UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re DECLAN H. MANNION **JACINTA M. MANNION,**	:	**Chapter 7**
Debtors	:	**Bky. No. 20-11073 ELF**
JAMIE HOLLAND,	:	**Adv. No. 20-0197**
Plaintiff	:	
v.	:	
DECLAN H. MANNION **JACINTA M. MANNION,**	:	
Defendants	:	

I. INTRODUCTION

On February 2, 2020, Debtors Declan H. Mannion ("Mr. Mannion") and Jacinta M. Mannion ("Mrs. Mannion") (collectively, "the Debtors") filed a voluntary petition under chapter 7 of the Bankruptcy Code.

On June 5, 2020, Jamie Holland ("Holland"), acting pro se, filed an adversary complaint objecting to the Debtors' discharge. By order dated October 15, 2020, I granted the Debtors' motion to dismiss under Fed. R. Civ. P. 12(b)(6) (incorporated by Fed. R. Bankr. P. 7012), but granted Holland leave to file an amended complaint.

Holland filed an amended complaint ("the Amended Complaint") on November 6, 2020. The Debtors filed a motion to dismiss the Amended Complaint on December 4, 2020 ("the Motion"). The Motion is presently before the court.

As often occurs in cases with unrepresented litigants, Holland has filed pleadings and documents in support of her claim that are simultaneously voluminous, elliptical, rambling and unfocused. As a result, the responding parties and the court must interpret and analyze Holland's submissions within the framework of 11 U.S.C. §727(a), the provision of the Bankruptcy Code that governs the denial of discharge in chapter 7 cases.

Essentially, in the Amended Complaint, Holland asserts that Mr. Mannion: (1) made false statements during the meeting of creditors, and in his bankruptcy schedules; (2) failed to disclose assets: and (3) purposefully failed to list Holland as a creditor.

For the reasons stated below, the Motion will be granted in part and denied in part.

II. BACKGROUND

The parties' dispute emanates from a restaurant venture Mr. Mannion entered into with his business partner, Conor Cummins ("Cummins"). Mr. Mannion and Cummins owned and operated three (3) bar-restaurants in the Philadelphia suburbs known as Molly Maguires Restaurant and Pub. Each bar-restaurant was separately incorporated.

Beginning in 2010, Mr. Mannion and Cummins obtained financing for the restaurants through the Small Business Administration ("SBA"). Along with the Debtors and Cummins, Holland guaranteed the SBA loans.[1]

In 2014, all three (3) restaurants filed chapter 11 bankruptcy cases in this court. See Bky. Nos. 14-15614, 14-15615, 15-15616. Subsequently, two (2) of the restaurants ceased operations

[1] At the time, Holland (then known as Jamie Cummins) was married to Cummins, They later divorced.

and one (1) restaurant emerged from chapter 11 as a reorganized debtor. The individual guarantors remained liable on the SBA loans.

All the guarantors, except for Holland, have filed chapter 7 bankruptcy cases in this court. As of August 2018, the SBA claimed that Holland owed $739,837.10 on her guarantee. (See Proof of Claim No. 6).

III. LEGAL STANDARD

The legal standard applied in deciding a motion to dismiss under Fed. R. Civ. P. 12(b)(6) is well established:

> A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of the factual allegations of a complaint, see Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993), and determines whether the plaintiff is entitled to offer evidence to support the claims, Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 563 n.8, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007). A defendant is entitled to dismissal of a complaint only if the plaintiff has not pled enough facts to state a claim to relief that is plausible on its face. Twombly, 550 U.S. at 547, 127 S. Ct. 1955. A claim is facially plausible where the facts set forth in the complaint allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009).
>
> In evaluating the plausibility of the plaintiff's claim, the court conducts a context-specific evaluation of the complaint, drawing from its judicial experience and common sense. See, e.g., Fowler v. UPMC Shadyside, 578 F.3d 203, 211 (3d Cir. 2009); Goldstein v. BRT, Inc. (In re Universal Mktg.), 460 B.R. 828, 834 (Bankr. E.D. Pa. 2011) (citing authorities). In doing so, the court is required to accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, viewing them in the light most favorable to the plaintiff. See, e.g., Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229, 81 L.Ed.2d 59 (1984); Taliaferro v. Darby Township Zoning Board, 458 F.3d 181, 188 (3d Cir. 2006). But the court is not bound to accept as true a legal conclusion couched as a factual allegation. Twombly, 550 U.S. at 555, 127 S. Ct. 1955; Iqbal, 556 U.S. at 678, 129 S. Ct. 1937.

The Third Circuit Court of Appeals has condensed these principles into a three (3) part test:

> First, the court must take note of the elements a plaintiff must plead to state a claim. Second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth. Finally, where there are well-pled factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.
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> Santiago v. Warminster Twp., 629 F.3d 121, 130 (3d Cir. 2010) (quotations and citations omitted).

In assessing a Rule 12(b)(6) motion, the court may "consider the allegations in the complaint, exhibits attached to the complaint and matters of public record ... [as well as] 'undisputedly authentic' documents where the plaintiff's claims are based on the documents and the defendant has attached a copy of the document to the motion to dismiss." Unite Nat'l Ret. Fund v. Rosal Sportswear, Inc., 2007 U.S. Dist. LEXIS 68110, 2007 WL 2713051, at *4 (M.D. Pa. Sept. 14, 2007) (citing Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993)); see also Angulo v. Emigrant Mortg. Co., 2010 Bankr. LEXIS 1402, 2010 WL 1727999, at *12 n.1 (Bankr. E.D. Pa. Apr. 23, 2010).

In re Boltz-Rubinstein, 574 B.R. 542, 547-48 (Bankr. E.D. Pa. 2017).

IV. DISCUSSION

A.

The Amended Complaint consists of five (5) paragraphs, accompanied by various exhibits. These exhibits include copies of documents filed in the bankruptcy case and screenshots of a Facebook page named "Molly's Shebeen," self-described as a food truck/caterer.

In her response to the Motion, (titled "Plea to Grant the Original Motion Objecting to Discharge of Debt"), Holland offered no additional factual allegations, but she appended another set of documents. Those documents, randomly sequenced, include copies the SBA loan

documents (including the individual guarantees), a download from the Pennsylvania Corporations Bureau website appearing to show the existence of a legal entity created on August 17, 2017 called Molly's Shebeen Pub, LLC, photographs of a food truck with "Molly's Shebeen" signage, and some other documents filed in the Debtors' bankruptcy case, most notably, Holland's proof of claim.

Holland also attached a memorandum of law that reads largely as a stream of consciousness; it is difficult to understand. At bottom, the memorandum of law provided no further context or clarity regarding the basis of Holland's objection to the Debtors' discharge.

After reviewing all of this material, I have attempted to winnow Holland's submissions down to the concrete factual allegations that might justify the denial of discharge under the Code provision that Holland appears to invoke. That Code provision is 11 U.S.C. §§727(a)(4)(A). [2]

B.

Section 727(a)(4) of the Bankruptcy Code, 11 U.S.C. §727(a)(4)(A), provides that 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."

Congress designed §727(a)(4)(A) to ensure that the debtor provides honest and reliable information to the trustee and others interested in the administration of the bankruptcy estate

[2] I have attempted to walk a fine line between construing the Amended Complaint liberally, in deference to Holland's pro se status, while avoiding the extreme of doing all the work needed to organize and formulate a party's arguments. Compare Garrett v. Wexford Health, 938 F.3d 69, 92 (3d Cir. 2019) with In re Zimmer, 624 B.R. 92, 96 (Bankr. W.D. Pa. 2021).

without their having to conduct costly investigations to discover the debtor's true financial condition. In re Singh, 433 B.R. 139, 154 (Bankr. E.D. Pa. 2010) (collecting cases); accord In re Von Kiel, 461 B.R. 323, 340 (Bankr. E.D. Pa. 2012), aff'd, 550 F. App'x 105 (3d Cir. 2013).

A party objecting to a debtor's discharge under §727(a)(4)(A) must prove by a preponderance of the evidence that:

> (1) the debtor made a false statement under oath;
>
> (2) the debtor knew the statement was false;
>
> (3) the debtor made the statement with the intent to deceive; and
>
> (4) the statement was material to the bankruptcy case.

Singh, 433 B.R. at 154.

An omission is material under §727(a)(4) when the subject bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or existence and disposition of property. E.g., In re Tzabari, 622 B.R. 332, 341 (Bankr. E.D. Pa. 2020). Materiality may turn on the degree to which, if any, that the misstatement (or omission) impeded the proper administration of the bankruptcy case. However, the plaintiff need not demonstrate proof of actual harm to creditors. Id.

With these principles in mind, I consider the allegations in the Amended Complaint.

C.

1.

Paragraphs 1 and 2 of the Amended Complaint can be considered together.

Paragraph 1 alleges that the Debtor failed to disclose a stream of rental income derived from "the apartments above the Fenix Nightclub establishment of which [Mr. Mannion] is the co-owner." In the Motion, the Debtors do not provide any further details regarding "the Fenix Nightclub" or the income stream referenced in the Amended Complaint, but they do assert that the apartments and rental income referenced in the Amended Complaint are owned by a third party, 193-197 Bridge Street Investments, LLC. (Debtor's Mem. at 10-11).

Paragraph 2, read liberally (along with the documents attached to Holland's response to the Motion), appears to allege that the Debtors failed to disclose Mr. Mannion's ownership interest in Molly's Shebeen Pub, allegedly jointly owned by Mr. Mannion and Cummins. Again, in the Motion, the Debtors deny the veracity of this allegation.

The allegations in both Paragraphs 1 and 2 are vague. For instance, the allegations do not describe the nature or form of organization of the Fenix Nightclub "establishment" that Mr. Mannion is alleged to co-own? Nonetheless, the allegations are sufficiently concrete insofar as they identify assets Mr. Mannion allegedly owns and a stream of income that he allegedly failed to disclose. This makes out a potential claim under 11 U.S.C. §727(a)(4)(A).

The Debtors' denial of the veracity of the allegations in Paragraphs 1 and 2 do not provide a basis for dismissal of the Amended Complaint. They have done nothing more than deny the truth of the allegations -- a response appropriate in an answer to a complaint, rather

than in a motion to dismiss.[3] Simply put, there is a factual dispute that cannot be decided on Rule 12(b)(6) motion. While it may be simple for the Debtors to present evidence in support of their denial of these allegations, resolution of the factual dispute will have to await summary judgment or trial.

2.

In Paragraph 5 of the Amended Complaint, Holland alleges that the "Debtor" (presumably Mr. Mannion), "willfully and deliberately failed to include [Holland] on the List of Creditors."

In their memorandum of law in support of the Motion, the Debtors assert that there was no reason to schedule Holland as a creditor because "at no time [did Holland] qualif[y] as a creditor of the Debtors -- as that term is defined under 11 U.S.C. 101(10). (Debtors' Mem. at 13).

This explanation for the omission of Holland from the Debtors' bankruptcy schedules is incorrect; shockingly so when made by experienced bankruptcy counsel.

There is no question that the Debtors failed to schedule Holland as a creditor. Yet, based on a straightforward reading of the Bankruptcy Code, it is plain that they should have done so.

Section 101(10)(A) defines "creditor" in part as an "entity that holds a claim against the debtor that arose before the order for relief." 11 U.S.C. §101(10)(A). Under §101(5)(A), a "claim" includes a "right to payment, whether or not such right is reduced to judgment,

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[3] Nor did the Debtors produce any evidence in support their denial of the allegations in the Amended Complaint. (Of course, had they done so, it would have converted the motion to dismiss into a motion for summary judgment, see Fed. R. Civ. P. 12(d)).

liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured."

The definition of "claim" has been thoroughly vetted by the courts, including the Third Circuit. Most pertinent for present purposes, the term "claim" is construed in the "broadest possible" manner, such that "all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case." In re Grossman's Inc., 607 F.3d 114, 121 (3d Cir. 2010).

A contingent "claim" includes the right of contribution that a guarantor holds against any co-guarantors to force payment of their shared obligation. In re XTI Xonix Techs. Inc., 156 B.R. 821, 827 (Bankr. D. Or. 1993). Under Pennsylvania law, guarantors have such a right of contribution. See In re Holler, 463 B.R. 733, 751-52 (Bankr. E.D. Pa. 2011); Keystone Bank v. Flooring Specialists, Inc., 518 A.2d 1179, 1185–86 (Pa. 1986).

As a co-guarantor of the same debt as the Debtors, Holland unquestionably holds a contingent claim against the Debtors and she is correct that she is a creditor that should have been scheduled and given notice of the bankruptcy case. But the more pertinent question is why was she omitted? Was it based on the honest, but erroneous, legal advice of the Debtors' counsel? Or was it for some intentional, fraudulent reason that would support her claim for denial of discharge?

Holland learned of the bankruptcy in time to file a proof of claim and object to discharge. She suffered no palpable prejudice as a result of the Debtors' omission. While those facts are relevant, they are not conclusive. The Debtors chose to list one of the co-guarantors (Cummins), but not Holland. Why? There may be a perfectly innocuous explanation. But, considering that

we are only in the pleading stage, it is too early in the case for the court to make factual findings regarding the Debtors' scienter.

Thus, similar to Paragraphs 1 and 2, resolution of the allegations in Paragraph 5 must await further development of the record.

3.

The two (2) other allegations in the Amended Complaint fail to state a plausible claim for relief. To the extent that Holland seeks to deny the Debtors discharge based on the allegations in Paragraphs 3 and 4 of the Amended Complaint, the pleading will be dismissed.

Paragraph 3 of the Amended Complaint alleges that the chapter 7 trustee discovered the existence of two (2) apartment buildings co-owned by Mr. Mannion, which caused the Debtors to file an Amended Schedule A/B to include those assets. Holland perceives this asserted sequence of events as another example of Mr. Mannion's failure to honestly disclose all of his assets.

It is a perplexing that Holland makes this allegation in that it appears to have no basis. While the docket reflects that the Debtors filed an original Schedule A/B and an Amended Schedule A/B, the disclosure of Mr. Mannion's real estate holdings was identical in both filings. At no point did the Debtors amend their schedules to disclose the ownership of the real property that Holland asserts was previously undisclosed.

Considering this obvious inaccuracy in Paragraph 3, along with Holland's failure to identify the real property that she claims was concealed by the Debtors, no plausible claim has been stated under 11 U.S.C. §727(a)(4)(A).

Paragraph 4 of the Amended Complaint is unintelligible. It refers to a cash-only cover charge of $20 collected at a St. Patrick's Day celebration attended by seven hundred (700) people and states that Mr. Mannion has not disclosed "where the cash sales went."

This allegation is totally devoid of context that could support a §727(a)(4)(A) claim.

Mr. Mannion remains a principal of the one (1) chapter 11 debtor that reorganized and remains in business -- an Irish bar. So, it is hardly surprising that he may have had some connection to a St. Patrick's Day promotion. The Bankruptcy Code does not require Mr. Mannion to state in his personal bankruptcy schedules where cash from his business's transactions "went." It is impossible to make the inferential leap that Holland asks the court to make: from patrons paying in cash in some vaguely described business promotion to a claim that Mr. Mannion has fraudulently failed to disclose his assets. This claim, too, is implausible based on the bare-bones facts alleged in Paragraph 4.

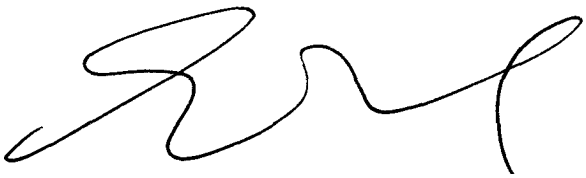
IV. CONCLUSION

For the reasons stated above, the Motion will be granted in part and denied in part.

The Motion will be denied insofar as it is based on the allegations is Paragraphs 1, 2 and 5 of the Amended Complaint. The Motion will be granted insofar as it is based on the allegations is Paragraphs 3 and 4 of the Amended Complaint.

An appropriate Order follows.

Date: June 7, 2021



ERIC L. FRANK
U.S. BANKRUPTCY JUDGE

cc: Jamie Holland
4704 Santa Barbara Boulevard
Cape Coral, FL 33914

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re DECLAN H. MANNION **JACINTA M. MANNION,**	:	**Chapter 7**
Debtors	:	**Bky. No. 20-11073 ELF**
JAMIE HOLLAND,	:	**Adv. No. 20-0197**
Plaintiff	:	
v.	:	
DECLAN H. MANNION **JACINTA M. MANNION,**	:	
Defendants	:	

O R D E R

AND NOW, upon consideration of the Defendants' Motion to Dismiss Amended Complaint, and the response thereto, and for the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. The Motion is **GRANTED IN PART AND DENIED IN PART**.
2. The Amended Complaint is **DISMISSED** insofar it is based on the allegations in Paragraphs 3 and 4 of the Amended Complaint.
3. In all other respects, the Motion is **DENIED**.

4. The Defendants shall file an Answer to the Amended Complaint **on or before June 21, 2021**.

Date: June 7, 2021

ERIC L. FRANK
U.S. BANKRUPTCY JUDGE

cc: Jamie Holland
4704 Santa Barbara Boulevard
Cape Coral, FL 33914