NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. NC-06-1437-DKS
HANFORD NICHOLS LOCKWOOD, JR.,	Bk. No. 05-31424
Debtor.	Adv. No. 05-03376
HANFORD NICHOLS LOCKWOOD, JR.,	
Appellant,	
v.	**M E M O R A N D U M**[1]
JMS LABS LIMITED (USA) L.L.C.,	
Appellee.	

Argued and Submitted on June 22, 2007
at San Francisco, California

Filed - August 30, 2007

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

Honorable Dennis Montali, Bankruptcy Judge, Presiding

_____

Before: DUNN, KLEIN and SMITH, Bankruptcy Judges.

[1] 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.

In this case of a debtor who apparently tripped on the threshold of insolvency planning, the bankruptcy court found that the debtor failed to disclose the transfer of his interest in a patent application within one year preceding his bankruptcy filing on his statement of financial affairs and denied debtor's discharge under § 727(a)(4)(A).[2] Debtor timely appealed. We AFFIRM.

I. FACTS

A. Pre-Bankruptcy

In December 1998, Hanford Lockwood, Jr. ("Lockwood") and JMS Labs Limited (USA), LLC ("JMS") entered into an "Assignment of the Patent and Know-How Purchase Agreement" ("Know-How Purchase Agreement") in which Lockwood assigned his patent for the MaxAir Nasal Dilator, a skin stabilization and nasal dilator system, to JMS. Over time, disputes between JMS and Lockwood arose concerning the patent and Know-How Purchase Agreement. Ultimately, arbitration ensued, and an award of $231,103.74 plus attorney's fees and costs was granted in JMS's favor. The arbitration award was entered as a final judgment in San Francisco Superior Court on December 3, 2004.

Prior to the entry of the judgment, on May 9, 2003, Lockwood filed with the U.S. Patent and Trademark Office ("USPTO") a provisional application, number 60/469,348, entitled "Improved

[2] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated prior to the effective date (October 17, 2005) of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

Nasal Strip with Variable Spring Rate" (the "2003 Application").[3] On February 19, 2004, Lockwood agreed to sell his 500 shares of stock in Silver Eagle Labs, Inc. ("Silver Eagle Labs") to his wife, Michele Lockwood ("Michele"), and to assign the 2003 Application to Silver Eagle Labs (the "Agreement").[4] As consideration, Michele agreed to pay Lockwood's attorney fees in CNS, Inc. v. Silver Eagle Labs, Inc., a pending infringement lawsuit case concerning the Improved Nasal Strip with Variable Spring Rate.[5]

On May 5, 2004, Lockwood filed another patent application, number 10/839,879, for the Improved Nasal Strip with Variable Spring Rate (the "2004 Application"). He assigned the Improved Nasal Strip with Variable Spring Rate and the 2004 Application to Silver Eagle Labs on July 9, 2004 (the "Assignment"). The Assignment was recorded on July 22, 2004.

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[3] The MaxAir Nasal Dilator and the Improved Nasal Strip with Variable Spring Rate are competing nasal strip products.

[4] Silver Eagle Labs is a Nevada corporation organized by Lockwood and Michele. At the time of Silver Eagle Labs' incorporation, 500 shares of stock were issued each to Lockwood and Michele. Following the transfer of Lockwood's shares to Michele, Michele and Lockwood surrendered their two certificates of ownership to Silver Eagle Labs, which then issued a new certificate to Infinite Financial Solutions, LLC. Infinite Financial Solutions, LLC, which is owned by Integrated Power, Inc., is the sole owner of Silver Eagle Labs. Michele has sole control over Integrated Power, Inc.

[5] The CNS infringement case was initiated a day before Lockwood and Michele entered into the Agreement. As of the end of 2005, Michele had paid roughly $380,000 in attorney fees and costs defending against the infringement suit.

B. The Bankruptcy

On May 9, 2005, Lockwood filed for chapter 13 relief. Shortly thereafter, he converted his case to chapter 7. Lockwood's schedules indicated that he owned no real property, held $489,538.11 in personal property assets, and had only one creditor - JMS, which held a $289,584.77 general unsecured claim based on its state court judgment. On his statement of financial affairs (the "Statement"), Lockwood disclosed only the transfer of an automobile during the year prior to his bankruptcy filing.

JMS timely commenced an action against Lockwood seeking denial of his discharge under § 727(a)(2) and (a)(4), as well as nondischargebility of its debt under § 523(a)(6). As to the § 727(a)(4) claim, JMS alleged that Lockwood had knowingly and fraudulently failed to disclose his interests in various business entities, including Macondray Trust, Silver Eagle Labs, Integrated Power, Inc., HNL Technologies, Inc., JMS Labs Limited, IBC, and Aegis Financial Service.

Following trial, the bankruptcy court ruled in Lockwood's favor on the § 523 claim, but took the § 727 matters under submission. Post-trial briefs concerning Lockwood's alleged undisclosed assignment of patent rights to Michele were filed by both parties.

On July 19, 2006, the court issued its oral ruling. In concluding that Lockwood's discharge should be denied pursuant to § 727(a)(4) only, the court found that an assignment of Lockwood's patent rights in the Improved Nasal Strip with Variable Spring Rate (the "Invention") had indeed occurred within one year preceding his bankruptcy filing. While the court

recognized that there was some confusion as to the difference between the 2003 Application disclosed in the Agreement and the 2004 Application transferred in accordance with the Assignment (both of which dealt with the Invention, but had different patent application numbers), it determined that whether the Invention and patent application(s) were transferred pursuant to the Assignment or the Agreement was irrelevant. Either they were transferred "absolutely of one asset" to Silver Eagle Labs under the Assignment or Lockwood performed his future obligation to assign his interest in the Invention and patent application(s) as contemplated by the Agreement in July 2004 through the Assignment.

The bankruptcy court further held that Lockwood's failure to disclose the transfer on the Statement was "certainly a materiality element of non-disclosure[.]" Hr'g Tr. 7:23-25, July 19, 2006. Lockwood had agreed to assign his interest in Silver Eagle Labs and his interest in the Invention and patent application(s) for no less than $380,000 - the amount expended by Michele in defending against the CNS litigation. Therefore, the property transferred had significant value.

Based on the foregoing, the court concluded

> that there was a materiality element in the sense that a non-disclosure of what occurred supports the conclusion that for purposes of Section 727(a)(4), Mr. Lockwood did make a false oath in connection with concealment of the transaction that was material, and . . . therefore . . . he has to be denied his discharge.

Hr'g Tr. at 9:4-12. A judgment ("Judgment") memorializing the court's ruling was entered on November 27, 2006, incorporating the following statement:

> [T]he discharge of Debtor under the Fourth Claim for Relief should be, and hereby is, denied under the Bankruptcy Code Section 727(a)(4)(A), based upon the Debtor's having knowingly and fraudulently made a false oath by a concealment of a material transaction, all as more particularly set forth in the findings of fact and conclusions of law stated by the Court on the record July 19, 2006.

Judgment at 2-3.

Lockwood filed a notice of appeal on December 1, 2006.[6]

II. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. § 1334 and § 157(b)(1) and (b)(2)(J). We have jurisdiction under 28 U.S.C. § 158.

III. ISSUE

Whether the bankruptcy court erred in denying Lockwood's discharge under § 727(a)(4)(A).

IV. STANDARD OF REVIEW

A judgment denying a debtor's discharge is reviewed so that:

> (1) the court's determinations of the historical facts are reviewed for clear error; (2) the selection of the applicable legal rules under § 727 is reviewed de novo; and (3) the application of the facts to those rules

[6] Attached as an exhibit to Lockwood's reply brief is a declaration of J. George Seka dated March 28, 2007, and attachments related thereto. JMS has moved to strike this exhibit as being outside the trial record and the designation on appeal. The motion is granted. "An appellate court may not consider evidence not presented to the trial court which is thus not part of the record on appeal." Smyrnos v. Padilla (In re Padilla), 213 B.R. 349, 354 n.3 (9th Cir. BAP 1997). See also Kirshner v. Uniden Corp. of Am., 842 F.2d 1074, 1077 (9th Cir. 1988).

> requiring the exercise of judgments about values animating the rules is reviewed de novo.

Searles v. Riley (In re Searles), 317 B.R. 368, 373 (9th Cir. BAP 2004).

V. DISCUSSION

Section 727(a)(4)(A) provides that a debtor's discharge shall be denied if "the debtor knowingly and fraudulently . . . made a false oath" in the course of the bankruptcy proceedings. Denial of discharge under this section requires the plaintiff to prove by a preponderance of the evidence that: "(1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently." Roberts v. Erhard (In re Roberts), 331 B.R. 876, 882 (9th Cir. BAP 2005).

The fundamental purpose of § 727(a)(4) is to ensure that dependable information is supplied to those interested in the administration of the bankruptcy estate without the trustee or other interested parties having to conduct costly investigations. Fogal Legware of Switz., Inc. v. Wills (In re Wills), 243 B.R. 58, 63 (9th Cir. BAP 1999); Aubrey v. Thomas (In re Aubrey), 111 B.R. 268, 274 (9th Cir. BAP 1990). Thus, a debtor's ability to obtain a fresh start is conditioned upon truthful disclosure. Aubrey, 111 B.R. at 274.

Courts are to construe a § 727 claim liberally in favor of the debtor and strictly against the person objecting to the discharge.

> A denial of a discharge is an act of mammoth proportions, and must not be taken lightly. In light of this gravity, this Court and many others have stated that Section 727 must be construed liberally in favor of the debtor and against the objector.

Gordon's Jewelry Co. v. Goldstein (In re Goldstein), 66 B.R. 909, 917 (W.D. Pa. 1986). See First Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1342 (9th Cir. 1986); see also Roberts, 331 B.R. at 882.

The party seeking to deny the debtor's discharge generally bears the burden of proof. However, since the Supreme Court's decision in Grogan v. Garner, 498 U.S. 279 (1991), the burden of proof standard for denial of discharge actions under § 727 of the Bankruptcy Code is preponderance of the evidence. Id. at 286-91; Stanley v. Hoblitzell (In re Hoblitzell), 223 B.R. 211, 215 (Bankr. E.D. Cal. 1998); Garcia v. Coombs (In re Coombs), 193 B.R. 557, 560 (Bankr. S.D. Cal. 1996).

The relatively lenient burden of proof standard compared with the consistent admonition to construe the standards for denial of discharge strictly in favor of debtors creates a tension that informs the decisionmaking of bankruptcy courts in § 727 cases. Yet, in spite of whatever weight on the scale favors the debtor's discharge, a party seeking denial of the debtor's discharge under § 727 likely will prevail if the evidence establishes that it is more likely than not that the objecting party's case is justified. This result is consistent with the principle that the discharge provisions of the Bankruptcy Code are designed for the benefit of the "honest but unfortunate debtor." See Marrama v. Citizens Bank, ___ U.S. ___, 127 S.Ct. 1105, 1111 (2007); Adeeb, 787 F.2d at 1345; Devers v.

Bank of Sheridan, Montana (In re Devers), 759 F.2d 751, 754-55 (9th Cir. 1985). The corollary to that principle is that the lot of the less than honest debtor in bankruptcy is apt to be highly unfortunate.

A. Application of § 727(a)(4)(A) Elements in This Case

1. False Oath

A false oath may involve either a false statement in or an omission from the debtor's schedules or statement of financial affairs. Roberts, 331 B.R. at 882; Wills, 243 B.R. at 62. Here, whether Debtor made a false oath is dependent upon when the transfer of the patent application[7] and Invention occurred.

Lockwood contends that the bankruptcy court erred in finding that he made a false oath in responding to question 10[8] in the

[7] 35 U.S.C. § 111(b) states that a "provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival after such 12-month period." Pursuant to 35 U.S.C. § 119(e)(1), a provisional patent application may be converted into a regular, non-provisional patent application if the regular patent application is filed within 12 months of the filing date of the provisional application.

Here, the 2004 Application, dated May 5, 2004, was filed during the 12-month period while the 2003 Application was pending. Hence, some evidence exists to suggest that the 2003 Application may have been converted into the 2004 Application as a non-provisional patent application.

For convenience purposes, the 2003 and 2004 Applications are collectively referred to as the "patent application" henceforth.

[8] Question 10 requires a debtor to "[l]ist all . . . property . . . transferred either absolutely or as security within one year immediately preceding the commencement of [the debtor's] case."

Statement when he failed to disclose the transfer of the Invention and patent application. He maintains that the transfer was made in February 2004, when he entered into the Agreement with Michele, and not on July 9, 2004, as the bankruptcy court found.[9] Debtor argues that because the transfer was made more than a year prior to his bankruptcy filing, he was not required to disclose it on the Statement.

A patent is "a creature of federal statute" which can only be transferred and assigned according to the terms of the patent statutes (35 U.S.C. § 1 et seq.). United States v. Solomon, 825 F.2d 1292, 1296 (9th Cir. 1987). The rules governing assignment provide that patents "shall be assignable in law by an instrument in writing." 35 U.S.C. § 261. "[T]he instrument of transfer must be unambiguous and show a clear and unmistakable intent to part with the patent; it must express intention to transfer ownership." Solomon, 825 F.2d at 1296 (citing 5 Lipscomb's Walker on Patents § 19:7 (3d ed. 1986)).

In this case, the Agreement states, in relevant part, that

> [Lockwood] further agrees to assign his invention entitled "Improved Nasal Strip with Variable Spring Rate" and the application for the United States patent (provisional USPTO serial number 60/469,348 filed 09 May 2003) to Silver Eagle Labs Inc. prior to the date the patent issues.

Agreement at 1, Feb. 19, 2004 (emphasis added). Though the

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[9] In Lockwood's opening brief, he asserts that the bankruptcy court erred in finding May 5, 2004, the date the change of ownership on the patent application was registered with the USPTO, to be the transfer date. This is an inaccurate statement of the court's finding. During its July 19 oral ruling, the court determined that the transfer occurred on July 9, 2004. Hr'g Tr. 7:1-3.

provision evidences Debtor's intent to assign the patent application and Invention to Silver Eagle Labs at some future date, it does not support Debtor's contention that the assignment actually occurred on the date of the Agreement, i.e., February 19, 2004. Put another way, the language is insufficient to establish Debtor's "clear and unmistakable intent" to part with the patent application and Invention as of the Agreement's date.

We agree with the bankruptcy court that the Assignment entered into on July 9, 2004, best reflects when the transfer occurred. The Assignment provides:

> For value received, [Lockwood] . . . hereby sells, assigns, transfers, and sets over unto Silver Eagle Labs Inc. . . . one hundred percent (100%) of the following as of 09 July 2004:
>
> (A) [Lockwood's] right, title and interest in and to the invention entitled "Improved Nasal Strip with Variable Spring Rate" invented by [Lockwood];
>
> (B) the application for United States patent therefor, assigned by [Lockwood] on 05 May 2004, U.S. Patent and Trademark Officer [sic] Serial Number 10/839,879; Filed 05 May 2004;
>
> (C) any patent or reissues of any patent that may be granted thereon; and
>
> (D) any applications which are continuous, continuations-in-part; substitutes, or divisions of said application.

Assignment at 1, July 9, 2004 (emphasis added). In our view, the terms of the Assignment clearly establish that Debtor did not actually transfer the patent application and Invention until July 9, 2004 - only ten months prior to his bankruptcy filing.

Because Lockwood transferred the patent application and Invention within the year preceding the commencement of his bankruptcy case, the court did not err in finding that Lockwood

made a false oath as to this nondisclosure on the Statement.

2. Materiality

Materiality is broadly defined. A false statement or omission "'is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property.'" Roberts, 331 B.R. at 883 (quoting Wills, 243 B.R. at 62). Weiner v. Perry, Settles & Lawson, Inc. (In re Weiner), 208 B.R. 69, 72 (9th Cir. BAP 1997); LaVangie v. Mazzola (In re Mazzola), 4 B.R. 179, 183 (Bankr. D. Mass. 1980)("The duty is on the debtor to answer not to evaluate.").

Although a false statement or omission need not cause direct financial prejudice to creditors for it to be material, the misstatement or omission must detrimentally affect the administration of the estate for a denial of discharge to be warranted. Wills, 243 B.R. at 63. An omission may also be considered material if it "interferes with the possibility of a preference or fraudulent conveyance action." Id. (citing 6 King, Collier on Bankruptcy ¶ 727.04[1][b] (15th ed. Rev. 1998)).

The bankruptcy court found that Debtor assigned his interest in Silver Eagle Labs and the patent application for no less than $380,000 - the amount of attorneys fees incurred in the state court infringement lawsuit. This is a significant amount which, if found in conjunction with a fraudulent transfer, would unquestionably affect the administration of Debtor's estate. Debtor does not object to the value the court placed on the patent application nor that the transfer was material. We are

persuaded that the court did not err in finding Debtor's omission of the transfer on the Statement to be material.

3. Knowledge

For a person to have acted knowingly, his or her acts must be deliberately and consciously committed. Roberts, 331 B.R. at 883; Black's Law Dictionary 888 (8th ed. 2004). An omission resulting from negligence (i.e., ignorance or carelessness) or recklessness does not rise to the level of knowing. Roberts, 331 B.R. at 884.

In its oral ruling, the bankruptcy court found that "for purposes of Section 727(a)(4), Mr. Lockwood did make a false oath in connection with concealment of the transaction that was material. . . ." Hr'g Tr. at 9:6-8 (emphasis added).

Black's Law Dictionary defines "concealment" as follows:

> **concealment**, *n*. **1.** The act of refraining from disclosure; esp., an act by which one prevents or hinders the discovery of something; a cover-up. **2.** The act of removing from sight or notice; hiding. . . .
> . . .
>
> "Concealment is an affirmative act intended or known to be likely to keep another from learning of a fact of which he would otherwise have learned. Such affirmative action is always equivalent to a misrepresentation and has any effect that a misrepresentation would have. . . ." *Restatement (Second) of Contracts* § 160 cmt. a (1979)(emphasis added).
>
> ***active concealment***. The concealment by words or acts of something that one has a duty to reveal.
>
> ***fraudulent concealment***. The affirmative suppression or hiding, with the intent to deceive or defraud, of a material fact or circumstance that one is legally (or, sometimes, morally) bound to reveal.

Black's Law Dictionary 306 (8th ed. 2004)(emphasis added).

In light of these definitional standards, when the bankruptcy court found that Lockwood concealed the transfer of the patent application and Invention in failing to disclose the Assignment in the Statement, the bankruptcy court necessarily found that the Debtor acted knowingly. See, e.g., Keeney v. Smith (In re Keeney), 227 F.3d 679, 685-86 (6th Cir. 2000) (affirming the denial of debtor's discharge pursuant to § 727(a)(4)(A), based upon the debtor's "continuing concealment" and nondisclosure in his schedules of his beneficial interest in real property.).

The bankruptcy court further stated in the Judgment that

> the discharge of Debtor . . . is [] denied under Bankruptcy Code Section 727(a)(4)(A), based upon the Debtor's having knowingly and fraudulently made a false oath by a concealment of a material transaction, all as more particularly set forth in the findings of fact and conclusions of law stated by the Court on the record July 19, 2006.

Judgment at 2-3.

The bankruptcy court's oral finding of "concealment," as satisfying the "knowing" element for denial of a discharge under § 727(a)(4)(A) could have been more clearly stated. However, any lack of clarity in the bankruptcy court's oral findings is eliminated by the bankruptcy court's statement in the Judgment that Lockwood "knowingly" made a false oath by concealing a material transaction, treated as a supplemental finding.

Including findings in a judgment is procedurally inappropriate and violates the separate document requirement of Federal Rule of Civil Procedure 58(a). Fed. R. Civ. P. 58(a)(1), incorporated by Fed. R. Bankr. P. 9021. However, after the 2002 amendment to Rule 58, the consequence of including findings in a

judgment is merely that the judgment is not deemed "entered" for purposes of the federal rules of procedure until 150 days after entry of the "judgment with findings" on the civil docket maintained by the clerk of the court. Fed. R. Civ. P. 58(b)(2)(B), incorporated by Fed. R. Bank. P. 9021.

In this case, the Judgment was entered on the clerk's docket on November 27, 2006. Treating the Judgment as containing findings offending the separate document rule means that for purposes of our analysis, it became "entered" 150 days later, on April 26, 2007.[10]

We conclude that the bankruptcy court did find that Debtor's omission to disclose the Assignment in the Statement was knowing.

4. Fraudulent Oath

Denial of discharge under § 727(a)(4)(A) requires a showing that the debtor made a false oath with the actual intent to defraud; constructive fraudulent intent is not sufficient. Wills, 243 B.R. at 64; see Devers, 759 F.2d at 753 (discussing type of intent required for § 727(a)(2) purposes).

Actual fraudulent intent may be established by circumstantial evidence or by inferences drawn from a debtor's course of conduct. Devers, 759 F.2d at 753-54; Roberts, 331 B.R. at 884; McCrary v. Barrack (In re Barrack), 217 B.R. 598, 607 (9th Cir. BAP 1998). The requisite intent may be found from the surrounding circumstances and certain "badges of fraud"

[10] Accordingly, the notice of appeal was filed after the decision became a matter of public record but before the April 26, 2007, entry of judgment and is "treated as filed after such entry and on the day thereof." Fed. R. Bankr. P. 8002(a).

including,

> 1) a close relationship between the transferor and the transferee; 2) that the transfer was in anticipation of a pending suit; 3) that the transferor [d]ebtor was insolvent or in poor financial condition at the time; 4) that all or substantially all of the [d]ebtor's property was transferred; 5) that the transfer so completely depleted the [d]ebtor's assets that the creditor has been hindered or delayed in recovering any part of the judgment; and 6) that the [d]ebtor received inadequate consideration for the transfer.

Emmett Valley Assocs. v. Woodfield (In re Woodfield), 978 F.2d 516, 518 (9th Cir. 1992). Not all of these factors need be present in order to find that a debtor acted with the requisite intent. Id. "A court may find the requisite intent where there has been a pattern of falsity or from a debtor's reckless indifference to or disregard of the truth." Wills, 243 B.R. at 64.

A number of "badges of fraud" in fact are present in this case: Through the Agreement and the Assignment, Lockwood transferred the patent application and the Invention to a corporate affiliate of his wife. The Settlement Agreement and the Assignment were effected under the cloud of the arbitration award in JMS's favor against Lockwood. The Assignment transferred a substantial asset from Lockwood, leaving little in the way of assets in his bankrupt estate to fund a distribution to his sole creditor.

As noted above, in its oral findings, the bankruptcy court found that Lockwood made "a false oath in connection with concealment of the transaction that was material[.]" Hr'g Tr. at 9:6-8. The bankruptcy court followed up its oral finding with a statement in the Judgment that Lockwood "fraudulently made a

false oath by a concealment of a material transaction. . . ." Judgment at 2.

We conclude that the bankruptcy court found that the Debtor made a false oath with actual intent to defraud by omitting to disclose the Assignment in the Statement.

B. The Record on Appeal Does Not Establish that the Bankruptcy Court Clearly Erred in Finding that Lockwood Knowingly and Fraudulently Omitted to Disclose the Assignment in the Statement

Lockwood has not raised any issue as to the bankruptcy court having made inadequate findings to support a denial of his discharge pursuant to § 727(a)(4)(A), but rather has argued that "[w]hen the only creditor in a Bankruptcy has previous notice that a valuable asset was transferred from Debtor to a third party for valuable consideration prior to the filing of Bankruptcy, the Debtor could never 'knowingly and fraudulently' [have] made a false oath by concealment of a material transaction." Statement of Issues on Appeal at 2, Dec. 12, 2006.

In this appeal, Lockwood has chosen to treat the oral findings of the bankruptcy court and the Judgment as reflecting determinations of knowledge and fraudulent intent and has proceeded to address the correctness of the bankruptcy court's denial of his discharge as a matter of fact on the merits. He approached the issues in this fashion in both his opening and reply briefs.

The problem for Lockwood is the standard for reversal of the bankruptcy court's fact findings is clear error, and he has crippled our ability to evaluate the record by neglecting to include 60 of the 63 pages of his own testimony from the

transcript of the trial in his excerpts of record.

The appellant bears the "burden of convincing the appellate court that the hearing before the lower court was either inadequate or that the legal conclusions from the facts deduced were erroneous." Gradner v. California, 393 U.S. 367, 370 (1969); Ashley v. Church (In re Ashley), 903 F.2d 599, 603-06 (9th Cir. 1990); Litton Loan Serv'g LP v. Garvida (In re Garvida), 347 B.R. 697, 708 (9th Cir. BAP 2006); Khaligh v. Hadaegh (In re Khaligh), 338 B.R. 817, 832 (9th Cir. BAP 2006).

As stated in the explanatory notes to 9th Circuit BAP Rule 8009(b)-1:

> The Panel generally limits its review to an examination of the excerpts of the record as provided by the parties. The Panel is not obligated to examine portions of the record not included in the excerpts. See In re Kritt, 190 B.R. 382, 386-87 (9th Cir. BAP 1995); In re Anderson, 69 B.R. 105, 109 (9th Cir. BAP 1986).
>
> The parties are further referred to [Fed. R. Bankr. P.] 8010(a)(1)(D) and (a)(2) which address the related problem created by appellants who do not make explicit references to the parts of the record that support their factual allegations and arguments. Opposing parties and the court are not obliged to search the entire record unaided for error. See Dela Rosa v. Scottsdale Memorial Health Systems, Inc., 136 F.3d 1241 (9th Cir. 1998); Syncom Capital Corp. v. Wade, 924 F.2d 167, 169 (9th Cir. 1991); FRAP Rule 10(b)(2).

Also see the explanatory note to 9th Circuit BAP Rule 8006-1:

> In order to review a factual finding for clear error, the record should usually include the entire transcript and all other relevant evidence considered by the bankruptcy court. See In re Friedman, 126 B.R. 63, 68 (9th Cir. BAP 1991) (failure to provide an adequate record may be grounds for affirmance); In re Burkhart, 84 B.R. 658 (9th Cir. BAP 1988).

Failure to provide essential transcripts or portions thereof can result in an adverse decision on the merits. See Ehrenberg v. Cal. State Univ., Fullerton Found. (In re Beachport Entm't), 396 F.3d 1083, 1087 (9th Cir. 2005); Morrissey v. Stuteville (In re Morrissey), 349 F.3d 1187 (9th Cir. 2003). Without an adequate record, we are entitled to conclude that the bankruptcy court did not err and may affirm the bankruptcy court's judgment. See Massoud v. Ernie Goldberger & Co. (In re Massoud), 248 B.R. 160, 163 (9th Cir. BAP 2000). We are entitled to conclude from Lockwood's decision not to include most of the transcript of his testimony at the trial before the bankruptcy court that he does not believe his testimony would be helpful to his efforts to demonstrate error. See Gionis v. Wayne (In re Gionis), 170 B.R. 675, 680-81 (9th Cir. BAP 1994).

We do not have the bulk of Lockwood's testimony available to us in order to evaluate whether the bankruptcy court clearly erred in holding that Lockwood knowingly and fraudulently omitted to disclose the Assignment in the Statement. In these circumstances, there is no adequate basis to determine that the bankruptcy court clearly erred in its findings to support denying Lockwood his discharge, and we conclude that with the bankruptcy court having found from the evidence before it that all the elements for denial of discharge pursuant to § 727(a)(4)(A) were satisfied, the Judgment should be affirmed.

VI. CONCLUSION

Based on the foregoing, we conclude that the bankruptcy court made all of the required findings to deny Lockwood's discharge pursuant to § 727(a)(4)(A), and Lockwood has not established on appeal that the bankruptcy court clearly erred in its findings. We AFFIRM.