NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In the Matter of	:	Case No. 09-23709/JHW
Frederick W. Braman, III	:	
Debtor	:	**OPINION**

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Before the court are the motions of the Chapter 13 trustee and a creditor, T&C Leasing, Inc., to dismiss the debtor's Chapter 13 petition, pursuant to 11 U.S.C. § 1307(c), or in the alternative, to deny confirmation of the debtor's modified Chapter 13 plan, pursuant to 11 U.S.C. § 1325(a), on the ground that neither the petition nor the plan were filed in good faith. Because I conclude that the debtor did not file his petition or plan in good faith, the

debtor's Chapter 13 case will be dismissed.

FACTS AND PROCEDURAL HISTORY

A. Pre-petition History.

The debtor has been employed for the last 14 years by International Entrees Corporation, also known as Braman Enterprises, Inc., a gourmet frozen food home delivery company. The corporation is owned primarily by the debtor's non-filing wife, Kirsten E. Coffey. Ms. Coffey holds 85% of the shares of the corporation.[1] The debtor serves as the president of the company, and he is the only employee of International Entrees at the present time. The company retains the services of an accountant, Henry Rosenblatt, and conducts business through "customers", who are akin to salesmen and independent contractors, and who purchase frozen food from the company, operate the company's fleet of refrigerated vehicles, and travel door-to-door to sell frozen products to retail customers.

International Entrees operates primarily on a cash basis. The company

[1] The remaining shares are held by the wife of the corporate accountant, Yolanda Rosenblatt (5%), the debtor's brother-in-law, Colin Coffey (5%), and the debtor's sister and brother-in-law, Lisa and Louis Vastardis (5%).

maintains a warehouse, owns and/or leases a fleet of refrigerated vehicles, and makes purchases from various food suppliers. The "customers" make payment to the company in cash, by check or by credit card, while most of the payments made by the company for food supplies are paid in cash by the debtor either directly to the vendor or by deposit into the vendor's bank account. The company pays its "customers" in cash and by check.[2] Significant amounts of cash are regularly handled by the debtor. The debtor withdraws most of the money in the company's bank account on a daily basis, either by counter withdrawal, ATM withdrawal, or by writing checks to himself or to cash.

On January 22, 2008, International Entrees entered into an equipment lease agreement with T&C Leasing, Inc., one of the objectors herein, wherein the company became indebted to T&C Leasing in the amount of $59,783.04. The indebtedness was collateralized by several of International Entrees' refrigerated vehicles, and was personally guaranteed by the debtor. In connection with the transaction, the debtor provided a Personal Financial Statement ("PFS") to T&C Leasing dated December 5, 2007, in which he represented his net worth to be $861,000, and his annual income to be

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[2] The debtor explained that if the "customer" had a $5,000 order that cost him $3,400 to purchase from International Entrees, the "customer" "runs the credit card [from the retail customer] into my business, and I have to give him his change, because he made a profit on that transaction." T88-9 to 11 (11/24/2009).

$104,000.[3]

During the time period of 2000 through 2007, the average annual revenue for International Entrees was approximately one million dollars a year. In early 2008, the business "dropped off, precipitously."[4] Gross receipts for International Entrees dropped from $1,050,102 in 2007 to $720,234 in 2008. Exh. D-3.

The company defaulted on the T&C Leasing loan in early 2008. As a consequence, T&C Leasing repossessed its collateral and obtained a judgment, entered on September 11, 2008, in the amount of $62,391.83, plus attorneys' fees and costs of $13,391.69, against both International Entrees and the debtor, jointly and severally. T&C Leasing pursued collection efforts against the debtor into 2009, ultimately serving a writ of execution on the county sheriff to levy on the debtor's personal property.

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[3] T&C Leasing filed an adversary proceeding contesting the dischargeability of the debt due from the debtor on the ground that the debt was incurred by use of a materially false financial statement. 11 U.S.C. § 1328(a)(2) and § 523(a)(2)(B). The adversary proceeding has not yet been litigated, but the factual circumstances pertaining to the financial statement reflect upon the credibility and good faith of the debtor, and will be detailed further, infra.

[4] T84-2 (12/22/2009).

B. Bankruptcy History.

On May 28, 2009, the debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code. In amended pleadings, the debtor listed as an asset a condominium in Denver, Colorado valued at $325,000, with a secured claim against the property of $289,000 held by Saxon Mortgage. In Schedule B, Personal Property, the debtor listed no cash on hand, no personal checking or savings accounts, an IRA in the amount of $1,200 that was liquidated in 2008, no stock or other corporate interests, and a 2007 Jeep vehicle worth $18,150, with a $42,050 secured claim against the vehicle held by Chrysler Finance. The debtor's residence in Haddonfield, New Jersey, which is titled to the debtor's spouse, was not listed. While the debt due to T&C Leasing was the only unsecured creditor initially listed by the debtor, in amended pleadings, the debtor scheduled approximately $125,000 in unsecured debt.

On Schedules I & J, the debtor listed his gross annual income as $50,000, his net monthly income at $3,398.74, and his monthly expenses at $3,298.00, leaving a net monthly income of $100.74 available for plan payments.[5] The mortgage payment included in the debtor's expenses

[5] The debtor's spouse does not earn any income.

apparently pertained to the mortgage on the debtor's Colorado condominium. The mortgage on the Haddonfield residence was not originally listed as an expense. On November 12, 2009, the debtor amended his Schedule I to reflect rental income from the Colorado condominium of $2,000 a month, and he amended Schedule J by modifying several of his expenses and including both mortgage payments, which resulted in a revised net monthly income of $253.74.

The debtor's original Chapter 13 plan proposed to make payments of $100 a month for 36 months to be paid primarily to unsecured creditors pro rata. The debtor intended to keep his Denver condominium and to make regular payments on account of the Saxon mortgage outside of his plan. He also proposed that International Entrees would continue to make the loan payments on his personal vehicle to Chrysler Financial. On October 20, 2009, the debtor filed a modified Chapter 13 plan that proposed to pay $250 a month for 36 months, to be paid pro rata to unsecured creditors. The increase in plan payments was apparently intended to reflect the fact that he was paying approximately $300 more to Saxon Mortgage then he was collecting in rent from the Colorado condominium, and he sought to compensate unsecured creditors for the difference. The plan continued to provide for payment of the Haddonfield mortgage by the debtor, and payment to Chrysler Finance by

International Entrees.

T&C Leasing filed several objections to the confirmation of the debtor's plan. Among the creditor's objections was the allegation that the debtor had failed to list all of his assets in his petition, because he listed over $800,000 in assets on his Personal Financial Statement, which was completed about 18 months earlier, while the assets listed in his petition were valued at significantly less. The creditor also proposed that the debtor understated his gross income on his schedules, again citing to the debtor's Personal Financial Statement, which listed his annual income from International Entrees at $80,000, and which was augmented by an annual rental income of $24,000 from the Colorado condominium. As further support for its focus on the debtor's income, T&C Leasing cited the significant amounts of cash that the debtor handled in the normal course of business for International Entrees (including many checks made out to him personally, which he cashed), the fact that the debtor showed little income in the six months prior to the filing but was still able to pay his bills, and the fact that the debtor's explanation that he liquidated certain assets to fund daily living expenses was not noted on the Statement of Financial Affairs and did not add up to the amounts necessary to maintain expenses. T&C Leasing claimed that the debtor either certified false financial information in order to induce T&C Leasing to enter into a leasing

arrangement or that he was concealing income and assets from his creditors and the bankruptcy estate. T&C Leasing also objected to the debtor's payment of $2,310 per month toward the Denver condominium mortgage while only contributing $100 per month toward his plan.

The Chapter 13 Standing Trustee's original motion to dismiss the debtor's case, based on the debtor's failure to provide the documents requested at the 341 First Meeting of Creditors, was subsequently withdrawn when many of the documents were provided.[6] Thereafter, the trustee filed an objection to confirmation, listing discrepancies in the incomes noted for the debtor and his spouse, objecting to the payment of the mortgage on the Colorado condominium, and claiming first that the plan to pay $100 per month for 36 months, and then to pay $250 per month for 36 months, on account of $125,000 in unsecured debt, should not be confirmed.

In response to the objections of the creditor and the Chapter 13 Standing Trustee, the debtor denies that he has failed to disclose assets or that he has misrepresented his income to the court, the trustee and his creditors. He asserts that he has filed his case and his plan in good faith, that his plan

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[6] Certain of the documents, including profit and loss statements from International Entrees, were never provided. Missing pages of corporate bank accounts were not supplied until the second day of trial.

meets all Chapter 13 requirements, and that the plan should be confirmed.

DISCUSSION

A. Good Faith Filing.

Section 1307(c) provides that a Chapter 13 case may be dismissed "for cause." 11 U.S.C. § 1307(c). The phrase "for cause" is not defined in the statute, but courts have concluded that "cause" includes a lack of good faith in filing a petition under Chapter 13 of the Bankruptcy Code. See Marrama v. Citizens Bank of Mass., 549 U.S. 365, 373, 127 S. Ct. 1105, 1111, 166 L.Ed.2d 956 (2007) ("Bankruptcy courts . . . routinely treat dismissal for prepetition bad-faith conduct as implicitly authorized by the words 'for cause.'"); In re Myers, 491 F.3d 120, 125 (3d Cir. 2007) ("A bankruptcy filing made in bad faith may be dismissed 'for cause' under 11 U.S.C. § 1307(c), although § 1307(c) does not explicitly mention the good faith requirement."); In re Caola, 422 B.R. 13, 16 n.3 (Bankr. D.N.J. 2010); In re Dahlgren, 418 B.R. 852, 855 (Bankr. D.N.J. 2009) ("The Third Circuit recognizes lack of good faith as 'cause' for purposes of Section 1307.").

In In re Lilley, 91 F.3d 491, 496 (3d Cir. 1996), the Third Circuit joined

the Seventh, Ninth and Tenth Circuits to hold that a "lack of good faith in filing is sufficient cause for dismissal under section 1307(c)." See also In re Goddard, 212 B.R. 233, 237 (D.N.J. 1997). Recognizing that good faith "'is a term incapable of precise definition,'" the Third Circuit concluded that the assessment must be made on a "case-by-case basis in light of the totality of the circumstances." Id. (quoting and citing to In re Love, 957 F.2d 1350, 1355 (7th Cir. 1992)). See also In re Smith, 286 F.3d 461, 465 (7th Cir. 2002). The assessment, by necessity, is a fact intensive determination. In re Myers, 491 F.3d 120, 125 (3d Cir. 2007). In making this determination, courts have considered, among other factors:[7]

> (1) The nature of the debt;
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> (2) The timing of the petition;
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> (3) How the debt arose;
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> (4) The debtor's motive in filing the petition;
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> (5) How the debtor's actions affected creditors;
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> (6) The debtor's treatment of creditors both before and after the petition was filed; and
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> (7) Whether the debtor has been forthcoming with the bankruptcy court and the creditors.

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[7] As part of the totality of circumstances review, the Lilley court "expressly reject[ed] one of the factors identified by the Seventh Circuit in In re Love: the question of whether the debt would be non-dischargeable in a Chapter 7 proceeding." In re Lilley, 91 F.3d at 496 n2.

In re Goddard, 212 B.R. at 238 (citing to Lilley, 91 F.3d at 496; Love, 957 F.2d at 1357). See also In re Myers, 491 F.3d at 125; In re Falotico, 231 B.R. 35, 40 (Bankr. D.N.J. 1999). In Marrama, the Supreme Court did not "articulate with precision what conduct qualifies as 'bad faith' sufficient to permit a bankruptcy judge to dismiss a Chapter 13 case or to deny conversion from Chapter 7," 549 U.S. at 375 n.11, 127 S. Ct. at 1112 n.11, but the Court did remark that "[i]t suffices to emphasize that the debtor's conduct must, in fact, be atypical." Id.

The criteria to determine whether good faith exists for purposes of a section 1307(c) dismissal are similar to the criteria to determine good faith in confirming a Chapter 13 plan under section 1325(a). See In re Dahlgren, 418 B.R. 852, 857 (Bankr. D.N.J. 2009) ("The same basic standards apply for determining good faith under Section 1325 as under Section 1307."); In re Uzaldin, 418 B.R. 166, 174 (Bankr. E.D.Va. 2009). Section 1325(a)(3) requires that a debtor's Chapter 13 plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). See Marrama v. Citizens Bank of Mass., 549 U.S. 365, 373, 127 S. Ct. 1105, 1111, 166 L.Ed.2d 956 (2007) ("lack of good faith in proposing a Chapter 13 plan is an express statutory ground for denying plan confirmation"); In re Tamecki, 229 F.3d 205, 209 n.1 (3d Cir. 2000) ("The Bankruptcy Code does require that repayment or reorganization plans . . . be proposed in good faith."). Courts that have

addressed the section 1325(a)(3) good faith requirement have fashioned various criteria similar to those under section 1307(c) in an attempt to provide a "statement of 'some of the factors that a court may find meaningful in making its determination of good faith.'" In re Caldwell, 851 F.2d 852, 859 (6th Cir. 1988) (quoting In re Estus, 695 F.2d 311, 317 (8th Cir. 1982)). See In re Dahlgren, 418 B.R. 852, 857 (Bankr. D.N.J. 2009). For example, courts have considered:

> (1) the debtor's income;
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> (2) the debtor's living expenses;
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> (3) the debtor's attorney's fees;
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> (4) the expected duration of the Chapter 13 plan;
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> (5) the sincerity with which the debtor has petitioned for relief under Chapter 13;
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> (6) the debtor's potential for future earning;
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> (7) any special circumstances, such as unusually high medical expenses;
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> (8) the frequency with which the debtor has sought relief before in bankruptcy;
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> (9) the circumstances under which the debt was incurred;
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> (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt;
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> (11) the burden which administration would place on the trustee;
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> (12) the statutorily-mandated policy that bankruptcy provisions be

construed liberally in favor of the debtor.

In re Alt, 305 F.3d 413, 419 (6th Cir. 2002). See, e.g., In re Smith, 286 F.3d 461 (7th Cir. 2002); In re Young, 237 F.3d 1168, 1174 (10th Cir. 2001).

B. Factual Circumstances.

To establish the debtor's lack of good faith in filing his Chapter 13 case and in proposing his Chapter 13 plan, the objectors focus primarily on the contention that the debtor has misrepresented his income both before and after filing, and has proposed a relatively nominal Chapter 13 plan to pay a very small dividend to unsecured creditors which is not reflective of his ability to pay. In fact, the objectors' concerns are borne out by the record presented.

The tax returns of the debtor and his spouse for the years preceding the bankruptcy filing show the following amounts of adjusted gross income:

2005	$70,480
2006	$96,320
2007	- 0 -
2008	$ 4,167

While the debtor's spouse earned a small income during 2005 and 2006 as a fitness administrator, the debtor has been the only income earner since 2006,

and his sole source of income has been derived from International Entrees. No rental income from the Colorado condominium was noted on the tax returns during 2005 through 2008, although the debtor believed that he may have had a tenant during 2006 and 2007, as well as during the Democratic National Convention for one week in 2008. At the trial, the debtor produced a three month lease on the Colorado condominium, commencing on October 3, 2009, which provided for a monthly rental of $2,000, and a month-to-month renewal by the tenant thereafter.

On the debtor's Amended Chapter 13 Statement of Current Monthly Income (Official Form 22C), the debtor noted an average gross monthly wage of $700 per month for the six month period preceding the filing of the petition on May 28, 2009. On his Schedule I, he noted a gross monthly wage of $4,166.66 ($50,000 annually). The debtor testified that before he filed his bankruptcy petition, he was advised that he needed to receive regular income from the business to show that he could fund a Chapter 13 plan. Together with his accountant, the debtor determined to set his salary at $50,000 per year. The debtor has not received his salary on a regular basis since he filed.

The unanswered question here is how the debtor managed to pay his expenses before he filed for bankruptcy, in light of the fact that he disclosed no

income for 2007, nominal income for 2008, and an average monthly income for the six months prior to filing of $700. The debtor's expenses included $2,310 per month for the mortgage on the Colorado condominium,[8] and $2,278 per month for the Haddonfield home. The combined payments for the two mortgages are approximately $55,000 each year. That number does not take into account all of the other household expenses of the debtor, his spouse and his child. The debtor's Chapter 13 plan does not provide for the curing of arrearages on either the Colorado condominium or the Haddonfield residence. The debtor testified at first that the Colorado mortgage was current, but later corrected himself to reflect that he was nearly three payments behind. The Haddonfield mortgage appears to be relatively current. The debtor emphatically confirmed that his only compensation was from the company, as reported on his tax returns, his Statement of Current Monthly Income, and his Schedule I. However, the various explanations offered by the debtor to explain the discrepancy between his income and expenses did not withstand scrutiny, and other circumstances established on this record strongly suggest that the debtor has not been forthright in providing accurate and complete information about his past and present income.

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[8] In his Amended Schedule J, the debtor lists the monthly expense of the mortgage on the Colorado condoninium as $2,150, but the Saxon Mortgage Statement (Exh. D-8) shows a required monthly payment of $2,310.

1. Liquidation of Assets and Family Contributions.

The debtor explained that in 2008, he and his spouse liquidated assets, including several IRA's, and borrowed from an insurance policy ($8,838)[9] to support themselves. When confronted with the fact that the total achieved from the liquidated assets and the borrowing was only approximately $26,000, the debtor testified that family members, particularly his brother Mark, paid six or seven mortgage payments on his behalf. He confirmed that he had no other money coming in from any other source,[10] but recalled on the second day of testimony, a month later, that his mother-in-law paid the Haddonfield mortgage approximately four or five times. He also recalled on the second day of trial that he received between $20,000 to $25,000 in gifts from family members,[11] but no documentation of these gifts was produced, and the record does not reflect whether these gifts included the payments advanced by the debtor's brother and mother-in-law. The only other source of funds mentioned was a personal injury settlement received by the debtor in 2005 in the approximate amount of $120,000, but the testimony reflected that all but

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[9] Initially, the debtor testified that over $22,000 was borrowed from the insurance policy, but when he was shown documents, he acknowledged that the lower amount, borrowed in late 2007, was correct.

[10] T112-24 (11/24/2009).

[11] T50-22 to T51-2 (12/22/09).

$20,000 to $25,000 of the settlement was used for company needs. Even with contributions from family members, the liquidation of assets, and the borrowing of funds, there is no way to reconcile the nominal income shown by the debtor from 2007 through the date of filing with his family's personal expenses during that time.

As to the debtor's family expenses, it should also be noted that when the debtor first filed Schedule J, he listed only the mortgage expense on the Colorado property. He did not list the mortgage expense on the Haddonfield property. Even if family members were providing occasional assistance with that expense, the debtor testified that he recognized his obligation to support his family, including his obligation to pay the family's residential mortgage, but he provided no explanation for why he initially omitted the expense from his schedule. When he amended Scheduled J to include both mortgages, he reduced other expenses sharply. For instance, he reduced the food expense for his family of three from $433 to $322, and the transportation expense from $145 to 45. These facts bespeak a manipulation of income and expenses that does not reflect an honest and forthright presentation of the debtor's actual circumstances.

2. Failure to Report Company Contribution Toward Debtor's Personal Expenses.

The debtor failed to report that International Entrees has actually been making substantial payments on account of his and his family's personal expenses. Except for acknowledging the payments by the company to Chrysler Financial for his vehicle, the debtor denied that the company paid any other personal bills for him or his family. At trial, he was confronted with several payments, including three non-business related plane tickets to Colorado for his family, and utility bills for his home, that were paid by the company. After trial, counsel for T&C Leasing, with access to bank records first produced on the final day of trial, was able to compile a list of personal expenses paid by the company, including the mortgage and utilities for the Haddonfield property, airline tickets, cable television, clothing, gym membership, condominium fees and internet service for the Colorado condominium, health and life insurance and personal credit cards for the debtor and his wife. Dkt. # 56, Exh. E. These expenses totaled $25,531.22, and were paid during the six month period prior to filing. These payments constituted income to the debtor, but were not reported as such on the Statement of Current Monthly Income.[12]

[12] Mr. Rosenblatt also testified mistakenly that the company does not pay the debtor's personal expenses. T169-22 to 24 (12/22/2009). That testimony was discredited at trial as well as in the post-trial submissions. See Dkt. #56, Exh. E.

3. Failure to Adequately Account for Substantial Amounts of Company Cash.

The difficulty with pinpointing the debtor's income with certainty is compounded by the fact that hundreds of thousands of dollars routinely pass through the debtor's hands in the regular course of operating the company, and the cash is not adequately accounted for. I accept at the outset the basic proposition that most of the food suppliers of the company require cash payments either before or on delivery. The problem is that the debtor's attempts, through his own testimony and the testimony of his accountant, Henry Rosenblatt, to reconcile the amounts received by him in cash with the amounts paid out to vendors and "customers" in cash were woefully inadequate. The debtor receives cash from the company through checks made out to him, checks made out to cash, and withdrawals from the company's bank account either directly or through ATM transactions. As well, the debtor receives some cash directly from "customers". In the six month period prior to filing, the records submitted reflect that the debtor handled at least $221,966.17 in cash.

When the issue of cash withdrawals from the company first arose during discovery, prior to the first day of trial, the focus was on checks made out to the debtor from the company during the six months prior to filing, which

amounted to $164,154.09. This total did not include the cash handled by the debtor from direct withdrawals and ATM transactions from the company bank account, or checks made out to cash which he cashed. Exhibit D-1 was presented by the debtor as an informal accounting in an attempt to connect the funds that the debtor obtained by cashing the checks made out to him with the specific vendors that the proceeds were allegedly used to pay. The exhibit was prepared by Henry Rosenblatt. The expenses purportedly paid with the proceeds from those checks totaled $168,947.08. To support the connection between the expenses paid with the checks that were cashed, the debtor provided copies of invoices and associated documents from various vendors. Exh. D-2.[13] In most cases, the checks written out to the debtor and cashed by him did not match the particular invoice listed on Exhibit D-1, and none of the checks noted the vendor or vendors who were the intended recipients of the check proceeds. It was acknowledged that the company did not maintain a ledger or any other business record tracing and connecting the cash to the invoices. Instead, Exhibit D-1 represents the debtor's attempt to recreate how the cash was probably applied. A comparison of the amounts of each check

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[13] Counsel for T&C Leasing represented that his office totaled the invoices included in Exhibit D-2, provided in support of the expenses listed in D-1, and with the exception of four invoices which were illegible, the expenses totaled approximately $138,000. T8-11 to 17 (12/22/2009). The court attempted to total the invoices as well. Discounting duplicate copies and 2 illegible invoices, the expenses totaled approximately $164,678.

with the amounts of each invoice ostensibly connected with that check evidences a complete disconnect between the checks and the invoices. As well, at least one instance was identified in which the vendor, listed on Exhibit D-1 as having been paid in cash, was actually paid in part by check.[14]

These discrepancies, inconsistencies and the general inability to trace the proceeds of the checks made payable to and cashed by the debtor undercut the intended purpose of Exhibit D-1. Instead of supporting the debtor's claims, the confusion introduced by the documents cast substantial doubt upon the use of the proceeds from the various checks cashed by the debtor. Complicating matters further, subsequent testimony revealed that Exhibit D-1 was not an exhaustive analysis of all of the cash handled by the debtor and allegedly used to pay the corporation's expenses. Rather, the amount of cash handled by the debtor was augmented by documentation derived from the company's bank statements that indicated that the debtor handled over $54,000 in additional cash. The sources for this additional cash included checks from the company made out to cash, direct withdrawals from the

[14] The invoices to Ocean Frost Corporation were dated April 3, 21 and 27, 2009, and totaled $2,734. Two of the invoices were shown by other records to have been paid by check and one was paid in cash. Exhibit D-1 lists the same three invoices as having been paid by the debtor after cashing checks made payable to himself. The two checks made payable to Ocean Frost totaled $1,852. The debtor acknowledged the mistake during his testimony.

company's bank account and ATM withdrawals by the debtor.

Following the identification of the discrepancies in Exhibits D-1 and D-2, Mr. Rosenblatt, testifying on the second day of trial one month later, explained that the original analysis was intended to account for only the checks made payable directly to the debtor. Before the second day of trial, Mr. Rosenblatt revised the history of expenses paid in cash to reflect an additional $56,020 paid to "customers" of the company during the six months prior to the filing. See Exh. D-11.[15] No documentary proof was submitted to establish that these cash disbursements to customers were actually paid,[16] and dates for these disbursements to each of the customers were provided. There was no direct connection offered to tie particular checks or cash withdrawals to specific disbursements made on a given day to a particular customer. Mr. Rosenblatt acknowledged that he did not actually disburse the funds to the customers himself, he was not at the company premises frequently, and he only recorded

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[15] The revised compilation also augmented the cash received by the debtor from all sources, for a new total of $219,365.65, a number that largely corroborates the amount of $221,966.17 documented by the objectors as the amount handled by the debtor in cash during the applicable period.

[16] Rosenblatt testified that the disbursements to customers are detailed on daily reconciliation sheets submitted by the customers which he routinely adds up and notes as a lump sum figure in the computerized records maintained for the company. Although he offered to produce the reconciliation statements, none were actually produced.

the disbursements from the daily reconciliation records.[17]

Further negative light is shed on these numbers by the debtor's feeble attempt to explain, the first time he was confronted with the numbers, what he did with the nearly $50,000 of additional cash he handled during the period in question beyond the amounts paid out to the vendors listed in Exhibit D-1. The debtor testified as follows:

> Q What are the additional expenses that you paid? Do you know?
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> A Oh, yeah. There is – there is other vendors. I have a $500 bond payment monthly that I pay in cash to one person. I have a $625 monthly cash payment I make to a bond holder. I mean, it's very -- if you would have asked for it, we would have provided this. It's another 30,000, $40,000. If you asked for it, we would have done it.[18]

In the revised listing of expenses paid in cash, there is no listing of either the $500 monthly payment or the $625 monthly bond payment. Nor are additional vendors listed. Conversely, during his initial testimony on the first day of trial, the debtor did not mention any significant cash payments to customers. In contrast, on the second day of trial, the payments to customers were presented as routine. As counsel for the objector T&C Leasing correctly points out, if the

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[17] T161-21 to T162-2 (12/22/2009).

[18] T94-5 through 12 (11/24/2009).

cash handled by the debtor is understated, or the expenses paid in cash by the debtor are overstated, then the debtor may be retaining cash that he has not accounted for in his bankruptcy case.

4. Misrepresentations on Debtor's December 2007 Personal Financial Statement.

The credibility of the debtor's representations regarding his past and present income was also negatively impacted by the misrepresentations acknowledged by the debtor to have been set forth in his Personal Financial Statement as submitted to T&C Leasing in December 2007.[19]

The PFS described the net worth of Frederick Braman to be approximately $861,000. The completed form listed the debtor's assets as including $7,500 in cash, $30,000 in an IRA or other retirement account, $15,500 in cash surrender value of a life insurance policy, $895,000 in real estate, $75,000 in other personal property and $400,000 in other assets, for a

[19] As noted above, T&C Leasing has filed an adversary proceeding challenging the dischargeability of the objection due from the debtor on section 523(a)(2)(B) grounds. The element of reliance is contested, based on the debtor's assertion that the transaction was agreed to and even partially funded before the Personal Financial Statement was filled out. What is not contested is that certain information in the statement does not accurately reflect the status of the debtor's financial affairs at the time it was completed. The non-dischargeability issue has not yet been adjudicated.

total of $1,423,000.[20] The real estate included two properties: 115 Briarcliff Court, Haddonfield, New Jersey, the debtor's principal residence, valued at $445,000, with a mortgage remaining in the amount of $241,000, and 1625 Larimer Street, Denver, Colorado, a condominium valued at $450,000, with a mortgage in the amount of $291,000. Both mortgages were described as current, with the debtor identified as the "Title Holder". The "Other Personal Property" of $75,000 apparently encompassed the household goods maintained at the two properties. The category of "Other Assets" was described as an "Investment in International Entrees Corp. $400,000." The debtor's salary was noted as $80,000 a year, and his income was augmented by $24,000 in annual rental income, for a total of $104,000 in gross income.

The PFS misrepresented the debtor's financial circumstances in several material ways. First, the Haddonfield real estate, with equity of over $200,000, represented to be owned solely by the debtor, is actually titled in the name of the debtor's spouse. The debtor acknowledged that the Haddonfield residence was never titled to him. Second, the $400,000 "investment" in International Entrees by the debtor is highly suspect as an asset of the debtor. The debtor and his accountant, Henry Rosenblatt, testified that this "investment" reflected

[20] In contrast, the debtor's initial schedules listed only $349,925 in total assets.

the approximate amount of money loaned by the debtor to the company over a period of years. Although the debtor claimed that there were documents, ie. notes, evidencing the loans, he later testified that he couldn't remember "if they all were documents or not but that's what we estimate the cumulative total ($400,000)" to be. Rosenblatt confirmed the existence of the "loan", but stated that he couldn't "really substantiate the full amount. It's an estimate. It probably is a -- a low estimate, actually."[21] Rosenblatt acknowledged that no promissory note with specific terms documenting any part of the loan existed, and "[w]e did not have a very good handle on it and there was no really [sic] history of it that I would ascertain."[22] He now considers the collectability of the note to be "very close to zero."[23]

Third, the debtor's gross annual income of $104,000 was highly questionable. As noted, according to the debtor's 2007 tax returns, the debtor received no income from the company. At trial, upon prompting from his counsel, the debtor suggested that the $80,000 of annual income noted on the PFS represented the salary he had actually received in 2006 of approximately $82,000. However, it must be noted that the PFS was completed in December

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[21] T124-13 to 15 (12/22/2009).

[22] T124-5 to 7 (12/22/2009).

[23] T196-12 (12/22/2009).

of 2007. As to the rental income, there is no indication in the debtor's tax returns that the Colorado condoninium was rented during 2007.

The debtor attempted to distance himself from accountability for the representations made in the PFS by contending that it was his accountant who actually prepared the document used by T&C Leasing. He claimed that he did not review the material in the statement. He simply signed it.[24] He stated that "when Henry Rosenblatt (his accountant) gives [documents] to me . . . I just sign them."[25] He stated that he did this because he believed that Rosenblatt "takes the meticulous time to prepare documents."[26]

The debtor's contentions in this regard were dramatically contradicted by Mr. Rosenblatt's testimony. Mr. Rosenblatt stated that the debtor gave him various documents which he then used to prepare the financial statement. He explained that he included the Haddonfield property on the statement because he thought at the time that it was owned by the debtor or possibly jointly owned. He claimed that he had never seen the deed and did not realize that it was actually owned by the debtor's wife. Most strikingly, he testified that he

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[24] T52-17 to 19 (11/24/2009).

[25] T53-1 to 2 (11/24/2009).

[26] T53-4 (11/24/2009).

relied upon the debtor for the property valuations used in the PFS, signifying that the debtor did not merely sign the PFS without review, but actually participated in its completion.

5. Debtor's Testimony Regarding the Collection of Rent on the Colorado Condominium.

Not only was the debtor's testimony contradictory and inconsistent, but the testimony occasionally painted a bizarre picture of the debtor's conduct. For instance, the debtor testified that the Denver property is currently occupied by a tenant on a short term lease, renewable on a month to month basis, with 30 days notice required prior to termination by the tenant. He initially claimed that it was his practice to travel to Colorado once a month to receive and then cash the rent checks at the Colorado bank used by the renter.[27] He then revised his explanation to clarify that he had only been there once so far.[28] He claimed that the flight was free because he used his frequent flyer miles to cover the cost of the trip.[29] He explained that he used the money from the

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[27] T41-25 to 42-5 (12/22/2009). According to Exhibit D-8, as the statement date of May 18, 2009, the debtor was delinquent for at least two mortgage payments and a total amount of $7,165.64 was due.

[28] T42-16 (12/22/2009).

[29] T44-20 to 23 (12/22/2009).

cashed rent check to get a money order or a cashier's check to then pay the Denver mortgage.[30] He stated that he made up the difference between the mortgage and the rent from his "own money" ($2,310 - $2,000 = $310).[31] The debtor's testimony in this regard is highly implausible and further impairs his credibility.

CONCLUSION

In light of the many contradictions and inconsistencies reflected above, the conclusion is inescapable that a critical component to assess the lack of good faith in filing has been established on this record. The debtor has not been forthcoming with the bankruptcy court and his creditors about the reporting of his past and present income. In re Lilley, 91 F.3d at 496. The debtor's responsibility to present the status of his income to the court and to the creditors fully, honestly and fairly is fundamental to the opportunity of the debtor to avail himself of the benefits of the Chapter 13 process. The debtor has failed to abide by this basic requirement. There can be little doubt that the serious credibility problems that have been outlined above, coupled with multiple contradictions and inconsistencies, support a finding that the debtor's

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[30] T44-3 to 9 (12/22/2009).

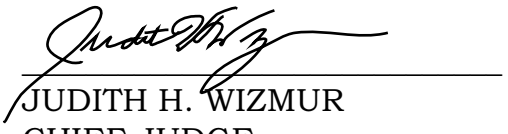
[31] T44-15 to 17 (12/22/2009).

failure to honestly represent his income qualifies as bad faith in filing the Chapter 13 case, which is sufficient to require the dismissal of his Chapter 13 case.

Coupled with the proposed treatment of the debtor's unsecured creditors in his Chapter 13 plan, offering them a nominal return of less than a 1% dividend, the presentation of the objectors has confirmed that the debtor has not petitioned for relief under Chapter 13 with sincerity and good faith. The objectors have established that there is sufficient cause for dismissal under 11 U.S.C. § 1307(c).

Counsel for T&C Leasing is requested to provide an order in conformance with this decision.

Dated: January 5, 2011



JUDITH H. WIZMUR
CHIEF JUDGE
U.S. BANKRUPTCY COURT