Dated: January 15, 2015
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
EARL BENARD BLASINGAME and
MARGARET GOOCH BLASINGAME,
Debtors.

Case No. 08-28289-L
Chapter 7

CHURCH JOINT VENTURE,
a Limited Partnership; and
FARMERS & MERCHANTS BANK,
Adamsville, Tennessee; and
EDWARD L. MONTEDONICO,
Chapter 7 Trustee;
Plaintiffs,
v.
EARL BENARD BLASINGAME and
MARGARET GOOCH BLASINGAME,
Defendants.

Adv. Proc. No. 09-00482

MEMORANDUM OPINION

THIS ADVERSARY PROCEEDING CAME BEFORE THE COURT for trial on November 4-6, November 22, December 16, 2013, and July 14-17, 2014. The trial concerned the

entitlement of the Debtors to discharge and to their claims of exemptions. Counts I, II, VI, and VIII of the Complaint were dismissed by order of the United States District Court entered November 5, 2012 (*see* Bankr. Dkt. 346). Count III alleges that discharge should be denied pursuant to 11 U.S.C. §§ 727(a)(2)(A) and (B). Count IV alleges that discharge should be denied pursuant to 11 U.S.C. § 727(a)(4)(A). Count V alleges that discharge should be denied pursuant to 11 U.S.C. § 727(a)(5). Count VII asked for an accounting. Count IX objects to the Debtors' claimed exemptions. Among their defenses, the Debtors raised reliance upon the advice of counsel.

The court heard the testimony of Earl Benard Blasingame, Margaret Gooch Blasingame, Martin A. Grusin, Tommy L. Fullen, Joseph T. Townsend, George L. Donaldson, and Joyce Long. The court also received numerous exhibits from the Plaintiffs and the Defendants. After considering the testimony of the witnesses, reviewing the exhibits, and considering the arguments of counsel, the court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

FINDINGS OF FACT

1. The Debtors filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on August 15, 2008. The Debtors were represented by attorney Tommy L. Fullen, an experienced bankruptcy practitioner.

Errors and Omissions in the Bankruptcy Schedules

2. In addition to the petition, the Debtors filed Schedules A through F in which they disclosed the following:

a. Schedule A, which lists no real property.

b. Schedule B, which lists cash on hand in the amount of $100; household goods in the amount of $4,000; wearing apparel in the amount of $500; a 1985 Mercedes Sedan (not running) in the amount of $100; and a 1985 Mercedes station wagon in the amount of $1,000.

c. Schedule C, which claims all property listed on Schedule B as exempt pursuant to Tennessee Code Annotated §§ 26-2-103 and 26-2-104.

d. Schedule D, which lists no secured creditors.

e. Schedule E, which lists the Internal Revenue Service as a creditor holding an unsecured priority claim in the amount of $250,000.

f. Schedule F, which lists four unsecured claims: Chase Commercial Corporation in the amount of $3,741,161; Farmers & Merchants Bank in the amount of $2,771,004; Nations Bank in the amount of $500,000; and Ray Stickler in the amount of $443,707. Each of these was described as "Incurred: pre 2008 Consideration: Open account." In addition, three entries were made for "notice only": Chase, c/o Stephen Hughes (an attorney in Milan, Tennessee); Nations Bank c/o Ron Cunningham (an attorney in Knoxville, Tennessee); and Martin A. Grusin.

3. In fact, the Debtors had the following interests in property and debts:

a. The Debtors hold a life estate in real property consisting of a residence and 27 acres located on South Maple Street, Adamsville, Tennessee, insured for a value of $1,706,000, as beneficiaries of the Blasingame Family Residence Generation Skipping Trust, for which they serve as co-trustees. (Pl. Ex. 84 and 106).

b. The Debtors were signatories to the following checking, savings or other financial accounts, and certificates of deposit. (Pl. Ex. 30):

Owner	**Bank/Broker**	**Acct. Number**	**Signatory Rights**	**Book Balance**
Business Inv. Trust	UBS Fin. Servs	xxxxx2288	Margaret	179,803.43
G.F. Corporation	BanCorp South	xxxx9358	Benard, Margaret	755.59
Business Inv. Trust	BanCorp South	xxxx8848	Benard, Margaret	14,018.72
Margaret G. Blasingame	Community South	xxxx8972	Margaret	0
Business Inv. Trust	Hardin Cnty Bank	xxxx4670	Benard, Margaret	1,418.72
Residence Trust	Hardin Cnty Bank	xxxx4662	Benard, Margaret	(2,587.00)
Residence Trust	Community South	xxx1672	Margaret	21,555.38
Margaret G. Blasingame	Regions Bank	xxxxxx5783	Margaret	5.83
Margaret G. Blasingame	Old Dominion	xxxxx9906	Margaret	1,671.93
Residence Trust	Community South	CD	Margaret	90,641.92
Business Inv. Trust	Smith Barney	xxx-xxxxx-x9779	Benard	565.64
E.B. Blasingame, Jr.	Raymond James	xxxx8764	Benard, Ben	80.69
Mavoureen Blasingame	Raymond James	xxx5950	Benard	99.95
Aqua Dynamic Sys	BanCorp South	xxxx6972	Benard, Joyce Long	36.72
G.F. Corporation	BanCorp South	xxx9358	Benard, Margaret, Joyce Long	765.89
Business Inv. Trust	BanCorp South	xxxx8848	Benard, Margaret, Joyce Long	14,018.72
Flozone Servs., Inc.	Community South	xxx9605	Benard, Joyce Long	258.04
Flozone Servs., Inc.	Hardin Cnty Bank	xxxx3801	Benard, Katherine Blasingame Church, Joyce Long	(36,135.11)
Fiberzone Tech., Inc.	Hardin Cnty Bank	xxxx3194	Benard, Katherine Blasingame Church, Joyce Long	2,963.09

Owner	Bank/Broker	Acct. Number	Signatory Rights	Book Balance
Blasingame Farm, Inc.	Hardin Cnty Bank	xxxx0071	Benard, Joyce Long	(2,727.19)
Business Inv. Trust	Hardin Cnty Bank	xxxx4670	Benard, Margaret	1,418.72
Residence Trust	Hardin Cnty Bank	xxxx4662	Benard, Margaret	(2,597.00)
Mavoureen Blasingame	Regions Bank	x1509	Benard	511.83
Kitty Cummings Estate	Farmers & Merchants Bank	xxx0354	Benard	1,159.03
E.B. Blasingame, Jr.	BankCorp South	xxxx2680	Benard, Margaret, Katherine, Ben, Joyce Long	1,709.58
TOTAL				109,700.70

c. The Debtors enjoyed the use of household goods appraised for insurance purposes at $1,194,200 as beneficiaries of the Blasingame Family Development Generation Skipping Trust, for which they serve as co-trustees. (Pl. Ex. 85 and 106).

d. Margaret Blasingame was the owner and/or beneficiary of the following annuities. (Pl. Ex. 30):

Owner	Bank/Broker	Acct. Number	Signatory Rights	Book Balance
Margaret	UBS Fin. Servs.	xxxxx1988	Margaret	425.87
Margaret	Symetra		Margaret	
Margaret	Horace Mann		Margaret	24,946.85
Margaret	Lincoln Fin. Group		Margaret	19,147.64
TOTAL				44,520.36

e. The Debtors were co-trustees and beneficiaries of three trusts: The Blasingame Family Residence Generation Skipping Trust (the "BRT"), the Blasingame Family Development Generation Skipping Trust (the "BDT"), and the Blasingame Family Business Investment Trust (the "BIT"). Collectively, these trusts are referred to as the "Trusts."

f. The Debtors enjoy the use of a 2008 Mercedes automobile purchased eight months prior to the filing of the bankruptcy petition for $70,165, titled to G.F. Corporation (Pl. Ex. 16, Answer to Interrogatory No. 3). Margaret Blasingame is the president of G.F. Corporation and the stock of the G.F. Corporation is owned by the BIT.

g. Benard Blasingame also enjoys the use of a 2007 Jeep Commander furnished by Flozone Services, Inc. (Pl. Ex. 16, Answer to Interrogatory No. 3). Mr. Blasingame is the vice president and chief executive officer of Flozone Services, Inc. The common stock of Flozone Services, Inc. is owned by the Debtors' daughter, Katherine Blasingame. The office of Flozone Services, Inc. is located on South Maple Street, Adamsville, Tennessee.

h. Benard Blasingame held a 16.46% interest in Heritage Apartments, Ltd.

i. The Debtors were the holders of the following credit cards. (Claims Register, Bankr. Dkt. Nos. 83, 121, 224; Pl. Ex. 35):

Authorized Users	**Company**	**Acct. Number**	**Amount Owed**
Benard, Margaret	FIA Card Services	xxxxxxxx2580	115.00
Margaret, Benard	FIA Card Services	xxxxxxxx3029	11,234.29
Margaret, Benard	HSBC Card Services	xxxxxxxx5515	1,547.33
Margaret, Benard	Capital One Bank	xxxxxxxx8095 xxxxxxxx0623 xxxxxxxx0390	1,688.71
Margaret, Benard	Chase Card	xxxxxxxx0966	181.71
Margaret, Benard	Chase Card	xxxxxxxx2015	3,435.06
Margaret, Benard	Chase Card	xxxxxxxx0906	1,566.06
Margaret, Benard	Citibank	xxxxxxxx8176	11,632.63
Benard	Household Bank	xxxxxxxx5883	891.58
TOTAL			32,292.37

j. Benard Blasingame guarantied an obligation owed by Flozone Services, Inc. to Hardin County Bank in the amount of $128,808.12 on August 14, 2008, the day that he signed his bankruptcy petition. (Pl. Ex. 74).

k. Benard Blasingame guarantied an obligation owed by G.F. Corporation to Hardin County Bank in the amount of $42,900 on December 14, 2007 (Pl. Ex. 108). That obligation was not due to mature until December 13, 2008. Mr. Blasingame signed the guaranty as the vice president of G.F. Corporation, but he is not listed as an officer of G.F. Corporation in the "Entity Overview" provided to Mr. Grusin on July 7, 2008. (Def. Ex. 1).

l. Benard Blasingame guarantied an obligation owed by Flozone Services, Inc. to Hardin County Bank in the amount of $41,800 on August 8, 2008, the day before he first met with Mr. Fullen. (Pl. Ex. 109).

m. The Debtors are indebted to the BIT in the approximate amount of $8,700. (Test. of Joyce Long).

4. In addition to Schedules A through F, the Debtors filed Schedules G through J when they filed their bankruptcy petition.

a. Schedule G states that the Debtors are parties to no executory contracts or unexpired leases.

b. Schedule H states that the Debtors have no co-debtors.

c. Schedule I states that the Debtors' income consists of Benard Blasingame's salary as vice president of Flozone Services, Inc. in the monthly gross amount of $1,116. From this amount, $83 is deducted for payroll taxes and social security, and $145 is deducted for insurance. Schedule I states that Margaret Blasingame is unemployed.

d. Schedule J lists monthly expenses in the amount of $3,445, including $800 for utilities; $70 for telephone; $550 for food; $200 for clothing; $100 for laundry and dry cleaning; $100 for medical and dental expenses; $600 for transportation not including car payments; $300 for recreation, clubs, entertainment, newspapers, magazines, etc.; $100 for charitable contributions; $500 for insurance (not deducted from wages or included in home mortgage payments); and $225 for automobile insurance. Schedule J would lead one to believe that the Debtors have personal expenses of approximately $41,340 per year ($3,445 x 12 mos.).

5. In fact, in the one-year period preceding the filing of the bankruptcy petition, $42,112.40 in living expenses for Benard Blasingame, and $42,962.71 in living expenses for Margaret Blasingame were paid through an account at BanCorp South in the name of Earl Benard Blasingame, Jr. The Debtors and their bookkeeper, Joyce Long, refer to this account as a "clearing account." The account was funded from various sources, including advances from the Trusts. Benard Blasingame repaid $6,101.55 of this amount from his paychecks, leaving $78,473.56 in personal expenses paid by the Trusts. (Affidavit of Joyce Long, ¶ 13, Adv. Proc. Dkt. 240-3).

6. In addition, in the year preceding the filing of the bankruptcy petition, $4,289.59 in living expenses for Benard Blasingame, and $4,792.36 in living expenses for Margaret Blasingame were paid from the BRT account at Community South Bank. This account is also sometimes referred to as a "clearing account." Margaret Blasingame deposited $4,980 to this account from her Symetra Annuity and $29,928.82 from her payroll checks as a teacher for the McNairy County Schools to this account.

7. In addition, in the year preceding the filing of the bankruptcy petition, deposits and withdrawals were made from an account at Regions Bank in the name of Mavoureen Blasingame and Benard

Blasingame. Mavoureen Blasingame was the mother of Benard Blasingame. She died in 2006. Benard Blasingame accesses funds deposited to this account by debit card to pay personal expenses. This account is also sometimes referred to as a "clearing account."

Errors and Omissions in the Statement of Financial Affairs

8. When they filed their bankruptcy petition, the Debtors also filed a Statement of Financial Affairs (Pl. Ex. 1). The SoFA makes the following disclosures:

a. Item 1, Income from employment or operation of business, shows income for Benard Blasingame in 2006 of $13,390; in 2007 of $13,390; and in 2008, year to date, of $8,928. The source of Mr. Blasingame's income is not provided. Item 1 shows income for Margaret Blasingame in 2006 of $36,804; in 2007 of $36,804; and in 2008, year to date, of $19,722. The source of Mrs. Blasingame's income is not provided.

b. Item 2, Income other than from employment or operation of a business, is marked "none."

c. Item 3, Payments to creditors, is marked "none."

d. Item 4, Suits and administrative proceedings, executions, garnishments and attachments, part a, lists four suits resulting in judgments in favor of Farmers & Merchants Bank, Ray Stickler, Nations Bank, and Chase Commercial Corporation. Part b, which asks for a description of property that has been attached, garnished or seized in the one year preceding the commencement of the case, is marked "none."

e. Item 5, Repossessions, foreclosures, and returns, is marked "none."

f. Item 6, Assignments and receivorships, parts a and b, are marked "none."

g. Item 7, Gifts, is marked "none."

h. Item 8, Losses, is marked "none."

i. Item 9, Payments related to debt counseling or bankruptcy, discloses that $5,100 was paid to Tommy L. Fullen, and $60 was paid to Green Path Debt Solutions.

j. Item 10, Other transfers, parts a and b, are marked “none.”

k. Item 11, Closed financial accounts, is marked “none.’

l. Item 12, Safe deposit boxes, is marked “none.”

m. Item 13, Setoffs, is marked “none.”

n. Item 14, Property held for another person, is marked “none.”

o. Item 15, Prior address of debtor, is marked “none.”

p. Item 16, Spouses and former spouses, is marked “none.”

q. Item 17, Environmental sites, parts a, b, and c, are marked “none.”

r. Item 18, Nature, location, and name of business, lists Flozone Services, Inc.; Fiberzone Technologies, Inc.; Aqua Dynamics Systems, Inc.; Ozone Engineering Design; SIS, Inc.; and G.F. Corporation; all located on South Maple Street, Adamsville, Tennessee. Part b, which asks for identification of any business that is “single asset real estate,” discloses, “Joyce Long and George Donaldson” at the address on South Maple Street. This apparently is intended to respond to Item 19, Books, records, and financial statements.

s. Item 19, Books, records, and financial statement, parts a, b, c, and d, are marked “none.”

t. Item 20, Inventories, parts a and b, are marked “none.”

u. Items 21 through 25, which do not apply to individual debtors, are marked “none.”

Amendments to the Bankruptcy Documents

9. The Debtors filed a series of amendments to their schedules and SoFA. The SoFA was amended on September 8, 2008, at Item 18.a., to add an asterisk before each of the corporate names given

with the explanation, “Clients do not have a personal interest in the business and do not own any stock.” (Pl. Ex. 7).

10. The SoFA was amended on November 20, 2008, at Item 3.b., to add payments on six credit cards, FIA Card Services, HSBC Card Services, Capital One Bank, Chase Card xxxxxxxx-0966, Chase Card xxxxxxxx-2015, and Chase Card xxxxxxxx-0906. The SoFA was also amended at Item 19.d. to add the name Hardin County Bank as a financial institution to whom a financial statement was given within the two years immediately preceding the commencement of the case. The date of issuance is not provided.

11. Schedule B was amended on December 2, 2008, at line 35, Other personal property of any kind not already listed, by adding “Heritage Apartments Limited (partnership interest 16.4%),” value unknown. (Pl. Ex. 9).

12. An order was entered December 19, 2008, granting the Debtors’ Motion to Amend Schedules to Add Omitted Prepetition Creditors. (Pl. Ex. 10; Bankr. Dkt. 121). Five creditors were to be added: Wal-Mart, FIA Card Services, CitiCards, HSBC Card Services, and Capital One Bank.

13. An order was entered December 19, 2008, granting the Debtors’ Motion to Amend Schedules to Add Omitted Prepetition Creditors. (Bankr. Dkt. 122). One creditor was added: Hardin County Bank.

14. Schedule B was amended on April 9, 2009. (Pl. Ex. 11). The amendments were as follows:

a. Item 2, checking, savings or other financial accounts, added “UBS account $477.00,” and “Regions Bank Account $6.00.”

b. Item 9, Interests in insurance policies, added “Term Life Insurance Policy Face Value of $400,000 no actual value.”

c. Item 10, Annuities, added "Lincoln Financial Group Annuity $15,000.00," and "SAFECO/Symetra Annuity, Indeterminate."

d. Item 12, Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans, added "Horace Mann Annuity account 403b, $24,946.00."

e. Item 13, Stock and interests in incorporated and unincorporated businesses, added "Dominion Account, $1,672.00."

f. Item 16, Accounts receivable, added "Accounts payable, Indeterminate."

g. Item 31, Animals, added "3 Dogs, $0.00."

15. Schedule C was amended on April 9, 2009. (Pl. Ex. 12). Added to the list of property claimed as exempt were, "Accounts payable, Indeterminate; Horace Mann Annuity account 403b, $24,946.00; Lincoln Financial Group Annuity, $15,000.00; UBS account, $477.00; Regions Bank Account, $6.00."

16. The SoFA was amended on April 9, 2009. (Pl. Ex. 13). The SoFA was amended as follows:

a. Item 6.b., all property in the hands of custodian, receiver, or court-appointed official, within one year immediately preceding the commencement of this case, added "McNairy County Circuit Court Clerk, Docket # 5038, State of Tennessee Dept of Transportation vs. Robert D. Gooch, III, et al., assignment of $20,000."

b. Item 9, Payments related to debt counseling or bankruptcy, added "Martin A. Grusin, Esq., August 8, 2008, ~$20,000 by assignment see 6b."

c. Item 10.a., Other transfers, added "See # 6 and # 9."

d. Item 14, Property held for another, added "Katherine Blasingame, Ben Blasingame, Grace Henley, See Attached." Attached was a typed cover page dated December 11, 2008, and ten

handwritten pages listing various items of personal property the Debtors claim is held by them for their daughter, son, or Mrs. Blasingame's sister.

17. Schedule B was amended on April 20, 2010. (Pl. Ex. 14). Schedule B was amended as follows:

a. Item 16, Accounts receivable, deleted "Accounts payable, Indeterminate."

b. Item 35, Other personal property of any kind not already listed, deleted "Unknown" as the value of Heritage Apartments Limited, and added "-$59,241.00."

18. Schedule B was amended on August 8, 2012. (Pl. Ex. 15). At item 20, Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust, the following was added:

The Blasingame Family Business Investment Trust (Includes the Clearing Accounts – Bancorp South #xxxx 268-0 and Regions #xxxxxxx509)	(J)	0.00
The Blasingame Family Residence Generation Skipping Trust	(J)	0.00
The Blasingame Family Development Generation Skipping Trust	(J)	0.00

All interest in trusts are contingent, discretionary benefits or distributions from spendthrift trusts established by the mother of Debtor, Benard Blasingame. Other beneficiaries include Katherine (Joint Debtors' daughter) and Ben Blasingame (Joint Debtors' son).

19. Except for the first amendment to the SoFA on September 8, 2008, which clarified that the Debtors are not stockholders in the corporations listed at item 18.a., all of the amendments to the Debtors' schedules and SoFA resulted from discovery undertaken by the Trustee, Church JV, and Farmers. (Testimony of Margaret Blasingame).

Additional Omissions

20. In addition to the amendments that were made, which constitute admission of omitted information, other items should have been disclosed in the Debtors' schedules and SoFA. The following information was known to the Debtors at the time of filing, but has never been the subject of an amendment:

Undisclosed Jewelry

21. The Debtors provide insurance through the "Blasingame Family Trust" (not one of the named trusts disclosed in the Debtors' amended Schedule B) for four items of jewelry: an engagement ring valued at $14,872; a ladies watch valued at $15,600; a ladies diamond and South Sea pearl drop valued at $26,880; and a ladies custom made matching bracelet set valued at $15,300. (Pl. Ex. 31). In addition, Benard Blasingame purchased a $2,130 bracelet on March 5. 2008, which Ms. Long identified as "Margaret bracelet for BD," but Mr. Blasingame described as a gift for his daughter. Neither Mrs. Blasingame's birthday nor her daughter's birthday appear in the record. Schedule B, item 7, discloses no jewelry. SoFA, item 7, discloses no gifts. Mr. Blasingame testified that the engagement ring was purchased by "the trust" for Ben Blasingame to give to his wife, and that the other insured items belong to his daughter, Katherine.

Undisclosed Garnishments

22. Margaret Blasingame's paychecks from McNairy County Schools were garnished beginning in January or February, 2008, and her personal bank account at Community South was garnished in June 2008. The SoFA, item 4.b., discloses none of these garnishments.

Undisclosed Account

23. Margaret Blasingame testified that she believed that her Community South account was closed as the result of the garnishment, but no closed account is disclosed at SoFA, item 11, nor is the account disclosed on Schedule B, item 2.

Undisclosed Safe Deposit Box

24. A safe deposit box rental fee was charged to the Regions Bank account in the name of Mavoureen Blasingame and Benard Blasingame on August 12, 2008. (Pl. Ex. 21). No safe deposit box is disclosed at SoFA, item 12. Benard Blasingame testified that the box was opened after his mother died and that there is nothing in it. He said that the key has been lost and that he would have closed the account but for the $175 fee required to drill out the lock.

Undisclosed Entity

25. Benard Blasingame was president of Blasingame Farms, Inc. when the bankruptcy petition was filed. According to Mr. Blasingame, Blasingame Farms, Inc. is a Tennessee corporation formed in 2004 to hold farm land. At that time, he owned 100% of its stock, but in 2006, the stock was transferred to his children's trusts, which were later merged into the BIT. Mr. Blasingame continued to manage the business of Blasingame Farms, Inc., after these transfers. Blasingame Farms, Inc. is not disclosed in SoFA, item 18.

Undisclosed "Clearing Accounts"

26. The Debtors rely upon their bookkeeper, Joyce Long, to conduct all of their financial affairs. Ms. Long freely transfers funds by and among the individuals, trusts, and corporations. Rather than treating payment of personal obligations on behalf of the Debtors as distributions from the trusts,

she treats them as advances or loans. No promissory notes are executed in connection with these transactions.

27. Ms. Long testified that when Ben Blasingame was preparing to enter the University of Tennessee, she established the account at BanCorp South that bears the names of all four of the Blasingames and Ms. Long. (Tr. 896). She testified that Ben Blasingame, Jr.'s social security number was used to open the account. (Tr. 895). She said that she wanted an account "where everybody could sign." (Tr. 898). Ben Blasingame testified that he was not aware of the account. This is the primary account that Ms. Long used to pay the expenses of the Debtors, the trusts, the corporations owned by the trusts, and Flozone Services, Inc. This account was known as "Ben's account," or the "EBB Account" until Mr. Grusin decided that it was a "clearing account." This account has never been added to Schedule B.

28. In order to facilitate the transfer of funds by and among the various bank accounts, Ms. Long routinely wrote checks payable to "EBB," "Benard Blasingame," "E.B. Blasingame," and "E. Benard Blasingame" for deposit to the EBB Account. Ms. Long also wrote the paychecks that Benard Blasingame received from Flozone Services, Inc., made payable to "Earl B. Blasingame," which were deposited to the EBB Account.

29. In a similar manner, Ms. Long used the Mavoureen Blasingame Account at Regions Bank and the Margaret Blasingame Account at Community South Bank to pay multiple obligations. The EBB Account, the Mavoureen Blasingame Account, and the Margaret Blasingame Account came to be called the "Clearing Accounts" after Mr. Grusin became involved.

30. According to Ms. Long, for the period August 1, 2007 until July 31, 2008, approximately $376,314.28 was deposited into these accounts. Of this amount, $322,223.75 was in the form of

checks or bank transfers in the name of E. Benard Blasingame, which she says were intended in his capacity as trustee. The sources of these funds were the BIT ($222,200.00); G.F. Corporation ($6,800.10); Aqua Dynamics Systems, Inc. ($8,950.00); Aqua Dynamics Systems, Inc. ($1,610.74); Blasingame Farms, Inc. ($13,810.90); Blasingame Farms, Inc. ($1,566.70); Fiberzone Technologies, Inc. ($5,150.20); Fiberzone Technologies, Inc. ($3,000.00); Flozone Services, Inc. ($49,311.05); Flozone Services, Inc. ($2,000.00); and Flozone Services, Inc. ($7,803.97).

31. Ms. Long kept detailed records of what was paid from the EBB Account, the Mavoureen Blasingame Account, and the Margaret Blasingame Account, records from which she was able to calculate the "debts" owed by each of the Blasingames to the various trusts.

Undisclosed Mercedes Automobile

32. Benard Blasingame purchased a 2008 Mercedes automobile eight months prior to the filing of the bankruptcy petition for $70,165, titled to G.F. Corporation. (Pl. Ex. 16, Answer to Interrogatory No. 3). The Buyer's Order was signed by him. (Def. Ex. 58).

33. The vehicle was purchased with a check written on the account of G.F. Corporation dated December 24, 2007, signed by E. B. Blasingame, made payable to Mercedes Benz of Nashville, in the amount of $70,165.83. (Pl. Ex. 26).

34. At trial, Benard Blasingame could not remember whether he is an officer of G.F. Corporation.

35. Funds to cover the purchase of the 2008 Mercedes automobile were transferred from the account of the BIT at BanCorp South to the account of G.F. Corporation on December 31, 2007. (Pl. Ex. 26).

36. On July 7, 2008, the Debtors provided to their attorneys, Martin A. Grusin and Hank Shackelford, an "Entity Overview" prepared by Joyce Long that describes the various trusts and related corporations. (Def. Ex. 1).

37. The Entity Overview lists the officers of G.F. Corporation as Margaret Blasingame, president, and Joyce Long, secretary. (Def. Ex. 1). Benard Blasingame is not listed as an officer of G.F. Corporation.

38. The Entity Overview lists the assets of G.F. Corporation as:

a. Point Harbor lots at Points of Pickwick (4 lots remaining);

b. Point Harbor Marina (unsold slips) at Points of Pickwick (3 slips remaining);

c. Point Harbor Marina Permit to construct slips at Points of Pickwick; 16+ acres behind Aqua Dynamics building – subdivided as Foxtrot Subdivision with water and sewer in place;

d. Tidwell House and acreage it sits on – beside AD building;

e. 12+ acres beside the AD building.

39. The Mercedes automobile is not included in the disclosure of the assets of G.F. Corporation given by the Debtors to their attorneys.

40. The Entity Overview shows three debts owed by the corporation, and income of $550 per month from rent of the Tidwell House.

41. At the time of the filing of the bankruptcy petition and at the time of trial, the 2008 Mercedes was parked at the Debtors' residence and thus in their possession. Yet the automobile was not listed at SoFA item 14, Property held for another.

42. Both of the Debtors admitted using the 2008 Mercedes automobile "on occasion" and "in their discretion."

43. Although Mrs. Blasingame is the president of G.F. Corporation, she is not regularly employed about its business. In fact, it has no regular business.

The Blasingame Residence Trust

44. Margaret Blasingame was employed as a teacher for McNairy County Public Schools until June 2008.

45. In the year preceding the filing of the bankruptcy petition, Margaret Blasingame regularly deposited her paychecks to an account styled "BFRT Special" at Community South Bank.

46. In the year preceding the filing of the bankruptcy petition, Margaret Blasingame also regularly deposited checks that she received as the beneficiary of an annuity established by her mother at Symetra Financial to the BFRT Special account.

47. The BFRT Special account is the account of the BRT.

48. On October 28, 2007, within the year preceding the filing of the bankruptcy petition, Margaret Blasingame wrote a check to Community South Bank from the BFRT Special account in the amount of $87,951.50 to purchase a certificate of deposit.

49. The BRT was formed by Mavoureen Blasiname on December 30, 1993, with Benard and Margaret Blasingame as co-trustees; and Benard, Margaret, Katherine, and Ben Blasingame as beneficiaries; and other extended family members as contingent beneficiaries. (Pl. Ex. 84).

50. The assets of the BRT consist of the residence occupied by the Debtors, together with the surrounding 27 acres, which includes a rental house. (Def. Ex. 1).

51. The Entity Overview reveals that in July 2008, the only source of income for the BRT was monthly rent in the amount of $325.

52. The BRT has never owned income producing assets other than the rental house. Nevertheless, in the year preceding the filing of the bankruptcy petition, it had three different bank accounts. (Tr. 906). None of these were disclosed by the Debtors in the original SoFA.

53. The residence and surrounding acreage were transferred to the BRT by Benard and Margaret Blasingame by Warranty Deed dated December 31, 1993. (Def. Ex. 37).

54. The purchase price for the residence was $440,000, which was supplied by a loan from Mavoureen Blasingame to the BRT, secured by a deed of trust on the real property. (Def. Ex. 39). Over the years, Mavoureen Blasingame forgave portions of the indebtedness until the debt was paid in full and the deed of trust was released.

Roles of Martin A. Grusin and Tommy L. Fullen

55. In the year preceding the filing of the bankruptcy petition, Margaret Blasingame was the owner of funds held by the Clerk of the Circuit Court of McNairy County in connection with a proceeding styled *State of Tennessee Department of Transportation v. Robert D. Gooch, III, et al.*

56. On August 8, 2008, Margaret Blasingame entered into an agreement with Martin A Grusin in which she assigned all of her rights and interests to the funds to him and authorized him to request the Clerk to pay the funds over to him. (Pl. Ex. 29).

57. Margaret Blasingame accompanied Mr. Grusin to McNairy County to accomplish the release of these funds.

58. Neither the existence of Margaret Blasingame's interest in the funds, nor the assignment to Mr. Grusin were disclosed in the original SoFA.

59. The Debtors became concerned about their financial situation in June 2008, when Margaret Blasingame's account at Community South Bank was garnished and a subpoena was served upon Hardin County Bank.

60. Martin A. Grusin is an attorney, licensed to practice in the state of Tennessee since 1972, who, in addition to the J.D. degree, holds an LL.M. in taxation.

61. Mr. Grusin represented the Debtors in the formation of The Blasingame Trust and served as its first trustee in 1983; he was a successful investor in one or more of the Debtors' businesses.

62. Mavoureen Blasingame did not trust Mr. Grusin and sought other counsel when she established the BRT, BIT, and BDT in 1993.

63. Mr. Grusin was replaced as trustee for the children's trusts because of unsuccessful investment decisions.

64. Nevertheless, when the collection efforts commenced against the Blasingames, they permitted a mutual friend, Robert Smith, to contact Mr. Grusin on their behalf.

65. Mr. Grusin acknowledged this contact from Mr. Smith, and testified that he told Mr. Smith to have Mr. Blasingame call him. Mr. Blasingame testified that he did not call Mr. Grusin but in fact, it was Mr. Grusin who first contacted him.

66. Mr. Grusin and Mr. Blasingame arranged a meeting in the office of Hank Shackelford, an attorney in Jackson, Tennessee, for July 7, 2008. Present at the meeting were Benard and Margaret Blasingame, Ms. Long, Mr. Grusin, and Mr. Shackelford.

67. At the meeting on July 7, 2008, the attorneys were presented with the Entity Overview (Def. Ex. 1) prepared by Joyce Long, together with information concerning collection efforts being made by Church JV.

68. At some point in the meeting, Mr. Grusin advised that the filing of a bankruptcy petition would stop the harassment and provide an opportunity for negotiation. There was a discussion of bankruptcy counsel. Mr. Shackelford recommended someone in Jackson, Tennessee. Mr. Grusin recommended Tommy Fullen of Memphis. Mr. Grusin indicated that he wanted to review the trust documents.

69. Between July 7 and August 8, 2008, Mr. Grusin introduced Mr. Blasingame to Mr. Fullen in a meeting that occurred in Mr. Grusin's office. Either at that meeting or shortly thereafter, Mr. Fullen provided Mr. Blasingame with a "Bankruptcy Case Information Form" and the form of the Statement of Financial Affairs for completion.

70. Someone (perhaps Joyce Long) prepared a "Payroll Recap-Last 6 months" for Mr. and Mrs. Blasingame. It is dated August 7, 2008. (Def. Ex. 2).

71. Between July 7 and August 8, 2008, Mr. Grusin traveled to Adamsville, Tennessee, where he met with Ms. Long and reviewed documents in order to satisfy himself that the trust documents were in order.

72. Margaret Blasingame testified that it was during that trip that she and Mr. Grusin went to the McNairy County Courthouse to secure the release of the $20,000 she had assigned to him. She understood that Mr. Grusin was being retained to protect herself and the trusts.

73. The engagement agreement with Mr. Grusin is dated August 8, 2008. (Pl. Ex. 29).

Preparation of Bankruptcy Documents

74. On August 8, 2008, Mr. Grusin or his assistant, Kathy Dills, faxed 35 pages of legal research to Hank Shackelford and Tommy Fullen.

75. On August 8, 2008, George Donaldson, the Blasingames' accountant, provided Benard Blasingame and Joyce Long with information concerning the Blasingames' income for the years 2005, 2006, and 2007. (Def. Ex. 4).

76. On August 8, 2008, someone (perhaps Joyce Long) prepared a document directed to "Benard" entitled "Information of Judgments."

77. On August 8, 2008, at 6:53 p.m., Joyce Long emailed to Benard Blasingame her responses to the questions from the Statement of Financial Affairs. (Def. Ex. 5).

78. Ms. Long left the next morning to attend her children's birthday parties and did not return until late the following week.

79. On Saturday, August 9, 2008, Margaret and Benard Blasingame met Mr. Fullen at his office. Either at that meeting or in the coming week, Mr. Fullen was provided with:

a. a document similar but not identical to Ms. Long's email to Benard Blasingame (Testimony of Margaret Blasingame);

b. a copy of the Debtors' 2006 income tax return and a copy of their application for extension to file their 2007 income tax return;

c. a copy of a Yearly Earnings Report for Flozone Services, Inc.,

d. a copy of a Payroll Check Register for Flozone Services, Inc.;

e. copies of payment advices from the McNairy County Board of Education;

f. a completed Bankruptcy Case Information form;

g. a copy of the email from George Donaldson concerning the Debtors' income for the prior three years;

h. a copy of the Information Concerning Judgments; and

i. a copy of a Notice of Federal Tax Lien.

80. Mr. and Mrs. Blasingame signed Mr. Fullen's Contract to Provide Legal Services, which indicates that the fee would be not less than $5,000, and that an additional $2,500 would be charged if the venue of the case were changed to Jackson, Tennessee.

81. Mr. Fullen's file was opened Monday, August 11, 2008. Benard Blasingame gave Mr. Fullen a check drawn on the account of the BIT for $5,300 dated August 11, 2008.

82. Mr. and Mrs. Blasingame returned to Mr. Fullen's office on Thursday, August 14, 2008. They completed their credit briefing. Their Certificates of Credit Counseling are dated August 14, 2008, at 5:14 p.m. EDT. (Def. Ex. 22).

83. Mr. Fullen personally interviewed the Debtors using a copy of the bankruptcy schedules. He filled in their answers by hand and prompted them with respect to amounts to assign to personal property items such as household goods and clothing. (Tr. 141-42; 532; 1287-88).

84. Mr. Fullen did not read all of the bankruptcy schedule forms to the Debtors. (Tr. 533). In other words, Mr. Fullen selected the information that he requested from the Debtors based upon the prior impression that he had been given by Mr. Grusin that all of their property was held in trust.

85. Mr. Fullen testified that he did not mention the word annuities, or an interest in an IRA or ERISA plan to the Debtors. (Tr. 534).

86. Mr. Fullen selected $4,000 as the value for the Debtors' household goods because that was the maximum exemption for personal property available at that time. (Tr. 535-36).

87. Mr. Fullen selected the $500 value placed on clothing in a similar manner. (Tr. 536).

88. Mr. Fullen asked the Debtors what cars were "in their name" but did not ask what cars they were driving. (Tr. 537).

89. Glenda Fullen, Mr. Fullen's wife and secretary, entered information from Mr. Fullen's notes and/or his dictation into the bankruptcy forms. (Tr. 552).

90. There were a number of items of information in the document similar to the email of Ms. Long to Benard Blasingame that did not appear in the Debtors' schedules and SoFA. Mr. Fullen explained that this resulted from an "oversight" on his part. The missing information consists of the following:

a. the Old Dominion account (which is described as closed after "approx $3,500 withdrawn to pay attorney fee");

b. the garnishments and levies of Chase;

c. Margaret Blasingame's checking account at Community South Bank.

91. In addition, Mr. Fullen was aware of the $20,000 assigned to Mr. Grusin. He did not list it in the SoFA because, "Mr. Grusin said that was income earned by his contract." (Tr. 549; 551-52).

92. The only documents in the record from Mr. Fullen's file that bear the Debtors' actual signatures are his engagement agreement, which is dated August 8, 2008, and the Chapter 7 Statement of Current Monthly Income and Means-Test Calculation, which is undated.

93. The Debtors' bankruptcy petition, schedules, and statement of financial affairs were filed on Friday, August 15, 2008, at 3:24 p.m. (Pl. Ex. 1).

The "Rush" to File the Bankruptcy Petition

94. Mrs. Blasingame and Mr. Fullen agree that they met on only two occasions. (Tr. 275, 520).

95. Mr. Fullen and Mr. and Mrs. Blasingame each testified that there was a rush to file the bankruptcy petition, but none could specify the reason for the rush to file.

96. Mrs. Blasingame testified that the rush to file resulted from creditor harassment and the fact that Mr. Fullen was leaving for some kind of military service. She said that she thought there was some "hearing with the bank" scheduled for the next week. She said that they needed to file before the

Hardin County Bank became involved because, "if they quit lending the companies money, then that might have been the end of the company and we have to think of the employees, too." (Tr. 280-81).

97. Mr. Fullen testified that the sense of urgency came from Mr. Grusin, and Mr. and Mrs. Blasingame. (Tr. 571). He recalled that it had to do with collection activity undertaken by attorney Stephen Hughes of Milan, Tennessee, and that it had to do with the garnishment of bank accounts. (Tr. 573-74).

98. Mr. Fullen recalled that he was going out of town for National Guard drill and that the Debtors' petition, schedules, and SoFA "needed to get done before [he] left town." (Tr. 667).

99. Mr. Fullen did not recall that he was leaving town the day of signing. He testified that when he had National Guard duty, he generally had to report in the morning. At that time, his place of report was Chattanooga. Mr. Fullen testified that when he had to travel to Chattanooga, he preferred to leave before noon on the day of travel. (Tr. 667).

100. The Debtors' Certificates of Credit Counseling were prepared late on the afternoon of Thursday, August 14, but their petition was not filed until 3:24 on the afternoon of Friday, August 15. Everyone seems to agree that the Debtors visited Mr. Fullen's office on Thursday, August 14, not Friday, August 15.

101. It seems more likely than not that the Debtors worked with Mr. Fullen on Thursday, August 14, and that Mrs. Fullen prepared the petition, schedules, and SoFA for filing, based upon Mr. Fullen's notes and dictation, the following day. It seems more likely than not that neither Mr. Fullen nor the Debtors reviewed the completed schedules and SoFA before they were filed.

102. This impression is bolstered by the fact that the Debtors never received a complete copy of their petition, schedules, and SoFA as filed; and further by the fact that no signed copy of these documents appears in Mr. Fullen's work papers.

103. The fact that Mr. Fullen was going out of town on the day following the Debtors' visit with him does not, however, explain the urgency for filing. The urgency for the filing resulted from the Debtors' needs, not Mr. Fullen's. It is a fact, however, that a sense of urgency was communicated to him by Mr. Grusin, if not by the Debtors.

Fullen's Reliance on Grusin

104. Mr. Grusin assured Mr. Fullen that all of the Debtors' assets were held in trust. (Tr. 576; 579; 580; 654-56).

105. Mr. Fullen did not learn that Mr. Grusin was not the attorney who formed the BRT, BIT, and BDT until after the bankruptcy petition was filed. (Tr. 675).

106. Mr. Grusin did not tell Mr. Fullen how he came to the conclusion that all of the Debtors' assets were held in trust. Mr. Fullen just assumed that Mr. Grusin knew because he had known the Blasingames for a long time and seemed familiar with their assets. (Tr. 677).

107. Mr. Fullen knew that the event that led to the filing of the bankruptcy petition was the garnishing of a bank account. (Tr. 547; 658).

108. Mr. Fullen knew that if the bankruptcy were intended to stop the garnishment of a bank account, that account would have to be in one or the other of the Debtors' names, but he did not ask them about their bank accounts. (Tr. 574; 580; 584).

109. Mrs. Blasingame testified that she was told that she did not have to disclose annuities or bank accounts that were not opened with her social security number.

110. Mr. Fullen testified that he did not tell the Debtors that they did not have to list bank accounts unless they bore the Debtors' names and social security numbers. (Tr. 612).

111. Mr. Fullen had no knowledge of annuities owned by Mrs. Blasingame at the time the bankruptcy schedules were prepared. (Tr. 588).

112. Mr. Fullen did not ask about debts guarantied by the Blasingames. (Tr. 650-51).

Debtors' Reliance on Fullen

113. The Blasingames relied on Mr. Fullen to complete their schedules and SoFA and did not verify to be sure that the schedules and SoFA contained all of the information they supplied to him. (Tr. 656).

114. Mr. Fullen communicated to the Debtors the belief that any omissions or errors in their schedules and SoFA could be corrected by amendment.

115. The Debtors did not, however, review their completed schedules and SoFA to determine whether amendments were needed, nor did they ask Joyce Long to do so.

116. With the exception of the very first amendment, which clarified that the Debtors were not stockholders in any of the corporations listed in the SoFA, none of the amendments that were later made by the Debtors were made as the result of their own initiative. Each resulted from discovery taken by the Trustee, Church JV, and Farmers.

117. In the amendment made to Schedule B on April 9, 2009, the only accounts disclosed are "UBS account" and "Regions Bank Account." Margaret Blasingame's account at Community South Bank is not disclosed. (Tr. 661).

118. The Blasingames never questioned why their other accounts were not added to Schedule B, but relied upon Mr. Fullen to handle all amendments. (Tr. 662).

119. Mr. Fullen never went through the schedules as amended with the Blasingames to be sure that everything was added. (Tr. 663).

120. Mr. Fullen did not meet Joyce Long until after the bankruptcy petition was filed. He never sat down with her to go over the schedules and SoFA as amended to ensure that everything was included. (Tr. 664-65).

CONCLUSIONS OF LAW

Jurisdiction

Jurisdiction over a complaint arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The determination of the objections to discharge are core proceedings arising under the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(2)(J).

Discharge in General

Discharge in bankruptcy is not a right but a privilege extended to the "honest but unfortunate debtor." *Grogan v. Garner*, 498 U.S. 279, 287 (1991), citing *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) ("One of the primary purposes of the Bankruptcy Act is to 'relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes."). Section 727(a) of the Bankruptcy Code directs the court to grant the debtor a discharge unless one or more specific exceptions apply.

See 11 U.S.C. § 727(a) ("The court shall grant the debtor a discharge unless ...."). These exceptions are to be liberally construed in favor of the debtor, and the party objecting to discharge has the burden of proving the application of one or more of the exceptions by a preponderance of the evidence. Fed. R. Bankr. P. 4005; *Roberts v. Montgomery (In re Montgomery)*, 2007 WL 625196, at *1 (Bankr. E.D. Tenn. 2007), citing *Kenney v. Smith (In re Kenney)*, 227 F.3d 679, 683 (6th Cir. 2000); *Barclays/American Bus. Credit, Inc. v. Adams (In re Adams)*, 31 F.3d 389, 394 (6th Cir. 1994).

The Bankruptcy Code imposes disclosure requirements upon debtors that are essential to the successful administration of the bankruptcy estate. The cases are "quite firm" in describing the nature and extent of a debtor's obligations. See cases collected at *Roudebush v. Sharp (In re Sharp)*, 244 B.R. 889, 891-92 (Bankr. E.D. Mich. 2000).

The Plaintiffs assert that discharge should be denied to the Blasingames under four exceptions: 11 U.S.C. §§ 727(a)(2)(A) and (B); 727(a)(4); and 727(a)(5).

Count III
Objection to Discharge Pursuant to Section 727(a)(2)(A) and (B)

The Plaintiffs object to the entry of discharge on the ground that the Debtors, with intent to hinder, delay, or defraud their creditors, transferred, removed, destroyed, mutilated or concealed, or permitted to be transferred, removed, destroyed, mutilated or concealed, property of the Debtors, within one year before the date of the filing of the petition, or property of the estate, after the date of the filing of the petition. *See* 11 U.S.C. § 727(a)(2)(A) and (B). In order to prevail, the Plaintiffs must prove the elements of section 727(a)(2) by a preponderance of the evidence. *Kenney v. Smith (In re Kenney)*, 227 F.3d 679, 683 (6th Cir. 2000). The elements required to be proven are (1) a disposition of property, such as concealment; and (2) a subjective intent on the debtor's part to

hinder, delay, or defraud a creditor through the act of disposing of the property. *Id.* citing *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997).

Proof of the "concealment" of an asset for purposes of section 727(a)(2) does not require proof of actual transfer. Rather, concealment "includes the withholding of knowledge of an asset by the failure or refusal to divulge information required by law to be made known." *Buckeye Retirement Co., LLC v. Swegan (In re Swegan)*, 383 B.R. 646, 655 (B.A.P. 6th Cir. 2008). "Concealment ... includes an attempt to prevent the discovery of property and the withholding of information which a debtor is required by law to reveal." *Allied Domecq Retailing USA v. Schultz (In re Schultz)*, 2000 WL 575505, *6 (Bankr. N.D. Ohio 2000), *aff'd* 50 Fed. Appx. 279 (6th Cir. 2002). Moreover, "[o]mitting information from bankruptcy schedules has been construed as a concealment occurring both before and after the bankruptcy filing." *Id.*, citing *Hunter v. Sowers (In re Sowers)*, 229 B.R. 151 (Bankr. N.D. Ohio 1998). In an unpublished opinion, however, the Bankruptcy Appellate Panel for the Sixth Circuit held that failure to disclose assets in connection with the filing of a bankruptcy petition should not be treated as a *pre*petition concealment. *Montedonico v. Beckham (In re Beckham)*, 421 B.R. 602, 2009 WL 1726526, at *7 (B.A.P. 6th Cir. 2009).

Maintaining a bank account in someone else's name may also constitute concealment. *Schultz*, 2000 WL 575505, at *6, citing *Roudebush v. Sharp (In re Sharp)*, 244 B.R. 889 (Bankr. E.D. Mich. 2000).

In addition to concealment, section 727(a)(2) requires proof of actual intent to hinder, delay, or defraud. Proof of constructive fraud is not adequate. *Montgomery*, 2007 WL 625196, at *2, citing *E. Diversified Distrib., Inc. v. Matus (In re Matus)*, 303 B.R. 660, 672 (Bankr. N.D. Ga.

2004). Because of the inherent difficulties in proving intent, plaintiffs may rely on circumstantial evidence, including evidence of a debtor's course of conduct, to establish his intent. *Montgomery,* 2007 WL 625196, at *2. "A debtor's intent 'may be inferred from the circumstances surrounding his objectionable conduct.'" *Keeney*, 227 F.3d at 684, quoting *In re Snyder,* 152 F.3d 596, 601 (7th Cir. 1998). In order to determine actual intent, the courts look to certain traditional "badges of fraud" including the following:

> (i) the lack of adequate consideration for the transfer; (ii) the family, friendship, or close relationship between the parties; (iii) the retention of possession, benefit, or use of the property in question by the debtor; (iv) the financial condition of the party sought to be charged prior to and after the transaction in question; (v) the conveyance of all of the debtor's property; (vi) the secrecy of the conveyance; (vii) the existence or cumulative effect of a pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat or suit by creditors; and (vii) the general chronology of the events and transactions under inquiry.

Montgomery, 2007 WL 625196, at *2, quoting *Matus,* 303 B.R. at 672-73. Additional factors indicating a debtor's actual intent to defraud include:

> whether the transaction is conducted at arms length; whether the debtor is aware of the existence of a significant judgment or over-due debt; whether a creditor is in hot pursuit of its judgment or claim and whether the debtor knows this; and the timing of the transfer relative to the filing of the petition.

Montgomery, 2007 WL 625196, at *2, quoting *Adamson v. Bernier (In re Bernier),* 282 B.R. 773, 781 (Bankr. D. Del. 2002). If the plaintiff establishes the existence of badges of fraud, the burden shifts to the debtor to rebut the presumption of intent. *Montgomery,* 2007 WL 625196, at *2, citing *Village of San Jose v. McWilliams,* 284 F.3d 785, 791 (7th Cir. 2002). Proof of just one wrongful act may be sufficient to show actual intent, but a pattern of continuing wrongful behavior is a stronger indication. *Hunter v. Sowers (In re Sowers),* 229 B.R. 151, 157 (Bankr. N.D. Ohio 1998).

A creditor need not prove that a debtor intended to hinder, delay, *and* defraud his creditors; proof of any one is sufficient. *Cuervo v. Snell (In re Snell),* 240 B.R. 728, 730 (Bankr. S.D. Ohio 1999). Thus, for example, if plaintiffs are able to establish a debtor's intent to delay, it is not necessary to prove an intent to defraud. *Id.*

The record in this case is replete with instances in which the Debtors concealed assets from their creditors both before and after the filing of their bankruptcy petition. The court will highlight three: (1) the Debtors engaged in a pattern of using bank accounts in names other than their own; (2) the Debtors purchased assets for their own use in names other than their own; and (3) the Debtors transferred property without disclosing the transfer to their creditors.

(1) Use of Bank Accounts in Other Persons' Names

As has been described in the Statement of Facts, the Debtors routinely used two bank accounts for payment of personal obligations that were in names other than their own: the EBB Account and the Mavoureen Blasingame Account. Deposits were made to these accounts from at least six different sources in addition to Benard Blasingame's paychecks from Flozone Services, Inc. The use of these accounts extended throughout the one-year period preceding the filing of the bankruptcy petition. The use of these accounts had the potential if not actual effect of hindering the efforts of creditors to locate the assets of the Debtors. The Debtors concealed the existence of these accounts when they filed their bankruptcy schedules. Neither of these accounts has ever been the subject of a subsequent amendment to the schedules. The Plaintiffs have proven that the Debtors concealed these accounts from their creditors.

The Plaintiffs have also proven circumstances that tend to show an intent to hinder or delay, if not defraud, their creditors. These accounts exhibit common badges of fraud. The accounts are

in the names of relatives of the Debtors: Earl Benard Blasingame, Jr., and Mavoureen Blasingame, Benard Blasingame's deceased mother. The accounts were established or used by the Debtors with knowledge of the large outstanding obligations owed to their creditors. Under these circumstances, the burden shifts to the Debtors to show some intent other than an intent to hinder or delay their creditors. The Debtors attempted to do this in two ways: first, by testimony tending to show that the Debtors or their bookkeeper adopted this practice for convenience, and second, by evidence that they disclosed these assets in response to discovery requests.

The Debtors' first explanation, convenience, fails completely. The Debtors and their bookkeeper, Joyce Long, explained that the EBB Account was established when Debtors' son, Ben Blasingame, was attending the University of Tennessee. Joyce Long also explained that she wanted an account upon which "everyone could sign." These explanations completely fail to address the fact that the account was opened using the social security number of Ben Blasingame, rather than one of his parents, and fail to address the subsequent use of the account to "clear" transactions by and among a number of different persons and entities.

With respect to the Mavoureen Blasingame Account, Benard Blasginame explained that he was added to the account before his mother died, and that he continued to use the account after her death for his personal expenses. Mr. Blasingame testified, however, that he knew of no reason why he could not open an account in his own name. Convenience alone cannot explain the use of either of these accounts by the Debtors.

The Debtors' second explanation also fails. The Debtors may have made the Plaintiffs aware of these accounts in the context of discovery, but they have never satisfactorily explained their failure to disclose these accounts in their original bankruptcy schedules or in any subsequent

amendment. They say, for example, that they made their attorneys fully aware of all their financial affairs, but no list of accounts was given to counsel prior to their bankruptcy filing. The Debtors explain that they were told by Mr. Fullen only to disclose accounts opened in their names using their social security numbers. Mr. Fullen denies giving this instruction. Moreover, the Debtors never made Mr. Fullen aware of the existence of the EBB Account or the Mavoureen Blasingame Account prior to filing, and they certainly never told him of their extensive use of these accounts to pay their personal expenses.

(2) Purchase of Assets in Names of Others

In one instance, the Debtors purchased an asset for their own use but placed the title in the name of a related corporation. The Plaintiffs have proven that the Debtors purchased a 2008 Mercedes automobile eight months prior to the filing of the bankruptcy petition for $70,165 titled to G.F. Corporation. Funds to purchase this vehicle were transferred from the account of the BIT at BanCorp South to the account of G.F. Corporation at BanCorp South. The "Entity Overview" provided by the Debtors to Mr. Grusin and Mr. Shackelford on July 7, 2008, does not include this automobile among the assets of G.F. Corporation. The G.F. Corporation has very little business other than the occasional showing of real property that it has available for sale. Both Margaret Blasingame and Benard Blasingame use the 2008 Mercedes automobile "in their discretion."

In another instance, personal funds of Margaret Blasingame were deposited to an account owned by the BRT, were accumulated, and were used to purchase a certificate of deposit. Margaret Blasingame routinely deposited her paychecks from McNairy County Schools and a monthly check she received from an annuity account at Symetra to an account at Community South Bank in the name of "BFRT Special," an account reportedly owned by the BRT On October 8, 2007, Margaret

Blasingame wrote a check payable to Community South in the amount of $87,951.50, that was combined with another deposit, which included a check from the Symetra annuity, to purchase a certificate of deposit, also in the name of "BFRT Special."

The transfer of Margaret Blasingame's earnings and annuity checks to the BFRT Special account, and the purchase of a certificate of deposit with funds accumulated in that account, were transfers that either potentially or actually hindered or delayed her creditors in discovering her assets. The fact that her paychecks were deposited to an account in the name of the BRT over which Margaret Blasingame retained control raises a badge of fraud that calls into question her intent in making the transfers and shifts to her the burden of proving that her intent was not to hinder or delay creditors.

The BRT holds title to the residence used by the Debtors, the surrounding 27 acres, and one rental house. Because the BRT has never owned income-producing assets other than the rental house (which at the time of filing generated $325 per month in income), it is difficult to imagine how Margaret Blasingame ever became indebted to the BRT in any amount.

(3) Transfer of Property without Disclosure to Creditors

A final example of instances in which the Debtors transferred or concealed property is Margaret Blasingame's assignment of funds held by the Clerk of the Circuit Court of McNairy County to her attorney, Mr. Grusin, one week before the filing of the bankruptcy petition. Mrs. Blasingame testified that these funds had been on deposit for years, and that she had been unable to secure their release because of "liens." Mr. Grusin seems to have had no trouble securing their release. Although this assignment was made one week before the filing of the bankruptcy petition, neither Margaret Blasingame's interest in the funds, nor the assignment of that interest to

Mr. Grusin were disclosed in the SoFA. The failure of the Debtors to disclose this asset and its transfer is a concealment of assets of the estate for purposes of section 727(a)(2)(B). The timing of the transaction is a badge of fraud that calls into question the intent of Margaret Blasingame in concealing this assignment.

Margaret Blasingame responded that she does not know why this asset and its assignment to Mr. Grusin were not disclosed in the original SoFA. These disclosures were not made until the amendment filed April 9, 2009. Significantly, a reference to the asset and a reference to the assignment appear in the email from Joyce Long to Benard Blasingame dated August 8, 2008, 6:53 p.m. This email reproduces questions from the form of the SoFA and provides suggested responses. The Blasingames met with Mr. Fullen on Saturday, August 9. Ms. Long was not present at that meeting and, although both of the Blasingames were sure that Ms. Long's email was given to Mr. Fullen, neither of them could positively say that she or he had delivered it. A similar, but not identical, document appears in the work papers of Mr. Fullen. (Def. Ex. 22). In this document, at item 6, the references from Joyce Long's email concerning the "$20,000 held by McNairy County Circuit Court belonging to Margaret Blasingame," and "$20,000 held by McNairy County Circuit Court belonging to Margaret Blasingame now being assigned to Martin A. Grusin, attorney," do not appear. At item 9, however, there still appears, "Assigned $20,000 to Martin A. Grusin," without identifying the source of the funds. No explanation was given by the Blasingames for these changes. The SoFA that was filed contains no reference to the assignment of funds to Mr. Grusin. As discussed more fully below, neither of the Blasingames read their original schedules or SoFA before signing them, nor did they review amendments that were made by their attorneys.

(4) Conclusions Concerning Intent

These are but three examples. In each case, the Plaintiffs have proven that assets were transferred or concealed in the one year preceding the filing of the bankruptcy petition. The Plaintiffs have also proven the existence of one or more badges of fraud surrounding the transfers or concealment that call into question the intent of the Debtors. As a result, the burden shifts to the Debtors to rebut the presumption that their intent was to hinder or delay, if not defraud, their creditors. In each case, the explanations that the Debtors offered fell far short.

The court was struck by the consistency of the testimony of the Blasingames and Ms. Long, and this deserves further comment. The Blasingames repeatedly insisted that their intention was not to hinder, delay, or defraud their creditors. They repeatedly insisted that if they had wanted to obtain a discharge in bankruptcy, they would have filed years ago. They said that their intent was to repay their creditors, and they said that they ultimately decided to file their bankruptcy petition because they were convinced (primarily by Mr. Grusin) that it would be "quick and easy"; that it would provide an opportunity to negotiate with their creditors; and that they could dismiss their case if needed. The impression that the Blasingames left with the court was not of dishonest persons, but of persons who had gotten caught up in their own game. They had adopted a lifestyle and way of doing business that over time must have come to seem normal. The Blasingames, and to a certain extent, Ms. Long, seemed incapable of appreciating how unusual their financial dealings were. It was almost, though not quite, as if they had forgotten that the elaborate system of accounts, trusts, and corporations had been created in the first instance because they were left heavily indebted after business failures in the early 1990s. (See Amended and Restated Forbearance Agreement, Def. Ex. 35). It was almost, though not quite, as if they failed to appreciate that most people most of the

time do not engage in a constant juggling of funds by and among accounts in order to pay their living expenses; most people, most of the time, do not routinely deposit their paychecks into an account in their son's name or one in the name of a trust established by their mother-in-law to hold title to their residence.

That Benard Blasingame had not completely forgotten is demonstrated by some of his correspondence with his attorneys. For example, on March 18, 2009, there is an email exchange among Mr. Fullen, Mr. Grusin, Mr. Shackelford, and Mr. Blasingame. Mr. Fullen states: "Please find attached the amendments to Schedules B and C and the Statement of Affairs. Marty please look at #9 in the statement of affairs[1] and give me an approximate date of payment. I have amended these schedules with no input so please let me know if there are changes." Mr. Blasingame responds with: "Do we have any case that the CD and annuity is not property of Margaret/Court? By making these amendments are we conceding?" (Pl. Ex. 52). This exchange shows that Mr. Blasingame is concerned about disclosure of these assets. The clear impression is given that he would prefer not to make the amendment. This exchange contradicts Mr. Blasingame's testimony that he left up to his attorneys the process of amendment.

As another example, there is an email exchange among Mr. Blasingame, Mr. Fullen, and Mr. Grusin, with a copy to Mr. Joe Townsend, Mr. George Donaldson, and Mr. Shackelford, dated November 2, 2009, which starts with Mr. Fullen saying, "Marty, my recollection is that some payments were made after August 2006. It would be a material problem if this did not occur. Please recheck your records." Mr. Blasingame then interposes: "All of Margaret and Benard's payroll

[1] Payments related to debt counseling, etc. What was eventually disclosed, of course, was the assignment of funds belonging to Mrs. Blasingame to Mr. Grusin within days before the filing of the bankruptcy petition.

checks were deposited into the Blasingame Clearing account after August 2006 and most all Margaret and Benard's expenses were paid out of the Clearing account.[2] The net balance over 15 years was approx. $8600 that the Blasingames owed the Clearing account." Mr. Grusin replies: "Bernard, the issue is what of her checks went into the trust either direct or indirect through the clearing account that were used to buy the $90,000 CD after August 2006. She [Margaret] testified that she deposited her checks into the trust to make up for your and her expenses and that's where money to buy the CD in the trust name came from. The issue is how many after Aug. 2006." Mr. Blasingame replies: "If we assume that none of Margaret's or mine went to pay our monthly expenses then you could assume money went to buy CD and our debt kept going up. That would certainly be different accounting for Aug 2006 through Aug 2008 than previous years." (Pl. Ex. 53). This exchange was not adequately explained, but gives the clear impression that Mr. Blasingame was well aware that the accounting was "flexible" and might be bent to his purpose.

The Debtors have failed to rebut the presumption raised by the Plaintiffs that their intent in concealing their assets was to hinder or delay their creditors. For this reason, their discharge should be denied pursuant to section 727(a)(2)(A) and (B). Judgment for the Plaintiffs will be entered on Count III of the Complaint.

Count IV
Objection to Discharge Pursuant to Section 727(a)(4)

The Plaintiffs also object to the Debtors' discharge pursuant to section 727(a)(4), under which the Plaintiffs must prove: "(1) the debtors made a statement under oath; (2) that was false; (3) they knew that the statement was false when they made it; (4) they fraudulently intended to make

[2] This statement is contrary to the evidence provided by Ms. Long that Mrs. Blasingame's paychecks were deposited to the "BFRT Special" account at Community South Bank.

the statement; and (5) the statement materially related to the bankruptcy case." *Montgomery*, 2007 WL 625196, at *3, citing 11 U.S.C.A. § 727(a)(4); and *Keeney*, 227 F.3d at 685. Section 727(a)(4) extends to both false statements and omissions. A statement is material if it "bears some relationship to the [debtor's] business transactions or estate, or concerns the discovery of assets, business dealings, or the existence or disposition of property." *Id.* (citations omitted). A debtor's schedules and statement of financial affairs are executed under oath and penalty of perjury. *Id.*, citing *Hamo v. Wilson (In re Hamo)*, 233 B.R. 718, 725 (B.A.P. 6th Cir. 1999). Likewise, statements made at a section 341 meeting of creditors or in the course of depositions or 2004 examinations are made under oath. *Id.*, citing 11 U.S.C.A. § 343, and *Brumley v. Wingard*, 269 F.3d 629, 642 (6th Cir. 2001).

Reckless indifference to the truth may satisfy the requirement for fraudulent intent in denying discharge under section 727. *See, e.g., Montgomery*, 2007 WL 625197, at *4; *The Cadle Co. v. Taras (In re Taras)*, 2005 WL 6487202, at *4 (Bankr. N.D. Ga. 2005). "[A] series or pattern of errors or omissions may have a cumulative effect giving rise to an inference of intent to deceive." *Id.*, citing *Kalvin v. Clawson (In re Clawson)*, 119 B.R. 851, 852-53 (Bankr. M.D. Fla. 1990); *Buck v. Buck (In re Buck)*, 166 B.R. 106, 109 (Bankr. M.D. Tenn. 1993).

The evidence of the Plaintiffs overwhelmingly demonstrates that the Defendants repeatedly gave false oaths in connection with their bankruptcy case. Their Schedules and SoFA made under oath were fraught with omissions and misstatements. In addition, they gave false oaths at their meeting of creditors.

The Debtors failed to disclose their interests in bank accounts. Although the Debtors ultimately amended their Schedule B on April 9, 2009, to disclose interests in two accounts, "UBS

account" and "Regions Bank Account," these amendments came well after the meeting of creditors, and only after a number of accounts were identified in connection with the examinations undertaken by the Plaintiffs. No account numbers were given. These accounts are listed as joint accounts, but they appear to be accounts in the name of Margaret Blasingame. Other bank accounts regularly used by the Debtors for personal expenses were not disclosed, including the EBB Account and the Mauvoureen Blasingame Account. According to Joyce Long, these accounts were regularly used for the payment of personal expenses.

The Debtors also failed to disclose other financial assets in their original Schedule B, including the Lincoln Financial Group annuity, the SAFECO/Symetra annuity, the Horace Mann annuity account, and the Dominion account. These accounts were revealed in the same amendment to Schedule B filed on April 9, 2009, after discovery and the taking of the examinations of the Debtors and their bookkeeper.

The Debtors failed to disclose their interests in three trusts: the BIT, the BRT, and the BDT.

The Debtors failed to disclose significant amounts of personal property that they claim to hold for others. This was included in the April 9, 2009, amendment to their Statement of Financial Affairs.

The Debtors failed to disclose Margaret Blasingame's interest in funds on deposit with the McNairy County Circuit Court Clerk, and the transfer of those funds to her attorney, Mr. Grusin. This was included in the April 9, 2009, amendment to their Statement of Financial Affairs.

The Debtors failed to disclose significant and ongoing transfers of funds among a number of bank accounts opened in the names of the trusts and related corporations. Included among these were transfers made to pay significant credit card charges made by the Debtors. These payments

to credit card issuers were revealed in the second amendment to the Statement of Financial Affairs, filed November 20, 2008.

The Debtors respond that they relied upon the advice of counsel in preparing their petition, schedules, and SoFA.

The court has already addressed the duty of the Debtors to disclose the omitted assets in the Memorandum on Plaintiffs' Motion for Partial Summary Judgment on Discharge Claims, pp. 21-23. As the court stated there, it is beyond dispute that the Official Bankruptcy Forms call for the disclosure of all bank and investment accounts and contingent and non-contingent interests in trusts. If a debtor is uncertain whether certain property is legally required to be included in his or her schedules and statement of financial affairs, the debtor's duty is to disclose the asset so that the question can be resolved. *Banc One v. Braymer (In re Braymer)*, 126 B.R. 499, 503 (Bankr. N.D. Tex. 1991), citing *Butler v. Ingle (In re Ingle)*, 70 B.R. 979, 983 (Bankr. E.D. N.C. 1987). The Plaintiffs have established that in filing their original petition, schedules, and SoFA, the Debtors made false statements under oath.

Next, the Plaintiffs must establish that these false statements were made knowingly and fraudulently. Reckless indifference to the truth may satisfy this requirement. *Keeney*, 227 F.3d at 686. Under certain circumstances, reliance upon advice of counsel may show that a debtor lacked the requisite intent to defraud. *In re Rivera*, 356 B.R. 786, 2007 WL 130415, *7 (B.A.P. 6th Cir. 2007), citing *First Beverly Bank v. Adeeb (In re Adeeb)*, 787 F.2d 1339, 1343 (9th Cir. 1986). This reliance, however, must be reasonable and in good faith. *Id.* citing *Adeeb; U.S. v. Lindo*, 18 F.3d 353, 356 (6th Cir. 1994); *Spring Works, Inc. v Sarff (In re Sarff)*, 242 B.R. 620, 629 (B.A.P. 6th Cir. 2000); *In re Colvin*, 288 B.R. 477, 483 (Bankr. E.D. Mich. 2003). The Debtors must show that their

attorney was fully informed and that his or her advice was reasonable. *In re Oliver*, 414 B.R. 361, 376 (Bankr. E.D. Tenn. 2009). Even an unrepresented debtor may be held responsible for correctly disclosing his beneficial interest in a trust based upon the plain language of the Official Bankruptcy Forms. *Taras*, 2005 WL 6487202, at *4.

The Debtors testified that they were told by their attorneys not to list their interests in trusts, in annuities, or in accounts not opened under their social security numbers. The Debtors admit that they did not provide either Mr. Fullen or Mr. Grusin with a list of their bank and financial accounts. They never provided to Mr. Fullen a list of the assets held by the trusts or of the assets held by them for other persons.

Mr. Fullen admitted that he was aware of the Debtors' interests in certain trusts, but stated that he was not aware of Mrs. Blasingame's interest in annuities, and he was not aware of the various accounts used by the Debtors. Mr. Fullen testified that he never told the Debtors that they did not have to list interests in annuities or that the disclosure of accounts was limited to accounts opened using the Debtors' social security numbers. He also stated that he did not ask them about assets held for other persons. Rather, he said that he didn't ask questions about those categories of assets because he had been assured by Mr. Grusin that all of the Debtors' assets were held in trusts.

Mr. Grusin denies giving any advice to the Debtors about what was to be disclosed in connection with the bankruptcy filing, but he admits that he assured them that the trusts would "not be part of the bankruptcy." He also admits that the Debtors may have become "confused" based upon statements that he made.

It seems clear that Mr. Grusin's assurances and certainty that certain assets would be excluded from the bankruptcy estate, and his and the Debtors' insistence that the bankruptcy petition

be filed before other collection activities could proceed, overrode Mr. Fullen's better judgment. Mr. Fullen did not observe his usual intake procedures with respect to bankruptcy clients in the Debtors' case. Mr. Fullen neglected to ask certain questions because of his understanding of the Debtors' financial situation, an understanding that he gained from Mr. Grusin rather than the Debtors. It is true that Mr. Fullen rushed through the preparation of the schedules and SoFA because he was leaving town, but it was the Debtors (perhaps under the influence of Mr. Grusin) who insisted that the petition be filed before Mr. Fullen was scheduled to return.

Despite the clear inadequacies of counsel in this case, however, the Debtors bear ultimate responsibility for their schedules and SoFA.[3] The Debtors knew that the information provided to Mr. Fullen did not accurately and adequately describe their true financial condition. The Defendants knew that the information provided to Mr. Fullen did not accurately or adequately describe their true financial condition. Margaret Blasingame clearly testified that she did not read her schedules and SoFA at the time that she signed them.[4] (Tr. 291; 1542). Benard Blasingame clearly testified that he did not read his schedules and SoFA, or the amendments to them, until after Mr. Cocke was engaged as his counsel if then. (Tr. 1395; 1416-17). Moreover, despite their reliance upon Ms. Long for documentation of all their financial affairs, the Debtors never asked Ms. Long to review the schedules and SoFA either before or after they were filed. (Tr. 889-90). Because the Debtors did not review their schedules and SoFA before filing, they asked no questions of Mr. Fullen

[3] This in no way excuses the Debtors' attorneys. Had they impressed upon the Debtors the seriousness of their undertaking or insisted that they take time to read their documents before submitting them for filing, the Debtors might have conducted themselves differently.

[4] If, indeed, she did sign them. The only documents found in Mr. Fullen's work papers bearing the hand-written signatures of the Debtors were Mr. Fullen's engagement agreement and the Chapter 7 Statement of Current Monthly Income and Means-Test Calculation.

concerning the information that was provided in the schedules. Nevertheless, the Debtors authorized the schedules and SoFA to be filed with their signatures – signatures that constitute an oath that the information contained in the schedules and SoFA was true and accurate. The schedules and SoFA were neither true nor accurate, as the Debtors readily admit. Their total disregard for their responsibilities regarding the schedules demonstrates reckless indifference to the truth of their statements.

The Debtors were put under oath again at their meeting of creditors. Prior to being questioned, they were asked to sign and submit to Mr. Montedonico, their trustee, written answers to *Required Statements by Debtor for 341 Meeting.* These statements were signed under penalty of perjury. In the statements, the Debtors affirmed that they had read and signed their petition, schedules, statements, and related documents; that they were personally familiar with the information contained in the documents; and that, to the best of their knowledge, the information contained in the documents was true and correct. (Pl. Ex. 118 and 119). In addition, the form of the statements gave the opportunity to list any omitted information, assets, or creditors. The Debtors provided no additional information. The Debtors admitted at trial that their statements were false. There is no indication that they "relied on counsel" to complete these statements.

At the meeting of creditors, the Debtors testified under oath in response to questions by Mr. Montedonico. They confirmed that they had helped prepare, had read, and had signed their bankruptcy petition; that it listed all their assets and liabilities; that the information contained in their schedules and SoFA was true; and that the statements provided in their *Required Statements by Debtor for 341 Meeting* were true. (Pl. Ex. 114). Each of these statements, made under oath, were

false. There is no indication that the Debtors "relied on counsel" to formulate their answers to Mr. Montedonico's questions. These false oaths alone would provide cause to deny their discharge.

At the meeting of creditors, the Debtors were also questioned by George D. McCrary, counsel for Farmers & Merchants Bank. Mr. McCrary asked questions about the trusts and corporations which Mr. Blasingame readily answered. (*Id.* at 12-19). Mr. Montedonico then asked why the trusts were not listed on the schedules or SoFA. Benard Blasingame responded that they were not listed because "[i]t asked for corporations; it didn't ask for anything like that." (*Id.* at 19). This statement is particularly damning because it reveals not only Mr. Blasingame's familiarity with his assets, but his awareness that there was a question about whether the trusts should be disclosed in his schedules. In other words, someone (most likely Mr. Grusin) made a calculated decision to omit reference to the trusts in the schedules and Mr. Blasingame was fully aware of this decision. Mr. Blasingame did not, however, state that he had been advised by his attorney not to disclose his interests in trusts. Instead, in connection with Mr. Blasingame's response, Mr. Fullen said, "We can supplement that," (*id.* at 20) and Mr. Blasingame added, " I listed all the corporations and everything and it really don't ask [sic] anything about trusts in here, but I can supplement that if that's what ..." (*id.* at 20-21). Mr. Blasingame made an affirmative statement about what "it" – the schedules – required to be listed, again belying his assertions at trial that he had never read the schedules and had no knowledge of what was required to be disclosed. Despite Mr. Fullen's and Mr. Blasingame's assurances at the meeting of creditors that the schedules would be amended to disclose the trusts, that particular amendment was not made until 4 years after the petition was filed. (*see* Pl. Ex. 15).

Mr. Montedonico continued the meeting of creditors for two weeks to permit the Debtors to review their schedules and SoFA to ensure that nothing was omitted. The following excerpt is pertinent:

> Mr. Montedonico: Okay. Well, in this next two weeks time, why don't you – have you got a copy of the petition? Okay. Why don't you – be sure to kind of get him to go through that and be sure we haven't left anything off that if you're not sure. That is what I'm getting in your answer, you'd like to re-check everything.
>
> Mr. Blasingame: When I read that, we supplied everything that we saw on that, plus some that we thought would be beneficial. But you said the trusts are in that, (inaudible) is that for them –
>
> Mr. Montedonico: I think they asked for.
>
> Mr. Blasingame: We haven't sent copies of two trusts and the other one was back in '83. And it's had no activity since then, but I was going to make a copy of it also.
>
> Mr. Montedonico: Okay. And are you saying the third one doesn't have any assets in it?
>
> Mr. Fullen: No. There has been no activity in it.
>
> Mr. Montedonico: But it does have some value –
>
> Mr. Blasingame: It has some stock in Aqua Dynamics.
>
> Mr. Fullen: Okay. We'll supplement that and I'll send that to Mr. Blaylock [attorney for the Trustee].

(*Id.* at pp. 23-25).

This excerpt demonstrates that even as early as the meeting of creditors, concerns were raised about the completeness and accuracy of the schedules and SoFA. Mr. Montedonico gave the Debtors an additional two weeks to review them for errors. He specifically instructed Mr. Fullen to go over them with Mr. Blasingame. Mr. Blasingame never did so and never reviewed the amendments that were later made on his behalf. Instead, as he later testified after acknowledging that even five years after the fact, he had never reviewed the amendments to his bankruptcy documents: "I have attorneys that have looked at them that I trust and so ...."

Mr. Blasingame's statements demonstrate a cavalier attitude toward his duties as a bankruptcy debtor and a reckless indifference to the truth of numerous statements made by him under oath. Mrs. Blasingame was present at the meeting of creditors and heard the exchange among Mr. Montedonico, Mr. Blasingame, and the other attorneys. She knew that there was some question about the completeness of the schedules and SoFA, yet she apparently took no more active interest than her husband in assuring that her bankruptcy documents were promptly and properly amended to reflect the Debtors' true financial condition.

If the Debtors are to be believed, it is clear that they did rely upon their counsel, but if they are to be believed, their reliance was completely unreasonable. Their story is that they relied upon their attorneys as they relied upon Ms. Long to do everything for them. As they tell it, their reliance amounted to a complete abdication of personal responsibility. In Mr. Blasingame's case especially, however, the truthfulness of their story is cast in doubt. Mr. Blasingame was extremely knowledgeable of his personal affairs when it seemed to suit him. And his statements at the meeting of creditors demonstrate that he was aware of the issue concerning the disclosure of the trusts before

the schedules were filed. He was aware of it and acquiesced in Mr. Grusin's decision to exclude them.

The Debtors' reckless indifference to the truth of their statements under oath satisfies the element of fraudulent intent. This indifference is not rebutted by their reliance upon counsel defense because their reliance upon counsel, when it occurred, was unreasonable.

Finally, the Plaintiffs have thoroughly demonstrated the materiality of the false statements made by the Debtors under oath. An item that is omitted from a debtor's schedules or SoFA is "material when 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.'" *Keeney v. Smith (In re Keeney)*, 227 F.3d 679, 686 (6th Cir. 2000). In fact, "[t]he threshold for materiality is fairly low." *The Cadle Company v. Taras (In re Taras)*, 2005 WL 6487202, at *6 (Bankr. N.D. Ga. 2005). The information omitted by the Debtors concerned their assets and income, their business dealings, and the existence and/or disposition of their property. Without question, the schedules and SoFA were seriously and materially misleading as filed.

The seriousness of the errors and omissions in the Debtors' schedules and SoFA was not expunged by the subsequent amendments, first, because even as amended, the schedules and SoFA contain errors, and second, because the amendments resulted only from the diligence of the Plaintiffs in discovering assets. The Debtors did nothing to ensure the accuracy of their schedules and SoFA, relying instead on others to do this work for them. This was not because the questions asked were difficult or required any particular expertise. As to Mr. Blasingame, the court was left with the impression that he simply couldn't be bothered. To their credit, Mrs. Blasingame and Ms. Long worked long and hard to respond to discovery requests, but Mrs. Blasingame stopped far short of

taking personal responsibility for the accuracy of the documents that were filed on her behalf – documents filed under oath. The Debtors' routine practice of relying on others to perform their record-keeping and bookkeeping does not excuse their failure to exercise appropriate care over the preparation of their bankruptcy documents and the sworn statements that they made. As demonstrated previously, not only did the Debtors make false oaths when they presented their bankruptcy petition and related documents for filing, but they made additional false oaths at their meeting of creditors.

It should go without saying that, "'[t]he operation of the bankruptcy system depends on honest reporting. If debtors could omit assets at will, with the only penalty that they had to file an amended ... [schedule] once caught, cheating would be altogether too attractive.'" *Clean Cut Tree Service v. Costello (In re Costello)*, 299 B.R. 882, 900 (Bankr. N.D. Ill. 2003), quoting *Rogers v. Boba (In re Boba)*, 280 B.R. 430, 435-36 (Bankr. N.D. Ill. 2002). Moreover, "'[c]omplete financial disclosure' is a prerequisite to discharge." *Keeney*, 227 F.3d at 685, quoting *In re Chavin*, 150 F.3d 726, 728 (7th Cir. 1998).

The Debtors have admitted that numerous statements made under oath in their bankruptcy case were false. They have tried to obviate their responsibility for these false statements by raising the defense of reliance upon counsel. The court finds that their reliance upon counsel, when present, was not reasonable, and moreover, that certain of their false statements (i.e., I have read my bankruptcy petition, schedules, and statements) were in no way related to the advice of counsel. The false statements were material. For all of these reasons, Judgment for the Plaintiffs will be entered on Count IV of the Complaint. The Debtors' discharge will be denied pursuant to section 727(a)(4).

Count V
Objection to Discharge Pursuant to Section 727(a)(5)

Plaintiffs assert that the discharge of the Debtors should be denied for the additional reason that they "failed to explain satisfactorily, before determination of denial of discharge ... any loss of assets or deficiency of assets to meet the debtor's liabilities." 11 U.S.C. § 727(a)(5). The Plaintiffs point to some $400,000 in transfers and payments made to the Debtors in the year preceding bankruptcy, including transfers of real property, stock in corporations, and thousands of dollars of checks made payable to the Debtors. The Plaintiffs assert that most of these transfers were to the BIT and/or the EBB account, and that the Debtors have failed to provide any evidence or explanation of these transfers.

Whether a debtor has satisfactorily explained a loss or deficiency of assets is a question of fact. *In re Chalik*, 748 F.2d 616, 619 (11th Cir. 1984) (citations omitted). The party objecting to discharge has the burden of proving the debtor owned substantial and identifiable assets that are no longer available for his creditors. The burden then shifts to the debtor to provide a satisfactory explanation for the loss. *In re Olbur*, 314 B.R. 732, 740-41 (Bankr. N.D. Ill. 2004). Whether the debtor's explanation is "satisfactory" lies within the discretion of the court, and the debtor need not be "far reaching and comprehensive." *Id.* at 741. Nor must the debtor demonstrate the wisdom of this decision. Rather, the focus is on the "completeness and truth" of his explanation. *Id.* citing *Clean Cut Tree Serv., Inc. v. Costello (In re Costello)*, 299 B.R. 882, 901 (Bankr. N.D. Ill. 2003).

In support of their objection, the Plaintiffs point to more than 100 checks made payable to "EBB" from various accounts and deposited to the EBB Account. Ms. Long testified that she used checks to transfer funds to the EBB Account to facilitate her use of that account to "cover" or "clear" transactions of the various entities. (Tr. 1000-1003, 1094). She explained that many times

these checks were written and deposited without Mr. Blasingame's knowledge. Ms. Long explained that checks written on the account of Flozone Services, Inc. were not Mr. Blasingame's payroll checks, but instead checks written to reimburse company credit card expenses through the EBB Account. (Tr. 1094).

While the wisdom of Ms. Long's methods could be questioned, there is no question that she has satisfactorily explained the disposition of these checks.

The Plaintiffs also point to certain transfers of property by Mrs. Blasingame, including proceeds from the sale of personal property inherited from her mother and funds deposited in her personal UBS account. In each case, however, the disposition of the property is known – it was transferred to the EBB account where it was commingled with other funds of the Debtors and used by Ms. Long to pay the obligations of the various persons and entities. Again, the explanation is unfortunate but still satisfactory.

There are no assets for which the Defendants have failed to provide a *satisfactory* account of their disposition. Judgment for the Defendants will be granted under Count V of the Complaint.

Count VII
Accounting

The original Complaint asked that the "Court order and direct Debtors, the three (3) Trusts and five (5) Corporations, as well any other entities in which they have control or a controlling interest, to provide to Plaintiffs and file with the Court a full and proper accounting of all assets held on date of filing and all subsequent transfers of property, real and personal, by them, as well as any other entity which they control or have a controlling interest, since the filing of the case." The Trusts and Corporations have been dismissed as defendants in this litigation. Claims against them are reportedly proceeding in another court. The Plaintiffs have engaged in extensive discovery in

this case and there was no discussion concerning the present need for an accounting at trial or in the Plaintiffs' proposed findings of fact and conclusions of law. The court therefore concludes that this claim has been abandoned by the Plaintiffs.

Count IX
Objection to Debtors' Claimed Exemptions

In their original Complaint, the Plaintiffs have objected to the Debtors' claims of exemption. In their proposed findings of fact and conclusions of law, the Plaintiffs suggest that the court should declare that certain property held by the Debtors – personal property in their residence, including property they assert belongs to their children and Mrs. Blasingame's sister – is actually property of the bankruptcy estate. This issue was not raised in the Complaint and is not properly before the court. It will not be decided at this time.

At the time of the filing of their petition, the Debtors were entitled to claim $4,000 in personal property as exempt from the claims of creditors pursuant to Tennessee Code Annotated § 26-2-103. Even though each of the Debtors would have been entitled to claim up to $4,000 in property as exempt, Schedule C as filed attributes all property claimed as exempt to Mr. Blasingame. It lists cash on hand at $100; household goods at $4,000; 1985 Mercedes Sedan (Not Running) at $100; and 1985 Mercedes Station Wagon at $1,000. The Debtors also claimed an exemption for Mr. Blasingame's wearing apparel in the amount of $500 under Tennessee Code Annotated § 26-2-104. Schedule C was subsequently amended on April 9, 2009, to claim the following:

Description of Property	Law Providing Exemption	Value of Claimed Exemption	Current Value of Property
Cash on Hand	(Husb) TC§ 26-2-103	100.00	100.00
Household Goods	(Husb) TC § 26-2-103	4,000.00	4,000.00
Wearing apparel	(Husb) TC§ 26-2-104	500.00	500.00

Description of Property	Law Providing Exemption	Value of Claimed Exemption	Current Value of Property
1985 Mercedes Sedan (Not Running)	(Husb) TC§ 26-2-103	100.00	100.00
1985 Mercedes Sedan	(Husb) TC§ 26-2-103	1000.00	1000.00
Accounts payable	(Husb) TC§ 26-2-103	Indeterminate	Indeterminate
Horace Mann Annuity account 403b	(Wife) TC § 26-2-111	24,946.00	24,946.00
Lincoln Financial Group Annuity	(Wife) TC § 26-2-111	15,000.00	15,000.00
UBS account	(Husb) TC § 26-2-103	477.00	477.00
Regions Bank Account	(Husb) TC § 26-2-103	6.00	6.00

(Bankr. Dkt. 223).

The Plaintiffs have provided no basis upon which up to $4,000 in personal property claimed to be exempt by Mr. Blasingame should not be treated as exempt. To the extent that Schedule C claims more than $4,000 in value as exempt under section 26-2-103 for Mr. Blasingame, the objection should be sustained. Schedule C as amended claims $1,683 in assets in excess of $4,000 together with "accounts payable" in an indeterminate amount as exempt for Mr. Blasingame. His exemption is disallowed in that amount and as to the "accounts payable."

Mr. Blasingame also claims wearing apparel as exempt pursuant to Tennessee Code Annotated § 26-2-104. That section permits a debtor to exempt "[a]ll necessary and proper wearing apparel for the actual use of the debtor and family and the trunks and receptacles necessary to contain same." The Plaintiffs have provided no basis upon which the wearing apparel of Mr. and Mrs. Blasingame claimed to be exempt by Mr. Blasingame should not be treated as exempt. This exemption should be allowed.

Mrs. Blasingame claimed exemptions for two annuities pursuant to Tennessee Code Annotated § 26-2-111. That section provides additional exemptions for various types of property. Mrs. Blasingame failed to pinpoint the specific exemption that she claimed. The one reference to "annuity" that occurs in that section appears at subsection (1)(D) which provides that a debtor's right to receive

> To the same extent that earnings are exempt pursuant to § 26-2-106, a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of death, age or length of service, [with an inapplicable exception].
>
> The assets of the fund or plan from which any such payments are made, or are to be made, are exempt only to the extent that the debtor has no right or option to receive them except as monthly or periodic payments beginning at or after age fifty-eight (58). Assets of such funds or plans are not exempt if the debtor may, at the debtor's option, accelerate payment so as to receive payment in a lump sum or in periodic payments over a period of sixty (60) months or less.

Neither of the parties made arguments for or against Mrs. Blasingame's claim of exemption in the two accounts. The Horace Mann account, listed as a 403(b) plan, appears to be Mrs. Blasingame's retirement account established during her years of teaching. That was her testimony at trial. (Tr. 1539). The Plaintiffs have failed to show that Mrs. Blasingame should not be entitled to exempt that account. The Lincoln Financial Group Annuity was sold to the Debtors by the Trustee pursuant to an order entered June 15, 2010. (Bankr. Dkt. 280). The objection to that exemption appears to be moot.

Judgment should be granted in part for the Plaintiffs under Count IX of the Complaint. The Debtors' exemptions are disallowed in the amount of $1,683 and with respect to Mr. Blasingame's "accounts payable." Judgment should be granted in part for the Defendants under Count IX of the Complaint. The Debtors' exemptions are allowed in the amount of $4,000 in personal property, with respect to the Debtors' wearing apparel, and with respect to the two annuity accounts.

CONCLUSION

Judgment should be given as follows:

As to Count III, judgment shall be entered FOR the Plaintiffs and AGAINST the Defendants. The discharge of the Defendants is DENIED pursuant to 11 U.S.C. §§ 727(a)(2)(A) and (B).

As to Count IV, judgment shall be entered FOR the Plaintiffs and AGAINST the Defendants. The discharge of the Defendants is DENIED pursuant to 11 U.S.C. § 727(a)(4).

As to Count V, judgment shall be entered AGAINST the Plaintiffs and FOR the Defendants.

As to Count VII, judgment shall be entered AGAINST the Plaintiffs and FOR the Defendants.

As to Count IX, judgment shall be entered FOR the Plaintiffs IN PART and FOR the Defendants IN PART. The exemptions of Mr. Blasingame are ALLOWED in the amount of $4,000 and with respect to his wearing apparel and the wearing apparel of Mrs. Blasingame. The remainder of his exemptions are DISALLOWED. The exemptions of Mrs. Blasingame in the two annuity accounts are ALLOWED.

cc: Debtors/Defendants
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Plaintiffs
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