UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1989

ERIC J. BLAIR,

Plaintiff - Appellee,

v.

DEAFUEH MONBO,

Defendant - Appellant,

and

TAJE MONBO,

Defendant,

ZVI GUTTMAN,

Trustee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, District Judge. (1:19-cv-03565-CCB)

Submitted: February 23, 2021 Decided: February 25, 2021

Before MOTZ, KEENAN, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Deafueh Monbo, Appellant Pro Se. Richard J. Hackerman, RICHARD J. HACKERMAN, P.A., Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Deafueh Monbo appeals the district court's order affirming the bankruptcy court's orders denying her motion to dismiss the debtor's Chapter 7 proceeding and denying a motion to extend time to object to discharge. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Blair v. Monbo*, No. 1:19-cv-03565-CCB (D. Md. Sept. 9, 2020). In light of this disposition, we deny Blair's motion to dismiss this appeal, for costs, and to impose sanctions. We also deny Monbo's motion for a stay pending appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX 4

INDEX TO APPENDICES

APPENDIX 1

Entered: December 9th, 2019
Signed: December 9th, 2019

SO ORDERED

MICHELLE M. HARNER
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Baltimore

In re:	*	
	*	
Eric J. Blair,	*	Case No. 19-11083-MMH
	*	
Debtor.	*	Chapter 7
	*	

* * * * * * * * * * * * *

ORDER DENYING MOTION TO DISMISS CHAPTER 7 CASE

A chapter 7 bankruptcy case is difficult for all affected parties. In most cases, neither the debtor nor the creditors wanted, or intended, the debtor to file for bankruptcy protection. For both, there are significant consequences, as a bankruptcy filing can affect, among other things, a debtor's credit record and the creditors' recovery on potential claims. Indeed, creditors may disagree with one of the fundamental purposes of the U.S. Bankruptcy Code,[1] namely to provide the honest but unfortunate debtor a fresh financial start. That result can be hard for creditors to accept, particularly in a chapter 7 liquidation case in which unsecured creditors often receive no recovery.

That appears to be the circumstances of the case before the Court. Two unsecured creditors are asking the Court to dismiss this chapter 7 case, and thereby deny the debtor an opportunity for a discharge, because of allegations of bad faith. The Court understands the creditors' frustration and desire to find sources to support a recovery on their alleged claims. Unfortunately, the record

[1] 11 U.S.C. §§ 101 et seq. (the "Code").

before the Court does not demonstrate conduct that would warrant a dismissal of this chapter 7 case under section 707 of the Code. Thus, as further explained below, the Court will deny the creditors' motion to dismiss this chapter 7 case.

I. Relevant Background

Eric J. Blair, the above-captioned debtor (the "Debtor"), filed this chapter 7 case on January 28, 2019. According to the Debtor's schedules of assets and liabilities and his Official Form 122A-1, the Debtor is a below median debtor. ECF 1, 4. Consequently, no presumption of abuse arose in this case, and neither the Court nor the U.S. Trustee sought dismissal of the Debtor's bankruptcy case.[2]

Prior to the filing of this case, the Debtor was named as a defendant in a civil lawsuit filed in the U.S. District Court for the Eastern District of New York (the "Lawsuit"). The plaintiffs in the Lawsuit are Deafueh Monbo and Taje Monbo (collectively, the "Creditors"). The Creditors allege that the Debtor and others engaged in wrongful conduct, including copyright infringement, relating to a certain film. Tr. 2 at 12, 14. The Creditors also allege that the Debtor has filed this chapter 7 case in bad faith. The Creditors seek to dismiss this chapter 7 case under section 707 of the Code and, as such, filed a Motion to Dismiss Chapter 7 Case (the "Motion"). ECF 18. The

[2] Where the presumption of abuse does not arise, only the judge or the United States Trustee has standing to file a motion under section 707(b). *See* 11 U.S.C. § 707(b)(6); *see also In re Plichta*, 589 B.R. 794, 800 (Bankr. N.D. Ill 2018) ("Section 707(b)(6) limits the standing of parties who may file a motion under Section 707(b) where the debtors' combined current monthly income is less than the applicable median family income."); *Schuchardt v. Gandy (In re Gandy)*, 3:14-cv-255-PLR-CCS, 2015 WL 4431017, at *4 (E.D. Tenn. July 20, 2015) (affirming order denying a creditor's motion to dismiss under section 707(b) because, based upon the income stated in the debtor's means test, the creditor lacked standing to file such motion); 6 Collier on Bankruptcy, ¶ 707.04[4][a] ("Section 707(b)(6) provides a safe harbor from abuse motions brought by creditors, trustees, and other entities other than the court of United States trustee if the current monthly income of the debtor. . . is equal to or less than the state median family income for a family size equal to or less than the size of the debtor's household."). Notably, "[f]or purposes of applying [the section 707(b)(6) safe harbor, the current monthly income stated by the debtor on Official Form 122A-2 line 3 should be determinative. If a creditor or trustee believes that the debtor has falsified the information on that form, the creditor or trustee may file a proceeding under section 707(a)(4)." 6 Collier on Bankruptcy, ¶ 707.04[4][a]. In any event, the Creditors did not submit any admissible evidence controverting the Debtor's stated monthly income and expenses on the Debtor's schedules or Official Form 122A-1. *See infra* Parts III and IV.

Debtor filed a response to the Motion, denying the allegations therein. ECF 27. The Court held an evidentiary hearing on the Motion on July 17, 2019, and October 18, 2019 (collectively, the "Hearing").[3] The parties have filed post-hearing briefs, and this contested matter is now ripe for resolution. ECF 49, 50.

II. Jurisdiction

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157(a), and Local Rule 402 of the United States District Court for the District of Maryland. This matter is a "core proceeding" under 28 U.S.C. § 157(b)(2). This Order constitutes the Court's findings of fact and conclusions of law in accordance with Rule 52 of the Federal Rules of Civil Procedure, made applicable to this contested matter by Rules 9104 and 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

III. Findings of Fact

The Court has carefully reviewed the testimony of each witness and the content of each exhibit admitted into evidence. If a party posed a relevancy objection to the admission of an exhibit, and the exhibit was nonetheless admitted, the Court has considered the relevancy issue under the guidance of Evidence Rule 401. If the Court determined such exhibit was relevant and that its admission outweighed any potential prejudice to the objecting party, the Court references the exhibit in the context of making the subject finding. The Court underscores that, regardless of whether a particular exhibit is referenced herein, the Court did review and consider its weight in reaching the findings of fact and conclusions of law set forth in this Order.

The Court also notes that several aspects of witness testimony and the admitted exhibits speak to the conduct or affairs of third parties not involved in this contested matter (referred to

[3] The Court refers to the transcripts from the Hearing as follows: the transcript of the July 17, 2019, hearing at ECF 48 is referred to herein as "Tr. 1"; the transcript of the October 18, 2019, hearing at ECF 52 is referred to herein as "Tr. 2."

herein as "third parties"). The Court considered this evidence only in the context of the pending dispute between the parties in this contested matter and did not evaluate it as to third parties. Likewise, the Court makes no findings of fact or conclusions of law with respect to any third parties or any disputes between the Creditors, the Debtor, and third parties.

As a final preliminary point, the Court states that it found each of the three witnesses who testified in this contested matter to be credible and forthcoming in their respective testimony. The Court did not perceive any of the witnesses to be dishonest, withholding information, or even trying to color the facts to their respective party's advantage. Each witness provided meaningful information for the Court and, if anything, wanted to share more information than perhaps was being elicited by the questions posed during examination. As explained below, the difference between the parties does not turn necessarily on what each witness said, but rather the implications of their testimony under applicable law. The parties have a definitely different view of the application of the law to the stated facts, which the Court resolves below in Part IV.

A. The Debtor's Ownership of Mission Film, Inc.

The Debtor testified that he was the owner of a corporation called Mission Film Inc. ("MFI"). MFI is an entity incorporated under Maryland law, which was classified as an S Corporation for tax purposes. The Debtor testified that he operated MFI from 2000[4] to 2012, and that MFI was in the business of providing production and post services. Tr. 2 at 166, 168, 174. Based on the relevant exhibits and the Debtor's testimony, MFI's charter was forfeited by the State of Maryland Department of Assessment and Taxation ("SDAT") in 2012, reinstated in 2014, and forfeited again in 2015.[5] Creditors' Ex. 4; Debtor's Ex. 8.

[4] The Debtor explained that the company was operated under a different name prior to 2004. Tr. 2 at 166.

[5] As to the status of MFI, the Debtor testified, "It's defunct. I'm resigned as resident agent. It's out of business. I have a full-time job." Tr. 2 at 169.

The Debtor explained that the business of MFI was doing well until 2012, when he was forced to shut down the business and lay off all employees. Tr. 2 at 154. He indicated that he reinstated MFI in 2014 to permit him to cash a check for a small project completed for Carroll County that year. *See, e.g.*, Tr. 157. The Debtor testified that MFI has no other or further operations, has no employees, and no assets. Tr. 1 at 40–41; Tr. 2 at 187, 216, 217, 222. The Court found the Debtor's testimony on these facts to be credible and consistent with the exhibits admitted into evidence.

The Creditors did a great deal of research on the Debtor and MFI in connection with this contested matter. That research revealed, among other things, a webpage for MFI and references to the Debtor continuing to work for MFI on the Debtor's LinkedIn[6] and Facebook pages. Creditors' Ex. 37. The Debtor did not dispute that this online information may exist, but he testified that he did not maintain or regularly check these online platforms. *See, e.g.*, Tr. 2 at 163, 183, 204, 278. Although Ms. Monbo pointed out that the online platforms suggest that MFI still operates and that the Debtor remains associated with MFI, the Creditors did not produce any evidence to refute the Debtor's testimony that he no longer actively operates the business and that there is no revenue or assets associated with that business. In fact, the Debtor testified, consistent with his schedules, that he has a full-time job working for another company. Creditors' Ex. 21; Tr. 2 at 154, 162, 169, 222. Based on the Debtor's testimony and the evidence in the record, the Court finds that MFI is a defunct, though not dissolved,[7] corporation with no value or business operations.

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[6] Tr. 2 at 281–83. Debtor's counsel objected to the admission of the Debtor's LinkedIn page based upon lack of authentication. Tr. 2 at 70. Resolution of the objection was reserved pending Debtor's counsel's cross-examination. Tr. 2 at 70–71. Although the LinkedIn page itself was not admitted into evidence, Mr. Blair testified extensively regarding the contents of the LinkedIn page. *See, e.g.* Tr. 2 at 161–63, 252-53, 281–84.

[7] Debtor's Ex. 8; *see also* Tr. 2 at 217 ("My accountant is a lawyer and a CPA, he said the charter has expired. All you need to do is resign as president and agent. I've never been advised to do any sort of dissolve. I've been told by multiple people that it's just dead.").

B. The Debtor's Role in the *12 O'Clock Boys* Film

A large portion of the evidentiary record relates to the Debtor's and MFI's involvement in a feature film titled *12 O'Clock Boys* (the "film"). The Debtor testified that he was one of several producers on the film; that statement is confirmed by the credits associated with the release and distribution of the film. Creditors' Ex. 8; Tr. 1 at 38–39; Tr. 2 at 227, 240. The Debtor further testified that he invested $8,600.00 in the film.[8] The Debtor's primary role in the film related to the use of a "Phantom Camera," which facilitated slow motion filming of the individuals' talents documented in the film. Tr. 1 at 38. The Debtor testified that he worked on the film for only three days, though he did try to use the publicity surrounding the release of the film to promote his own career.[9] Tr. 2 at 240, 252, 300, 306.

The Court credits the Creditors' evidence concerning the media coverage of the film and the fact that copies of the film are or have been distributed to media outlets and sold to the public. Creditors' Exs. 5, 7, 8, 10, 11, 12, 13, 14. The Creditors did not offer any evidence to show that the Debtor or MFI received any money from the film. Thus, there is nothing in the evidence to refute the Debtor's statements that neither he nor MFI ever received a penny from the film.[10] *See, e.g.*, Tr. 1 at 43; Tr. 2 at 89–90, 95–100, 240. As such, the Court finds that the Debtor had no income associated with the film or MFI to disclose in his bankruptcy papers.

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[8] Tr. 1 at 43–44.

[9] The evidence does establish that the Debtor promoted the film and his work on the film. *See, e.g.*, Tr. 2 at 298; Creditors' Ex. 1; Tr. 1 at 31. That evidence does not, however, provide any support for the allegations that the Debtor profited from the film or was involved in the distribution and sale of the film.

[10] The Court notes that none of the Creditors' evidence links the Debtor directly to distributions of, or any profit from, the film. The Debtor's testimony that he was not one of the "filmmakers" included in the sale of rights to the movie was undisputed. Tr. 2 at 231, 235. The Court notes that the exhibit containing this reference was admitted after the Debtor's counsel withdrew her objection, though the exhibit arguably contains potential hearsay under the Evidence Rules.

C. The Debtor's Disclosures in his Bankruptcy Papers

The Creditors' diligence in preparing for this contested matter did uncover several omissions in the Debtor's bankruptcy papers. Specifically, based on the evidence (including the Debtor's own testimony), the Court finds the following information to be missing or incomplete in the Debtor's bankruptcy papers:

- No disclosure of MFI
- No disclosure of websites owned or used by the Debtor
- Incomplete information regarding the Creditors' Lawsuit against the Debtor
- Incomplete information regarding Mr. Monbo, in that the creditor matrix failed to disclose Mr. Monbo's address.[11]

The Debtor did not dispute these omissions. Tr. 2 at 154-57, 161, 199–207. Rather, he apologized and explained the process he underwent with counsel to complete his bankruptcy schedules. Tr. 2 at 161, 187, 274, 278–279, 282. According to the Debtor's testimony, the Debtor provided information to counsel in a two-hour interview. *Id.* He did not specifically review each question on the bankruptcy schedules and statement of financial affairs with counsel but did review the general information provided in a follow up telephone call with counsel. Counsel apparently was the party responsible for taking the information provided and filling out the bankruptcy forms. The Debtor did not review the actual, completed papers, though he did acknowledge receiving the completed papers from counsel and signing them under penalty of perjury. *See, e.g.*, Tr. 2 at 186–187.

[11] The Creditors also argued that the Debtor failed to identify his cell phone contract, as well as assets such as the Phantom Camera and a vehicle. The 2005 Highlander was identified in the Debtor's Schedule C. Creditors' Ex. 21. The Debtor testified that the value of the camera and vehicle was nominal. Tr. 2 at 192–194. The Creditors presented no admissible evidence at the Hearing to refute the Debtor's testimony on these points. Likewise, the Court does not find the failure to list any cell phone contract or lease to be material. There is no evidence that any of these assets hold any meaningful value for creditors or that the Debtor intentionally or malevolently left these or other items off his bankruptcy schedules.

With respect to certain omissions, the Debtor testified that he answered counsel truthfully and that he did not believe any domain names were still active. Tr. 2 at 203–205, 278. In this exchange, the Debtor told counsel that he closed down MFI in 2012 and was no longer operating the business. Tr. 2 at 276–277, 297. The Debtor said his conversation with counsel did not raise the 2014 reinstatement and subsequent forfeiture of MFI's charter. Tr. 2 at 276, 297, 299. The Debtor recalled counsel indicating that the former business' website was inconsequential in the context of the bankruptcy papers. Tr. 2 at 203.[12] The Debtor also stated that he was emotionally and physically distressed during this period and trusted counsel to complete the bankruptcy forms.[13]

The Creditors' evidence emphasized that the Debtor signed the bankruptcy papers, representing that he had reviewed the papers, and that the information therein was true and accurate. The Creditors also presented evidence to establish the dates of the filing of the Lawsuit on August 29, 2019[14]; the Debtor completing his credit counseling session (December 17, 2018), which is required to be eligible to file a bankruptcy petition December 17, 2018[15]; the subpoena in the Lawsuit being served on the Debtor (January 9, 2019)[16]; and the Debtor filing his bankruptcy

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[12] The Debtor testified as follows:

> Q. So at the time you filed this application you had a website called Missionfilm.com?
> A. That's what I told counsel.
> Q. No, I'm asking you.
> A. I'm telling, you I told counsel --
> Q. I'm not --
> A. -- and they said it was of no consequence because nothing was being --
> Q. Okay.
> A. -- sold from it.

Tr. 2 at 203.

[13] When asked if he signed the bankruptcy petition, the Debtor responded, "Yeah, I mean, this was very overwhelming and stressful, and I was very sad and upset. And I don't even remember how I signed these, or when I signed these, or if I signed these. But I imagine that I did." Tr. 2 at 267; *see also* Tr. 2 at 277.

[14] Debtor's Ex. 1; Tr. 2 at 75.

[15] Creditors' Ex. 39-2; Tr. 2 at 35.

[16] Creditors' Ex. 39-3, Tr. 2 at 37–38.

petition (January 28, 2019)[17]. The Debtor added only that he began experiencing significant financial challenges in 2014 and, as a result, was exploring bankruptcy alternatives well before filing this chapter 7 case.[18] Tr. 2 at 159, 306, 308. He denied filing this bankruptcy case solely because of the Lawsuit. He also denied intentionally using an incorrect address for Mr. Monbo on his creditor matrix.[19]

Based on the Debtor's bankruptcy schedules, which the Creditors moved into evidence, the Debtor had $3,321 in secured debt, $96,045 in unsecured debt, and assets in the amount of $8,197.38. These debt amounts do not include the Creditors' alleged claim grounded in the Lawsuit, which is disputed, unliquidated, and contingent and thus has no specific identified value.[20] The Creditors are among the 27 scheduled creditors in this case.

The Court further discusses these findings of fact and the related evidence below in the context of evaluating the Creditors' claims under applicable law.

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[17] Creditors' Ex. 19; Tr. 2 at 41.

[18] For example, the Debtor testified:

> Around 2014, money was so bad I was constantly in fear of becoming homeless. Chronically nearly getting evicted. It got horrible, horrible, horrible. I hurt my back and then I got terribly sick. I gained 200 pounds. I was 400 pounds. I was in bed for a year and a half. My girlfriend took care of me. And we were constantly getting close to being evicted.
>
> ...
>
> Then I needed to deal with my -- the mess that happened when I was sick, very sick, near-death sick. And that's when I decided that I have a fulltime job, I needed to finally declare bankruptcy. I had been meeting with different lawyers about declaring bankruptcy for over three years, but I guess it was pride, I didn't want to feel like I failed and feel the shame of bankruptcy. And then I finally pulled the trigger on it once I got a full-time job, so that I could move forward in my life and have a fresh start.

Tr. 2 at 304–305.

[19] *See* Tr. 2 at 269 ("I don't even know what per se -- I didn't even know what per se meant. There was no -- there was no -- there was absolutely no reason to leave off an address. I mean, obviously, you guys are working together.").

[20] Creditors' Ex. 21; Debtor's Ex. 7, pp. 74-79. The Creditors offered the first page of the complaint in the Lawsuit, and the Debtor offered the complaint and amended complaint in the Lawsuit; all three exhibits were admitted. These exhibits show that the Debtor and MFI are one of several defendants and that the Creditors assert 16 counts against the defendants. Debtor's Ex. 7. The exhibits do not demonstrate the value of these claims. Debtor's Ex. 7, pp. 77-79. In fact, no party offered admissible valuation evidence on either MFI, the film, or the Lawsuit. Creditors' Exs. 5, 7, 8, 10–14, 19–22; Debtor's Ex. 7.

IV. Conclusions of Law

The Creditors bring this Motion under section 707 of the Code. Although the Creditors assert that they have standing to pursue a dismissal of the Debtor's case for bad faith under both sections 707(a) and 707(b)(3) of the Code, the law does not fully support their position. As explained below, the Creditors fail to account for section 707(b)(6) of the Code, which grants standing to bring a section 707(b)(3) claim solely to the Court and the U.S. Trustee when the debtor is a below median debtor, as we have here. Moreover, as the Court explained during the first day of the evidentiary hearing, the Court permitted the Creditors to argue a bad faith dismissal claim under section 707(a) of the Code, even though some courts have suggested that such claims are no longer available to creditors in consumer bankruptcy cases. Considering the entirety of the record and the applicable legal standards, the Creditors have failed to meet their burden of proof to establish that the Debtor's conduct during the course of this chapter 7 case warrants a dismissal of the case.

A. No Available Claim Under Section 707(b) of the Code

Section 707 of the Code provides in pertinent part:

> **(a)** The court may dismiss a case under this chapter only after notice and a hearing and only for cause, 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 or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.
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> **(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 of relief would be an abuse of the provisions of this chapter. In making a

> determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).
>
> ...
>
> **(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.
>
> ...
>
> **(6)** Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than--
> **(A)** in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;
> **(B)** in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or
> **(C)** in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525[1] per month for each individual in excess of 4.

11 U.S.C. § 707.

Section 707(b) was significantly changed in 2005 by amendments to the Code that separated out consumer debtors and factored in the financial analysis commonly referred to as the means test. Under section 707(b), if a debtor has a current monthly income above the state's median income, and further calculations are performed showing a surplus, the debtor's bankruptcy case is presumed to be an abusive filing.[21] The debtor can attempt to rebut that presumption. If the

[21] *See, e.g., McDow v. Dudley*, 662 F.3d 284, 288 (4th Cir. 2011) ("Under the means test, if the debtor's average monthly disposable income, as calculated under the statute, exceeds the statutory threshold, then the case is presumptively abusive and must be dismissed unless the debtor can show "special circumstances." 11 U.S.C. § 707(b)(2)(A)-(B)."); *In re Consiglio*, No. 15-31915 (AMN), 2018 WL 1162869, at *3 (Bankr. D. Conn. Mar. 2, 2018) (explaining means test).

debtor's current monthly income is, however, below the state's median income, that debtor does not need to perform further calculations, no abuse is presumed, and only certain parties can challenge the debtor's filing under section 707(b), including section 707(b)(3). As Judge Bailey concisely explained in *In re Hiller*:

> I begin with the relevant statute and rules. Under § 707(b)(1), the court "may dismiss a case filed by an individual debtor under this chapter [chapter 7 of title 11] whose debts are primarily consumer debts ... if it finds that the granting of relief would be an abuse of the provisions of this chapter." 11 U.S.C. § 707(b)(1). In certain cases, a presumption of abuse arises. See 11 U.S.C. § 707(b)(2). The parties agree that no presumption of abuse arises in this case. When a presumption of abuse does not arise, the court, in considering whether the granting of relief would be an abuse of the provisions of chapter 7, "shall consider (A) whether the debtor filed the petition in bad faith; or (B) the totality of the circumstances ... of the debtor's financial situation demonstrates abuse." 11 U.S.C. § 707(b)(3). *Recourse to § 707(b) is limited. One such limitation is that when the debtor is a so-called "below-median debtor," only the judge or the United States trustee may file a motion to dismiss under § 707(b).* 11 U.S.C. § 707(b)(6) ("Only the judge or United States trustee ... may file a motion under section 707(b), if the current monthly income of the debtor ... as of the date of the order for relief, when multiplied by 12, is equal to or less than—in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner.").

482 B.R. 462, 468–69 (Bankr. D. Mass. 2012) (emphasis added).

As noted above, the Debtor's Official Form 122A-1 demonstrates that the Debtor is a below median debtor.[22] ECF 4. The limitation set forth in section 707(b)(6) is thus applicable to this

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[22] "Current Monthly Income" is defined in section 101(10A) of the Code as:

> the average monthly income from all sources that the debtor receives . . . without regard to whether such income is taxable income, derived during the 6–month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or (ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and includes any amount paid by any entity other than the debtor . . ., on a regular basis for the household expenses of the debtor or the debtor's dependents . . ., but excludes benefits received under the Social Security Act [and payments to certain victims of crimes or terrorism].

11 U.S.C. § 101(10A). "The first step in the means test requires the debtor to compute her current monthly income calculated according to the number of members of her household, multiply that number by 12 to obtain her annual income, and then compare that number to the annual median income of the state in which the debtor resides." *See In re Megginson*, No. 06-12034-JS, 2007 WL 2609783, at *3 (Bankr. D. Md. Sept. 4, 2007). When the Debtor's case was filed, the median income for a Maryland household of one was $64,615.00. When, as here, the Debtor's Form 122A-1 shows that the Debtor's income is below the applicable state median, the Debtor is considered to be a "below median debtor," there is no presumption of abuse, and no further calculations are required. *See Megginson*, 2007 WL

chapter 7 case. Only the Court or the U.S. Trustee may challenge the Debtor's filing under section 707(b) of the Code.[23] The Court has not done so, and the U.S. Trustee has not filed a motion to dismiss or taken a position on the Motion. The Creditors do not have standing to bring a motion against this particular Debtor under section 707(b)(3).[24]

Some courts and commentators have suggested that the 2005 amendments to the Code eliminated all bad faith dismissal claims against consumer debtors under section 707(a).[25] These

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2609783, at *3 ("Assuming that the debtor's annual income as computed is less than or equal to the annual median income of the resident state, no presumption of abuse arises and the debtor qualifies for Chapter 7 relief, without further calculation.").

[23] 11 U.S.C. § 707(b)(6); *see also Gandy*, 2015 WL 4431017, at *4 ("Because the income reported by [the debtor] was less than the applicable monthly income, a presumption of abuse did not arise. ***It also meant that a creditor did not have standing to file a motion to dismiss the case for abuse.***") (emphasis added); *In re McVicker*, 546 B.R. 46, 53 (Bankr. N.D. Ohio 2016) ("Only the bankruptcy judge, the Officer of the United States Trustee, or in non-U.S. Trustee states, a bankruptcy administrator can bring an action for 'abuse' by debtors who are below the median level for their state."). Section 707(b)(6) limits the standing of who can bring an action under section 707(b); section 707(b)(7) "specifically forbids 'ability to pay' arguments for consumer debtors who are below the median income level." *See McVickers*, 546 B.R. at 53-54; *see also* 6 Collier on Bankruptcy, ¶ 707.01[1]:

> [S]ection 707(b)(6) forbids motions under section 707(b) against debtors below the applicable state median income standard from being filed by anyone other than the court or the United States Trustee. . . . In addition, new section 707(b)(7) forbids *any party* from filing a means test motion, based on the debtor's ability to pay debts, against a debtor below the applicable median income standard.

(emphasis added).

[24] The Court made this oral ruling during the first day of the evidentiary hearing, but the Creditors raised the issue again in their post-hearing brief. It appears that the Creditors did not account for the safe harbor provided by section 707(b)(6). They focus solely on the language of section 707(b)(3). Such a position is incomplete and unsupported by applicable law.

[25] For example, one court in this Circuit has explained:

> This debate raged before the 2005 amendments to the Bankruptcy Code, which, as one noted treatise has observed, may have resolved the issue entirely:
>
> > Those amendments added section 707(b)(3), which provides that bad faith is to be considered in deciding whether to dismiss a case under section 707(b), rather than section 707(a). By placing the bad faith language in section 707(b), Congress afforded protection to lower income debtors against abusive bad faith dismissal motions by creditors which they might not be able to defend due to lack of financial resources; a section 707(b) motion may be brought only by the court or the United States trustee if the debtor's current monthly income is below the applicable state median income level. Similarly, to the extent that the moving party raises the debtor's ability to pay debts or abuse of the Bankruptcy Code, permitting a motion under section 707(a) undercuts the intention of Congress that such issues be handled under 707(b) in which a statutorily prescribed means test is to be used, and which is limited to debtors with current monthly income above the applicable state median family income level. That the debtor is merely taking advantage of its legal rights is not, by itself, sufficient to support a finding of bad faith. A section 707(a) dismissal is not available merely because the debtor could repay some or all of the debts. Similarly, section 707(a) should not be the remedy for malfeasance that is specifically addressed by other Code sections, such as those providing for exceptions to discharge.
>
> 6 Collier on Bankruptcy, ¶ 707.03[2] (15th ed. Rev.2006).

In re Sudderth, No. 06-10660, 2007 WL 119141, at *2 (Bankr. M.D.N.C. Jan. 9, 2007).

courts reason that Congress intended to protect lower income individuals from harassing creditor filings asserting bad faith claims not covered by the revised section 707(b) of the Code. The Court acknowledges this position, but nevertheless, permitted the parties to produce their respective evidence to facilitate a determination on the merits of the claims. The Court recognizes that some courts, including courts in this Circuit, have suggested a continued role for section 707(a) dismissal claims in consumer cases. Regardless, as explained below, the Court does not find adequate evidence to warrant a bad faith dismissal of the Debtor's case under section 707(a) of the Code.

B. Analysis of Creditors' Allegations Under Section 707(a) of the Code

A court has the discretion to dismiss a case, after notice and a hearing, for bad faith or one of the non-exclusive causes enumerated in section 707(a) of the Code. 11 U.S.C. 707(a); *see also In re Minick*, 588 B.R. 772, 775 (Bankr. W.D. Va. 2018) (stating that the "open ended authority to dismiss a case for cause enables a bankruptcy judge to serve as gatekeeper to combat abuse of the bankruptcy laws."). The party moving for dismissal bears the burden of proof,[26] and "the bar for finding bad faith is a high one." *Janvey v. Romero*, 883 F.3d 406, 412 (4th Cir. 2018).[27]

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[26] *See, e.g., In re Aiello*, 428 B.R. 296, 299 (Bankr. E.D.N.Y. 2010) ("The party moving for dismissal under Section 707(a) bears the burden of proving cause by a preponderance of the evidence.").

[27] Courts consider a number of factors in assessing a claim for dismissal under section 707(a) of the Code, including:

(1) The debtor's concealment or misrepresentation of assets and/or sources of income, such as the improper or unexplained transfers of assets prior to filing;
(2) The debtor's lack of candor and completeness in his statements and schedules, such as the inflation of his expenses to disguise his financial well-being;
(3) The debtor has sufficient resources to repay his debts, and leads a lavish lifestyle, continuing to have excessive and continued expenditures;
(4) The debtor's motivation in filing is to avoid a large single debt incurred through conduct akin to fraud, misconduct, or gross negligence, such as a judgment in pending litigation, or a collection action;
(5) The debtor's petition is part of a "deliberate and persistent pattern" of evading a single creditor;
(6) The debtor is "overutilizing the protection of the Code" to the detriment to his creditors;
(7) The debtor reduced his creditors to a single creditor prior to filing the petition;
(8) The debtor's lack of attempt to repay creditors;
(9) The debtor's payment of debts to insider creditors;
(10) The debtor's "procedural gymnastics" that have the effect of frustrating creditors;
(11) The unfairness of the debtor's use of the bankruptcy process.

In re Minick, 588 B.R. 772, 776 (Bankr. W.D. Va. 2018) (citing *McDow v. Smith*, 295 B.R. 69, 79 n.22 (E.D. Va. 2003)); *see also Janvey*, 883 F.3d at 410 (applying the eleven factors from *McDow* when determining the existence of bad faith).

In assessing a movant's evidentiary case against a debtor, the Court may consider only admissible evidence and applicable law. *See In re Harris*, 279 B.R. 254, 261 (B.A.P. 9th Cir. 2002) (stating that a court's dismissal for abuse "must be based upon factual findings supported by admissible evidence"); *In re Hall*, 569 B.R. 58, 65, 69-70 (Bankr. W.D. Va. 2017) (stating that in evaluating a motion to dismiss, "the Court will consider the evidence presented, the record in the case, and the skillful arguments of counsel," and noting that where the movant failed to present evidence controverting the debtor's deductions, the court accepted the debtor's stated deductions); *In re Johnson*, 318 B.R. 907, 921 (Bankr. N.D. Ga. 2005) (denying trustee's motion to dismiss because the trustee did not present sufficient evidence to establish cause for dismissal); *In re Ferrell*, Case No. 15-10370, 2016 WL 331140, at *2 (Bankr. D. Maine January 27, 2016) (denying debtor's motion to dismiss where she failed to submit any evidence in support of her motion).

The Court cannot weigh evidence not offered at the evidentiary hearing and included in the record thereof, or evidence that is not admissible under the Federal Rules of Evidence, made applicable to this contested matter by Bankruptcy Rules 9014 and 9017.[28] The Court recognizes that the Creditors elected to proceed pro se in this matter, but that does not lessen their burden or excuse their compliance with substantive law or applicable rules.[29]

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[28] *See In re Kelly*, 841 F.2d 908, 916 (9th Cir. 1988) (rejecting debtors' argument that section 707(b) was unconstitutionally vague because it did not state procedures for presentation of evidence and rebuttal of statutory presumption and stating "[w]ith respect to the presentation of evidence, the Bankruptcy Rules incorporate the Federal Rules of Evidence, as well as Federal Rules of Civil Procedure 43 and 44 governing precisely this issue. Bankr. R. 9017."); *In re Ferrell*, Case No. 15-10370, 2016 WL 331140, at *2 (Bankr. D. Maine January 27, 2016) (stating that debtor's motion to dismiss the bankruptcy case is a contested matter and, under Rule 9017, the Federal Rules of Evidence apply in contested matters).

[29] *See, e.g., Greene v. U.S. Dep't of Educ. (In re Greene)*, No. 10-51071-SCS, 2013 WL 1724924, at *16–17 (Bankr. E.D. Va. Apr. 22, 2013) ("It is axiomatic that unrepresented litigants are to be afforded liberal construction of their pleadings... However, there are limits to the considerations given to unrepresented litigants. Although the pleadings of *pro se* litigants are construed liberally, there is no lower standard when it comes to rules of evidence and procedure.... While *pro se* litigants are afforded some latitude when it comes to technical procedural requirements, the Court expects them to follow the same rules of evidence and procedure as is required by those who are authorized to practice law.") (citations and quotations omitted).

As explained above in the Court's Findings of Fact, the Court has carefully reviewed the evidence admitted at the Hearing. *See supra* Part III. The Court understands the Creditors' allegations, but assumptions or suspicions are not adequate to sustain the heavy burden of movants under section 707(a) of the Code. The Creditors failed to establish fraud, misrepresentation, or even reckless conduct with respect to the Debtor's filing of this case and his conduct during the case.

The Court begins with the timing and purpose of the Debtor's bankruptcy petition. The filing of a bankruptcy case to stop litigation or even to address the claim of a single creditor does not, standing alone, evidence bad faith. *See, e.g., In re Remember Enterprises, Inc.*, 425 B.R. 757, 760 (Bankr. M.D.N.C. 2010) (finding that a debtor who filed bankruptcy in response to pending litigation did not file his bankruptcy proceeding in bad faith); *In re Minick*, 588 B.R. 772, 779 (Bankr. W.D. Va. 2018) (holding that a debtor who later admitted he filed the bankruptcy suit in order to avoid a single creditor did not act in bad faith because the debtor was "honest and forthcoming about his prepetition conduct."); *see also Janvey*, 883 F.3d at 408 (finding that a debtor who filed bankruptcy to avoid paying a $1.275 million judgment had not filed in bad faith).[30] Moreover, in this case, the Debtor has more than one creditor and testified to the several factors underlying his financial distress and prompting his bankruptcy filing. *See supra* Part III.C. Although the Creditor's Lawsuit appears to have been a tipping point, the Court finds that it was not the sole reason for this bankruptcy filing.

[30] In *Janvey*, the U.S. Court of Appeals for the Fourth Circuit explained, "Janvey first objects that bankruptcy should be unavailable to Romero because he seeks to avoid a single large debt—namely, Janvey's judgment against him. This objection is flawed for two reasons.... As a factual matter, it is simply not the case that Romero filed for bankruptcy solely to avoid the judgment.... As a legal matter, the fact that a bankruptcy petition was filed in response to a single debt need not alone constitute bad-faith cause for dismissal." *Janvey*, 883 F.3d at 414.

The Creditors also point to several deficiencies in the Debtor's bankruptcy papers and suggest that the Debtor is hiding assets or income.[31] As noted above, the Debtor admitted to certain mistakes and omissions in his bankruptcy papers. None of these omissions are material, however, when considered in the overall context of the Debtor's bankruptcy case. None of the established omissions impacted creditors' recoveries or rights against the Debtor.

That said, the Creditors consistently argued that the Debtor made more money than he disclosed in his bankruptcy papers. This argument was primarily grounded in the fact that the Debtor was one of several producers on the film and was the owner of a film production company, MFI. The Debtor did not deny being a producer on the film or owning MFI. *See supra* Part III.C. The Creditors produced no admissible evidence to contradict the Debtor's statements. They offered no contract, distribution agreement, bank account, cancelled checks, or other evidence of payments to the Debtor or MFI. *See, e.g.*, Tr. 2 at 89–90, 95–100.[32]

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[31] The Creditors also made broad generalizations regarding a debtor's obligations under the Code. The Creditors did not assert these statements with statutory or case law authority. The Court notes that a debtor in a chapter 7 case does have an obligation to disclose tax and, in certain circumstances, business information. Section 521 of the Code, however, only requires a debtor to provide tax information to the bankruptcy trustee and does not require the debtor to file ongoing tax disclosures unless requested by the Court, the U.S. trustee, or a party in interest. 11 U.S.C. § 521(e)(2)(A)(i) & (ii), 521(f). The bankruptcy trustee typically notifies the Court when a debtor fails to comply with section 521(e)(2)(A); the Chapter 7 trustee in this case has not filed any such notice. Moreover, absent extraordinary circumstances, a corporate entity such as MFI is separate and distinct from the individual debtor, and the entity's business and assets (other than the debtor's ownership interest) is not included in the bankruptcy case. In general, "[a]ssets owned by a corporation in which a debtor is a stockholder are not property of the debtor, but that of the corporation." *Simpson v. Levitsky, et al. (In re Levitsky)*, 401 B.R. 695, 710 (Bankr. D. Md. 2008) (citing *Kreisler v. Goldberg*, 478 F.3d 209, 214 (4th Cir. 2007));*see also Fowler v. Shadel*, 400 F.3d 1016, 1019 (7th Cir. 2005) ("The corporate assets of Fowler Trucking, Inc. are not property of the debtor [sole shareholder] and therefore cannot become property of [the debtor's] estate."). As Judge Schneider explained in *Levitsky*, "the assets of a non-debtor corporation do not become assets of the bankruptcy estate of a stockholder of the corporation, *even when the individual owns all of the stock*." 401 B.R. at 710 (emphasis added).

[32] The Creditors suggested that they did not have an opportunity to conduct a Rule 2004 examination of the Debtor with regards to such matters. The Creditors, as movants, however, had the ability to conduct discovery in this contested matter under the applicable bankruptcy and civil rules, but did not do so. *See, e.g.*, Fed. R. Bankr. P. 9014. Moreover, the Bankruptcy Rule 2004 process generally is not available to a party after formal litigation, such as a contested matter, is commenced; this concept is referred to as the "pending proceeding" rule. *See, e.g., In re SunEdison, Inc.*, 572 B.R. 482, 490 (Bankr. S.D.N.Y. 2017) ("The pending proceeding rule is based on the different safeguards that attend Rule 2004 and civil litigation discovery, and reflects a concern that a party to litigation could circumvent his adversary's rights by using Rule 2004 rather than civil discovery to obtain documents or information relevant to the lawsuit.").

The Creditors also made much of the Debtor's failure to dissolve MFI under state law. They suggest that the continued existence of this entity shows some ongoing business operations. Unfortunately, the Court is not aware of any legal requirement that a company dissolve when it ceases active business operations.[33] Moreover, a company that has forfeited its charter continues to exist only as a "legal non-entity" and only for certain limited purposes.[34] In fact, as the Debtor testified, MFI was required to reinstate its charter before it could receive payment on even a small project. Tr. 2 at 308–309. The Court understands that it may be best practices for a defunct corporation to dissolve under state law, but the Court cannot draw any inference regarding ongoing operations from MFI's failure to follow best practices. The record contains no evidence showing any work, projects, contracts, or income for MFI since the 2014 payment during the reinstatement period.

Considering the entire record and the totality of the circumstances, the Court finds no bad faith, reckless conduct, concealment of assets, or wrongful conduct on the Debtor's part that would

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[33] Maryland law does not require an inactive corporation to dissolve. *See* Md. Code Ann., Corps. & Ass'ns § 3-401 et seq. (setting forth procedures for voluntary and involuntary dissolutions). Under certain limited circumstances, the Maryland Code allows stockholders to petition for the involuntary dissolution of a corporation (for example in cases of deadlock which prevent the corporation from taking action, or cases of illegality, oppression, or fraud) and allows stockholders or creditors to petition for dissolution when the corporation is insolvent. *See* Md. Code Ann., Corps. & Ass'ns § 3-413. Notably, the mere fact that a corporation is no longer active does not provide grounds to compel dissolution. *Id.* A corporation is dissolved upon the acceptance of its articles of dissolution by the Department, but continues to exist for the purposes of winding up its affairs, i.e. doing the acts necessary to liquidate and wind up the corporation's business affairs. Md. Code Ann., Corps. & Ass'ns § 3-408.

[34] *See, e.g.*, *Thomas v. Rowhouses, Inc.*, 206 Md. App. 72, 80–81, 47 A.3d 625, 629–30 (2012) ("Under Maryland law, when a corporation has forfeited its corporate charter or has been dissolved—whether judicially, administratively, voluntarily or involuntarily—it is generally said to be 'a legal non-entity' and 'all powers granted to [the corporation] by law, including the power to sue or be sued, [are] extinguished generally as of and during the forfeiture period.'"); *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 857 A.2d 1095 (Md. Ct. App. 2004) ("A corporation, the charter for which is forfeit, is a legal non-entity; all powers granted to Dual, Inc. by law, including the power to sue or be sued, were extinguished generally as of and during the forfeiture period."); *MT Holding Corp. I v. PNC Bank*, No. 377, 2018 WL 3993732, at *3 (Md. Ct. Spec. App. August 20, 2018) (noting that, upon forfeiture, a "corporation is a nonentity" and all of the powers conferred upon the corporation by law, are null and void); *In re Estate of Barnes*, No. 2349, 2019 WL 1771758, at *5 (Md. Ct. Spec. App. April 22, 2019) (noting that when a corporate charter has been forfeited, the lapsed corporation "may hold and own assets until those assets are liquidated as provided by the statute."). "When a corporation's charter is forfeited for non-payment of taxes or failure to file an annual report, the corporation is dissolved by operation of law and ceases to exist as an entity." *See, e.g.*, *Kroop & Kurland, P.A. v. Lambros*, 118 Md. App. 651, 657–58, 703 A.2d 1287, 1289 (Md. Ct. Spec. App. 1998) (citing cases).

warrant dismissal of this case. *See, e.g., Janvey*, 883 F.3d at 408 (affirming lower courts' decision denying motion to dismiss and explaining that "[c]ourts must consider the totality of the circumstances underlying each case to determine whether a debtor has acted in bad faith"). This conclusion is supported by the facts in this case and the applicable law in this Circuit.

Accordingly, it is, by the United States Bankruptcy Court for the District of Maryland,

ORDERED, that the Motion is denied.

cc: Debtor
James Logan
Deafueh Monbo
Taje Monbo
Zvi Guttman
All parties in interest

END OF ORDER

APPENDIX 2

Entered: December 9th, 2019
Signed: December 9th, 2019

SO ORDERED

MICHELLE M. HARNER
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Baltimore

In re:	*	
	*	
Eric J. Blair,	*	Case No. 19-11083-MMH
	*	
Debtor.	*	Chapter 7
	*	

* * * * * * * * * * * * *

ORDER DENYING MOTION TO EXTEND TIME TO OBJECT TO DISCHARGE

This matter is before the Court on the Motion for an Order Extending the Deadline for Creditors to File Complaints Objecting to Discharge Under and Pursuant to 11 U.S.C. § 727 and FRPB Rule 4004(B)(1) (the "Motion"), filed by Deafueh Monbo and Taje Monbo (collectively, the "Creditors"). ECF 19. The Motion was timely filed pursuant to Bankruptcy Rule 4004(b)(1). The above-captioned Debtor filed a response to the Motion. ECF 28. The Court considered the Motion in the context of an evidentiary hearing on July 17, 2019, and October 18, 2019 (collectively, the "Hearing").[1] For the reasons set forth below, the Court does not find adequate cause, as mandated by Bankruptcy Rule 4004(b)(1), to grant the relief requested by the Motion. The Motion will be denied.

Bankruptcy Rule 4004(b)(1) provides, "On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in

[1] The Court refers to the transcripts from the Hearing as follows: the transcript of the July 17, 2019, hearing at ECF 48 is referred to herein as "Tr. 1"; the transcript of the October 18, 2019, hearing at ECF 52 is referred to herein as "Tr. 2."

subdivision (b)(2), the motion shall be filed before the time has expired." Fed. R. Bankr. P. 4004.[2] The rule permits a court to extend the objection deadline, but a court can only do so if adequate cause exists.[3] Courts generally consider the following factors in assessing cause under Bankruptcy Rule 4004:

> (1) whether the creditor has received sufficient notice of the deadline and information to file an objection; (2) the complexity of the case; (3) whether the creditor has exercised diligence; (4) whether the debtor has refused in bad faith to cooperate with the creditor; and (5) the possibility that proceedings pending in another forum will result in collateral estoppel of the relevant issues.

In re Kramer, 492 B.R. 366, 371 (Bankr. E.D.N.Y. 2013).

By the Motion, the Creditors assert that Taje Monbo lacked actual notice of the Debtor's bankruptcy case because only his name and not his correct address was listed on the Debtor's creditor matrix.[4] Creditor Deafueh Monbo does not deny receiving notice, but states that she "was not aware that the 341 meeting of creditors was mandatory." ECF 19. The Court notes that actual notice generally means having actual knowledge of the pending case[5] and that the section 341

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[2] In addition, Bankruptcy Rule 9006(b)(3) provides, in relevant part, "The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules." Fed. R. Bankr. P. 9006.

[3] "When seeking relief under Rule 4004(b)(1), it is the burden of the moving party to demonstrate that cause exists. *See, e.g., In re Marsh*, 2012 WL 4482581, at *2 (Bankr. D. Mont. Sept. 26, 2012). Whether that burden is met falls within the discretion of the bankruptcy court. *See, e.g., In re Anthanassious*, 418 Fed. Appx. at 97; *In re Boltz–Rubinstein*, 454 B.R. 614, 620 (Bankr.E.D.Pa.2011)." *In re Aloia*, 496 B.R. 366, 380 (Bankr. E.D. Pa. 2013). As explained below, the Creditors have failed to meet their burden under Bankruptcy Rule 4004(b).

[4] The Creditors suggested that the Debtor intentionally left Mr. Monbo's address off the creditor matrix. The Debtor denied this allegation. *See* Tr. 2 at 269 ("I don't even know what per se -- I didn't even know what per se meant. There was no -- there was no -- there was absolutely no reason to leave off an address. I mean, obviously, you guys are working together.").

[5] *See, e.g., In re Carolina Internet, Ltd.*, No. 11-32461, 2014 WL 1576790, at *6 (Bankr. W.D.N.C. Apr. 18, 2014) (noting, in context of due process, that "[b]ankruptcy jurisprudence is replete with cases holding that 'notice is adequate when it is shown that although a party did not receive formal notice, actual notice was received.' *In re Fusco*, 2008 WL 4298584, at *6 (B.A.P. 6th Cir.2008)."); *In re Bateman*, 254 B.R. 866, 871 (Bankr. D. Md. 2000) ("Where a creditor has actual knowledge of the bankruptcy case, notice from the clerk's office is irrelevant."); *In re McMichael*, 146 B.R. 661, 663 (Bankr. E.D. Va. 1991) ("Here, Kamjo had actual knowledge of the case in time to properly file. Furthermore, the court agrees with the persuasive line of cases holding that actual knowledge of the bankruptcy proceeding binds the moving party to inquire as to the time period fixed for filing complaints to determine dischargeability. *See, e.g., In re Ezell*, 116 B.R. 556 (Bkrtcy.N.D.Ohio 1990); *In re Dewalt*, 107 B.R. 719 (9th Cir. BAP 1989) ('An unscheduled creditor with actual notice of the bankruptcy has the burden to inquire as to the bar date for filing a nondischargeability complaint.'); *In re Alton*, 64 B.R. 221, 224 (Bankr.M.D.Fla.1986), *aff'd* 837 F.2d 457 (11th Cir.1988).").

meeting of creditors is *not* mandatory. Rather, the section 341 meeting of creditors gives creditors an opportunity, if they want to attend, to ask questions of the debtor and obtain additional information regarding the case. 11 U.S.C. § 341.

The Debtor filed this chapter 7 case on January 28, 2019. The Bankruptcy Noticing Center mailed notice of the bankruptcy case to all creditors listed on the Debtor's creditor matrix, including Ms. Monbo, on January 31, 2019. ECF 9. At the Hearing, Ms. Monbo testified that she received notice of the chapter 7 case from the bankruptcy court on or about February 26, 2019. Tr. 2 at 121. Ms. Monbo did not explain the delay between the mailing and receipt of the notice,[6] but the Court finds that largely irrelevant. The deadline for objecting to the Debtor's discharge in this case was set for May 6, 2019. Even assuming receipt of the notice on February 26, 2019, the Creditors had more than adequate time to file a complaint objecting to discharge.

With respect to Mr. Monbo, the Creditors assert that the Debtor's creditor matrix lists an incorrect address for Mr. Monbo. The Court appreciates the Creditors' concern in this regard but finds little resulting harm. The record in this case demonstrates that the Creditors are joint plaintiffs in a lawsuit filed against the Debtor and others in the U.S. District Court for the Eastern District of New York. A suggestion of bankruptcy was filed in that civil litigation on March 4, 2019. Debtor's Ex. 5 (offered and admitted during Hearing). Mr. Monbo thus had actual knowledge of this bankruptcy case and the ability to file a timely complaint.

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[6] The Court observes that there is a presumption that notice by mail is timely received when the mail is properly addressed with any applicable postage paid. *See, e.g., In re Perkins*, No. CA 10-03041-JW, 2011 WL 3163294, at *2 (Bankr. D.S.C. Feb. 8, 2011) ("Pursuant to Fed. R. Bankr. P. 9006(e), 'notice by mail is complete on mailing.' Courts have generally held that mailing creates a presumption of receipt. *See id.* (stating the 'rule implies that correctly mailed notice creates a presumption of proper notice'); *Moody v. Bucknum (In re Bucknum)*, 951 F.2d 204, 207 (9th Cir.1991) (indicating 'mail that is properly addressed, stamped, and deposited into the mails is presumed to be received by the addressee')). Typically, a mere denial of receipt by the creditor does not rebut the presumption of proper notice. *Moody*, 951 F.2d at 207 (*citing In re American Properties*, 30 B.R. 247, 250 (Bankr.D.Kan.(1983)). The presumption created by mailing is only overcome by evidence that the mailing was not, in fact, accomplished. *Greyhound*, 62 F.3d at 735.").

As set forth above, courts must consider several factors to determine whether cause exists to extend the deadline to object to a debtor's discharge. In this matter, the Creditors had actual knowledge of the Debtor's chapter 7 case at least by March 4, 2019.[7] This chapter 7 case is not novel or complex. The Creditors have not shown that they exercised all reasonable diligence in attempting to file an objection to discharge. For example, Ms. Monbo chose not to attend the section 341 meeting of creditors held on March 5, 2019, and neither creditor has taken any discovery, despite having commenced contested matters in this case by the filing of the Motion and the Motion to Dismiss Case.[8] ECF 18, 19. The Creditors have not alleged that the Debtor failed to provide them requested information or attempted to delay their efforts. Likewise, the Chapter 7 Trustee has made no such allegations in this case. Finally, the Motion does not depend on the resolution of other litigation, as a section 727 discharge analysis focuses largely on the Debtor's conduct relating to the filing and pendency of the bankruptcy case.[9]

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[7] The Creditors' suggestion of bankruptcy filed in the civil litigation states that "Plaintiffs, through their counsel, hereby inform this Court of a Notice of a Chapter 7 Bankruptcy Case (the 'Bankruptcy Notice') received by Plaintiff Deafueh Monbo on February 26, 2019. The notice relates to Case No. 19-11083 with a filing date of January 28, 2019 and which names Defendant in this case Eric Blair as the Debtor." Debtor's Ex. 5. The suggestion of bankruptcy was signed by the attorney as "Attorney for Plaintiffs Taje Monbo and Deafueh Monbo." *Id.* Given that the suggestion of bankruptcy was filed on behalf of both Creditors in the civil litigation by their attorney and the fact that both Creditors are participating in that civil litigation, the Court finds that Mr. Monbo had *actual* knowledge of this chapter 7 case on that date.

[8] As at least one court has explained,

> The majority view is that there can be no cause justifying an extension of time to object to discharge where the party seeking the extension failed to diligently pursue discovery prior to expiration of the deadline." *In re Grillo*, 212 B.R. 744, 747 (Bankr.E.D.N.Y.1997) (denying extension where creditor waited until five days prior to expiration of the deadline to file a Rule 2004 motion). *See also In re Farhid*, 171 B.R. 94, 97 (N.D.Cal.1994) (denying extension where creditor failed to attend section 341 meeting of creditors or request any Rule 2004 examination); *In re Mendelsohn*, 202 B.R. 831, 832 (Bankr.S.D.N.Y.1996) (denying extension where creditor failed to seek a Rule 2004 examination and moved for an extension of time on last day to file objections to discharge); *In re Leary*, 185 B.R. 405, 406 (Bankr.D.Mass.1995) (denying extension where creditor waited until ten days prior to expiration of *369 the deadline to pursue requested Rule 2004 examinations); *In re Dekelata*, 149 B.R. 115, 117 (Bankr.E.D.Mich.1993) (denying extension where request for Rule 2004 examination was made for the first time 11 days prior to expiration of the deadline).

In re Chatkhan, 455 B.R. 365, 368–69 (Bankr. E.D.N.Y. 2011).

[9] *See* 11 U.S.C. § 727(a) (listing grounds for denial of discharge). Section 727(a), in large part, requires the grounds for denial of discharge to either relate to the bankruptcy case or the estate, or to have occurred within one year of the filing. *See* 727(a)(4), (6)(10)(11) actions relating to the bankruptcy case or estate; *see also* 727(a)(2) and (a)(7) requiring the actions t have occurred within one year or after the date of the petition).

In addition to considering the foregoing factors, the Court observes that the Creditors and the Debtor have been litigating in this chapter 7 case for several months. The parties started the Hearing on the Motion and the Motion to Dismiss Case in July 2019. The Court heard extensive evidence during the Hearing. The Court understands why the Creditors may be frustrated by the Debtor's efforts to discharge any debt[10] he may owe them resulting from the civil litigation. But that frustration really relates to policies underlying the Bankruptcy Code—e.g., Congress's decision to allow debtors who qualify for chapter 7 relief to discharge most of their prepetition obligations.

The bankruptcy discharge is a hallmark of U.S. bankruptcy law. It provides a debtor with that coveted fresh start, and it is one of the primary policy objectives underlying the Code. *See, e.g., Grogan v. Garner*, 498 U.S. 279, 286 (1991). Nevertheless, particularly in a chapter 7 case in which creditors frequently receive no recoveries, the debtor's discharge and fresh start may seem unfair to creditors. For that reason, the bankruptcy discharge is only available to the "honest but unfortunate debtor." *Grogan v. Garner*, 498 U.S. at 287. As set forth in the Court's Order Denying Motion to Dismiss Case (the "Dismissal Order"), based on the evidence admitted during the Hearing, the Court did not find conduct by the Debtor rising to the level of bad faith, as that term is used in the context of section 707(a) of the Bankruptcy Code. ECF 56. The Court recognizes that other factors may be considered in a section 727 analysis but references the Dismissal Order given the lack of cause supporting the Motion. The Creditors' failure to establish adequate cause

[10] Indeed, the Code broadly defines the terms "debt" and "claim" so that, "[g]enerally, 'all legal obligations of the debtor, no matter how remote or contingent,' are potentially dischargeable in bankruptcy." *Kubota Tractor Corp. v. Strack (In re Strack)*, 524 F.3d 493, 497 (4th Cir. 2008) (citations omitted). The term "debt" means a "liability on a claim." 11 U.S.C. § 101(12). The term "claim" means a "**(A)** right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or **(B)** right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured." 11 U.S.C. § 101(5).

under Bankruptcy Rule 4004(b) precludes the relief requested by the Motion; that result also is supported by the policies underlying the bankruptcy discharge and the overall record in this case.

Accordingly, it is, by the United States Bankruptcy Court for the District of Maryland,

ORDERED, that the Motion is denied.

cc: Debtor
James Logan
Deafueh Monbo
Taje Monbo
Zvi Guttman
All parties in interest

END OF ORDER

APPENDIX 3

FILED: April 6, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1989
(1:19-cv-03565-CCB)
(19-11083)
(19-00372)

ERIC J. BLAIR

Plaintiff - Appellee

v.

DEAFUEH MONBO

Defendant - Appellant

and

TAJE MONBO

Defendant

ZVI GUTTMAN

Trustee

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely motion to stay the

mandate stays the mandate until the court has ruled on the motion. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk