IT IS SO ORDERED.

Dated: November 22, 2024

Mina Nami Khorrami
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	Case No. 2:23-bk-52661
MARK L. ANTHONY	Chapter 13
Debtor.	Judge Mina Nami Khorrami

MEMORANDUM OPINION AND ORDER DENYING AMENDED MOTION TO DISMISS OR CONVERT CHAPTER 13 CASE FILED BY DAVID STEMEN AND EVENTURESENCORE, INC. (DOC. 19) AND TRUSTEE'S MOTION TO DISMISS CASE PRIOR TO CONFIRMATION (DOC. 90)

I. Introduction

Before the Court are the *Amended Motion to Dismiss or Convert Chapter 13 Case* filed by David Stemen and Eventuresencore, Inc.[1] (Doc. 19) and the *Trustee's Motion to Dismiss Case Prior to Confirmation* (Doc. 90), filed by Chapter 13 Trustee Faye English (hereinafter collectively the "Motions") [2], along with the *Memorandum Contra Amended Motion of David Stemen and Eventuresencore, Inc. to Dismiss or Convert (Doc 19)* (Doc. 25) filed by Debtor, Mark Lynn Anthony (hereinafter the "Debtor"), and *Debtor Mark L. Anthony's Memorandum Contra Motion of the Chapter 13 Trustee to Dismiss Case Prior to Confirmation (Docket # 90)* (Doc. 96).

By agreement of the Movants and the Debtor, the Motions were heard together in a consolidated evidentiary hearing (hereinafter the "Hearing") which was held on June 10, 11, and 12, 2024.[3] At the Hearing, Robert Morje appeared on behalf of the Debtor, James Nobile appeared on behalf of the Stemen Creditors, and Molly Hartnell appeared on behalf of the Trustee. Michael Idzkowski appeared on behalf of the State of Ohio, Environmental Protection Agency (hereinafter, the "Ohio EPA"), which is a creditor in the case, but did not take an official position on the Motions or actively participate in the Hearing.

At the conclusion of the Hearing, the Court set a deadline of July 12, 2024, to allow the Movants and the Debtor to submit post-trial briefs instead of closing arguments. The Movants and the Debtor timely filed their post-hearing briefs. The *Post-Trial Brief in Support of Trustee's Motion to Dismiss (Doc. 90)* (Doc. 147) was filed by the Trustee, the *Post-Trial Brief of David*

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[1] Mr. Stemen and Eventuresencore, Inc. will collectively be referred to as the "Stemen Creditors."

[2] Ms. English will be referred to as the "Trustee." Where appropriate, Mr. Stemen, Eventuresencore, and Ms. English will be referred to collectively as the "Movants."

[3] At the February 28, 2024, pretrial conference, the parties agreed that the Hearing would focus solely on the dismissal issues raised in the Motions, and that confirmation issues would be deferred until after the Motions were resolved. The Court revisited this conclusion with the parties at the May 28, 2024, final pretrial conference, but ultimately determined to adhere to its prior determination.

Stemen and Eventuresencore, Inc. was filed by the Stemen Creditors (Doc. 148), and the *Brief of Debtor in Opposition to Motions to Dismiss for Bad Faith* was filed by the Debtor (Doc. 149).

After expiration of the deadline for filing post-hearing briefs, the Stemen Creditors made two supplemental submissions – on August 16, 2024, they filed their *Supplement to: Post-Trial Brief of David Stemen and Eventuresencore, Inc. (ECF 148)* (Doc. 162) and on September 3, 2024, they filed their *Second Supplement to: Post-Trial Brief of David Stemen and Eventuresencore, Inc. (ECF 148)* (Doc. 165) (collectively the "Supplements"). The Court convened a status conference on September 24, 2024, to determine whether any party wished to be heard or file any response to the Supplements, but no one wished to file any other pleadings.[4] The Court took the matter under advisement on September 25, 2024.

Based on the exhibits admitted into evidence and testimony of the witnesses and after the review of the pleadings and documents filed by the Movants and the Debtor, and for the reasons which follow, the Motions are denied.

II. Findings of Fact

The facts of this case are complex and span over several years. The Debtor is a 63-year-old man who lives in or near Logan, Ohio in Hocking County. He grew up in Lithopolis, Ohio, graduated from Carroll High School in 1980, and attended Hocking College for one year. He has no educational degrees beyond his high school diploma. His father was a firefighter for the City of Columbus and owned a construction business building houses and commercial projects.

The Debtor's early jobs involved doing construction work for his father, but due to difficulties in his relationship with his father, the Debtor began doing construction work on his

[4] The Supplements were filed well after the July 12, 2024 deadline for post-hearing submissions and leave to file them out of time was neither sought nor obtained. Nor did the Court reopen the Hearing for further evidentiary submissions. Accordingly, the Court limits its consideration to the evidence admitted at the Hearing and the briefs submitted in compliance with the July 12, 2024 deadline.

own. Over time, the Debtor progressed to a cabinet molding and mill workshop where he did a lot of work in residential construction. In this work, he learned to operate cranes. Eventually, he started operating a mobile crane business and established a company called Load Lifters, LLC (hereinafter "Load Lifters") to operate the crane business. The Debtor has always been in business for himself since he stopped working for his father. Since 2015, the Debtor's primary source of income has been his crane work through Load Lifters, supplemented by occasional work in his individual capacity performing minor construction and maintenance work. For additional income, the Debtor purchases, repairs, and resells used vehicles and equipment. Prior to 2015, the Debtor was involved in various business ventures, including the operation of mobile home parks, an RV park, and a zipline business, but over time each of those businesses failed, and the Debtor continues to bear the consequences of those failures.

Between 2004 to 2007, the Debtor was able to acquire three mobile home parks, each of which was in the name of a separate limited liability company. Each of the parks were located in different cities: one was in New Lexington (Lexmobile Park), one in Lancaster (Hillview Park), and one in Logan (Valley View Estates Park). Each was held in the name of a separate limited liability company owned by the Debtor, though which limited liability company owned which park was not made clear at the Hearing. A mobile homeowner would be able to rent a space in these parks; each rental space provided a concrete pad for the mobile home, sewer and electric hookups, and automobile parking spaces. The parks had playgrounds and some amenities, but none had swimming pools.

In addition to the mobile home parks, the Debtor also owned Lake Logan R.V. Park, LLC ("Lake Logan Park"), which operated a recreational vehicle park. He acquired the Lake Logan Park around the same time as the mobile home parks. The Lake Logan Park was a short-term

recreational vehicle park, which had a few camper rental spaces.[5] There were about 15 to 20 renters who would rent spaces annually at the Lake Logan Park, but the rest of its business was generated from traffic off the highway.

Initially, the mobile home and RV parks were operating at a profit, but over time, their business declined and they started to lose income. The parks were ultimately disposed of, and the properties were sold, either at private sale or foreclosure. The Debtor's companies last owned any of these parks in 2017.

Around 2010, the Debtor went into business with Kerry Gemmell ("Mr. Gemmell"). Mr. Gemmell and the Debtor formed Hocking Peaks Adventure Park, LLC (hereinafter the "Zipline Park") to run a zipline park on property located at 15111 State Route 664 South, Logan, Ohio (hereinafter the "Zipline Property"). M&T Property Investments, LLC (hereinafter "M&T Investments"), of which the Debtor is the sole member, initially owned the Zipline Property. M&T Investments had a mortgage on the Zipline Property. Mr. Anthony and Mr. Gemmell had reached an understanding that the Debtor would provide the location and his labor, and Mr. Gemmell would provide the financing; and that the profits would be split equally. Eventually, Mr. Gemmell and the Debtor had a falling out that resulted in litigation beginning in 2013.[6] The Hocking County Court of Common Pleas (the "State Court") appointed a receiver, Reg Martin ("Mr. Martin"), who shut down the Zipline Park and terminated the employees in 2015. Ultimately, a consent judgment was entered in favor of Mr. Gemmell and against the Debtor in the Gemmell Litigation. The Debtor's Schedule E/F indicates that the debt to Mr. Gemmell is $560,000.

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[5] The difference between Lake Logan Park and the mobile home parks was that the mobile home parks were for long-term residential leases, whereas Lake Logan Park involved short-term visits, typically (but not exclusively) for weekends.

[6] The litigation was filed in the Hocking County Court of Common Pleas and was styled *Gemmell v. Anthony*, Case No. 13CV0046 (hereinafter the "Gemmell Litigation").

Around 2019, M&T Investments defaulted on the mortgage on the Zipline Property and Timber View Properties, Inc. (hereinafter "Timber View"), a corporation owned by Jack Beatley (hereinafter "Mr. Beatley"), acquired the note and mortgage. In 2019, M&T Investments sold the Zipline Property to Evergreen Site Holdings, Inc. (hereinafter "Evergreen"), another corporation owned by Mr. Beatley.[7] The sale price was $568,000, but no cash was paid to M&T Investments or the Debtor. The purchase price was paid by Evergreen's assumption of the mortgage debt obligations owed to Timber View.

The Debtor lived on the Zipline Property until 2021 when he was forced to leave his residence as the result of an order entered by the State Court in the Gemmell Litigation. The Debtor's currently resides at 18170 State Route 664 South, Logan, Ohio (hereinafter the "Blackjack Property"), in a cabin located at a cabin rental business owned by Mr. Beatley, known as Blackjack Crossing. As early as the November 2022 meeting of creditors in the Debtor's first chapter 13 case filed in 2022, being case number 22-52785[8], the Movants were aware that the Debtor was not living at the Zipline Property, but that instead he was living at the Blackjack Property. Movants' J. Ex. 5, at 3 (hereinafter "MJE-5").[9] The Debtor occasionally performs repair and maintenance tasks for Blackjack Crossing. The Debtor also has the authority to sign checks to reimburse himself for supplies needed in conjunction with those tasks when specifically authorized by Mr. Beatley. It is not clear whether the Debtor still had the check signing authority on the Blackjack Crossing bank account when the 2023 Case was filed. The Debtor has denied any ownership interest in the Blackjack Crossing business.

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[7] Evergreen is a chapter 7 debtor before this Court in case no. 22-52799.

[8] This is the Debtor's second chapter 13 case since 2022. On September 9, 2022, he filed his first chapter 13 case in this Court (the "2022 Case"), which was dismissed on April 10, 2023. To distinguish the cases, the current case will be referred to as the "2023 Case".

[9] As is standard under 11 U.S.C. § 341, the Debtor testified under oath at the meeting of creditors in the 2022 Case. MJE-5 is a transcript of that testimony.

On the Zipline Property, there is a building referenced by the parties as the "work barn" (hereinafter the "Work Barn") in which a significant number of tools and equipment is stored. Some of it belongs to the Debtor or Load Lifters, some belongs to the Debtor's son, and some belongs to Mr. Beatley. The tools and equipment were disclosed by the Debtor on his Schedule A/B as assets of Load Lifters with a value of $250.[10] Most of the items in the Work Barn were purchased used at auction and do not have significant value. The Debtor did not include an inventory or appraisal of his tools and equipment in the Work Barn on Schedule A/B, but he did provide an inventory of tools and equipment belonging to him at the Hearing. The total value of tools and equipment on the inventory was $1,702.[11] The balance of the materials in the Work Barn belonging to the Debtor have no more than scrap value.

Although the Debtor does not list any dependents in his Schedule J, he does acknowledge having a 13-year-old daughter with a former girlfriend named Mary Koch (hereinafter "Ms. Koch"). The Movants were aware that the Debtor has a daughter as early as the November 2022 meeting of creditors in the 2022 Case. MJE-5 at 27. The Debtor pays voluntary child support when he is able, but there is no evidence of a domestic relations court order requiring such child support payment.

The Debtor owns memberships interests in several limited liability companies. These include M&T Investments, Marlin Trace Investments, Ltd. (hereinafter "Marlin Trace"), Marlin Trace Investments II, Ltd. (hereinafter "Marlin Trace II"), Lexmobile, LLC (hereinafter "Lexmobile"), Lake Logan Park, Sky View Farms, LLC (hereinafter "Sky View"), and Load

[10] They were scheduled at a value of $250, but this was a scrivener's error, and they should have been valued at $2,500.

[11] The inventory lists fifty-four items (and in a few cases, categories of items). These were the only items belonging to Debtor in the Work Barn that have any value beyond scrap value. The difference between the $1,702 value placed on the inventory and the $2,500 value that should have been on Schedule A/B for the total contents of the Work Barn belonging to the Debtor was not explained.

Lifters. He also listed a connection to the Zipline Park on his Statement of Financial Affairs (hereinafter "SOFA").

Load Lifters, Sky View, M&T Investments, and the Zipline Park were listed on the Debtor's Schedule A/B and/or SOFA. Marlin Trace, Marlin Trace II, Lake Logan Park, and Lexmobile (hereinafter the "Undisclosed Membership Interests") were not listed on the Debtor's schedules or SOFA. However, the Debtor disclosed these companies and his interest in them, in November 2022, when the Debtor testified about them at the meeting of creditors in the 2022 Case. MJE-5 at 25-27.[12] The Debtor did not include the Undisclosed Membership Interests on his Schedule A/B or SOFA because the Debtor believed they were not active since the assets of these entities were sold prior to the filing of the 2023 Case (hereinafter the "Petition Date"). After discovering that his ownership interests in the business entities needed to be disclosed in the 2023 Case regardless of whether they held assets, the Debtor instructed his attorney to disclose them. Counsel for the Debtor acknowledged that it was counsel's fault that those amendments had not been filed prior to the Hearing.

In 2020, the Debtor caused Marlin Trace to transfer a parcel of property located at 9776 State Route 664 South, Logan, Ohio (the "9776 Property") to Ms. Koch for $225,000. Marlin Trace acquired the 9776 Property in 2007 for $270,000. The 9776 Property was encumbered by a mortgage and tax liens when it was sold in 2020, and the mortgage was in default. Prior to this sale, the Debtor attempted to sell the 9776 Property using a realtor but was unsuccessful in obtaining any purchase offers. A boiler fire occurred prior to the sale, which may have impacted the value of the 9776 Property.

[12] The Stemen Creditors included each of these entities in their request for documents under Bankruptcy Rule 2004 in both the 2022 Case and the 2023 Case.

The Debtor, in his own name and through his companies, owned a variety of vehicles that were not disclosed in the 2023 Case.

- 2013 International Prostar 1HSDJSJR3DJ307256 (the "2013 International Prostar"), acquired by the Debtor in 2020 for $6,600. The Debtor sold it to MDT LLC for $13,400 in September 2021. This transfer was not disclosed on SOFA.
- 2013 Chevy Spark KL8CB6S93DC627780 (the "2013 Chevy Spark"). This vehicle was purchased new by the Debtor in 2013 and immediately transferred to Load Lifters for no consideration. Load Lifters owned the 2013 Chevy Spark at all relevant times until it was transferred to Justin Anthony, the Debtor's son, on March 11, 2021, for $500. The transfer was filed with the State of Ohio Bureau of Motor Vehicles on June 25, 2021. This transfer was not disclosed on SOFA in the 2022 Case or the 2023 Case.
- 1960 Van Dyke Motor Home 140X2FD2978 (the "1960 Van Dyke"). Lexmobile acquired this vehicle and transferred it to a Justin Meisner at some point prior to 2022. Justin Meisner then placed the title in his name in May 2022. The Debtor did not recall when this transfer took place but acknowledged that there was a significant delay between the time of the sale and when it was titled to the buyer in 2022. This transfer was not disclosed on SOFA. The 1960 Van Dyke was titled to Lexmobile at all relevant times prior to the sale to Justin Meisner.
- 1974 Bonanza Motor Home 13700914 (the "1974 Bonanza"). The Debtor purchased this vehicle in 2006 and it was titled in his name in 2010. The Debtor did not list this vehicle on Schedule A/B because the Debtor crushed it more than two years prior to the Petition Date, and it no longer exists.

- 2002 Alumitech Airboat AON010721202 (the "2002 Airboat"). The 2002 Airboat was acquired by the Debtor in 2011. The Debtor did not list the 2002 Airboat on Schedule A/B or SOFA. The Debtor sold the 2002 Airboat around 2016. The buyer, however, has never transferred the title out of the Debtor's name.
- 1996 Fairmont Mobile Home MY9698508K (the "1996 Fairmont"). This vehicle was acquired by the Debtor in 2008. The Debtor did not list this vehicle on Schedule A/B or SOFA. It was sold more than two years before the Petition Date to a tenant who lives on the Zipline Property, but the tenant never transferred the title.
- 1987 Western Star ZWKPDCCH8HK917477 (the "1987 Western Star"). This vehicle was acquired by the Debtor in 2005. The Debtor did not list this vehicle on Schedule A/B or SOFA. The Debtor bought the vehicle as salvage and sold it as salvage more than two years ago prior to the Petition Date. It was not roadworthy at the time the Debtor sold it.
- 1998 Ford 35 Van 1FTSE34F1WHA10766 (the "1998 Ford 35 Van"). This vehicle was acquired by the Debtor in 2002. It was sold around 2005 to a company in Kentucky that sells trucks. The vehicle was not listed on Schedule A/B nor was the transfer listed on SOFA.

The Debtor failed to retain any records for the sales of the undisclosed vehicles, most of which happened more than two years prior to the Petition Date. The 2013 International Prostar was sold by the Debtor less than two years prior to the Petition Date. The other undisclosed vehicles were sold more than two years prior to the Petition Date. According to the Debtor, the purchasers of the vehicles did not effectuate a transfer of the titles because they were not going to be driven on public roads and/or the purchaser did not want to pay the sales tax that must be paid

when obtaining a new title. As a result, these vehicles are still titled in the name of the Debtor although they were sold more than two years prior to the Petition Date.

The Debtor valued his membership interest in Load Lifters on Schedule A/B in the amount of $84,726.31. This valuation is primarily based on the value of Load Lifters' most valuable asset, the 2007 Internation crane (the "2007 Crane"), which is valued at $50,000. In June 2023, Load Lifters acquired this crane for $87,000, and insured it for $120,000. At the time of the purchase, the Debtor was in desperate need for a new crane when Load Lifters' prior crane was significantly damaged in an accident. The Debtor valued the 2007 Crane at $50,000 because he believed he overpaid for it initially. In addition, prior to the filing of the 2023 Case, the Debtor's independent research regarding values for comparable cranes were as low as $35,000.

Other than his personal bank account and the Load Lifters business bank account, both maintained at Huntington National Bank, the Debtor does not keep extensive financial records. The Debtor employed a bookkeeper for the Zipline Park until it was placed into a receivership in 2014 or 2015. Since then, the Debtor has not maintained a system for keeping records. At the urging of his bankruptcy counsel, during the 2023 Case the Debtor has started a new practice of issuing and keeping receipts for Load Lifters transactions, since Load Lifters is the Debtor's primary source of income.

Prior to filing the 2023 Case, the Debtor engaged regularly in gambling, primarily at the Eldorado Casino at Scioto Downs in Columbus, Ohio. The Debtor did not understand during the 2022 Case that gambling would be an issue. His current counsel made it very clear that gambling during the 2023 Case would be a significant problem. Except for once in February 2024, Debtor has not gambled during the 2023 Case. Prior to the 2023 Case, much of his gambling involved use of funds that were offered to him by the casino and not his own money. Since this case was

filed, the Debtor has not been on the Eldorado Casino property, with two exceptions. Once was in February 2024 when he met his mother for dinner to celebrate his birthday, and he lost $160. The other instance was in the spring of 2024 when he retrieved gambling records from casino management for use in connection with his 2023 Case.

The Debtor is subject to several substantial money judgments. The Debtor's Schedule E/F indicates that Mr. Gemmell has a judgment against him for $560,000. In addition, the Ohio EPA has a consent judgment of approximately $100,000.[13] The Zipline Park receiver, Reg Martin, has a judgment in the amount of $240,000. There are also substantial unliquidated and disputed claims owed to the Stemen Creditors for $500,000, and a $72,000 claim owed to the Internal Revenue Service. In total, the Debtor listed $1,450,700 in general unsecured claims on his Schedule E/F. Based upon the evidence admitted at the Hearing, the Debtor lacks the ability to pay these claims.

The Debtor filed the 2023 Case to address these claims. In particular, the Debtor was concerned about his ability to comply with two state court contempt proceedings whereby he was ordered to make payments. One order related to matters raised by the receiver in the Gemmell Litigation. Details regarding the other order were not introduced at the Hearing.

III. Jurisdiction and Venue

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue is properly before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

[13] This claim arises out of a judgment related to the disposal of solid waste from one of the mobile home parks.

IV. Analysis

A. Legal Standard for Motion to Dismiss Under 11 U.S.C. § 1307(c).

Dismissal or conversion of a chapter 13 case is governed by 11 U.S.C. § 1307(c), which provides that the Court may dismiss a case or convert it to one under another chapter for "cause." "Cause" under 11 U.S.C. § 1307(c) includes bad faith in filing the petition. *Marrama v. Citizens Bank*, 549 U.S. 365, 367, 374-75, 127 S.Ct. 1105, 166 L.Ed.2d 956 (2007); *Alt v. United States (In re Alt)*, 305 F.3d 413, 418 (6th Cir. 2002).

The Supreme Court in *Marrama* emphasized that the debtor's conduct "must, in fact, be atypical," and that dismissal for bad faith should be limited to "extraordinary cases." *Id*., 549 U.S. at 375 n.11. Further, "[b]ecause dismissal is harsh . . . the bankruptcy court should be more reluctant to dismiss a petition . . . for lack of good faith than to reject a plan for lack of good faith under Section 1325(a)." *Id*. (quoting *In re Love*, 957 F.2d 1350, 1356 (7th Cir. 1992)).

When the debtor's bad faith is alleged as cause for dismissal under § 1307(c), the "key inquiry in such cases is whether the debtor is seeking to abuse the bankruptcy process." *Alt*, 305 F.3d at 419. S*ee also Society Nat'l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 592 (6th Cir. 1992) (stating that the "critical issue is whether there is a 'sincerely-intended repayment of prepetition debt consistent with the debtor's available resources.'") (quoting *Metro Emp. Credit Union v. Okoreeh-Baah (In re Okoreeh-Baah)*, 836 F.2d 1030, 1032-33 (6th Cir. 1988))). Further, a debtor's motive in seeking chapter 13 relief is "not only an appropriate factor to consider when evaluating a debtor's good faith in seeking relief under chapter 13, it is *essentially the heart of the good faith inquiry*." *Condon v. Brady (In re Condon)*, 358 B.R. 317, 329 (B.A.P. 6th Cir. 2007) (emphasis added).

The Sixth Circuit in the *Alt* case directs bankruptcy courts deciding a motion to dismiss or convert for bad faith to consider the "totality of the circumstances" to determine whether the debtor is seeking to abuse the bankruptcy process. *Alt*, 305 F.3d at 419. The *Alt* court emphasized that "good faith is a fact-specific and flexible determination." 315 F.3d at 419 (quoting *In re Okoreeh-Baah*, 836 F.2d 1030, 1032-33 (6th Cir. 1988)). As the Sixth Circuit had previously noted:

> [N]o list is exhaustive of all the conceivable factors which could be relevant when analyzing a particular debtor's good faith. It would be impossible to provide such a list and we have not attempted to do so. We also stress that no one factor should be viewed as being a dispositive indication of the debtor's good faith. We agree with the Fifth Circuit that "[t]he 'totality of the circumstances' test means what it says: *It exacts an examination of all the facts in order to determine the bona fides of the debtor*."

Hardin v. Caldwell (In re Caldwell), 851 F.2d 852, 860 (6th Cir. 1988) (citing *In re Chaffin*, 816 F.2d 1070, 1074 (5th Cir. 1987) (emphasis added)).

The Sixth Circuit has identified a list of seven factors as relevant to the "totality of the circumstances" inquiry when deciding a motion to dismiss under 11 U.S.C. § 1307(c). *Alt*, 305 F.3d at 419. These factors are: (1) the nature of the debt, including the question of whether the debt would be nondischargeable in a chapter 7 proceeding; (2) the timing of the petition; (3) how the debt arose; (4) the debtor's motive in filing the petition; (5) how the debtor's actions affected creditors; (6) the debtor's treatment of creditors both before and after the petition was filed; and (7) whether the debtor has been forthcoming with the bankruptcy court and the creditors. *Id.* at 419 (citing *Love*, 957 F.2d at 1357). Further, bankruptcy courts should also consider (to the extent relevant) the factors that are relevant to the analysis under 11 U.S.C. § 1325(a)(3) regarding whether a chapter 13 plan has been proposed in good faith. *Alt*, 305 F.3d at 420.[14]

[14] The factors for good faith to be considered in the plan confirmation context under 11 U.S.C. § 1325(a)(3) are: (1) the debtor's income; (2) the debtor's living expenses; (3) the debtor's attorney's fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the

The Sixth Circuit recognizes that there is substantial overlap between the factors used to determine good faith in the context of a dismissal under 11 U.S.C. § 1307(c) and good faith in the context of plan confirmation under 11 U.S.C. § 1325(a). *Alt*, 305 F.3d at 420. These factors, however, are relevant not as an end in themselves as part of a mechanical counting of factors, but rather exist to guide the Court in its analysis of the "key inquiry" – whether the debtor is seeking to abuse the bankruptcy process. *Alt*, 305 F.3d at 419. Even though it is appropriate for the court to consider the factors, if relevant, in the plan confirmation context when deciding dismissal under 11 U.S.C. § 1307(c), the court should be more reluctant to dismiss a case under § 1307(c). *Marrama*, 549 U.S. at 374-75, n.11 (citing *Love*, 957 F.2d at 1356); *Alt*, 305 F.3d at 420.

There is no presumption under 11 U.S.C. § 1307(c) that the case was filed in bad faith, and the burden of proving that the petition was filed in bad faith is on the moving parties. *Alt*, 305 F.3d at 420; *Love*, 957 F.2d at 1355-56.

B. Relevance of the 2022 Case

The first question before this Court is whether the Debtor's conduct in the 2022 Case is relevant to the issue of bad faith during the 2023 Case. This Court believes that such evidence is relevant and should be considered. *In re Doersam*, 849 F.2d 237, 239 (6th Cir. 1988) ("the totality of the debtor's conduct, both before and after the plan is submitted, is to be considered when evaluating whether the debtor has acted in good faith") (citation omitted). Accordingly, the Court considered evidence related to the Debtor's conduct in the 2022 Case in reaching its decision.

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debtor's potential for future earning; (7) any special circumstances, such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which administration would place on the trustee; and (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor. *Alt*, 305 F.3d at 919 (citing *Barrett,* 964 F.2d at 591. The *Alt* court stressed that the *Barrett* factors are not exclusive, and that good faith is a fact-specific and flexible determination. *Alt, 305 F.3d at 419* (citing *Okoreeh-Baah*, 836 F.2d at 1032-33)).

The second inquiry for this Court is the probative value of the Debtor's conduct in the 2022 Case as it relates to the issue of bad faith. The 2022 Case was dismissed when the Debtor withdrew his opposition to the Trustee's motion to dismiss.[15] The order of dismissal in the 2022 Case did not contain any findings of misconduct but instead simply dismissed the case.[16] Thus, the dismissal of the 2022 Case was not based on the Debtor's failure to comply with court orders or Debtor's misconduct, but instead was based on a payment delinquency. It is not unusual for a debtor to dismiss a chapter 13 case that has run into difficulties and subsequently try again, perhaps (as in this case) with new counsel and a new understanding of the requirements of chapter 13. *See, e.g. In re White*, 273 B.R. 279, 283 (Bankr. M.D. Fla. 2001) (noting that lack of disclosures in prior case was cause for the dismissal of the prior case but should not control the outcome of the second case, which should instead be judged primarily upon its own merits). Accordingly, the Court gives little probative value to the Debtor's conduct in the 2022 Case and instead will direct its focus on the events of this case.

Although the *Alt* court encourages the consideration of many factors, the Movants in this case presented evidence on a relatively few numbers of factors. The Movants focused on (1) the Debtor's motivation in filing the 2023 Case, (2) the Debtor's credibility, (3) the Debtor's errors and nondisclosures in his Petition, schedules, and SOFA, and (4) the Debtor's gambling. The Court will address each factor in turn.

C. <u>The Debtor's Motive in Filing the 2023 Case</u>

The Debtor's motive in filing the 2023 Case is a key factor in evaluating whether it was filed in bad faith, particularly as that motive is reflected in the Debtor's conduct once the case is

[15] Though the Debtor acknowledged that the 2022 Case was dismissed after his counsel withdrew his opposition to the Trustee's motion to dismiss, he was not aware that his counsel in the 2022 Case was going to withdraw the opposition to the motion to dismiss.

[16] The Debtor stated that his understanding was that the 2022 Case was dismissed due to a payment delinquency.

filed. The Bankruptcy Appellate Panel in *Condon* described motivation as "essentially the heart of the good faith inquiry." 358 B.R. at 329.

While the Debtor candidly acknowledged that his immediate concern in filing his 2023 Case was his fear that he was going to be jailed based upon contempt sanctions that he was unable to pay, it is readily apparent that this was not his only motive. The Debtor faces a financial picture that can fairly be described as overwhelming. He has numerous six-figure judgments against him, and his goal is to pay his creditors, reorganize his obligations, and ultimately discharge those debts. That is entirely consistent with the purpose and spirit of chapter 13: the "sincerely-intended repayment of pre-petition debt consistent with the debtor's available resources." *Okoreeh-Baah*, 836 F.2d at 1033.

The Movants suggest that the timing of the Debtor's two filings indicates that he is a serial filer. While this is the Debtor's second case since 2022, neither of his cases fit the pattern of a serial filer who abuses the bankruptcy process simply to slow a state court case. Many chapter 13 cases are filed on the eve of foreclosure or some other event in a nonbankruptcy court, but this fact alone does not compel a finding they were filed in bad faith. Rather, the question is whether a debtor is making serious efforts to confirm and complete a plan. For these reasons, though the timing of a case and the frequency of bankruptcy filings, may have some probative value with respect to determining good faith, that value is limited, and it will rarely be dispositive. The court must inquire further to understand all the facts and circumstances. *In re Malone*, 2021 Bankr. LEXIS 3600, at *19 (Bankr. S.D. Ohio Dec. 2, 2021).

As of the Hearing, the Debtor had made 10 plan payments of over $2,000 each to the Trustee. He filed his schedules and various amendments to them. He filed several versions of a chapter 13 plan. The Debtor's financial circumstances establish a significant need for chapter 13

reorganization. And that is one of the basic purposes of chapter 13 – to facilitate the repayment of debts to the extent permitted by the Debtor's available resources. As a result, while one of the Debtor's motivations in filing the 2023 Case was the impending state court contempt proceedings, it was not the sole motivation. The record demonstrates that the Debtor needs bankruptcy relief and is making a good-faith effort to obtain it. Therefore, the Court concludes that the Debtor's motives in filing the 2023 Case were consistent with the purpose and goals of chapter 13.

D. The Debtor's Credibility

Much like the Debtor's motivation in filing a chapter 13 case, the Court's evaluation of the Debtor's credibility is critical to a determination of the Debtor's sincerity and overall good faith. Moreover, the Court's evaluation of the Debtor's credibility will influence all its findings. The Stemen Creditors vigorously question the Debtor's credibility. They challenge the Debtor's credibility in part based on a judgment entry from the Gemmell Litigation dated March 30, 2022, related to Mr. Martin's contempt motion. In that entry, the State Court found that the Debtor "has no credibility."[17] At the request of the Stemen Creditors, the Court took judicial notice of the judgment entry. The Stemen Creditors argue that the judgment entry from the State Court provides a basis for the Court to reject all of the Debtor's testimony.

The Stemen Creditors' argument ignores the limits on judicial notice under Rule 201 of the Federal Rules of Evidence. The Court may take judicial notice of matters that are not reasonably subject to dispute. Fed. R. Evid. 201(b). Thus, the Court may take judicial notice of filings on its own docket, those of other courts, or in other public offices. But the Court may not take judicial notice of the truth of factual assertions contained in such documents. *KBC Asset Mgmt. N.V. v. Omnicare, Inc. (In re Omnicare, Inc. Sec. Litig.)*, 769 F.3d 455, 467 (6th Cir. 2014); *Abu-Joudeh*

[17] Other than the Debtor's acknowledgement of the finding and the judgment entry itself, the Court was provided with little information, context, or circumstances regarding the proceedings in the State Court.

v. Schneider, 954 F.3d 842, 848 (6th Cir. 2020). This principle dictates that the Court may not take judicial notice of the truth of opinions or factual findings made by other courts. *Winget v. J.P. Morgan Chase Bank, N.A.*, 537 F.3d 565, 576 (6th Cir. 2008); *see also Grayson v. Warden, Commissioner*, 869 F.3d 1204, 1225 (11th Cir. 2017) (holding that Evidence Rule 201 does not permit trial court to take judicial notice of truth of factual findings from another court) (collecting cases).

The State Court's findings regarding the Debtor's credibility arose in a very different context than that presented here. The judgment entry itself from the Gemmell Litigation reflects that it resulted from a contempt hearing to determine whether the Debtor was interfering with the receivership related to the Zipline Property. The State Court's findings relate to the Debtor's attempts to explain and justify his conduct regarding the Zipline Property in 2020 and 2021. The issue before this Court is whether the Debtor is pursuing the 2023 Case in bad faith based upon the totality of the circumstances of the Debtor's entire financial situation. These are very different factual inquiries based upon different standards.

Given that the Court's perception of the Debtor's credibility is an essential factor in deciding the Motion, the Court will not take judicial notice of the truth of the State Court's findings regarding the Debtor's credibility. As the trier of fact, the trial court determines the credibility of the witnesses and other evidence and the weight to be accorded to the evidence. *In re Saxon*, 637 B.R. 705, 709-10 (Bankr. D.S.C. 2022). As the Supreme Court has stated, "only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said." *Anderson v. Bessemer City*, 470 U.S. 564, 574-75, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985).

The Court here observed the Debtor while he was testifying over the course of two and a half days. In the face of thorough and extensive questioning, he was neither evasive nor unduly defensive. Though the Debtor occasionally did not remember an event in precise detail, he often was discussing events from a decade or more prior to the Hearing. Thus, any lapses in his memory did not appear to be a basis for the Debtor to avoid answering the questions asked of him. This Court, having had the opportunity to observe the Debtor closely during his two and a half days of testifying, found him to be frank and lacking any signs of evasiveness or dissembling that would lead the Court to question his testimony. As a result of the Court's observation of the Debtor during his testimony, the Court finds him to be credible.

This finding that the Debtor was generally credible and sincere in his motivations has substantial impact upon the Courts' evaluation of the Motions. The Debtor's credibility is a substantial factor to be considered when determining if he is proceeding in bad faith. *In re Shank*, 652 B.R. 350, 361 (Bankr. D. Kan. 2023) (finding that chapter 13 petition and plan had been filed in good faith based significantly upon debtor's credible testimony); *see also In re Gaudet*, 61 B.R. 349, 350 (Bankr. D.R.I. 1986) (converting chapter 13 case to chapter 7 due to "[t]he debtor's general conduct and demonstrated lack of credibility, which we view as a blatant bad faith attempt to misuse the bankruptcy process").

The Movants asserted often that the Debtor was lying but offered nothing to support that conclusion. The Court will not simply assume that a witness is lying. "It is exceedingly common for witnesses to recall the same events and conversations differently, and the fact that several witnesses present conflicting testimony does not require a court to conclude that one of them is lying." *In re Babb*, 440 B.R. 523, 526 (B.A.P. 8th Cir. 2010).

Accordingly, the Court finds that the Debtor was credible and forthright in his testimony. The Court notes that its task here is not to make judgments about the Debtor's character or whether he may have spent his money unwisely. Rather, its task is to determine whether the Debtor is seeking to abuse the spirit of the bankruptcy system, or whether he is seeking to address and reorganize his debts to the best of his ability given his resources. The Debtor has an overwhelming need for bankruptcy relief given the substantial judgments against him and is making a determined effort to bring that about. Accordingly, the Court finds that the Debtor's credibility and motivations for filing this case reflect that he filed his 2023 Case in good faith.

E. Nondisclosure of Assets

The Court next turns to the issue upon which the Movants focused much of their attention– various nondisclosures they assert in the Debtor's schedules and SOFA. They argue that these nondisclosures demonstrate that the Debtor has not been forthcoming with his creditors and warrants a finding of bad faith. The Movants assert that the Debtor's alleged failure to list various assets on Schedule A/B and to disclose various asset transfers and business relationships on his SOFA is evidence that he was not forthcoming with his creditors.

In a chapter 13 bankruptcy, debtor is required "to be honest, forthcoming, truthful, and frank." *Alt*, 305 F.3d at 421 (citing *Love*, 957 F.2d at 1357). A debtor has an "affirmative duty" to disclose his assets and financial affairs in the schedules and statements required by 11 U.S.C. § 521 and Rule 1007 of the Federal Rules of Bankruptcy Procedure. *Browning v. Levy*, 283 F.3d 261, 275 (6th Cir. 2002). These disclosure obligations lie "at the very core of the bankruptcy process and meeting these obligations is part of the price debtors pay for receiving the bankruptcy discharge." *Stanley v. FCA US, LLC*, 51 F.4th 215, 220 (6th Cir. 2022) (internal quotation marks omitted). "Whether the debtor has been forthcoming with the bankruptcy court and the creditors

is properly considered in deciding whether dismissal for lack of good faith is appropriate. *Alt*, 305 F.3d at 421 (upholding dismissal for bad faith where bankruptcy court found that the debtor's performance at her deposition was "laughable at best, fraudulent and criminal at worst"). Accordingly, the Court will consider the completeness and accuracy of the Debtor's disclosures.

The disclosure obligations are defined by the Bankruptcy Code, Bankruptcy Rules, and the specific questions and instructions on the Official Bankruptcy Forms themselves. 11 U.S.C. § 521(a)(1)(B) requires a debtor to file schedules and a statement of financial affairs. Bankruptcy Rule 1007(b)(1) directs that these filings are to be "prepared as prescribed by the appropriate Official Forms," and Bankruptcy Rule 9009(a) mandates that the Official Forms be used "without alteration" other than minor changes made to expand or contract the space provided on the form as dictated by the debtor's responses. The Code and Bankruptcy Rules thus provide that the scope of a debtor's disclosure obligations is defined by the questions that are asked by Official Form Schedules and Statement of Financial Affairs. *See In re Clark*, 86 B.R. 593, 594-95 (Bankr. E.D. Ark. 1988) (holding that the debtor's obligation is "simply to consider the question carefully and answer it completely and accurately."). It is not bad faith for a debtor to fail to disclose something that he was not required to disclose. *See, e.g.*, *In re Crumley*, 428 B.R. 349, 359 (Bankr. N.D. Tex. 2010) (judging completeness of debtor's disclosures against the specific questions and instructions in the Official Forms). The fact that a trustee or creditor might wish to know more does not mean that the debtor is guilty of nondisclosure. *See In re Geer*, 522 B.R. 365, 395 (Bankr. N.D. Ga. 2014) (finding that debtor was not required to disclose transfers to third parties from his wholly owned corporation: "as much as those of us who have been involved in the administration of bankruptcy cases might wish otherwise, the Official Form Schedules and Statement of Financial Affairs are not as probingly inclusive as might be desired.").

Second, even where there is a failure to disclose, inadvertent nondisclosures are not evidence of bad faith or otherwise worthy of sanction. *Eubanks v. CBSK Fin. Grp., Inc.*, 385 F.3d 894, 898-99 (6th Cir. 2004). Nondisclosures warrant a finding of bad faith only when there is evidence that misstatements or omissions were made to mislead the court or that they prejudiced the creditors or the bankruptcy estate. *Condon*, 358 B.R. at 328-29 (reversing bankruptcy court finding of bad faith, even where there were "troubling" nondisclosures, where there was no finding of intent to mislead the court or prejudice creditors). Courts have also indicated that the lack of any advantage to the debtor from the nondisclosures is an important consideration. *In re Roberts*, 339 B.R. 807, 813 (Bankr. M.D. Ga. 2006); *In re Klein*, 581 B.R. 579, 582 (Bankr. N.D. Ill. 2018) ("mistakes in a chapter 13 debtor's schedules that have no effect on creditors and gain the debtor nothing do not show bad faith.").

Finally, courts have found that if nondisclosures result from lack of diligence by the debtor's counsel, that may suggest that the debtor did not seek to mislead the court or creditors. *See Condon*, 358 B.R. at 328-29; *see also In re Beck*, 309 B.R. 340, 351 (Bankr. N.D. Cal. 2004).

With these principles in mind, the Court turns to the specific nondisclosures asserted by the Movants.

1. <u>Debtor's Address on Petition</u>

The Petition indicates that the Debtor lives at the Zipline Property. The Debtor, however, only receives his mail at that address. The Debtor actually resides at the Blackjack Property. The voluntary petition form permits a debtor to indicate an address where he receives mail in the event it differs from his residential address. *See* Official Form 101, item 5. No evidence was presented to the Court explaining why the Debtor did not avail himself of this option when he completed the information in his voluntary petition.

The Stemen Creditors have not pointed the Court to any authority finding that the use of an incorrect address on the Petition is relevant to the question of bad faith, and this Court has not discovered any authority through its independent research. Notwithstanding, the Stemen Creditors contend that this issue creates an inference of bad faith because it shows that the Debtor was trying to hide the fact that he was residing at Blackjack Crossing, the cabin rental business owned by Mr. Beatley, and that this knowledge would then have led to the disclosure of the Debtor's connection to that business. But the Debtor, during his November 2022 testimony at the meeting of creditors in the 2022 Case, had indicated to the Movants that he had been temporarily residing at the Blackjack Property. MJE-5 at 28. Given that he admitted this connection to the Blackjack Property early in the 2022 Case undermines any inference that the address on the Petition in the 2023 Case was incorrectly listed to hide anything. Accordingly, the Court cannot find that the use of the incorrect address on the Petition was made with the intent to mislead the Court, nor that creditors were prejudiced by it.

2. Nondisclosure of Blackjack Crossing

The Stemen Creditors also assert that the Debtor failed to disclose a connection to Blackjack Crossing, a cabin rental business owned by Mr. Beatley. However, the Stemen Creditors did not produce any evidence that the Debtor, in fact, holds any interest in Blackjack Crossing. The evidence they assembled falls short of the mark. They point to a Better Business Bureau report for Blackjack Crossing, that was apparently obtained from the internet, that lists the Debtor as an owner along with Mr. Beatley. But the report from the Better Business Bureau has no probative value. No evidence was presented regarding the Better Business Bureau's source of information, and the Debtor testified that he had never seen the report and knew nothing about it.

The Stemen Creditors also point to the fact that the Debtor had signing authority on a Blackjack Crossing bank account. But that does not demonstrate Debtor had an interest in the business. The evidence before the Court indicates that, at most, the Debtor had the ability to sign checks on one Blackjack Crossing checking account, to be exercised only with Mr. Beatley's approval, for the purpose of allowing the Debtor to acquire supplies as needed when the Debtor was performing repair or maintenance work on the Blackjack Property for Mr. Beatley. This evidence does not warrant any finding that the Debtor had any interest in Blackjack Crossing that was required to be listed on Schedule A/B or SOFA. Accordingly, the Court cannot find that the Debtor's use of the Zipline Property as his address is evidence that the Debtor was trying to mislead the Court or creditors regarding the Blackiack Crossing.

Moreover, the Debtor was not required to disclose the fact that he had signing authority on a Blackjack Crossing account. Item 17 of Schedule A/B asks the Debtor to disclose any legal or equitable interest in any financial accounts. Although the Stemen Creditors suggest that Item 23 of SOFA (section related to the property held or controlled for someone else) requires disclosure of a bank account belonging to another party for which a debtor has signing authority, they have not cited to any authority on that point. In contrast, however, at least one bankruptcy court concluded that possessing signatory authority on a corporate bank account did not establish that a debtor had personal control of the funds in the account. *Kruse v. Murray (In re Murray)*, 408 B.R. 268, 277 (Bankr. W.D. Mo. 2009). While it may have been advisable for the Debtor to err on the side of disclosure, the failure to do so is not evidence of bad faith. It was not clear whether this

signing authority still existed on the Petition Date, and in any event, the Movants did not demonstrate that any benefit to the Debtor or prejudice to the Movants resulted from same.[18]

3. Failure To Disclose Dependent

Next, the Stemen Creditors raise the Debtor's nondisclosure of his 13-year-old child. Schedule J does not require the disclosure of children, it requires the disclosure of dependents. The evidence suggests that the child is not a dependent of the Debtor. The child does not live with the Debtor and no evidence of a domestic support obligation under the definition set forth in 11 U.S.C. § 101(14) was introduced.[19]

In any event, the Stemen Creditors' primary theory is that disclosure of the child would have led to disclosure of Ms. Koch, the mother, which then would have led to the disclosure that the Debtor, through Marlin Trace, transferred the 9776 Property to Ms. Koch in 2020. And because the Stemen Creditors assert that the transfer was a fraudulent transfer, the lack of disclosure of the daughter becomes evidence that the Debtor was trying to cover up a fraudulent transfer. For a number of reasons, this theory is not tenable.

The Debtor acknowledged all these facts at the November 2022 meeting of creditors. He acknowledged that he had a daughter, that the mother was Ms. Koch, that the Debtor owned Marlin Trace, and that Marlin Trace sold the 9776 Property to Ms. Koch for $225,000 in 2020. MJE-5 at 27.[20] Thus, the idea that the Debtor hid the fact that he has a daughter and his relationship to Ms. Koch as part of a scheme to hide the transfer of the 9776 Property to Ms. Koch to shield the transfer

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[18] The Debtor's testimony at the Hearing was unclear when this signing authority was created and whether it still existed. The transcript of the meeting of creditors from the 2022 Case indicates that this authority had existed at one point, but, like the testimony at the Hearing, was unclear whether the authority still existed. MJE-5 at 24-25 (discussing a check signed by the Debtor in 2013).

[19] Accurate Schedules I and J are critical to confirmation. The disclosure of any regular payment to the mother of the child would be relevant to the Debtor's expenses as reflected on Schedule J and his ability to fund the chapter 13 plan and more critical to this Court's consideration of good faith in the context of the plan confirmation.

[20] That this transfer was known to the Movants is also demonstrated by the fact that it is specifically identified as a topic for production of documents in the Rule 2004 Orders in both the 2022 Case and the 2023 Case.

from inquiry is not convincing. The Debtor's disclosure of these facts at the meeting of creditors in the 2022 Case negates any inference that the Debtor was attempting to hide any of these facts.

Moreover, although the Stemen Creditors assert that the sale was a highly questionable and fraudulent transfer, they failed to provide proof in support of that contention. The property was transferred from Marlin Trace, and not the Debtor. As a result, its disclosure on SOFA was not required. Moreover, the Stemen Creditors offered no evidence of value of the 9776 Property. The only evidence of value before the Court was the Debtor's testimony that Marlin Trace purchased the 9776 Property in 2007 for $270,000. The 9776 Property was damaged by a boiler fire prior to the sale in April 2020, and a realtor obtained no offers when the Debtor listed it for sale. While the fire damage ultimately was repaired, it was repaired by Ms. Koch after she purchased the 9776 Property for $225,000. Ms. Koch obtained an appraisal in connection with purchasing the 9776 Property that the property was worth approximately $240,000. Accordingly, from the evidence before the Court, it cannot find that the sale price was inadequate or otherwise inappropriate. The Stemen Creditors did not produce any evidence of value of the 9776 Property at the Hearing. They refer in their Post-Hearing Brief to a purported valuation from Zillow that was not introduced as evidence at the Hearing or stipulated to by the parties; as such, any reference to Zillow in support of valuation will not be considered by the Court.[21]

[21] Numerous courts have found that Zillow valuations are "inherently unreliable." *In re Darosa*, 442 B.R. 173, 177 (Bankr. D. Mass. 2010); *In re Phillips*, 491 B.R. 255, 260 n.7 (Bankr. D. Nev. 2013); *In re Tabor*, 583 B.R. 155, 169 (Bankr. N.D. Ill. 2018); *In re Slovak*, 489 B.R. 824 (Bankr. D. Minn. 2013); *In re Levin*, 2020 WL 1987783 (Bankr. E.D.N.Y. April 24, 2020); *In re DeBilio*, 2014 WL 4476585, at *7 (B.A.P. 9th Cir. Sept. 11, 2014). And here the Court does not have a printout from the website to consider but instead has only a conclusory statement in the Post-Hearing Brief.

The failure to list a dependent on Schedule J when the daughter was not shown to be a dependent of the Debtor, particularly since the Debtor was not shown to be legally required to make any support payment, is not evidence of bad faith.[22]

4. Undisclosed Membership Interests

The Movants assert that the Debtor should have included the Undisclosed Membership Interests on his Schedule A/B and his SOFA. They point out that the Debtor did not list the Undisclosed Membership Interests on either the Debtor's Schedule A/B or SOFA. This is a well-founded concern raised by the Movants. All these entities were "active" on the Petition Date, at least in the sense that they had not been dissolved.[23] The Debtor admitted that he was the sole owner of each of the Undisclosed Membership Interests. All interests in property must be disclosed, even if the debtor believes they are worthless. *Lorocco v. Smithers (In re Smithers)*, 342 B.R. 384 (table), 2006 WL 509396, at *4 (B.A.P. 6th Cir. Mar. 2, 2006). The Undisclosed Membership Interests are assets of the Debtor and should have been listed on Schedule A/B and SOFA even if the Debtor believed that they were worthless because they had disposed of all their property or were not operating.

While the Court is concerned that these interests were not disclosed, upon closer examination, the Court does not find that the Debtor's lack of disclosure of his membership interest in these entities supports a finding of bad faith in the context of 11 U.S.C. § 1307(c). The Undisclosed Membership Interests held no assets on the Petition Date. Courts recognize that the worthless nature of an asset makes it more likely that an omission was inadvertent and not done

[22] Even though the Court has determined that whether the Debtor makes regular voluntary support payments for his child is not relevant to the Motions currently under consideration, it is a factor relevant to confirmation of the plan.

[23] Even if they had been dissolved, Item 27 of SOFA requires disclosure of the Debtor's connection to any business, including a membership interest in a limited liability company, within four years before the case was filed.

with fraudulent intent. *In re Fraser*, 2017 WL 5064155, at *4 (Bankr. N.D. Ohio Nov. 1, 2017). The Movants did not show that the nondisclosures were done with the intent to mislead the Court or the creditors, or that the creditors were prejudiced as required by *Condon*, 358 B.R. at 328.

Here, the Debtor did not schedule these entities because their assets had been disposed of, and to his understanding that meant that they were not active. Although his assumption was wrong, this error does not by itself show bad faith. The Debtor also testified that when he learned that disclosure of these entities was an issue, he directed his counsel to file the appropriate amendments. Counsel for the Debtor did not timely file the amendments and admitted that the delay in filing them was entirely his fault. Furthermore, the testimony from the November 2022 meeting of creditors shows that the Movants were aware of the Undisclosed Membership Interests before the 2023 Case was ever filed. MJE-5 at 25-27. The Movants failed to show any prejudice to themselves, any other creditor, or the bankruptcy estate because of these nondisclosures. Accordingly, the Court concludes that these nondisclosures were inadvertent and that they did not prejudice the Movants, other creditors, or the bankruptcy estate in this case.

Based upon the foregoing, the Movants failed to meet their burden under to show that the Debtor intended to mislead the Court, that Movants, any other creditors, or the bankruptcy estate were prejudiced, or that the Debtor benefitted from these nondisclsoures. *See Condon*, 358 B.R. at 328-29. The Court concludes that the omission of the Undisclosed Membership Interests was inadvertent, and that these nondisclosures could not have misled the creditors or the bankruptcy estate given that Movants were aware of them.[24]

[24] The transcript of the 2022 meeting of creditors shows that the Trustee, the Stemen Creditors, the Ohio EPA, Mr. Gemmell, and Citizens' Bank of Logan – virtually all of the Debtor's major creditors – were present.

5. Nondisclosure of Vehicles

The Stemen Creditors also argue that the Debtor failed to disclose various motor vehicles that are still titled to the Debtor. The certificates of title for the following vehicles remain in the name of the Debtor even though the vehicles were sold previously to third parties: 1974 Bonanza, 2002 Alumitech, 1996 Fairmont, 1987 Western Star, and 1998 Ford Van. Based upon the Debtor's testimony, the Court finds that the Debtor disposed of these vehicles long before the Petition Date and outside the two-year window required by Item 19 of SOFA, so that they did not need to be disclosed on Schedule A/B or SOFA. The Stemen Creditors correctly point out that the Debtor presented no records of such sales (or, in the case of the 1974 Bonanza, its destruction). But these vehicles are several decades old and all of them were acquired as used vehicles by the Debtor at least two years prior to the Petition Date (and in many cases much longer than that timeline). Given the Court's general conclusion that the Debtor was a credible witness, the Court accepts his testimony that these vehicles did not need to be disclosed on either the Debtor's Schedule A/B or on his SOFA because he had disposed of them.[25] The Movants thus failed to carry their burden to show any intent to mislead the Court or prejudice to the Movants, other creditors, or the bankruptcy estate.

The Stemen Creditors point to two vehicles, the 2013 Chevy Spark, and the 1960 Van Dyke, which they assert should have been scheduled because they were transferred within two years of the Petition Date but not disclosed. The 2013 Chevy Spark was owned by Load Lifters when it was transferred in March of 2021. That transfer thus was not required to be disclosed on

[25] The Stemen Creditors complain repeatedly about the Debtor's lack of records. The Court notes that the Debtor produced his tax returns and bank account records. Bank account records and tax returns are the "quintessential documents in personal bankruptcy." *In re Hobbs*, 333 B.R. 751, 757-58 (Bankr. N.D. Tex. 2005) (quoting *Robertson v. Dennis (In re Dennis)*, 330 F.3d 696, 703 (5th Cir. 2003)). Moreover, many of the documents of which the Stemen Creditors complain relate to transactions that occurred eight or more years prior to the Petition Date and which one would not expect to be preserved.

SOFA. The 1960 Van Dyke was owned by Lexmobile when it was transferred. Assets of a nondebtor entity do not become part of its shareholder's estate even where the debtor owns the majority or sole interest. *In re Russell*, 121 B.R. 16, 17-18 (Bankr. W.D. Ark. 1990).

Finally, the Stemen Creditors correctly point out that the Debtor did not disclose that in September 2021 he sold a 2013 International Prostar for $13,400. In 2020, the Debtor acquired this vehicle for $6,600 in Florida, drove it to Ohio, did some work on it, and then sold it for $13,000 in September 2021, approximately 23 months before the 2023 Case was filed. This transfer should have been disclosed on Item 18 of SOFA, which requires disclosure of property transferred within two years before the Petition Date. This transfer should have been disclosed on item 19 of SOFA, and the Court is concerned that this transfer was not disclosed.[26] However, the Movants did not present any evidence that the Debtor intended to mislead the Court, nor did they show how they, other creditors, or the bankruptcy estate were prejudiced by its nondisclosure.

6. Contents of the Work Barn

The Movants assert that the Debtor did not adequately disclose the tools and equipment stored in the Work Barn. The Debtor acquired many of these tools and items of equipment at auctions and many of them are in poor condition or not usable at all. A video of the contents of the Work Barn was introduced into evidence, which indicates that there are hundreds of individual tools and items of equipment stored in the Work Barn. Most of these items appeared to be rusty and in poor condition. Although the Work Barn structure is property of the Evergreen bankruptcy estate, none of the tools or equipment stored there belong to Evergreen.

[26] The transfer was within two years of the Petition Date. Based on the evidence, the Debtor regularly buys, repairs, and resells vehicles and other items of personal property to supplement his income. The requirement to disclose property transfers within two years of the Petition Date on Item 19 of SOFA excludes any transfers made in the ordinary course of the Debtor's business or financial affairs. Neither the Debtor nor the Movants addressed whether this exception might apply here, and the Court declines to develop this issue where the parties have not.

The Debtor identified the contents of the Work Barn on his Schedule A/B as property of Load Lifters. Although the tools and equipment were valued at $250, that was a mistake, and it should have been $2,500. The Debtor did not attempt to provide individual values for each tool and piece of equipment on his Schedule A/B. At the Hearing, the Debtor provided an inventory of fifty-two of the items contained in the Work Barn, which are the items that have more than scrap value, showing a total value of approximately $1,700. These values were based upon the Debtor's knowledge of and experience with these tools, the fact that most of them were purchased used, and they had been maintained in less-than-ideal conditions. As a result, these items were often not in good condition when the Debtor acquired them, and many have deteriorated further, particularly given the lack of a dehumidifier in the Work Barn for the last several years.

While the Stemen Creditors fault the Debtor for failing to provide a more detailed inventory or appraisal of the entire contents of the Work Barn, they have not cited to any authority stating that the Debtor was required to do so. He disclosed the existence of the tools and equipment belonging to him in the Work Barn and made a reasonable estimate of their value on Schedule A/B, and ultimately provided an inventory of the items at the Hearing that he believed had value. The Court does not view his failure to do more than was required to be evidence of bad faith. The Stemen Creditors did not cite to any authority supporting the proposition that a chapter 13 debtor is required to incur the expense of having to appraise these types of assets in preparing Schedule A/B. The Debtor disclosed the existence of these tools and did his best to value them. He testified at some length to explain why he listed the values he did.[27]

[27] One example is a panel saw, which was one of the largest items in the Work Barn. The Debtor testified that such an item sold new might sell for $8,000 or more, but that he bought it used for $50. The saw head is not working, and the Debtor believed that the cost of buying a new motor for it would be prohibitive in comparison with the cost of simply buying another similar used saw at an auction. As such, he testified that the saw was worth no more than scrap value.

Moreover, the Debtor can (and did) testify to the value of his assets. "By the great weight of authority, the owner of personal property is qualified by his ownership alone to testify as to its value." *Lawton v. Strong*, 249 F.2d 299, 302 (6th Cir. 1957); *see also Lee Shops, Inc. v. Schatten-Cypress Co.,* 350 F.2d 12, 17 (6th Cir. 1965). This rule applies to property that is owned by a corporation or other entity where the witness is an officer, partner, or owner of the entity. *Lee Shops*, 350 F.2d at 17. The Movants did not produce any evidence to rebut the values stated by the Debtor.

7. Minimizing Value of Other Assets

Finally, the Stemen Creditors assert that the Debtor attempted in bad faith to minimize the value of Load Lifters by minimizing the value he attributed to the 2007 Crane. The Debtor had purchased this crane for $87,000 in June 2023 after his prior crane was totaled in an accident and he was unable to earn any income. But the Debtor valued the crane at $50,000 because he believed he had overpaid for it and because he found similar cranes to be valued for as low as $35,000. As a result, the Debtor's valuation of $50,000 is a reasonable valuation.

The Stemen Creditors point to the fact that the crane was insured for $120,000 as evidence that the $50,000 was deliberately low. But it is not unusual for essential equipment to be insured for more than its worth. The value is not so unreasonably low in comparison with the insured value as to suggest that the scheduled value was done in bad faith. *Compare In re Koss*, 403 B.R. 191, 213-14 (Bankr. D. Mass. 2009) (denying discharge under 11 U.S.C. § 727(a)(4)(A) for making a false oath when debtor scheduled and claimed as exempt property valued at $12,500 on his schedules that he subsequently valued at $400,000 for insurance purposes following a fire). The Debtor explained why he believed that the crane should be valued at $50,000, and his

explanation seems reasonable. The Court rejects the Stemen Creditors' argument that the Debtor wrongfully attempted to minimize the value of his assets.

8. The Debtor's Responses to the Rule 2004 Examination

The Court's final observation regarding the Debtor's disclosures relates to how discovery in this case proceeded. The Rule 2004 Order called for an extensive production of documents. The Debtor sat for three days of examination at the 2004 examination, and then testified for another two and a half days at the Hearing. None of the parties here raised any issues with the Debtor's responses and no discovery motions were filed. The Court can only conclude that the Debtor provided what was requested, and this conclusion supports the Court's overall finding that the Movants did not carry their burden of showing that the Debtor was not forthcoming with his creditors.

9. Conclusion Regarding the Debtor's Disclosures

The evidence regarding the Debtor's disclosures in this case is mixed. Many of the issues raised by the Movants have proven unfounded upon a full examination of the evidence. Most of the vehicles that the Stemen Creditors claim should have been disclosed were transferred or destroyed well outside the two-year period prior to the Petition Date required for disclosure of transfers on SOFA. At the same time, the Movants have demonstrated that some matters were not disclosed that should have been, such as the omission of the transfer of the 2013 International Prostar from SOFA and the omission of the Undisclosed Membership Interests from Schedule A/B and SOFA. The Court is concerned about these nondisclosures. The Debtor is required to report all his assets even if he believes them to be without value. And if the debtor is uncertain, the asset or transfer "should be scheduled with an appropriate explanation." *Azbill v. Kendrick (In re Azbill)*, 2008 Bankr. LEXIS 527, at *22 (B.A.P. 6th Cir. Mar. 11, 2008). A debtor in bankruptcy must be

transparent about his assets since all the assets of the debtor become the assets of and property of the bankruptcy estate. Any transfers of assets which might be avoidable are matters for the trustee and/or creditors to review, and if needed, for the Court to decide. *In re Robinson*, 292 B.R. 599, 607 (Bankr. S.D. Ohio 2003) (collecting cases); *see also In re Stone*, 504 B.R. 906, 916 n.4 (Bankr. C.D. Ill. 2014) (denying claim for fraudulent concealment under § 727 but noting that the safer course would have been to follow the principle of "disclose, disclose, disclose.").

As part of its evaluation of the totality of the circumstances, the Court has considered the nondisclosures of the Undisclosed Membership Interests, as well as the nondisclosure of the sale of the 2013 Prostar, both individually and in their entirety. Many of them, particularly the Membership Interests, were an issue in the 2022 Case and the Court questions why they were not addressed in the 2023 Case, either in the original Schedule A/B and SOFA or through an amendment filed prior to the Hearing. It was readily foreseeable that any deficiencies with these disclosures would become an issue, and by failing to include these items on Schedule A/B and SOFA, the Debtor provided the Movants with a substantial argument that he had not been forthcoming with his creditors. The nondisclosures have made this decision a closer question than it otherwise would have been and could have led to a different outcome.

However, the Court is tasked with evaluating the nondisclosures as part of the totality of the circumstances. And it must also keep in mind the admonition from the Bankruptcy Appellate Panel that the Court must determine whether inaccuracies and omissions in the schedules resulted from an intent to mislead the Court or that they prejudiced creditors or the bankruptcy estate. *Condon*, 358 B.R. at 328-29.

The record here conclusively establishes that most, if not all, of these undisclosed items were known to the Movants well before this case was ever filed, when the Debtor acknowledged

them during his testimony at the meeting of creditors from the 2022 Case. The Movants, as well as the Debtor's other major creditors, were all present.[28] The Debtor's acknowledgement of the undisclosed items in that testimony suggests that there was no intent to mislead the Court or anyone else. Likewise, it suggests that the Movants and other creditors were not prejudiced, because they were fully aware of the undisclosed items with ample time to take any actions they deemed necessary. The nondisclosures reflect inattention to details and sloppiness, but that does not rise to the level of bad faith. *See Beck*, 309 B.R. at 351 ("[t]he evidence does not show that [the debtor] attempted to withhold information or mislead anyone, it merely shows insufficient attention to details by all involved -- such negligence is not commendable, but it is less culpable than bad faith"). And the Court is mindful that the Debtor intended that everything be disclosed that was required to be disclosed, and further, that counsel for the Debtor admitted that it was his fault that the necessary amendments had not yet been filed.[29]

Moreover, the Court's finding that the Debtor was generally credible and sincere in his testimony has significant implications for the Court's conclusions regarding whether he was not forthcoming with his creditors. In this regard, the Court finds instructive *In re Lewiston*, 537 B.R. 808, 835 (Bankr. E.D. Mich. 2015). In that case, the debtor had owned or been connected to a wide variety of businesses, and when he filed chapter 7, his creditors sought to deny his discharge based, in part, upon his failure to properly disclose his connections and interests with those companies. The *Lewiston* court concluded that although the creditors had managed to poke holes in the debtor's disclosures and demonstrated that various matters were not disclosed that should

[28] The transcript of the 2022 meeting of creditors indicates that the Trustee was the presiding officer, and that the Stemen Creditors, Ohio EPA, Mr. Gemmell, and Merchants National Bank all appeared through counsel. MJE-5 at 21-22.

[29] Unsworn statements of counsel, of course, are generally not evidence. However, unequivocal statements in the nature of an admission may be considered. *In re Stephenson*, 205 B.R. 52, 55 (Bankr. E.D. Pa. 1997).

have been, they had not damaged the debtor's credibility. *Id*., 537 B.R. at 847. On the critical question of whether the debtor intended to mislead or defraud the court or creditors, the court found the debtor credible. Accordingly, the court rejected the creditors' argument that the debtor had acted with intent to defraud the court or creditors, even though it had found various failures to disclose. *Id*.

This Court reaches a similar conclusion here. The Movants did poke some holes in the Debtor's disclosures. However, they did not demonstrate that the Debtor intended to mislead the Court. Nor did they show prejudice to the Movants or other creditors, or any benefit to the Debtor from those nondisclosures. Moreover, the Debtor responded to a broad request for documents and sat for a lengthy examination under Rule 2004. He also testified at length at the Hearing and the Court found his testimony credible. Therefore, notwithstanding its reservations regarding the nondisclosures, under the specific facts of the case and considering the totality of the circumstances, the Court finds that the Movants did not carry their burden of showing that the Debtor was not forthcoming with his creditors.

F. <u>The Debtor's Gambling</u>

Next, the Movants raise the issue of the Debtor's gambling. They point out that the Debtor acknowledged that he engaged in gambling during the 2022 Case and after its dismissal. But the Debtor was adamant that he stopped gambling at the outset of the 2023 Case, and with only one isolated exception, has stuck to that during the pendency of the 2023 Case.

None of the parties have provided the Court with any authorities discussing gambling as it relates to the issue of bad faith. Gambling is not prohibited by the Bankruptcy Code. *In re Robinson*, 628 B.R. 168, 178 (Bankr. D. Kan. 2021). It is legal in Ohio, at least at licensed casinos such as the Eldorado Casino where the Debtor has gambled in the past. *See* Ohio Rev. Code §

3770.21 and Ohio Adm. Code § 3770:2-1 et seq; *see also State ex rel. Walgate v. Kasich*, 59 N.E.3d 1240, 1243-44 (Ohio 2016) (describing generally the various laws authorizing gambling in Ohio). As such, "the use of budgeted recreation funds for gambling would ordinarily not, without more, constitute an abuse of the provisions, purpose, or spirit of Chapter 13." *In re Wilkins*, 329 B.R. 358 (table), 2005 WL 1926413, at *3 (B.A.P. 10th Cir. Aug. 11, 2005). Indeed, in *In re Ford*, 345 B.R. 713, 720 (Bankr. D. Colo. 2006), the court found that the debtor's prepetition gambling was not evidence of bad faith even though she admitted that it had continued post-petition. The *Ford* court found it important that despite the gambling, the debtor testified that she had stopped gambling and had remained current with her plan payments to the trustee. *Id.*[30]

The same is true here. The Debtor ceased gambling after the 2023 Case was filed, when his current counsel advised him that it would create substantial problems if he continued.[31] There is no evidence to the contrary. While the Stemen Creditors also suggest that the Court should conclude that the Debtor is still gambling despite the lack of any evidence, that suggestion is an invitation for the Court to engage in speculation. The Court may draw inferences from circumstantial evidence, but "[a]n inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact that is known to exist." *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 754 (11th Cir. 2010) (quoting *Siewe v. Gonzales*, 480 F.3d 160, 168 (2nd Cir. 2007)). There simply is no evidence from which this Court could make a reasoned and logical decision based upon the evidence that was introduced at the Hearing that the Debtor is still gambling.

[30] Gambling is an issue to the extent that it depletes the Debtor's income and thereby prevents him from making his chapter 13 plan payments. The evidence here indicates that the Debtor has made his plan payments as of the Hearing and has stopped gambling in the 2023 Case.

[31] The Debtor acknowledged one exception when he met his mother at Scioto Downs for his birthday in February 2024.

The only evidence before the Court is that the Debtor, upon the advice and direction of his current counsel, ceased gambling when he filed the 2023 Case. This evidence thus does not support a finding of bad faith.

G. Trustee's Motion to Dismiss

The Trustee filed a separate Motion that raises many of the same arguments relating to bad faith that were raised by the Stemen Creditors. To the extent the issues raised by the Trustee are the same as the Stemen Creditors, the Court has already dealt with them. The Trustee has also raised several distinct arguments regarding alleged payment delinquencies, provision of tax returns and other information, the accuracy of the Debtor's income and expenses as listed on Schedules I and J, and the length of the Debtor's plan. The Trustee in her post-hearing brief suggested that the Debtor has also not been forthcoming with responses to other requests for information, and that the Debtor has engaged in unreasonable delay prejudicial to creditors.

According to the Debtor's payment summary maintained by the Trustee for this case, the Debtor had made all required payments as of the date of the Hearing except for the June 2024 payment which had just come due. The summary indicates that the Debtor had paid $21,400 as of the date of the Hearing. The Trustee asserted that the Debtor has often been delinquent during the case, but the evidence indicated that the Debtor has always made his plan payment in the month it has been due, although not on the date required by the Trustee based on the Petition Date. It appears to the Court that there is a timing issue, and the evidence indicates that the Debtor pays as soon as his cash flow permits. The evidence does not indicate the Debtor is willfully disregarding his payment obligations. Indeed, the substantial payments made to the Trustee are a concrete demonstration of the Debtor's motivation in pursuing and obtaining chapter 13 relief.

As for the issues related to the Debtor's income and expenses, the Court believes that those issues are best resolved as part of the confirmation process. To the extent that the Debtor believes Schedules I and J need to be amended, either because they were inaccurate or because matters have changed over the course of this case, those amendments need to be filed promptly. The Debtor and/or his counsel should be meeting and conferring with the Trustee on a regular basis to resolve any ongoing issues in this case, so that the Trustee can determine whether the Debtor's amended plan satisfies the confirmation criteria set forth in 11 U.S.C. § 1325, particularly the disposable income and best interests of creditors tests.

Regarding tax returns, the Debtor was obligated by 11 U.S.C. § 1308 to provide to the Trustee a copy of the tax returns for the four years prior to the Petition Date. Although the Trustee asserted that she has not been provided with the 2023 tax return, the Debtor obtained an extension for filing his 2023 tax return and, as of the Hearing, he had not filed his 2023 tax return. The Debtor also indicated that his accountant was considering whether he needed to amend his 2019 tax return. At the conclusion of the Hearing, the Debtor was not able to provide his 2023 tax return to the Trustee. If any returns or amended returns have been filed since the Hearing, the Court expects that the Debtor will promptly provide them to the Trustee.

The Trustee also asserted that the Debtor has not been forthcoming with other information so that she can complete her due diligence. The Code, Bankruptcy Rules, and Local Rules all compel a debtor to be forthcoming with the trustee. *See* 11 U.S.C. § 521(a)(3), Bankruptcy Rule 4002(a)(4), and L.B.R. 4002-1(f)(1). Part of a debtor's basic duty of disclosure is to comply with the trustee's reasonable requests for follow-up information based upon matters disclosed in the schedules or statement of financial affairs or at the meeting of creditors. There is no evidence in the record of specific requests for information that the Debtor did not satisfy, so the Court cannot

grant the Motion on that basis. However, the Court expects that the Debtor will promptly address any outstanding information requests from the Trustee. Any unsatisfied information requests demonstrated by the Trustee at the confirmation hearing will be viewed unfavorably by the Court.

Finally, the Trustee raises a concern about the length of time this case has been pending prior to confirmation. The Court shares that general concern, but delay by itself is not cause for dismissal or conversion. 11 U.S.C. § 1307(c)(1) requires a finding of "unreasonable delay prejudicial to creditors." Delay is unreasonable only where it occurs without justification. *Stevenson v. TND Homes I, Ltd. (In re Stevenson)*, 583 B.R. 573, 580-81 (B.A.P. 1st Cir. 2018). The Trustee has not demonstrated that the Debtor should be faulted for the length of time this case has been pending prior to confirmation. The Stemen Creditors filed their Motion within a month of the Petition Date, and the Debtor has spent the bulk of this case addressing the Movants' broad set of discovery requests and preparing for the Hearing. Importantly, the parties agreed shortly after the Motions were filed that confirmation issues would be deferred until after the Motions were decided. Since the Hearing concluded, the docket reflects that the Debtor has continued to attempt to move this case towards confirmation. Under these circumstances, the Court does not find any unreasonable delay prejudicial to creditors under 11 U.S.C. § 1307(c)(1).

Although this case has been pending for about 15 months, no confirmation hearing has yet been held, and therefore, the Court has not been able to evaluate whether the requirements of 11 U.S.C. § 1325 will or can be satisfied. The parties agreed long ago to defer confirmation questions until the Motions were decided, so the Court does not deem it appropriate to penalize any party for the length of time prior to confirmation. When considering whether there is unreasonable delay, the issue is whether the debtor is attempting to prosecute the case in a reasonable fashion. *See In re Dean*, 2019 WL 4312108 (Bankr. E.D. Va. Sept. 11, 2019) (denying motion to dismiss for

unreasonable delay even though court had denied confirmation five separate times, where debtor had proposed a further amended plan and was current on plan payments).

Accordingly, the Trustee's Motion, to the extent that it raises separate issues that may be characterized as confirmation issues, is denied without prejudice.

V. Conclusion

For the foregoing reasons, the Court concludes that the Movants have not sustained their burden of showing that this case was filed in bad faith or that other cause to dismiss or convert this case exists under 11 U.S.C. § 1307. Since cause for conversion or dismissal has not been established under 11 U.S.C. § 1307(c), the Motions are denied, and this case shall proceed towards confirmation. Given the length of time this case has been pending, the Court intends to require that this case move quickly to the confirmation stage. This case is set for a continued confirmation hearing on December 12, 2024, which the Court will convene as a pretrial conference on confirmation, where the Court will set a date for the confirmation hearing and any associated deadlines. Any remaining amendments to the Plan, schedules, or SOFA should be filed by the Debtor sufficiently in advance of December 12, 2024, to permit a meaningful review by the Court and the creditors. The Debtor and his counsel are urged to meet and confer with the Trustee to address all outstanding information requests and resolve all remaining issues.

Therefore, **IT IS ORDERED** that the Motions are DENIED.

IT IS FURTHER ORDERED that the hearing on confirmation of the Debtor's *Fourth Amended Chapter 13 Plan* (Doc. 175) will go forward as scheduled on December 12, 2024, at 9:30 a.m. as a pretrial conference for the confirmation hearing. The Movants are required to appear in person for this pretrial conference.

IT IS SO ORDERED.

Copies to: Default List