Findings of Fact In a Section 523(a)(2) Exception to Discharge Action: The Converging Grey Areas of Intent, the Totality of the Circumstances, and Clear Error

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I. Introduction

One of the more difficult facts that a litigant must prove is a debtor's intent to deceive or defraud a creditor as required by many discharge exceptions under section 523.[1] To add insult to injury, because of this difficulty, courts have developed and used a totality of the circumstances test for trial courts to determine a debtor's intent.[2] Finally, if there is an appeal, the appellate court gets to determine if the trial court committed a clear error or not. All of these factors recently came together in the case of *In re Stewart*.[3]

II. The Factual Background

In *Stewart*, the Court of Appeals for the First Circuit reviewed a bankruptcy court's decision in a discharge objection adversary proceeding brought pursuant to 11 U.S.C.A. § 523(a)(2)(A). That provision excepts from discharge any debt of the debtor for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

In *Stewart*, the plaintiffs contracted with the debtor's company to remodel and renovate the plaintiffs' home.[4] Prior to executing the contract and as part of the plaintiffs' due diligence, the plaintiffs requested financial and operational information from the company to ensure that the company could perform the work, both from a technical basis, and from a financial basis.[5] The debtor, on behalf of the company, provided the plaintiffs with inaccurate information concerning the company's financial performance, its relationship with various subcontractors, and its technical ability to perform the contract.[6] After reviewing the misstated information, and in reliance thereon, the plaintiffs entered into the contract with the company.[7] The contract between the plaintiffs and the company provided for the plaintiffs to make periodic "milestone" payments.[8] The plaintiffs understood - based in part on the debtor's representations - that the company would use the plaintiffs' pay-

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ments to fund the plaintiffs' project; and that the company would not use the payments for any other purpose.[9] The debtor further represented to the plaintiffs that he would be able to use the milestone payments to leverage deals with subcontractors and suppliers for the plaintiffs' benefit.[10]

Almost immediately after commencing work on the project, there were delays and inefficiencies.[11] The plaintiffs alleged in their complaint and presented evidence at trial that the company improperly sequenced the project; performing certain aspects prior to completing necessary preconditions.[12] According to the plaintiffs, the company pushed forward with the work, despite the failure to satisfy the preconditions, to trigger additional milestone payments.[13] For his part, the debtor contended that scheduling subcontractors and obtaining supplies and materials was at times problematic, and that the project continued out of sequence because it was better for there to be some progress rather than no progress.[14]

As the project progressed - albeit slowly - the company's and the debtor's financial conditions continued to deteriorate.[15] The company used the plaintiff's periodic milestone payments for general company purposes.[16] Eventually, the company was unable to continue the project and informed the plaintiffs that the company would not be able to complete the project.[17] Despite the debtor's last-ditch efforts to keep the company afloat, including withdrawing funds from his retirement account, the company ceased construction having completed only 45 percent of the work, and the plaintiffs having paid for 90 percent of the contract price.[18] The company filed for bankruptcy pursuant to Chapter 7, and six months later the debtor likewise filed a Chapter 7 petition.[19]

III. The Adversary Proceeding and the Bankruptcy Court's Opinion

The plaintiffs timely filed their complaint objecting to the debtor's discharge pursuant to, among other sections, section 523(a)(2)(A) for the debtor's false pretenses, false representation, or actual fraud.[20] The plaintiffs alleged in this regard that the debtor defrauded them by two primary means: first by failing to disclose the company's pre-contract financial condition and expertise, and second by misrepresenting how the company would use the plaintiffs' milestone payments.[21] At trial, the plaintiffs produced evidence concerning the misrepresentations of company's true financial condition prior to the contract, the company's poor relationships with subcontractors, the improper sequence of the construction, the debtor's representations concerning the milestone payments, and the company's use of the milestone payments for non-project expenses.[22] The plaintiffs also introduced evidence concerning the debtor's actual fraud. For his part, the debtor produced evidence to rebut each of these points.[23] After the five-day trial, the bankruptcy court entered a judgment in favor of the debtor, ruling that the plaintiffs' claims against the debtor were dischargeable.[24] In its opinion, the bankruptcy court analyzed the evidence of the debtor's[25] various misrepresentations to the plaintiffs as they related to the plaintiff's claims of fraudulent misrepresentation and concluded that the plaintiffs had not satisfied their

burden on the fraudulent misrepresentation claim.[26] After considering all of the evidence, the bankruptcy court likewise held that the "overall course of dealing was not indicative of actual fraud" and held in favor of the debtor on the plaintiffs' actual fraud claim.[27] The bankruptcy court did not consider the evidence with regard to the plaintiffs' false pretenses claim.[28]

IV. The BAP's Review

The plaintiffs appealed to the First Circuit Bankruptcy Appellate Panel.[29] At the BAP, the plaintiffs argued that the bankruptcy court committed clear error with regard to its factual findings concerning the debtor's misrepresentations and made legal errors concerning actual fraud.[30] The BAP largely agreed, finding for its part that the debtor "made at least three sets of express misrepresentations and that many of the bankruptcy court's factual findings" were contrary to the testimony and evidence the plaintiffs presented at trial.[31] The BAP additionally considered the evidence in the record to conclude that the plaintiffs had actually and justifiably relied on the debtor's representations.[32] Based on these findings of intent and reliance, the BAP concluded that the debtor acted with intent to deceive the plaintiffs and reversed the bankruptcy court's judgment.[33]

V. The First Circuit's Review

The debtor appealed to the First Circuit, which reviewed the bankruptcy court's findings of fact for clear error, and the bankruptcy court's legal conclusions de novo.[34] The circuit court began its analysis by delineating the clear error standard of review, stating that the reviewing court could not reverse the trial court "simply because it is convinced that it would have decided the case differently."[35] The circuit court further explained that "a finding of fact is only clearly erroneous when 'the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'"[36]

a. The Plaintiffs' False Pretenses Claim

The circuit court then took up the issues concerning the evidence of the plaintiffs' false pretenses claims.[37] The BAP had ruled, and the debtor challenged on appeal to the circuit, that the bankruptcy court committed clear error when the bankruptcy court (1) failed to analyze whether the debtor had obtained funds from the plaintiffs by false pretenses, and (2) failed to find that the plaintiffs had carried their burden with regard the their false pretenses claim.[38] The circuit court addressed the BAP's holdings in order. First, the circuit court agreed with the BAP that the bankruptcy court had not sufficiently considered the evidence with regard to the plaintiff's false pretenses claim.[39]

The circuit court, however, did not agree with the BAP that the plaintiffs had carried their burden with regard to the false pretenses claim.[40] The circuit court reversed the BAP, holding that the BAP had set aside its review of the bankruptcy court's opinion, weighed the evidence itself, and entered judgement based on the BAP's consideration of the evidence.[41] In this regard the

circuit court explained that, "given the complexity of the record and the contested nature of the testimony, we leave this sort of factfinding to the trier of fact."[42] Accordingly, the circuit court reversed the BAP on the issue of false pretenses and remanded with instructions to return the case to the bankruptcy court for further findings on that issue.[43]

b. The Plaintiffs' False Representation Claim - Intent

The circuit court began its analysis of the bankruptcy court's treatment of the plaintiffs' false representation claim by considering the legal standard that the bankruptcy court applied.[44] The circuit court found that the bankruptcy court erred when it determined what was required to prove a false representation.[45] Specifically, the circuit court found that the bankruptcy court "took too narrow a view of what constitutes intent to deceive."[46]

According to the circuit court, the bankruptcy court truncated the analysis of the debtor's misrepresentations - looking at them one-by-one - rather than considering the totality of the circumstances to determine whether the debtor intended to deceive the plaintiffs.[47] Put another way, the bankruptcy court missed the forest of the debtor's intent for the individual trees. As the circuit court explained the matter, "the bankruptcy court dealt with the [plaintiffs'] claims that [the debtor] misrepresented the milestone payment structure to 'fund their project' and that [the company] would use these advance payments to 'leverage subcontractors' as distinct issues."[48] Rather than considering the effect of each individual representation in isolation, the bankruptcy court should have considered the representation within the context of all of the debtor's representations to the plaintiffs: the representations concerning the company's finances, the representations concerning the company's relationships with subcontractors, the representations concerning the sequencing of the construction, the representations concerning the use of the milestone payments to fund the construction, the representations concerning the use of the milestone payments to leverage the subcontractors all united to provide context for any one representation. The circuit court summarized its instruction to the bankruptcy court by stating that "the right question is whether [the debtor] intended to deceive [the plaintiffs], through recklessly made misrepresentations, in light of the totality of the circumstances."[49]

c. The Plaintiffs' False Representation Claim - Reliance

Like its analysis that the bankruptcy court viewed the debtor's intent too narrowly, the circuit court also found that the bankruptcy court viewed the plaintiffs' reliance too narrowly.[50] The bankruptcy court focused on the debtor's representations prior to the plaintiffs' executing the contract as the only representations on which the plaintiffs could rely.[51] However, as the circuit court pointed out "post-contract-formation misrepresentations by the debtor that lead the creditor to 'stay the course' rather than opt out of the contract may constitute cause-in-fact of the creditor's subsequent harm"[52] and that therefore

> the relevant transaction does not necessarily refer to the initial ill-fated decision to contract with [the company]. The transaction could be the [plaintiffs']

> continuing decision to prepay contract milestones when the payments were being diverted elsewhere and not as represented, i.e., to leverage subcontractors. For a 'fraud that induces the creditor not to exercise a right arising from the contract may make the debtor's debt nondischargeable.[53]

Because the bankruptcy court did not consider the debtor's representations to the plaintiffs after the initial contract or the plaintiffs' reliance on those representations, the circuit court remanded the case to the bankruptcy court with instructions to "explain its rationale" because the bankruptcy court had not provided "a full read on the credibility of the [plaintiffs], particularly with respect to [their] statements on reliance."[54] Therefore, while the circuit court reversed the BAP's holding on reliance for de facto weighing the evidence, the circuit court de jure weighed the evidence with instructions for the bankruptcy court to justify its contrary conclusions.

VI. Lessons Learned and Mistakes to Avoid

a. At the Trial Court

Perhaps the best way to review *Stewart* is to start at the level of the trial court and consider the plaintiff's evidentiary burden in a section 523 action, what constitutes a bankruptcy court's findings of fact, and separately its conclusions of law. In a nondischargeability action the plaintiff has the burden of proof by a preponderance of the evidence.[55] "The burden of showing something by a 'preponderance of the evidence,' the most common standard in the civil law, 'simply requires the trier of fact "to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact's existence.' "'[56] The plaintiff carries this burden by presenting the factfinder with evidence,[57] which the factfinder then evaluates and finds it to be "sufficiently probative to demonstrate the truth of the asserted proposition with the requisite degree of certainty,"[58] that is, more probable than not.

Once the parties have put their evidence into the record, the trial court will make findings of fact based on that evidence. A "finding of fact" is different from evidence in the strict sense. Specifically, a finding of fact is defined as, "a determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, usually presented at the trial or hearing."[59] Thus the trial court evaluates and weighs the evidence in the record and determines what evidence constitute the facts.

In dischargeability actions involving intent, such as the action in *Stewart*, the debtor's intent is a question of fact.[60] However, a debtor will only rarely admit that he intended to make a false representation. Therefore, courts employ a totality of the circumstances test to determine intent. Under the totality of the circumstances test, courts consider the following nonexclusive list of factors to determine a debtor's intent:[61]

(1) the length of time between the time the debtor incurred the debt and the filing of bankruptcy;

(2) whether the debtor consulted an attorney regarding bankruptcy prior to incurring the debt;

(3) the number of debts the debtor incurred;

(4) the amount of the debts;

(5) the financial condition of the debtor at the time the debtor incurred the debt;

(6) whether the debt incurred was greater than the amount to which the debtor was entitled;

(7) whether the debtor rapidly incurred the debts;

(8) whether or not the debtor had the ability to satisfy the debts;

(9) the debtor's employment prospects;

(10) the debtor's financial sophistication;

(11) whether there was a sudden change from the debtor's ordinary course of business; and

(12) whether the debtor incurred the debts for luxuries or necessities.

As the circuit court in *Stewart* pointed out, each of these factors are trees in the forest of the totality of the circumstances. Even if not directly relevant to a particular representation, the presence of the factors provides provide important context for the representations.[62] Accordingly, a creditor's counsel litigating a nondischargeability action should be prepared to present evidence concerning as many elements as possible to provide the full context for the court to consider the totality of the circumstances. Likewise, trial courts should allow such evidence, even if it does not bear directly on the misrepresentation. Such evidence is relevant to the greater context of the totality of the circumstances.[63] Attorneys and courts, however, should take care not to lose sight of the purpose of these factors: to determine the debtor's state of mind. Accordingly, the court should make an evaluation of the evidence before it, and not a strict comparison with these factors.[64]

b. <u>On Appeal</u>

As *Stewart* shows, courts of appeal can struggle with applying the correct standard of review and can instead substitute their interpretation of the evidence for that of the trial court. Typically, the appellate court reviews the trial court's findings of fact with some degree of deference.[65] Trial courts receive this deference for practical and procedural reasons. First, recreating proceedings on appeal is costly for the litigants and the courts and can render the first proceeding useless.[66] Second, the trial court is better positioned to make evidentiary determinations because the real-time nature of the proceeding is superior to a reviewing body acting solely on the basis of the written record.[67]

An appellate court's review under the clearly erroneous standard is very deferential, requiring a "definite and firm conviction that a mistake has been committed."[68] In *Anderson*, the Supreme Court explained that the clear error standard:

> plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently. The reviewing court oversteps the bounds of its duty under Rule 52(a) if it undertakes to duplicate the role of the lower court. In applying the

> clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues de novo. If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.[69]

In *Stewart*, the circuit court reversed the BAP for weighing the evidence and substituting its own judgment for that of the bankruptcy court.[70] Ironically, however, the circuit court came close to doing the same thing, stating that "rather than reassigning weight to witness testimony when it is apparent the trier of fact considered it and chose to assign it little weight, the proper remedy is to remand to give the trial court the opportunity to explain its rationale."[71] While the circuit court did not specifically substitute its judgment for that of the bankruptcy court, neither did it defer to the bankruptcy court's determination of the evidence. Rather, the circuit court remanded for the purpose of requiring the bankruptcy court to further justify itself, its holding, and its reasoning. Courts on appeal should avoid this type of second guessing. As the Supreme Court has stated, "a finding that is 'plausible' in light of the full record—even if another is equally or more so—must govern."[72]

VII. Conclusion

Stewart can serve as a valuable lesson to litigants, trial courts, and appellate courts alike. Litigants must consider what evidence is necessary to prove their nondischargeability case and determine how best to introduce that evidence into the record. Trial courts should consider the totality of the circumstances when making factual determinations and not view the evidence so narrowly that they fail to consider the full context of the creditor's claims. Appellate courts should give the trial courts the deference to which they are entitled, without second-guessing the factfinder.

NOTES:

[1]See generally In re Woods, 616 B.R. 803, 814 (Bankr. N.D. Okla. 2020) ("rarely, if ever, will a debtor admit his or her intent to deceive while under oath"); In re Adesanya, 613 B.R. 808, 831 n.17 (Bankr. E.D. Pa. 2020) (same); In re LaPace, 614 B.R. 911, 916, 68 Bankr. Ct. Dec. (CRR) 107 (Bankr. M.D. Fla. 2020) (same).

[2]Cancer Research Technology Ltd. v. Barr Laboratories, Inc., 637 F.3d 1293, 1297, 97 U.S.P.Q.2d 1894 (Fed. Cir. 2011) (Dyk, J., dissenting) (calling the totality of the circumstances test "amorphous"); In re White, 512 B.R. 822, 827 (Bankr. N.D. Miss. 2014) (same); In re DSC, Ltd., 387 B.R. 174, 178, 49 Bankr. Ct. Dec. (CRR) 239 (Bankr. E.D. Mich. 2008) (same).

[3]In re Stewart, 948 F.3d 509, Bankr. L. Rep. (CCH) P 83485 (1st Cir. 2020).

[4]948 F.3d at 515.

[5]948 F.3d at 515.

[6]948 F.3d at 515–16.

[7]948 F.3d at 516.

[8]948 F.3d at 516.

[9]948 F.3d at 516.

[10]948 F.3d at 516.

[11]948 F.3d at 516.

[12]948 F.3d at 517.

[13]948 F.3d at 517.

[14]948 F.3d at 517.

[15]948 F.3d at 517.

[16]948 F.3d at 516.

[17]948 F.3d at 517.

[18]948 F.3d at 517.

[19]948 F.3d at 517.

[20]948 F.3d at 514, 518.

[21]948 F.3d at 518.

[22]948 F.3d at 517.

[23]948 F.3d at 517.

[24]948 F.3d at 518.

[25]The bankruptcy court presumed for purposes of its analysis that the plaintiffs could pierce the corporate veil.

[26]948 F.3d at 518.

[27]948 F.3d at 518.

[28]948 F.3d at 522–523.

[29]948 F.3d at 522–523.

[30]948 F.3d at 518–519.

[31]948 F.3d at 519.

[32]948 F.3d at 519.

[33]948 F.3d at 519.

[34]948 F.3d at 519.

[35]948 F.3d at 519.

[36]948 F.3d at 519, quoting Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573, 105 S. Ct. 1504, 84 L. Ed. 2d 518, 37 Fair Empl. Prac. Cas. (BNA) 396, 36 Empl. Prac. Dec. (CCH) P 35058, 1 Fed. R. Serv. 3d 1 (1985).

[37]948 F.3d at 520–22.

[38]948 F.3d at 521.

[39]948 F.3d at 522.

[40]948 F.3d at 522.

[41]948 F.3d at 522.

[42]948 F.3d at 522.

[43]948 F.3d at 522.

[44]948 F.3d at 523.

[45]948 F.3d at 523.

[46]948 F.3d at 523.

[47]948 F.3d at 523.

[48]948 F.3d at 523. The circuit court had previously found that the plaintiffs waived their arguments concerning the debtor's representations concerning the company's financial condition and relationships with its subcontractors. 948 F.3d at 523, n.7.

[49]948 F.3d at 525.

[50]948 F.3d at 526.

[51]948 F.3d at 526.

[52]948 F.3d at 526, quoting Restatement (Second) of Torts § 546 cmt. a).

[53]948 F.3d at 526 (quotations omitted).

[54]948 F.3d at 526.

[55]Grogan v. Garner, 498 U.S. 279, 286–87, 111 S. Ct. 654, 112 L. Ed. 2d 755, 21 Bankr. Ct. Dec. (CRR) 342, 24 Collier Bankr. Cas. 2d (MB) 1, Bankr. L. Rep. (CCH) P 73746A, 70 A.F.T.R.2d 92-5639 (1991).

[56]Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622, 113 S. Ct. 2264, 124 L. Ed. 2d 539, 16 Employee Benefits Cas. (BNA) 2265 (1993) (quoting In re Winship, 397 U.S. 358, 371–372, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) (Harlan, J., concurring) (brackets in original)).

[57]"Evidence" being defined as "something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact." Oliver v. Colvin, 2014 WL 941820 at *1 n. 3 (W.D. Wis. 2014) (quoting Black's Law Dictionary 635 (9th ed. 2009)).

[58]Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 622, 113 S. Ct. 2264, 124 L. Ed. 2d 539, 16 Employee Benefits Cas. (BNA) 2265 (1993)

[59]Oliver v. Colvin, 2014 WL 941820at *1 n. 3 (W.D. Wis. 2014) (quoting Black's Law Dictionary 708); Littlepage v. Trejo, 2017 WL 3611773 at *4 (W.D. Tex. 2017); Natural Resources Defense Council, Inc. v. U.S. Food and Drug Admin., 760 F.3d 151, 167 (2d Cir. 2014) ("Thus a 'finding' traditionally occurs after adversarial parties are given notice of a hearing and an opportunity to be heard there, at least if hearings are contemplated as part of the administrative scheme."); Nor-Am Agr. Products, Inc. v. Hardin, 435 F.2d 1151, 1165–66, 2 Env't. Rep. Cas. (BNA) 1016, 1 Envtl. L. Rep. 20032 (7th Cir. 1970) (stating, somewhat unhelpfully, that a finding of fact "is a finding based on the 'factfinding tribunal's experience with the mainsprings of human conduct.").

[60]See Cai v. Shenzhen Smart-In Indus. Co., 571 Fed. Appx 580, 582 (9th Cir. 2014) (finding that a debtor's intent to deceive under § 523(a)(2)(A) is a question of fact). See also Pullman-Standard v. Swint, 456 U.S. 273, 288, 102 S. Ct. 1781, 72 L. Ed. 2d 66, 28 Fair Empl. Prac. Cas. (BNA) 1073, 28 Empl. Prac. Dec. (CCH) P 32619, 33 Fed. R. Serv. 2d 1501 (1982) (collecting cases where the Supreme Court considered intent to be a question of fact).

[61]In re Kukuk, 225 B.R. 778, 786 (B.A.P. 10th Cir. 1998).

[62]In re Stewart, 948 F.3d 509, 525, Bankr. L. Rep. (CCH) P 83485 (1st Cir. 2020) ("rather than disposing of this evidence as support for a stand-alone argument insufficient to show fraudulent intent, this evidence should have been viewed as context for the aforementioned misrepresentations.")

[63]948 F.3d at 525.

[64]In re Murphy, 190 B.R. 327, 334, 34 Collier Bankr. Cas. 2d (MB) 1467, Bankr. L. Rep. (CCH) P 76784 (Bankr. N.D. Ill. 1995)); accord Hashemi, 104 F.3d at 1122 ("[T]hese factors are nonexclusive; none is dispositive, nor must a debtor's conduct satisfy a minimum number in order to prove fraudulent intent."); Kountry Korner, 221 B.R. at 272 n. 8 ("the Court is not interested in engaging in 'factor counting,' " as it is the subjective intent of the debtor that must be shown); Herrig, 217 B.R. at 897 (factors are merely guidelines which are not to be applied as a litmus test, and courts should not engage in simple mathematics to determine dischargeability based on the number of factors met); Touchard, 121 B.R. at 401 & n. 5 (factors serve as guidance only); In re Faulk, 69 B.R. 743, 747 (Bankr. N.D. Ind. 1986) (same); Carpenter, 53 B.R. at 730 (same).

[65]Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California, 508 U.S. 602, 623, 113 S. Ct. 2264, 124 L. Ed. 2d 539, 16 Employee Benefits Cas. (BNA) 2265 (1993).

[66]508 U.S. at 623.

[67]508 U.S. at 623; Holton v. City of Thomasville School Dist., 425 F.3d 1325, 1350, 202 Ed. Law Rep. 54 (11th Cir. 2005).

[68]508 U.S. at 623.

[69]Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573–74, 105 S. Ct. 1504, 84 L. Ed. 2d 518, 37 Fair Empl. Prac. Cas. (BNA) 396, 36 Empl. Prac. Dec. (CCH) P 35058, 1 Fed. R. Serv. 3d 1 (1985)).

[70]In re Stewart, 948 F.3d 509, 522, Bankr. L. Rep. (CCH) P 83485 (1st Cir. 2020) ("the BAP proceeded to find that 'the record viewed as a whole, supports a conclusion that [the debtor] impliedly made such false representations.' Given the complexity of the record and the contested nature of the testimony, we leave this sort of factfinding to the trier of fact.").

[71]In re Stewart, 948 F.3d 509, 527, Bankr. L. Rep. (CCH) P 83485 (1st Cir. 2020)

[72]Cooper v. Harris, 137 S. Ct. 1455, 1465, 197 L. Ed. 2d 837 (2017).

