

DEC 02 2016

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No.	CC-15-1316-FDKi
)		
6	BENJAMIN LEE TAYLOR and JANET)	Bk. No.	2:13-bk-35470-BR
	LOUISE TAYLOR,)		
7)	Adv. Pro.	2:14-ap-01163-BR
	Debtors.)		
8	_____)		
)		
9	BENJAMIN LEE TAYLOR,)		
)		
10	Appellant,)		
)		
11	v.)	MEMORANDUM*	
)		
12	KAREN GOOD, DBA Judgment)		
	Enforcement Bureau,)		
13)		
	Appellee.)		
14	_____)		

Argued and Submitted on November 17, 2016
at Pasadena, California

Filed - December 2, 2016

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Barry Russell, Bankruptcy Judge, Presiding

Appearances: Dennis Winters of Winters Law Firm argued for
Appellant Benjamin Lee Taylor; Michael A. Wallin
of Slater Hersey and Lieberman LLP argued for
Appellee Karen Good.

* This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have, see Fed. R. App. P. 32.1, it has no precedential value, see
9th Cir. BAP Rule 8024-1.

1 Before: FARIS, DUNN,** and KIRSCHER, Bankruptcy Judges.

2 **INTRODUCTION**

3 Appellant and chapter 7¹ debtor Benjamin Lee Taylor appeals
4 from the bankruptcy court's denial of discharge under
5 §§ 727(a) (2) (A), (2) (B), and (4) (A). He argues that the court
6 erred because the property that he allegedly concealed was not
7 his property or estate property, and the omissions and
8 misstatements relating to the property were not material. We
9 find no merit to Mr. Taylor's arguments. Accordingly, we AFFIRM.

10 **FACTUAL BACKGROUND**

11 Mr. Taylor is the sole shareholder of a number of businesses
12 registered in the state of California: Taylor Concrete Pumping
13 Corporation ("TCP"), Taylor Transportation, Inc. ("TTI"), Ben
14 Taylor Concrete Co., Taylor Concrete Services, Inc., and Taylor
15 Concrete & Pumping (collectively, "Taylor Entities").

16 Mr. Taylor maintained that TCP is a defunct corporation with
17 no assets that stopped doing business in 2013. He later
18 testified that, as of January 2014, none of the Taylor Entities
19 was doing business.

20 Ms. Good is the assignee of two 2010 state court judgments
21 in excess of \$430,000 against Mr. Taylor and TCP. She initiated
22 collection actions in California state court, including

24 ** The Honorable Randall L. Dunn, United States Bankruptcy
25 Judge for the District of Oregon, sitting by designation.

26 ¹ Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure, and all "Civil Rule" references are to the Federal
Rules of Civil Procedure.

1 conducting judgment debtor examinations. During one of these
2 examinations, she inquired about TTI. Mr. Taylor testified that
3 he had never heard of TTI and did not own it. He also denied
4 owning any other active business besides TCP.

5 Mr. Taylor claimed that the recession severely damaged his
6 business between 2007 and 2009 and that he could not pay
7 creditors, including Ms. Good. He and his wife, Janet Louise
8 Taylor, filed their chapter 7 petition on October 18, 2013. They
9 represented that they only had \$138 in cash on hand and \$1 in a
10 checking account. In their bankruptcy schedules, they disclosed
11 their ownership of TCP, but did not include any other information
12 concerning the Taylor Entities.

13 At a § 341(a) meeting of creditors on December 5, 2013,
14 Mr. Taylor testified that he did not have a personal bank account
15 and that he paid his bills by money order. He was also asked
16 whether TTI had a Bank of America bank account. Mr. Taylor
17 testified that TTI was dissolved and that it did not have a Bank
18 of America bank account.

19 Ms. Good then served a subpoena on Bank of America for
20 documents relating to accounts held in the name of TTI or TCP.
21 Bank of America responded by disclosing information pertaining to
22 an account held by TTI (the "TTI Account"), of which Mr. Taylor
23 is an authorized signer. The account statements provided by Bank
24 of America showed thousands of dollars deposited and withdrawn
25 from the TTI Account each month.²

26
27 ² For example, in the statement for October 2013 (the month
28 in which the Taylors filed for bankruptcy), the ending balance
(continued...)

1 On January 2, 2014, Mr. Taylor testified at a judgment
2 debtor examination in the California superior court that he used
3 the TTI Account to pay his personal bills. He also acknowledged
4 that he owned TTI and was its chief executive officer.

5 Mr. Taylor also changed his prior testimony and stated at a
6 Rule 2004 examination that the TTI Account belonged to TTI, but
7 he used it as an account for TCP because creditors had liens on
8 TCP's bank accounts. He also deposited into the TTI Account
9 checks made to him personally and made withdrawals for both
10 business and personal expenses.

11 In March 2014, Ms. Good filed an adversary proceeding
12 against Mr. Taylor to determine nondischargeability of debt under
13 §§ 523(a)(4), (2)(A), and (6) and to deny discharge under
14 §§ 727(a)(2)(A), (2)(B), (3), (4)(A), and (5).³ In relevant
15 part, Ms. Good asserted that the Taylors were doing business and
16 collecting money under the name of TTI. They opened the TTI
17 Account, which was not reported on their petition or schedules,
18 and used the TTI Account as a depository for checks written to
19 TCP, TTI, Taylor Concrete & Pumping, and Mr. Taylor. She
20 estimated that the checks deposited in the name of TCP exceeded
21 \$203,000 in 2012-13. She said that the Taylors withdrew funds

22
23 ²(...continued)
24 was a paltry \$364.24. However, the beginning balance was
25 \$4,028.75, with deposits totaling \$15,659.53 and withdrawals
26 totaling \$19,308.04. Withdrawals included payments to Kohl's
Department Stores, DirectTV, Netflix, and Experian credit
reporting.

27 ³ The bankruptcy court later granted the Taylors' motion to
28 dismiss the entire complaint as to Mrs. Taylor and the
§§ 523(a)(4) and (2)(A) claims as to Mr. Taylor.

1 from the TTI Account to pay both personal and business expenses.

2 At the trial of Ms. Good's adversary proceeding, Mr. Taylor
3 testified that, because of tax levies and liens attached to his
4 personal bank account and TCP's bank account, "I had no choice
5 but to use the only account I had to deposit checks I received
6 from my concrete work, the account in [TTI]. I did not do this
7 to hide the money from Ms. Good. I did it because it was the
8 only account I had access to."

9 He additionally claimed that he did not make any false
10 statement at the § 341(a) meeting of creditors because he was
11 confused by Ms. Good's questions regarding TTI and the TTI
12 Account.

13 At the conclusion of trial, the bankruptcy court said that
14 the concealment and false statements regarding the TTI Account
15 were sufficient to deny discharge under §§ 727(a)(2) and (a)(4),
16 and therefore it did not need to rule on the § 523 claims or the
17 remaining § 727 claims.

18 On September 1, 2015, the bankruptcy court issued the
19 following findings of fact:

20 3. In connection with his bankruptcy case,
21 defendant intentionally and fraudulently concealed from
22 his schedules and made misstatements regarding a bank
account held by Taylor Transportation, Inc. ("TTI") at
Bank of America.

23 4. Defendant, with the intent to hinder, delay,
24 and defraud his creditors, used the above bank account
25 held at Bank of America as a depository for checks and
26 monies received by Taylor Concrete Pumping Corp., TTI,
and defendant. Defendant also used the funds from this
bank account for his personal expenses while having
concealed its existence from his creditors by failing
to disclose it in his bankruptcy petition.

27
28 Mr. Taylor timely filed his notice of appeal on

1 September 15, 2015. Subsequently, the bankruptcy court entered
2 an amended judgment on April 29, 2016 that included a Civil Rule
3 54(b) certification.

4 **JURISDICTION**

5 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
6 §§ 1334 and 157(b) (2) (J). We have jurisdiction under 28 U.S.C.
7 § 158.

8 **ISSUE**

9 Whether the bankruptcy court erred in denying Mr. Taylor a
10 discharge pursuant to §§ 727(a) (2) (A), (2) (B), and (4) (A).

11 **STANDARDS OF REVIEW**

12 In an action for denial of discharge, we review: (1) the
13 bankruptcy court's determinations of the historical facts for
14 clear error; (2) its selection of the applicable legal rules
15 under § 727 de novo; and (3) its determinations of mixed
16 questions of law and fact de novo. Searles v. Riley
17 (In re Searles), 317 B.R. 368, 373 (9th Cir. BAP 2004), aff'd,
18 212 F. App'x 589 (9th Cir. 2006).

19 De novo review is independent and gives no deference to the
20 trial court's conclusion. Roth v. Educ. Credit Mgmt. Agency
21 (In re Roth), 490 B.R. 908, 915 (9th Cir. BAP 2013).

22 A bankruptcy court clearly errs if its findings were
23 illogical, implausible, or "without support in inferences that
24 may be drawn from the facts in the record." United States v.
25 Hinkson, 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc).
26 Review for clear error is "significantly deferential," and an
27 appellate court should not reverse unless it is left with "a
28 definite and firm conviction that a mistake has been committed."

1 In re Roth, 490 B.R. at 915 (quoting Baker v. Mereshian
2 (In re Mereshian), 200 B.R. 342, 345 (9th Cir. BAP 1996)).

3 DISCUSSION

4 **A. The bankruptcy court properly denied discharge pursuant to** 5 **§ 727(a)(2).**

6 Section 727(a)(2) provides that the bankruptcy court may
7 deny a discharge if:

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

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

13 (B) property of the estate, after the date of the
14 filing of the petition[.]

15 § 727(a)(2).

16 "A party seeking denial of discharge under § 727(a)(2) must
17 prove two things: '(1) a disposition of property, such as
18 transfer or concealment, and (2) a subjective intent on the
19 debtor's part to hinder, delay or defraud a creditor through the
20 act [of] disposing of the property.'" Retz v. Samson
21 (In re Retz), 606 F.3d 1189, 1200 (9th Cir. 2010) (quoting Hughes
22 v. Lawson (In re Lawson), 122 F.3d 1237, 1240 (9th Cir. 1997)).

23 **1. The bankruptcy court did not err in finding that** 24 **Mr. Taylor transferred or concealed his property by** **depositing his money in the TTI Account.**

25 Mr. Taylor's main argument is that the court erred in
26 finding that he concealed or lied about property of the estate,
27 because the TTI Account was not in his name, but rather belonged
28 to one of his companies, TTI.

1 "Most courts conclude that 'property of the debtor' under
2 section 727 does not include property of a corporation the debtor
3 controls, unless the court should pierce the corporate veil and
4 disregard the corporate form." Kane v. Chu (In re Chu), 511 B.R.
5 681, 685 (Bankr. D. Haw. 2014) (citations omitted). The TTI
6 Account, in and of itself, is not property of the debtor or the
7 bankruptcy estate.

8 But the salient question is not whether the TTI Account
9 itself is in Mr. Taylor's name, but whether the money flowing in
10 and out of the TTI Account was Mr. Taylor's property and
11 therefore rightfully a part of his bankruptcy estate. Ms. Good
12 proved at trial that Mr. Taylor used the undisclosed TTI Account
13 as his personal bank account. Mr. Taylor confirmed that he used
14 the TTI Account to deposit checks written to him personally and
15 made withdrawals for personal expenses. Mr. Taylor does not
16 dispute on appeal that the TTI Account contained his personal
17 funds and that he did not disclose the funds or the TTI Account.

18 Accordingly, the property at issue - a portion of the money
19 that passed through the TTI Account - belonged to Mr. Taylor. We
20 find no error with the court's conclusion that Mr. Taylor was
21 using the TTI Account to conceal and transfer his personal
22 funds.⁴

24 ⁴ None of the parties raise the issue of the timing of the
25 transfer and concealment in satisfaction of the separate sub-
26 parts of §§ 727(a)(2). Nevertheless, the record is clear that
27 Mr. Taylor concealed his property both in the year prior to
28 filing his chapter 7 petition (by not disclosing the TTI Account
so as to avoid creditors' liens) and after the bankruptcy filing
(by not including TTI or the TTI Account in his schedules and

(continued...)

1 **2. The bankruptcy court did not err in finding that**
2 **Mr. Taylor had a subjective intent to hinder or delay**
3 **creditors.**

3 Second, we must consider whether the court erred in holding
4 that Mr. Taylor had a subjective intent to hinder, delay, or
5 defraud his creditors.⁵

6 "A debtor's intent need not be fraudulent to meet the
7 requirements of § 727(a) (2). Because the language of the statute
8 is in the disjunctive it is sufficient if the debtor's intent is

9
10 _____

11 ⁴(...continued)

11 denying at the § 341(a) meeting that he was aware of the TTI
12 Account). The record also reveals that Mr. Taylor admitted that
13 he deposited personal funds into the TTI Account and made
14 withdrawals for personal and family expenses, although the timing
15 of those transactions is less clear. At a minimum, the bank
16 statements provided by Ms. Good show that Mr. Taylor made
17 personal deposits and withdrawals for personal expenses during
18 the year prior to his bankruptcy filing, in satisfaction of
19 § 727(a) (2) (A).

20 ⁵ At the conclusion of the trial, the bankruptcy court
21 orally found that Mr. Taylor had an intent to hinder or delay his
22 creditors and stated that it need not reach the question whether
23 he had an intent to defraud. However, in its subsequent written
24 findings (prepared by counsel), it stated that Mr. Taylor had
25 "the intent to hinder, delay **and** defraud his creditors"
26 (Emphasis added.) We need not resolve this discrepancy. The
27 court's written order prevails over any oral findings. See
28 Rawson v. Calmar S.S. Corp., 304 F.2d 202, 206 (9th Cir. 1962)
(stating that the court's oral "comment is superseded by the
findings of fact. The trial judge is not to be lashed to the
mast on his off-hand remarks in announcing decision prior to the
presumably more carefully considered deliberate findings of
fact").

25 Further, the statute is written in the disjunctive, and we
26 may affirm even without a finding of an intent to defraud. See
27 In re Retz, 606 F.3d at 1200. It is clear that Mr. Taylor
28 intended to hinder and delay creditors, so we need not consider
whether the bankruptcy court erred in finding that he also had an
intent to defraud.

1 to hinder or delay a creditor. Furthermore, 'lack of injury to
2 creditors is irrelevant for purposes of denying a discharge in
3 bankruptcy.'" In re Retz, 606 F.3d at 1200 (internal citations
4 omitted); see Wolkowitz v. Beverly (In re Beverly), 374 B.R. 221,
5 242-43 (9th Cir. BAP 2007), aff'd in part, dismissed in part,
6 551 F.3d 1092 (9th Cir. 2008) ("In other words, proof of mere
7 intent to hinder or to delay may lead to denial of discharge.").

8 Whether a debtor intended to hinder, delay, or defraud a
9 creditor is a question of fact reviewed for clear error. Intent
10 may be inferred from surrounding circumstances⁶ or a course of
11 conduct. In re Beverly, 374 B.R. at 243.

12 Mr. Taylor argues that he did not have any intent to hinder,
13 delay, or defraud any creditor. However, he merely repeats or
14 rephrases variations of his argument that the property was not
15 his. He fails to discuss intent or the circumstantial evidence
16 that supported a finding of intent.

17
18 ⁶ Various factors, called "badges of fraud," may constitute
19 circumstantial evidence of intent. In re Beverly, 374 B.R. at
20 243.

21 These factors, not all of which need be present,
22 include (1) a close relationship between the transferor
23 and the transferee; (2) that the transfer was in
24 anticipation of a pending suit; (3) that the transferor
25 Debtor was insolvent or in poor financial condition at
26 the time; (4) that all or substantially all of the
27 Debtor's property was transferred; (5) that the
28 transfer so completely depleted the Debtor's assets
that the creditor has been hindered or delayed in
recovering any part of the judgment; and (6) that the
Debtor received inadequate consideration for the
transfer.

Emmett Valley Assocs. v. Woodfield (In re Woodfield), 978 F.2d
516, 518 (9th Cir. 1992).

1 Even though Mr. Taylor did not admit an intent to hinder or
2 delay, the bankruptcy court could properly infer such intent from
3 the surrounding circumstances and his course of conduct. See
4 In re Beverly, 374 B.R. at 243. There was a close relationship
5 between Mr. Taylor and his wholly-owned businesses; he personally
6 was insolvent and deeply in debt; he did not disclose the TTI
7 Account but transferred personal funds and funds of the Taylor
8 Entities in and out of the TTI Account because his creditors were
9 aware of and had liens against his accounts and the Taylor
10 Entities' other accounts; he withdrew substantial sums of money
11 from the TTI Account for personal use; he denied knowledge of
12 TTI; he denied the existence of the TTI Account; and he only
13 admitted the existence of TTI and the TTI Account when confronted
14 by Ms. Good. See In re Woodfield, 978 F.2d at 518-19 (finding
15 multiple badges of fraud, including "[t]he relationship between
16 the Debtors and the corporation could not have been closer; the
17 Debtors created and operated the transferee corporation. The
18 transfer was admittedly made in anticipation of the bankruptcy
19 filing. The partnership was admittedly in poor financial
20 condition at the time, having defaulted on several
21 obligations."); Beauchamp v. Hoose (In re Beauchamp), 236 B.R.
22 727, 731-32 (9th Cir. BAP 1999), aff'd, 5 F. App'x 743 (9th Cir.
23 2001) (debtor concealed a bank account, and although he later
24 disclosed it, the concealment can be a ground for denial of
25 discharge).

26 The bankruptcy court could infer from these facts that
27 Mr. Taylor intended to hinder or delay his creditors from
28 discovering and seizing the funds in the TTI Account by

1 concealing TTI and, most importantly, the TTI Account. The court
2 found that Mr. Taylor, "with the intent to hinder, delay, and
3 defraud his creditors, used the [TTI Account] as a depository for
4 checks and monies received by [TCP, TTI], and defendant.
5 Defendant also used the funds from this bank account for his
6 personal expenses while having concealed its existence from his
7 creditors by failing to disclose it in his bankruptcy petition."
8 Accordingly, based on the circumstantial evidence, the bankruptcy
9 court did not err in finding that Mr. Taylor had a subjective
10 intent to hinder or delay creditors.

11 **3. Mr. Taylor's misstatements are not shielded by any**
12 **"litigation privilege."**

13 With respect to § 727(a)(2)(A), Mr. Taylor argues that
14 statements made during discovery cannot be used against him
15 pursuant to the Noerr-Pennington doctrine and "litigation
16 privilege." He contends that "[m]isrepresentations made during
17 discovery is not grounds for later action against parties" and
18 that "communications uttered or published in the courts or
19 judicial proceedings are absolutely privileged." These arguments
20 are frivolous.

21 The Noerr-Pennington doctrine relates to "[t]he First
22 Amendment aspect of antitrust law," and "exempts bringing a
23 lawsuit - that is, petitioning a court - from antitrust
24 liability." Freeman v. Lasky, Haas & Cohler, 410 F.3d 1180, 1183
25 (9th Cir. 2005). This is not an antitrust case.

26 The "litigation privilege" that Mr. Taylor cites is a
27 "privilege [that] is a bar to a defamation claim"
28 Lisowski v. Davis (In re Davis), 312 B.R. 681, 690 (Bankr. D.

1 Nev. 2004). This is not a defamation case.

2 To quote the bankruptcy court, "I hate to use the word
3 frivolous but I guess it really fits." We agree and find this
4 defense of Mr. Taylor's false statements completely meritless.

5 **B. The bankruptcy court properly denied discharge pursuant to**
6 **§ 727(a)(4)(A).**

7 Section 727(a)(4)(A) provides that a court shall deny
8 discharge if "(4) the debtor knowingly and fraudulently, in or in
9 connection with the case . . . (A) made a false oath or
10 account[.]" § 727(a)(4)(A).

11 "To prevail on this claim, a plaintiff must show, by a
12 preponderance of the evidence, that: '(1) the debtor made a false
13 oath in connection with the case; (2) the oath related to a
14 material fact; (3) the oath was made knowingly; and (4) the oath
15 was made fraudulently.'" In re Retz, 606 F.3d at 1196 (quoting
16 Roberts v. Erhard (In re Roberts), 331 B.R. 876, 882 (9th Cir.
17 BAP 2005)).

18 Mr. Taylor challenges the bankruptcy court's § 727(a)(4)(A)
19 determination on the basis that the misstatements were not
20 material.⁷ "A fact is material if it bears a relationship to the
21 debtor's business transactions or estate, or concerns the
22 discovery of assets, business dealings, or the existence and
23 disposition of the debtor's property. An omission or

24
25 ⁷ Mr. Taylor's discussion of § 727(a)(4)(A) only addresses
26 the materiality of the false statements. Mr. Taylor waives any
27 other arguments with respect to § 727(a)(4)(A). See Christian
28 Legal Soc. Chapter of Univ. of Cal. v. Wu, 626 F.3d 483, 487 (9th
Cir. 2010). He does not challenge the first, third, and fourth
factors concerning the "false oath," "knowing," and "fraudulent"
requirements.

1 misstatement that detrimentally affects administration of the
2 estate is material." Id. at 1198 (internal citations and
3 quotation marks omitted). "A false statement or omission may be
4 material even if it does not cause direct financial prejudice to
5 creditors." Fogal Legware of Switz., Inc. v. Wills
6 (In re Wills), 243 B.R. 58, 63 (9th Cir. BAP 1999).

7 Mr. Taylor argues that his misstatements were not material
8 because the TTI Account was not his property. While it is true
9 that "omissions or misstatements concerning property that would
10 not be property of the estate may not meet the materiality
11 requirement of § 727(a)(4)(A)[,]" id., we have already rejected
12 this argument as it pertains to the TTI Account, because some of
13 the funds in the TTI Account were estate property.

14 Mr. Taylor also argues that the minimal amount in the TTI
15 Account renders his omissions and misstatements immaterial. We
16 disagree.

17 In determining whether an omission is material,
18 the issue is not merely the value of the omitted assets
19 or whether the omission was detrimental to creditors.
20 Even if the debtor can show that the assets were of
21 little value or that a full and truthful answer would
22 not have directly increased the estate assets, a
23 discharge may be denied if the omission adversely
24 affects the trustee's or creditors' ability to discover
25 other assets or to fully investigate the debtor's
26 pre-bankruptcy dealing[s] and financial condition.

23 6 Collier on Bankruptcy ¶ 727.04[1][b] (Alan N. Resnick & Henry
24 J. Sommer, eds., 16th ed.); see In re Wills, 243 B.R. at 64 ("we
25 conclude that a statement or omission relating to an asset that
26 is of little value or that would not be property of the estate
27 can be material if it detrimentally affects the administration of
28 the estate"). We may also consider materiality in the context of

1 "(1) matters relating to the extent and nature of the debtor's
2 assets; (2) inquiries relating to the debtor's business
3 transactions or estate; (3) matters relating to the discovery of
4 assets; [and] (4) the history of the debtor's financial
5 transactions[.]" In re Wills, 243 B.R. at 62 n.3.

6 Mr. Taylor contends that his false statements were
7 immaterial because the TTI Account only held \$364.24 at the end
8 of October 2013 and \$251.58 at the end of December 2013. But we
9 cannot merely look at a snapshot of the TTI Account on a
10 particular date. Rather, Ms. Good proved that hundreds of
11 thousands of dollars flowed in and out of the TTI Account in the
12 months preceding and following the Taylors' bankruptcy filing.
13 While the ending balances for the months of October and December
14 2013 may have been minimal, the funds deposited into and
15 withdrawn from the TTI Account were not.

16 Furthermore, the flow of money in and out of the TTI Account
17 not only reveals concealed assets, but also shows that Mr. Taylor
18 was working and earning money. By concealing the TTI Account and
19 the flow of his money, Mr. Taylor created a false impression
20 about his financial condition and the value of his business.
21 This information has a direct bearing on the administration of
22 the bankruptcy estate and affects the creditors' and chapter 7
23 trustee's investigation into and evaluation of his pre-bankruptcy
24 dealings and financial condition. See id. at 63. In this
25 respect as well, Mr. Taylor's false statements were material.⁸

26
27 ⁸ Mr. Taylor cites a number of non-binding cases to support
28 his argument that his false statements were immaterial. However,
(continued...)

1 Mr. Taylor argues that his misstatements did not interfere
2 with the administration of his estate. While the chapter 7
3 trustee apparently has not attempted to administer the TTI
4 Account, Mr. Taylor's false statements nevertheless hindered
5 creditors and interfered with the administration of the estate.
6 "The fundamental purpose of § 727(a)(4)(A) is to insure that the
7 trustee and creditors have accurate information without having to
8 conduct costly investigations." In re Retz, 606 F.3d at 1196
9 (citation omitted); see Sergent v. Haverland (In re Haverland),
10 150 B.R. 768, 772 (Bankr. S.D. Cal. 1993) ("A trustee or creditor
11 should not be required to make a costly investigation, as in fact
12 the plaintiffs were forced to do, to uncover the existence of
13 property which the debtor knowingly fails to disclose.").

14 Mr. Taylor concealed the existence of TTI in order to hide

15 _____
16 ⁸(...continued)
17 these cases are readily distinguishable and do not help
18 Mr. Taylor's position. See Merena v. Merena (In re Merena),
19 413 B.R. 792, 817 (Bankr. D. Mont. 2009), aff'd, 2009 WL 4914650
20 (9th Cir. BAP Dec. 10, 2009) (finding the omission of lawsuits
21 immaterial, because, unlike the present case, they "do not
22 concern business dealings or the existence and disposition of
23 [the debtor's] property"); Olympic Coast Inv., Inc. v. Wright
24 (In re Wright), 364 B.R. 51, 75 (Bankr. D. Mont. 2007), aff'd,
25 2008 WL 160828 (D. Mont. Jan. 16, 2008), aff'd, 340 F. App'x 422
26 (9th Cir. 2009) (finding that the omission of business entities
27 was not material because the businesses were all "defunct or
28 valueless" and there was no evidence that "the omitted assets had
any value to the estate"); Sprague, Thall & Albert v. Woerner
(In re Woerner), 66 B.R. 964, 974 (Bankr. E.D. Pa. 1986) (holding
that the debtor's omissions concerning his personal bank account
were not material, where there was no evidence that funds were
going in or out of the account). These cases are not relevant to
the present case, where Mr. Taylor was still earning money and
regularly caused substantial funds (including personal funds) to
flow in and out of a concealed bank account in the name of a
concealed business entity.

1 the TTI Account. At another time, he even denied that TTI had an
2 account at Bank of America. These false statements directly
3 concerned the extent of Mr. Taylor's assets, his business
4 transactions, and the history of his financial transactions.
5 They impeded the creditors and the orderly administration of the
6 bankruptcy estate. As such, the court did not err in finding
7 that the omissions and false statements were material.

8 **CONCLUSION**

9 For the reasons set forth above, the bankruptcy court did
10 not err in denying Mr. Taylor discharge under §§ 727(a)(2)(A),
11 (2)(B), and (4)(A). Therefore, we AFFIRM.