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JUL 16 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

Michael Joel Kamen,

Debtor(s).

CHAPTER 7

Case No.: 2:12-bk-19793-BB

Adv No: 2:12-ap-01805-BB

**MEMORANDUM DECISION BARRING
DEBTOR'S DISCHARGE PURSUANT TO
BANKRUPTCY CODE SECTION
727(a)(4)(A)**

Gerson Fox,

Plaintiff(s),

v.

Michael Joel Kamen.

Defendant(s).

Date: June 25, 2019

Time: 10:00 AM

Courtroom: 1539

Debtor Michael Joel Kamen ("Kamen") filed a voluntary petition under chapter 11 of the Bankruptcy Code on March 19, 2012, commencing bankruptcy case number 2:12-bk-19793-BB (the "Case"). Kamen's former business partner and his wife, Gerson

1 and Gertrude Fox (jointly, the “Foxes”), commenced the above adversary proceeding
2 (the “Action”) against Kamen on June 18, 2012. By the time the Action went to trial on
3 June 25, 2019, only one claim for relief remained in the Action: a claim under
4 Bankruptcy Code section 727(a)(4)(A) to bar Kamen from obtaining a discharge on the
5 ground that Kamen had “knowingly and fraudulently” made a false oath or account in
6 connection with the Case.

7 For the reasons set forth below, the Court finds that Kamen, knowingly and
8 fraudulently, made several false statements under oath in connection with facts that are
9 material in the Case and that the Foxes are entitled to a judgment barring Kamen from
10 receiving a discharge in the Case under Bankruptcy Code section 727(a)(4)(A). A
11 judgment to this effect will be entered concurrently herewith.

12 I

13 **STATEMENT OF FACTS**

14 Kamen filed his bankruptcy schedules (the “Schedules”) and his Statement of
15 Financial Affairs (the “SOFA”) on April 17, 2012.¹ Kamen was represented in
16 connection with the preparation of these documents by competent bankruptcy counsel,
17 Leslie Cohen Law, PC, whose employment was approved by order entered May 15,
18 2002 [Case Docket No. 71]. Kamen executed both the Schedules and the SOFA under
19 penalty of perjury.

20 On October 23, 2012, the Court entered an order [Case Docket No. 235] granting
21 the motion of creditor The Private Bank of California for appointment of a chapter 11
22 trustee in the Case. The United States Trustee selected Richard Laski (“Laski”) to serve
23 as chapter 11 trustee in the Case. The Case was converted to a case under chapter 7
24 of the Bankruptcy Code by order entered November 19, 2012 [Case Docket No. 274].
25 Laski conducted an examination of Kamen under oath at a meeting of creditors under
26 Bankruptcy Code section 341(a) held January 2, 2013 (the “341(a) Meeting”).
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¹ The Schedules and the SOFA appear on the docket in the Case as Docket No. 35.

1 In the Joint Pretrial Order entered April 9, 2019 [Action Docket No. 205], the
2 parties stipulated to the following additional facts, among others:

- 3 1. In or about early 2011, Kamen asked an old friend Mel Kaftan (“Kaftan”) to open
4 a bank account in Kaftan’s name for the benefit of Kamen (the “Kaftan/Kamen
5 Account”);²
- 6 2. Kamen advised Kaftan that the proceeds from the sale of “his artwork and other
7 items” would be deposited into the Kaftan/Kamen Account to be used by Kaftan
8 for the benefit of Kamen;³
- 9 3. Kaftan testified that he only wrote checks from the Kaftan/Kamen Account at the
10 instruction of Kamen or someone working for Kamen;⁴
- 11 4. Kamen continued to instruct Kaftan to disburse money to Kamen after the
12 bankruptcy filing;⁵
- 13 5. Funds deposited into the Kaftan/Kamen Account came from sales of Kamen’s
14 artwork and [in April of 2011], from the proceeds of a sale of a condominium that
15 Kamen had owned in Vancouver;⁶
- 16 6. All of the funds paid to Kamen by Kaftan prior to January 7, 2014 were from
17 proceeds generated by sales of Kamen’s artwork or his condominium — Kaftan
18 did not make any loans or gifts of money to Kamen at any time prior to January
19 7, 2014;⁷ and
- 20 7. At the time Laski learned of the existence of the Kaftan/Kamen account,
21 [sometime prior to December 30, 2013], \$78,287.15 remained in the account.⁸

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25 ² Joint Pretrial Order, p. 4, par. 33. See also Transcript of Kaftan Deposition, Plaintiff’s Trial Exhibit 7,
26 at pp. 30-31.

27 ³ Joint Pretrial Order, p. 4, par. 34.

28 ⁴ Joint Pretrial Order, p. 4, par. 35.

⁵ Joint Pretrial Order, p. 4, par. 38.

⁶ Joint Pretrial Order, p. 4, pars. 37 & 39.

⁷ Joint Pretrial Order, p. 4, par. 44.

⁸ Joint Pretrial Order, p. 4, par. 40.

1 There is no dispute, and this Court has previously found,⁹ that Kamen's Schedules
2 and SOFA are inaccurate in several respects and that Kamen gave false testimony at
3 his 341(a) Meeting. More specifically, the Schedules are inaccurate in that they, among
4 other things, significantly undervalue Kamen's furnishings and artwork and do not
5 disclose:

- 6 a. the existence of the Kaftan/Kamen Account or any other bank account
7 held by Kaftan for the benefit of Kamen that contained property of the
8 estate;
- 9 b. Kamen's collectible posters;
- 10 c. artwork stored at 2404 Wilshire Boulevard;
- 11 d. the sale of a condominium unit in Vancouver within two years preceding
12 the bankruptcy filing;
- 13 e. sales of posters within the two years preceding the bankruptcy filing.¹⁰

14 Kamen gave false testimony under oath at his 341(a) Meeting on at least the
15 following issues:

- 16 a. Kamen testified that the \$15,000 to \$18,000 that he was receiving from
17 Kaftan per month was a gift, that there was no other reason that Kaftan
18 was giving him money and that he hadn't given anything to Kaftan, when
19 in fact the money that Kamen admitted he had "parked"¹¹ with Kaftan
20 represented a portion of the proceeds from a January 2011 sale of his
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22 ⁹ Order Granting in Part and Denying in Part Motion for Partial Summary Adjudication of Issues, Action Docket
23 No. 196, p. 2, par. 4.

24 ¹⁰ Kamen claimed at trial that he never amended his Schedules or SOFA to correct these inaccuracies because, after
25 a chapter 11 trustee was appointed, he was no longer represented by counsel in the Case. [The docket in the Case
26 reflects that, on November 12, 2012, he filed a substitution of attorney, substituting himself, in propria persona, for
27 Ms. Cohen in both the Case and the Action.] Thereafter, he retained replacement counsel to represent him in the
28 Action. Why didn't he amend his schedules to ensure their accuracy before Ms. Cohen resigned or seek assistance
from the Court's self-help center or from replacement counsel in filing amended schedules at any time thereafter?
This action was filed in August of 2012 -- more than two months before Ms. Cohen resigned and almost 6 years
before this matter went to trial. Yet Kamen did not take the steps necessary to correct the false oaths on his
Schedules and his SOFA at any time during this 6-year period.

¹¹ At trial, as a way of explaining why he did not consider the money that he had given to Kaftan to have been
transferred to him, Kamen explained that he had not transferred ownership of the money to Kaftan. He had merely
"parked" the funds with him so that he would have access to them and his creditors would not.

1 Vancouver condominium and the proceeds of sales of collectible posters
2 that occurred both within the two years preceding the commencement of
3 the Case and after the Case was filed:
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5 [By Mr. Guess, Trustee's counsel] Q. . . . Why is he giving you
6 money?

7 A. He's my friend. It's my best friend and because I'm broke. If he
8 didn't give me any money, I would have no income whatsoever.

9 Q. How do you know Mr. Kaftan?

10 A. Since high school, since – for about 55 years.

11 Q. Have you ever done any business deals with Mr. Kaftan?

12 A. No.

13 Q. Have you ever given any money to Mr. Kaftan?

14 A. Have I ever loaned him money or given him money?

15 Q. A loan, a non-loan, anything. Have you ever given anything –

16 A. Not that I know. When you say given, no.

17 Q. Okay. So what do you mean?

18 A. No. I'm saying that I don't think that I've ever given him any
19 money –

20 Q. Okay.

21 A. –for anything. I mean, he's a wealthy guy, and he wouldn't have
22 needed any money.

23 Q. Okay. Have you ever transferred any property to Kaftan?

24 A. No.

25 [By Mr. Laski, trustee] Q. Does he have any of your vehicles?

26 A. Huh?

27 Q. Does he have any vehicles that you previously owned?

28 A. He bought one car. He bought one car.

1 Q. Which vehicle is that?

2 A. The Audi.

3 [By Mr. Guess] Q. Has he ever bought any other property from
4 you? Has he ever bought anything else from you?

5 A. No.

6 Q. I mean, I'll be candid. I have a really hard time, even if he's
7 your best friend for 55 years, understanding why he's giving you 15
8 to 18 thousand dollars a month. Is there – is this a loan? Did he –
9 are you going to pay him back?

10 A. It's a gift. He's put together I think a group of guys, and they've
11 been funding it. That's my understanding.¹²

12 b. Kamen testified that he had no personal property located anywhere other
13 than at 2404 Wilshire, his apartment and Ortiz Brothers Storage, when in
14 fact he had delivered collectible posters to an auction house to be sold:

15 Q. . . . Other than at 2404 Wilshire and other than with Ortiz
16 Brothers Storage and other than at your apartment, do you have
17 any physical property located anywhere?

18 A. No.¹³

19 c. Kamen testified that he sold his condo in Vancouver prior to January of
20 2010,¹⁴ when in fact the documentation introduced at trial showed that the
21 sale closed in January of 2011;¹⁵ and

22 d. Kamen testified that he had not sold any art since the beginning of 2010
23 and had not given any art to anyone since the beginning of 2010,¹⁶ when

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25 ¹² Testimony from 341(a) Meeting, Plaintiff's Trial Exhibit 3, at pp. 37-38.

26 ¹³ Plaintiff's Trial Exhibit 3, at pp. 5-6.

27 ¹⁴ Plaintiff's Trial Exhibit 3, at p. 24.

28 ¹⁵ Plaintiff's Trial Exhibit 8.

¹⁶ Plaintiff's Trial Exhibit 3, at p. 58. Although Kamen's direct testimony trial declaration, Action docket no. 216, specifically states that he did not personally sell "any artwork such as posters," Kamen's counsel attempted to ask Kamen leading questions at the time of trial designed to elicit testimony to the effect that Kamen had not disclosed the existence or value of his collectible posters, or the substantial amount of proceeds generated by sales thereof, in response to questions about "artwork" because he did not consider his posters to be "artwork." The court does not

1 in fact, as Kamen admitted at trial, there had been sales of his collectible
2 posters both within the two years preceding the bankruptcy filing and post-
3 petition.¹⁷

4 On March 5, 2019, the Court entered its “Order Granting in Part and Denying in
5 Part Motion for Partial Summary Adjudication of Plaintiff’s Second Amended Complaint”
6 [Action Docket No. 196], summarily adjudicating that Kamen had made false oaths
7 related to material facts in the Case. The only factual issue that remained at the time of
8 trial was whether these material misrepresentations had been made “knowingly and
9 fraudulently” as required by section 727(a)(4)(A). Based on the evidence and testimony
10 introduced at trial, the Court finds that Kamen’s misrepresentations were indeed
11 knowing and fraudulent and, therefore, that Kamen should not receive a discharge in
12 bankruptcy.

13 II

14 KAMEN MADE FALSE OATHS KNOWINGLY AND FRAUDULENTLY

15 Bankruptcy Code section 727(a)(4)(A) provides that a chapter 7 debtor shall be
16 granted a discharge unless “the debtor knowingly and fraudulently, in or in connection
17 with the case — (A) made a false oath or account.” The oath must relate to a material
18 fact, and the plaintiff must show both that the false oath was made knowingly and that it
19 was made fraudulently. “Knowingly” and “fraudulently” are two separate elements that
20 must not be conflated. In re Retz, 606 F.3d at 1197; Roberts v. Regard (In re Roberts),
21 331 B.R. 876, 882, 885 (Bankr. 9th Cir. 2005).

22 To demonstrate that the defendant acted knowingly, the plaintiff must show that
23 he made the false oath, “deliberately and consciously.” In re Roberts, supra, at 883-84.

24 find any testimony that Kamen’s counsel may have attempted to elicit at trial to this effect to be credible,
25 particularly in light of the fact that Kamen had never previously advanced this argument and did not include this
26 argument in his direct testimony trial declaration.

27 ¹⁷ See also Plaintiff’s Trial Exhibit 7, pp. 56-63.

1 To demonstrate that an oath was made fraudulently, the plaintiff must show that, at the
2 time the oath was made, the defendant knew it was false and made the false oath with
3 the intention and purpose of deceiving his creditors. In re Retz, 606 F.3d at 1198-99.
4 “Intent is usually proven by circumstantial evidence or by inferences drawn from the
5 debtor’s conduct.” Id. “Reckless indifference or disregard for the truth may be
6 circumstantial evidence of intent, but is not sufficient, alone, to constitute fraudulent
7 intent.” Id. A debtor’s fraudulent intent “may be established by inferences drawn from
8 his or her course of conduct.” In re Wills, 243 B.R. At 64.

9 On these facts, both those admitted by the parties, and those found by the Court
10 at trial, the conclusion is inescapable that, in failing to disclose the existence of the
11 Kaftan/Kamen Account and the source of the proceeds that went into that account, and
12 in lying about the reason that he was receiving periodic disbursements from Kaftan,
13 Kamen acted consciously and deliberately, with full knowledge of the falsity of his
14 testimony and with the intent to deceive his creditors.

15 Either the monies that Kamen arranged to be paid to Kaftan from the sale of his
16 condominium and his posters were transfers to Kaftan, or they were not. One or the
17 other must necessarily be true. If these payments were transfers, they should have
18 been disclosed on Kamen’s SOFA, as they occurred within the two years preceding
19 Kamen’s bankruptcy filing, and Kamen should have acknowledged these transfers when
20 questioned about them at his 341(a) Meeting. If they were not transfers, and Kamen
21 merely asked Kaftan to hold these funds for Kamen’s benefit, the funds still belonged to
22 Kamen, were an asset of his bankruptcy estate and should have been disclosed on his
23 Schedules.

24 Both Kamen and Kaftan testified that they considered the funds in the
25 Kaftan/Kamen Account to belong to Kamen and that funds were only disbursed at
26 Kamen’s direction for his benefit. Kamen specifically testified that he “parked” these
27 funds with Kamen so that he would have money to live on. Kamen was questioned at
28 the 341(a) Meeting about whether he had given or transferred anything to Kaftan and

1 why Kaftan would be giving him money every month. He knew full well why Kaftan was
2 giving him money, but, instead of disclosing the fact that he had parked assets that
3 belonged to his bankruptcy estate with Kaftan, Kamen lied about the reason for the
4 payments and claimed that Kaftan was giving him money as a gift. Kamen could not
5 have been mistaken or confused about these facts.

6 The same is true with regard to Kamen's posters. He "parked" them with an
7 auction house prior to his bankruptcy filing, and the auction house sold posters during
8 the two years before the bankruptcy filing and continued to sell them after the
9 bankruptcy filing. Kamen made arrangements for the proceeds of these sales to be
10 deposited with Kaftan for his benefit. Either Kamen "transferred" these posters to the
11 auction house within the two years before the bankruptcy filing or he did not actually
12 "transfer" them, he merely arranged for the auction house to hold them until they could
13 be sold. If these were transfers to the auction house, they should have been disclosed
14 on Kamen's SOFA, and Kamen should have mentioned them when questioned about
15 such transfers at his 341(a) Meeting. If they were not actually transferred to the auction
16 house, they remained an asset of Kamen's bankruptcy estate at the time of the filing
17 and should have been disclosed on Kamen's schedules.

18 Kamen's counsel attempted to argue for the first time at trial that Kamen had not
19 disclosed sales of these posters at his 341(a) Meeting because he did not consider
20 them to be "artwork"; however, even if the Court were to accept this proposition as
21 true,¹⁸ it would not explain Kamen's failure to disclose the existence of any unsold
22 posters. On Schedule B, the fifth type of property described is "Books, pictures and
23 other art objects; antiques; stamp, coin, record, tape, compact disc, and other
24 collections or collectibles." The thirty-fifth category of assets on Schedule B is "Other
25 personal property of any kind not already listed." Any posters that Kamen had not
26 transferred to someone else by the time the bankruptcy case was filed should have
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¹⁸ In light of the fact that Kamen's trial declaration refers to his collectible posters as a type of "artwork," see supra,
note 16, the Court does not find this proffered testimony to be credible.

1 been listed in one of these places. And in any event, sales of posters that occurred
2 within the two years prior to the bankruptcy filing should have been disclosed on his
3 SOFA as well — even if Kamen did not consider his posters to be “artwork.”¹⁹ However,
4 Kamen disclosed neither the existence of these assets on his schedules nor any
5 transfers of these assets on his SOFA or at his 341(a) Meeting.

6 In short, the Court rejects on credibility grounds Kamen’s contention that he
7 actually believed he was not under any obligation to disclose the existence of assets
8 that still belonged to him that he had merely parked with someone else so that he would
9 have money to live on later. Kamen could not possibly have believed that, by hiding an
10 asset that still belongs to you with someone else, that asset will fall into some kind of
11 alternate dimension in which it is neither something you own nor something you have
12 transferred away and that you need not mention the existence of the asset on your
13 schedules or testify accurately about it under oath at a meeting of creditors. These
14 false statements were made deliberately and consciously and, therefore, “knowingly”
15 within the meaning of the applicable caselaw.

16 And Kamen’s testimony at the 341(a) Meeting, where he carefully avoids saying
17 anything that might have tipped the trustee off as to the existence of the Kaftan/Kamen
18 Account or the poster sales that had been continuing to produce funding for that
19 account, demonstrates clearly the purpose for Kamen’s false oaths and omissions — to
20 deceive his creditors: to conceal the existence of these assets so that he would have
21 something to live on after he filed bankruptcy. Therefore, these false oaths and
22 omissions were made “fraudulently” within the meaning of the applicable caselaw.²⁰ As
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24 ¹⁹ The amount of sales proceeds generated by these sales was not trivial. The evidence adduced at trial reflects that
the net sales proceeds amounted to hundreds of thousands of dollars. See Plaintiff’s Trial Exhibit 11.

25 ²⁰ Kamen also testified falsely that the January 2011 sale of his Vancouver condominium had not occurred within
26 two years prior to his bankruptcy filing. Kamen claimed that he had been trying to sell the condominium for so long
27 that he thought it had been sold earlier. The Court does not find this testimony credible for at least two reasons: (1)
28 if Kamen had been trying to sell the condominium for an extended period, finally accomplishing the sale would be
that much more memorable; and (2) Kamen received a sizeable amount of proceeds (\$446,215.98) and personally
instructed his bank in April of 2011 to transfer from these proceeds more than \$100,000 to ex-wife and more than
\$100,000 to the Kaftan/Kamen Account. His bankruptcy was filed approximately one year later. These transactions
are sufficiently sizeable and recent to be memorable. Therefore, the Court finds that the failure to disclose the
existence of this transfer was deliberate and conscious and therefore “knowing” within the meaning of section

1 all of the elements of section 727(a)(4)(A) have been satisfied, Kamen should not
2 receive a discharge in bankruptcy.

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4 **III**

5 **CONCLUSION**

6 A significant part of Kamen's defense at trial was his argument that he had
7 cooperated fully with Laski and, therefore, could not have been trying to deceive or
8 defraud his creditors when he made false oaths about his assets. When David Guess,
9 counsel for Laski, was questioned at trial about the level of cooperation that he had
10 received from Kamen, his responses were telling.

11 With the exception of Kamen's refusal to provide the trustee with a declaration at
12 one point when asked to do so, and the false testimony that Kamen had given at his
13 341(a) Meeting, Guess agreed that, as far as Guess knew, Kamen had responded
14 truthfully whenever Guess had asked him specific questions about an asset that the
15 trustee had already discovered. But it was only through Guess's own diligent third-party
16 discovery efforts that Laski had learned about the sale of Kamen's Vancouver condo,
17 Kamen's ongoing sales of collectible posters and the existence of the Kaftan/Kamen
18 Account.

19 Guess described the process of obtaining information from Kamen concerning
20 assets of his bankruptcy estate as tantamount to playing the game of "Battleship"²¹— if

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22 727(a)(4)(A). Further, as disclosing the existence of this transfer would have led the trustee to question where the
23 proceeds went and might well have led to the discovery of the Kaftan/Kamen account, which Kamen was trying to
24 conceal, the Court finds that the purpose of Kamen's failure to disclose this transfer was part of his fraudulent
25 scheme to conceal the existence of the money he had "parked" with Kamen and was therefore "fraudulent" as well.
26 Although Kamen also offered false testimony as to the value of his artwork and failed to disclose that he had a
27 sizeable quantity of artwork stored at 2404 Wilshire, insufficient evidence was adduced at trial to demonstrate that
28 these false oaths were made knowingly and fraudulently.

²¹ According to the Wikipedia article on the subject, "Battleship" began as a pencil and paper game that dates back
at least as far as World War I. It was published by various companies as a pad-and-pencil game in the 1930s and
was released as a plastic board game by Milton Bradley in 1967. The game is played on four grids, two for each
player. On one grid, the player arranges ships and records the shots by the opponent. On the other grid, the player
records his own shots. Before play begins, each player secretly arranges his ships on his primary grid. After the
ships have been positioned, the game proceeds in a series of rounds. In each round, each player takes a turn to
announce a target square in the opponent's grid which is to be shot at. The opponent announces whether the shot was
a hit or a miss. The attacking player notes the hit or miss on his own "tracking" grid with the appropriate color peg

1 the trustee managed to score a "hit" by asking Kamen exactly the right question about
2 an asset that Kamen had been trying to hide, Kamen truthfully provided details in
3 response to the question. Otherwise, that information was not provided — even when
4 the omission resulted in Kamen's making false oaths on his Schedules or SOFA or at
5 his 341(a) Meeting.

6 A discharge in bankruptcy is a powerful tool, created for the benefit of the honest,
7 but unfortunate debtor, not for the benefit of a debtor who knowingly and fraudulently
8 makes false oaths for the purpose of hiding assets from creditors. Kamen made
9 material misstatements under oath about the existence of his assets, and these false
10 statements were not inadvertent or accidental. They were knowing and fraudulent.
11 Therefore, Kamen is not entitled to a discharge in bankruptcy. An order to this effect
12 will be entered concurrently herewith.

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25 Date: July 16, 2019



26 Sheri Bluebond
27 United States Bankruptcy Judge

28 (red for "hit;" white for "miss"), in order to build up a picture of the opponent's fleet. When all of the squares of a
ship have been hit, the ship's owner announces the sinking of that ship. If all of a player's ships have been sunk, the
game is over and the opponent wins.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.