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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP Nos. NC-12-1087-HPaMk
		)	NC-12-1180-HPaMk
6	PAUL DENBESTE and MELODY	)	(Related Appeals)
	DENBESTE,	)	
7		)	Bk. No. 10-13558
	Debtors.	)	
8	_____	)	Adv. No. 11-01184
		)	
9	PAUL DENBESTE; MELODY	)	
	DENBESTE,	)	
10		)	
	Appellants,	)	
11		)	
	v.	)	<b>M E M O R A N D U M<sup>1</sup></b>
12		)	
	MANDY POWER, d/b/a Judgment	)	
13	Enforcement USA,	)	
		)	
14	Appellee.	)	
	_____	)	

Argued and Submitted on October 18, 2012  
at San Francisco, California

Filed - November 6, 2012

Appeal from the United States Bankruptcy Court  
for the Northern District of California

Honorable Alan Jaroslovsky, Chief Bankruptcy Judge, Presiding

Appearances: James Patrick Chandler of Law Offices of James P.  
Chandler, argued for Appellants; Malcolm  
Leader-Picone of Bartlett, Leader-Picone & Young,  
LLP, argued for Appellee.

Before: HOLLOWELL, PAPPAS, and MARKELL, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.

1 Paul and Melody DenBeste (the Debtors) appeal two orders of  
2 the bankruptcy court: the first is the denial of the Debtors'  
3 motion to dismiss an adversary proceeding, brought by their  
4 principal creditor, to deny them a discharge (BAP No.  
5 NC-11-1087); the second is the bankruptcy court's post-trial  
6 judgment denying them a discharge under § 727(a)(4)(A)<sup>2</sup> for  
7 knowingly and fraudulently making false oaths on their bankruptcy  
8 schedules (BAP No. NC-11-1180). We AFFIRM both orders.

9 **I. FACTS**

10 In October 2005, several judgments were entered in  
11 California state court against the Debtors in favor of John and  
12 Bradford DeMeo (the Judgments). The DeMeos assigned the  
13 Judgments to Walter Steinmann dba Judgment Enforcement USA, and  
14 Steinmann subsequently assigned the Judgments to Mandy Power dba  
15 Judgment Enforcement USA (Power) on April 14, 2010.

16 Power attempted to collect on the Judgments, the balance due  
17 on which was approximately \$56,000, to no avail. On August 20,  
18 2010, at Power's request, the state court appointed a receiver  
19 (Receiver), stating that it was "loath to order the drastic  
20 remedy of receivership, but it is obvious that all other methods  
21 of collection have been met with stubborn refusal to abide by the  
22 mandates of the Court's lawful orders and judgment."<sup>3</sup>

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24 <sup>2</sup> Unless otherwise indicated, all chapter and section  
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.  
26 All "Rule" references are to the Federal Rules of Bankruptcy  
27 Procedure, Rules 1001-9037.

28 <sup>3</sup> As part of its order appointing the Receiver, the state  
court addressed the Debtors' ongoing contention that the

(continued...)

1 Thereafter, the Receiver seized \$66,000 from the Debtors and the  
2 Debtors were required to show cause why the Judgments should not  
3 have been satisfied by the seized funds.<sup>4</sup> On September 15, 2010,  
4 the day before the state court stated it would issue a decision  
5 on the show cause order, the Debtors filed a chapter 13  
6 bankruptcy petition.

7 The Debtors filed their bankruptcy schedules and statement  
8 of financial affairs on September 29, 2010 (Schedules). On  
9 October 21, 2010, the case was converted at the Debtors' request  
10 to chapter 7. The § 341 meeting of creditors was initially held  
11 on November 5, 2010, and continued to December 7, 2010. Power  
12 attended the December 7th § 341 meeting.

13 At the start of the meeting, the Debtors took an oath to  
14 testify truthfully. They testified that they had reviewed the  
15 Schedules and that the Schedules accurately reflected all their  
16 assets and creditors with the exception of one omission, which  
17 required correction. The Debtors stated that they left off a  
18 60-acre parcel of real property in Lake County, California (the  
19 Property), for which they asserted they paid \$125,000 and still  
20 owed \$125,000. However, in response to questions from the  
21

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22 <sup>3</sup>(...continued)

23 Judgments were void or unenforceable because Power (or its  
24 assignor) lacked standing due to noncompliance with California  
25 law regarding the filing of fictitious business name statements.  
26 The state court determined there was sufficient documentation  
27 supporting Power's right, as the lawfully designated assignee of  
28 the Judgments, to collect them.

<sup>4</sup> The majority of the Debtors' seized funds included deposit  
accounts associated with a family trust.

1 Trustee, as well as Power, the Debtors revealed that they also  
2 had bank accounts, horses, vehicles, interests in their corporate  
3 business, DenBeste Yard & Garden (the Corporation), and in a  
4 family trust, the DenBeste Family Trust (the Trust), that were  
5 omitted from the Schedules.

6 While the Debtors admitted they had several vehicles –  
7 including a Hummer, BMW, Corvette, and Chevy truck – they  
8 asserted those vehicles were owned by the Corporation. When  
9 Power questioned the Debtors as to why they had failed to list  
10 the Judgments, her attachments or the appointment of the Receiver  
11 in their statement of financial affairs and Schedules, or that  
12 Mr. DenBeste was a beneficiary to the Trust, the Debtors stated  
13 that they thought the information was listed on their Schedules.<sup>5</sup>

14 Due to the Debtors' omissions on the Schedules, the Trustee  
15 commented that: "It's pretty clear these Debtors have run a  
16 little fast and loose with their statement under penalty of  
17 perjury on these schedules, as well as their statements today"  
18 and that "they've probably given . . . enough ammunition" to  
19 bring an action to deny their discharge. The Trustee continued  
20 the § 341 meeting to December 21, 2010, in order for the Debtors  
21 to provide further information about their assets and make  
22 appropriate amendments to their Schedules. According to the  
23 bankruptcy court's docket, no amendments to the Debtors'  
24 Schedules were filed until eight months later in August 2011.

25 Power filed, on July 6, 2011, an adversary proceeding

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26  
27 <sup>5</sup> The Receiver was pursuing the funds from the Trust. It  
28 was not until sometime in March 2012, that the Trustee determined  
that the funds were not estate property.

1 against the Debtors alleging they knowingly and fraudulently  
2 filed materially false bankruptcy schedules and should be denied  
3 a discharge under § 727(a)(3) and (4) (the Complaint).<sup>6</sup> Power  
4 alleged that the Debtors failed to schedule various assets,  
5 including the Property, bank accounts, horses, vehicles  
6 (including the Hummer, Corvette and a Harley Davidson  
7 motorcycle), and their beneficial interest in the Trust.

8 On August 10, 2011, the Debtors filed an amended petition  
9 and amended schedules (Amended Schedules). Although the Amended  
10 Schedules corrected some of the omissions brought up at the § 341  
11 meeting and referenced in the Complaint, they did not list the  
12 Debtors' interests in the Trust or the Corporation, nor any  
13 additional vehicles.

14 On August 26, 2011, the Debtors filed a motion to dismiss  
15 the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6) or  
16 in the alternative, a Motion for Summary Judgment (Motion to  
17 Dismiss). The Debtors asserted that they were entitled to  
18 judgment as a matter of law on the basis that Power lacked  
19 standing to pursue the Complaint because: (1) the Judgments were  
20 invalid as they lacked merit ("the judgments on which plaintiff  
21 bases her claims were not the result of any conduct by debtors,  
22 but by unmitigated, unrestrained and outrageous gamesmanship on  
23 the part of the underlying claimants"); (2) the assignment of the  
24 Judgments to her were invalid because of her failure to file a  
25 fictitious business name statement under requirements of

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26  
27  
28 <sup>6</sup> Power sought and was granted two extensions of time in  
which to file the Complaint.

1 California business law; (3) Power could show no "injury in fact"  
2 traceable to the Debtors' conduct. Additionally, the Debtors  
3 asserted that the allegations in the Complaint were rendered moot  
4 by the Amended Schedules.

5 In her response to the Motion to Dismiss, Power provided the  
6 state court's order appointing the Receiver, which reaffirmed the  
7 validity of the Judgments and that Power had standing despite the  
8 Debtors' allegation that she (or her assignor) did not properly  
9 file a fictitious business name statement. Power also provided  
10 the bankruptcy court with copies of the recording of her  
11 fictitious business name statement.

12 After the Debtors filed a reply, a hearing on the Motion to  
13 Dismiss was held on October 14, 2011. At the close of the  
14 hearing, the bankruptcy court denied the Motion to Dismiss,  
15 finding that: (1) Power sufficiently alleged in the Complaint  
16 that she was a creditor of the Debtors having been assigned the  
17 Judgments, and (2) that even if the issue of compliance with  
18 state law was relevant to the Complaint, Power submitted  
19 sufficient documentation establishing her compliance with  
20 California's fictitious business name filing requirements. The  
21 bankruptcy court set a trial on the Complaint for March 8, 2012.

22 In December 2011, Power served discovery requests on the  
23 Debtors. The Debtors responded on January 27, 2012. The Debtors  
24 answered each question by reiterating the arguments they made in  
25 their Motion to Dismiss and challenging the merits of, and  
26 Power's right to collect, the Judgments. Also on January 27,  
27 2012, the Debtors appealed the denial of the Motion to Dismiss.

28 The bankruptcy court held a trial on the Complaint on

1 March 8, 2012. At trial, Power entered into evidence documents  
2 from the Department of Motor Vehicles (DMV) that demonstrated  
3 there were nine vehicles registered in the name of the Debtors,  
4 including the Hummer, Corvette, two Harley Davidson motorcycles,  
5 three trailers, and two trucks. Mr. DenBeste testified that the  
6 Corporation owned the Hummer, Corvette, two trailers and two  
7 trucks, but he provided no evidence to support that testimony.  
8 The Debtors testified that they provided all their information to  
9 the Trustee and, although they again testified that they reviewed  
10 the Amended Schedules before signing them, they "did not notice"  
11 that certain assets, including the motorcycles, the Corporation,  
12 and the Trust were not listed.

13 Additionally, Mr. DenBeste made clear that he vigorously  
14 disputed the validity of the Judgments and Power's ability to  
15 collect them:

16 POWER'S ATTORNEY: In issuing the order appointing the  
17 receiver, the Sonoma County  
18 Superior Court overruled your  
objections to the validity of the  
judgments, correct?

19 MR. DENBESTE: Correct.

20 POWER'S ATTORNEY: So you understand that the issue  
21 has been litigated and resolved in  
an order, correct?

22 MR. DENBESTE: Time-barred by fee arbitration.

23 POWER'S ATTORNEY: Okay. And it is your intention, is  
24 it not, Mr. DenBeste, to continue  
25 to do everything in your power to  
resist any effort of Ms. Power to  
collect on these four judgments,  
correct?

26 MR. DENBESTE: Time-barred by fee arbitration.

27 POWER'S ATTORNEY: Is that a yes?  
28

1 MR. DENBESTE: Yes.

2 Trial Tr. (March 8, 2012) at 45:4-18.

3 After the trial, on March 19, 2012, the bankruptcy court  
4 issued a written decision (Memorandum Decision), finding that the  
5 Debtors' Schedules were "grossly false, and the [A]mended  
6 [S]chedules only slightly less so." It further found that the  
7 Debtors concealed their assets with the intent to "thwart Power  
8 in her efforts to enforce the [J]udgments lawfully assigned to  
9 her." Accordingly, the bankruptcy court determined that the  
10 Debtors were not entitled to a discharge pursuant to  
11 § 727(a)(4)(A) and (a)(2)(B). The bankruptcy court entered a  
12 judgment denying the Debtors' discharge the same day. The  
13 Debtors timely appealed.

14 **II. JURISDICTION**

15 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
16 § 1334 and 157(b)(2)(J). We have jurisdiction under 28 U.S.C.  
17 § 158.

18 **III. ISSUES**

19 Did the bankruptcy court err in denying the Motion to  
20 Dismiss?

21 Did the bankruptcy court err in denying the Debtors a  
22 discharge?

23 **IV. STANDARDS OF REVIEW**

24 "[W]hile denial of a motion to dismiss an adversary  
25 proceeding for failure to state a claim is generally  
26 interlocutory and thus rarely reviewed by us, any review of such  
27 a denial is de novo." Waaq v. Permann (In re Waaq), 418 B.R.  
28 373, 376-77 (9th Cir. BAP 2009); see also Wirum v. Warren



1 (In re Warren), 568 F.3d 1113, 1116 (9th Cir. 2009).

2 We apply the following standard of review to a judgment on  
3 an objection to discharge: (1) the bankruptcy court's  
4 determinations of the historical facts are reviewed for clear  
5 error; (2) the selection of the applicable legal rules under  
6 § 727 is reviewed de novo; and (3) the application of the facts  
7 to those rules requiring the exercise of judgments about values  
8 animating the rules is reviewed de novo. Retz v. Samson  
9 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010), citing Searles  
10 v. Riley (In re Searles), 317 B.R. 368, 373 (9th Cir. BAP 2004)  
11 aff'd, 212 Fed. Appx. 589 (9th Cir. 2006).

12 Intent is a factual matter reviewed for clear error. See,  
13 e.g., Beauchamp v. Hoose (In re Beauchamp), 236 B.R. 727, 729  
14 (9th Cir. BAP 1999). A factual finding is clearly erroneous if  
15 it is "illogical, implausible, or without support in the record."  
16 In re Retz, 606 F.3d at 1196, citing United States v. Hinkson,  
17 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009)(en banc).

## 18 V. DISCUSSION

### 19 A. Motion to Dismiss

20 Neither the denial of a motion to dismiss nor the denial of  
21 a motion for summary judgment is a final order capable of  
22 appellate review. In re Waag, 418 B.R. at 376; Lum v. City &  
23 Cnty. Of Honolulu, 963 F.2d 1167, 119-70 (9th Cir. 1992).  
24 Generally, an order is final, rather than interlocutory, only  
25 when it fully adjudicates the issues raised and clearly manifests  
26 the court's intent to be its final act in the matter. Brown v.  
27 Wilshire Credit Corp. (In re Brown), 484 F.3d 1116, 1120 (9th  
28 Cir. 2007) (quoting Slimick v. Silva (In re Slimick), 928 F.2d

1 304, 307 (9th Cir. 1990)). However, interlocutory orders merge  
2 into a final order, when it is eventually entered; a timely  
3 appeal taken from a final order may cover both the final order as  
4 well as any interlocutory order leading up to the entry of the  
5 final order. United States v. Real Prop. Located at 475 Martin  
6 Ln., Beverly Hills, CA, 545 F.3d 1134, 1141 (9th Cir. 2008).  
7 Consequently, the bankruptcy court's order denying the Motion to  
8 Dismiss merged into the bankruptcy court's judgment entered after  
9 trial.

10 Nevertheless, the merger of an interlocutory dismissal order  
11 into a final order does not necessarily mean that the dismissal  
12 order will be reviewed on appeal. Review of a motion to dismiss  
13 may be denied if, at trial, there is adequate evidence presented  
14 to support the judgment. Bennett v. Pippin, 74 F.3d 578, 585  
15 (5th Cir. 1996), cert. denied, 519 U.S. 817 (after a plaintiff  
16 prevails on trial on the merits, the sufficiency of the  
17 allegations in the complaint is irrelevant and moot).

18 Additionally, the Ninth Circuit has held that the denial of a  
19 motion for summary judgment is not reviewable on appeal from a  
20 final judgment entered after a full trial on the merits.

21 Lorricchio v. Legal Servs. Corp., 833 F.2d 1352, 1358-59 (9th  
22 Cir. 1987); see also Lum, 963 F.2d at 1170 (review of denial of  
23 summary judgment after trial on merits is pointless academic  
24 exercise); Abbott Marie Jones, Should The Exception Be The Rule?  
25 Advocating For Appellate Review Of Summary Judgment Denials,  
26 72 Ala. Law. 38 (Jan. 2011); Jesse Leigh Jenike-Godshalk,  
27 Comment, Appealed Denials And Denied Appeals: Finding A Middle  
28 Ground In The Appellate Review Of Denials Of Summary Judgment

1 Following A Full Trial On The Merits, 78 U. Cinn. L. Rev. 1595  
2 (Summer 2010).

3       The bankruptcy court's denial of the Motion to Dismiss  
4 decided nothing other than that: (1) the allegations in the  
5 Complaint were sufficient to state a claim for relief; and,  
6 (2) there were genuine issues of fact, which required a trial on  
7 the merits of the Complaint. Since the trial has occurred, there  
8 is no need to review whether that decision was erroneous,  
9 particularly because, as we discuss below, the bankruptcy court  
10 did not err in entering judgment in favor of Power.

11       However, we note that it may be appropriate to address the  
12 Debtors' argument regarding Power's standing, as questions of  
13 standing must be supported at each stage of litigation.<sup>7</sup> Warren  
14 v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1140 (9th Cir.  
15 2003). At the Motion to Dismiss stage, Power was only required  
16 to show that the facts, as alleged in the Complaint, and if  
17 proved, would confer standing. Id.

18       The Complaint alleged that: (1) Power had been assigned the  
19 Judgments, (2) the Receiver had been appointed to aid Power's  
20 collection efforts on the Judgments; and, (3) the state court had  
21 issued an order directing the Debtors to show cause why funds  
22 seized by the Receiver should not be used to satisfy the  
23 Judgments. These allegations were sufficient to establish that  
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25       <sup>7</sup> The Debtors did not assert at the trial any argument, or  
26 present any evidence, that Power lacked standing. Instead,  
27 Mr. DenBeste testified that the state court order appointing the  
28 Receiver overruled and resolved the Debtors' objections to the  
validity and enforceability of the Judgments. See Trial Tr.  
(Mar. 8, 2012) at 45:4-18.

1 Power was a creditor of the Debtors with standing to pursue the  
2 § 727 action. See 11 U.S.C. § 101(10)(A); § 727(c)(1); see also,  
3 Cal. Civ. Code § 954 (a judgment creditor may assign a judgment  
4 to a third party); Carter v. Brooms (In re Brooms), 447 B.R. 258,  
5 265 (9th Cir. BAP 2011) (an assignee acquires all rights and  
6 remedies possessed by the assignor for the enforcement of the  
7 debt, subject to the defenses that the judgment debtor had  
8 against the assignor).

9 As noted by numerous courts, the integrity and viability of  
10 the bankruptcy process depend on the full, candid and complete  
11 disclosure by debtors of their financial affairs. In re Searles,  
12 317 B.R. at 378; Garcia v. Coombs (In re Coombs), 193 B.R. 557,  
13 563 (Bankr. S.D. Cal. 1996). Indeed, the Bankruptcy Code and  
14 Rules impose an affirmative duty on the debtor to disclose  
15 assets. 11 U.S.C. § 521(a)(1); Rules 1007, 1007-1, 1008;  
16 Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 785 (9th  
17 Cir. 2001).

18 [T]he very purpose of certain sections of the law, like  
19 11 U.S.C. § 727(a)(4)(A), is to make certain that those  
20 who seek the shelter of the bankruptcy code do not play  
21 fast and loose with their assets or with the reality of  
22 their affairs. The statutes are designed to insure  
23 that complete, truthful, and reliable information is  
24 put forward at the outset of the proceedings, so that  
25 decisions can be made by the parties in interest based  
26 on fact rather than fiction . . . '[t]he successful  
27 functioning of the bankruptcy act hinges both upon the  
28 bankrupt's veracity and his willingness to make a full  
disclosure.'

25 Kavanagh v. Leija (In re Leija), 270 B.R. 497, 501 (Bankr. E.D.  
26 Cal. 2001)(citations omitted). Consequently, as a creditor of  
27 the Debtors, Power is sufficiently harmed by any failure on the  
28 part of the Debtors to provide truthful information in their

1 bankruptcy case, providing her with standing to maintain the  
2 Complaint.<sup>8</sup> Thus, to the extent the issue of standing is  
3 reviewable here, we conclude that the bankruptcy court did not  
4 err in denying the Motion to Dismiss.

5 **B. Denial of Discharge**

6 A denial of a discharge is an act that must not be taken  
7 lightly. Consequently, § 727 must be construed liberally in  
8 favor of the debtor and against the objector. Roberts v. Erhard  
9 (In re Roberts), 331 B.R. 876, 882 (9th Cir. BAP 2005) (citing  
10 First Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1342  
11 (9th Cir. 1986)). However, the opportunity for a fresh start is  
12 available only to the "honest but unfortunate debtor." Merena v.  
13 Merena (In re Merena), 413 B.R. 792, 807 citing Grogan v. Garner,  
14 498 U.S. 279, 286-87 (1990). Therefore, a party objecting to a  
15 debtor's discharge must prove by a preponderance of the evidence  
16 that the debtor's actions or conduct fall within one of the  
17 exceptions to discharge set forth in § 727. Khalil v. Developers  
18 Sur. & Indem. Co. (In re Khalil), 379 B.R. 163, 172 (9th Cir. BAP

19  
20

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21 <sup>8</sup> Both bankruptcy trustees and creditors may object to  
22 discharge (in fact, under § 704(6), trustees have a duty to do so  
23 if advisable). However, the reality is that trustees "commonly  
24 take a back seat when a creditor objects to discharge in order to  
25 conserve resources." Jacobson v. Robert Speece Props., Inc.  
26 (In re Speece), 159 B.R. 314, 322 n.12 (Bankr. E.D. Cal. 1993).

27 The Debtors also made an argument that joinder of the  
28 Trustee to the Complaint was necessary. See Appellants' Opening  
Br., NC-11-1180. This argument was not made to the bankruptcy  
court at trial (or in the Debtors' Motion to Dismiss).  
Accordingly, the argument is waived and we do not address the  
merits of the argument. Golden v. Chicago Title Ins. Co.  
(In re Choo), 273 B.R. 608, 613 (9th Cir. BAP 2002).

1 2007), aff'd, 578 F.3d 1167, 1168 (9th Cir. 2009).

2 The Bankruptcy Code provides that a chapter 7 debtor shall  
3 be granted a discharge, unless "the debtor knowingly and  
4 fraudulently, in or in connection with the case - (A) made a  
5 false oath or account." 11 U.S.C. § 727(a)(4)(A). The  
6 "fundamental purpose of § 727(a)(4)(A) is to insure that the  
7 trustee and creditors have accurate information without having to  
8 conduct costly investigations." In re Retz, 606 F.3d at 1196  
9 citing Fogal Legware of Switz., Inc. v. Wills (In re Wills),  
10 243 B.R. 58, 63 (9th Cir. BAP 1999). To succeed on a  
11 § 724(a)(4)(A) claim, the objecting party must demonstrate that:  
12 (1) a false oath or statement was made by the debtor;  
13 (2) knowingly and fraudulently; (3) which was material to the  
14 course of the bankruptcy proceedings. Id.; In re Roberts,  
15 331 B.R. at 882.

16 A false oath or statement is made when it occurs in the  
17 debtor's schedules or at an examination during the course of the  
18 proceedings. In re Roberts, 331 B.R. at 882. The Debtors  
19 testified at the § 341 meeting that their Schedules, signed under  
20 penalty of perjury, accurately reflected all their assets and  
21 liabilities except for the omission of the Property, which they  
22 stated was fully encumbered. However, it was later revealed  
23 during the meeting that they also omitted numerous other assets.  
24 On their Amended Schedules, the Debtors listed the Property,  
25 which turned out to be unencumbered, four bank accounts, and  
26 three horses, but they still failed to list all the vehicles  
27 discussed at the meeting, or their interests in the Corporation  
28 and the Trust (even though it was much later determined not to be

1 estate property).

2 A debtor's bankruptcy schedules must be verified or contain  
3 an unsworn declaration under penalty of perjury. 28 U.S.C.  
4 § 1746; Rule 1008. Accordingly, a false statement or omission in  
5 a debtor's schedules is a false oath under § 727(a)(4)(A). As a  
6 result, the bankruptcy court did not err when it found that the  
7 first element of § 727(a)(4)(A) was satisfied.

8 A false oath is "'material,' and thus sufficient to bar  
9 discharge if it bears a relationship to the bankrupt's business  
10 transactions or estate, or concerns the discovery of assets,  
11 business dealings, or the existence and disposition of his  
12 property." Mertz v. Rott, 955 F.2d 596, 598 (8th Cir. 1992);  
13 In re Retz, 606 F.3d at 1198. An omission or misstatement that  
14 "detrimentally affects the administration of the estate is  
15 material." In re Roberts, 331 B.R. at 883. The Debtors'  
16 omission of several significant assets on their Schedules as well  
17 as on their Amended Schedules prevented the Trustee and creditors  
18 from having accurate information, which affected the  
19 administration of the estate and the Trustee's and creditors'  
20 understanding of the Debtors' financial affairs and transactions.  
21 Therefore, the omissions were appropriately found by the  
22 bankruptcy court to be material.

23 The last element is intent. The Debtors must have  
24 "knowingly and fraudulently" made the omissions on their  
25 Schedules. A debtor "acts knowingly if he or she acts  
26 deliberately and consciously." In re Khalil, 379 B.R. at 173  
27 (quoting In re Roberts, 331 B.R. at 883). Here, the Debtors  
28 acted deliberately and consciously because they listed their

1 assets on their Schedules and answered questions at the § 341  
2 meeting relating to any omissions (other than the Property) in  
3 the negative when they actually had other significant assets,  
4 which were not listed on their Schedules.

5 The element of fraudulent intent is satisfied if the debtor  
6 made a false statement or omission in his bankruptcy schedules  
7 that he knew at the time to be false and that he made with the  
8 intention and purpose of deceiving creditors. Id. at 175. The  
9 Debtors assert that “[t]here was absolutely no evidence presented  
10 that the alleged omissions were anything more than inadvertent  
11 errors” or constituted an intent to defraud. Appellants’ Opening  
12 Br. at 8, 16. The bankruptcy court found otherwise, and after  
13 reviewing the record, we conclude that the bankruptcy court’s  
14 finding was not illogical, implausible or unsupported by the  
15 record.

16 Intent may be proven through “circumstantial evidence or by  
17 inferences drawn from a debtor’s course of conduct.” In re Retz,  
18 606 F.3d at 1199; In re Khalil, 578 F.3d at 1168. An example of  
19 circumstantial evidence suggesting an intent to defraud may be  
20 found where the debtor fails to clear up all inconsistencies and  
21 omissions, even having had an opportunity to do so, such as by  
22 filing amended schedules. See In re Khali, 379 BR. at 176. Here,  
23 the Debtors did not file the Amended Schedules until eight months  
24 after the § 341 meeting and after Power had filed the Complaint.<sup>9</sup>

25

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26 <sup>9</sup> The Debtors assert that the delay in amending their  
27 Schedules was because the Receiver had seized their financial  
28 records and would not return them. However, it is somewhat  
(continued...)



1 The record indicates that the Debtors' omissions were not  
2 the result of honest mistake promptly corrected by an amendment.  
3 The Amended Schedules failed to clear up all inconsistencies or  
4 omissions; they did not reflect the Debtors' ownership of several  
5 vehicles, which were, according to D.V. records, registered in  
6 their names. Furthermore, although the issue of the vehicles and  
7 motorcycles, as well as their interests in the Corporation and  
8 the Trust, were brought up at the § 341 meeting, the Debtors did  
9 not endeavor to ensure those items were included on the Amended  
10 Schedules. Instead, they insisted that the D.V. records were  
11 incorrect and that the Hummer, Corvette, two trailers and two  
12 trucks were owned by the Corporation and that they had discussed  
13 this with the Trustee. Still, they provided no evidence to  
14 demonstrate that the Corporation paid for or owned the vehicles.  
15 More importantly, simply providing information to the Trustee  
16 does not satisfy the Debtors' burden to disclose their assets on  
17 their bankruptcy schedules. In re Searle, 317 BR. at 377 (proper  
18 method of correcting any inaccuracy or omission must be through  
19 amendments in plain view of all parties in interest).

20 Debtors have a duty, throughout the bankruptcy case, to  
21 ensure that their bankruptcy schedules are accurate. Id. In  
22 this case, the Debtors' lack of attention in correcting any  
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24 <sup>9</sup>(...continued)  
25 disingenuous to argue that the Schedules could not have been  
26 promptly amended because they lacked information. Some of the  
27 assets that were omitted were readily known to the Debtors, for  
28 example, their interests in the Corporation and the Trust.  
Moreover, the issue of vehicles and ownership was discussed at  
the § 341 meeting.

1 omission appears reckless, particularly after the Trustee's  
2 admonition at the § 341 meeting that the Debtors were "playing  
3 fast and loose," and because there was a challenge to their  
4 discharge. See, e.g., In re Khali, 578 F.3d at 1168  
5 (recklessness combined with other circumstantial evidence may  
6 prove fraudulent intent).

7 Finally, Mr. Densest admitted that he intended to resist any  
8 effort by Power to collect on the Judgments. Indeed, the  
9 bankruptcy court found that the Debtors' were motivated to  
10 conceal their assets because they "believe that the [Judgments  
11 assigned to [Power] were wrongly made by the state court and that  
12 the state court ruled improperly in holding that the [Judgments  
13 are enforceable. The [Debtors] therefore feel justified in  
14 obstructing their enforcement. This attitude is fully apparent  
15 in their responses to discovery." Memorandum Decision at 2.  
16 "Motive can support a finding of knowing and fraudulent intent."  
17 In re Khali, 370 BR. at 176.

18 After carefully reviewing the record, we have no difficulty  
19 concluding that the bankruptcy court did not err in finding that  
20 the Debtors knowingly and fraudulently made a false oath on their  
21 Schedules (and Amended Schedules), which materially affected the  
22 Trustee's and creditors' ability to fully determine the Debtors'  
23 financial affairs. Therefore, we AFFIRM the bankruptcy court's  
24 judgment denying the Debtors' discharge.

#### 25 VI. CONCLUSION

26 For the foregoing reasons, we AFFIRM the judgment denying  
27 the Debtors' discharge.

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