UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 16-50206
	)	Chapter 7
TUCKER DON PANKOWSKI	)	
SSN/ITIN xxx-xx-3166	)	
	)	
Debtor.	)	
	)	
ACE OILFIELD RENTALS, LLC	)	Adv. No. 16-5008
	)	
Plaintiff	)	
-vs-	)	
	)	DECISION RE: DENIAL OF DISCHARGE
TUCKER DON PANKOWSKI	)	
	)	
Defendant.	)	

The matter before the Court is Plaintiff Ace Oilfield Rentals, LLC's complaint seeking a denial of Debtor-Defendant Tucker Don Pankowski's discharge of debts.[1] This is a core proceeding under 28 U.S.C. § 157(b)(2). The Court enters these findings and conclusions pursuant to Fed.R.Bankr.P. 7052. For the reasons discussed below, the Court will deny Pankowski's discharge pursuant to 11 U.S.C. § 727(a)(2)(A) and § 727(a)(4)(A).

I.

Tucker Don Pankowski and Douglas John Kerkvliet formed, owned, and operated Western Dakota Welding and Fabrication, LLC ("Western"). Pankowski held

[1]Because Pankowski's discharge will be denied, the Court does not reach Ace Oilfield Rentals, LLC's alternative request that its particular claim be excepted from discharge pursuant to 11 U.S.C. § 523(a)(2), (4), or (6).

a 49% interest and Kerkvliet held the remainder.[2] Ace Oilfield Rentals, LLC ("Ace") contracted with Western to fabricate trailer-mounted hydraulic catwalks for "wrangling pipe" over oil rigs. Though not referenced in the parties' Manufacturing Agreement, a manufactured unit became known as a "HydraCat."[3] The Manufacturing Agreement provided Western would be Ace's "sole and exclusive Manufacturer" of the HydraCats and also provided:

> **8. Confidentiality**
> Manufacturer in the course of performing the Services hereunder may gain access to certain confidential or proprietary information of the Client. Such "Confidential Information" shall include all information concerning the business, affairs, products, marketing, systems, technology, customers, end-users, financial affairs, accounting, statistical data belonging to the Client and any data, documents, discussion, or other information developed by Manufacturer hereunder and any other proprietary and trade secret information of Client whether in oral, graphic, written, electronic or machine-readable form. The Manufacturer agrees to hold all such Confidential Information of the Client in strict confidence and shall not, without the express prior written permission of Client, (a) disclose such Confidential Information to third parties; or (b) use such Confidential Information for any purposes whatsoever, other than the performance of its obligations hereunder. Manufacturer shall hold its employees to the same terms of this confidentiality agreement. The obligations under this Section shall survive termination or expiration of this Agreement.

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[2]Exhibit A to Western's Operating Agreement indicates Kerkvliet made a $150,000.00 capital contribution for his 51% interest and Pankowski made a $5,000.00 capital contribution for his 49% interest. This seeming disparity was not addressed on the record.

[3]Some documents refer to a unit as a "Hydra Cat," with a space in the middle, and less often as a "Hydra-Cat."

> **9. Non-Compete Clause**
> In exchange for the independent and valuable consideration described above, Manufacturer will not solicit, contact, or communicate with any person, company, or business that is or was a client, customer, or prospective client of Ace Oilfield Rentals, LLC. Manufacturer will not engage in the Same or Similar Business as the Client. If client or customer wants to purchase a hydraulic catwalk rather than rent or lease from Ace Oilfield Rentals, LLC, Manufacturer will in advance, notify Client of situation so that Client can rectify situation with the customer. If situation cannot be rectified, Manufacturer will obtain a written statement from Client agreeing to the sale.
> . . . .
>
> **15. Right of First Refusal**
> Manufacturer agrees to give Client the right of first refusal for any orders of hydraulic catwalks to any other customers of Manufacturer. Client can refuse the production of one and still reserve the right to accept production of the next. In the event of multiple orders to Manufacturer, by customers other than Client, Manufacturer agrees to give Client the opportunity to purchase the next unit and all subsequent units. For example, if another customer wants to purchase two units, Manufacturer can only agree to build one unit for the other customer after Client has declined that unit in writing and the second unit requested cannot be built for the other customer unless Client declines that unit in writing as well.

Pankowski and Kerkvliet were both aware that under the Manufacturing Agreement Western was not authorized to manufacture and sell HydraCats on its own.

Over the next 18 months, Western manufactured ten HydraCats for Ace that Ace then leased, sold, or retained for later sale or leasing. Western added to its building in the second half of 2014 to foster production.

In late November 2014, while Western was manufacturing its eleventh

HydraCat for Ace, Ace ordered two more HydraCats from Western. Three days later, Ace cancelled the order in light of waning drilling in nearby oil fields. Western returned the $240,000.00 deposit Ace had made for the two new units. Both Western and Ace hoped the situation would improve sufficiently to warrant the manufacturing of additional HydraCats in the future, though at some point Pankowski and Kerkvliet began, on the advice of counsel, to consider the Manufacturing Agreement with Ace to have ended due to Ace's cancellation of its November 2014 order. Western completed the eleventh HydraCat that Ace had ordered earlier, and Ace completed payment and later took possession of that unit.[4]

Though it did not have an active order from Ace, Western manufactured two more HydraCats in late 2014 and the first half of 2015. Western sold both HydraCats, the first directly to Consolidated Wellsite Services, LLC ("Consolidated Wellsite") for $200,000.00 and the second directly to Continental Industries Field Services, LLC ("Continental Industries") for $162,500.00. Consolidated Wellsite had been in negotiations with Ace since late 2014 to acquire another HydraCat through Ace, but instead bought one directly from Western, making its final payment on February 13, 2015. Ace learned of Western's direct sale to Consolidated Wellsite in December 2014. Western did not give Ace the opportunity to purchase this HydraCat first, contrary to the terms of the Manufacturing Agreement. When Ace learned of the sale, one of Ace's principals contacted Kerkvliet by telephone, requesting Ace's lost

[4]How and when Ace obtained possession of the eleventh HydraCat appears to have been the subject of one count of Ace's Oklahoma lawsuit but was not part of its complaint in this adversary proceeding.

profit from the sale and assurances a direct sale would not happen again. Ace did not receive either.

Regarding the HydraCat sold to Continental Industries, Western had been in negotiations with Continental Industries since about March 2015. Western sent an unsigned letter to Ace dated March 13, 2015 advising Ace it could purchase this unit for $203,000.00.[5] Ace did not respond directly, but forwarded the letter to its attorney. Continental Industries made a deposit in August 2015 for a unit and completed payment in September 2015. Though the record is unclear regarding when Ace first informed Pankowski and Kerkvliet that Ace would seek legal recourse regarding Western's direct sales of HydraCats to Consolidated Wellsite and Continental Industries, it appears a heated telephone call on this topic involving Pankowski, Kerkvliet, and a representative of Ace occurred in April 2015, after Ace received the March 13, 2015 letter from Western.

At some point, Western began advertising, through its website, the sale of HydraCats. Western's website did not, as of April 14, 2015, mention Western's affiliation with Ace, but instead stated: "Buy direct from the manufacturer and SAVE!" Its website as of April 14, 2015 also referred to the HydraCat as "our machine."

Ace commenced litigation against Western, Pankowski, and Kerkvliet before an

[5]In a June 6, 2017 deposition, Kerkvliet testified the correspondence to Ace was sent relative to Western's sale of a HydraCat to Consolidated Wellsite. The record otherwise indicates the correspondence related to Western's sale of a HydraCat to Continental Industries.

Oklahoma state court on May 13, 2015. The state court action was removed to the United States District Court for the Western District of Oklahoma on June 19, 2015. Discovery continued over the next several months, with the federal district court setting a discovery completion deadline of August 4, 2016.

Though when the idea was formulated is not known, Pankowski and Kerkvliet decided they would extinguish Western and Pankowski would continue the business as a different company. They also decided to file personal bankruptcy cases. According to Pankowski in his deposition testimony given June 6, 2017, Kerkvliet initially approached Dacotah Bank regarding financing for Pankowski to buy out Kerkvliet's interest in Western, and it was Kerkvliet who filled out the Personal Financial Statement Pankowski signed and later gave to First Interstate Bank, the eventual lender.

Pankowski's Personal Financial Statement was dated February 18, 2016 and was on a Dacotah Bank form. Pankowski's and his spouse's names were on the first page, but only Pankowski signed it. In the Personal Financial Statement, Pankowski valued his 49% interest in Western at $294,000.00. He further stated his annual earnings were $69,000.00 and the couple's net worth was $591,500.00. Under "Assets," Pankowski valued "Other Real Estate Owned[,] Sch[.] 8" at $128,000.00; this was property separate from the couple's "Primary Residence[,] Sch[.] 6[,]" which Pankowski valued at $235,000.00. Schedule 6 itself matched Pankowski's disclosure under "Assets" regarding the couple's primary residence. Schedule 8 was not consistent with his disclosures under "Assets." Pankowski did not include in

Schedule 8 the "Other Real Estate Owned" disclosed under "Assets" valued at $128,000.00. Instead, in Schedule 8, Pankowski listed 11953 Pleasant Valley Road in Custer with a value of $200,000.00, stated the title was in his name, and stated the purchase date was May 25, 2015. This Pleasant Valley Road address is the address for the real property owned by the business. Pankowski's Personal Financial Statement included, as a liability, a personal guaranty for $190,000.00. He did not disclose on the Personal Financial Statement any "Lawsuits Existing/Pending."

In his deposition, Pankowski testified that while his Personal Financial Statement had originally been completed for Dacotah Bank, he obtained the loan from First Interstate Bank because it "had a better deal for us[.]"[6] On February 26, 2016, Kerkvliet provided First Interstate Bank some Profit & Loss statements for Western. These documents stated Western had net income of $201,780.62 in 2013, $463,495.62 in 2014, and $274,353.66 in 2015.

At Pankowski's request, an attorney with the Rapid City law firm of Gunderson, Palmer, Nelson & Ashmore, LLP did the legal work necessary to create a new limited liability company. By Articles of Organization signed and dated by the attorney on March 22, 2016 and filed with the South Dakota Secretary of State on March 24, 2016, WesDak Welding and Diesel, LLC ("WesDak") was formed. Gunderson, Palmer paid an extra fee to the South Dakota Secretary of State to expedite the processing.

[6]Pankowski testified in his deposition that he gave Dacotah Bank the Personal Financial Statement in February 2016 because "this is when we [sought credit to] put the addition on our shop[,]" but according to the business's website, the addition was completed in December 2014.

The Articles of Organization identified Pankowski as the initial manager. Pankowski testified at trial that Thomas Collings, Keith A. Geditz, and he were WesDak's members. Collings was an employee of Western at the time. Pankowski also testified he assumed a 75% interest in WesDak; the Court was unable to find in the record WesDak's membership agreement or other documentation regarding Collings's and Geditz's split of the remaining 25% interest.

A representative of First Interstate Bank evaluated the business property on March 25, 2016. The resultant Commercial Real Estate Evaluation dated April 6, 2016, which was created for the bank's own consideration, listed WesDak as the real property owner and borrower. The evaluation also stated:

> One owner is purchasing the other 49% of the business from the other owner at the present time. They have agreed on a purchase price of $385,000 for the 49% ownership interest or approximately $770,000 for the entire company. They have not settled on the specific allocation of the purchase price, but it includes real estate, inventory, and equipment.

Thus, the evaluation incorrectly indicated a purchase of existing interests was taking place and erroneously indicated Pankowski was transferring his interest to Kerkvliet. Further, the evaluation did not recognize WesDak was a newly created entity, Kerkvliet held no formal interest in WesDak, or the real property and other business assets were still owned by Western as of March 25, 2016. For its in-house consideration of the proposed loan, First Interstate Bank determined the mortgaged real property was worth at least $500,000.00.[7] First Interstate Bank also determined,

[7]Based on definitions and statements in the evaluation, it appears the $500,000.00 was for the real property and building only. It does not appear the

after reviewing the 2015 Profit & Loss statement provided by Kerkvliet, the business had sufficient cash flow to service a new loan.

By check dated March 31, 2016, and with the notation "Set up new bank account[,]" Western transferred $5,000.00 to First Interstate Bank, and First Interstate Bank used the funds to open a new account for WesDak. WesDak borrowed $385,943.56, plus $200.00 for fees, from First Interstate Bank on April 13, 2016. With the loan funds provided by First Interstate Bank, Western's loan balance of $383,297.56 with Dacotah Bank was paid in full.[8] Western provided $2,471.76 in cash to pay real estate taxes. First Interstate Bank took a mortgage from WesDak dated April 13, 2016, and Pankowski, Collings, and Geditz each gave First Interstate Bank a Commercial Guaranty regarding WesDak's new loan.[9]

On April 13, 2016, Kerkvliet signed, on Western's behalf, a Warranty Deed transferring the business real property to WesDak. Attorney Gerald M. Baldwin of Custer prepared the Warranty Deed. The Warranty Deed was notarized on April 13, 2016 and recorded on April 14, 2016.[10] First Interstate Bank filed its Financing

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evaluator also included the value of the ongoing business.

[8]Settlement Statements included in a joint exhibit indicate that at closing two mortgages held by Dacotah Bank and real estate taxes owed to the Custer County Treasurer were paid. The statements also set forth closing costs of $2,846.00, which WesDak paid.

[9]Only Pankowski's signed guaranty was made a part of the record, but the Business Loan Agreement refers to guaranties by all three members of WesDak. Heidi McBride, a commercial loan officer with First Interstate Bank, also testified all three members of WesDak gave the bank a personal guaranty.

[10]The Warranty Deed at Joint Exhibit 6 does not contain the register of deeds's recording stamp; the Warranty Deed at Exhibit L of Pankowski's deposition does.

Statement with the South Dakota Secretary of State on April 14, 2016.

Contrary to affirmative disclosure requirements in the Business Loan Agreement with First Interstate Bank, WesDak and its members did not disclose Ace had pending litigation against Pankowski or that Pankowski planned to soon file bankruptcy. According to Heidi McBride, a commercial loan officer with First Interstate Bank, she would liked to have known about both matters when the bank was deciding whether to make a loan to WesDak.

WesDak and Western executed a separate Asset Purchase Agreement wherein WesDak took Western's assets but not its liabilities. The Asset Purchase Agreement, which had been prepared for WesDak by an attorney with Gunderson, Palmer, was dated March 31, 2016 in its opening paragraph but was not signed by Pankowski, as WesDak's manager, and Kerkvliet, as Western's officer, until May 18, 2016. Only WesDak was represented by counsel regarding the agreement. In the Asset Purchase Agreement, Western did not disclose Ace's claim against it. Instead, the document included the following paragraphs:

> 7.5 **ABSENCE OF UNDISCLOSED CLAIMS OR LIABILITIES**. Except as disclosed on Exhibit 7.5, there are no material claims or liabilities of any nature, whether accrued, not accrued, absolute, contingent or otherwise, which exist presently or which may arise in the future as a result of activities of [Western] or the Business on or prior to the Closing Date which would impose any transferee liability on [WesDak].
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> 7.6 **LITIGATION**. Except as disclosed on Exhibit 7.6, there is no governmental or private litigation, investigation, proceeding, claim, suit or audit of

> any kind whatsoever, pending against [Western] or the Business, including any mechanic's lien pending or which has been filed. Except as disclosed on Exhibit 7.6, there is no private person, other entity, or governmental agency that has any basis for any cause of action, whether or not known or asserted, which would cause [Western], the Business or [WesDak], as a transferee, to suffer any loss or liability not disclosed herein.

Neither an Exhibit 7.5 nor an Exhibit 7.6 was appended to the record copy of the Asset Purchase Agreement, and Kerkvliet was unable to affirm an Exhibit 7.6 ever existed. The consideration stated in the Asset Purchase Agreement was $384,936.44–a sum close to the $383,297.56 WesDak borrowed and used to pay in full Western's loan from Dacotah Bank.

Kerkvliet also signed a Bill of Sale dated March 31, 2016 on Western's behalf. Therein, numerous items of personalty were listed that Western was transferring to WesDak. The Bill of Sale stated the consideration is "set forth in the attached Asset Purchase Agreement[.]" The Asset Purchase Agreement included various items of personalty as part of the "Purchased Assets" being sold for $384,936.44. Neither the Bill of Sale nor the Asset Purchase Agreement included Western's bank accounts, cash on hand, or accounts receivable as personalty being transferred to WesDak. What those amounts were on March 31, 2016 and what happened to those assets is not of record.

Western filed Articles of Termination with the South Dakota Secretary of State on May 5, 2016 using the secretary's form. According to the completed form, Western had been dissolved on April 1, 2016. Kerkvliet signed and dated the form

on April 28, 2016.

The Court was unable to find anything in the record showing Collings or Geditz provided capital or other consideration for their interests in WesDak. The Court was also unable to find anything in the record showing Pankowski provided capital or other consideration for his interest in WesDak or find anything explaining how his 49% interest in Western morphed into his 75% interest in WesDak.

In mid-2016 in the Oklahoma litigation, Ace filed a summary judgment motion. Ace was also scheduled to take Pankowski's deposition on July 27, 2016 and Kerkvliet's deposition on August 2, 2016.

On July 25, 2016, Pankowski and Kerkvliet each commenced a chapter 13 bankruptcy case in the District of South Dakota; their spouses did not file with them. Pankowski filed incomplete schedules and statements with his petition. However, he had reviewed and signed only his petition at that time, although his electronic signature appeared on all the documents. On his petition, Pankowski estimated his assets at less than $50,000.00 and his liabilities between $500,000.00 and $1,000,000.00.

Both Pankowski and Kerkvliet switched counsel of record in their bankruptcy cases on August 23, 2016. Kerkvliet converted his bankruptcy case to chapter 7 on August 31, 2016, and Pankowski converted his bankruptcy case to chapter 7 on September 1, 2016. The record indicates their first bankruptcy attorney, Brian L. Utzman, initiated the two bankruptcy cases at the request of Pankowski's and Kerkvliet's subsequent counsel of record, Stan H. Anker of Anker Law Group, P.C.,

because Attorney Anker was on vacation when Pankowski and Kerkvliet wanted to file their petitions.[11]

Pankowski filed several schedules and statements labeled "amended" on September 2, 2016.[12] In the attendant summary, Pankowski stated the value of his scheduled assets was $125,391.47, and his total scheduled liabilities were $907,521.06, including Ace's claim, which Pankowski described as a contingent, unliquidated, and disputed unsecured claim for $300,000.00. He scheduled Kerkvliet and Western as codebtors on Ace's claim.

On his amended schedule A/B, Pankowski claimed a 75% ownership interest in WesDak and valued his interest at zero. He valued his interest in vehicles and other personalty at $35,391.47. He valued his half interest in a house at $90,000.00.

In his amended statement of financial affairs:

(a) Pankowski stated he earned $226,361.00 from operating a business in 2014 and $59,822.00 from operating a business in 2015, and he listed his 2016 year-to-date income from operating a business at $33,190.74;

(b) Pankowski stated he did not make any payments or transfer any property

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[11]Anker Law Group, P.C. was advising Kerkvliet regarding the Oklahoma litigation; it is not clear whether the firm was also counseling Western and Pankowski on that matter. Since Anker Law Group, P.C. is not a single attorney firm and does a substantial amount of bankruptcy work, it is unclear why an attorney outside the firm was used to complete and file Pankowski's and Kerkvliet's chapter 13 petitions and then the bankruptcy cases were promptly turned over to Anker Law Group, P.C.

[12]Pankowski filed two motions seeking an extension of time to file all his required schedules and statements. Neither motion was contested. Since Pankowski had already filed schedules and statements with his petition and since the record did not then reflect Pankowski had not signed the schedules and statements that were filed with his petition, the Court granted the first extension only for the filing of Pankowski's chapter 13 plan and granted the second extension only as to his chapter 13 plan and "any list, schedule, statement, or payment advices not previously filed[.]"

on account of a debt that benefitted an insider;

(c) as a sale, trade, or other transfer of property other than in the ordinary course of business within two years of his petition, Pankowski listed only an apparent sale–the type of transfer was not clear–of a pickup bed camper to "Jan" of Sturgis, South Dakota, in June 2016 for $1,500.00; and

(d) Pankowski stated he had not given anyone a financial statement about his businesses–Western and WesDak–within the preceding two years.

In his amended statement of financial affairs, Pankowski did not disclose any wage income for 2014, 2015, or 2016 to the date of his petition. He did not discuss anywhere in his amended statement of financial affairs the extinguishment of Western, the transferring of its assets to WesDak, or the morphing of his 49% interest in Western into his 75% interest in WesDak in the months preceding his bankruptcy–he just listed each business, the beginning and ending dates for Western and a beginning date for WesDak. At question 28, Pankowski also did not disclose he gave First Interstate Bank, for the purpose of the business loan, his Personal Financial Statement dated February 18, 2016 that contained valuations of his interest in Western.

Pankowski and his spouse's 2015 federal income tax return showed Pankowski had wage and salary income of $45,630.00 and schedule E business income from Western of $72,985.00. As noted above, Pankowski did not include his 2016 wage income on his amended statement of financial affairs, but he did reflect it on his amended schedule I, where Pankowski stated his wage income was $3,803.00 per month and his net income from operating a business was $5,141.00 per month.

Pankowski filed an amended schedule A/B on October 13, 2016. Via the

amendment, he added a parcel of real property in Custer County, South Dakota, and valued his half interest at $1,000.00. Kerkvliet similarly amended his schedule A/B to add to his assets the other half interest in this same real property. Pankowski testified the land was adjacent to their business property but was not used by the business. Pankowski did not amend any other schedule or statement in the subsequent two years of his bankruptcy case.

Pankowski, in his June 6, 2017 deposition, acknowledged that with the transfer of all Western's assets to WesDak, Western would no longer have any assets from which Ace could be paid on its pending claim against Western, though he denied thwarting Ace was the purpose of the transfer. Pankowski acknowledged in his deposition and at trial he filed bankruptcy to "get out" of Ace's lawsuit in Oklahoma and avoid the costs of the Oklahoma litigation. Pankowski further testified at trial that Western's assets were transferred to WesDak so Kerkvliet could leave the business, in part due to Kerkvliet's eye health issues and the lack of work for Kerkvliet. Pankowski also testified Western was terminated and WesDak was created so the business name could feature "Diesel."

As of January 9, 2017, WesDak's website[13] reflected Pankowski, Collings, and Geditz as the co-owners and Kerkvliet's spouse as the office manager. The website still listed Kerkvliet as a contact person for buyers interested in a HydraCat. A picture

[13]At trial, Ace's counsel referred to Plaintiff's Exhibit 9 as pages from WesDak's website as of January 9, 2017, but the Court was unable to locate that date on the exhibit itself. Arthur Lee Puckett, III, a representative of Ace, testified he had taken the screenshots of the website on that date.

of the shop building on the website showed the building had "Western Dakota Welding" for outside signage. As of that date, WesDak's website address remained *WesternDakotaWelding.com*, and WesDak still used Western's Facebook page.

As of June 3, 2017, WesDak's website remained similar: the website address was still *WesternDakotaWelding.com*; WesDak still used Western's Facebook page; Pankowski and Kerkvliet were listed as WesDak's primary contact persons for inquiries regarding a HydraCat; and a picture on the website indicated the business's building still had "Western Dakota Welding" on it. Pankowski verified the accuracy of the picture during his June 6, 2017 deposition.

In a June 28, 2017 year-to-date profit and loss statement WesDak gave First Interstate Bank, WesDak showed net income of $144,949.74. An attendant June 28, 2017 balance sheet for WesDak attributed $26,652.26 to the Land and Building and $313.37 to Shop Equipment. The balance sheet labeled the remaining Fixed Assets as Purchased Goodwill valued at $327,754.72 and indicated the business was depreciating "Purchased Goodwill for WDWD[.]"

As of September 5, 2017, WesDak was offering its real property and its 12,000 square foot building for sale for $649,000.00. The real property and building were no longer listed for sale at the time of trial, but Pankowski testified at trial he would accept an offer for $649,000.00 because he believed that price would generate sufficient profit to allow him to build another shop. The unpaid balances as of January 9, 2018 on WesDak's two loans from First Interstate Bank (WesDak had obtained a second loan in 2016) were, respectively, $367,688.67 and $15,075.77.

After Pankowski's and Kerkvliet's personal bankruptcy cases were filed, Ace's lawsuit in Oklahoma continued only against Western. Pankowski, Kerkvliet, and Western did not timely disclose to the court in Oklahoma or to Ace that Western had been extinguished or that Western had transferred its assets to WesDak. By order dated September 1, 2017, the United States District Court for the Western District of Oklahoma awarded Ace $454,554.90 in actual damages, $1.00 in nominal damages, $89,952.80 in punitive damages, and $108,390.25 for attorney fees, for a total of $652,898.95. The court also enjoined Western "and all persons or entities acting in concert with it" from manufacturing and selling HydraCats and disseminating any of Ace's "confidential proprietary information and trade secrets." No appeal was taken. Ace has been unable to recover anything on its judgment against Western.

Before this Court, Ace timely commenced separate adversary proceedings against Pankowski and Kerkvliet seeking a denial of their respective discharge of debts under 11 U.S.C. § 727(a)(2) or (4) and seeking, alternatively, to have its claim against each debtor excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6). A joint trial was held August 30, 2018.[14] The matters were taken under advisement after receipt of the trial transcript[15] and the parties' respective written closing arguments.[16]

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[14]In addition to the exhibits admitted at trial (doc. 78), the Court, without objection by the parties, included as part of the record the entire case file for Bankr. Nos. 16-50206 and 16-50207, including proofs of claim and depositions, and the case file for this adversary proceeding and Adv. No. 16-5009, including the depositions.

[15]The transcriptionist erroneously captioned the transcript only for this adversary proceeding, and the transcript is filed only in this adversary proceeding. *See supra* note 14.

[16]At the conclusion of the trial, the Court asked the parties, in their written closing arguments, to "discuss each count of the complaint and each element

II.

A chapter 7 debtor may be denied a general discharge of debts for one of several reasons set forth in 11 U.S.C. § 727(a). The party seeking a denial of a debtor's discharge must prove each element of a particular subsection by a preponderance of the evidence. Fed.R.Bankr.P. 4005; *Kaler v. Charles* (*In re Charles*), 474 B.R. 680, 683-84 (B.A.P. 8th Cir. 2012); *Cadlerock Joint Venture II, L.P. v. Sandiford* (*In re Sandiford*), 394 B.R. 487, 490 (B.A.P. 8th Cir. 2008). Once that party has made a *prima facie* case, the debtor must come forward with evidence to rebut or meet the presumption. The party seeking a denial of the debtor's discharge, however, bears the ultimate burden of persuasion. *Sandiford,* 394 B.R. at 490 (quoting Fed.R.Evid. 301). Section 727(a) is designed to prevent a debtor's abuse of the bankruptcy code, but because a denial of a discharge is a harsh remedy, the provisions of § 727(a) are strictly construed in favor of the debtor. *Snyder v. Dykes* (*In re Dykes*), 590 B.R. 904, 909 (B.A.P. 8th Cir. 2018) (quoting therein *Korte v. Internal Revenue Service* (*In re Korte*), 262 B.R. 464, 471 (B.A.P. 8th Cir. 2001)). This harsh remedy must be imposed on Pankowski in this case, pursuant to both 11 U.S.C. § 727(a)(2)(A) and 11 U.S.C. § 727(a)(4)(A).

Under § 727(a)(2)(A), a debtor may be denied a general discharge of debts if

> the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has

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regarding the code sections under which [Ace] seeks relief." In large part, however, each party's primary focus was not on § 727(a)(2)(A) or (a)(4)(A).

> 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[.]

The elements under § 727(a)(2)(A) are: (1) the subject action took place within twelve months prior to the bankruptcy petition date; (2) the debtor took the subject action; (3) the debtor did so with the intent to hinder, delay, or defraud creditors; and (4) the subject action consisted of transferring, removing, destroying, or concealing property of the debtor. *City Nat. Bank of Fort Smith, Arkansas v. Bateman* (*In re Bateman*), 646 F.2d 1220, 1222 (8th Cir. 1981); *Georgen-Running v. Grimlie* (*In re Grimlie*), 439 B.R. 710, 716 (B.A.P. 8th Cir. 2010).

When considering whether the debtor had the requisite fraudulent intent, the Court may consider any factors bearing upon the issue, including the oft-utilized "badges of fraud," with a confluence of several badges being sufficient for a presumption of fraudulent intent to arise. *Ritchie Capital Management, LLC v. Stoebner*, 779 F.3d 857, 864 (8th Cir. 2015); *Doeling v. O'Neill* (*In re O'Neill*), 550 B.R. 482, 499 (Bankr. D.N.D. 2016). As may be relevant here, these badges of fraud include, but are not limited to: (1) the lack or an inadequacy of consideration for the subject transfer or transfers; (2) a family, friendship, or other close relationship between the debtor and the transferee; (3) the debtor's retention of the possession, benefit, or use of the property in question; (4) the financial condition of the debtor before and after the transfer; (5) a transfer of all or substantially all the debtor's property; (6) the secrecy of the transfer; (7) the existence or the cumulative effect of

a pattern or series of transactions or a course of conduct after the pendency or threat of legal action; and (8) the general chronology of events and transactions under inquiry. *See, e.g.*, *Sears v. Sears*, 863 F.3d 980, 985 (8th Cir. 2017); *Stoebner*, 779 F.3d at 861-65; *Kelly v. Armstrong*, 141 F.3d 799, 802 (8th Cir. 1998); *O'Neill*, 550 B.R. at 499; *Nielsen v. Logs Unlimited, Inc.*, 839 N.W.2d 378, 381-82 (S.D. 2013) (citing S.D.C.L. § 54-8A-4(b)). Once the party seeking a denial of the debtor's discharge has identified several badges of fraud and established a presumption of fraudulent intent, the debtor must go forward and establish a "legitimate supervening purpose" for the transfer. *Stoebner*, 779 F.3d at 862.

A presumption of fraudulent intent also arises when a debtor has transferred valuable property without payment. *Bateman*, 646 F.2d at 1222 (quotations therein omitted). If the party seeking a denial of the debtor's discharge establishes a gratuitous transfer occurred, the burden of production then shifts to the debtor to prove his or her intent in making the transfer was not to hinder, delay, or defraud creditors. *Id*. at 1222-23; *Grimlie*, 439 B.R. at 716.

Here, the record shows, without dispute, Pankowski's interest in Western was extinguished, Pankowski and Kerkvliet jointly took the steps necessary to extinguish their interests in Western, and they took this action in the spring of 2016, only a few months before filing bankruptcy. Thus, the first, second, and fourth elements of § 727(a)(2)(A) are satisfied.

The third element–whether Pankowski extinguished his interest in Western with the intent to hinder, delay, or defraud his creditors–is also satisfied. The confluence

of relevant circumstances is overwhelming, with most wearing a badge of fraud.

WesDak did not purchase Western's business as a whole–WesDak just took ownership of Western's assets and took over the business's mortgage debt through a new lender. WesDak did not assume Western's other liabilities.

A new legal entity did not need to be created for Kerkvliet's interest in Western to be bought out, contrary to one of Pankowski's and Kerkvliet's claimed reasons for extinguishing Western. Instead, Western's Operating Agreement provided for that contingency. A new legal entity also did not need to be created for the business name to be changed to include "Diesel."

As he admitted, Pankowski did not receive any consideration for his interest in Western. While Pankowski's 49% interest in Western morphed into a 75% interest in WesDak, there is nothing in the record showing WesDak or its principals–Pankowski, Collings, and Geditz–provided any consideration to Western or its principals–Pankowski and Kerkvliet–for the equity in the assets WesDak received or that their capital contributions were integral to WesDak's receiving financing to pay off Western's debt at Dacotah Bank. There is nothing in the record to show Pankowski, Collings, or Geditz even provided any separate capital for their interests in WesDak.

Pankowski and Kerkvliet's actions regarding Western and Western's assets produced several benefits for themselves, each an insider of the other. Pankowski benefitted from Western's extinguishment by acquiring, without any demonstrated consideration, a larger interest in the same business operation under a different

company name. Kerkvliet benefitted from the extinguishment of Western and WesDak's assumption of Western's mortgage debt by having his personal guaranty of Western's debt extinguished. Pankowski and Kerkvliet benefitted by having a key asset each held–his respective interest in Western–extinguished should Ace be successful in its Oklahoma lawsuit. Most important, Western's creditors received no benefit from Western's extinguishment since the equity in Western's assets was apparently transferred to WesDak for no consideration.

Though Western was extinguished, the business continued under the new limited liability company's name without interruption, as Pankowski acknowledged in his deposition. Pankowski continued to earn income from that continued operation.

Pankowski's interest in Western constituted Pankowski's principal asset; thus, the extinguishment of that interest impacted his financial condition, and the morphing of that interest into an interest in WesDak only muddled his financial affairs. In fact, the entire record indicates muddling theirs and Western's financial affairs may have been Pankowski and Kerkvliet's principal reason for extinguishing Western and then filing personal bankruptcy cases, all while in the midst of Ace's lawsuit against Western and themselves individually. Both Pankowski and Kerkvliet admitted Western's extinguishment would thwart the collection of any judgment Ace obtained against Western.

Another badge of fraud is Pankowski and Kerkvliet's extinguishment of their interests in Western, their transfer of Western's assets to WesDak, and Pankowski's creation of WesDak before he and Kerkvliet each filed bankruptcy were not done

openly: The existence of Ace's lawsuit was not disclosed to the lender that provided takeout financing for WesDak; Pankowski was unable to affirm the attorney who prepared the Asset Purchase Agreement for WesDak knew Ace had brought suit against Western; and Western, Pankowski, and Kerkvliet failed to disclose the extinguishment of Western to the court in Oklahoma. In addition, four different law firms were involved in the creation of WesDak, the termination of Western, the transfer of Western's assets to WesDak, and Pankowski's and Kerkvliet's bankruptcies. Further, Pankowski and Kerkvliet, as Western's members, did not ensure Western was dissolved in an orderly manner following the precepts of S.D.C.L. ch. 47-34A, art. 8. In particular, the record does not show Western's assets were applied against Western's obligations to its creditors, as required by § 47-34A-806, or that notice of Western's termination was given to claimants under either § 47-34A-807 or § 47-34A-808. Instead, formalities were minimized or bypassed in Pankowski and Kerkvliet's haste to extinguish Western, transfer Western's assets to WesDak, and then file their personal bankruptcies.

A final notable badge of fraud is Pankowski and Kerkvliet's extinguishment of Western, Pankowski's creation of WesDak, Pankowski and Kerkvliet's transfer of Western's assets to WesDak, and Pankowski's and Kerkvliet's bankruptcy petitions all occurred as Ace's legal action in Oklahoma was nearing a dispositional stage. Ace's summary judgment motion was pending and depositions of Pankowski and Kerkvliet were scheduled to be taken within a matter of days.

Pankowski did not establish on the record a legitimate supervening purpose for

extinguishing his interest in Western. *See Allred v. Nickeson* (*In re Nickeson*), Bankr. No. 13-10137, Adv. No. 14-1004, 2015 WL 9957348, at *9-10 (Bankr. D.S.D. May 28, 2015) (though "[t]here is no bright line test for what constitutes a legitimate supervening purpose[,]" the defendant in a trustee's fraudulent transfer action failed to adequately rebut the presumption of fraud). *Cf. Luker v. Eubanks* (*In re Eubanks*), 444 B.R. 415, 424-25 (Bankr. E.D. Ark. 2010) (the debtor's testimony established a legitimate supervening purpose for the transaction at issue where the court found the debtor had a "strong personal character and a commitment to full disclosure" and where the debtor abstained from shading or reframing "the circumstances that were to be construed against him"). Pankowski's and Kerkvliet's testimony that Western was extinguished and WesDak was created because Kerkvliet wanted out of the business due to a lack of work for Kerkvliet and Kerkvliet's eye health issues and because Pankowski wanted to add "Diesel" to the business name was not credible. Kerkvliet and his spouse remained active in the business long after Pankowski and Kerkvliet extinguished Western and had all Western's assets transferred to WesDak. As noted above, Western's Operating Agreement provided the means for a transfer of interests without the dissolution of Western, and a name change for Western could have incorporated "Diesel." Moreover, the addition of "Diesel" to the business name was not shown to be vital to the business since a year after WesDak was created the business's building still had Western's name on it and the business's Facebook page and website address had not been changed to include "Diesel." Finally, if Pankowski and Kerkvliet actually needed to terminate Western for these claimed reasons, they

could have done so while still complying with S.D.C.L. ch. 47-34A, art. 8.

III.

The record also shows Pankowski should be denied a discharge of debts under 11 U.S.C. § 727(a)(4)(A), which provides a debtor may be denied a discharge if "the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account[.]" The elements of this subsection are: (1) the debtor made a statement under oath; (2) the statement was false; (3) the debtor knew the statement was false; (4) the debtor made the statement with a fraudulent intent; and (5) the statement related materially to the debtor's bankruptcy case. *Lincoln Sav. Bank v. Freese* (*In re Freese*), 460 B.R. 733, 738 (B.A.P. 8th Cir. 2011), *cited in Charles*, 474 B.R. at 684. A debtor's disclosures in the schedules, statements, and other documents the debtor is required to file, as well as the debtor's testimony at the meeting of creditors, constitute oaths for the purposes of § 727(a)(4)(A). *Charles,* 474 B.R. at 684. The debtor's fraudulent intent under § 727(a)(4)(A) may be established by circumstantial evidence. *Home Service Oil Co. v. Cecil* (*In re Cecil*), 542 B.R. 447, 451 (B.A.P. 8th Cir. 2015); *Dantzler v. Zulpo* (*In re Zulpo*), 592 B.R. 231, 255 (Bankr. E.D. Ark. 2018) (badges of fraud may establish fraudulent intent to conceal) (cites therein omitted). Multiple inaccuracies may rise to the level of a reckless indifference to the truth, and may be regarded as intentionally false. *Cecil,* 542 B.R. at 451; *McDermott v. Petersen* (*In re Petersen*), 564 B.R. 636, 650-51 (Bankr. D. Minn. 2017). Finally, the threshold to establish a particular statement was material to the case is "fairly low." *Charles*, 474 B.R. at 686 (quotations therein

omitted). "The subject matter of a false oath is material, and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property." *Cepelak v. Sears* (*In re Sears*), 246 B.R. 341, 347 (B.A.P. 8th Cir. 2000) (quotation therein and additional citations omitted), *cited in Charles*, 474 B.R. at 686. Even the omission of a "relatively modest asset" may result in the denial of a debtor's discharge if made "with knowledge and fraudulent intent." *Charles*, 474 B.R. at 686 (quoting *Sears*, 246 B.R. at 347).

Once the party seeking the denial of a discharge under § 727(a)(4)(A) has established the debtor made a false oath, the debtor must then go forward and show he lacked the requisite fraudulent intent or that the omissions were inadvertent. *In re Loganbill*, 554 B.R. 871, 877 (Bankr. W.D. Mo. 2016); *Watson v. Andrews* (*In re Andrews*), 428 B.R. 855, 861 (Bankr. E.D. Ark. 2010). The debtor's showing must be made with credible evidence, *Velde v. Omang* (*In re Omang*), 403 B.R. 647, 652 (Bankr. D. Minn. 2009); mere unsupported assertions of honest intent are insufficient. *Conine v. Foster* (*In re Foster*), Bankr. No. 2:08-bk-75126, Adv. No. 2:09-ap-07076, 2012 WL 1441418, at *3 (Bankr. W.D. Ark. Apr. 25, 2012).

The Court does not find any fraud arising from Pankowski's filing of his initial, incomplete schedules and statement of financial affairs. It is undisputed Pankowski had not signed these documents before his attorney filed them with Pankowski's petition. Their premature filing was Pankowski's first bankruptcy attorney's transgression, not Pankowski's.

Pankowski's amended schedules and amended statement of financial affairs, however, contain errors that are material and warrant a denial of his discharge. First, in his amended schedule A/B, Pankowski scheduled WesDak with a zero value. However, within a handful of months before filing his bankruptcy petition, Pankowski valued his 49% interest in the business at $294,000.00 in his Personal Financial Statement dated February 18, 2016 and, using the numbers from his Personal Financial Statement, his interest in the business's equity position was at least $107,800.00. Moreover, between February 2016 and his July 25, 2016 petition date, the size of Pankowski's interest in the business increased from 49% to 75%, thus increasing the value of his interest in the business. In support of those numbers, First Interstate Bank, around the same time, valued the business real property and building at $500,000.00 and Pankowski and Kerkvliet told the bank's evaluator they thought the business was worth $770,000.00 as a going concern. The debt against the property was about $384,000.00, thus leaving equity of at least $116,000.00 and as much as $386,000.00. On his amended schedule D, Pankowski himself stated the business's land and shop held equity of $42,283.06. Thus, when considered from several angles, the value of Pankowski's interest in the business was not close to zero on the petition date, and his declaration to the contrary on his amended schedule A/B is fraudulent.

In his February 18, 2016 Personal Financial Statement, Pankowski claimed the market value of his family residence was $235,000.00, with equity of $85,000.00. In his bankruptcy case, Pankowski scheduled the home's value at only $180,000.00,

with equity of $16,454.00. Again, the disparity is significant.

Pankowski's disclosures regarding the real property he and Kerkvliet own jointly that is adjacent to the business property are also problematic. Pankowski failed to include this land on his amended schedule A/B filed on September 2, 2016. When he amended his schedule A/B again on October 13, 2016 to add it, he valued his interest at only $1,000.00. In contrast, in his February 18, 2016 Personal Financial Statement given to First Interstate Bank, Pankowski valued his "Other Real Estate Owned" at $128,000.00. It appears the two parcels are the same since Pankowski did not own the business realty, he had separately listed the family residence on both the Personal Financial Statement and his amended bankruptcy schedules, and he did not disclose in his amended statement of financial affairs at question 18 any real estate transactions between February 2016 and his July 25, 2016 petition date that would have altered his real estate holdings after he signed the Personal Financial Statement but before he filed bankruptcy.[17]

The Court also notes Pankowski's lack of candor in his amended statement of financial affairs regarding his business interests. All Pankowski provided was a starting and ending date for Western and a starting date for WesDak. Pankowski forsook opportunities at questions 8 and 18 to disclose any details surrounding the extinguishment of Western, the transfer of Western's assets to WesDak, his 49% interest in Western becoming a 75% interest in WesDak, and WesDak's payment of

[17]The other possibility is Pankowski, in his Personal Financial Statement at Schedule 8, valued the property he jointly owned with Kerkvliet at $200,000.00, but when everything is considered, that seems less likely.

Western's debt to Dacotah Bank that resulted in the termination of Kerkvliet's personal guaranty of the business debt. Pankowski also failed to disclose he had given First Interstate Bank his Personal Financial Statement that included a valuation of the business. While Pankowski's less than ideal disclosures regarding his business interests in Western and WesDak alone may not warrant a denial of his discharge, they are nonetheless material when considered with his inaccurate scheduling of the value of his business and his real property interests.

Under the circumstances presented and after considering Pankowski's credibility and demeanor at trial, the Court finds Pankowski's significant undervaluation of his business and his real property interests in his schedules and his lack of candor in his amended statement of financial affairs regarding his business interests evidence a reckless disregard for the truth, if not an outright intent to mislead the case trustee, his creditors, and the Court. *Williamson v. Fireman's Fund Ins. Co.*, 828 F.2d 249, 252 (4th Cir. 1987) (because it is difficult to rely only on a debtor's testimony regarding his state of mind, a court may infer fraudulent intent under § 727(a)(4)(A) from all the facts and circumstances in the case), *cited in Robinson v. Rothwell* (*In re Robinson*), 342 Fed. Appx. 235, 236 (8th Cir. 2009), and *Sears*, 246 B.R. at 349-50. The effect of his undervaluations was to shield or hide equity in assets. Pankowski did not timely correct the valuation errors. *See Mertz v. Rott*, 955 F.2d 596, 598-99 (8th Cir. 1992) (a debtor's failure to take advantage of opportunities to correct an error in the record is indicia of a fraudulent intent under § 727(a)(4)(A)). Pankowski, at trial, offered no plausible explanation regarding why the value of his business

interest and his real property interests declined in a few months' time. Further, at trial he displayed no discernable concern regarding the accuracy of his amended schedules and amended statement of financial affairs.

In sum,

> [f]ull disclosure is required, not only to ensure that creditors receive everything they are entitled to receive under the Bankruptcy Code, but also to give the bankruptcy system credibility and make it function properly and smoothly:
>
> > Bankruptcy provides debtors with a great benefit: the discharge of debts. The price a debtor must pay for that benefit is honesty and candor. If a debtor does not provide an honest and accurate accounting of assets to the court and creditors, the debtor should not receive a discharge.

Cecil, 542 B.R. at 454 (B.A.P. 8th Cir. 2015) (quoting therein *Ellsworth v. Bauder* (*In re Bauder*), 333 B.R. 828, 834 (B.A.P. 8th Cir. 2005) (Schermer, J., dissenting)). Here, the record clearly shows Pankowski should not receive a discharge of debts as a benefit when he did not pay for that discharge with honesty and candor regarding his required bankruptcy documents.

IV.

Pankowski has strongly argued judgment should be entered in his favor because Ace does not hold a personal claim against him. To date, the case trustee has not requested proofs of claim from creditors. However, Pankowski scheduled Ace as a contingent, unliquidated, disputed creditor, and disputed claims are nonetheless claims under 11 U.S.C. § 101(5)(A). Further, neither the case trustee nor Pankowski has

brought an action before this Court seeking a determination of whether Ace holds a personal claim against Pankowski or has sought relief from the automatic stay to conclude the Oklahoma litigation against Pankowski. Thus, for purposes of this denial of discharge action, Ace is a creditor with standing to bring this denial of discharge action, as required by 11 U.S.C. § 727(c)(1). *Korte v. Internal Revenue Service* (*In re Korte*), 262 B.R. 464, 470-71 (B.A.P. 8th Cir. 2001); *Jeffrey M. Goldberg & Assocs., Ltd. v. Holstein* (*In re Holstein*), 299 B.R. 211, 223-25 (Bankr. N.D. Ill. 2003), *cited in Sears*, 863 F.3d at 984.[18]

V.

The Court will not determine in this adversary proceeding whether the corporate veil regarding either Western or WesDak should be lifted to allow recourse against their principals or members or whether holders of claims against Pankowski should be able to levy on assets of the two limited liability companies. *See Kelley v. Opportunity Finance, LLC* (*In re Petters Co.*), 561 B.R. 738, 749-50 (Bankr. D. Minn. 2016) (defining the variants of veil piercing)*; Larson Manu. Co. of South Dakota, Inc. v.*

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[18]The court in *Holstein* also discussed the role judicial economy plays in allowing a creditor holding a disputed claim to bring a denial of discharge action.

> Any other result, finally, would threaten judicial economy. Under Holstein's view, a debtor in bankruptcy can always assert as a defense to a creditor's discharge objection that the creditor's claim was legally or factually unsupportable. If that were true, every decision on an objection to discharge would inevitably entail a decision on the merits of the objecting creditor's claim. Bankruptcy courts would end up deciding multitudes of substantive claims ordinarily the province of state courts and federal district courts. In defining a "creditor" to include those holding "disputed" as well as "undisputed" claims, Congress evidently had something else in mind.

Holstein, 299 B.R. at 225.

American Modular Housing Group, LLC, 4:16-CV-04118-VLD, 2018 WL 626263, at *6 (D.S.D. Jan. 30, 2018) (discussing when a corporate veil may be pierced under South Dakota law); *Kozlowski v. Palmquist*, 4:12-CV-04174-KES, 2016 WL 1255711, at *12-13 (D.S.D. Mar. 29, 2016) (discussing when a corporate veil may be pierced under South Dakota law); *Osloond v. Osloond*, 609 N.W.2d 118 (S.D. 2000) (discussing when a corporate veil may be pierced under South Dakota law); *Kansas Gas & Elec. Co. v. Ross*, 521 N.W.2d 107 (S.D. 1994); and *Baatz v. Arrow Bar*, 452 N.W.2d 138 (S.D. 1990). Any such action would need to involve the entities themselves and their members or principals, some of whom are not parties to this adversary proceeding. Whether and how the entities' veils should be lifted may also be more appropriately determined by the Oklahoma federal district court in light of its familiarity with the facts and to preclude any inconsistent findings by this Court. Further, the trustee for Pankowski's and Kerkvliet's chapter 7 bankruptcy cases, wearing the shoes and utilizing the provisions of 11 U.S.C. ch. 5 and S.D.C.L. ch. 47-34A, art. 8, may need to be involved in any action seeking to make Pankowski or Kerkvliet personally liable for claims against either limited liability company or to make either limited liability company's assets available to Pankowski's and Kerkvliet's creditors. *See, e.g., Mohsen v. Wu* (*In re Mohsen*), Bankr. No. 05-50662, Adv. No. 06-05183, 2010 WL 6259979, at *4 (B.A.P. 9th Cir. Dec. 21, 2010) (the debtor-member's interest in a limited liability company became property of the bankruptcy estate); *In re Hickory Ridge, LLC*, Bankr. No. 07-1251, 2010 WL 1727968, at *5-6 (Bankr. N.D. W.Va. Apr. 27, 2010) (when a member of a limited liability company files

bankruptcy, his interest in the entity becomes an asset of the estate pursuant to 11 U.S.C. § 541).[19]

An order and judgment will be entered denying Pankowski's discharge pursuant to § 727(a)(2)(A) and § 727(a)(4)(A).

Dated: February 7, 2019.

BY THE COURT:

Charles L. Nail, Jr.
Bankruptcy Judge

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota

[19]The United States District Court for the District of South Dakota has recently certified related issues to the South Dakota Supreme Court for determination. *See* Order Certifying Questions to South Dakota Supreme Court, *SDIF Limited Partnership 2 v. Tentexkota, LLC*, et al., 1:17-CV-01002-CBK (doc. 207) (D.S.D. Dec. 10, 2018), and Order Accepting Certification, *SDIF Limited Partnership 2 v. Tentexkota, LLC*, #28825 (S.D. Jan. 3, 2019).

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 16-50206
	)	Chapter 7
TUCKER DON PANKOWSKI	)	
SSN/ITIN xxx-xx-3166	)	
	)	
Debtor.	)	
	)	
ACE OILFIELD RENTALS, LLC	)	Adv. No. 16-5008
	)	
Plaintiff	)	
-vs-	)	ORDER DIRECTING ENTRY OF
	)	JUDGMENT DENYING DISCHARGE
TUCKER DON PANKOWSKI	)	
	)	
Defendant.	)	

In recognition of and compliance with the decision entered this date; and for cause shown; now, therefore,

IT IS HEREBY ORDERED a judgment shall be entered denying Debtor-Defendant Tucker Don Pankowski a discharge pursuant to 11 U.S.C. § 727(a)(2)(A) and 11 U.S.C. § 727(a)(4)(A).

So ordered: February 7, 2019.

BY THE COURT:

Charles L. Nail, Jr.
Bankruptcy Judge

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 16-50206
	)	Chapter 7
TUCKER DON PANKOWSKI	)	
SSN/ITIN xxx-xx-3166	)	
	)	
Debtor.	)	
	)	
ACE OILFIELD RENTALS, LLC	)	Adv. No. 16-5008
	)	
Plaintiff	)	
-vs-	)	
	)	JUDGMENT DENYING DISCHARGE
TUCKER DON PANKOWSKI	)	
	)	
Defendant.	)	

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED Debtor-Defendant Tucker Don Pankowski is denied a discharge pursuant to 11 U.S.C. § 727(a)(2)(A) and 11 U.S.C. § 727(a)(4)(A).

So ordered: February 7, 2019.

BY THE COURT:

Charles L. Nail, Jr.
Bankruptcy Judge

NOTICE OF ENTRY
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered on the date shown above.

Frederick M. Entwistle
Clerk, U.S. Bankruptcy Court
District of South Dakota