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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NOT FOR PUBLICATION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

6	In re:	)	BAP No.	CC-15-1348-FDKu
		)		
7	RICHARD JAY BLASKEY,	)	Bk. No.	8:11-bk-21187-ES
		)		
8	Debtor.	)	Adv. Pro.	8:11-ap-01462-ES
		)		
9	_____	)		
		)		
10	BARTON PROPERTIES, INC.;	)		
	STEPHEN SELINGER,	)		
		)		
11	Appellants,	)		
		)		
12	v.	)	<b>MEMORANDUM*</b>	
		)		
13	RICHARD JAY BLASKEY,	)		
		)		
14	Appellee.	)		
		)		

Argued and Submitted on July 28, 2016  
at Pasadena, California

Filed - August 8, 2016

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

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding

Appearances: Anthony A. Patel argued for Appellants Barton  
Properties, Inc. and Stephen Selinger; Chad V.  
Haes of Marshack Hays LLP argued for Appellee  
Richard Jay Blaskey.

Before: FARIS, DUNN, and KURTZ, Bankruptcy Judges.

\* 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 **INTRODUCTION**

2 This appeal arises out of a \$1,000,320 state court judgment  
3 against appellee/chapter 7<sup>1</sup> debtor Richard Jay Blaskey in favor  
4 of appellants Barton Properties, Inc. and Stephen Selinger. In  
5 summary, the bankruptcy court determined that the state court  
6 judgment was not nondischargeable debt under §§ 523(a)(2)(A),  
7 (a)(4), or (a)(6). On appeal, we affirmed as to § 523(a)(4), but  
8 vacated and remanded the bankruptcy court's judgment as to  
9 §§ 523(a)(2)(A) and (a)(6) for the court to apply the correct  
10 standard of proof. On remand, the court articulated the ordinary  
11 preponderance of the evidence standard and reaffirmed its prior  
12 determination that Appellants failed to establish that  
13 Mr. Blaskey's debt was nondischargeable under §§ 523(a)(2)(A) and  
14 (a)(6). We find no error in the court's conclusion.  
15 Accordingly, we AFFIRM.

16 **FACTUAL BACKGROUND<sup>2</sup>**

17 **A. Proceedings before the bankruptcy court<sup>3</sup>**

18 Appellants retained Mr. Blaskey, an attorney, in 2004 to  
19 represent them in various state court cases. Among other legal  
20 matters, the parties agreed that Mr. Blaskey would represent  
21 Appellants in three unrelated lawsuits.  
22

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

25 <sup>2</sup> We have exercised our discretion to review the bankruptcy  
26 court's docket, as appropriate. See Woods & Erickson, LLP v.  
Leonard (In re AVI, Inc.), 389 B.R. 721, 725 n.2 (9th Cir. BAP  
27 2008).

28 <sup>3</sup> The following facts are taken from our decision in the  
previous appeal, BAP No. CC-14-1340-KuDKi, with some alterations.

1 In 2007, Appellants discovered that Mr. Blaskey had been  
2 derelict in representing them in the underlying actions to such  
3 an extent that the state court presiding over the underlying  
4 actions had entered adverse orders and judgments against Barton  
5 Properties. As a result, in 2008, Barton Properties sued  
6 Mr. Blaskey in state court for legal malpractice, breach of  
7 contract, fraud, and breach of fiduciary duty. The state court  
8 entered a default judgment against Mr. Blaskey in 2010.

9 Mr. Blaskey commenced his bankruptcy case in August 2011,  
10 and Appellants filed their nondischargeability adversary  
11 proceeding shortly thereafter. Appellants alleged three distinct  
12 claims for relief under §§ 523(a)(2)(A), (a)(4), and (a)(6).

13 The court held the trial on Appellants' claims in March  
14 2014. Appellants offered into evidence a handful of exhibits and  
15 presented the testimony of Mr. Selinger, who at all relevant  
16 times was the president of Barton Properties. Mr. Selinger  
17 testified that, in 2006, Mr. Blaskey told him that he was taking  
18 care of all of the litigation and settlement tasks in the  
19 underlying actions. If Mr. Selinger had known the truth - that  
20 Mr. Blaskey was derelict in his duties - Barton Properties would  
21 not have paid Mr. Blaskey's 2006 invoices for legal fees to the  
22 tune of roughly \$50,000. Mr. Selinger also testified that, if  
23 Mr. Blaskey had not lied to him about the performance of his  
24 duties, he would have hired new counsel, who might have had  
25 opportunities to prevent or have set aside some or all of the  
26 adverse orders and judgments entered in the underlying actions.

27 Notably, Mr. Selinger's testimony contained virtually no  
28 specifics about what Mr. Blaskey reported to him about the status

1 of the underlying actions, when Mr. Blaskey made particular  
2 reports, when Barton Properties made payments to Mr. Blaskey, and  
3 how much was paid in each instance. Furthermore, Mr. Selinger  
4 offered no specifics regarding the remedial opportunities  
5 available at the time but later lost because Barton Properties  
6 was relying on Mr. Blaskey's misstatements.

7 Appellants offered two distinct types of evidence to  
8 demonstrate the amount of damages they suffered. First, there  
9 was Mr. Selinger's testimony. Mr. Selinger gave a generalized  
10 account of damages, broken down by underlying action. According  
11 to Mr. Selinger, as a result of Mr. Blaskey's conduct, Barton  
12 Properties suffered damages of roughly \$470,000, \$60,000, and  
13 \$450,000, respectively, in the three underlying actions. For the  
14 most part, Mr. Selinger did not offer specific details concretely  
15 demonstrating how Mr. Blaskey's nondischargeable conduct caused  
16 Barton Properties' damages in the underlying actions.

17 Second, Appellants produced documentary evidence. They  
18 offered as exhibits the complaint filed and the \$1 million  
19 default judgment entered in their state court action against  
20 Mr. Blaskey. Appellants in essence asserted that issue  
21 preclusion applied and that these two documents established their  
22 damages of \$1 million. But Appellants' issue preclusion argument  
23 went further. According to Appellants, the state court judgment  
24 not only conclusively established Mr. Blaskey's liability for  
25 \$1 million but also conclusively established that the judgment  
26 debt was nondischargeable - that Mr. Blaskey was precluded from  
27 arguing in the adversary proceeding that the \$1 million in  
28 damages resulted from anything other than nondischargeable

1 conduct.

2 Mr. Blaskey was not present at trial, so the court struck  
3 his written testimony. Mr. Blaskey's counsel did not offer any  
4 further evidence.

5 After the conclusion of the trial, the bankruptcy court  
6 announced its findings of fact and conclusions of law. The  
7 bankruptcy court rejected Appellants' assertion that they were  
8 entitled to issue preclusion based on the state court judgment.  
9 The bankruptcy court pointed out that issue preclusion was not  
10 available unless the issues in question were the subject of  
11 explicit findings by the state court or, alternately, implicit  
12 findings on those issues were essential to support the state  
13 court's judgment. The bankruptcy court pointed out that the  
14 state court judgment was not supported by any explicit findings  
15 and that it was impossible to tell on which causes of action  
16 Appellants had prevailed. Consequently, the bankruptcy court  
17 held that it could not apply issue preclusion to determine the  
18 dischargeability of Mr. Blaskey's \$1 million judgment debt  
19 because Appellants had not satisfied the "necessarily decided"  
20 element for issue preclusion.

21 The court next addressed the trial record and whether  
22 Appellants had made a sufficient showing that the \$1 million  
23 judgment debt, or any portion thereof, should be declared  
24 nondischargeable under § 523(a)(2)(A). The court found that  
25 Appellants had not established by a preponderance of the evidence  
26 that their damages resulted from fraudulent conduct. According  
27 to the court, there was either no evidence or insufficient  
28 evidence connecting any particular misrepresentation Mr. Blaskey

1 made either to the \$50,000 in legal fees Appellants paid  
2 Mr. Blaskey or to the roughly \$1 million in damages Appellants  
3 apparently suffered in the underlying actions.

4 The court further explained that Appellants' evidentiary  
5 deficiencies were exacerbated by the lack of any documentation to  
6 support the amounts Mr. Blaskey billed them or the amounts they  
7 actually paid. The court also pointed out that Appellants' lack  
8 of specificity regarding the alleged representations worked  
9 against them proving their nondischargeability claims by a  
10 preponderance of the evidence.

11 As for Appellants' § 523(a)(4) claim, the bankruptcy court  
12 found that there was no evidence of any express or technical  
13 trust as to any of the monies Appellants paid to Mr. Blaskey and  
14 there was insufficient evidence of a defalcation within the  
15 meaning of the statute. And as for Appellants' § 523(a)(6)  
16 claim, the bankruptcy court found there was insufficient evidence  
17 that Mr. Blaskey subjectively intended to injure Appellants.

18 During its ruling, the bankruptcy court stated multiple  
19 times that Appellants bore the burden of proof to establish all  
20 of the nondischargeability elements by a preponderance of the  
21 evidence. However, the bankruptcy court also made a couple of  
22 statements indicating that the preponderance of the evidence  
23 standard has a special meaning or gloss in nondischargeability  
24 litigation. For instance, the bankruptcy court stated that it  
25 was "required to view the evidence strictly against the creditor  
26 and liberally in favor of the debtor" and "in the light most  
27 favorably to the defendant and strictly against the plaintiff."

28 On June 20, 2014, the bankruptcy court entered judgment in

1 favor of Mr. Blaskey and against Appellants.

2 **B. Appellate review by the BAP**

3 Appellants appealed the bankruptcy court's decision to the  
4 BAP, BAP No. CC-14-1340-KuDki ("First Appeal").

5 The Panel held that the bankruptcy court correctly  
6 determined that issue preclusion did not apply to the state  
7 court's default judgment. The Panel also affirmed the bankruptcy  
8 court's decision in favor of Mr. Blaskey on the § 523(a)(4)  
9 claim.

10 The Panel held, however, that the court misapplied the  
11 standard of proof on the §§ 523(a)(2)(A) and (a)(6) claims.  
12 While the court correctly identified the standard as a  
13 preponderance of the evidence, it conflated the strict  
14 construction of the statutory language of § 523(a) with the  
15 standard of proof, which only requires that a fact is more likely  
16 than not.

17 Accordingly, the Panel remanded the case to the bankruptcy  
18 court for consideration of the §§ 523(a)(2)(A) and (a)(6) claims  
19 under a non-heightened standard of proof. The Panel did not  
20 direct any particular procedure or result on remand, but only  
21 required that the bankruptcy court apply the ordinary  
22 preponderance of the evidence standard.

23 **C. The bankruptcy court's decision on remand**

24 Without holding any further hearings or receiving additional  
25 materials from the parties, the bankruptcy court issued its order  
26 in response to the Panel's decision in the First Appeal ("Order  
27 on Remand"). The court summarized the procedural history of the  
28 case and stated that it had reviewed the entire trial record

1 under the preponderance of the evidence standard. It concluded  
2 that "1) no further court proceedings or briefing is necessary  
3 and 2) judgment should be entered in favor of Defendant as to the  
4 § 523(a)(2)(A) and (6) claims based upon the findings and  
5 conclusions set forth in the Oral Ruling, which is incorporated  
6 by reference herein." In other words, the court reaffirmed its  
7 previous ruling in its entirety.

8 Appellants timely filed their notice of appeal from the  
9 Order on Remand.

#### 10 **JURISDICTION**

11 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
12 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.  
13 § 158.

#### 14 **ISSUES**

15 (1) Whether the bankruptcy court erred in its application of  
16 the preponderance of the evidence standard.

17 (2) Whether the bankruptcy court erred when it determined  
18 that Appellants did not establish their §§ 523(a)(2)(A) and  
19 (a)(6) claims.

20 (3) Whether the bankruptcy court erred in its consideration  
21 of the parties' evidence and objections.

22 (4) Whether the bankruptcy court violated public policy and  
23 equitable principles in ruling in favor of Mr. Blaskey.

24 (5) Whether the bankruptcy court correctly followed the  
25 BAP's decision in the First Appeal.

#### 26 **STANDARDS OF REVIEW**

27 In bankruptcy discharge appeals, we review the bankruptcy  
28 court's findings of fact for clear error and conclusions of law

1 de novo. We apply de novo review to mixed questions of law and  
2 fact that require consideration of legal concepts and the  
3 exercise of judgment about the values that animate the legal  
4 principles. Wolkowitz v. Beverly (In re Beverly), 374 B.R. 221,  
5 230 (9th Cir. BAP 2007), aff'd in part & dismissed in part,  
6 551 F.3d 1092 (9th Cir. 2008); see also Honkanen v. Hopper  
7 (In re Honkanen), 446 B.R. 373, 382 (9th Cir. BAP 2011) (the  
8 ultimate question of whether a particular debt is dischargeable  
9 is a mixed question of fact and law reviewed de novo).

10 "Whether a requisite element of a § 523(a)(2)(A) claim is  
11 present is a factual determination reviewed for clear error."  
12 Tallant v. Kaufman (In re Tallant), 218 B.R. 58, 63 (9th Cir. BAP  
13 1998). Similarly, "[w]hether a debtor's conduct is willful and  
14 malicious under § 523(a)(6) is a question of fact reviewed for  
15 clear error." Banks v. Gill Distrib. Ctrs., Inc. (In re Banks),  
16 263 F.3d 862, 869 (9th Cir. 2001).

17 Factual findings are clearly erroneous if they are  
18 illogical, implausible, or without support in the record. Retz  
19 v. Samson (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010). If  
20 two views of the evidence are possible, the trial judge's choice  
21 between them cannot be clearly erroneous. Anderson v. City of  
22 Bessemer City, N.C., 470 U.S. 564, 574 (1985).

23 We review a bankruptcy court's evidentiary rulings for abuse  
24 of discretion, and then only reverse if any error would have been  
25 prejudicial to the appellant. Mbunda v. Van Zandt  
26 (In re Mbunda), 484 B.R. 344, 351 (9th Cir. BAP 2012), aff'd,  
27 604 F. App'x 552 (9th Cir. 2015). To determine whether the  
28 bankruptcy court has abused its discretion, we conduct a two-step

1 inquiry: (1) we review de novo whether the bankruptcy court  
2 “identified the correct legal rule to apply to the relief  
3 requested” and (2) if it did, we consider whether the bankruptcy  
4 court's application of the legal standard was illogical,  
5 implausible, or “without support in inferences that may be drawn  
6 from the facts in the record.” United States v. Hinkson,  
7 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc).

8 “We afford broad discretion to a district court’s  
9 evidentiary rulings. To reverse such a ruling, we must find that  
10 the district court abused its discretion and that the error was  
11 prejudicial. A reviewing court should find prejudice only if it  
12 concludes that, more probably than not, the lower court’s error  
13 tainted the verdict.” In re Mbunda, 484 B.R. at 352 (quoting  
14 Harper v. City of L.A., 533 F.3d 1010, 1030 (9th Cir. 2008)).

15 We review de novo the bankruptcy court’s compliance with the  
16 mandate of an appellate court. See United States v. Kellington,  
17 217 F.3d 1084, 1092 (9th Cir. 2000).

## 18 DISCUSSION

19 **A. The bankruptcy court correctly applied the preponderance of  
20 the evidence standard on remand as to Appellants’  
§§ 523(a) (2) (A) and (a) (6) claims.**

21 **1. The bankruptcy court correctly followed the BAP’s  
22 instruction on remand.**

23 Appellants argue that the bankruptcy court did not adhere to  
24 the BAP’s instruction on remand from the First Appeal, because  
25 the court did not hold further proceedings, request additional  
26 briefing, explain how it applied the preponderance of the  
27 evidence standard, or identify findings of facts and conclusions  
28 of law. We disagree.

1 Under the rule of mandate, "[o]n remand, a trial court may  
2 not deviate from the mandate of an appellate court." Commercial  
3 Paper Holders v. Hine (In re Beverly Hills Bancorp), 752 F.2d  
4 1334, 1337 (9th Cir. 1984). "'The rule of mandate is similar to,  
5 but broader than, the law of the case doctrine.' A district  
6 court that has received the mandate of an appellate court cannot  
7 vary or examine that mandate for any purpose other than executing  
8 it." Hall v. City of L.A., 697 F.3d 1059, 1067 (9th Cir. 2012)  
9 (quoting United States v. Cote, 51 F.3d 178, 181 (9th Cir.  
10 1995)); see AT&T Universal Card Servs. v. Black (In re Black),  
11 222 B.R. 896, 900 (9th Cir. BAP 1998) ("When a case has been  
12 decided by an appellate court and remanded, the trial court 'must  
13 proceed in accordance with the mandate and such law of the case  
14 as was established by the appellate court.'" (citation omitted)).  
15 However, "the rule of mandate allows a lower court to decide  
16 anything not foreclosed by the mandate." Hall, 697 F.3d at 1067.

17 The Panel only ordered that the bankruptcy court apply the  
18 proper standard of proof on remand. It did not require the  
19 bankruptcy court to hold further proceedings, and it specifically  
20 stated that it did not require "the bankruptcy court [to] make  
21 different findings." Rather, it said that, "before we can review  
22 the bankruptcy court's findings, we need to ensure that the  
23 bankruptcy court applied the ordinary preponderance of the  
24 evidence standard."

25 The bankruptcy court stated in its Order on Remand that it  
26 reviewed the entire trial record under the ordinary preponderance  
27 of the evidence standard and that, under the normal preponderance  
28 standard, it would reach the same result. This is exactly

1 consistent with our mandate.

2       **2. The court did not err in ruling in favor of Mr. Blaskey**  
3       **on Appellants' § 523(a) (2) (A) claim.**

4       Section 523(a) (2) (A) prohibits the discharge of any  
5 obligation for money, property, services, or credit, to the  
6 extent that the money, property, services, or credit were  
7 obtained by fraud, false pretenses, or false representations.  
8 § 523(a) (2) (A). The Ninth Circuit has consistently held that a  
9 claim of non-dischargeability under § 523(a) (2) (A) requires the  
10 creditor to demonstrate five elements:

- 11       (1) the debtor made . . . representations;
- 12       (2) that at the time he knew they were false;
- 13       (3) that he made them with the intention and purpose  
14       of deceiving the creditor;
- 15       (4) that the creditor relied on such representations;  
16       [and]
- 17       (5) that the creditor sustained the alleged loss and  
18       damage as the proximate result of the  
19       misrepresentations having been made.

20       Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir.  
21       2010) (quoting Am. Express Travel Related Servs. Co. v. Hashemi  
22       (In re Hashemi), 104 F.3d 1122, 1125 (9th Cir. 1996)).

23       In the present case, the court determined that Appellants  
24 failed to establish that the state court judgment was  
25 nondischargeable. Although the court noted that it is  
26 "undisputed . . . that Mr. Blaskey did not perform all services,"  
27 it held that the evidence did not establish the nature and  
28 substance of the alleged misrepresentations, the causal  
connection between those misrepresentations and any damages, and  
the amount of any resulting damages.

1 The bankruptcy court did not clearly err when it found that  
2 Appellants' evidence - which all parties and the court agreed was  
3 "thin" - was not sufficient to carry their burden of proof. The  
4 Appellants failed to establish that Mr. Blaskey made false  
5 statements that he knew to be false with the expectation that  
6 Appellants would rely on those statements. They also failed to  
7 establish damages attributable to the alleged  
8 misrepresentations.<sup>4</sup> The court did not commit clear error when  
9 it held that Appellants failed to prove their case by a  
10 preponderance of the evidence.

11 **3. The court did not err by ruling in favor of Mr. Blaskey**  
12 **on Appellants' § 523(a)(6) claim.**

13 Similarly, the court did not err when it determined that  
14 Appellants did not meet their burden of proof regarding their  
15 § 523(a)(6) claim.

16 Section 523(a)(6) provides an exception to discharge for  
17 debts "for willful and malicious injury by the debtor to another  
18 entity or to the property of another entity." "A determination  
19 whether a particular debt is for 'willful and malicious injury by  
20 the debtor to another' under section 523(a)(6) requires  
21 application of a two-pronged test to apply to the conduct giving  
22

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23 <sup>4</sup> Appellants argue that the superior court judgment  
24 established the amount of damages, such that the bankruptcy court  
25 must afford it issue preclusive effect. We rejected this  
26 argument in the First Appeal and will not revisit it here.

27 In any event, the bankruptcy court properly determined that  
28 Appellants failed to prove a causal relation between the alleged  
misrepresentations and their alleged damages, so we need not  
examine the calculation of damages here.

1 rise to the injury. The creditor must prove that the debtor's  
2 conduct in causing the injuries was both willful and malicious."  
3 Suarez v. Barrett (In re Suarez), 400 B.R. 732, 736 (9th Cir. BAP  
4 2009), aff'd, 529 F. App'x 832 (9th Cir. 2013). First,  
5 "[w]illfulness requires proof that the debtor deliberately or  
6 intentionally injured the creditor, and that in doing so, the  
7 debtor intended the consequences of his act, not just the act  
8 itself." Id. at 736-37. Second, "[f]or conduct to be malicious,  
9 the creditor must prove that the debtor: (1) committed a wrongful  
10 act; (2) done intentionally; (3) which necessarily causes injury;  
11 and (4) was done without just cause or excuse." Id. at 737.

12 The bankruptcy court held that Appellants failed to  
13 establish the elements of § 523(a)(6). It said that the  
14 conclusory statements in the complaint were insufficient to  
15 establish willful and malicious injury. It also said that  
16 Appellants did not focus on § 523(a)(6) at trial and could not  
17 simply rely on their arguments concerning § 523(a)(2)(A). We  
18 discern no error.

19 Appellants' evidence fails to establish either the "willful"  
20 or "malicious" prong required by § 523(a)(6). As noted by the  
21 bankruptcy court, Mr. Selinger's testimony did not prove  
22 Mr. Blaskey's intent to injure Appellants. Even on appeal,  
23 Appellants fail to point to any evidence establishing  
24 Mr. Blaskey's willful and malicious conduct. Accordingly, the  
25 court did not err in rejecting Appellants' § 523(a)(6) claim.

26 **4. Appellants' other evidentiary arguments are misplaced.**

27 Appellants also argue that the bankruptcy court  
28 misunderstood the nature of the case or otherwise erred in

1 discounting their evidence. We reject these arguments.

2 Appellants contend that the court misconstrued the facts to  
3 reflect mere negligence, rather than "lies, deceit and cover-up."  
4 They imply that the court was reluctant to reach the latter  
5 conclusion, because of "what it may say about our legal  
6 system[,] " and the court "was loathe to go down that path."

7 We find no merit in Appellants' position. The bankruptcy  
8 court properly found that Mr. Selinger's testimony simply did not  
9 establish, by a preponderance of the evidence, each of the  
10 elements of their claims. See Hussain v. Malik (In re Hussain),  
11 508 B.R. 417, 425 (9th Cir. BAP 2014) ("the bankruptcy court was  
12 in the best position to evaluate the documentary and testimonial  
13 evidence"). Nothing in the record suggests that the court was  
14 biased by a desire to protect the reputation of lawyers or the  
15 legal system.

16 They also contend that the court must accept Mr. Selinger's  
17 testimony, because Mr. Blaskey did not offer any testimony to  
18 refute it. But they ignore the fact that they had the ultimate  
19 burden of proving their claims by a preponderance of the  
20 evidence. See generally Brown v. Electrolux Home Prods., Inc.,  
21 817 F.3d 1225, 1233 (11th Cir. 2016) ("And the entire point of a  
22 burden of proof is that, if doubts remain about whether the  
23 standard is satisfied, 'the party with the burden of proof  
24 loses.'"); United States v. 15 Bosworth St., 236 F.3d 50, 55 (1st  
25 Cir. 2001) ("when there is insufficient evidence on a particular  
26 issue, that issue must be resolved **against** the party who bears  
27 the burden of proof" (emphasis in original)). The bankruptcy  
28 court determined that Mr. Selinger's testimony and evidence were

1 insufficient to establish Appellants' claims. The bankruptcy  
2 court was not required to accept Mr. Selinger's testimony. The  
3 fact that Mr. Blaskey did not testify does not relieve Appellants  
4 of their burden of proof.

5 Appellants further argue that the court erred in requiring  
6 them to produce documentary evidence to support their claims,  
7 because Mr. Selinger offered written and oral testimony. We  
8 again find no error in the court's determination. The court  
9 stated that Mr. Selinger's testimony alone was insufficient to  
10 establish the various elements discussed above, and Appellants  
11 failed to offer documentary evidence to fill in gaps in his  
12 testimony.

13 **B. The court did not err in considering Mr. Blaskey's closing**  
14 **statement.**

15 Appellants argue that the court erred in considering  
16 Mr. Blaskey's evidentiary objections and challenges raised in his  
17 closing statement. However, they fail to provide us with  
18 sufficient information to review this issue. An appellate court  
19 "won't consider matters on appeal that are not specifically and  
20 distinctly argued in appellant's opening brief. Applying this  
21 standard, we've refused to address claims that were only argue[d]  
22 in passing, or that were bare assertion[s] . . . with no  
23 supporting argument." Christian Legal Soc. Chapter of Univ. of  
24 Cal. v. Wu, 626 F.3d 483, 487 (9th Cir. 2010) (internal citations  
25 and quotation marks omitted).

26 Appellants do not identify any particular error. They  
27 complain about two of Mr. Blaskey's supposed objections:  
28 (1) objections to testimony regarding Mr. Blaskey's "doctoring"

1 of documents; and (2) objections to "certain evidence" including  
2 the \$400,000 lost settlement. However, Mr. Blaskey did not  
3 object to the inclusion of such evidence; rather, he merely  
4 argued against the weight or relevance of the evidence, as he is  
5 entitled to do during closing statements.

6 In any event, there is no indication that the court  
7 sustained either of these "objections" or excluded any of  
8 Appellants' evidence. We find no error.

9 **C. The court did not abuse its discretion in excluding**  
10 **Exhibits 5 and 6.**

11 Appellants argue that the court should have admitted their  
12 Exhibits 5 and 6 at trial. We hold that the bankruptcy court  
13 correctly excluded both exhibits.

14 Exhibit 5 was Mr. Selinger's declaration in superior court.  
15 The court did not admit Exhibit 5 because the information therein  
16 could have been offered by Mr. Selinger in written or rebuttal  
17 testimony. Appellants offer no legal authority supporting the  
18 admissibility of Exhibit 5. We will not consider unsupported  
19 arguments. See Christian Legal Soc. Chapter of Univ. of Cal.,  
20 626 F.3d at 487. Moreover, Appellants' counsel agreed with the  
21 objection and did not preserve this error on appeal: "Okay.  
22 We'll - we will agree with the objection and not, you know - not  
23 try to present it then . . . on the direct." Finally, Appellants  
24 do not provide us with a copy of Exhibit 5, so we are unable to  
25 review it and determine whether it should have been admitted.

26 Exhibit 6 is a declaration of Appellants' counsel.  
27 Appellants claim that the document establishes Mr. Blaskey's non-  
28 cooperation and that his "behavior and habits are admissible to

1 show how he acted in the past," but they do not cite any relevant  
2 legal authority supporting this proposition. Appellants have not  
3 even provided the Panel with a copy of the document so that we  
4 may evaluate its admissibility. Further, the declaration is  
5 inadmissible hearsay, as it was an out-of-court statement by  
6 counsel, who was not a witness at trial. Fed. R. Evid. 801.

7 Accordingly, the bankruptcy court properly excluded  
8 Exhibits 5 and 6.

9 **D. The bankruptcy court's judgment does not violate public**  
10 **policy or equitable principles.**

11 Appellants also state that the bankruptcy court's ruling  
12 contravened public policy and ignored the bankruptcy court's role  
13 as an equitable tribunal. These arguments are unsupported.

14 Appellants' assertion that Mr. Blaskey "should not be  
15 allowed to just walk away from his obligations" ignores the fact  
16 that they were unable to establish the requisite elements of  
17 §§ 523(a)(2)(A) and (a)(6). While it is true that public policy  
18 dictates that bankruptcy protection is reserved for the "honest  
19 but unfortunate debtor," that maxim cannot save Appellants'  
20 failure to meet a statutory requirement.

21 In fact, congressionally enacted public policy favors  
22 discharge. See Snoke v. Riso (In re Riso), 978 F.2d 1151, 1154  
23 (9th Cir. 1992) ("One of the fundamental policies of the  
24 Bankruptcy Code is the fresh start afforded debtors through the  
25 discharge of their debts. In order to effectuate the fresh start  
26 policy, exceptions to discharge should be strictly construed  
27 against an objecting creditor and in favor of the debtor.").  
28 Sections 523(a)(2)(A) and (a)(6) represent Congress' view of the

1 correct public policy. We will not substitute our view of public  
2 policy for the congressional view.

3 Similarly, while it is true that a bankruptcy court is a  
4 court of equity, it cannot and should not ignore a statute merely  
5 because a party complains that it is not "receiv[ing] a fair  
6 result." Appellants provide no authority for their novel  
7 proposition to the contrary. See San Rafael Baking Co. v.  
8 N. Cal. Bakery Drivers Sec. Fund (In re San Rafael Baking Co.),  
9 219 B.R. 860, 866 (9th Cir. BAP 1998) ("Bankruptcy courts are  
10 courts of equity but must follow the law and cannot ignore  
11 express statutory commands."); cf. Law v. Siegel, 134 S. Ct.  
12 1188, 1197 (2014) (holding that there is "no authority for  
13 bankruptcy courts to deny an exemption on a ground not specified  
14 in the Code").

15 **CONCLUSION**

16 For the reasons set forth above, we AFFIRM.  
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