

NOV 12 2013

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP Nos.	WW-12-1072-DTaKu
)		WW-12-1073-DTaKu
TERRY DEFOOR,)		(Consolidated)
)		
Debtor.)	Bk. No.	10-17470-KAO
_____)		
)	Adv. No.	11-01060-KAO
TERRY DEFOOR,)		
)		
Appellant,)		
)		
v.)	M E M O R A N D U M ¹	
)		
RAFEL LAW GROUP PLLC,)		
)		
Appellee.)		
_____)		

Argued and Submitted on October 17, 2013
at Seattle, Washington

Filed - November 12, 2013

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Karen A. Overstreet, Bankruptcy Judge, Presiding

Appearances: Richard Birinyi, Esq. of Schwabe, Willimason &
Wyatt argued for Appellant; Bridget G. Morgan,
Esq. of Bush Strout & Kornfeld argued for
Appellee.

Before: DUNN, TAYLOR and KURTZ, 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.

1 The debtor, Terry Defoor, appeals the bankruptcy court's
2 order granting summary judgment to deny his chapter 7 discharge
3 under § 727(a)(5).² We AFFIRM.

4
5 **FACTS**

6 For over nineteen years, Terry and Stacey Defoor had a
7 committed domestic partnership; after five years of marriage,
8 they divorced in 1992 but reunited after a brief separation,
9 living together until October 2006. Over the course of their
10 relationship, Terry and Stacey acquired numerous assets,
11 including several homes, undeveloped plots of land, furniture and
12 cars. They also jointly operated a real estate acquisition and
13 development company, GWC Development Incorporated, Inc.
14 ("GWC, Inc.").

15 A month after they ended their relationship, Stacey
16 initiated a state court action against Terry seeking a division
17 of their assets ("state court action"). After over two years of
18 litigation, the state court entered a judgment ("Judgment")
19 awarding Stacey approximately \$2.22 million against Terry and
20 GWC, Inc., jointly and severally. It also awarded her several
21 undeveloped real properties and various homes and the furniture
22 therein, among other assets. The state court later amended the
23 Judgment, reducing Stacey's money award from \$2.2 million to
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25
26 ² Unless otherwise indicated, all chapter, section and rule
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 The Federal Rules of Bankruptcy Procedure, Rules 1001-9037.
The Federal Rules of Civil Procedure are referred to as "Civil
Rules."

1 approximately \$1.85 million ("Amended Judgment").³ The Amended
2 Judgment remained effective nunc pro tunc, with interest to
3 accrue beginning November 20, 2008, at 12% per annum.

4 Terry filed a chapter 11 bankruptcy petition on June 29,
5 2010. He converted his chapter 11 bankruptcy case to chapter 7
6 on June 6, 2011.

7 Terry listed Stacey as a creditor with a disputed \$2.2
8 million general unsecured claim.⁴ He scheduled no income and no
9

10 ³ Terry filed an appeal, and Stacey filed a cross-appeal of
11 the Judgment. On August 16, 2010, in an unpublished decision,
12 the state appellate court affirmed in part and reversed in part.
13 The state court entered the Amended Judgment pursuant to the
state appellate court's unpublished decision.

14 ⁴ Stacey filed a proof of claim (claim no. 7) on October 14,
15 2010, in an amount "to be determined." However, in an exhibit
16 attached to claim no. 7, she mentioned the Judgment providing her
17 the \$2.22 million money award. (Apparently, she did not specify
18 the claim amount because of Terry's appeal and her cross-appeal
19 of the Judgment.) She amended her proof of claim (claim no. 7-2)
on October 26, 2011, again in an amount "to be determined." In
an exhibit attached to claim no. 7-2, she mentioned the Amended
Judgment providing her the \$1.85 million money award.

20 Stacey filed another proof of claim (claim no. 10) on
21 June 20, 2010, in the amount of approximately \$2.57 million,
based on the Judgment.

22 Rafel Law Group represented Stacey in the state court
23 action. It later obtained a judgment and a supplemental judgment
24 ("Rafel Law Group Judgments") against Stacey, presumably based on
25 attorneys' fees incurred in the state court action. The Rafel
26 Law Group Judgments totaled approximately \$2.03 million. Rafel
27 Law Group later acquired all of Stacey's rights to and interests
28 in claim no. 7-2 and claim no. 10 by execution at a sheriff's
sale.

After filing a notice of transfer of claim no. 7-2 and claim
no. 10 (collectively, "claims"), Rafel Law Group was substituted
for Stacey as the creditor regarding the claims against Terry's
(continued...)

1 expenses.

2 Terry scheduled a home located in Kirkland, Washington
3 ("Kirkland Home"), valuing it at \$1.8 million. He scheduled
4 \$21,155 in cash on hand and in a bank account, \$220,833 in
5 accounts receivable, \$393,800 in anticipated tax refunds, several
6 vehicles, including cars, a snowmobile and a boat, furniture,
7 electronics, tools and office equipment. He also scheduled
8 approximately \$1.88 million in loans made to GWC, Inc. and
9 GWC & Associates, Inc., a related entity (collectively,
10 "GWC loans"),⁵ and ownership interests in various entities,
11 including GWC, Inc. and GWC & Associates, Inc. (collectively,
12 "GWC ownership interests"). He initially did not claim any of
13 these assets exempt.

14 Terry amended his schedules several times to include other
15 assets, such as various parcels of undeveloped land, machinery
16 and jewelry. He also reduced the value of several assets to \$0,
17

18 ⁴(...continued)
19 chapter 7 bankruptcy estate. On July 17, 2012, the bankruptcy
20 court entered an order substituting Rafel Law Group for Stacey as
the plaintiff in the subject adversary proceeding.

21 ⁵ Terry was the 100% owner of both GWC, Inc. and
22 GWC & Associates, Inc.

23 On March 11, 2010, GWC, Inc. and GWC & Associates, Inc. each
24 filed chapter 11 bankruptcy petitions (case nos. 10-12697 and
25 10-12699, respectively). On April 26, 2010, the bankruptcy court
26 substantively consolidated the two chapter 11 bankruptcy cases
under lead case no. 10-12697 ("GWC, Inc. chapter 11 bankruptcy
27 case").

28 On Terry's motion, the bankruptcy court entered an order on
December 2, 2010, substantively consolidating his chapter 11
bankruptcy case with the GWC, Inc. chapter 11 bankruptcy case
under the lead case no. 10-17470.

1 including one account receivable, the GWC loans and GWC ownership
2 interests. Terry claimed exemptions in most, if not all, of the
3 assets.

4 On January 14, 2011, Stacey initiated an adversary
5 proceeding against Terry seeking to deny his discharge under
6 § 727(a)(5), applicable in Chapter 11 pursuant to § 1141(d)(3)(C)
7 ("complaint").⁶ In her complaint, she alleged that Terry had
8 acquired personal property and real property assets totaling
9 approximately \$9 million in value between 2006 and 2008. She
10 asserted that Terry had "sole control" over at least \$8 million
11 in cash.

12 According to Stacey, between September 2006 and October
13 2007, Terry, GWC, Inc. and/or GWC & Associates, Inc. obtained
14 these funds by selling the following assets: a boat, a condo
15 located in Costa Rica ("Costa Rica Condo") and certain real
16 property located in Renton, Washington ("Renton Slope Property").
17 They also received funds as part of an assignment fee from an
18 entity named CamWest Development, Inc. ("CamWest") and as part of
19 a transaction with CamWest concerning certain real property

21 ⁶ Stacey moved to amend her complaint to add a § 727(a)(3)
22 claim. Terry initially opposed, but later agreed to allow Stacey
23 to amend her complaint. The bankruptcy court entered an agreed
24 order on September 12, 2011, a few days after the summary
25 judgment hearing. She filed the amended complaint on the same
26 day.

27 Stacey later moved to dismiss the § 727(a)(3) claim ("motion
28 to dismiss") in the amended complaint, as the bankruptcy court
already had entered an order granting summary judgment on the
§ 727(a)(5) claim. On November 7, 2011, three days after a
hearing on the motion to dismiss, the bankruptcy court entered an
order dismissing the § 727(a)(3) claim with prejudice.

1 located in Federal Way, Washington. The remainder of the funds
2 came from an investment account in GWC, Inc.'s name.

3 Stacey further alleged that, under the Judgment, Terry
4 received approximately \$682,000 total in vehicles, furnishings,
5 watches, audio equipment and a country club membership, among
6 other personal property assets. She pointed out that although
7 Terry had valuable personal property assets, he undervalued
8 certain personal property items or omitted them on both his
9 original and amended schedules. Terry also failed to explain the
10 disposition and/or loss of certain personal property and real
11 property assets in both his original and amended schedules and
12 statement of financial affairs (collectively, "bankruptcy
13 documents"). He further failed to account for the sale or
14 transfer of these personal property and real property assets in
15 the bankruptcy documents.

16 A few months before the scheduled trial in October 2011,
17 Stacey moved for summary judgment ("Summary Judgment Motion") on
18 her complaint. She contended that Terry's chapter 7 discharge
19 should be denied because he failed to explain satisfactorily the
20 loss and/or disposition of the funds to meet his liabilities
21 under § 727(a)(5).

22 She claimed that Terry had control over approximately \$11.5
23 million in cash ("funds") since October 2006, but failed to
24 explain adequately the disposition and/or loss of the funds.
25 Stacey relied on a document titled "Schedule of Combined Cash
26 Receipts and Disbursements" ("Summary") that Terry filed in the
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28

1 main bankruptcy case.⁷ The Summary listed the funds Terry and/or
2 GWC Inc. held from October 1, 2006 to December 31, 2009.⁸

3 According to the Summary, most of the funds came from sales
4 of assets (e.g., the Costa Rica Condo, boats and several
5 vehicles) and from an increase in credit card balances. Stacey
6 pointed out that the Summary failed to reference additional cash
7 receipts, however. Specifically, though Terry had testified at
8 the § 341(a) meeting that another related entity, GWCM, LLC,
9 obtained \$1.14 million in loans, the Summary failed to reference
10 the loans.

11 Stacey noted that Terry and/or GWC, Inc., GWC & Associates,
12 Inc. and GWCM, LLC (collectively, "GWC Entities") used some of
13 the funds to purchase the Kirkland Home, an apartment complex
14 located in Sea-Tac, Washington ("Sea-Tac Apartments") and
15 undeveloped real property located in Branson, Missouri ("Boren
16 Property"). Terry and/or the GWC Entities also used the funds to
17 furnish the Kirkland Home and model homes located in Branson,
18 Missouri ("Branson Model Homes"). They also used the funds to
19 make improvements to the Kirkland Home and undeveloped real
20 property intended for a recreational residential community
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24 ⁷ We note that the Summary lists "GWC Corp." We assume that
Terry meant to refer to GWC, Inc.

25
26 ⁸ Terry attached the Summary as Exhibit 4 to his declaration
in support of his response to Stacey's motion for an order
27 establishing her interest in certain sale proceeds and an order
to appoint a chapter 11 trustee ("Right to Sale Proceeds
28 Motion").

1 located in Branson, Missouri ("Lea Ridge Property"),⁹ as well as
2 to purchase equipment.

3 Terry and/or the GWC Entities moreover spent approximately
4 \$4.8 million between October 2006 and December 2009 for "business
5 expenses." She pointed out that the Summary indicated only
6 \$10,294,202 in total disbursements, which was \$1,195,000 less
7 than the funds Terry admitted to holding between October 1, 2006
8 and December 31, 2009.

9 Stacey contended that although his bankruptcy documents
10 indicated that he and the GWC Entities had little or no cash
11 available as of the petition date, he failed to provide helpful
12 and reliable evidence to explain adequately the disposition
13 and/or loss of the subject funds.

14 For example, during discovery, Terry gave Stacey nineteen
15 boxes of documents that he used in preparing the Summary. Upon
16 review, Stacey found that she could not rely on the documents to
17 "verify the accuracy of the figures contained in the Summary."
18 Instead of producing copies of cancelled checks, credit card
19 billing statements, tax returns and other source documents used
20 for the Summary, Terry simply referenced the Summary, a
21 spreadsheet, "accountings" and other self-prepared financial
22
23
24

25 ⁹ Terry and Stacey both refer to two parcels of real
26 property as the "Boren Property" and the "Lea Plat/Forsythe Plat"
27 or "Lea Ridge/Forsythe Plat" ("Lea Ridge Property"). Based on
28 our review of the record, it seems that both parcels of property
were located in Branson, Missouri. The Boren Property apparently
was real property separate from the Lea Ridge Property.

1 statements.¹⁰ He moreover insisted that he already had produced
2 the relevant source documents.

3 Terry opposed the Summary Judgment Motion ("Summary Judgment
4 Opposition"), claiming that he had provided adequate records
5 accurately detailing his every financial transaction. He
6 asserted that he had produced all of his bank account statements,
7 cancelled checks, QuickBooks records and credit card statements.

8 Terry insisted that his documentary evidence contained
9 "detailed explanations of each and every payment during the
10 relevant period, including where the payments [were] accounted."
11 He maintained that there was a "total lack of any evidence that
12 there [were] missing funds." He moreover argued that neither the
13 Bankruptcy Code nor case law required him to "individually
14 identify, catalogue, and produce line by line, the checking
15 account records, canceled checks, underlying invoices, and
16 supporting data for each of these almost 3,000 transactions on
17 pain of losing his discharge."

18 Terry averred that the declaration of Ed Rich ("Rich"), his
19 long-time accountant ("Rich Declaration"), and the deposition of
20 Paul Sutphen ("Sutphen"), Stacey's forensic accountant ("Sutphen
21 Deposition"),¹¹ showed that he had explained his financial

23 ¹⁰ According to his response to request for admission no. 3
24 in Stacey's first set of interrogatories, Terry "created a
25 spreadsheet detailing every deposit and withdrawal from all bank
26 accounts held by [himself], GWC and [GWC & Associates, Inc.]
since September 2006"

27 ¹¹ Sutphen had been deposed in the state court action.
28 Terry submitted portions of the Sutphen Deposition as an exhibit
(continued...)

1 transactions adequately. Neither Sutphen nor Rich uncovered any
2 "unaccounted for transactions." He claimed that Sutphen also
3 found no evidence of fraud. He further contended that Rich
4 testified that there was adequate "back up information" for his
5 financial transactions.

6 Terry offered the Rich Declaration in support of his Summary
7 Judgment Opposition. Rich acknowledged that Terry used
8 QuickBooks for his personal and business accounting. He
9 maintained that QuickBooks was "adequate for [Terry's] business"
10 and that it "provide[d] considerably more detail than other
11 programs on the market"

12 Rich explained that he was familiar with the QuickBooks
13 accounts for Terry and the GWC Entities because he "was primarily
14 engaged in completing the tax returns for the [GWC Entities] and
15 for [Terry] personally." He went on to explain that he had
16 helped Terry prepare the spreadsheet, which reconciled "all of
17 the bank accounts (except the GWCM, LLC account)." They created
18 the spreadsheet by reconciling every monthly bank account
19 statement with the corresponding entry in the QuickBooks account.
20 The spreadsheet also listed the date of each payment and
21 identified the payee.

22 Rich then explained that he created the Summary to help
23 others "understand what each payment was for and why it was
24 made," as the spreadsheet did not summarize the expenses paid
25 with a specific check by category. He acknowledged that "some of
26

27 ¹¹(...continued)
28 to his own declaration.

1 the headings [in the summary] were not 100% technically correct
2 because of the labels and because some of the transactions did
3 not actually involve fully cash transactions." Rich also
4 prepared additional spreadsheets identifying "the composition of
5 each line item by date, the account from which the transfer was
6 made, the identity of the payee, and the account that the
7 transaction was posted to on QuickBooks."

8 Rich maintained that although he personally never audited,
9 reviewed or compiled Terry's books, "there [were] no significant
10 or material unrecorded transactions that involve funds in bank
11 accounts." He further asserted that the Summary and spreadsheets
12 he and Terry had prepared completely and accurately accounted for
13 all of the transactions that Terry and the GWC Entities had
14 entered into since Terry and Stacey's separation. He also
15 averred that he had not discovered any proof of any activity
16 indicating that Terry had concealed funds.

17 In his own declaration, Terry explained the processes he and
18 Rich used in creating the spreadsheet (which listed the name of
19 every payee for all transfers to and from his bank accounts), the
20 Summary (which identified general expense categories and various
21 expenses) and the accountings (which identified payees and payers
22 and all of the transfers to and from his bank accounts).

23 Terry also referenced the Sutphen Deposition in support of
24 his Summary Judgment Opposition. He mainly relied on Sutphen's
25 testimony to show that his financial records contained no
26 "disconcerting" information. According to Terry, throughout the
27 state court action, Stacey alleged that he had transferred funds
28 out of the country. Stacey employed Sutphen to identify any

1 unusual tracing of funds through Terry's bank accounts. She also
2 tasked Sutphen with the preparation of a balance sheet of assets
3 and liabilities as of the date of Stacey and Terry's separation.

4 Sutphen testified that although he found some "very odd
5 transactions through [Terry's] bank and investment accounts . . .
6 they all appeared to be accounted for properly at the end." He
7 also testified that he found no evidence of any fraud by Terry
8 concerning his assets and liabilities, as well as those of GWC,
9 Inc.

10 In her reply to Terry's Summary Judgment Opposition, Stacey
11 claimed that Terry failed to account for at least \$921,504 of the
12 approximately \$11 million in cash he held after their separation
13 in October 2006. She highlighted specific inaccuracies in the
14 accounting documents Terry provided.

15 Stacey first referenced a document titled, "Investment in
16 Renton Land Detail" ("Renton Slope Property Accounting"). The
17 Renton Slope Property Accounting listed funds used for the Renton
18 Slope Property between October 1, 2006 and December 31, 2009.
19 She pointed out that Terry had spent a total of \$464,955 for the
20 Renton Slope Property before October 1, 2006, even though the
21 Renton Slope Property Accounting purportedly covered the period
22 between October 1, 2006 and December 31, 2009.

23 She next contended that Terry included double payments of
24 \$100,000 to WGC, Inc. He listed a \$100,000 payment to WGC, Inc.
25 in a document titled, "Investment in Kirkland Home Detail"
26 ("Kirkland Home Accounting"). He then listed a \$100,000 payment
27 to WGC, Inc. as a debit in a document titled, "Shareholder
28 Distributions Detail" ("Shareholder Accounting"). Stacey argued

1 that Terry's "artificial reduction of cash [thus] result[ed] in
2 an additional \$100,000 being unaccounted for by [Terry]."

3 Stacey claimed that Terry also mischaracterized several
4 transactions. In a document titled, "Stacy [sic] Defoor Payments
5 Expense Detail" ("Stacey Expense Accounting"), Terry stated that
6 he made \$92,549 in payments on her behalf. Terry included in the
7 Stacey Expense Accounting the entire \$92,549 "book value" of two
8 cars, a 2003 Porsche Boxster and a 2004 Porsche Cayenne, that
9 were awarded to Stacy in the state court action. He reported
10 that these transactions reflected a \$92,549 use of cash. But,
11 Stacey noted, neither a check number nor a reference to a wire
12 transfer was made. She argued that the transfer of two cars
13 owned free and clear did not constitute "a use of cash." Terry
14 thus overstated his use of cash by \$92,549.

15 In another document titled, "Model Home Furniture and
16 Equipment lost in Repossession Expense Detail" ("Model Home
17 Expense Accounting"), Terry represented that his cash was
18 depleted by \$65,000. The \$65,000 reduction in cash allegedly had
19 resulted from the repossession of "model home furniture and
20 equipment." Stacey contended that Terry could not characterize
21 "repossession" as a use of cash when he already had paid for the
22 furniture and equipment.

23 Terry further overstated his expenses by claiming that he
24 had used \$50,000 to purchase vacant land located in Redmond,
25 Washington ("Redmond Fowler Property"). Stacey pointed out that
26 Terry did not spend any funds to acquire the Redmond Fowler
27 Property. Rather, he obtained an interest in the Redmond Fowler
28 Property as partial compensation under an agreement with CamWest

1 in 2005.

2 In a document titled, "Lea Ridge Building, Furniture and
3 Equipment Destroyed During Snowstorm (Uninsured) Expense Detail"
4 ("Lea Ridge Accounting"), Terry counted \$30,000 as a use of cash
5 that resulted from the destruction of furniture and equipment in
6 a snowstorm at the Lea Ridge Property. Stacey argued that Terry
7 again overstated his expenses by characterizing the destruction
8 of furniture and equipment as a use of cash, even though he
9 previously had purchased the subject furniture and equipment.

10 Terry also listed a total of \$44,000 as expenses in a
11 document titled, "Security and Escrow deposits Forfeited Expense
12 Detail" ("Security and Escrow Deposit Accounting"). He listed
13 \$20,000 paid as "additional security deposits per Terry D," and
14 \$24,000 paid as "additional escrow deposits per Terry D." Stacey
15 contended that Terry did not provide a check number, payee or
16 wire transfer for either of these transactions. She alleged that
17 Terry again overstated his expenses by \$44,000.

18 Stacey moreover argued that Terry failed to account for a
19 total of \$474,477.70 in improvements and/or purchases of
20 equipment and furniture for the Kirkland Home, another model home
21 and the Branson Model Homes (collectively, "Kirkland Home and
22 Model Homes Furniture and Equipment Accounting"). He provided
23 three documents, one titled, "Kirkland Residence Improvements,
24 Equipment and Furnishings Detail" ("Kirkland Home Accounting"),
25 another titled, "Model Home Furniture Detail ("Model Home
26 Accounting"), and another titled, "Branson and Model Home Costs
27 Abandoned Expense Detail" ("Branson Property Accounting"). She
28 contended that Terry could not properly report that he converted

1 cash into personal property items. Instead, he must provide an
2 inventory.

3 Stacey also contended that Terry's reliance on the Sutphen
4 Deposition was misleading because Sutphen was not testifying
5 about Terry's current accounting, which did not exist until three
6 years after Sutphen was deposed. She pointed out that Sutphen
7 was employed in August 2007 and deposed in December 2007. Stacey
8 argued that nothing in his deposition could relate to Terry's use
9 of cash after December 2007.

10 At the September 9, 2011 hearing on the Summary Judgment
11 Motion, the bankruptcy court noted that Terry heavily relied on
12 Sutphen's analysis of his books and records as evidence that they
13 did not contain "anything of concern." Tr. of September 9, 2011
14 hr'g, 6:8. The bankruptcy court discounted Sutphen's analysis,
15 however, as he had been "analyzing transactions prior to October
16 2006, and his deposition was taken December 14, 2007." Tr. of
17 September 9, 2011 hr'g, 6:12-14. It found that Sutphen had
18 "absolutely nothing relevant to say about the time period between
19 . . . October 31, 2006 and December 31, 2009." Tr. of
20 September 9, 2011, hr'g, 6:14-17.

21 Although the bankruptcy court agreed with Terry that he was
22 not required to produce all of the source documents for his
23 accounting, it believed that he had to respond to "some very
24 specific things that were raised in the [Summary Judgment Motion]
25 . . . in a way that [the bankruptcy court could] understand it."
26 Tr. of September 9, 2011 hr'g, 6:2-4. The bankruptcy court
27 proceeded to go through his accountings, questioning numerous
28 transactions.

1 It first focused on the "\$465,955 investment"¹² in the
2 Renton Slope Property. The bankruptcy court noted that the funds
3 used for the Renton Slope Property had been spent before
4 October 1, 2006. It thus determined that the investment in the
5 Renton Slope Property could not be included in the cash
6 statement.

7 The bankruptcy court next looked at a \$100,000 double
8 deduction¹³ for payments to WGC, Inc.¹⁴ It agreed with Stacey
9 that Terry had counted a \$100,000 payment to WGC, Inc. twice.

10 The bankruptcy court then reviewed the payments totaling
11 \$92,549 that Terry allegedly made on Stacey's behalf. It agreed
12 with Stacey that these payments did not constitute cash
13

14
15 ¹² The amount reflected in the transcript is incorrect.
16 According to the document titled, "Cash Flow - Investment in
Renton Land Detail," the correct amount is \$464,955.

17 ¹³ Again, the amount reflected in the transcript is
18 incorrect. The amount is not \$135,000 as stated in the
19 transcript. Based on our reading of the relevant documents
20 attached to the Rich Declaration and Stacey's reply in support of
21 the Summary Judgment Motion, it seems that Stacey contested a
22 \$100,000 payment to WGC, Inc. She noted that Terry included a
23 \$100,000 payment to WGC, Inc. in the spreadsheet titled,
24 "Investment in Kirkland Home Detail." Stacey argued that this
25 \$100,000 payment to WGC, Inc. increased Terry's alleged use of
26 cash between October 1, 2006 and December 31, 2009. She pointed
out that Terry included this same \$100,000 payment to WGC, Inc.
as a "debit" in his spreadsheet titled, "Shareholder
Distributions Detail." Stacey contended that such accounting
artificially reduced Terry's cash, resulting in another \$100,000
being unaccounted for by him.

27 ¹⁴ The transcript lists "WCG," but Exhibit 5, "Cash Flow
28 Investment in Property," attached to the Rich Declaration lists
it as "WGC, Inc."

1 transactions; they were book values for two cars already awarded
2 to Stacey in the state court action.

3 It then examined the \$65,000 use of cash for the repossessed
4 furniture for the model home. The bankruptcy court again agreed
5 with Stacey that the repossession of the model home's furniture
6 did not constitute a cash expense, though it was properly
7 documented as an accounting transaction.

8 With respect to the \$50,000 allegedly used for the purchase
9 of the Redmond Fowler Property, the bankruptcy court noted it
10 earlier addressed this matter in the main bankruptcy case.¹⁵ It
11 remained convinced that there was no use of cash toward the
12 purchase of the Redmond Fowler Property.

13 The bankruptcy court reviewed the \$30,000 deduction for the
14 destruction of furniture and equipment in a snowstorm at the Lea
15 Ridge Property. It concluded that this deduction was not a cash
16 transaction - the Lea Ridge Property Accounting did not explain
17 where the \$30,000 had gone. It mentioned that the total \$44,000
18 expense in security and escrow deposits also had not been
19 explained.

20 The bankruptcy court then looked at the \$474,477.70 spent in
21 improvements and purchases of equipment and furniture for the
22 Kirkland Home, another model home and the Branson Model Homes as
23 listed in the Kirkland Home and Model Homes Furniture and
24 Equipment Accounting. The bankruptcy court stated that it was
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26 ¹⁵ The bankruptcy court addressed this issue when Stacey
27 filed a motion for an order establishing her interest in the
28 proceeds of the sale of the Redmond Fowler Property to CamWest.
See main case docket no. 121.

1 unacceptable for Terry simply to say that he did not keep a
2 detailed inventory of the furniture and equipment, given the
3 significant prices he paid for them and the need for insurance
4 coverage for them.

5 The bankruptcy court recognized that the accountings Terry
6 provided were "summary in nature" and may have been "re-creations
7 of what happened after the fact." Tr. of September 9, 2011 hr'g,
8 11:4, 11:9-10. It also pointed out that "[t]here [weren't] any
9 source documents for anything." Tr. of September 9, 2011 hr'g,
10 11:4-5. The bankruptcy court further noted that Terry offered no
11 testimony of any person who had input information into the
12 QuickBooks accounts at the time of input.

13 The bankruptcy court determined that Terry did not meet his
14 burden "to explain to [it] what happened with credible
15 testimony." Tr. of September 9, 2011 hr'g, 12:21-22. Although
16 Terry did not have to provide "hundreds of pages of accounting
17 transactions," he had to explain "here's what [he] bought, and
18 here's what happened to it." Tr. of September 9, 2011 hr'g,
19 13:3-4. The bankruptcy court further determined that it was
20 unacceptable for and inaccurate of Terry to characterize accrual
21 based transactions as cash transactions.

22 On November 7, 2011, the bankruptcy court entered an order
23 ("Summary Judgment Order") granting Stacey's Summary Judgment
24 Motion.¹⁶ Terry timely appealed.

26 ¹⁶ Terry moved to set aside the Summary Judgment Order under
27 Civil Rule 59(e), applicable through Rule 9023 ("Motion to
28 Reconsider"). The bankruptcy court denied the Motion to
(continued...)

1 marks omitted)). "In making this determination, conflicts are
2 resolved by viewing all facts and reasonable inferences in the
3 light most favorable to the non-moving party." Id. (citation
4 omitted).

5 We may affirm on any ground supported by the record. Shanks
6 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

7
8 **DISCUSSION¹⁷**

9 The only issue before us is whether Terry raised any genuine
10 issue of material fact that would preclude summary judgment in
11 Stacey's favor on her § 727(a)(5) claim for relief. Based on our
12 review of the record, we conclude that Terry did not.

13 Under § 727(a)(5), the bankruptcy court shall deny the
14 debtor a discharge if he fails "to explain satisfactorily . . .
15 any loss of assets or deficiency of assets to meet [his]
16 liabilities." The objecting creditor bears the initial burden of
17 proof to demonstrate that: 1) the debtor at one time, not too
18 remote from the petition date, owned identifiable assets; 2) the
19 debtor no longer owned the assets as of the petition date; and
20 3) the bankruptcy documents do not reflect an adequate

21
22 ¹⁷ Terry urges us to review two additional declarations that
23 he submitted to the bankruptcy court in support of his Motion to
24 Reconsider. We decline to review those declarations because we
25 have been asked to consider on appeal only whether the bankruptcy
26 court erred in granting Stacey's Summary Judgment Motion. See
27 Appellant's Opening Brief at 2 ("The sole issue in this case is
28 whether it is proper to grant summary judgment in favor of the
plaintiff."). We therefore limit our review to the documents
relating to the Summary Judgment Motion, as presented to the
bankruptcy court.

1 explanation for the disposition of the assets. Retz v. Samson
2 (In re Retz), 606 F.3d 1189, 1205 (9th Cir. 2010). "Once the
3 objecting creditor has made a prima facie case, the debtor must
4 offer credible evidence regarding the disposition of the missing
5 assets." Id. (citing Devers v. Bank of Sheridan, Montana
6 (In re Devers), 759 F.2d 751, 754 (9th Cir. BAP 1985)). The
7 debtor's failure to provide an adequate explanation for the loss
8 of assets constitutes sufficient ground for denial of his
9 discharge under § 727(a)(5). Retz, 606 F.2d at 1205 (citing
10 Devers, 759 F.2d at 754).

11 "Vague and indefinite explanations of losses that are based
12 on estimates uncorroborated by documentation are unsatisfactory."
13 Bell v. Stuerke (In re Stuerke), 61 B.R. 623, 626 (9th Cir. BAP
14 1986)(citing In re Chalik, 748 F.2d 616, 619 (11th Cir. 1984)).
15 A debtor "cannot omit items from his schedules, force the trustee
16 and the creditors, at their peril, to guess that he has done so -
17 and hold them to a mythical requirement that they search through
18 a paperwork jungle in the hope of finding an overlooked needle in
19 a documentary haystack." Retz, 606 F.3d at 1206 (quoting Boroff
20 v. Tully (In re Tully), 818 F.2d 106, 111 (1st Cir. 1987)
21 (internal quotation marks omitted)).

22 On appeal, Terry maintains that he offered "full, accurate
23 and complete accounting records" that adequately explained the
24 loss and disposition of his assets. He persists in asserting
25 that he has accounted for every financial transaction entered
26 into between October 2006 and December 2009. He insists that
27 "[t]here is simply no missing money." Terry complains that, in
28 making its determination under § 727(a)(5), the bankruptcy court

1 ignored the Rich Declaration, the Sutphen Deposition and the
2 accountings and Summary he provided.

3 Contrary to his contentions, the bankruptcy court carefully
4 reviewed all of the accountings, Summary and other financial
5 documents he provided as evidence in support of his Summary
6 Judgment Opposition. It highlighted a number of significant
7 expenses Terry claimed he made, which, in actuality, were not
8 cash transactions.

9 Terry disregards the bankruptcy court's concern that he
10 failed to provide source documents for certain questionable
11 transactions. He also ignores its concern that he
12 mischaracterized numerous transactions; instead of identifying
13 these transactions as accrual based or accounting transactions,
14 Terry labeled them as cash transactions.

15 Reviewing Terry's documentary evidence (e.g., the Summary
16 and the accountings), the bankruptcy court reasoned that it was
17 not credible to explain the losses and deficiencies in his
18 assets. (It noted that the Summary and accountings may have been
19 re-creations of financial transactions after the fact.) It found
20 a number of substantial discrepancies and inaccuracies in the
21 Summary and accountings that Terry failed to explain away or to
22 provide source documents to support. Under these circumstances,
23 the bankruptcy court determined that the documentary evidence
24 submitted by Terry was inadequate to raise a genuine issue of
25 material fact in opposition to the Summary Judgment Motion.

26 Once Stacey demonstrated that Terry did not provide
27 sufficient explanations as to losses of his assets, it was up to
28 Terry to provide countering evidence to establish the existence

1 of a genuine issue of material fact. Because Terry failed to do
2 so, the bankruptcy court did not err in granting summary judgment
3 on Stacey's § 727(a)(5) claim and denying Terry's discharge.
4

5 **CONCLUSION**

6 Terry did not raise any genuine issue of material fact as to
7 the inadequacy of his explanation for the loss and/or dissipation
8 of certain of his assets. The bankruptcy court did not err in
9 granting summary judgment on Stacey's § 727(a)(5) claim. We

10 AFFIRM.
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