

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NOT FOR PUBLICATION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.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
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.

<sup>1</sup> 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).<sup>2</sup> 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 <sup>2</sup> 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").<sup>3</sup> 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.<sup>4</sup> He scheduled no income and no  
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10 <sup>3</sup> 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 <sup>4</sup> 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"),<sup>5</sup> 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,  
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18 <sup>4</sup>(...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 <sup>5</sup> 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  
27 under lead case no. 10-12697 ("GWC, Inc. chapter 11 bankruptcy  
28 case").

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").<sup>6</sup> 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

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21 <sup>6</sup> 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

1 main bankruptcy case.<sup>7</sup> The Summary listed the funds Terry and/or  
2 GWC Inc. held from October 1, 2006 to December 31, 2009.<sup>8</sup>

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  
21  
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23  
24 <sup>7</sup> We note that the Summary lists "GWC Corp." We assume that  
Terry meant to refer to GWC, Inc.

25  
26 <sup>8</sup> 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"),<sup>9</sup> 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

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25 <sup>9</sup> 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.<sup>10</sup> 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"),<sup>11</sup> showed that he had explained his financial

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23 <sup>10</sup> 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 <sup>11</sup> 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

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27 <sup>11</sup>(...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"<sup>12</sup> 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 deduction<sup>13</sup> for payments to WGC, Inc.<sup>14</sup> 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

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14  
15 <sup>12</sup> 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 <sup>13</sup> 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 <sup>14</sup> 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.<sup>15</sup> 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 <sup>15</sup> 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.<sup>16</sup> Terry timely appealed.

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26 <sup>16</sup> 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 **DISCUSSION<sup>17</sup>**

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

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21  
22 <sup>17</sup> 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.