1-1-2024

The Continuing Problem of Continuing Concealment – Ignoring the Language and Policy of § 727(a)(2)(A)

Laura B. Bartell
Wayne State University, l.bartell@wayne.edu

The Continuing Problem of Continuing Concealment – Ignoring the Language and Policy of § 727(A)(2)(A)

by

Laura B. Bartell[*]

Individual debtors who file for bankruptcy protection under chapter 7 of the Bankruptcy Code[1] are entitled to receive a discharge unless one of the grounds for denying a discharge set forth in § 727(a) is established. Section 727(a)(2) of the Code directs the court to deny a discharge if:

> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred. removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed –
>
> (A) property of the debtor, within one year before the date of the filing of the petition; or
>
> (B) property of the estate, after the date of the filing of the petition.[2]

For many years courts have applied the doctrine of "continuing concealment" to deny discharges to chapter 7 debtors who took an act to conceal property more than one year before the filing date and continued to reap the rewards of that concealment during the one-year period.[3] In this article I suggest that the doctrine of "continuing concealment" is not justified by the language of § 727(a)(2) (or its predecessor provision in the Bankruptcy Act of 1898[4]) and should be rejected.

I will first set out the statutory history of § 727(a)(2), followed by a description of the case law interpreting the term "concealed," and the

---

[*] Professor of Law, Wayne State University Law School. My thanks to Kathryn Polgar for her research help.

[1] 11 U.S.C. §§ 101–1532. (hereinafter the "Code").

[2] 11 U.S.C. § 727(a)(2).

[3] *See generally* 6 RICHARD LEVIN & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 727.02[2][b] (16th ed. 2024).

[4] Bankruptcy Act of 1898, Pub. L. No. 55-541, 30 Stat. 544, codified at 11 U.S.C. §§ 1–1200 (repealed 1978).

development of the concept of "continuing concealment." I will then discuss what I think is wrong with the doctrine of continuing concealment as applied to the discharge provision. There are four parts to this argument. First, I maintain that the definition of "conceal" does not include the types of transactions described as supporting continuing concealment. Second, the statute permits denial of discharge only if the debtor has concealed property of the debtor, yet the cases dealing with continuing concealment often do not involve concealment of property of the debtor. Third, the statutory limit on the time within which the debtor must have concealed property is not a statute of limitations, but an element of the act that bars discharge, and Congress never made the act a continuing one. Fourth, the inclusion of the word "concealed" in the context of the other prohibited acts in section 727(a)(2) makes clear that it refers to the debtor's act of concealing property, not the property's state of being concealed. This interpretation is bolstered by the inclusion of the one-year period applicable to those acts. Therefore, I conclude that the continuing concealment doctrine has no basis in the language or policy of the discharge provisions of the Code and should be jettisoned by the courts.

I. THE STATUTORY HISTORY OF THE EXCEPTION TO DISCHARGE FOR CONCEALMENT

As originally enacted, the Bankruptcy Act focused on concealment in multiple contexts. For example, a bankruptcy petition could be filed against a person only if that person was "insolvent"[5] and if the petitioning creditors could establish that the person had committed an "act of bankruptcy" within

[5] The definition of "insolvent" labelled a person insolvent if the aggregate of a person's property "exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors" at a fair valuation was insufficient to pay his creditors. Bankruptcy Act § 1(15). Other provisions allowed for the avoidance of certain preferential transfers made or judgments entered while the debtor was insolvent within four months before the filing of a petition, *id.* § 60a, b; liens obtained while the debtor was insolvent that would work a preference or if the benefitted party had reasonable cause to believe the debtor was insolvent, *id.* § 67c; and setoffs or counterclaims purchased or transferred to a creditor after the petition was filed or within four months before with knowledge or notice that the bankruptcy was insolvent or had committed an act of bankruptcy, *id.* § 68b.

the preceding four months.[6] One of those acts existed if a person "conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay or defraud his creditors" within the four-month period.[7]

Among the bankruptcy crimes created by the Bankruptcy Act was one for having "knowingly and fraudulently . . . concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy."[8]

With respect to the discharge, the Bankruptcy Act also provided in § 14b for a bankrupt to obtain a discharge upon timely application[9] "unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which condition might be ascertained."[10] The term "conceal" was defined in § 1(22) of the Bankruptcy Act to "include secrete, falsify, and mutilate."[11]

When the Bankruptcy Act was amended in 1903, the language of § 14b(2) was modified slightly.[12] Four additional grounds for denying discharge were added, including one that for the first time directed the court to deny a discharge if the applicant "at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed,

---

[6] Bankruptcy Act § 3b.

[7] *Id.* § 3a. Two of the other acts of bankruptcy turned on actions taken while the person was "insolvent." Section 3(a)(2) labelled as an act of bankruptcy a person having "transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors" and § 3(a)(3) including a person having "suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference." *Id.* Proof that the party proceeded against was not "insolvent" at the time the petition was filed against him was a "complete defense" to the bankruptcy proceedings. *Id.* § 3(c).

[8] *Id.* § 29b.

[9] Application could be made "after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt." *Id.* § 14(a).

[10] *Id.* § 14b.

[11] *Id.* § 1(22).

[12] The revised clause (2) read "with intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which such condition might be ascertained." Act of Feb. 5, 1903, ch. 487, § 4, 32 Stat. 797.

destroyed, or concealed any of his property with intent to hinder, delay, or defraud his creditors."[13]

In December 1924 the President of the American Bar Association (ABA) appointed a Special Committee on Practice in Bankruptcy Matters to consider, among other things, proposing amendments to the Bankruptcy Act "to lessen abuses" that they perceived on the part of the debtors, "especially in the more populous centers of business and commercial activity."[14] The Special Committee prepared a bill which was endorsed by the ABA, passed in substantially the same form by Congress, and signed into law in 1926.[15] Key amendments were made to the discharge provisions of the Bankruptcy Act, including § 14b.[16] In § 14b(4) the amendment changed the period of four months to twelve months[17] "as the original period has been found too short to reach many cases."[18]

Other than changing its designation from § 14b(4) to § 14c(4), the language of former §14b(4) remained unchanged even after 1938 when the

---

[13] *Id.* Three other new grounds for discharge were added: if the applicant "obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit," "in voluntary proceedings been granted a discharge in bankruptcy within six years;" and "in the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court." *Id.* at 797–98.

[14] Report of the Special Committee on Practice in Bankruptcy Matters to American Bar Association (1925), 50 Reports of American Bar Association, 478, 479 ("ABA Report").

[15] Act of May 27, 1926, ch. 406, 44 Stat. 662.

[16] In addition to the amendment to § 14(b)(4) described below, the amendments modified § 14(b)(2) to include (among other changes) a new clause allowing discharge if "the court deem such failure or acts to have been justified, under all the circumstances of the case"; § 14(b)(3) to bar discharge if the bankruptcy "obtained an extension or renewal of credit, by making or publishing, or causing to be made or published, in any manner whatsoever, a materially false statement in writing respecting his financial condition"; and adding a new clause (7) which read "has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities." The amendment also added a new proviso at the end of § 14(b) that shifted the burden to the bankrupt of proving he did not commit any of the acts described in § 14(b) if any party objected to the discharge and showed "to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which . . . would prevent his discharge in bankruptcy." § 6, 44 Stat. at 663–664, codified at 11 U.S.C. § 32(b).

[17] § 6, 44 Stat. at 664, codified at 11 U.S.C. § 32(b)(4).

[18] ABA Report, *supra* note 14, at 484.

Bankruptcy Act was reenacted by the Chandler Act.[19] Congress did, however, insert a new proviso in § 29d dealing with bankruptcy offenses. Previously § 29d set a three-year statute of limitations for prosecution of bankruptcy offenses. Under the proviso, Congress specified that "the offense of concealment of assets of a bankrupt shall be deemed to be a continuing offense until the bankrupt shall have been finally discharged, and the period of limitations herein provided shall not begin to run until such final discharge." [20] In 1948 the bankruptcy offenses were included in the newly-enacted Crimes and Criminal Procedure Act.[21] Section 52 of the Bankruptcy Act (the codification of § 29) was repealed.[22] Among those offenses were fraudulent concealment, now codified in 18 U.S.C. § 152(1).

The Code, enacted in 1978, retained the denial of discharge for a debtor who, with intent to hinder, delay, or defraud "has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed – (A) property of the debtor, within one year before the date of the filing of the petition"[23] and for a debtor who "has concealed, destroyed, mutilated, falsified, or filed to keep or preserve any recorded information . . . from which the debtor's financial condition of business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case."[24] Congress eliminated the definition of "conceal" that had been included in the Bankruptcy Act, but used the term "conceal,"[25] "conceals,"[26] or "concealed"[27] in several other provisions of the Code.

---

[19] Chandler Act of 1938, Pub. L. 75-696, § 14c, 52 Stat. 840, 850, codified at 11 U.S.C. § 32(c). No change was made to the definition of "conceal" although it was redesignated as § 1(7), codified at 11 U.S.C. §1(7).

[20] *Id.* § 29d, codified at 11 U.S.C. § 52(d).

[21] *See* Act of June 25, 1948, ch. 645, 62 Stat. 683, 689–90.

[22] *Id.* § 20.

[23] 11 U.S.C. § 727(a)(2)(A).

[24] *Id.* § 727(a)(3).

[25] *Id.* § 522(g)(1)(B) (exemption for property recovered by trustee if property was not voluntarily transferred by debtor and debtor did not conceal property).

[26] *Id.* § 342(b)(2)(A) (written notice by clerk warning of potential punishment of person who knowingly and fraudulently conceals assets in connection with case).

[27] *Id.* §§ 101(32)(A)(i) (definition of "insolvent"); 503(b)(3)(B) (allowance of administrative expenses to creditor that recovers property transferred or concealed by the debtor).

II. DEVELOPING A JUDICIAL THEORY OF CONTINUING CONCEALMENT

The definition of "conceal" in the Bankruptcy Act did not provide much guidance to courts attempting to apply § 14b(2) or its modern counterpart § 727(a)(2). Because that definition merely stated that to conceal "include[s]" to "secrete, falsify, and mutilate," it did not limit the acts embraced within the defined term.[28] Therefore courts have gone beyond the definition in attempting to define the term.

The cases interpreting the term "concealed" for bankruptcy purposes have arisen in three different contexts. I will discuss each in turn.

Concealment as an Act of Bankruptcy. First, as previously discussed,[29] under the Bankruptcy Act as originally enacted, a person committed an "act of bankruptcy" if that person "conveyed, transferred, concealed, or removed" any part of his property with intent to hinder, delay or defraud his creditors within four months prior to the commencement of the bankruptcy case.[30]

One of the earliest cases interpreting this provision was *Citizens' Bank of Salem v. W.C. De Pauw Co.*,[31] which tellingly distinguished "concealment" from "transfer." The alleged bankrupt had become insolvent and transferred its assets to Union Trust Company for less than fair value. Two years later the assets were sold to the American Window Glass Company for a significant profit. The bankruptcy petitioners alleged this transfer was "concealment" of the assets. Although the court acknowledged that when tangible assets are separated from a debtor's estate and secreted from creditors the action may constitute "concealment" and continues as

---

[28] As stated in 2A NORMAN SINGER & SHAMBIE SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 47:7 (7th ed. 2022), "[t]he word 'includes' [in a statutory definition] is usually a term of enlargement, and not of limitation, and conveys the conclusion that there are other items includible, though not specifically enumerated."

[29] *See supra* text accompanying notes 6–7.

[30] Bankruptcy Act § 3b. As amended by the Chandler Act, and codified at 11 U.S.C. § 21(a)(1), the act of bankruptcy consisted of a person having "concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them, or made or suffered a transfer of any of his property, fraudulent under the provisions of section 107 [dealing with fraudulent transfers] or 110 [vesting in the trustee property of the debtor, including property transferred in fraud of his creditors] of this title." *Id.*

[31] 105 F. 926 (7th Cir. 1901).

long as the assets remain secret, in this case the property was not "kept under cover" but instead remained "open and visible."[32] Rather than a concealment, the transaction was a "transfer" and, because it occurred more than four months prior to the petition, could not serve as an act of bankruptcy.[33]

The court found concealment in *In re Shoesmith*.[34] The issue before the court was whether the alleged bankrupt was "insolvent" within the meaning of § 1(15) of the Bankruptcy Act;[35] absence of insolvency would be a defense to involuntary bankruptcy proceedings initiated against him.[36] The debtor claimed to have $4,500 in cash at the date of the petition as part of funds received from his brother when he fraudulently transferred property to his brother. After the petition was filed, the debtor supposedly "invested it in distant states."[37] The court concluded "the money was concealed within the meaning of the statute" because "[[t]]o conceal is 'to hide, withdraw, remove, or shield from observation; cover or keep from sight.'" [38] The court continued by saying that concealment "implied an act done or procedure to be done, which is intended to prevent or hinder. It covers something more, however, than a mere failure to disclose."[39] Given that the intent to hinder, delay and defraud had been shown, the cash was, according to the court, concealed.[40]

More recently, the court in *In re McIsaac*[41] adopted a very expansive view of concealment, stating a prima facie case of concealment is established "where the natural and inevitable result of the debtor's acts will be the delay or disappointment of creditors."[42] The debtors in that case had failed to pay

---

[32] *Id.* at 930.

[33] *Id.*

[34] 135 F. 684 (7th Cir. 1905).

[35] Bankruptcy Act § 1(15). A person was deemed to be insolvent "whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts." *Id.*

[36] Bankruptcy Act § 3c.

[37] 135 F. at 687.

[38] *Id.* citing CENTURY DICTIONARY.

[39] *Id.*

[40] *Id.*

[41] 19 B.R. 391 (Bankr. D. Mass. 1982).

[42] *Id.* at 396.

partnership creditors out of funds transferred to them as general partners of a partnership but instead retained the funds. The court labeled this a "concealment" of the funds and adjudicated them as bankrupts,[43] despite the fact that no property was hidden or secreted.

The court declined to find concealment in *Continental Bank & Trust Co. of New York v. Winter*,[44] where the alleged act of concealment consisted of the debtor having executed a waiver of her right to take against the will of her late husband. The court said, "[a]t most she failed to disclose to [her creditor] the fact that she had executed the waiver until she was asked about it [during her bankruptcy case] and then she concealed nothing."[45] The court continued to state that "[p]roperty is concealed or permitted to be concealed within the meaning of those terms in [Bankruptcy Act § 3a] when a person does, or permits to be done, anything with intent to hinder, delay or defraud his creditors which prevents, or tends to prevent the discovery of the property. Proof of concealment, however, requires something more than a mere failure to volunteer information to creditors."[46]

In *In re Napco Manufacturing Co.*[47] the court quoted the same definition of concealment used by the court in *Winter*,[48] and found no concealment when creditors were aware that, upon ceasing operations, the alleged bankrupt delivered business assets to another company. The court noted "there can be no prevention of the discovery of, or the withholding of knowledge of, assets where the debtor has not owned any other or further property than that of which [its creditors] must be held to have had

---

[43] *Id.* Because the retention of the funds occurred long before the four months preceding the bankruptcy filing, the court also concluded that the four-month period begins to run with respect to concealment of assets only when the concealment is discovered. *Id.* (citing *In re* Verona Constr. Co., 126 F.2d 976, 977 (3d Cir. 1942)). *See also* Dworsky v. Alanjay Bias Binding Corp., 182 F.2d 803, 805 (2d Cir. 1950).

[44] 153 F.2d 397 (2d Cir. 1946), *cert. denied*, 329 U.S. 717 (1946).

[45] *Id.* at 399.

[46] *Id.* The court also held that, to the extent that the waiver could be considered a "transfer" of the debtor's property, it did not occur within four months before the involuntary petition was filed. *Id.* By contrast, the court in Peterson v. Peterson, 400 F.2d 336 (8th Cir. 1968) concluded that the debtor committed an act of bankruptcy by refusing to answer questions about his assets under supplementary proceedings ordered by a state court.

[47] 72 F. Supp. 555 (D. Neb. 1947).

[48] *Id.* at 557.

knowledge, both as to existence and whereabouts."[49]

Concealment as a Bankruptcy Offense. Since the enactment of the Bankruptcy Act it has been a bankruptcy crime, punishable by imprisonment, if a person "knowingly and fraudulently . . . concealed" from his trustee any of the property belonging to his estate.[50] As codified in the Crimes and Criminal Procedure Act, title 18, § 152(1) makes it a crime to "knowingly and fraudulently conceal[] from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor."[51] The term "conceal" is used in dozens of sections in title 18,[52] where it presumably has the same meaning. A leading source of jury instructions for federal criminal cases states that "to 'conceal' means deliberately to hide, falsify, change, mutilate, or do any act preventing discovery and identification of an object of substance."[53]

The early cases interpreting "concealment" turned not on the original acts of concealment but on whether the concealed assets were disclosed to the trustee. As stated in *Kaufman v. United States*,[54] "if the concealment which began before the appointment of the trustee continued after the appointment as made, . . .it constituted concealment from him."[55] The court in *Coughlin v. United States*[56] opined, "the word [concealed] is not to be limited in meaning to physical secretion, as contended by defendant. It also means to prevent discovery or to withhold knowledge by refusing or failing to divulge information."[57] The court went on to conclude that omitting

---

[49] *Id.*

[50] Bankruptcy Act § 29b(1).

[51] 18 U.S.C. § 152(1).

[52] *See, e.g.*, 18 U.S.C. §§ 4, 38, 288, 488, 510, 548, 551, 554, 658, 662, 668, 670, 757, 792, 880, 1023, 1027, 1032, 1035, 1040, 1071, 1072, 1202, 1381, 1519, 1592, 1597, 1723, 1831, 1920, 2071, 2257A, 2317, 2339, 2339C, 2382.

[53] 1A KEVIN F. O'MALLEY, JAY E. GRENIG, & HON. WILLIAM C. LEE, FEDERAL JURY PRACTICE AND INSTRUCTIONS § 16:02 (6th ed. 2023). The jury instructions include additional language relating to the concealment of "information or knowledge" as opposed to an object or substance.

[54] 212 F. 613 (2d Cir. 1914).

[55] *Id.* at 618. *See also* Reinstein v. United States, 282 F. 214, 215 (2d Cir. 1922); *In re* Agnew, 225 F. 650, 654 (N.D.N.Y. 1915).

[56] 147 F.2d 233 (8th Cir. 1945).

[57] *Id.* at 236–37.

property owned by the bankrupt from schedules prepared in the bankruptcy case may effectively conceal the bankrupt's property from the trustee.[58]

Other cases also equated concealment with the failure to disclose to the trustee the debtor's interest in property that belonged to the debtor[59] even if the original acts creating the concealment occurred earlier. Generally, this disclosure would be made by describing the property on the bankruptcy schedules (unless omitted due to mistake or inadvertence).[60] Although these cases sometimes describe the concealment as "continuing" until appointment of the trustee, in fact the courts acknowledge that the statutory offense did not take place until the trustee was elected.[61]

These cases established that concealment can occurs only if (1) there is an obligation to make disclosure about the assets to the trustee,[62] and (2) the assets actually belong to the debtor. Many cases turn on whether the debtor actually had an interest in the property that was required to be disclosed.[63]

Concealment as Grounds for Denying Discharge. As previously

---

[58] *Id.* at 237.

[59] *See, e.g.*, United States v. Zimmerman, 158 F.2d 559, 561 (7th Cir. 1946); United States v. Schireson, 116 F.2d 881, 884 (3d Cir. 1940); Marcus v. United States, 20 F.2d 454, 456 (3d Cir. 1927); Warren v. United States, 199 F. 753, 757 (5th Cir. 1912); United States v. Fallman, 28 F. Supp. 251, 251–52 (D. Mass. 1939).

[60] *See, e.g.*, United States v. Shapiro, 101 F.2d 375, 378 (7th Cir. 1939) (noting that the "conduct of the bankrupt, the relative extent of the omission, the character of the asset itself, and the reasons given for the difference between the financial statement of the business and the bankruptcy schedules" must also be considered).

[61] *See Marcus*, 20 F.2d at 456; *Reinstein*, 282 F. at 216; *Warren*, 199 F. at 756–57.

[62] 11 U.S.C. § 521(a)(1) obligates the debtor to file, among other things, a schedule of assets and liabilities. *See also* FED. R. BANKR. P. 1007(b)(1).

[63] *Compare* United States v. Heavrin, 144 F. Supp. 2d 769, 781 (W.D. Ky. 2001) (concluding that the property "concealed" by the defendant was not his property) *with* United States v. Schireson, 116 F.2d 881 (3d Cir. 1940); Goetz v. United States, 59 F.2d 511 (7th Cir. 1932) (concluding that the concealed property was the debtor's property). In one case, Investors Grp., Inc. v. Annunziata (*In re* Annunziata), No. 06-14799, Adv. No. 07-1050, 2008 WL 410643 (Bankr. D. Mass. Feb. 12, 2008), the court stated that the debtor had taken actions to conceal a "secret interest" in property even though the court also concluded that the debtor's spouse had deeded the property to herself and the debtor as tenants by the entirety. The deed was never recorded, but the court recognized that the transfer was effective without recordation. The debtor was clearly the joint owner of the property; the debtor was concealing a legal (not an equitable or secret) interest in the property.

discussed,[64] under the Bankruptcy Act as originally enacted the debtor would be denied a discharge under § 14b if the debtor "committed an offense punishable by imprisonment as herein provided"[65] or "with fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained."[66]

In 1903, § 14b was amended to add a new clause (4) providing for denial of discharge if the applicant "at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed any of his property with intent to hinder, delay, or defraud his creditors."[67]

The comparable provision to § 14b(4) in the Code, § 727(a)(2)(A), continues to deny a debtor a discharge if the debtor has fraudulently "concealed . . . property of the debtor, within one year before the date of the filing of the petition."[68] Many courts have examined what constitutes "concealment" of property for purposes of the discharge provisions.

The earliest cases in which the court denied discharge based on the theory of concealment involved acts that occurred prior to the enactment of the Bankruptcy Act in 1898. The debtors in these early cases transferred their property to others before the enactment of the Bankruptcy Act with the intent of defrauding creditors while retaining the benefit of the transferred assets. For example, in *In re Welch*,[69] the debtor both purchased real and personal property used in his business in the name of his wife and transferred other property to his wife at a time when he was threatened with enforcement of a large judgment against him.[70] He continued to conduct the business as he did before.[71]

---

[64] *See supra* text accompanying note 10.

[65] It was, as discussed in Part II(2) *supra*, an offense to knowingly and fraudulently conceal from the trustee property belonging to the estate. Bankruptcy Act § 29b(1).

[66] Bankruptcy Act § 14b.

[67] Act of Feb. 5, 1903, ch. 487, § 4, 32 Stat. 797. *See supra* text accompanying notes 12–13.

[68] 11 U.S.C. § 727(a)(2)(A).

[69] 100 F. 65 (S.D. Ohio 1899).

[70] *Id.* at 66.

[71] *Id.* As I discuss in Part III(A), I believe there is a distinction to be made between property transferred from the debtor to a third party and property in which the debtor never had legal title. The court, however, treated them all the same.

The debtor in *In re Quackenbush*,[72] intending to defraud his creditors, sold real property to his brother-in-law for a nominal sum (which the debtor advanced to his brother-in-law) in 1881, then caused the property to be reconveyed to his second wife without consideration in 1895. He took similar actions with other real and personal property in 1891.[73] The debtor continued to deal with the property as if he owned it until the bankruptcy filing.

In neither case did the debtor list the transferred property on his bankruptcy schedules. In both cases the court concluded the debtor continued to have an interest in the property so fraudulently transferred, and by failing to schedule the property had engaged in "concealment" of the property from the bankruptcy trustee under § 29b(1) justifying denial of discharge under § 14b(1).[74]

Notably, these courts did not conclude that the initial transfers of the property by the debtors with fraudulent intent would justify denial of a discharge. They could not have done so because those actions did not constitute concealment of property *from the trustee*. At the time the debtors took the actions constituting fraudulent transfers, there was no trustee (and indeed no Bankruptcy Act). Nor did those courts conclude that the concealment of property by the debtors was "continuing" after the initial transfers occurred. Rather, concealment from the trustee occurred when the debtor failed to disclose the property on his schedules as required by § 7a(8) of the Bankruptcy Act.[75] This was not "continuing concealment" but concealment by failure to disclose at the time the schedules were filed.[76] As the court noted in *Quackenbush*, "The offense is consummated if the

---

[72] 102 F. 282 (N.D.N.Y. 1900).

[73] *Id.* at 282.

[74] *See Welch*, 100 F. at 65; *Quackenbush*, 102 F. at 286.

[75] Bankruptcy Act § 7a(8) required the bankrupt to "prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and list of his creditors[.]"

[76] The courts also concluded that, by failing to schedule the property that had been so transferred in which the debtor retained an equitable interest, the debtor made a "false oath or account in" the bankruptcy case, which would be a bankruptcy offense under § 29b(2) and would justify denial of discharge under section 14b(1). *See Welch*, 100 F. at 65; *Quackenbush*, 102 F. at 282.

bankrupt with fraudulent intent conceals for a single day his property from the trustee."[77] Subsequent cases also focused on the debtor's failure to include on his schedule property that was fraudulently transferred prior to bankruptcy when concluding that the debtor had "concealed" property from the trustee.[78]

But the court in *Quackenbush* also used some unfortunate language, characterizing the debtor's actions as "continuous concealment, extending beyond the date of bankruptcy,"[79] thus birthing the concept of continuing or continuous concealment. Instead of looking at the debtor's failure to list on the debtor's schedules property in which the debtor retained an interest as an act of "concealment" from the trustee warranting a denial of discharge, courts began to characterize the original fraudulent transfer of property as concealment and saw the failure to disclose an interest in that property merely as a continuation of the original concealing acts.

The first case to seize upon the "continuing concealment" language in *Quackenbush* was *In re Jacobs & Verstandig*.[80] In declining to award a discharge to the debtors, the court expressed its view that the debtors "concealed a large amount of the assets of the firm" and failed to produce books that might account for the missing assets.[81] Although the failure to keep appropriate books of account would in itself justify denial of discharge (and was certainly critical to the court's decision),[82] the court included the following language, citing *Quackenbush* and several other cases,[83] none of which used the term "continuing concealment" and most of which were decided on the basis of inadequate books and records.[84]

> The word "concealed" employed in this connection is sufficiently elastic in its signification to comprise a "continuing concealment." Thus, if a bankrupt has disposed of property belonging to him, prior to the

---

[77] *Quackenbush*, 102 F. at 285.

[78] *See, e.g.*, *In re* Huntley, 14 F. Supp. 784, 785–86 (D. Mass. 1936); United States v. Cohn, 142 F. 983, 984 (S.D.N.Y. 1906); *In re* Hoffman, 102 F. 979, 980 (S.D.N.Y. 1900).

[79] *Quackenbush*, 102 F. at 285.

[80] 147 F. 797 (D. Ore. 1906).

[81] *Id.* at 801.

[82] The court stated that "[i]n the case at bar the bankrupts have produced what books they had, but they were grossly derelict in failing to keep intelligible books of account of their ordinary business, so as to show the state of their assets." *Id.* at 801–02.

[83] *See, e.g.*, *In re* Bemis, 104 F. 672 (N.D.N.Y. 1900); *In re* Mendelsohn, 102 F. 119 (S.D.N.Y. 1900); *In re* Ablowich, 99 F. 81 (S.D.N.Y. 1900).

[84] *See Bemis*, 104 F. at 675; *Mendelsohn*, 102 F. at 122, *Ablowich*, 99 F. at 82.

adjudication, and has the proceeds thereof in his possession or within his authority to use and appropriate subsequently, there is a continuing concealment ⟦of the proceeds⟧, for which he is amenable to the law, although the fact of concealment by intent and purpose took place while he was not a bankrupt.[85]

Notice that the court in *Jacobs & Verstandig* did not suggest the property disposed of by the debtors was concealed or fraudulently transferred; instead, it denied discharge because of the concealment of the proceeds received by the debtor from those sales, which clearly were property of the debtors. There was no secret or equitable interest in property. Similarly in *In re James*,[86] the debtor removed goods from his storehouse and concealed them more than four months prior to the bankruptcy petition.[87] The court held the petitioner was not entitled to a discharge. "⟦I⟧f an article be concealed, put in a secret or hiding place, and so remains until it is discovered, it continues until such time in a state of concealment, or is during the entire period concealed."[88] Therefore, the bankrupt had "'concealed' the property at all times up to the day of its discovery" including during the four months preceding the filing date.[89] On appeal the Fourth Circuit agreed that a debtor who had concealed his goods for the purpose of defrauding creditors did not "come into court with clean hands" and had not "dealt fairly with his fellowman." The Fourth Circuit ruled that to grant a discharge to such a person is inconsistent with a bankruptcy law "intended to promote honesty and fair dealing."[90]

In these cases, the property concealed clearly belonged to the debtor. But subsequent cases under the Bankruptcy Act expanded the doctrine to cover property fraudulently transferred by the debtor, often characterizing the transfer as having created a "secret" or "constructive" trust which continued thereafter.[91] And although the doctrine has prompted some

---

[85] *Jacobs & Verstandig*, 147 F. at 801.

[86] 175 F. 894 (E.D.N.C. 1910), *aff'd*, 181 F. 476 (4th Cir. 1910), *appeal dismissed*, 227 U.S. 410 (1913).

[87] *Id.* at 895.

[88] *Id.*

[89] *Id.* at 896.

[90] 181 F. at 479.

[91] *See, e.g.*, Green v. Toy, 171 F.2d 979, 979 (1st Cir. 1949); Duggins v. Heffron, 128 F. 2d 546, 548 (9th Cir. 1942) Hudson v. Mercantile Nat'l Bank of Pueblo, Colo., 119 F.

skepticism,[92] seven circuit courts of appeals[93] as well as all lower courts that have faced the issue have adopted the continuing concealment doctrine under the Code. They find continuing concealment when the debtor continued to have an interest in property after having transferred it to (or put it in the name of) a third party more than the statutory period before the bankruptcy filing even if no subsequent act constituting concealment occurred.[94] If the property was absolutely transferred—meaning the debtor

346, 348 (9th Cir. 1902); Sacklow v. Vecchione (*In re* Vecchione), 407 F. Supp. 609, 614 (E.D.N.Y. 1976); *In re* Elliott, 83 F. Supp. 771, 773–74 (E.D. Pa. 1948); *In re* Walter, 67 F. Supp. 925, 926 (S.D.N.Y. 1946); *In re* Baxter, 27 F. Supp. 54, 56 (S.D.N.Y. 1939); *In re* Ulrich, 18 F. Supp. 919, 920 (S.D.N.Y. 1937), *aff'd*, 95 F.2d 1018 (2d Cir. 1938); *In re* Jacobson, 9 F.2d 139, 141 (D.S.D. 1925); *In re* Graves, 189 F. 847, 848 (M.D. Pa. 1911); *In re* May, 12 B.R. 618, 625 (Bankr. N.D. Fla. 1980); *cf.* Groth v. Krueger (*In re* Groth), 36 F.2d 41, 42–43 (7th Cir. 1929) (accepting doctrine but finding no continuing concealment).

[92] *See* Small v. Bottone (*In re* Bottone), 2009 B.R. 257, 262–63 (Bankr. D. Mass. 1997) (stating that the court has a "lack of reverence" for the concept, because it "elevates circumstantial evidence to doctrinal status" and construes exceptions to discharge broadly, thereby undermining the Code's fresh start policy).

[93] *See* Gasson v. Premier Capital, LLC, 43 F.4d 37, 45 (2d Cir. 2022); Rosen v. Bezner, 996 F.2d 1527, 1531 (3d Cir. 1993); Keeney v. Smith (*In re* Keeney), 227 F.3d 679, 685 (6th Cir. 2000); Thibodeaux v. Olivier (*In re* Olivier), 819 F.2d 550, 555 (5th Cir. 1987); Friedell v. Kauffman (*In re* Kauffman), 675 F.2d 127, 128 (7th Cir. 1981); Hughes v. Lawson (*In re* Lawson), 122 F.3d 1237, 1242 (9th Cir. 1997); Coady v. D.A.N. Joint Venture III, L.P. (*In re* Coady), 588 F.3d 1312, 1317 (11th Cir. 2009).

[94] *See, e.g.*, *Keeney*, 227 F.3d at 685 (debtor and wife lived on property held by parents, made all mortgage payments and borrowed money on property); *Lawson*, 122 F.3d at 1241 (debtor granted deed of trust to her mother but retained superior interest in property); Honeycutt v. Commercial Nat'l Bank (*In re* Honeycutt), 15 F.3d 181 (unpublished), 1994 WL 24973, at *2 (5th Cir. 1994) (debtor transferred corporation to wife but retained control); *Olivier*, 819 F.2d at 554 (debtors transferred title to their home seven years before bankruptcy); First Federated Life Ins. Co. v. Martin (*In re* Martin), 698 F.2d 883, 887 (7th Cir. 1983) (condominium occupied by debtor but ostensibly owned by his father); *Kauffman*, 675 F.2d at 128 (debtor transferred house to his wife); Wieland v. Gordon (*In re* Gordon), 526 B.R. 376, 389 (B.A.P.10th Cir. 2015) (debtor transferred legal title to residence); R.I. Depositors Econ. Prot. Corp. v. Hayes (*In re* Hayes), 229 B.R. 253, 260–61 (B.A.P. 1st Cir. 1999) (debtors transferred residence to trust while continuing to live there); United Gen. Title Ins. Co. v. Karanasos, No. 13-CV-7153, 2014 WL 4388277, at *8 (E..D.N.Y. Sept. 5, 2014) (debtor transferred his interest in residence to his wife); Wilferd v. Wardle, No. 2:06-CV-01007, 2007 WL 391583, at *3 (D. Utah Feb. 1, 2007) (debtor transferred residence to his wife); McNichols v. Shala (*In re* Shala), 251 B.R. 710, 714 (N.D. Ill. 2000) (debtor sold limousine business but retained secret interest); Anderson v. Michaelson, Nos. 98 C 2927, 97 A 1252, & 97 B 06507, 1999 WL 59985, at *2 (N.D. Ill. Feb. 3, 1999) (debtor transferred condominium to corporation owned by wife but over

whose checking account he had signing authority, and then leased property to second corporation which he owned and operated); Newton v. Essres (*In re* Essres), 139 B.R. 958, 961–62 (D. Colo. 1992) (debtor transferred tractors, snowmobiles, trailers, boat, snow blower, and horses but continued to use them); Salomon v. Kaiser (*In re* Kaiser), 32 B.R. 701, 704 (S.D.N.Y. 1983), *aff'd*, 722 F.2d 1574 (2d Cir. 1983) (debtor purchased real property in name of wife); PNC Bank, N.A. v. Leongas (*In re* Leongas), 628 B.R. 71, 95–96 (Bankr. N.D. Ill. 2021) (debtor transferred residence to friend while continuing to live in it and pay expenses); Layng v. Pansier (*In re* Pansier), 613 B.R. 119, 146–47 (Bankr. E.D. Wis. 2020) (debtor transferred residence to trust while trust paid personal expenses); Mediche, Ltd. v. Abramovich (*In re* Abramovich), No. 14-24708, Adv. No. 14-00819, 2017 WL 4776710, at *5 (Bankr. N.D. Ill. Oct. 19, 2017) (debtor transferred residence to wife); United States v. Hart (*In re* Hart), 563 B.R. 15, 49 (Bankr. D. Idaho 2016) (debtor transferred interest in residential property and tractor to trust); Thacker v. SE Prop. Holdings, LLC (*In re* Thacker), No. 5:15-cv-00183, 2016 WL 6039204, at *1 (Bankr. N.D. Fla. Mar. 21, 2016) (debtor transferred substantially all assets into a revocable trust two years before bankruptcy); Premier Capital, LLC v. Crawford (*In re* Crawford), 531 B.R. 275, 303 (Bankr. D. Mass. 2015) (debtor placed title to antique automobiles in wife's name); McDow v. Ward (*In re* Ward), No. 11-04760, Adv. No. 12-80006, 2012 WL 3201871, at *7 (Bankr. D. S.C. Aug. 2, 2012) (debtor transferred $125,000 to account in wife's name which was then used to pay bills); NLRB v. Fragata (*In re* Fragata), No. 6:10-bk-21874, Adv. No. 6:11-ap-00054, 2012 WL 2847597, at *4 (Bankr. M.D. Fla. July 11, 2012) (debtor transferred interest in company to his wife while continuing to run it); Gary J. Rotella & Assoc., P.A. v. Bellassai (*In re* Bellassai), 451 B.R. 594, 601 (Bankr. S.D. Fla. 2011) (debtor transferred assets of auto dealership to his girlfriend); Cmty. Credit Union v. Hammontree (*In re* Hammontree), No. 09-42677, Adv. Nos. 09-40119, 09-40120, 0940122, 09-40123 & 09-40124, 2011 WL 2357220, at *4 (Bankr. N.D. Ala. Mar. 11, 2011) (debtor transferred ongoing business, customer goodwill, operating assets and business location to new company owned by friend); McCarthey Invs. LLC v. Shah (*In re* Shah), No. 07-13833, Adv. No. 08-01762, 2010 WL 2010824, at *8 (Bankr. S.D.N.Y. May 13, 2010) (debtor transferred residence into wife's name); Investors Group, Inc. v. Annunziata (*In re* Annunziata), No. 06-14799, Adv. No. 07-1050, 2008 WL 410643, at *7 (Bankr. D. Mass. Feb. 12, 2008) (debtor had concealed interest in real property originally purchased by his wife); Garland v. United States (*In re* Garland), 385 B.R. 280, 295 (Bankr. E.D. Okla. 2008), *aff'd*, 417 B.R. 805 (B.A.P. 10th Cir. 2009) (debtor concealed interest in personal residence, law firm, and various corporations and business entities); United States v. Swenson (*In re* Swenson), 381 B.R.272, 291 (Bankr. E.D. Cal. 2008) (debtors had equitable interest in residence purchased by husband's father and wife's sister); Cadle Co. v. Prupis (*In re* Prupis), No. 04-48414, Adv. No. 05-2674, 2007 WL 295351, at *11 (Bankr. D.N.J. Jan. 24, 2007) (debtor surrendered stock in his law firm for which he continued to work); Doubet, LLC v. Palermo (*In re* Palermo), 370 B.R. 599, 615 (Bankr. S.D.N.Y. 2007) (debtor transferred right to receive money for his services to corporate entities he controlled); Structured Asset Servs., L.L.C. v. Self (*In re* Self), 325 B.R. 224, 240 (Bankr. N.D. Ill. 2005) (debtor transferred cash and car to his wife); Jeffrey M. Goldbert & Assocs., Ltd. v.

Holstein (*In re* Holstein), 299 B.R. 211, 231 (Bankr. N.D. Ill. 2003), *aff'd*, No. 03-C-8023, 2004 WL 2075442 (N.D. Ill. Aug. 31, 2004) (debtor concealed transfer of partnership interests to girlfriend and testified that he had done so); Pher Partners v. Womble (*In re* Womble), 289 B.R. 836, 843–44 (Bankr. N.D. Tex. 2003), *aff'd*, 299 B.R. 810 (N.D. Tex. 2003) (debtor transferred funds to related entities); Kaler v. Craig (*In re* Craig), 195 B.R. 443, 449 (Bankr. D.N.D. 1996) (debtor placed family home and bank accounts in wife's name but continued use); Tillery v. Hughes (*In re* Hughes), 184 B.R. 902, 908 (Bankr. E.D. La. 1995) (debtor transferred property to his own professional corporation but continued to use it); Shamban v. O'Brien (*In re* O'Brien), 190 B.R. 1, 4 (Bankr. D. Mass. 1995) (debtor and wife transferred family home into a trust of which wife was trustee and beneficiary); Cong. Talcott Corp. v. Sicari (*In re* Sicari), 187 B.R. 861, 865 (Bankr. S.D.N.Y. 1994) (debtor made fraudulent transfers of personal assets to relatives and to a friend); *In re* Sausser, 159 B.R. 352, 356–57 (Bankr. M.D. Fla. 1993) (debtor transferred his boat to his father more than a year prior to the filing, but State of Florida title records showed no change in title and debtor continued to retain possession and maintain boat at his residence); Cullen Ctr. Bank & Tr. v. Lightfoot (*In re* Lightfoot), 152 B.R. 141, 147 (Bankr. S.D. Tex. 1993) (debtor transferred boat to his wife but continued to use it); Minsky v. Silverstein (*In re* Silverstein), 151 B.R. 657, 659 (Bankr. E.D.N.Y. 1993) (debtor transferred his one-half interest in his residence to his wife); U.S. v. Towe (*In re* Towe), 147 B.R. 545, 550 (Bankr. D. Mont. 1992) (debtor transferred automobiles to foundation more than one year before bankruptcy but retained control); Kellogg-Citizens Nat'l Bank of Green Bay v. DeBuin (*In re* DeBruin), 144 B.R. 90, 93 (Bankr. E.D. Wis. 1992) (debtors transferred 37 cows and other farm property and vehicles into trusts while continuing to enjoy trust income and use of vehicles); Bold City VII, Ltd. v. Radcliffe (*In re* Radcliffe), 141 B.R. 1015, 1020 (Bankr. E.D. Ark. 1992) (debtor transferred large condominium and luxurious vehicles to solely-owned company and continued to use them); Bartlett Futures, Inc. v. Davis (*In re* Davis), 124 B.R. 831, 835 (Bankr. D. Kan. 1991) (debtor retained control over funds withdrawn from joint bank account by wife); Penner v. Penner (*In re* Penner), 107 B.R. 171, 176 (Bankr. N.D. Ind. 1989) (debtor transferred dairy business while remaining in control); Nelson v. Peters (*In re* Peters), 106 B.R. 1, 5 (Bankr. D. Mass. 1989) (debtor purported to sell Corvette to friend); First Nat'l Bank of Crosby v. Syrtveit (*In re* Syrtveit), 105 B.R. 596, 599 (Bankr. D. Mont. 1989) (debtor retained benefit of lot after transfer); Yacht Investors, Inc. v. Lazar (*In re* Lazar), 81 B.R. 148, 150 (Bankr. S.D. Fla. 1988) (debtor transferred assets to his daughters and proceeds were used to purchase yachts for debtor); Teilhaber Mfg. Corp. v. Hodge (*In re* Hodge), 92 B.R. 919, 922 (Bankr. D. Kan. 1988) (debtor transferred all assets of his business to a Missouri corporation and then to a Kansas corporation solely owned by his wife); Nat'l City Bank, Marion v. McNamara (*In re* McNamara), 89 B.R. 648, 651–52 (Bankr. N.D. Ohio 1988) (debtor gave cash concealed in his closet to relatives to purchase residence in their names in which he resided); Morrison v. Howard (*In re* Howard), 55 B.R. 580, 584 (Bankr. E.D.N.C. 1985) (debtor transferred house and antiques to nonprofit charitable corporation controlled by debtor); Langston v. Balch (*In re* Balch), 25 B.R. 22, 23 (Bankr. N.D. Tex. 1982) (debtor transferred proceeds of sale of family homestead to corporation owned by wife and used proceeds for living expense); Belveal v. West (*In re* West), No. 05-11461, Adv. No. 06-1022, 2007 WL

retained no interest—the failure to disclose the transfer does not constitute "concealment" even if the transfer itself might provide independent grounds for denying discharge under § 727(a)(2) if it was made within the statutory period before filing with fraudulent intent[95]

4563444, at *5 (Bankr. W.D. Ky. Dec. 21, 2007) (debtor transferred family home to revocable trust); *cf.* Meany v. Meany (*In re* Meany), No. 99-3885, 2000 WL 666378, at *3 (E.D. La. May 19, 2000) (applying the continuous concealment doctrine even though the transfer of shares of stock took place within one year prior to the bankruptcy filing).

[95] *See, e.g.*, Finalco, Inc. v. Roosevelt (*In re* Roosevelt), 87 F.3d 311, 318 (9th Cir. 1996) (debtor had no continuing interest in property allocated to his wife under post-nuptial "marital settlement agreement"); Thompson v. Eck, 149 F.2d 631, 633 (2d Cir. 1945) (debtor had no continuing interest in parcels deeded to his wife); Farmers' Sav. Bank v. Allen, 41 F.2d 208, 212 (8th Cir. 1932) (debtor transferred farm implements, stock and grain to his brother fourteen months prior to bankruptcy); First Nat'l Bank of Gordon v. Serafini (*In re* Serafini), 113 B.R. 692, 694–95 (D. Colo. 1990) (although transfer was subsequently avoided, before then there was no evidence that debtor retained interest in transferred assets); *In re* Arnold, 1 F. Supp. 499, 503 (D.N.H. 1932) (debtor purchased real property and put title in name of his bookkeeper, who conveyed it to corporation owned by debtor and his parents, which then conveyed it to debtor's daughter; held no concealment); Cadle Co. of Conn., Inc. v. Benevento (*In re* Benevento), No. 10-25535, Adv. No. 11-01011, 2012 WL 3475163, at *10 (Bankr. S.D. Fla. Aug. 14, 2012), *aff'd*, No. 12-81115, 2013 WL 5408527 (S.D. Fla. Sept. 25, 2013) (no evidence that debtor retained any interest in transferred assets); Pher Partners v. Womble (*In re* Womble), 289 B.R. 810, 847–50 (Bankr. N.D. Tex. 2003), *aff'd*, 299 B.R. 810 (N.D. Tex. 2003) (debtor validly disclaimed mother's estate and therefore had no interest in it to conceal); Lower Bucks Hospital v. Hannon (*In re* Hannon), Nos. 96-1804 & 96-1275, 1997 WL 47626, at *2 (Bankr. E.D. Pa. Feb. 3, 1997) (debtor retained no interest in home after transfer to children); Bank of Chester Co. v. Cohen (*In re* Cohen), 142 B.R. 720, 727–28 (Bankr. E.D. Pa. 1992) (debtor conveyed assets to niece and nephew for personal reasons, no retained interest); United States v. Sumpter (*In re* Sumpter), 136 B.R. 690, 700–01 (Bankr. E.D. Mich. 1991) (no evidence debtor retained benefits or, or shouldered burdens of, owning transferred property); Hall v. Hall (*In re* Hall), 126 B.R. 117, 120 (Bankr. M.D. Fla. 1991) (debtor gave money to former girlfriend more than one year preceding filing); Patton v. Hooper (*In re* Hooper), 39 B.R. 324, 327 (Bankr. N.D. Ohio 1984) (two parcels of land and two automobiles were conveyed absolutely with no retained interest); Wisconsin Fin. Corp. v. Ries (*In re* Ries), 22 B.R. 343, 346 (Bankr. W.D. Wis. 1982) (no evidence that debtor retained any interest in transferred piano); Ohio Citizens Tr. Co. v. Smith (*In re* Smith), 11 B.R. 20, 22 (Bankr. N.D. Ohio 1981) (debtor had no control over backhoe he sold).

III. WHAT IS WRONG WITH CONTINUING CONCEALMENT

When the debtor has taken actions with respect to his or her property with fraudulent intent, it is understandable that bankruptcy courts wish to punish this behavior by denying the debtor a discharge. The problem is that courts are assuming the power to do so without express statutory authority; if Congress wanted courts to deny discharge to debtors who took any action with respect to their property at any time with intent to hinder, delay or defraud creditors, it would have said so in § 727(a)(2). Given that Congress limited denials of discharge to debtors who with fraudulent intent have "transferred, removed, destroyed, mutilated, or concealed, or ⟦ ⟧ permitted to be transferred, removed, destroyed, mutilated, or concealed . . . property of the debtor, within one year before the date of the filing of the petition,"[96] courts must confine themselves to the circumstances laid out in the statute and not invent new grounds for denial of discharge. There are several reasons the "continuing concealment" theory is inconsistent with the statutory limits of section 727(a)(2). Those reasons are advanced below.

A. Concealing Requires Concealment

In interpreting the words in the statute, one must begin with the statutory text. "Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning."[97] Only when the "literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters" should one look to the intent of the drafters rather than the language.[98]

What is the ordinary meaning of "conceal"? If one looks at a dictionary[99] the term means "1. To hide; withdraw or remove from observation; cover or keep from sight" or "2. To keep secret; to prevent or avoid disclosing or divulging."[100] Other dictionary definitions include "1. To prevent disclosure or recognition of" or "2. To place out of sight"[101] or "to hide or keep from

---

[96] 11 U.S.C. § 727(a)(2)(A).

[97] BP America Production Co. v. Burton, 549 U.S. 84, 91 (2006).

[98] Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982), quoted in U.S. v. Ron Pair Enters., Inc., 489 U.S. 235, 242 (1989).

[99] THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 303 (1967).

[100] *Id.*

[101] MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 257 (11th ed. 2003).

observation, discovery, or understanding; keep secret."[102] To quote from a source that dates to the time of the enactment of the Bankruptcy Act,[103] a definition mirrored in Black's Law Dictionary,[104] conceal means "to hide; secrete; withhold from the knowledge of others."[105] The word comes from the Middle English word "concelen" ("to keep close or secret, forbear to divulge") which itself was from the Old French "conceler ("hide, disguise") and from the Latin "concelāre, the infinitive of "concelō" ("to hide").[106]

Therefore, the ordinary meaning suggests that the debtor must have taken some action to hide, either physically or by keeping secret, property of the debtor within the statutory period to satisfy the requirements of § 727(a)(2)(A). The entire basis of continuing concealment – that the debtor is deemed to conceal property of which the debtor made a prepetition transfer more than one year before filing and retained an equitable interest – is logically inconsistent with the idea of an interest in property being concealed. In fact, courts determine that the debtor continues to have an equitable interest by noting that the debtor continued to possess, use, or manage the property supposedly transferred, or treated it in other ways as if the debtor continued to own it.[107] Those actions are the opposite of concealment. A creditor looking at the debtor's relationship to the property would assume the debtor retained full ownership of the property. The legal interest of the party to whom the transfer was made might be concealed, but the fact the debtor has an interest in the property is not.

Nothing could be less concealed than property in the possession of, and used by, the debtor. It is a general principle of real property law that possession of property creates constructive notice to any bona fide purchaser that the possessor may have an equitable interest in the property.[108] So, for example, the trustee may not avoid an unrecorded

---

[102] THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 275 (1969).

[103] HENRY BLACK, A DICTIONARY OF LAW CONTAINING DEFINITIONS OF THE TERMS AND PHRASES OF AMERICAN AND ENGLISH JURISPRUDENCE, ANCIENT AND MODERN 241 (1891).

[104] BLACK'S LAW DICTIONARY 261 (5th ed. 1979).

[105] *Id.*

[106] OXFORD ENGLISH DICTIONARY (Oxford University Press 2023), available at oed.com.

[107] *See infra* discussion in Part II(B).

[108] *See, e.g.*, *In re* Stewart, 325 F. App'x 82, 85 (3d Cir. 2009); Bump v. Dahl, 26 Wis.

transfer of real property under § 544(a)(3)[109] to a buyer who has possession of the property because possession provides constructive notice to the world of the buyer's interest.[110] If the debtor is in possession of property to which someone else has record title, possession provides constructive notice to the trustee of the debtor's equitable interest; therefore, the debtor cannot be said to be concealing that interest.

Yet courts continue to label as concealment a debtor's continued connection to property purportedly conveyed to another. I suggest if there is no concealment of the property (or debtor's interest in it), the debtor cannot in fact have "concealed" property. There may be some other bad act, such as a fraudulent transfer, but concealment requires that something be secreted. Looking at it another way, the debtor cannot have taken acts to conceal property with intent to hinder, delay or defraud creditors if the debtor has made the debtor's connection to the property obvious to those creditors, either expressly or through the debtor's actions.[111] That is not the state of mind required for denial of discharge under § 727(a)(2).

For example, in *SE Property Holdings, LLC v. Stewart*[112] the debtors made gratuitous transfers of the membership interests in a limited liability company ("LLC") to their children but continued to claim full ownership thereafter on their financial statements and tax returns. One of the debtors remained in complete control over the LLC even after the purported transfer, and the transferees received no distributions and paid no expenses.[113] The court noted that the debtors represented to "creditors, tax authorities . . . , employees and the recipients of the interests transferred" that the debtors still owned all membership interests.[114] This was clearly a fraudulent transfer,[115] but debtors' continued interest in the LLC was

---

2d 607, 612, 133 N.W. 2d 295, 298 (Wis. 1965). *See generally* 39 AM. JUR. 242, Notice and Notices, § 18.

[109] Section 544(a)(3) of the Code gives the trustee the ability to avoid any transfer of property of the debtor that is voidable by a bona fide purchaser of real property from the debtor. 11 U.S.C. § 544(a)(3).

[110] *See, e.g.*, *In re* Espino, 648 B.R. 235, 251 (Bankr. D. Idaho 2022).

[111] *See, e.g.*, Antognoni v. Basso (*In re* Basso), 397 B.R. 556, 564 (B.A.P. 1st Cir 2008) (declaration of homestead "does not hide an interest in property, but rather announces it").

[112] No. 15-12213, Adv. No. 16-1087, 2022 WL 3209467 (Bankr. W.D. Okla. Aug. 3, 2022).

[113] *Id.* at *3.

[114] *Id.* at *13.

[115] *Id.* at *17.

definitely not concealed.

Another case in which the court mischaracterized the debtor's actions as concealment was *In re Wylie*.[116] The debtors simply checked the box on their 2018 joint tax returns to have their tax overpayments applied to their 2019 tax liability. The court correctly labeled the action of the debtors a "transfer" of property (to the taxing authorities) but also said the debtors "concealed" their right to a refund because it put the refund out of the reach of any creditors other than the taxing authorities.[117] Although it is true the same act can constitute a "transfer" and "concealment," this one was in no way concealed. The debtor is required to provide to the trustee a copy of the federal income tax return for the most recent tax year ending immediately before commencement of the case; any creditor can request a copy as well.[118] There was nothing concealed about the debtors' election. It may have been a preferential transfer, but it was not a concealment. The court did, however, conclude that the debtors did not take their action with intent to hinder, delay, or defraud creditors.[119]

Debtors have often attempted to defend against denial of their discharges by pointing out there was nothing hidden about the property and any transfer thereof.[120] In some cases, if the property was originally transferred, the transfer was undone before the bankruptcy filing and the debtor listed the property on the bankruptcy schedules.[121] But courts that have

---

[116] 649 B.R. 852 (Bankr. E.D. Mich. Apr. 17, 2023).

[117] *Id.* at 865.

[118] 11 U.S.C. § 521(e)(2)(A).

[119] *Id.*

[120] *See, e.g.*, R.I. Depositors Econ. Prot. Corp. v. Hayes (*In re* Hayes), 229 B.R. 253, 261 (B.A.P. 1st Cir. 1999); Thacker v. SE Prop. Holdings, LLC, No. 5:15-cv-00183, 2016 WL 6039204, at *5 (N.D. Fla. Mar. 21, 2016); Wieland v. Gordon (*In re* Gordon), 509 B.R. 359, 373–74 (Bankr. N.D. Okla. 2014), *aff'd*, 526 B.R. 376 (B.A.P. 10th Cir. 2015); Jeffrey M. Goldbert & Assocs., Ltd. v. Holstein (*In re* Holstein), 299 B.R. 211, 232 (Bankr. N.D. Ill. 2003), *aff'd*, No. 03-C-8023, 2004 WL 2075442 (N.D. Ill. Aug. 31, 2004); Ransier v. McFarland (*In re* McFarland), 170 B.R. 613, 630 (Bankr. S.D. Ohio 1994); Bartlett Bank & Trust Co., v. Wolmer (*In re* Wolmer), 57 B.R. 128, 132 (Bankr. N.D. Ill. 1986); Peoples Bank, Inc., v. Herron (*In re* Herron), 49 B.R. 32, 34 (Bankr. W.D. Ky. 1985).

[121] *See, e.g.*, Davis v. Davis (*In re* Davis), 911 F.2d 560 (11th Cir. 1990) (per curiam); Flushing Sav. Bank, FSB v. Vidro (*In re* Vidro), 497 B.R. 678, 688–89 (Bankr. E.D.N.Y. 2013) (return of concealed property does not prevent denial of discharge); *cf.* Martin v. Bajgar (*In re* Bajgar), 104 F.3d 495 (1st Cir. 1997) (debtor's wife returned fraudulently transferred property after bankruptcy filing but debtor was denied discharge). *But see* First

considered the issue have almost uniformly rejected the contention that the knowledge of the trustee and creditors about the debtor's connection to the property defeats the assertion that the debtor's interest has been concealed.[122] As one court put it, without irony: "A concealment . . . need not be literally concealed."[123] Another opined: "It would be an exceedingly narrow construction to hold that the bankrupt avoids the charge of concealment because he informs the trustee of the plan adopted to effectuate the fraud."[124] But that is the nature of "concealment" – if something is disclosed, it is not concealed. The debtor may have done something else illegal or immoral, but the debtor has not concealed property. It defies logic to consider property as to which the debtor transferred legal title but retained possession to be "concealed."

As an illustration, I would maintain the debtor in *Wieland v. Gordon (In re Gordon)*[125] did nothing that could be characterized as "concealing" the

---

Beverly Bk v. Adeeb (*In re* Adeeb), 787 F.2d 1339, 1345 (9th Cir. 1986) (holding if property that was fraudulently transferred within one year before bankruptcy was retransferred to debtor prior to bankruptcy, debtor was entitled to discharge).

[122] *See, e.g.*, Coady v. D.A.N. Joint Venture III, L.P. (*In re* Coady), 588 F.3d 1312, 1316 (11th Cir. 2009); United States v. Zimmerman, 158 F.2d 559, 560 (7th Cir. 1946); *Hayes*, 229 B.R. at 261; Sacklow v. Vecchione (*In re* Vecchione), 407 F. Supp. 609, 618 (E.D.N.Y. 1976); *Vidro*, 497 B.R. at 688; *Thacker*, 2016 WL 6039204 at *5; *Holstein*, 299 B.R. at 232; March v. Sanders (*In re* Sanders), 128 B.R. 963, 970–71 (Bankr. W.D. La. 1991); Penner v. Penner (*In re* Penner), 107 B.R. 171, 176 (Bankr. N.D. Ind. 1989). *But see McFarland*, 170 B.R. at 630 (household goods and furnishings were "not removed or hidden from the Trustee" so no concealment); *In re* MacDonald, 114 B.R. 326, 334–35 (D. Mass. 1990) (no clear and convincing evidence of concealment of debtor's beneficial interest in stock held in father's name); *In re* Mapco Mfg. Co., Inc. 72 F. Supp. 555, 557 (D. Neb. 1947) (dismissing involuntary petition where there was no property of which the petitioners did not have knowledge, both as to its existence and its whereabouts); Premier Capital, LLC v. Crawford (*In re* Crawford), 531 B.R. 275, 302 (Bankr. D. Mass. 2015) (concluding that creditors knew about debtor's connection to property during the one year preceding bankruptcy, so no concealment); Applebaum v. Henderson (*In re* Henderson), 134 B.R. 147, 158 (Bankr. E.D. Pa. 1991) (because creditor was intimately familiar with transfers so could not have been hindered, delayed or defrauded); *Wolmer*, 57 B.R. at 132 (no concealment when transfer was disclosed to creditor after getting judgment against debtor, and disclosed to other creditors at § 341 meeting); *Herron*, 49 B.R. at 34 (where transfer was recorded and creditor admitted that it knew about the transfer, there was no concealment).

[123] *Kauffman*, 675 F.2d at 128.

[124] *In re* Quackenbush, 102 F. 282, 285 (N.D.N.Y. 1900).

[125] 509 B.R. 359 (Bankr. N.D. Okla. 2014), *aff'd*, 526 B.R. 376 (B.A.P. 10th Cir. 2015).

primary residence in which he lived with his wife (who paid for its construction with money he gave her over the years of their marriage and who had legal title to the house) or vehicles titled in her name. The court held that the debtor concealed his equitable interest in the home. But despite living in the house with his wife and paying the utilities for the house, the debtor did not own it. He clearly disclosed that title to the property was held by his wife in every personal financial statement he prepared over the years and in prior litigation, as well as the bankruptcy schedules.[126] Attributing an equitable interest in assets owned by a wife to her husband seems to be a reversion to the days predating the married women's property acts when the rights of married women to own their own property were not recognized. The property was hers; the fact that they were a family unit and he therefore had "joint use, management, and control of those assets"[127] did not give him an equitable interest in them.

B. Concealment Requires That Property of the Debtor Be Concealed

Words have meaning. To "conceal [] property" is not the same thing as concealing information about property or the value of property or some aspect of the property other than the debtor's interest in it.[128]

In *United States v. Wagner*[129] the court was considering whether, by changing the locks on the doors of three unoccupied houses to obstruct the trustee's access to the property, the debtor had "concealed" the property from the trustee for purposes of the crime of fraudulent concealment. The debtor argued that, although he obstructed the trustee's access to the property and thereby hindered its sale, he did not conceal the property from the trustee. The court disagreed, considering the debtor's interpretation of the term "conceal" to be too narrow. It stated, "by depriving the Trustee of access to the house, Wagner concealed . . . the value of the property. That the Trustee knew of the house's existence does not alter our conclusion."[130]

---

[126] *Id.* at 367–68.

[127] *Id.* at 369.

[128] *See* PRN Real Estate & Invs., LTD v. Cole (*In re* Cole), No. 21-cv-711, 2022 WL 1096091, at *3 (M.D. Fla. Mar. 31, 2022) (stating that an attempt to "hide information about the nature or value of the property . . . is simply not what the statute prohibits").

[129] 382 F.3d 598, 606–10 (6th Cir. 2004).

[130] *Id.* at 607.

But § 152(1) does not make it an offense to conceal from the trustee the *value* of the debtor's property; it precludes concealing from the trustee "any property belonging to the estate of a debtor."[131] The vacant houses were not concealed from the trustee.

Similarly, in *Hughes v. Lawson (In re Lawson)*,[132] the debtor granted a deed of trust (the equivalent of a mortgage) to her mother on her personal residence supposedly to secure $350,000 at a time when the residence was worth $300,000 and already encumbered by a prior deed of trust securing $58,000.[133] The debtor subsequently borrowed more money and granted the new lender a third deed of trust on the residence but subordinated her mother's deed of trust to that of the new lender.[134] This, the court held, was continuing concealment of the debtor's interest in the property.[135] But the debtor at all times owned the residence; the only issue was the value of her interest (the equity in the residence after satisfaction of all debts secured by valid deeds of trust). The property was certainly not concealed from anyone.

There are many provisions of the Code and the Federal Rules of Bankruptcy Procedure that require disclosure of information about property. For example, § 521(a) and Bankruptcy Rule 1007(b) require a debtor file certain schedules, including a schedule of assets and liabilities.[136] If a trustee is serving in the case, the debtor must "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate."[137] The court may also order "an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee."[138]

The debtor is required to appear at a meeting of creditors under § 341,[139]

---

[131] 18 U.S.C. § 152(1).
[132] 122 F.3d 1237 (9th Cir. 1997).
[133] *Id.* at 1239.
[134] *Id.*
[135] *Id.* at 1241.
[136] 11 U.S.C. § 521(a)(1)(B)(i); FED. R. BANKR. P. 1007(b)(1)(A).
[137] 11 U.S.C. § 521(a)(4).
[138] 11 U.S.C. § 542(e).
[139] 11 U.S.C. § 341.

at which the debtor must submit to examination under oath[140] including questions about the debtor's "acts, conduct, or property" or "liabilities and financial condition."[141] If the debtor has "concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained,"[142] the court may deny the debtor a discharge. It is also a ground for denial of discharge if the debtor "made a false oath or account"[143] (which could be false information with respect to the debtor's property) or "knowingly and fraudulently . . . withheld from an officer of the estate entitled to possession . . . any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs."[144] If the debtor has received a discharge and is selected for an audit under § 586(f) of title 28,[145] on request of the trustee, a creditor, or the U.S. trustee, and after notice and a hearing, the court must revoke the debtor's discharge if the debtor fails to explain satisfactorily "a failure to make available for inspection all necessary accounts, books, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested."[146]

Unlike these sections directed at eliciting information about the debtor's property from the debtor, § 727(a)(2) says nothing about accounts, papers, documents, records, files, or any other information. The language of § 727(a)(2) uses the phrase "concealed … property of the debtor."[147] When the property itself is not concealed, the language of § 727(a)(2) simply is not satisfied.

Moreover, although a fraudulent transfer of property of the debtor

---

[140] 11 U.S.C. § 343.

[141] FED. R. BANKR. P. 2004(b).

[142] 11 U.S.C. § 727(a)(3).

[143] 11 U.S.C. § 727(a)(4)(A).

[144] 11 U.S.C. § 727(a)(4)(D).

[145] Section 586(f)(1) authorizes the U.S. trustee to contract with auditors to perform audits in cases designated by the U.S. trustee pursuant to § 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. 28 U.S.C. § 586(f)(1). Such audits are intended to determine whether individual debtors make material misstatements of income or expenditures or of assets in connection with their bankruptcy cases.

[146] 11 U.S.C. § 727(d)(4)(b).

[147] 11 U.S.C. § 727(a)(2)(A).

within one year of the filing can result in denial of a discharge,[148] concealment of the transfer of property, as opposed to the property itself, does not justify denial of discharge.[149]

When is concealed property "property of the debtor"? The Supreme Court has recognized that "[[p]]roperty interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding."[150] The courts concluding that the debtor continues to have a property interest in assets that have been the subject of a fraudulent transfer seldom analyze that question under state law.[151]

State law governing the impact on property interests of a fraudulent transfer is generally that state's version of the Uniform Voidable Transactions Act (UVTA) or the Uniform Fraudulent Transfer Act (UFTA).[152] The UVTA explicitly states that transfers described in its provisions are "voidable" rather than "void."[153] Its predecessor, the UFTA, also provided for "avoidance of the transfer" by a creditor if the transfer was defined as fraudulent as to that creditor.[154] Therefore, unless and until a person with a right to seek avoidance of the transfer takes action to do so

---

[148] *Id. See, e.g.*, *In re* Kontrick, 295 F.3d 724, 737 (7th Cir. 2002); *In re* Freudmann, 362 F. Supp. 429, 431 (S.D.N.Y. 1973); FDIC v. Sullivan (*In re* Sullivan), 204 B.R. 919, 939 (Bankr. N.D. Tex. 1997).

[149] *See* Rosen v. Bezner, 996 F.2d 1527, 1532 (3d Cir. 1993); United States v. Turner, 725 F.2d 1154, 1157 (8th Cir. 1984); McDermott v. Petersen (*In re* Petersen), 564 B.R. 636, 646 (Bankr. D. Minn. 2017); Irish Bank Res. Corp v. Drumm (*In re* Drumm), 524 B.R. 329, 407 (Bankr. D. Mass. 2015); Darwin (Huck) Spaulding Living Tr. v. Carl (*In re* Carl), 517 B.R. 53, 67 (Bankr. N.D.N.Y. 2014); Small v. Bottone (*In re* Bottone), 209 B.R. 257, 264 n.8 (Bankr. D. Mass. 1997).

[150] Butner v. United States, 440 U.S. 48, 55 (1979).

[151] *But see* United States v. Fletcher (*In re* Fletcher), No. 11-12334, Adv. No. 11-01116, 2015 WL 1239811, at *10 (Bankr. N.D. Okla. Mar. 13, 2015) (applying Oklahoma law on creation of resulting trust when transfer of real property is made to one person and consideration paid by another).

[152] Only six states have not enacted a version of one of these two statutes – Alaska, Louisiana, Virginia, Maryland, South Carolina, and Massachusetts – and two of them (South Carolina and Massachusetts) have had legislation introduced to adopt the Uniform Voidable Transactions Act.

[153] Uniform Voidable Transactions Act (UVTA) §§ 4, 5 (1984).

[154] Uniform Fraudulent Transfer Act (UFTA) § 8 (2014).

within the applicable statute of limitations,[155] the transferred property belongs to the transferee and the transferor has no remaining interest in the property without regard to the transferor's intent in making the transfer. Indeed, if the transferee took the property "in good faith and for a reasonably equivalent value," the transfer is not avoidable at all even if the debtor made the transfer with fraudulent intent.[156]

This is significant because, although the initial act by the debtor of transferring property to someone else might constitute a transaction that can be avoided by the trustee – either under § 548 or under § 544(b) – and may itself constitute concealment of that property from creditors, any acts the debtor takes thereafter with respect to that property are not acts with respect to property of the debtor. The property belongs to the transferee. Therefore, continuing concealment should never be asserted with respect to property that has been transferred in a voidable transaction; rather, creditors should seek to avoid the transfer.[157]

Yet most continuing concealment cases present exactly this scenario.[158] Instead of recognizing that a fraudulent transfer actually eliminates the debtor's interest in the property until and unless it is avoided, bankruptcy courts examine whether the debtor continues to have an equitable interest in the property so transferred by looking at the "surrounding circumstances to determine whether there has been a concealment."[159] Among the factors considered by courts are:

---

[155] UVTA § 9; UFTA § 9.

[156] UVTA § 8(a); UFTA § 8(a).

[157] Once the transfer is avoided (restoring ownership of the property to the debtor) there can be no concealment at all.

[158] For an example of a case in which the fraudulent transfer was in fact avoided during the one-year period prior to the filing, *see* Pelham Plate Glass, Inc. v. Charette (*In re* Charette), 148 B.R. 94 (Bankr. D. Mass. 1992). The court characterized the debtor's conduct prior to the date on which the fraudulent transfer was avoided as "concealment," and noted that the concealment ended when the fraudulent transfer was avoided. *Id.* at 96 n.1.

[159] *See, e.g.*, Small v. Bottone *(In re* Bottone), 209 B.R. 257, 263 (Bankr. D. Mass. 1997). *See also* Friedell v. Kauffman (*In re* Kauffman), 675 F.2d 127, 128 (7th Cir. 1981)) (looking at "attendant circumstances indicating that the bankrupt continues to use the property as his own"). *Cf.* Shamban v. O'Brien (*In re* O'Brien), 190 B.R. 1 (Bankr. D. Mass. 1995) (finding "concealment" without consideration of whether the property concealed was the debtor's).

(1) whether the debtor paid in whole or in part the purchase price for the property;[160]

(2) whether the debtor transferred a residence but continued to live in it,[161] or transferred other real property and continued to collect rents;[162]

(3) whether the debtor transferred personal property (which

---

[160] *See, e.g.*, Thibodeaux v. Olivier (*In re* Olivier), 819 F.2d 550, 551 (5th Cir. 1987); United States v. Fletcher (*In re* Fletcher), No. 11-12334, Adv. No. 11-01116, 2015 WL 1239811, at *10 (Bankr. N.D. Okla. Mar. 13, 2015); McCarthey Invs. LLC v. Shah (*In re* Shah), No. 07-13833, Adv. No. 08-01762, 2010 WL 2010824, at *8 (Bankr. S.D.N.Y. May 13, 2010); Hubbell Steel Corp. v. Cook (*In re* Cook), 126 B.R. 261, 267 (Bankr. E.D. Tex. 1991); Nat'l City Bank, Marion v. McNamara (*In re* McNamara), 89 B.R. 648, 651–52 (Bankr. N.D. Ohio 1988).

[161] *See, e.g.*, *Olivier*, 819 F.2d at 551; *Kauffman*, 675 F.2d at 128; Antognoni v. Basso (*In re* Basso), 397 B.R. 556, 563 (B.A.P. 1st Cir. 2008); R.I. Depositors Econ. Prot. Corp. v. Hayes *(In re* Hayes), 229 B.R. 253, 260 (B.A.P. 1st Cir. 1999); United Gen. Title Ins. Co. v. Karanasos, No. 13-CV-7153, 2014 WL 4388277, at *8 (E.D.N.Y. Sept. 5, 2014); Wilferd v. Wardle, No. 2:06-CV-01007, 2007 WL 391583, at *5 (D. Utah Feb. 1, 2007); Sacklow v. Vecchione (*In re* Vecchione), 407 F. Supp. 609, 616–17 (E.D.N.Y. 1976); PNC Bank, N.A. v. Leongas (*In re* Leongas), 628 B.R. 71, 95-96 (Bankr. N.D. Ill. 2021); Layng v. Pansier (*In re* Pansier), 613 B.R. 119, 146–47 (Bankr. E.D. Wis. 2020); Mediche, Ltd. v. Abramovich (*In re* Abramovich), No. 14-24708, Adv. No. 14-00819, 2017 WL 4776710 at *5 (Bankr. N.D. Ill. Oct. 19, 2017); *Fletcher*, 2015 WL 1239811, at *2; United States v. Hart (*In re* Hart), 563 B.R. 15, 47 (Bankr. D. Idaho 2016); *Shah*, 2010 WL 2010824, at *1; Garland v. United States (*In re* Garland), 385 B.R. 280, 295 (Bankr. E.D. Okla. 2008), *aff'd*, 417 B.R. 805 (B.A.P.10th Cir 2009); IRS v. Petersen (*In re* Petersen), 312 B.R. 385, 392 (Bankr. N.D. Iowa 2004); Berland v. Mussa (*In re* Mussa), 215 B.R. 158 (Bankr. N.D. Ill. 1997); *O'Brien*,190 B.R. at 4; Minsky v. Silverstein (*In re* Silverstein), 151 B.R. 657 (Bankr. E.D.N.Y. 1993); *Cook*, 126 B.R. at 267; Morrison v. Howard, (*In re* Howard), 55 B.R. 580, 584 (Bankr. E.D.N.C. 1985); Belveal v. West (*In re* West), No. 05-11461, Adv. No. 06-1022, 2007 WL 4563444, at *5 (Bankr. W.D. Ky. Dec. 21, 2007); *but see* Anderson v. Hooper (*In re* Hooper), 274 B.R. 210, 216–17 (Bankr. D.S.C. 2001); Tillery v. Hughes (*In re* Hughes), 184 B.R. 902, 908 (Bankr. E.D. La. 1995); Ransier v. McFarland (*In re* McFarland), 170 B.R. 613, 629–30 (Bankr. S.D. Ohio 1994); Patton v. Hooper (*In re* Hooper), 39 B.R. 324, 328 (Bankr. N.D. Ohio 1984) (holding that merely living on the transferred property is insufficient to prove a secret interest in the property). *Cf.* Rosen v. Bezner, 996 F.2d 1527, 1532 (3d Cir. 1993) (holding that issue of whether debtor had equitable interest in home he transferred to his wife could not be resolved on summary judgment).

[162] *See, e.g.*, Cong. Talcott Corp. v. Sicari (*In re* Sicari), 187 B.R. 861, 873–75 (Bankr. S.D.N.Y. 1994); First Nat'l Bank of Crosby v. Syrtveit (*In re* Syrtveit), 105 B.R.596, 599 (Bankr. D. Mont. 1989).

could include a business) but continued to possess it, use it, or benefit from it;[163]

(4) whether the debtor made debt service, tax, insurance, utilities, and/or other payments on the property transferred;[164]

(5) whether the debtor listed the transferred property on personal financial statements;[165] and

---

[163] *See, e.g.*, Serio v. DiLoreto (*In re* DiLoreto), 266 F. App'x 140, at **2 (3d Cir. Jan. 29, 2008); Honeycutt v. Commercial Nat'l Bank (*In re* Honeycutt), 15 F.3d 181 (5th Cir. 1994); Korte v. IRS (*In re* Korte), 262 B.R. 464, 472 (B.A.P. 8th Cir. 2001); Newton v. Essres (*In re* Essres), 139 B.R. 958, 961–62 (D. Colo. 1992); *Vecchione*, 407 F. Supp. at 617; Dantzler v. Zulpo (*In re* Zulpo), 592 B.R. 231, 245 (Bankr. E.D. Ark. 2018); Premier Capital, LLC v. Crawford (*In re* Crawford), 531 B.R. 275, 303 (Bankr. D. Mass. 2015); Agai v. Antoniou (*In re* Antoniou), 515 B.R. 9, 14 (Bankr. E.D.N.Y. 2014); NLRB v. Fragata (*In re* Fragata), No. 6:10-bk-21874, Adv. No. 6:11-ap-00054, 2012 WL 2847597, at *4 (Bankr. M.D. Fla. July 11, 2012); Cmty. Credit Union v. Hammontree (*In re* Hammontree), No. 09-42677, Adv. Nos. 09-40119, 09-40120, 0940122, 09-40123 & 09-40124, 2011 WL 2357220, at *4 (Bankr. N.D. Ala. Mar. 11, 2011); Gary J. Rotella & Assoc., P.A. v. Bellassai (*In re* Bellassai), 451 B.R. 594, 601 (Bankr. S.D. Fla. 2011); FDIC v. Sullivan (*In re* Sullivan), 204 B.R. 919, 939 (Bankr. N.D. Tex. 1997); Cadle Co. v. Prupis (*In re* Prupis), No. 04-48414, Adv. No. 05-2674, 2007 WL 295351, at *11 (Bankr. D.N.J. Jan. 24, 2007); Structured Asset Servs., L.L.C. v. Self (*In re* Self), 325 B.R. 224, 240 (Bankr. N.D. Ill. 2005); Eckard Brandes, Inc. v. Riley (*In re* Riley), No. 01-4452 & 02-00013, 2004 WL 2370640, at * 4 (Bankr. D. Hawaii Apr. 20, 2004); *Mussa*, 215 B.R. at 175; *Sicari*, 187 B.R. at 877–78; Cullen Ctr. Bank & Tr. v. Lightfoot (*In re* Lightfoot), 152 B.R. 141, 147 (Bankr. S.D. Tex. 1993); U.S. v. Towe (*In re* Towe), 147 B.R. 545, 550 (Bankr. D. Mont. 1992); Penner v. Penner (*In re* Penner), 107 B.R. 171 (Bankr. N.D. Ind. 1989); Nelson v. Peters (*In re* Peters), 106 B.R. 1, 5 (Bankr. D. Mass. 1989); Teilhaber Mfg. Corp. v. Hodge (*In re* Hodge), 92 B.R. 919, 921 (Bankr. D. Kan. 1988); *Howard*, 55 B.R. at 584; Langston v. Balch (*In re* Balch), 25 B.R. 22, 23 (Bankr. N.D. Tex. 1982).

[164] *See Olivier*, 819 F.2d at 554; *Kauffman*, 675 F.2d at 128; *Shah*, 2010 WL 2010824, at *1; *Karanasos*, 2014 WL 4388277, at *8; Wilferd v. Wardle, 2007 WL 391583, at *5; *Vecchione*, 407 F. Supp at 617; *In re* Walter, 67 F. Supp. 925, 926 (S.D.N.Y. 1946); *Leongas*, 628 B.R. at 95–96; *Abramovich*, 2017 WL 4776710 at *5; *Fletcher*, 2015 WL at *2; *Hart*, 563 B.R. at 26; *Hayes*, 229 B.R. at 260*; Zulpo*, 592 B.R. at 247*; Shah*, 2010 WL at *1; *Garland,* 385 B.R. at 296; Minsky v. Silverstein (*In re* Silverstein), 151 B.R. 657 (Bankr. E.D.N.Y. 1993); *Cook*, 126 B.R. at 263; *Peters*, 106 B.R. at 5.

[165] *See Kauffman*, 675 F.2d at 128; *Crawford*, 531 B.R. at 298; *cf. Essres*, 139 B.R. at 961–62; *Syrtveit*, 105 B.R. at 596 (debtor claimed tax deductions related to the transferred property).

> (6) whether the debtor used the property as collateral for personal loans.[166]

None of these factors should be relevant if debtor has transferred the property to another person, even with intent to hinder, delay, or defraud creditors. The property belongs to the transferee unless the transfer is avoided.

An early case squarely rejected the assertion that failure to list allegedly fraudulently transferred property on the debtor's schedules warranted denial of discharge. In *In re Hennebry*[167] the debtor had deeded property in Colorado and Illinois to his wife while he was insolvent and with actual fraudulent intent long before filing for bankruptcy.[168] The court stated that the bankrupt was required to schedule only property he owns or in which he has an interest at the time he prepares the schedule, not property transferred before that time even in a fraudulent transfer. As the court said,

> If Congress had intended that the transfer of property by the bankrupt in fraud of creditors, or the concealment thereof by him with such intent, at any time prior to the bankruptcy, no matter how remote, would bar a discharge, it surely would not have limited the transfer or concealment for such purpose to a time within the four months immediately preceding the filing of the petition in bankruptcy. To hold a fraudulent transfer of property made more than four months prior to the filing of the petition in bankruptcy will bar a discharge would be in plain disregard of the act of Congress.[169]

The remedy potentially available to the trustee for a fraudulent transfer of property of the debtor prior to the one-year period now specified in § 727(a)(2) is avoidance of the transfer. It is not denial of discharge.[170] If the

---

[166] *See Kauffman*, 675 F.2d at 128; *Hayes*, 229 B.R. at 260; *West*, 2007 WL 456344, at *2.

[167] 207 F. 882 (N.D. Iowa 1913).

[168] *Id.* at 883.

[169] *Id.* at 884.

[170] *Id.* at 885. *See also In re* Doody, 92 F.2d 653, 655 (7th Cir. 1937); Moriyama v. Allen, 13 F.2d 117 (9th Cir. 1926); *In re* Perkins, 40 F. Supp. 114 (D.N.J. 1941). *Cf.* Berland v. Mussa (*In re* Mussa), 215 B.R. 158 (Bankr. N.D. Ill. 1997); Shamban v. O'Brien (*In re* O'Brien), 190 B.R. 1 (Bankr. D. Mass. 1995) (court both avoided the fraudulent

transfers are successfully avoided, the property becomes part of the bankruptcy estate.[171]

An early decision of the Second Circuit in *In re Hammerstein*[172] recognized this principle. The debtor sold furniture and other property at a time when her husband was financially stressed. The court assumed that the transfers were fraudulent, but noted that the issue presented was denial of discharge, not avoidance of a fraudulent conveyance, and said "⟦i⟧f the bankrupt has conveyed ⟦property⟧, no matter how fraudulently, so that he has lost all right, title and interest therein, it is not a concealment" of property of the estate.[173] Therefore, discharge was appropriate.[174]

A fraudulent transfer of property of the debtor can itself serve as grounds for denial of discharge if it takes place within the statutory period prior to filing.[175] But unless the transfer is avoided, if the transfer was legally

---

transfers and denied discharge).

[171] 11 U.S.C. § 541(a)(3). *See, e.g.*, Ransier v. McFarland (*In re* McFarland), 170 B.R. 613, 618 (Bankr. S.D. Ohio 1994).

[172] 189 F. 37 (2d Cir. 1911). The debtor was the wife of Oscar Hammerstein I, the grandfather of American playwright/lyricist Oscar Hammerstein II.

[173] *Id.*

[174] *Id. See also* United States v. Alper, 156 F.2d 222 (2d Cir. 1946) (when debtor paid preexisting debt with newly purchased property and then filed for bankruptcy, the transfer of the property may have been preference but was not concealment); Levinson v. U.S., 47 F.2d 451 (6th Cir. 1931) (using furniture purchased on credit to pay debts was not concealing property, even if it was a preferential transfer); *In re* Kean, 237 F. 682 (E.D.N.Y. 1916) (transfer of property acquired with wife's money and titled in name of bankrupt back to wife may be a preference, but is not concealment of property of the bankrupt from the trustee); *In re* Wakefield, 207 F. 180, 1878 (N.D.N.Y. 1913) (concluding that creditor failed to establish that bankrupt retained any ownership in property conveyed to his father-in-law); *In re* Dauchy, 130 F. 532 (2d Cir. 1904) (bankrupt conveyed real property to her father more than two years prior to the adjudication and creditors failed to establish that bankrupt retained interest in the property after conveyance); *In re* Quackenbush, 102 F. 282, 284 (N.D.N.Y. 1900) (suggesting that if the bankrupt's interest had become legally vested in the transferee of a fraudulent transfer before the enactment of the Bankruptcy Act, the debtor would have been entitled to a discharge).

[175] Section 727(a)(2) of the Code (like its predecessor § 14c of the Bankruptcy Act, codified at 11 U.S.C. § 32(c)) denies discharge not only if the debtor concealed property of the debtor within one year prior to the filing but also if the debtor transferred property during that period in each case with intent to hinder, delay, or defraud his creditors. 11 U.S.C. § 727(a)(2). *See, e.g.*, EFA Acceptance Corp. v. Cadarette (*In re* Cadarette), 601 F.2d 648, 651 (2d Cir. 1979) (holding that the fact that the debtor retained a key to the

effective,[176] the property cannot be considered as belonging to the debtor and therefore the debtor cannot be said to be concealing it. Therefore, an unavoidable fraudulent transfer should never give rise to denial of discharge.

In the remaining continuing concealment cases, the property was never transferred by the debtor to someone else. Typically – but not invariably – the debtor was involved in the purchase of the assets (as by providing some or all of the funds needed to buy the property) and retains a connection to them after purchase (such as by living in real property held in another's name or working for a business created in another's name).[177] In that situation, before the court can find concealment of property of the debtor the court must determine that the property held in another's name is in fact (in whole or in part) the debtor's property, that is, that the debtor has an equitable interest in the property. This too should be a question of state law and is not determined by the state's version of the UVTA or UFTA.

Bankruptcy courts finding continuing concealment rarely purport to apply state law in making their determination.[178] Instead, like those courts

---

transferred automobile and used it and parked it in his back yard provided evidence of a fraudulent motive behind a transfer).

[176] If there is no evidence of a legal transfer at all, the property can certainly be treated as belonging to the debtor. *See* McCue v. Galbraith (*In re* Galbraith), 17 B.R. 302 (Bankr. M.D. Fla. 1982) (court found no evidence of purported transfer of organ by debtor, and he continued to possess and use the organ). In addition, the transfer might not be legally effective if the recipient of the transfer is the "alter ego" of the transferor; there can be no effective transfer to oneself. *See, e.g.*, Frank v. Ward (*In re* Ward), 557 B.R. 508, 515–16 (Bankr. N.D. Tex. 2016); United States v. Towe (*In re* Towe), 147 B.R. 545, 550 (Bankr. D. Mont. 1992); *cf.* SC Advisors 7, LLC v. Rudnick (*In re* Rudnick), No. 20-40124, Adv. No. 20-04013, at * 4 (N.D. Fla. Mar. 3, 2021) (debtor cannot be held to have concealed assets transferred to alleged alter ego because those assets are not assets of the debtor unless court rules that the transferee is alter ego of debtor).

[177] *See, e.g.*, Coady v. D.A.N. Joint Venture III, L.P. (*In re* Coady), 588 F.3d 1312 (11th Cir. 2009) (although debtor had no involvement in creating wife's businesses, he provided uncompensated work for those businesses and was paid expenses); Keeney v. Smith (*In re* Keeney), 227 F.3d 679 (6th Cir. 2000) (debtor made all mortgage payments on one piece of real property and down payment on another although both were titled in names of his parents; he lived in each of them in turn rent-free).

[178] *But see* Gasson v. Premier Capital, LLC, 43 F.4th 37 (2d Cir. 2022) (applying New York law to determine that the debtor had a de facto property interest in his wife's consulting business); Finalco, Inc. v. Roosevelt (*In re* Roosevelt), 87 F.3d 311, 318 (9th Cir. 1996) (applying California law to conclude that debtor had no interest in property allocated to his wife under marital agreement); *In re* MacDonald, 114 B.R. 326, 332 (D. Mass. 1990)) (applying Massachusetts law to conclude that debtor was beneficial owners of stock in

that search for an equitable interest in the transferor after a fraudulent transfer of debtor's property,[179] courts look for facts surrounding debtor's involvement with the assets or business to determine whether the court thinks the debtor should be deemed to have an equitable interest.[180] Those facts tend to be the same ones considered when property has been transferred by the debtor to a third party:

(1) whether the debtor paid in whole or in part for the assets or business;[181]

(2) if the asset is residential real property, whether the

corporation held by his father); Wieland v. Gordon (*In re* Gordon), 509 B.R. 359, 373 (Bankr. N.D. Okla. 2014), *aff'd*, 526 B.R. 376 (B.A.P. 10th Cir.2015) (applying Oklahoma law to find that debtor had equitable interest in family house and vehicles held in wife's name); Marine Midland Bank v. Portnoy (*In re* Portnoy), 201 B.R. 685, 698–701 (Bankr. S.D.N.Y. 1996) (concluding that N.Y. law determined whether debtor retained an interest in assets transferred to a trust in Jersey in the Channel Islands); Ransier v. McFarland (*In re* McFarland), 170 B.R. 613, 617 (Bankr. S.D. Ohio 1994) (applying Ohio law on ownership of property); *cf.* Johnson v. Miles (*In re* Miles), No. 19-32352, Adv. No. 20-00316 (Bankr. N.D. Ill. May 24, 2023) (court recognized that the issue of whether a person has an equitable interest in property is a matter of state law but found no applicable Indiana case law and therefore applied federal common law for determining equitable ownership under a nominee theory); Levi v. Levi (*In re* Levi), 581 B.R. 733, 744 (Bankr. S.D.N.Y 2017) (stating that state law determines what constitutes an interest in property but failing to cite any state law in determining that debtor had ownership interest in chapter 11 debtors); Agai v. Antoniou (*In re* Antoniou), 515 B.R. 9, 13 (Bankr. E.D.N.Y. 2014) (noting that the Code looks to state law to determine whether debtor has an interest in property but cites only state law defining property); Kaler v. Craig (*In re* Craig), 195 B.R. 443, 449 (Bankr. D.N.D. 1996) (citing North Dakota cases relating to presumptive fraud but not equitable ownership of property).

[179] *See supra* text accompanying notes 159–166.

[180] *See, e.g.*, New World Marketing Corp. v. Garcia (*In re* Garcia), 88 B.R. 695, 704 (Bankr. E.D. Pa. 1988).

[181] *See* First Federated Life Ins. Co. v. Martin (*In re* Martin), 698 F.2d 883, 885 (7th Cir. 1983); *Keeney*, 227 F.3d at 683–84; Salomon v. Kaiser (*In re* Kaiser), 32 B.R. 701, 704 (S.D.N.Y. 1983), *aff'd*, 722 F.2d 1574 (2d Cir. 1983); Kaler v. Craig (*In re* Craig), 195 B.R. 443, 450 (Bankr. D.N.D. 1996); Nat'l City Bank, Marion v. McNamara (*In re* McNamara), 89 B.R. 648, 651–52 (Bankr. N.D. Ohio 1988); Yacht Investors, Inc. v. Lazar (*In re* Lazar), 81 B.R. 148, 150 (Bankr. S.D. Fla. 1988); *but see In re* Fragetti, 24 B.R. 392, 396 (Bankr. S.D.N.Y. 1982) (finding no equitable interest where, even though the debtors gave $50,000 to their daughter and son-in-law to purchase a home, the home was not in the debtors' name and they did not live there).

debtor lived in it;[182]

(3) if the asset is personal property (which could include a business), whether the debtor possessed it, used it, or benefited from it;[183]

(4) whether the debtor paid debt service, carrying costs, taxes, utilities, or other ongoing expenses associated with the property;[184]

(5) whether the debtor treated the property as his own for tax purposes;[185] and

(6) whether the debtor used the property in obtaining financing for personal purposes.[186]

The bottom line for all courts finding continuing concealment of property of the debtor is that a debtor is considered to have an equitable interest in property if the debtor treats property owned by another as his own by retaining possession or use of it. But property rights are not created by permissive use of property of another.[187] An owner of property can allow someone else to use property – even gratuitously and for long periods of time – without relinquishing any property interest. In none of these cases were debtor's actions adverse to the title owner of the property. What these courts must be concluding is that the third party never had complete

---

[182] *See Martin*, 698 F.2d at 885*; Keeney,* 227 F.3d at 684*;* United States v. Swenson (*In re* Swenson), 381 B.R. 272, 291 (Bankr. E.D. Cal. 2008); *McNamara*, 89 B.R. at 651*; Lazar*, 81 B.R. at 150. Of course, when a spouse owns a home in her own name, it would be a rare situation in which the husband does not live with her in the house, so cohabitation should not be determinative of property rights in the real estate. *See, e.g.*, Berland v. Mussa (*In re* Mussa), 215 B.R. 158, 174 (Bankr. N.D. Ill. 1997); Small v. Bottone (*In re* Bottone), 209 B.R. 257, 263–64 (Bankr. D. Mass. 1997); Patton v. Hooper (*In re* Hooper), 39 B.R. 324, 329 (Bankr. N.D. Ohio 1984).

[183] *See* Cadle Co. v. Ogalin (*In re* Ogalin), 303 B.R. 552, 558 (Bankr. D. Conn. 2004); *Craig*, 195 B.R. at 451.

[184] *See Kaiser*, 32 B.R. at 704; *Martin*, 698 F.2d at 885*; Keeney*, 227 F.3d at 684*; Swenson*, 381 B.R. at 286*; McNamara*, 89 B.R. at 651–52.

[185] *See Kaiser*, 32 B.R. at 706*; Martin,* 698 F.2d at 885*; Swenson*, 381 B.R. at 287.

[186] *See Coady*, 588 F.3d at 1314.

[187] *See, e.g.*, Forsman v. Greene, No. 38583-3, 2023 WL 179804, at *5 (Wash. Ct. App. Feb. 7, 2023); Wallace v. Rail Res., LLC, 222 Ark. App. 506, 657 S.W.3d 875, 879 (2022); Nye v. Fire Group P'ship, 265 Neb. 438, 445, 657 N.W.2d 220, 226 (2003).

ownership over the property.[188] If that is so, it is the third party's interest that is concealed by debtor's possession or use, not the debtor's interest. If the debtor has an interest in the property and fails to disclose it on the bankruptcy schedules, the debtor's discharge may be denied under § 727(a)(4)(A) for making a false oath, but the debtor has not concealed the debtor's interest.

C. The Temporal Limit on Concealment as Grounds for Denial of Discharge Is Not a Statute of Limitations and Cannot Be Tolled

Under in the Bankruptcy Act, the time a person "concealed" property was critical in applying all the provisions in which the term was used. As discussed above,[189] to force a person into bankruptcy the petitioning creditor had to show the person had committed an act of bankruptcy (which could include that person having concealed any part of his property) within four months prior to the date the petition was filed. After the amendments of 1903, the Bankruptcy Act denied discharge to a debtor who had concealed property "at any time subsequent to the first day of the four months immediately preceding the filing of the petition."[190] The four-month period for denial of discharge was increased to one year in the 1926 amendments[191] specifically because the original four-month period was "too short to reach many cases."[192] If an act of concealment continued thereafter until the concealment was undone, there would have been no need to extend the period because the original four-month period would have reached earlier actions.

It is important to recognize that the period Congress included in the discharge provisions is not a statute of limitations applicable to a bankruptcy offense. There are bankruptcy offenses described in § 152 of title 18,[193] and

---

[188] For example, in U.S. v. Towe (*In re* Towe), 147 B.R. 545, 547 (Bankr. D. Mont. 1992), the court noted that in prior litigation it was determined that the transferee of the property was the "alter ego" of the debtor. In that case, there was no transfer to a third party at all.

[189] *See supra* text accompanying notes 6–7.

[190] *See supra* text accompanying notes 12–13.

[191] *See supra* text accompanying notes 15–18.

[192] ABA Report, *supra* note 14, at 484.

[193] 18 U.S.C. § 152. Every clause of 18 U.S.C. § 152 refers to actions taken connection with a case under title 11.

they are subject to a statute of limitations codified at § 3282 of title 18.[194] There are some crimes which courts have concluded are "continuing offenses" for purposes of applying the statute of limitations,[195] and many others which they have concluded are not.[196] In rare cases, Congress has itself specified that a specific crime is a continuing one. Under § 3237(a), "[a]ny offense involving the use of the mails, transportation in interstate or foreign commerce or the importation of an object or person into the United States is a continuing offense and . . . may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves."[197] The purpose of that statute is for purposes of determining venue, not application of the statute of limitations.

---

[194] 18 U.S.C. § 3282. Section 3282(a) requires prosecution of non-capital offenses "within five years next after such offense shall have been committed."

[195] *See, e.g.*, United States v. Wellington, 647 F. Supp. 3d 1183, 1186 (D.N.M. 2022) (finding crime of knowingly operating an unlicensed money transmitting business is continuing offense); United States v. Maher, 955 F.3d 880, 886 (11th Cir. 2020) (finding offense of remaining government property a continuing offense); United States v. Edelkind, 525 F.3d 388, 393 (5th Cir. 2008) (finding failure to pay child support is a continuing offense); United States v. Gray, 876 F.2d 1411, 1419 (9th Cir. 1989) (holding that failure to appear for sentencing is a continuing offense because of ongoing obligation to appear); United States v. Garcia, 854 F.2d 340, 343–44 (9th Cir. 1988) (holding that kidnapping is a continuing offense because crime required not only seizing but also detention of victim); United States v. Brunell, 320 F. Supp. 246, 248 (D. Mass. 2018) (finding multiple purchases made from late father's account into which social security administration deposited benefits after father's death constituted continuing violation of government theft). *Cf.* United States v. Bailey, 444 U.S. 394, 413 (1980) (holding that escape from federal custody is a continuing offense because federal statute tolls statute of limitations for period that escapee remains at large).

[196] *See, e.g.*, Toussie v. United States, 397 U.S. 112 (1970) (failure to register for the draft is not a continuing offense); United States v. Tavarez-Levario, 788 F.3d 433, 437 (5th Cir. 2015) (finding crime of knowingly using a counterfeit green card was not a continuing offense); United States v. Rivera-Ventura, 72 F.3d 277 (2d Cir. 1995) (being found in the U.S. after alien was previously deported is not a continuing offense); United State v. Reitmeyer, 356 F.3d 1313, 1322 (10th Cir. 2004) (holding the execution of a scheme under Major Fraud Act is not continuing offense); United States v. DiSantillo, 615 F.2d 128, 136 (3d Cir. 1980) (finding prohibition on reentry by alien who has been arrested and deported was not continuing offense); United States v. Henrickson, 191 F. Supp. 3d 999 (D.S.D. 2016) (holding theft of government property was not a continuing offense); United States v. Powell, 99 F. Supp. 3d 262 (D.R.I. 2015) (holding embezzlement was not a continuing offense); United States v. Cunningham, 891 F. Supp. 460, 463 (N.D. Ill. 1995) (holding crime of secreting, detaining and delaying United States mail was not continuing offense).

[197] 18 U.S.C. § 3237(a).

In one case Congress enacted a criminal statute intending to specify a continuing offense for purposes of the statute of limitations and it is unique to bankruptcy. Section 3284 expressly deems "concealment of assets of a debtor in a case under title 11" to be a "continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge."[198]

Language making fraudulent concealment of bankruptcy assets from the trustee a "continuing offense" for purposes of applying the statute of limitations was first included in the Bankruptcy Act in 1938.[199] Prior to the enactment of the amendment adding this language, the statute of limitations for concealment ran from the time the last overt act of concealment occurred.[200] Because the crime was concealment from the trustee, courts held the period could not begin to run until the trustee was qualified or elected.[201] The amendment was intended to codify the cases so holding, permitting acts of concealment that occurred more than the applicable period[202] prior to the bankruptcy declaration to serve as the basis for criminal prosecution and to allow prosecution to be pursued for the statutory period after discharge was granted or denied. This provision applies only to the statute of limitations for the crime of concealment in § 152(1) of Title 18 and has no bearing on the discharge provisions of § 727(a)(2) of the Code.

Rather than a statute of limitations for a bankruptcy offense, the one-year period in § 727(a)(2)(A) is an element of the statutory requirement for denial of discharge itself. The closest analogy is the two-year period for

---

[198] 18 U.S.C. § 3284.

[199] Chandler Act, Act of June 22, 1938, ch. 575, § 29d, 52 Stat. 856, codified at 11 U.S.C. § 52(d), (applying the three-year statute of limitations for prosecution of the crime of concealment of assets).

[200] *See, e.g.*, Warren v. United States, 199 F. 753 (5th Cir. 1912).

[201] *See, e.g.*, Spiechowicz v. United States, 16 F.2d 1001 (6th Cir. 1927); Marcus v. United States, 20 F.2d 454, 456 (3d Cir. 1927); Block v. United States, 9 F.2d 618, 619 (2d Cir. 1925); United States v. Fraidin, 63 F. Supp. 271, 277 (D. Md. 1945).

[202] The original statute of limitations was one year, Bankruptcy Act of 1898, c. 541, § 29d, and was extended to three years by the same amendment that added the "continuing offense" language. Act of June 22, 1938, c. 575, § 29d, 52 Stat. 856, codified at 11 U.S.C. § 52(d).

avoiding a fraudulent transfer under § 548.[203] That two-year period is a statute of repose.[204] The statute of limitations for the trustee to assert an avoidance action based on § 548 is the later of two years after entry of the order for relief or one year after the appointment of the trustee, but in any event before the case is closed or dismissed.[205] The statute of limitations is potentially subject to equitable tolling.[206] But the Supreme Court has held[207] that equitable doctrines cannot extend a statute of repose.[208] The two-year limit in § 548 is therefore not subject to equitable tolling,[209] nor is it subject to the "continuous concealment" doctrine.[210] If a transfer occurs earlier than the two years, there is simply no cause of action.[211]

Similarly, the one-year look-back period in § 727(a)(2) is a statute of repose and is not subject to equitable tolling.[212] If the act of concealment occurs more than one year before the filing, § 727(a)(2) is simply inapplicable to that act and cannot serve as the basis for a denial of discharge.

---

[203] Section 548(a)(1) requires that the transfer be made or the obligation incurred by the debtor "on or within 2 years before the date of the filing of the petition" to be subject to avoidance by the trustee. 11 U.S.C. § 548(a)(1).

[204] A statute of repose puts an outer limit on the right to bring a civil action that is measured not from the date on which the claim accrues but from the date of the last culpable act or omission of the defendant. *See* CTS Corp. v. Waldburger, 573 U.S. 1, 8 (2014).

[205] 11 U.S.C. § 546(a)(1).

[206] *See, e.g.*, McGoldrick v. McGoldrick (*In re* McGoldrick), 117 B.R. 554, 559 (Bankr. C.D. Cal. 1990); McColley v. Rosenberg (*In re* Candor Diamond Corp.) 76 B.R. 342, 350 (Bankr. S.D.N.Y. 1987).

[207] *See Waldburger*, 573 U.S. at 9.

[208] *See, e.g.*, DeNoce v. Neff *(In re* Neff), 505 B.R. 255, 263 (B.A.P. 9th Cir. 2014); *In re* Sandburg Mall Realty Mgmt. LLC, 563 B.R. 875, 895 (Bankr. C.D. Ill. 2017).

[209] *See, e.g.*, Ivey, Barnum & O'Mara, LLC v. Bear, Stearns & Co. (*In re* Stanwich Financial Servs Corp.), 488 B.R. 829, 835 (D. Conn. 2013); *Sandburg Mall*, 563 B.R. at 895; Schlossberg v. Abell (*In re* Abell), 549 B.R. 631, 659 (Bankr. D. Md. 2016); Industrial Enterp. of America, Inc. v. Burtis (*In re* Pitt Penn Holding Co., Inc., No. 09-11475, Adv. No. 11-51868, 2012 WL 204095, at *3 (Bankr. D. Del. Jan. 24, 2012).

[210] *See* Burns v. Gallimore (In re Gallimore), No. 00-52225, Adv. No. 01-6034 & 02-6015, 2004 WL 1743947, at *7 (Bankr. M.D.N.C. June 8, 2004).

[211] *See Sandburg Mall*, 563 B.R. at 896.

[212] *See Neff*, 505 B.R. at 268; Layng v. Khan (*In re* Khan), No. 20-17315, 2022 WL 108329, at *2 n.2 (Bankr. N.D. Ill. Jan. 12, 2022); *Sandburg Mall*, 563 B.R. at 896. *But see* Woble v. Pher Partners (*In re* Womble), 299 B.R. 810, 812 (N.D. Tex. 2003); Eckard Brandes, Inc. v. Riley (*In re* Riley), Nos. 01-4452 & 02-00013, 2004 WL 2370640, at *4 (Bankr. D. Hawaii Apr. 20, 2004) (stating that the one-year period in § 727(a)(2)(A) is a statute of limitations and is subject to equitable tolling).

If there is another act of concealment during the one-year period preceding bankruptcy (such as failure to disclose the concealed property when under a legal obligation to do so[213]), that subsequent act can serve as the basis for denying discharge.[214] But the original act of concealment that lies outside of the one-year period does not "continue" thereafter; to hold otherwise is to embrace equitable tolling of a statute of repose, which the Supreme Court has rejected as inappropriate.

D. Concealing Is an Act, Not a State of Being

Even those courts that recognize continuing concealment acknowledge that § 727(a)(2) requires an "act" of concealment.[215] If the only act described in § 727(a)(2) does not occur during the one year preceding the bankruptcy filing, the court must grant a discharge even if it occurred at an earlier time.[216] The problem with the cases that developed the concept of "continuing concealment" is that they look to the time during which the concealment endures rather than the time of the debtor's act of concealment, while the statutory language focuses on the latter. Section 727(a)(2) focuses squarely on whether the debtor concealed property during the applicable period with

---

[213] *See* Buckeye Ret. Co., LLC v. Swegan (*In re* Swegan), 383 B.R. 646 (B.A.P. 6th Cir. 2007) (the debtor was examined under oath in a state court proceeding within one year of bankruptcy and provided false answers when asked about his property, and that was held to warrant denial of discharge as continuing concealment).

[214] *See* Rosen v. Bezner, 996 F.2d 1527, 1531 (3d Cir. 1993) (suggesting that the failure to reveal property previously concealed can, "in some circumstances, properly be considered culpable conduct during the year before bankruptcy").

[215] *See, e.g.*, Provident Bank v. Antonucci (*In re* Antonucci), 602 B.R. 618, 627 (Bankr. E.D. Pa. 2019); Coady v. D.A.N. Joint Venture III, L.P. (*In re* Coady), 588 F.2d 1312, 1315 (11th Cir. 2009); Rosen v. Bezner, 996 F.2d 1527, 1531 (3d Cir. 1993); Irish Bank Res. Corp. Ltd. v. Drumm (*In re* Drumm), 524 B.R. 329, 404 (Bankr. D. Mass. 2015); DeAngelis v. Forbes (*In re* Forbes), No. 09-27371, Adv. No. 12-1032, 2013 WL 6230369, at *5 (Bankr. D.N.J. Dec. 2, 2013); Pereira v. Gardner (*In re* Gardner), 384 B.R. 654, 663 (Bankr. S.D.N.Y. 2008); Small v. Bottone (*In re* Bottone), 209 B.R. 257, 262 (Bankr. D. Mass. 1997).

[216] *See* Antognoni v. Basso (*In re* Basso), 397 B.R. 556, 564 (B.A.P. 1st Cir. 2008) ("It bears repeating that while actions by the debtor prior to the one-year period may provide circumstantial evidence of concealment activity within the year, the plaintiff must nonetheless prove that the requisite conduct actually took place within the year preceding bankruptcy.").

the right state of mind, not whether the *property* remains concealed during that period. Indeed, the inclusion of time periods applicable to the actions a debtor might take with respect to his assets provides strong evidence that Congress was looking to discrete acts constituting concealment rather than whether the property itself continued to be concealed.

If one interprets the word "concealed" to embrace not only the actions taken by the debtor resulting in the concealment but the mere existence of the concealment thereafter until the assets are no longer concealed, the time period included in the denial of discharge provision would have been meaningless. A person could have taken actions to conceal property at any time in the past and as long as the property remained concealed thereafter, the debtor would be ineligible for discharge. Indeed, there would have been no reason to extend the period in § 14b(4) from four months to one year if Congress intended concealment to be an ongoing concept, because in that case a concealment earlier than four months before the petition was filed would still justify denial of discharge if it continued thereafter into the statutory period.

It is also important to look at the language of § 727(a)(2) in context. There are currently five discrete actions the debtor can take that can justify denial of discharge: transferring. removing, destroying, mutilating, or concealing property of the debtor within one year before the petition is filed (or permitting one of those actions to occur).[217] "Concealed" appears as part of a string of other actions the debtor might take with respect to his or her property that would justify denial of a discharge. The location of the term brings to bear certain principles of statutory interpretation. Each of the words included in the string enacted by Congress must be given its own meaning: "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void, or insignificant."[218] This suggests that "conceal" does not mean the same thing as transfer, remove, destroy, or mutilate. Yet courts often treat concealment as if it is merely a continuation of a transfer.

The Code includes provisions for avoidance of fraudulent transfers,

---

[217] The Code added the word "mutilated" to the string of actions, which was previously unnecessary because the definition of "conceal" in the Bankruptcy Act included "mutilate."

[218] Hibbs v. Winn, 542 U.S. 88, 101 (2004), quoting 2A N. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 46.06, pp. 181–86 (rev. 6th ed. 2000). *See also* TRW Inc. v. Andrews, 534 U.S. 19, 30 (2001); Duncan v. Walker, 533 U.S. 167, 174 (2001).

both under federal law[219] and by subrogation to the rights of an actual creditor under state law.[220] For purposes of § 548, the transfer must have been made "within 2 years before the date of the filing of the petition."[221] When the trustee seeks to avoid a transfer voidable by an actual unsecured creditor under § 544(b), the trustee can do so only within the limitations period provided by the applicable law.[222] When a "continuing concealment" consists of a fraudulent transfer not subsequently disclosed, if that transfer occurred more than two years before the filing of the bankruptcy petition, the continuing concealment doctrine is nothing more than an end-run around the statutory limit on avoidance of fraudulent transfers to those occurring within the specified period.

Another canon of statutory interpretation is that words should be interpreted in the context of those around them, or *noscitur a sociis*: "a word is known by the company it keeps."[223] No one could suggest any of the other actions described in that section – transferring, removing, destroying or mutilating property – continues beyond the single point in time it occurs.[224] If Congress had intended "concealed" to be interpreted differently from the other words in § 727(a)(2), it would have used the language "continuing to conceal" rather than simply "concealed." The context in which the word appears strongly supports the assertion that concealment occurs when the acts resulting in the concealment of property occur, not at all times thereafter.

This is not to suggest there cannot be acts that constitute concealment after the initial act resulting in concealment. If the debtor has taken the initial acts to conceal property and thereafter is under an obligation to disclose the property to creditors (as when served with judicial process requiring disclosure) but does not do so, that failure to disclose is itself

---

[219] *See* 11 U.S.C. § 548.

[220] *See* 11 U.S.C. § 544(b).

[221] 11 U.S.C. § 548(a)(1).

[222] Under state fraudulent transfer statutes, the period is typically four to six years. *See* UVTA § 9 (four years after the transfer was made).

[223] *See, e.g.*, S.D. Warren Co. v. Me. Bd. of Envtl. Prot., 547 U.S. 370, 378 (2006), *citing* Gustafson v. Alloyd Co., 513 U.S. 561, 575 (1995).

[224] *But see* Penner v. Penner (*In re* Penner), 107 B.R. 171, 176 (Bankr. N.D. Ind. 1989) (stating that a fraudulent transfer made more than one year before the bankruptcy filing was grounds for denying discharge).

another act of concealment.[225] But the original acts of concealment do not "continue" beyond the original date through the debtor's failure to disclose the initial acts when not legally required to do so.

In addition, if the debtor engages in a scheme that includes multiple acts of concealment some of which occur during the year preceding bankruptcy, as by the continuing transfer of assets, then even if the scheme could be called "continuing," those discrete acts satisfy the temporal requirement for denial of discharge under § 727(a)(2)(A) and there is no need to characterize earlier acts as "continuing concealment."[226]

This interpretation is also more consistent with the Supreme Court's opinion in *City of Chicago v. Fulton*[227] where the Supreme Court concluded that, when a creditor took possession of the debtor's automobile prior to the bankruptcy filing, the retention of that automobile after the petition was filed did not violate the automatic stay under § 362(a)(3).[228] The automatic stay provision, the Supreme Court held, prohibits only "affirmative acts that would disturb the status quo of estate property as of

---

[225] *See, e.g.*, Peterson v. Peterson, 400 F.2d 336, 343 (8th Cir. 1968). *But cf.* Antognoni v. Basso *(In re* Basso), 397 B.R. 556, 564 (B.A.P. 1st Cir. 2008) (holding that filing a homestead declaration on his property just prior to the filing was not concealment of debtor's interest but the opposite).

Failure to disclose an interest in property on the bankruptcy schedules is itself concealment, but of property of the estate – not property of the debtor – and warrants denial of discharge under § 727(a)(2)(B) rather than § 727(a)(2)(A). This distinction sometimes confuses courts. *See, e.g.*, Fokkena v. Blackburn (*In re* Blackburn), 385 B.R. 660, 667 (Bankr. N.D. Iowa 2008) (finding failure to disclose trusts on bankruptcy schedules satisfied § 727(a)(2)(A) because they were prepared "within the year preceding filing"); United States v. Swenson (*In re* Swenson), 381 B.R.272, 291 (Bankr. E.D. Cal. 2008) (debtor's interest in residence was "secret" because they did not disclose it on their bankruptcy schedules); United Bank, Inc. v. Fedczak (*In re* Fedczak), No. 05-3418, Adv. No. 05-195, 2007 WL 1670110, at *4 (Bankr. N.D. W. Va. June 6, 2007) (debtor failed to disclose ownership of stock he inherited years earlier on his bankruptcy schedules); A.V. Reilly Int'l, Ltd. v. Rosenzweig (*In re* Rosenzweig), 237 B.R.453, 457 (Bankr. N.D. Ill. 1999) (intentional omission of assets from schedules justifies denial of discharge under § 727(a)(2)(A)).

[226] *See, e.g.*, Good v. Kantorik (*In re* Kantorik), 475 B.R. 233 (Bankr. W.D. Pa. 2012) (debtor arranged for payments for his own accounting work to be received by his son and his wife for many years, including the year preceding bankruptcy).

[227] 592 U.S. 154 (2021).

[228] 11 U.S.C. § 362(a)(3) bars any "act to obtain possession of property of the estate . . . or to exercise control over property of the estate."

the time when the bankruptcy petition was filed."[229]

Although the word "act" does not appear in § 727(a)(2), the items included on the list of what the debtor might have done to warrant denial of discharge all constitute acts on the part of the debtor. That section, like § 362(a), is creating a baseline for determining when property of the debtor is protected from those acts – one year before the filing. Discharge is barred only to the extent the debtor has disrupted the status quo as of that date by transferring, removing, mutilating, or concealing property after that date. When the debtor has taken acts to conceal property before that date and has done nothing since, the status quo is not altered after that date and the debtor has not concealed the property within the meaning of § 727(a)(2)(A) during the one-year period.

IV. CONCLUSION

The bankruptcy discharge is the "heart of the fresh start provisions of the bankruptcy law."[230] On the other hand, the purpose of the discharge is to "relieve the honest debtor from the weight of oppressive indebtedness."[231] It has been said the discharge is for the benefit of the "honest but unfortunate debtor."[232] Courts are naturally reluctant to interpret the Code to require conferral of the great benefit of discharge on debtors who are bad actors and do not "deserve" it.

And it is understandable that courts consider debtors who have fraudulently concealed their property more than one year prior to bankruptcy to be bad actors. The continuing concealment doctrine is aimed at preventing what courts consider an inequitable result, that is, permitting debtors to defraud their creditors by concealing assets, waiting more than one year to file for bankruptcy protection and getting a discharge.[233]

---

[229] 592 U.S. at 158.

[230] H.R. REP. NO. 595, 95th Cong., 1st Sess. 384 (1977); S. REP. NO. 989, 95th Cong., 2d Sess. 98 (1978).

[231] Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).

[232] *See* Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367 (2007), quoting Grogan v. Garner, 498 U.S. 279, 286–87 (1991); *see also* Spring Valley Produce, Inc. v. Forrest (*In re* Forrest), 47 F.2d 1229, 1246 (11th Cir. 2022); Premier Capital., LLC v. Crawford (*In re* Crawford), 841 F.3d 1, 7 (1st Cir. 2016), Morrison v. Howard (*In re* Howard), 55 B.R. 580, 583 (Bankr. E.D.N.C. 1985).

[233] *See generally* Dustin P. Branch, *Understanding Continuing Concealment and Its*

But equitable considerations cannot override legislative language. Congress has made it clear over the years that certain acts by a debtor justify denial of discharge if, and only if, those acts occur during the period specified in the statute, originally four months prior to the petition, and then modified to be one year prior to the filing. There would have been no reason to extend the period from four months to one year (a change made because the ABA suggested the original four-month period "has been found too short to reach many cases"[234]) if acts to conceal the debtor's property taken more than four months prior to the bankruptcy filing were deemed to "continue" thereafter into the four months.

If Congress had wanted to make concealment of assets a continuing concept for purposes of discharge, it knew how to do so. Since 1938, it stated by statute that concealment was deemed to continue from the time the acts of concealment occurred until discharge was granted or denied for purposes of the criminal offense of fraudulent concealment[235] but it has not chosen to enact any comparable provision in § 727 of the Code. The absence of such an explicit provision suggests Congress did not intend concealment to be continuing in that context.

The natural corollary of the temporal limitation on acts of concealment justifying denial of discharge is that if the acts taken by the debtor – in concealing property of the debtor – occurred earlier than the period so specified, those acts are not grounds for denying discharge, even if the debtor undertook those actions with actual intent to hinder, delay, or defraud creditors and the court thinks the debtor has thereby undermined the bankruptcy system. As long as the debtor does not take any action to conceal the property within the statutory period the debtor should not be denied discharge under § 727(a)(2).[236]

It is important to emphasize that, even if the debtor's actions that impede

---

Limitations, 25 CAL. BANKR. J. 214, 215 (2000).

[234] ABA Report, *supra* note 14, at 484.

[235] *See supra* text accompanying note 198 (discussing 18 U.S.C. § 3284).

[236] Of course, failure to disclose an interest in property of the estate on the bankruptcy schedules may justify denial of discharge under § 727(a)(2)(B). *See, e.g.*, Anglin v. Estes (*In re* Estes), No. 07-04648, Adv. No. 007-00235, 2014 WL 897325, at *25 (Bankr. N.D. Ala. Mar. 6, 2014). But the nondisclosure must be of "property of the estate" which requires that it satisfies the requirements of § 541(a) of the Code. Property that was subject to a prepetition fraudulent transfer is not property of the estate until and unless the transfer is avoided.

the conduct of the trustee are not grounds for denial of the discharge, this does not mean the debtor can take such actions with impunity. The trustee can, if the debtor engaged in a "transfer"[237] of the debtor's property or an interest in the debtor's property within two years before the petition was filed, bring an avoidance action under § 548(a)(1)[238] and recover the property so transferred for the benefit of the estate or, if the court orders, the value of that property.[239] If the debtor made such a transfer more than two years before the bankruptcy filing, but within the applicable state statute of limitations for avoidance of a voidable transaction, the trustee can step into the shoes of an actual unsecured creditor who could assail the transfer under state law and avoid it by subrogation.[240]

The debtor is required under § 521(a)(3) to "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties"[241] and is also obligated under § 521(a)(4) to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate."[242] Certain violations of those duties may be bankruptcy crimes under § 152(1) of Title 18.[243] Even when they are not, they can serve as cause for dismissal of the case under § 707(a),[244] or may subject the debtor to sanctions pursuant to the court's inherent powers under § 105(a),[245] or the debtor may be held in contempt for violating a court order.[246] The debtor may also be denied a discharge if the debtor knowingly and fraudulently made "a false oath or account" under

---

[237] 11 U.S.C. § 101(54)

[238] 11 U.S.C. § 548(a)(1).

[239] 11 U.S.C. § 550(a).

[240] 11 U.S.C. § 544(b).

[241] 11 U.S.C. § 521(a)(3).

[242] 11 U.S.C. § 521(a)(4).

[243] *See, e.g.*, Johnson v. Cmty. Home Fin. Servs., Inc. (*In re* Cmty. Home Fin. Servs., Inc.), No. 12-01703, Adv. No. 14-00030, 2018 WL 1141759 (Bankr. S.D. Miss. Feb. 27, 2018).

[244] *See, e.g.*, *In re* Miller, No. 17-60023, 2018 WL 1226012, at *5 (Bankr. N.D.N.Y. Mar. 8, 2018); Sicherman v. Warner (*In re* Warner), No. 10-20997, Adv. No. 11-1032, 2011 WL 6140856, at *3 (Bankr. N.D. Ohio Dec. 9, 2011); *In re* Ventura, 375 B.R. 103, 109 (Bankr. E.D.N.Y. 2007); *In re* Moses, 792 F. Supp. 529, 531 (E.D. Mich. 1992), *aff'd*, 227 B.R. 98 (E.D. Mich. 1996); *In re* Peklo, 201 B.R. 331, 334 (Bankr. D. Conn. 1996).

[245] *See In re* Paige, 365 B.R. 632 (Bankr. N.D. Tex. 2007).

[246] *See, e.g.*, United States v. Johnson, No. 2:10-CR-223, 2012 WL 2564802 (S.D. Ohio July 2, 2012).

§ 727(a)(4)[247] or took other action described in that section.

If the court can use debtor's actions to conceal assets that took place long before the statutory period to deny the debtor a discharge, any individual who ever took actions to conceal property with the intent to hinder, delay, or defraud creditors would never be eligible for a bankruptcy discharge. There is nothing in the Code to suggest that individuals who have taken actions in an attempt to defraud their creditors are permanently barred from a discharge of their debts. Section 727(a)(2) has a time limit in it for a reason; the "continuing concealment" doctrine is inconsistent with the plain language and policy of the Code.

* * *

[247] 11 U.S.C. § 727(a)(4)(A).