

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In Re:	§	CASE NO. 03-34333-H4-7
	§	
JACK T. HOLLADAY,	§	(Chapter 7)
Debtor.	§	
_____	§	
WILLIAM WEST, CHAPTER 7 TRUSTEE	§	ADVERSARY NO. 03-3781
AND HEA CLINIC, P.A.,	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
JACK T. HOLLADAY,	§	
Defendants.	§	

**HEA CLINIC, P.A.’S FIRST AMENDED  
COMPLAINT SEEKING DENIAL OF DISCHARGE**

TO THE HONORABLE WILLIAM GREENDYKE,  
UNITED STATES BANKRUPTCY JUDGE:

COME NOW, HEA Clinic, P.A. (“HEA”) and files this First Amended Complaint Seeking Denial of Discharge of Debtor Jack Holladay (“Debtor”) and in support thereof would show as follows:

**I.  
PARTIES**

1. Debtor is an individual debtor who initiated this proceeding by filing a voluntary Chapter 7 petition on March 25, 2003.
2. William West is the duly appointed, acting Chapter 7 Trustee in this case.
3. HEA is a professional association with its principal place of business in Houston, Harris County, Texas.

4. HEA, a creditor and party in interest in this proceeding, is Debtor's sole unsecured creditor. Debtor owes HEA approximately \$750,000 pursuant to a judgment entered against Debtor in favor of HEA on March 12, 2003.

**II.**  
**JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to 11 U.S.C. §1334 and 28 U.S.C. § 157(b)(2)(B). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(I) and (J). Venue is proper under 28 U.S.C. § 1409(a).

6. This matter is properly brought as an adversary proceeding under Fed. R. Bankr. P. 7001(4) and (6).

**III.**  
**FACTS**

7. Debtor is a renowned eye surgeon. Based upon records produced by Debtor, his annual income is in the range of \$600,000. Prior to filing for bankruptcy, only a fraction of this income was attributable to salary, and the rest was derived from distributions from corporations formed and owned, in whole or in part, by the Debtor. Upon filing bankruptcy, Debtor, changed the characterization of his income and is now claiming that the vast majority of his income is salary or wages for personal services. Debtor valued his interests in these profitable corporations in his Schedules at \$100.00 and \$1,000.00.

8. Debtor owns two homes; one in Bellaire, Texas (the "Bellaire Home"), and one in Lake Nona, Florida ("the Florida Estate"). The Bellaire Home and the Florida Estate are valued by Debtor at \$1,000,000 and \$800,000, respectively. Debtor submitted in his Schedules, under penalty of perjury, that these two extravagant homes contain personal property worth only \$8,835.00.

9. HEA and the Chapter 7 Trustee objected to Debtor's exemptions. After an evidentiary hearing, the Court ruled on February 27, 2004 that Debtor's personal property had a value more than 700% higher than that set forth in Debtor's sworn Schedules.

10. HEA took a 2004 examination of Mrs. Sharon Holladay, the Debtor's wife, on June 23, 2003. Mrs. Holladay testified that Debtor owned a number of assets that were not listed on his original Schedules.

11. Debtor attempted to hide assets by failing to list a number of personal property items he owns, including, but not limited to, a golf cart, sports equipment, a new grill, a laptop computer, cameras and camcorders and other personal property. Mrs. Holladay testified that an interior decorator assisted her in purchasing all new furnishings for the Florida home, and that Debtor spent \$2,000 (the same value placed on all the Florida furnishings) to move some of the furnishings to Florida. Debtor listed only 109 items of personal property in his original Schedules. The Trustee's appraiser identified and appraised at least 260 items when she went through Debtor's two homes. Debtor did not file his Amended Schedule listing much of the omitted property in his Florida Home until after his wife testified about the omitted assets in her Rule 2004 deposition.

12. Debtor intentionally undervalued property on his Schedules. By way of example only, Mrs. Holladay testified that their Bellaire home contains a Steinway grand piano that was purchased several years ago for around \$25,000 (which Debtor valued at \$2,500), that just one piece of the Debtor's exercise equipment cost \$3,674 in September 2002 (which Debtor valued at \$200) and that pictures that the Debtor valued at \$25 on his Schedules include original works of art by a local artist and pictures purchased from an interior designer.

13. Debtor has also attempted to conceal the value of intellectual property he owns, including the Holladay Trademarks, which he valued at only \$1.00 in his Schedules. Debtor spent a significant amount of money to register the Holladay Trademarks prior to filing

bankruptcy, then listed their value at only \$1.00, and unsuccessfully attempted to exempt the Trademarks from his bankruptcy estate. Debtor has also failed to disclose royalties and has mischaracterized licensing agreements as consulting agreements.

14. Debtor has made transfers in contravention of paragraph 7 and/or 10 of his Statement of Financial Affairs. In the year before filing bankruptcy, Debtor transferred tens of thousands of dollars to a trust established for his children. Debtor also contributed to a down payment on a \$300,000 condominium for his son, as well as furnishings, inspections and other items related to his son's condominium shortly before filing bankruptcy.

15. The Debtor listed only \$2,500.00 in furs and jewelry in his Schedules, but spent that amount on a single piece of jewelry in the Fall of 2001.

16. Debtor attributes minimal values to companies in which he holds a significant interest and which have generated substantial income and yielded substantial distributions, and which have potential for significant future income and distributions. No receivables are listed for any of these companies and no distributions or other profits from these companies have been turned over to the Debtor's estate. Debtor intentionally undervalued his interest in these companies to give the impression that Debtor is merely a stockholder in worthless corporations and has failed to disclose or turn over to the Trustee distributions from any of the Companies in which the Debtor has an interest.

17. In the months prior to his bankruptcy filing, Debtor dissipated non-exempt assets to pay for luxury items, as well as lavish personal living expenses, in order to preclude HEA and the Trustee from utilizing those funds to satisfy HEA's judgment.

18. Debtor has not maintained sufficient records to adequately explain his business transactions or dissipation of significant amounts of non-exempt liquid assets and cash, such that the Trustee and his creditors may conduct a meaningful review of Debtor's assets. Debtor testified at his 341 meeting that his wife was in charge of tracking income and expenses for his

household. Mrs. Holladay testified at her 2004 exam that she obtained a number of certified checks from Debtor's accounts because of their concern that HEA would freeze these accounts in satisfaction of their judgment against Debtor. Mrs. Holladay and the Debtor have been unable to give reasonable explanations as to where significant amounts of cash withdrawn from Debtor's various accounts within months of Debtor's bankruptcy filing have gone.

**IV.**  
**GROUND FOR DENYING DISCHARGE**

19. Debtor's pattern of nondisclosure shows that Debtor acted with intent to hinder and/or defraud the Trustee and creditors. Pursuant to 11 U.S.C. § 727(a)(2) Debtor should be denied a discharge because Debtor has, with the intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property under this title, transferred, removed, destroyed, mutilated or concealed property of the Debtor within one year of the date of filing bankruptcy as set forth above.

20. The Court should deny Debtor's discharge under 11 U.S.C. § 727(a)(5) because the Debtor has failed to adequately explain the loss of assets or deficiency of assets to meet his liabilities.

21. The Court should deny Debtor's discharge under 11 U.S.C. § 727(a)(4)(A) because the Debtor knowingly and fraudulently, in or in connection with the case made a false oath or account.

22. On April 29, 2003, Debtor knowingly and fraudulently made false oaths when Debtor testified that his Schedules were true and correct. It was only when Mrs. Holladay was deposed and admitted that Debtor owns a number of significant assets he did not identify in his original Schedules (which he signed under penalty of perjury), that Debtor amended his Schedules.

23. Debtor knowingly and fraudulently made false oaths when he signed and executed his original Schedules that excluded a number of items of substantial value and otherwise contained incorrect information. Debtor further made false oaths at the 341 Meeting of Creditors when he testified that his Schedules were true and correct and when he testified under oath that nothing at his Bellaire home was of any value. He made a further false oath when he testified at the 341 Meeting of Creditors that he specifically recalled not executing any financial statement to Bank of America, when in fact he did provide such a financial statement, which statement was withheld from HEA for 5 months.

24. Based on the foregoing, Debtor knowingly and fraudulently, in or in connection with the case made a false oath or account. Such a false oath is sufficient to deny Debtor's discharge. Accordingly, Debtor should be denied his discharge under 11 U.S.C. § 727(a)(4)(A).

**PRAYER**

WHEREAS, PREMISES CONSIDERED, HEA Clinic, P.A. respectfully request that the Court deny Debtor's discharge for the reasons stated herein and for such other and further relief to which it may be entitled.

Respectfully submitted,

LOCKE LIDDELL & SAPP LLP

By: /s/ J. Michael Dorman

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading has been served in accordance with Local Bankruptcy Rule 9013 on all parties listed below, by either United States mail, first class postage prepaid, or by ECF e-mail on this the 11<sup>th</sup> day of March, 2004.

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