

APR 11 2016

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No.	CC-15-1262-TaKuD
6	YAN SUI,	)	Bk. No.	8:11-bk-20448-CB
7	Debtor.	)	Adv. No.	8:13-ap-01246-CB
8	_____	)		
9	YAN SUI,	)		
10	Appellant,*	)		
11	v.	)	<b>MEMORANDUM**</b>	
12	RICHARD A. MARSHACK, Chapter 7	)		
13	Trustee; 2176 PACIFIC	)		
14	HOMEOWNERS ASSOCIATION;	)		
15	SCOTTSDALE INSURANCE COMPANY;	)		
16	JOHN CHANCE, Avenue Realty &	)		
17	Lending; ERIC F. KING;	)		
18	MCKENNA, LONG AND ALDRIDGE,	)		
19	LLP; MISTY VANARKEL,	)		
20	Executive Mortgage Specialist,	)		
21	Wells Fargo Home Mortgage,	)		
22	Appellees.***	)		
23	_____	)		

\* Pei-Yu Yang also signed the opening appellate brief. Although she is the named plaintiff in the underlying adversary proceeding, the order on appeal was not entered against Yang; thus, she is not a party to this appeal.

\*\* 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(c)(2).

\*\*\* Only three appellees filed briefs on appeal: Richard A. Marshack, Chapter 7 Trustee; 2176 Pacific Homeowners Association; and Scottsdale Insurance Company. The remaining appellees waived their rights to appear in this case pursuant to the conditional waiver order entered by the BAP Clerk of Court.

1 Argued and Submitted on March 17, 2016  
2 at Pasadena, California

3 Filed - April 11, 2016

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

6 Honorable Catherine E. Bauer, Bankruptcy Judge, Presiding

7 Appearances: Appellant Yan Sui argued pro se; Chad V. Haes of  
8 Marshack Hayes LLP argued for appellee Richard A.  
9 Marshack, Chapter 7 Trustee; Allyson Suzanne  
10 Ascher of Bonne Bridges Mueller O'Keefe & Nichols  
11 argued for appellee 2176 Pacific Homeowners  
12 Association; Meka Moore of Selman Breitman LLP  
13 argued for appellee Scottsdale Insurance Company.

14 Before: TAYLOR, KURTZ, and DUNN, Bankruptcy Judges.

### 15 INTRODUCTION

16 Chapter 7<sup>1</sup> debtor Yan Sui, pro se, appeals from a  
17 bankruptcy court order denying his motion requesting an order to  
18 show cause why the chapter 7 trustee, trustee's counsel,  
19 2176 Pacific Homeowners Association, and Scottsdale Insurance  
20 Company, among others, should not be held in civil contempt  
21 under § 105(a) for violating his § 524(a) discharge injunction.  
22 The bankruptcy court denied the Debtor's motion based on a  
23 determination that the Debtor lacked standing.

24 We disagree with the bankruptcy court's determination  
25 regarding standing. Nonetheless, on other grounds apparent from  
26 the record, we AFFIRM.

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27 <sup>1</sup> Unless otherwise indicated, all chapter and section  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 **FACTS**

2 Shortly after the Debtor filed a chapter 7 petition, his  
3 trustee, Richard A. Marshack, learned of the Debtor's pre-  
4 petition transfer of his interest in real property located in  
5 Costa Mesa, California (the "Property") to Pei-Yu Yang.  
6 Although the record is not clear, it appears that Yang is the  
7 Debtor's wife, ex-wife, or longtime domestic partner.

8 The Trustee commenced an adversary proceeding against Yang  
9 (the "Avoidance Proceeding") and successfully avoided the  
10 transfer as a fraudulent conveyance. The Avoidance Proceeding  
11 order, in addition to avoiding the transfer, characterized the  
12 Debtor's interest in the Property as property of the estate;  
13 provided that the estate and Yang held title to the Property as  
14 joint tenants; and authorized the Trustee to recover and  
15 administer the estate's interest in the Property for the benefit  
16 of creditors.<sup>2</sup>

17 In the meantime, the Debtor received a chapter 7 discharge.

18 The Trustee then commenced a second adversary proceeding  
19 against Yang, and sought to compel turnover of the Property,  
20 sell it pursuant to § 363, and surcharge Yang's interest in the  
21 Property (the "Turnover Proceeding"). The Trustee also  
22 prevailed in the Turnover Proceeding. A resulting order, among  
23 other things, required immediate turnover of the Property and  
24 authorized the Trustee to sell the Property, including any

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25  
26 <sup>2</sup> Yang appealed this order to the Ninth Circuit, which  
27 affirmed. As a result, the determination that the Debtor  
28 fraudulently transferred his interest in the Property is now  
final.

1 interest held by Yang, free and clear of all interests.<sup>3</sup>

2 In order to effectuate the Turnover Order, the Trustee  
3 moved for a "writ of assistance," seeking authorization to evict  
4 all occupants from the Property. The bankruptcy court granted  
5 the motion, resulting in the Debtor's (and Yang's) eviction from  
6 the Property. The Trustee also successfully obtained an order  
7 approving a sale of the Property under § 363(b) and (m).<sup>4</sup>

8 The Debtor responded with a motion for an order to show  
9 cause why the Trustee, his attorneys, and a number of other  
10 parties should not be held in civil contempt for violating the  
11 discharge injunction ("OSC Motion"). In the OSC Motion, the  
12 Debtor argued that the Trustee violated his discharge injunction  
13 through his actions with regard to the Avoidance Proceeding, the  
14 Turnover Proceeding, the eviction of the Debtor and Yang, and  
15 the sale of the Property. He also argued that the other parties  
16 violated his discharge injunction through their participation in  
17 the sale, through representation of the Trustee, or by failing  
18 to withdraw proofs of claim filed in the Debtor's bankruptcy  
19 case. In short, he argued exclusively that activity to collect,  
20 liquidate, and administer his bankruptcy estate and to evidence  
21 claims against his bankruptcy estate violated the discharge in  
22

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23 <sup>3</sup> Yang appealed the order to this Panel, which dismissed  
24 the appeal as moot. See BAP No. 14-1498. Yang then appealed  
25 the dismissal order to the Ninth Circuit, where it remains  
pending. See 9th Cir. No. 15-60066.

26 <sup>4</sup> The Debtor appealed from the sale order. See BAP  
27 No. 15-1200. The Panel dismissed that appeal as moot. An  
28 appeal of the dismissal order is currently pending before the  
Ninth Circuit. See 9th Cir. No. 15-60065.

1 his bankruptcy case.

2 At a hearing, the bankruptcy court denied the OSC Motion.  
3 It explained that the Debtor was not a party to the Turnover  
4 Proceeding and, thus, that he lacked standing to bring the OSC  
5 Motion. The bankruptcy court also patiently explained that a  
6 bankruptcy trustee can sometimes have "years of work" after  
7 entry of a debtor's discharge in a bankruptcy case and that the  
8 discharge related only to the Debtor's personal liability for  
9 debts.

10 Following the bankruptcy court's entry of the order denying  
11 his motion, the Debtor timely appealed.

#### 12 JURISDICTION

13 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
14 §§ 1334 and 157(b)(2). We have jurisdiction under 28 U.S.C.  
15 § 158.

#### 16 ISSUES

17 Whether the Debtor had standing to file the OSC Motion; if  
18 so, whether the bankruptcy court abused its discretion in  
19 denying the motion.

#### 20 STANDARDS OF REVIEW

21 Standing is an issue that we review do novo. Paine v.  
22 Dickey (In re Paine), 250 B.R. 99, 104 (9th Cir. BAP 2000).

23 We review the bankruptcy court's decision to deny the OSC  
24 Motion for an abuse of discretion. Hilao v. Estate of Marcos,  
25 103 F.3d 762, 764 (9th Cir. 1996). A bankruptcy court abuses  
26 its discretion if it applies the wrong legal standard,  
27 misapplies the correct legal standard, or if its factual  
28 findings are illogical, implausible, or without support in

1 inferences that may be drawn from the facts in the record. See  
2 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832  
3 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,  
4 1262 (9th Cir. 2009) (en banc)).

5 We may affirm on any basis supported by the record. See  
6 Johnson v. Neilson (In re Slatkin), 525 F.3d 805, 810 (9th Cir.  
7 2008).

#### 8 **DISCUSSION**<sup>5</sup>

9 The bankruptcy court denied the OSC Motion based on a  
10 determination that the Debtor was not a party to the Turnover  
11 Proceeding and the conclusion that the Debtor, thus, lacked  
12 standing to bring the OSC Motion. We disagree with this  
13 conclusion. A debtor invariably has standing to assert claims  
14 based on an alleged violation of his discharge injunction.  
15 Thus, the bankruptcy court erred.

16 On this record, however, the error was harmless; the  
17 Debtor's allegations of discharge violative conduct are without  
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19  
20 <sup>5</sup> In his opening brief and reply brief on appeal, the  
21 Debtor apparently requests that we take judicial notice of the  
22 excerpts of record filed in several other appeals to this Panel  
23 (BAP Nos. CC-14-1022, CC-14-1498, CC-14-1439, and CC-15-1200),  
24 as part of the record in this appeal. We deny the Debtor's  
25 requests. In reviewing the bankruptcy court's decision here, we  
26 consider only those documents presented to it in connection with  
27 the order on appeal. See Kirshner v. Uniden Corp. of Am.,  
28 842 F.2d 1074, 1077 (9th Cir. 1988).

25 We do, however, exercise our discretion to take judicial  
26 notice of the existence of certain related appeals and documents  
27 electronically filed in the adversary proceeding, the underlying  
28 bankruptcy case, and the related appeals, to the extent  
pertinent. See Atwood v. Chase Manhattan Mortg. Co.  
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 merit.

2 A debtor's discharge injunction does not preclude his  
3 trustee from initiating recovery actions or from seeking to sell  
4 or obtain possession of estate assets. Once a debtor's trustee  
5 prevails in a recovery action or obtains the right to possession  
6 or sale of estate assets, a debtor's discharge does not bar the  
7 trustee from implementing the resulting orders. Similarly, a  
8 debtor's discharge does not bar his pre-petition creditors from  
9 filing and maintaining claims against estate assets in the case  
10 from which the discharge issues. Ultimately, the Debtor's  
11 allegations of discharge violations are meritless because the  
12 Trustee and other appellees acted consistent with the Bankruptcy  
13 Code, the Federal Rules of Bankruptcy Procedure, or bankruptcy  
14 court orders.

15 In seeking to avoid the Debtor's fraudulent transfer to  
16 Yang, to recover physical possession of the Property, and to  
17 sell the Property for the benefit of creditors, the Trustee  
18 carried out his duties as the administrator of the bankruptcy  
19 estate under § 704(a)(1). Indeed, in the absence of a sale,  
20 only the Trustee could pursue fraudulent transfer claims under  
21 the Bankruptcy Code. See, e.g., Stoll v. Quintanar  
22 (In re Stoll), 252 B.R. 492, 495 (9th Cir. BAP 2000).

23 Further, in connection with the eviction and sale, the  
24 Trustee acted as authorized by bankruptcy court order. These  
25 actions consistent with the obligation to "collect and reduce to  
26 money the property of the estate" did not violate the Debtor's  
27 discharge injunction - there was no collection, recovery, or  
28 offset of a debt as a personal liability against the Debtor.

1 This reasoning applies with equal force to the Trustee's agents  
2 and to those who purchased the Property as allowed by bankruptcy  
3 court order.

4 At oral argument, appellees 2176 Pacific Homeowners  
5 Association and Scottsdale Insurance Company made clear that  
6 neither took any collection action independent of the filing of  
7 a proof of claim as allowed by § 501(a). As the Debtor received  
8 a discharge only in the underlying bankruptcy case, his  
9 creditors did not violate the discharge injunction when they  
10 filed timely proofs of claim and refrained from withdrawing them  
11 after discharge issued.

12 In sum, none of the appellees' actions violated the  
13 § 524(a) injunction.

14 **CONCLUSION**

15 Based on the foregoing, we AFFIRM the bankruptcy court's  
16 denial of the OSC Motion.