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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-13-1566-KiTaPa
)		
STEVEN CARL GRONLUND and)	Bk. No.	6:12-14417
GINA MARIE GRONLUND,)		
)	Adv. No.	6:12-1173
Debtors.)		
_____)		
STEVEN CARL GRONLUND,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
KARL T. ANDERSON, Chapter 7)		
Trustee,)		
)		
Appellee.)		
_____)		

Argued and Submitted on July 25, 2014,
at Pasadena, California

Filed - August 19, 2014

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

Honorable Deborah J. Saltzman, Bankruptcy Judge, Presiding

Appearances: Andrew Edward Smyth, Esq., argued for appellant
Steven Carl Gronlund; Thomas J. Polis, Esq., of
Polis & Associates, APLC, argued for appellee, Karl
T. Anderson, Chapter 7 Trustee.

Before: KIRSCHER, TAYLOR and PAPPAS, 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 Appellant, Steven Carl Gronlund ("Debtor"), appeals the
2 bankruptcy court's decision to deny his discharge at the request
3 of Appellee, chapter 7² trustee Karl T. Anderson ("Trustee"). The
4 bankruptcy court denied Debtor's discharge under § 727(a)(2)(A)
5 and (B) and § 727(a)(4)(A) because he concealed and failed to
6 disclose a material asset in his bankruptcy schedules and
7 statement of financial affairs. We AFFIRM.

8 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

9 Debtor has twenty years of experience owning and operating
10 businesses, including mortgage and real property rental
11 businesses. On February 23, 2012, Debtor and Gina Gronlund, his
12 wife and co-debtor, filed their chapter 7 bankruptcy case.
13 Debtor's initial Schedule B was very detailed, even listing pots
14 and pans and where they were located in Debtor's residence.
15 However, Debtor did not list a note related to Mexican real
16 property ("Mexican property"), which he eventually valued at
17 \$450,000 (the "Mexican Note"). Pursuant to the terms of the
18 Mexican Note, Debtor received a \$2,500 "interest-only" payment
19 each month. Debtor had been receiving payments on the Mexican
20 Note since May 2008. The interest income was not specifically and
21 separately listed in his initial Schedule I, nor was it listed in
22 his initial Schedule G. Debtor testified, however, that the
23 \$2,500 payments might be included in the \$9,000 per month gross
24 income listed in his initial Schedule I.

25 Debtor signed his bankruptcy schedules under penalty of

26
27 ² Unless specified otherwise, all chapter and code
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
all rule references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 perjury. He appeared at the § 341(a) meeting of creditors
2 ("§ 341(a) meeting") and answered the Trustee's questions under
3 oath. At the beginning of the meeting, Debtor reaffirmed that his
4 bankruptcy schedules were accurate and needed no corrections.
5 During the meeting, however, Trustee reviewed Debtor's tax return
6 and noticed a large amount of earned interest income. Trustee
7 asked Debtor about it. Debtor accurately stated that the earned
8 interest income on his tax return reflected a \$2,500 monthly
9 payment he received on a note secured by Mexican property he sold
10 to Sayed Rezai ("Rezai"). Trustee noted that this asset and
11 income were not reflected in Debtor's schedules; Debtor agreed.
12 When Trustee first asked about Rezai, Debtor responded, "Sayed
13 Rezai, he is a -- somebody who bought my -- bought a property down
14 in Big Bear." § 341(a) Tr. (Mar. 30, 2012) at 24:5-6. Later,
15 Debtor corrected himself, stating the property in question was
16 located in Mexico, not Big Bear, California. Debtor testified
17 that Rezai lived in Mexico, that he was not sure whether Rezai had
18 a place in the United States and that "[s]ometimes he doesn't pay
19 me." Id. at 26:3. However, moments later when Trustee asked
20 about the timing of the \$2,500 payments, Debtor testified that
21 they "just come[] in every month." Id. at 28:8-9. Debtor also
22 testified that he "didn't even think about" the Mexican Note
23 because he had sold the Mexican property years before. Id. at
24 24:15-22. Trustee continued the meeting to allow Debtor to amend
25 his schedules to include the Mexican Note. Id. at 30:13-14.

26 **A. Trustee's adversary complaint**

27 Debtor did not file amended schedules in the six weeks
28 following the § 341(a) meeting, so on May 17, 2012, Trustee filed

1 an adversary complaint seeking to deny Debtor's discharge.
2 Trustee's complaint alleged Debtor affirmatively concealed the
3 beneficial interest he held in the Mexican Note and made a false
4 oath. The complaint pled claims for relief under § 727(a)(2)(A)
5 and (a)(4)(A).

6 One week after Trustee filed the adversary proceeding, Debtor
7 filed amended schedules. The Mexican Note, valued at \$450,000,
8 and the \$2,500 monthly income were added. However, the amended
9 schedules also asserted that the Mexican Note was over-encumbered
10 by debts owed to Debtor's mother, his in-laws and the federal
11 government of Mexico for Maritime Zone Taxes. These encumbrances
12 were not listed in the original schedules. Further, Debtor had
13 not mentioned these debts at the § 341(a) meeting when the Mexican
14 Note was discussed. The Debtor alleged that the value of the
15 insider claims secured by the Mexican Note totaled \$390,000 and
16 the tax liability totaled \$80,000. No proofs of claim on any of
17 these purported encumbrances were ever filed. Although the record
18 is missing certain exhibits admitted at trial, Debtor introduced
19 documents that he believed established the purported encumbrances
20 against the Mexican Note. It is clear, however, that the
21 bankruptcy court did not find these exhibits to be credible.

22 In Trustee's Trial Brief, Trustee argued that Debtor's
23 discharge should be denied because he made a false oath in
24 connection with the case and concealed the Mexican Note. Trustee
25 argued that the combined evidence of Debtor failing to list the
26 Mexican Note on his schedules, failing to disclose it during the
27 first 30 minutes of examination at the § 341(a) meeting and, after
28 disclosing it, claiming it was over-encumbered by insider claims

1 without documentary proof, proved Debtor's false oath under
2 § 727(a)(4)(A) and concealment under § 727(a)(2)(A) and (B).

3 In his trial declaration, Trustee testified: that Debtor
4 received 48 payments on the Mexican Note during the four years
5 preceding his filing bankruptcy; that the 48 payments amounted to
6 approximately \$130,000, which the Trustee considered an
7 "economically significant" asset; and that the checks Debtor
8 received from Rezai arrived "each and every month," despite
9 Debtor's claim at the § 341(a) meeting that sometimes he was not
10 paid. Although Trustee stated in his declaration that a copy of
11 the cancelled checks were attached as Exhibit #3, they were not,
12 and we do not have a copy of them in the record. In any event,
13 the checks were offered at trial and admitted. Trustee also
14 testified that the checks Rezai sent to Debtor came from Rezai's
15 personal residence in Escondido, California, despite Debtor's
16 claim at the § 341(a) meeting that Rezai lived in Mexico.

17 Mauricio Leon de la Barra ("de la Barra") testified for
18 Trustee as Special Mexican Real Estate Counsel. In his trial
19 declaration, de la Barra testified: that what was being referred
20 to as a "promissory note," the Mexican Note, throughout the
21 adversary proceeding was more accurately described as a beneficial
22 interest in a Mexican trust; that under Mexican law, an
23 encumbrance in real property is perfected by recording the
24 corresponding lien in the Public Registry of Property in the
25 locality in which the real property is located; that he conducted
26 a public records search for the Mexican property in January 2013;
27 and that he found no encumbrances recorded against the Mexican
28 property. Importantly, de la Barra further testified that the

1 value of the Mexican Note was approximately \$530,000.

2 In Debtor's Trial Brief he argued that he lacked the
3 requisite intent to satisfy the elements of both the false oath
4 claim and the concealment claim because his omission of the
5 Mexican Note in his initial schedules was inadvertent and not
6 purposeful.

7 In his trial declaration, Debtor testified: that at the time
8 he filed for bankruptcy his personal life and business dealings
9 were chaotic; that his elderly in-laws lived with him and were
10 failing in health; that he was supporting his severely injured
11 brother-in-law and his family; that he was recovering from having
12 to testify as a witness in a trial prosecuting his friend for
13 murder, which depressed him; and that he was delinquent and
14 defaulting on loans which led to eleven separate foreclosures of
15 income-producing real properties. Debtor further testified that
16 his income decreased during this time, that he was being sued by
17 several lenders and that a restaurant he owned failed. He
18 testified that historically he paid little attention to the
19 details of his business transactions, but that "during this
20 period[,] [he] paid virtually no attention to the everyday
21 financial aspects of [his] businesses."

22 Debtor hired attorney Gary Quackenbush ("Quackenbush") to
23 prepare and file his bankruptcy petition. Debtor directed his
24 business bookkeeper, Laurie Provost ("Provost"), and business
25 employee, Linda Meyer ("Meyer"), to "assist in the preparation and
26 transmission of the necessary information to Quackenbush" rather
27 than doing it himself. He asked Provost and Meyer to do this
28 because of "[his] personal situation, the complexity of [his]

1 finances and because of their knowledge of [his] financial
2 affairs." Debtor testified that Quackenbush received all the
3 information necessary to accurately fill out his bankruptcy forms
4 by February of 2012. Quackenbush gave Debtor a first draft of the
5 petition and schedules later that month, which Debtor testified,
6 were "replete with errors of all kind[s]"; Debtor, Provost and
7 Meyer corrected them. Debtor stated he saw a second draft that
8 also contained errors. Debtor testified he signed the third draft
9 prepared by Quackenbush trusting that the petition and schedules
10 were complete and accurate. Debtor terminated Quackenbush on
11 July 24, 2012, shortly after Trustee filed his adversary
12 complaint.

13 Provost testified in her trial declaration: that it was her
14 duty as "point person" to be the primary contact with
15 Quackenbush's office during the preparation of Debtor's bankruptcy
16 petition and schedules; that Meyer was responsible for gathering
17 information regarding Debtor's real properties and related
18 matters; and that completing information requests from
19 Quackenbush's office was challenging because of the fluctuating
20 nature of Debtor's financial affairs.

21 Meyer testified in her trial declaration: that she supplied
22 Provost a list of Debtor's real properties; and that her property
23 list included the Mexican property as she received the monthly
24 payments related to it.

25 **B. The trial on Trustee's adversary complaint**

26 The bankruptcy court held a three-day trial in October 2013.
27 Several witnesses testified, including Trustee, Debtor, de la
28 Barra, Provost, Meyer and Gina Gronlund.

1 At trial, a transcript of the § 341(a) meeting was admitted
2 into evidence and an audio recording of it was played.

3 Provost testified that she gathered the necessary information
4 for Debtor's bankruptcy, including information about Debtor's real
5 properties that she had received from Meyer, and transmitted it to
6 Quackenbush's office. However, she testified it was not her job
7 to review and correct the information. She testified that only
8 Debtor reviewed and corrected the information supplied to
9 Quackenbush.

10 Meyer testified that she also never reviewed drafts of the
11 bankruptcy forms and that her only role was to gather information
12 and give it to Provost. Meyer also reaffirmed her declaratory
13 testimony that the Mexican property was included on the list of
14 Debtor's real properties she supplied to Provost. After closing
15 argument, the bankruptcy court took the matter under submission.

16 The bankruptcy court recited its oral findings of fact and
17 conclusions of law on the record on October 16, 2013. After
18 observing Debtor's demeanor while testifying under oath and
19 examining the transcript of the § 341(a) meeting and audio
20 recording of it, the court found that Debtor was not a credible
21 witness because of inconsistencies in his testimony. The court
22 denied Debtor's discharge for intentionally concealing the Mexican
23 Note before and after filing bankruptcy in violation of
24 § 727(a) (2) (A) and (B) and for knowingly and fraudulently, in
25 connection with the case, making a false oath or account in
26 violation of § 727(a) (4) (A) by omitting the Mexican Note from his
27 schedules.

28 The bankruptcy court entered a judgment consistent with its

1 oral ruling on October 31, 2013. This timely appeal followed.

2 **II. JURISDICTION**

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

5 **III. ISSUES**

6 1. Did the bankruptcy court err when it denied Debtor's
7 discharge under § 727(a) (2) (A) and (B)?

8 2. Did the bankruptcy court err when it denied Debtor's
9 discharge under § 727(a) (4) (A)?

10 **IV. STANDARDS OF REVIEW**

11 In an action for denial of discharge, we review: (1) the
12 bankruptcy court's determinations of the historical facts for
13 clear error; (2) its selection of the applicable legal rules under
14 § 727 de novo; and (3) its application of the facts to those rules
15 requiring the exercise of judgments about values animating the
16 rules de novo. Searles v. Riley (In re Searles), 317 B.R. 368,
17 373 (9th Cir. BAP 2004), aff'd, 212 F. App'x 589 (9th Cir. 2006).

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

1 Bessemer City, N.C., 470 U.S. 564, 573-75 (1985).

2 **V. DISCUSSION**

3 Debtor argues that the evidence does not support the
4 bankruptcy court's decision that he violated § 727(a)(2) or
5 (a)(4)(A). Specifically, Debtor argues the bankruptcy court's
6 denial of discharge was in error because it "ignored" that he
7 voluntarily disclosed the omitted Mexican Note at the § 341(a)
8 meeting. Debtor also argues the bankruptcy court erred in finding
9 he attempted to conceal it when he testified that the \$2,500
10 monthly interest payments he received were sometimes late or
11 missed. In addition, Debtor argues that claiming the existence of
12 encumbrances against the Mexican Note, even if not recorded,
13 cannot be considered a "concealment."

14 In short, Debtor disputes the bankruptcy court's findings of
15 fact. He does not argue that the court applied an incorrect
16 standard of law. Therefore, our review is limited to determining
17 whether the bankruptcy court's findings are illogical, implausible
18 or without support in the record.

19 **A. The bankruptcy court did not err in denying Debtor's**
20 **discharge under § 727(a)(2).**

21 The bankruptcy court denied Debtor's discharge under both
22 subsections of § 727(a)(2). That section states:

23 The court shall grant the debtor a discharge, unless
24 . . . the debtor, with intent to hinder, delay, or
25 defraud a creditor or an officer of the estate charged
26 with custody of property under this title, has
27 transferred, removed, destroyed, mutilated, or concealed,
28 or has permitted to be transferred, removed, destroyed,
mutilated, or concealed[,] (A) property of the debtor,
within one year before the date of the filing of the
petition, or (B) property of the estate, after the date
of the filing of the petition.

1 § 727(a)(2)(A), (B). A party seeking denial of discharge under
2 § 727(a)(2) must prove two things: "(1) a disposition of
3 property, such as transfer or concealment, and (2) a subjective
4 intent on the debtor's part to hinder, delay or defraud a creditor
5 through the act [of] disposing of the property." Hughes v. Lawson
6 (In re Lawson), 122 F.3d 1237, 1240 (9th Cir. 1997).

7 **1. Concealment**

8 Debtor argues the evidence does not support his intentional
9 concealment of the Mexican Note. Specifically, Debtor disagrees
10 that his testimony "[s]ometimes [Rezai] doesn't pay me," should
11 have been considered an act of concealment. Additionally, Debtor
12 argues that the insider encumbrances included in his amended
13 schedules should not be considered evidence of concealment.

14 The bankruptcy court outlined what it found as evidence of
15 Debtor's concealment of the Mexican Note. The evidence included
16 failing to list the asset on the initial schedules, failing to
17 list the \$2,500 monthly payments from it, failing to disclose it
18 "in response to several questions at the [§] 341(a) meeting of
19 creditors," and Debtor's "evasive" and "contradict[ory]" answers
20 concerning when Rezai makes payments on the Mexican Note. Trial
21 Tr. (Oct. 16, 2013) 3:11-4:2. The court also found that Debtor's
22 later claim that the Mexican Note was over-encumbered was evidence
23 of concealment. Although the court included the timing of Rezai's
24 payments to Debtor and the purported insider encumbrances in its
25 analysis, the court also based its finding on two other
26 circumstances of concealment that Debtor does not dispute: he
27 failed to list the Mexican Note, and he failed to disclose it in
28 response to questions during the beginning of the § 341(a)

1 meeting.

2 Debtor argues that because he voluntarily disclosed the
3 \$2,500 monthly interest payments when directly asked about the
4 Mexican Note at the § 341(a) meeting, his discharge should not be
5 denied because it shows the omission was inadvertent. Based on
6 the above evidence, the bankruptcy court disagreed and described
7 Debtor as "less than credible." Id. at 10:8-13. The record shows
8 that Debtor's testimony was contradictory on several points. Even
9 if Debtor volunteered the information about the \$2,500 monthly
10 interest payments when asked about it at the § 341(a) meeting, the
11 bankruptcy court was free to consider all of the relevant evidence
12 on this point and conclude that his omission of the Mexican Note
13 was not inadvertent. Anderson, 470 U.S. at 573-75.

14 Further, Debtor's voluntary disclosure of the Mexican Note at
15 the § 341(a) meeting does not overcome Debtor's failure to
16 schedule it. Schedules are paramount for disclosure to creditors
17 in chapter 7. Creditors rely on accurate schedules to determine
18 whether to file a proof of claim. Revealing a valuable asset
19 during the § 341(a) meeting is not sufficient to notify creditors
20 because they rarely attend.

21 The evidence shows the timing of Debtor's concealment of the
22 Mexican Note was both before and after filing bankruptcy.
23 Prepetition, Debtor concealed the Mexican Note by failing to list
24 it in his schedules and statement of financial affairs. He blamed
25 his staff, his attorney, and his chaotic life for his failure to
26 list the property. However, he signed the petition, schedules,
27 and statement of financial affairs under penalty of perjury.
28 Postpetition, Debtor failed to disclose the Mexican Note until

1 directly asked about it at the § 341(a) meeting. He was evasive
2 in his answers about where the property was located, where Rezai
3 lived, when he sold the property to Rezai, and how much Rezai
4 still owed him and claimed he forgot about it. After disclosing
5 the Mexican Note, he claimed he sometimes did not receive the
6 payments on it. Finally, once he amended his schedules to reflect
7 the Mexican Note, Debtor asserted that it was fully pledged to pay
8 insider claims and, therefore, had no value. However, while
9 Debtor attempted to substantiate these encumbrances at trial by
10 submitting various documents (which are not included in the
11 record), the bankruptcy court found the purported encumbrances
12 were "nonexistent." Trial Tr. (Oct. 16, 2013) 9:10-11.

13 The evidence presented supports the bankruptcy court's
14 finding that Debtor concealed the Mexican Note both before and
15 after filing bankruptcy within the meaning of § 727(a)(2)(A) and
16 (B). Therefore, the court's finding that Debtor concealed it is
17 not illogical, implausible or without support in the record.

18 **2. Intent to hinder, delay or defraud**

19 Debtor also argues the evidence does not support the
20 bankruptcy court's finding that he had the requisite intent to
21 hinder, delay or defraud. Specifically, he argues "[t]here is no
22 actual fraud in this case." Debtor's argument on this point is
23 misplaced because actual fraud is not required.

24 A debtor's intent need not be fraudulent to meet the
25 requirements of § 727(a)(2). Because the language of the statute
26 is in the disjunctive, it is sufficient if the debtor's intent is
27 to hinder or delay a creditor. Bernard v. Sheaffer
28 (In re Bernard), 96 F.3d 1279, 1281 (9th Cir. 1996).

1 The bankruptcy court found that, based on Debtor's conduct
2 and the circumstances surrounding the filing of the petition and
3 conduct after the petition was filed, Debtor had the requisite
4 intent to hinder, delay or defraud. Important to the court was
5 Debtor's twenty years of work experience and sophistication in
6 real estate matters and the mortgage industry. With that in mind,
7 the court found that "[Debtor's] assertion that he just forgot to
8 schedule this property and its income or relied on his employees
9 or counsel[,] don't relieve [him] of his obligations and, in fact,
10 are just not credible." Trial Tr. (Oct. 16, 2013) 4:21-5:2. The
11 court found that Debtor's employees did include the Mexican Note
12 in a list they prepared. The court then discussed the testimony
13 of these same employees confirming that, although they gathered
14 information for the preparation of the bankruptcy schedules, it
15 was understood by everyone that Debtor was responsible for what
16 the schedules contained. Another fact showing Debtor's intent was
17 his omission of the only asset he owned of any value – the Mexican
18 Note – as all of his other assets "were of no value or were
19 underwater." Id. at 8:14-19.

20 The combination of Debtor's business sophistication and the
21 fact that the "only asset of value" was omitted support the
22 bankruptcy court's finding that Debtor's concealment of the
23 Mexican Note was to hinder, delay or defraud his creditors within
24 the meaning of § 727(a)(2). The record also supports the court's
25 finding that Debtor, at minimum, acted with reckless indifference
26 to the truth, thereby establishing that his discharge could be
27 denied under § 727(a)(2). Id. at 10:25-11:2.

28 Accordingly, the bankruptcy court did not err in denying

1 Debtor's discharge under § 727(a)(2)(A) and (B).

2 **B. The bankruptcy court did not err in denying Debtor's**
3 **discharge under § 727(a)(4)(A).**

4 Section 727(a)(4)(A) states: "The court shall grant the
5 debtor a discharge, unless . . . the debtor knowingly and
6 fraudulently, in or in connection with the case made a false oath
7 or account." § 727(a)(4)(A). "A false statement or an omission
8 in the debtor's bankruptcy schedules or statement of financial
9 affairs can constitute a false oath." Khalil v. Developers Sur. &
10 Indem. Co. (In re Khalil), 379 B.R. 163, 172 (9th Cir. BAP 2007).

11 To obtain a denial of discharge under § 727(a)(4)(A), the
12 objector must show: "(1) the debtor made a false oath in
13 connection with the case; (2) the oath related to a material fact;
14 (3) the oath was made knowingly; and (4) the oath was made
15 fraudulently." In re Retz, 606 F.3d at 1197.

16 **1. False Oath**

17 The bankruptcy court found that Debtor omitted the Mexican
18 Note from his schedules and statement of financial affairs, failed
19 to list the \$2,500 payments he received from Rezai in his monthly
20 income, and failed to disclose the Mexican Note in response to
21 several questions at the § 341(a) meeting. The court also found
22 that Debtor's answers were evasive once he disclosed its
23 existence. Further, after disclosing the Mexican Note in his
24 amended schedules, Debtor claimed, without any documentary
25 evidence in support, it was over-encumbered and valueless.

26 Debtor does not dispute that he omitted the Mexican Note.
27 Nor does he dispute that he represented the Mexican Note was over-
28 encumbered in his amended schedules. The evidence in this case

1 established that Debtor made a false oath. Therefore, the
2 bankruptcy court did not clearly err in finding that Debtor made a
3 false oath in his original schedules, statement of financial
4 affairs and his amended schedules.

5 **2. Materiality**

6 A fact is material "'if it bears a relationship to the
7 debtor's business transactions or estate, or concerns the
8 discovery of assets, business dealings, or the existence and
9 disposition of the debtor's property.'" In re Khalil, 379 B.R. at
10 173. An omission or misstatement that "detrimentally affects
11 administration of the estate" is material. Wills v. Wills
12 (In re Wills), 243 B.R. 58, 63 (9th Cir. BAP 1999) (citing
13 6 Lawrence P. King et al., COLLIER ON BANKRUPTCY ¶ 727.04[1][b] (15th
14 ed. rev. 1998)).

15 Debtor's oath related to a material fact. The existence of
16 the Mexican Note is material because it is a valuable asset worth
17 at least \$450,000 based on Debtor's own testimony or approximately
18 \$530,000 based on de la Barra's testimony. Further, it clearly
19 bears a relationship to Debtor's business transactions or estate
20 and, because of its highly valuable nature, its omission
21 detrimentally affected the administration of the estate. Debtor
22 disputed the overall value of the Mexican Note claiming it was
23 over-encumbered with security interests in connection with several
24 loans he received from his mother and his in-laws. However, after
25 considering Debtor's paltry documentary evidence of this, the
26 bankruptcy court found that the purported security interests
27 claimed by Debtor were "nonexistent." No evidence existed of any
28 loan payments made to Debtor's mother or his in-laws. No

1 documents existed showing any transfer of the beneficial interest
2 from Debtor to his mother or his in-laws. No recordation of any
3 loan, security interest or beneficial interest transfer existed in
4 the property records in Mexico.

5 The bankruptcy court found that the Mexican Note was worth
6 "at least \$300,000, probably closer to \$400,000, earning \$2,500
7 per month in interest, when at the time the initial schedules were
8 filed, the Debtor's total income was \$9,000." Trial Tr. (Oct. 16,
9 2013) at 11:17-24. Put simply, because of the value of the
10 Mexican Note, the bankruptcy court found "[t]he omission was
11 material." Id. at 11:24. We see no clear error in that finding.

12 **3. Knowingly Made**

13 A debtor "'acts knowingly if he or she acts deliberately and
14 consciously.'" In re Khalil, 379 B.R. at 173 (quoting Roberts v.
15 Erhard (In re Roberts), 331 B.R. 876, 883 (9th Cir. BAP 2005)).

16 The bankruptcy court found Debtor knowingly omitted the
17 Mexican Note because Debtor "consciously signed the schedules and
18 the various declarations related to the schedules and statements
19 of financial affairs, later signed the amended schedules declaring
20 that these documents were true and correct, and the Defendant made
21 the same statements and testified in the same manner at the
22 [§] 341(a) meeting." Trial Tr. (Oct. 16, 2013) 12:2-7. Further,
23 the record shows Debtor revised two initial drafts of his
24 schedules that were both "replete with errors of all kind[s]," but
25 later testified that he signed the third draft believing them to
26 be complete and accurate. The bankruptcy court also found "[t]he
27 asset provided \$2500 of interest per month at the time the case
28 was filed." Id. at 8:20-21. The court went on, "[t]his is a

1 substantial portion of the Debtor's monthly income of about \$9,000
2 a month in the original schedules," and so "it's not something
3 that someone just forgets." Id. at 8:21-24. We do not perceive
4 any clear error in the bankruptcy court's finding that Debtor's
5 false oath was made knowingly.

6 **4. Fraudulent Intent**

7 A debtor acts with fraudulent intent when: (1) the debtor
8 makes a misrepresentation; (2) that at the time he or she knew was
9 false; and (3) with the intention and purpose of deceiving
10 creditors. In re Retz, 606 F.3d at 1198-99. Fraudulent intent is
11 typically proven by circumstantial evidence or by inferences drawn
12 from the debtor's conduct. Id. at 1199. Circumstantial evidence
13 may include showing a reckless indifference or disregard for the
14 truth. Id.; In re Wills, 243 B.R. at 64 (intent may be
15 established by a pattern of falsity, debtor's reckless
16 indifference, or disregard of the truth).

17 The bankruptcy court found that the evidence establishing
18 Debtor's intent and the denial of his discharge under § 727(a)(2)
19 also supported a finding of fraudulent intent under
20 § 727(a)(4)(A). Alternatively, the evidence showed that Debtor
21 had at least acted with a reckless indifference to the truth,
22 which also satisfies the requisite intent under § 727(a)(4)(A).
23 We agree. The evidence supports the bankruptcy court's finding
24 that Debtor acted with fraudulent intent to deceive creditors when
25 he omitted the Mexican Note from his schedules and statement of
26 financial affairs. Thus, it is not clearly erroneous.

27 The bankruptcy court did not err when it determined that
28 Debtor knowingly and fraudulently made a false oath in connection

1 with his case that related to a material fact. Therefore, it did
2 not err in denying Debtor's discharge under § 727(a)(4)(A).

3 **VI. CONCLUSION**

4 For the reasons set forth above, we AFFIRM.
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