Opinion Title: 09/28/2012 UNPUBLISHED In re In the Paint, LLC v. Archibald, 10-3057, Judge Mosier.
Body: Creditors filed and adversary proceeding against the Debtor under § 523(a)(2)(A) and § 727(a)(2). Creditors asserted that their debt should be excepted from discharge because the Debtor failed to disclose that he had violated his noncompete agreement when the parties were negotiating a separation agreement. The Creditors also asserted that the Debtor should be denied a discharge because he transferred his equity interest in a business within one year of filing for bankruptcy.Creditors' § 523(a)(2)(A) claim. Held: To prevail on a claim for nondisclosure, the plaintiff must establish that the debtor had a duty to disclose a fact, that the undisclosed fact was material and that the debtor knew the undisclosed fact was material. In addition, the plaintiff must establish that the debtor failed to disclose the fact with intent to deceive the creditor, that the creditor relied on the nonexistence on the fact and that the creditor's reliance was justified. Creditors failed to establish any of the elements under § 523(a)(2)(A) and their debt was therefore dischargeable. Creditors' § 727(a)(2) & (5) claims. Held: To prevail on a § 727(a)(2) claim the plaintiff must establish that a transfer was made with actual intent to hinder, delay or defraud creditors. To prevail on a § 727(a)(5) claim the plaintiff must establish that there was a loss or deficiency of debtor's assets. Absent any evidence that a transfer hindered or delayed a creditor, the transfer of an asset with little or no value did not give rise to a § 727(a)(2) or (5) claim. Debtor was granted a discharge.
File: 560.pdf [1]
Judge: Chief Judge R. Kimball Mosier [2]
Date: Friday, September 28, 2012

Source URL: https://www.utb.uscourts.gov/opinions/opinion-560#comment-0

Links
[1] https://www.utb.uscourts.gov/sites/default/files/opinions/560.pdf
[2] https://www.utb.uscourts.gov/content/chief-judge-r-kimball-mosier