

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In Re:

Case No. 13-29932-SVK

TONY HAYES,

Chapter 7

Debtor.

PAUL G. SWANSON,

Plaintiff,

Adv. Proc. No. 2014 AP_____

vs.

TONY HAYES

5429 Buffalo Ridge Trail
Sturgeon Bay, WI 54235,

Defendant.

COMPLAINT FOR REVOCATION OF DISCHARGE

NOW COMES Paul G. Swanson, the Plaintiff and Chapter 7 Trustee, and respectfully represents as follows:

1. On July 23, 2013, the above named Debtor filed a petition for relief under Chapter 7, Title 11 of the United States Code. The Debtor was granted a discharge herein on October 28, 2013. The case is still open and the trustee is administering assets of the estate.
2. On July 23, 2013, the Debtor filed his bankruptcy Schedules in this case listing all of his assets and all of his liabilities.
3. On August 22, 2013, the Debtor attended the first Meeting of Creditors wherein he testified under oath that he had listed all of his assets and that his Schedules were true and complete.

4. Among those assets listed are 100% interest in Sturgeon Bay Iron & Scrap Metal, LLC, Full Circle Recycling, LLC, and AAAAA Sanitation, LLC. The Trustee has, since he was appointed to the case, taken possession of the assets of the LLCs for the benefit of creditors as it appears there is substantial equity in the same even though the Debtor did not list a value but rather scheduled them as “indeterminate”.
5. Pursuant to 11 U.S.C. § 727(d)(1) or (2), the Trustee may request revocation of the discharge previously granted.
6. The Trustee is in the process of selling the assets of the Debtor's wholly-owned LLC, Sturgeon Bay Iron & Scrap Metal, LLC and, as such, has taken possession of all the assets of that entity. In the course of the investigation by the Trustee and his counsel, certain facts have been revealed concerning missing assets from that entity.
7. Specifically, the entity had an interest in a Caterpillar mini excavator, a Lowboy semi trailer and approximately 20 metal dumpsters for the collection of scrap metal.
8. Through the investigation, it was determined that the Debtor was in possession, personally, of these assets. Despite repeated demands upon the Debtor and his counsel for the return of the assets, the Debtor has failed to do so for no justifiable excuse. Such assets are rightfully the property of the LLC which is property of the estate. Such assets have a significant value.
9. Additionally, during the investigation it was also determined that the Debtor is the title owner to a 1996 Peterbilt semi tractor as the Trustee's counsel observed him driving the same. Once again, despite repeated demands to turn over the semi tractor, the Debtor has failed to do the same.
10. The 1996 Peterbilt semi tractor has, according to the records of the Department of

Motor Vehicles, been titled in the Debtor's name for years . The Debtor omitted the Peterbilt semi tractor from from his schedules. The Peterbilt semi tractor has significant value.

11. Upon information and belief, after the date of the filing of the Petition and while the Debtor was still operating one or more of his LLCs, the entities took in substantial amounts of money, a significant amount of which is not accounted for. Trustee believes that the Debtor is withholding funds which are actually property of either Sturgeon Bay Iron & Scrap Metal, LLC or Full Circle Recycling, LLC, which rightfully belong to those LLCs, both of which are property of the state.
12. The Trustee alleges that the Debtor acquired property that is property of the estate , to wit, property of one of his LLCs and, despite repeated demands to do so, has failed to deliver or surrender of such property to the Trustee.
13. The Trustee has also ascertained that the Debtor materially misrepresented the value of his interest in Sturgeon Bay Iron & Scrap Metal, LLC to the Trustee when he knew that the business and its assets had a substantial value to the estate. The Trustee alleges that this representation or omission rises to the level of fraud and that the Debtor obtained his discharge through such fraud, contrary to 11 U.S.C. § 727 (d)(1).
14. The intentional undervaluation of substantial assets of the Debtor, to wit, his interest in his LLCs, in his Schedules constitutes fraud in fact as does the failure to disclose his ownership interest in a 1996 Peterbilt semi tractor.
15. Such fraud would have prevented the discharge had it been known and timely brought to the attention of the Court.
16. The Trustee did not know of the fraud until approximately July 2014, after the

discharge was granted to the Debtor.

17. The Trustee asserts that this is a core proceeding in accordance with Bankruptcy Rule 7008.

Wherefore, the Plaintiff requests the following relief:

- A. The discharge of the above-named debtor be revoked.
- B. That the Debtor be ordered to account for all property in his hands that belongs to Sturgeon Bay Iron & Scrap Metal, LLC or any one of his LLCs and turn the same over to the Trustee for liquidation for the benefit of creditors of this estate.
- C. For whatever further relief the Court deems equitable under the circumstances.

Dated this 17th day of October, 2014.

By:



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