Dated: March 15, 2024
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
JACK WARREN HARANG,
Debtor.

Case No. 18-24543-L
Chapter 7 (asset)

Bettye S. Bedwell,
Chapter 7 Trustee,
Plaintiff,
v.
R. Lee Eddy III, as trustee of
the Jack Warren Harang Trust, and
the Jack Warren Harang Trust,
Defendants.

Adv. Proc. No. 21-00030

Henry T. Dart and
Henry Dart Attorneys at Law, P.C.,
Plaintiffs,
v.
Jack Warren Harang,
Defendant.

Adv. Proc. No. 21-00112

MEMORANDUM OPINION

THESE ADVERSARY PROCEEDINGS were consolidated for trial because they raise overlapping questions of fact. In Bedwell v. Eddy, Adv. Proc. No. 21-00030, the Chapter 7 trustee seeks a declaration (1) that Eddy, as trustee of the Jack Warren Harang Trust, is indebted to Jack Warren Harang, individually, and thus to the bankruptcy estate, in the amount of $450,000; and (2) that the Trust and all its assets are property of the bankruptcy estate as the result of Harang's treatment of the Trust assets as his own. The second adversary proceeding, Dart v. Harang, Adv. Proc. No. 21-00112, seeks a declaration that Mr. Harang's debt to Mr. Dart in the amount of $1,628,696.14, evidenced by a judgment of the 22d Judicial District Court for the Parish of St. Tammany, State of Louisiana, should be excepted from discharge pursuant to (1) 11 U.S.C. § 523(a)(2)(A) for money, property or services obtained by false pretenses, false representation, or actual fraud; (2) 11 U.S.C. § 523(a)(4) for fraud or defalcation while acting in a fiduciary capacity; and/or (3) 11 U.S.C. § 523(a)(6) for willful and malicious injury by the debtor to another entity or the property of another entity. Dart also seeks a declaration that Mr. Harang is not entitled to discharge pursuant to (1) 11 U.S.C. § 727(a)(2)(A) for fraudulent concealment of assets pre-petition; (2) 11 U.S.C. § 727(a)(2)(B) for fraudulent concealment of assets post-petition; (3) 11 U.S.C. § 727(a)(3) for concealment, destruction, falsification, or failure to keep or preserve financial documents, books and records; (4) 11 U.S.C. § 727(a)(4)(A) for knowingly and fraudulently making a false oath or account; (5) 11 U.S.C. § 727(a)(5) for failure to explain satisfactorily, before determination of denial of discharge, loss of assets or deficiency of assets to meet the debtor's liabilities. Mr. Dart also claims that Mr. Harang undervalued his assets and objects to his claims of exemptions. Answers were timely filed by Mr. Eddy and Mr. Harang denying the claims for relief.

The Court conducted a trial from October 23 to October 25, 2023. Testimony was given by Mr. Dart, Ms. Bedwell, Mr. Harang, and the Court reviewed the deposition testimony of Mr. Eugene Douglass, who represented Mr. Harang when his bankruptcy petition was filed, and Ms. Katherine Hunter, Mr. Harang's daughter. Mr. Eddy did not attend the hearing. His counsel, Mr. Richard Barker IV, offered Mr. Eddy's Rule 2004 examination as evidence and the Trustee in Bankruptcy stipulated to its admission as Trustee Exhibit 37. The Court instructed Mr. Barker to prepare specific excerpts from the transcript of the examination that he wished to rely upon. He has not done so, but the Court did review the testimony of Mr. Eddy.

At the close of the trial, the Court asked the parties whether they wished to have a transcript of the trial prepared and to file proposed findings of fact and conclusions on law. The parties agreed that a transcript would be prepared and that proposed findings and conclusions would be filed thirty days thereafter. Notice of the filing of the official transcript was given January 11. The deadline for filing proposed findings and conclusions was Monday, February 12 (February 10, the actual thirtieth day, fell on a Saturday). Mr. Bailey on behalf of the Trustee in Bankruptcy and Mr. Dart on behalf of himself made timely filings. Mr. Parrish on behalf of Mr. Harang and Mr. Barker on behalf of Mr. Eddy did not.

Mr. Parrish filed his "Final Argument" on February 16, 2024, after the deadline [ECF No. 133]. Mr. Parrish admits in footnote 1 to that document that the filing is late and is not the post-trial brief the Court requested.[1] Mr. Dart responded by filing an *Expedited Motion to Strike "Defendant Harang's Final Argument" (Doc. 133) and to Prohibit Further Late Filings* on February 19, 2024 [ECF No. 134]. Mr. Parrish filed a response on February 22, and filed his

[1] In fact, the Court requested proposed findings of fact and conclusions of law. The Court also strongly suggested that counsel begin work on their submissions while the trial was still fresh in their minds.

Motion for Enlargement of Time to File Post-Trial Memorandum on March 6, 2024 [ECF Nos. 137 and 138].

On February 29, 2024, Mr. Barker filed an *Ex Parte Motion and Incorporated Memorandum for Extension or Enlargement of Time to File Findings of Fact and Conclusions of Law, or to Deem Pleading Timely Filed* [ECF No. 93] and his *Proposed Findings of Fact and Conclusions of Law* [ECF No. 94]. Mr. Bailey filed an objection to the motion to extend and a motion to strike the proposed findings of fact and conclusions of law. [ECF Nos. 95 and 96].

The Court will discuss the late filings of Mr. Parrish and Mr. Barker below.

Having carefully considered the testimony of the witnesses, the numerous exhibits, and the pleadings in these adversary proceedings and the related bankruptcy case, the Court makes the following findings of fact and conclusions of law.

JURISDICTION, AUTHORITY, AND VENUE

Jurisdiction over an adversary proceeding 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). Determinations of the dischargeability of particular debts, objections to discharges, and allowance or disallowance of exemptions from property of the estate all arise under the Bankruptcy Code and thus are core proceedings, as are matters concerning administration of the bankruptcy estate and the turnover of property of the estate. *See* 11 U.S.C §§ 523(a); 727(a), 522, 542 and 28 U.S.C. § 157(b)(2)(A), (B), (E), (I), and (J). Venue of this adversary proceeding is proper to the Western

District of Tennessee because this proceeding arises in a bankruptcy case pending in this district. *See* 28 U.S.C. § 1409(a).

FINDINGS OF FACT CONCERNING THE TRUSTEE IN BANKRUPTCY'S COMPLAINT

The Trustee in Bankruptcy asked this Court (1) to enter judgment against the testamentary trust described below in the amount of $264,750 together with pre- and post-judgment interest; (2) to declare that certain mineral rights and real property located in Moscow, Tennessee, are property of the bankruptcy estate pursuant to 11 U.S.C. § 541(a); and (3) to order the trust to turn over the mineral rights and real property to her. The facts underlying these claims are the following.

The Parties

Jack Warren Harang, the debtor in the underlying bankruptcy case, is a lawyer licensed to practice in the state of Louisiana. Mr. Harang was born October 30, 1944. He has been married and divorced three times. He has one living daughter, Katherine Hunter. He commenced his bankruptcy case by filing a voluntary petition under Chapter 7 of the Bankruptcy Code on June 1, 2018.

R. Lee Eddy, III, is an attorney practicing in the state of Louisiana. He is the successor trustee of the testamentary trust described below and has represented Mr. Harang and members of his family for at least 48 years.

The Jack W. Harang Trust

Mr. Harang is the son of Jack Francis Harang who died in 1975. In his Will, Jack Francis Harang left one-third of his Louisiana estate (the "legitime") to Evelyn M. Nettles, as trustee of the Jack Warren Harang Trust (the "Trust") [Trustee Ex. 27 at 25:5 – 25:10, Ex. 4; Dart Ex. 26]. The Will provides that the Trust will terminate upon the death of Mr. Harang, at which time the property of the Trust will be distributed to the heirs at law or the legatees of Mr. Harang. During

the life of Mr. Harang, the trustee was to pay the net income of the Trust to Mr. Harang on or about October 30, his birthday. The Will specified that the Trust property was to be free from all other charges and conditions except the interest of Mr. Harang, and that it would not be subject to voluntary or involuntary alienation by Mr. Harang, nor subject to levy or seizure by any person having a claim against Mr. Harang, except as required by the Louisiana Code. The trustee was permitted to invade the corpus of the Trust for the benefit of Mr. Harang only in the event of a medical emergency.

At the time of Jack Francis Harang's death, the Trust property consisted of an undivided interest in real property; a one-sixth interest in mineral royalty tracts in Acadia and Lafayette Parishes; and a one-third interest in the Valentine Field in Lafourche Parish. [Trustee Ex. 37 at 61:5 – 61:13]. The real property was partitioned in 1984, and the Trust became the owner of 46.17 acres in St. Tammany Parish. [Trustee Ex. 37 at 61:5 – 61:8]. There was a house on the St. Tammany Parish property located on Bootlegger Road. Mr. Harang used this as his residence until the property was sold in 2007. [Trustee Ex. 37 at 114:22 – 114:25; 115:19 – 115:25].

Evelyn M. Nettles died January 26, 1988. Although the Will named First National Bank of Commerce in New Orleans as successor trustee, Mr. Eddy was appointed provisional trustee on March 6, 1991. Mr. Eddy was confirmed as permanent trustee twenty-eight years later, on March 19, 2019 (after Mr. Harang's bankruptcy case was filed), *nunc pro tunc* to March 7, 1991. [Trustee Ex. 37 at 77:22 – 7 7:24; 92:13 – 92:20]. No inventory of the assets of the Trust upon the death of Ms. Nettles was produced, but Mr. Eddy agreed that the property of the Trust consisted of the St. Tammany Parish Property and interests in the mineral rights that Mr. Harang inherited from his father [Trustee Ex. 37 at 110:19 – 111:6]. Mr. Eddy made no effort to lease the St. Tammany Parish Property between 1991 and 2007, when it was sold [Trustee Ex. 37 at 114:4 – 114:6].

The St. Tammany Parish Property together with Ms. Hunter's contiguous property was sold to the St. Tammany Parish Recreational District 14 on January 27, 2007, for $2.5 million. [Trustee Ex. 37 at 116:11 – 117:17; 122:19 – 123:16]. In order to avoid the large capital gain that would have been realized upon sale of the property, Mr. Harang suggested to Mr. Eddy that the Trust enter into a 1031 exchange.[2] [Trustee Ex. 37 at 128:9 – 128:13; 130:3 – 130:8; Trustee Ex. 20 Letter from Mr. Eddy to the Debtor dated Oct. 3, 2013 ("You [Jack] will recall that when you selected the Vermont property for purchase from the sale proceeds of the St. Tammany land …."); Tr. Oct. 23, 2024 at 131:1 – 131:9 ([Mr. Harang] "I mean, I picked it out, but he – I – he said for me to go try and find a piece of property that was comparable that I could live in ….")].

Mr. Eddy did not observe the instructions provided in the Will concerning distributions to Mr. Harang. The Trustee introduced evidence of the following checks drawn on the account of the Trust made payable to Mr. Harang between April 2013 and November 2014:

Date	Amount	Drawer	Drawee	Memo
4/4/2013	$14,000	Robert Lee Eddy III	Jack W. Harang	None
5/10/2013	$40,000	Robert Lee Eddy III	Jack W. Harang APLC	None
9/27/2013	$100,000	R.L. Eddy III Clients Trust Fund Acct	Jack W. Harang	"Loan"
10/18/2013	$30,000	R.L. Eddy III Clients Trust Fund Acct	Jack W. Harang	"Loan from trust"
11/8/2013	$5,000	R.L. Eddy III Clients Trust Fund Acct	Jack W. Harang	"Loan"
11/8/2013	$10,000	R.L. Eddy III Clients Trust Fund Acct	Jack W. Harang	"Loan"
10/15/2014	$10,250	R.L. Eddy III Clients Trust Fund Acct	Jack Harang	"Deposit to Regions Acct 6738"
11/7/2014	$10,000	R.L. Eddy III Clients Trust Fund Acct	Jack W. Harang	"Loan"
Total	$219,250			

[2] *See* 26 U.S.C. § 1031 Exchange of real property held for productive use or investment.

[Trustee Ex. 24]. None of these distributions was made on Mr. Harang's birthday, although some were made close to it. The presence of round numbers and the multiple designations as "loan" make it unlikely that these checks represented distribution of the net proceeds of the Trust to Mr. Harang. Indeed, given the property originally held by the Trust, the source of these funds is unclear. The Trust did not produce any information concerning the assets owned or net income produced by the Trust in any year.

The Trust did own some income-producing property in 2013 consisting of mineral rights. On June 12, 2013, Mr. Eddy wrote to Ms. Mary Kum at Texas Petroleum Company as follows:

> This letter is to confirm our earlier conversation today (6/12/2013) to advise you that I am the sole trustee of the JACK W. HARANG TRUST and have been the sole trustee for at least twenty (20) years. Under the terms of the trust, Jack W. Harang is the sole income beneficiary. Many years ago I received the royalty checks, placed them in a special account, then wrote a check to Mr. Harang. To reduce unnecessary paperwork, several years ago I agreed with Mr. Harang to have the royalty checks mailed directly to him and allowed him to negotiate these checks. All checks have been, and always will be made payable to the JACK W. HARANG TRUST.
>
> Accordingly, please MAIL ALL CHECKS to Mr. Jack W. Harang at his NEW ADDRESS which is [address in Kenner, Louisiana scratched through and an address in Moscow, Tennessee added].

[Trustee Ex. 22]. Numerous royalty checks were in fact mailed directly to Mr. Harang. [Trustee Ex. 23]. It is unclear whether this left funds in the Trust for payment of real estate taxes. It is clear that on at least one occasion, real property in Moscow, Tennessee, belonging to the Trust had to be redeemed after it was sold for non-payment of taxes. [Tr. Oct. 24, 2023, at 92:10 – 92:23].

The Internal Revenue Service Claim

Mr. Harang treated the royalty checks as his own until the Internal Revenue Service, as a creditor of Mr. Harang, sought to levy upon the royalty payments. [Trustee Ex. 37 at 217:16 –

217:25; Trustee Ex. 23]. Texas Investment Petroleum Company commenced a concursus[3] proceeding in the 15th Judicial District Court of Acadia Parish, which was removed to the United States District Court for the Western District of Louisiana. Mr. Eddy wrote to Mr. Harang concerning this event as follows:

> As we have previously discussed, I have not filed any response whatsoever. I really don't want to have my deposition taken or any testimony to be given with respect to the original Spendthrift Trust. I don't want anyone digging too deep into this matter. Remember that if the production from the Valentine Field begins (I don't think anything has been found yet) and the IRS continues to remain ignorant of this mineral interest [sic]. I want it to remain that way! I can file something not opposing the Concursus. Of course, the IRS and the T[exas] I[nvestment] P[etroleum] C[ompany] are going to want some kind of Consent Judgment temporarily maintaining the garnishment. Perhaps, I can negotiate something. The income really belongs to the trust.
>
> Please let me know immediately as to what you want to do with this. My opinion is that we should "let sleeping dogs lie."

[Trustee Ex. 21]. The collection efforts of the IRS led directly to Mr. Harang's consultation with Eugene Douglass in January 2018, the eventual engagement of Mr. Douglass on March 2, 2018, and the filing of the voluntary petition commencing the bankruptcy case on June 1, 2018. [Dart Ex. 51]. The IRS filed its proof of claim in the amount of $1,329,242.62 on November 1, 2018. [Claim 1-1]. It claims that $12,762.79 of this claim is secured and that $11,266.75 of the unsecured portion of the claim is entitled to priority.

The Dischargeability Complaint Against the IRS

Shortly after the filing of his bankruptcy petition, Mr. Harang commenced an adversary proceeding against the United States to determine the dischargeability of the tax claims [Adv. Proc. No. 18-00213]. As the result of Mr. Harang's refusal to cooperate in discovery, the bankruptcy court, Judge Paulette J. Delk presiding, issued an order on January 30, 2020, that provides, "[f]or

[3] Similar to an interpleader proceeding.

all purposes in this case going forward, the Court will presume as established and Debtor shall be prohibited from contesting that the Debtor had sufficient income to pay his tax liabilities for the 2007 and 2008 tax years, but consciously chose not to do so." [Order Granting the United States' Motion to Impose Discovery Sanctions, Adv. Proc. No. 18-00213, ECF No. 32 at 2]. The undersigned bankruptcy judge was assigned this case on July 30, 2020. When Mr. Eddy refused to appear for his deposition at the direction of Mr. Harang, the Court issued a second sanctions order making these three additional findings:

> **a) Harang was the true owner of the Vermont Mansion and Country Estate**.[4] Eddy testified at his Rule 2004 examination that Harang picked out these two parcels of real property, that the Trust purchased these properties at Harang's suggestion, and that the Trust could not pay for the operating expenses of the Vermont Mansion on its own. (Eddy 2004 Exam. 132:18-22; 143:1-3; 178:5-9; 179:11-13). In addition, Eddy testified that Harang (and not a company under his control) took a significant loss – or "took a bath" when the Mansion was sold to the Trust. *Id*. at 161:25-162:6. This testimony is corroborated by, among other things, a handwritten note from Jack Harang to Lee Eddy, stating that when the Vermont Mansion was sold, Eddy should reimburse Harang for his loss. (Trial Ex. 20.).
>
> **b) Harang had access to the corpus of the Trust, yet tried to hide how much he took from the Trust**. Trial Exhibit 26.002 shows Eddy's accounting of $182,000 transferred from the corpus of the Trust to the cost account for Harang's law firm. These payments were denominated as "loans." According to Eddy, Harang never said he would repay, and in fact never did repay the "loans." (Eddy 2004 Exam. 255:2-9, 257:2-5). In fact, Eddy could not explain why the payments were denominated as "loans." *Id*. at 221:15-24. Under the Trust documents, the Trustee could only invade the corpus of the Trust in a case of an emergency, which did not include "any financial catastrophe, either civil or criminal . . . ." (Trial Ex. 17.) Eddy has no records of why Jack needed these payments. (Eddy 2004 Exam. 255:25- 256:5.) Accordingly, the United States asks that the Court find: **(a)** these payments were distributions from the corpus of the Trust, **(b)** that Eddy was not authorized to make these distributions under the terms of the Trust, and **(c)** that both Eddy and Harang knew these were not loans at the time the payment was made.
>
> **c) Harang and Eddy collaborated to hide from the IRS and other creditors in this bankruptcy further payments the Trust made to Harang.** Trial Exhibit 25, shows a schedule of payments discussed in finding 2 created by Eddy.

[4] The term "Country Estate" is the defined term utilized by the IRS in the IRS Adversary Proceeding to refer to the property located at 200 Diffee Road, Moscow, Tennessee, which property is referred to herein as the Moscow Property.

> Trial Exhibit 26, but also includes an additional $115,000 in transfers deposited into Harang's IOLTA account and the bank account of a company under his dominion and control (HHHH Development, Inc.). While Eddy attempted to explain the $182,000 deposited in the law firm's cost account, he provided no explanation of these payments. (Trial Ex. 26.) Further, Trial Exhibit 21 is a letter in which Eddy states to Harang regarding a pre-bankruptcy proceeding that he did not "want to have [his] deposition taken or any testimony be given with respect to the original Spendthrift Trust" because he did not "want anyone diffing [sic] too deep into this matter." Eddy further states in Trial Exhibit 21, that the "the IRS continues to remain ignorant of [a] mineral interest" and he wants it "to remain that way" because in his opinion, they "should let sleeping dogs lie." This Court can infer from these exhibits that Harang and Eddy attempted to conceal payments the Trust made to Harang.

[*Supplemental Order on United States' Expedited Second Motion to Impose Discovery Sanctions*, Adv. Proc. No. 18-00213, ECF No. 119 at 4 – 5].

On January 15, 2021, this Court scheduled the trial in Adversary Proceeding 18-00213 for February 16, 2021. On January 21, 2021, three weeks before trial was scheduled to commence, Mr. Harang filed a motion to voluntarily dismiss the adversary proceeding with prejudice under Rule 41 of the Federal Rules of Civil Procedure, made applicable in bankruptcy by Rule 7041 of the Federal Rules of Bankruptcy Procedure. The IRS asked that the dismissal be conditioned upon the inclusion of its prior factual findings in the order of dismissal, and the Court agreed. [Dismissal Order, Adv. Proc. No. 18-00213, ECF No. 161 at 3]. Mr. Harang was unhappy with this outcome, even though he had been given the option to proceed to trial as scheduled. Mr. Harang appealed to the Bankruptcy Appellate Panel. The panel affirmed the decision of this Court by order entered December 28, 2021. *Harang v. U.S. (In re Harang)*, No. 21-8003, 634 B.R. 731 (B.A.P. 6th Cir. 2021), *aff'd*, *Harang v. U.S.*, No. 22-5146, slip op. (6th Cir. Jan. 17, 2023).

HHHH Development, Inc.

Mr. Harang and his second wife, Suzanne M. Bessette, formed HHHH Development, Inc. ("4H"), a Michigan corporation on February 15, 1991. [Trustee Ex. 1, pp. 11 – 15; Dart Ex. 33,

pp. 1 – 8]. At its inception, 4H authorized the issuance of 50,000 shares of $1 par value stock. Mr. Harang and Ms. Bessette were each issued 5,000 shares. Mr. Harang and Ms. Bessette were the initial directors and officers of 4H and adopted bylaws for the company. [Trustee Ex. 1, pp. 16 – 24; 48 – 51]. In January 2009, Mr. Harang attempted to transfer one-half of his shares to his daughter, Ms. Hunter. [Trustee Ex. 1, pp. 52 – 55]. The Trustee in Bankruptcy maintains that this attempted transfer violated the terms of the bylaws of the corporation and thus was ineffective.

On June 12, 2009, 4H purportedly issued 10,000 shares of $1 par value stock to each of Mr. Harang, Ms. Hunter, Briana Rivera (daughter of Ms. Bessette), and Laurie Lynn Marcel (daughter of Ms. Bessette). [Trustee Ex. 1, pp. 56 – 63]. The Trustee in Bankruptcy believes that this transaction violates the Articles of Incorporation and is void.

The dispute about the ownership of 4H is the subject of Adversary Proceeding No. 21-00031, *Bedwell v. Bessette*, filed March 15, 2021. The Trustee in Bankruptcy reached a settlement with Ms. Bessette, Ms. Rivera, and Ms. Marcel on September 30, 2021 [Bankruptcy Case ECF No. 322], and with Ms. Hunter April 12, 2023 [Bankruptcy Case ECF No. 340]. An Order Dismissing the Adversary Proceeding and Directing the Clerk to Close the Adversary Proceeding was entered February 9, 2024, and the proceeding was closed the same day. [ECF No. 34].

4H entered into the discussion of the Trust because of its purchase of real property located at 131 Lost Nation Road, Essex, Vermont, on December 15, 2006 (the "Vermont Property"). 4H paid $1,450,000 for the property but then sold it to the Trust six months later, June 29, 2007, for $1,000,000. [Tr. Oct. 24, 2023, at 72:3 – 72:6 ("Q. Your testimony was that in 2006, you contributed or loaned $1,450,000 to 4H to purchase the real property at 131 Lost Nation Road, Essex, Vermont. Correct? A. Yes.")]. Mr. Eddy purchased the Vermont Property at the request of Mr. Harang using the Trust's portion of the net proceeds of the sale of the St. Tammany Parish

Property, $999,581.75 in a 1031 exchange. [Trustee Ex. 37 at 140:8]. Mr. Harang lived in the Vermont Property as his residence while his son-in-law attended medical school. Mr. Harang and Mr. Eddy verbally agreed that Mr. Harang would pay all maintenance and taxes for the property and keep the grass cut. [Trustee Ex. 37 at 95:3 – 95:11]. Mr. Harang paid no rent to the Trust for the use of the Vermont Property. He also paid no taxes, causing over $100,000 in unpaid property taxes to accumulate. He did, however, make improvements to the property valued by Mr. Eddy at $280,000 [Trustee Ex. 37 at 143:16 – 144:2].

In March 2013, Mr. Eddy sold the Vermont Property to an unrelated third party for $1,141,500 and used the proceeds of that sale to purchase property located in Moscow, Tennessee, which Mr. Harang listed as his residence when he filed his bankruptcy petition in 2018 (the "Moscow Property"). [Trustee Ex. 10 and 11]. Mr. Eddy and Mr. Harang had a similar agreement concerning the maintenance and taxes for the Moscow Property as they had concerning the Vermont Property – Mr. Harang was permitted to occupy the property as his residence provided that he maintain it, cut the grass, and pay the taxes [Trustee Ex. 37 at 175:22 – 176:4; Tr. Oct. 24, 2023, at 92:7 – 92:14].

Although Mr. Harang testified that he maintains his driver's license and voter's registration in Tennessee, he does not have a Tennessee law license and does not have an office for the practice of law in Tennessee. [Tr. Oct. 24, 2023, at 26:10 – 27:4]. In fact, he testified that he sleeps and stores some of his files and personal property at a house in Kenner, Louisiana, owned by Diane Raley, a woman he once described as his fiancée, but who he now says is no longer in a "man-woman relationship" with him [Tr. Oct. 24, 2023, at 22:2 – 24:25].

Mr. Harang and Mr. Eddy agreed that if the Vermont Property were sold for more than $1,000,000 net, they would work out a repayment of the shortfall of $450,000 that resulted from

the Trust's purchase of the Vermont Property from 4H [Tr. Oct. 24, 2023, at 79:19 – 81:11; Trustee Ex. 9]. Apparently, they believed that this amount was due to Mr. Harang, individually, rather than 4H because Mr. Harang made a "capital contribution" to 4H from his own funds to enable it to purchase the Vermont Property. [Trustee Ex. 37, 160:16 – 161:1; Dart Ex. 4 at 71:1 – 71:17]. When the Trust paid 4H the purchase price for the Vermont Property, Mr. Harang received $1,000,000 from 4H. [Dart Ex. 65 at 3]. No legitimate explanation was given by Mr. Harang for this series of transactions. Mr. Eddy seems not to have exercised any independent judgment in the matter.

The Trust made distributions to Mr. Harang in 2013, subsequent to the sale of the Vermont Property, in the amount of $185,250. The Trustee in Bankruptcy believes that this should be credited against $450,000 owed by the Trust to 4H/Harang, and that $264,750 remains to be paid. The Trustee relies in part on the following testimony by Mr. Eddy acknowledging this debt:

> BY MR. DART:
>
> Q So the trust – Mr. Eddy, the trust still owes Jack $264,750; right?
>
> A Well, I would say –
>
> Q That's the 450 – that's the 450 minus the 185,250; correct?
>
> A Yeah. I would say so. Because I know Jack wanted – he took a real bath.

[Trustee Ex. 37, at 161:25 – 162:6].

The Moscow Property

Mr. Eddy sold the Vermont Property to a third party for $1,141,500. A portion of these proceeds ($599,000) was used to purchase the Moscow Property. [Trustee Ex. 10 – 11]. No explanation for this purchase was given other than Mr. Harang's desire to live there. Mr. Harang testified that he lived at the Moscow Property but also that he lived at the home of Ms. Raley in

Kenner, Louisiana. Mr. Harang maintained a relationship with Ms. Raley for 20 years. For a brief period in 2018, at the time the bankruptcy petition was being prepared and filed, they were engaged to be married. Mr. Harang maintains an office to practice law in Kenner, Louisiana, at the residence of Ms. Raley [Tr. Oct. 24, 2023, at 22:16 – 23:1]. Notwithstanding this testimony, Mr. Harang claims that the Moscow Property is his domicile.

Mr. Eddy never inspected or asked an independent person to view the Moscow Property before he caused the Trust to purchase it. [Trustee Ex. 37 at 177:16 – 178:9; 179:1 – 179:13]. Although Mr. Harang, rather than the Trust, accepted responsibility to maintain the Moscow Property and pay the taxes related to it, the Moscow Property was sold for delinquent taxes in September 2022, and was redeemed by Mr. Harang on September 14, 2023, shortly before the trial in the adversary proceeding.

The Mineral Rights

At the filing of the bankruptcy petition, the purported assets of the Trust consisted of the Moscow Property and various Mineral Rights described by the Trustee in Bankruptcy as: (a) Mineral Royalty .007811250 overriding royalty interest in the F. Williams Crowley tract, Acadia Parish, Louisiana; (b) working interest in various units in the Maurice Field, Lafayette and Vermillion Parishes, Louisiana; and (c) a lease in the Valentine Field in Lafourche Parish, Louisiana [Trustee Ex. 37 at 183:9 – 184:16; Complaint, ¶ 16]. Mr. Eddy and the Trust have not admitted that these were the assets of the Trust but have also not provided alternative descriptions. [Answer of Eddy and Trust, ¶ 4].

The Trustee in Bankruptcy has been receiving some royalty income from the Mineral Rights during the pendency of the bankruptcy case.

CONCLUSIONS OF LAW CONCERNING THE TRUSTEE IN BANKRUPTCY'S COMPLAINT

The Late Filings of Mr. Barker

Rule 9006 of the Federal Rules of Bankruptcy Procedure permits enlargement of a deadline set by order of the court "on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." Fed. R. Bankr.P. 9006(b)(1). At the close of the proof, the Court stated "So we'll do 30 days after the transcript becomes available to file your proposed findings of fact and conclusions, 14 days after that to make any kind of objections or response that you want to make. And then it's mine." [Tr. Oct. 24, 2023, at 216:21 – 216:25].

The transcript was filed January 10, and official notice of the filing was given January 11, 2024. [Adv. Proc. No. 23-00112, ECF Nos. 126 – 128]. The deadline for filing proposed findings and conclusions was Monday, February 12. Mr. Bailey on behalf of the Trustee in Bankruptcy timely filed proposed findings of fact and conclusions of law. Mr. Barker filed his motion to extend and proposed findings and conclusions on February 29, 2024. Mr. Bailey objected to the motion to extend and moved to strike the proposed findings and conclusions.

Mr. Barker claims that he did not receive notice of the time for filing proposed findings and conclusions and relies upon copies of emails he received between November 21, 2023, and February 17, 2024, and the docket sheets he printed on February 23 and 29, 2024. The email thread and the February 29 docket from Adversary Proceeding 23-00030 contain notice of Mr. Bailey's filing on February 9. The February 23 docket from Adversary Proceeding 23-00112 includes the notice of the filing of the official transcript on January 11. The transcript was requested in adversary proceeding 23-00112. Mr. Barker was aware that these proceedings were consolidated for trial. It would have been prudent of him to begin checking for the filing of transcripts 30-45

days after the trial was completed. In addition, Mr. Bailey says that he emailed the transcripts to Mr. Barker on January 12. Mr. Barker does not deny that he received this email from Mr. Bailey. It is also clear that he received notice of the filing of Mr. Bailey's proposed findings and conclusions on February 9, three days before the deadline for filing his proposed findings and conclusions. The receipt of Mr. Bailey's filing should have put Mr. Barker on notice that he should check to see whether the transcripts had been filed and when.

Even had he missed the deadline for filing proposed findings and conclusions, the receipt of Mr. Bailey's submission triggered the fourteen-day period for Mr. Barker to respond. Fourteen days after the deadline for filing proposed findings and conclusions was Monday, February 26. Mr. Barker made no pretrial filing until Friday, February 29.

Mr. Barker has failed to show that his neglect was excusable. He knew that the proceedings were consolidated for trial and should have ascertained when the request for transcripts was made. Failing that, he could have begun checking the dockets in mid-December to determine whether the transcripts were filed. Failing that, he could have paid attention when Mr. Bailey emailed the transcripts to him on January 12. Failing that, he could have realized that the transcripts had been filed when he received Mr. Bailey's submission on February 9. Having received Mr. Bailey's filing, Mr. Barker could have filed a timely motion to extend the time for filing his proposed findings and conclusions and he could have could have filed a timely response. He did none of these things. Accordingly, the motion to extend will be DENIED and the motion to strike will be GRANTED.

The Trustee in Bankruptcy's Complaint

The Trustee in Bankruptcy seeks a declaration that the Trust is indebted to Mr. Harang (and thus to the bankruptcy estate) in the amount of $264,750, representing the difference between

the $450,000 loss that 4H incurred when it sold the Vermont Property to the Trust and $185,250 in distributions or payments Mr. Eddy made to Mr. Harang after the Vermont Property was sold. In the alternative, the Trustee in Bankruptcy seeks a declaration that the Trust and all its assets are property of the bankruptcy estate [ECF No. 1]. Mr. Eddy and the Trust deny that the Trust agreed to pay Mr. Harang $450,000 and deny that the assets of the Trust are assets of the bankruptcy estate [ECF No. 16].

Is the Trust Indebted to Mr. Harang?

The Trustee in Bankruptcy claims that the Trust is indebted to Mr. Harang in the amount of $264,750 as a result of transactions surrounding the purchase and sale of the Vermont Property. Mr. Harang contributed $1,450,000 to 4H, which was used to purchase the Vermont Property on December 15, 2006. Mr. Harang testified that he earned the funds contributed to the corporation for this purpose. 4H sold the Vermont Property to the Trust for $1 million[5] on June 29, 2007, resulting in a $450,000 loss to 4H. [Trustee Ex. 37 at 138:14 – 139:12]. There is no contemporaneous agreement in the record indicating that the Trust was indebted to 4H or Mr. Harang for the difference in the purchase price paid by 4H and the purchase price paid by the Trust. The Purchase and Sale Contract signed by Mr. Eddy as trustee of the Trust and by Mr. Harang as President of 4H indicates a "[t]otal purchase price" of $1,000,000, as does the Settlement Statement [Trustee Ex. 8, pp. 6 and 10].

Mr. Harang lived in the Vermont Property as his residence and made certain renovations to the property. [Trustee Ex. 39 at 21:19 - 23:15]. The Vermont Property was eventually sold to unrelated parties on March 29, 2013, for $1,141,500 [Trustee Ex. 37 at 165:8].

[5] The St. Tammany Parish Property was sold in 2007. The net proceeds of the sale attributed to the Trust was approximately $1 million. [Trustee Ex. 37 at 125:10 – 125: 14]. This apparently was the source of funds for the purchase of the Vermont Property by the Trust. The purchase was treated as a 1031 exchange to defer capital gains taxes [Trustee Ex. 37 at 125:1 – 125:5].

After the Vermont Property was sold, Eddy made distributions to Harang totaling $185,250 [Trustee Ex. 37 at 160:3 – 160:17]. These distributions were described by the parties in conflicting ways.

Eddy described these distributions as "Jack Harang Trust distributions of money remaining from sale of Vermont property after purchasing Tennessee property as of January 4th, 2016."[6] [Trustee Ex. 37 at 160:3 – 160:5].

Mr. Harang made an affidavit in connection with his divorce from his third wife that treated potential proceeds from the sale of the Vermont Property as his own, separate property [Trustee Ex. 8] There is also an undated, handwritten note from Mr. Harang to Mr. Eddy, which states:

> Lee,
>
> Please keep this in the file as a reminder of our agreement that if [the Vermont Property] is ever sold and is sold for over the One Million net that we will work out a repayment of our shortfall of $450K.
>
> Thanks,
>
> Jack Harang

[Trustee Ex. 9]. Eddy described this document as "[c]opy of the letter in Jack Harang's handwriting confirming an agreement to disburse principal from the trust because he [sic] lost $450,000 when the Vermont property was sold to an unrelated party for $1 million." [Trustee Ex. 37 at 150:14 – 150:18].

Katherine Hunter was asked by Mr. Eddy to write a letter on February 27, 2019, *after the bankruptcy petition was filed*, which states:

> To R. Lee Eddy, III and to Whom it May Concern,
>
> I, Katherine Hunter (Harang) affirm that between 9/2013 and 8/2015, I authorized R. Lee Eddy, to invade the corpus of the Jack W. Harang trust in order to pay disbursements to my father,

[6] The Moscow Property was purchased by the Trust on July 1, 2013, for $599,000. [Dart Ex. 73].

Jack W. Harang, so that he could recoup the losses that he (Jack Harang) had incurred from the sale of his property in Vermont. Over time, these disbursements totaled $185,250.00.

Secondly, I affirm that I approved of Jack W. Harang's purchase of, and residence in, the property in Vermont, as well as the subsequent purchase of, and residence in, the property in Moscow, Tennessee.

I also affirm that I gave permission for R. Lee Eddy to use trust income to pay legal fees in defending the trust against legal claims which directly or indirectly challenged the integrity/legal status of the trust as a spendthrift trust. I also affirm that I gave permission for R. Lee Eddy to use trust income to pay legal fees in connection with ongoing litigation between Jack and his ex-wife, Sue Besette. We (R. Lee Eddy, Jack W. Harang, and myself) have agreed that any future income, or invasion of the corpus, used for these purposes, will be decided upon, in advance, on a case-by-case basis.

Additionally, in the long distant past, I affirm that I agreed that any income disbursements to my father, Jack W. Harang, from his trust, be made at his request, and not solely on his birthday, as (seemingly rigidly and cruelly) stipulated by the terms of his trust.

Please let me know if there are any further questions or concerns.

Cordially

Katherine E. Hunter (Harang)

[Trustee Ex. 39, Hunter Deposition, Ex. 3].

When asked directly whether it is his position that the Trust owes Mr. Harang $450,000, Mr. Eddy replied: "I don't know if it – he lost $450,000 … [b]ut Katherine authorized to me to pay $851 – one million – $185,000 and also to pay other expenses that Jack was incurring, such as legal fees." [Trustee Ex. 37 at 150:24 – 151:5]. When asked for his interpretation of the transactions, Mr. Eddy stated:

> A My interpretation was that Jack was going to be restored money he put into the property and, also, other monies could be used to benefit Jack in connection with a minimum of litigations … and which didn't have to do with any property, but had to do with some other things; and all I can say is it might have been that, given these litigation expenses and also with respect – I know one of them was with his – one of his ex-wives, okay, Sue Bessette, I think, but there were other litigations, too.

A And so I – you know, that hope an attempt would be made to try to restore Jack what he had lost less, of course, what he'd improved the house from.

Q [Mr. Dart]. What I am getting at is not what you used the money for, but it was your understanding that when Jack paid a million-450 for this property … and then turned around and sold it to the trust for $1 million, that the trust had some obligation to pay that 450 back to jack that he had lost, right?

A And this was much later.

Q But it doesn't matter when. I'm just –

A Well, no, you – you're implying it's contemporaneous.

I really had just testified that I thought it was going to be a really good deal for the trust.

[Trustee Ex. 37 at 152:25 – 154:6].

The Trustee in Bankruptcy asserts that there was an agreement to repay Mr. Harang $450,000 as the result of the purchase of the Vermont Property by the Trust for less than 4H paid for the property, and that the $185,250 in distributions made by Mr. Eddy to Mr. Harang in 2013 should be credited against that obligation, leaving a remaining indebtedness of $264,750. Unfortunately, the facts do not support the Trustee's claim.

There is simply no evidence of a contemporaneous agreement that the Trust would pay more than $1,000,000 to purchase the Vermont Property. If there had been such an agreement, the obligation would properly run to 4H, the previous owner and seller of the property, not to Mr. Harang individually. The record does not disclose why Mr. Harang chose to have 4H purchase the Vermont Property initially. Mr. Harang stated that he, individually, wanted to live near his daughter and son-in-law while his son-in-law was in medical school. It is possible that Mr. Harang wanted to purchase the Vermont Property before the proceeds of the St. Tammany Parish Property were available to the Trust, but this is somewhat speculative because Mr. Harang did not make his

intentions known to the Court. It is also possible that Mr. Harang chose to have 4H purchase the property rather than himself because his ownership of the property before the proceeds of the St. Tammany Parish Property became available would have prevented the 1031 exchange, but this too is speculative. For whatever reason, Mr. Harang decided to contribute $1,450,000 to 4H and to cause 4H to use those contributed funds to purchase the Vermont Property. It is clear that these were Mr. Harang's decisions and no one else's. It is also clear that Mr. Harang, not Mr. Eddy, decided that the Trust should purchase the Vermont Property. Mr. Eddy also testified that it was Mr. Harang who first mentioned the possibility of a 1031 exchange. [Trustee Ex. 37 at 130:6 – 130:9]. Mr. Eddy understood that Mr. Harang wanted the Trust to avoid paying the capital gains tax that would have arisen if the St. Tammany Parish Property was sold without the proceeds being reinvested in like property. [*Id*.] The proceeds from the sale of the St. Tammany Property were less than what 4H had already paid for the Vermont Property and may have been less than Mr. Harang anticipated they would be when he caused 4H to buy the Vermont Property. That fact, however, does not give rise to an obligation owed by the Trust to Mr. Harang personally, which the Trustee in Bankruptcy must show, or even to an obligation to 4H.

Is the Property of the Trust Property of the Bankruptcy Estate?

Bankruptcy Code section 541(a)(1) provides that the bankruptcy estate consists of all legal and equitable interests of the debtor in property as of the commencement of the case, wherever located and by whomever held, with certain limited exceptions. *See* 11 U.S.C. § 541(a).

One of those exceptions is provided at section 541(c)(2) which provides: "A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title." There is no dispute that Jack Francis Harang intended to create a spendthrift trust for the benefit of his son in his Will. Had Mr. Harang

and Mr. Eddy abided by the terms of the Will with respect to the Trust Property, there would be no question but that the assets of the Trust are beyond the reach of Mr. Harang's creditors and the Trustee in Bankruptcy. That is not how they acted, however. Throughout the term of Mr. Eddy's trusteeship, he has taken directions from Mr. Harang concerning the sale and purchase of Trust assets and has directed that the royalty payments belonging to the Trust be made directly to Mr. Harang. Mr. Eddy has made loans and/or distributions to Mr. Harang that clearly were not authorized by the language and spirit of the Will. Jack Francis Harang went to great pains to spell out that the corpus of the Trust was not to be made available to Mr. Harang except in the event of extended illness, injury, or similar event. The Will explicitly states, "The term 'emergency' as I used it in the previous sentence, refers to an emergency of a medical nature, which may befall the person of Jack Warren Harang, and shall never be interpreted as referring to financial catastrophe, either civil or criminal, to which the said Jack Warren Harang might fall victim." [Trustee Ex. 2 at 2; Dart Ex. 26]. Had Mr. Eddy observed the terms of the Will, he would have collected the income from the property of the Trust throughout each year, used whatever portion was necessary to maintain and preserve the assets of the Trust and pay its expenses, and distributed the net proceeds to Mr. Harang on or near October 30. It is clear that he never did this. The questions before this Court with respect to the second count of the Trustee in Bankruptcy's Complaint are: (a) what legal consequences flow from the conduct of the trustee and beneficiary with respect to the property of the Trust; and (b) do the prior orders of this Court change those results?

Do the Assets of the Spendthrift Trust belong to the Bankruptcy Estate as a Result of the Actions of Mr. Harang and Mr. Eddy?

The Supreme Court has made clear that in the context of a bankruptcy case, "property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an

interested party is involved in a bankruptcy proceeding." *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136 (1979). The Trustee in Bankruptcy asserts that property held in the name of another may be decreed to be the property of the true, equitable owner, citing *D.T. & A.T. Lee v. First Nat'l Bank*, 18 La. App. 586, 589, 139 So. 63, 65 (1932).

Louisiana has "a strong public policy in effectuating and protecting the settlor's intent as set forth in the trust document." *Albritton v. Albritton*, 600 So.2d 1328, 1331 (La. 1992). The *Albritton* decision relies upon the earlier decision of the Louisiana Supreme Court, *Richards v. Richards*, which states: "In construing a trust, the settlor's intention controls and is to be ascertained and given effect, unless opposed to law or public policy." *Id.*, 408 So.2d 1209 (La. 1981). The *Albritton* court further states: "The trust would hardly be a stable device for the transmission of property if the beneficiaries and trustees could make agreements that could modify the settlor's fundamental intent in setting up the trust." *Albritton*, 600 So.2d at 1331. Louisiana Revised Statutes 9:2025 provides:

> **§ 2025. Delegation of right to terminate or to modify administrative provisions**
>
> A settlor may delegate to another person the right to terminate a trust, or to modify the administrative provisions of a trust, *but the right to modify other provisions of a trust may not be delegated*.

Moreover, Louisiana Revised Statutes 9:2028 provides that a trust may not be destroyed, even upon the consent of the trustees and beneficiaries:

> The consent of all settlors, trustees and beneficiaries shall not be effective to terminate the trust or any disposition in trust, unless the trust instrument provides otherwise.

The *Albritton* court concludes:

> Taken as a whole, we believe these rules set forth a public policy of protecting the trust instrument from any modification or termination contrary to the settlor's clearly expressed intent. These are imperative rules of public order, and any violation of these rules is an absolute nullity.

Albritton, 600 So.2d at 1332.

> Louisiana law permits the creation of a spendthrift trust:
>
> The trust instrument may provide that the interest of a beneficiary shall not be subject to voluntary or involuntary alienation by a beneficiary. A restraint upon voluntary alienation by a beneficiary is valid. But a restraint upon involuntary alienation by a beneficiary is subject to the limitations prescribed by this sub-part.

La. Stat. Ann. § 9:2002. Jack Francis Harang's intent to prevent the voluntary or involuntary alienation of Trust Property by the beneficiary is clear. [Trustee Ex. 2].

> With respect to creditors, the Louisiana Trust Code provides:
>
> A creditor may seize only:
>
> (1) An interest in income or principal that is subject to voluntary alienation by a beneficiary.
>
> (2) A beneficiary's interest in income and principal, to the extent that the beneficiary has donated property to the trust, directly or indirectly. A beneficiary will not be deemed to have donated property to a trust merely because he fails to exercise a right of withdrawal from the trust.

La. R.S. § 9:2004. Mr. Harang's interest in the income of the Trust is not subject to voluntary or involuntary alienation pursuant to the express terms of the Will. Any Trust Property that can be traced to the original Trust Property consisting of the St. Tammany Parish Property and the Mineral Rights remains Trust Property not subject to voluntary or involuntary alienation. This was the Will of the settlor, Jack Francis Harang, and no agreement of the income beneficiary and trustee can change this.[7] Mr. Harang cannot, however, shelter his own assets by donating them to the Trust. Mr. Harang testified that he made improvements to the Vermont Property and to the Moscow

[7] Eddy went to great lengths to establish the acquiescence of his acts by Hunter, the daughter of Harang. Hunter is not a beneficiary of the Trust, however, and has no present interest in it. Pursuant to the terms of the Trust, Hunter will have an interest in the Trust only upon the death of Harang if she is his legatee, or failing that, his heir at law.

Property. Those improvements would constitute donations to the Trust, but the record is not clear concerning the amounts of those donations.

The Trustee in Bankruptcy argues that the Trust is the mere alter ego of Mr. Harang, but points to no decision in which the alter ego doctrine has been applied to a trust. As late as 2010, the Louisiana Court of Appeal affirmed that there are none. *Crutcher-Tufts Res., Inc. v. Tufts*, 38 So.3d 987, 990 (La. App. 4 Cir. 2010). Under Louisiana law, the factors for evaluating an alter ego claim in a corporate setting are:

> (1) commingling of corporate and shareholder funds; (2) failure to follow statutory formalities required for the transaction of corporate affairs; (3) undercapitalization; (4) failure to provide separate bank accounts and bookkeeping records; and (5) failure to hold regular shareholder or director meetings.

Id. at 989. The alter ego theory is only to be applied in exceptional circumstances. *Riggins v. Dixie Shoring Co., Inc.*, 590 So.2d 1164, 1168 (La. 1991).

The Trust was formed by Jack Francis Harang and was created to hold title to assets that Mr. Harang was entitled to as a forced heir under then applicable Louisiana law, which permitted the share of the forced heir to be held in trust for the lifetime benefit of the heir. There is no allegation that the Trust was formed for an improper purpose or in fraud of creditors of Jack Francis Harang or his son. It is admitted that Mr. Harang maintained the real property of the Trust while he lived in the various properties owned by him. The first exchange of the St. Tammany Parish Property for the Vermont Property resulted in an increase in the value of the Trust assets, based upon the ultimate sales price of the Vermont Property. It is true that the Vermont Property was exchanged for the Moscow Property, valued significantly less than the proceeds of the sale of the Vermont Property, and that $185,250 of these proceeds were distributed to Mr. Harang, but these distributions occurred in 2013, some five years prior to the filing of the bankruptcy petition. The Trustee in Bankruptcy does not assert, for example, that these were transfers in fraud of creditors.

So far as the record shows, the Trust has no creditors. Rather the distributions were made to Mr. Harang. Whether these distributions were in violation of the terms of the Trust or not, it is difficult to see how the Trustee in Bankruptcy can complain of them, since they resulted in an increase in the assets available to Mr. Harang's creditors.

Is Property of the Trust Property of the Bankruptcy Estate As the Result of this Court's Prior Orders?

In the alternative to her alter ego theory, the Trustee in Bankruptcy asserts that this Court's previous findings in its order imposing sanctions upon Mr. Haring for "dilatory tactics throughout his bankruptcy case" establish the law of the case binding the Court to a finding that Mr. Harang was the true owner of the Vermont Property and is the true owner of the Moscow Property. [*Order on United States' Expedited Second Motion to Impose Discovery Sanctions*, *Harang v. United States (In re Harang)*, Adv. Proc. No. 18-00213, ECF No. 105; and *Supplemental Order on United States' Expedited Motion to Impose Discovery Sanctions*, Adv. Proc. No. 18-00213, ECF No. 119.] This Court found that Mr. Eddy refused to appear for his scheduled deposition and otherwise to cooperate in discovery as the result of instructions from Mr. Harang. Based on the finding that Mr. Harang acted in bad faith to impede discovery, the Court made the factual findings set forth above, including the finding that Mr. Harang is the true owner of the Moscow Property; Mr. Harang had access to the corpus of the Trust, yet tried to hide how much he took from the Trust; and Mr. Harang and Mr. Eddy collaborated to hide from the IRS and other creditors in this bankruptcy further payments the Trust made to Mr. Harang. [ECF No. 119]. Mr. Harang later sought to dismiss the adversary proceeding he had commenced to determine the dischargeability of his tax debts. The dismissal was conditioned upon the incorporation of the factual findings of the Supplemental Order [*Order of Dismissal with Prejudice*, Adv. No. 18-00213, ECF No. 161]. Mr. Harang appealed the portion of this Order that conditioned the dismissal upon the incorporation of the

factual findings made in the Supplemental Order; the Supplemental Order was affirmed on appeal by the Sixth Circuit Bankruptcy Appellate Panel and the Sixth Circuit Court of Appeals.

The Trustee in Bankruptcy correctly argues that the findings of this Court are now the law of the case. "Under the law-of-the-case doctrine, courts must 'follow decisions made in earlier proceedings to prevent the relitigation of settled issues in a case, thereby protecting the settled expectations of parties, ensuring uniformity of decisions, and promoting judicial efficiency.'" *Marshall v. Anderson Excavating & Wrecking Company*, 8 F.4th 700, 711 (8th Cir. 2021) (citation omitted). This result is certainly unfortunate for Mr. Harang based upon the facts established in the trial of this proceeding. Had Mr. Eddy and Mr. Harang cooperated in discovery, they could have established that Trust Property was used to purchase the Vermont Property and subsequently, the Moscow Property. Identifiable contributions by Mr. Harang to the Trust would have been subject to the claims of his creditors, but not the real property purchased in a series of 1031 exchanges from the proceeds of the sale of the original St. Tammany Parish Property. As the result of Mr. Harang's bad faith failure to cooperate in discovery, the Court has conclusively found that the Moscow Property is property of Mr. Harang, and thus property of his bankruptcy estate. This property, which otherwise would have been available for distributions to the legatees or heirs of Mr. Harang at his death will now be made available for payment of his creditors in his bankruptcy case.

The Court does not agree, however, with the Trustee in Bankruptcy's argument that all assets of the Trust were conclusively found to be assets of Mr. Harang in this Court's prior orders. None of the factual findings imposed by the Supplemental Order is directed to the Mineral Rights. The first factual finding is concerned with the Vermont Property and the Moscow Property. The second factual finding is concerned with the payments made by the Trust in the amount of

$185,250 during 2013, which were conclusively found to be unauthorized distributions of the corpus of the Trust rather than loans, as Mr. Harang had attempted to assert. The third factual finding is concerned with the collaboration of Mr. Eddy and Mr. Harang in hiding other payments made to Mr. Harang by the Trust in addition to the $185,250 distributed in 2013. None of the factual findings imposed by the Court's prior Supplemental Order goes so far as to find that all assets of the Trust are in fact assets of Mr. Harang. The Mineral Rights were property contributed to the Trust by Jack Francis Harang. They remain property of the Trust and are not subject to voluntary or involuntary alienation pursuant to the terms of the Will. There is no allegation in the record that Mr. Eddy attempted to transfer these interests to Mr. Harang or that Mr. Harang exercised control over them. Rather, Mr. Harang was permitted to anticipate proper income distributions from the Trust when Mr. Eddy directed that certain royalty payments be made directly to Mr. Harang. The Court does not condone this practice but cannot find that these acts should override the intent of Jack Francis Harang that his son alone should enjoy the income from these assets during his lifetime.

Judgment will be granted for the Trustee in Bankruptcy with respect to the Moscow Property. The Moscow Property is property of the bankruptcy estate as the result of the prior sanctions orders of the Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW CONCERNING DART'S COMPLAINT

The Expedited Motion to Strike

Mr. Dart has filed an *Expedited Motion to Strike "Defendant Harang's Final Argument" (Doc. 133) and to Prohibit Further Late Filings* [ECF No. 134]. Mr. Dart argues that Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure allows the late filing of a document if the movant's failure was the result of excusable neglect. Mr. Dart is correct that a when an act is

required by order of the court to be done at or within a specified time, a motion to enlarge that time made *after* the expiration of the specified period may be granted only upon finding that the failure resulted from excusable neglect. Mr. Parrish, on behalf of Mr. Harang, filed his response to the motion to strike on February 22, 2024, ten days after his proposed findings of fact and conclusions of law were due. Mr. Parrish admits that he can show no excuse for his failure. He admits that he miscalculated the date when his proposed findings and conclusions were due [Defendant Harang's Final Argument, ECF No. 133, p.1].

Mr. Parrish ultimately asked the Court to enlarge the time for filing his proposed findings and conclusions on March 6, 2024, well after the February 12 deadline. Like Mr. Barker, Mr. Parrish did not timely file a response to Dart's proposed findings and conclusions, which would have given him an opportunity to dispute any of the suggested findings and conclusions proposed by Mr. Dart.

Mr. Parrish asks the Court not to grant the motion to strike because motions to strike are disfavored and "there is a doctrine that discourages hypertechnical use of rules, especially where such use of rules deprive[s] the courts of information that potentially advances the court's achievement of justice at no real cost to other parties." [*Id*. at 3].

The Court disagrees with Mr. Parrish's characterization of Rule 9006(b)(1) as hypertechnical. It is straightforward in setting the circumstances under which enlargement of time may be granted. When the request for enlargement is made before the time to act has expired, the request may be freely granted with or without notice. Once the period has expired, however, excusable neglect must be shown. Mr. Parrish freely admits he cannot meet this standard. Moreover, the document that Mr. Parrish has filed does not comply with the Court's order that proposed findings of fact and conclusions of law be prepared. The Court was very specific about

this because of the length of the trial. The Court wanted each of the parties to have the opportunity to have a transcript prepared so that specific portions of the record could be used to support their proposed findings and conclusions. If the Court had simply wanted closing arguments, those could have been given at the close of trial. Instead, more than three months have passed since the conclusion of the trial and the transcript was prepared at great expense. It is not the Court's intention to wait any longer for Mr. Parrish to assist the Court by doing what he was directed to do at the end of October.

For the same reasons, the Court cannot grant Mr. Parrish's late-filed motion to extend the time to file his proposed findings and conclusions. For the first time he raises as a possible excuse a knee injury and the flu, but he fails to explain how these prevented him from timely filing a motion to extend. Mr. Parrish received Mr. Dart's proposed filings and conclusions when they were filed on February 9, 2024. No excuse is given for Mr. Parrish's delay of twenty-six days in filing the motion to extend.

The motion to strike and prohibit further late filings will be GRANTED and the motion to extend will be DENIED.

Mr. Dart's Complaint

In this Court's prior Order on Plaintiffs' Motion for Partial Summary Judgment and Defendant's Motion to Dismiss, the Court did not grant summary judgment for the Plaintiffs (Henry T. Dart and Henry Dart Attorneys at Law, P.C. (collectively "Mr. Dart")) or for the Defendant on Counts I and II of the Complaint, which allege that a debt owed to Mr. Dart by Mr. Harang, evidenced by a judgment in the amount of $1,628,696.14, should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) for obtaining money, property or services by false pretenses, false representations and/or fraud (Count (I), or 11 U.S.C. § 523(a)(4) for fraud or

defalcation while acting in a fiduciary capacity (Count II). The Court incorporates its statement of background facts not in dispute here.

Count I – Section 523(a)(2)(A)

The Court denied the motion for summary judgment as to Count I because it found that although Mr. Dart established a debt owed to him by Mr. Harang evidenced by the Louisiana court's judgment, he failed to show that the debt arose from misrepresentation or fraud. None of the factual findings by the Louisiana court include a discussion of misrepresentation or fraud. The judgment resulted from failure of Mr. Harang to pay one-half, his virile share, of a judgment against Mr. Dart arising from a loan that Mr. Dart obtained from Advocate Financial, LLC ("Advocate"). At trial, Dart introduced additional evidence concerning the Advocate loan to him, and the failure or refusal of Mr. Harang to obtain a similar loan from Advocate to cover his part of litigation expenses. Nothing in the testimony or exhibits suggests, however, that Mr. Dart was misled about Mr. Harang's failure to obtain an Advocate loan. Mr. Harang never told Mr. Dart that he had obtained a loan, and Mr. Dart was at various times apprised of the status of Mr. Harang's application to Advocate, which was never completed. [Tr. Oct. 24, 2023, at 200:7 – 201:2; Tr. Oct. 25, 2023, at 58:15 – 59:22]. The Court finds no facts supporting an exception to discharge of the Dart claim on the basis of misrepresentation or fraud.

Count II – Section 523(a)(4)

The Court denied the motion for summary judgment as to Count II of the Complaint because Louisiana law imposes a duty to account to the partnership only upon a partner who has acted contrary to his fiduciary duty. The Louisiana Civil Code expressly provides:

> A partner owes a fiduciary duty to the partnership and to his partners. He may not conduct any activity, for himself or on behalf of a third person, that is contrary to his fiduciary duty and is prejudicial to the partnership. If he does so, he must account to the partnership and to his partners for the resulting profits.

La. Civ. Code art 2809.

The Sixth Circuit has made clear that "a statute may create a trust for purposes of § 523(a)(4) [only] if the statute defines the trust res, imposes duties on the trustee, and those duties exist prior to any act of wrongdoing." *Bd. of Trs. of the Ohio Carpenters' Pension Fund v. Bucci (In re Bucci)*, 493 F.3d 635, 640 (6th Cir. 2007). Under Louisiana law, there is no trust res prior to an act of wrongdoing by one of the partners.

The Court denied Mr. Harang's motion to dismiss because it was predicated upon the alleged lack of jurisdiction of the Louisiana court to enter judgment against him. This defense was stricken by the Court in its *Order Granting Motion to Strike Affirmative Defenses*, February 9, 2022 [ECF No. 15].

Mr. Dart has added no additional arguments in support of his argument that Mr. Harang's debt to him arose from for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny. He has not alleged or shown that Mr. Harang acted as trustee for his benefit with respect to the mass tort/class action claims that the parties pursued together. He has not alleged or shown that Mr. Harang came into possession of funds belonging to the joint venture.

The Court finds no facts supporting an exception to discharge of the Dart claim on the basis of for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

Count III – 523(a)(6)

Section 523(a)(6) excepts from discharge debts "for willful and malicious injury by the debtor to another entity or the property of another entity." 11 U.S.C. § 523(a)(6). The Sixth Circuit applies a two-pronged approach. *MarketGraphics Research Group, Inc. v. Berge (In re Berge)*, 953 F.3d 907, 914 (6th Cir. 2020), citing *Doe v. Boland (In re Boland)*, 946 F.3d 335, 338 (6th Cir. 2020) ("A debtor willfully and maliciously injures a creditor if, acting without just cause or

excuse, he knows or is substantially certain that his actions will cause injury."). "Willful" for purposes of section 523(a)(6) means "actual intent to cause injury," "not merely a deliberate or intentional *act* that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S.Ct. 974, 977 (1998). The Sixth Circuit uses a subjective test to determine whether a debtor intended to cause injury. It asks whether the debtor desired to cause the consequences of his act or believed that the consequences were substantially certain to follow from his act. *Berge*, 953 F.3d at 915, citing *Markowitz v. Campbell (In re Markowitz)*, 190 F.3d 455, 464 (6th Cir. 1999). The term "malicious" means an act done "in conscious disregard of one's duties or without just cause or excuse." *Berge*, 953 F.3d at 915, citing *Wheeler v. Laudani*, 783 F.2d 610, 615 (6th Cir. 1986). Both willfulness and malice must be shown. In the absence of either, the debt is dischargeable.

Mr. Dart argues that the same acts of Mr. Harang that he says were fraudulent as to him also give rise to a willful and malicious injury. The Court has found that the acts of Mr. Harang were not fraudulent. There was no concealment of the fact that Mr. Harang had not obtained his own loan from Advocate. Mr. Harang breached his agreement with Mr. Dart to pay one half of the cost of litigation. The parties fully expected that the proceeds of litigation would cover their expenses. In this belief, they were both mistaken, but there is no evidence in the record that Mr. Harang intended to injure Mr. Dart. Because Mr. Dart's injuries (which are purely economic) did not result from the willful act of Mr. Harang, the debt owed to Mr. Dart is dischargeable.

Count IV - Section 727(a)(2)(A)

Section 727(a)(2)(A) prevents a debtor from receiving a discharge if "the debtor, with intent to hinder, delay, or defraud a creditor … has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed … property of the debtor, within one year before the date of the filing of the petition." 11 U.S.C.

§ 727(a)(2)(A). In support of his contention that Mr. Harang's discharge should be denied under this section, Mr. Dart alleges that (1) Mr. Eddy's answer in the concursus lawsuit brought by TPIC on February 22, 2018, against Mr. Eddy and the IRS varied from the alleged fact "that Harang had essentially taken over the Trust;" and (2) Mr. Harang refused to cooperate in discovery Mr. Dart initiated in aid of execution on the Louisiana judgment in the months preceding the filing of his bankruptcy petition.

Louisiana law is clear that no agreement between a trustee and the beneficiaries of a trust can vary the terms expressed by the settlor. *Albritton*, 600 So.2d at 1331. Mr. Eddy's unauthorized distributions to Mr. Harang cannot change the intention of Jack Francis Harang that income of the Trust, including income from the Mineral Rights, be accumulated and the net income distributed to Mr. Harang only once per year. Mr. Eddy's statements concerning the Trust in his answer were in fact true. The Trust was not terminated then and cannot be terminated by the agreement of the trustees and beneficiaries unless the trust instrument provides otherwise. La. R.S. 9:2028. There was no attempt to hinder, delay or defraud creditors in Mr. Eddy's truthful statement in response to the concursus complaint.

Mr. Dart's second theory in support of denial of discharge pursuant to section 727(a)(2)(A) is more troubling. Mr. Dart alleges that Mr. Harang refused to cooperate in discovery in aid of execution after the Louisiana judgment against him became final on March 9, 2018. Mr. Dart alleges that he served written discovery on April 24, 2018; that Mr. Harang failed to respond within thirty days; that Dart's lawyer sent Mr. Harang a letter on May 23, 2018 (one day before responses were due), setting a Local Rule 10.1 discovery conference by telephone on May 30, 2018, to discuss Mr. Harang's failure to respond; and that Mr. Harang failed to respond to counsel's letter or attend the scheduled discovery conference. Mr. Harang filed his bankruptcy petition on June 1,

2018. Mr. Harang denied these allegations of the Complaint in his answer, but they are supported by Mr. Dart's testimony and the judgment of the Louisiana State Court. [Tr. Oct. 23, 2023, at 57:21 – 58:14; Dart Ex. 56 and 57]. Mr. Harang's acts of failing to timely respond to discovery, which was due May 24, 2018, and failing to respond to counsel's May 23 letter, and failing to attend the telephone conference scheduled by Dart's counsel for May 30, 2018, did delay Mr. Dart in his efforts to obtain information about Mr. Harang's assets by some 8 days.

By failing or refusing to respond to legitimate discovery requests, Mr. Harang concealed his assets with the intent to hinder a creditor in the months leading up to the filing of his bankruptcy petition in violation of section 727(a)(2)(A), but the delay of only eight days appears to be de minimis — not enough to support denial of discharge. It is highly unlikely that Mr. Dart would have successfully levied upon any of Mr. Harang's assets in the brief period prior to the filing of the bankruptcy petition, and if he were, his levy might have been avoided as a preferential transfer.

Count V – Section 727(a)(2)(B)

Section 727(a)(2)(B) provides that a debtor shall be granted a discharge unless "the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under [title 11] has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed … property of the estate, after the date of the filing of the petition." 11 U.S.C. § 727(a)(2)(B).

Mr. Harang was questioned about four separate lawsuits filed before his bankruptcy petition was filed for which he received a fee after his petition was filed. Mr. Harang revealed these fees to the Trustee in Bankruptcy only at his 2004 Examination. [Tr. Oct. 23, 2024, at 172:12 – 199:24]. Mr. Harang concealed his receipt of these fees, which were the products of assets of the bankruptcy estate in violation of section 727(a)(2)(B). "Concealment" as used in section 727(a)(2)

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 (6th Cir. BAP 2008), citing, *Peterson v. Scott (In re Scott)*, 172 F.3d 959, 967 (7th Cir. 1999). The concealment of property of the estate is a serious matter that does support denial of discharge. *See, e.g.*, *In re Heil*, 289 B.R. 897, 909 (Bankr. E.D. Tenn. 2003) (Debtor concealed both obligation and postpetition payment made on behalf thereof, both were property of the estate, they were not disclosed after he filed his bankruptcy petition, and fraudulent intent can be inferred from the debtor's cumulative acts and omissions).

Count VI – Section 727(a)(3)

Section 727(a)(3) prevents a debtor from receiving a discharge when "the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve recorded information … from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure was justified under all of the circumstances of the case." 11 U.S.C. § 727(a)(3). Mr. Harang failed to provide any business records concerning 4H, his land company in Michigan, or his law practice. The Trust appears to have kept very few records of its transactions, although this lack may be charged to the nominal trustee, Mr. Eddy. Mr. Harang and Mr. Eddy appear to have relied solely on bank statements as business records. No balance sheets or profit and loss statements were produced by the parties. The records maintained by Mr. Harang and Mr. Eddy are inadequate for the Trustee in Bankruptcy and the creditors to ascertain the financial transactions of Mr. Harang and the Trust. Discharge may be denied pursuant to section 727(a)(3).

Count VII – Section 727(a)(4)

Section 727(a)(4) provides that a debtor who knowingly makes a false oath in connection with his bankruptcy case may not receive a discharge. A party objecting to a debtor's discharge

under section 727(a)(4) must show that, (1) the debtor made a statement while under oath, (2) the statement was false, (3) the statement related materially to the bankruptcy case, (4) the debtor knew the statement was false, and (5) the debtor made the statement with fraudulent intent. *Hamo v. Wilson (In re Hamo)*, 233 B.R. 718, 725 (6th Cir. BAP 1999).

Mr. Harang commenced his bankruptcy case by filing a voluntary petition under chapter 7 of the Bankruptcy Code on June 1, 2018. Mr. Harang was represented by Mr. Eugene Douglass, who was first consulted in January and ultimately retained by Mr. Harang on March 2, 2018. [Dart Ex. 94, Douglas Deposition, at 16:1 – 16:24; Dart Ex. 51]. Mr. Douglass prepared the schedules and statements filed by Mr. Harang in support of his bankruptcy petition based upon information provided to him by Mr. Harang. Although Mr. Douglass asked for information concerning, for example, the Jack Warren Harang Trust and 4H, Mr. Harang did not provide the requested information to Mr. Douglass prior to the filing of the bankruptcy petition. [Tr. Oct. 24, 2023, at 39:21 – 40:5]. Mr. Harang admits that he reviewed the information contained in his petition, schedules, and statements numerous times before he signed a copy of these documents, under penalty of perjury, which were retained by Mr. Douglass. [Dart Ex. 2]. Mr. Douglass affixed both his and Mr. Harang's electronic signatures to the petition, schedules, and statements that were filed with the bankruptcy court. [Dart Ex. 1; Dart Ex. 94 at 27:18, 33:19 – 34:2 – 34:6; 34:19 – 35:1].

The schedules and statements are inaccurate. Numerous examples can be given.

Mr. Harang listed his interest in 4H as a 25% interest valued at $1. The assets of 4H at the time the petition was filed consisted in 1,200 acres of timber land in the Upper Peninsula of Michigan. This property was sold by Ms. Bedwell, the Chapter 7 trustee, with the permission of the other shareholders, for $1,500,000. Mr. Harang and his former wife, Ms. Suzanne Bessette, were the original shareholders of 4H, each holding 5,000 shares of stock. Mr. Harang maintains

that he transferred half of his interest to his daughter, Katherine Hunter. Even if Mr. Harang held only a 25% interest in 4H, his share should have been valued substantially higher than $1.

Mr. Harang lived in the Moscow Property for the year preceding the filing of his bankruptcy petition. The Moscow Property was titled in the name of the Trust. Mr. Harang paid no rent to the Trust during the period that he lived there prior to the filing of his petition. He did not disclose these facts to Mr. Douglass. Schedule G falsely states that Mr. Harang was paying and intended to pay $1,000 per month in rent.

Mr. Harang and Mr. Eddy entered a consent judgment in the concursus proceeding recognizing the Trust as the owner of the Mineral Royalties, even though Mr. Harang received $50,574.00 in royalty payments from Texas Petroleum Investment Company from 2013 through 2014. This Court has previously found that "Harang and Eddy collaborated to hide from the IRS and other creditors in this bankruptcy further payments the Trust made to Harang." [*Harang v. United States* (*In re Harang*), Adv. Proc. No. 18-00213, *Order on United States' Expedited Second Motion to Impose Discovery Sanctions*, ECF No. 105; and *Supplemental Order on United States' Expedited Motion to Impose Discovery Sanctions*, ECF No. 119]. Mr. Harang hid facts concerning the Mineral Royalties from Mr. Douglass and did not disclose those facts in his bankruptcy schedules [Dart Ex. 94 at 46:18 – 46:24; 47:9 – 47:13].

Mr. Harang's prior law practice, Jack Harang APLC, received certain other mineral royalties from Hilcorp as a fee before the bankruptcy case was filed. Jack Harang, APLC was administratively dissolved in 2016. Its assets devolved to Mr. Harang personally. Mr. Harang continued to receive Hilcorp royalties during the year preceding the bankruptcy petition. Mr. Harang did not reveal the mineral royalty payments to Mr. Douglass. Mr. Harang never reported

his interest in the Hilcorp royalties or the income he received from this source in his bankruptcy schedules. [Tr. Oct. 23, 2023, at 171:11 – 171:13].

In each of these instances, Mr. Harang gave an oath concerning the accuracy of his bankruptcy statements and schedules that was false in violation of section 727(a)(4). A debtor is expected to ensure that his schedules and statement of financial affairs are answered carefully and accurately:

> A debtor has "a paramount duty to carefully consider all questions included in the Schedules and Statement [of Financial Affairs] and see that each is answered accurately and completely." *In re Colvin*, 288 B.R. at 480 [(Bankr. E.D. Mich.2003)] (quoting *Casey v. Kasal (In re Kasal)*, 217 B.R. 727, 734 (Bankr. E.D. Pa.1998), aff'd, 223 B.R. 879 (E.D. Pa. 1998)). "The burden is on the debtors to complete their schedules accurately." *Rion v. Spivey (In re Springer)*, 127 B.R. 702, 707 (Bankr. M.D. Fla. 1991).

Church Joint Venture v. Blasingame (In re Blasingame), 559 B.R. 692, 699 (B.A.P. 6th Cir. 2016). A debtor's schedules and statement of financial affairs are executed under oath and penalty of perjury. *Montgomery v. Montgomery (In re Montgomery)*, 2007 WL 625196, slip op. at *3 (Bankr. E.D. Tenn. 2007).

Although any one of these errors or omissions might seem immaterial, the failure to provide Mr. Douglass with requested information and the pattern of errors and omissions together give rise to an inference that Mr. Harang intended to present a false picture of his financial condition to the Trustee in Bankruptcy and to his creditors. 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).

In addition, the Debtor's failure to amend his schedules when errors and omissions were brought to his attention also demonstrates reckless disregard for the gravity of his duty to provide the full and accurate disclosure that is a debtor's expected offering in exchange for a discharge in bankruptcy. Mr. Harang has made false oaths in violation of section 727(a)(4).

Count VIII – Section 727(a)(5)

Section 727(a)(5) precludes discharge to any debtor who fails "to explain satisfactorily, before determination of denial of discharge under § 727(a), any loss of assets or deficiency of assets to meet debtor's liabilities." 11 U.S.C. § 727(a)(5).

A party objecting to a debtor's discharge under this section, for allegedly failing to satisfactorily explain a loss of assets, bears the initial burden of proof. *In re Yokley*, 61 B.R. 198, 200 (Bankr.W.D.Ky.1986); *In re Potter*, 88 B.R. 843 (Bankr.N.D.Ill.1988). The objecting party must demonstrate: (1) debtor at one time, not too remote from the bankruptcy, owned identifiable assets; (2) on the date debtor commenced his or her bankruptcy, debtor no longer owned the particular assets; and (3) the Bankruptcy pleadings do not reflect an adequate explanation for the disposition of the assets. *See In the Matter of Dupree*, 197 B.R. 928, 938 (Bankr.N.D.Ala.1996); *In re Mart*, 87 B.R. 206, 211 (Bankr.S.D.Fla.1988); *Potter*, 88 B.R. at 843; *See also Yokley*, 61 B.R. at 200. Once the objecting party has met its initial burden of proof, the burden of proof then shifts to the debtor to provide a satisfactory explanation for the disposition of the asset(s). *Yokley*, 61 B.R. at 200; *Mart*, 87 B.R. at 211; *See also In re Chalik*, 748 F.2d 616, 619 (11th Cir.1984).

In support of his argument that discharge should be denied to Mr. Harang under this section, Mr. Dart points to "failure to account for over $9.5 million he has collected;" and failure

to adequately account for proceeds of the sale of two Rolex watches, a defined benefit plan at New York Life Insurance Company, or a 51' Defever motor yacht. [Dart Ex. 3 at 21; Dart Ex. 55; Dart Ex. 62 at 5 – 6; Trustee Ex. 38 at 39, 51, 62 – 63]. Mr. Harang provided no proof in response to the proof provided by Mr. Dart.

Mr. Harang has failed to satisfactorily explain the disposition of the named assets in violation of section 727(a)(5). Discharge should be denied for this additional reason.

Count IX – Objection to Undervaluation of Assets and Alternative Objection to Illegal Claim of Exemptions

Mr. Dart again objects that Mr. Harang has undervalued his interest in 4H, and that he has wrongfully claimed that interest as exempt. Mr. Dart also claims that Mr. Harang cannot claim an exemption in his Toyota Land Cruiser, which should be valued at $11,833, or in his dogs, which should be valued at $550. Mr. Harang claimed exemptions in his interest in 4H of $1, in his Land Cruiser of $1, and in his dogs of $5. Mr. Harang properly invoked Tennessee's "wild card exemption," Tennessee Code Annotated section 26-2-103, which permits a debtor to claim up to $10,000 in aggregate value of personal property. Mr. Harang has claimed exemptions under section 26-2-103 totaling $10,000.46. He is within the permissible exemption amount. If he has claimed less than the full value of any item, the result may be that the Trustee in Bankruptcy decides to sell those items. Regardless of the value attributed to assets by Mr. Harang, he will be entitled only to the amount he has claimed as exempt from the proceeds of sale.

CONCLUSIONS

For the foregoing reasons, the Court finds and concludes as follows:

1. Judgment as to Count I of the Complaint in Adversary Proceeding 21-00030 should be GRANTED for the Defendants.

2. Judgment as to Count II of the Complaint in Adversary Proceeding 21-00030 should be GRANTED IN PART and DENIED IN PART. The Moscow Property should be declared to be property of the bankruptcy estate. The Mineral Rights should remain assets of the Trust.

3. The Defendants in Adversary Proceeding 21-00030 should be ordered to turn over the Moscow Property to the Trustee in Bankruptcy for further administration.

4. Judgment as to Counts V-VIII of the Complaint in Adversary Proceeding 21-00112 should be GRANTED for the Plaintiffs Henry T. Dart and Henry Dart Attorneys at Law, P.C.

5. Judgment as to Counts I-IV, and IX of the Complaint in Adversary Proceeding 21-00112 should be GRANTED for the Defendant Jack Warren Harang.

6. Discharge of the debts of Defendant Jack Warren Harang should be DENIED pursuant to 11 U.S.C. §§ 727(a)(2)(B), 727(a)(3), 727(a)(4), and 727(a)(5).

7. Mr. Eddy's' late-filed motion to extend time to file proposed findings of fact and conclusions of law should be DENIED, and the Trustee in Bankruptcy's motion to strike should be GRANTED.

8. Mr. Harang's late-filed motion to extend the time to file proposed findings of fact and conclusions of law should be DENIED, and Mr. Dart's motion to strike should be GRANTED.

The Court will enter separate orders consistent with this Memorandum Opinion.

cc: Debtor
Attorney for Debtor
Defendants
Attorneys for Defendants
Plaintiffs
Attorneys for Plaintiffs
United States Trustee
Matrix