

20-1829

ORIGINAL

MOTION PICTURE CASE

NO.

Supreme Court, U.S.
FILED
JUN 26 2021
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DEAFUEH MONBO
Petitioner
vs.
ERIC J. BLAIR
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT
AND
U.S. BANKRUPTCY COURT FOR MARYLAND

PETITION FOR WRIT OF CERTIORARI

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RECEIVED
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SUPREME COURT, U.S.

MOTION PICTURE CASE

QUESTIONS PRESENTED

1. **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. The Debtor misrepresented and omitted over twenty-two (22) items in his Bankruptcy Petition and Schedule. **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)?
3. When it comes to a Debtor making false statements in his/her Bankruptcy Application, does *In re Green v. Staples* (In re Green), 934 F.2d 568 (4th Cir.1991) distinguish between the size of the false statement? In other words, does *In re Green v. Staples* (In re Green), 934 F.2d 568 (4th Cir.1991) make a distinction between material **false statements** and immaterial **false statements** by the Debtor.
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. Rule 9024 states that Rule 60 F. R. Civ .P. applies in cases under the Bankruptcy Code. Rule 60(b)(1), F. R. Civ. P., states that the Court may relieve a party from a final judgment or order for mistake, inadvertence, surprise, or excusable neglect, and section (b)(6) allows for any other reason that justifies relief. **Question:** Are the Creditors entitled to relief under the excusable neglect theory.

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the Court who judgment is subject to this Petition is as follows:

1. Deafueh Monbo
2. Taje Monbo
3. Eric J. Blair
4. Zvi Guttman, *Trustee*

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Deafueh Monbo, respectfully prays that a writ of certiorari issue to review the judgment below.

ORDERS BELOW

The order of the Bankruptcy Court denying the Petitioner's Motion to Dismiss Chapter 7 Bankruptcy Case is attached at Exhibit 1 to the Petition and is unpublished.

The order of the Bankruptcy Court denying the Petitioner's Motion to Extend time to Object to Discharge is attached at Exhibit 2 to the Petition and is unpublished.

While the order of the Court of Appeals affirming the Bankruptcy Orders are attached at Exhibit 3 to the Petition and is unpublished.

JURISDICTION

The two orders of the Bankruptcy Court of the District of Maryland were entered on December 9 2019. A copy of the orders is attached as Exhibit 1 and Exhibit 2.

On December 16, 2020, an appeal was filed with the U.S Court of Appeals for the Fourth Circuit. On February 25, 2021, the U.S Court of Appeals for the Fourth Circuit erroneously affirmed the Bankruptcy Court decision. See Exhibit 3.

On April 6, 2021, a temporary Stay order was issued by the U.S Court of Appeals for the Fourth Circuit. . See Exhibit 4

This Petition for a writ of certiorari to the U.S. Supreme Court is being filed within 90 days of the denial order from the Court Of Appeals for Maryland.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISION INVOLVED

Bankruptcy Rule § 523(a)(6)

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 Respondent from any debt—
 - ...
 - (6) or willful and malicious injury by the Respondent to another entity or to the property of another entity . . .

Bankruptcy Rule §727(a)(3)

Bankruptcy Code §727(a)(3) provides that:

- (a) The court shall grant the Respondent a discharge, unless
 - ...
 - (3) the Respondent has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the Respondent's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

Rule 60(b)(1), F. R. Civ. P.

Rule 60(b)(1), F. R. Civ. P states that the court may relieve a party from a final judgment or order for mistake, inadvertence, surprise, or excusable neglect, and section (b)(6) allows for any other reason that justifies relief.

STATEMENT OF CASE

FACTUAL BACKGROUND NO. 1

I. The Legendary 12 O'Clock Boyz Film

1. 12 O'Clock Boyz is a pioneering motion picture film series released in 2001 and 2003, which showcased a new breed of dirt-bike performers in Baltimore, Maryland. The independently released 12 O'Clock Boyz film series not only introduced never before seen riveting dirt-bike stunts, but also featured eccentric characters, comedy, scripted iconic scenes, and new hip-hop soundtracks. Since its inception, 12 O'Clock Boyz has been a cultural phenomenon that is eagerly followed by thousands of fans throughout the North East. The influence of the characters extends far beyond the actions on the screen. Petitioner owns the copyrights in the 12 O'Clock Boyz film series. *See Exhibit 5*

2. The first 12 O'Clock Boyz film released in 2001 sold 50,000 copies in two weeks and revolutionized the Baltimore dirt-bike culture. Petitioner Deafueh and her co-creditor Taje Monbo, subsequently released the second film in a series of 12 O'Clock Boyz films titled "The Paparazzi Edition" in 2003. The success of Petitioner's films is the reason kids in Baltimore aspired to be 12 O'Clock Boyz.

3. 12 O'Clock Boyz has been used as the title of an ongoing series of creative works evidenced by the release of a second 12 O'Clock Boyz film, and the phrase has acquired secondary meaning.

4. Respondent Eric J, Blair and several entities and individuals have made an infringing 2013 documentary entitled "12 O'Clock Boys" (the infringing "12 O'Clock Boys (2013) film").

5. The infringing 12 O'Clock Boys (2013) film infringes Petitioner's works by using innumerable copyrighted elements of "12 O'Clock Boyz" including its movie title card, clips and excerpts, and the character named Pug. At about seventeen minutes into the infringing 12 O'Clock Boys (2013) film, the title card from Petitioners' 2001 film appears on screen:

"12 O'Clock Boyz, Inc.
presents
The Official 12 O'Clock Boyz"

The title is followed by upward of thirty (30) excerpts taken from Petitioner's 12 O'Clock Boyz films. These clips include shots of actors PeeWee, Nephew Fred, Weedy, Shorty and Silly Willy as well as scenes of dirt-bikes being washed and even the shot of a young woman being spanked on the backside as she walks away.

Petitioner was not advised that these clips from 12 O'Clock Boyz were being used in the infringing 12 O'Clock Boys (2013) film, and did not give permission for their use.

II. Copyright and Trademark Infringement Lawsuit

On October 23, 2018, the Petitioner 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 Respondent, 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. 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 Copyright and Trademark Infringement lawsuit was filed, the Respondent filed a Chapter 7 bankruptcy case.

In an attempt to defraud creditors, the Respondent, Eric J. Blair, misrepresented and omitted financial information on his Bankruptcy Application.¹

On February 26, 2019, Petitioner Deafueh received notice of the Respondent's bankruptcy filing. Prior to February 26, 2019, Petitioner Deafueh was not aware of the Respondent's bankruptcy filing.

On May 3, 2019, the Petitioner filed a Motion to Dismiss the Chapter 7 bankruptcy case. Petitioner also timely file a Motion To Extend Time to Object to Discharge.

On December 9, 2019, the Bankruptcy Court issued a Denial Order denying Petitioner's Motion to Dismiss the Chapter 7 Bankruptcy Case and Petitioner's Motion To Extend Time to Discharge.

On December 13, 2019, Petitioner timely filed a Notice of Appeal of the Denial Order to the U.S. District Court and then lastly to the U.S. Court of Appeals for the Fourth Circuit.

¹ Misrepresentations and Omissions in Respondent Eric J. Blair's Bankruptcy Schedules are discussed in details in Factual Background No. 2

ARGUMENT NO.1

I. PETITIONER HAS MERITORIOUS DEFENSES

Rule 9024 states that Rule 60 F. R. Civ .P. applies in cases under the Bankruptcy Code. Rule 60(b)(1), F. R. Civ. P., states that the court may relieve a party from a final judgment or order for mistake, inadvertence, surprise, or excusable neglect, and section (b)(6) allows for any other reason that justifies relief.

To establish mistake, inadvertence, or excusable neglect under Rule 60(b)(1), a party must show that: "(1) it had a meritorious defense that might have affected the outcome; and (2) granting the motion would not result in prejudice to the non-defaulting party. In re Worldwide Web Systems, Inc. d.b.a. Teleware Global Corp., 328 F.3d 1291, 1295 (11th Cir. 2003) (citing E.E.O.C. v. Mike Smith Pontiac GMC, Inc., 896 F.2d 524, 528 (11th Cir. 1990)). "There is a strong policy of determining cases on their merits and we therefore view defaults with disfavor." *Id.* (emphasis added).

The Petitioner has meritorious defenses. First, 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 Respondent from any debt—
 - ...
 - (6) or willful and malicious injury by the Respondent to another entity or to the property of another entity . . .

All or part of the debt owed to Petitioner, as evidenced by the Copyright and Trademark Infringement Complaint (U.S. Dist. Court Case No:1:18-CV-05930) filed in

the New York U.S. District Court against the Respondent, is non-dischargeable as it is a debt for willful and malicious injury caused by the Respondent within the meaning of Bankruptcy Code §523(a)(6).

As this Court is aware, Respondent Eric J. Blair is one of the Producers of the infringing film, 12 O'Clock Boys. By producing the infringing and unauthorized derivative film, 12 O'Clock Boys without the authorization or consent of the Petitioner Deafueh to or her co-creditor (Taje Monbo), the Respondent, Eric J. Blair, willfully and maliciously caused damage and injury to the Copyright and Trademark property of Petitioner Monbo and her co-creditor (Taje Monbo).

Accordingly, the debt owed by Respondent Eric J. Blair to Petitioner Deafueh is not dischargeable pursuant to § 523(a)(6) of the Bankruptcy Code.

Second, Bankruptcy Code §727(a)(3) provides that:

(a) The court shall grant the Respondent a discharge, unless

...
(3) the Respondent has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the Respondent's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

The Respondent, 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 Respondent's financial condition or business transactions might be ascertained.

By virtue of the foregoing, the Respondent's discharge should be denied under Bankruptcy Code §727(a)(3).

Third, Respondent's Bankruptcy Petition claims an annual income of \$51,999.96.

The Respondent-A swore under penalty of perjury that the information which he provided in the Petition was true and correct. The Respondent 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 2018.

By virtue of the Bankruptcy Code §727(a)(5), the Respondent's discharge should be denied for Respondent's failure to satisfactorily explain his claim loss of thousands of dollars in Mission Film business income.

II. EXCUSABLE NEGLECT

Petitioner Deafueh and her co-creditor (Taje Monbo) are Pro Se Litigants. At the time of the preparation of the Motion to Extend Time document, Section 523 was inadvertently left out of the actual written Motion document by mistake. However, Petitioner Deafueh expressed her desire in open court to file an adversary complaint, encompassing all the meritorious defenses discussed herein. (Especially Section 523)

See Exhibit 6 For the Transcript

FACTUAL BACKGROUND NO. 2

III. Misrepresentation and Omission in Respondent Eric J. Blair's Bankruptcy Application

The Petitioner Deafueh's diligence in researching and carefully analyzing the Respondent's Bankruptcy Application uncovered several misstatements and omissions in the Respondent's' Bankruptcy Application. *See Exhibit 7.*

Specifically, based on the evidence and the Petitioner's research, twenty-two (22) items were misrepresented or omitted in Respondent's Bankruptcy petition.

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

7. No disclosure of when Respondent incurred the debt owed to the Petitioners and No disclosure that Respondent debt owed to Petitioner is "Contingent".
8. No disclosure of executory contracts or unexpired leases (including contracts with the clients of Respondent's business, Mission Film Inc.)
9. No disclosure of companies or persons with whom the Respondent entered contracts or lease with for rent, cell phone etc such as (1) Respondent's Landlord (2) Respondent's cellphone company and (3) the website hosting company for Respondent's business, Mission Film, Inc.
10. No disclosure of the net income of Respondent's business, Mission Film Inc.
11. Indicating "Yes" that Respondent declared under penalty of perjury that Respondent has read the summary and schedules filed with this declaration and that they are true and correct when Respondent knowingly provided material misstatements and false information in his Petition filed with the Bankruptcy Court.
12. No disclosure of Respondent'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 Respondent within 1 year before Respondent filed for bankruptcy. Specifically, no disclosure that the nature of the lawsuit against Respondent is for Copyright and Trademark Infringement. And no disclosure that Copyright and Trademark Infringement Lawsuit against Respondent is "Pending".
14. No disclosure of the details about Respondent's connection to his business, Mission Film, Inc within **4 years before Respondent filed for bankruptcy.** Specifically, no disclosure of the following information for Respondent's connection to his business, Mission Film Inc. as required by Bankruptcy Form 107, Line 25:
 - a) Respondent'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) Respondent's connection as an officer, director, or managing executive of a corporation of Mission Film, Inc.

- c) Respondent's connection as an owner of at least 5% of the voting or equity securities of Mission Film, Inc.
- d) Details of the below 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 Respondent has read the answers on this Statement of Financial Affairs and any attachments, and that Respondent declare under penalty of perjury that the answers are true and correct when Respondent knowingly provided material misstatements and false information in Respondent's Petition filed with the Bankruptcy Court.

16. Indicating "Yes" that Respondent hereby verify(ies) that the attached matrix listing creditors is true to the best of Respondent's knowledge when Respondent intentionally did not provide the correct address for Taje Monbo to the Bankruptcy Court (although Respondent had received copy of the court summons which lists Taje Monbo's address as P.O. Box 441, Owings Mills MD 21117.)

(See Exhibit 7).

On May 3, 2019, the Petitioners filed a Motion to Dismiss pursuant to section 707(a) of the Bankruptcy Code for the Court to enter an order dismissing the Respondent's Chapter 7 bankruptcy case for bad faith.

On December 9, 2019, the Bankruptcy Court issued a Denial Order denying Petitioner's Motion to Dismiss the Chapter 7 Bankruptcy Case for bad faith.

On December 13, 2019, Petitioners timely filed a Notice of Appeal of the Denial Order to the U.S. District Court and then to the U.S. Court of Appeals for the Fifth Circuit.

ARGUMENT NO. 2

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

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, **Respondent’s 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 bankruptcy application and, therefore, the Bankruptcy Case must be dismissed for cause pursuant to section 707(a).

Respondent 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.

Respondent 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.

Respondent Eric J. Blair filed his Bankruptcy Petition solely in response to the copyright and trademark infringement lawsuit filed by Petitioner.

On January 12, 2019, Respondent received summons and a copy of the Complaint for the copyright and trademark infringement lawsuit filed by Petitioner Deafueh. Instead of filing an answer with respect to the Complaint, the Respondent chose to file a Bankruptcy Petition on January 28, 2019 (two weeks later) in order to have an automatic stay put on the Copyright Infringement 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 Bankruptcy Application is merely the Respondent’s ploy — procedural maneuvers geared towards preventing the Creditors from obtaining relief for the Respondent’s willful and malicious copyright and trademark infringement.

Respondent’s 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 Respondent lacked good faith in filing the Bankruptcy Application and, therefore, the Bankruptcy Case must be dismissed for cause pursuant to section 707(a).

II. Respondent Eric J. Blair has an ongoing and independent duty to provide accurate and complete information on their schedules regardless of whether he was assisted by counsel in preparing his Bankruptcy Schedules

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 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 abuse of the bankruptcy process by a debtor seeking to take unfair advantage of his creditors.” *Id.*

Here in this case, the Respondent 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. 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).

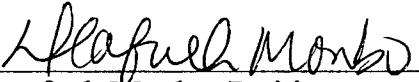
Applying the *Green* factors to this case warrants a finding of abuse. While the first through third factors did not weigh in favor of dismissal, an analysis of the remaining factors lead to a finding of abuse. The fourth *Green* factor, whether the statement of current income and expenses reasonably and accurately reflect the debtors’ true financial condition, offered the strongest evidence of abuse. The Respondent’s failure to include information about whether he had Mission Film, Inc in the last eight

years, and Respondent's failure to include his Missionfilm.com website and Facebook page and Respondent's failure to include **all the other information listed in Exhibit 7** "falls short of 'full and accurate disclosure' of the Respondents' finances, which is essential to the bankruptcy process." Given the inaccuracies in the Respondents' schedules, it is impossible for the Court, the Trustee, and the creditors to fully ascertain the Respondents' true financial situation. The lack of transparency in the Respondents' schedules provided sufficient evidence of bad faith, satisfying the final *Green* factor. Consequently, the Respondent's case must be dismissed for a finding of abuse. 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).

CONCLUSION

Certiorari is proper. The Petition for a writ of certiorari should be granted.

Respectfully Submitted,



Deafueh Monbo, Petitioner

Date: 6/27/2021

Statement as to Typeface: The font used in this Writ of Certiorari is Times New Roman and the type size is 13 point.