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U.S. Bankruptcy Appellate Panel
of the Tenth Circuit
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Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE DAVID F. BUTLER, COLLEEN A. BUTLER, also known as Colli Butler, doing business as Power Players, doing business as Power Players International, Debtors.	BAP No. UT-06-077
FREELIFE INTERNATIONAL, LLC, Plaintiff – Appellee, v. DAVID F. BUTLER, COLLEEN A. BUTLER, also known as Coli Butler, doing business as Power Players, doing business as Power Players International, Defendants – Appellants.	Bankr. No. 04-27637-JAB Adv. No. 04P-3012-JAB Chapter 7 ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of Utah

Before NUGENT, McNIFF, and BERGER[1], Bankruptcy Judges.

NUGENT, Bankruptcy Judge.

Appellants David F. Butler and Colleen A. Butler (the "Butlers" or "Debtors") appeal from an order of the Bankruptcy Court for the District of Utah

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

[1] Honorable Robert D. Berger, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Kansas, sitting by designation.

denying their discharge under 11 U.S.C. § 727(a)(2)(A), (a)(2)(B), and (a)(4)(A).[2] Debtors' various specifications of error may be summarized as follows: (1) the bankruptcy court erred in denying a discharge based on their attempted transfer of Prosperous Partners' XanGo distributorship because it was not "property of the debtor;" (2) the bankruptcy court erred in holding that they closed various bank accounts with the intent to hinder, delay, or defraud their creditors; (3) the bankruptcy court erred in holding that they concealed their interest in XanGo Power Players; (4) the bankruptcy court erred in holding their statements regarding the Frank Butler distributorship were false oaths; and (5) the bankruptcy court erred in denying David's discharge for conduct attributable solely to Colleen. After oral argument[3] and careful review of the record before us, we AFFIRM.[4]

I. Jurisdiction

This Court has jurisdiction over this appeal. The bankruptcy court's judgment disposed of the adversary proceeding on the merits and is a final order subject to appeal under 28 U.S.C.§ 158(a)(1). The Appellants timely filed their notice of appeal. The parties have consented to this Court's jurisdiction because they have not elected to have the appeal heard by the United States District Court for the District of Utah.[5]

II. Background

The Butlers are seasoned multi-level marketing professionals who have

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[2] Unless otherwise indicated, all future statutory references in text are to the Bankruptcy Code, Title 11 of the United States Code.

[3] We heard oral argument in this case on January 23, 2007.

[4] On March 1, 2007, Matthew S. Tarkington, counsel for Appellee Freelife International Inc. (sic), filed a Notice of Withdrawal of Counsel in this appeal. The Clerk is directed to amend its records to reflect Mr. Tarkington's withdrawal as counsel for the Appellee.

[5] 28 U.S.C. §158(b)-(c); Fed. R. Bankr. P. 8001(e).

worked in various network marketing business ventures since the late 1980s. Freelife International, LLC ("Freelife") is a network marketing company that manufactures various health supplements and sells them through a network of independent distributors. The Butlers were at one time major distributors for Freelife and were directly involved in Freelife's business until September 18, 2002, when the Butlers' Freelife distributorship was terminated by Freelife. Thereafter, the Butlers became distributors for XanGo, LLC ("XanGo"), which manufactures the "functional beverage" known as XanGo juice.

The Butlers, with three of their children (Holli, Mike, and Travis), created a series of corporate entities prior and subsequent to their bankruptcy filings to operate various distributorships. These business entities include the following: Power Players International, Inc. ("Power Players"), which was originally formed by the Butlers to operate their Freelife distributorship; Prosperous Partners International, Inc. d/b/a XanGo Players ("Prosperous Partners"); XanGo Power Players, LLC ("XPP"); and the Frank Butler Distributorship ("FBD"). Prosperous Partners, XPP, and FBD were formed to operate XanGo distributorships.

On October 21, 2002, Freelife sued the Butlers and Power Players in Connecticut state court. Freelife sought to enjoin the Butlers from recruiting current Freelife distributors and require them to make certain disclaimers during their marketing activities. A stipulated temporary restraining order was entered on December 2, 2002, which the Butlers violated. Freelife then obtained three judgments against the Butlers for contempt and sanctions (the "Freelife Judgments"). The combined total of these three judgments is $943,105, making Freelife the Butlers' largest unsecured creditor.

On May 27, 2003, Freelife domesticated the two largest Freelife Judgments in Utah state court. Thereafter, Freelife obtained four garnishment writs, the first attaching monies owed by XanGo to the Butlers, the second attaching monies owed by Prosperous Partners to the Butlers, and the third and fourth attaching

funds owed by XanGo to Prosperous Partners.

To stave off the garnishments, the Butlers filed bankruptcy.[6] Freelife brought this adversary proceeding seeking denial of the Butlers' discharge, claiming the Butlers had engaged in an elaborate scheme to utilize various business entities and members of their immediate family to thwart its collection efforts. After a three-day trial, the bankruptcy court, in a detailed 47 page decision, denied the Butlers' discharge under § 727(a)(2)(A), (a)(2)(B) and (a)(4)(A) ("Appealed Decision"). The Butlers timely appealed.

An in-depth, detailed description of the formation, organization, and operation of the business entities connected to the Butlers and the various transactions between them can be found in the Appealed Decision.[7] For the most part, Debtors do not quibble in any material way with the bankruptcy court's basic findings of fact. Rather, Debtors challenge the bankruptcy judge's findings or ultimate conclusions regarding (1) the ownership of the Prosperous Partners' distributorship, (2) concealment of their interest in XPP, (3) the value of FBD and its income, (4) their intent in closing several bank accounts on July 21, 2003, and (5) David's culpability for acts attributable solely to Colleen. Relevant portions of the Appealed Decision will be discussed.

III. Discussion

A. Standard of Review

When reviewing the decision of a bankruptcy court, we are to apply the same standards of review that govern appellate review in other types of cases.[8]

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[6] The Butlers filed three separate bankruptcy petitions on August 5, 2003; January 6, 2004; and May 10, 2004, respectively. The first two bankruptcy cases were dismissed.

[7] Appealed Decision at 1-24, *in* Appellants' Appendix, Vol. 1, 201-224.

[8] *See, e.g.*, *Andersen v. UNIPAC-NEBHELP (In re Andersen)*, 179 F.3d 1253, 1255 (10th Cir. 1999).

"For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable *de novo*), questions of fact (reviewable for clear error), and matters of discretion (reviewable for 'abuse of discretion')."[9] "In general a question of fact is one that can be answered with little or no reference to law, and a question of law is one that can be answered with little or no reference to fact. So-called 'mixed questions' lie in between."[10]

We review the bankruptcy court's findings of fact only for clear error. Whether Debtors concealed their property interests with the requisite intent is a question of fact subject to the clearly erroneous standard.[11] As for the bankruptcy court's conclusion concerning Prosperous Partners being the Debtors' alter ego, we review the findings of fact for clear error and the legal conclusions de novo.

B. Denial of Discharge under Section 727(a)(2) and (a)(4)(A).

Section 727(a)(2) provides:

> (a) The court shall grant the debtor a discharge, unless –
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> . . .
>
> (2) 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 transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed –
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> (A) property of the debtor, within one year before the date of the filing of the petition; or

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9 *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

10 *Allis-Chalmers Credit Corp. v. Tri-State Equip., Inc. (In re Tri-State Equip., Inc.)*, 792 F.2d 967, 970 (10th Cir. 1986).

11 *Holaday v. Seay (In re Seay)*, 215 B.R. 780, 788 (10th Cir. BAP 1997).

> (B) property of the estate, after the date of the filing of the petition[.][12]

In order to succeed in obtaining denial of a debtor's discharge under §727(a)(2)(A), the objector must establish, by a preponderance of the evidence, that "(1) the debtor transferred, removed, concealed, destroyed, or mutilated, (2) property of the estate, (3) within one year prior to the bankruptcy filing, (4) with the intent to hinder, delay, or defraud a creditor."[13] The elements of § 727(a)(2)(B) are substantially the same except that the plaintiff must prove that the debtor transferred or concealed property of the estate after the bankruptcy petition was filed.

Section 727(a)(4) denies a debtor a discharge where –

> (4) the debtor knowingly and fraudulently, in or in connection with the case –
>
> (A) made a false oath or account[.][14]

Generally, the creditor has the burden of proof to show that the debtor made an oath or account that was false as to a material matter in the case. The omission of an asset from one's bankruptcy schedules, made under penalty of perjury, is an example of a false oath or account.[15]

The bankruptcy court denied Debtors' discharge under § 727(a)(2) and (a)(4) based on four transfers/events: (1) the attempted transfer of Prosperous Partners' XanGo distributorship to GotXanGo.com; (2) concealment of their interest in XPP and the income funneled into XPP; (3) closure of five Wells Fargo bank accounts with the simultaneous opening of an XPP bank account; and (4) the

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[12] 11 U.S.C. § 727(a)(2).

[13] *Gullickson v. Brown (In re Brown)*, 108 F.3d 1290, 1293 (10th Cir. 1997).

[14] 11 U.S.C. § 727(a)(4)(A).

[15] 6 *Collier on Bankruptcy* ¶ 727.04 (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2006).

Debtors' income disclosure and valuation of FBD. In seeking reversal of denial of their discharge under § 727(a)(2), Debtors argue that as to each of these events, Freelife failed to demonstrate one of the essential elements of proof.

With respect to the Prosperous Partners' distributorship transfer, Debtors challenge the bankruptcy court's determination that because it was the Debtors' alter ego, Prosperous Partners' property was actually the Debtors' property. With respect to transfers involving various bank accounts, Debtors contend the requisite intent is missing. In challenging the bankruptcy court's conclusions under § 727(a)(4) concerning the Debtors' alleged false oaths or claims, Debtors question the bankruptcy court's finding that XPP's existence was not disclosed, and that FBD's income and value were misrepresented.

1. Prosperous Partners' Distributorship Was Property of the Debtor because Prosperous Partners was the Debtors' Alter Ego: § 727(a)(2).

Prosperous Partners became operational as a XanGo distributor on October 30, 2002, nine days after Freelife filed its suit in Connecticut state court. Prosperous Partners was incorporated in Nevada on December 27, 2002. The initial board of directors consisted of one member, the Butlers' daughter, Holli, who was 18 years old at the date of incorporation. Colleen has been the secretary-treasurer for Prosperous Partners since its creation. At the time of trial, Holli was listed as the president of Prosperous Partners, while Colleen was listed as the secretary-treasurer. The bankruptcy court found that Colleen "opened, operated, and controlled each of the bank accounts for these entities."[16]

From its inception, Prosperous Partners employed the Butlers as "consultants." The consulting agreements[17] between Prosperous Partners and the

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[16] Appealed Decision at 4, *in* Appellants' Appendix, Vol.1. at 204.

[17] Prosperous Partners and the Butlers executed several Consulting Agreements. The Consulting Agreements generally contain the same provisions.

Butlers gave the Butlers power of attorney to act in Prosperous Partners' name. The consulting agreements also set forth a compensation structure for the Butlers. In addition to receiving any trips, prizes or rewards from XanGo, the Butlers were to receive a percentage of income generated by Prosperous Partners on a sliding scale (i.e., 50% of income during the first six-month period, 25% for the following six months, etc.).[18] In sum, the evidence clearly supports the bankruptcy court's finding that Holli was the owner of Prosperous Partners in name only.

Prosperous Partners' main asset was the XanGo distributorship. On December 20, 2003, seventeen days after Freelife garnished XanGo, Holli signed several agreements purporting to sell Prosperous Partners' distributorship to her brother Mike's company, GotXanGo.com. At the time these sale agreements were being contemplated and signed, Mike was in high school and preparing to depart on a church mission. Colleen prepared all of the sale agreements.

XanGo initially approved the sale, but ultimately rejected it on April 8, 2004. Shortly before rejection of the sale, Colleen engaged in a flurry of e-mails with various XanGo representatives pleading for the sale to be completed before XanGo was served with the garnishment:

> . . . I've been waiting since February for the transfer of businesses. Can you please find out what the hold up is? I was promised it would be done in February and every day is a day that Xango (sic) could be served a garnishment and I REALLY need it changed before that happens.[19]
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> . . . .

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[18] The bank and financial statements in the record show that the compensation structure was not adhered to and all of Prosperous Partners' income, with the exception of some minimal payments in 2004, ended up in the Butlers' pocket. Exhibits 27, 28, 72, 74, 82-84, *in* Appellants' Appendix, Vol. 8 & 10, 1498, 1521, 1986, 1989, 2032-2223.

[19] E-mail dated April 6, 2004, from Colleen to Daniela Raynes, Exhibit 90, *in* Appellants' Appendix, Vol. 11, 2260.

> The bottom line is, the sale HAS to go through right away. Any minute now XanGo could be served with a writ of garnishment against Prosperous Partners, and when they do, they need to get the $200 check, not the big check [approximately $50,000] for the business that was sold to GotXango back in February.[20]

The bankruptcy court's ruling concerning the Debtors' conduct in connection with Prosperous Partners is predicated on its conclusion that Prosperous Partners was the Debtors' alter ego. In an order entered on May 10, 2004, the day the Butlers filed their bankruptcy case, a Utah state court determined that Prosperous Partners was the alter ego of the Butlers and their company, Power Players. Also, as previously discussed, during the preceding three months, the Debtors attempted to effectuate the transfer of Prosperous Partners' XanGo distributorship to their daughter, Holli. The bankruptcy court concluded that because the state court had held that the entity was the Butlers' alter ego, a transfer of its assets was tantamount to a transfer of their assets.

The Butlers argue the attempted transfer of Prosperous Partners' XanGo distributorship to GotXanGo.com did not violate § 727(a)(2)(A) because it did not involve "property of the debtor." They contend Prosperous Partners, not the Butlers, owned the asset and their control of Prosperous Partners was insufficient to establish an ownership interest. They argue the state court's alter-ego ruling, whether applying estoppel effect to the state court ruling or of the bankruptcy court's own independent decision, did not vest the Butlers with legal title to Prosperous Partners' assets. They claim an alter-ego ruling does not merge the identity of the individual and the corporation.

We are not persuaded. The evidence amply supports the bankruptcy court's finding that the Butlers treated Prosperous Partners' property (as well as that of

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[20] E-mail dated April 8, 2004, from Colleen to Cara Jensen and Daniela Raynes, Exhibit 91, *in* Appellants' Appendix, Vol. 11, 2261-2262.

their other entities) as their own, and ignored the separate corporate status.[21] When a debtor disregards corporate formalities, transfers money freely and without legitimate reason between the corporations and the debtor, and uses a corporation for a fraudulent purpose, the debtor should not be permitted to hide behind the corporate veil and should be treated as the corporation's alter ego.[22]

"It is well established that property of the debtor in the possession, custody and control of its alter ego comprises property of the estate at the commencement of the case, and that bankruptcy courts have the power to disregard separate corporate entities so as to reach the assets of its non-debtor alter ego to satisfy debts of the debtor."[23] It is also a settled principle of law that "[w]hen one legal entity is but an instrumentality or alter ego of another, by which it is dominated, a court may look beyond form to substance and may disregard the theory of distinct legal entities in determining ownership of assets in a bankruptcy proceeding."[24] The basic policy underlying the alter-ego doctrine is to redress fraud or wrong perpetrated through an instrumentality.

There is also ample support for the bankruptcy court's legal conclusion under Utah law. In Utah, two circumstances must exist before a corporate entity can be disregarded: (1) there must be such unity of interest and ownership that

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[21] Since the creation of Prosperous Partners, Colleen has deposited approximately $25,723.60 in XanGo commission checks payable to Prosperous Partners into either her personal account or into the Power Players accounts. Trial Transcript at 363-66, *in* Appellants' Appendix, Vol. 3, 621-624; Exhibits 60-68, *in* Appellants' Appendix, Vol. 9, 1956-66. An additional $30,180 in XanGo commissions was deposited into the XPP account instead of the Prosperous Partners account. Trial Transcript at 365, *ll*. 4-7, *in* Appellants' Appendix, Vol. 3, 623.

[22] *Compton v. Bonham (In re Bonham)*, 224 B.R. 114, 116 (Bankr. D. Alaska 1998).

[23] *Blomberg v. Riley (In re Riley)*, 351 B.R. 662, 671 (Bankr. E.D. Wis. 2006).

[24] *Id.* (citing *Dulbina of Am., Ltd. v. Sklarin* (*In re Sklarin)*, 69 B.R. 949, 954 (Bankr. S.D. Fla.1987)).

the separate personalities of the corporation and the individual no longer exist, rendering the corporation the alter ego of one or a few individuals; and (2) the observance of the corporate form would sanction a fraud, promote injustice, or an inequitable result would follow.[25]

Here, both elements are present. The Butlers do not dispute that corporate formalities were not maintained. They commingled their funds with those of the entities and utilized those funds for their personal use. The email messages from Colleen to the XanGo representatives indicate the attempted transfer was to prevent Freelife from garnishing money owned to Prosperous Partners. The evidence amply supports a finding that the Butlers engaged in a game of "hide and seek" to hinder their creditors.[26] The bankruptcy court did not err in concluding that the attempted transfer of Prosperous Partners' distributorship involved property of the Debtors.

2. Concealment of Interest in XPP: § 727(a)(2) and (a)(4).

The Butlers contend the bankruptcy court erred in finding that "no interests in XPP have ever been disclosed in this bankruptcy case and the Butlers concealed the consulting income that was funneled into XPP." The Butlers claim they did disclose their interest in XPP in their amended schedules and statement of affairs.

On their Schedule B, the Butlers listed Colleen as having a 20 percent interest in XPP.[27] On their amended Statement of Financial Affairs ("SOFA"), the Butlers stated their interest in XPP as follows:

> [XPP], a Utah limited liability company organized in 2003, by Holli Campbell (80% membership interest) and Colli Butler (20%

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[25] *Norman v. Murray First Thrift & Loan Co.*, 596 P.2d 1028, 1030 (Utah 1979).

[26] Appealed Decision at 7, *in* Appellants' Appendix, Vol. 1, 207.

[27] Exhibit 6 at 4, *in* Appellants' Appendix, Vol. 6, 1107.

> membership interest); Debtors temporarily deposited their consulting fees from Prosperous Partners Int'l, Inc. into this company's bank account for a short while before the filing of this Chapter 11 case and until [they] were able to open a DIP account post-petition. [28]

Thus, the bankruptcy court's statement that XPP was undisclosed is not accurate.

Were this the only reason for denying the Butlers a discharge, it would be clear error. But it is not. The Debtors' conduct with respect to XPP and its assets is sufficient to support a denial of the Debtors' discharges.

The structure and operation of XPP show that it was a sham entity designed for the purpose of concealing and hiding assets from creditors. The organization and operation of XPP are similar to that of Prosperous Partners in that Holli's ownership was in name only. It was intended to be owned 80% by Holli and 20% by Colleen. Holli, however, testified that she had nothing to do with XPP. The Butlers' accountant also testified that nothing in XPP's financial records indicated any involvement by Holli in XPP. Colleen confirmed this, describing Holli's interest in XPP as more in the nature of "collateral" than a "business interest."[29] Moreover, XPP was never properly formed as a Utah limited liability company. Denying the Debtors a discharge based in part upon their conduct in connection with XPP is entirely consistent with the bankruptcy court's general conclusion that Freelife successfully showed a pattern of fraud and concealment and is not error.

3. The Butlers' Intent Regarding the Closure of Various Bank Accounts: § 727(a)(2).

The Butlers contend the bankruptcy court erred when it found that Colleen closed various Wells Fargo bank accounts on July 21, 2003 with intent to hinder, delay, or defraud Freelife in its collection activities. They assert that the accounts

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[28] Exhibit 7, *in* Appellants' Appendix, Vol. 6, 1164.

[29] Trial Transcript at 119, *ll*. 6-16, *in* Appellants' Appendix, Vol. 2 at 376.

were closed with a legitimate business purpose: to avoid check bouncing fees and preserve assets.

We cannot describe and summarize the Butlers' activities on July 21, 2003 better than they are described in the Appealed Decision:

> The most obviously damning of the Butlers' activities and the ones that provide the clearest evidence of the Butlers' intent are the events of July 21, 2003. All in the course of one day, the Butlers (1) failed to attend a court hearing to discuss the nature and extent of their assets; (2) closed five Wells Fargo bank accounts with connections to judgment debtors of Freelife (one of which was actually emptied by Holli in Wyoming earlier in the day) but left open the as-of-yet untouched Prosperous Partners account; and (3) opened up the XPP account. No explanation was provided as to Colli's failure to appear in court even if David was unavailable, and Colli's self-serving and uncorroborated testimony that the accounts were closed to stave off bounced check fees strains credulity. This is especially true in light of the Butlers' long history of paying bounced check fees prior to July 21, 2003 as shown by their bank statements admitted into evidence in this case. It is patently clear to the Court that the actions of July 21, 2003 were taken with the intent to hinder, delay, or defraud Freelife in its collection activities, and denial of discharge on this ground is therefore appropriate.[30]

Because the requisite intent to hinder, delay, or defraud creditors is rarely admitted by a debtor, the courts look to circumstantial evidence for specific indicia of fraud, often referred to as "badges of fraud."[31] Among those badges are: (1) concealment of prebankruptcy conversions; (2) conversions of assets immediately prior to filing bankruptcy; (3) gratuitous transfers of property; (4) continued use of transferred property; (5) transfers of property to family members; (6) obtaining credit to purchase exempt property; (7) conversion following entry of a large judgment against the debtor; (8) a pattern of sharp dealing prior to bankruptcy; (9) conversions of property rendering the debtor insolvent; (10) and the monetary value of converted assets. The more badges that are present, the more likely it is that the transfer has been made with intent to

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[30] Appealed Decision at 34-35, *in* Appellants' Appendix, Vol 1, 234-35.

[31] *In re Carey*, 938 F.2d 1073, 1077 (10th Cir. 1991).

hinder, delay or defraud creditors. Not fewer than five of these, badges (2), (3), (4), (5), and (7), are clearly present here. They strongly suggest the intent to hinder, delay, or defraud.

"A bankruptcy court's findings concerning intent are factual and subject to review under a clearly erroneous standard."[32] We therefore defer to the bankruptcy judge who viewed the witnesses' demeanor and judged their credibility. Given the bankruptcy court's unequivocal findings regarding the Butlers' lack of credibility, there is no clear error with respect to this portion of the Appealed Decision.

4. Concealment of FBD's Income and Value: § 727(a)(2) & (a)(4).

In the Appealed Decision, the bankruptcy court concluded that "[t]he Butlers concealed their interest in and the value of the Frank Butler distributorship [] and the perfunctory Notice of Abandonment only served to mislead."[33] The bankruptcy court denied discharge on this ground under § 727(a)(2)(B) and (a)(4).

On their amended SOFA, the Butlers made the following representations regarding FBD:

> Frank Butler (aka) David F. Butler (Debtor) is a party to a personal services contract with XanGo LLC; however, if Prosperous Partners Int'l, Inc. is an alter ego of the Debtors, then this contract is void under the rule of XanGo LLC that a single individual or couple shall not be a party to more than one such contract; there has been *no income received under this contract to date.*[34]

On August 24, 2004, the Butlers filed a Notice of Abandonment, stating "*[FBD] has no value* and is burdensome to the Chapter 11 estate because of XanGo LLC's policy that prohibits persons from being parties to more than one such contract

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32 *Holaday v. Seay (In re Seay)*, 215 B.R. 780, 788 (10th Cir. BAP 1997).

33 Appealed Decision at 35, *in* Appellants' Appendix, Vol. 1, 235.

34 Exhibit 7, *in* Appellants' Appendix, Vol. 6, 1164 (emphasis added).

simultaneously."[35] The bankruptcy court found that the Butlers' representations that FBD had no value and had generated no income were false because FBD had at least $28 in income from a single sponsorship check. The bankruptcy court also found that because a downline had been established, FBD had potential value to prospective buyers.

The Butlers argue that because expenses exceeded revenue, their statement that the distributorship had received no income was reasonable. Likewise, because they could not retain possession of the distributorship pursuant to XanGo's policy, their valuation of FBD was also reasonable. As a result, the Butlers assert that those statements were not false, or, if they were, they were not material to the case.

The Butlers' conduct in attempting to transfer FBD through an abandonment is yet another attempt to mislead their creditors. Property is abandoned if it is "burdensome" or of "inconsequential value and benefit" to the estate,[36] which this was not. The Butlers' claim that FBD is valueless is contradicted by their earlier attempted transfer to Holli.

In an email to XanGo, Colleen wrote:

> This is an urgent matter.
>
> . . . .
>
> . . . I discovered that the downline was taken out from under Frank Butler at the end of the month and I asked Daniela why. She told me that [Frank Butler] was being terminated per YOUR REQUEST . . . .
>
> Cara, I need your help. My daughter Holli has already been shafted out of her position (Prosperous Partners) by the [Utah state court]. So we agreed to trade positions so she would have her own and we would build her to Premier to compensate her for what she lost. And now this position is in jeopardy if we don't get this fixed.
>
> Please correct this problem. Transfer Frank Butler to Holli Campbell

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35 Exhibit 105, *in* Appellants' Appendix, Vol. 11, 2345 (emphasis added).

36 11 U.S.C. § 554.

> and then move all her people back under her (Frank Butler's placement downline and personal sponsorships).[37]
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> . . . .
>
> This is critical! In order for David and I to take Prosperous Partners, we had to give our Frank Butler distributorship to [Holli]. Then we agreed to transfer our consulting agreement to her position but she gets 100% of that income with out (sic) having to pay business building expenses. This way she will net the same amount of money as our [original] agreement.[38]

These emails establish that Colleen appreciated the importance of the downline and intended to preserve it for the Butler family's enterprise.

A statement or omission is material under § 727(a)(4) if it bears a relationship to the debtors' business transactions, or if it concerns the discovery of assets, business dealings, or the existence or disposition of the debtor's property.[39] The recalcitrant debtor may not escape a § 727(a)(4) denial of discharge by admitting the omission and asserting that the omitted or falsely stated information concerned a worthless business relationship or holding.[40]

Based on the record, the bankruptcy court's decision regarding the Butlers' FBD's disclosures was not error.

C. Denial of David's discharge

David Butler argues that even if this Court affirms the denial of Colleen's discharge, the bankruptcy court's decision to deny his discharge should be reversed because all of the egregious conduct upon which the bankruptcy court's decision was based arose out of Colleen's business dealings. David suggests that

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[37] Email dated September 9, 2004, from Colleen to Mike Mansfield and Daniela Raynes, Exhibit 108, *in* Appellants' Appendix, Vol. 11, 2352-53.

[38] Email dated September 9, 2004, from Colleen to Cara Jensen, Exhibit 108, *in* Appellants' Appendix, Vol. 11, 2351.

[39] *Structured Assets Servs. v. Self (In re Self)*, 325 B.R. 224, 249 (Bankr. N.D. Ill. 2005).

[40] *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984).

since he had no knowledge of or involvement in these dealings, he could not have the requisite intent to hinder, delay or defraud the Butlers' creditors. Addressing this issue below, the bankruptcy court concluded that David's studied lack of knowledge and purposeful disconnect from any knowledge concerning these financial or legal matters, combined with his reckless disregard for the truth, was sufficient to support the denial of his discharge under § 727. We agree.

As noted by the bankruptcy court, a debtor cannot disclaim all responsibility for statements which he made under oath by playing ostrich and burying his head in the sand.[41] The evidence established that David purposely avoided involving himself in the Butlers' financial matters. David described his involvement as follow:

> I don't pay any attention. I do that on purpose. I have to –I have to feed the kids. So I just talk on the phone. And I purposely don't know anything. *I just don't want to know anything because I don't like to get into the negativity, the evil that's going on.* I just– I don't like the appearance of it. I just talk to people on the phone.[42]

Accordingly, the bankruptcy court's denial of discharge as to David was not clearly erroneous.

IV. Conclusion

In order to reverse the bankruptcy court's well-reasoned and detailed decision, this Court must harbor a definite and firm conviction that a mistake has been made. We are far from having that conviction in this case. As there is no clear error in the bankruptcy court's findings of fact or conclusions of law, we AFFIRM the order denying the Debtors' discharges pursuant to §727(a)(2) and (a)(4).

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[41] Appealed Decision at 45 n.78, *in* Appellants' Appendix, Vol. 1, 245 (citing *Boroff v. Tully (In re Tully*), 818 F.2d 106, 111 (1st Cir. 1987)).

[42] Final Pretrial Order at 31, *in* Appellants' Appendix, Vol. 1, 157 (emphasis added).