

JUL 01 2015

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No. AZ-14-1511-PaJuKi
		)	AZ-14-1514-PaJuKi
6	DUSTIN ROGER CHANTEL and ELIZABETH	)	(related appeals) <sup>1</sup>
	DARLENE CHANTEL,	)	
7		)	Bankr. No. 13-11909
	Debtors.	)	
8		)	Adv. Proc. 13-00977
		)	14-00041
9	DUSTIN ROGER CHANTEL; ELIZABETH	)	
	DARLENE CHANTEL,	)	
10		)	
	Appellants,	)	
11		)	
	v.	)	<b>MEMORANDUM</b> <sup>2</sup>
12		)	
	WILLIAM PIERCE, Chapter 7 Trustee;	)	
13	UNITED STATES TRUSTEE,	)	
		)	
14	Appellees.	)	
		)	

Submitted Without Oral Argument<sup>3</sup>  
on June 19, 2015

Filed - July 1, 2015

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

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

<sup>1</sup> Although the parties have separately briefed the two appeals, the Panel elects to treat them as related appeals in this Memorandum.

<sup>2</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 8024-1.

<sup>3</sup> After reviewing the briefs and submissions of the parties, pursuant to Fed. R. Bankr. P. 8019, in separate orders entered on April 30, 2015, the Panel determined that oral argument was not required in these appeals.

1 Appearances: Dustin Roger Chantel pro se on brief; Ramona D.  
2 Elliott, P. Matthew Sutko, John Postulka, Ilene J.  
3 Lashinsky, Elizabeth C. Amorosi, and Christopher J.  
4 Pattock on brief for appellee United States  
Trustee; Terry A. Dake on brief for appellee  
William E. Pierce, chapter 7 trustee.

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5 Before: PAPPAS, JURY, and KIRSCHER, Bankruptcy Judges.

6  
7 Chapter 7<sup>4</sup> debtors Dustin Roger Chantel ("Dustin") and  
8 Elizabeth Darlene Chantel ("Elizabeth"<sup>5</sup> and, together, "Debtors")  
9 appeal two judgments of the bankruptcy court entered in related  
10 adversary proceedings: (1) determining that all of the real and  
11 personal property held by an entity known as the Chan-Lan Trust  
12 (the "Trust") was property of the bankruptcy estate, and directing  
13 Debtors to turn over that property to the chapter 7 trustee,  
14 William E. Pierce ("Pierce"); and (2) denying their discharge  
15 under § 727 (a) (2) (A), (a) (2) (B), (a) (3), (a) (4) (A), and  
16 (a) (4) (D). We AFFIRM the bankruptcy court's judgment determining  
17 that the Trust's assets are property of the estate and directing  
18 Debtors to turn them over to Pierce. We AFFIRM that portion of  
19 the bankruptcy court's judgment denying discharge under  
20 § 727(a) (2) (A), (a) (2) (B), and (a) (4), but we REVERSE that portion  
21 of the judgment denying Debtors' discharge under § 727(a) (3) and  
22 (a) (4) (D).

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24  
25 <sup>4</sup> Unless otherwise indicated, all chapter and section  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
27 all Rule references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

28 <sup>5</sup> We refer to Debtors by first name for clarity; no  
disrespect is intended.



1 Ct. App. Apr. 16, 2013). No further appeal was taken.

2 Debtors filed a petition for relief under chapter 13 on  
3 July 11, 2013, which the court dismissed due to Debtors' failure  
4 to timely file a chapter 13 plan. The court then granted Debtors'  
5 motion to reinstate the case but converted it to a chapter 7 case  
6 on August 12, 2013. Pierce was appointed to serve as chapter 7  
7 trustee.

8 Debtors' schedules indicated that they owned no real property  
9 and had not transferred any property to a self-settled trust in  
10 the previous ten years. The only reference to the Trust was in  
11 schedule G in which Debtors claimed they leased farmland from the  
12 Trust. Debtors listed their monthly income as \$2,039, comprised  
13 solely of pension, social security benefits, and disability  
14 benefits. There is no declaration in their schedules about the  
15 income of, nor any compensation Debtors may receive from, the  
16 Trust.<sup>7</sup>

17 On August 27, 2013, Pierce commenced an adversary proceeding  
18 against Debtors in their personal capacities and as trustees of  
19 the Trust. Pierce sought a judgment denying Debtors' discharge  
20 under § 727(a)(2)(A), (a)(2)(B), (a)(3), (a)(4)(A), and (a)(4)(D)  
21 alleging that Debtors had: failed to properly disclose their  
22 interests in the Trust; failed to provide records concerning the  
23 Trust; transferred assets of the Trust during the bankruptcy case  
24 without court approval; and knowingly, wilfully, and fraudulently  
25 hindered, delayed, and defrauded their creditors and the trustee.

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26  
27 <sup>7</sup> Although Debtors did not list any real property in their  
28 schedules, they did list a mortgage of approximately \$163,000.  
Their schedule F also acknowledges a debt of \$175,000 to Mohave  
based upon the state court judgment.

1 Pierce also sought a judgment from the bankruptcy court  
2 determining that all of the real and personal property of the  
3 Trust was property of the bankruptcy estate pursuant to § 541 and  
4 directing that Debtors turn over all of the property to Pierce  
5 pursuant to § 542.

6 On January 16, 2014, the United States Trustee (the "UST")  
7 commenced an adversary proceeding against Debtors. It also  
8 requested that the bankruptcy court deny Debtors' discharge under  
9 § 727(a)(2), (a)(3), and (a)(4). The UST alleged that the Trust  
10 was a sham, that Debtors were the beneficial owners of the Trust's  
11 assets, and that Debtors had transferred, removed, and concealed  
12 property of the Trust with the intent to hinder, delay, and  
13 defraud their creditors. The UST further alleged that Debtors had  
14 failed to keep, or had concealed, records, and that they  
15 knowingly, and with fraudulent intent, made false statements under  
16 oath concerning material information by failing to disclose their  
17 interest in the Trust in their schedules.

18 At the request of the UST and Pierce, the bankruptcy court  
19 ordered that both adversary proceedings be tried at the same  
20 time.<sup>8</sup> The trial occurred on July 31 and August 8, 2014. Pierce  
21 and the UST were represented by counsel; Debtors appeared pro se.  
22 At the beginning of trial, both Pierce and the UST informed the  
23 bankruptcy court that they no longer sought a denial of Debtors'  
24 discharge for their failure to produce books and records.

25 Dustin and Elizabeth testified at the trial. Dustin made

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26  
27 <sup>8</sup> Before trial commenced, Dustin, as trustee of the Trust,  
28 filed a motion to dismiss the case. The bankruptcy court denied  
the motion because Dustin was not an attorney, and only attorneys  
may represent the Trust in federal court.

1 several important admissions and other statements during his  
2 testimony. Among them, he testified that in the years preceding  
3 creation of the Trust a group of people whom he could not identify  
4 had approached him about creating a trust; they then gratuitously  
5 gave him two parcels of real estate to create the Trust. Dustin  
6 later claimed that he had traded services in exchange for the two  
7 parcels. Dustin testified that Debtors owned no real property,  
8 and later he testified that Debtors had transferred numerous  
9 parcels of real property and items of personal property to the  
10 Trust, including the Property. Dustin admitted that Debtors had  
11 declared income from property ostensibly owned by the Trust on  
12 their personal income tax returns. He also admitted that Debtors  
13 had used the Property allegedly owned by the Trust as collateral  
14 for loans made to Debtors, including the mortgage loan, and then  
15 had deducted the mortgage loan interest on their personal income  
16 taxes. Dustin admitted that the Trust's funds were used to pay  
17 Debtors' personal cable bill, cell phone bill, dental expenses,  
18 gas and propane bills, car loan payments (for cars titled in  
19 Debtors' names), car registration, credit card bills, and other  
20 personal expenses. Dustin was unable to identify any  
21 distributions to beneficiaries made by the Trust except for loans.  
22 Dustin also testified that, after Debtors filed their bankruptcy  
23 petition, Dustin sold silver bullion, which had been purchased  
24 with Trust funds, to unnamed parties, and then lost the \$110,000  
25 in sale proceeds gambling in Nevada.<sup>9</sup>

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27 <sup>9</sup> Dustin ignored the bankruptcy court's advice that he  
28 consider invoking the Fifth Amendment because of the potential  
(continued...)

1 In her testimony, Elizabeth confirmed several aspects of  
2 Dustin's testimony, while adding other details. She insisted that  
3 the information Debtors listed in the bankruptcy schedules was  
4 correct. She acknowledged that Debtors had transferred their  
5 assets to the Trust, including a \$90,000 cash inheritance she  
6 received, which Debtors then used to make improvements to the  
7 Property. She recounted how Debtors had purchased jewelry with  
8 Trust funds, which was stored in Elizabeth's jewelry box and worn  
9 by her.

10 At the close of trial, the bankruptcy court took the matter  
11 under advisement. On October 15, 2014, the court announced its  
12 oral findings, conclusions, and decision. Highlights of the  
13 court's decision included that:

14 - Debtors were the settlors, trustees, and beneficiaries of  
15 the Trust because Debtors supplied all of the assets contributed  
16 to the Trust without consideration, and without relinquishing  
17 enjoyment, dominion, and control over those assets.

18 - Debtors used Trust assets regularly to pay personal  
19 expenses.

20 - The \$110,000 in Trust assets (i.e., the silver bullion sale  
21 proceeds) gambled away by Dustin, and the jewelry purchased for  
22 Elizabeth, were prominent examples of why, in the court's words,  
23 "[t]he Trust was nothing more than Debtors' personal asset  
24 repository." Hr'g Tr. 9:10-11, Oct. 15, 2014.

25 - Debtors had unlimited power over the Trust, including the  
26

27 \_\_\_\_\_  
28 <sup>9</sup>(...continued)  
criminal implications of his testimony.

1 power to amend the Trust.

2 - The Trust documents did not require any distributions to be  
3 made to its beneficiaries, and no distributions other than loans  
4 to be repaid were in fact made.

5 - Debtors "maintained all the beneficial ownership of the  
6 Trust assets." Hr'g Tr. 11:6-9, Oct. 15, 2014.

7 - "The trial evidence, including [among] other things, the  
8 Court's evaluation of witness credibility clearly established that  
9 the Debtors withheld, concealed their assets, and provided false  
10 information to the Trustees with the intent to hinder, delay, and  
11 defraud their creditors, the estate Trustee, and the U.S.  
12 Trustee." Hr'g Tr. 15:5-15, Oct. 15, 2014.

13 - Debtors knowingly and fraudulently signed the bankruptcy  
14 schedules in which they failed to disclose Trust assets and  
15 personal income earned by the sale of Trust property.

16 - Debtors' failure to disclose the assets and transfers to  
17 the Trust constituted false oaths.

18 The bankruptcy court entered separate judgments in the two  
19 adversary proceedings on November 11, 2014. In the judgment in  
20 Pierce's adversary proceeding, the court denied Debtors' discharge  
21 under § 727(a)(2)(A), (a)(2)(B), (a)(3), (a)(4)(A), and (a)(4)(D).  
22 It also determined that all of the assets of the Trust were  
23 property of the Debtors' bankruptcy estate under § 541 which must  
24 be turned over to Pierce pursuant to § 542. In the UST's  
25 adversary proceeding, the court denied "discharge of all of  
26 Debtors' debts and claims which are listed in the Schedules . . .

27

28

1 or could have been included in the Schedules.”<sup>10</sup>

2 Dustin and Elizabeth filed timely appeals of both judgments.

## 3 II. JURISDICTION

4 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
5 and 157(b) (2) (E) and (J). We have jurisdiction under 28 U.S.C.  
6 § 158.

7 Although their argument is difficult to decipher, Debtors  
8 appear to challenge the jurisdiction of the bankruptcy court and  
9 this Panel to adjudicate the issues raised in these proceedings  
10 because, they allege, there are “non-core” issues implicated here.  
11 Debtors seem to argue that the judgments purport to adjudicate  
12 their dispute with Mohave, thereby presenting non-core contract  
13 law issues, which the bankruptcy court and this Panel may not  
14 constitutionally decide. See N. Pipeline Constr. Co. v. Marathon  
15 Pipe Line Co., 458 U.S. 50 (1982); Stern v. Marshall, 564 U.S. 2  
16 (2011). For the following reasons, we reject Debtors’ attempted  
17 jurisdictional challenge.

18 First, no non-core claims were asserted in the adversary  
19 proceedings. Pierce and the UST sought a judgment denying  
20 Debtors’ discharge under § 727(a), a classic core proceeding per  
21 28 U.S.C. § 157(b) (2) (J).<sup>11</sup> In addition, Pierce sought an order

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23 <sup>10</sup> The judgment in the UST action did not reference any  
24 specific provisions of § 727(a) upon which the Court determined  
25 Debtors’ discharge should be denied. However, the judgment does  
26 reference the oral ruling of October 15, 2014, during which the  
bankruptcy court determined Debtors’ discharge should be denied  
under § 727(a) (2) (A), (a) (2) (B), and (a) (4) (A).

27 <sup>11</sup> A claim for denial of the debtor’s bankruptcy discharge is  
28 a “public rights” controversy, involving only the Debtors and the  
bankruptcy estate, which the bankruptcy court may constitutionally

(continued...)

1 requiring Debtors to turn over what the bankruptcy court  
2 determined to be property of the estate, another core proceeding.  
3 See 28 U.S.C. § 157(b) (2) (E). Marathon and Stern address  
4 constitutional questions regarding the bankruptcy court's  
5 authority to adjudicate claims between the bankruptcy estate and  
6 third parties other than the debtors. Here, the only parties  
7 involved were Debtors, Pierce, and the UST. Because there were no  
8 third parties involved in these proceedings, the principles  
9 discussed in those decisions are of no consequence.

10 Secondly, while they suggest otherwise, Debtors' claims  
11 involving Mohave were not at issue in the adversary proceedings,  
12 and Mohave has not asserted any claims against the assets of the  
13 Trust. Indeed, there is a separate adversary proceeding pending  
14 in the bankruptcy court where the dispute between Mohave and  
15 Debtors will be heard. Adv. 13-01267.<sup>12</sup>

16 In sum, Debtors' ill-defined jurisdictional arguments lack  
17 merit.

### 18 III. ISSUES

19 Whether the bankruptcy court erred in determining that all of  
20 the real and personal property in the Trust was property of the  
21 estate and directing the turnover of that property to Pierce.

22 Whether the bankruptcy court erred in denying Debtors'

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23  
24 <sup>11</sup>(...continued)  
25 adjudicate. Deitz v. Ford (In re Deitz), 760 F.3d 1038, 1039 (9th  
26 Cir. 2014).

27 <sup>12</sup> In their adversary proceeding, Mohave seeks an exception  
28 to discharge under § 523(a) (6) for their Superior Court judgment  
of \$175,407.04, plus attorneys' fees and costs. We express no  
opinion on the impact this decision has on that adversary  
proceeding.

1 discharge.

#### 2 IV. STANDARDS OF REVIEW

3 Whether property is included in a bankruptcy estate, and the  
4 procedures for recovering estate property, are questions of law  
5 that we review de novo. White v. Brown (In re White), 389 B.R.  
6 693, 698 (9th Cir. BAP 2008). The court's factual findings are  
7 reviewed for clear error. Retz v. Samson (In re Retz), 606 F.3d  
8 1189, 1196 (9th Cir. 2010).

9 We review a bankruptcy court's decision resolving an  
10 objection to discharge as follows:

11 "(1) the bankruptcy court's determinations of  
12 the historical facts are reviewed for clear  
13 error; (2) the selection of the applicable  
14 legal rules under § 727 is reviewed de novo;  
15 and (3) the application of the facts to those  
16 rules requiring the exercise of judgments  
17 about values animating the rules is reviewed  
18 de novo."

16 In re Retz, 606 F.3d at 1196 (quoting Searles v. Riley  
17 (In re Searles), 317 B.R. 368, 373 (9th Cir. BAP 2004), aff'd,  
18 212 F. App'x 589 (9th Cir. 2006)).

19 The bankruptcy court's determinations concerning the debtor's  
20 intent are factual matters reviewed for clear error. Beauchamp v.  
21 Hoose (In re Beauchamp), 236 B.R. 727, 729 (9th Cir. BAP 1999). A  
22 factual finding is clearly erroneous if it is "illogical,  
23 implausible, or without support in the record." In re Retz,  
24 606 F.3d at 1196 (citing United States v. Hinkson, 585 F.3d 1247,  
25 1261-62 & n.21 (9th Cir. 2009) (en banc)).

#### 26 V. DISCUSSION

27 Debtors' essential argument, both in the bankruptcy court and  
28 in these appeals, is that they owned none of the Trust property.

1 Because all of the property at issue was the Trust's property,  
2 Debtors insist that they committed no concealment or false oath in  
3 failing to disclose relevant facts about the property in their  
4 schedules, nor did they engage in any wrongdoing in transferring  
5 property of the Trust both pre- and post-petition.

6 We agree with the bankruptcy court that the property held by  
7 the Trust was property of the estate which must be turned over to  
8 Pierce and, with the two exceptions regarding Debtors' obligations  
9 to keep records discussed below, we agree with the bankruptcy  
10 court that Debtors' discharge was properly denied under § 727(a).

11 I.

12 **The bankruptcy court did not err in determining that all**  
13 **assets of the Trust were property of the estate and directing**  
14 **turnover of those assets to the chapter 7 trustee.**

15 Under § 541(a)(1), property of the estate includes "all legal  
16 or equitable interests of the debtor in property as of the  
17 commencement of the case." This expansive language is not  
18 ambiguous - all means all. But even assuming the statute is  
19 ambiguous, this provision has been consistently interpreted by the  
20 courts to have the broadest possible scope. United States v.  
21 Whiting Pools, 462 U.S. 198, 204 (1983) (noting that "Congress  
22 intended a broad range of property to be included in the estate  
23 . . . . The statutory language reflects this scope of the estate  
24 . . . . The house and senate reports on the Bankruptcy Code  
25 indicate that § 541(a)(1)'s scope is broad."); accord Cusano v.  
26 Klein, 264 F.3d 936, 945 (9th Cir. 2001).

27 Although the term "property of the estate" is to be construed  
28 broadly, the Bankruptcy Code does limit its reach. For example,  
§ 541(b)(1) provides that: "Property of the estate does not

1 include – 1) any power that the debtor may exercise solely for the  
2 benefit of an entity other than the debtor.” Under this  
3 provision, a debtor who is a trustee of a private or business  
4 trust ordinarily exercises its “power” on behalf of the trust and  
5 thus “solely for the benefit of an entity other than the debtor.”  
6 However, there is an important exception to this rule: when a  
7 debtor is both the trustee and beneficiary of a trust. Torts  
8 Claimants Comm. v. Roman Catholic Archbishop in Or. (In re Roman  
9 Catholic Archbishop of Or.), 345 B.R. 686, 707 (Bankr. D. Or.  
10 2006).

11 **A. The Trust was the alter ego of Debtors and its assets**  
12 **were property of the estate.**

13 In bankruptcy, an alter ego is a nominal third party that has  
14 no substantive existence separate from the debtor, and property  
15 purportedly held by that third party is, therefore, the debtor's  
16 own property. Int'l Fin. Servs. Corp. v. Chromas Techs. Can.,  
17 Inc., 356 F.3d 731, 734, 736-737, 740 (7th Cir. 2004);  
18 In re Pisculli, 426 B.R. 52, 61 (Bankr. E.D.N.Y. 2010) (assets of  
19 an alter ego of debtor at the time of filing the bankruptcy  
20 petition are property of the estate).

21 Alter ego theory is usually used to reach assets nominally  
22 held by a corporation. Dietel v. Day, 492 P.2d 455, 457 (Ariz.  
23 Ct. App. 1972). However, Arizona law allows the same theory to  
24 reach assets of a trust because “the underlying principle is the  
25 sham nature of the arrangement.” Id.; United States v. Hart,  
26 2006 WL 3377626, at \*3 (D. Ariz. Oct. 19, 2006); see also Neely v.  
27 United States, 775 F.2d 1092, 1094 (9th Cir. 1985) (alter ego  
28 theory may be applied to sham trusts under federal law).

1 A trust is an individual's alter ego when there is a unity of  
2 interest and ownership between the trust and the individual, such  
3 that observing the trust form would work an injustice. Dietel,  
4 492 P.2d at 457; Ize Nantan Bagowa, Ltd. v. Scalia, 577 P.2d 725,  
5 728 (Ariz. Ct. App. 1978). Under Arizona law, a court may find  
6 that a trust is an alter ego where (1) the individual treats the  
7 trust property as his own; (2) the trust paid minimal or no  
8 consideration for the property; (3) the individual has expressed  
9 the intent to shelter assets via the trust mechanism; (4) the  
10 individual maintains active or substantial control over the  
11 operations and decisions of the trust; and (5) a family or close  
12 relationship exists between the individual and the holding entity.  
13 Hart, 2006 WL 3377626, at \*3 (citing Deutsche Credit Corp. v. Case  
14 Power & Equip. Co., 876 P.2d 1190, 1195-96 (Ariz. Ct. App. 1994)).

15 Here, the bankruptcy court made clear findings concerning  
16 each of these requirements. Because its decision was based on  
17 competent evidence, it could properly conclude that there was a  
18 near perfect unity of interest between the Trust and Debtors, and  
19 thus, that the Trust was the alter ego of Debtors and its assets  
20 were property of the bankruptcy estate.

21 1. Debtors treated trust property as their own. The  
22 bankruptcy court heard the testimony of both Debtors and was given  
23 voluminous documentary exhibits detailing each asset of the Trust.  
24 Among its findings from this evidence, it determined that Debtors  
25 had used the Trust "to pay Debtors' home loan as well as expenses  
26 personally related to utilities, gas for vehicles, tires, car  
27 payments, personal eyeglasses, dental work, credit card bills,  
28 propane gas purchases, cable television and cell phones." Hr'g

1 Tr. 7:11-17, Oct. 15, 2014. The court concluded that "the  
2 evidence clearly established the Trust served as the Debtors' de  
3 facto checking account, or personal account, I should say." Id.  
4 at 7:22-23. The court further found that, although Debtors  
5 claimed to have repaid the Trust for some of these expenses, their  
6 testimony "lacked credibility" and any payments made were "de  
7 minimis in relation to the benefits provided." Id. at 7:19-21.

8 Here, there was ample evidence offered to support the  
9 bankruptcy court's conclusion that Debtors treated the Trust's  
10 assets as their own. In addition, we must give substantial  
11 deference to the bankruptcy court's findings because they were  
12 based in part on credibility determinations concerning witness  
13 testimony. Anderson v. City of Bessemer City, N.C., 470 U.S. 564,  
14 573 (1985); Rosenbaum v. City & Cnty. of San Francisco, 484 F.3d  
15 1142, 1163 (9th Cir. 2007) (the "trial court's credibility  
16 findings are subject to clear error and deserve special  
17 deference").

18 2. The Trust paid no consideration for the properties,  
19 which were all provided by Debtors. As noted, the court was given  
20 documentary evidence about the assets contributed to and owned by  
21 the Trust. It found that all assets of the Trust had been  
22 contributed by Debtors, and that "Debtors' transfers of property  
23 and money to the trust were made without receiving adequate  
24 consideration[.]" Hr'g Tr. 7:6-8, Oct. 15, 2014. Debtors have  
25 not effectively challenged the court's findings in this respect.

26 3. Debtors intended to shelter assets via the trust  
27 mechanism. Based on the documentary evidence, and because the  
28 Debtors lacked credibility, the bankruptcy court found that

1 Debtors intended to shelter assets: "By transferring nominal  
2 ownership of their valuable assets to the trust, the Debtors  
3 sought to and intended to hinder, delay, or defraud their  
4 creditors." Hr'g Tr. 11:10-15, Oct. 15, 2014. The record  
5 adequately supports this finding, and it was not clearly  
6 erroneous.

7 4. Debtors maintained active or substantial control over  
8 the operations and decisions of the Trust. The bankruptcy court  
9 made explicit fact findings on this point: "Throughout its  
10 histories, Debtors have exercised exclusive dominion and control  
11 over trust assets[.]" Hr'g Tr. 7:11-12, Oct. 15, 2014. "For all  
12 relevant times since the inception of the Trust, one or both of  
13 the Debtors executed documents and instruments and acted as sole  
14 trustees of the Trust." Id. at 6:17-20. The bankruptcy court's  
15 findings are supported in the record and were not clearly  
16 erroneous.

17 5. A family or close relationship exists between the  
18 Debtors and the Trust. It is undisputed that Debtors, at all  
19 relevant times, served as the trustees of the Trust. The one  
20 exception to this condition occurred in 1997, when Debtors'  
21 stepson/son Brian Lankford was a trustee. However, there is no  
22 indication in the record that anyone outside the Debtors' family  
23 ever participated in the management of the Trust, nor have Debtors  
24 suggested otherwise.

25 As can be seen, the bankruptcy court made appropriate and  
26 adequate fact findings as to each of the five elements under the  
27 Arizona case law to show that the Trust was the alter ego of the  
28 Debtors at the time of filing the bankruptcy petition (and

1 thereafter). The bankruptcy court could therefore properly  
2 conclude that the Trust's assets were actually the Debtors'  
3 property. Chromas Techs. Can., Inc., 356 F.3d at 740. As a  
4 result, those assets became property of the estate when Debtors  
5 filed their bankruptcy petition. § 541(a); In re Pisculli,  
6 426 B.R. at 61.

7 **B. The bankruptcy court did not err in directing the**  
8 **turnover of the assets of the Trust.**

9 A bankruptcy court may order the turnover of property to the  
10 debtor's estate if it is property of the estate. See § 542(a)  
11 (requiring turnover of property of the estate to the trustee  
12 unless such property is of inconsequential value or benefit to the  
13 estate.) To prevail in a turnover action under § 542(a), a  
14 trustee must establish: (1) that property of the estate is or was  
15 in the possession, custody, or control of an entity during the  
16 pendency of the case; (2) that the property may be used by the  
17 trustee under § 363; and (3) that the property has more than  
18 inconsequential value or benefit to the estate. See § 542(a);  
19 Bailey v. Suhar (In re Bailey), 380 B.R. 486, 492 (6th Cir. BAP  
20 2008); Zazali v. Minert (In re DBSI, Inc.), 468 B.R. 664, 669  
21 (Bankr. D. Del. 2011); 5 COLLIER ON BANKRUPTCY ¶ 542.02[2] (Alan N.  
22 Resnick & Henry J. Sommer, eds., 16th ed.).

23 As discussed in the previous section, the bankruptcy court  
24 properly concluded that all assets of the Trust were property of  
25 the estate and that "at all relevant times, Debtors have exercised  
26 exclusive dominion and control over trust assets[.]" Hr'g Tr.  
27 7:11-12, Oct. 15, 2014. While the bankruptcy court did not  
28 attempt to value all of the assets of the Trust, the record before

1 the court included in its list of assets numerous parcels of real  
2 estate, and other real estate contracts valued at over \$175,000.  
3 The only indication in the record of liens was a mortgage on the  
4 principal residence. Among the personal property assets, the  
5 silver bullion testified to by Dustin had significant value, and  
6 Elizabeth testified that the jewelry was "valuable." Thus, we are  
7 confident that the Trust assets had a value of consequence, and  
8 that their liquidation would confer a significant benefit to the  
9 creditors of the estate.

10 Because the Trust assets had significant value and were  
11 property of the estate in the possession, custody, and control of  
12 Debtors, the bankruptcy court did not err in ordering the turnover  
13 of the Trust assets.

## 14 II.

### 15 **The bankruptcy court did not err in denying Debtors' 16 discharge.**

#### 17 **A. The court did not err in denying Debtors' discharge 18 under § 727(a) (2) (A) and (a) (2) (B) .**

19 Section 727(a) (2) provides that:

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

27 Under § 727(a) (2), a party objecting to a debtor's discharge must  
28 prove the following elements by a preponderance of the evidence:

1   “(1) disposition of property, such as a transfer or concealment,  
2   and (2) a subjective intent on the debtor’s part to hinder, delay,  
3   or defraud a creditor through the act of disposing of the  
4   property.” In re Retz, 606 F.3d at 1200 (quoting Hughes v.  
5   Lawson (In re Lawson), 122 F.3d 1237, 1240 (9th Cir. 1997)). The  
6   intent of a debtor in making a transfer or concealment of property  
7   is a question of fact that “may be established by circumstantial  
8   evidence, or by inferences drawn from a course of conduct.”  
9   Devers v. Bank of Sheridan (In re Devers), 759 F.2d 751, 753-54  
10   (9th Cir. 1985); see also Adeeb v. Adeeb (In re Adeeb), 787 F.2d  
11   1339, 1342 (9th Cir. 1986).

12         In this case, after a two-day trial where the bankruptcy  
13   court heard testimony from Debtors and received substantial  
14   documentary evidence concerning the assets of the Trust, the court  
15   found the Trust was “a mere conduit for Debtors’ personal  
16   activities and all of the assets contributed [to it] constituted  
17   property of the Debtors before the bankruptcy filing.” Hr’g Tr.  
18   11:7-9, Oct. 15, 2014. Further, the court determined that Debtors  
19   had concealed, and failed to properly disclose, “more than  
20   \$110,000 of liquid assets [of the Trust] consisting of quantities  
21   of silver bullion purchased just prior to and subsequent to  
22   Debtors’ petition date.” Id. at 8:25-9:3. The court also found  
23   that Debtors concealed the Property in the Trust, even though in  
24   2013, and for some time prior, Debtors claimed to own the Property  
25   as their personal residence and had pledged it as collateral for  
26   loans. The court found “[a]t the time of their [petition] filing,  
27   Debtors had nominally divested themselves of title to . . . most  
28   if not all of their valuable assets by transferring these to [the

1 Trust] in exchange for no or de minimis consideration.” Id. at  
2 9:17-20. Further, the court determined, “[b]y transferring  
3 nominal ownership of their valuable assets to the [T]rust, the  
4 Debtors sought to and intended to hinder, delay, or defraud their  
5 creditors. Notwithstanding the nominal transfer of the assets  
6 during the one year period of filing for bankruptcy, the Debtors  
7 maintained all the beneficial ownership of [T]rust assets.” Id.  
8 at 11:10-15.

9 The bankruptcy court did not err in finding that Debtors  
10 concealed and transferred their property both pre- and post-  
11 petition. First, we agree with the bankruptcy court that the  
12 evidence in the record established Debtors’ prepetition  
13 concealment and transfers of property within one year prior to the  
14 bankruptcy petition. The evidence also shows that Debtors  
15 concealed and transferred property of the estate after they filed  
16 their bankruptcy petition. Given the evidence presented at trial  
17 regarding the concealment and transfer of property by the Debtors  
18 both pre- and post-petition, the bankruptcy court’s finding that  
19 Debtors intended to hinder, delay, or defraud their creditors by  
20 completing these actions was also not illogical, implausible, or  
21 without support in the record.

22 The bankruptcy court did not err in denying Debtors’  
23 discharge under § 727(a)(2)(A) and (a)(2)(B).

24 **B. The bankruptcy court did not err in denying discharge**  
25 **under § 727(a)(4)(A).**

26 Section 727(a)(4)(A) provides: “[t]he court shall grant the  
27 debtor a discharge, unless – . . . (4) the debtor knowingly and  
28 fraudulently, in or in connection with the case – (A) made a false

1 oath or account." The party objecting to a debtor's discharge  
2 under this provision must prove, by a preponderance of the  
3 evidence, "(1) that the debtor made a false oath in connection  
4 with the case; (2) the oath related to a material fact; (3) the  
5 oath was made knowingly; and (4) the oath was made fraudulently.'" In re Retz, 606 F.3d at 1197 (quoting Roberts v. Erhard  
6 (In re Roberts), 331 B.R. 876, 882 (9th Cir. BAP 2005)). Intent  
7 is a finding of fact that is usually proven by circumstantial  
8 evidence or by inferences drawn from the debtor's conduct.  
9 In re Retz, 606 F.3d at 1199 (citing In re Devers, 759 F.2d at  
10 753-54).  
11

12 Here, the bankruptcy court found Debtors failed to disclose  
13 numerous parcels of real property they owned, including the  
14 Property, which they used as their residence. The court also  
15 found Debtors failed to disclose in their schedules several bank  
16 accounts they owned. Moreover, the court found Debtors omitted  
17 the silver bullion from their schedules, as well as the jewelry.  
18 These findings of fact are supported by the record, and based upon  
19 them, the bankruptcy court did not err in concluding that Debtors  
20 made false oaths and omissions as to material facts in their  
21 bankruptcy case by failing to list these assets in their  
22 schedules.

23 The bankruptcy court also did not clearly err when it found  
24 that Debtors acted knowingly because they deliberately omitted  
25 assets from their schedules with knowledge of the fact that they  
26 were incomplete. See Khalil v. Developers Sur. & Indem. Co.  
27 (In re Khalil), 379 B.R. 163, 173 (9th Cir. BAP 2007) ("A debtor  
28 'acts knowingly if he . . . acts deliberately and consciously.'")

1 (quoting In re Roberts), 331 B.R. at 883); see also In re Retz,  
2 606 F.3d at 1198 (holding that a debtor acts knowingly if he or  
3 she deliberately and consciously signed the schedules and  
4 Statement of Financial Affairs knowing they were incomplete).

5 Finally, the bankruptcy court properly found, as it did under  
6 § 727(a)(2)(A) and (a)(2)(B), that Debtor acted fraudulently in  
7 concealing and omitting assets in their schedules because they did  
8 so with the intent to deceive their creditors and the bankruptcy  
9 trustee.

10 Because the bankruptcy court's findings were not clearly  
11 erroneous, and because all the requirements of the statute are  
12 met, we conclude that the bankruptcy court did not err in denying  
13 the Debtors' discharge under § 727(a)(4)(A).

14 **C. The bankruptcy court erred in denying discharge under**  
15 **§ 727(a)(3) and (a)(4)(D).**

16 Under § 727(a)(3), a discharge must be denied if "the debtor  
17 has concealed, destroyed, mutilated, falsified, or failed to keep  
18 or preserve any recorded information, including books, documents,  
19 records, and papers, from which the debtor's financial condition  
20 or business transactions might be ascertained, unless such act or  
21 failure to act was justified under all of the circumstances of the  
22 case." This statute ensures that discharge is dependent on a  
23 debtor's true presentation of his financial affairs. Caneva v.  
24 Sun Cmtys. Operating Ltd. P'ship (In re Caneva), 550 F.3d 755, 761  
25 (9th Cir. 2008).

26 Similarly, § 727(a)(4)(D) provides for denial of discharge if  
27 "the debtor knowingly and fraudulently, in or in connection with  
28 the case - . . . (D) withheld from an officer of the estate

1 entitled to possession under this title, any recorded information,  
2 including books, documents, records, and papers, relating to the  
3 debtor's property or financial affairs[.]”

4 We conclude the bankruptcy court, perhaps inadvertently,  
5 erred when it denied Debtors' discharge under § 727(a) (3) and  
6 (a) (4) (D). Recall, both the UST and Pierce withdrew their claims  
7 under § 727(a) (3) at the beginning of trial. And neither party  
8 presented any evidence regarding Debtors' records under either  
9 provision of § 727(a). The bankruptcy court also made no findings  
10 regarding the appropriateness of Debtors' books and records or  
11 whether they were withheld from an officer of the estate.

12 We, therefore, REVERSE that portion the bankruptcy court's  
13 judgment denying Debtors' discharge under § 727(a) (3) and  
14 (a) (4) (D).

#### 15 **VI. CONCLUSION**

16 We AFFIRM the court's judgment determining that the assets of  
17 the Trust are property of the estate and directing the turnover of  
18 those assets to Pierce. We AFFIRM the bankruptcy court's  
19 judgments denying Debtors' discharge under § 727(a) (2) (A),  
20 (a) (2) (B), and (a) (4) (A). Finally, we REVERSE the bankruptcy  
21 court's judgment denying Debtors' discharge under § 727(a) (3) and  
22 (a) (4) (D).

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