

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND**

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In re: Marcus Charles Bernard Soori-Arachi  
and Stephanie Tamgho,  
Debtors

BK No. 17-10570  
Chapter 7

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**MEMORANDUM ORDER DENYING  
MOTION TO REMOVE CHAPTER 7 TRUSTEE  
(this relates to Doc. ## 190, 199, 202, 203)**

This matter is before the Court on Debtor Marcus Soori-Arachi's ("Mr. Soori")<sup>1</sup> Motion for Bankruptcy Trustee Removal (Doc. #190), seeking to remove Chapter 7 Trustee Stacy Ferrara ("Trustee"). The Trustee filed her objection (Doc. #199) arguing that the Debtor had failed to establish cause for her removal under Bankruptcy Code § 324(a),<sup>2</sup> and the United States Trustee ("UST") filed an objection (Doc. #202) on similar grounds. For the reasons stated below, the Court finds that cause does not exist to remove Ms. Ferrara as trustee.

I. Applicable Law

Section 324(a) of the Bankruptcy Code provides that "[t]he court, after notice and a hearing, may remove a trustee . . . for cause." The Code does not define "cause," and courts make that determination on a case-by-case basis. *In re Lundborg*, 110 B.R. 106, 108 (Bankr. D. Conn. 1990). "Removal of a trustee is an extreme remedy." *In re JMW Auto Sales*, 494 B.R. 877, 889 (Bankr. S.D.Tex. 2013). Whether a trustee should be removed under § 324 is left to the sound discretion of the bankruptcy court. *In re AFI Holding, Inc.* 530 F.3d 832, 844 (9th Cir. 2008).

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<sup>1</sup> Although the bankruptcy case is a joint filing of Mr. Soori and his spouse Stephanie Tamgho, the Motion was filed and signed only by Mr. Soori.

<sup>2</sup> Unless otherwise indicated, the terms "Bankruptcy Code," "Code," "section" and "§" refer to Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 37.

The *Lundborg* court noted instances where a trustee was removed on the grounds of malfeasance, gross neglect of the trustee's duties, actual conflicts of interest, serious violation of a trustee's duties, and gross incompetence and fraud. *See In re Lundborg*, 110 B.R. at 108 (citing *In re BH & P, Inc.*, 103 B.R. 556, 561 (Bankr. D.N.J. 1989); *Matter of Shoen Enter., Inc.*, 76 B.R. 203, 206 (Bankr. M.D.Fla. 1987); *Matter of Island Amusement, Inc.*, 74 B.R. 18, 19 (Bankr. D.P.R. 1987); *In re Mira-Pak, Inc.*, 72 B.R. 430, 431 (Bankr. S.D.Tex 1987)). The trustee's conduct must rise to such a serious level as to warrant removal. "In general, a party seeking the removal of a trustee must prove that there has been some actual injury or fraud. A trustee should not be removed for mistakes in judgment where that judgment was discretionary and reasonable under the circumstances . . . ." *Lundborg*, 110 B.R. at 108 (citations omitted). Courts also should consider the best interests of the estate over those of a single moving party. *Id.*

## II. Application of the Law

In support of his motion, Mr. Soori attaches as an exhibit a copy of his letter addressed to Assistant United States Trustee Gary Donahue requesting the Trustee's removal. All but one of the asserted grounds have previously been raised by Mr. Soori. Based on the Trustee's various filed status reports, responses, objections, and explanations at several hearings throughout this case, the Court found that the Trustee was diligently and appropriately performing her duties and determined that Mr. Soori's complaints were unfounded. *See, e.g.*, Trustee's reports and responses at Doc. ## 37, 49, 109, 122.

Despite the Court's attempts to explain to Mr. Soori the role and duties of the Trustee, he continues to misperceive such duties. The Court reiterates that the Trustee is a representative of the bankruptcy estate and does not serve as Mr. Soori's personal attorney to carry out his desired,

and apparently never-ending, fishing expedition to locate assets that he merely speculates may be out there. Turning more specifically to Mr. Soori's numbered complaints set forth in his letter to the UST, the Court concludes as follows.

A. *Paragraphs (1), (2), (5), (6), and (8)*

Here Mr. Soori rehashes his gripes about the Trustee's comments: "I represent your creditors," and "[m]y job is to recover assets for payment to creditors." The Court has previously addressed and rejected these grievances. *See* final order at Doc. #43 and audio of November 1, 2018 hearing at Doc. #93. The Court was satisfied, and remains satisfied, that the Trustee adequately performed her duties through her investigations of financial accounts of Mr. Soori and other potential financial accounts established for his benefit. The Court also denied Mr. Soori's repeated requests to compel the Trustee to subpoena the custodian of a Fidelity Account<sup>3</sup> for an accounting. *See* Doc. ## 93 and 123. Finally, the Court determined that the Trustee is properly balancing the interests of the estate, the creditors, and Mr. Soori, and sustained her objections to Mr. Soori's exemption claims in the Fidelity Account.

B. *Paragraphs (3), (4), and (9)*

These complaints essentially challenge the merits of the Trustee's arguments in support of her objections to Mr. Soori's exemption claims in the Fidelity Account. In a detailed bench decision, the Court ruled that the Trustee's exemption objections were timely, denied Mr. Soori's motion that the Trustee be estopped from asserting the exemption objections and that his exemption claims be deemed allowed, and sustained the Trustee's exemption objections. *See* audio of August 7, 2019 bench decision at Doc. #165 and orders at Doc. ## 166 and 167.

Having sustained the exemption objections, the Court subsequently denied as meritless

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<sup>3</sup> For a full description and discussion of the Fidelity Account and the annuity policy contained in the account see the Court's Decision and Order at Doc. #125.

Mr. Soori's motion for sanctions against the Trustee for pursuing her exemption objections. *See* Doc. #175. Mr. Soori has appealed these rulings and the matters are pending before the First Circuit Bankruptcy Appellate Panel. Mr. Soori's disagreement with the merits of the Trustee's legal arguments and the Court's conclusions and orders is not grounds for removal of the Trustee.

*C. Paragraph (7)*

Mr. Soori's complaint that the Trustee refused his request of August 26, 2019 to provide him with "any correspondence you have had (sent or received) with any institution regarding any account reported in my schedules at any time," is not groundless. The Trustee responded to this request stating: "My job is to recover assets for payment to creditors. Your request for such correspondence will provide no benefit to the estate, so I must respectfully decline." *See* Doc. #190, Exh. C. The Trustee's response does not appear to align with the trustee's duties enumerated in Bankruptcy Code § 704(a)(7), nor is "benefit to the estate" a qualifying requirement. This section states: "unless the court orders otherwise, [the trustee shall] furnish such information concerning the estate and the estate's administration as is requested by a party in interest." The response is not, however, completely off base as the Trustee avers in her objection that she provided access to Mr. Soori's prior counsel to responses and information she obtained as a result of several subpoenas she issued to various financial institutions in her efforts to locate assets of Mr. Soori. She also permitted his counsel to make copies of any such information in her file. She suggests that Mr. Soori can obtain all of that information from his prior counsel and the estate should not be burdened with the cost of providing the same information directly to him.

Nevertheless, the Court concludes that the Trustee's response and position on this

discrete issue does not rise to the level of misconduct or dereliction of her duties as to constitute cause to remove her as Trustee. *See In re Haworth*, 356 Fed. Appx. 529 (2d Cir. 2009) (cause to remove the chapter 7 trustee was not shown even if, as alleged, the trustee acted improperly by declining to furnish tax returns and bank statements of the debtor requested by an interested party as there was no fraud by the trustee and no actual injury to the debtor's interest).

Accordingly, the Motion for Bankruptcy Trustee Removal is **DENIED**.

Date: October 22, 2019

By the Court,

A handwritten signature in black ink that reads "Diane Finkle". The signature is written in a cursive style with a horizontal line underneath the name.

Diane Finkle  
U.S. Bankruptcy Judge