

In re Singh
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NOT FOR PUBLICATION

United States Bankruptcy Court, D. New Jersey.
In re Rabinder S. SINGH a/k/a Rabinder S. Riar and
Navneet K. Riar a/k/a Navneet K. Singh, Debtors.
Arvind Walia, Plaintiff,

v.

Rabinder S. Singh a/k/a Rabinder S. Riar, Navneet K.
Riar a/k/a Navneet K. Singh, Harbir S. Riar, Riar
Petroleum Corp., Shan & Co., and John Doe
Corporations 2-99, Defendants.

Bankruptcy No. 02-41704 (DHS).
Adversary No. 03-02810 (DHS).

Oct. 4, 2007.

Nicollette & Perkins PA, [Eric R. Perkins](#), Esq.,
Hackensack, NJ, Counsel for Arvind Walia.

Giordano, Halleran & Ciesla PC, [Donald F. Campbell, Jr.](#), Esq., Middletown, NJ, Former Counsel
for Arvind Walia (brief and trial).

LoFaro & Reiser LLP, [Glenn R. Reiser](#), Esq.,
William C. La Tourette, Hackensack, NJ, Counsel for
Harbir S. Riar, Riar Petroleum Corp. and Shan & Co.
Rabinder S. Singh a/k/a Rabinder S. Riar, Paramus,
NJ, Pro Se.

Becker, Meisel LLC, [Stacey L. Meisel](#), Esq.,
Livingston, NJ, Chapter 7 Trustee for Rabinder S.
Singh a/k/a Rabinder S. Riar.

OPINION

[DONALD H. STECKROTH](#), United States
Bankruptcy Judge.

*1 On November 20, 2003, Arvind Walia (“Plaintiff” or “Walia”) filed an adversary complaint against Rabinder S. Singh a/k/a Rabinder S. Riar (hereinafter “Debtor”) seeking: (i) avoidance of an alleged fraudulent transfer of the Debtor's interest in Riar Petroleum Corp. (hereinafter “RPC”) to Harbir Riar and (ii) non-dischargeability under [Sections 523 and 727 of the Bankruptcy Code](#). In response to a motion to dismiss, this Court issued an Opinion on July 26, 2005 (“Opinion”), which served to narrow the remaining issues and scheduled a trial for determination of those issues.

In its Opinion, this Court held that: (i) Walia lacked

standing to prosecute his avoidance count and joined Stacey L. Meisel, Chapter 7 Trustee for the Debtor, as a party in interest to prosecute the avoidance action if necessary; (ii) if Walia were deemed a secured creditor, this Court would lack jurisdiction; and (iii) if Walia was determined to be an unsecured creditor, this Court would maintain jurisdiction and the Trustee would be directed to investigate the transfer of the Debtor's interest in RPC to Harbir Riar. The issues resulting from the Opinion are two-fold. Therefore, this Court must determine whether Walia is a secured creditor through an interest in RPC and its alleged successor in interest Shan & Co. If not, this Court must then determine whether Walia's loans to the Debtor are non-dischargeable and whether Debtor should receive a discharge under the Bankruptcy Code.

For the reasons that follow, the Court holds that: (i) Walia is an unsecured creditor of this estate, (ii) jurisdiction is maintained and the Trustee is directed to investigate the transfer of the Debtor's interest in RPC to Harbir Riar, and (iii) the Debtor's discharge is denied pursuant to [Sections 727\(a\)\(2\) and \(a\)\(3\) of the Bankruptcy Code](#). The Court has jurisdiction over this matter pursuant to [28 U.S.C. § 1334](#) and the Standing Order of Reference from the United States District Court for the District of New Jersey dated July 23, 1984. This matter is a core proceeding pursuant to [28 U.S.C. §§ 157\(b\)\(2\)\(I\), \(J\), \(K\) and \(O\)](#). Venue is proper under [28 U.S.C. §§ 1408 and 1409](#). The following shall constitute this Court's findings of fact and conclusions of law as required by [Federal Rule of Bankruptcy Procedure 7052](#).

Procedural History

The Debtor and Navneet Riar, husband and wife, filed a voluntary joint petition for relief under Chapter 13 of the Bankruptcy Code on October 3, 2002.^{FNI} On April 24, 2003, the case was converted to a Chapter 7 proceeding. On or about November 20, 2003, Walia filed his adversary complaint against the debtors, Harbir Riar and RPC. The complaint alleges the fraudulent transfer of a gas station and seeks non-dischargeability of a debt owed on grounds that the Debtor either intended to hide assets from Plaintiff, or falsely claimed an interest in RPC which in turn induced Walia to loan him money.

^{FNI}. The Debtor filed a voluntary petition

for relief under Chapter 13 of the Bankruptcy Code on April 3, 2001. In the petition, he did not claim to have an interest in RPC, but did state that he earned over \$4,000 per month in income from RPC. The Debtor also failed to disclose the transfer of his interest in RPC to Harbir Riar. Ultimately, his proposed plan was not confirmed and the proceeding was dismissed on October 17, 2001.

On January 28, 2002, the Debtor and his wife filed a joint petition for relief in bankruptcy under Chapter 13 of the Bankruptcy Code. The only significant change between this filing and his previous filing was the listing of a docketed judgment entered against the Debtor, his wife, and RPC by an entity entitled American Group of New York. Again the plan was not confirmed and the case was dismissed in July 11, 2002.

The Debtor and his wife then filed the instant joint petition for relief under Chapter 13 of the Bankruptcy Code on October 3, 2002, later converted to a proceeding under Chapter 7. Again, the petition did not claim the Debtor's interest in RPC as an asset of the estate, though he did in this petition list RPC as a business in which he had an interest from 1996 to 2001.

Thereafter, on January 16, 2004, the Debtor filed an answer to the complaint, denying all allegations. On January 20, 2004, Harbir Riar, RPC and Shan & Co. ("Riar Defendants") filed their answer denying Walia's allegations and asserting that Harbir Riar had purchased the Debtor's interest in RPC in good faith. Walia then filed an amended complaint on July 6, 2004 to include Shan & Co. as a defendant. After motion practice, which resulted in this Court's Opinion on dismissal of the adversary complaint, this Court held a trial. ^{FN2}

^{FN2}. An Order granting the withdrawal of Forman, Holt & Eliades LLC as counsel for the Debtor was entered August 16, 2006. The Debtor appeared *pro se* on the scheduled trial date and requested an

adjournment to retain new counsel. The Debtor's request was denied as he had many months since the withdrawal to retain new counsel. The trial proceeded as scheduled.

*2 In addition, the Court provided Walia relief from the automatic stay on or about December 21, 2005, permitting him to file a complaint in Superior Court to preserve his state law remedies. Walia then filed a complaint against the identical defendants in state court on December 28, 2005.

Findings of Fact

1. In February of 1996, the Debtor and Harbir Riar purchased a gas station with an address of 182 Pennington Avenue, Trenton, New Jersey.
2. On April 11, 1996, the Debtor and Harbir Riar incorporated RPC under the laws of the state of Delaware to serve as the gas station's operating entity.
3. The Debtor and Harbir Riar entered into a lease agreement with Getty Petroleum Corporation to operate the gas station.
4. Both the Debtor and Harbir Riar contributed payment towards the purchase price of the gas station.
5. The Debtor and Harbir Riar were each 50% shareholders and owners of the gas station.
6. The Debtor served as the vice president of RPC, while Harbir Riar served as both its president and secretary.
7. The Debtor and Harbir Riar served as the board of directors of RPC.
8. Under the terms of the lease agreement, RPC was required to make rental payments to Getty and sell Getty gasoline.
9. The Debtor and Harbir Riar also received a commission from Getty based on the percentage of gasoline sold. The commission payments were deposited by Getty into a joint account in their names.

10. In addition to commission checks, both men were paid a monthly salary for their services from the gas station account.

11. On September 7, 1999, the Debtor and Harbir Riar renewed the lease agreement with Getty on behalf of RPC through January 31, 2003.

12. The renewed lease agreement was originally drafted in the names of the Debtor and Harbir Riar, but was subsequently executed in the name of RPC. Despite this change, the commission account remained in the names of the Debtor and Harbir Riar.

13. On April 6, 1998, the Debtor took a loan from V.P. Bindra and pledged his 50% interest in RPC as collateral. The agreement was drafted by Lawrence Chaifetz, Esq.,^{FN3} of whom Bindra was a long-time client.

^{FN3}. Mr. Chaifetz was served with a subpoena requiring his appearance at trial. Despite the subpoena, Mr. Chaifetz did not appear. This Court stated on the record at trial that it would sign an order compelling his appearance. However, no order was submitted.

14. Collateral for the loan was represented by a stock certificate in the amount of 200 shares, purportedly issued by RPC on April 7, 2006. The Debtor satisfied the agreement with Bindra in 1999, and Bindra's interest in RPC was accordingly released as collateral for the loan.

15. Walia met the Debtor in 1998. At the time the Debtor owned an interest in multiple businesses including: Garden State Spices, Inc., Biopure Ingredients, Inc., United Poly-met, Inc., and RPC.

16. In 1999, Walia agreed to operate a second gas station as business partner with the Debtor and transferred \$250,000 to the Debtor as a capital investment.

17. At or around the same time, Walia loaned the Debtor \$150,000 for use in other businesses operated by the Debtor.

18. The business plan to operate a second gas station never materialized. Walia demanded repayment of his \$400,000. The Debtor refused and responded that he had spent the money.

*3 19. In June of 1999 the Debtor executed a promissory in favor of Walia under which payment was to be made in two installments for the total amount of \$400,000^{FN4} by the end of the year.

^{FN4}. This figure was later increased to \$600,000 in a subsequent transaction. However, the Court does not have before it any proof of tender of the excess \$200,000. Therefore, the Court finds that \$400,000 was the actual amount loaned.

20. The note was not repaid as promised by the Debtor. As a result of non-payment, Walia insisted that the Debtor execute a new set of collateralized loan documents. The Debtor agreed and recommended Mr. Chaifetz conduct the transaction as he had previously brokered and papered the Bindra agreement.

21. On November 27, 2000, Walia and the Debtor met at Mr. Chaifetz's office and executed documents including: (i) a guaranty of payment, (ii) a UCC-1 financing statement for RPC, (iii) a stock power agreement, and (iv) a purported assignment of the stock certificate previously pledged to V.P. Bindra to Arvind Walia.^{FN5}

^{FN5}. Testimony indicates that a previous effort to execute replacement documents disintegrated due to the alleged forgery of Navneet Riar's signature by the Debtor.

22. After the agreements were signed, the Debtor provided Mr. Chaifetz with a stock certificate representing an ownership interest in RPC. Mr. Chaifetz then advised Walia that the stock certificate was in the attorney's possession.

23. The November 27, 2000 transaction took place in the State of New York.

24. At all relevant times, the stock certificate was in the possession of Mr. Chaifetz in the State of New York.

25. Documents including a UCC-1 financing statement reciting Walia's alleged interest in RPC were filed in the State of New Jersey.

26. Walia never saw the RPC stock certificate until after the November 27, 2000 transaction was executed. Instead, he only saw a pile of stock certificates handed to Mr. Chaifetz on that date.

27. Walia did not conduct any due diligence concerning the Debtor's financial wherewithal to make good on his promises of repayment. In addition, Walia did not conduct any due diligence concerning the validity or value of the assets taken as collateral.

28. Walia failed to request a formal written acknowledgment from RPC authorizing or ratifying the issuance of the stock certificate.

29. The stock certificate states that it represents 200 shares in RPC and is dated April 7, 1996.

30. The transaction constituted the execution of a promissory note by the Debtor, collateralized by, *inter alia*, an equity interest in RPC.^{FN6}

^{FN6}. The Court expressly stops short of deciding whether the pledge actually constituted the Debtor's full 50% interest in RPC, as alleged, or simply 200 of the 1,500 shares authorized for issuance by RPC as this determination is unnecessary given the Court's legal conclusions.

31. No stock was ever issued for RPC.

32. RPC neither sold nor attempted to sell stock to Walia.

33. No valid assignment of shares in RPC or of the Debtor's interest therein was ever accomplished.

34. The Debtor made only a \$7,000^{FN7} payment on the total amount owed to Walia.

^{FN7}. No proof of the \$7,000 payment is before the Court. At trial, both Walia and the

Debtor agreed that a payment of \$5,000 to \$10,000 was made in cash.

35. The Debtor and Harbir Riar next engaged in a series of transactions to quickly transfer the gas station out of the control of RPC and the Debtor. The purpose for the transfer, at least on the Debtor's part, was to hinder, defraud or delay Walia's collection efforts.

36. A letter dated February 28, 2000, both signed and notarized by the Debtor, references his previous resignation as an officer of RPC and transference of his ownership interest to Harbir Riar. The letter also attaches a purported letter of resignation dated December 31, 1999. Minutes of RPC's board of directors also allege the Debtor's resignation and reflect the same date.^{FN8}

^{FN8}. Based upon Debtor's scheme and the numerous inconsistencies in the record, these documents were likely dated prior to their actual creation and execution. In addition, the documents appear doctored as discussed *infra*.

*4 37. On January 24, 2000, RPC entered into a new lease agreement with Getty, signed by Harbir Riar only.

38. On March 19, 2001, Harbir Riar filed an application with Getty to become the sole operator of the gas station, instead of RPC. The application was notarized by the Debtor.

39. On April 30, 2001, Harbir Riar incorporated Shan & Co. to replace RPC as the operating entity for the gas station. Mr. Riar then entered into a new lease agreement with Getty in the name of Shan & Co. on May 16, 2001.

40. Despite this transfer, and during the relevant time period, the Debtor continued to receive the identical "salary" from RPC as he had received while he owned an interest in the company. These payments continued until two days after the instant bankruptcy petition was filed.

41. The commission checks from Getty continued to be made out to the Debtor as well as Harbir Riar.

42. In addition, the Debtor's signature appeared on a transfer of securities form by and between Harbir Riar, on behalf of RPC, and Getty in May of 2001.

43. Walia requested production of income tax returns for RPC from both the Debtor and Harbir Riar. The produced returns are not identical. None of the RPC tax returns is signed.

44. The 2001 RPC tax return produced by the Debtor lists Harbir Riar as 100% owner of RPC.

45. The 2001 RPC tax return produced by Harbir Riar lists his ownership interest as only 50%.

46. The 2000 RPC tax return produced by Harbir Riar lists the Debtor as an owner of RPC, despite his alleged resignation in 1999.

47. The Debtor's personal tax returns conflict.

48. Both the Debtor's 2000 and 2001 tax returns state that he received \$48,000 in non-employee compensation from RPC yet the Debtor's 2001 tax return attaches a profit and loss statement of RPC.

Discussion

I. Admissibility of Tape Recording

In his affidavit in lieu of direct testimony, Plaintiff makes references to two recorded conversations with Harbir Riar after Mr. Riar's deposition. During the conversations, Mr. Riar allegedly admitted that the facts surrounding the transfer of the Debtor's interest in RPC were different from those to which he testified at his deposition. The admissibility of the recordings or transcripts thereof was first addressed in this Court's November 8, 2004 Opinion denying their exclusion from evidence on a motion *in limine*.

The sum and substance of the Court's holding was as follows.

This Court finds that the Defendants have not carried their burden in an effort to exclude tapes in issue. There is insufficient proof that the conversations were undertaken by the parties for the purpose of

compromise of the litigation. In addition, the tapes are admissible for impeachment purposes if they contradict the sworn testimony of Defendant Riar either at trial or in deposition testimony taken during discovery.

November 8, 2004 Opinion of The Honorable Donald H. Steckroth Denying the Motion in Limine of Harbir Riar, RPC, and Shan & Co., p. 8. At no time did the Court deem the recordings or any transcript thereof to be admissible at trial on plaintiff's case.

*5 “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” [FED.R.EVID. 901\(a\)](#). It is beyond cavil that the burden of authentication is upon the proponent of the evidence. [Link v. Mercedes-Benz of N. Am., Inc.](#), 788 F.2d 918, 928 (3d Cir.1986); [FED.R.EVID. 901\(a\)](#). “The burden of proof for authentication is slight. ‘All that is required is a foundation from which the fact-finder could legitimately infer that the evidence is what the proponent claims it to be.’ “ [Link](#), 788 F.2d at 927 (quoting [McQueeney v. Wilmington Trust Co.](#), 779 F.2d 916 (3d Cir.1985) (quoting [In re Japanese Elec.](#), 723 F.2d 238, 285 (3d Cir.1983), cert. granted on other grounds, 471 U.S. 1002 (1985))).

A foundation for admissibility of recordings may be established by the testimony of a witness with personal knowledge, comparison by the trier of fact or expert witness, and voice identification. [FED.R.EVID. 901\(b\)](#). A trial court “does not have unbridled discretion to disregard the problems inherent in use of [tape recordings]. Tape recordings are not readily identifiable as the original version. They are peculiarly susceptible of alteration, tampering, and selective editing.” [United States v. Starks](#), 515 F.2d 112, 121 (3d Cir.1975) (overruled in part by [Federal Rule of Evidence 901](#) which requires sufficient evidence for admission, not clear and convincing evidence).

A review of the authorities leads to the conclusion that, before a sound recording is admitted into evidence, a foundation must be established by showing the following facts:

(1) That the recording device was capable of taking

the conversation now offered in evidence.

- (2) That the operator of the device was competent to operate the device.
- (3) That the recording is authentic and correct.
- (4) That changes, additions or deletions have not been made in the recording.
- (5) That the recording had been preserved in a manner that is shown to the court.
- (6) That the speakers are identified.
- (7) That the conversation elicited was made voluntarily and in good faith, without any kind of inducement.

Id. at 121 n. 11 (citation omitted).

Here, the Court is left with no possibility of determining that the recordings are what Walia claims them to be. Plaintiff made almost no attempt to lay the foundation of the recordings or his translation thereof at trial. Indeed, the only foundation proffered was that Walia is able to translate Punjabi to English, as the conversation at issue took place in Punjabi. Therefore, the taped conversations and any transcript thereof are inadmissible.

II. Arvind Walia Constitutes an Unsecured Creditor

The conclusion that Walia constitutes an unsecured creditor of the estate is clear and inevitable as the stock certificate upon which he relies to claim a secured interest in RPC was never validly issued and pre-dates incorporation.

A. Validity of the RPC Stock Certificate

*6 When a conflict of laws question is presented, a federal court is bound to apply the law regarding conflicts of laws of the state in which it sits.^{FN9} *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941); *NL Indus., Inc. v. Commercial Union Ins. Co.*, 65 F.3d 314, 316 (3d Cir.1995). New

Jersey has adopted the Uniform Commercial Code, see *N.J. STAT. ANN. § 12A:1-101 et seq.*, which provides in Section 8-110 that the law of the issuer's jurisdiction governs the validity of a security. *N.J. STAT. ANN. § 12A:8-110(a)(1); Rudbart v. N. Jersey Dist. Water Supply Comm 'n*, 127 N.J. 344, 369 (N.J.1992); *N.J. Bank, N.A. v. Bradford Sec. Operations, Inc.*, 690 F.2d 339, 343 n. 9 (3d Cir.1982) (applying New Jersey law). Absent an exception not relevant here, the issuer's jurisdiction is that of the state in which it is organized. *N.J. STAT. ANN. § 12A:8-110(d)*. RPC was organized under the laws of the State of Delaware. Delaware has also adopted the Uniform Commercial Code and the identical choice of law provisions. See *DEL.CODE ANN. tit. 6, § 8-110; Weller v. Am. Tel. & Tel. Co.*, 290 A.2d 842, 844 (Del. Ch.1972). Therefore, Delaware law governs regarding the validity of the RPC stock certificate.^{FN10}

^{FN9}“The internal affairs doctrine is a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation's internal affairs-matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders....”*Edgar v. Mite Corp.*, 457 U.S. 624, 645 (1982) (citation omitted). The purpose of the doctrine is to prevent conflicting demands upon a corporation. *Id.*

RPC was incorporated under the laws of the State of Delaware. Walia did not purchase shares of RPC. Instead, the shares were, at best, collateral to assure repayment of a loan to the Debtor. In addition, as the loan was to the Debtor, Walia is not a creditor of RPC. Therefore, the internal affairs doctrine is inapplicable. See *Palladin v. Gaon*, 2006 U.S. Dist. LEXIS 59844, at *51 (D.N.J. August 22, 2006); *Wasserman v. Halperin (In re Classica Group)*, 2006 Bankr.LEXIS 2599, at *20 n. 7 (Bankr.D.N.J. Sept. 29, 2006).

^{FN10} This distinction is without a difference since the outcome does not alter under an application of New Jersey law.

The starting point for any inquiry into the validity of corporate action is Delaware General Corporations Law, *see* [DEL.CODE ANN. tit. 8, § 101 et seq.](#) A corporation may only issue shares after the time of its incorporation, as a corporation does not come into existence until articles of incorporation are filed. [DEL.CODE ANN. tit. 8, § 101\(a\)](#); *State ex rel. Richards v. Brooks*, 1909 Del.Super. LEXIS 10, at *4 (Del.Super.Ct.1909). For this reason alone, the stock certificate at issue is invalid as it pre-dates the incorporation of RPC.

Further, the power of a corporation to issue shares is provided in [DEL.CODE ANN. tit. 8, § 151](#). Specifically, “[e]very corporation may issue” shares as authorized by its certificate of incorporation and Delaware General Corporations Law. [DEL.CODE ANN. tit. 8, § 151\(a\)](#). Stock issued without corporate authority is invalid. [Triplex Shoe Co. v. Rice & Hutchins, Inc.](#), 152 A. 342, 350 (Del.1930). “The board of directors of a corporation is charged with the ultimate responsibility to manage or direct the management of the business and affairs of the corporation.” [Arnold v. Society for Sav. Bancorp, Inc.](#), 678 A.2d 533, 540 (Del.1996) (citing [DEL.CODE ANN. tit. 8, § 141\(a\)](#)). A corporation's board of directors has the “exclusive authority to issue stock and regulate a corporation's capital structure.” [Grimes v. Alteon Inc.](#), 804 A.2d 256, 261 (Del.2002); *see* [DEL.CODE ANN. tit. 8, § 152](#). The “requirement of board approval for the issuance of stock is not limited to the act of transferring the shares of stock to the would-be stockholder, but includes an antecedent transaction that purports to bind the corporation to do so.” [Grimes](#), 804 A.2d at 261. “Moreover, it is well established in the case law that directors must approve a sale of stock.” *Id.* n. 9 (collecting cases). A corporate board of directors may act by meeting or unanimous written consent. [DEL.CODE ANN. tit. 8, §§ 141\(b\) and \(f\)](#). A majority of disinterested directors constitutes a quorum and a favorable vote of a majority of disinterested directors attending the board meeting will validate a corporate action in the ordinary course of business. [DEL.CODE ANN. tit. 8, § 141\(b\)](#).

*7 Here, no action could validate the issuance as neither the board nor RPC were in existence as of April 7, 1996. Assuming *arguendo* that the certificate was created post-incorporation, there is no evidence that a meeting of the RPC board of directors was

conducted to determine whether stock should issue. In addition, no evidence exists that the issuance was approved by the board. Equally, there is no evidence of unanimous written consent of RPC's board of directors. Lastly, RPC has not ratified the issuance. Therefore, the stock certificate is equally invalid for lack of an authorized corporate act.

Pursuant to [DEL.CODE ANN. tit. 8, § 201](#), the transfer of securities is governed by Article 8 of the Delaware Uniform Commercial Code. For a transfer to be valid, a “security” must be delivered. [DEL.CODE ANN. tit. 6, § 8-301](#). “A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.” [DEL.CODE ANN. tit. 6, § 8-103\(a\)](#). Therefore, as the stock certificate is invalid, any effort to transfer or assign it is equally invalid.

B. Subscription

In an effort to salvage his alleged security interest, Walia alternatively characterizes the collateralization of the loan with the RPC certificate as a subscription of stock. In a contract for the subscription of stock, the subscriber agrees to pay or promises to pay for a certain number of shares of a corporation's capital stock. [Grimes](#), 804 A.2d at 261; [First Caldwell Oil Co. v. Hunt](#), 127 A. 209, 210 (N.J.1925); *see* [N.J. STAT. ANN. § 14A:7-3](#).

The transaction *sub judice* did not constitute a subscription. There was no stock to transfer. The Debtor and Walia did not execute any agreement by which he would acquire the stock in exchange for consideration provided to RPC. Any consideration provided was past consideration and was given by Walia to the Debtor. The corporation did not benefit, nor was it ever intended to benefit from the transaction. There is no evidence that RPC ever issued, much less authorized, the sale of its shares pursuant to a subscription agreement.

Instead, the certificate was intended to act as mere collateral for the repayment of the money owed to Walia in the event of the Debtor's default. Walia's alleged remedy was to look to the collateral to assure repayment. Since the collateral is deemed invalid, this determination does not alter the nature of the original transaction.

C. Perfection Under The Uniform Commercial Code

In the alternative, Walia argues that the Court may consider him a perfected secured creditor solely by virtue of his filing of a UCC-1 financing statement representing his alleged interest in RPC or his perfection by possession under Article 9 of the New Jersey Uniform Commercial Code. This Court disagrees.

Article 9 of the New Jersey Uniform Commercial Code was recently amended, with changes becoming effective on July 1, 2001. [N.J. STAT. ANN. § 12A:9-701](#). Generally and in the instant matter, revised Article 9 “applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this chapter takes effect.” [N.J. STAT. ANN. § 12A:9-702](#). If an action taken prior to July 1, 2001 served to perfect a security interest under former Article 9 but not pursuant to revised Article 9, the retroactivity provision of revised Article 9 provides a 60-day grace period in order to consummate actions required for perfection under its provisions. [N.J. STAT. ANN. § 12A:9-710](#). Therefore, a security interest valid under former Article 9 would have to be reevaluated pursuant to the revised provisions.

*8 The New Jersey Uniform Commercial Code provides the general rule that “[w]hile a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.” [N.J. STAT. ANN. § 12A:9-305](#) (no substantive amendment). However, [t]he local law of the jurisdiction in which the debtor is located governs perfection of a security interest in investment property by filing.” [N.J. STAT. ANN. § 12A:9-305\(c\)\(1\)](#) (no substantive amendment). “ ‘Investment property’ means a security, whether certificated or uncertificated....” [N.J. STAT. ANN. § 12A:9-102\(49\)](#) (no substantive amendment). “A registered organization that is organized under the law of a state is located in that state.” [N.J. STAT. ANN. § 12A:9-307\(e\)](#) (no substantive amendment). “A debtor who is an individual is located at the individual’s principal residence.” [N.J. STAT. ANN. § 12A:9-307\(b\)\(1\)](#) (no substantive amendment).

Looking to the proper law to apply to perfection by filing, it is no consequence whether the Debtor or RPC constitute the “debtor” for purposes of revised Article 9. Article 9 of the Uniform Commercial Code as it exists in either Delaware or New Jersey is predicated upon the existence of a valid security as defined by state law. *See generally* [N.J. STAT. ANN. § 12A:9-101](#) *et seq.* (no substantive amendment), [DEL. CODE ANN. tit. 6, § 9-101](#) *et seq.* More specifically, as defined in Article 8 and made applicable to Article 9 by Section 9-102(b), “[a] share or similar equity interest issued by a corporation ... is a security.” [N.J. STAT. ANN. § 12A:8-103](#) (no substantive amendment); [DEL. CODE ANN. tit. 6, § 8-103](#). As the certificate was never validly issued by RPC, there can be no perfection by filing under Article 9 under the law as it exists in either Delaware or New Jersey.

Turning to perfection by possession under Article 9, the identical defect is fatal to Walia’s argument. As the certificate was located in New York at all relevant times, the law of that jurisdiction applies. [N.J. STAT. ANN. § 12A:9-301\(2\)](#) (no substantive amendment). “[A] secured party may perfect a security interest in negotiable documents ... by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under [Section 8-301](#).” [N.Y. U.C.C. § 9-313\(a\)](#). As defined in Article 8 and made applicable to Article 9 by Section 9-102(b), “[a] share or similar equity interest issued by a corporation ... is a security.” [N.Y. U.C.C. § 8-103\(a\)](#). Again, as the security was never validly issued by RPC, Walia could not perfect a security interest in it by possession under Article 9 of the New York Uniform Commercial Code.

In the alternative, Walia argues that he also perfected his interest in the stock certificate by possession under Article 8 of the Uniform Commercial Code. Under Article 8, the law in which the security is located at the time of delivery governs. [N.J. STAT. ANN. § 8-110](#). As defined in [N.Y. U.C.C. § 8-103\(a\)](#), “[a] share or similar equity interest issued by a corporation ... is a security.” As the certificate was never issued by RPC, Walia could not perfect his interest in it by possession.

*9 In sum, for the foregoing reasons, this Court finds Plaintiff is not a secured creditor. Thus, since the debt

is proven, Walia constitutes an unsecured creditor of the Debtor with a claim of \$393,000, plus lawful interest, because the stock certificate at issue is a nullity. As Walia maintains no security or ownership interest in RPC, any interest in Shan & Co. is equally unfounded. Therefore, this Court will maintain jurisdiction and direct the Trustee to investigate the transfer of the Debtor's interest in RPC to Harbir Riar for purposes of bringing an avoidance action and recovery for the benefit of creditors.

III. Non-Dischargeability

A. [Section 523\(a\)\(2\)\(A\)](#)

[Section 523\(a\)\(2\)\(A\) of the Bankruptcy Code](#) provides that debts for money, property, services, or credit obtained by “false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition” are non-dischargeable.

In order to have a valid claim under 523(a)(2)(A), a creditor must prove that the debtor either made a misrepresentation or did an act which was wrong. The proofs must show that the debtor knew it was wrong, that she intended the creditor to rely on the act or misrepresentation and that the creditor did, in fact, rely on such act or misrepresentation and finally, that the creditor was damaged thereby.

Starr v. Reynolds ([In re Reynolds](#)), 197 B.R. 204, 205 (Bankr.D. N.J.1996) (quoting *Starr v. Reynolds* ([In re Reynolds](#)), 193 B.R. 195, 200 (D.N.J.1996) (citing *United Counties Trust Co. v. Knapp* ([In re Knapp](#)), 137 B.R. 582, 586 (Bankr.D.N.J.1992))).

Non-dischargeability under [Section 523\(a\)\(2\)\(A\)](#) requires a showing of “justifiable, but not reasonable, reliance.” *Field v. Mans*, 516 U.S. 59, 73-75 (1995) (citing *see City Bank & Trust Co. v. Vann* ([In re Vann](#)), 67 F.3d 277, 282 (11th Cir.1995); *Eugene Parks Law Corp. Defined Benefit Pension Plan v. Kirsh* ([In re Kirsh](#)), 973 F.2d 1454, 1457-58 (9th Cir.1992)). In order to constitute justifiable reliance:

‘the plaintiff's conduct must not be so utterly unreasonable, in the light of the information apparent to him, that the law may properly say that his loss is his own responsibility.’ This conclusion, however,

does not mean that the reliance must be objectively reasonable. ‘Although the plaintiff's reliance on the misrepresentation must be justifiable, ... this does not mean that his conduct must conform to the standard of the reasonable man.’ Justifiable reliance is gauged by ‘an individual stand[ard] of the plaintiff's own capacity and the knowledge which he has, or which may fairly be charged against him from the facts within his observation in the light of his individual case.’ Additionally, ‘it is only where, under the circumstances, the facts should be apparent to one of [plaintiff's] knowledge and intelligence from a cursory glance, or he has discovered something which should serve as a warning that he is being deceived, that he is required to make an investigation of his own.

*10 *In re Reynolds*, 193 B.R. at 202 (quoting *In re Vann*, 67 F.3d at 283 (internal citations omitted)).

The creditor bears the burden of proving non-dischargeability by a preponderance of the evidence. [Grogan v. Garner](#), 498 U.S. 279, 290 (1991). “The overriding purpose of the Bankruptcy Code is to relieve debtors from the weight of oppressive indebtedness and provide them with a fresh start. Exceptions to discharge are strictly construed against creditors and liberally construed in favor of debtors.” *Ins. Co. of N. Am. v. Cohn* ([In re Cohn](#)), 54 F.3d 1108, 1113 (3d Cir.1995) (citing *United States v. Stelweck*, 108 B.R. 488, 495 (E.D.Pa.1989)).

Walia argues that if the Court were to find that the Debtor validly transferred his interest in RPC to Harbir Riar in 1999, then the loans exacted by the Debtor were pursuant to misrepresentations of the Debtor's continued interest in RPC. However, non-dischargeability under [Section 523\(a\)\(2\)\(A\)](#) may not issue since the evidence at trial shows Walia did not justifiably rely upon representations made to him by the Debtor in attempting to acquire an interest in RPC. For purposes of this analysis, the Court will assume *arguendo* that the Debtor did transfer his interest in RPC in 1999 as this constitutes the only avenue upon which fraud under [Section 523\(a\)\(2\)\(A\)](#) may be proven.

Walia made no effort to confirm whether the Debtor did in fact maintain an ownership interest in RPC at the time of the transfer of the stock certificate in November of 2000. Notably, Walia admitted at trial

that he made almost no investigation of RPC or the Debtor's interest therein. He also admitted at trial that he never saw the RPC stock certificate during the transaction. Further, he made no investigation of the Debtor's financial wherewithal to repay the sum due or to confirm the validity of the collateral offered. In foregoing one's legal remedies to collect \$400,000 in loans, it is expected that a party will conduct at least minimal due diligence to confirm whether collateral provided in exchange for forbearance is indeed valid. Walia made no such effort and cannot, under the facts herein, be said to have proven by a preponderance of the evidence that he justifiably relied upon the Debtor's representations of an ownership interest in RPC.

B. [Section 727\(a\)\(2\)](#)

[Section 727 of the Bankruptcy Code](#) provides an exception to the general rule that a court must permit a debtor his discharge, and precludes a debtor's discharge in circumstances where the debtor transferred or concealed property from either a creditor or estate representative within one year before the filing of a petition for relief in bankruptcy. [11 U.S.C. § 727\(a\)\(2\)](#). [Section 727](#) "is to be construed liberally in favor of the debtor." [Rosen v. Bezner](#), 996 F.2d 1527, 1531 (3d Cir.1993) (citations omitted). Indeed, denying a discharge is an "extreme step and should not be taken lightly." *Id.*

Non-dischargeability under [Section 727\(a\)\(2\)](#) requires both an act and an improper subjective intent. *Id.* Generally, a "party seeking to bar discharge must prove that both of these components were present during the one year period before bankruptcy..." *Id.* However, pursuant to the continuous concealment doctrine, "a concealment will be found to exist during the year before bankruptcy even if the initial act of concealment took place before this one year period as long as the debtor allowed the property to remain concealed into the critical year." *Id.* (citation omitted). The proper focus is "whether there is concealment of property, not whether there is concealment of a transfer." *Id.* at 1532.

*11 In a situation involving a transfer of title coupled with retention of the benefits of ownership, there may, indeed, be a concealment of property. Where this is the case, however, the concealment is present

not because retention of the benefits of ownership conceals the fact that the debtor no longer has legal title, but rather because the transfer of title represents to the world that the debtor has transferred away all his interest in the property while in reality he has retained some secret interest—a secret interest of which retention of the benefits of ownership may be evidence.

Id. While the act may have occurred prior to the year before to the petition filing, the intent to hinder or defraud creditors or an estate representative must exist within the critical period. *Id.* at 1533.

This Court acknowledges that the complete bar of a debtor's discharge is an extraordinary remedy. However, such action is necessary here. The fundamental principle underlying the Bankruptcy Code is "to relieve the *honest* debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes" [Williams v. U.S. Fidelity & Guaranty Co.](#), 236 U.S. 549, 554-55 (1915) (citing [Zavelo v. Reeves](#), 227 U.S. 625, 629 (1913) (emphasis added)); [Burlingham v. Crouse](#), 228 U.S. 459, 473 (1913) (all under the Bankruptcy Act); [In re Pelkowski](#), 990 F.2d 737, 744 (3d Cir.1993) (under the Bankruptcy Code) (citation omitted). This Court finds that the Debtor's actions in attempting to transfer and conceal his interest in RPC were made with fraudulent intent that continued into and through the critical period. In coming to this conclusion, this Court notes two critical points. First, the Debtor has never provided the Court with a credible justification for his alleged transfer of RPC. Second, the Debtor's testimony at trial was marked by numerous inconsistencies, so much so that it caused the Court to remark on the record, on repeat occasions, that the only consistent aspects of trial were the inconsistencies presented.

In 1999, Walia loaned the Debtor \$150,000. In addition, Walia gave the Debtor \$250,000 as capital for the acquisition of a gas station, unrelated to RPC, with the hopes of entering into a partnership to manage and operate same. Within months the hopes of a partnership had eviscerated, prompting Walia to demand the return of the \$400,000. The response from the Debtor was that the money had already been spent on other endeavors. In June of 1999, the Debtor executed an unsecured promissory note to Walia. The

Debtor quickly defaulted on his payment obligations. Walia then demanded the execution of a second promissory note with attendant collateral, including the Debtor's home.^{FN11} Those documents were executed on or about July 1, 2000. Subsequent to the execution, Walia began to suspect that the Debtor had forged his wife's signature on the documents. Upon notifying the Debtor of this suspicion, the Debtor began to avoid Walia for a number of months. In the fall of 2000, Walia was successful in his confrontation of the Debtor, resulting in the transaction at issue in November of 2000. Again the Debtor defaulted after only a short period.

^{FN11}. The discussion of the intermediate transaction is provided to illustrate that the Debtor's efforts to delay or defraud Walia were of an ongoing and continuous nature. The Debtor's testimony at trial on this issue was incredible and no serious effort to dissuade any belief in these facts was undertaken.

*12 The Debtor then undertook a different approach, that of filing a petition for relief under the Bankruptcy Code on April 3, 2001. The *only* reference made to RPC in the Debtor's first petition was a monthly income of \$4,000, allegedly earned as an employee. No reference to an ownership interest, the Debtor's previous position as an officer of RPC, or of the transfer of his interest in RPC was provided. After only minimal activity, the Debtor's proceeding was dismissed. Shortly thereafter, the Debtor and his wife chose to file a joint petition for relief in bankruptcy. The Debtor *again* listed a monthly income from RPC in the amount of \$4,000 as an "employee" of the company. Again, no reference to an ownership interest, transfer, or prior position as an officer of RPC was disclosed. The proceeding was dismissed at confirmation on July 11, 2002. The Debtor and his wife then filed the instant joint petition on October 3, 2002, less than three months later. The Debtor again listed a monthly employment income from RPC in the amount of \$4,000. Markedly different from the Debtor's previous filings, however, was the listing of his interest in RPC from 1996-2001. No transfer of his interest in RPC was ever disclosed in any of the schedules filed and certified to by the Debtor.

These circumstances evidence the Debtor's failure to

disclose a transfer or attempted transfer of his interest in RPC to Harbir Riar. That is a fraud on creditors. As previously stated, any and all documents relating to the transfer and of Debtor's resignation from RPC are suspect. The documents presented to the Court appear to be doctored. Many of them were both signed and notarized by the Debtor. In addition, the purported signatures of the Debtor on different copies of documents are markedly different. Further, the documents relating to the resignation and transfer bear the notarization of "Rabinder Singh" and the signature "Rabinder Riar," the latter being an alias used by the Debtor. Based upon the complete unreliability of these documents, the Court can only make the following conclusions: namely that the attempted transfer occurred on or after December 31, 1999 and that documentation of the transfer was most likely dated retroactively.

The Debtor and Harbir Riar readily admit that the Debtor received identical payments after the alleged transfer as he had received prior to the transfer. These payments were made despite the alleged resignation from and transfer of the Debtor's interest in RPC. The commission checks from Getty also continued to be made out to both the Debtor and Harbir Riar. In addition, the Debtor's signature appeared on a transfer of securities form by and between RPC and Getty in May of 2001.

Inconsistencies in relevant testimony are glaring. The Debtor testified at his deposition that he received no consideration for the transfer of his interest in RPC. However, at trial, the Debtor and Harbir Riar claimed that a payment of \$30,000 was made to the Debtor.^{FN12} Further, the alleged resignation and transfer of the Debtor's interest came by resolution of the board of directors of RPC, which consisted solely of Harbir Riar and the Debtor. Thus, this Court has nothing more than self-serving testimony as well as conflicting and doctored documents to evidence any resignation, whether in form or substance.

^{FN12}. A check drawn on the account of Harbir Riar and made payable to Litton Loan Servicing in the amount of \$30,000 was presented to the Court. The Court notes that Litton Loan Servicing acted as the servicing company for a mortgagor of the Debtor's former real property. However, there is no evidence connecting the payment

to the Debtor other than trial testimony. In addition, the check is dated March 28, 2001, well after the alleged transfer took place.

*13 To continue, Walia requested production of income tax returns for RPC from both the Debtor and Harbir Riar. The returns are not similar! The 2001 RPC tax return produced by the Debtor lists Harbir Riar as 100% owner in RPC. The 2001 RPC tax return produced by Harbir Riar lists his ownership interest as only 50%. In addition, the 2000 RPC tax return produced by Harbir Riar lists the Debtor as an owner of RPC, despite his alleged resignation in 1999.

The Debtor's personal tax returns also conflict. The Debtor's 2000 tax return states that he received \$48,000 in non-employee compensation from RPC despite the claim that the Debtor resigned in 1999. The Debtor's 2001 tax return also states that he received \$48,000 in non-employee compensation from RPC. In addition, the Debtor's 2001 tax return attaches a profit and loss statement of RPC, an entity he now claims he had no interest in that year.

The weight of the evidence is obvious in light of the total lack of opposition by the Debtor. It is clear to this Court that the Debtor's alleged resignation from RPC in 1999 did not occur. Equally clear is that the alleged transfer of the Debtor's interest in RPC to Harbir Riar was done, at least on the Debtor's part, with the intent to hinder, defraud or delay Walia's efforts to collect the amount owed him. While Harbir Riar allegedly paid \$30,000 in exchange for the transfer, the Court has no evidence before it other than the incredible and inconsistent testimony of the defendants to connect the payment to either the Debtor or the transfer. Assuming *arguendo* that payment was, in fact, made to the Debtor on account of the alleged transfer of interest, it was likely significantly undervalued and was executed by the Debtor in the sole effort to escape Walia's grasp and to conceal assets from collection. In addition, despite the transfer, the Debtor enjoyed all of the benefits of his previous position as officer of RPC, including continued payment of salary and non-employee compensation.

The Debtor's efforts to conceal the true nature of the transaction continued well into the year prior to the date of filing the instant petition. Indeed, they

continued until well after the petition date (through failure to disclose on schedules) and were only revealed by the efforts of Walia himself. Moreover, the Debtor's actions constitute an effort to conceal the transfer from the former Chapter 13 trustee and the current Chapter 7 Trustee. Such conduct will not be countenanced by the Court. Discharge is reserved for the honest but unfortunate debtor; this Debtor does not fit that description. For these reasons, the Debtor is denied discharge pursuant to [Section 727\(a\)\(2\) of the Bankruptcy Code](#).^{FN13}

[FN13](#). Clearly, the Debtor has also failed to make full and complete disclosure of any and all records reflecting his financial condition, a condition precedent to discharge. This Court is satisfied that Walia has met his burden of showing that the Debtor failed to maintain adequate records. The burden of justification then shifts to the Debtor. The Debtor does not address his failure, much less offer any justification. Therefore, in the alternative, this Court bars the Debtor's discharge under [Section 727\(a\)\(3\) of the Bankruptcy Code](#).

Conclusion

For the reasons set forth above, this Court finds that: (i) Arvind Walia is an unsecured creditor of the Debtor's bankruptcy estate in the amount of \$393,000, plus lawful interest; and (ii) the Debtor's discharge is revoked pursuant to [Section 727\(a\)\(2\)](#) and (a)(3) of the Bankruptcy Code. The Court maintains jurisdiction and directs the Trustee to investigate the transfer of the Debtor's interest in RPC to Harbir Riar for the purpose of bringing a possible avoidance action to recover the asset for the benefit of creditors. An Order in conformance with this Opinion has been entered by the Court and a copy is attached hereto.

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In re Singh
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