

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

CESAR CEDILLO,

Debtor.

Chapter 7  
Case No. 13-42445-ess

-----X  
WEB HOLDINGS, LLC,

Plaintiff,

Adv. Pro. No. 15-01048-ess

-against-

CESAR CEDILLO,

Defendant.

-----X

**MEMORANDUM DECISION ON WEB HOLDINGS, LLC'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

*Appearances:*

Eric C. Zabicki, Esq.  
Pick & Zabicki LLP  
369 Lexington Avenue  
12th Floor  
New York, New York 10117

*Attorneys for Web Holdings, LLC*

Norma E. Ortiz, Esq.  
Ortiz & Ortiz LLP  
32-72 Steinway Street  
Suite 402  
Astoria, New York 11103

*Attorneys for Cesar Cedillo*

**HONORABLE ELIZABETH S. STONG  
UNITED STATES BANKRUPTCY JUDGE**

**Introduction**

Before the Court is the motion of Web Holdings, LLC (“Web Holdings”) for partial summary judgment on two claims asserted in the Complaint dated April 13, 2015 (the “Summary Judgment Motion”), on grounds that there is no genuine dispute as to a material fact as to each element of these claims and that as a result, Web Holdings is entitled to the entry of judgment as a matter of law.

Web Holdings moves for summary judgment on its claim against the debtor, Cesar Cedillo, arising under Bankruptcy Code Section 727(a)(2), to deny Mr. Cedillo a discharge in his Chapter 7 bankruptcy case, on grounds that Mr. Cedillo transferred all of his right, title, and interest in assets of a hardware store owned by him, within one year of the petition date, and with the intent to hinder, delay, or defraud creditors of his estate, including Web Holdings. And Web Holdings moves for summary judgment on its claim against Mr. Cedillo arising under Bankruptcy Code 727(a)(4), to deny Mr. Cedillo a discharge here, on grounds that Mr. Cedillo, knowingly and fraudulently, in connection with his bankruptcy case, made false oaths and accounts.

Mr. Cedillo opposes Web Holdings’ Summary Judgment Motion on grounds, among others, that he has been forthcoming with respect to his financial condition in connection with this bankruptcy case, and that any errors and omissions in his Schedules and Statements were inadvertent and unintentional and do not provide a basis for the harsh remedy of denial of his bankruptcy discharge. And at a minimum, Mr. Cedillo argues, Web Holdings has not shown that there is no genuine dispute as to a material fact as to whether he acted with intent to defraud his creditors, or that he knowingly and fraudulently made a false statement in this bankruptcy case.

### **Jurisdiction**

This Court has jurisdiction over this adversary proceeding pursuant to Judiciary Code Sections 157(b)(1) and 1334(b), and the Standing Order of Reference dated August 28, 1986, as amended by the Order dated December 5, 2012, of the United States District Court for the Eastern District of New York. In addition, this Court may adjudicate these claims to final judgment to the extent that they are core proceedings pursuant to Judiciary Code Section 157(b), and to the extent that they are not core proceedings, pursuant to Judiciary Code Section 157(c) because the parties have stated their consent to this Court entering a final judgment. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1940 (2015) (holding that in a non-core proceeding, a bankruptcy court may enter final orders “with the consent of all the parties to the proceeding.”).

### **Background**

#### **Mr. Cedillo's Chapter 7 Bankruptcy Case**

##### **The Petition**

On April 24, 2013 (the “Petition Date”), Cesar Cedillo filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code. That same day, Alan Nisselson was appointed as the Chapter 7 Trustee.

##### **The Schedules and Statements**

On May 8, 2013, Mr. Cedillo, under the penalty of perjury, filed Schedules and Statements in connection with his bankruptcy case.<sup>1</sup>

---

<sup>1</sup> See Case No. 13-42445, ECF No. 12. Unless stated otherwise, all references to documents correspond to Adv. Pro. No. 15-01048.

Mr. Cedillo does not list any real property on his Schedule A – Real Property. He lists personal property totaling \$13,853 on his Schedule B – Personal Property. Specifically, in response to Question 13, Mr. Cedillo lists a five percent ownership interest in “Katy & Tania” valued at \$1.00, and in response to Question 18, he lists a 2012 tax refund valued at \$4,000. In response to Question 21, “other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims,” Mr. Cedillo lists two items of personal property. These are an action by him against Web Holdings pending in the New York Supreme Court, Kings County, valued at \$1.00, and a note from NY Electric Supplies LLC (“NY Electric”) dated October 1, 2012, for \$50,000, for the sale of inventory and fixtures from Kevin & Richard Hardware Corp. (“K&R Hardware”), also valued at \$1.00. Case No. 13-42455, Schedule B, ECF No. 12, at 3. And Mr. Cedillo lists his interest in “machinery, fixtures, equipment, and supplies used in business” in the aggregate amount of \$7,500. *Id.*

On August 6, 2013, Mr. Cedillo filed an amended Schedule B. His amended Schedule B omits descriptions of his personal property that were included in his initial Schedule B filed on May 8, 2013.

On his Schedule E – Creditors Holding Unsecured Priority Claims, Mr. Cedillo lists one creditor, the New York State Department of Taxation & Finance (“New York State”), as holding an unsecured priority claim in the aggregate amount of \$150,000. On his Schedule F, he lists several creditors holding unsecured, nonpriority claims, including a judgment in favor of Carver Federal Savings Bank (“Carver”) in the amount of \$166,447.29, and an unsecured, nonpriority claim held by Web Holdings in an unknown amount.

Mr. Cedillo does not list any co-debtors on his Schedule H – Codebtors. On his Schedule I – Current Income of Individual Debtor, he states that he was employed as a plumber for one

week, but does not provide his exact dates of employment. He also states that he received other monthly income in the amount of \$600, and lists his combined average monthly income as \$2,600. He does not identify any contributors. Mr. Cedillo lists expenses totaling \$2,600 on his Schedule J – Current Expenditures of Individual Debtor, and these expenses include food, clothing, taxes, “payment to roommate for Rent, Utilities, Phone and Food,” “Personal Care and Grooming,” and “Vehicle Fuel and Maintenance.” Case No. 13-42455, Schedule J at 1-2.

Mr. Cedillo also filed a Statement of Financial Affairs. In response to Question 18, he identifies four businesses in which he had an interest within six years preceding the Petition Date. These are Kathy & Tania Inc., 654 Myrtle Ave. Corp., 1111 Willoughby Ave. Realty Corp., and Troutman Realty Corp. In response to Question 10, Mr. Cedillo lists the transfer of a hardware store to NY Electric. In response to Question 19, Mr. Cedillo identifies Humbert Suremott as having kept his books of accounts and records within the two years preceding his filing for bankruptcy.

On August 6, 2013, Mr. Cedillo filed an amended Statement of Financial Affairs. He amended his response to Question 18, concerning businesses in which he had an interest within six years preceding the Petition Date, to include an interest in Kevin & Richard Plumbing & Heating Serv., and also updated the status or disposition of the suits and administrative proceedings in which he is or was a party within one year preceding the Petition Date to include Carver’s state court action against him. Mr. Cedillo also updated his description of *Web Holdings, LLC v. Steal Corp., et al.*, Index No. 41979-2007, from “unknown,” to “judgment.” Case No. 13-42445, Stmt. of Fin. Affairs at 2; Am. Stmt. of Fin. Affairs at 2.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.