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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NOT FOR PUBLICATION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

| | | | |
|--------------------------------|---|--------------------|------------------|
| In re: |) | BAP No. | CC-08-1218-MkPaD |
| |) | | |
| MICHAEL J. WAHL, |) | Bk. No. | SV 04-10644-GM |
| |) | | |
| Debtor. |) | Adv. No. | SV 04-01465-GM |
| |) | | |
| MICHAEL J. WAHL; CANDACE CRAIG |) | | |
| WAHL, |) | | |
| |) | | |
| Appellants, |) | | |
| |) | | |
| v. |) | MEMORANDUM* | |
| |) | | |
| DAVID K. GOTTLIEB, Chapter 7 |) | | |
| Trustee, |) | | |
| |) | | |
| Appellee. |) | | |

Argued and Submitted on May 14, 2009
at Pasadena, California

Filed - June 22, 2009

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

Honorable Geraldine Mund, Bankruptcy Judge, Presiding

Before: MARKELL, PAPPAS 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 The debtor, Michael J. Wahl, appeals the denial of his
2 chapter 7 bankruptcy discharge,¹ and he and his wife, Candace
3 Craig Wahl, appeal the bankruptcy court's determination that
4 certain property was community property, and hence part of Mr.
5 Wahl's bankruptcy estate. We AFFIRM.

6
7 **FACTS**

8 Michael and Candace Wahl were residents of California who
9 married in Florida in 1981. They assert that before the
10 marriage, they had conversations in which they agreed that their
11 income from "creative endeavors" would remain separate property.²
12 The term was never specifically defined. They testified that
13 consistent with their agreement, throughout their marriage, they
14 have maintained separate bank accounts in which they kept their
15 "creative" income separate and subject to their individual
16 control. Mr. Wahl used his money to buy a stereo, which he put
17 in the living room of their home, and Ms. Wahl used some of her
18 money for grooming expenses for her modeling work. Under the

19 _____
20 ¹Unless otherwise indicated, all chapter, section and rule
21 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as
22 enacted and promulgated prior to the effective date (October 17,
23 2005) of the relevant provisions of the Bankruptcy Abuse
24 Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,
April 20, 2005, 119 Stat. 23, and to the Federal Rules of
Bankruptcy Procedure, Rules 1001-9037.

25 ²In his testimony at the trial of the adversary proceeding,
26 Mr. Wahl said that in the days before their marriage, he had told
27 his wife-to-be, "[G]oing forward, anything you do individually
28 and that I do individually from our creative endeavors is going
to be owned separately." Memorandum of Opinion After Trial, at 4,
11. 22.5-23.5. This statement by Mr. Wahl is the essence of
their purported prenuptial agreement.

1 agreement, the joint household expenses were to be paid through
2 Mr. Wahl's and Ms. Wahl's income from other work, which was
3 deposited in a joint checking account.³ Though no evidence of
4 three separate checking accounts was submitted to the bankruptcy
5 court, the court "[n]onetheless [found] that three accounts
6 existed." Memorandum of Opinion After Trial, at 5.

7 During the marriage, Mr. Wahl worked as an executive in the
8 motion picture industry, and Ms. Wahl worked as a substitute
9 teacher. In addition, Mr. Wahl created a product called
10 "Chrimoose," which he registered with funds from his separate
11 bank account for copyright and trademark in his own name.
12 Besides her income from teaching, Ms. Wahl had income from
13 modeling, which she put into her separate account.

14 In 1993, Ms. Wahl created "Flutter Faeries," and she entered
15 into an agreement with Gunther-Wahl Productions, Inc. ("Gunther-
16 Wahl"), which was 50% owned by her husband, to develop and sell
17 an animated television series based on Flutter Faeries and to
18 develop and sell characters and toys based on the Flutter Faeries
19 concept. Gunther-Wahl made presentations about Flutter Faeries
20 to a number of toy companies, including Mattel, Inc. ("Mattel").

21 In 1998, Ms. Wahl and Gunther-Wahl sued Mattel in the Los
22 Angeles Superior Court for breach of contract. They claimed that
23 Mattel was using the Flutter Faeries concept and characters after
24 having told Gunther-Wahl that it was not interested in the idea.

25
26 ³In the sentence after the "creative endeavors" sentence
27 quoted in note 2, Mr. Wahl testified, he told his wife-to-be, "We
28 are going to have a household income from my legal activities."
Id. lines 24-24.5. At the time of their marriage, Mr. Wahl was
working as a lawyer.

1 Mattel responded with a suit in federal District Court claiming
2 copyright infringement.

3 The state court case was tried, with a jury verdict for
4 Mattel; the federal case was settled and dismissed. Ms. Wahl and
5 Gunther-Wahl appealed the state court verdict, and the California
6 Court of Appeal reversed the state court jury verdict and
7 remanded the case for retrial, which remains pending.

8 On January 28, 2004, Mr. Wahl filed for bankruptcy under
9 chapter 7. In his schedule of assets, he made no mention of his
10 wife's assets from her "creative endeavors," including Flutter
11 Faeries and the pending litigation against Mattel. Despite
12 Gunther-Wahl's lawsuit against Mattel, Mr. Wahl listed the value
13 of Gunther-Wahl, of which he was a 50% owner, at \$0. At the first
14 meeting of creditors, Mr. Wahl testified under oath that Gunther-
15 Wahl had been inactive since the late 1990s. The trustee asked
16 him whether the company had any assets. "None," Mr. Wahl said.

17 At the trial and in his court papers, Mr. Wahl stated that
18 in his bankruptcy filing he was assisted and advised by a lawyer,
19 Keith Rouse, who, he said, was fully aware of the Mattel
20 litigation. Mr. Wahl asserts that he acted in good faith on Mr.
21 Rouse's advice and that he did not commit fraud. Mr. Rouse was
22 not called as a witness to testify about what advice he gave Mr.
23 Wahl about his bankruptcy schedules and Gunther-Wahl's value.⁴

24
25
26 ⁴At oral argument of this appeal, Mr. Wahl explained that he
27 had not called Mr. Rouse to testify at the trial because of the
28 possibility that waiving his attorney-client privilege could have
resulted in disclosing information relative to the Mattel
litigation that would lessen its value.

1 The bankruptcy trustee, Mr. Gottlieb, says that he was
2 unaware of the pending Mattel litigation involving Gunther-Wahl
3 until, on the deadline date for objecting to Mr. Wahl's
4 discharge, he received a letter from Mattel's lawyer regarding
5 mediation of the dispute.

6 Ms. Wahl filed an adversary proceeding against the trustee
7 seeking declaratory relief that Flutter Faeries and the Mattel
8 lawsuit were her separate property. The trustee counterclaimed
9 against Mr. Wahl to revoke his discharge under § 727(d)(1).

10 On August 30 and 31, 2007, and June 26 and 27, 2008, the
11 bankruptcy court conducted four days of trial on the adversary
12 proceeding between Ms. Wahl and the trustee regarding the
13 purported prenuptial agreement and on the trustee's complaint to
14 revoke Mr. Wahl's discharge. The court ruled on August 13, 2008,
15 that no legally cognizable prenuptial agreement existed between
16 Mr. and Ms. Wahl; that all of Ms. Wahl's income and assets
17 acquired during the marriage, including her interest in the
18 Mattel litigation, were community property; and that Mr. Wahl's
19 actions - including his failure to list these assets on his
20 bankruptcy schedules and to disclose them at the § 341(a) meeting
21 of creditors - constituted fraud. As a result of the fraud, the
22 court revoked his discharge.

23 The Wahls timely appealed on August 22, 2008, challenging
24 (1) the refusal of the bankruptcy court to recognize the
25 purported prenuptial agreement, which would have shielded Ms.
26 Wahl's separate assets from Mr. Wahl's bankruptcy estate and (2)
27 the finding that Mr. Wahl had committed fraud and the consequent
28

1 revocation of his discharge.⁵

2
3 **JURISDICTION**

4 The bankruptcy court had jurisdiction under 28 U.S.C.
5 §§ 1334 and 157. We have jurisdiction under § 158.

6
7 **STANDARDS OF REVIEW**

8 We review a bankruptcy court's legal conclusions, including
9 its interpretation of the Bankruptcy Code and state law, de novo.
10 Roberts v. Erhard (In re Roberts), 331 B.R. 876, 880 (9th Cir.
11 BAP 2005), aff'd 241 Fed. Appx. 420 (9th Cir. 2007).

12 "Findings of fact, whether based on oral or documentary
13 evidence, shall not be set aside unless clearly
14 erroneous" Rule 8013. Moreover, in order to reverse a
15 bankruptcy court's findings of fact, we must have a definite and
16 firm conviction that the court committed a clear error of
17 judgment in the conclusion it reached. SEC v. Coldicutt, 258
18 F.3d 939, 941 (9th Cir. 2001); Hansen v. Moore (In re Hansen),
19 368 B.R. 868, 874-75 (9th Cir. BAP 2007).

20
21 _____
22 ⁵Appellants did not provide a complete transcript of the
23 trial for this panel to review. Without a full transcript, we
24 cannot fully consider the arguments that they claim they made to
25 the trial court, and we cannot realistically evaluate the court's
26 findings of fact to determine if they are clearly erroneous. It
27 is the appellants' burden to provide a transcript. See Rule
28 8006. As this panel has previously stated, "The burden is on [an
appellant] to demonstrate that the findings of fact [made by the
trial court] were clearly erroneous. We are entitled to presume
that [an appellant who does not provide a transcript] does not
think the trial transcript helpful in that regard." Gionis v.
Wayne (In re Gionis), 170 B.R. 675, 680-81 (9th Cir. BAP 1994).

1 **DISCUSSION**

2 All parties acknowledge that California is a community
3 property state and that, in the absence of a supervening
4 agreement between the spouses, each spouse owns an undivided one-
5 half interest in all property acquired during the marriage.⁶

6 Prenuptial agreements are covered by the statute of frauds,
7 which means that they must be in writing.⁷ It is not impossible
8 for an oral prenuptial agreement to be deemed valid and binding,
9 but it is extremely difficult, and the standard for recognizing a
10 prenuptial agreement in the absence of a writing is very high.
11 The bankruptcy court found that "the Wahls had some sort of
12 premarital understanding," but whatever that understanding was,
13 it did not meet the high burden that the law requires for
14 enforceability against third parties.

15 In their briefs and in their arguments, the Wahls
16 fundamentally misunderstand and misconstrue prenuptial
17 agreements, the statute of frauds, and the reasons for the
18 requirement that such agreements must be in writing. They

19
20 ⁶The Wahls were married in 1981. At that time, premarital
21 agreements were covered in §§ 5133-37 of the California Civil
22 Code. Effective January 1, 1986, California adopted the Uniform
23 Premarital Agreement Act which provided that premarital
24 agreements made before the Act's effective date were to be
25 governed by the law in existence at the time such agreements were
26 made. Cal. Fam. Code § 1503.

27 ⁷Former § 5134 of the California Civil Code provided that
28 the statute of frauds applied to premarital agreements. "[A]ll
contracts for marriage settlements must be in writing, and
executed or acknowledged or proved in like manner as a grant of
land is required to be executed and acknowledged or proved."
Current § 1611 of the Cal. Fam. Code is similar: "A premarital
agreement shall be in writing and signed by both parties. It is
enforceable without consideration."

1 contend that the issue of oral prenuptial agreements usually
2 arises in divorce cases, where the divorcing spouses typically
3 disagree with each other about whether they had a premarital
4 agreement and what it provided. The Wahls note that the current
5 case is not a divorce proceeding, and, in fact, they say, the
6 spouses agree that there was a prenuptial agreement and what its
7 terms were. In their view, the fact that they agree should end
8 the inquiry, and no one, including the chapter 7 trustee, has
9 standing to challenge what the spouses say they verbally agreed
10 to before the marriage.⁸

11 Their argument is just plain wrong. While it may be true
12 that the issue of an oral prenuptial agreement usually arises in
13 the context of a divorce, that is not the only context in which
14 it may arise or in which it matters. In a bankruptcy proceeding,
15 under § 541(a)(2), the debtor's estate includes all of the
16 debtor's and the nonfiling spouse's interests in community
17 property. Given this interest, creditors are entitled to a full
18 accounting of a debtor's assets, which may very well be affected
19 by the presence or absence of a valid prenuptial agreement that

21 ⁸In their opening brief, the Wahls say they have:

22 repeatedly acknowledged the existence of their
23 premarital agreement. They do not dispute it and both
24 have acted in conformity therewith. In this present
25 situation, as the only parties to the agreement, they
26 are the only ones with standing to dispute the
27 existence of the agreement. If they both agree that
the premarital agreement exists and their commitment to
it, the Trustee cannot use the statute of frauds in an
attempt to frustrate that agreement.

28 Appellants' opening brief at 13.

1 purports to determine whether property is community or separate
2 property. A valid prenuptial agreement overriding a state's
3 community property law would prevent creditors from gaining
4 access to half of the assets of the nondebtor spouse. But if
5 there is no such agreement, all such property would be community
6 property, and it would become part of the debtor spouse's
7 bankruptcy estate under § 541(a)(2).

8 That is exactly the case here, and that is why the trustee,
9 who stands in the place of the creditors, may challenge the
10 purported prenuptial agreement. If a debtor has assets that are
11 estate assets available to the creditors, the trustee is
12 obligated to find them and administer them for the creditors'
13 benefit. Failing to do so would be an abdication of the trustee's
14 responsibility to the creditors. See § 704(a)(1).

15 Moreover, far from dispensing with the need for a written
16 prenuptial agreement, this case highlights the need for one or
17 for unassailable evidence to support a purported oral agreement.

18 The Wahls have a common interest in arguing that they had a
19 prenuptial agreement that overrode California's community
20 property law. They are trying to prevent Ms. Wahl's community
21 property interest in the Mattel litigation and the property to
22 which it relates from being turned over to Mr. Wahl's creditors.
23 There is incentive for collusion, which is exactly why the
24 statute of frauds applies. The Wahls must either produce a
25 writing showing exactly what they agreed to before the wedding,
26 or, in the absence of a writing, they must meet the very high
27 standard of proof to establish that they had an oral agreement
28 and that they adhered to it throughout their marriage.

1 In the absence of such a showing, Ms. Wahl's assets acquired
2 during the marriage are community property under California law
3 and thus property of the estate.

4 Do the Wahls Have a Valid Prenuptial Agreement?

5 California courts, as well as the courts of other states,
6 have upheld oral prenuptial agreements when there is indisputable
7 evidence of full or partial performance with the terms of the
8 agreement and that performance was to the detriment of the
9 performing party. Further, the acts of performance must be
10 "unequivocally referable to the contract" and must be acts not
11 reasonably expected in a marriage. See, e.g., Hall v. Hall, 222
12 Cal. App.3d 578, 271 Cal. Rptr. 773 (1990), in which the
13 California Court of Appeal enforced an oral premarital agreement
14 on the basis of the wife's partial performance: she gave her
15 husband \$10,000, quit her job, and applied for early Social
16 Security. Id. at 586, 271 Cal. Rptr. at 778.

17 As explained by Witkin's Summary of California Law, for a
18 purported oral agreement to avoid the statute of frauds there
19 must be "substantial change of position in reliance on [the] oral
20 agreement." 1 Bernard E. Witkin, Summary of California Law,
21 Contracts, § 325, at 305-06 (9th ed. 1987). In the current case,
22 the Wahls have shown no unambiguous change of position as a
23 result of whatever understanding they may have had, and certainly
24 no substantial change of position.

25 The bankruptcy court also considered DewBerry v. George, 115
26 Wash. App. 351, 62 P.3d 525 (2003), a case from Washington,
27 another community property state, in which the court upheld an
28 oral premarital agreement not unlike the one the Wahls claim to

1 have made. The court found that the parties in that case had
2 agreed to treat their incomes as separate property and, in
3 accordance with that agreement, made a "painstaking and
4 meticulous effort to maintain separate finances and property."
5 Id. at 356, 62 P.3d at 526. For example, they maintained separate
6 bank accounts, purchased property separately, did not establish a
7 joint account until four years into the marriage, after their
8 first child was born, and reimbursed their separate accounts from
9 the joint account if they used their separate funds for household
10 purchases. The court found that these "painstaking efforts to
11 establish and maintain separate property," Id. at 362, 62 P.3d at
12 530, were not usually followed in a husband-and-wife relationship
13 and were convincing proof of performance of an oral premarital
14 agreement.

15 By contrast, the bankruptcy court here found that neither of
16 the Wahls presented sufficient evidence of part performance to
17 overcome the statute of frauds. Unlike the wife in Hall, neither
18 of the Wahls was disadvantaged by "trivial and insufficient"
19 evidence they presented of having used their separate checking
20 accounts for separate purposes. Memorandum of Opinion After
21 Trial, at 14. Unlike the parties in DewBerry, the Wahls did not
22 show "painstaking efforts" to maintain separate property, and
23 what they did show was not "unequivocally referable" to their
24 purported prenuptial agreement. Id.

25 Furthermore, the bankruptcy court found that the term
26 "creative endeavors" was "too uncertain to satisfy the
27 requirements of the statute of frauds." Id. at 16. "The term
28 'creative endeavor' remains virtually meaningless," the court

1 found. Id.⁹ See In re Marriage of Shaban, 105 Cal. Rptr. 2d 863,
2 869, 88 Cal. App. 4th 398, 409 (Cal. Ct. App. 2001) (stating a
3 "need for reasonable certainty of terms and conditions" in
4 premarital agreements in order to give them effect).

5 As a result of all of these defects, the bankruptcy court
6 found that whatever "understanding" the Wahls may have had before
7 their marriage, in the absence of a writing, it was not
8 enforceable against third parties. The court was correct. The
9 Wahls may have had some sort of agreement, but they did not do
10 what was necessary under California law to make it enforceable
11 against third parties. As a result, California community
12 property law applies without exception. This means that the
13 relevant pool of community assets, swept into the estate by
14 § 541(a)(2), included all income and assets received during the
15

16
17 ⁹In its discussion of the uncertainty of the term "creative
18 endeavors," the bankruptcy court correctly identified another
19 fatal defect that prevents the purported premarital agreement
20 from being enforceable:

21 At the time of their understanding, Michael was a
22 practicing lawyer and expected to pursue a career
23 outside the home with a regular source of income. But
24 what if he had made a lot of money on Chrismoose and
25 quit his law job to work at home creating more animated
26 characters? Would everything he made be his separate
27 property to spend as he wished or would his prior
28 "hobby" then morph into a regular source of income to
be used to support the family?

Similarly, what if Candace had moved from periodic
fit modeling to steady work in that field or even
become a celebrity model? Would this replace her
community property income as a substitute teacher or
would she retain everything as separate property?

Id. at 16-17.

1 Wahls' marriage and in existence when Mr. Wahl filed his
2 bankruptcy petition. It also means that Mr. Wahl and Ms. Wahl
3 each has a one-half interest in all property acquired by either
4 during marriage, including Ms. Wahl's interest in the Flutter
5 Faeries project and the Mattel litigation. Under § 541(a)(2),
6 these community property interests are property of Mr. Wahl's
7 bankruptcy estate.

8 Were Michael Wahl's Actions Fraudulent
9 and Should His Discharge Be Revoked?

10 In response to Ms. Wahl's lawsuit seeking to quiet title in
11 the Flutter Faeries project and the Mattel litigation, the
12 trustee counterclaimed, seeking to revoke Mr. Wahl's discharge.
13 Although there was some procedural confusion as to the status of
14 the discharge - it should have been issued as a matter of course
15 at the time of the counterclaim, but wasn't - the trustee
16 established that Mr. Wahl should not retain his discharge under
17 the standard for denial of a discharge.¹⁰

18
19
20 ¹⁰Mr. Wahl contended at the trial that the trustee's
21 counterclaim seeking revocation of the discharge was improper
22 because the court had never entered the discharge. But Ninth
23 Circuit law on this point is clear. In Dietz v. Mitchell (In re
24 Dietz), 914 F.2d 161 (9th Cir. 1990), the court found that "the
25 [bankruptcy] court acted consistently with the spirit of the
26 bankruptcy rules, which contemplate that discharge is effective
27 immediately upon expiration of the 60-day period following the
28 creditors' meeting, so long as no objections are filed." Id. at
164.

26 In the current case, since the 60-day period had passed, the
27 trustee was entitled to believe that the discharge was effective.
28 He could thus counterclaim to have it revoked. The fact that the
court had not formally entered the discharge did not bar the
trustee's counterclaim.

1 Under § 727(d) (1), “[o]n request of the trustee, . . . and
2 after notice and a hearing, the court shall revoke a discharge
3 granted under subsection (a) of this section if – [¶](1) such
4 discharge was obtained through the fraud of the debtor, and the
5 requesting party did not know of such fraud until after the
6 granting of such discharge” As stated in Collier on
7 Bankruptcy, “[t]his language requires, at a minimum, that the
8 discharge would not have been granted but for the fraud alleged.
9 The fraud required to be shown is fraud in fact, such as the
10 intentional omission of assets from the debtor's schedules.”
11 6 Collier on Bankruptcy ¶ 727.15[2] (Alan N. Resnick & Henry J.
12 Sommer eds., 15th rev. ed. 2009). See, e.g., White v. Nielsen
13 (In re Nielsen), 383 F.3d 922, 925 (9th Cir. 2004); Bowman v.
14 Belt Valley Bank (In re Bowman), 173 B.R. 922, 925 (9th Cir. BAP
15 1994).

16 The bankruptcy court found that failure to list the Flutter
17 Faeries property and the Mattel litigation was fraudulent
18 concealment. It also found that Mr. Wahl’s valuation of his
19 interest in Gunther-Wahl at zero was part of this fraudulent
20 concealment.¹¹

21 Mr. Wahl contends that the highly factual finding of an
22 intent to defraud was improper because he testified that his
23

24 ¹¹The trustee testified at the trial that he did not know of
25 the Mattel litigation until Mattel's counsel contacted him on May
26 3, 2004, which was the last day to file objections to discharge.
27 The bankruptcy court credited that testimony and concluded that
28 the trustee did not know of Mr. Wahl's fraud before that date,
thus satisfying § 727(d) (1)'s requirement that “the requesting
party did not know of such fraud until after the granting of such
discharge.”

1 failure to list the property was entirely due to his faithful
2 following advice of counsel. In many cases, reliance on the
3 advice of counsel in completing bankruptcy schedules may
4 constitute good faith and thus negate the necessary deceptive
5 intent required for a finding of fraud. "Generally, a debtor who
6 acts in reliance on the advice of his attorney lacks the intent
7 required to deny him a discharge of his debts." First Beverly
8 Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1343 (9th Cir. 1986)
9 (citing Hultman v. Tevis, 82 F.2d 940, 941 (9th Cir. 1936) and In
10 re Nerone, 1 B.R. 658, 660 (Bankr. S.D.N.Y. 1979)).

11 But Mr. Wahl attempted to prove his good faith by his
12 testimony alone. The bankruptcy court heard that evidence and
13 did not believe it or credit it as strongly as Mr. Wahl desires.
14 Without corroboration by his lawyer or by some other evidence, we
15 cannot say that the bankruptcy court's factual findings with
16 respect to good faith were clearly erroneous.

17 Review under the clearly erroneous standard is significantly
18 deferential, requiring a "definite and firm conviction that a
19 mistake has been committed." See Easley v. Cromartie, 532 U.S.
20 234, 242 (2001); Lentini v. California Center for the Arts,
21 Escondido, 370 F.3d 837, 843 (9th Cir. 2004); USAA Fed. Sav. Bank
22 v. Thacker (In re Taylor), 390 B.R. 654, 660 (9th Cir. BAP 2008).
23 Under this standard, if the bankruptcy court's account of the
24 evidence is plausible in light of the entire record, we may not
25 reverse, even if we would have weighed the evidence differently.
26 See Husain v. Olympic Airways, 316 F.3d 829, 835 (9th Cir. 2002),
27 aff'd, 540 U.S. 644 (2004). "Where there are two permissible
28 views of the evidence, the factfinder's choice between them

1 cannot be clearly erroneous." United States v. Elliott, 322 F.3d
2 710, 714 (9th Cir. 2003); see also Hayes v. Woodford, 301 F.3d
3 1054, 1067 n.8 (9th Cir. 2002) (internal quotation omitted) ("To
4 be clearly erroneous, a decision must strike us as more than just
5 maybe or probably wrong; it must . . . strike us as wrong with
6 the force of a five-week-old unrefrigerated dead fish.").

7 The record as provided by Mr. Wahl does not give us any
8 plausible basis to reverse under these standards. Moreover, Mr.
9 Wahl's other testimony on this point was also not helpful. Mr.
10 Wahl testified at trial that because Mattel had won in Gunther-
11 Wahl's state court action for breach of contract, he believed the
12 litigation was worthless, and thus his interest in Gunther-Wahl
13 was legitimately zero. But the facts as found by the bankruptcy
14 court belie that statement. The bankruptcy court, which heard
15 Mr. Wahl's testimony, found it "unbelievable," Memorandum of
16 Opinion After Trial, at 22, and special deference is paid to
17 credibility findings. See Anderson v. City of Bessemer, 470 U.S.
18 564, 573 (1985); McClure v. Thompson, 323 F.3d 1233, 1241 (9th
19 Cir. 2003). The bankruptcy court supported this finding by
20 noting that Mr. Wahl knew that his wife and Gunther-Wahl (of
21 which he was an officer) had retained counsel to appeal the state
22 court litigation, which meant that at least they thought the
23 claim had value.

24 Based upon this and other testimony, the bankruptcy court
25 found that Mr. Wahl "acted with the requisite fraudulent intent
26 when he continually concealed the Flutter Faeries litigation from
27 the Trustee." Memorandum of Opinion After Trial, at 22. The
28 bankruptcy court found a pattern of conduct demonstrating that

1 "the debtor acted with fraudulent intent in concealing property
2 of the estate." Id. at 21-22.

3 Given Mr. Wahl's election not to call his lawyer to
4 corroborate his testimony regarding good faith, and his failure
5 to provide relevant transcripts, we cannot say on this record
6 that any of the factual predicates supporting the bankruptcy
7 court's fraud determination were erroneous, let alone clearly
8 erroneous. The bankruptcy court thus committed no error.

9 **CONCLUSION**

10 We AFFIRM the bankruptcy court's conclusion that there was
11 no enforceable prenuptial agreement, that California's community
12 property law applies, and that one-half of Ms. Wahl's interest in
13 Flutter Faeries and the Flutter Faeries litigation belong to Mr.
14 Wahl and are part of his bankruptcy estate.

15 We further AFFIRM the bankruptcy court's judgment that Mr.
16 Wahl's failure to disclose assets was knowing and fraudulent and
17 warranted revocation of his discharge.