

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

United States Court  
Southern District of Tex.  
FILED  
JUN 30 2003  
Michael N. Milby, Clerk

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

**03 3781**

**WILLIAM WEST, CHAPTER 7 TRUSTEE AND HEA CLINIC, P.A.'S  
COMPLAINT SEEKING DENIAL OF DISCHARGE**

TO THE HONORABLE WILLIAM GREENDYKE,  
UNITED STATES BANKRUPTCY JUDGE:

COME NOW, William West, Chapter 7 Trustee ("Trustee") and HEA Clinic, P.A. ("HEA") and file this 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. Debtor may be served with process at his residence at 5108 Braeburn, Bellaire, Harris County, Texas or wherever he may be found.

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)(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).

## **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. Based upon Debtor's representations, only a fraction of this income is attributable to salary, the rest is derived from distributions from corporations formed by the Debtor. Debtor valued his interests in these extremely profitable corporations on Schedules Debtor filed March 25, 2003 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 \$1,800,000.00. Debtor submitted on his Schedules, under penalty of perjury, that these two extravagant homes contain personal property worth only \$8,835.00.

9. Debtor has insured the personal property in his Bellaire Home at a value of \$501,000.

10. Despite repeated requests, Debtor finally produced information relating to his insurance on his Florida property (after Mrs. Holladay's 2004 examination) which shows that Debtor has insured what he claims to be \$2,000 worth of property for approximately \$300,000.

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

12. Debtor attempted to hide assets by failing to list a number of items he owns, including a golf cart, a number of sets of golf clubs, sports equipment, a new grill, silver pieces, 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 Estate after the 3800- 5500 square foot (depending on whether you include the lanais) estate was purchased in May, 2000 and that Debtor spent \$2,000 (the same value he places on the furnishings) to move these furnishings to Florida.

13. Mrs. Holladay testified that their Bellaire home contains a baby grand piano that was purchased a couple of years ago for around \$25,000, that just one piece of the debtor's exercise equipment cost in the range of \$2,000- \$3,000 and that the pictures that the Debtor valued at \$25 on his Schedules are actually original works of art by a local artist and pictures purchased from an interior designer.

14. Debtor used an interior decorator at a company by the name of Insides, Etc. to assist in furnishing both the Florida Estate and the Bellaire Home. More than \$26,000 was paid

to Insides Etc. in just the checks (let alone any credit card payments) produced by Debtor for the past two years.

15. Debtor has made transfers in contravention of paragraph 7 of his Statement of Financial Affairs. In the past year, Debtor has transferred tens of thousands of dollars to a trust established for his children. Mrs. Holladay testified that she thought her son paid part of this amount back, but she had no recollection (or documentation produced) regarding any amount repaid. 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. Mrs. Holladay was unable to recall how much money had been given to their son on the brink of the bankruptcy filing.

16. The Debtor claims to own only \$2,500.00 in furs and jewelry, but spent almost half that amount on a single piece of jewelry from Tiffany's on February 8, 2003.

17. Debtor rushed out and spent a significant amount of money to register the Holladay Trademark prior to filing bankruptcy, then lists its value as \$1.00 and attempts to exempt the trademark so that his bankruptcy estate cannot utilize this asset. He attributes minimal values to companies in which he holds a significant interest and which have yielded substantial distributions. Debtor takes inconsistent positions with the Internal Revenue Service and the Bankruptcy Court regarding what income is salary versus distributions from companies in which the estate has an interest.

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

18. 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. HEA reserves the right to amend this Complaint after further discovery has been completed.

19. 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. Debtor has not maintained sufficient records to adequately explain his business transactions 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 was unable to give reasonable explanations as to where significant amounts of cash withdrawn from Debtor's various accounts had gone. Documents produced by Debtor refer to a separate account number with Paine Webber that has yet to be identified.

20. 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.

21. On April 29, 2003, Debtor knowingly and fraudulently made false oaths when Debtor testified that his Schedules were true and correct and when Mrs. Holladay admitted that Debtor owns a number of significant assets he did not identify in his schedules which he signed under penalty of perjury and provided information that other assets were likely significantly undervalued.

22. Debtor knowingly and fraudulently signed and executed his 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 everything at his Bellaire home was about eleven years old and he had nothing there of any value.

23. 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).

24. In joining this Complaint, the Trustee is relying on the information and facts that were obtained by HEA in the Debtor's wife's 2004 examination and documents produced in connection with the Debtor's noticed 2004 examination. The Trustee believes that it is unusual for the Debtor to have so little personal property in comparison to the high income and expensive real estate properties owned in Florida and Bellaire, Texas. The Trustee believes that the Debtor should not be granted a discharge until his Court authorized appraiser has had an opportunity to inspect the Debtor's homes and prepare her report to the Trustee. The court recently entered an order that authorized the Trustee to employ his appraiser.

**PRAYER**

WHEREAS, PREMISES CONSIDERED, William West, Chapter 7 Trustee and 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: Patricia Williams Prewitt

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ATTORNEYS FOR HEA CLINIC, P.A.

COWGILL & HOLMES, PLLC

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ATTORNEYS FOR WILLIAM  
G. WEST, JR., CHAPTER 7 TRUSTEE

B 104 (Rev. 8/87)	<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)												
<b>PLAINTIFFS</b> William West, Chapter 7 Trustee  HEA Clinic, P.A.	<b>DEFENDANTS</b>  Jack T. Holladay  <div style="font-size: 2em; font-weight: bold; text-align: center;">03 3781</div>													
ATTORNEYS (Firm Name, Address, and Telephone No.) Patricia Williams Prowitt Loeke Liddell Sapp, LLP 3400 JP Morgan Chase Tower 600 Travis Houston, TX 77002 713-226-1206		ATTORNEYS (If Known) Michael Holmes Cowgill & Holmes, PLLC 7407 Katy Freeway, Suite 100 Houston, TX 77024 713 956-0254  Craig Cavalier 3555 Timmons Lane, Suite 1450 Houston, TX 77027												
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY														
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)  Objection to Discharge 11 U.S.C. § 727														
<b>NATURE OF SUIT</b> (Check the one most appropriate box only.)														
<table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none;"><input type="checkbox"/> 454 To Recover Money or Property</td> <td style="width:33%; border: none;"><input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan</td> <td style="width:33%; border: none;"><input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property</td> <td style="border: none;"><input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523</td> <td style="border: none;"><input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property</td> <td style="border: none;"><input type="checkbox"/> 434 To obtain an injunction or other equitable relief</td> <td style="border: none;"><input type="checkbox"/> 498 Other (specify)</td> </tr> <tr> <td style="border: none;"><input checked="" type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727</td> <td style="border: none;"><input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan</td> <td style="border: none;"></td> </tr> </table>			<input type="checkbox"/> 454 To Recover Money or Property	<input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11 or Chap. 13 Plan	<input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action	<input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property	<input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523	<input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court	<input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property	<input type="checkbox"/> 434 To obtain an injunction or other equitable relief	<input type="checkbox"/> 498 Other (specify)	<input checked="" type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727	<input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan	
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<b>ORIGIN OF PROCEEDINGS</b> (Check one box only.) <table style="width:100%; border: none;"> <tr> <td style="width:25%;"><input checked="" type="checkbox"/> 1 Original Proceeding</td> <td style="width:25%;"><input type="checkbox"/> 2 Removed Proceeding</td> <td style="width:25%;"><input type="checkbox"/> 4 Reinstated or Reopened</td> <td style="width:25%;"><input type="checkbox"/> 5 Transferred from Another Bankruptcy Court</td> </tr> </table>			<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed Proceeding	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another Bankruptcy Court								
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<b>DEMAND</b>	NEAREST THOUSAND \$	OTHER RELIEF SOUGHT objection to discharge												
<b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>														
NAME OF DEBTOR Jack T. Holladay		BANKRUPTCY CASE NO. 03 - 34333- H4-7												
DISTRICT IN WHICH CASE IS PENDING Southern	DIVISIONAL OFFICE Houston	NAME OF JUDGE Greendylke												
<b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>														
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.												
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE												
FILING FEE (Check one box only.) <input type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED														
DATE 6/30/03	PRINT NAME Patricia Williams Prowitt	SIGNATURE OF ATTORNEY (OR PLAINTIFF) Patricia Williams Prowitt												