

No. 26-

IN THE
Supreme Court of the United States

STEVEN T. SAVAGE AND VIRGINIA A. SAVAGE,

Petitioners,

v.

COASTAL CAPITAL, LLC,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER the denial of a debtor's bankruptcy discharge under 11 U.S.C. § 727(a)(5) (the "Bankruptcy Code") on the grounds of failure to explain satisfactorily any loss or deficiency of assets to meet the debtor's liabilities requires a uniform standard for determining when an explanation is satisfactory and whether documentary corroborating evidence is required?

PARTIES TO THE PROCEEDINGS

Petitioners Steven T. Savage and Virginia A. Savage were the debtors in the bankruptcy court and appellants in the United States Court of Appeals for the First Circuit.

Respondent Coastal Capital, LLC was the creditor objecting to discharge and appellee in the United States Court of Appeals for the First Circuit.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Coastal Capital, LLC v. Savage (In re Savage)*, No. 25-1249, United States Court of Appeals for the First Circuit, judgment entered February 27, 2026. App. 1a.
- *Coastal Capital, LLC v. Savage*, 2025 WL 481049 (D.N.H. Feb. 13, 2025). App. 28a.
- *Coastal Capital, LLC v. Savage (In re Savage)*, 2023 WL 8252355 (Bankr. D.N.H. Nov. 28, 2023). App. 49a.
- *Steven T. Savage, et ux. v. Coastal Capital, LLC*, No. 25A1170, Supreme Court extension docket.

To the best of Petitioners' knowledge, there are no other proceedings in state or federal trial or appellate courts, including proceedings in this Court, directly related to this case.

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INTRODUCTION

This case presents a recurring and important question under the Bankruptcy Code: what must a debtor do to “explain satisfactorily” a loss or deficiency of assets to meet liabilities under 11 U.S.C. § 727(a)(5)? Bankruptcy Code § 727(a)(5) provides for the denial of a debtor’s discharge based on an unsatisfactory explanation of any loss of assets or deficiency in assets to meet the debtor’s liabilities. However, its text does not define what is or is not satisfactory. Resolution of that question is significant to all debtors because denial of discharge is among the Code’s most severe consequences, yet Code § 727(a)(5) can impose that consequence without proof of fraud, concealment, scienter, or bad faith. The answer to the question is also important to creditors and trustees who bring actions to deny the discharge so that they understand their burden of proof.

In the decision below, the First Circuit upheld the denial of debtors’ discharge because, although the bankruptcy court found the debtors to be credible, the debtors’ testimony did not suffice in the Court’s opinion. The bankruptcy court focused on the issue of documentary corroboration, and the First Circuit’s decision relied heavily on the lack of documentary corroboration to explain loss of a small percentage of the assets.

Circuit courts of appeal are split confusingly on what a satisfactory explanation requires. Several circuits require documentation to support testimony, and others do not, finding that testimony alone suffices. The First Circuit and others require documentation, and the Second Circuit allows credible testimony alone, without documentation.

The Seventh Circuit, in separate matters, held in one case that documentation is required; and in another case, it held that no bright line exists regarding documentation, indicating that testimony can carry the day; and, in yet another case, it permitted discharge because the debtor's failure to explain under Code § 727(a)(5) was an innocent one.

Some courts question if the explanation persuades the judge while others consider whether it leaves no doubt or stops speculation. Still other courts question whether it leaves the judge no longer wondering. No consistent rule has emerged governing whether a debtor can explain the loss of assets with testimony alone or whether documents corroborating that testimony are also required.

The word "documentation" does not appear in the statute, yet some courts require documentation for proof of a debtor's explanation. Since the statute requires an explanation for any loss of assets, a determination is needed for whether the intent of Code § 727(a)(5) is to require documentary corroboration of every asset.

Because of this lack of definition, bankruptcy judges have tried to provide a definition for what constitutes a satisfactory explanation, attempting to balance creditors' rights with the rights of the honest but unfortunate debtor to a fresh start.

A historical perspective is significant because it reflects a transition from the original bankruptcy laws of the United States which existed as a creditors' remedy only. The goal of bankruptcy shifted to become a remedy for debtors under the Bankruptcy Code providing the dual

goal of limited bankruptcy relief to honest debtors while still providing protection to creditors. Congress could not have intended to punish even honest and unfortunate debtors in this section. Thus, a debtor who, like the Savages, has to rely on credible oral testimony to explain the loss of a relatively small part of the bankruptcy estate should be treated as honest but unfortunate. Any threat to creditors' rights in such situations is outweighed by the interest of fairness to the debtor, as well as by the need for predictable rules to guide bankruptcy judges.

This Court's review is warranted to clarify the federal standard governing 11 U.S.C. § 727(a)(5) before it continues to produce severe discharge consequences without a defined measuring stick.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit is reproduced at App. 1a–21a and is reported at *Coastal Capital, LLC v. Savage (In re Savage)*, 169 F.4th 45 (1st Cir. 2026).

The opinion of the United States District Court for the District of New Hampshire is reproduced at App. 28a–48a and is reported at *Coastal Capital, LLC v. Savage*, 2025 WL 481049 (D.N.H. Feb. 13, 2025).

The opinion of the United States Bankruptcy Court for the District of New Hampshire is reproduced at App. 49a–84a and is reported at *Coastal Capital, LLC v. Savage (In re Savage)*, 2023 WL 8252355 (Bankr. D.N.H. Nov. 28, 2023).

JURISDICTION

The United States Court of Appeals for the First Circuit entered judgment on February 27, 2026. On April 24, 2026, Justice Jackson granted an extension of time to file a petition for a writ of certiorari to and including July 27, 2026. See *Steven T. Savage, et ux. v. Coastal Capital, LLC*, No. 25A1170. The First Circuit judgment is reproduced at App. 1a, and the Bankruptcy Court’s post-mandate order noting the intended certiorari filing is reproduced at App. 22a–24a.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Bankruptcy Code § 727(a)(5) provides in relevant part App. 101a–102a.

The court shall grant the debtor a discharge, unless . . . the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor’s liabilities.

STATEMENT OF THE CASE

A. Legal Framework

The United States Constitution grants Congress power to enact uniform, national laws governing bankruptcies. U.S. Const. Art. I, § 8, Cl. 4. Congress has enacted such laws, including the Nat’l Bankruptcy Act of 1898, Bankruptcy Act of 1898, ch. 541, 30 Stat. 544,

544–612, which generally provided for the equal treatment of similarly situated creditors, and for the discharge of the debtor. See Henry G. Newton, *The United States Bankruptcy Law of 1898*, 9 Yale L.J. 287, 287–90 (1900). The 1898 Act provides for a denial of a debtor’s discharge when the debtor committed an offense punishable by imprisonment or acted with fraudulent intent before the bankruptcy filing. *Id.* at 290.

Forty years later, Congress amended the Nat’l Bankruptcy Law of 1898 and enacted the Bankruptcy Act of 1938, which first introduced the concept of denial of discharge when the “Court is satisfied that the [debtor] has . . . failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities”. Chandler Act, ch. 575, § 1, 52 Stat. 840, 850 (1938).

After another forty years, Congress enacted the Bankruptcy Reform Act of 1978, which became the Bankruptcy Code. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 101, 92 Stat. 2549, 2604. The Code carried forward the Act’s provision that a debtor must explain satisfactorily any loss of assets:

The court shall grant the debtor a discharge, unless—. . . (5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor’s liabilities; 11 U.S.C. §727(a)(5). App. 101a–102a.

While the Bankruptcy Code has been amended significantly, including the 1984, 1986, 1994, and 2005 Amendments, the language of 11 U.S.C. §727(a)(5) has

not changed since 1978, and none of those amendments provides a definition for “explain satisfactorily.”

B. Factual and Procedural Background

1. Bankruptcy Court Decision

Steven Savage was the sole shareholder, and he and Virginia Savage were, respectively, President and Vice President of Sky-Skan, Inc., a company that designed and maintained digital planetarium equipment. App. 2a–4a. Sky-Skan had a line of credit originally with Bank of America, later assigned to Coastal Capital, LLC. “Coastal” App. 3a–4a. Sky-Skan defaulted, and both Sky-Skan and the Savages entered bankruptcy proceedings. App. 4a–5a.

Sky-Skan’s bankruptcy documents accurately disclosed that it transferred \$704,075.27 to the Savages in the year before Sky-Skan’s bankruptcy. App. 4a. The payments were described as expense reimbursements for credit card charges, travel expenses, rent, and personal loan repayments. App. 4a. The Savages’ own individual bankruptcy filings did not disclose the \$704,075.27 transferred to them from Sky-Skan. App. 4a–5a.¹

In the bankruptcy court, Coastal objected to discharge in a six-count complaint accusing the Savages of receiving “hundreds of thousands of dollars from Sky-Skan” in the years leading up to the bankruptcy,

1. Statement Of Financial Affairs section of the Official Bankruptcy Forms for an individual debtor does not require an itemization of loan repayments received.

but failing “to satisfactorily explain the reason that said money is not available to satisfy their liabilities.” App. 5a–6a. The debtors testified that the money was used as reimbursement for business expenses and was not for personal expenses. The court found the debtors’ explanation for their actions to be credible. Coastal asserted several fraud claims, but the relevant claim on appeal was the Code § 727(a)(5) count. App. 6a–7a. The bankruptcy court ruled for the Savages on all fraud-type theories but denied discharge under Code § 727(a)(5). *Id.* at 51–52.

The bankruptcy court found that Sky-Skan transferred \$704,075.27 to the Savages; that the Savages documented \$684,599.42; and that \$19,475.85 initially remained unexplained. App. 6a–7a, 20a. The court then identified additional rent-related gaps, bringing the total to \$56,653.50. *Id.* Because the debtors explained that amount, but without documentation, the bankruptcy court denied discharge under Code § 727(a)(5). *Id.*

2. United States District Court Decision

The district court affirmed. It reviewed the bankruptcy court’s factual findings for clear error, legal conclusions de novo, and discretionary decisions for abuse of discretion. App. 29a. The court affirmed the bankruptcy court’s calculation of funds for which Debtors supplied a verbal explanation, but for which the debtors lacked documentation. App. 35a–36a, 40a–43a. It clarified that Code § 727(a)(5) requires a reason for any loss or deficiency of assets to cover liabilities, and it found that the Savages failed to show that Coastal prevented them from providing a satisfactory explanation.

3. The First Circuit Decision

The First Circuit affirmed and held that a satisfactory explanation must be supported by at least some corroboration, which must be sufficient to eliminate the need for any speculation as to what happened to all assets. The bankruptcy court found that the debtors were credible and that they testified that all funds transferred to them were for rent or business purposes. The court found that the debtors' numerous trial documents explained a large percentage of the assets, but the court rejected the debtors' explanation.

The court then rejected their verbal explanation that they could not access additional explanatory documentary evidence. It said that "any loss" of assets must be explained, and that "most of Sky Skan funds [were] accounted for, but not all," and denied discharge. App. 19a–21a.

The First Circuit discussed the issue of "sufficiency to satisfy liabilities in full", rejected the argument that the missing assets must be sufficient to pay liabilities in full, and said that the assets need only be property that would have been available to the estate rather than sufficient to satisfy liabilities in full. App. 14a–16a.

It held that good faith does not determine whether an explanation is satisfactory, saying that "the inquiry is not a matter of good faith, but whether a debtor has satisfactorily explained the loss of an asset." App. 19a–20a. Yet the First Circuit stated separately that

“like all exceptions to discharge, [Code § 727(a)(5)] is to be construed narrowly,” and that “exceptions to discharge should be construed in favor of the debtor in furtherance of the Bankruptcy Code’s ‘fresh start’ policy.” App. 17a–18a.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

Because of the lack of definition of the term “explain satisfactorily,” bankruptcy judges have had to decide whether a debtor’s testimony alone is sufficient and, furthermore, what, if any, limitation or percentage or value of lost assets, as it relates to the entire estate, will rise to the level of proof to warrant the denial of a debtor’s discharge. This undefined standard has created not only a circuit split regarding whether documentary evidence is required, but also, for those circuits that require such evidence, whether the debtor must account for every dollar of losses. Moreover, the term “deficiency of assets to meet liabilities” is also unclear. Therefore, the undefined standard has created inconsistencies in the circuits and even an inconsistency within at least one circuit.

For denial of discharge under this section, five circuit courts of appeal require supporting documentation for a debtor’s explanation of loss of assets; two circuit courts of appeal require no documentation; and the Seventh Circuit has said, variously, that although a violation of Code § 727(a)(5) occurred, discharge will nonetheless be granted because the violation was innocent; that documentation was required; and, most recently, that no bright line requiring documentation exists. See *First Fed. Life Ins.*

Co. v. Martin (In re Martin), 698 F.2d 883 (7th Cir. 1983), *Suttles v. Suttles (In re Suttles)*, 819 F.2d 764 (7th Cir. 1987), *D’Agnese v. Cotsibas (In re D’Agnese)*, 86 F.3d 732 (7th Cir. 1996), and *Hudgens v. New Equip. Leasing, Inc. (In re Hudgens)*, 149 F. App’x 480 (7th Cir. 2005).

Whether an honest debtor who explains his loss of assets is denied a discharge because he or she lacks documentation is the essential issue requiring the Supreme Court’s review. Consideration by this Court is needed to clarify what showing is required for denial of a debtor’s discharge, under Code § 727(a)(5), and to resolve the split in the circuits.

I. Courts need a standard for “satisfactory explanation.”

Code § 727(a)(5) presents an important and recurring federal bankruptcy question because it makes discharge turn on whether a debtor has “explain[ed] satisfactorily” a loss or deficiency of assets, while the statute itself supplies no measure of what explanation is enough. See 11 U.S.C. § 727(a)(5); App. 1a, 9a–12a. The question is outcome-determinative: once the objector shows a loss or deficiency of assets, discharge rises or falls on whether the court finds the debtor’s explanation satisfactory. See App. 9a–12a.

Denial of discharge is one of the Code’s harshest consequences, yet Code § 727(a)(5) does not require proof of fraud, concealment, scienter, or bad faith. Even so, the consequence remains complete denial of discharge. See App. 1a, 20a.

Code § 727(a)(5) affects not merely a single debt; rather, it authorizes denial of discharge of all of the debt. The First Circuit affirmed that consequence here under Code § 727(a)(5), and other courts apply the same strict standard where the debtor fails to provide a satisfactory explanation with documentation. See App. 19a–21a; *Chalik v. Moorefield (In re Chalik)*, 748 F.2d 616, 619–20 (11th Cir. 1984).

Courts have filled the gap with judge-centered formulations in the absence of a statutory rule which may lead to abuse of discretion. The Eleventh Circuit has said that “[t]o be satisfactory, ‘an explanation’ must convince the judge,” and that “[v]ague and indefinite explanations of losses that are based upon estimates uncorroborated by documentation are unsatisfactory.” *Chalik v. Moorefield*, 748 F.2d 616, 619 (11th Cir. 1984). The Fifth Circuit has similarly defined a satisfactory explanation as one that leaves the court satisfied so that it “no longer wonders.” *First Tex. Sav. Ass’n v. Reed*, 700 F.2d 986, 993 (5th Cir. 1983). And the Seventh Circuit has warned that “[t]he speculation of the bankruptcy judge or the creditors as to what may actually have been occurring is not an adequate substitute for a believable explanation by the debtor.” *First Fed. Life Ins. Co. v. Martin*, 698 F.2d 883, 888 (7th Cir. 1983). Those formulations do not tell debtors what evidence they must produce, nor do they tell bankruptcy judges when testimony without further documentation is sufficient. This affects both sides of the bankruptcy process: debtors and creditors must know what proof is required to preserve discharge, and judges must know when the severe sanction of denial of discharge is warranted.

The decision below illustrates why that absence matters. The First Circuit affirmed denial of discharge under Code § 727(a)(5) after concluding that the debtors had not satisfactorily explained all of the transferred funds, even though other fraud-based theories failed below. App. 10a–21a. It further rejected the argument that the missing assets had to be sufficient to pay liabilities in full, and treated good faith as separate from the inquiry under Code § 727(a)(5). App. 19a–20a.

Ultimately, this leads to a harsh, discharge-denial result imposed without a clear statutory standard.

This Court’s review is important to clarify what “explain satisfactorily” means before the same federal provision continues to produce discharge-denial outcomes under an undefined standard. At minimum, Code § 727(a)(5) needs a clear rule that gives debtors, creditors, trustees, and courts a more concrete measure than whether the explanation persuades a particular judge, leaves the court no longer wondering, or eliminates speculation. See *Chalik*, 748 F.2d at 619; *Reed*, 700 F.2d at 993; *Martin*, 698 F.2d at 888.

II. Lower courts diverge on the requirement of documentary corroboration supporting the debtor’s explanation.

Courts applying Code § 727(a)(5) lack a consistent evidentiary standard for what makes an explanation satisfactory. The First Circuit’s strict standard requires corroboration and rejects speculation about what happened to missing assets. See App. 9a–12a. Other courts, including the Fifth Circuit, Seventh Circuit, and

Eleventh Circuits apply that strict standard: a satisfactory explanation must be more than “vague, indefinite, and uncorroborated assertions,” and must eliminate the need for a court “to speculate as to what happened to all the assets.” *D’Agnese v. Cotsibas*, 86 F.3d 732, 734–35 (7th Cir. 1996).

The Sixth Circuit also applied the strict standard and held that a debtor’s failure to keep documents regarding his drug use and gambling losses resulted in a denial of discharge for failure to explain, rejecting “general, unsubstantiated statements” as insufficient. *Dolin v. N. Petrochemical Co.*, 799 F.2d 251, 253 (6th Cir. 1986).

Applying a more flexible standard, other courts reject a categorical documentary-evidence rule. The Second Circuit has held that “[a] convincing and unrebutted explanation does not require documentary corroboration in every instance.” *D.A.N. Joint Venture v. Cacioli*, 463 F.3d 229, 238–39 (2d Cir. 2006). The Seventh Circuit says that “no bright line rule” requiring documentary evidence in every case is needed. That documentation is only one way—“albeit a very good way”—to explain asset loss. *Hudgens v. New Equip. Leasing, Inc.*, 149 F. App’x 480, 488–89 (7th Cir. 2005).

The split in the circuits matters because the consequences are severe, and not marginal or trivial. A debtor who fails to satisfy a court’s evidentiary standard loses the discharge entirely.

In the First Circuit, an explanation must be supported by documentary corroboration sufficient to eliminate speculation about what happened to all assets. Under that

approach, the Savages’ testimony about a small percentage of funds was insufficient because the judge required additional documentation of all assets. By contrast, the Second Circuit in *Cacioli* held that a debtor’s credible explanation does not require documentary corroboration in every instance. And the Seventh Circuit in *Hudgens* rejected a bright-line rule requiring documents, treating documentation as one strong method of explanation rather than a categorical prerequisite. Those cases illustrate the practical difference: the same debtor may preserve discharge in a court willing to accept credible testimony but fail in a court requiring documentation. Compare *D’Agnese*, 86 F.3d at 734–35, and *Chalik*, 748 F.2d at 619, with *Cacioli*, 463 F.3d at 238–39.

This nonuniformity strengthens the need for review. The key question is not whether different courts use different words for the same rule; rather, the question is whether there should be a uniform standard for applying the rule, and the answer is yes.

III. The decision below deepens uncertainty over “any loss,” “to meet liabilities,” and good faith.

Not only does the decision below leave undefined “satisfactory explanation,” but it also found that the statute reaches “any loss of assets or deficiency” of assets. App. 10a–12a.

The court also rejected the argument that assets count under Code § 727(a)(5) only if they would have been sufficient to satisfy liabilities in full. Instead, it interpreted the phrase “to meet the debtor’s liabilities” to cover assets that would have been available to the estate

to meet liabilities, even if those assets would not have paid all debts in full. App. 14a–16a. This interpretation broadens the scope of Code § 727(a)(5) while leaving the critical word—“satisfactorily”—undefined.

At the same time, the First Circuit treated good faith as distinct from the Code’s § 727(a)(5) inquiry. App. 19a–20a. That matters because the bankruptcy court rejected Coastal’s fraud-based and false-oath theories but still denied discharge under Code § 727(a)(5) once it found the debtor’s explanation to be unsatisfactory. App. 65a–68a, 71a–72a, 84a.

This combination is what makes *Savage* especially important. The Savages documented most of the transfers, yet the court nonetheless denied discharge because they lacked documents for a small percentage of the assets. The Savages testified that the funds were for reimbursement of business expenses, but the court rejected the testimony, holding that the debtors still had to document all the assets. App. 10a–21a.

The current combination of rules highlights the legal issue without resolving it. Code § 727(a)(5) applies to “any loss,” and it does not require fraud or bad faith. It does not require that assets be sufficient to pay liabilities in full, and nonetheless, it still provides no concrete measure of what explanation is satisfactory. App. 10a–21a.

IV. This case is a suitable vehicle to clarify the federal standard.

This case is well-suited for analysis because it features a definitive federal appellate decision on the Code

§ 727(a)(5) issue. The First Circuit reviewed the denial of discharge after the district court affirmed, looked straight to the bankruptcy court's reasoning, and resolved the appeal under Code § 727(a)(5). App. 1a–2a, 9a–13a. As a result, this petition presents a clear problem that defines the need for a uniform legal standard.

The question likewise mattered on the facts in the bankruptcy court, which recognized that the Savages supplied extensive documentation and rejected Coastal's larger missing-money theory yet still denied discharge after concluding that the remaining amount was not satisfactorily explained with documentation. Thus, even though the debtors documented the vast majority of assets and even though the debtors' testimony was credible, that was not enough because the debtors did not have documentation to support their verbal explanation. This deviates from the principle that an honest but unfortunate debtor should receive a discharge.

The legal issue was outcome-determinative. Although Coastal filed a six-count complaint, mostly sounding in fraud theories, it prevailed only on the count under Code § 727(a)(5), but that single count was enough to block discharge entirely. App. 57a, 71a–72a. Thus, the First Circuit's decision highlights the precise issue of the necessity of documentation: even where the debtor's credible testimony explained the assets, the court nonetheless required documentation of all assets.

Even when other fraud-related theories failed, and most transfers were documented, whether the discharge was granted depended on whether the court found not only a satisfactory explanation, but also a satisfactory

documented explanation under an undefined federal standard. This type of recurring question is exactly why this Court's review is justified.

CONCLUSION

Without a standard of proof identifying whether testimony must be corroborated by documents, materially similar cases can turn on evidentiary requirements which differ in different courts. Debtors, creditors, and bankruptcy courts need a uniform standard before the severe consequence of denial of discharge is imposed under Bankruptcy Code § 727(a)(5). This is to preserve the principle of granting discharge to an honest but unfortunate debtor while also supporting creditors' rights.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT,
FILED FEBRUARY 27, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 25-1249

IN RE: STEVEN T. SAVAGE; VIRGINIA A. SAVAGE,

Debtors,

COASTAL CAPITAL, LLC,

Appellee,

v.

STEVEN T. SAVAGE; VIRGINIA A. SAVAGE,

Appellants.

APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

[Hon. Steven J. McAuliffe, *U.S. District Judge*]

Before

Gelpí, Thompson, and Montecalvo,
Circuit Judges.

February 27, 2026

Appendix A

THOMPSON, Circuit Judge. Filing for bankruptcy offers insolvent debtors a path toward a fresh start. But, before they can obtain their sought-after relief via a discharge, debtors must provide a basic rundown of their financial condition and satisfactorily explain any apparent loss of assets during the lead-up to their filing for bankruptcy. Here, the United States Bankruptcy Court for the District of New Hampshire found that appellants Steven and Virginia Savage (“the Savages”) did not satisfactorily explain the disposition of their assets and consequentially denied the couple a discharge. The United States District Court for the District of New Hampshire upheld this decision, and, after due consideration, we affirm.

I

Debtors filing for Chapter 7 bankruptcy may “obtain a ‘fresh start’ by discharging nearly all previously incurred debts.” *In re Shove*, 83 F.4th 102, 106 (1st Cir. 2023) (quoting *In re Curran*, 855 F.3d 19, 22 (1st Cir. 2017)). But not all debtors walk unimpeded to their fresh starts as “certain behavior may preclude the granting of a discharge.” *In re Simmons*, 810 F.3d 852, 855 (1st Cir. 2016). We need only introduce one type of preclusive behavior relevant to this appeal (although the Bankruptcy Code defines several others, *see* 11 U.S.C. § 727(a)). A bankruptcy court may deny a discharge when “the debtor has failed to explain satisfactorily, before determination of denial of discharge . . . any loss of assets or deficiency of assets to meet the debtor’s liabilities.” *Id.* § 727(a)(5).

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With this statutory requirement in mind, we turn to the case at hand. We draw the facts from those found by the bankruptcy and district courts, which are largely undisputed by the parties. *See In re NTA, LLC*, 380 F.3d 523, 524 (1st Cir. 2004). In doing so, we relay only those facts pertaining to the issues raised on appeal.

The story opens with a company called Sky-Skan Incorporated. Sky-Skan designed, installed, and maintained digital equipment used in planetariums around the world. Steven Savage was Sky-Skan's president and sole shareholder while Virginia Savage was Sky-Skan's vice president and bookkeeper. In July 2011, Bank of America provided Sky-Skan with a \$900,000 line of credit secured by Sky-Skan's property and personally guaranteed by the Savages. Steven Savage's personal guarantee was further secured by his mortgage on a commercial condominium in Nashua, New Hampshire, where Sky-Skan operated its business.

In April 2017, Bank of America assigned its loan to appellee Coastal Capital, LLC ("Coastal" to save keystrokes). Shortly thereafter, Sky-Skan fell into financial trouble and could no longer obtain new lines of credit. To help their ailing company, the Savages dipped into their own pockets to cover Sky-Skan's operational expenses using personal funds and credit cards.

But, even with the Savages' support, Sky-Skan defaulted on its obligations to Coastal. Sky-Skan's default kicked off a series of legal proceedings, first in state court to prevent Sky-Skan and the Savages from moving

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or concealing the collateral securing its obligations, and later in federal bankruptcy court after Sky-Skan filed a Chapter 11 bankruptcy petition.¹ During its bankruptcy proceedings, Sky-Skan filed a statement of financial affairs (“SOFA”) and schedules of its assets and liabilities as required by 11 U.S.C. § 521(a)(1). These Sky-Skan documents were signed by Steven Savage under the pains and penalties of perjury. Sky-Skan’s SOFA disclosed \$704,075 in payments to the Savages for “Expense Reimbursement for use of credit cards, travel expenses, rent and repayment of personal loans” in the one-year period before Sky-Skan filed for bankruptcy.

The Savages soon followed their languishing company into bankruptcy and filed their own petition in December 2017.² Much like Sky-Skan, the Savages submitted their own SOFA and schedules as part of their bankruptcy proceedings, but their disclosures reported no income from employment nor from operating a business in the

1. Chapter 11 bankruptcy, also known as reorganization bankruptcy, enables businesses (and sometimes individuals) with significant debt to restructure their financial obligations while continuing operations under court supervision. It also halts creditor collection efforts, allowing for a payment plan to be negotiated, ultimately aiming to return the entity to profitability or provide a fresh start. *See generally Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 272, 144 S.Ct. 1414, 219 L.Ed.2d 41 (2024) (discussing Chapter 11 bankruptcy).

2. The Savages initially filed for Chapter 11 bankruptcy but later converted their case to a Chapter 7 bankruptcy. Chapter 7 bankruptcy petitions are more common for individuals (as opposed to corporations) and provide a path toward a discharge.

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three calendar years leading up to their bankruptcy petition. Critically, the Savages' SOFA and schedules did not disclose the \$704,075 transferred from Sky-Skan to the Savages between November 2016 and November 2017.

While the Savages' bankruptcy proceedings were underway, Coastal filed an adversary complaint objecting to the Savages' eligibility for a Chapter 7 discharge.³ Coastal's complaint set forth six counts under federal bankruptcy law as to why it believed the Savages should be denied a discharge. After a motion to dismiss filed by the Savages (which the bankruptcy court denied) and cross motions for summary judgment (which the bankruptcy court mostly denied but granted in part), Coastal and the Savages proceeded to a bench trial to decide counts I-III and the surviving parts of counts IV-VI.

The bench trial before the bankruptcy court lasted two days with Steven and Virginia Savage providing the only testimony. The court heard argument, received post-trial briefing, and ultimately found in the Savages' favor on all counts except count III. That count of Coastal's complaint accused the Savages (as we just detailed above) of receiving "hundreds of thousands of dollars from Sky-Skan" in the year leading up to their bankruptcy petition

3. In essence, "an adversary proceeding is a subsidiary lawsuit within the larger framework of a bankruptcy case." *Fin. Oversight & Mgmt. Bd. for P.R. v. Cooperativa de Ahorro y Crédito Abraham Rosa*, 54 F.4th 20, 26 n.1 (1st Cir. 2022) (citation modified). The goals of an adversary proceeding vary, but typically seek recovery of money or property, a discharge determination, or to subordinate certain claims.

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but failing “to satisfactorily explain the reason that said money is not available to satisfy their liabilities.” The bankruptcy court found it undisputed that the Savages received \$704,075.27 from Sky-Skan during the year leading up to bankruptcy. But the court also found that the Savages presented evidence regarding the disposition of \$684,599.42 worth of those particular funds. Thus, on the bankruptcy court’s initial tally, the disposition of \$19,475.85 in funds remained unknown.

But the bankruptcy court did not stop there. It also found gaps in the Savages’ explanation related to \$89,500’s worth of the Sky-Skan money reportedly paid as rent to the couple to operate out of the Savages’ New Hampshire commercial condominium. The court noted that the Savages were consistently collecting rent from Sky-Skan on the condo but not consistently paying the mortgage. So, because the Savages did not use Sky-Skan’s rent money to pay the monthly mortgage on the condo for seven months, the bankruptcy court added an additional \$15,151.29 to the unaccounted-for funds column (\$2,164.47 a month in missed mortgage payments times seven months).

The court went on to identify further missing funds related to this rental income. At trial, Virginia Savage testified that the Savages increased Sky-Skan’s monthly rent from \$4,000 a month to \$8,000 a month so that they could stop receiving a salary and reduce Sky-Skan’s tax burden.⁴ Based on this testimony, the court attributed

4. The bankruptcy court noted that, even though Virginia Savage said that they charged Sky-Skan \$8,000 a month in rent, it only paid the Savages this amount for two months between

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\$4,000 a month as salary that the Savages used to pay for personal expenses like housing, utilities, and food. But even then, with \$4,000 a month accounted for as salary and \$2,164.47 a month accounted for as mortgage debt on the condo (whether paid or unpaid), that left \$1,835.53 out of Sky-Skan's \$8,000 a month rent payments unaccounted for. The court multiplied that \$1,835.53 figure by twelve resulting in another \$22,026.36 in unaccounted-for funds. After adding everything together, the court reached a final figure of \$56,653.50 in unexplained proceeds.

From there, the bankruptcy court concluded the Savages had failed to satisfactorily explain this deficiency and consequentially denied them a discharge under 11 U.S.C. § 727(a)(5). In other words, the court ruled in Coastal's favor on only count III of the adversary complaint, but that was enough to prevent the Savages from obtaining a discharge. The Savages' post-judgment motions were denied by the bankruptcy court, and the bankruptcy court's decision on count III was later upheld on appeal by the district court. The Savages timely beseeched our court to conduct yet another review of the bankruptcy court's count III decision and its denial of a discharge pursuant to 11 U.S.C. § 727(a)(5).

November 2016 and November 2017. In reality, Sky-Skan's rent payments varied drastically with a low of \$550 in January 2017 and a high of \$18,200 in March 2017. So, even though \$89,500 in rent payments breaks down to approximately \$7,458.34 a month, the court used Virginia's testimony and based its calculations off \$8,000 a month in rent payments.

*Appendix A***II**

Appellate review in bankruptcy cases proceeds in two steps: litigants must first appeal to the district court (or a bankruptcy appellate panel) and then the courts of appeals may provide a “second tier of appellate review.” *In re Simmons*, 810 F.3d at 856; *see* 28 U.S.C. § 158(a)-(b), (d). Once the case travels to our court, “we accord no special deference to determinations made by the first-tier appellate tribunal but, rather, train the lens of our inquiry directly on the bankruptcy court’s decision.” *In re Simmons*, 810 F.3d at 857 (citation modified).

We review the bankruptcy court’s findings of fact for clear error and its conclusions of law *de novo*. *E.g.*, *In re Montr., Me. & Atl. Ry., Ltd.*, 956 F.3d 1, 6 (1st Cir. 2020). The decision of whether to grant or withhold a discharge presents a mixed question of law and fact. *In re Carp*, 340 F.3d 15, 25 (1st Cir. 2003). We review claims of this ilk for clear error unless the bankruptcy court’s analysis rests atop of legal error—meaning we will not set aside the bankruptcy court’s conclusions “unless, on the whole of the record, we form a strong, unyielding belief that a mistake has been made.” *Id.* at 22 (citation modified).

A

To better elucidate (and resolve) the Savages’ appellate asseverations, we first set forth the pertinent burden-shifting framework. As touched on in our statutory introduction, § 727(a)(5) “authorizes the bankruptcy court to deny a discharge when a debtor has experienced a loss

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of assets or some other deficiency that the debtor cannot satisfactorily explain.” *In re Simmons*, 810 F.3d at 859. A burden-shifting framework applies to claims under this provision: the party seeking to prevent a discharge must first show that the debtor has not accounted for previously owned assets or income, then, after that showing, the burden shifts to the debtor to satisfactorily explain the deficiency (as in, tell us what happened to the money). *Id.* at 860. A satisfactory explanation “‘must be supported by at least some corroboration,’ and it ‘must be sufficient to eliminate the need for any speculation as to what happened to *all of the assets*.’” *Id.* (emphasis added) (quoting *In re Aoki*, 323 B.R. 803, 817 (B.A.P. 1st Cir. 2005)).

The Savages’ arguments relate to how the bankruptcy court interpreted and applied § 727(a)(5) after the burden had shifted to them to satisfactorily explain what happened to the \$704,075.27 in Sky-Skan money.⁵ The Savages first claim that the bankruptcy court’s decision to deny them a discharge rests on a mistaken

5. The Savages did not dispute below and agree on appeal that they received \$704,075.27 from Sky-Skan in the year preceding their bankruptcy petition. So, even though the Savages’ statutory interpretation arguments at times seem to implicate the bankruptcy court’s decision to shift the burden on to them, the Savages have waived their ability to raise this argument. *See, e.g., Punskey v. City of Portland*, 54 F.4th 62, 67 (1st Cir. 2022) (explaining that claims not squarely raised before the trial court are waived on appeal). Moreover, the Savages have failed to provide any developed argument that the bankruptcy court erred in shifting the burden onto them, giving us further cause to deem this claim waived. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990).

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interpretation of § 727(a)(5). According to the Savages, the statute only permits denial of a discharge when the lost assets at issue are substantial—a term they loosely define (at times) to mean assets capable of meeting their outstanding liabilities.⁶ So, because they satisfactorily explained their deficiency as to all but a relatively small portion that would not have covered their outstanding liabilities, the Savages believe the bankruptcy court legally erred by denying their discharge over such a trivial amount. And if we disagree with their interpretation of the relevant statute, the Savages lodge further challenges to the bankruptcy court’s calculation of the unaccounted-for assets and the court’s decision not to credit their good faith explanation for most of the deficiency. The Savages also accuse Coastal of destroying documents in its possession that they say would have explained where the Sky-Skan money went. We discuss each argument in turn, starting with the Savages’ statutory interpretation arguments.

B

The Savages claim that 11 U.S.C. § 727(a)(5) “requires the plaintiff to prove that the defendant owned a *substantial* asset that it no longer owns.” (emphasis added on behalf of the Savages). And, because the

6. We say “at times” because the Savages offer several theoretical and ranging definitions for what constitutes a “substantial” asset, including 51% or more of any outstanding liabilities, “considerable in quantity; significantly great,” and simply “something much more than what was unaccounted-for here.” Nonetheless, their inability to land on one definition is immaterial to our decision.

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unaccounted-for portion of the funds “was not substantial or able to meet the Savages’ liabilities, they provided a satisfactory explanation as a matter of law.” As Coastal eagerly points out and the Savages concede, the term “substantial” does not appear in the statutory text. *See* 11 U.S.C. § 727(a)(5). So the Savages not only read an extra term into the statute, but argue that this term carries significant weight in their appeal such that the bankruptcy court erred by requiring them to explain the loss of an insubstantial amount.

The interpretation of the Bankruptcy Code is a legal question that we review de novo. *In re Christo*, 192 F.3d 36, 37 (1st Cir. 1999). Questions of statutory interpretation start with the statutory text. *E.g.*, *In re Ruiz*, 122 F.4th 1, 13 (1st Cir. 2024). As we just laid out (as plainly as it gets), the Savages’ reading of § 727(a)(5) requires inserting the word “substantial” into the statute, something we cannot do. *Vicor Corp. v. FII USA Inc.*, 132 F.4th 1, 7 (1st Cir. 2025) (citing *Romag Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212, 215, 140 S.Ct. 1492, 206 L.Ed.2d 672 (2020)). Rather, the statutory text explicitly precludes a discharge where “the debtor has failed to explain satisfactorily . . . *any* loss of assets or deficiency of assets to meet the debtor’s liabilities.” 11 U.S.C. § 727(a)(5) (emphasis added); *see also In re Simmons*, 810 F.3d at 860 (requiring a debtor to explain “what happened to all of the assets” (quoting *In re Aoki*, 323 B.R. at 817)). The Savages’ interpretation would not only insert a new term (and an elusive new standard for courts to apply) but also render the phrase “any loss of assets or deficiency” superfluous. *E.g.*, *Woo v. Spackman*, 988 F.3d 47, 51 (1st Cir. 2021) (“[I]t is apodictic that we

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should avoid, when possible, interpretations of a statute that will render words in the statutory text superfluous.”). Therefore, we reject the Savages’ interpretation and hold that the bankruptcy court did not err when interpreting § 727(a)(5). *See In re Simmons*, 810 F.3d at 859-60 (explaining 11 U.S.C. § 727(a)(5) and its burden shifting framework sans reference to a requirement that a loss of assets or deficiency must be substantial).

The Savages’ attempt to persuade us differently with caselaw falls equally short. The Savages cite a case from the First Circuit Bankruptcy Appellate Panel that further quotes a case from the United States Bankruptcy Court for the Northern District of Illinois in support of their interpretative theory. To the Savages’ credit, that quotation does state “[o]nce the creditor has introduced some evidence of the disappearance of *substantial assets*, the burden shifts to the Debtor to explain satisfactorily the losses or deficiencies.” *In re Brien*, 208 B.R. 255, 258 (B.A.P. 1st Cir. 1997) (emphasis ours) (quoting *In re Potter*, 88 B.R. 843, 849 (Bankr. N.D. Ill. 1988)). But neither that case nor its quoted source considered the specific issue raised by the Savages, and neither case required the debtor’s lost assets to be “substantial” as the Savages request. *See id.* (dismissing a complaint because appellants/creditors failed to initially allege facts demonstrating the existence of any loss or how the property disappeared); *In re Potter*, 88 B.R. at 849 (finding that plaintiffs/creditors made a prima facie case under 11 U.S.C. § 727(a)(5) without any consideration

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of whether lost assets were substantial).⁷ So we're left with neither the statutory text nor the Savages' citations to caselaw to support their argument that § 727(a)(5) requires a substantial loss of assets or deficiency to deny a discharge.

In a similar vein, the Savages push another theory of statutory interpretation that is often indistinguishable in their briefing from their first argument. They argue that § 727(a)(5) does not require a debtor to satisfactorily explain unaccounted-for funds if the missing funds wouldn't be enough to pay back the debtor's outstanding liabilities. Here (as opposed to their previous claim), the Savages favorably cite § 727(a)(5)'s text which refers, in relevant part, to "any loss of assets or deficiency of assets *to meet the debtor's liabilities*." (emphasis added). So, the argument goes, because the missing and unexplained money here wasn't enough "to meet" the Savages' liabilities (as in, to pay those liabilities in full),

7. The Savages cite other bankruptcy cases, but none apply or even support the theory of interpretation they ask us to adopt. For instance, the Savages cite *In re Bajgar*, 104 F.3d 495, 497 (1st Cir. 1997), for the proposition that "[t]he development of the 'substantial asset' test likely resulted from interpreting the legislative intent in accordance with Section 727(a)(5)'s plain language." But *In re Bajgar* discusses a different provision of the Bankruptcy Code related to fraudulent transfers, 11 U.S.C. § 727(a)(2)(A), and the statutory interpretation principles discussed therein point us to "the text of the statute itself." *In re Bajgar*, 104 F.3d at 497 (citation omitted). In other words, the case cited says nothing about the substantial asset theory peddled by the Savages under § 727(a)(5) nor provides a canon of construction that could plausibly support their theory.

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the bankruptcy court erred in finding their explanation unsatisfactory. Call us unconvinced.

To support this claim, the Savages break out their dictionaries and argue that “to meet,” as used in § 727(a)(5), must mean “to satisfy” or “to pay fully.” Even assuming this definition for the isolated text is plausible, the Savages’ interpretation rapidly falls apart in the context of the statute, caselaw, and common sense. Allow us to briefly say more to each point.

First, the Savages’ theory runs afoul of basic bankruptcy principles and the context surrounding § 727(a)(5). Chapter 7 bankruptcy can forgive an insolvent individual for unpaid debts “by authorizing a discharge of prepetition debts following the liquidation of the debtor’s assets by a bankruptcy trustee, who then distributes the proceeds to creditors.” *In re Buscone*, 61 F.4th 10, 20 (1st Cir. 2023) (citation modified). When proceedings begin, before any consideration of a discharge, debtors must fully disclose the extent of their assets. *Id.* at 20-21. Once a debtor’s assets are on the table, “her interests in property are either compiled into the bankruptcy estate from which (to the extent the estate can afford) her creditors will be paid, or those interests are exempted from the estate for the debtor to keep.” *Id.* at 20 (citation modified).⁸ In other words, some assets may stay with debtors while

8. For example, one exemption (commonly called a “homestead exemption”) can protect a debtor’s interest in their home. *In re Rockwell*, 968 F.3d 12, 18 (1st Cir. 2020); *see also* N.H. Rev. Ann. § 480:4 (codifying New Hampshire’s version of a homestead exemption).

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other assets will be liquidated and used to pay creditors (or, spoiler alert, used “to meet” the debtor’s outstanding liabilities).

A denial of a discharge under § 727(a)(5) only implicates the class of assets belonging to the bankruptcy estate available to pay a debtor’s liabilities. *See In re Cimenian*, No. 24-1250, 2025 WL 2652996, at *2 (Mar. 24, 2025) (affirming the bankruptcy court’s § 727(a)(5) holding because plaintiff failed to prove “a loss of assets to the bankruptcy estate”); *In re Aoki*, 323 B.R. at 817 (explaining the consequences of corporate assets becoming attributable to the bankruptcy estate as “any loss or reduction of those assets could form the basis for denying a discharge under § 727(a)(5)”). Herein lies the parry to the Savages’ novel thrust of interpretation. A debtor must satisfactorily explain any loss of assets that would have been available “to meet the debtor’s liabilities,” but does not have a parallel obligation to explain lost assets that otherwise did not belong to the bankruptcy estate and would not have been available to pay creditors. 11 U.S.C. § 727(a)(5). Therefore, we reject the Savages’ expansive interpretation of “to meet” as used in § 727(a)(5) and view it merely as referring to the class of assets available to meet a debtor’s liabilities.

Second, the Savages provide no support in our caselaw (or elsewhere) for reading § 727(a)(5) as they request. Instead, the caselaw repeatedly shows courts reviewing a debtor’s explanation of lost assets without considering any outstanding liabilities or whether the unaccounted-for assets would cover those liabilities in full. *See In*

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re Simmons, 810 F.3d at 860; *see also In re Ward*, 978 F.3d 298, 306-07 (5th Cir. 2020) (reviewing a debtor’s explanation for lost assets without reference to whether those assets could fully pay any outstanding liabilities); *In re Elian*, 659 F. App’x 104, 107 (3d Cir. 2016) (same); *In re Retz*, 606 F.3d 1189, 1205-06 (9th Cir. 2010) (same); *In re Chalik*, 748 F.2d 616, 620 (11th Cir. 1984) (same). The Savages’ interpretation would require us to believe previous courts interpreting § 727(a)(5) overlooked a crucial element of this inquiry: a debtor’s outstanding liabilities. We’ll decline that invitation and instead read our caselaw and the persuasive interpretations offered in our sister circuits as further support for rejecting the Savages’ construction.

And third, we hasten to add that the Savages’ interpretation of § 727(a)(5) contravenes common sense. *See, e.g., United States ex rel. Omni Healthcare Inc. v. MD Spine Sols. LLC*, 160 F.4th 248, 261 (1st Cir. 2025) (noting how “common sense” plays a role in statutory interpretation (citation omitted)). Taken to its extreme, under the Savages’ requested interpretation, a debtor with \$1,000,000 in outstanding liabilities would not need to satisfactorily explain a \$999,999 deficiency because that total unaccounted-for money would be insufficient to meet the debtor’s liabilities. Or, under more likely circumstances, debtors with ballooning liabilities (say nearly \$3,500,000, for example) would not need to satisfactorily explain millions of dollars in lost assets because those assets couldn’t satisfy their outstanding liabilities. *Cf. In re Simmons*, 810 F.3d at 855, 860 (affirming a denial of discharge of “nearly \$3,500,000

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in unsecured debt” where the debtor failed to explain “the loss of millions of dollars in assets”). We decline to construe § 727(a)(5) to produce such absurd results.

Not so fast. The Savages argue our interpretation would produce absurdity at the opposite extreme, that a bankruptcy court could deny a discharge if only \$1 was missing but a debtor had \$1,000,000 in outstanding liabilities. Perhaps it could, but, luckily for the Savages and future debtors, the statute and our precedent provide two layers of protection against this hypothetical \$1 discharge denial. Recall that a party seeking to prevent a discharge has the initial burden of producing some evidence that the debtor “has not accounted for previously owned assets or previously earned income.” *In re Simmons*, 810 F.3d at 860. This initial burden protects debtors from a denial of discharge due to \$1 because a plaintiff would need to somehow produce evidence that the debtor previously owned that dollar but did not account for it in their bankruptcy filings. *See In re McNamara*, 620 B.R. 178, 192 (Bankr. D. Mass. 2020) (requiring a lost asset to be “actual” and not “theoretical”). Furthermore, even if a plaintiff could prove the existence of an unaccounted-for dollar, the debtor then has the opportunity to satisfactorily explain to the court how that dollar was used. And, although the bankruptcy court has discretion to decide whether an explanation is satisfactory, *see In re Aoki*, 323 B.R. at 817, the § 727(a)(5) exception to discharge—like all exceptions to discharge—is to be construed in favor of the debtor in furtherance of the Bankruptcy Code’s “fresh start” policy, *see In re Stewart*, 948 F.3d 509, 520 (1st Cir. 2020); *see also In re Carp*, 340 F.3d at 25 (“[E]xceptions

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to discharge should be construed narrowly.”). So, to summarize bluntly, it is difficult to prove a dollar is missing and easy to satisfactorily explain to the bankruptcy court where a dollar went.

Having discerned no legal error in the bankruptcy court’s interpretation of § 727(a)(5), we may proceed to the Savages’ remaining claims.

C

The Savages next argue that the bankruptcy court erred in calculating the amount of assets left unaccounted-for. According to the Savages’ view of the evidence, the unaccounted-for funds should have totaled \$11,684.71, instead of \$56,653.50. Our review of the bankruptcy court’s factual finding is for clear error—a formidable standard where we will not reverse so long as the bankruptcy court reached a supportable result in light of the record. *See In re Shove*, 83 F.4th at 110-11.

The bankruptcy court’s calculation is unshakeable. As Coastal points out, the court’s order explains the exact testimony, evidence, and calculation it used to arrive at \$56,653.50 in unaccounted-for funds. The Savages’ appellate argument is nothing more than their preferred view of the same record evidence and, concerning, their view of purported record evidence they did not, in fact, present at trial. Indeed, the Savages concede in their appellate briefing that they did not testify at trial about the schedule they now claim would have accounted for a portion of their missing assets. Therefore, even assuming

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the Savages' interpretation of their evidence produces a plausible ledger for their unaccounted-for funds, it does not prove the bankruptcy court clearly erred. *See Cumpiano v. Banco Santander P.R.*, 902 F.2d 148, 152 (1st Cir. 1990) (explaining that a factfinder's choice between two permissible views of the evidence can never be clearly erroneous). Nor does their postulation account for all the missing funds. *See In re Simmons*, 810 F.3d at 860 (requiring a debtor to explain "what happened to all of the assets" (quoting *In re Aoki*, 323 B.R. at 817)). So we need not tarry on this one.

D

The Savages' next argument fares no better and warrants little discussion. They assert that the bankruptcy court committed clear error by denying them a discharge despite their good faith effort to trace how they used the Sky-Skan money. With near vertigo-inducing variation, the Savages claim to be unsophisticated debtors who aren't accountants but also that they provided the bankruptcy court with "thousands of pages of accounting history" and that their "testimony reflects that [they] kept substantial records," just not for the unaccounted-for funds. The inquiry is not a matter of good faith, but whether a debtor has satisfactorily explained the loss of an asset. None of the Savages' assertions provide an explanation at all, "much less one that would satisfy the strictures of section 727(a)(5)." *In re Simmons*, 810 F.3d at 860.

The bankruptcy court accepted the Savages' explanation for the disposition of most of the \$704,075.27

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from Sky-Skan, but that did not alleviate their obligation to explain all of it. *See id.* (“The debtor’s explanation must be supported by at least some corroboration, and it must be sufficient to eliminate the need for any speculation as to what happened to all of the assets.” (citation modified)). In short, the bankruptcy court did not err in finding most of the Sky-Skan funds accounted for, but not all, and denying the Savages a discharge as a result.

E

In a final attempt to prove clear error, the Savages argue that the bankruptcy court penalized them for “being unable to meet their burden when Coastal refused access and knowingly destroyed documents that likely contained evidence that would have provided a satisfactory explanation regarding where the entirety of the money went.” In August 2021, the Chapter 7 trustee from the Sky-Skan bankruptcy was authorized to destroy certain Sky-Skan records and release other documents to Coastal, who was permitted to take possession of these records if it chose to. Part of this permission also allowed Coastal to “confidentially destroy[]” these records after they were no longer needed for a dispute between Coastal and the IRS. Under our spoliation doctrine,⁹ the Savages now request that we infer there was a satisfactory explanation for what happened to the Sky-Skan money in the documents that Coastal did not independently provide to the Savages and later destroyed.

9. *See Gomez v. Stop & Shop Supermarket Co.*, 670 F.3d 395, 399 (1st Cir. 2012), for a detailed explanation of this doctrine as we won’t be needing it here.

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Both Coastal and the district court viewed this claim as first raised in the Savages' post-trial motion for reconsideration. The Savages adamantly oppose this characterization but do little else to support their claim. The Savages say that they first raised this issue in a motion in limine, but they never discuss the court's denial of that motion or why we should deem it reversible error. Furthermore, the Savages never address the bankruptcy court's justification for dismissing this claim in the Savages' motion for reconsideration or the district court's reasons for affirming. A party who fails to develop an argument as to why a particular order is erroneous waives their ability to do so. *Cioffi v. Gilbert Enter.*, 769 F.3d 90, 93-94 (1st Cir. 2014). We find apt reason to apply this prophylactic rule here amidst the Savages' unsupported factual allegations and unmentioned discovery details.

III

For the reasons outlined above, we ***affirm***. Parties shall bear their own costs.

**APPENDIX B — ORDER OF THE UNITED STATES
BANKRUPTCY COURT FOR THE DISTRICT OF
NEW HAMPSHIRE, DATED APRIL 8, 2026**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

Case No. 17-11760-KB
Chapter 7

IN RE: STEVEN T. SAVAGE AND
VIRGINIA A. SAVAGE,

Debtors.

ORDER

Before the Court is the Amended Motion to Vacate Order Denying Discharge and Closing Case (the “**Motion**”) (ECF No. 447) filed by Steven T. Savage and Virginia A. Savage (the “**Debtors**”) requesting that this Court vacate the Notice of Entry of Order Denying the Discharge of Both Debtors, (the “**Discharge Denial Order**”), and an Order Closing the Case and Discharging the Trustee, (the “**Order Closing the Case**”). *See* ECF Nos. 440-41. Creditor Coastal Capital, LLC (“**Coastal**”) filed an objection to the Motion. ECF No. 448. The Court held a hearing on the Motion on April 8, 2026. The Court has considered the Motion, the Objection and the arguments raised at the hearing and has determined that the Debtors failed to demonstrate that (i) this case should remain open for any assets to be administered, (ii) cause warrants the case remaining open or being reopened,

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or (iii) there would be any irreparable harm to Debtors. Accordingly, the Motion is denied.

I. BACKGROUND

The Debtors filed a Chapter 11 Petition on December 20, 2017. The matter was converted to a Chapter 7 matter on November 12, 2020. Coastal filed an adversary proceeding objecting to Debtors' eligibility for a discharge under 11 U.S.C. § 727 and arguing that the debt owed to Coastal was non-dischargeable under 11 U.S.C. § 523. This Court held a bench trial on Coastal's adversary complaint and ruled in Coastal's favor as to Count III. The Debtors appealed to the United States District Court for the District of New Hampshire (the "**District Court**") and the District Court affirmed this Court's ruling. The Debtors then appealed to the First Circuit Court of Appeals (the "**First Circuit**"), which entered its judgment affirming this Court and the District Court in an order issued on February 27, 2026. The Debtors had at that point exhausted their appeals as of right, as the United States Supreme Court has discretion to grant the petition for writ of certiorari. *See* 28 U.S.C. § 1254.

Meanwhile in the underlying bankruptcy case, the Chapter 7 Trustee entered the Chapter 7 Trustee's Final Report (the "**Final Report**") on December 10, 2024, ECF No. 426, and the Final Account and Certification that the Estate has been Fully Administered, and Application to be Discharged (the "**Trustee's Estate Certification**") on February 25, 2025. ECF No. 432. Upon entry of the First Circuit's mandate on March 23, 2026, this Court entered

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the Discharge Denial Order and the Order Closing the Case.

The Debtors filed the Motion, requesting that this Court vacate the Discharge Denial Order and the Order Closing the Case. The Debtors argue that closing the case was premature, despite having exhausted their appeals as of right, as they intend to file a petition for writ of certiorari with the U.S. Supreme Court by May 28, 2026. The Debtors contend that “until [the US Supreme Court] rules[,] making the judgment final and not reversing it, the denial of the Debtors’ discharge should not be deemed final.” They assert that closing the case has lifted the automatic stay, exposing them to creditor actions that could cause irreparable harm during this period. The Debtors request to reopen the case and reinstate the automatic stay stating that no creditor will be harmed by doing so.

Coastal opposes the Motion, arguing, *inter alia*, that there is no legal or factual basis to grant the relief requested. Coastal’s only remedy is to collect the judgment, and they cite to *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 217 F.3d 8, 13 (1st Cir. 2000) to support its contention that monetary harm to the Debtors does not qualify as irreparable harm.

II. DISCUSSION

A. There is No Basis to Vacate the Court’s Orders

The Bankruptcy Code addresses closing and reopening cases in § 350(a), where it states that “[a]fter an

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estate is fully administered and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a) (emphasis added). The language of § 350(a) does not vest the court with discretion, but mandates that the court shall close the case upon the bankruptcy estate being fully administered.

Bankruptcy Rule 5009(a) provides that an estate is deemed fully administered and the case ready to be closed when “the trustee has filed a final report and final account and has certified that the estate has been fully administered; and . . . within 30 days after the filing, no objection to the report has been filed by the United States trustee or a party in interest.” The Trustee filed the Final Report on December 10, 2024, and the Trustee’s Estate Certification on February 25, 2025. The Debtors did not object to the Final Report or the Trustee’s Estate Certification; thus, the estate was deemed fully administered as early as March 27, 2025.

The case could not be closed within the timing of Bankruptcy Rule 5009(a) due to the pending appeal in accordance with Bankruptcy Rules 8007 and 8025, which provides for a stay pending appeal to the District Court, Bankruptcy Appellate Panel, or Court of Appeals. However, upon the First Circuit’s mandate, this Court is required to close the case under Bankruptcy Code § 350.

B. The Debtor Failed to Demonstrate Cause to Reopen the Case

To the extent that the Debtors seek to reopen their case under Bankruptcy Code § 350(b), the Debtors cannot

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demonstrate that there are assets to be administered, that the debtor is entitled to relief, or that there exists cause to reopen the case.

First, the Trustee filed the Trustee's Estate Certification reporting there are no further assets to be administered, and the Debtors do not contest that fact. Second, the Debtors claim there will be irreparable damage if the automatic stay is not imposed but fail to articulate any specific harm other than creditors will attempt to collect their debts. The Debtors provided that "the order closing case specifically exposes the Debtors to irreparable harm and jeopardy since the case closing ends the protection of the automatic stay in bankruptcy while the Debtors pursue their appropriate and available remedies, including filing a petition for writ of certiorari with SCOTUS." However, it is well established that "if money damages will fully alleviate harm, then the harm cannot be said to be irreparable." *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 914 (1st Cir. 1989); accord *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 217 F.3d 8, 13 (1st Cir. 2000) (describing "irreparable harm" as "a substantial injury that is not accurately measurable or adequately compensable by money damages"). Third, the Debtors have not demonstrated any cause to reopen the case in the Motion or at the hearing in this matter.

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III. CONCLUSION

Based on the foregoing, the Motion is denied.

Dated: April 8, 2026

/s/ Kimberly Bacher
Kimberly Bacher
Chief Bankruptcy Judge

**APPENDIX C — ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF NEW
HAMPSHIRE, DATED FEBRUARY 13, 2025**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Case No. 24-cv-59-SM-AJ
Opinion No. 2025 DNH 016

COASTAL CAPITAL, LLC

v.

STEVEN SAVAGE AND VIRGINIA SAVAGE

ORDER

After their company, Sky-Skan, Inc., experienced financial difficulty and filed for bankruptcy protection, Steven and Virginia Savage filed their own bankruptcy petition in the United States Bankruptcy Court, District of New Hampshire. *In re Savage*, 17-bk-11760 (Bankr. N.H.). One of the Savages' creditors, Coastal Capital, LLC, filed an adversary proceeding, *In re Savage*, 21-bk-01006-KB (Bankr. N.H.), seeking to deny them discharges under 11 U.S.C. § 727 and to except the Savages' obligations to Coastal from discharge under 11 U.S.C. § 523. Following a two-day trial, the bankruptcy court ruled in favor of the Savages on five of Coastal's claims but concluded under § 727(a)(5) that the Savages were not entitled to discharges. The Savages appeal the judgment entered in the adversary proceeding on grounds that the court made legal and factual errors in arriving at that result.

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For the reasons discussed below, the bankruptcy court's decisions are affirmed.

STANDARD OF REVIEW

Federal district courts have jurisdiction to decide appeals from final judgments, orders, and decrees of the bankruptcy court. 28 U.S.C. § 158(a); *In re Shove*, 83 F.4th 102, 108 (1st Cir. 2023). The court reviews factual findings for clear error, legal conclusions de novo, and discretionary decisions for abuse of discretion. *Id.*; *UMB Bank, N.A. v. MacMillin Co., LLC*, 654 B.R. 824, 827 (D.N.H. 2023), *appeal dismissed sub nom. In re Prospect-Woodward Home*, No. 23-2001, 2024 WL 2805540 (1st Cir. May 3, 2024); *In re Hoover*, 828 F.3d 5, 8 (1st Cir. 2016). “Under the clear error standard, [the court] defer[s] to the bankruptcy court’s factual findings unless, on the whole of the record, [the court] form[s] a strong, unyielding belief that a mistake has been made.” *In re Montreal, Maine & Atl. Ry., Ltd.*, 956 F.3d 1, 6 (1st Cir. 2020) (internal quotation marks omitted). “Abuse of discretion occurs when the trial court ignores a material factor deserving significant weight, relies upon an improper factor, or assesses all proper and no improper factors, but makes a serious mistake in weighing them.” *Torres Lopez v. Consejo de Titulares del Condominio Carolina Ct. Apts. (In re Torres Lopez)*, 405 B.R. 24, 30 (B.A.P. 1st Cir. 2009).

*Appendix C***BACKGROUND¹**

Steven Savage was the president and sole shareholder of Sky-Skan, Inc., a company that designed, installed, and maintained equipment used in planetariums. Virginia Savage, Steven's wife, was the vice president and bookkeeper for the company. The Savages operated Sky-Skan from a commercial condominium in Nashua, New Hampshire, that Steven owned.

In July of 2011, Sky-Skan obtained a \$900,000 line of credit from Bank of America. The loan agreement gave Bank of America a security interest in certain categories of Sky-Skan's property, and the Savages personally guaranteed the loan. To secure his personal guaranty, Steven gave Bank of America a mortgage on the Nashua condominium. Bank of America assigned the Sky-Skan loan to Coastal Capital, LLC, in April of 2017.

By that time, Sky-Skan was having financial difficulty, and the Savages were using their personal credit and debit cards to fund Sky-Skan's business operations. Sky-Skan and the Savages defaulted on their obligations under the loan held by Coastal. Coastal sought a restraining order in state court to prevent Sky-Skan and the Savages from moving, concealing, encumbering, wasting, or altering

1. The court will cite the record provided in document number 7-1 as "Appx."

The background is summarized from the bankruptcy court's trial and reconsideration decisions in the adversary proceeding, Doc. no. 7-1, Appx. 178-204 and Appx. 206-216, and the parties' factual statements to the extent they are supported by the record.

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the collateral for the loan and their guaranties. The state court issued the requested orders in August of 2017 and allowed Coastal to secure the collateral, take possession of all bank accounts, and to conduct a secured party sale of the collateral. The court later found that actions taken by Sky-Skan and the Savages were in contempt of its orders and ordered them to pay Coastal's fees and costs.

Sky-Skan filed a voluntary Chapter 11 petition in the bankruptcy court on November 1, 2017. Sky-Skan's statement of financial affairs disclosed that Sky-Skan transferred \$704,075.00 to the Savages to reimburse them for the funds they provided to Sky-Skan during the year before Sky-Skan filed for bankruptcy. On December 20, 2017, the Savages filed their own chapter 11 bankruptcy petition. The Savages' statement of financial affairs did not show the \$704,075.00 transferred to them by Sky-Skan. The Savages owed Coastal \$1,000,000.00 at the time of filing. They owed additional amounts to the Internal Revenue Service.

The Savages' case was converted to a chapter 7 proceeding on November 12, 2020. Coastal filed an adversary proceeding against the Savages on February 8, 2021, objecting to their bankruptcy discharges and the dischargeability of the debt owed to Coastal. Coastal brought six claims in the adversary proceeding, objecting to discharge under 11 U.S.C. §§ 727(a)(2)(A), 727(a)(4)(A), 727(a)(5), and 727(a)(7), and objecting to dischargeability under 11 U.S.C. § 523(a)(4) and § 523(a)(6). The court narrowed the claims on summary judgment leaving Counts I-III and parts of Counts IV-VI for trial.

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The bankruptcy court held a two-day trial. Steven and Virginia Savage were the only witnesses. The court found in favor of the Savages on Counts I, II, IV, V, and VI. On Count III, however, in which Coastal challenged the Savages' discharge under § 727(a)(5), the court found in favor of Coastal. The court denied the Savages discharges under § 727(a)(5), and judgment entered on November 28, 2023.

The Savages moved for reconsideration under Federal Rule of Civil Procedure 59(e), made applicable to a bankruptcy proceeding under Federal Rule of Bankruptcy Procedure 9023, and for relief under Rule 60, made applicable under Bankruptcy Rule 9024. Following a hearing on the motion, the court concluded that the Savages provided no grounds for reconsideration under Rule 59(e). With respect to relief under Rule 60, the court noted that the Savages relied on Rule 60(b)(3), pertaining to a party's misconduct, and Rule 60(b)(6), the catchall provision. The court found that the Savages' arguments on misconduct were inconsistent and that they had not shown any misconduct by Coastal. The court also rejected the Savages' new theory under Rule 60(b)(6) that the court should have considered the amounts listed on their Schedule J filed in the bankruptcy case to find that more of the missing money (\$44,968.79) was explained. The court concluded that the Savages provided no grounds for relief under Rule 60(b)(6) because it was the Savages' burden to explain where the missing funds had gone, because the Savages did not raise Schedule J until the post judgment motion for reconsideration, and because Schedule J did not provide the required explanation. The Savages then

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sought review in this court of the bankruptcy court's decision to deny them discharges under § 727(a)(5).

DISCUSSION

“The court shall grant the debtor a discharge, unless—the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor’s liabilities.” § 727(a)(5); *see also In re Simmons*, 810 F.3d 852, 859 (1st Cir. 2016) (“Section 727(a)(5) authorizes the bankruptcy court to deny a discharge when a debtor has experienced a loss of assets or some other deficiency that the debtor cannot satisfactorily explain.”). Courts address claims under § 727(a)(5) in a burden-shifting framework. *Id.*, at 860. The party seeking to deny the debtor discharge must show “that the debtor has not accounted for previously owned assets or previously earned income.” *Id.* If that showing is made, the debtor must explain the deficiency, and that explanation “must be supported by at least some corroboration and it must be sufficient to eliminate the need for any speculation as to what happened to all of the assets.” *Id.* (internal quotation marks omitted).

The Savages raise five issues in support of their appeal of the bankruptcy court’s decisions. First, they challenge the bankruptcy court’s calculation of the amount of the unaccounted-for missing money. Second, they contend that the amount of unaccounted-for money was not a substantial asset within the meaning of § 727(a)(5). Third, the Savages contend that the bankruptcy court erred in

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finding that they did not account for part of the missing money, and fourth, alternatively, that the bankruptcy court erred in not finding that Coastal prevented them from making the necessary showing by withholding and destroying the supporting documentation. Fifth, the Savages contend that the bankruptcy court erred in denying their discharges entirely rather than limiting the denial to the amount of unaccounted-for money. Coastal opposes all grounds that the Savages raise.

A. Calculation of the Missing Money

The bankruptcy court calculated the missing money as follows. Sky-Skan transferred \$704,075.27 of the Coastal loan to the Savages, but the Savages no longer had that money at the time of the bankruptcy. The bankruptcy court found that the Savages provided explanations for \$684,599.42 of the \$704,075.27, but they could not explain what happened to the remaining \$19,475.85.

In addition, the court further scrutinized \$89,500.00 of the money received from Sky-Skan, which the Savages explained was rent for the commercial condominium where the Savages operated Sky-Skan, and was used to pay the mortgage on the condominium and personal expenses. The court found that the Savages did not use all of Sky-Skan's rental payments to pay the condominium mortgage, leaving \$15,151.29 unaccounted for, and that \$22,026.36 was not accounted for as personal living expenses. The bankruptcy court found that the missing money totaled \$56,653.50.

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On appeal, the Savages challenge the bankruptcy court's calculation on grounds that the court improperly allocated the burden of proof (to explain missing money) to them rather than Coastal and failed to consider the Schedule J amounts pertaining to living expenses.²

1. Burdens

The Savages argue that it was “Coastal’s burden to prove that a substantial asset was not accounted for, and so it was Coastal’s burden to establish the total amount of the unaccounted-for funds.” Doc. no. 7, at 30. They contend that the bankruptcy court made a clearly erroneous factual error in finding that Coastal met its burden, and that error resulted in erroneously shifting the burden to the Savages to account for the missing money. The Savages misunderstand the burden-shifting framework under § 727(a)(5).

The party challenging discharge under § 727(a)(5) “has the initial burden of producing some evidence that the debtor no longer has assets which he previously owned.” *In re Fustolo*, 597 B.R. 1, 64 (Bankr. Mass. 2019) (internal quotation marks omitted). The missing asset or assets must be “substantial” to satisfy the plaintiff’s initial burden. *In re Brien*, 208 B.R. 255, 258 (B.A.B. 1st Cir. 1999); *see also In re McDonald*, 29 F.4th 817, 822 (6th Cir. 2022) (holding that the missing assets for the plaintiff’s initial burden must be “substantial and identifiable”). If

2. The Savages do not challenge the bankruptcy court’s arithmetic as to the amount of unaccounted-for missing money.

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the creditor meets the burden of showing that the debtor no longer has assets that he previously owned, the debtor must “provide a satisfactory explanation for the loss or deficiency of the asset.” *Fustolo*, 597 B.R. at 64. “Section 727(a)(5) is broadly drawn and gives the bankruptcy court broad power to decline to grant a discharge in bankruptcy when the debtor does not adequately explain a shortage, loss, or disappearance of assets.” *In re Aoki*, 323 B.R. 803, 817 (B.A.P. 1st Cir. 2005).

The Savages contend that Coastal did not meet its initial burden of proving that substantial assets were missing and, for that reason, the bankruptcy court erred in putting the burden on them to account for missing assets. The bankruptcy court found (and it appears to be undisputed) that Sky-Skan transferred \$704,075.27 to the Savages, which was listed on Sky-Skan’s statement of financial affairs filed in its bankruptcy proceeding. Steven Savage signed that document under pains and penalties of perjury. It also appears to be undisputed that the Savages did not have that money when they filed their bankruptcy petition; that money was not included in the Savages’ statement of financial affairs filed in their personal bankruptcy case. Based on those circumstances, Coastal proved that before they filed for bankruptcy protection, the Savages had identifiable and substantial assets, \$704,075.27, and that they no longer had those assets at the time of filing. That proof shifted the burden to the Savages to provide an explanation for what happened to the substantial sum transferred from Sky-Skan. The Savages have not shown that the bankruptcy court erred in shifting the burden to them to account for the missing money.

*Appendix C***2. Schedule J**

The Savages argue that the amount the bankruptcy court found was missing and unaccounted for is incorrect because it does not include the amounts they listed on Schedule J filed in the bankruptcy case to show their household expenses.³ They contend that Schedule J shows \$77,815.29 in household expenses that would account for all but \$11,684.71 of the unaccounted-for money. They assert that because it was Coastal's burden to show that the Savages did not account for the missing money and Coastal did not challenge Schedule J, they can rely on that document to show that the missing amount is \$11,684.71. As is discussed above, it was not Coastal's burden to prove what the Savages did with the missing money. In addition, as the bankruptcy court noted, even under the Savages' theory, they still did not account for \$11,815.29, which would support the bankruptcy court's decision to deny them discharges.

In addition, the Savages first raised the argument that Schedule J would provide an explanation for some of the missing money in their post judgment motion for reconsideration, citing Federal Rule of Civil Procedure 60(b)(6). Rule 60(b)(6) provides relief from judgment when extraordinary circumstances justify reopening the case. *Kemp v. United States*, 596 U.S. 528, 533 (2022). Rule 60(b),

3. Schedule J lists the debtors' expenses in response to certain questions and categories as of the petition date. *In re Rudler*, 576 F.3d 37, 47 (1st Cir. 2009). The Savages' Schedule J reflects expenses as of December 20, 2017, when the petition was filed. Appx. 85-88.

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however, “is available only when Rules 60(b)(1) through (b)(5) are inapplicable.” *Id.*; accord *Quinones v. Frequency Therapeutics, Inc.*, 347 F.R.D. 560, 566 (D. Mass. 2024). A decision on a Rule 60(b)(6) motion is reviewed for an abuse of discretion. *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Loc. No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 19 (1st Cir. 1992).

The Savages point to no extraordinary circumstances that might justify reopening the adversary proceeding to consider Schedule J. They state only that they did not introduce Schedule J during trial because “they had limited trial time to get through thousands of pages of accounting records to show how they used the majority of the funds.” Doc. no. 7, at 30. They do not explain why trial time was limited or cite a court order that limited the time for presenting their case. Further, Schedule J was readily available to them, having been filed in their bankruptcy case.

It appears that the Savages, who are represented by competent counsel, made the strategic choice not to introduce Schedule J to support their explanation for the missing money. That choice, which resulted in failing to introduce evidence that the Savages now believe would be material, might fit under Rule 60(b)(1) as possibly a mistake or excusable neglect. *See Kemp*, 596 U.S. at 533-39. The Savages, however, relied on Rule 60(b)(6) and cannot now seek relief under Rule 60(b)(1) on appeal. *Id.* at 533.

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The bankruptcy court did not abuse its discretion in rejecting the Savages' post-trial theory that Schedule J would provide the needed explanation for missing money. The Savages have shown no error in the bankruptcy court's calculation of the missing and unaccounted-for money.

B. Substantial Asset

The Savages assert that their unaccounted-for missing money, \$56,653.50 as calculated by the bankruptcy court, or \$11,815.29 as calculated by the Savages, was not sufficiently substantial to warrant denying them discharges under 727(a)(5). In their reply, they argue that § 727(a)(5) is limited to unaccounted-for assets that "cause the Debtors to be unable to satisfy their liabilities." Doc. no. 11, at 5.

Section 727(a)(5) requires a debtor to account for "*any* loss or deficiency of assets to meet the debtor's liabilities." (Emphasis added.) The statutory language does not require that unaccounted-for amounts be so substantial that, if accounted for, the debtor would be able to fully satisfy his or her liabilities.⁴ Therefore, the plain meaning of § 727(a)(5) does not support the Savages' strained interpretation.

4. The Savages argue that because they owed so much to Coastal, the unaccounted-for money did not make any difference in their ability to satisfy their liabilities. Of course, some repayment is better than no repayment, particularly from the point of view of the creditor. The Savages cite no authority to support their interpretation of § 727(a)(5), and the court finds that theory unpersuasive.

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The Savages quote *In re Tully*, 818 F.2d 106, 110 (1st Cir. 1987), to establish that the unaccounted-for missing money must be “real and substantial.” In that case, however, the court was addressing a different section, § 727(a)(4), under which “the debtor can be refused his discharge only if he (i) knowingly and fraudulently made a false oath, (ii) relating to a material fact.” *Id.* In considering whether that burden was met, the court stated: “The reasons for denying a discharge to a bankrupt must be real and substantial, not merely technical and conjectural.” (quoting *Dilworth v. Boothe*, 69 F.2d 621, 624 (5th Cir. 1934)). Section 727(a)(5) does not require proof of knowingly and fraudulently making a false oath, or materiality, but instead focuses on the sufficiency of the explanation for missing assets.⁵ The Savages have not shown that unaccounted-for missing money must be “real and substantial” to support denial of discharge under § 727(a)(5).

The Savages also argue that a requirement exists that “the lost asset be of ‘substantial value relative to the debtors’ liabilities’” before they will be denied discharges. Doc. 7, at 31 (quoting *In re McDonald*, 29 F.4th at 823). They assert that the missing assets are not substantial relative to their total debt of more than \$2 million. For that reason, they contend, the bankruptcy court erred in

5. The bankruptcy court considered Coastal’s request to deny discharge under § 727(a)(4) in this case and rejected it, concluding that Coastal had not shown that the Savages knowingly and fraudulently withheld information from their creditors or the court. Appx. 191.

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denying discharges based on the amount of the missing and unaccounted-for money.

In that section of *McDonald* quoted by the Savages, the issue was not whether a missing asset must be substantial to support denial of discharge under § 727(a)(5). Instead, the court addressed a different question: the look-back period for identifying debtors' missing assets. *Id.* at 822. The trustee pointed to a loan and a line of credit as lost assets, but the debtor argued that he acquired those assets too far before the time he filed the petition, i.e. too far back, to be counted for purposes of § 727(a)(5). *Id.* The court noted that § 727(a)(5) does not have a specific look-back period, as other sections of § 727(a) have, but also noted that for purposes of the sections with a look-back period, "the existence of lost assets of substantial value relative to debtors' liabilities often warrants the extension of such two-year period." *Id.* at 823. Therefore, the court in *McDonald* did not hold, as the Savages represent, that only unaccounted-for missing money that is substantial in relation to the entire debt supports discharge denial under § 727(a)(5). The misquote from *McDonald* does not establish that rule or show any error by the bankruptcy court.

As the Savages concede, whether to deny a discharge under § 727(a)(5) is a matter left to the bankruptcy court's discretion, which turns on the particular circumstances presented. The Savages have not shown any circumstances suggesting that the thousands of dollars of missing and unaccounted-for money was insubstantial or that the bankruptcy court's exercise of discretion was in any way objectionable. *See, e.g., Fustolo*, 597 B.R. at 66 (denying

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discharge under § 727(a) when debtor could not explain \$29,981.00 of \$449,518.47 and finding that “this amount of unaccounted for cash is not insubstantial under any definition”).⁶

Therefore, the Savages have not shown error or an abuse of discretion by the bankruptcy court based on a theory that the unaccounted-for missing money was not substantial.

C. The Savages’ Explanations

The Savages contend that the bankruptcy court erred in finding that they did not satisfactorily account for \$56,653.50 of the missing money. The court found that the Savages were able to provide documentary evidence to show the disposition of some of the missing money and credited the Savages’ testimony to explain certain additional amounts. The court did not find adequate explanation for the remaining amounts.

Under § 727(a)(5), “once the plaintiff has established the loss of an asset, it is up to the debtor to provide a satisfactory explanation for the loss or deficiency of the asset.” *In re Aoki*, 323 B.R. 803, 817 (B.A.P. 1st Cir. 2005). To be satisfactory, “the debtor’s explanation “must be supported by at least some corroboration”

6. The Savages argue that the court should disregard the holding in *Fustolo* as an outlier. That decision, however, remains good law in the First Circuit, and while it is not precedential, it is persuasive.

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and “must be sufficient to eliminate the need for any speculation as to what happened to all of the assets.” *Id.*; accord *In re McNamara*, 620 B.R. 178, 189 (Bankr. D. Mass. 2020). For that reason, a debtor’s “[v]ague or indefinite references, evidence or explanations, or an uncorroborated hodgepodge of financial transactions” do not satisfy the debtor’s burden to provide a satisfactory explanation.” *Id.* (internal quotation marks omitted). *Aoki*, 323 B.R. at 817; accord *McNamara*, 620 B.R. at 189 (Bankr. D. Mass. 2020); see also *Centennial Bank v. Kane*, No. 23-CV-02944-WHO, 2024 WL 1342600, at *4 (N.D. Cal. Mar. 29, 2024); *Osuji v. Azie*, No. 20-CV-1365 (PKC), 2021 WL 602699, at *6 (E.D.N.Y. Feb. 16, 2021); *In re Elian*, No. 10-49482 DHS, 2015 WL 5164796, at *5 (D.N.J. Sept. 2, 2015), *aff’d*, 659 F. App’x 104 (3d Cir. 2016). “What constitutes a ‘satisfactory’ explanation for § 727(a)(5) purposes is left to the discretion of the court.” *In re Park*, 682 F. App’x 88, 93 (3d Cir. 2017) (additional internal quotation marks omitted).

The Savages argue that “overwhelming evidence” at trial showed that they satisfactorily accounted for the missing funds. Doc. no. 7, at 34. On appeal, however, they point to no record evidence tending to explain what happened to the unaccounted-for money. Instead, they merely assert that they spent time looking for financial records, that “Steven is not a sophisticated accountant,” and that Virginia handled the bookkeeping but she was not an accountant and had no formal training. *Id.* at 37. But they do not identify record evidence that accounts for the missing money. As such, the Savages have shown no abuse of discretion by the bankruptcy court in finding

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that they did not provide a satisfactory explanation for the unaccounted-for money.

D. Misconduct by Coastal

Alternatively, the Savages fault Coastal for their own failure to provide evidence or a satisfactory explanation of what happened to the unaccounted-for money. They accuse Coastal of refusing them access to documents and then destroying documents that would have demonstrated what happened to the money. They ask for a spoliation of evidence inference as to the evidentiary value of the unidentified destroyed documents.

The Savages first raised the issue of their access to documents in Coastal's possession in the context of their motion for reconsideration under Rule 60(b)(3). "[T]he burden is on the Rule 60 movant to demonstrate the existence of exceptional circumstances justifying relief from judgment." *U-Nest Holdings, Inc. v. Ascensus Coll. Sav. Recordkeeping Servs., LLC*, 82 F.4th 61, 64 (1st Cir. 2023). Under Rule 60(b)(3), the court may relieve a party from a final judgment for "fraud . . . , misrepresentation or misconduct by an opposing party." The moving party "must demonstrate misconduct—such as fraud or misrepresentation—by clear and convincing evidence and show that the misconduct foreclosed full and fair preparation or presentation of her case." *Giroux v. Fed. Nat. Mortg. Ass'n*, 810 F.3d 103, 108 (1st Cir. 2016) (internal quotation marks omitted). Review of a decision under Rule 60(b)(3) is for abuse of discretion. *U-Nest Holdings* 82 F.4th 63.

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The bankruptcy court concluded that the records referred to by the Savages, or some of them, were moved to the business condominium where Sky-Skan previously operated, and that the trustee in Sky-Skan's Chapter 7 case told Coastal that any records or documents that Coastal did not remove would be destroyed. Based on the record in the Sky-Skan case, the bankruptcy court determined that the Sky-Skan trustee sought authority to destroy records on June 10, 2021, which was granted in August, with permission given to Coastal to take records before August 18, with certain requirements. The Savages and their counsel were served with the motion and the order, and they were aware of those proceedings. The Savages did not object or seek to appeal the order.

Discovery in the adversary proceeding did not close until January 31, 2022, but the Savages propounded no discovery requests. Nor did they otherwise seek access to any of the Sky-Skan records that Coastal possessed or had access to after August 18. For that reason, Coastal had no obligation to supplement discovery requests based on the Sky-Skan records. The bankruptcy court found that the Savages had not shown any misconduct by Coastal with respect to the Sky-Skan records.

On appeal, the Savages argue that Coastal improperly denied them access to the Sky-Skan records. In support, they assert, without evidence, that they tried to get the records at Sky-Skan's office, but their key did not work. When they contacted Coastal's counsel, the response was that discovery was closed.

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The Savages provide no detail about when they attempted to enter the office, which apparently was under the control of the Sky-Skan trustee. They do not explain why they did not seek discovery in the adversary proceeding or why they did not contact the Sky-Skan trustee about the records. They have not provided any evidence of misconduct by Coastal, much less clear and convincing evidence of misconduct.

The Savages also made no proffer about what they expected the Sky-Skan records to show. For that reason, they have not shown that the Sky-Skan records would have assisted in their explanation of the unaccounted-for money. Further, as the bankruptcy court noted, the Savages' theory that the absence of the Sky-Skan records prevented them from providing a satisfactory explanation is inconsistent with their theory that their Schedule J explained what happened to the unaccounted-for money.

The Savages have not shown that the bankruptcy court abused its discretion in denying them relief under Rule 60(b)(3).

E. Partial Discharge

In the Savages' final challenge to the bankruptcy court's decision, they argue that a discharge should have been denied only to the extent of the unaccounted-for money. They rely on cases that address settlement of § 727(a)(5) claims to contend that because the United States Trustee and the Chapter 7 Trustee did not object to discharge, denial of discharge should be limited.

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The Savages did not raise their novel theory for a partial discharge in the bankruptcy court, and for that reason it is not properly before this court on appeal. *In re Cruz Rivera*, 600 B.R. 132, 142-43 (B.A.P. 1st Cir. 2019); *In re U Lock, Inc.*, No. BR 22-20823, 2024 WL 4476492, at *4 (W.D. Pa. Oct. 11, 2024). In the absence of persuasive authority, or a reason to overlook the “raise or waive” rule, the court declines to overturn the bankruptcy court decision based on a theory that was not previously raised.

Even if the partial discharge theory had been properly presented, it would not succeed. The language of § 727(a)(5) provides grounds to deny discharge, without any suggestion that there might be a partial denial. The Savages cite no case or other authority to support an interpretation of § 727(a)(5) requiring a limited denial of discharge given the circumstances that exist in this case. Therefore, the Savages provide no grounds to reverse the bankruptcy court’s decision to deny them discharges, based on their partial discharge theory.

F. Equitable Principles

The Savages invoke equitable considerations that underly bankruptcy protection to support each of their theories of relief from the bankruptcy court’s decision, and argue that they should be allowed a full discharge. They cite *In re Hannon*, 839 F.3d 63, 70 (1st Cir. 2016), where the court stated that “the statutory right to a discharge should ordinarily be construed liberally in favor of the debtor” in the context of an objection to discharge under § 727(a)(4). In contrast, “[s]ection 727(a)(5) is broadly

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drawn and gives the bankruptcy court broad power to decline to grant a discharge in bankruptcy when the debtor does not adequately explain a shortage, loss, or disappearance of assets.” *In re Aoki*, 323 B.R. at 817.

The court is satisfied that the bankruptcy court fully considered equitable principles and the material circumstances presented by the Savages in concluding that they were not entitled to a discharge under § 727(a)(5).

CONCLUSION

For the foregoing reasons, the bankruptcy court’s decision denying the Savages a discharge, pursuant to § 727(a)(5), is affirmed.

SO ORDERED.

s/ Steven J. McAuliffe
Steven J. McAuliffe
United States District Judge

February 13, 2025

**APPENDIX D — MEMORANDUM OPINION OF
THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW HAMPSHIRE,
DATED NOVEMBER 28, 2023**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

Bk. No. 17-11760-BAH
Chapter 7

IN RE: STEVEN T. SAVAGE AND
VIRGINIA A. SAVAGE,

Debtors.

Adv. No. 21-1006-BAH

COASTAL CAPITAL, LLC,

Plaintiff,

v.

STEVEN T. SAVAGE AND VIRGINIA A. SAVAGE,

Defendants.

MEMORANDUM OPINION

I. INTRODUCTION

The Court held a two-day trial on March 13 and 16, 2023, on the remaining claims asserted by Coastal

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Capital, LLC (“Coastal”) in its complaint (Doc. No. 1) (the “Complaint”) against Steven T. Savage (“Steven”) and Virginia A. Savage (“Virginia”) (together the “Savages” or the “Debtors”), seeking to deny the Debtors their discharges under 11 U.S.C. § 727 and to except Debtors’ obligations to Coastal from discharge pursuant to 11 U.S.C. § 523. The Complaint contains six counts, titled as follows:

Count I: Objection to Discharge Pursuant to 11 U.S.C. § 727(a)(2)(A)—Pre-Petition Transfer and Concealment of Property of the Debtor

Count II: Objection to Discharge Pursuant to 11 U.S.C. § 727(a)(4)(A)—False Oath

Count III: Objection to Discharge Pursuant to 11 U.S.C. § 727(a)(5)—Failure to Satisfactorily Explain Loss of Assets

Count IV: Objection to Discharge Pursuant to 11 U.S.C. § 727(a)(7)—False Oath in Connection with the Sky-Skan Bankruptcy

Count V: Objection to Dischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(4)—Fraud and/or Defalcation While Acting in a Fiduciary Capacity and Embezzlement

Count VI: Objection to Dischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(6)—Malicious Injury

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The Court issued orders on motions for summary judgment on May 18, 2022 (Doc. No. 109) and on July 12, 2022 (Doc. No. 111). Together, those orders (i) found in favor of Virginia with respect to Coastal's claims against her in Count IV, and (ii) in favor of both Steven and Virginia with respect to Coastal's claim in Count V that the debt at issue be excepted from discharge as being a debt "for fraud or defalcation while acting in a fiduciary capacity" within the meaning of § 523(a)(4), but not with respect to Coastal's claim in Count V that the debt be excepted from discharge as a debt "for . . . embezzlement." Accordingly, the following claims remained for trial:

Count I: Objection to Discharge Pursuant to 11 U.S.C. § 727(a)(2)(A)—Pre-Petition Transfer and Concealment of Property of the Debtor

Count II: Objection to Discharge Pursuant to 11 U.S.C. § 727(a)(4)(A)—False Oath

Count III: Objection to Discharge Pursuant to 11 U.S.C. § 727(a)(5)—Failure to Satisfactorily Explain Loss of Assets

Count IV: Objection to Discharge Pursuant to 11 U.S.C. § 727(a)(7)—False Oath in Connection with the Sky-Skan Bankruptcy—as against Steven only

Count V: Objection to Dischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(4)—Fraud and/or Defalcation While Acting in a Fiduciary

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Capacity and Embezzlement—with respect to
embezzlement only

Count VI: Objection to Dischargeability
of Debt Pursuant to 11 U.S.C. § 523(a)(6)—
Malicious Injury

Despite the parties submitting lists indicating there might be as many as eighteen witnesses at trial, Coastal and the Debtors called only two witnesses, Steven and Virginia. At the conclusion of their testimony, the Court took the matter under advisement.¹ The Court gave Coastal and the Debtors until May 19, 2023, and June 9, 2023, respectively, to file post-trial memoranda (Doc. No. 146), which they did (Doc. Nos. 156 and 157) (respectively, “Coastal’s Brief” and the “Debtors’ Brief”).

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and Local Rule 77.4(a) of the United States District Court for

1. At the close of Coastal’s case and then again at the close of the Debtors’ case, the Debtors made oral motions for judgment in their favor. The Court declined to rule on those motions, instead deciding, under Federal Rule of Civil Procedure 52(c), made applicable by Federal Rule of Bankruptcy Procedure 7052, to render its judgment after the close of the evidence and after taking the Complaint under advisement. The Court sets forth its findings of fact and conclusions of law in this opinion and, to the extent necessary, will deny by separate order the Debtors’ oral motions, as clarified by the Debtors’ post-trial submissions (Doc. Nos. 148 and 149).

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the District of New Hampshire. This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. FACTS

The Court finds the following facts, some of which were established at trial and in the summary judgment record, and others of which the Court has taken judicial notice. Sky-Skan Incorporated (“Sky-Skan”) was a company that designed, installed, and maintained digital equipment used in planetariums across the globe. Steven was the company’s president and sole shareholder. Virginia served as the company’s vice president and bookkeeper. In July 2011, Bank of America, N.A. (“BOA”) and Sky-Skan executed a loan agreement pursuant to which BOA provided Sky-Skan with a \$900,000.00 line of credit. To secure the loan, BOA and Sky-Skan executed a security agreement which gave BOA a security interest in various categories of Sky-Skan’s property, including all accounts, inventory, machinery, equipment, and cash or non-cash proceeds. The Savages personally guaranteed that loan. Steven’s guaranty was secured by a mortgage on a commercial condominium in Nashua, New Hampshire that he owned individually, and in which Sky-Skan operated its business. In April 2017, BOA assigned its loan and mortgage to Coastal.

During 2017, Sky-Skan was having financial difficulty. The Debtors were funding much of Sky-Skan’s business operations by using their own personal credit cards and debit cards. Both Steven and Virginia testified that they used their own credit when Sky-Skan could no longer

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obtain credit, and that Sky-Skan reimbursed the Debtors for the business expenses that they charged to their personal credit and debit cards.²

Sky-Skan and the Savages ultimately defaulted on their obligations to Coastal. Coastal filed a petition in state court seeking an order enjoining Sky-Skan and the Savages from moving, concealing, encumbering, wasting or altering the collateral securing their obligations. Coastal sought an attachment and permission to conduct a secured party sale of the collateral securing its loan pursuant to the provisions of Article 9 of the Uniform Commercial Code as enacted in New Hampshire (NH RSA 382-A). The state court issued orders in August and September 2017. Specifically, on August 27, 2017, the state court found that Coastal “made a satisfactory preliminary showing . . . that it is properly secured with respect to Collateral as described and defined in [its petition] and that immediate and irreparable injury, loss or damage will result if the requested relief is not granted.” For that reason, the state court ordered that “Sky-Skan Incorporated, Steven T. Savage and Virginia Savage shall not move, conceal, encumber, waste and/or alter the Collateral.” On September 22, 2017, the state court issued another order, which reiterated the same proscriptions that the court ordered on August 27, 2017: “Sky-Skan Incorporated, Steven T. Savage and Virginia Savage shall not move, conceal, encumber, waste and/or alter the Collateral.” Further, Coastal was permitted to

2. At trial, the Savages supplied hundreds, if not thousands, of pages of documentation supporting these claims.

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secure and/or move the collateral, take possession of all bank accounts, and conduct a secured party sale of its collateral.

On October 31, 2017, Sky-Skan received a wire deposit to its Provident Bank account from a customer in the amount of \$180,000.00. The next day, on November 1, 2017, the following five events occurred: Coastal filed a motion in the state court for contempt and immediate injunctive relief; the state court granted Coastal's request that the court "[i]ssue an immediate temporary order directing the defendants and their counsel turn over all funds in the Provident Bank account and the receivable checks be delivered immediately to Plaintiff and that the Hillsborough County Sheriff be given authority to assist Plaintiff in gaining possession of such receivable checks"; \$157,843.04 was deposited into Sky-Skan's account at Provident Bank; \$146,355.00 was withdrawn from the Provident Bank account; and Sky-Skan filed a chapter 11 bankruptcy petition (the "Sky-Skan Bankruptcy"). The sequence of these events is unclear from the record.³

On November 6, 2017, the state court issued an order that noted that it had on November 1, 2017 "granted the requested immediate temporary order directing the defendants to turn over to the plaintiff funds in a Provident Bank account and receivable checks." Neither

3. Sky-Skan's property was also encumbered by several tax liens in favor of the Internal Revenue Service (the "IRS"). In the Sky-Skan Bankruptcy, the IRS and Coastal disputed and litigated the relative priority of their respective liens on Sky-Skan's property, as discussed below.

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the amount of the receivable checks nor the amount of the Provident Bank account was set forth in the November 1 or the November 6 orders. The motion for contempt, however, referred to the following collateral having been refused to be turned over:

- (a) Approximately \$140,000 in a Provident Bank account; and
- (b) Approximately \$336,000 in receivable checks.

In the November 6, 2017, order the state court found that “based on the offers of proof, that the defendants did not comply with the plaintiff’s request to take possession of collateral as provided by both the security agreement and this court’s previous orders, they are in contempt.” The court ordered the Debtors to pay Coastal’s fees and costs and doubled the fees “for the intentional contemptuous actions by the defendants.” It is unclear from the record what ultimately happened to the receivable checks that Coastal requested be turned over on November 1, 2017.

On November 27, 2017, Sky-Skan filed its statement of financial affairs (“SOFA”) and schedules in the Sky-Skan Bankruptcy, which Steven signed under the pains and penalties of perjury. Sky-Skan’s schedules disclosed that it did not have any interest in any other business. They also did not disclose any interests in licenses and intellectual property. Sky-Skan’s SOFA did disclose that Sky-Skan transferred \$704,075.00 to the Savages for “Expense Reimbursement for use of credit cards, travel expenses, rent and repayment of personal loans” within one year

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before the filing of the Sky-Skan Bankruptcy. At trial, the Debtors produced various records demonstrating that they received \$574,247.71 from Sky-Skan to reimburse themselves for charges incurred on their personal credit cards for Sky-Skan business expenses,⁴ \$10,851.71 to reimburse the Debtors for Sky-Skan travel and business expenses paid with their personal debit cards,⁵ \$89,500.00 for rent owed to Steven for Sky-Skan's use of the commercial condominium from which Sky-Skan operated (which property Steven owned individually),⁶ and \$10,000.00 to repay a loan made by Steven's father to the company.⁷ Altogether the Debtors accounted for \$684,599.42 of the \$704,075.27 that Sky-Skan transferred to them between November 5, 2016, and November 1, 2017, leaving unaccounted \$19,475.85.⁸

On November 30, 2017, Sky-Skan's 341 meeting of creditors was held. Steven testified at that meeting that Sky-Skan held no interest in Sky Skan Europe GmbH ("SSE") but that he personally held an ownership interest

4. See Exs. 101, 106, 107, 107D, 107G, 107J, 107M, and 109-115.

5. Ex. 122.

6. Ex. 101.

7. Ex. 101.

8. The Court notes that this amount is different than the \$117,411.48 figure that the Debtors cited in a previously filed motion in limine (Doc. No. 128), which figure Coastal adopted in Coastal's Brief as \$117,000.00. This \$117,000.00 figure for unaccounted monies is not supported by the trial record. See Ex. 101.

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in SSE. On December 8, 2017, Sky-Skan amended its schedules to add additional assets and liabilities, including its interest in various trademarks and software.

On December 20, 2017, the Savages filed their own chapter 11 bankruptcy petition (the “Debtors’ Bankruptcy”). On January 22, 2018, they filed their own schedules and statement of financial affairs. On their SOFA, the Debtors disclosed that they earned no income from employment or from operating a business during 2017 or during the two previous calendar years. Their SOFA reflected that they had received rental income of \$89,500.00 in 2015, \$84,250.00 in 2016, and \$84,750.00 in 2017. Neither the SOFA nor the schedules reflected a figure of \$704,075.27 as having been transferred by Sky-Skan to the Debtors between November 2016 and November 2017.⁹

On December 27, 2017, Sky-Skan amended its SOFA, disclosing that Sky-Skan owned 51% of SSE and 9% of Sky-Skan Oceana Pty, Ltd. Steven signed this amendment under the pains and penalties of perjury. On January 24, 2018, the Debtors appeared and testified under oath during the 341 meeting in the Debtors’ Bankruptcy. At that meeting, Steven testified that Sky-Skan owned 51% of the shares in SSE.

9. The trial record reflects that the Debtors’ schedules do indicate that they received \$89,500.00 in rental income, which is part of the \$704,075.27 figure that Sky-Skan listed on its SOFA as having been transferred to the Savages in the year preceding Sky-Skan’s bankruptcy filing.

*Appendix D***III. DISCUSSION**

“Chapter 7 bankruptcy proceedings allow a debtor to obtain a ‘fresh start’ by discharging nearly all previously incurred debts.” *Hernandez v. Shove (In re Shove)*, 83 F.4th 102, 106 (1st Cir. 2023) (citing *Privitera v. Curran (In re Curran)*, 855 F.3d 19, 22 (1st Cir. 2017), and quoting *Grogan v. Garner*, 498 U.S. 279, 283 (1991)); see *Botelho v. Buscone (In re Buscone)*, 61 F.4th 10, 20 (1st Cir. 2023). “Nevertheless, the bankruptcy code ‘limits the opportunity for a completely unencumbered new beginning to the honest but unfortunate debtor by exempting certain debts from discharge.’” *Shove*, 83 F.4th at 106 (quoting *Grogan*, 498 U.S. at 279). “When filing for bankruptcy, debtors are obligated to fully disclose the extent of their assets and debts . . . in such schedules.” *Buscone*, 61 F.4th at 20–21. “The statutes are designed to insure that complete, truthful, and reliable information is put forward at the outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction.” *Boroff v. Tully (In re Tully)*, 818 F.2d 106, 110 (1st Cir. 1987). “[T]he successful functioning of the bankruptcy code hinges both upon the bankrupt’s veracity and [her] willingness to make full disclosure.” *Buscone*, 61 F.4th at 21 (quoting *Marrama v. Citizens Bank of Mass. (In re Marrama)*, 430 F.3d 474, 482 (1st Cir. 2005), and *Tully*, 818 F.2d at 110). “[T]he bankruptcy court is entitled to demand utmost good faith and honesty from debtors in the preparation of their schedules and statements of affairs.” *Buscone*, 61 F.4th at 21 (quoting *Marrama*, 430 F.3d at 482). “Although the ‘statutory right to a discharge should ordinarily be construed liberally in favor of a debtor,’

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this is not so when a claim ‘falls squarely’ into one of the § 727(a) enumerated exceptions.” *Kupperstein v. Schall (In re Kupperstein)*, 61 F.4th 1, 7 (1st Cir. 2023) (quoting *Tully*, 818 F.2d at 110), and citing *Premier Cap., LLC v. Crawford (In re Crawford)*, 841 F.3d 1, 7-8 (1st Cir. 2016)). “[T]he ultimate decision about whether to grant or withhold a discharge is a mixed question of law and fact.” *Gannett v. Carp (In re Carp)*, 340 F.3d 15, 25 (1st Cir. 2003) (quoted in *Shove*, 83 F.4th at 110).

**Count I: Objection to Discharge Pursuant to
11 U.S.C. § 727(a)(2)(A)—Pre-Petition Transfer
and Concealment of Property of the Debtor**

In Count I, Coastal seeks to deny the Debtors a discharge pursuant to § 727(a)(2)(A) of the Bankruptcy Code because “the Debtors knowingly and intentionally concealed and/or transferred their interest in property, including, but not limited to, the hundreds of thousands of dollars paid to them by Sky-Skan throughout 2017 in order to avoid their creditors, including Coastal.” Section 727(a)(2)(A) provides:

The court shall grant the debtor a discharge, unless . . . the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed [] property of the debtor, within one year before the date of the filing of the petition[.]

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11 U.S.C. § 727(a)(2)(A). To be successful on a claim under § 727(a)(2)(A), Coastal must establish by a preponderance of the evidence that:

1. the debtor transferred, removed, destroyed, mutilated, or concealed,
2. his or her property (or the property of the estate if the transfer occurs postpetition),
3. within one year of the petition filing date (for prepetition transfers),
4. with intent to hinder, delay or defraud a creditor.

Groman v. Watman (In re Watman), 301 F.3d 1, 7 (1st Cir. 2022) (cited in *Watman v. Groman (In re Watman)*, 458 F.3d 26, 32 (1st Cir. 2006)).

As the Court noted in its summary judgment order (Doc. No. 111) (the “Summary Judgment Order”), for the Court to deny the Debtors a discharge under § 727(a)(2)(A), the Court must find that the Debtors “transferred, removed, destroyed, mutilated, or concealed” *the Debtors’ property*, not *Coastal’s property* or *Sky-Skan’s property*.

It is undisputed that the Debtors received \$704,075.27 from Sky-Skan in the year preceding the Sky-Skan Bankruptcy. The trial record demonstrates how the Debtors used *some* of the \$704,075.27 that Sky-Skan transferred to them within the year before Sky-Skan’s November 1, 2017, bankruptcy filing but *not all* of the

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money. The Debtors presented evidence regarding \$684,599.42 of the \$704,075.27 they received from Sky-Skan. As described earlier, Sky-Skan's SOFA disclosed that Sky-Skan transferred \$704,075.00 to the Savages for "Expense Reimbursement for use of credit cards, travel expenses, rent and repayment of personal loans" within one year before filing the Sky-Skan Bankruptcy. At trial, the Debtors produced various records demonstrating that they received \$574,247.71 from Sky-Skan to reimburse themselves for charges incurred on their personal credit cards for Sky-Skan business expenses,¹⁰ \$10,851.71 to reimburse the Debtors for Sky-Skan travel and business expenses paid with their personal debit cards,¹¹ \$89,500.00 for rent owed to Steven for Sky-Skan's use of the premises from which Sky-Skan operated,¹² and \$10,000.00 to repay a loan made by Steven's father to the company.¹³ As previously noted, the Debtors accounted for \$684,599.42 of the \$704,075.27 that Sky-Skan transferred to them, leaving unaccounted funds totaling \$19,475.85.

The disposition of the \$19,478.85 in funds is unknown.¹⁴ Steven testified that the money Sky-Skan transferred to the Debtors was to reimburse them for business expenses,

10. See Exs. 101, 106, 107, 107D, 107G, 107J, 107M, and 109-115.

11. Ex. 122.

12. Ex. 101.

13. Ex. 101.

14. It seems plausible to the Court that the Debtor may have used these funds to live but they did not so testify at trial.

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specifically, he stated “we didn’t take this money and do something with it. What we did with it was pay business expenses and that’s clearly outlined in those five journals.” Doc. No. 150 at 124. According to Steven, they used “all of this money to pay business expenses.” *Id.* Virginia testified that “100 percent of the transfers here [from Sky-Skan to the Debtors] were for non-personal expenses.” Doc. No. 151 at 10. “So everything that was listed that was transfers to us was either rent—for rent or to be used for business expenses. . . . Everything that Sky-Skan paid to us went through the accounting system either towards rent or business expenses.” Doc. No. 152 at 144. She acknowledged at trial, however, that she “could not find all the records” that would have corroborated her testimony that all of the funds that Sky-Skan transferred to them were for rent or business expenses. Doc. No. 151 at 13.

In the Court’s view, if the unaccounted for \$19,475.95 in funds were used to pay for Sky-Skan’s business expenses, one would expect that backup documentation would exist in the same Sky-Skan records that corroborated \$684,599.42 of the \$704,075.27 in expenses. Apparently that backup documentation does not exist. Without any credibly supported explanation as to the disposition of \$19,475.85, it is reasonable for the Court to conclude that the funds were “transferred” or “removed” by the Debtors. For that reason, the Court finds that Coastal has satisfied the first three requirements of its claim under § 727(a)(2)(A), i.e., that the Debtors transferred or removed their property (the funds that Sky-Skan transferred to them making them the Debtors’ property), within one year of the Debtors’ Bankruptcy.

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However, to establish a claim under § 727(a)(2)(A), Coastal must prove a fourth element: intent, specifically, “intent to hinder, delay or defraud a creditor.” A debtor’s subjective intent to delay or defraud a creditor is usually a fact-intensive inquiry. *Ghosh v. Bao (In re Tooley)*, Case No. 19-41928-CJP, AP No. 20-04023-CJP, 2022 WL 1038168, at *7 (Bankr. D. Mass. Mar. 31, 2022). Debtors rarely admit to transferring assets to hinder, delay, or defraud creditors. *Id.* at *7. The Savages have not done so here, and the Court is unable to infer that intent from the trial record. Coastal’s Brief fails to address the issue of intent in its analysis of how the particular facts of this case fall within the provisions of § 727(a)(2)(A). Instead, it merely cites a case where the Court found that the transfer of assets in violation of a state court order, while under financial distress, is a circumstance indicating fraudulent intent. *Marrama*, 445 F.3d at 523. This does not satisfy Coastal’s burden. Accordingly, the Court cannot deny the Debtors their discharges pursuant to § 727(a)(2)(A) and will enter judgment in favor of the Debtors on Count I.

**Count II: Objection to Discharge Pursuant to
11 U.S.C. § 727(a)(4)(A)—False Oath**

In Count II, Coastal seeks to deny the Debtors a discharge pursuant § 727(a)(4)(A) in connection with their allegedly “false, inaccurate and/or misleading statements or omissions” in their SOFA and their statement of current monthly income (“SCMI”), wherein “the Debtors concealed the hundreds of thousands of dollars in income that they received from Sky-Skan during 2017” and falsely stated “they received no income from operating a

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business in 2017 or the two (2) calendar years prior.” The First Circuit has stated that a debtor may be denied a discharge under § 727(a)(4)(A) if:

1. the debtor made a false statement under oath in the course of the debtor’s bankruptcy proceeding;
2. the debtor did so knowingly and fraudulently; and
3. the false statement related to a material fact.

Zizza v. Harrington (In re Zizza), 875 F.3d 728, 732 (1st Cir. 2017) (citing *Hannon v. ABCD Holdings, LLC (In re Hannon)*, 839 F.3d 63, 70 (1st Cir. 2016)). With respect to the second element, “‘reckless indifference to the truth’ . . . has consistently been treated as the functional equivalent of fraud for the purposes of § 727(a)(4)(A).” *Tully*, 818 F.2d at 112 (quoted in *Zizza*, 875 F.3d at 732). A false statement is material if it “bears a relationship to the debtor’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of property.” *Zizza*, 875 F.3d at 732 (quoting *Hannon*, 839 F.3d at 75). “[T]he threshold to materiality is fairly low.” *Kupperstein*, 61 F.4th at 9 (citing *Crawford*, 841 F.3d at 8, and quoting *Lussier v. Sullivan (In re Sullivan)*, 455 B.R. 829, 839 (B.A.P. 1st Cir. 2011)). “False oaths alone, however, are not enough to deny a discharge under 11 U.S.C. § 727(a)(4)(A). The falsehoods must be made ‘knowingly and fraudulently.’” *Kupperstein*, 61 F.4th at 8 (citing *Crawford*, 841 F.3d at 8, and quoting 11 U.S.C. § 727(a)(4)(A)).

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The Debtors argue that Sky-Skan's transfers to them were not income, but rather expense reimbursements, and therefore the Debtors did not need to disclose the receipt of those funds on their bankruptcy schedules. For that reason, the Debtors contend they did not make a false statement.

Income is a term defined broadly in the Bankruptcy Code. *Kupperstein*, 61 F.4th at 8 (citing 11 U.S.C. § 101(10A), which defines "current monthly income" as the "average monthly income from all sources that the debtor receives . . . without regard to whether such income is taxable income"). As detailed above, the Debtors could account for only \$684,599.42 of the \$704,075.27 that Sky-Skan transferred to them between November 5, 2016, and November 1, 2017, leaving the disposition of \$19,475.85 in funds unknown.

To the extent payments received from Sky-Skan exceeded the business expenses of Sky-Skan that were personally incurred by the Debtors and reimbursed by Sky-Skan, it seems those amounts should have been disclosed as income on the Debtor's SOFA and schedules. To the extent that they were not so disclosed, the Court finds that the Debtors made a false statement under oath satisfying this element of Coastal's claim under § 727(a)(4) (A). And because that false statement under oath related to the Debtors' finances, the statement related to a material fact, thus satisfying another element of Coastal's claim.

However, to deny debtors a discharge under § 727(a)(4)(A), the Court must find that they made the false

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statements “knowingly and fraudulently,” i.e., with the requisite intent. Coastal cites *Irish Bank Resolution Corp. Ltd. v. Drumm (In re Drumm)*, 524 B.R. 329, 395 (Bankr. D. Mass. 2015), aff’d, Civil No. 15-CV-10184-LTS, 2015 WL 9911447 (D. Mass. Nov. 20, 2015), for the proposition that “fraudulent intent may be established by circumstantial evidence or inferred from a course of conduct.” But Coastal has not demonstrated how the particular facts of this case demonstrate the required intent with respect to its claim in Count II. The Debtors’ explanation for their actions is credible and does not support a finding that the Debtors were knowingly and fraudulently withholding information from their creditors or the Court. The Debtors believe and testified that all the funds that Sky-Skan transferred to them were for rent or business purposes, and thus, in their view, did not need to be disclosed. The Court cannot make the inferential leap that Coastal has failed to lay out and establish.

Coastal has the burden of proving its case, including that the Debtors made a false statement with fraudulent intent. The Court finds that it failed to establish all elements of its claim seeking to deny the Debtors their discharges under § 727(a)(4)(A). For that reason, the Court finds in favor of the Debtors on Count II.

**Count III: Objection to Discharge Pursuant to
11 U.S.C. § 727(a)(5)—Failure to Satisfactorily
Explain Loss of Assets**

In Count III, Coastal seeks to deny the Debtors their discharges pursuant to § 727(a)(5) as the Debtors have

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allegedly failed to account for “hundreds of thousands of dollars” in money they received from Sky-Skan in the year before the Sky-Skan Bankruptcy. Section 727(a)(5) provides that a debtor shall not receive a discharge if the debtor has “failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor’s liabilities.” The First Circuit Court of Appeals has explained the requirements for denying a discharge under § 727(a)(5) as follows:

Section 727(a)(5) authorizes the bankruptcy court to deny a discharge when a debtor has experienced a loss of assets or some other deficiency that the debtor cannot satisfactorily explain.

Harrington v. Simmons (In re Simmons), 810 F.3d 852, 860 (1st Cir. 2016) (citing *Aoki v. Atto Corp. (In re Aoki)*, 323 B.R. 803, 817 (B.A.P. 1st Cir. 2005)).

A burden-shifting framework applies: if the party seeking to thwart a discharge shows that the debtor has not accounted for previously owned assets or previously earned income, the burden shifts to the debtor to explain the deficiency. *See id.* The debtor’s explanation “must be supported by at least some corroboration,” and it “must be sufficient to eliminate the need for any speculation as to what happened to all of the assets.” *Id.* Something more than vague allusions is

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required. *See id.* To invoke § 727(a)(5), it is unnecessary to show that the debtor has acted fraudulently or in bad faith. *See id.* Rather, the issue turns on whether a satisfactory explanation is—or is not—forthcoming.

Simmons, 810 F.3d at 860 (citing *Aoki*), 323 B.R. at 817). A “jumble of vague, unassorted memoranda, checks, bank statements, and bills,” do not provide a satisfactory explanation for missing or lost assets. *Wortman v. Ridley (In re Ridley)*, 115 B.R. 731, 738 (Bankr. D. Mass. 1990) (quoting *Jackson v. Menick*, 271 F.2d 806, 809 (9th Cir. 1959)). “In general, undocumented explanations will not be held satisfactory.” *Ridley*, 115 B.R. at 738.

The Debtors provided documentary evidence regarding the disposition of \$684,599.42 of the \$704,075.27 they received from Sky-Skan. The Debtors were unable to explain the disposition of the balance of \$19,475.85, other than the Debtors testifying that all the funds that Sky-Skan transferred to them were either for rent or for business expenses that the Debtors personally incurred.

Further, as Coastal noted at trial, while the Debtors received \$89,500.00 as rental income, the Debtors did explain where the entirety of that money went. The trial record is clear that the Debtors did not use that rental income to make the monthly mortgage payments of \$2,164.47 for the commercial condominium from May 2017 to November 2017, which amount totals \$15,151.29. In addition, for the months in which the Debtors did make the monthly mortgage payments on the rental property, the

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Debtors did not fully explain where the difference between the purported \$8,000.00 monthly rental payment¹⁵ and the monthly mortgage payment of \$2,164.47 (or \$5,835.53 per month) went during this period. Steven testified that “[p]art of the monthly rent was for rent and for salary” Doc. No. 150 at 164. Virginia explained that Sky-Skan had been paying rent in the amount of about \$4,000.00 per month at one time. Then Sky-Skan ran into difficulty making tax payments to the IRS. To lessen Sky-Skan’s tax burden, Sky-Skan’s accountant suggested that Steven and Virginia stop taking salary (which Virginia estimated was more than \$4,000.00 per month combined for them both at that time) and instead increase Sky-Skan’s rental payment to Steven from \$4,000.00 to \$8,000.00 per month. Doc. No. 152 at 147-48; see Doc. No. 151 at 12. Virginia testified that “[w]e wanted [the salary] to be the minimum amount that we needed to cover our personal expenses.” Doc. No. 152 at 148. Virginia testified that the rental income “was our main source of income at the time from—for the personal expenses.” Doc. No. 151 at 10. She explained that this rental income “was our . . . only income personally and we had personal bills to pay as well.” Doc. No. 151 at 11.¹⁶

15. The Court notes that the amount of monthly rent Steven received varied from a low of \$550.00 in January 2017 to a high of \$18,200 in March 2017. There were only two months during the period from November 2016 to November 2017 when Sky-Skan actually paid Steven \$8,000.00 for rent; those months were April 2017 and July 2017. In two months no rent was received, in five months the rent received was more than \$8,000.00, and in four months the rent received was less than \$8,000.00.

16. Virginia reiterated that “the general purpose of raising the rent and lowering the salary [was to] reduce Sky-Skan’s obligation for taxes.” Doc. No. 152 at 149.

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Based on the Debtors' testimony, it is appropriate to attribute \$4,000.00 of each monthly rental payment as salary,¹⁷ which the Debtors then used to pay for their personal expenses (e.g., home mortgage payment, utilities, food, vehicle expenses, etc.). After attributing \$4,000.00 per month as salary used for the Debtors' personal living expenses, there remains \$1,835.53¹⁸ per month in unaccounted-for funds. Over a 12-month period, this would total \$22,026.36. Thus, by the Court's calculation, the Debtors' unaccounted funds total \$56,653.50.¹⁹

Unlike § 727(a)(2)(A) and (a)(4)(A), § 727(a)(5) does not require Coastal to establish that the Debtors acted fraudulently or in bad faith, but only that they have been unable to account for previously owned assets or earned income and have been unable to satisfactorily explain the deficiency. Because the Debtors have failed to satisfactorily explain what happened to \$56,653.50 that they received from Sky-Skan, the Court must deny the Debtors a discharge pursuant to § 727(a)(5). *See Patriot Grp., LLC v. Fustolo (In re Fustolo)*, 597 B.R. 1, 65-67 (Bankr. D. Mass. 2019) (holding the debtor's failure to explain where \$29,981.00 out of total disbursements of

17. Despite the Court attributing \$4,000.00 to the Debtors as salary, the Court does not find that the Debtors made a false statement for purposes of Count II by failing to list this amount as income on their schedules, as the Debtors disclosed the rental income that they received at the higher \$8,000.00 per month amount.

18. $\$8,000.00 - \$2,164.47 - \$4,000.00 = \$1,835.53$

19. $\$19,475.85 + \$15,151.29 + \$22,026.36 = \$56,653.50$

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\$449,518.47 warranted denial of the debtor's discharge under § 727(a)(5) as "this amount of unaccounted for cash is not insubstantial under any definition"). Accordingly, the Court finds in favor of Coastal with respect to Count III.

**Count IV: Objection to Discharge Pursuant to
11 U.S.C. § 727(a)(7)—False Oath in Connection
with the Sky-Skan Bankruptcy**

In Count IV, Coastal sought to deny the *Debtors* their discharge pursuant to § 727(a)(7) based on *Steven's* statement²⁰ at Sky-Skan's 341 meeting that Steven was the 51% owner of SSE and his failure to disclose in Sky-Skan's bankruptcy schedules that Sky-Skan actually was the 51% owner of SSE. Section 727(a)(7) provides that "[t]he court shall grant the debtor a discharge, unless . . . the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider." Coastal is relying on § 727(a)(4)(A) in this count. As noted previously, a debtor may be denied a discharge under § 727(a)(4)(A) if:

1. the debtor made a false statement under oath in the course of the debtor's bankruptcy proceeding;
2. the debtor did so knowingly and fraudulently; and

20. Because Coastal failed to allege that Virginia made any false statement, the Court granted summary judgment in favor of Virginia on May 18, 2022. Doc. No. 109.

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3. the false statement related to a material fact.

Zizza, 875 F.3d at 732.

The Debtors do not dispute that Sky-Skan is an insider. It is also undisputed that Sky-Skan amended Sch. A/B to reflect that Sky-Skan was the 51% owner of SSE and therefore Steven made a false statement under oath (Bk. No. 17-11540-BAH, Doc. No. 140). It is also undisputed that at Sky-Skan's 341 meeting Steven testified that Sky-Skan had no interest in SSE, when in fact Sky-Skan was the 51% owner of SSE. Steven's statements are material as they relate to an asset of Sky-Skan.²¹ Thus, the only issue is whether the false statements were made "knowingly and fraudulently."

The Debtors have argued that "Steven Savage made a mistake when he stated that he was the owner of the stock of Sky Skan Europe GmbH and upon realizing the mistake he caused Sky Skan Incorporated's bankruptcy schedules to reflect that fact that Sky Skan Incorporated owns the stock of Sky Skan Europe." Steven's testimony at trial supported the Debtors' position that this false statement was merely a mistake caused by Steven's assumption that Glenn Smith had transferred 51% ownership from Sky-Skan to Steven.²²

21. The Court takes judicial notice that the Debtor's interest in SSE sold for \$205,000.00 in Sky-Skan's bankruptcy case (Bk. No. 17-11540-BAH, Doc. No. 909).

22. Steven testified that he stated at the 341 meeting that he personally owned SSE because, at that time, he thought he did. "I

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The Court takes judicial notice of the affidavit of Glenn Smith that was filed at the summary judgment stage of this proceeding. Doc. No. 103-1. In that affidavit, Smith stated that “[a]t some time in approximately 2009 Steven Savage asked me to determine and prepare the documents necessary to transfer the ownership of 51% of Sky Skan Europe stock from Sky Skan Incorporated to Steven Savage. . . . For some reason the transfer was never processed and Steven Savage and I had not followed up with each other on whether it was completed.”

When Sky-Skan amended Sch. A/B, the amendment included an explanation that “Debtor believed these shares were owned by Steven Savage and the Debtor’s 2014 audited financial statement reflected Mr. Savage’s ownership. It was not until Debtor requested the corporate record book from SSE that it was discovered that the shares were still owned by the Debtor and not by Mr. Savage.”

These statements support a finding that Steven simply made a mistake when he made the false

thought I owned it based on the authority it gave to Glenn to make the transaction, which I assumed he did.” Doc. No. 150 at 158. “I gave Glenn permission. I have power of attorney to make that change and I thought he did.” *Id.* at 164. “[T]he general scenario, as far as I understand, was I gave Glenn power of attorney to make two changes that he requested. The first was to remove me as a managing director and there was a reason for that, a good one; and the second was to move me—to move Sky-Skan and swap the shares to me personally. He performed the former, but did not perform the latter. . . . But I didn’t know that. I assumed he had done both.” *Id.* at 170; *see also id.* at 51.

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statements under oath in connection with the Sky-Skan Bankruptcy. The “knowingly and fraudulently” element of a § 727(a)(4)(A) claim requires that a debtor have fraudulent intent. Coastal’s Brief is completely devoid of any explanation as to how the particular facts that were established at trial demonstrate that Steven acted knowingly and fraudulently in connection with the false oaths contained in Sky-Skan’s schedules and made at the 341 meeting. Steven’s testimony regarding the reason for the omissions or misstatements was credible. Unlike the *Drumm* case, the Court does not find that Steven “adopted a ‘strategy’ with respect to truth-telling and full disclosure, a strategy that involved the initial deliberate withholding of required information and the later controlled release of that information, when and as it suited [the debtor’s] purposes.” *Drumm*, 524 B.R. at 396. Rather, the record reflects that any omissions or misstatements were due to excusable inadvertence. Accordingly, the Court will enter judgment in favor of Steven with respect to Count IV as Coastal has failed to meet its burden of proof with respect to this claim.

**Count V: Objection to Dischargeability of
Debt Pursuant to 11 U.S.C. § 523(a)(4)—Fraud
and/or Defalcation While Acting in a
Fiduciary Capacity and Embezzlement**

In Count V of the Complaint, Coastal seeks to except its debt from discharge pursuant to § 523(a)(4). Unlike Coastal’s claims under § 727, which focus on denying the Debtors a discharge, Count V and Count VI (discussed below) each seek a determination of the dischargeability

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of the debt owed by the Savages to Coastal. While it is undisputed that the Debtors owe Coastal a sum of money based on the July 28, 2011, guaranty executed by each of the Debtors, the amount that is presently owed was not explicitly articulated in the Complaint nor was it established at trial. And Coastal did not call any witnesses from Coastal who may have provided clarity on this issue. Nonetheless, the Court can take judicial notice of Coastal's claim filed in the Debtors' Bankruptcy, which alleges that Coastal was owed \$932,152.233 as of November 1, 2017. POC 17. The Court also takes judicial notice that Coastal has already received an interim distribution in the Sky-Skan case and may receive a final distribution at some future date.²³

The Bankruptcy Code provides in § 523(a)(4) that:

A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

23. In Coastal's Brief, Coastal cites a motion in the main bankruptcy case that was granted by the Court (Bk. No. 17-11140-BAH, Doc. No. 1063) and asserts that "Coastal subsequently received a distribution of \$144,644.85 pursuant to a settlement of various claims with the SSI Chapter 7 Trustee in November 2021, including its claim in the SSI case. Thus, Coastal was owed no less than \$787,507.48 after receipt of its SSI distribution" (footnote omitted). On December 17, 2021, the Court did approve an interim distribution that authorized \$144,644.85 to be paid to Coastal (Bk. No. 17-11140-BAH, Doc. No. 1108).

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11 U.S.C. § 523(a)(4). Coastal originally sought to except its entire debt from discharge “for fraud or defalcation while acting in a fiduciary capacity” or for “embezzlement.” In the Summary Judgment Order, the Court ruled that Coastal had not established the Debtors were acting in a fiduciary capacity with respect to Coastal.²⁴ For that reason, only Coastal’s embezzlement claim remains.

Common law provides that embezzlement is “the fraudulent conversion of the property of another by one who is already in lawful possession of it.” *Sherman v. Potapov (In re Sherman)*, 603 F.3d 11, 13 (1st Cir. 2010) “[T]o amount to embezzlement, conversion must be committed by a perpetrator with fraudulent intent.” *Id.* To be successful on a claim seeking to except a discharge for embezzlement under § 523(a)(4), Coastal must establish:

1. the relevant property was rightfully in the possession of a non-owner;
2. the non-owner appropriated the property for a use other than for which it was intended; and
3. the circumstances indicate fraud.

24. The argument in Coastal’s Brief—that it “has amply established that, in this case, the Savages knowingly and impermissibly violated State Court orders requiring them to hold funds in trust for Plaintiff’s benefit”—does not withstand scrutiny. The Court previously ruled in the Summary Judgment Order that “[t]here is no express or technical trust here.” Doc. No. 111 at 17. The Court cannot understand why Coastal nonetheless continues to argue that there was a trust relationship between the parties, within the scope of § 523(a)(4).

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Amsol, Inc. v. Jaworski (In re Jaworski), 2004 BNH 005, 15 (citing *TransAmerica Comm. Fin. Corp. v. Littleton (In re Littleton)*, 942 F.2d 551, 555 (9th Cir. 1991)).

To succeed on its embezzlement claim in Count V, Coastal must establish that the “relevant property” was rightfully in the possession of “a non-owner.” Coastal has not proven that any of the property at issue²⁵ was in the possession of a non-owner. As the Court stated in the Summary Judgment Order, it is basic corporate law that corporations operate through their officers. *See* RSA 293-A:8.41. The property was Sky-Skan’s property at all times. Coastal simply had a lien on the property.²⁶ Because

25. Coastal never clearly articulated at trial or in Coastal’s Brief exactly what property was allegedly embezzled by the Debtors. Sky-Skan owes Coastal money based on a loan agreement executed by Sky-Skan. The Savages owe Coastal money based on a guaranty of that debt. Coastal is apparently arguing that monies Sky-Skan did not turn over between August and November 2017, in accordance with various state court orders, were somehow embezzled by the Debtors, and that these funds are the “relevant property” for purposes of its § 523(a)(4) claim. The Court disagrees. As discussed above, the funds remained Sky-Skan’s property even after the state court entered its orders, pending the ultimate disposition of that property under the applicable provisions of UCC Article 9. And once the Sky-Skan chapter 11 commenced, those funds (as proceeds of accounts in which Coastal—and the IRS—claimed a security interest) were subject to the preemptive provisions of §§ 361 and 363 of the Bankruptcy Code with respect to their use.

26. The state court never held that the property was Coastal’s, but only that it was collateral securing Sky-Skan’s and the Debtors’ obligations. The state court ordered on September 22, 2017, that Coastal could proceed to secure and/or move the collateral, take

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the property was never Coastal's property, Coastal has not established and cannot establish that any of the debt that the Debtors owe to Coastal should be excepted from discharge under § 523(a)(4). For that reason, the Court finds in favor of the Debtors on Count V.

**Count VI: Objection to Dischargeability of Debt
Pursuant to 11 U.S.C. § 523(a)(6)—Malicious Injury**

In Count VI, Coastal seeks to except the debt that the Debtors owe to it pursuant to § 523(a)(6), which provides:

A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity.

To be successful on a claim under § 523(a)(6), Coastal must prove:

1. the creditor suffered an injury;
2. the injury was the result of the debtor's actions;

possession of all bank accounts, and conduct a secured party sale of the collateral pursuant to NH RSA 382-A:9-610. It never stated that Coastal "owned" the property, but rather that Coastal could take possession of the collateral. In the Court's view, it was up to Coastal to take affirmative steps to do that and, unless and until it sold or otherwise disposed of the property, the property remained Sky-Skan's. While Coastal may have asked Sky-Skan to turn over various property (which appears disputed with respect to the events of October 31, 2017, and November 1, 2017), and the state found that the Debtors failed to do so, this does not amount to embezzlement.

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3. the debtor intended to cause the injury or there was a substantial certainty that the injury would occur; and
4. the debtor had no just cause or excuse for the action resulting in injury.

Kirk v. Burrows (In re Burrows), 2017 BNH 002, 13 (citing *B.B. v. Bradley (In re Bradley)*, 466 B.R. 582, 587 (B.A.P. 1st Cir. 2012) (quoting *Hermosilla v. Hermosilla (In re Hermosilla)*, 430 B.R. 13, 22 (Bankr. D. Mass. 2010)); *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998)).

Upon the state court's consideration of Coastal's motion for contempt and immediate injunctive relief, the state court, on November 1, 2017, did "direct[] the defendants and their counsel [to] turn over all funds in the Provident Bank account and the receivable checks [to] be delivered immediately to Plaintiff and [ordered] that the Hillsborough County Sheriff be given authority to assist Plaintiff in gaining possession of such receivable checks." On November 6, 2017, the state court found that "the defendants did not comply with the plaintiff's request to take possession of collateral as provided by both the security agreement and this court's previous orders." For that reason, the state court held the Debtors in contempt.²⁷ The court ordered the Debtors to pay Coastal's fees and costs and doubled the fees "for the intentional

27. As of November 1, Sky-Skan was in chapter 11, and the automatic stay obviously prohibited Coastal from asserting its claim against Sky-Skan in the state court.

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contemptuous actions by the defendants.” Based on these events, Coastal seeks to except the Debtors’ obligations to it from discharge under § 523(a)(6).

The first issue in a § 523(a)(6) claim is whether the creditor suffered an injury. By finding the Debtors in contempt it appears the state court found that Coastal was injured. But the extent of that injury is not clear from the state court order, nor is it clear from the trial record. Coastal did not present any documentary or testimonial evidence as to the amount it was owed as of the date of trial, or how and to what extent it may have been harmed as a result of the Debtors’ actions.²⁸ As noted earlier, Coastal did not call any of its representatives to testify at trial, forgoing the opportunity to adduce evidence concerning the extent of its claimed injury. Further, despite being raised as an issue in the Summary Judgment Order, Coastal did not present clear evidence as to what ultimately happened to the collateral that Sky-Skan did not turn over in accordance with the November 1, 2017, state court order.

In addition to these inadequacies, the Court finds that Coastal has not demonstrated that the fourth element of its claim under § 523(a)(6) has been satisfied, i.e., whether the Debtors had “no just cause or excuse” for failing to turn over Sky-Skan funds (funds which served as collateral securing Coastal’s debt). The Debtors testified at trial that they were acting on the advice of counsel with respect to

28. As noted earlier in footnote 23, Coastal contends in Coastal’s Brief that it was owed no less than \$787,507.48 after receipt of its distribution in the Sky-Skan Bankruptcy.

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monies that were not turned over to Coastal on October 31 and November 1, 2017.²⁹, ³⁰The Debtors argued further

29. These funds included \$14,000.00 that was transferred to Steven's personal account and two separate cash withdrawals of \$5,100.00 and \$8,300.00. Doc. No. 152 at 166. In addition, Sky-Skan wired \$45,855.00 to "Jvckenwood [sic] USA Corporation" and \$45,000.00 to Attorney Tamposi. Doc. No. 151 at 25; Exs. 14 and 22.

30. When testifying about his compliance with the state court orders, Steven testified as follows:

Q. But despite that, you continued—you on behalf the company continued to pay out, you and [your] wife, the amounts that you saw fit [that] the company needed, regardless of what the order said, correct?

A. I guess, but we didn't do—let's just say we always consulted with our attorney about all the affairs of our situation.

Doc. No. 150 at 105-106.

He explained further with respect to the receivable checks that Sky-Skan was holding on October 31, 2017, that they were told not to turn them over:

I found out from Ginger that [Mr. Gleicher] told us not to do anything with the checks, to hold the checks. . . . It was clear we're not doing anything with the checks and that made me confused. . . . Mr. Gleicher told her not to do anything with the checks. . . . We were waiting for permission for guidance, for direction and we got none.

Doc. No. 150 at 150-153.

Steven explained further that when money was transferred on November 1, 2017, "[t]here was transactions that all authorized by Mr. Tamposi," who was Sky-Skan's and the Debtors' attorney at the time. Doc. No. 150 at 152.

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in the Debtors' Brief that Coastal was not even the first position creditor regarding some of the funds in question.³¹ The Court already noted in the Summary Judgment Order that once Sky-Skan filed its chapter 11 petition, all Sky-Skan's property became part of Sky-Skan's bankruptcy estate and would be eligible for distribution to Sky-Skan's creditors in accordance with the Bankruptcy Code.

Viginia testified with respect to payments that Sky-Skan made on November 1, 2017:

Well, we had decided at that point to go ahead and file bankruptcy and Mr. Tamposi said we could go ahead and pay what we needed to pay.

Doc. No. 151 at 26.

She further explained that Sky-Skan did not turn over a \$180,000.00 wire transfer to Mr. Gleicher at Coastal because:

Well, he had just come in and at that point it was our belief that the only thing he wanted to do was liquidate the company and they wanted to keep operating and that's when we decided to file bankruptcy.

Doc. No. 152 at 183.

31. The Court ruled in the Sky-Skan Bankruptcy that the IRS held first priority status with respect to all accounts receivable identified in that proceeding with the exception of one \$600.00 account (*Piampiano v. Coastal Capital, LLC (In re Sky-Skan Incorporated)*, Bk. No. 17-11540-BAH, Adv. No. 17-1080-BAH (Bankr. D.N.H. Sept. 29, 2021), Doc. No. 222). On December 17, 2021, the Court approved an interim distribution with \$417,952.24 being paid to the Internal Revenue Service and only \$144,644.85 being paid to Coastal (Bk. No. 17-11540-BAH, Doc. Nos. 1063 and 1108).

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Based on these factors, the Court finds that the Coastal has not established that the Debtors did not have just cause and excuse for failing to turn over funds to Coastal. For that reason, the Court finds that Coastal has not met its burden of proving that any of its debt should be excepted from discharge under § 523(a)(6). The Court therefore finds in favor of the Debtors with respect to Count VI.

IV. CONCLUSION

For the reasons set forth in this opinion, the Court will enter a judgment ruling in favor of Coastal on Count III of the Complaint and in favor of the Debtors on Counts I, II, IV, V, and VI of the Complaint. The Debtors' discharges will be denied pursuant to 11 U.S.C. § 727(a)(5). This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

ENTERED at Concord, New Hampshire.

Date: November 28, 2023

/s/ Bruce A. Harwood
Bruce A. Harwood
Chief Bankruptcy Judge

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**APPENDIX E — ORDER OF THE UNITED STATES
BANKRUPTCY COURT FOR THE DISTRICT OF
NEW HAMPSHIRE, DATED FEBRUARY 20, 2024**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

Bk. No. 17-11760-BAH
Chapter 7

IN RE: STEVEN T. SAVAGE AND
VIRGINIA A. SAVAGE,

Debtors.

Adv. No. 21-1006-BAH

COASTAL CAPITAL, LLC,

Plaintiff,

v.

STEVEN T. SAVAGE AND VIRGINIA A. SAVAGE,

Defendants.

ORDER

The Court issued a memorandum opinion (Doc. No. 158) (the “Opinion”) and a final judgment (Doc. No. 160) (the “Judgment”) on November 28, 2023, addressing the remaining claims asserted by Coastal Capital, LLC

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(“Coastal”) in its complaint (Doc. No. 1) (the “Complaint”) against Steven T. Savage (“Steven”) and Virginia A. Savage (together the “Savages” or the “Debtors”), which sought (1) to deny the Debtors their discharges under 11 U.S.C. § 727 and (2) to except Debtors’ obligations to Coastal from discharge pursuant to 11 U.S.C. § 523. The Court entered judgment in favor of the Debtors on Counts I, II, IV, V, and VI of the Complaint and in favor of Coastal on Count III of the Complaint. The Debtors were denied their bankruptcy discharges pursuant to 11 U.S.C. § 727(a)(5) because they could not satisfactorily explain a loss of assets. Specifically, they could not account for the disposition of \$56,653.50 that they received from Sky-Skan Incorporated (“Sky-Skan”), the Debtors’ company, in the year preceding Sky-Skan’s bankruptcy.

On December 12, 2023, within fourteen days of the issuance of the Opinion and the Judgment, the Debtors filed Debtors’ Motion to Alter or Amend Judgment Denying Their Discharges Pursuant to FRBP 9023 or for Relief from Order Pursuant to FRBP 9024 (Doc. No. 164) (the “Motion”). The Motion was supported by a separate memorandum (Doc. No. 164-1) (the “Memo”). Coastal objected to the Motion (Doc. No. 175) (the “Objection”) contending the Debtors have not established a basis on which to provide any relief from the Judgment or to alter or amend it. The Court held a hearing on February 7, 2024, and took the Motion under advisement. For the reasons set forth below, the Motion is denied.

The Debtors request that the Court alter or amend its judgment pursuant to Federal Rule of Bankruptcy

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Procedure 9023, which makes Federal Rule of Civil Procedure 59(e)¹ applicable in bankruptcy proceedings. In the alternative, the Debtors request that the Court grant the Debtors relief pursuant to Federal Rule of Bankruptcy Procedure 9024, which makes Federal Rule of Civil Procedure 60(b)² applicable in bankruptcy proceedings. Rule 59 and Rule 60 are “distinct” as “they serve different purposes and produce different consequences.” *Nieves Guzman v. Wiscovitch Rentas (In re Nieves Guzman)*, 567 B.R. 854, 862 (B.A.P. 1st Cir. 2017).

The First Circuit Court of Appeals recently addressed Rule 59(e) motions, noting that such motions are “generally denied” and that relief is “granted sparingly.” *Botelho v. Buscone (In Buscone)*, 61 F.4th 10, 35 (1st Cir. 2023) (citations omitted); *see also Ramirez Rosado v. Banco Popular De Puerto Rico (In re Ramirez Rosado)*, 561 B.R. 598, 607 (B.A.P. 1st Cir. 2017) (“Courts have consistently

1. Federal Rule of Bankruptcy Procedure 9023 provides in relevant part that “Rule 59 F.R. Civ. P. applies in cases under the Code. A motion . . . to alter or amend a judgment shall be filed . . . no later than 14 days after entry of a judgment.” Federal Rule of Civil Procedure 59(e) provides simply that “[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”

2. Federal Rule of Bankruptcy Procedure 9024 provides in relevant part that “Rule 60 F.R. Civ. P. applies in cases under the Code.” Federal Rule of Civil Procedure 60 provides in relevant part that “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; . . . or (6) any other reason that justifies relief.”

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stated that a motion for reconsideration of a previous order is an extraordinary remedy that must be used sparingly because of the interest in finality and conservation of scarce judicial resources.” (quotations and citations omitted)). The First Circuit Court of Appeals explained that “[t]hey are ‘not the venue to undo procedural snafus or permit a party to advance arguments it should have developed prior to judgment, nor [are they] a mechanism to regurgitate old arguments previously considered and rejected.’” *Buscone*, 61 F.4th at 35 (quoting *Biltcliffe v. CitiMortgage, Inc.*, 772 F.3d 925, 930 (1st Cir. 2014)). “Rather, relief is granted ‘only when the original judgment evidenced a manifest error of law, if there is newly discovered evidence, or in certain other narrow situations.’” *Buscone*, 61 F.4th at 35 (quoting *Biltcliffe*, 772 F.3d at 930).

Despite requesting relief under Rule 59(e) in the Motion, the Debtors’ Memo is devoid of any discussion of Rule 59(e). At the hearing the Debtors seemed to acknowledge that the Memo did not focus on the Rule 59(e) standard. They admitted they were not claiming there was newly discovered evidence. Rather, they argued that the Court has discretion to amend the Judgment. Without citing any legal authority, the Debtors simply argued at the hearing that the Court did not correctly apply the law in its Opinion. The Court stands by its analysis of § 727(a)(5) in the Opinion. The Court finds that the Debtors have failed to establish an intervening change in the controlling law, a clear legal error, or newly discovered evidence. For that reason, the Court concludes there is no basis to alter or amend the Judgment pursuant to Rule 59(e).

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Like Rule 59(e), relief under Rule 60(b) is also “an extraordinary remedy which should be used sparingly.” *Nieves Guzman*, 567 B.R. at 863 (quoting *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006)). Unlike Rule 59(e), Rule 60(b) sets forth specific reasons that justify granting a party relief from a final judgment or order. *Nieves Guzman*, 567 B.R. at 863; *Sharma v. Pappalardo (In re Sharma)*, 647 B.R. 795, 806 (B.A.P. 1st Cir. 2023), *appeal docketed*, No. 23-9002 (1st Cir. Feb. 8, 2023). “Rule 60(b) ‘seeks to balance the importance of finality against the desirability of resolving disputes on the merits.’” *Nieves Guzman*, 567 B.R. at 863 (quoting *Farm Credit Bank of Baltimore v. Ferrera-Goitia*, 316 F.3d 62, 66 (1st Cir. 2003)).

In the Memo, the Debtors refer to two provisions of Rule 60(b): they seek relief from the Judgment under Rule 60(b)(3) “for an opposing party’s misconduct,” and under Rule 60(b)(6) “for any other reason that justifies relief.” With respect to their claim for relief under Rule 60(b)(3), the Debtors contend that the reason that they could not account for the disposition of all of the \$704,075.27 transferred to them by Sky-Skan is because of Coastal’s misconduct. They state that they “did attempt to produce documentary explanations . . . but they were deprived of access to a certain set of Sky Skan’s business records when Coastal removed and disposed of them without first informing anyone that they came into possession of them postdiscovery, and without allowing the defense the opportunity to review any of them before disposing of them.” They argue that “the Savages are being punished for not thinking it was necessary to propound discovery

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requests for documents that Coastal did not possess during discovery, and it was unreasonable to assume that they would at some point find themselves in a position to obtain Sky Skan's business records.”³ The crux of the Debtors' argument is that Coastal bears responsibility for the Debtors' inability to account for the disposition of \$56,653.50 (the so-called “unaccounted funds”). They assert that Coastal came into possession of documents that might have helped the Debtors explain what they did with the money they received from Sky-Skan prior to the Debtors and Sky-Skan both filing bankruptcy in 2017, but did not independently provide those documents to the Debtors.

Specifically, the Debtors reference a colloquy that occurred at a pretrial hearing held on August 31, 2022, in this proceeding,⁴ during which Coastal's attorney recited

3. The Court notes that it issued a pretrial scheduling order on April 20, 2021 (Doc. No. 22), and it permitted fact discovery to take place through September 6, 2021. The discovery deadline was later extended to November 12, 2021 (Doc. No. 40) and then to January 31, 2022 (Doc. No. 67).

4. The following is the colloquy between Mr. Antonelli (Coastal's attorney), the Court, and Mr. Kelly (the Debtors' attorney), as set forth in the transcript filed with the Court on September 16, 2022 (Doc. No. 120 at 15-17).

MR. ANTONELLI: Sure. My recollection is, in the *Sky-Skan* case, the Court entered an order on perhaps the *Sky-Skan* Trustee's motion, but I can't remember. It was—I believe it was stipulated. I didn't handle the argument, I don't think, the oral argument on it. But in sum and substance, there was some sort of agreement

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as to a temporary preservation of records up to a certain point in time, after which the records would be destroyed, the purpose of which was to give Coastal an opportunity to gather records. My recollection is some records were taken over there, that Coastal, in fact, sent over some movers or otherwise moved some records. And then my recollection is that the intended effect was that the Sky-Skan Trustee was going to destroy whatever records weren't picked up. Again, that's my recollection. Obviously, if my recollection is accurate and all those steps actually took place, I suspect there wouldn't be records left, but that's—

THE COURT: Right.

MR. ANTONELLI:—a lot of speculation, so I—

THE COURT: Okay. But that speculation is consistent with my memory, too, Mr. Antonelli, so—but that's just my memory and your memory together. All right. Well—

MR. ANTONELLI: Sure.

...

MR. KELLY: Judge, this is Attorney Kelly. Just one more thing on the commercial condo issue. Are we—given Attorney Antonelli's statements about his recollection of what happened in the *Sky-Skan* case, and relative to whatever there may have been for a deadline or an order regarding preservation and then destruction of documents, can we still—or I don't know if he's still going to find out from his client whether any foreclosure proceedings have begun or have already happened, and whether there's still access. And, you know, I'd also like to know what documents—I can ask Attorney Antonelli this, but I just want to know if we can still—you know, you're still interested in, as I am, to find out the status

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that an agreement had been reached with the chapter 7 trustee in the Sky-Skan bankruptcy case regarding a temporary preservation of records, “the purpose of which was to give Coastal an opportunity to gather them.”

of whether they’ve taken any possession or control over the access to that building.

THE COURT: Well, no, I assume they took possession and control. The question is whether -the question I asked is whether the property had been sold.

MR. KELLY: I don’t know the—they stated that they had taken control or possession. I think what he said was, he doesn’t know.

THE COURT: All right. Well, I don’t know that you need me to mediate that discussion, Mr. Kelly and Mr. Antonelli. There shouldn’t be any secrets about the status of the condominium, whatever it might be, so share what information there is to share, and hopefully that will answer everybody’s questions. And if there’s some dispute that I need to hear about, I’m here to hear it, but I’m not sure why people wouldn’t be able to at least identify what the status of the property is and where the records went without judicial intervention.

MR. KELLY: Okay, thank you.

The Court notes that the Debtors never filed any motion to compel initial disclosures or supplemental disclosures, any motion to re-open discovery, or any other type of motion to bring any dispute to the Court regarding documents or access to Sky-Skan’s business condo, as invited by the Court to do so. Only on January 24, 2023, as the trial approached, did the Debtors file a motion in limine, which motion the Court denied on the grounds that the Debtors had not propounded discovery on Coastal to begin with (Doc. Nos. 128 and 143).

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Coastal's attorney then recited that he believed that some of those records were moved to Sky-Skan's business condominium (which was owned by Steven and from which SkySkan operated), and that the chapter 7 trustee in the Sky-Skan case was going to destroy whatever records that Coastal did not pick up. It is these documents that the Debtors contend they did not have access to and which may have assisted them in explaining what they did with the money Sky-Skan transferred to them before Sky-Skan and the Debtors filed for bankruptcy.⁵ The Debtors state they had no reason to propound discovery requests upon Coastal with respect to Sky-Skan's business records because they knew that Coastal did not possess or control those records at any time prior to the close of discovery, which occurred on January 31, 2022. They state that because Coastal later came into possession of Sky-Skan's records and later disposed of those records, it is somehow Coastal's fault that the Debtors could not produce records with respect to the disposition of \$56,653.50.

The docket of the Sky-Skan bankruptcy case reveals that on June 10, 2021, the Sky-Skan trustee filed a motion seeking authority to destroy certain of Sky-Skan's records (Bk. No. 17-11540-BAH, Doc. No. 938). After a hearing, on August 4, 2021, the Court granted the motion, which

5. The Court notes that this argument is inconsistent with the Debtors' other argument in the Motion, discussed *supra*, i.e., that the Court should have looked to the Debtors' Schedule J and found that the bulk of the unaccounted funds were spent by the Debtors for their personal living expenses. If that were the case, one would not expect to find evidence of the Debtors' personal living expenses in Sky-Skan's books

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permitted the Sky-Skan trustee to destroy certain of Sky-Skan's books and records and to release other books and records to Coastal (Bk. No. 17-11540-BAH, Doc. No. 986). Coastal was permitted to take possession of the records it so chose no later than August 18, 2021. In addition, the Court required Coastal to do the following: "the documents will be accessible to the Trustee and his counsel, that the documents will be maintained in a secured location so that confidential information is properly protected, and that the documents will be confidentially destroyed at the expense of recipient immediately after they are no longer needed for the purposes underlying the objection [related to the dispute over priority between Coastal and the IRS]." The Court notes that the Savages and their then-counsel of record were each served with the trustee's motion on June 10, 2021 (Bk. No. 17-11540-BAH, Doc. No. 938). They were also served with a copy of the Court's order granting the motion on August 6, 2021 (Bk. No. 17-11540-BAH, Doc. No. 989). Therefore, the Debtors were aware (or should have been aware) in the summer of 2021 that Coastal would be taking possession of various Sky-Skan records. The Debtors did not object to the motion, or appeal (or seek to appeal) the Court's order.

Based on the timeline above, it appears that Coastal came into possession or control of various Sky-Skan books and records *prior* to the close of discovery in this adversary proceeding, as Coastal was to take possession of these books and records no later than August 18, 2021, and discovery did not close in this adversary proceeding until January 31, 2022. Thus, it appears that the Debtors had many months to propound discovery once Coastal

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had taken possession of various books and records of Sky-Skan from Sky-Skan's trustee, but the Debtors failed to do so.

The Debtors admitted at the hearing on the Motion that they made no formal discovery requests of Coastal at any time during this adversary proceeding.⁶ They argued in their Memo that "Coastal did not possess or control the 'records' during discovery, so there was no reason to propound a discovery request to Coastal for those records before discovery closed." While the Court believes the Debtors' timeline of events is inaccurate (i.e., Coastal did not come into possession of Sky-Skan's records *after* the close of discovery on January 31, 2022, but rather it came into possession of them no later than August 18, 2021), the Court questions how the Debtors could or would be certain that Coastal was not in possession of any discoverable material unless and until the Debtors made a formal request for documents pursuant to Federal Rule of Bankruptcy Procedure 7034 and Federal Rule of Civil Procedure 34, or served Coastal with interrogatories pursuant to Federal Rule of Bankruptcy Procedure 7033 and Federal Rule of Civil Procedure 33. Because the Debtors failed to serve Coastal with such discovery requests, Coastal would have had no obligation to supplement its responses as required by the discovery

6. The Debtors made the same admission on the first day of trial during the argument on the Debtors' motion in limine. Doc. No. 150 at 7 ("[T]he defendants didn't propound discovery requests.").

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rules.⁷ In the Court's view, the fact that the Debtors failed to propound any discovery on Coastal at any time during this adversary proceeding is fatal to the Debtors' claim for relief under Rule 60(b)(3). Having failed to propound discovery,⁸ the Debtors cannot now complain (having received an adverse ruling) about what records Coastal had or did not have, or that Coastal failed to voluntarily turn over documents. The Court cannot find on this record that Coastal engaged in any misconduct that would

7. The Court acknowledges that Federal Rule of Civil Procedure 26(a)(1)(A), made applicable in bankruptcy by Federal Rule of Bankruptcy Procedure 7026, requires parties to make certain initial disclosures and to supplement them as required by Federal Rule of Civil Procedure 26(e). Presumably Coastal made its initial disclosures as required as the Debtors never filed any motion to compel such disclosures.

To the extent that the records now at issue were in the possession of Sky-Skan's trustee at the time this adversary proceeding was commenced, and not in Coastal's possession, it is undisputed that the Debtors were advised, as explained previously, that Coastal might be taking possession of those records. Therefore, that information was "otherwise . . . made known to the other parties during the discovery process," as provided in Rule 26(e)(1)(A). It also undisputed that the Debtors reviewed those records Memo, "[t]he Savages successfully introduced literally thousands of pages of those relevant business records as evidence at trial."

8. Debtors' counsel has stated that he requested documents from Coastal via email after the August 31, 2022, hearing. It is possible that the documents had been destroyed by that date in accordance with the documents order the Court issued in Sky-Skan's bankruptcy case. In any event, that request was made eight months after the close of discovery.

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warrant granting the Debtors relief from the Judgment pursuant to Rule 60(b)(3).⁹

The Debtors next argue that they should be relieved from the Judgment pursuant to Rule 60(b)(6) “for any other reason that justifies relief.” In particular, the Debtors disagree with the way the Court determined that the Debtors’ unaccounted funds totaled \$56,653.50. They contend that the Court should have examined the Debtors’ Schedule J and determined that much of the \$56,653.50 in unaccounted funds (\$44,968.79 by their calculation) were used toward the Debtors’ monthly household expenses,

9. The Court agrees with Coastal that motions to alter or amend (as well motions for relief from judgment) are not an excuse for a party “to undo its own procedural failures,” such as not issuing a full discovery request to a party who may have custody of relevant documents. *See In re Hanish, LLC*, 570 B.R. 4, 12 (Bankr. D.N.H. 2017).

Further, as Coastal argued in the Objection, “[t]here are two prerequisites to obtaining redress under [Rule 60(b)(3)]. First, the movant must demonstrate misconduct—such as fraud or misrepresentation—by clear and convincing evidence. Second, the movant must ‘show that the misconduct foreclosed full and fair preparation or presentation of [his] case.’ *Karak v. Bursaw Oil Corp.*, 288 F.3d 15, 20-21 (1st Cir. 2002) (quoting *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 923 (1st Cir. 1988)).” Here, as already noted, the Court does not find that Coastal’s moving of documents was misconduct, as Coastal was authorized by a court order to do so. Second, the Debtors have not shown how this supposed “misconduct” prevented their full and fair preparation of the case, when they never made any formal discovery requests and apparently had full access to the documents while they were in the possession of counsel to Sky-Skan’s trustee.

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leaving only \$11,684.71 (again, by the Debtors' calculation) in unaccounted funds. They argue that Coastal "did not call into question or dispute the stated expenses on [S]chedule J, nor question the Savages about the use of the \$8,000.00 of monthly rental income to pay household expenses listed on [S]chedule J."

As Coastal correctly argues in its Objection, that was not Coastal's burden. The Court explained in the Opinion:

A burden-shifting framework applies [when considering a claim under § 727(a)(5)]: if the party seeking to thwart a discharge shows that the debtor has not accounted for previously owned assets or previously earned income, the burden shifts to the debtor to explain the deficiency. *See id.* The debtor's explanation "must be supported by at least some corroboration," and it "must be sufficient to eliminate the need for any speculation as to what happened to all of the assets." *Id.* Something more than vague allusions is required. *See id.*

Opinion at 15 (citing *Harrington v. Simmons (In re Simmons)*, 810 F.3d 852, 860 (1st Cir. 2016), and *Aoki v. Atto Corp. (In re Aoki)*, 323 B.R. 803, 817 (B.A.P. 1st Cir. 2005)). Thus, it was the Debtors' burden to demonstrate what happened to the unaccounted funds. Upon review of the trial transcripts, the Court finds that, during their case, the Debtors never directed the Court or any witness to Schedule J to establish the Debtors' personal expenses. And even if they had done so, what basis would the Court

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have had for concluding that the Debtors' expenses, as of December 20, 2017 (the date of the Debtors' bankruptcy filing, which is the relevant date for Schedule J), were the same expenses the Debtors had in the months leading up to their bankruptcy filing, during the period when Sky-Skan paid them more than \$700,000.00? Further, even assuming that the calculation should have been as the Debtors contend, the Debtors admit that there were still \$11,874.71 in unaccounted funds. That is enough to warrant denial of the Debtors' discharges for the reasons articulated in the Opinion.

Notwithstanding that there were unaccounted funds that warrant a finding under § 727(a)(5) that the Debtors failed to satisfactorily explain a loss or deficiency of assets, the Debtors argue that it would "just and fair" (thus implicating Rule 60(b)(6)) for the Court to "find that only \$11,684.71 is non-dischargeable" and to permit the Debtors to discharge all of their remaining debt. Without citation to any legal authority, the Debtors contend that the Court can somehow transform an objection to discharge claim under § 727 into a non-dischargeability claim under § 523, simply on the basis that it would just and fair to do so. As Coastal argued in its Objection, the Debtors have failed to cite any legal authority for their argument "that merely reducing the amount missing, under their calculation, somehow entitles them to [a] discharge."¹⁰ While Rule 60(b) gives the Court the power to vacate judgments or orders under very narrow circumstances where appropriate to

10. In fact, the Debtors failed to cite in their Memo any case law interpreting Rule 60(b) (or Rule 59(e)) whatsoever.

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achieve justice, *Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 59 v. Superline Transp. Co., Inc.*, 953 F.2d 17, 19 (1st Cir. 1992), the Debtors have not established those circumstances here.

In summary, the Court concludes that the Debtors have not established any intervening change in law or newly discovery evidence that would warrant altering or amended the Judgment pursuant to Rule 59(e), nor have they established they are entitled to relief from the Judgment under Rule 60(b)(3) “for an opposing party’s misconduct” or under Rule 60(b)(6) “for any other reason that justifies relief.” For those reasons, the Motion is denied.

ENTERED at Concord, New Hampshire.

Date: February 20, 2024

/s/ Bruce A. Harwood
Bruce A. Harwood
Chief Bankruptcy Judge

**APPENDIX F — RELEVANT STATUTORY
PROVISIONS**

11 U.S.C. § 727, Part 1 of 5

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

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

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(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the

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debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title [11 USCS § 1141], or under section 14, 371, or 476 of the Bankruptcy Act [former 11 USCS § 32, 771, or 876], in a case commenced within 8 years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title [11 USCS § 1228 or 1328], or under section 660 or 661 of the Bankruptcy Act [former 11 USCS § 1060 or 1061], in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

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(A) 100 percent of the allowed unsecured claims in such case; or

(B)

(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter [11 USCS §§ 701 et seq.];

(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 [11 USCS § 111], except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) [11 USCS § 109(h)(4)] or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.); or

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(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

(A) section 522(q)(1) [11 USCS § 522(q)(1)] may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) [11 USCS § 522(q)(1)(A)] or liable for a debt of the kind described in section 522(q)(1)(B) [11 USCS § 522(q)(1)(B)].

(b) Except as provided in section 523 of this title [11 USCS § 523], a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter [11 USCS §§ 701 et seq.], and any liability on a claim that is determined under section 502 of this title [11 USCS § 502] as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title [11 USCS § 501], and whether or not a claim based on any such debt or liability is allowed under section 502 of this title [11 USCS § 502].

(c)

(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

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(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;

(3) the debtor committed an act specified in subsection (a)(6) of this section; or

(4) the debtor has failed to explain satisfactorily—

(A) a material misstatement in an audit referred to in section 586(f) of title 28 [28 USCS § 586(f)];
or

(B) a failure to make available for inspection all necessary accounts, papers, documents,

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financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28 [28 USCS § 586(f)].

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of—

(A) one year after the granting of such discharge; and

(B) the date the case is closed.