statements and tax returns from David, Becky, Boroughs, and Harvill. Jerrolds testified that he did not meet Becky until she arrived at Central Bank on November 6, 2007, to close on two loans for Sleep Analysts--one for $140,000 and another for $50,000. Becky, Boroughs, and Harvill were present at the

[6] Becky had a previous partnership, the dissolution terms of which prevented her or Sleep Analysts from consummating the agreement to form Trinity Southeast for approximately one year.

closing. A corporate resolution from Sleep Analysts purporting to authorize the loans was provided to Jerrolds around the time of the closing.[7] The loan documents stated that the loans were being made to "purchase equipment for business." The collateral for both loans was all equipment Sleep Analysts owned and any equipment it acquired in the future. The loan documents were silent as to whether Central Bank was ensured a first-position lien on the collateral. Both loans were personally guaranteed by Becky, Boroughs, and Harvill.[8]

There was conflicting testimony at trial regarding the purpose of the Central Bank loans. Jerrolds and Boroughs testified that they believed the loans were to purchase equipment and to cover start-up expenses for the Tennessee sleep labs and pulmonary rehabs. Jerrolds testified that he received an itemized list of start-up expenses for Pulmonary Solutions and Sleep Analysts at some point prior to closing.[9] The list, which was admitted at trial, included a $38,500 expense for a "body box," as well as other equipment and two months of payroll. (Pl.'s Ex. 4.) The listed expenses totaled

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[7] Harvill signed the corporate resolution as the Secretary of Sleep Analysts; Boroughs signed it as an attesting officer of Sleep Analysts; Thomas Young [Young], the Chief Operating Officer [COO] of Trinity Southeast, signed it as an agent of Sleep Analysts. Boroughs and Young testified that Becky authorized Harvill to sign the corporate resolution for Sleep Analysts at the closing. Jerrolds first testified that he witnessed a "big discussion" between Becky, Boroughs, and Harvill at closing regarding who should sign the corporate resolution on behalf of Sleep Analysts. Jerrolds testified that the parties decided to let Harvill sign. Jerrolds later testified that Young was not present at closing and therefore the corporate resolution must not have been signed under the circumstances he had previously described. Becky testified that she did not recall a discussion regarding the corporate resolution at the closing. There was no explanation offered at trial regarding why Becky, as Sleep Analysts' only officer, failed to sign its corporate resolution. In any event, Becky testified that she was made aware that the loans were in Sleep Analysts' name when she arrived for the closing.

[8] The personal guarantees were unsecured.

[9] Jerrolds did not know who prepared the list of start-up costs. Jerrolds could not recall who gave him the list or precisely when he obtained it. Boroughs testified that Becky prepared the list; Becky testified that she did not. Young testified that he created the list with Becky's assistance.

$140,000--the amount of one of the Central Bank loans. Jerrolds testified that he thought that Sleep Analysts had ordered the equipment listed on plaintiff's Exhibit 4, but that he did not believe that the equipment had been paid for prior to the November 6 closing on the Central Bank loans. Becky testified that she believed the loans were not for the purpose of buying equipment--because she had already financed the equipment through Intel. Rather, the loans were for other start-up costs and operating capital for Dr. Gigi Woods-Davis's [Dr. Davis] pulmonary rehab (the first pulmonary rehab to be set up in Tennessee after Becky, Harvill, and Boroughs decided to form Trinity Southeast.) [10]

Central Bank issued the checks to Trinity Southeast. Boroughs deposited the loan proceeds into a Trinity Southeast bank account.[11] The $50,000 loan was used to pay a Riverside Medical American Express bill that consisted primarily of Sleep Analysts' expenses. Becky testified that she and other Sleep Analysts employees had American Express cards in Riverside Medical's name; she further testified that Sleep Analysts had charged at least some of the $50,000 that Riverside Medical owed to American Express. Approximately $115,000 of the $140,000 Central Bank loan was transferred from Trinity Southeast to Sleep Analysts in November 2007. Sleep Analysts made the loan payments to Central Bank until early 2010.

Becky testified that she developed health problems in March 2009. She testified that she briefly improved in August 2009, but that she generally declined over the course of 2009. She testified that by October 2009, her medical issues, combined with taking medications that affected her memory and cognitive abilities, dictated that she take a less active role

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[10] Pulmonary Solutions, through Sleep Analysts, had set up one rehab in Tennessee prior to discussions about forming Trinity Southeast.

[11] Although Becky did not have signature authority on Trinity Southeast's account at Sumner Bank, Young testified that, as Trinity Southeast's COO, he managed the account and disbursed funds when asked by Boroughs, Harvill, or Becky.

in her businesses.[12] She gave her daughter, Jennipher Crossno [Jennipher], power of attorney. Also in October 2009, Medicare released a coverage determination that significantly reduced reimbursements to pulmonary rehabs, diminishing Pulmonary Solutions'--and thereby Sleep Analysts', expected future profits.

Becky decided to pull Sleep Analysts and SEMO Medical out of the planned merger into Trinity Southeast at some point in 2009.[13] She testified that Boroughs asked her to come to a meeting he had set up with Trinity Southeast's accountant. She testified that she became concerned during the meeting when Boroughs asked the accountant to put "some things on the books that were old." She announced her intention to withdraw from the planned merger the same day. The parties entered into a dissolution agreement on December 31, 2009.[14] The dissolution agreement provided, among other things, that Sleep Analysts, with Becky as guarantor, would be responsible for the two Central Bank loans in Sleep Analysts' name, a Bank of Waynesboro loan in Trinity Southeast's name with a balance of $59,310, and all obligations owed by any party to Kennett National Bank [KNB] in Missouri.[15] Sleep Analysts stopped paying Central Bank, Bank of Waynesboro, and KNB in April 2010.

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[12] At trial, Becky introduced into evidence a hand-written list of medication that she has allegedly taken since the onset of her medical problems in 2009; she testified that the medication impairs her memory, her ability to think clearly, and her capacity to answer questions in a direct manner. Her husband and daughter testified similarly. No medical testimony or documentation was offered to support the Christain family's self-serving assertions.

[13] Becky testified that she decided to pull out of the merger "before [she] got sick." It was unclear at trial whether she meant her initial illness in March 2009 or when she worsened in October 2009.

[14] The parties to the dissolution agreement were: Sleep Analysts, Pulmonary Solutions, SEMO Medical, Mitchell Oxygen, Trinity Southeast, Riverside Medical, Becky, Boroughs, and Harvill.

[15] When Sleep Analysts renegotiated a $1,500,000 loan from KNB after the parties had decided to form Trinity Southeast, Boroughs and Harvill guaranteed the loan in order to reduce Sleep Analysts' monthly payment to KNB from $30,000 to $18,000.

In the summer of 2010, Central Bank attempted to make arrangements with Dr. Davis to obtain the equipment pledged as collateral on its two loans. Central Bank discovered that the company that had financed the equipment under a lease-to-purchase agreement with Sleep Analysts, OFC Capital Corporation (formerly Intel) [OFC], was also claiming an interest in the equipment. Central Bank also learned that Dr. Davis had entered into an agreement with Sleep Analysts to purchase the same equipment in which Central Bank and OFC claimed competing interests.[16]

During the same period in mid-2010, KNB, Sleep Analysts' largest secured creditor, demanded that Sleep Analysts start liquidating assets. KNB sent letters directing Sleep Analysts' customers to remit all further payments directly to KNB rather than to Sleep Analysts.[17] Sleep Analysts began selling sleep labs at KNB's direction. When Sleep Analysts obtained proceeds from a sale, it forwarded the funds to the creditors associated with the sleep lab that had been sold.

In addition to closing Sleep Analysts, the debtors also stopped operating C & C in September 2010. The debtors sold C & C's equipment and assets to Cape Family Practice, PC on September 4, 2010. C & C's bank statement reflects a $60,000 deposit from that sale on October 1, 2010. Although the debtors testified that C & C was closed by September 2010, the debtors wrote a $25,000 check out of their personal account to Account Services, allegedly to pay a C & C bill, on October 14, 2010. (Trial Tr. vol. II, 331; Pl.'s Ex. 27.) The debtors testified that they could not explain why the check was written out of their personal account.

The debtors filed their joint, voluntary chapter 7 bankruptcy petition on November 11,

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[16] Central Bank chose to settle rather than litigate the lien priority disputes with OFC and Dr. Davis.

[17] KNB obtained the addresses of Sleep Analysts' customers from the checks that had been deposited into Sleep Analysts' bank accounts at KNB.

2010, and filed their initial schedules and statements on December 7, 2010. The debtors filed various amended schedules and statements on January 25, 2011, February 9, 2011, April 28, 2011, and February 22, 2012. On January 25, 2011, the debtors amended Schedule C to exempt stocks worth $3290, Schedule E to disclose $92,063 owed to the IRS, Schedule F to add Puget Sound Leasing Co., Inc. as an unsecured creditor for an unknown amount, and the SOFA to disclose that they transferred their former home in Missouri to Aaron and Jessica Jamerson on June 1, 2010. On February 9, 2011, the debtors amended Schedule F to add Cape Family Practice and Dr. Davis as unsecured creditors holding contingent, disputed, unliquidated claims for unknown amounts. On April 29, 2011, the debtors amended Schedule F to add Charles S. Pewitt, D.O. as an unsecured creditor with a $91,570 disputed claim.

On February 22, 2012, one week prior to trial and two weeks after the creditors deposed Becky, the debtors filed the final amendment [February 22 amendment] to their schedules and statements. The debtors amended Schedule B to add a "½ interest in a cabin" valued at $2500 and Schedule F to add KNB as an unsecured creditor for an unknown amount. The debtors also amended their SOFA to add information in response to five questions. Question 1 of the SOFA is entitled "[i]ncome from employment or operation of business" and reads, in pertinent part, as follows:

> State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year . . . .

In the February 22 amendment, the debtors disclosed in response to question 1 that David had received additional income of $7681 in 2010 through the date of filing from "perfect pay."[18] Question 2 of the SOFA is entitled "[i]ncome other than from employment or

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[18] The debtors testified at trial that "perfect pay" indicates that the funds came from Sleep Analysts.

operation of business" and reads, in pertinent part, as follows:

> State the amount of income received by the debtor other than from employment, trade, or profession, or from operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars . . . .

In the February 22 amendment, the debtors disclosed in response to question 2 that they had received additional income of $99,778 in 2010 from sources other than employment or operation of a business comprised of:

- $88 from David's AT&T dividends
- $31 from David's retirement
- $11,659 from rental income
- $88,000 from David's IRA withdrawal

Question 4 of the SOFA is entitled "[s]uits and administrative proceedings, executions, garnishments and attachments" and reads, in pertinent part, as follows:

> List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case . . . .

In the February 22 amendment, the debtors disclosed in response to question 4 that a lawsuit had been filed in Missouri by Charles S. Pewitt D.O. against Becky and Sleep Analysts in 2010. Question 10 of the SOFA is entitled "[o]ther transfers" and reads, in pertinent part, as follows:

> List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case . . . .

In the February 22 amendment, the debtors disclosed the following in response to question 10:

- in June 2010, KNB received $250,000 from the sale of the Christains' former residence and $13,000 from the sale of SEMO Medical's assets; according to the Christains, KNB distributed the funds as follows: $155,635 to cover overdraft charges; $3610 for "payroll owed"; $5000 to the IRS; and $98,403 for a Sleep Analysts' loan; KNB also received

$12,500 from Aaron and Jessica Jamerson for furnishings they bought from the Christains

- in June 2010, the Christains transferred their former residence to Aaron and Jessica Jamerson
- in October 2010, C & C sold its assets and equipment to Dr. Anthony J. Keele of Cape Family Practice for $60,000
- in December 2009, Sleep Analysts sold assets to McPherson Medical & Diagnostics, LLC and the Christains received $33,500
- in January 2010, Sleep Analysts sold assets to Skyline Cardiovascular Institute and the Christains received $33,500
- in January 2010, Sleep Analysts sold assets to Summit Medical Associates and the Christains received $38,000
- in December 2009, Sleep Analysts sold assets to Hall Medical and the Christains received $32,000
- in December 2009, Sleep Analysts sold assets to Dr. Davis and the Christains received $39,250
- in October 2010, the Christains transferred $25,000 to Account Services to pay off leases on the equipment C & C sold to Cape Family Practice
- in May 2010, the Christains transferred a donkey and two goats to Fred Chandler for $100

Question 18 of the SOFA is entitled "[n]ature, location and name of business" and reads, in pertinent part, as follows:

> If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full-or part- time within six years immediately preceding the commencement of this case . . . .

In the February 22 amendment, the debtors disclosed their interest in the following

entities in response to question 18:

- Pulmonary Solutions, LLC from October 2006 to May 2010
- C & C Consultants, LLC from November 2008 to September 2010
- Trinity Southeast Holdings from 2007 to December 2009
- Christain, Christain & Riggs, Inc. from 2005 to November 2007
- Thicker Partners, L.P. with the notation "been out of business for over 10 years"
- Legacy Hospice from 2003 to 2006

At trial, the debtors also admitted that the following information was not disclosed on their initial schedules or statements or in any of the four amendments:

- $609,851 in gross income in 2008 from C & C; the debtors should have disclosed this in response to question 1 of the SOFA
- $254,256 in gross income in 2010 from C & C; the debtors should have disclosed this in response to question 1 of the SOFA
- $75,000 that David withdrew from his IRA 2008; the debtors should have disclosed this in response to question 2 of the SOFA
- $38,000 in disability back pay in 2009; the debtors should have disclosed this in response to question 2 of the SOFA
- some portion of $13,000 generated from a yard sale in the summer of 2010; the debtors should have disclosed this in response to question 2 of the SOFA
- the debtors gave their friend Sherry Riggs clothing and other assets to hold for them or to sell for them prior to the debtors filing bankruptcy; the debtors should have disclosed this in response to question 6 of the SOFA
- $3000 gift to Sleep Analysts in August 2010; the debtors should have disclosed this in response to question 7 of the SOFA

Findings of Fact and Conclusions of Law

The creditors contend that the Court should deny the debtors' discharge under § 727(a)(2),

(a)(4)(A), and (a)(5).[19] Denial of a discharge is a harsh penalty that courts should not administer carelessly. *McDonough v. Erdman* (*In re Erdman*), 96 B.R. 978, 984 (Bankr. D. N.D. 1988). Denial of a discharge is a drastic remedy. *Korte v. U.S. Internal Revenue Serv*. (*In re Korte*), 262 B.R. 464, 471 (B.A.P. 8th Cir. 2001) (quoting *American Bank v. Ireland* (*In re Ireland*), 49 B.R. 269, 271 n.1 (Bankr. W.D. Mo. 1985)). Because the remedy dictated by § 727 is severe, the statute's provisions are "'strictly construed in favor of the debtor.'" *Id.* at 471 (quoting *Fox v. Schmit* (*In re Schmit*), 71 B.R. 587, 589-90 (Bankr. D. Minn. 1987)). However, § 727 is also intended to "prevent the debtor's abuse of the Bankruptcy Code." *In re Schmit*, 71 B.R. at 590. In a denial of discharge case under § 727, the burden of proof is on the objecting party. *In re Korte*, 262 B.R. at 471. Thus, the creditors must prove each element of § 727(a)(2), (a)(4)(A), or (a)(5) by a preponderance of the evidence in order for the debtors' discharge to be denied. *Id*.

Section 727(a)(2)

Under § 727(a)(2) the Court shall grant a debtor a discharge, unless--

> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of the property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed–
>
> > (A) property of the debtor, within one year before the date of the filing of the petition; or
> > (B) property of the estate, after the date of the filing of the petition[.]

11 U.S.C. § 727(a)(2). Section 727(a)(2) is fundamental to the concept that a debtor's chapter 7 discharge is granted upon the condition that he has disclosed all of his assets and made them available for distribution. *Helena Chem. Co. v. Richmond* (*In re Richmond*), 429 B.R. 263, 302 (Bankr. E.D. Ark. 2010). "Section 727(a)(2) is intended to prevent the discharge of a debtor who attempts to avoid payment to creditors by concealing or otherwise disposing of assets." *Id.* (quoting COLLIER ON BANKRUPTCY § 727.02 n.1

[19] The creditors' standing to object to David's discharge was addressed in the Court's April 17, 2012 Order Denying Mr. Christain's Oral Motion for Judgment on Partial Findings.

(rev. 15th ed. 2009)). A creditor objecting to a debtor's discharge under § 727(a)(2) has the burden of proving four elements by a preponderance of the evidence–

> (1) that the act complained of was done within one year prior to the date the petition was filed, or after the date the petition was filed;
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> (2) that the act was that of the debtor;
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> (3) that it consisted of a transfer, removal, destruction, or concealment of the debtor's property, or, if the act occurred after the date the petition was filed, the property of the estate; and
>
> (4) that it was done with an intent to hinder, delay, or defraud either a creditor or an officer of the estate.

See 11 U.S.C. § 727(a)(2); *see also In re Korte*, 262 B.R. at 472. Proof that a creditor or the estate was harmed as a result of the debtor's act is not required under § 727. *In re Richmond*, 429 B.R. at 302 (citing *In re Snyder*, 152 F.3d 596, 601 (7th Cir. 1998)) (citation omitted). The creditors argue that the debtors' discharge should be denied under § 727(a)(2) because the debtors concealed property when they failed to disclose all of their assets in their chapter 7 voluntary petition.

The Court finds that the creditors proved the first and third elements of § 727(a)(2)--that within one year prior to the debtors filing their bankruptcy petition, or after the debtors filed their bankruptcy petition, they concealed property. The debtors failed to list numerous assets when they filed their initial schedules and statements on December 7, 2010. Failing to list assets on bankruptcy schedules and statements is tantamount to an act of concealment falling within the time frame required by § 727(a)(2). *See Fowler v. Weathers* (*In re Weathers*), 2011 WL 3207950, at *3 (Bankr. W.D. Ark. July 21, 2011) (citing *Cobb v. Hadley* (*In re Hadley*), 70 B.R. 51, 53 (Bankr. D. Kan. 1987)). It is generally acknowledged that "concealment is a continuing act." *Id.* (quoting *Peterson v. Hazen* (*In re Hazen*), 37 B.R. 329, 332 (Bankr. M.D. Fla. 1983)). Ostensibly, the debtors attempted to correct some of the omissions and inaccuracies contained in their initial schedules and statements when they filed amendments on four separate occasions. Debtors may amend their schedules liberally under most circumstances. *Kaelin v. Bassett* (*In re*

Kaelin), 308 F.3d 885, 889 (8th Cir. 2002)(citing *In re Harris*, 886 F.2d 1011, 1015 (8th Cir. 1989)). However, amendments filed after a creditor reveals the falsity of the original documents do not negate the fact that the debtors' original schedules and statements were inaccurate. *Sholdra v. Chilmark Fin. LLP* (*In re Sholdra*), 249 F.3d 380, 382-83 (5th Cir. 2001).

The Court finds that the creditors proved the second element of § 727(a)(2)--that the concealment of property was an act of both David and Becky. The debtors testified that David filled out most of the bankruptcy petition because Becky was having difficulty with her memory due to her illness and her medications. David would like the Court to believe that he is not responsible for the omissions and inaccuracies in the debtors' petition because he was not involved enough in Becky's businesses, particularly those under the Trinity Southeast umbrella, to provide the required information. Becky would like the Court to believe that she is not responsible for the omissions and inaccuracies in the debtors' petition because she was too ill or too medicated to provide the required information.

The Court finds that David was not as oblivious to Becky's business matters as he would like the Court to believe. David was assisting Becky with matters incidental to Trinity Southeast from the outset. Furthermore, if David truly believed that his wife was having trouble with her memory in the months prior to filing bankruptcy, then he should have been more diligent in determining the facts before they filed their petition. The debtors' daughter, Jennipher, acted as Becky's power of attorney in business matters once Becky became ill. If the debtors had been concerned that they were inadvertently leaving assets undisclosed when they filed bankruptcy--due to David's alleged unfamiliarity with the debtors' businesses and Becky's allegedly impaired memory--then they could have asked Jennipher or their accountant to help them gather the information necessary to accurately fill out their schedules and statements. Finally, both debtors testified that they jointly owned C & C, and that C & C was totally separate from Trinity Southeast. David's alleged lack of involvement with Trinity Southeast does not explain the debtors' failure to

disclose information about C & C. Both of the debtors signed their bankruptcy petition, schedules, and statement of financial affairs; both debtors were responsible for the information contained in those documents. In the absence of medical testimony proving that Becky was incapable of remembering her assets when the debtors filed their petition, the Court finds that the concealment of property was an act of both David and Becky.

The Court finds that the creditors proved the fourth element of § 727(a)(2)--that the debtors acted with the intent to hinder, delay, or defraud a creditor or an officer of the estate. For the creditors to succeed in proving the fourth element of § 727(a)(2), they must show that the debtors acted with the actual intent to hinder, delay, or defraud a creditor or the trustee. *In re Korte*, 262 B.R. at 472. Constructive intent will not suffice. *Jacoway v. Mathis* (*In re Mathis*), 258 B.R. 726, 733 (Bankr. W.D. Ark. 2000). Debtors rarely admit that they had the requisite intent. *In re Korte*, 262 B.R. at 472. Thus, the necessary intent may be "inferred from the facts and circumstances of the debtor[s'] conduct." *Id*. at 472-73 (quoting *In re Schmit*, 71 B.R. at 590-91).

If the debtors had intended to disclose all of their assets and income, they had many opportunities to do so. The debtors filed their petition on November 11, 2010. The Court entered an order requiring the debtors to file their schedules and statements by November 26, 2010. On November 23, 2010, the debtors filed a motion to extend the deadline for filing their statements and schedules to December 7, 2010, due to an upcoming holiday and the "complicated nature of their case." The Court granted the motion. The debtors did not move for any further extensions and they filed their initial schedules and statements on December 7, 2010. The debtors filed three amendments over the subsequent four months. However, the debtors did not disclose a single additional asset until they filed their fourth amendment on February 22, 2012, over one year after filing their original schedules and statements. Further, the debtors only disclosed assets that had been omitted from their schedules and statements after Becky's deposition on February 9, 2012, and after the chapter 7 trustee had been discharged from her duties by the United States Trustee on February 15, 2012.

The debtors' bankruptcy had been pending for sixteen months when the debtors filed the February 22 amendment. The February 22 amendment contained critical information pertaining to the debtors' assets and income that had not been disclosed in the debtors' initial schedules and statements or in the debtors' three previous amendments.[20] The Court finds the date of this amendment significant for three reasons: first, it was two weeks after the creditors' deposed Becky; second, it was one week after the United States Trustee discharged the chapter 7 trustee from her duties; and third, it was one week prior to this trial.

In evaluating whether the debtors had the requisite intent under § 727(a)(2), the Court finds that the debtors' omissions regarding C & C are the most telling, in part because the debtors did not omit all references to C & C; rather, they disclosed information about C & C selectively. If the debtors had genuinely forgotten about C & C when they were filing their bankruptcy, then C & C would not have appeared at all in the debtors' petition. However, the debtors referenced C & C in response to some questions in their SOFA, while omitting information about C & C in response to others. In the debtors' original schedules and statements, they referenced C & C in response to two questions in the SOFA, question 1 and question 11. Question 1 of the SOFA is entitled "[i]ncome from employment or operation of business" and reads, in pertinent part, as follows:

> State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year . . . .

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[20] As the Court enumerated in detail in the Background section, the February 22 amendment contained the following information : an interest in a cabin valued at $2500; $7681 in additional income in 2010 from employment; $99,778 in additional income in 2010 from sources other than employment or operation of a business; a lawsuit filed in Missouri by Charles S. Pewitt D.O. against Becky Christain and Sleep Analysts in 2010; numerous transfers including the October 2010 sale of C & C's assets for $60,000; and a $25,000 payment for C & C's debt to Account Services in October 2010.

In response to question 1, the debtors disclosed income from C & C for 2009 of $181,786 for Becky and $181,786 for David; they also disclosed a $7583 "self-employment earnings loss" for Becky in 2009 from C & C and a $7584 "self-employment earnings loss" for David in 2009 from C & C.[21] Question 11 of the SOFA is entitled "[c]losed financial accounts" and reads as follows:

> List all financial accounts and instruments held in the name of the debtor of for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case.

In response to question 11, the debtors disclosed a Sleep Analysts' bank account at KNB with a negative balance that they had closed in April 2010, and a C & C bank account at Focus Bank with a zero balance that they had closed in November 2010--the same month that they filed their petition. The Court cannot fathom how the debtors "inadvertently overlooked" C & C when disclosing their 2008 income and their 2010 income, yet remembered to list C & C when disclosing their 2009 income and listing closed bank accounts.

The debtors argued at trial that they did not disclose their 2010 income from C & C in their SOFA because their tax returns were not completed until October 2011. This explanation is not plausible. It is not believable that the debtors required the benefit of their completed tax returns in order to recall a business that played such a prominent role in their finances. C & C should have been in the forefront of the debtors' minds due to the numerous transactions that they had conducted on C & C's behalf in the two months prior to filing their bankruptcy on November 11, 2010. The debtors sold C & C's assets in September 2010. They received $60,000 from that sale in October 2010. They transferred $17,000 from C & C into their personal account in October 2010. They paid a $25,000 bill out of their personal account on C & C's behalf in October 2010. They closed C & C's bank account within the 10 days prior to filing bankruptcy on November 11, 2010. The debtors' argument that they required their 2010 tax returns in order to disclose

[21] The debtors also disclosed income from other sources in response to question 1.

their C & C income for 2010 is disproved by the fact that the debtors failed to amend their SOFA after obtaining their 2010 tax returns in October 2011. Further, not having their 2010 tax returns until October 2011 does not explain why the debtors failed to disclose their C & C income for 2008.[22]

Although the creditors did not advance this argument at trial, the evidence established that C & C was the debtors' alter ego. "It is well settled that if an entity is the 'alter ego' of an individual, the assets of the entity may be determined to be the assets of the individual." *In re Gillespie*, 269 B.R. 383, 388 (Bankr. E.D. Ark. 2001). To determine whether an entity is an individual's alter ego, courts look to the totality of the circumstances and evaluate, first, whether the individual respects corporate or entity formalities; second, whether the individual commingles personal funds and expenses with those of the corporation or entity, including the use of corporation or entity assets for personal purposes; and third, the family relationship between the officers of the corporation or entity and the individual. *Id.* (citing *Horton Dairy, Inc. v. United States*, 986 F.2d 286, 289 (8th Cir. 1993)).

In the instant case, the debtors used C & C as a personal bank account. In 2008 alone, C & C paid for their daughter's swimming pool and plastic surgery, funded Becky's brother's divorce, and provided the debtors' son with at least $2000 in spending money. In 2009, Becky wrote a $4000 check to David Felkner out of the debtors' personal account for a sales commission related to C & C. At trial Becky testified that the check to David Felkner should have been written out of C & C's bank account. As mentioned previously, the debtors wrote Account Services a $25,000 check out of their personal account to pay C & C's bill in October 2010. The debtors did not respect formalities with regard to C & C, they commingled their own funds with C & C's, and the debtors were C & C's only officers. The Court finds that C & C was the debtors' alter ego. Although it is not

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[22] At a minimum, the debtors should have stated in their SOFA that additional income for 2008 and 2010 would be provided by a subsequent amendment.

necessary to prove that creditors were harmed as a result of concealment under § 727(a)(2), the debtors' failure to fully disclose their income from C & C until trial, as well as their failure to disclose their interest in C & C until the February 22 amendment, deprived the trustee of a timely opportunity to determine if C & C, as the debtors' alter ego, owned assets that should have been brought into the debtors' estate for the benefit of the creditors. *Id.*

The Court finds also finds it implausible that the debtors forgot about C & C when responding to question 18 of the SOFA. Question 18 of the SOFA is entitled "[n]ature, location and name of business" and reads, in pertinent part, as follows:

> If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full-or part- time within six years immediately preceding the commencement of this case . . . .

In their initial response to question 18, the debtors listed only Sleep Analysts, SEMO Medical, and Mitchell Oxygen, the financially troubled companies that Becky had planned to merge into Trinity Southeast. The debtors argued at trial that they had inadvertently omitted C & C from the list of companies that they had owned in the prior six years because their personal tax returns were over 100 pages long. In light of the fact that the debtors sold C & C's assets two months before they filed their bankruptcy and deposited $60,000 from that sale into C & C's account one month before they filed their bankruptcy, the Court does not find the debtors' explanation regarding the length of their tax returns to be credible. Further, debtors have a paramount duty to accurately list their assets in a bankruptcy petition. *Johnson v. Baldridge* (*In re Baldridge*), 256 B.R. 284, 289 (Bankr. E.D. Ark. 2000). If the debtors needed to review their 100-page tax return in order to accurately portray their interest in and their income from C & C, then they should have done so.

The debtors contended at trial that they did not conceal C & C because they had provided

all of their tax returns to the chapter 7 trustee. The Court rejects the debtors' contention that because they provided the chapter 7 trustee with tax returns in which C & C allegedly appeared, they did not conceal C & C. A debtor "cannot omit items from his schedules, force the trustee and the creditors, at their peril, to guess that he has done so--and hold them to a mythical requirement that they search through a paperwork jungle in the hope of finding an overlooked needle in a documentary haystack." *Boroff v. Tully* (*In re Tully*), 818 F.2d 106, 111 (1st Cir. 1987). The fact that the debtors provided tax returns to the chapter 7 trustee did not obviate their duty to disclose all of their property in their bankruptcy petition.

The sheer number of assets that the debtors omitted, the implausibility of the debtors' explanations, the timing of the February 22 amendment, and the fact that the debtors initially listed only their unprofitable companies, leads the Court to conclude that the debtors intentionally failed to list property--C & C in particular--with the intent to hinder, delay, or defraud their creditors and the trustee.[23] The Court finds that the creditors proved each element of § 727(a)(2) by a preponderance of the evidence. The Court denies the debtors' discharge pursuant to § 727(a)(2).

Section 727(a)(4)(A)

Under § 727(a)(4)(A), the Court shall grant a debtor a discharge, unless "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). A creditor objecting to a debtor's discharge under § 727(a)(4)(A) has the burden of proving five elements by a preponderance of the evidence--

(1) that the debtor made a statement under oath;

(2) that the statement was false;

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[23] Although the debtors did not state the value of Sleep Analysts, SEMO Medical, or Mitchell Oxygen in their bankruptcy petition, Becky testified at trial that these companies were no longer profitable by October 2009.

(3) that the statement was made with fraudulent intent;

(4) that the debtor knew the statement was false; and

(5) that the statement related materially to the debtor's bankruptcy.

In re Richmond, 429 B.R. at 307. "The bankruptcy code, through § 727(a)(4)(A), 'requires nothing less than a full and complete disclosure of any and all apparent interests of any kind.'" *In re Weathers*, 2011 WL 3207950, at *6 (quoting *In re Korte*, 262 B.R. at 474). Section 727(a)(4)(A) promotes truthfulness in schedules and statements. *Daniel v. Boyd* (*In re Boyd*), 347 B.R. 349, 354 (Bankr. W.D. Ark. 2006). The implications of the disclosure and veracity requirements of the bankruptcy code reach beyond each individual case. *Nat'l Am. Ins. Co. v. Guajardo* (*In re Guajardo*), 215 B.R. 739, 742 (Bankr. W.D. Ark. 1997). "The failure to comply with the requirements of disclosure and veracity necessarily affects the creditors, the application of the Bankruptcy Code, and the public's respect for the bankruptcy system as well as the judicial system as a whole." *Id.*

The Court finds that the creditors proved the first and second elements of § 727(a)(4)(A)--that the debtors made a false statement under oath. Debtors must verify their schedules and statements under the penalty of perjury. *In re Boyd*, 347 B.R. at 354. The debtors signed a declaration concerning their schedules that states: "I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 39 sheets, and that they are true and correct to the best of my knowledge, information, and belief." The debtors signed a similar declaration regarding their SOFA that states: "I declare under the penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct." The debtors filed two additional, identical declarations regarding their SOFA, one on January 25, 2011, and the other on February 22, 2012, declaring twice more under the penalty of perjury that the information contained in the SOFA was true and correct. The debtors' declarations regarding their schedules and statements have the "force and effect of an oath." *Id*. at 355 (citing *Cepelak v. Sears* (*In re Sears*), 246 B.R. 341, 347 (8th Cir. B.A.P. 2000)).

As detailed in relation to § 727(a)(2) above, the debtors failed to list numerous assets and transfers, as well as a significant amount of income in their initial schedules and statements. Nevertheless, the debtors certified under the penalty of perjury that the information contained in their schedules and statements was true. Despite filing four sets of amendments to their schedules and statements, the debtors never filed complete and truthful schedules and statements. It was not until the trial--over one year after the debtors filed bankruptcy--that much of the information that the debtors should have disclosed in their schedules and statements was finally unearthed.[24] At trial, the debtors did not contend that their bankruptcy petition was accurate; rather, they argued that the inaccuracies were not intentional. The Court finds that the debtors made false oaths within the meaning of § 727(a)(4)(A).

The Court finds that the creditors proved the third and fourth elements of § 727(a)(4)(A)--that the debtors knew their statements were false and the debtors had fraudulent intent. Whether the debtors had the requisite knowledge and intent under § 727(a)(4)(A) is a matter of fact. *In re Sears*, 246 B.R. at 347 (citing *Palatine Nat'l Bank v. Olson* (*In re Olson*), 916 F.2d 481, 484 (8th Cir. 1990)). The debtors in this case are far from unsophisticated. Both David and Becky held positions in management at large companies prior to owning their own businesses. Becky testified, and Boroughs agreed, that it was Becky's business expertise that made her an attractive partner for Riverside Medical when the parties initially contemplated Trinity Southeast. The debtors have owned nine companies within the past decade. They were accustomed to listing their income and assets on financial statements to obtain business loans. They were ostensibly capable of gathering detailed financial information to facilitate the preparation of their complicated tax returns.

Despite the debtors' relative sophistication in business matters, they initially listed only

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[24] The Court listed the information that the debtors disclosed for the first time at trial in the Background section of this opinion.

three of the nine companies that they had owned during the six years prior to filing bankruptcy and neglected to disclose at least $1,084,476 in relevant income in their SOFA.[25] The debtors also failed to list approximately ten transfers in response to question 10 of the SOFA prior to the February 22 amendment. Nevertheless, the debtors repeatedly swore under the penalty of perjury that they had read their schedules and statements and that they were true and correct. The Court finds that the debtors knew that their bankruptcy petition was not accurate when they made several oaths to the contrary.

As stated previously, debtors rarely admit to having fraudulent intent, so courts may look to surrounding circumstances to ascertain intent. *In re Richmond*, 429 B.R. at 298. Even if the debtors had merely been careless, the '"cumulative effect of all the falsehoods together evidences a pattern of reckless and cavalier disregard for the truth to support fraudulent intent."' *In re Sholdra*, 249 F.3d at 383 (quoting *Economy Brick Sales, Inc. v. Gonday* (*In re Gonday*), 27 B.R. 428, 432 (Bankr. La. 1983)). Reckless indifference to the accuracy of the information that the debtors provided in their schedules and statements is sufficient to prove intent. *In re Richmond*, 429 B.R. at 298.

The same circumstances that supported the Court's finding of intent under § 727(a)(2) also support the Court's finding of intent under § 727(a)(4)(A). The number of inaccuracies and omissions in the debtors' schedules and statements, the debtors' failure to adequately explain the inaccuracies and omissions, the fact that the debtors filed the February 22 amendment on the heels of Becky's February 9 deposition, and the fact that the debtors initially listed only their unprofitable entities while failing to disclose C & C all bolster the Court's finding of fraudulent intent.

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[25] The $1,084,476 is comprised of: $609,851 in gross income from C & C in 2008; $75,000 from an IRA withdrawal in 2008; $38,000 in disability back pay in 2009; $254,256 in gross income from C & C in 2010; $7681 in income from "perfect pay" in 2010; $88 in AT&T dividends in 2010; $31 in retirement income in 2010; $11,569 in rental income in 2010; and $88,000 from an IRA withdrawal in 2010.

In addition, the debtors had five occasions to set out truthful information--when they filed their original schedules and statements, and when they filed each of their four amendments. The debtors' failure to file truthful schedules and statements despite numerous opportunities to do so is further evidence of fraudulent intent. *See Mertz v. Rott*, 955 F.2d 596 (8th Cir. 1992). Although the debtors testified that they did not intend to mislead the Court or their creditors, the unsupported assertion of honest intent does not overcome the inference of fraudulent intent. *In re Hamilton*, 390 B.R. 618, 625 (Bankr. E.D. Ark. 2008).

The Court finds that the creditors proved the fifth element of § 727(a)(4)(A)--the debtors' false statements related materially to their bankruptcy. In order to warrant the denial of the debtors' discharge under § 727(a)(4)(A), the debtors' false statements must be material to their bankruptcy case. *In re Richmond*, 429 B.R. at 307. "A false statement 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 Boyd*, 347 B.R. at 354 (quoting *In re Mathis*, 258 B.R. at 736)). The debtors contended that their finances were complicated and therefore their petition contained inaccuracies. Although it has been noted that the "complexity of one's financial affairs is [not] a basis for leniency under the bankruptcy laws," the Court has considered the complexity of the debtors' finances in its evaluation of the materiality of each omission and inaccuracy. *Jordan v. Bren* (*In re Bren*), 122 Fed. Appx. 285, 288 (8th Cir. 2005). If each of the debtors' numerous false statements could be viewed in isolation, not all of them would be material. However, when the debtors' false statements are viewed as part of the broader landscape of this case, their effect is cumulative and they are material. *Mosely v. Sims* (*In re Sims*), 148 B.R. 553, 557 (Bankr. E.D. Ark. 1992).

Further, the debtors made numerous false statements that are alone sufficient to warrant the denial of their discharge under § 727(a)(4)(A). The debtors failed to disclose their interest in C & C and five other companies, as well as the September 2010 sale of C & C's assets and $7681 in additional income in 2010 until the February 22 amendment. The

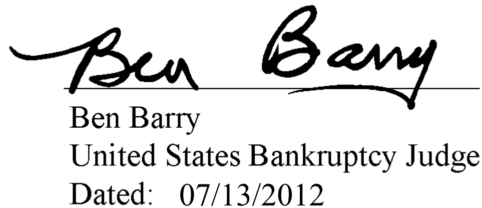
debtors also failed to disclose their interest in a cabin valued at $2500 and $99,778 in additional income in 2010 from sources "other than employment or business" until the February 22 amendment.

The debtors *never* disclosed--in their initial schedules and statements or in any of the four amendments--$609, 851 in gross income from C & C in 2008, a $75,000 withdrawal from David's IRA in 2008, $38,000 in disability back pay in 2009, and $254,256 in gross income from C & C in 2010. These false oaths go directly to the heart of the debtors' business transactions, the discovery of the debtors' assets and business dealings, and the existence and disposition of the debtors' property. The Court finds that the creditors proved each element of § 727(a)(4)(A) by a preponderance of the evidence. The Court denies the debtors' discharge pursuant to § 727(a)(4)(A).

Conclusion

For the reasons stated above, the Court finds that the elements of § 727(a)(2) and (a)(4)(A) have been met, and the Court denies the Christains' discharge.[26]

IT IS SO ORDERED.



Ben Barry
United States Bankruptcy Judge
Dated: 07/13/2012

cc: Gail Inman-Campbell, attorney for debtors
Theresa L. Pockrus, attorney for creditors
Jill R. Jacoway, chapter 7 trustee
United States Trustee

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[26] The Court finds that the creditors did not meet their burden of proof under § 727(a)(5); because the Court denies the debtors' discharge under (a)(2) and (a)(4)(A), the Court will not unnecessarily extend this opinion with a discussion of (a)(5).