

JUN 30 2015

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No.	AZ-14-1309-KiPaJu
6	HOWARD FLETCHER THRUSTON,)	Bk. No.	10-27593
7	Debtor.)	Adv. No.	10-2156
8	_____)		
9	HOWARD FLETCHER THRUSTON,)		
10	Appellant,)		
11	v.)	MEMORANDUM¹	
12	DAVID M. REAVES, Chapter 7)		
13	Trustee,)		
14	Appellee.)		
	_____)		

Argued and Submitted on June 19, 2015,
at Phoenix, Arizona

Filed - June 30, 2015

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable Eddward P. Ballinger, Jr., Bankruptcy Judge, Presiding

Appearances: Appellant Howard Fletcher Thruston argued pro se;
Misty Weniger Weigle of Reaves Law Group argued for
appellee, David M. Reaves, Chapter 7 Trustee.

Before: KIRSCHER, PAPPAS and JURY, 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 8024-1.

1 Howard Fletcher Thruston ("Debtor") appeals a judgment
2 denying his discharge. Chapter 7² trustee, David M. Reaves
3 ("Trustee"), objected to Debtor's discharge under § 727(a)(2),
4 (a)(3) and (a)(4). The bankruptcy court later granted Trustee's
5 motion for summary judgment and entered a judgment denying
6 Debtor's discharge on all counts. On appeal, we vacated and
7 remanded the summary judgment order and judgment because a genuine
8 dispute existed as to whether Debtor acted with the intent
9 necessary for denial of his discharge under § 727(a)(2) or (a)(4).
10 After a two-day trial, the bankruptcy court determined that Debtor
11 made a number of false oaths in connection with his bankruptcy
12 case and denied his discharge under § 727(a)(4)(A).³ We AFFIRM.

13 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

14 A. Events leading to Trustee's discharge objection and motion 15 for summary judgment

16 Debtor is a licensed contractor and real estate broker. He
17 has been married to Morgen Thruston since 1986. During the course
18 of their marriage and prior to the petition date, Mrs. Thruston
19 acquired title to various real properties in Iowa and Arizona (the
20

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

23 ³ The bankruptcy court stated at the beginning of its
24 Memorandum Decision that it was denying Debtor's discharge under
25 § 727(a)(4) because "Debtor knowingly and fraudulently made a
26 false oath or account, or withheld from an officer of the estate
27 recorded information relating to the Debtor's property and
28 financial affairs," which implicates both § 727(a)(4)(A) and (D).
However, later in the decision the court referred only to Debtor's
false oaths and omissions, and the judgment denying discharge
states only that Debtor "made a number of false statements under
oath in connection with this case[.]" Therefore, we conclude
Debtor's discharge was denied under § 727(a)(4)(A) only.

1 "Iowa Property," the "Citrus Property," the "Northridge Property"
2 and the "Wagon Wheel Property"). On the petition date,
3 Mrs. Thruston also owned a 2008 Hummer, leased a 2007 GMC truck,
4 and possessed a 100% membership interest in Rosemont, LLC, which
5 owned a commercial building in Arizona. Debtor was the sole
6 shareholder of his construction company, Dynasty Homes, Inc.
7 ("Dynasty Homes"). Dynasty Homes operated out of the building
8 owned by Rosemont, LLC. Mrs. Thruston was employed by Dynasty
9 Homes as a designer for about twenty years, with her most recent
10 salary being \$100,000 annually. She left her position there
11 sometime between 2005 and 2008, after the birth of their eighth
12 child.

13 Debtor filed a skeletal chapter 7 bankruptcy petition on
14 August 30, 2010; Mrs. Thruston did not join in the petition.
15 Several days later, Debtor filed a "Declaration" listing numerous
16 creditors but not specifying the nature of the debts. Debtor
17 attended a continued § 341(a) meeting of creditors on October 19,
18 2010. When Trustee informed him that the couple's community
19 assets were property of Debtor's bankruptcy estate even though
20 Mrs. Thruston did not file, Debtor stated "Right. I know that."
21 § 341(a) Hr'g Tr. (Oct. 19, 2010) 8:6.

22 After receiving several extensions of time to file the
23 requisite documents, Debtor filed his original schedules and
24 statement of financial affairs ("SOFA") on October 19, 2010, just
25 minutes before the continued § 341(a) meeting. In his summary of
26 schedules, Debtor listed real property assets of "1,150,000?" and
27 current income of \$339.50. In his Schedule B, Debtor listed one
28 Chase checking account containing \$50.00 and real estate and

1 contractor licenses with no value. Debtor left Schedules A, C, D,
2 E, F, G and H blank; he did not schedule any real properties,
3 vehicles, creditors or codebtors. In his Schedules I and J,
4 Debtor listed monthly income of \$339.50 and monthly expenses of
5 \$2,869.53. In executing his Declaration Concerning Debtors'
6 Schedules, Debtor typed "[i]ncomplete-need help."

7 Debtor's SOFA was similarly bare. He did, however, disclose
8 Dynasty Homes in Item 21, listing himself as "President" with a
9 "?" percentage of stock ownership (and his wife with a "?" next to
10 her name). He also attached a list of twelve lawsuits, in which
11 he identified the name of the opposing party, the case number, the
12 name of the court and the nature of each lawsuit. Some suits
13 clearly involved real property and other possible estate assets,
14 but none were specifically identified or itemized anywhere in
15 Debtor's schedules. He also did not list any foreclosures of real
16 property within one year of the bankruptcy filing in Item 5. As
17 with his schedules, Debtor declared under penalty of perjury that
18 the information contained in his SOFA was true and correct.

19 In light of the deadline under Rule 4004 and Debtor's
20 essentially blank schedules, Trustee filed an adversary complaint
21 on December 1, 2010, objecting to Debtor's discharge under
22 § 727(a)(2), (a)(3) and (a)(4). Trustee alleged that Debtor
23 failed to disclose significant assets held by Mrs. Thruston and to
24 provide information on a number of items, including any real
25 properties owned by her or Debtor, bank accounts owned by
26 Mrs. Thruston and tax returns for either of them. Debtor denied
27 Trustee's allegations.

28 As ordered by the bankruptcy court, Debtor filed amended

1 schedules and SOFA on January 31, 2011. He disclosed a few more
2 personal property assets in his Schedule B, including his wedding
3 ring, clothing, Dynasty Homes machinery valued at \$30,000 and his
4 interest in "lawsuits" of "unknown" value. But Schedules A, C and
5 D remained blank. To Schedule F, Debtor attached a spread sheet
6 listing over 100 unsecured creditors. Debtor disclosed four
7 leases on Schedule G by name only and provided no descriptions or
8 identifying details of the leases. Debtor listed Mrs. Thruston as
9 a codebtor in his Schedule H, but failed to provide the name of
10 any creditors or debts for which she was a codebtor. Unlike his
11 original schedules, Debtor's avowal to the accuracy of his amended
12 schedules was unconditional.

13 In his motion for summary judgment, Trustee argued that as of
14 the petition date Debtor or Mrs. Thruston owned the Iowa Property
15 (valued between \$500,000 and \$700,000), the Citrus Property
16 (valued at \$1.5 million) and the Northridge Property (valued at
17 approximately \$1 million), and further argued that Mrs. Thruston
18 possessed an interest in Rosemont, LLC, the Wagon Wheel Property,
19 the Hummer and the GMC truck. Trustee contended these assets were
20 acquired during the marriage and therefore were community assets,
21 even if Mrs. Thruston held title to them. Consequently, Debtor
22 possessed a community property interest in all of these assets yet
23 failed to disclose them in his schedules or SOFA. Trustee further
24 contended that Mrs. Thruston's membership interest in Rosemont,
25 LLC was valued at over \$2.3 million, and that she had transferred

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27
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1 it postpetition to a Stephen Trice without court authorization.⁴

2 Trustee pointed out that during the pendency of Debtor's
3 bankruptcy case, secured creditors had moved for relief from the
4 automatic stay as to three of the subject real properties. In
5 each instance, Debtor opposed stay relief and asserted a legal or
6 equitable interest in the property at issue. He also pointed out
7 that Mrs. Thruston, Dynasty Homes and Rosemont, LLC all filed for
8 bankruptcy relief after Debtor initiated his bankruptcy case.
9 However, those cases suffered from the same maladies as did
10 Debtor's: a bare bones petition, no initial schedules or SOFA,
11 and numerous emergency motions in lieu of responsive documents.⁵

12 Debtor spent much time in his opposition to Trustee's motion
13 calling him a liar, a fraud and a bully. As for the motion's
14 merits, Debtor contended he never hid or concealed estate assets,
15 arguing that the real and personal properties identified by
16

17
18 ⁴ On the same day Mrs. Thruston transferred her 100%
19 membership interest in Rosemont, LLC to Mr. Trice, Rosemont, LLC
20 filed a chapter 11 bankruptcy case. According to its schedules,
21 the building owned by Rosemont, LLC was valued at \$2.3 million.

22 ⁵ All three of Mrs. Thruston's cases were ultimately
23 dismissed, her last chapter 11 case being dismissed with prejudice
24 and barring her from filing any bankruptcy cases until
25 September 19, 2012. In that case, Judge Nielsen said in his Order
26 to Show Cause that "there is reason to believe debtor and her
27 husband are engaged in a calculated practice of filing uncompleted
28 bankruptcy cases to avoid their secured creditors' collection
efforts."

29 Thereafter, Mrs. Thruston filed a chapter 11 case in Iowa,
30 which was dismissed on June 20, 2012. It also appears that an
31 individual named Philip Howard Trice (not to be confused with
32 Stephen Trice) filed a chapter 7 bankruptcy case in Arizona on
33 October 4, 2012, listing his residence as the Northridge Property,
34 where Debtor and Mrs. Thruston resided from the petition date
35 until the property was foreclosed and they were forcibly evicted.
36 The bankruptcy court dismissed that case for failure to file
37 schedules and statements.

1 Trustee were Mrs. Thruston's sole and separate property and so he
2 was not required to list them in his bankruptcy case. In any
3 event, argued Debtor, the banks had foreclosed on the Citrus
4 Property and the Northridge Property in January 2010, eight months
5 prior to his petition date, and had foreclosed on the Rosemont,
6 LLC building in January 2011, which was underwater and sold for
7 only \$712,000. Further, Trustee had since abandoned the Iowa
8 Property and Dynasty Homes as having no value for the estate. As
9 for the vehicles, Debtor argued that the GMC truck lacked equity
10 and was returned when the lease expired and the Hummer, which also
11 had no equity, had since been repossessed. In short, Debtor
12 maintained he had no interest in the assets identified by Trustee
13 or, even if he did, they had no value for the estate.

14 The bankruptcy court granted summary judgment on all counts.
15 On appeal, the Panel vacated and remanded the judgment, concluding
16 that a genuine issue of fact existed as to whether Debtor acted
17 with the requisite intent under § 727(a)(2) or (a)(4).

18 **B. Trial on Trustee's claims under § 727(a)(2) and (a)(4)**

19 The bankruptcy court held a trial on Trustee's § 727(a)(2)
20 and (a)(4) claims on March 5 and 6, 2014.⁶ Both parties filed
21 pretrial statements. Debtor's position remained unchanged, with
22 the exception of his contention that on January 2, 2011, before he
23 filed his amended schedules and SOFA, he met with bankruptcy
24 attorney Clint Smith, who Debtor claimed told him that he was not
25 required to list his non-filing spouse's sole and separate
26

27 ⁶ Trustee ultimately withdrew his § 727(a)(3) claim, and
28 based on its ruling under § 727(a)(4)(A), the bankruptcy court
opted to not address Trustee's claim under § 727(a)(2).

1 property. Mr. Smith's affidavit confirmed Debtor's contention.
2 However, on cross-examination, Mr. Smith admitted that he never
3 discussed any specific assets with Debtor or reviewed any of the
4 couple's records to determine how any particular asset was held
5 and whether it was Mrs. Thruston's sole and separate property.
6 Debtor further claimed that in ruling on a prior stay relief
7 motion, Judge Baum had ruled that Mrs. Thruston's sole and
8 separate property was not part of his bankruptcy estate.

9 Four witnesses testified: Debtor; Mrs. Thruston; Trustee and
10 Mr. Smith. Mrs. Thruston testified that the reason she held title
11 to various assets as her sole and separate property was to ensure
12 that if her credit was negatively affected, Debtor could still
13 purchase investment properties with his good credit. She conceded
14 this arrangement benefitted their family.

15 With respect to each asset Trustee contended Debtor failed to
16 disclose, the evidence was as follows:

17 **1. Real properties not disclosed**
18 **a. Iowa Property**

19 Exhibits for this property included a 2006 warranty deed
20 reflecting that Mrs. Thruston took title as her sole and separate
21 property, Trustee's February 2011 notice of intent to abandon the
22 property and a sheriff's deed recorded August 8, 2012. While
23 Mrs. Thruston could not recall certain specifics of the Iowa
24 Property (when she bought it, how she financed the purchase, how
25 many loans were on it or the home's square footage), she testified
26 that she held title to it from day one. The mortgage for the Iowa
27 Property, however, contained both her and Debtor's signature.
28 When questioned about this, Mrs. Thruston explained that the bank

1 required both of their signatures on the mortgage, which explained
2 why Debtor's name was added later in a different type.

3 Debtor testified that he was not a co-borrower for the Iowa
4 Property, but that the bank required him to sign the mortgage
5 document acknowledging that Mrs. Thruston was the borrower.
6 Debtor further testified that he thought he held an interest in
7 the Iowa Property when he opposed the bank's motion for relief
8 from stay. When asked why he did not list it in his Schedule A,
9 Debtor had no plausible explanation, but did admit that if it was
10 a community asset, it should have been listed.

11 **b. Citrus Property**

12 Exhibits for this property included a 1997 warranty deed
13 indicating that Mrs. Thruston took title as her sole and separate
14 property, a disclaimer deed with the same date signed by Debtor
15 and a trustee's deed upon sale dated January 7, 2010.

16 Mrs. Thruston testified that she purchased the property with funds
17 she received from a prior home sale.

18 Debtor testified that, despite his execution of a disclaimer
19 deed, when the bank sought relief from stay for the Citrus
20 Property in November 2010 he believed he held an interest in it.
21 He further admitted that at the related hearing in December 2010,
22 he affirmatively argued that he held a community interest in the
23 property and that it had significant equity. However, Debtor
24 later clarified his testimony, stating that he thought he held a
25 "lawsuit" interest in the Citrus Property at the time of the stay
26 relief hearing due to the lender's fraud, not an ownership
27 interest, and that he had disclosed this interest in his list of
28 court actions. Debtor testified that he did not list the Citrus

1 Property in Schedule A because it had been foreclosed prior to his
2 bankruptcy. And he did not list the foreclosure in Item 5 of his
3 SOFA because the property was not his.

4 **c. Northridge Property**

5 Exhibits for this property included a 2001 warranty deed
6 reflecting that Mrs. Thruston took title as her sole and separate
7 property, a disclaimer deed with the same date signed by Debtor, a
8 quitclaim deed dated November 2002 from Mrs. Thruston purporting
9 to convey her interest to both her and Debtor, a quitclaim deed
10 dated April 2007 from Debtor purporting to convey his interest
11 back to Mrs. Thruston, and a trustee's deed upon sale dated
12 January 26, 2010. Mrs. Thruston had little recollection as to why
13 the quitclaim deeds were executed, but believed it was done for
14 financing purposes. Debtor testified that when the bank sought
15 relief from stay in March 2011, he believed he held a possessory
16 interest in the Northridge Property as well as a "lawsuit"
17 interest. Debtor testified that he did not list the foreclosure
18 in Item 5 of his SOFA because the property was not his.

19 **d. Wagon Wheel Property**

20 Exhibits for this property included a 2007 warranty deed
21 showing that Mrs. Thruston took title as her sole and separate
22 property and a disclaimer deed with the same date signed by
23 Debtor. Mrs. Thruston testified that she had never been to this
24 property, which consisted of an old trailer in a trailer park.
25 She testified that she had sold it, but could not remember when.
26 She could also not recall what she paid for it, if anything, but
27 did recall receiving \$35,000 when she sold it and using the
28 proceeds to pay bills.

1 **2. Personal property not disclosed**

2 **a. Rosemont, LLC**

3 Several exhibits were admitted regarding this entity,
4 including: (1) Articles of Organization dated November 15, 2000,
5 which indicated that its original members were Stephen and Carol
6 Trice; (2) Articles of Amendment dated October 17, 2006, and
7 recorded February 7, 2007, reflecting the Trices' resignation as
8 members and Mrs. Thruston appointment as the entity's sole member;
9 and (3) Articles of Amendment dated December 6, 2010, removing
10 Mrs. Thruston as the sole member and adding Mr. Trice as the sole
11 member and statutory agent. Also admitted were numerous deeds of
12 trust for the building owned by Rosemont, LLC, recorded between
13 May 2005 and February 2009.

14 Mrs. Thruston could not recall what, if anything, she paid
15 Mr. Trice for Rosemont, LLC in 2006, but believed that when she
16 purchased the entity she was also purchasing the building it
17 owned. She testified that she did not know whether Dynasty Homes
18 ever operated out of the Rosemont, LLC building or leased it, but
19 then later testified that she could not remember when Dynasty
20 Homes eventually vacated the building. In relation to any lease
21 agreement with Dynasty Homes, Mrs. Thruston testified that
22 although she collected the monthly lease checks, she could not
23 remember what the amounts were. Mrs. Thruston could also not
24 recall who managed Rosemont, LLC once she obtained ownership or
25 whether she took over the entity's bank accounts, or what the
26 monthly income and expenses were for the building or what she did
27 with the net income if any was available.

28 Mrs. Thruston admitted encumbering the Rosemont, LLC building

1 with four deeds of trust during the time she owned it for the
2 purpose of obtaining \$1.475 million in loans, but testified that
3 she was not sure what the funds were used for or whether she even
4 received the \$1 million loan for one of them. Mrs. Thruston
5 testified that the building was underwater when she transferred
6 her interest in the entity to Mr. Trice, and that the intent for
7 the transfer was so that Mr. Trice could obtain refinancing. She
8 could not recall, however, if she ever informed Mr. Trice about
9 the multiple deeds of trust. She could also not recall any
10 details about Rosemont, LLC's bankruptcy filing on the day of the
11 transfer to Mr. Trice.

12 Debtor testified that Dynasty Homes paid no rent to Rosemont,
13 LLC, but rather occupied the space on a trade basis. Debtor
14 testified that Mr. Trice had transferred his interest in Rosemont,
15 LLC to Mrs. Thruston in 2006, because he could no longer service
16 the debt on the building and he owed Mrs. Thruston money. Debtor
17 admitted to preparing the documentation for the 2006 transfer. He
18 testified that he did not list Rosemont, LLC in his schedules
19 because he had no interest in it; it was Mrs. Thruston's sole and
20 separate property. Debtor testified that he was not required to
21 seek court approval when Mrs. Thruston transferred her interest in
22 Rosemont, LLC back to Mr. Trice in December 2010, as it was not
23 his property.

24 **b. 2008 Hummer and 2007 GMC truck**

25 Exhibits for these vehicles included titles reflecting
26 Mrs. Thruston's ownership, a deficiency letter from the lender for
27 the Hummer, and a letter from the lender for the GMC truck showing
28 that Mrs. Thruston owed a balance of \$763.35 for excess tire wear.

1 Mrs. Thruston testified that she drove the Hummer and their son
2 drove the GMC truck; Debtor drove a Cadillac Escalade borrowed
3 from Mrs. Thruston's father. Debtor confirmed this.

4 Mrs. Thruston testified that she alone made all of the payments on
5 the two vehicles. Trustee testified that according to Debtor's
6 bank statements, vehicle payments had been made from a bank
7 account belonging to Debtor.

8 **c. Bank accounts**

9 Debtor admitted he did not disclose all of his bank accounts
10 in his original Schedule B, but testified that he provided all of
11 his bank statements from six different accounts to Trustee at the
12 § 341(a) meeting. Debtor testified that he did not list all of
13 the accounts in his original Schedule B because they had zero
14 balances. His answer was the same with respect to his amended
15 Schedule B. He also did not list any of Mrs. Thruston's bank
16 accounts because she had no money.

17 Trustee testified that on the petition date, the Chase
18 account disclosed by Debtor had a balance of about \$4,000, not the
19 \$50.00 Debtor claimed. The Chase account exhibit indicated that
20 Debtor's balance on the petition date was \$4,224.51.

21 **C. The bankruptcy court's ruling**

22 The parties submitted post-trial briefing; the bankruptcy
23 court took the matter under submission. Trustee maintained that
24 the evidence established that the assets at issue were community
25 assets, not separate property of Mrs. Thruston, and should have
26 been disclosed by Debtor. Trustee argued that Debtor's course of
27 conduct, including his failure to disclose significant properties
28 with millions of dollars in secured debt, his failure to disclose

1 his and his wife's interests in Rosemont, LLC and its subsequent
2 transfer, and his failure to disclose their vehicles, among other
3 things, demonstrated Debtor's intent to conceal the assets.
4 Debtor's conduct further demonstrated that he was very much aware
5 of the omitted properties, asserting or denying an interest in
6 them depending upon which position best served his immediate
7 purposes. Trustee maintained that it was irrelevant the omitted
8 assets ultimately proved to have little or no value to the estate.

9 The bankruptcy court issued its Memorandum Decision and
10 judgment denying Debtor's discharge under § 727(a)(4)(A). It
11 first analyzed whether the assets identified by Trustee were
12 community assets requiring disclosure by Debtor. The court found
13 that, at a minimum, the Iowa Property, Rosemont, LLC, the Hummer
14 and the GMC truck were community assets and therefore should have
15 been disclosed in Debtor's schedules and SOFA. However, based on
16 the disclaimer deeds executed by Debtor, the court found that the
17 Citrus Property and the Wagon Wheel Property were Mrs. Thruston's
18 sole and separate property and therefore did not have to be
19 disclosed. The court further found that Debtor had acted with the
20 requisite intent in failing to disclose the identified community
21 assets, among other things. It specifically found Mrs. Thruston's
22 testimony "less than credible," and that the couple had "engaged
23 in a pattern of delay to put off the inevitable." Debtor timely
24 appealed the judgment.

25 **II. JURISDICTION**

26 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
27 and 157(b)(2)(J). Unlike final orders, interlocutory orders
28 decide merely one aspect of the case without disposing of the case

1 in its entirety on the merits. See United States v. 475 Martin
2 Ln., 545 F.3d 1134, 1141 (9th Cir. 2008). Because the bankruptcy
3 court granted Trustee relief under § 727(a)(4)(A), it decided not
4 to address his § 727(a)(2) claim. However, despite this
5 interlocutory ruling, the judgment contains a Civil Rule 54(b)
6 certification. Thus, it is a final judgment. See Civil Rule
7 54(b) (incorporated by Rule 7054); see also Belli v. Temkin
8 (In re Belli), 268 B.R. 851, 855-56 (9th Cir. BAP 2001).
9 Accordingly, we have jurisdiction under 28 U.S.C. § 158.

10 **III. ISSUE**

11 Did the bankruptcy court err when it denied Debtor's
12 discharge under § 727(a)(4)(A)?

13 **IV. STANDARDS OF REVIEW**

14 In an action for denial of discharge, we review: (1) the
15 bankruptcy court's determinations of the historical facts for
16 clear error; (2) its selection of the applicable legal rules under
17 § 727 de novo; and (3) its application of the facts to those rules
18 requiring the exercise of judgments about values animating the
19 rules de novo. Searles v. Riley (In re Searles), 317 B.R. 368,
20 373 (9th Cir. BAP 2004), aff'd, 212 F. App'x 589 (9th Cir. 2006).
21 Factual findings are clearly erroneous if they are illogical,
22 implausible or without support in the record. Retz v. Samson
23 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010). We give great
24 deference to the bankruptcy court's findings when they are based
25 on its determinations as to the credibility of witnesses. Id.
26 (noting that as the trier of fact, the bankruptcy court has "the
27 opportunity to note variations in demeanor and tone of voice that
28 bear so heavily on the listener's understanding of and belief in

1 what is said."). If two views of the evidence are possible, the
2 trial judge's choice between them cannot be clearly erroneous.
3 Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573-75
4 (1985).

5 V. DISCUSSION⁷

6 A. Community assets

7 Section 541 provides that a bankruptcy estate consists of
8 "all legal or equitable interests of the debtor in property of the
9 debtor as of the commencement of the case," including "[a]ll
10 interests of the debtor and the debtor's spouse in **community**
11 **property,**" either under the debtor's sole, equal, or joint
12 management and control, or liable on an allowable claim against
13 the debtor. § 541(a)(1) & (2) (emphasis added).

14 Arizona is a community property state; a presumption of
15 community property arises as to property acquired during marriage
16 **regardless of the form of title.** See A.R.S. § 25-211(a); Carroll
17 v. Lee, 712 P.2d 923, 929 (Ariz. 1986) (presumption of community
18 property "applies to property acquired during marriage **even though**
19 **title is taken in the name of only one spouse.**") (emphasis added).
20 Because Debtor and his wife live in Arizona, the presumption of
21 community property automatically arises as to all property and
22 assets acquired during their marriage, even those solely titled in
23 Mrs. Thruston's name. See A.R.S. § 25-211(a); Carroll, 712 P.2d
24 at 929. To the extent Debtor possessed a community property
25 interest in the assets identified by Trustee, those interests

26
27 ⁷ As with his prior appeal, Debtor spends significant time
28 discussing his disdain for Trustee and his lengthy litigation with
the National Bank of Arizona. Unfortunately, these matters have
no relevance to the issue before us, so we do not address them.

1 became property of his bankruptcy estate as of the petition date.

2 Arizona's presumption of community property may be rebutted
3 by clear and convincing evidence. Bender v. Bender, 597 P.2d 993,
4 995-96 (Ariz. Ct. App. 1979). A party may rebut the presumption
5 of community property by establishing, among other things, that
6 one spouse executed a disclaimer deed, which disclaims all
7 interests, claims and rights to real property. See Bell-Kilbourn
8 v. Bell-Kilbourn, 169 P.3d 111, 114 (Ariz. Ct. App. 2007)
9 (disclaimer deed is a contract between the parties and such
10 evidence rebuts the community property presumption).

11 Here, the bankruptcy court found that Debtor had sufficiently
12 rebutted the community property presumption as to the Wagon Wheel
13 Property and the Citrus Property based on the disclaimer deeds
14 executed contemporaneously with Mrs. Thruston taking sole and
15 separate title. However, the court found that Debtor failed to
16 provide sufficient evidence to overcome the community property
17 presumption as to the Iowa Property, the Northridge Property,⁸
18 Rosemont, LLC, the Hummer and the GMC truck. We must give great
19 deference to the bankruptcy court's finding that Mrs. Thruston's
20 testimony about properties she claimed were her sole and separate

21
22 ⁸ In ruling that the Northridge Property was likely a
23 community asset, the bankruptcy court stated that no argument or
24 evidence was presented that Debtor had executed a disclaimer deed
25 renouncing any interest in this property. This is factually
26 incorrect. A disclaimer deed for the Northridge Property was
27 admitted as Exhibit #132 and is part of the appellate record.
28 Nonetheless, the bankruptcy court did not include the Northridge
Property in its list of community assets that Debtor should have
disclosed. Therefore, we believe the court's factual error here
is harmless and would not change the outcome of this appeal if
reversed. In ruling against Debtor, the bankruptcy court
identified several other community assets (among other things)
that should have been disclosed, providing a sufficient basis to
deny his discharge under § 727(a)(4)(A).

1 property was "less than credible," with the majority of her
2 answers to questions being "I don't know" or "I don't remember."
3 In re Retz, 606 F.3d at 1196.

4 Debtor contends the alleged community assets were
5 Mrs. Thruston's sole and separate property because they were in
6 her name. We reject this argument. Even though Mrs. Thruston
7 held title to the Hummer and GMC truck, other evidence showed that
8 payments for these vehicles were being made from Debtor's bank
9 account, which Debtor did not dispute. Debtor also did not
10 provide any evidence to show that Rosemont, LLC was not a
11 community asset. The court specially found that Mrs. Thruston's
12 testimony regarding her ownership of Rosemont, LLC "lacked
13 credibility." Finally, besides taking title to the Iowa Property
14 as Mrs. Thruston's sole and separate property, Debtor presented no
15 evidence of a disclaimer deed (or some equivalent). To the
16 contrary, the mortgage for the Iowa Property reflected both
17 Debtor's and Mrs. Thruston's signatures. Although both of them
18 testified that the bank required Debtor to sign acknowledging that
19 Mrs. Thruston was the borrower, the bankruptcy court apparently
20 found this testimony did not rebut the presumption that the Iowa
21 Property was community property.

22 Despite his claim of ignorance, Debtor's calculated execution
23 of disclaimer deeds clearly shows that he knows holding title to
24 property in one spouse's name does not make it that spouse's sole
25 and separate property under Arizona law. He knows that additional
26 steps must be taken to disclaim the other spouse's community
27 property interest.

28 Debtor further contends he relied on the advice of his

1 counsel that anything solely owned by Mrs. Thruston was not part
2 of his bankruptcy estate and therefore did not have to be listed
3 in his schedules and statements. The bankruptcy court rejected
4 this argument. Mr. Smith testified that he and Debtor did not
5 discuss any particular assets and whether they qualified as
6 community or sole and separate property. Instead, the
7 conversation was very general in nature – that a spouse's sole and
8 separate property is not property of the estate and need not be
9 disclosed. We agree with the bankruptcy court.

10 We also reject Debtor's contention that Judge Baum had
11 previously **ruled** he had no interest in any property Mrs. Thruston
12 owned as her sole and separate property. Debtor here refers to a
13 comment Judge Baum made at a stay relief hearing for the Citrus
14 Property on December 28, 2010, **after** Debtor had filed his original
15 schedules and SOFA with no mention of the Citrus Property. The
16 colloquy between Debtor and Judge Baum follows:

17 DEBTOR: As far as the house goes, obviously Arizona is
18 a community property state. I have an interest in the
property because of that and ---

19 JUDGE BAUM: Not if you sign a disclaimer, [sic] deed.
20 Hr'g Tr. (Dec. 28, 2010) 4:14-17. Judge Baum's comment on the
21 record was not a **ruling** that assets titled in Mrs. Thruston's name
22 were in fact her sole and separate property as Debtor contends; he
23 was telling Debtor generally what the law is in Arizona. Debtor
24 has already raised this argument before the Panel in his prior
25 appeal, which was rejected.

26 On this record, we discern no clear error in the bankruptcy
27 court's finding that the Iowa Property, Rosemont, LLC, the Hummer
28 and the GMC truck were community property assets that Debtor

1 should have disclosed in his schedules and SOFA.

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

4 Construing liberally Debtor's pro se brief, which fails to
5 cite to the record, he disputes only the bankruptcy court's
6 findings of fact; he does not contend the court applied an
7 incorrect standard of law. Therefore, our review is limited to
8 determining whether the bankruptcy court's findings are illogical,
9 implausible or without support in the record.

10 The party objecting to a debtor's discharge under § 727(a)
11 bears the burden of proving by a preponderance of the evidence
12 that the debtor's discharge should be denied. In re Retz,
13 606 F.3d at 1196. Courts are to "'construe § 727 liberally in
14 favor of debtors and strictly against parties objecting to
15 discharge.'" Id. (quoting Bernard v. Sheaffer (In re Bernard),
16 96 F.3d 1279, 1281 (9th Cir. 1996)).

17 Section 727(a)(4)(A) states: "The court shall grant the
18 debtor a discharge, unless . . . the debtor knowingly and
19 fraudulently, in or in connection with the case made a false oath
20 or account." "A false statement or an omission in the debtor's
21 bankruptcy schedules or statement of financial affairs can
22 constitute a false oath." Khalil v. Developers Sur. & Indem. Co.
23 (In re Khalil), 379 B.R. 163, 172 (9th Cir. BAP 2007). To obtain
24 a denial of discharge under § 727(a)(4)(A), the objector must
25 show: "(1) the debtor made a false oath in connection with the
26 case; (2) the oath related to a material fact; (3) the oath was
27 made knowingly; and (4) the oath was made fraudulently."
28 In re Retz, 606 F.3d at 1197.

1 **1. False Oath**

2 The bankruptcy court found that Debtor had omitted multiple
3 items of important information from his schedules and SOFA, which
4 Debtor admitted at trial. His original schedules and SOFA were
5 "essentially blank." In addition to the community assets that he
6 should have disclosed, the court observed that Debtor failed to
7 list even minimal personal property such as clothing, furniture or
8 the like in his first attempt. The court rejected Debtor's
9 defense that his original schedules and SOFA should be excused
10 because he acknowledged they were "incomplete" and that he needed
11 help. This is because Debtor's amended schedules and SOFA, filed
12 two months later, were "little improvement" and he "did not make
13 the same plea then." The court found Debtor's suggestion that the
14 disclosed pieces of information in certain parts of his schedules
15 could have led Trustee to make certain assumptions about various
16 assets was also insufficient. Finally, while Debtor presented
17 several bank statements from his various accounts to Trustee at
18 the § 341(a) meeting, only one – the Chase account – was ever
19 disclosed in his schedules. Other than Trustee, no one else knew
20 of these accounts, including Debtor's creditors. The court found
21 that Debtor offered no explanation for these missing accounts,
22 other than to say they contained no funds.

23 The evidence in this case established that Debtor made a
24 false oath. Therefore, the bankruptcy court did not clearly err
25 in finding that Debtor made a false oath in both his original and
26 amended schedules and SOFA.

27 **2. Materiality**

28 A fact is material "'if it bears a relationship to the

1 debtor's business transactions or estate, or concerns the
2 discovery of assets, business dealings, or the existence and
3 disposition of the debtor's property.'" In re Khalil, 379 B.R. at
4 173; see also In re Retz, 606 F.3d at 1198. An omission or
5 misstatement that "detrimentally affects administration of the
6 estate" is material. Wills v. Wills (In re Wills), 243 B.R. 58,
7 63 (9th Cir. BAP 1999) (citing 6 Lawrence P. King et al., COLLIER ON
8 BANKRUPTCY ¶ 727.04[1][b] (15th ed. rev. 1998)).

9 The bankruptcy court found that Debtor's omissions were
10 material "in that they relate[d] to the existence and disposition
11 of his property." It is without question that the undisclosed
12 community assets and bank accounts concerned the discovery of
13 assets and the existence and disposition of Debtor's property.
14 The only argument Debtor appears to make here is that his failure
15 to disclose these items was immaterial because the assets had no
16 equity for the benefit of the estate. However, the fact these
17 undisclosed assets may have lacked value is of no consequence for
18 purposes of § 727(a)(4)(A). A false statement or omission may be
19 material even if it does not cause direct financial prejudice to
20 creditors. In re Wills, 243 B.R. at 63. And a lack of realizable
21 value for creditors certainly does not negate a debtor's duty of
22 full and candid disclosure of his or her financial condition.
23 Palmer v. Downey (In re Downey), 242 B.R. 5, 17 (Bankr. D. Idaho
24 1999). Debtor was obligated to disclose **all** assets in which he
25 held an interest, valuable or not.

26 The evidence in this case established that Debtor's false
27 oaths related to material facts. We see no clear error with the
28 bankruptcy court's finding of materiality.

1 **3. Knowingly and Fraudulently Made with Intent to Deceive**

2 A debtor "'acts knowingly if he or she acts deliberately and
3 consciously.'" In re Khalil, 379 B.R. at 173 (quoting Roberts v.
4 Erhard (In re Roberts), 331 B.R. 876, 883 (9th Cir. BAP 2005));
5 see also In re Retz, 606 F.3d at 1198. A debtor acts with
6 fraudulent intent when: (1) the debtor makes a misrepresentation;
7 (2) that at the time he or she knew was false; and (3) with the
8 intention and purpose of deceiving creditors. Id. at 1198-99.
9 Fraudulent intent is typically proven by circumstantial evidence
10 or by inferences drawn from the debtor's conduct. In re Retz,
11 606 F.3d at 1199. Circumstantial evidence may include showing a
12 reckless indifference or disregard for the truth. Id.;
13 In re Wills, 243 B.R. at 64 (intent may be established by a
14 pattern of falsity, debtor's reckless indifference, or disregard
15 of the truth).

16 The bankruptcy court found that Debtor knew his schedules and
17 SOFA were false. It rejected Debtor's argument that he had a good
18 faith belief he had no interest in many of the assets. In
19 rejecting this defense, the court pointed to Debtor's objections
20 to various lender's motions for relief from stay. Debtor filed an
21 objection to a stay relief motion for the Iowa Property on October
22 1, 2010, claiming an interest in it. Yet, eighteen days later
23 when he filed his original schedules and SOFA, Debtor omitted this
24 interest. Debtor maintained at trial that he genuinely believed
25 at the time he had an interest in the Iowa Property. The court
26 found that if that were the case, Debtor should have listed it in
27 his original schedules filed on October 19, 2010.

28 The same was true for the Citrus Property and the Northridge

1 Property. Debtor objected to stay relief for the Citrus Property
2 on November 15, 2010, claiming significant equity and a "community
3 property interest" in it, yet he omitted this interest in his
4 original schedules and SOFA filed one month before and in his
5 later-filed amended schedules and SOFA. The lender on the
6 Northridge Property sought stay relief on February 17, 2011. By
7 this time, Debtor had filed his amended schedules and SOFA.
8 Nevertheless, he still objected to stay relief on March 15, 2011,
9 arguing that he had a right to protect his interests by filing
10 bankruptcy and that the home was foreclosed upon illegally. To
11 the extent Debtor claims he meant he had a "lawsuit" interest in
12 this property and not an ownership interest, he is mistaken. As a
13 chapter 7 debtor, any such "lawsuit" interest belonged to Trustee.

14 With respect to the Hummer and GMC truck, Debtor had no
15 explanation for why they were not listed, other than he did not
16 drive them and they were titled in Mrs. Thruston's name. As for
17 Rosemont, LLC, the bankruptcy court found that Debtor controlled
18 the entity and its sole asset, and that ownership was held by
19 Mrs. Thruston for "convenience sake." The court rejected Debtor's
20 "no harm no foul" argument for not disclosing Rosemont, LLC
21 because it lacked value for creditors. The same was true for
22 Debtor's failure to disclose all of his bank accounts which he
23 claimed lacked funds.

24 The bankruptcy court also rejected Debtor's contention that
25 he relied on Mr. Smith's legal advice about sole and separate
26 property as a reason for not disclosing the identified assets. We
27 further observe that even if Mr. Smith's advice could negate
28 Debtor's intent for failing to disclose the assets titled in

1 Mrs. Thruston's name, this does not explain why Debtor's schedules
2 were almost entirely blank, failing to disclose even his own
3 personal property or a community interest in any books, furniture
4 or other household goods, which Debtor admitted he had.

5 Debtor declared under the penalty of perjury that the
6 information contained in his schedules and SOFA was true and
7 correct. Clearly, it was not. While good faith errors are
8 acceptable and understandable, the bankruptcy court found that is
9 not what occurred here:

10 This is not a case where the sole issue is the
11 nondisclosure of any one piece of property. The evidence
12 shows numerous nondisclosures, all of which collectively
13 paint an inaccurate picture of the Debtor's finances and
14 conduct.

15 Mem. Dec. (May 13, 2014) 9 n.6. Debtor had plenty of opportunity
16 to amend his original schedules and SOFA to correct any
17 deficiencies. Even after speaking to Mr. Smith and after the
18 bankruptcy court ordered him to do so, it still took Debtor almost
19 a month to file his amended ones. The amendments were of marginal
20 improvement. His conduct suggests that he was clearly aware of
21 the omitted assets; he asserted or denied an interest in them
22 depending upon which position best served his immediate needs. At
23 minimum, this conduct demonstrates his reckless indifference or
24 disregard for the truth.

25 We do not perceive any clear error with the bankruptcy
26 court's finding that Debtor's false oath was made knowingly and
27 fraudulently and with intent to deceive. Accordingly, the
28 bankruptcy court did not err when it denied Debtor's discharge
under § 727(a)(4)(A).

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VI. CONCLUSION

For the reasons stated above, we AFFIRM.