

MAY 28 2013

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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NOT FOR PUBLICATION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 No.	CC-12-1542-TaDKi
6	ERKAN EREREN and AYLIN)	Bk. No.	10-bk-22580-CB
7	EREREN,)	Adv. No.	10-ap-01600-CB
8	Debtors.)		
9	ERKAN EREREN; AYLIN EREREN,)		
10	Appellants,)		
11	v.)	MEMORANDUM*	
12	RICHARD A. MARSHACK,)		
13	Chapter 7 Trustee; UNITED)		
14	STATES TRUSTEE,)		
	Appellees.)		

Argued and Submitted on May 15, 2013
at Pasadena, California

Filed - May 28, 2012

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

Honorable Catherine E. Bauer, Bankruptcy Judge, Presiding

Appearances: Michael Harvey Raichelson of the Law Offices of
Michael H. Raichelson argued on behalf of
Appellants; Melissa Davis Lowe of Shulman Hodges &
Bastian LLP argued on behalf of Appellee Richard
A. Marshack, Chapter 7 Trustee.

Before: TAYLOR, DUNN, and KIRSCHER, 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 **INTRODUCTION**

2 Debtors Erkan Ereren ("Mr. Ereren") and Aylin Ereren
3 ("Mrs. Ereren" and jointly, "Debtors") appeal from the bankruptcy
4 court's judgment denying their chapter 7 discharge pursuant to
5 § 727(a)(2), (a)(4), and (a)(5)¹ and its order on findings of
6 fact and conclusions of law following trial. We AFFIRM the
7 bankruptcy court's denial of discharge under § 727(a)(2) and
8 (a)(4).

9 **FACTS**

10 ***Pre-Bankruptcy***

11 The Debtors are a married couple and immigrants from Turkey.
12 Mr. Ereren is a surgeon, but in 1996 he was injured in a ski
13 accident that left him permanently disabled. In addition to \$800
14 in monthly gross income, Mr. Ereren receives approximately
15 \$14,400 per month in disability payments.

16 In January 2008, Mr. Ereren obtained \$3,000,000 in "markers"
17 from MGM Grand Hotel, LLC ("MGM") in Las Vegas and in
18 approximately 24 hours suffered substantial losses. MGM
19 subsequently sued Mr. Ereren in Nevada state court to collect on
20 his gambling debt. On January 28, 2010, it obtained a judgment
21 against Mr. Ereren in the amount of \$2,379,350. On March 9,
22 2010, MGM obtained a "sister-state" judgment against Mr. Ereren
23 in California in the amount of \$3,317,625.66.

24 At the time of the domestication of judgment, the Debtors

25
26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure, and "Civil Rule" references are to the Federal Rules
of Civil Procedure.

1 owned two Mercedes-Benzes (the "Vehicles"). On March 16, 2010,
2 however, Mr. Ereren traded-in the Vehicles at a Mercedes-Benz
3 dealership and received \$59,000 in proceeds. Mr. Ereren then
4 entered into leases for two 2010 Mercedes-Benzes.

5 MGM began to further ratchet up its collection efforts
6 against Mr. Ereren during the summer of 2010. On June 16, 2010,
7 it obtained a Writ of Execution on the sister-state judgment in
8 California state court, and a Notice of Levy was issued by the
9 Orange County Sheriff. MGM also conducted two judgment debtor
10 examinations of Mr. Ereren, and, on August 23, 2010, it obtained
11 an order for a judgment debtor examination of Mrs. Ereren.

12 On July 26 and July 27, 2010, and while collection efforts
13 intensified, Mrs. Ereren made two² transfers of funds in the
14 total amount of \$178,681 (the "Funds") to her brother Huseyin
15 Chait Berk ("Berk"). Berk lives in Turkey.

16 ***Chapter 7 Filing and the Adversary Proceeding***

17 On September 7, 2010, the Debtors filed a voluntary
18 chapter 7 bankruptcy petition. Richard A. Marshack was appointed
19 as the chapter 7 trustee ("Trustee").

20 After two § 341(a) meetings of creditors, the Trustee filed
21 an adversary complaint objecting to the Debtors' discharge under
22 § 727(a)(2), (a)(4), and (a)(5). The complaint alleged that the
23 Debtors transferred the Funds and the Vehicles with the intent to
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26
27 ² The first transfer was made on July 26, 2010 in the amount
28 of \$87,000 and the second transfer was made the following day in
the amount of \$91,681.

1 hinder, delay, or defraud their creditors;³ that they knowingly
2 and fraudulently omitted the transfer of the Vehicles from their
3 statement of financial affairs ("SOFA"); and that they failed to
4 satisfactorily explain the loss or deficiency of the assets to
5 meet the Debtors' liabilities.

6 The bankruptcy court scheduled a trial for September 4,
7 2012. In advance of trial, the Debtors each filed a declaration
8 in lieu of direct trial testimony.

9 Mr. Ereren declared that between 2003 and 2004, his father
10 (who lived in Turkey) became ill. Between the latter half of
11 2004 until the elder Ereren's death in January 2005, Mr. Ereren
12 allegedly borrowed approximately \$157,500 from Berk to pay for
13 the elder Ereren's medical bills, expenses, and funeral in
14 Turkey. Mr. Ereren stated that based on Berk's request, in
15 January 2005, Mrs. Ereren and he executed a promissory note in
16 favor of Berk ("Berk Note"), evidencing their promise to repay
17 the money loaned by Berk. He stated that the total amount owed
18 under the Berk Note was \$178,681 and that it matured on or before
19 August 1, 2010.

20 Mr. Ereren further declared that he did not learn of the MGM
21 sister-state judgment until late March/early April 2010 and that
22 he disclosed to MGM his trade-in of the Vehicles during his
23 judgment debtor examination. Mr. Ereren stated that the Debtors
24 did not believe they were required to list the trade-in of the
25 Vehicles on their SOFA, as it was Mr. Ereren's regular practice
26

27 ³ Although the Trustee does not specifically identify the
28 creditors, it appears that, at a minimum, he refers to MGM.

1 to upgrade the couple's cars every four to five years, which the
2 Debtors disclosed to their bankruptcy counsel.⁴ Finally,
3 Mr. Ereren declared that bankruptcy counsel advised the Debtors
4 as to the possible preference issue and attempted to recover the
5 Funds from Berk, but to no avail.

6 Mrs. Ereren declared that she was not involved in the
7 couple's financial affairs. She stated that she traveled to
8 Turkey during the summer of 2010, where Berk continuously
9 demanded payment on the note. Consequently, she stated that she
10 merely paid the Berk Note when she transferred the Funds.

11 Both of the Debtors further testified at the September 2012
12 trial. Mr. Ereren testified on cross-examination that the
13 Debtors paid the Berk Note based on moral and cultural reasons.
14 On her cross-examination, Mrs. Ereren testified that she
15 unsuccessfully requested an extension from her brother and
16 advised her husband of her intent to transfer the Funds. She
17 stated that while she knew that her husband gambled, she was not
18 aware of the extent of his losses or the MGM judgments. At the
19 conclusion of trial, the bankruptcy court took the matter under
20 submission.

21 The bankruptcy court subsequently entered its judgment
22 ("Judgment") denying the Debtors' discharge under § 727(a)(2),
23 (a)(4), and (a)(5). The Judgment was brief, but included an
24 express statement that the bankruptcy court did not find the
25 Debtors credible.

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28 ⁴ The Debtors were represented by different counsel in
filing their chapter 7 bankruptcy petition.

1 The Trustee moved for findings of fact and conclusions of
2 law under Civil Rule 52 and Rule 7052. He also requested that
3 the bankruptcy court take judicial notice of certain documents in
4 support of his opposition to the Debtors' independent motion
5 under Civil Rule 52.⁵

6 On October 15, 2012, the bankruptcy court entered an order
7 on its findings of fact and conclusions of law following trial
8 ("Order on Findings of Facts and Conclusions of Law").⁶ In doing
9 so, the bankruptcy court adopted the Trustee's proposed findings
10 of fact, as well as his proposed conclusions of law save two
11 alterations.

12 The Debtors timely appealed from the Judgment and Order on
13 Findings of Facts and Conclusions of Law.⁷

14 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 _____
18 ⁵ The Debtors concurrently moved to alter or amend the
19 findings of fact and conclusions of law under Civil Rule 52, for
20 a new trial under Civil Rule 59, and to amend the Judgment under
21 Civil Rule 59. As discussed in note 6, *infra*, the bankruptcy
22 court did not rule on their motion.

23 ⁶ After entering the Order, it appears that the bankruptcy
24 court did not rule on the Debtors' motion or the Trustee's
25 request for judicial notice. We do not consider the Debtors'
26 requests relating to their motion, as issues as to the
27 disposition of their motion are not before us in this appeal.

28 ⁷ While the Findings of Fact and Conclusions of Law as
entered does not provide that it is an order, it was entered on
the Trustee's motion under Civil Rule 52 and, thus, we treat it
as an order. Under Rule 8002, the Trustee's motion tolled the
time for appeal and, therefore, the Debtors' appeal of both the
Judgment and Order is timely. *See* Fed. R. Bankr. P. 8002(b)(1).

1 § 158.

2 **ISSUES**

- 3 1. Did the bankruptcy court err in denying the Debtors'
4 discharge under § 727(a)(2)?
5 2. Did the bankruptcy court err in denying the Debtors'
6 discharge under § 727(a)(4)?

7 **STANDARD OF REVIEW**

8 In an action for denial of discharge, we review: (1) the
9 bankruptcy court's determinations of the historical facts for
10 clear error; (2) its selection of the applicable legal rules
11 under § 727 de novo; and (3) its application of the facts to
12 those rules requiring the exercise of judgments about values
13 animating the rules de novo. Searles v. Riley (In re Searles),
14 317 B.R. 368, 373 (9th Cir. BAP 2004) (citation omitted), aff'd,
15 212 Fed. Appx. 589 (9th Cir. 2006).

16 Factual findings are clearly erroneous if illogical,
17 implausible, or without support in the record. Retz v. Samson
18 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010) (citation
19 omitted). We give great deference to the bankruptcy court's
20 findings when they are based on its determinations as to the
21 credibility of witnesses. Id. (noting that as the trier of fact,
22 the bankruptcy court has "the opportunity to note variations in
23 demeanor and tone of voice that bear so heavily on the listener's
24 understanding of and belief in what is said.") (citation and
25 quotation marks omitted). Where there are two permissible views
26 of the evidence, the bankruptcy court's choice between them
27 cannot be clearly erroneous. Nq v. Farmer (In re Nq), 477 B.R.
28 118, 132 (9th Cir. BAP 2012) (citation omitted). We may affirm

1 on any basis in the record. See Caviata Attached Homes, LLC v.
2 U.S. Bank, N.A. (In re Caviata Attached Homes, LLC), 481 B.R. 34,
3 44 (9th Cir. BAP 2012).

4 Notwithstanding, when the bankruptcy court adopts proposed
5 findings of fact and conclusions of law, we review its decision
6 with special scrutiny in determining whether its findings were
7 clearly erroneous. See Alcock v. Small Bus. Admin. (In re
8 Alcock), 50 F.3d 1456, 1459 n.2 (9th Cir. 1995) ("Findings of
9 fact prepared by counsel and adopted by the trial court are
10 subject to greater scrutiny than those authored by the trial
11 judge."); see also Anderson v. City of Bessemer City, 470 U.S.
12 564, 572 (1985).

13 **DISCUSSION**

14 In general, the bankruptcy court must grant a discharge to
15 an individual chapter 7 debtor unless one of the twelve
16 enumerated grounds in § 727(a) is satisfied. In the spirit of
17 the "fresh start" principles that the Bankruptcy Code embodies,
18 claims for denial of discharge are liberally construed in favor
19 of the debtor and against the objector to discharge. Khalil v.
20 Developers Sur. & Indem. Co. (In re Khalil), 379 B.R. 163, 172
21 (9th Cir. BAP 2007), aff'd, 578 F.3d 1167 (9th Cir. 2009)
22 (citation omitted). The objector to discharge bears the burden
23 to prove by a preponderance of the evidence that the debtor's
24 discharge should be denied under an enumerated ground of
25 § 727(a). Id. (citation omitted).

26 **A. Preliminary Matters**

27 **1. Joint Pre-Trial Order**

28 Prior to trial, the parties apparently entered into a joint

1 pre-trial order ("JPTO"), which narrowed the disputed issues of
2 law and fact for trial. In his opening brief, the Trustee
3 identifies an additional issue on appeal; namely, whether certain
4 issues of law and fact not identified in the JPTO should have
5 been litigated at the trial, specifically with respect to the
6 § 727(a)(5) claim. The Trustee did not file a cross-appeal and,
7 thus, is not a cross-appellant on appeal.

8 The Debtors object and contend that the JPTO is not part of
9 the record because it was not entered by the bankruptcy court.
10 They, in turn, reference their opposition to the Trustee's
11 request for judicial notice before the bankruptcy court; in that
12 opposition, the Debtors argued that judicial notice of the JPTO
13 was improper because the parties submitted the proposed order
14 nine months before trial, and the Debtors subsequently requested
15 changes to the JPTO before trial, which were never addressed.

16 The Trustee is not a cross-appellant and cannot present
17 additional issues on appeal. See Fed. R. Bankr. P. 8006; Leavitt
18 v. Alexander (In re Alexander), 472 B.R. 815, 824 (9th Cir. BAP
19 2012). Further, as discussed below, we take no position on the
20 § 727(a)(5) ruling. Consequently, we do not consider the JPTO in
21 this appeal.

22 **2. Statutory Basis for Denial of Discharge**

23 The adversary complaint sought denial of discharge under,
24 among other grounds, § 727(a)(2) and (a)(4). Based on the briefs
25 and the record on appeal, we assume that the precise denial of
26 discharge was under § 727(a)(2)(A) and (a)(4)(A).

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1 **B. The bankruptcy court did not err in denying the discharge**
2 **under § 727(a)(2)(A).**

3 Section 727(a)(2)(A) provides that the bankruptcy court may
4 deny a debtor's discharge if the debtor disposed of or permitted
5 the disposal of his or her property, with the intent to hinder,
6 delay, or defraud a creditor or an officer of the estate, within
7 one year prior to the date of petition. The objector to
8 discharge under § 727(a)(2)(A) must prove two things: (1) a
9 disposition of property, whether by transfer, removal,
10 destruction, mutilation, or concealment (within the statutory
11 time period); and (2) the debtor's subjective intent to hinder,
12 delay or defraud a creditor through the act of disposing of the
13 property. In re Retz, 606 F.3d 1189, 1200 (9th Cir. 2010)
14 (citation and quotation marks omitted).

15 The bankruptcy court denied discharge under § 727(a)(2)(A)
16 based on the prepetition disposition of the Funds and the
17 Vehicles. The Debtors do not contest that the Funds and the
18 Vehicles were their property prior to filing bankruptcy. They
19 also cannot contest that Mrs. Ereren transferred the Funds and
20 that Mr. Ereren traded-in the Vehicles within the statutory
21 prepetition time period. Therefore, our review focuses on the
22 Debtors' intent to hinder, delay, or defraud a creditor.

23 The intent to hinder, delay, or defraud "is a question of
24 fact that requires the trier of fact to delve into the mind of
25 the debtor and may be inferred from surrounding circumstances."
26 In re Searles, 317 B.R. at 379 (citation omitted). Similarly,
27 the debtor's "course of conduct may be probative of the
28 question." Id. at 380 (citation omitted). The basis of intent

1 is disjunctive and, thus, a finding of intent to hinder or delay
2 or defraud is sufficient to deny discharge under § 727(a)(2).
3 In re Retz, 606 F.3d at 1200 (citation omitted).

4 On appeal, the Debtors argue that the Trustee failed to meet
5 his burden of showing that the Debtors intended to hinder, delay,
6 or defraud. The Debtors contest the bankruptcy court's finding
7 as to Mrs. Ereren's knowledge of her husband's gambling problem
8 and the MGM judgments at the time that she transferred the Funds.
9 They reiterate that Mrs. Ereren transferred the Funds as payment
10 on the Berk Note and that the Debtors regularly upgraded their
11 cars every four to five years. Thus, the Debtors argue that the
12 bankruptcy court erred in finding that one or both of the Debtors
13 intended to hinder, delay, or defraud a creditor. At oral
14 argument, the Debtors further emphasized that the Order on
15 Findings of Fact and Conclusions of Law failed to contain a
16 finding as to Mrs. Ereren's intent to hinder, delay, or defraud.

17 The Trustee asserts that he introduced significant evidence
18 at trial from which the bankruptcy court inferred the Debtors'
19 intent. He cites to evidence such as MGM's collection efforts
20 prior to the transfers; the Debtors' failure to present adequate
21 evidence of consideration for the Funds transfer; the fact that
22 Berk was an insider; Mrs. Ereren's testimony that she was aware
23 of Mr. Ereren's gambling problem; and the fact that Mr. Ereren
24 did not make his settlement offer to MGM until after the
25 transfers.

26 The bankruptcy court generally determined that the Debtors'
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1 testimony was not credible.⁸ It affirmatively found that
2 Mr. Ereren knew that his wife intended to transfer the Funds, but
3 did nothing to dissuade her and that Mrs. Ereren knew that her
4 husband had a gambling problem, at least at the time that she
5 transferred the Funds. The bankruptcy court did not make
6 additional express findings as to the Debtors' states of mind
7 when they transferred the Funds or the Vehicles. But based on
8 the evidence before it, the bankruptcy court ultimately
9 determined that the Debtors intended to hinder, delay, or defraud
10 a creditor(s) in making these transfers.

11 In so determining, the bankruptcy court necessarily
12 disregarded the Debtors' explanations that their disposition of
13 the Funds or the Vehicles were neutral decisions. That is, it
14 did not believe that Mr. Ereren traded in the Vehicles in March

15
16 ⁸ This finding is contained in the Judgment and it is the
17 sole finding made by the bankruptcy court in the Judgment. Civil
18 Rule 58, incorporated into adversary proceedings by Rule 7058,
19 provides that every judgment must be set in a separate document.
20 Fed. R. Civ. P. 58(a). This Panel has stated that "[a] separate
21 document means one that is separate from an opinion, memorandum,
22 or findings of the court." Boggan v. Hoff Ford, Inc.
23 (In re Boggan), 251 B.R. 95, 98 n.2 (9th Cir. BAP 2000)
24 (construing a former version of Rule 9021(a), which was amended
25 in 2009 in connection with the addition of Rule 7058). The
26 separate document rule, however, is intended to calculate the
27 time for an appeal; it is not jurisdictional and may be waived.
28 Id. Civil Rule 58 was recently amended to provide that if a
separate document is required, the judgment is deemed entered
when a separate document is entered or 150 days from entry of the
order or opinion on the docket, whichever is earlier. Fed. R.
Civ. P. 58(c)(2).

Neither party raises this issue on appeal. To the extent
the Judgment contained one finding, the 150-days expired on
February 3, 2013. Thus, the Judgment does not violate the
separate document rule for the purposes of this appeal.

1 2010 simply because it was his regular practice to do so. To the
2 extent the bankruptcy court did or did not believe that there was
3 a valid obligation owed to Berk, on which we do not opine, it did
4 not believe that Mrs. Ereren transferred the Funds simply because
5 the Berk Note was set to mature or even solely because of social
6 or cultural reasons. The bankruptcy court's findings and
7 determinations are supported by the record, which reveals that
8 the transactions conspicuously followed the MGM judgment, roughly
9 coincided with MGM's domestication of its judgment in California
10 and its acceleration of its collection efforts against
11 Mr. Ereren, and preceded a settlement offer to MGM.

12 As the Debtors asserted at oral argument, minor discord
13 exists between the Judgment and the Order on Findings of Fact and
14 Conclusions of Law with respect to Mrs. Ereren's intent under
15 § 727(a)(2)(A). Specifically, the Order does not contain an
16 express finding as to Mrs. Ereren's intent to hinder, delay, or
17 defraud a creditor under § 727(a)(2)(A). Rather, the bankruptcy
18 court concluded that Mr. Ereren, with the intent to hinder,
19 delay, or defraud, allowed his wife to transfer the Funds. This
20 lack of precision, however, is of no moment under these
21 circumstances. The Judgment provides for denial of discharge
22 under § 727(a)(2) against both of the Debtors. Further, even if
23 there was a valid obligation to Berk, the timing and
24 circumstances of Mrs. Ereren's transfer were such that it
25 warranted an inference of intent to hinder, delay, or defraud
26 MGM. The Debtors repeatedly represented that Mrs. Ereren had
27 minimal involvement in the Debtors' finances leading up to the
28 date of the petition; yet, she caused the transfer of a

1 significant amount of money, roughly congruent with MGM's
2 increasing efforts to collect on its judgment. Thus, the record
3 supports the bankruptcy court's ultimate conclusion as to
4 Mrs. Ereren notwithstanding the absence of an express finding.⁹
5 See In re Caviata Attached Homes, LLC, 481 B.R. at 44 (we may
6 affirm on any basis in the record).

7 The Debtors suggest that, at worst, the transfer of the
8 Funds was a preference to Berk. Preference of one creditor does
9 not *per se* result in a finding of intent to hinder, delay, or
10 defraud another creditor. See Murphey v. Crater (In re Crater),
11 286 B.R. 756, 761-62 (Bankr. D. Ariz. 2002) (collecting cases);
12 see also Foxmeyer Drug Co. v. Gen. Elec. Capital Corp.
13 (In re Foxmeyer Corp.), 296 B.R. 327, 337 (Bankr. D. Del. 2003)
14 (collecting cases). But a debtor's preference of one creditor
15 does not preclude a finding of intent to hinder, delay, or
16 defraud his or her other creditors. See Cox v. Villani
17 (In re Villani), 478 B.R. 51, 61 (1st Cir. BAP 2012); Warchol v.
18 Barry (In re Barry), 451 B.R. 654, 662 (1st Cir. BAP 2011).

19 Thus, a debtor's alternative motivations for the disposition of
20 property are irrelevant when the debtor harbors an intent to
21 hinder, delay, or defraud another creditor. First Beverly Bank
22 v. Adeeb (In re Adeeb), 787 F.2d 1339, 1343 (9th Cir. 1986).

23 Here, once again, Mrs. Ereren's transfer of the Funds (coupled
24 with the timing of MGM's collection efforts) provide a strong
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26 ⁹ Even if the record did not support denial of discharge
27 under § 727(a)(2) as to Mrs. Ereren, as discussed in section C,
28 the Panel affirms the denial of discharge under § 727(a)(4) as to
both Debtors.

1 inference as to her intent to hinder, delay, or defraud a
2 creditor. Thus, whether the transfer of the Funds was also a
3 preference is essentially irrelevant.

4 On this record, the bankruptcy court's findings are not
5 illogical, implausible, or without support from the record.¹⁰ It
6 did not err in finding that both of the Debtors intended to
7 hinder, delay, or defraud a creditor, namely, MGM. See
8 In re Searles, 317 B.R. at 379-80 (bankruptcy court may infer
9 intent by the surrounding circumstances, including a debtor's
10 course of conduct). It found that the Debtors' testimony was not
11 credible, which we accord great deference. See In re Retz,
12 606 F.3d at 1203-04. And where there are two permissible views
13 of the evidence, the bankruptcy court's choice between them
14 cannot be clearly erroneous. See In re Ng, 477 B.R. at 132.
15 Therefore, the bankruptcy court did not err in denying the
16 Debtors' discharge under § 727(a)(2)(A).

17 **C. The bankruptcy court did not err in denying the discharge**
18 **under § 727(a)(4)(A).**

19 To obtain a denial of discharge under § 727(a)(4)(A), the
20

21 ¹⁰ At oral argument, the Debtors also raised an issue as to
22 the form of the Order on Findings of Fact and Conclusions of Law,
23 asserting, among other things, that the bankruptcy court's
24 findings on intent were contained under its conclusions of law.
25 It is unfortunate that the bankruptcy court adopted (essentially
26 verbatim) the Trustee's proposed findings of fact and conclusions
27 of law, which contained this inaccuracy. It is also unfortunate
28 that the bankruptcy court's sole alterations to the proposed
findings of fact and conclusions of law was with respect to
Mrs. Ereren's intent under § 727(a)(2)(A), creating a facial
ambiguity. Nonetheless, these are distinctions without a
difference and, thus, of no moment to this appeal.

1 objector must show that: (1) the debtor made a false oath in
2 connection with the case; (2) the oath related to a material
3 fact; (3) the oath was made knowingly; and (4) the oath was made
4 fraudulently. In re Retz, 606 F.3d at 1197 (citation omitted).
5 A false statement or omission in the debtor's schedules or
6 statement of financial affairs may constitute a false oath for
7 the purposes of § 727(a)(4)(A). In re Khalil, 379 B.R. at 172;
8 Foqal Legware of Switz., Inc. v. Wills (In re Wills), 243 B.R.
9 58, 62 (9th Cir. BAP 1999).

10 The Debtors argue that they were only required to disclose
11 transactions outside of the ordinary course of their financial
12 affairs. They contend that because upgrading their cars (by
13 trading-in or selling) every four to five years was in the
14 ordinary course of their financial affairs, their omission of the
15 trade-in on their SOFA did not constitute a false oath. By
16 failing to determine whether the transfer was outside the course
17 of their ordinary financial affairs, the Debtors argue that the
18 bankruptcy court erred in finding that there was an omission on
19 their SOFA.

20 The bankruptcy court did not make express findings as to
21 whether the trade-in was in the ordinary course of the Debtors'
22 financial affairs. Compare Tow v. Henley (In re Henley),
23 480 B.R. 708, 766-67 (Bankr. S.D. Tex. 2012) (debtors improperly
24 omitted on SOFA the sales of assets at garage sales), with
25 Maxfield v. Jennings (In re Jennings), 349 B.R. 897, 913 (Bankr.
26 M.D. Fla. 2006) (debtor's omission on his SOFA of the sale of his
27 boat was material, but not false when debtor understood the sale
28 to be in the ordinary course of his affairs). Nonetheless, the

1 bankruptcy court broadly determined that the Debtors' testimony
2 was not credible. And given its ultimate conclusion, the
3 bankruptcy court necessarily disregarded the Debtors' explanation
4 that the transfer of the Vehicles was in the ordinary course of
5 their financial affairs. The record supports this conclusion.

6 The Debtors next argue that the Trustee failed to prove that
7 the Vehicles sales hindered or impeded the administration of the
8 bankruptcy estate and, thus, failed to prove that the false oath
9 was material. Whether a fact is material is broadly defined:

10 "[a] fact is material if it bears a relationship to the debtor's
11 business transactions or estate, or concerns the discovery of
12 assets, business dealings, or the existence and disposition of
13 the debtor's property." In re Khalil, 379 B.R. at 173 (citation
14 omitted). The bankruptcy court concluded that the omission was
15 material. It is undisputed that the Vehicles previously belonged
16 to the Debtors and that they obtained \$59,000 from the sale.
17 This information clearly related to the existence and disposition
18 of significant assets. See id. Thus, the record supports the
19 bankruptcy court's conclusion that the Debtors' omission was
20 material.

21 The Debtors further contest that they acted knowingly or
22 fraudulently. At oral argument, the Debtors emphasized that they
23 did not act knowingly or fraudulently because "everyone" knew
24 about the transfer of the Vehicles. That is, they disclosed the
25 transfer to MGM during Mr. Ereren's judgment debtor examinations,
26 to their bankruptcy counsel at the time of filing, and to the
27 Trustee during their § 341(a) meeting of creditors.

28 A debtor "acts knowingly if he or she acts deliberately and

1 consciously." In re Retz, 606 F.3d at 1198 (citation and
2 quotation marks omitted). A debtor's intent to hinder, delay, or
3 defraud under § 727(a)(2) may be probative of the "knowing and
4 fraudulent" elements under § 727(a)(4)(A). Palmer v. Downey
5 (In re Downey), 242 B.R. 5, 14 n.10 (Bankr. D. Idaho 1999)
6 (citation omitted).

7 The bankruptcy court found a knowing failure to disclose.
8 Its finding is supported by the record. Once again, the
9 bankruptcy court broadly determined that the Debtors' testimony
10 was not credible. In so finding, the bankruptcy court implicitly
11 declared that it did not find the Debtors' explanations for their
12 omission believable.

13 Moreover, the fundamental purpose of § 727(a)(4)(A) is to
14 incentivize a debtor to provide the trustee and creditors with
15 accurate information so that they do not need to conduct costly
16 investigations. In re Wills, 243 B.R. at 63 (citation omitted).
17 As a result, whether MGM was aware of the transfer through a
18 separate, nonbankruptcy proceeding is irrelevant. Similarly, the
19 Debtors' apparent disclosure to the Trustee at their § 341(a)
20 meeting of creditors is inadequate as a defense. See
21 In re Searles, 317 B.R. at 377 (observing that in lieu of an
22 amended schedule or statement, "[a]n unfiled letter to the
23 trustee does not suffice because it is not in the plain view of
24 all parties in interest who should be entitled to rely on the
25 accuracy of the court's official file."); Beauchamp v. Hoose
26 (In re Beauchamp), 236 B.R. 727, 732 (9th Cir. BAP 1999), aff'd,
27 5 Fed. Appx. 743 (9th Cir. 2001) (debtor who omits assets from
28 schedules and statements and then "repents" at or before the

1 § 341(a) meeting of creditors "pits the fundamental fresh start
2 purpose of the [Bankruptcy] Code . . . against the clean hands
3 maxim." (citation and quotation marks omitted). Thus, the
4 record supports the bankruptcy court's finding that the Debtors'
5 omission was knowingly made.

6 Finally, the Debtors argue that the bankruptcy court erred
7 in finding that they fraudulently omitted the transfer. They
8 assert that its finding is illogical given that they disclosed
9 the vehicle sales to their biggest creditor and to the Trustee.
10 They also assert that they disclosed the new car leases on their
11 bankruptcy schedules. The Debtors further contend that they
12 disclosed the transfer to bankruptcy counsel, which negates any
13 intent to defraud.

14 A debtor acts with fraudulent intent when: (1) the debtor
15 makes a misrepresentation; (2) that at the time he or she knew
16 was false; and (3) with the intention and purpose of deceiving
17 creditors. In re Retz, 606 F.3d at 1198-99 (citation omitted).
18 Fraudulent intent is typically proven by circumstantial evidence
19 or by inferences drawn from the debtor's conduct. Id. at 1199
20 (citation omitted). Circumstantial evidence may include showing
21 a reckless indifference or disregard for the truth. Id.
22 (citation omitted); In re Wills, 243 B.R. at 64 (citation
23 omitted); In re Downey, 242 B.R. at 14 n.10. A debtor, however,
24 may prove lack of intent by demonstrating good faith reliance on
25 his or her attorney's advice. In re Retz, 606 F.3d at 1199
26 (citation omitted).

27 The bankruptcy court found that the Debtors fraudulently
28 omitted the transfer of the Vehicles. The record supports its

1 finding. Once again, the bankruptcy court broadly determined
2 that the Debtors' testimony was not credible. It, thus,
3 implicitly found that the quality of the Debtors' disclosures to
4 the various parties did not negate fraudulent intent. This was
5 reasonable; given the § 727(a)(2)(A) determinations, it is clear
6 that the bankruptcy court did not believe that the transfer was
7 an ordinary course transaction. This finding also renders an
8 attorneys' advice regarding disclosure of ordinary course
9 transactions irrelevant.

10 The bankruptcy court was also reasonable in failing to
11 equate disclosure of the new car leases in the Debtors' schedules
12 with disclosure of the prior sale yielding substantial cash
13 proceeds. The bankruptcy court's finding of the Debtors' intent
14 to hinder, delay, or defraud MGM under § 727(a)(2)(A), thus, also
15 supports its finding of fraudulent intent under § 727(a)(4)(A).
16 See In re Downey, 242 B.R. at 14 n.10. On this record, there are
17 sufficient patterns of falsities or reckless indifference to the
18 truth on the Debtors' part to support the bankruptcy court's
19 determinations. Thus, the record supports the bankruptcy court's
20 finding that the Debtors' omission was fraudulently made.

21 Although the Debtors assert that they disclosed the transfer
22 to bankruptcy counsel such that it negates intent, they provided
23 no additional evidence - by way of declaration from the attorney
24 who filed the chapter 7 petition, for example - other than their
25 testimonial evidence. The record supports the bankruptcy court's
26 apparent conclusion that the Debtors did not establish that they
27 relied on counsel's advice when they failed to disclose the
28 transfer or that their reliance on counsel's advice, if any, was

1 reasonable or made in good faith. See In re Retz, 606 F.3d at
2 1199 (citation omitted).

3 In sum, the bankruptcy court did not err in finding that the
4 Debtors made a false omission on their SOFA, that their omission
5 related to a material fact, and that they omitted the information
6 knowingly and fraudulently. The bankruptcy court's findings were
7 not illogical, implausible, or without support in the record.
8 Again, we give abundant deference to the bankruptcy court's
9 findings based on its assessment of the Debtors' credibility at
10 trial. See id. at 1203-04. And, again, where there are two
11 permissible views of the evidence, the bankruptcy court's choice
12 between them cannot be clearly erroneous. See In re Ng, 477 B.R.
13 at 132. Therefore, the bankruptcy court did not err in denying
14 the Debtors' discharge under § 727(a)(4)(A).¹¹

15 **CONCLUSION**

16 Based on the foregoing, we AFFIRM the bankruptcy court's
17 denial of discharge under § 727(a)(2) and (a)(4).
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27 ¹¹ Because we affirm under § 727(a)(2)(A) and (a)(4)(A), we
28 decline to address the denial of discharge under § 727(a)(5).