

CASE NO. 1:19-CV-03565 CCB
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

In Re: **ERIC J. BLAIR, Debtor** FILED ENTERED
LODGED RECEIVED

FEB 11 2020

DEAFUEH MONBO and TAJE MONBO
Appellants - Creditors

BY MS AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND DEPUTY

v.

ERIC J. BLAIR
Appellee - Debtor

Appeal from the United States Bankruptcy Court
For the District Of Maryland
Case No. 19-11083 MMH

(The Honorable Michelle M. Harner)

APPELLANT INITIAL BRIEF

Respectfully Submitted,

DEAFUEH MONBO, *Appellant*
P.O. Box [REDACTED]
Bel Air, MD 21014

[REDACTED]

TAJE MONBO, *Appellant*
P.O. Box [REDACTED]
Owings Mills, MD 21117

CORPORATE DISCLOSURE STATEMENT

Appellants are individuals. No corporate disclosure statement under Federal Rule of Bankruptcy Procedure 8012 is required.

LIST OF PARTIES

This appeal is from the U.S. Bankruptcy Court for the District Court of Maryland, Honorable Michelle M. Harner presiding.

The Debtor is Eric J. Blair, and the Trustee is Zvi Guttman. The Bankruptcy Court case is a Chapter 7.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is requested unless the District Court after examining the briefs and record determines that oral argument is unnecessary because the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

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**APPELLANTS' BRIEF REGARDING
APPEAL FROM BANKRUPTCY COURT**

STATEMENT OF JURISDICTION

This appeal arises from two Orders of the United States Bankruptcy Court for the District of Maryland, Baltimore Division, in Chapter 7 Case No. Case No. 19-11083 MMH denying Appellant's Motion to Dismiss Case pursuant to 11 U.S.C. Section 707(a) and 707(b) (Dkt #56) and Appellant's Motion to Extend Time to Object to Discharge (Dkt #57). These two Orders are final and appealable.

This appeal is timely because the Notice of Appeal (Dkt 60) was filed within 14 days of the Denial Order from the United States Bankruptcy Court for the District of Maryland.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 158.

STATEMENT OF ISSUES PRESENTED

Normally, Appellants would have three issues presented on appeal. However, because **allegations of fraud** entered into this Bankruptcy matter, more than three issues are presented on appeal.

1. The Creditors' copyright and trademark infringement lawsuit is still pending and has not gone before the jury as of the date of this appeal. Furthermore, no judgments have been entered against the Debtor in favor of the Creditors as of the date of this appeal. [See Creditor's Hearing Exhibit 27]

Question: Whether the Bankruptcy Court erred when the Bankruptcy Court failed to recognize that Section 523(a)(6) of the Bankruptcy Code prohibits the Debtor from discharging "willful and malicious" copyright and trademark infringement claims that are contingent?

2. Where allegations of fraud enter into a Bankruptcy matter, does a Creditor have standing under 707(B)(3) of the Bankruptcy Code to dismiss a Debtor's Chapter 7 Case?
3. The Debtor misrepresented and omitted numerous information in his Bankruptcy Petition and Schedule [See Docket No. 49, Exhibit 2]. **Question:** Whether the Bankruptcy Court's decision not to dismiss the Debtor's Chapter 7 Bankruptcy Case for bad faith violates *In re Green v. Staples* (In re Green), 934 F.2d 568 (4th Cir.1991)?
4. Whether the Bankruptcy Court's analysis that Debtor Eric J. Blair does not have an ongoing and independent duty to provide accurate and complete information on his schedules regardless of whether he was assisted by counsel in preparing his schedules violates *In re Barrows*, 399 B.R. 506, 511 (Bankr. D. Minn. 2009) and violates *In re Rolland*, 317 B.R. 402, 414 (Bankr.C.D.Cal.2004) and violates *In re Pettey*, 288 B.R. 14, 20 (Bankr.D.Mass.2003)?
5. The Creditors timely filed their Motion to Extend Time to Object to Discharge [Docket No. 9]. **Question:** Whether the Bankruptcy Court erred when the Bankruptcy Court denied the Creditors' *timely* Motion To Extend Time to Discharge where:
 - (1) The Debtor, in his operation of his various businesses, including (1) Mission Film, Inc, and (2) Eric Blair d/b/a Mission Film, concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the Debtor's financial condition or business transactions might be ascertained; and By virtue of the foregoing, the Debtor's discharge should be denied under Bankruptcy Code Section 727(a)(3)?

- (2) The Debtor knowingly and fraudulently, in or in connection with the Bankruptcy case, made a false oath or account, in that he misrepresented and omitted information in his Bankruptcy Petition and Schedule [See Docket No. 49, Exhibit 2]; and By virtue of the Debtor's false representations and omissions, and the oath he took concerning the veracity of his submissions, the Debtor's discharge should be denied under Bankruptcy Code Section 727(a)(4)(A)?
 - (3) Debtor has offered no satisfactory explanation for his claimed loss of thousands of dollars in his Mission Film business income to now \$51,999.96 per year in personal income for 2019; and By virtue of Bankruptcy Code Section 727(a)(5), Debtor discharge should be denied for Debtor's failure to satisfactorily explain his claim loss of thousands of dollars in his Mission Film business income?
6. The Debtor misrepresented and omitted information in his Bankruptcy Petition and Schedule [See Docket No. 49, Exhibit 2].

Question:

- (1) Whether Debtor's misrepresentation and omission falls short of full disclosure of the Debtor's finances which is essential to the Bankruptcy process?
- (2) Whether given the inaccuracies in the Debtor's schedule, it is impossible for the Bankruptcy Court, the Trustee and the Creditors to fully ascertain the Debtor's true financial conditions?
- (3) Whether the lack of transparency in Debtor's schedule provides sufficient evidence of bad faith satisfying (1) the final *Green* Factor and (2) the alternative basis for dismissal set forth in Section 707(B)(3)(A)?

TRUSTEE

7. Should Creditors count on the Bankruptcy Trustee taking action when it appears that fraudulent act by a Debtor could deprive Creditors of money they are entitled to receive?
8. On April 1, 2019, the Bankruptcy Trustee withdrew his Report of No Distribution [Docket No. 14] after receiving a 49-page "Notice of Suspected Fraud" by debtor [Docket No. 15]. **Question:** Whether a Bankruptcy Trustee who suspect fraud but does not have sufficient evidences to bring the matter before the Court should have compelled testimony and document production from Debtor Eric J. Blair through a Bankruptcy Rule 2004 Examination?
9. On April 16, 2019, the Court received a "Notice of Suspected Fraud" by debtor [Docket No. 15]. **Question:** Whether the Court erred by failing to ask the Bankruptcy Trustee to examine the acts and conduct of the Debtor and obtain information through a

Bankruptcy Rule 2004 Examinations after receiving the 49-page "Notice of Suspected Fraud"?

CREDITOR, TAJE MONBO

10. Whether the Bankruptcy Court erred when the Bankruptcy Court surmised that Taje Monbo received actual notice of Debtor's bankruptcy filing when:
 - (1) Debtor never listed Taje Monbo's address on the creditor's matrix and the Bankruptcy Court never mailed notice of Debtor's bankruptcy to Taje Monbo.
and
 - (2) Taje Monbo has never lived or worked at 10451 Mill Run Circle, #400, Owings Mills, MD 21117 where the Bankruptcy Court mailed the notice of Debtor's Bankruptcy?
11. Whether the Bankruptcy Court erred when the Bankruptcy Court surmise that Taje Monbo received actual notice of Debtor's bankruptcy filing where Taje's copyright lawyer notifies the New York District Court in the separate copyright infringement lawsuit (Case No. 1:18-CV-05930-MKB-ST) that Debtor had filed for Bankruptcy, **but fails to advise Taje Monbo himself that the Debtor has filed for Bankruptcy?**
12. The Debtor was aware of Taje Monbo's P.O. Box [REDACTED] Owings Mills, MD 21117 address which is listed on the Court Summons that Debtor received on January 12, 2019 in the copyright infringement lawsuit against Debtor. **Question:** Under the Bankruptcy Code is the Debtor required to submit Taje Monbo's P.O. Box [REDACTED], Owings Mills, MD 21117 on the creditor matrix [Docket No. 9] so that the Bankruptcy Court could give Taje Monbo official notice of Debtor's Bankruptcy Filing?

DEBTOR'S PETITION

13. Where allegations of fraud enter into a Bankruptcy matter, can the Bankruptcy Court really determine whether or not a Debtor's income is below the median income without a 2004 examination or discovery?
14. Whether the Debtor's failure to honestly and accurately disclose his financial conditions and to amend his Bankruptcy Schedules for inaccuracies and omissions are evidence of bad faith under Section 707(b)?
15. Whether Bankruptcy Code Section 727(a)(3) requires the Debtor to keep or preserve any recorded information, including books, documents, records, and papers for his film production business, Mission Film, Inc. from which the Debtor's financial condition or business transactions might be ascertained?
16. Whether the Bankruptcy Court erred where Debtor misrepresented and omitted **twenty-two (22) items** on his Bankruptcy Petition [See Docket No. 49, Exhibit 2] and the Bankruptcy Court concludes that Debtor's filing is not in bad faith?

17. Debtor has a pattern of continuing to operate his business, Mission Film Inc. while Mission Film Inc. is still in "Forfeited Status". [See Creditor's Hearing Exhibit 28 and 37]

Question:

Where allegations of fraud enter into a Bankruptcy matter, did the Bankruptcy Court erred when the Bankruptcy Court failed to draw inference regarding Debtor's ongoing operations of his business, Mission Film, Inc. while Mission Film, Inc. was still in forfeited status and not dissolved?

18. The Debtor owns a Phantom Camera. Debtor testified that his Phantom Camera has a **zero value** and therefore never disclose the Phantom Camera as an asset on his Petition. However, a brand new Phantom camera costs around \$140,000.00 and a used Phantom Camera is sold on ebay for \$87,000. [See Dkt 40, at Exhibit 3, 4, and 5]

Question:

Whether the Bankruptcy Court erred when the Bankruptcy Court concluded that Debtor's misstatement of the fair market value of his asset (i.e. the Phantom Camera) on his Bankruptcy Schedule is not material under the Bankruptcy Code, especially when allegations of fraud has entered into the Debtor's Bankruptcy matter?

OTHER

19. Should the Bankruptcy Court take judicial notice of indisputable facts noted in the judicial notice [Docket No. 60 - 2]?
20. The Creditors filed a pleading entitled "Motion for Relief from Order" [Dkt No. 60 - 1] on the same day as the Notice of Appeal. Is the Motion for Relief From Order considered a motion under Fed. R. Bankr. P. 9024?

STANDARD OF REVIEW

The District Court reviews the Bankruptcy Court's findings of fact under the clearly erroneous standard of review. In re: Optical Technologies, Inc., 252 B.R. 531 (M.D. Fla. 2000). The Bankruptcy Court's conclusions of law are reviewed under the *de novo* standard of review. *Id.* The Bankruptcy Court's equitable determinations are reviewed under an abuse of discretion standard.

STATEMENT OF CASE AND STATEMENT OF FACTS

I. Copyright and Trademark Infringement Lawsuit Filed Against Debtor

On October 23, 2018, the Appellants filed a complaint ("the Original Complaint") in the United States District Court for the Eastern District of New York ("the Copyright and Trademark Infringement Action"), against the Appellee, Eric J. Blair and several entities and individuals involved in the production, distribution and adaptation of the infringing film, 12 O'Clock Boys (2013) Film. (See Appellee's Hearing Exhibit 1 attached hereto as Appendix 1). The 139-paragraph Complaint asserted thirteen claims:

1. Copyright Infringement
2. Contributory Copyright Infringement
3. Vicarious Copyright Infringement
4. Infringement of Right of Publicity
5. Trademark Infringement
6. False Designation of Origin Passing Off and Unfair Competition
7. Trademark Dilution
8. Cybersquatting
9. Trademark Infringement Under Maryland Code Bus Reg. 1-414 et. seq.
10. False Advertising and Unfair Competition under Common Law
11. Contributory Trademark Infringement
12. Vicarious Trademark Infringement

13. Unjust Enrichment

(Id.)

In an attempt to avoid liability, on January 28, 2019, three months after the filing of the Copyright and Trademark Infringement Action, the Appelle filed this Chapter 7 bankruptcy case. *See* Dkt 1 attached hereto as **Appendix 2**. On February 26, 2019, Appellant Deafueh received notice of the Appelle's bankruptcy filing. Prior to February 26, 2019, Appellant Deafueh was not aware of the Debtor's bankruptcy filing.

Appellant Taje Monbo on the other hand, never received notice of the Appelle's bankruptcy filing because the Appelle never listed Appellant, Taje Monbo's P.O. Box [REDACTED] Owings Mills, Maryland 21117 address on the creditor matrix as required by the Bankruptcy Code. *See* Dkt 9 attached hereto as **Appendix 3**. Appellant, Taje Monbo's address as listed on the court summons served on the Appelle on January 12, 2019 in the Copyright and Trademark Infringement Action is P.O. Box [REDACTED] Owings Mills, Maryland 21117. (*See* Appellant's Hearing Exhibit 17 attached hereto as **Appendix 4**).

On March 4, 2019, the Copyright Counsel for the Appellants advised the United States District Court for the Eastern District of New York that the Appelle, a named defendant in the Copyright and Trademark Infringement Action had filed for chapter 7 bankruptcy. (*See* Appelle's Hearing Exhibit 5 attached hereto as **Appendix 5**. However, the Copyright Counsel did **not** advise Appellant, Taje Monbo himself that the Appelle had filed for bankruptcy.

On July 3, 2019, the U.S. District Court, Eastern District of New York granted the Appellants' motion for leave to file an amended complaint to add additional parties and claims.

The U.S. District Court, EDNY ordered that **no** defendants are in default. *See* Appellant's Hearing Exhibit 27 attached hereto as **Appendix 6**.

On August 29, 2019, the Appellants filed the Amended Complaint in the Copyright and Trademark Infringement Action against the Appellee and several entities and individuals. The Amended Complaint includes the same thirteen claims asserted in the Original Complaint plus three new additional claims. *See* Appellant's Hearing Exhibit 34 attached hereto as **Appendix 7**.

II. The 49-Page "Notice of Suspected Fraud" furnished to the Trustee and the Bankruptcy Court

On January 28, 2019, the Appellee filed this Chapter 7 bankruptcy case. *See* Dkt 1 attached hereto as **Appendix 2**. Relying on misrepresentations made by the Appellee in Appellee's bankruptcy petition, on March 11, 2019, the Trustee (Zvi Guttman) issued a Report of No Distribution in the Appellee's bankruptcy case. (Dkt 12 attached hereto as **Appendix 8**).

On March 31, 2019, Appellant Deafueh Monbo emailed the Trustee and notified the Trustee that she had uncovered documents that reveal that the Appellee had made false representation and material omissions in his Petition for Bankruptcy which she wanted to turn over to the Trustee. *See* Dkt 15, Exhibit 1 attached hereto as **Appendix 9**.

The Trustee then asked Appellant Deafueh Monbo to email the uncovered documents to him with a brief explanation of the issues. *See* Dkt 15, Exhibit 2 attached hereto as **Appendix 10**.

On April 1, 2019, Appellant Deafueh Monbo emailed the uncovered documents to the Trustee along with a brief explanation of the issue of suspected fraud by the Appellee including the omission of income from royalties, DVD sales and licensing fees earned from Appellee's film, *12 O'Clock Boys*. *See* Dkt 15, Exhibit 3 attached hereto as **Appendix 11**.

On April 1, 2019, the Trustee withdrew his Report of No Distribution in Appellee's Bankruptcy case. *See* Dkt 14 attached hereto as **Appendix 12**. *However*, the Trustee failed to

investigate or take steps to compel testimony and document production through a Bankruptcy Rule 2004 examination.

On April 16, 2019, Appellant Deafuch Monbo directly notified the Bankruptcy Court of the Appellee's suspected fraud by filing a 49-page pleading entitled "Notice of Fraud". *See* Dkt 15 attached hereto as **Appendix 13**. However, the Bankruptcy Court too failed to ask the Trustee to examine the acts and conduct of the Appellee based on the suspected fraud.

III. Misrepresentations and Omissions in Appellee's Bankruptcy Schedules

The Appellants' diligence in researching and carefully analyzing the Appellee's Bankruptcy Petition uncovered several misstatements and omissions in the Appellee's Bankruptcy Schedules. (*See* Dkt 49, Exhibit 2 attached hereto as **Appendix 14**).

Specifically, based on the evidence and the Appellants' research, sixteen (16) items were misrepresented or omitted in Appellee's Bankruptcy petition.

1. No disclosure of the business name and Employer Identification Numbers (EIN) **used in the last 8 years** for Appellee's business, Mission Film, Inc.
2. Indicating "Yes" that Appellee declared under penalty of perjury that the information that Appellee provided was true and correct, when Appellee knowingly provided material misstatements and false information in his petition filed with the Bankruptcy Court.
3. No disclosure of the 10,000 shares of stock that Appellee owns in Mission Film, Inc. as stated in the Articles of Incorporation for Mission Film, Inc.
4. No disclosure of Appellee's ownership of the website: www.missionfilm.com and the business facebook page: <https://www.facebook.com/missionfilm>.
5. No disclosure of Appellee's business related property used in his business, Mission Film such as customer list, phantom cameras.
6. No answers provided by Appellee regarding Questions No. 38 - 45, at Part 5 although Appellee owns Mission Film in which Appellee has interest in all the business-related properties such as the phantom cameras etc.

7. No disclosure of when Appelle incurred the debt owed to the Appellants and no disclosure that Appelle debt owed to Appellant is "Contingent".
8. No disclosure of executory contracts or unexpired leases (including contracts with the clients of Appelle's business, Mission Film Inc.)
9. No disclosure of companies or persons with whom the Appelle entered contracts or lease with for rent, cell phone etc such as (1)Appelle's Landlord (2) Appelle's cellphone company and (3) the website hosting company for Appelle's business, Mission Film, Inc.
10. No disclosure of the net income of Appellee's business, Mission Film Inc.
11. Indicating "Yes" that Appelle declared under penalty of perjury that Appelle has read the summary and schedules filed with this declaration and that they are true and correct when Appelle knowingly provided material misstatements and false information in his petition filed with the Bankruptcy Court.
12. No disclosure of Appelle's business income from Mission Film, Inc. during **this year or the two previous** calendar years.
13. No full disclosure of the details of the lawsuit against Appelle within 1 year before Appelle filed for bankruptcy. Specifically, no disclosure that the nature of the lawsuit against Appelle is for Copyright and Trademark Infringement. And no disclosure that Copyright and Trademark Infringement Lawsuit against Appelle is "Pending".
14. No disclosure of the details about Appelle's connection to his business, Mission Film, Inc within **4 years before Appelle filed for bankruptcy**. Specifically, no disclosure of the following information for Appelle's connection to his business, Mission Film Inc. as required by Bankruptcy Form 107, Line 25:
 - a) Appelle's connection as a sole proprietor or self-employed in a trade, profession, or other activity, either full-time or part-time to Mission Film, Inc.
 - b) Appellee's connection as an officer, director, or managing executive of a corporation of Mission Film, Inc.
 - c) Appelle's connection as an owner of at least 5% of the voting or equity securities of Mission Film, Inc.
 - d) Details of the below information for Mission Film, Inc.
 - Address
 - Describe the nature of the business
 - Name of accountant or bookkeeper
 - Employer Identification number
 - Dates business existed

15. Indicating "Yes" that Appelle has read the answers on this Statement of Financial Affairs and any attachments, and that Appelle declare under penalty of perjury that the answers are true and correct when Appelle knowingly provided material misstatements and false information in Appelle's petition filed with the Bankruptcy Court.
16. Indicating "Yes" that Appelle hereby verify(ies) that the attached matrix listing creditors is true to the best of Appelle's knowledge when Appelle intentionally did not provide the correct address for Appellant, Taje Monbo to the Bankruptcy Court (although Appelle had received copy of the court summons which lists Appellant, Taje Monbo's address as P.O. Box [REDACTED], Owings Mills MD 21117.)

(See Dkt 49, Exhibit 2 attached hereto as **Appendix 14**)

On May 3, 2019, the Appellants filed a Motion to Dismiss pursuant to section 707(a) and 707(b) of the Bankruptcy Code for the Court to enter an order dismissing the Appelle's Chapter 7 bankruptcy case. See Dkt 18 attached hereto as **Appendix 15**.

On July 17, 2019, Bankruptcy Court held the initial Hearing on the Motion to Dismiss the Appelle's bankruptcy case which was later continued to October 18, 2019. See Dkt 39

On December 9, 2019, the Bankruptcy Court issued a Denial Order denying Appellants' Motion to Dismiss the Chapter 7 Bankruptcy Case pursuant to section 707(a) and 707(b) of the Bankruptcy Code for the Court. See Dkt 56 attached hereto as **Appendix 16**.

On December 13, 2019, Appellants timely filed a Notice of Appeal of the Denial Order to the U.S. District Court. (Dkt 60). Along with the Notice of Appeal, Appellants also timely filed a Judicial Notice and a Motion For Relief From Order. See Dkt 60-1 and 60-2 attached hereto as **Appendix 17 and Appendix 18**, respectively.

IV. Appellants' Timely Motion to Extend Time to File Complaint For Determination of Non-Dischargeability of Debts and Objection to Appelle's Discharge Pursuant to Section 523(a) and Section 727(a)

On or about January 28, 2019, the Bankruptcy Court issued a Notice of Chapter 7 Bankruptcy Case on behalf of the Appelle. *See* Dkt 8-1 attached hereto as **Appendix 19**. According to the Notice of Chapter 7 Bankruptcy case, the deadline for Creditors to object to discharge under 11 U.S.C. Section 727(a) or to challenge whether certain debts are dischargeable under 11 U.S.C. under 523(a) is May 6, 2019. *See* Dkt 8-1 attached hereto as **Appendix 19**.

On May 3, 2019, the Appellants timely filed a Motion to extend time to object to Appelle's discharge. *See* Dkt 19 attached hereto as **Appendix 20**.

On July 17, 2019, Bankruptcy Court held the initial Hearing on the Motion to Extend Time to Object to Appelle's discharge which was later continued to October 18, 2019. *See* Dkt 39

On December 9, 2019, the Bankruptcy Court issued a Denial Order denying Appellants' Motion to extend time to object to Appelle's discharge or to object to the dischargeability of Appellants' copyright and trademark infringement claims. *See* Dkt 57 attached hereto as **Appendix 21**.

On December 13, 2019, Appellants filed a timely Notice of Appeal of the Denial Order to the U.S. District Court. (Dkt 60). Along with the Notice of Appeal, Appellants also timely filed a Judicial Notice and a Motion For Relief From Order. *See* Dkt 60-1 and 60-2 attached hereto as **Appendix 17 and Appendix 18**, respectively.

V. Appelle's Phantom Camera

The Phantom Flex 4K camera ("Phantom Camera") is a third-generation digital cinema camera providing the ultimate in image quality. Designed for the cinematographer, the Phantom Flex 4K is a high-speed camera providing exceptional flexibility through its frame rate capabilities and by adapting to different shooting styles. (See Dkt 49, Exhibit 3). A brand new Phantom camera costs around \$140,000.00. (See Dkt 49, Exhibit 4).

Appelle owns a Phantom Camera which Appelle failed to disclose in his Bankruptcy Petition. (See Dkt 49, Exhibit 5). Appelle testified in court that his Phantom camera is stored in storage and his Phantom camera has a zero value. However, a used Phantom camera on Ebay is sold for \$87,000.00. (See Dkt 49, Exhibit 6 attached hereto as **Appendix 22**)

ARGUMENTS

SUMMARY OF ARGUMENTS

The Bankruptcy Court disregarded the law of the case and controlling case law concerning dismissing the Appelle's Chapter 7 Bankruptcy case as a bad faith filing pursuant to 11 U.S.C. Section 707(a) and 707 (b) of the Bankruptcy Code. Further, the Bankruptcy Court disregarded the law of the case and controlling case law concerning granting Appellants' Timely Motion To Extend Time to Object to Discharge pursuant to Federal Rules of Bankruptcy Procedure Rule 4004(b)(1)

First, the Trustee erred in failing to conduct a 2004 Examination after receiving the 49-page Notice of Suspected Fraud on April 1, 2019. After receiving the 49-page Notice of Suspected Fraud, the Trustee simply withdrew his Report of No Distribution but failed to compel

discovery and production of document through a Bankruptcy Rule 2004 Examination to examine:

- (1) the acts, conduct, property, liabilities or financial condition of the Appelle
- (2) any matter which may affect the administration of the bankruptcy estate or
- (3) any matter which may affect the Appelle's right to discharge.

Second, the Bankruptcy Court also erred in failing to ask the Trustee to examine the acts and conducts of the Appelle after receiving the 49-page Notice of Fraud by Appelle. Pursuant to the Bankruptcy Code, the Bankruptcy Court should have asked the Trustee to examine the acts and conducts of the Appelle to examine any matter which may affect the Appelle's right to discharge.

Third, pursuant to Section 707(a), the Bankruptcy Court erred in failing to dismiss the Appelle's bankruptcy case as bad faith filing when the Appelle misrepresented and omitted twenty-two items on his bankruptcy schedules in connection with his bankruptcy case. (See Appendix 14)

“Cause for dismissal under § 707(a) has been held to include a lack of good faith in filing the petition. In re Marino, 388 B.R. 679, 682 (Bankr. E.D.N.C. 2008); see also McDow v. Smith (In re Smith), 295 B.R. 69, 74 (E.D. Va. 2003) (holding, after considering the statutory construction of §707(a), that a debtor's bad faith may constitute cause for dismissal under a totality of the circumstances analysis); Desiderio v. Parikh (In re Parikh), 456 B.R. 4, 20 (Bankr. E.D.N.Y. 2011) (finding that bad faith constitutes cause for dismissal under §707(a), while acknowledging disagreement among the circuit courts regarding the issue); In re Zick, 931 F.2d 1124, 1126-27 (6th Cir. 1991) (holding that although chapter 7 does not explicitly require good faith, good faith is an implicit jurisdictional requirement, and the lack thereof is a valid basis for dismissal for cause under §707(a))

Here in this case the Appelle misrepresented and omitted twenty-two items on his bankruptcy schedules in connection with his bankruptcy case, thus, Appelle's case should have been dismissed as bad faith filing.. Generally, a "debtor's 'bad faith' or 'lack of good faith' is evidenced by debtor's deliberate acts or omissions that constitute a misuse or abuse of the provisions, purpose, or spirit of the Bankruptcy Code." Smith, 295 B.R. 69, 74.

Fourth, pursuant to Section 707(b), the Bankruptcy Court erred in failing to dismiss the Appelle's bankruptcy case as abuse of the Bankruptcy Code when the Appelle misrepresented and omitted twenty-two items on his bankruptcy schedules. (See Appendix 14)

Here in this case, the Debtor misrepresented information on his Bankruptcy Petition. (See **Exhibit 2**) Material misrepresentations and omissions in a debtor's schedules are factors that a court may consider in determining whether dismissal for bad faith is appropriate under Section 707(b)(3)(A). See *In re Fox*, 521 B.R. at 532. Debtors have an ongoing and independent duty to provide accurate and complete information on their schedules regardless of whether they were assisted by counsel in preparing their schedules. See *In re Barrows*, 399 B.R. 506,511 (Bankr. D. Minn. 2009). "The purpose of the schedules is to ensure that there is adequate information available to the debtor's creditors-there should be no independent duty placed upon the creditors to conduct an investigation to ensure that the information in the schedules and statements is true, accurate and complete." *In re Seung Chan Park*, 480 B.R. 627, 639 (Bankr. D. Md. 2012). "To allow [a debtor] to use his discretion in determining the relevant information to disclose would create an end-run around this strictly crafted system." *Id.* (quoting *In re Weldon*, 184 B.R. 710, 715 (Bankr. D.S.C. 1995)). "Creditors should not have to 'drag the truth' from the debtor and the debtor should be required to abide by the 'cardinal rule: when in doubt, disclose.'" *Id.* (quoting *In re Hlishak*, 337 B.R. 620,630 (Bankr. N.D. Ohio 2005)). In addition to honestly and accurately

disclosing financial conditions, debtors are required to amend their bankruptcy schedules as soon as practicable after learning of any inaccuracies or omissions. *See Bauer v. Iannacone (In re Bauer)*, 298 B.R. 353, 357 (B.A.P. 8th Cir. 2003); *see also In re Evinger*, 354 B.R. 850, 854 (Bankr. W.D. Ark. 2006). Failure to abide by any of these duties may be evidence of bad faith under Section 707(b). Applying the *Green* factors to this case warrants a finding of abuse under Section 707(b)(3).

Fifth, the Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint pursuant to Section 523(a)(6) and Section 727. Here in this case, the last day to file an adversary complaint was May 6, 2019. On May 3, 2019 (before the expiration date), the Appellants timely filed an extension of time to file an adversary complaint pursuant to Federal Rule Bankruptcy Procedure 4004(b)(1).

The Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint when the Appelle willfully and maliciously infringed on the Appellants' Copyrights and Trademarks and by reason of the Appelle's conduct, the Appelle's debts to the Appellants were incurred by willful and malicious injury by Appelle and are not dischargeable pursuant to 11.U.S.C. Section 523(a)(6).

Further, the Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint when the Appelle, in his operation of his various businesses, including (1) Mission Film, Inc, (2) Eric Blair d/b/a Mission Film and (3) Eric Blair d/b/a Mission Film Productions, concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the Appelle's financial condition or business transactions might be ascertained. And by virtue of the foregoing, the Appelle's discharge should be denied under Bankruptcy Code § 727(a)(3).

Further, the Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint when the Appelle has offered no satisfactory explanation for his claimed loss of thousands of dollars in Mission Film business income to now \$51,999.96 per year in personal income for 2019 and by virtue of Bankruptcy Code § 727(a)(5), the Appelle's discharge should be denied for Appelle's failure to satisfactorily explain his claim loss of thousands of dollars in Mission Film business income.

Further, the Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint when the Appelle knowingly and fraudulently, in or in connection with the Bankruptcy case, made a false oath or account, in that he failed to include on his Statement of Financial Affairs attached to his Petition information about the nature, names, taxpayer identification numbers, locations, and beginning and end dates of all businesses in which the Appelle was an officer, director, partner or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession or other activity **within four years preceding his filing for Bankruptcy** and By virtue of the Appeller's false representations and omissions, and the oath he took concerning the veracity of his submissions, the Appelle's discharge should be denied under Bankruptcy Code § 727(a)(4)(A).

Finally, the Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint pursuant to Section 523(a)(6) and 727 when Appellant, Taje Monbo did not have actual, timely notice of the Bankruptcy filing. For one, the Appelle failed to submit Appellant's Taje Monbo's address on the creditor matrix so the Bankruptcy Court give Appellant Taje Monbo official notice of the Appelle's Bankruptcy filing. And two, the copyright attorney for Appellant, Taje Monbo in the separate copyright infringement case failed to advise

Appellant Taje Monbo that the Appellee had filed for Bankruptcy as it is the Appellee's responsibility to ensure that Appellee's creditors receive notice of Appellee's bankruptcy filing.

Sixth, this appeal also raises the issue of judicial notice. Pursuant to Federal Rule of Evidence 201, Appellants request that the Court take judicial notice of the facts listed in Dkt 60-2. Federal Rule of Evidence 201(b) states that the court may take judicial notice of facts that are "(1) generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." See Fed. R. Evid. 201. A court may consider judicially noticeable facts in connection with a motion to dismiss, *Shwarz v. U.S.*, 234 F.3d 428, 435 (9th Cir. 2000), and must generally take judicial notice if a party requests it and supplies the court with the requisite information. See Fed. R. Evid. 201(c)(2). Accordingly, this Court is entitled to take judicial notice of the facts noted in Dkt 60-2, and Appellants specifically request that this Court and the Bankruptcy Court take judicial notice of the facts cited in Dkt 60-2.

ARGUMENTS

- I. **The Bankruptcy Court erred in failing to understand that Appelle willfully and maliciously infringed on the Appellants' Copyrights and Trademarks and by reason of the Appelle's conduct, the Appelle's debts to the Appellants were incurred by willful and malicious injury by Appelle and are not dischargeable pursuant to 11.U.S.C. Section 523(a)(6).**

The Appellants own the United States copyrights in the Original 12 O'Clock Boyz film series released in 2001 and 2003 and the 12 O'Clock Boyz visual artworks (collectively, the "12 O'Clock Boyz Copyrighted Works").

The Appelle willfully and maliciously infringed the Appellants' copyrights by producing an infringing film entitled, 12 O'Clock Boys (2013) which contains copyrighted elements of the Appellants' 12 O'Clock Boyz Copyrighted Works.

Bankruptcy Code § 523(a)(6) provides, in relevant part, that:

(b) A discharge under section 727, 1141, 1228(a), 1228(b) or 1328(b) of this title does not discharge an individual debtor from any debt—

...
(6) or willful and malicious injury by the debtor to another entity or to the property of another entity . . .

All of the debt owed to Appellants, as evidenced by the Copyright and Trademark Infringement Action against the Appellee, is non-dischargeable as it is a debt for willful and malicious injury caused by the Appellee within the meaning of Bankruptcy Code § 523(a)(6).

Because the Appelle's debt is for willful and malicious injury, the debts of the Appelle to the Appellants are non-dischargeable in bankruptcy

II. The Trustee erred in failing to conduct a 2004 Examination after receiving the 49-page Notice of Suspected Fraud by Appelle.

Rule 2004 Examinations provides that a trustee who suspects fraud but doesn't have sufficient evidence to bring the matter before the court can compel testimony and document production from just about anyone through a Bankruptcy Rule 2004 examination. The scope of the examination is broad enough to allow inquiry into any action that could be considered fraud in a bankruptcy case.

For instance, Bankruptcy Rule 2004 authorizes the bankruptcy trustee to examine:

- the acts, conduct, property, liabilities or financial condition of the debtor
- any matter which may affect the administration of the bankruptcy estate,
- any matter which may affect the debtor's right to a discharge

Here in this case, on March 31, 2019, the Trustee received a 49-page notice of suspected fraud by Appelle. On April 1, 2019, the Trustee simply withdrew his Report of No Distribution, but never compelled testimony and document production through a Bankruptcy Rule 2004 examination.

Because the Trustee knew about the suspected fraud by Appelle on March 31, 2019 and did not conduct a 2004 Examination, the Trustee erred in failing to take action when fraudulent act by the Appelle could deprive Creditors of money they are entitled to receive.

III. The Bankruptcy Court also erred in failing to ask the Trustee to examine the acts and conducts of the Appellee after receiving the 49-page Notice of Fraud by Appellee

Similarly, on April 16, 2019, the Bankruptcy Court received a 49-page notice of suspected fraud by Appellee. Because the Bankruptcy Court knew about the suspected fraud by Appellee on April 16, 2019 and did not ask the Trustee to examine the acts and conducts of the Appellee through a 2004 Examination, the Bankruptcy Court erred

IV. Pursuant to Section 707(a), the Bankruptcy Court erred in failing to dismiss the Appellee's bankruptcy case as bad faith filing when the Appellee misrepresented and omitted twenty-two items on his bankruptcy schedules.

Section 707(a) of the Bankruptcy Code states that a court may dismiss a chapter 7 case “after notice and a hearing only for cause,” without expressly defining “cause.” 11 U.S.C. § 707(a). Instead, it provides three non-exclusive examples of “cause” for discretionary dismissal including:

(1) unreasonable delay by the debtor that is prejudicial to creditors; (2) nonpayment of any fees or charges required under chapter 123 of title 28; and (3) failure of the debtor in a voluntary case to file, within fifteen days . . . the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee. 11 U.S.C. § 707(a). However, “cause for dismissal under § 707(a) has been held to include a lack of good faith in filing the petition.” *In re Marino*, 388 B.R. 679, 682 (Bankr. E.D.N.C. 2008); *see also McDow v. Smith* (In re Smith), 295 B.R. 69, 74 (E.D. Va. 2003) (holding, after considering the statutory construction of §707(a), that a debtor’s bad faith may constitute cause for dismissal under a totality of the circumstances analysis); *Desiderio v. Parikh* (In re Parikh), 456 B.R. 4, 20 (Bankr. E.D.N.Y. 2011) (finding that bad faith constitutes cause for dismissal under §707(a), while acknowledging disagreement among the circuit courts regarding the issue); *In re Zick*, 931 F.2d 1124, 1126-27 (6th Cir. 1991)

(holding that although chapter 7 does not explicitly require good faith, good faith is an implicit jurisdictional requirement, and the lack thereof is a valid basis for dismissal for cause under §707(a)

Generally, a “debtor’s ‘bad faith’ or ‘lack of good faith’ is evidenced by debtor’s deliberate acts or omissions that constitute a misuse or abuse of the provisions, purpose, or spirit of the Bankruptcy Code.” Smith, 295 B.R. 69, 74. In assessing bad faith under this section, this district has adopted a non-exclusive fourteen-factor totality of the circumstances test. See e.g., In re Marino, 388 B.R. 679, 682 (Bankr. E.D. N.C. 2008); In re Scott, Case No. 10-00794-8-JRL, 7 Bankr. E.D.N.C. Aug. 6, 2010). The factors include:

- (1) The debtor reduces creditors to a single creditor in the months prior to the filing of the petition;
- (2) **The debtor failed to make candid and full disclosure;**
- (3) **Debtor filed the case in response to a judgment pending litigation;**
- (4) The debtor made no efforts to repay his debts;
- (5) **The unfairness of the use of Chapter 7;**
- (6) The debtor has sufficient resources to pay his debts;
- (7) The debtor is paying debts to insiders;
- (8) The schedules inflate expenses to disguise financial well-being;
- (9) The debtor transferred assets;
- (10) The debtor’s overly utilizing the protections of the Code to the unconscionable detriment of creditors;
- (11) The debtor employed a deliberate and persistent plan of evading a single major creditor;

- (12) The debtor failed to make lifestyle adjustments or continued living an expansive or lavish lifestyle;
- (13) The debts are modest in relation to assets and income; and
- (14) **There are other procedural "gymnastics."**

In re Marino, 388 B.R. 679, 682 (citations omitted). These fourteen factors are intended to serve as a guide, as the court must examine any allegation of bad faith on the facts of the particular case. In re Scott, Case No. 10-00794-8-JRL, 8 (Bankr. E.D.N.C. Aug. 6, 2010). The presence of any one factor is not sufficient for a finding of cause for dismissal, however, the presence of multiple factors, when considered together, may suffice. *Id.*

As discussed below, **this Bankruptcy Case presents at least four of the factors that courts consider when determining whether a Chapter 7 petition should be dismissed as a bad faith filing pursuant to section 707(a) of the Bankruptcy Code.** Consequently, the totality of the circumstances demonstrates that the Debtor lacked good faith in filing the Petition and, therefore, the Bankruptcy Case must be dismissed for cause pursuant to section 707(a).

Appelle failed to include his business income from his film production companies: (1) Mission Film, Inc and (2) Eric Blair d/b/a Mission Film, and (3) Eric Blair d/b/a Mission Film Productions as part of his income on his Bankruptcy Petition.

Appelle failed to include on his Statement of Financial Affairs attached to his Petition information about the nature, names, taxpayer identification numbers, locations, and beginning and end dates of all businesses in which the Debtor was an officer, director, partner or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession or other activity within four years preceding his filing for Bankruptcy.

Debtor filed his Bankruptcy Petition solely in response to the copyright and trademark infringement lawsuit filed by Creditors.

On January 12, 2019, Appelle received summons and a copy of the Complaint for the copyright and trademark infringement lawsuit filed by the Creditors. Instead of filing an answer with respect to the Complaint, the Appelle chose to file a Bankruptcy Petition on January 28, 2019 (two weeks later) in order to have an automatic stay put on the Creditors' lawsuit.

“[T]he unfairness of the Debtor’s use of the bankruptcy process” has permeated the entire Bankruptcy Case since its inception. McDow, 295 B.R. at 80 n.22. As discussed above, the Petition is merely the Appelle’s ploy — procedural maneuvers geared towards preventing the Creditors from obtaining relief for the Appelle’s willful and malicious copyright and trademark infringement.

This Bankruptcy Case presents at least four factors that courts consider when determining whether a Chapter 7 petition should be dismissed as a bad faith filing pursuant to section 707(a) of the Bankruptcy Code. Consequently, the totality of the circumstances evidences that the Appelle lacked good faith in filing the Petition and, therefore, the Bankruptcy Case must be dismissed for cause pursuant to section 707(a).

V. Pursuant to Section 707(b), the Bankruptcy Court erred in failing to dismiss the Appellee's bankruptcy case as abuse of the Bankruptcy Code when the Appellee misrepresented and omitted twenty-two items on his bankruptcy schedules

Because **allegations of fraud** entered this Bankruptcy matter, Appellants have standing to under 707(3)(b) to dismiss Appellee's Chapter 7 case.

The abuse provision of Section 707(b), which provides, in relevant part:

(b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), **or any party in interest**, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting would be an abuse of the provisions of this chapter. 11 U.S.C. §707(b)(1).

In this case, the dispute is whether the instant filing is an abuse of the Bankruptcy Code. Section 707(b)(3) provides guidance on when the granting of relief would be considered abusive where the presumption of abuse does not arise or is rebutted. That subsection provides:

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider—

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse. 11 U.S.C. §707(b)(3).

Although the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") lowered the standard under Section 707(b) from "substantial abuse" to "abuse," pre-BAPCPA cases are still instructive for interpreting Section 707(b)(3) and defining "totality of the circumstances." *In re Crink*, 402 B.R. 159, 169 (Bankr. M.D.N.C. 2009). In *Green v. Staples (In re Green)*, 934 F.2d 568 (4th Cir.1991), the United States Court of Appeals for the Fourth Circuit

set forth several factors for courts to evaluate when deciding whether to dismiss a case as abusive based on the “totality of the circumstances.” The *Green* factors are:

- (1) Whether the bankruptcy petition was filed was filed because of sudden illness, calamity, disability, or unemployment;
- (2) Whether the debtor incurred cash advances and made consumer purchases far in excess of his ability to repay;
- (3) Whether the debtor’s proposed family budget is excessive or unreasonable;
- (4) Whether the debtor’s schedules and statement of current income and expenses reasonably and accurately reflect the true financial condition;
and
- (5) Whether the petition was filed in good faith.

Id. “Exploring these factors, allows the court to determine more accurately whether the particular debtor’s case exemplifies the real concern behind Section 707(b): abuse of the bankruptcy process by a debtor seeking to take unfair advantage of his creditors.” *Id.*

Here in this case, the Appelle misrepresented information on his Bankruptcy Petition. Material misrepresentations and omissions in a debtor’s schedules are factors that a court may consider in determining whether dismissal for bad faith is appropriate under Section 707(b)(3)(A). *See In re Fox*, 521 B.R. at 532. Debtors have an ongoing and independent duty to provide accurate and complete information on their schedules regardless of whether they were assisted by counsel in preparing their schedules. *See In re Barrows*, 399 B.R. 506, 511 (Bankr. D. Minn. 2009). “The purpose of the schedules is to ensure that there is adequate information available to the debtor’s creditors—there should be no independent duty placed upon the creditors to conduct an investigation to ensure that the information in the schedules and statements is true, accurate and complete.” *In re Seung Chan Park*, 480 B.R. 627, 639 (Bankr. D. Md. 2012). “To allow [a debtor] to use his discretion in determining the relevant information to

disclose would create an end-run around this strictly crafted system.” *Id.* (quoting *In re Weldon*, 184 B.R. 710, 715 (Bankr. D.S.C. 1995)). “Creditors should not have to ‘drag the truth’ from the debtor and the debtor should be required to abide by the ‘cardinal rule: when in doubt, disclose.’” *Id.* (quoting *In re Halishak*, 337 B.R. 620, 630 (Bankr. N.D. Ohio 2005)). In addition to honestly and accurately disclosing financial conditions, debtors are required to amend their bankruptcy schedules as soon as practicable after learning of any inaccuracies or omissions. *See Bauer v. Iannacone (In re Bauer)*, 298 B.R. 353, 357 (B.A.P. 8th Cir. 2003); *see also In re Evinger*, 354 B.R. 850, 854 (Bankr. W.D. Ark. 2006). Failure to abide by any of these duties may be evidence of bad faith under Section 707(b).

Applying the *Green* factors to this case warrants a finding of abuse under Section 707(b)(3). While the first through third factors did not weigh in favor of dismissal, an analysis of the remaining factors lead to a finding of abuse. The fourth *Green* factor, whether the statement of current income and expenses reasonably and accurately reflect the debtors' true financial condition, offered the strongest evidence of abuse. The Appelle's failure to include information about whether he had Mission Film, Inc in the last eight years, and Appelle's failure to include his Missionfilm.com website and Facebook page and Appelle's failure to include **the other information listed in Appendix 14** "falls short of 'full and accurate disclosure' of the Appelles' finances, which is essential to the bankruptcy process." Given the inaccuracies in the Appelles' schedules, it is impossible for the Court, the Trustee, and the creditors to fully ascertain the Appelles' true financial situation. The lack of transparency in the Appelles' schedules provided sufficient evidence of bad faith, satisfying both the final *Green* factor and the alternative basis for dismissal set forth in Section 707(b)(3)(A). Consequently, the Court should dismiss Appelle's case for a finding of abuse pursuant to Section 707(b). *See Green v. Staples*

(*In re Green*), 934 F.2d 568 (4th Cir. 1991). Also See *In re Price*, No.14-13186-WIL, 2015 WL 1543006 (Bankr. D. Md. Mar. 30, 2015).

VI. The Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint pursuant to Section 523 and Section 727.

Fed. R. Bankr P. 4007(c) provides that a complaint objecting to dischargeability must be filed no later than 60 days after the first date set for the meeting of creditors.

Here in this case, the last day to file an adversary complaint was May 6, 2019. On May 3, 2019 (before the expiration date), the Appellants timely filed an extension of time to file an adversary complaint pursuant to Federal Rule Bankruptcy Procedure 4004(b)(1). Yet the Bankruptcy Court denied the Appellants' Motion For Extension of Time to file adversary complaint.

The Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint pursuant to Section 523(a)(6) and Section 727.

First, 523(a)(6) excepts from discharge a debt “for willful and malicious injury by the debtor to another entity or to the property of another entity.”.

Here in this case, the Appelle debts is for willful and malicious copyright and trademark infringement. Under the Bankruptcy Code, the Appellants are entitled to file an adversary complaint objecting to discharge. The Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint.

Second, 727(a)(3) provides that the debtor will not receive a discharge if “the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor’s financial condition or

business transaction might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case.”

Here in this case, the Appellee the Appellee, in his operation of his various businesses, including (1) Mission Film, Inc, (2) Eric Blair d/b/a Mission Film and (3) Eric Blair d/b/a Mission Film Productions, concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the Appellee's financial condition or business transactions might be ascertained. And by virtue of the foregoing, the Appellee's discharge should be denied under Bankruptcy Code § 727(a)(3).

Under the Bankruptcy Code, the Appellants are entitled to file an adversary complaint objecting to discharge. The Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint.

Third, 727(a)(5) provides that a debtor will not receive a discharge if “the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor’s liabilities.”

Here in this case the Appellee has offered no satisfactory explanation for his claimed loss of thousands of dollars in Mission Film business income to now \$51,999.96 per year in personal income for 2019 and by virtue of Bankruptcy Code § 727(a)(5), the Appellee's discharge should be denied for Appellee's failure to satisfactorily explain his claim loss of thousands of dollars in Mission Film business income.

Under the Bankruptcy Code, the Appellants are entitled to file an adversary complaint objecting to discharge. The Bankruptcy Court erred in failing to grant Appellants' timely extension of time to file an adversary complaint.

VII. The Bankruptcy Court erred when the Bankruptcy Court surmise that Appelleant, Taje Monbo received actual notice of Appelle' Bankruptcy Case

The Bankruptcy Code provides that each Creditor shall be provided notice of a Debtor's bankruptcy filing. Further, the Bankruptcy Code provides that a Debtor is responsible for ensuring that the address of each creditor is listed on the Creditor Matrix.

Here in this case, Appellant Taje Monbo never received notice of the Appelle's bankruptcy filing because the Appelle never listed Appellant, Taje Monbo's P.O. Box ■■■, Owings Mills, Maryland 21117 address on the creditor matrix as required by the Bankruptcy Code. See Dkt 9 attached hereto as **Appendix 3**. Appellant, Taje Monbo's address as listed on the court summons served on the Appelle on January 12, 2019 in the Copyright and Trademark Infringement Action is P.O. Box ■■■, Owings Mills, Maryland 21117. (See Appellant's Hearing Exhibit 17 attached hereto as **Appendix 4**.)

Although, on March 4, 2019, the Copyright Counsel for the Appellants advised the United States District Court for the Eastern District of New York in the separate copyright infringement lawsuit (Case No. 1:18-CV-05930-MKB-ST) that the Appelle, a named defendant in the Copyright and Trademark Infringement Action had filed for Chapter 7 bankruptcy (Appendix 5), the Copyright Counsel **failed to advise Appellant, Taje Monbo himself that the Appelle had filed for bankruptcy**. Therefore, Appellant Taje Monbo had no knowledge of the Appelle's Bankruptcy case.

The Bankruptcy Court erred when the Bankruptcy Court surmised that Appellant, Taje Monbo received actual notice of Appelle's Bankruptcy case.

VIII. The Bankruptcy Court erred when the Bankruptcy Court concluded that Debtor's misstatement of the fair market value of his asset (i.e. the Phantom Camera) on his Bankruptcy Schedule is not material under the Bankruptcy Code.

The Bankruptcy Code provides that the fair market value of Debtor's assets shall be disclosed on the Bankruptcy Schedule. Here in this case the Appellee owns a Phantom Camera. A brand new Phantom camera costs around \$140,000.00. (See Dkt 49, Exhibit 4). Appellee failed to disclose in his Bankruptcy Petition. (See Dkt 49, Exhibit 5). The Appellee testified in court that his Phantom camera is stored in storage and his Phantom camera has a zero value. However, a used Phantom camera on Ebay is sold for \$87,000.00. (See Dkt 49, Exhibit 6 attached hereto as **Appendix 22**). The Bankruptcy Court erred when the Bankruptcy Court concluded that Appellee's misstatement of the fair market value of his asset (i.e. the Phantom Camera) on his Bankruptcy Schedule is not material under the Bankruptcy Code, **especially when allegations of fraud has entered this Bankruptcy matter.**

IX. The Bankruptcy Court erred when the Bankruptcy Court failed to draw inference regarding Appellee's ongoing operations of his business, Mission Film, Inc. while Mission Film, Inc. was still in forfeited status and not dissolved.

The Appellee has a pattern of continuing to operate his business, Mission Film Inc. while Mission Film Inc. is still in "Forfeited Status". For example, Appellee founded Mission Film, Inc in 2004. In 2012, the State of Maryland put Mission Film, Inc in forfeited status because the Appellee failed to pay business property tax for the eight year period covering 2005 to 2014 although, the Appellee was continuing to operate his business during 2005-2014 (See Appellant's Hearing Exhibit 28 attached hereto as **Appendix 23**)

On February 24, 2014, the Appelle paid the State of Maryland his eight-year back business property tax so the State of Maryland could remove the tax lien against Mission Film and revive Mission Film. (See Appellant's Hearing Exhibit 24)

In 2015, the Appelle again failed to pay the State of Maryland for 2015 business property taxes and the State of Maryland put Mission Film, Inc back in forfeited status because the Appelle failed to pay business property tax for 2015.

The Appelle has a pattern of continuing to operate his business, Mission Film Inc. while Mission Film Inc. is still in "Forfeited Status". The Bankruptcy Court erred when the Bankruptcy Court failed to draw inference regarding Appelle's ongoing operations of his business, Mission Film, Inc. while Mission Film, Inc. was still in forfeited status and not dissolved, especially when (1) allegations of fraud has entered this bankruptcy matter and (2) when the Trustee and the Bankruptcy Court have received a 49-page notice of suspected fraud by Appelle and have not conducted a Rule 2004 Examination.

X. The Court is entitled to take judicial notice of the facts noted in Dkt 60-2

Rule 201. provides that the Court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Pursuant to Federal Rule of Evidence 201, Appellants requested the Court take judicial notice of the following facts and information, in support of Judicial Notice and the Creditors' Relief From Order.

1. On March 31, 2019, the Trustee received notice of suspected fraud by Debtor.
2. On April 1, 2019, the Trustee withdrew his Report of No Distribution. **Docket 14**
3. On April 16, 2019, the Court received notice of suspected fraud. **Docket 15**
4. When allegations of fraud enter into a bankruptcy matter, the next step usually involves obtaining information through Rule 2004 Examinations or discovery.

Rule 2004 Examinations

A trustee who suspects fraud but doesn't have sufficient evidence to bring the matter before the court can compel testimony and document production from just about anyone through a Bankruptcy Rule 2004 examination. The scope of the examination is broad enough to allow inquiry into any action that could be considered fraud in a bankruptcy case. For instance, Bankruptcy Rule 2004 authorizes the bankruptcy trustee to examine:

- the acts, conduct, property, liabilities or financial condition of the debtor
 - any matter which may affect the administration of the bankruptcy estate, or
 - any matter which may affect the debtor's right to a discharge
5. Here in this case, the Trustee simply withdrew his Report of No Distribution but never compelled testimony and document production through a Bankruptcy Rule 2004 examination.
 6. Also, here too, the Court has not ordered the Trustee to examine the acts and conduct of the Debtor based on the suspected fraud.

Because the above fact noticed in Dkt 60-2 is not subject to reasonable dispute, the Appellants are entitled to have the facts judicially noticed.

CONCLUSION

In light of the ruling of Judge Harner, the controlling case law set forth above and the evidence and testimony presented by the parties, Appellee's Bankruptcy Case should have been dismissed as a bad faith filing pursuant to 11 U.S.C. Section 707(a) and 707 (b) of the Bankruptcy Code.

Further, the Bankruptcy Court erred by denying the Appellants' timely Motion to Extend Time to File Objection to Discharge under 11 U.S.C. Section 523 and 11 U.S.C. Section 727.

PRAYER FOR RELIEF

WHEREFORE Appellants pray that this Court find that the Bankruptcy Court made clearly erroneous findings of fact, committed an error of law and/or abused its discretion by (1) denying Appellant's Motion to Dismiss pursuant to 11 U.S.C. Section 707(a) and 707(b), and (2) by denying Appellant's Motion to Extend Time to Object to Discharge pursuant to 11 U.S.C. Section 523 and 11 U.S.C. Section 727, remand the case to the Bankruptcy Court with instructions for further proceedings consistent with reversal, and award such other legal and equitable relief as it deems appropriate.

Respectfully submitted on February 10th, 2020.

By: 

By: 

CERTIFICATE OF COMPLIANCE

This Brief complies with Rule 8015 of the Federal Rules of Bankruptcy Procedure because this Brief contains no more than 13,000 words.

Date: February 10th, 2020.

By: 

By: 

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- Appendix 3 BNC Certificate of Mailing - Meeting of Creditors (Dkt 9)
- Appendix 4 Court Summons in CV-18-5930, EDNY -- (Appellant's Hearing Exhibit 17)
- Appendix 5 Letter From Luiz Felipe, Esq. in CV-18-5930, EDNY (Appellant's Hearing Exhibit 5)
- Appendix 6 Court Order dated July 11, 2019, EDNY CV-18-5930 (Dkt 97)
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- Appendix 9 3/31/2019 Email from Deafueh Monbo to the Trustee -- (Dkt 15, Exhibit 1)
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. . . .

- Appendix 22 Print-out of Ebay showing price of a used Phantom Camera -- (Dkt 49, Ex 6)
- Appendix 23 . . . Printout of Mission Film Business History (Appellant's Hearing Exhibit 28)
- Appendix 24 . . . Mission Film Personal Property Lien Certificate (Appellant's Hearing Exhibit 24)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed by first class mail on 2/10/2020 to

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Chapter 7 Bankruptcy Trustee

By: 

By: 