UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

PAUL S. HUDSON, — Case No. 00-11683
Chapter 7

Debtor.

WASHINGTON 1993, INC., — Adv. No. 00-90091

Plaintiff,

v.

PAUL S. HUDSON,

Defendant.

APPEARANCES:

Paul S. Hudson — Pro Se
2430 Vineyard Lane
Crofton, MD 21114

Richard T. Corvetti
South Shore Road
P.O. Box 568
Lake Pleasant, NY 12108-0568

Donohue, Sabo, Varley & Armstrong, P.C. — Kenneth G. Varley, Esq.
Attorneys for Richard T. Corvetti
One Winners Circle
P.O. Box 15056
Albany, NY 12212

Harris, Balzer & Conway, PLLC — Gregory G. Harris, Esq.
The Patroon Building — Chapter 7 Trustee
5 Clinton Square
Albany, NY 12207

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

The current matter before the court concerns the effect of the mandate issued by the United States District Court for the Northern District of New York in bankruptcy litigation commenced by Richard T. Corvetti ("Corvetti") against Paul S. Hudson (the "Debtor"), and originally decided by this court by Memorandum-Decision and Order issued August 21, 2001 (the "Bankruptcy Decision") (No. 62).[1] *See Washington 1993, Inc. v. Hudson (In re Hudson),* Ch. 7 Case No. 00-11683, Adv. No. 00-90091, slip. op. at 2 (Bankr. N.D.N.Y. Aug. 21, 2001) (holding the Debtor is not entitled to a discharge), *remanded sub nom. Hudson v. Corvetti*, No. 3:01-CV-01474, slip. op. (N.D.N.Y. June 13, 2003). The parties have a long and sometimes convoluted history which the court will not recite here; rather, the court tailors its discussion to facts directly related to the Debtor's pending motion for rehearing made pursuant to Federal Rule of Bankruptcy Procedure 8016 (the "Remand Motion"). (No. 96.) The Chapter 7 Trustee, Gregory G. Harris, Esq. (the "Trustee"), has filed a Statement of Non-Opposition and Withdrawal of Prior Position Papers (No. 125), thereby limiting the court's consideration to the parties' oral arguments,[2] multiple submissions made by the Debtor,[3] and two

[1] Unless otherwise indicated, all docket references relate to the above-captioned adversary proceeding.

[2] *See* Remand Mot. Tr., 3-20, Nov. 6, 2003. (No. 105.)

[3] These include: Paul S. Hudson's Affirmation in Supp. of Remand Mot., Oct. 19, 2003 (No. 96); Debtor's Mem. of Law (No. 97); Debtor's Reply Mem. of Law (No. 103); Appellant-Def.-Debtor's Offer of Proof for Proposed New Findings and Conclusions upon Recons. on Remand and Supplementary Affirmation in Supp. of Remand Mot. ("Debtor's Offer of Proof") (No. 138); Debtor's Supplementary Mem. of Law in Supp. of Recons. on Remand of Denial of Discharge ("Debtor's Supplementary Mem.") (No. 139); and Appellant-Def.'s Mem. of Law on Scope and Nature of Remand Proceeding for Recons. of Denial of Discharge Decision ("Debtor's Memo. of Law on Scope of Remand") (No. 141).

submissions made by Corvetti[4] relating to the Remand Motion.

JURISDICTION

The court has jurisdiction over the parties and subject matter of this proceeding pursuant to 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(J), and 1334(b).

BACKGROUND

The Debtor filed a Chapter 7 petition in the United States Bankruptcy Court for the District of Maryland, Northern Division (the "District of Maryland"), on November 12, 1999. On February 10, 2000, Corvetti commenced the above-referenced adversary proceeding against the Debtor seeking to except certain debts from discharge pursuant to 11 U.S.C. § 523, and to bar discharge altogether pursuant to 11 U.S.C. § 727. Corvetti also moved to change the venue from the District of Maryland to this District. This court was familiar with the Debtor, who had previously filed two commercial bankruptcy cases and one individual bankruptcy case in this District. (Bankruptcy Decision at 2-3.) Corvetti's motion to change venue was granted, and both the main case and the adversary proceeding were transferred from the District of Maryland to this court on or about March

[4] These include: Kenneth G. Varley's Aff. in Opp'n, Oct. 31, 2003 (No. 99); and Corvetti's Mem. of Law (No. 101). The appeals taken in this matter have caused some confusion about Corvetti's ability to be heard on the Remand Motion. (*See* Letter from Kenneth G. Varley, Esq. to the Court (June 30, 2005) (No. 171).) In fact, Corvetti commenced a second adversary proceeding seeking, *inter alia*, a declaratory judgment as to his standing to be heard in this matter and in other pending actions before the United States District Court and Second Circuit Court of Appeals. *See Corvetti v. Hudson*, Ch. 7 Case No. 00-11683, Adv. No. 04-90005 (Bankr. N.D.N.Y. filed Jan. 5, 2004) (the "Declaratory Judgment Proceeding"). On December 8, 2004, Corvetti moved for summary judgment in the Declaratory Judgment Proceeding. (Declaratory Judgment Proceeding, No. 30.) The court issued a bench ruling on Corvetti's summary judgment motion on March 10, 2005, wherein, based on Judge McAvoy's prior appellate decisions, the court granted Corvetti's cause of action for standing to be heard in this proceeding. (*See* Declaratory Judgment Action, Second Hr'g Tr. at 44-47, Mar. 10, 2005 (No. 66).)

28, 2000.

At the time of the Debtor's bankruptcy filing, Corvetti had lawsuits pending against the Debtor in various New York State courts; at least one of Corvetti's lawsuits was in the advanced stages of litigation. (Bankruptcy Decision at 2.) To understand the nature of Corvetti's main lawsuit that formed grounds for the underlying adversary complaint, the court must briefly explain the Debtor's personal history. The Debtor's daughter, Melina Kristina Hudson, was tragically killed in the 1988 Pan Am Flight 103 explosion over Lockerbie, Scotland. The Debtor and certain other personal representatives brought a wrongful death action in the United States District Court for the Northern District of Ohio (the "Wrongful Death Action"). The Wrongful Death Action was settled in 1997, and the Probate Court, Division of the Court of Common Pleas, Cuyahoga County, Ohio (the "Ohio Probate Court") ordered distribution of the settlement proceeds under Ohio law in five equal sums to the Debtor, his wife, and their three sons. Under a theory more fully explored by the United States District Court for the Northern District of New York, *see Harris v. Hudson*, No. 1:02-CV-00614, slip. op. (N.D.N.Y. Aug. 13, 2002) (dismissing the Trustee's complaint in a similar, if not identical, fraudulent conveyance action against the Debtor and his three sons) (the "Trustee's Fraudulent Conveyance Action"),[5] Corvetti sued the Debtor in state court on grounds that he had made fraudulent conveyances of a portion of the Pan Am settlement proceeds to his father and to each of his sons (the "Fraudulent Conveyance Action").

The Debtor's bankruptcy filing stayed the Fraudulent Conveyance Action, and the parties simply moved their battle to a different forum–the federal courts. In this adversary proceeding, the

[5] Pursuant to 28 U.S.C. § 157(d), on August 14, 2002, the District Court withdrew its reference of this proceeding to this court.

main allegations of Corvetti's complaint are that the Debtor intentionally failed to schedule "monetary transfers" to his sons as assets/revocable transfers on his Statement of Financial Affairs (Bankruptcy Decision at 5), and that he failed to schedule several lawsuits, including the Wrongful Death Action, which would have disclosed the existence of proceeds or unliquidated claims arising out of the untimely death of his daughter (*id*. at 19). Because Corvetti believed that New York rather than Ohio law should control the distribution of the wrongful death proceeds, Corvetti alleged that the "monetary transfers" were estate assets subject to the Trustee's marshaling and avoidance powers. Corvetti asserted that the Debtor should have known to list these "transfers" in his petition because they were the subject of pending state court litigation between the parties at the time of the Debtor's bankruptcy filing. Corvetti also took issue with the Debtor's valuation of a second wrongful death action against the Government of Libya, which also arose out of the Lockerbie disaster, *see Hudson v. Socialist People's Libyan Arab Jamahiriya*, No. 9:94-CV-05557 (E.D.N.Y. filed Dec. 2, 1994) (the "Libyan Action"); the Debtor listed the value of any potential distribution from the Libyan Action as zero on Schedule B (Bankruptcy Decision at 19). Unlike the Fraudulent Conveyance Action, however, the Debtor did list the Libyan Action under Question 4a of his Statement of Financial Affairs.

After an exhaustive six day trial, and upon consideration of the voluminous pre-trial submissions, trial testimony, documentary evidence, and post-trial memoranda, the court found the elements of 11 U.S.C. § 727(a)(4)(A)[6] had been met. Specifically, the court found that: (1) "the Debtor made a false statement under oath by signing his Statement of Financial Affairs under the

[6] "The court shall grant the debtor a discharge, unless the debtor knowingly and fraudulently, in or in connection with the case, made a false oath or account." 11 U.S.C. § 727(a)(4)(A).

penalty of perjury and omitting several lawsuits . . .” (*id*.); (2) the Debtor “knowingly made the sworn, false statement” (*id.* at 20); (3) the Debtor did so with the requisite fraudulent intent (*id.* at 20-22); and (4) the Debtor’s omissions were material because the fraudulent conveyance suit “might have yielded a recovery for the creditors of his estate . . .” (*id.* at 22). The court faulted the Debtor for his failure to include any of Corvetti’s lawsuits against him in either his Statement of Financial Affairs or his schedules (*id.* at 3). The court was also troubled by the Debtor’s lack of specificity regarding the Wrongful Death Action–“he did not state where the lawsuit had been filed [or identify] what the other parties to that lawsuit received” (*id.* at 4). Because the court determined that “the Debtor failed in his duty to disclose and he manipulated the bankruptcy system in his efforts to keep the wrongful death lawsuit proceeds from being examined for the benefit of his creditors” (*id.* at 23), the court denied the Debtor’s discharge.

The Debtor appealed the court’s ruling to the United States District Court for the Northern District of New York (No. 66), and the District Court initially affirmed the Bankruptcy Decision by written decision dated September 26, 2002 (the “District Court Affirmance”). *See Hudson v. Corvetti*, No. 3:01-CV-1474, slip. op. (N.D.N.Y. Sept. 26, 2002). On appeal, the Debtor argued that this court had made three discernable errors: (1) the court impermissibly denied his discharge based on grounds not pleaded in the complaint (District Court Affirmance at 1); (2) the court rendered the Bankruptcy Decision after improperly taking judicial notice of documents outside of the record (*id.* at 1-2); and (3) the Bankruptcy Decision was not based on the record and amounted to clear error (*id.* at 2). The Honorable Thomas J. McAvoy rejected all three arguments as a basis for reversal.

The Debtor then moved for reconsideration of the District Court Affirmance. From the inception of this case, the Debtor has endured a firestorm of litigation both here and in state court;

much of the litigation was triggered by the Trustee on behalf of the bankruptcy estate;[7] the majority of the litigation, however, was triggered by Corvetti. Following the District Court Affirmance, the Trustee, the Debtor, and members of the Debtor's family entered into settlement negotiations to resolve all outstanding litigation and any unliquidated claims that the estate may have had against the Debtor and his relatives. The Stipulation of Settlement (Attach. to Paul S. Hudson's Aff. in Supp. of Settlement, Main Case, No. 148) specifically provided for the Trustee's release of numerous claims against the Debtor and members of his family in exchange for the Debtor's payment of $36,500 to the estate and one-fifth of any net recovery received from the Libyan Action. The Debtor filed a motion seeking court approval of the proposed settlement (Main Case, No. 148), and Corvetti opposed and cross-moved for various forms of relief (Main Case, No. 147). At the March 27, 2003 hearing on the Debtor's motion, it was apparent that the Trustee and the Debtor were not in complete agreement despite that both had signed the Stipulation of Settlement. By Order dated May 30, 2003 (the "Order Denying Settlement") (Main Case, No. 163), both motions were denied without prejudice and over the opposition of the responding party.

Upon being apprised of the possibility of settlement, however, Judge McAvoy granted the Debtor's motion for reconsideration of the District Court Affirmance. It is Judge McAvoy's June 13, 2003 Decision and Order (the "Remand Decision") (No. 95) that the court now addresses; it instructs the court to determine whether "new evidence"–a potential settlement of the Debtor's

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[7] In addition to the Trustee's Fraudulent Conveyance Action referenced *supra*, the Trustee pursued various other causes of action against the Debtor in Ohio and New York. The Trustee was able to marshal $1,580,760.21 for the bankruptcy estate via a settlement/compromise with the Debtor of all pending litigation commenced by the Trustee against the Debtor and members of the Debtor's family, which was approved by this court by Stipulated Order on Consent dated January 22, 2004. (Main Case, No. 225.) That settlement is being funded using proceeds made available by a settlement reached between the Libyan Government and Lockerbie victims' representatives to compensate Lockerbie victims' families.

claims with the Trustee–affects the court's earlier determination that the Debtor should not be given a discharge.[8] (Remand Decision at 3-4.) The Remand Decision was issued two weeks after this court's Order Denying Settlement.

The Remand Motion was first heard on November 6, 2003, and scheduled for submissions shortly thereafter, but it was not fully before the court until June 2005. A series of events prevented the court from deciding the remand earlier.[9] After such a tortured history, the Remand Motion is

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[8] The Remand Decision repeatedly references "settlement with the Trustee" (Remand Decision at 1, 3), but it also mentions "settlement of the section 727 claims" (*id*. at 3). Because only Corvetti could settle his 11 U.S.C. § 727(a)(4)(A) claim with court approval, and there is no indication of any such settlement in the record–either here or in the District Court–prior to issuance of the Remand Decision, the court assumes the latter reference was made in error. The Debtor and Corvetti did settle Corvetti's 11 U.S.C. § 523 claims in the context of the Debtor's appeal, but Judge McAvoy's Corrected Order for Partial Settlement on Appeal (Case No. 3:01-CV-1474, No. 80) makes clear that the settlement was limited to those causes of action.

[9] The Debtor has at times accused the court of allowing the Remand Motion to languish. The timing of this decision, however, has been controlled by the parties' actions in this proceeding, the Debtor's main case, and in the Declaratory Judgment Proceeding. Because the dockets speak for themselves, the court provides only a few examples of the intervening events which required finality before the court could turn its attention to the matter at hand. First, on December 12, 2003, the Debtor filed a motion for intradistrict transfer or recusal (No. 108), which the court denied by Memorandum, Decision and Order dated January 30, 2004 (No. 127). The Debtor filed a motion to reconsider the court's January 30, 2004 decision (No. 144), and that too was denied by Memorandum-Decision and Order dated July 23, 2004 (No. 153). Second, on January 4, 2004, Corvetti filed the Declaratory Judgment Proceeding to determine whether he could continue to oppose the Remand Motion. Third, on March 22, 2004, the Debtor filed another motion for intradistrict transfer or recusal. (Declaratory Judgment Proceeding, No. 13). The Debtor's motion was denied by Memorandum-Decision and Order dated February 18, 2005. (Declaratory Judgment Proceeding, No. 42.) Fourth, on July 27, 2004, the Trustee filed a Motion to Approve a Settlement/Compromise Pursuant to Bankruptcy Rule 9019(a). (Main Case, No. 276.) Because the contemplated settlement would have allowed Corvetti to discontinue both adversary proceedings against the Debtor, the parties agreed to adjourn several pending motions on the court's docket. This once promising global settlement between the Trustee, the Debtor, Corvetti, Trustco Bank, Sunset Partnership, Washington 1993, Inc., and certain other creditors, however, generated further litigation and was ultimately denied by this court by Memorandum-Decision and Order dated December 7, 2004 (Main Case, No. 321). Fifth, on December 8, 2004, Corvetti filed a motion for summary judgment in the Declaratory Judgment Proceeding. (Declaratory Judgment Proceeding, No. 30.) After a lengthy hearing on

now ripe for consideration. The contemplated settlement that was the impetus for remand, however, never came to fruition.

ARGUMENTS[10]

The Debtor interprets the mandate to require this court to: (1) specify all documents subject

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March 10, 2004, Corvetti's motion was granted in part and denied in part (*see* Declaratory Judgment Proceeding, First and Second Hr'g Trs., Mar. 10, 2005 (Nos. 65, 66)), and a final order with respect to the same was entered on March 17, 2005 (Declaratory Judgment Proceeding, No. 67). The Debtor appealed the court's March 17, 2004 order, and the parties agreed to adjourn the submission dates for the Remand Motion pending resolution of the appeal. On April 12, 2005, the court so ordered a Stipulation for the dismissal of the appeal. (No. 168.) On June 1, 2005, the court directed Corvetti to make his final submissions on the Remand Motion on or before June 30, 2005. Corvetti chose not to submit additional papers. Finally, on March 8, 2005, at the Debtor's request, the court issued an ex-parte order to show cause as to why all proceedings under this court's jurisdiction should not be stayed pending decision by the United States Court of Appeals for the Second Circuit of the Debtor's Emergency Petition for a Writ of Mandamus directing this court to recuse itself and directing the District Court to withdraw its reference of the Declaratory Judgment Proceeding to this court. (Main Case, No. 341.) The Debtor's application for a stay was later denied by Order dated March 11, 2005. (Main Case, No. 343.) On May 25, 2005, the Second Circuit issued an Order denying the Debtor's petition. (Main Case, No. 170.) While the court certainly appreciates the Debtor's need for finality on the question of his discharge, it has handled this matter as expeditiously as possible under the circumstances.

[10] The District Court and this court are in agreement that the "Debtor's papers are, at times, completely incoherent." (District Court Affirmance at 1 n.1.) Nonetheless, the court has made every effort to ascertain and correctly summarize the Debtor's position. This task is further complicated, however, by entry of the Order Denying Settlement after the Debtor's request for reconsideration was fully submitted before the District Court. The Debtor's submissions made prior to issuance of the Order Denying Settlement focus heavily on the alleged propriety of the settlement that was proposed but never materialized and the interrelationship between settlement and discharge, while his later submissions focus on other alleged "new evidence" that supposedly absolves the Debtor from allegations of fraud and concealment. The "new evidence" the Debtor references consists of the Honorable David N. Hurd's August 13, 2002 Memorandum-Decision and Order dismissing the Trustee's Fraudulent Conveyance Action, and the September 3, 2002 Judgment Entry of the Ohio Probate Court (Ex. J to Debtor's Offer of Proof) reopening the Estate of Melina Kristina Hudson and reappointing the Debtor as Fiduciary. It seems the Debtor's arguments shifted as the procedural posture of the case changed. Thus, the only thing the court can clearly glean from the Debtor's submissions is that he construes the District Court's mandate to be sweepingly broad.

to judicial notice; (2) consider the decisions of Judge Hurd and the Ohio Probate Court in litigation closely related to the Trustee's Fraudulent Conveyance Action; (3) consider bench rulings, findings, testimony, and arguments rendered in the context of his prior Maryland bankruptcy filing; and (4) hold an evidentiary hearing to determine the 11 U.S.C. § 727 allegations driving this adversary proceeding. (Paul S. Hudson's Affirmation in Supp. of Remand Mot. ¶ 3.) According to the Debtor, "[t]he District Court has also instructed this court . . . to take into consideration the pending settlement with the Trustee, the settlement with [the Creditor], and the criteria for settlement in [11 U.S.C. §] 727 proceedings as set forth in the Maynard case."[11] (*Id.* ¶ 5.) In effect, the Debtor seeks a new trial. Although the Debtor does not directly request a new trial, he asks that the record be reopened for issuance of new findings of fact and conclusions of law. (*Id.* ¶ 7.)

In support of the Remand Motion, the Debtor offers copies of affidavits and memoranda that he submitted to the District Court addressing his prior request for reconsideration of the District Court Affirmance. (*See* Attach. to Paul S. Hudson's Affirmation in Supp. of Remand Mot.) The Debtor believes that this court "should examine the motion for reconsideration papers and the cases cited by Judge McAvoy in . . . [the] remand decision for guidance in this remand proceeding." (Debtor's Reply Mem. of Law at 5.) In his opinion, "[t]he case law cited by the District Court . . . and other applicable case law supports the granting of the pending remand motion." (*Id.*) According to the Debtor, "the only reasonable interpretation of the [Remand Decision] is that the District Court found that there was new evidence that might reasonably be expected to alter the conclusion reached by this Court, or that this Court committed a clear error of law resulting in

[11] *In re Maynard*, 269 B.R. 535, 542 (D. Vt. 2001) (settlement or compromise of 11 U.S.C. § 727 actions is appropriate if it is fair and equitable and in the best interests of the estate).

manifest injustice." (Appellant-Def.'s Mem. of Law on Scope and Nature of Remand Proceeding for Recons. of Denial of Discharge Decision at 4.)

Corvetti takes a much less generous stance regarding the scope of the mandate. He summarizes the Debtor's position as follows:

> Mr. Hudson's application . . . is based upon a fundamental misreading of Judge McAvoy's Decision. . . . Mr. Hudson's approach is to outline the relief he sought in his application to Judge McAvoy for remand and then to treat Judge McAvoy's Decision as granting all the relief that Mr. Hudson sought.

(Kenneth G. Varley's Aff. in Opp'n ¶ 4.) In stark contrast to the Debtor, Corvetti argues that Judge McAvoy has remanded to this court for consideration on only one ground: "whether consideration of settlement should cause this court to reconsider its earlier decision that Mr. Hudson should be denied a discharge" (*id.* ¶ 5).

DISCUSSION

The law of the case doctrine prevents a court from addressing issues that have been litigated and decided in earlier proceedings in the same case. *In re Highland Financial Corp.*, 216 B.R. 109, 113 (Bankr. S.D.N.Y. 1997). Under the branch of the law of the case doctrine known as the mandate rule, a lower court must apply the decision of a superior court on remand. *Id.* "The trial court, following remand, [must] proceed in accordance with the appellate court's decision and mandate," *id.* (citing *Stagl v. Delta Air Lines, Inc.*, 117 F.3d 76, 79 (2d Cir. 1997); *United States v. Sanchez*, 35 F.3d 673, 677 (2d Cir. 1994), *cert. denied*, 514 U.S. 1038 (1995); *Day v. Moscow*, 955 F.2d 807, 812 (2d Cir.), *cert. denied*, 506 U.S. 821 (1992)), "and not consider questions which the mandate has laid to rest[,]" *id.* (citations omitted); *see also* 5 AM. JUR. 2D *Appellate Review* § 787 (2005) ("[W]hen a case is remanded for a specific act, the entire case is not reopened, but rather the lower tribunal is only authorized to carry out the appellate court's mandate . . . ."). Thus, a lower court has

no power or authority to deviate from the mandate issued by an appellate court. *Oneida Indian Nation of New York v. County of Oneida*, 214 F.R.D. 83, 93 (N.D.N.Y. 2003). There are, however, three generally recognized law of the case exceptions: (1) an intervening change in controlling law; (2) the need to correct a clear error of law or to prevent manifest injustice, or (3) the availability of substantially different evidence at the trial on remand. *Highland*, 216 B.R. at 114. For reasons set forth *infra*, none of the exceptions apply here.

Examination of the District Court's mandate in light of the foregoing principles reveals that it is limited and specific; contrary to the Debtor's belief, the Remand Decision did not generally remand the adversary proceeding. The District Court found "that [this] court should be given the opportunity, in the first instance, to determine whether the settlement involving the Wrongful Death lawsuit affects the determination that the debtor should not be given a discharge." (Remand Decision at 3-4.) Because the settlement never materialized, the question posed by the mandate is now moot.

Judge McAvoy's District Court Affirmance is the law of the case as to fraud, and the court can find no circumstances which require a departure from the law of the case doctrine.[12] As the

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[12] All that is required by the Remand Decision is reconsideration of whether the parties' former settlement negotiations somehow impact this court's conclusion that the Debtor is not entitled to a discharge. The Remand Decision otherwise leaves intact Judge McAvoy's prior findings of fact and conclusions of law with respect to evidence in the record. (*See* District Court Affirmance at 10-13.) After careful analysis of the factors impacting discharge, Judge McAvoy wrote:

> The Bankruptcy Court found that when he filed his bankruptcy schedules in the present action, the Debtor did not include the wrongful conveyance lawsuit. . . . [T]he failure of Hudson to schedule the wrongful conveyance lawsuit constituted a false statement that was material to the bankruptcy proceeding. . . . .
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> Judge Littlefield found ample evidence from which he could infer the debtor had the requisite intent to defraud his creditors. First, the record reflected

party now opposing applying the law of the case, the burden would fall upon the Debtor to satisfy any of the exceptions to that doctrine. Unfortunately for the Debtor, however, he has already disposed of all available exceptions when he moved for reconsideration in the District Court under the other branch of the law of the case doctrine known as the prior decision rule. *See Oneida*, 214 F.R.D. at 91 (Under prior decision rule, "'when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case, . . . unless cogent and compelling reasons militate otherwise[.]'") (quoting *United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2002), *cert. denied*, *Donato v. United States*, 539 U.S. 902 (2003)). In moving for reconsideration, the Debtor argued that there was (1) an intervening change in controlling law, (2) a need to correct a clear error of law or to prevent manifest injustice, and (3) the availability of new evidence not previously available. The District Court impliedly, if not expressly, decided that only the third ground had merit and, in so doing, it limited the new or substantially different evidence to the "potential settlement of [the Debtor's] claims with the bankruptcy Trustee" (Remand Decision at 3). The Debtor's arguments are the same, and only the audience has changed. Thus, there is no reason for this court to inquire any further.

> that the debtor had been put on notice that the asset must be scheduled during his prior bankruptcy. Second, the debtor failed to amend his schedules despite numerous instances in which the fraudulent conveyance lawsuit was brought to his attention by Corvetti or the bankruptcy court. Further, by Hudson's own testimony, the fraudulent conveyance lawsuit was foremost in his mind when he filed the petition for discharge. The Bankruptcy Judge was entitled to discredit Hudson's testimony that the lawsuit was left off by mistake, particularly in light of the fact that he failed to amend his schedules until more than a month after Corvetti filed his adversary petition [sic].

(District Court Affirmance at 12-13.) The District Court Affirmance was not vacated and, thus, those findings of fact and conclusions of law were not open to reconsideration on remand.

CONCLUSION

The potential settlement with the Trustee that never materialized has not altered this court's specific findings of malfeasance on the part of the Debtor that were affirmed by the District Court. The court therefore reaffirms its earlier decision that the Debtor's discharge is denied pursuant to 11 U.S.C. § 727(a)(4)(A).

It is SO ORDERED.

Dated: 12/30/05
Albany, New York

/s/ Robert E. Littlefield, Jr.
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Honorable Robert E. Littlefield, Jr.
United States Bankruptcy Judge