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HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	CC-07-1448-MkMoD
)		
7	JAN ERIC WEILERT and)	Bk. No.	06-12896
	DEBORAH WEILERT,)		
8)	Adv. No.	06-01077
	Debtors.)		
9	_____)		
)		
10	JAN ERIC WEILERT,)		
)		
11	Appellant,)		
)		
12	v.)	MEMORANDUM*	
)		
13	EUGENE PARKER,)		
)		
14	Appellee.)		
15	_____)		

Argued and Submitted on May 22, 2008
at Pasadena, California

Filed - September 2, 2008

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

Honorable Peter H. Carroll, Bankruptcy Judge, Presiding

Before: MARKELL, MONTALI and DUNN, Bankruptcy Judges.

*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 Eugene Parker ("Parker") paid \$168,505 for a recreational
2 vehicle ("RV") purchased from Jan Weilert RV Center and debtor,
3 Jan Eric Weilert ("Weilert"). The RV never was delivered. After
4 Parker sued in state court under several theories for relief,
5 including fraud, the parties entered into a settlement agreement
6 for \$244,000. The settlement included the execution of a
7 stipulation for judgment for \$500,000 to be entered against
8 Weilert if he defaulted under the Settlement Agreement. Parker
9 received payments totaling \$22,000 before Weilert defaulted.
10 Weilert filed for bankruptcy protection under chapter 7,¹ and the
11 stipulated judgment never was entered.

12 Parker sought to have the \$500,000 debt under the stipulated
13 judgment excepted from Weilert's discharge. Weilert raised the
14 defense that all fraud and nondischargeability claims were waived
15 by the terms of the Settlement Agreement. This appeal arises
16 from the bankruptcy court's grant of summary judgment in favor of
17 Parker on his § 523(a)(2)(A) claim. We AFFIRM.

18

19 **FACTS**

20 On July 15, 2002, Parker bought the RV from Jan Weilert RV
21 Center and Weilert, for \$160,355. Parker also ordered various
22 upgrades costing \$8,150, bringing the total purchase price to
23 \$168,505. When he signed the purchase contract, he made an
24 initial down payment of \$80,000, and he paid off the balance the
25 following month, in August 2002.

26 _____
27 ¹Unless otherwise indicated, all chapter, section, and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Weilert never delivered the RV to Parker, and he never
2 refunded the \$168,505 that Parker paid.

3 Nearly two years later, on March 30, 2004, Parker sued Jan
4 Weilert RV Center and Weilert in the Superior Court of California
5 for Riverside County ("State Court Action") under several
6 theories for relief, including fraud, breach of contract, deceit,
7 conversion, constructive trust, civil conspiracy, and accounting.

8 On March 16, 2006, the parties settled the State Court
9 Action by signing a Settlement Agreement and Release of Claims
10 (the "Settlement Agreement"), under which Weilert was to pay
11 Parker \$244,000. The Settlement Agreement recited that it was
12 "intended to fully and finally resolve all controversies between
13 and among the Settling Parties which relate to the Agreement and
14 the allegations in the Action." However, the Settlement
15 Agreement provided that the State Court Action would be dismissed
16 only "[a]t such time [as] all conditions of this Settlement
17 Agreement are complied with fully."

18 The Settlement Agreement called for Weilert to make an
19 initial payment to Parker of \$10,000 and then pay him \$3,000 a
20 month beginning April 15, 2006, until the total amount of
21 \$244,000 was paid. It provided that if Weilert defaulted on his
22 monthly payments to Parker, Parker could enter a judgment for
23 \$500,000 against Weilert, to which the parties had stipulated
24 ("Stipulated Judgment").

25 In addition, the Settlement Agreement contained a broad
26 mutual release of claims. The parties also expressly waived the
27 protection of Cal. Civil Code § 1542, which specifies that
28 general releases do not extend to unknown claims. The releases

1 of claims included in the Settlement Agreement were drafted to
2 cover unknown claims.

3 Weilert paid Parker the \$10,000 initial payment and made
4 four monthly payments of \$3,000 each, for a total of \$22,000. He
5 defaulted in or about November 2006.

6 On December 19, 2006, Weilert filed for bankruptcy relief
7 under chapter 7. The Stipulated Judgment had not been entered
8 before that date and, as far as the record shows, has never been
9 entered.

10 On March 26, 2007, Parker filed a Complaint to Determine
11 Dischargeability of Debt under § 523(a)(2)(A) in Weilert's
12 bankruptcy case, which he amended on May 22, 2007. The amended
13 complaint ("First Amended Complaint") sought to declare
14 nondischargeable the \$500,000 debt represented by the unentered
15 Stipulated Judgment. Parker claimed that the entire \$500,000,
16 rather than the amount he had actually paid for the RV, was
17 obtained by or attributable to fraud and was therefore
18 nondischargeable.²

19 On September 11, 2007, Weilert filed a Motion to Dismiss
20 Adversary Proceeding on the ground that the Settlement Agreement
21 waivers precluded relief on the First Amended Complaint. Parker
22 filed an opposition on September 21, 2007.

23
24 ²In the briefing on this appeal, Weilert claims that if
25 summary judgment in Parker's favor was appropriate, then the
26 court should not have awarded the \$500,000 in the Stipulated
27 Judgment. He claims that the bankruptcy court should have
28 awarded the amount (\$168,505) contracted and paid for the
purchase of the RV, minus the amount (\$22,000) that Weilert paid
pursuant to the Settlement Agreement, i.e., "\$146,606" [sic].
Appellant's Opening Brief at 30. This argument was not raised
before the bankruptcy court.

1 On September 25, 2007, Parker filed a Motion for Summary
2 Judgment on the First Amended Complaint seeking
3 nondischargeability of the \$500,000 debt, encompassing both the
4 original debt and the agreed-to debt after default. Weilert
5 replied on October 18, 2007 with a consolidated Opposition to
6 Motion for Summary Judgment and Cross-Motion for Summary
7 Judgment.

8 A hearing on all motions was held on November 8, 2007. The
9 judge took the matters under submission, and at a hearing on
10 November 16, 2007, he read the court's findings of fact and
11 conclusions of law into the record. At that time, the bankruptcy
12 court granted Parker's motion and denied Weilert's motions. It
13 held that "[Weilert's] debt to [Parker] evidenced by this
14 stipulated judgment is a debt for money or property obtained by
15 fraud within the scope of section 523(a)(2)[A] and is
16 nondischargeable."

17 Weilert timely appealed the bankruptcy court's orders
18 entered November 20, 2007: 1) the "Order Granting Plaintiff's
19 Motion for Summary Judgment" and 2) the "Order Denying
20 Defendant's Motion for Summary Judgment."
21

22 JURISDICTION

23 The bankruptcy court had jurisdiction under 28 U.S.C.
24 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.
25 § 158.

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1 reversed unless they are manifestly erroneous. Gen. Elec. Co. v.
2 Joiner, 522 U.S. 136, 141 (1997). Under the abuse of discretion
3 standard, we must have a definite and firm conviction that the
4 bankruptcy court committed a clear error of judgment in the
5 conclusion that it reached before reversal is appropriate.
6 S.E.C. v. Coldicutt, 258 F.3d 939, 941 (9th Cir. 2001); In re
7 Black, 222 B.R. 896, 899 (9th Cir. BAP 1998).

8
9 **DISCUSSION**

10 The first issue in this case is the dischargeability of a
11 debt in bankruptcy where the debtor may have committed fraud but
12 the alleged fraud claim has been settled before the debtor's
13 bankruptcy filing. Interpreting the Stipulated Judgment and the
14 Settlement Agreement in this case is complicated by the fact that
15 the record indicates that the original drafts of the Settlement
16 Agreement and Stipulated Judgment included language regarding
17 fraud and nondischargeability of the debts. However, the parties
18 struck that language before they signed.³

19 Weilert asserts that all fraud and nondischargeability
20 claims were waived through the Settlement Agreement. In
21

22
23 ³In the Settlement Agreement, the stricken language reads,
24 "Certain disputes have arisen between Plaintiff and Releasees
25 regarding the purchase of an RV including but not limited to 1)
26 Breach of contract by Releasees, 2) Fraud by Releasees, 3)
27 Misappropriation by Releasees, and 4) Conversion and Conspiracy
28 to Defraud by Releasees." Most of the stricken-out language in
the Stipulated Judgment is unreadable, except for the following:
"no part of the Judgment whatsoever shall be dischargeable under
any title of the Federal Bankruptcy laws, nor can any elements of
any of the causes of action be litigated in the Bankruptcy courts
of the United States of America."

1 Weilert's view, the Settlement Agreement completely replaced and
2 superseded all previous transactions and their attending
3 circumstances.

4 However, in two decisions, Archer v. Warner, 538 U.S. 314
5 (2003), and Brown v. Felsen, 442 U.S. 127 (1979), the Supreme
6 Court concluded that a bankruptcy court can look behind a
7 settlement agreement to the underlying facts to determine whether
8 the original debt was obtained by fraud and whether that original
9 fraud so infects the debt as settled as to render it
10 nondischargeable.

11 I. Archer v. Warner allows a court to look behind a settlement
12 agreement when determining the dischargeability of a fraud
13 claim.

14 a. The holding in Archer v. Warner

15 Archer v. Warner settled a circuit split regarding the
16 treatment of settlement agreements in nondischargeability
17 proceedings. 538 U.S. at 318-19. In Archer, under factual
18 circumstances substantially similar to the present case, the
19 Archers sued the Warners for fraud in connection with the sale of
20 a manufacturing company. The parties settled the lawsuit for
21 \$300,000 payable from the Warners to the Archers. In exchange,
22 the Archers released the Warners from "any and every right,
23 claim, or demand," presently held or that might later accrue.
24 The Warners paid \$200,000 and executed a promissory note for the
25 balance of \$100,000. When the Warners failed to make the first
26 payment on the promissory note, the Archers filed a lawsuit in
27 state court. The Warners subsequently filed a chapter 7
28 bankruptcy petition. The Archers filed a complaint for
nondischargeability of the debt on the promissory note under

1 § 523(a)(2)(A). The bankruptcy court ruled that the settled debt
2 was dischargeable, and the Fourth Circuit affirmed. The matter
3 was appealed to the Supreme Court. Id.

4 At the Supreme Court, the majority of the justices agreed
5 with the Fourth Circuit that the settlement debt was the "only .
6 . . relevant debt." However, they went on to hold that the
7 settlement debt could "also amount to a debt for money obtained
8 by fraud." Id. at 318-19 (emphasis in original). The Fourth
9 Circuit had relied on a "novation theory" to conclude that the
10 settlement debt entirely replaced the original debt. While
11 stating that the Archers' settlement agreement "may have worked a
12 kind of novation," the Supreme Court ultimately determined that,
13 "[a]s a matter of logic, . . . the Fourth Circuit's novation
14 theory cannot be right," relying on the earlier decision in Brown
15 v. Felsen. Id. at 320, 323.

16 The factual circumstances in Brown were the following:

17 (1) Brown sued Felsen in state court seeking money that
18 (Brown said) Felsen had obtained through fraud; (2) the
19 state court entered a consent decree embodying a
20 stipulation providing that Felsen would pay Brown a
21 certain amount; (3) neither the decree nor the
22 stipulation indicated the payment was for fraud; (4)
23 Felsen did not pay; (5) Felsen entered bankruptcy; and
24 (6) Brown asked the Bankruptcy Court to look behind the
25 decree and stipulation and to hold that the debt was
26 nondischargeable because it was a debt for money
27 obtained by fraud.

28 Id. at 319 (citing Brown, 442 U.S. at 128-29).

29 In Brown, as in Archer, the Supreme Court confronted a split
30 among the circuits. The issue was whether res judicata, i.e.,
31 claim preclusion, prevented bankruptcy courts in exception to
32 discharge litigation from looking behind a settlement
33 incorporated in a state court judgment "to uncover the nature of

1 the claim" that led to the entry of the subject judgment.
2 Archer, 538 U.S. at 319. The Supreme Court unanimously held
3 that, "[c]laim preclusion did not prevent the Bankruptcy Court
4 from looking beyond the record of the state-court proceeding and
5 the documents that terminated that proceeding . . . in order to
6 decide whether the debt at issue . . . was a debt for money
7 obtained by fraud." Id. at 320 (citing Brown, 442 U.S. at 138-
8 39).

9 As noted above, although in Archer the Supreme Court stated
10 that the settlement agreement between the parties "may have
11 worked a kind of novation," conceptually, it is perhaps more
12 appropriate to consider a settlement agreement incorporating
13 releases and/or waivers of claims as an accord and satisfaction
14 in the context of discharge litigation. In the event of a breach
15 of an accord and satisfaction, the nonbreaching party may enforce
16 either the accord or the original obligation, because the
17 original obligation is not superseded until the accord is fully
18 performed. RESTATEMENT (SECOND) OF CONTRACTS § 281. In contrast, a
19 novation in contract law supersedes the original obligation,
20 making it unenforceable. See, e.g., Glazer v. Lehman Bros.,
21 Inc., 394 F.3d 444, 460 (6th Cir. 2005). As the Supreme Court
22 apparently recognized, the contract law concept of a novation is
23 not necessarily a comfortable fit when invoked to characterize
24 the transformation of a fraud claim through a settlement. In any
25 event, the conclusion reached by the Supreme Court in Archer was
26 that in federal bankruptcy law exception to discharge litigation
27 under § 523(a)(2)(A), a settlement agreement entered into before
28 the debtor's bankruptcy filing did not preclude the bankruptcy

1 court from considering fraud claims, even where the settlement
2 agreement "completely addressed and released each and every
3 underlying state law claim." Archer, 538 U.S. at 318-19.

4 b. Defenses remanded for consideration in Archer

5 The Supreme Court remanded Archer for determination of two
6 defenses raised by Mrs. Warner: First, she argued that the
7 Archers promised in the settlement agreement not to make "the
8 present claim of nondischargeability for fraud" in her bankruptcy
9 case. Id. at 322. In the case before us, neither the Settlement
10 Agreement nor the Stipulated Judgment includes such a promise,
11 and Weilert does not argue that Parker ever made any such
12 promise. Second, Mrs. Warner argued that dismissal of the
13 underlying state court litigation between the Archers and the
14 Warners with prejudice barred relitigation of the Archers' fraud
15 claims against her, because under North Carolina law, such a
16 dismissal barred the Archers from pursuing their fraud claims in
17 bankruptcy court based on collateral estoppel, i.e., issue
18 preclusion. In this appeal, the Settlement Agreement
19 specifically provided that Parker was not obligated to execute a
20 "Request for Dismissal of the Action with Prejudice" until all
21 conditions of the Settlement Agreement had been complied with
22 fully, and there is no evidence in the record before us that the
23 State Court Action between Parker and Weilert has been dismissed.
24 Accordingly, the two defenses that the Supreme Court excepted
25 from its ruling in Archer do not apply in this case.

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1 c. Weilert's alleged dispositive defense

2 What Weilert does argue is that the bankruptcy court
3 disregarded his undisputed testimony "that it was his intent that
4 all claims other than those arising in the Settlement Agreement
5 were waived and that he intended to perform under the Settlement
6 Agreement." Appellant's Opening Brief at 12. He emphasizes in
7 his argument that among the release provisions of the Settlement
8 Agreement was a specific waiver of the provisions of California
9 Civil Code § 1542, which provides that general releases do not
10 extend to unknown claims.⁴

11 We do not doubt that Weilert intended to obtain a complete
12 release of any and all of Parker's claims against him through the
13 Settlement Agreement, but that is beside the point. As noted by
14 the dissent in Archer, the settlement agreement in that case used
15 "the broadest language possible, to release [the parties] from
16 'any and every right, claim, or demand . . . arising out of' a
17 fraud action filed by petitioners in North Carolina state court."
18 Archer, 538 U.S. at 323 (Thomas, J., dissenting). Yet, the
19 Supreme Court held that the all-encompassing release terms of the
20 settlement agreement did not preclude the bankruptcy court from
21 looking behind the settlement agreement to determine whether the
22 Archers' claim should be excepted from Mrs. Warner's bankruptcy
23 discharge based on underlying fraud. In other words, the broadest
24 possible release and waiver of state law claims language in the

25
26 ⁴California Civil Code § 1542 provides that: "A general
27 release does not extend to claims which the creditor does not
28 know or suspect to exist in his or her favor at the time of
executing the release, which if known by him or her must have
materially affected his or her settlement with the debtor."

1 settlement agreement did not avail Mrs. Warner in her efforts to
2 preclude the Archers from asserting a § 523(a)(2)(A) claim for
3 fraud against her.

4 Likewise, in this case, the broad terms of the release and
5 waiver of claims in the Settlement Agreement, whatever Weilert
6 intended them to effect, did not preclude the bankruptcy court
7 from applying Archer and looking behind the Settlement Agreement
8 to determine if Parker's claim against Weilert was excepted from
9 his discharge based on fraud. We conclude that the bankruptcy
10 court did not err in denying Weilert's motions to dismiss and for
11 summary judgment.

12 II. In response to Parker's motion for summary judgment, Weilert
13 did not present any evidence to raise a genuine issue of
material fact.

14 Parker's adversary complaint against Weilert asserted a
15 claim under § 523(a)(2)(A). Section 523(a)(2)(A) excepts from a
16 debtor's discharge any debt for money obtained by false
17 pretenses, a false misrepresentation or actual fraud. In order
18 to prevail on a § 523(a)(2)(A) cause of action, a creditor must
19 establish five separate elements by a preponderance of the
20 evidence:

21 (1) misrepresentation, fraudulent omission or deceptive
22 conduct by the debtor; (2) knowledge of the falsity or
23 deceptiveness of his statement or conduct; (3) an
24 intent to deceive; (4) justifiable reliance by the
creditor on the debtor's statement or conduct; and (5)
damage to the creditor proximately caused by its
reliance on the debtor's statement or conduct.

25 Ghomeshi v. Sabban (In re Sabban), 384 B.R. 1, 5 (9th Cir. BAP
26 2008) (citing Turtle Rock Meadows Homeowners Ass'n v. Slyman (In
27 re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000)). Fraud may be
28 established through circumstantial evidence or evidence of a

1 pattern of conduct consistent with the fraud alleged. See, e.g.,
2 Devers v. Bank of Sheridan, Montana (In re Devers), 759 F.2d 751,
3 754 (9th Cir. 1985).

4 Parker moved for summary judgment, arguing that there was no
5 genuine issue of material fact as to Weilert's fraud. In support
6 of his motion, Parker submitted his declaration addressing each
7 of the elements of a § 523(a)(2)(A) claim as follows: Parker
8 declared that the only person he dealt with at the Jan Weilert RV
9 Center with respect to purchase of the RV was Weilert. Weilert
10 told him that "he was authorized to sign sales contracts on
11 behalf of Jan Weilert RV Center . . . which was in the business
12 of selling new and used motorhomes" Parker declared that
13 he entered into the contract to purchase the RV on or about
14 July 15, 2002 for a purchase price of \$160,355 and paid \$80,000
15 for the RV on that date. He declared that he paid a further
16 \$80,000 for the purchase of the RV in August 2002. He declared
17 that he ordered upgrades for the RV and made further payments
18 totaling \$8,150. He declared that Weilert told him that the RV
19 would be delivered to Parker "within 30 days from the date of the
20 Contract." Parker further declared that Weilert "advised him on
21 more than one occasion that he was having difficulty obtaining
22 the Motorhome I ordered." In addition, Parker declared that
23 Weilert "made multiple oral representations to me of his and [Jan
24 Weilert RV Center's] ability to cause the timely delivery of the
25 Motorhome which I ordered, starting 15 July 2002 and on various
26 dates thereafter." Parker also declared:

27 I made numerous demands to [Weilert] for delivery of
28 the Motorhome. In October 2002 [Weilert] orally
represented to me that Debtor/RV would soon deliver the

1 Motorhome. During my multiple follow-up calls,
2 [Weilert] advised me that the delays in delivery were
3 caused by another dealer or that the manufacturer alone
4 was responsible for the delays. However [Weilert]
5 continued to promise delivery.

6 Finally, Parker declared that he never received the RV or a
7 return of the money that he paid for the RV.

8 Weilert did not file any declaration that presented
9 countervailing evidence as to the substantive elements of
10 Parker's fraud claim under § 523(a)(2)(A). Instead he submitted
11 a declaration saying that he intended the Settlement Agreement
12 and the Stipulated Judgment to encompass a waiver and release of
13 all of Parker's claims.

14 Weilert's response to Parker's motion for summary judgment
15 was inadequate under Fed. R. Civ. P. 56(e)(2) (incorporated and
16 made applicable in adversary proceedings in bankruptcy by Fed. R.
17 Bankr. P. 7056), which states that:

18 When a motion for summary judgment is made and
19 supported as provided in this rule, an adverse party
20 may not rest upon the mere allegations or denials of
21 the adverse party's pleading, but the adverse party's
22 response, by affidavits or as otherwise provided in
23 this rule, must set forth specific facts showing that
24 there is a genuine issue for trial. If the adverse
25 party does not so respond, summary judgment, if
26 appropriate, shall be entered against the adverse
27 party.

28 The Ninth Circuit has determined that "[i]n opposing summary
judgment, a nonmoving party must go beyond the pleadings and, by
her own affidavits, or by the depositions, answers to
interrogatories, and admissions on file, designate specific facts
showing that there is a genuine issue for trial." Bias v.
Moynihan, 508 F.3d 1212, 1218 (9th Cir. 2007) (quoting Celotex
Corp. v. Catrett, 477 U.S. 317, 324 (1986) (internal quotation

1 marks omitted)). See also Estate of Tucker ex rel. Tucker v.
2 Interscope Records, Inc., 515 F.3d 1019, 1033 n.14 (9th Cir.
3 2008); Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th
4 Cir. 2007).

5 As admitted by counsel for appellant at oral argument in
6 this case, Parker's declaration set forth evidence as to all the
7 elements of his claim for relief under § 523(a)(2)(A). Because
8 Weilert focused almost exclusively on his argument that the
9 releases and waivers of claims contained in the Settlement
10 Agreement precluded Parker from pursuing his underlying claim for
11 fraud, in spite of Archer, he did not respond to the points made
12 in Parker's declaration. That was a fatal error, because after
13 the bankruptcy court ruled against Weilert on the application of
14 Archer, the only remaining relevant issues were whether Parker
15 had made a prima facie case with respect to the required elements
16 under § 523(a)(2)(A). We agree with the bankruptcy court that
17 Parker submitted adequate evidence in his declaration to
18 establish each of the required § 523(a)(2)(A) elements in his
19 declaration and other submissions. Weilert failed to present any
20 controverting evidence. Without an adequate response from
21 Weilert, summary judgment naturally and appropriately followed.
22 In addition, based on the Supreme Court's conclusion in Archer
23 that the unpaid balance of the settlement agreement was the only
24 relevant debt (538 U.S. at 319), we conclude that the bankruptcy
25 court did not err as a matter of law in determining that the debt
26 excepted from Weilert's discharge is the default amount specified
27 in the Stipulated Judgment, negotiated as part of the settlement
28 between the parties.

1 III. The bankruptcy court did not abuse its discretion in
2 overruling Weilert's evidentiary objections to Parker's
3 declaration.

4 Weilert raised evidentiary objections to Parker's
5 declaration, based on relevance, hearsay, lack of foundation and
6 best evidence grounds. At the outset of the hearing on the
7 parties' opposing motions, the bankruptcy court overruled
8 Weilert's evidentiary objections to Parker's declaration and
9 admitted it "for its full probative value and [gave] Mr. Parker's
10 testimony that is contained in the declaration appropriate weight
11 in determining the issues on the motion for summary judgment."
12 Tr. of November 8, 2007 Hearing, at 1.

13 On appeal, Weilert argued only his relevance and hearsay
14 objections to Parker's declaration. As to relevance, Weilert's
15 argument is that since all claims relating to fraud in the
16 underlying transaction were released and waived through the
17 Settlement Agreement, the statements contained in Parker's
18 declaration regarding the underlying transaction do not tend to
19 prove or dispute any facts relevant to the resolution of the
20 subject adversary proceeding. As to hearsay, Weilert argues that
21 the statements that he allegedly made, according to Parker, were
22 out of court statements offered to prove the truth of the matters
23 asserted.

24 The bankruptcy court's decisions as to the admissibility of
25 evidence are reviewed for abuse of discretion. See, e.g.,
26 Montiel v. City of Los Angeles, 2 F.3d 335, 341 (9th Cir. 1993).
27 Although the bankruptcy court did not articulate specific reasons
28 for its evidentiary rulings at the hearing on the parties'
motions, we may affirm the bankruptcy court on any basis

1 supported by the record. Pollard v. White, 119 F.3d 1430, 1433
2 (9th Cir. 1997). In light of our conclusions with respect to the
3 application of Archer in this case, Parker's statements in his
4 declaration relating to Weilert's underlying fraud clearly were
5 relevant in the adversary proceeding between the parties. As to
6 Weilert's hearsay argument, the above-cited statements from
7 Parker's declaration regarding Weilert's alleged statements and
8 representations concerning the RV purchase transaction appear to
9 fall outside the definition of hearsay under the Federal Rules of
10 Evidence as admissions by a party opponent. See Fed. R. Evid.
11 801(d)(2). Based on the record before us in this appeal, we do
12 not have a definite and firm conviction that the bankruptcy court
13 erred in its evidentiary rulings.

14 **CONCLUSION**

15 Under the Supreme Court's decisions in Brown and Archer, a
16 bankruptcy court may look behind a settlement agreement when
17 making exception to discharge determinations as to fraud in
18 bankruptcy.

19 In looking behind the Settlement Agreement in this case,
20 Parker asserted and established all of the elements for
21 nondischargeability under § 523(a)(2)(A), and in opposition,
22 Weilert merely repeated his assertion that he had intended the
23 Settlement Agreement and Stipulated Judgment release and waiver
24 provisions to encompass all of Parker's claims. Weilert did not
25 present evidence raising a genuine issue of material fact as to
26 any of the elements of fraud with respect to Parker's claim.

27 As a result, the bankruptcy court properly granted summary
28 judgment in Parker's favor, and we AFFIRM.