

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

FILED
JAMES J. WALDRON, CLERK

December 2, 2013

U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY: /s/Nelson Dos Santos, Deputy

IN RE: _____

Scott Forbes and Ginette Forbes,

Debtor.

CHAPTER 7

CASE NO.: 09-27371 (NLW)

OPINION

Roberta A. DeAngelis, United States
Trustee,

Plaintiff,

v.

Scott Forbes,

Defendant.

Adversary No.: 12-1032

Before: HON. NOVALYN L. WINFIELD

A P P E A R A N C E S :

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This Adversary Proceeding is before the court on the United States Trustee's Complaint for denial of Scott Forbes' discharge under 11 U.S.C. §§ 727(a)(2)(B) and 727(a)(7) of the United States Bankruptcy Code ("Bankruptcy Code"). For the reasons set forth below, the court denies the Debtor's discharge.

JURISDICTION

The court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 1134 and 157(a) and the Standing Order of Reference issued by the United States District Court for the District of New Jersey on September 18, 2012. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(J). The following constitutes the Bankruptcy Court's findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052.

STATEMENT OF FACTS

A. Procedural History

Scott Forbes ("Scott") and his spouse, Ginette Forbes ("Ginette"), filed a Chapter 11 petition on July 3, 2009. In addition, three days later on July 6, 2009, Forbes Enterprises Corp. ("FEC") filed a Chapter 11 petition. Scott signed the FEC petition in his capacity as president and identified himself as FEC's sole shareholder on its subsequently filed Statement of Financial Affairs ("SOFA"). FEC was engaged in the business of construction and identified a Building License as an asset on Schedule B to its petition. However, it appears from FEC's schedules that at the time FEC filed for protection under Chapter 11, its only building projects of consequence were (i) a construction management contract for Kenny and Iris Shamus and (ii) a substantially

constructed residence at 5 Oak Road, Saddle River, New Jersey (“5 Oak Road”) that FEC valued at \$4,500,000, but which also was encumbered by two mortgages totaling approximately \$3,684,000. Neither case ultimately was able to reorganize, and on May 18, 2010 both cases were converted to Chapter 7 liquidation cases. On January 10, 2012, Roberta A. DeAngelis, the United States Trustee, Region 3 (“UST”) filed a complaint, against Scott, grounded on Bankruptcy Code §§ 727(a)(2)(B) and 727(a)(7).

B. Basis for Denial of Discharge

Essentially, the UST contends that Scott concealed the existence of a construction contract for completing 5 Oak Road by diverting the contract to a newly formed and undisclosed entity, Forbes Custom Homes, LLC (“Newco”), of which Scott is a 10% owner and his minor son is a 90% owner. Further, the UST asserts that the contract transferred to Newco was an asset of FEC, for which FEC should have received the benefit, not Newco. The timeline and the manner in which these events unfolded are set forth below. All of these events occurred post-petition and largely during the time when both Scott’s case and the FEC case remained in Chapter 11.

1. Formation of Newco

Scott caused Forbes Custom Homes LLC (“FCH” or “Newco”) to be formed on December 1, 2009, approximately five months after he and FEC filed for relief under Chapter 11 (UST-1). The membership of the limited liability company was comprised of Scott (10% interest) and his minor son (90% interest).(Plaintiff’s Statement of Undisputed Facts, Admission

No. 3) Also in December 2009, Newco obtained an Employer Identification Number from the Internal Revenue Service. (UST-2) Further, Newco began operations in the period of January - March 2010 and continued operations for some time thereafter. (Plaintiff's Statement of Undisputed Facts, Admission No. 9) Scott did not disclose the existence of Newco during the pendency of his Chapter 11 case or that of FEC. (Plaintiff's Statement of Undisputed Facts, Answer to Complaint, ¶¶ 50 & 52) At trial, Scott testified that he formed Newco to shield future income from his creditors.

Scott's trial testimony also established that he is knowledgeable not only about the business of home construction, but also about the benefits of operating such a business either as a corporation or a limited liability company. He stated that except for his first business, he has always operated his businesses as either a corporation or a limited liability company. In fact, he testified that he operates his current home construction business as a limited liability company.

2. Sale of 5 Oak Road

In January 2010, counsel for FEC filed a motion to sell 5 Oak Road to Michael Jarmark ("Mr. Jarmark") for the sum of \$3,300,000, all cash. By the time of the sale hearing date, various objections to the sale motion and the UST's motion to convert FEC to a Chapter 7 case were also pending. In particular, counsel for creditor, Jeffrey Ross, raised the issue of whether all details of the sale had been adequately disclosed. Specifically, he questioned whether "Mr. Forbes has a side transaction with the proposed buyer to complete the work that need to be completed on the house." (UST -3, Hrg. Tr. 5:5-7)

In order to meet this objection and to provide substantiation for approval of the sale under Bankruptcy Code § 363, Scott took the stand to testify about the proposed sale to Mr. Jarmark. Scott stated that construction of 5 Oak Road was approximately 90% complete. (Id., 14:7-9) With regard to the alleged “side transaction”, Scott also testified about a contract to complete the construction of 5 Oak Road:

Q. And, have you had an opportunity to speak with Mr. Jarmark about completing the work, because as you know, or you may not know, an objection has been raised that you have a side deal to complete the property?

A. Yes, I have talked to Michael Jarmark about that.

Q. And are you in the process of negotiation with Jarmark to have one of your entities complete the property?

A. Correct. I gave him –

Q. And can you speak to what are the issues and what are the – what’s the facts underlying your agreement to complete the property?

A. I gave Mr. Jarmark a price to finish the house, gave him a contract. It has not been signed yet. What’s left to be finished in the house, the boiler systems have to be installed. The finish electrical has to be done, the railings have to be done. Shower doors have to be done, the mirrors have to be done. The hardwood floors have to be finished. The alarm has to be finished. The central vacuum has to be finished. Front door glass has to get replaced. A buffer in the buffer zone for Saddle River requirement, there has to be a tree planting in the buffer zone. What else has to be – miscellaneous painting has to be done in the house.

Q. And, what’s going to be the approximate cost to complete the house, if Mr. Jarmark agrees to have you complete the house?

A. There’s about 160 to \$175,000 left to finish the house.

Q. At your cost?

A. Yes.

- Q. And, what was the total amount that you had quoted Mr. Jaramark to have that work done and for your supervision of that work?
- A. \$200,000.
- Q. So, you anticipated making a profit of approximately \$25,000 should –
- A. Correct.
- Q. – let me just complete the question, should Mr. Jaramark have retained your services to complete the house at Five Oak? Is that correct?
- A. That's correct.

(Id. 16:20 to 18:8) Further, under cross-examination by UST's counsel, Scott stated that the contract proposal for additional work at 5 Oak Road was prepared under the name of FEC. (Id., 22:3-12) Based in part on Scott's testimony, the court approved the sale of 5 Oak Road by FEC to Mr. Jarmark, stating in pertinent part that:

I think there is a sound business purpose, a satisfied claim of the secured creditor because Investors has, I think, made a good business judgment, that this is the best value that will be realized for this property. It lifts a financial burden off of this debtor, creates the prospect that there will be a subsequent contract to complete the construction, which if at the value testified to by Mr. Forbes, would yield a profit for Forbes Enterprises.

So, I think both fair value and business purpose prongs have been satisfied.

(Id., 38:8-17)

Additionally, at the same hearing the court denied, without prejudice to renew, the UST's motion to convert the FEC Chapter 11 case to a Chapter 7. The court's decision was grounded on representations by Debtor's counsel that the net proceeds from the sale of 5 Oak Road would be held in his attorney's trust account and that a liquidating plan would be filed approximately 30 days later. (Id., 49:25 to 51:25) Additionally, as indicated in its ruling on the sale of 5 Oak Road,

the court believed it likely that FEC would complete the construction of 5 Oak Road, thereby increasing funds available to creditors under the liquidating plan described by FEC's counsel. Scott was present while both motions were ruled upon, and neither disclosed Newco's existence nor identified Newco as an entity that would take over the contract to complete 5 Oak Road.

3. Operation of Newco

On December 15, 2009, FEC submitted a proposed contract to Mr. Jarmark for completion of construction of 5 Oak Road. (UST-5) The price for these services was quoted at \$200,000. (Id.) This is the contract that was the subject of Scott's testimony at the February 2010 hearing to approve the sale of 5 Oak Road. However, this contract was not performed by FEC.

At trial, Scott testified that after the February 2010 sale hearing FEC effectively ceased operations. Scott stated that no work was performed by FEC after that date and no funds were deposited in the FEC debtor-in-possession operating account. The FEC Monthly Operating Report for February 2010 reflects this lack of operations. (UST-16B) Scott also testified that the closing for 5 Oak Road occurred on March 8, 2013. Thus, the March 2010 Monthly Operating Report shows the receipt of the \$278,425.36 net proceeds from the sale of 5 Oak Road. (Id.) However, FEC's March report does not reveal any other income from operations.

Instead, in March 2010, Scott commenced operation of Newco by executing a contract between Newco and Mr. Jarmark for the finish work at 5 Oak Road. (UST-18) FEC's name was stricken from the contract and Newco's name was written above the strikeout. As reflected in

the deposits to Newco's bank account described below, Newco performed substantial work for Mr. Jarmark after the March 8th closing on 5 Oak Road with FEC:

- March 9, 2010 - \$100,000 was deposited by wire transfer from Mr. Jarmark, with the description “Completion of 5 Oak Road.”
- March 9, 2010 - \$65,000 was deposited by wire transfer from Mr. Jarmark with the description “Basement Contract.”
- March 16, 2010 - \$50,000 was deposited by wire transfer from Mr. Jarmark with the description “Completion of 5 Oak Road.”
- March 16, 2010 - \$50,000 was deposited by wire transfer from Mr. Jarmark with the Description “Basement Contract.”
- March 25, 2010 - \$15,860.15 was deposited by wire transfer from Mr. Jarmark with the description “Completion of 5 Oak Road.”
- March 25, 2010 - \$75,000 was deposited by wire transfer from Mr. Jarmark with the description “Basement Contract.”
- April 1, 2010 - \$15,000 was deposited by wire transfer from Mr. Jarmark with the description “Completion of 5 Oak Road.”
- April 1, 2010 - \$13,400 was deposited by wire transfer from Mr. Jarmark with the description “Copper Gutters.”
- April 12, 2010 - \$25,000 was deposited by wire transfer from Mr. Jarmark with the description “Completion of 5 Oak Road.”
- April 12, 2010 - \$50,000 was deposited by wire transfer from Mr. Jarmark with the description “Basement Contract.”
- April 26, 2010 - \$10,100 was deposited by wire transfer from Mr. Jarmark with the description “Completion of 5 Oak Road.”
- April 26, 2010 - \$22,500 was deposited by wire transfer from Mr. Jarmark with the description “Coah Fee for 5 Oak Road.”
- May 5, 2010 - \$25,000 was deposited by wire transfer from Mr. Jarmark with the description “Completion of 5 Oak Road.”
- May 12, 2010 - \$50,000 was deposited by wire transfer from Mr. Jarmark with the description “Completion of 5 Oak Road.”
- May 12, 2010 - \$50,000 was deposited by wire transfer from Mr. Jarmark with the description “Basement Contract.”

(UST- 4 Bates nos. 011, 005, 020, 037, 044, 055)

The FEC case was converted from a Chapter 11 case to a Chapter 7 case on May 19, 2010. As detailed above, between the February 8, 2010 sale hearing and conversion of the FEC case on May 19, 2010, the total funds received from Mr. Jarmark and deposited in Newco's bank account for work performed at 5 Oak Road amounted to \$616,860.15.

Further evidence that the 5 Oak Road contract proposals were diverted from FEC can be seen from a perusal of the contract proposal prepared and provided to Mr. Jarmark several months prior to the February 2010 hearing to approve the sale of 5 Oak Road. A proposal to finish construction at 5 Oak Road was forwarded by FEC to Mr. Jarmark on December 15, 2009. (UST-5 Bates no. 001) The proposal identified twenty items and quoted a price of \$200,000. (Id.) Similarly, days after the sale hearing on February 11, 2010, a proposal to finish the basement at 5 Oak Road was forwarded on FEC letterhead. (Id., Bates nos. 004-009) This proposal quoted a price of \$295,000. (Id.) Additionally, also on February 11, 2010, three additional proposals for work were prepared on FEC letterhead and forwarded to Mr. Jarmark: (i) a proposal for a Wall Unit and a Master Closet at a price of \$8,500, (ii) a fireplace at \$2,950 and (iii) a boiler upgrade at \$10,500 (Id. Bates nos. 010-014). Not one of these contracts was submitted by Scott in his own name or that of Newco. However, on March 9, 2010, one day after the closing on 5 Oak Road, Newco was substituted for FEC and all of this work proposed by FEC was performed by Newco as evidenced by the wire transfers identified above.

DISCUSSION

The discharge of debt has been described by Congress as “the heart of the fresh start provisions of the bankruptcy law.” Rosen v. Bezner, 996 F.2d 1527, 1531 (3d Cir. 1993), quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 384 (1977) U.S. Code Cong. & Admin. News 1978, p.p.

5963, 6340. Further, because denial of discharge is an extreme penalty, Bankruptcy Code § 727 must be construed liberally in favor of the debtor. Id. Nonetheless, as the Supreme Court has stated, the fresh start that results from the discharge of burdensome debt belongs solely to the honest but unfortunate debtor. Grogan v. Garner, 498 U.S. 279, 286-87 (1991). Essentially, the exceptions to discharge set forth in § 727(a) provide one of the means by which the Bankruptcy Code insures that only an honest but unfortunate debtor benefits from a discharge of debt. See, Boroff v. Tully (In re Tully), 818 F.2d 106, 110 (1st Cir. 1987) (noting that the very purpose of the subsections of § 727(a) “is to make certain that those who seek the shelter of the bankruptcy code do not play fast and loose with their assets or with the reality of their affairs.”)

At trial, the plaintiff has the burden of proving the objection to discharge. Fed. R. Bankr. P. 4005. The burden of proof is satisfied by meeting the preponderance of the evidence standard. In re Finney, 333 B.R. 242, 247 (Bankr. W.D. Pa. 2005); In re Zimmerman, 320 B.R. 800, 806 (Bankr. M.D. Pa. 2005).

Section 727(a)(2)(B) provides in relevant part that “[t]he court shall grant the debtor a discharge unless...the debtor, with intent to hinder, delay or defraud a creditor...has transferred...or concealed...property of the estate, after the date of the filing of the petition.” 11 U.S.C. § 727(a)(2)(B). The conduct substantiating this exception to discharge essentially consists of two components: an act and an improper intent. Rosen v. Bezner, 996 F.2d at 1531; In re Kontrick, 295 F.3d 724, 736 (7th Cir. 2004). Because the conduct about which the UST complains occurred in connection with Scott’s role as the sole member and officer of FEC, §727(a)(7) also comes into play. That provision denies a discharge to a debtor who, at any time during the debtor’s own case, commits any of the acts specified in § 727(a)(2) through (a)(6) in connection with another case concerning an insider. 11 U.S.C. § 727(a)(7). Here, FEC

constitutes the insider whose creditors were affected by Scott's misconduct.¹ Importantly, Scott essentially was FEC. He was the president and sole member, negotiated its construction management contracts and supervised the construction of 5 Oak Road. In particular, he was the person who, on behalf of FEC, negotiated with Mr. Jarmark for the sale of 5 Oak Road and to complete the construction of the residence.

The court must find an actual intent by the debtor to hinder, delay or defraud creditors in order to sustain an objection to discharge under § 727(a)(2). In re Grammenos, 469 B.R. 535, 547 (Bankr. D.N.J. 2012); In re Dolata, 306 B.R. 97, 146 (Bankr. W.D. Pa. 2004); In re Wines, 997 F.2d 852, 856 (11th Cir. 1993). Further, the intent must be actual intent, not constructive intent. Village of San Jose v. McWilliams, 284 F.3d 785, 789 (7th Cir. 2002). Because direct evidence of a debtor's intent is often not available, the intent to hinder, delay or defraud may be drawn from his conduct and circumstantial evidence can be considered in court. Rosen, 996 F.2d at 1533; In re Babb, 358 B.R. 343, 3450 (Bankr. E.D. Tenn. 2006); In re Shafer, 2010 WL 1286427 at *4 (Bankr. D.N.J. 2010 March 31, 2010)(quoting In re Spitko, 357 B.R. 272, 302 (Bankr. E.D. Pa. 2006)).

After considering Scott's testimony and the exhibits placed in evidence, the court concludes that (i) Scott caused the Jarmark contract proposed for completion of 5 Oak Road to

¹ Bankruptcy Code § 101(31) provides in relevant part that:

The term "insider" includes –

(A) if the debtor is an individual –

- (i) relative of the debtor or of a general partner of the debtor;
- (ii) partnership in which the debtor is a general partner;
- (iii) general partner of the debtor; or
- (iv) corporation of which the debtor is a director, officer, or

person in control;

11 U.S.C. § 101(31) (emphasis supplied)

be diverted from FEC to Newco, and (ii) that he concealed the diversion of the Jarmark contract to Newco in order that he would reap the benefits of that contract.

For the most part, Scott was a very credible witness. It was evident that he is a sophisticated businessman with substantial knowledge of the home construction business. Scott readily attested to always doing business with either a corporation or a limited liability company and that Newco was formed in part because of the bad publicity caused by the bankruptcy filings. Thus, the court readily credits Scott's testimony that after he and FEC filed their respective Chapter 11 cases, he also formed Newco in order to obtain a fresh start and an opportunity to make a living. What the court does not find credible is Scott's testimony that he did not understand that there was anything improper about failing to disclose the existence of Newco and the fact that it acquired the contract with Jarmark to complete construction of 5 Oak Road. As a further defense to the fact that Newco performed the Jarmark contract, Scott also testified that he understood that FEC was being converted to a Chapter 7 case after the sale of 5 Oak Road. The court understands this statement by Scott to mean that he claims to have believed that he did not need to disclose Newco's existence or its acquisition of the FEC contract. However, the surrounding facts and circumstances demonstrate that Scott intended to conceal Newco's acquisition of FEC's contract with Mr. Jarmark and that he took steps to conceal the diversion.

Scott was present at the hearing to approve the sale of 5 Oak Road to Mr. Jarmark and the UST's motion to convert the FEC Chapter 11 case to a Chapter 7 case. In regard to a creditor's concern about a "side transaction" to complete construction on 5 Oak Road, Scott testified, describing the items remaining to be finished and stating that he had provided Mr. Jarmark with the contract, although it was unsigned as of the sale hearing. Under questioning

from the UST's counsel, Scott further testified that the contract was prepared under the name of FEC. The court concludes that this testimony was offered as an additional basis for the court and the parties present at the hearing to approve the sale of 5 Oak Road. In fact, it had that effect as no further concern was raised by any party about a possible side transaction, and as part of its ruling, the court stated that one benefit of the sale was that it "creates the prospect that there will be a subsequent contract to complete the construction, which if at the value testified to by Mr. Forbes, would yield a profit for Forbes Enterprises." (UST-3 38:7-9) After giving his testimony and hearing the court's ruling, Scott did not make any effort to disclose the existence of Newco, much less the prospect that it, not FEC, would undertake performance of the contract with Mr. Jarmark. The fact that immediately after the March 8th closing on 5 Oak Road Newco began performance of the FEC contract proposal described by Scott at the February sale hearing supports the conclusion that Scott intentionally did not disclose Newco and its future role.

Further, Scott's statement that he understood that FEC was being liquidated after the sale is unsupported by the facts.² Scott was present when, after argument from UST counsel in favor of conversion, the court denied the UST's motion without prejudice to renew. While FEC's counsel represented that a liquidating plan would be filed, such a plan is not inconsistent with the prospect of FEC contracting with Mr. Jarmark to complete the construction at 5 Oak Road, given Scott's testimony that the residence was 90% complete and his description of the remaining work.

It also appears to the court that either at or shortly after the February 8, 2010 hearing to approve the sale of 5 Oak Road, Scott made the decision to no longer operate FEC. In fact, he testified that no work was performed by FEC after the sale. FEC's February 2010 Monthly

² Though not precisely articulated by Scott at trial, the court also understood Scott's testimony regarding his understanding of the effect of liquidation of FEC as support for his position that Newco could step into the shoes of FEC.

Operating Reports confirmed the lack of operations. This non-activity occurred despite the existence of (i) the initial December 15, 2009 proposal by FEC (the subject of Scott's testimony on February 8, 2010) to finish 20 items for a total of \$200,000, (ii) a February 11, 2010 proposal by FEC (three days after the sale hearing) to finish the basement for a price of \$295,000 and (iii) another February 11, 2010 proposal by FEC for three additional upgrades totaling \$21,950. In short, as of mid-February 2010, FEC had provided proposals to Mr. Jarmark for work totaling \$516,900. It must also be noted that these proposals are completely inconsistent with Scott's claim that he thought FEC was being liquidated.

None of this work was performed by FEC. Instead, Scott caused these corporate opportunities to be transferred to Newco. On or about February 27, 2010, Newco opened a bank account at JP Morgan Chase and on March 9, 2010, one day after FEC closed the sale of 5 Oak Road to Mr. Jarmark, the first two wire transfers were made to Newco's bank account. These wire transfers totaled \$165,000 and carried the descriptions "Completion of 5 Oak Road" and "Basement Contract," the same work Scott proposed to Mr. Jarmark on FEC letterhead. Thereafter, from March 19, 2010 through May 12, 2010, an additional \$451,860.15 was paid into the Newco bank account on account of the services performed by Newco. In this same time period neither the UST nor the creditors were made aware of the existence of Newco or the contracts performed by Newco.

In the aggregate, the total funds received by Newco for work done at 5 Oak Road amounted to \$618,860.15. The actual profit lost by FEC as a consequence of Scott's conduct was not part of the proofs offered by the UST, presumably because the degree of injury suffered by creditors is not an element of § 727(a)(2). The focus of that subsection is the intent to "hinder, delay or defraud," and an act in furtherance of that intent. Nonetheless, the total value

of the contracts Scott diverted to Newco permits the inference that Scott acted for his own benefit and perhaps that of his minor son. This, in turn, permits the inference that Scott acted with actual fraudulent intent. See, Matter of Chastant, 873 F.2d 89, 91 (5th Cir. 1989). Thus, the court finds that with the intent to defraud FEC creditors, Scott concealed the existence of Newco and the transfer of the FEC corporate opportunities (the contract proposals that were or could have been made by FEC) to Newco.

As a debtor in possession, FEC was a fiduciary to its creditors and had the same duties as a trustee. 11 U.S.C. § 1107(a). In its role as a debtor in possession, FEC had an independent duty to protect and conserve its property for the benefit of its creditors. Northwestern Nat'l Bank of St. Paul v. Halux, Inc. (In re Halux), 665 F.2d 213, 216 (8th Cir. 1981); Devers v. Bank of Sheridan (In re Devers), 759 F.2d 751, 754 (9th Cir. 1985); In re Anchorage Nautical Tours, Inc., 145 B.R. 637, 642-43 (9th Cir. B.A.P. 1992). As FEC's only officer, sole member and person responsible for managing FEC's business, Scott was subject to the same fiduciary responsibilities. See, Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 355 (1985) ("noting that the debtor's directors bear essentially the same fiduciary obligation to creditors and shareholders as would the trustee for a debtor out of possession.") Scott disregarded his responsibility to FEC's creditors by diverting the opportunity to contract with Mr. Jarmark from FEC to Newco. The concealment of that diversion of corporate opportunity was plainly done with the intent to defraud the creditors of FEC because the only persons who benefitted by the diversion was Scott and his minor son as the sole members of Newco.

"Concealment is defined as preventing the discovery of, fraudulently transferring or withholding knowledge or information required to be made known." In re Corona, 2010 WL 1382122 at *13 (Bankr. D.N.J. 2010 April 5, 2010). As just discussed, the steps taken by Scott,

particularly after the closing on 5 Oak Road, demonstrate that he intended to withhold and did withhold from FEC's creditors information that would have revealed the transfer of the contract proposals initiated by FEC. Scott's improper intent to defraud creditors of FEC is apparent from the fact that no consideration flowed to FEC from the transfer of the corporate opportunities to Newco. "An intent to hinder, delay or defraud creditors will further be presumed when the debtor gratuitously transfers valuable property, or transfers property for inadequate consideration." Id.

It does not matter that a binding contract had not been concluded with FEC when Scott, acting on behalf of Newco, entered into a contract with Mr. Jarman. Notably, that contract was the very same contract proposed by FEC. Scott simply struck through FEC's name, replaced it with Newco's name, and executed the contract on behalf of Newco. It is also noteworthy that Newco's contract with Mr. Jarman was executed the day after FEC and Mr. Jarman completed the sale of 5 Oak Road. From these facts alone the court can reasonably infer that Scott intended to conceal the transfer of FEC's proposed contract with Mr. Jarman to Newco.

CONCLUSION

Based on the Debtor's conduct in the FEC case and pursuant to 11 U.S.C. §§ 727(a)(2)(A) and 727(a)(7), the Debtor's discharge is denied.

Dated: December 2, 2013

_____/S/_____
NOVALYN L. WINFIELD
United States bankruptcy Judge