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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No.	CC-16-1281-KuFL
	)		
RONALD DAVID TRUPPA, JR.,	)	Bk. No.	1:15-bk-11029-MT
	)		
Debtor.	)	Adv. No.	1:15-ap-01103-MT
	)		
_____	)		
TIFANIE JOUDEH,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
RONALD DAVID TRUPPA, JR.,	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on March 23, 2017  
at Pasadena, California

Filed - April 27, 2017

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

Honorable Maureen A. Tighe, Bankruptcy Judge, Presiding

Appearances: Michael Ross Lewis of Lewis & Ham, LLP argued for  
appellant; John W. Sullivan argued for appellee.

Before: KURTZ, FARIS and LAFFERTY, 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 Tifanie Joudeh appeals from a summary judgment in favor of  
3 chapter 7<sup>1</sup> Debtor Ronald David Truppa, Jr. disposing of her  
4 nondischargeability and objection to discharge claims.

5 Joudeh's two-page declaration filed with her summary  
6 judgment opposition was the only "evidence" she submitted in  
7 support of her claims under §§ 523(a)(2)(A) and 523(a)(6), and  
8 the story she told in her declaration was entirely discredited by  
9 her own emails, which she did nothing to challenge when Truppa  
10 submitted them in support of his summary judgment motion.

11 As for her objection to discharge claim under  
12 § 727(a)(4)(A), unlike the bankruptcy court, we are persuaded  
13 that the facts in the summary judgment record, when viewed in the  
14 light most favorable to Joudeh, were sufficient to permit a  
15 reasonable trier of fact to find in her favor on all of the  
16 elements necessary for a § 727(a)(4)(A) claim. This does not  
17 mean that Joudeh is likely to win at trial on this claim. It  
18 only means that, given the facts in the summary judgment record,  
19 Joudeh's § 727(a)(4)(A) claim should have survived Truppa's  
20 summary judgment motion.

21 Accordingly, we AFFIRM the portion of the bankruptcy court's  
22 summary judgment disposing of Joudeh's §§ 523(a)(2)(A) and  
23 523(a)(6) claims, and we REVERSE and REMAND for further  
24 proceedings on Joudeh's § 727(a)(4)(A) claim.

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25  
26 <sup>1</sup>Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
28 all "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037. All "Civil Rule" references are to  
the Federal Rules of Civil Procedure.

1 **FACTS**

2 We rely on the uncontroverted facts in the record. Truppa  
3 is one of the founders, officers and directors of the Santa  
4 Catalina Film Festival, a non-profit public benefit corporation  
5 formed in 2011. The Festival holds an annual film festival on  
6 Catalina Island, off the coast of Southern California. The  
7 Festival's activities have always included, among other things,  
8 seminars regarding film production and marketing, and pitch  
9 sessions during which attendees could submit creative ideas and  
10 receive immediate feedback from film industry representatives.  
11 The seminar and pitch session aspects of the Festival changed  
12 names from time to time. For the 2013 Festival, they were known  
13 as the Catalina Film & TV Market and for the 2014 Festival they  
14 were known as the Catalina Film & TV Summit.

15 For the 2011 Festival, Joudeh and her law firm provided pro  
16 bono legal services to the Festival and also co-sponsored a  
17 gathering known as the Mimosa Mixer. In return for those  
18 contributions, Joudeh's law firm received advertising and  
19 acknowledgments in Festival publications.

20 Joudeh's role in the Festival was much the same in 2012, but  
21 in 2013 her role began to change. At a meeting in June 2013,  
22 Joudeh and Truppa met with Gena Vazquez - a volunteer who served  
23 as director of the Festival's seminars in 2012 and every year  
24 thereafter. At the June 2013 meeting, the parties apparently  
25 discussed Joudeh helping Vazquez recruit panelists for the  
26 September 2013 Festival's Catalina Film & TV Market.

27 According to Truppa, at the June 2013 meeting and in follow  
28 up email correspondence, Joudeh never proposed any sort of

1 personal compensation or any sort of personal benefits in  
2 exchange for her help in recruiting industry executives to  
3 participate in the Festival's September 2013 seminars and pitch  
4 sessions. Instead, she asked the Festival to cover the cost of  
5 her firm's co-sponsored party and to make sure there were plenty  
6 of perquisites for the participating industry executives she  
7 recruited. The emails corroborate Truppa's account:

8 [Joudeh:] So, I'm jumping on this ASAP. **The only thing**  
9 **I ask for is that if I spend this much time putting**  
10 **this together, that I (or Steff) don't have to come out**  
11 **of pocket for the Soiree.** I will still pay for the  
12 invite to be designed and printed and will try to get  
13 the same champagne sponsor again though.

14 [Truppa:] We will cover the Soiree - Just to clarify  
15 (Rental property/space, decorations/bar setups, alcohol  
16 sponsors)? Anything else I'm missing?

17 [Joudeh:] **\*\*MUSIC!!** Also, I told X that food is a  
18 necessity (light apps like cheese/crackers, chips/dips  
19 (NICE dips), fruit, cold meats ... especially if we are  
20 going to take the late eve slot.

21 [Joudeh:] **The main item, which I know you know, is that**  
22 **we cover everything for the execs while they are on the**  
23 **island. Dinners/Lunches/Transportation/Liaison**  
24 **contacts, etc.**

25 [Truppa:] So are you including this in Soiree Cost? We  
26 would do this with/for any of our panel guests as well,  
27 which now their presence will be part of a festival  
28 component (Market), not just the Soiree. Is that what  
you're saying/asking?

[Joudeh:]\*\*No, I was asking you to verify that once my  
guys hit the port in LA, everything is going to be  
taken care of for them. Food, transportation on the  
island, housing, liaison services, "fun time"  
(discussed below) etc.

Truppa Decl. (June 28, 2016) at Ex. 2 (emphasis added).

Joudeh has told a much different story. According to her,  
in August 2013, she and Truppa entered into an oral agreement  
pursuant to which they would be partners in a new business known

1 as the Catalina Film & TV Summit. Joudeh claimed that, in  
2 accordance with this agreement, the first Summit was held on  
3 September 18 and 19, 2013, and she used her contacts and  
4 proprietary email database of 16,000 people to promote the Summit  
5 and recruit industry executives to serve as Summit panelists.  
6 She also claimed that she coordinated schedules and  
7 transportation for the participating industry executives,  
8 prepared panel schedules, topics and panelists, and herself  
9 participated in Summit panels, pitches and other events. She  
10 further claimed that she introduced Truppa to her industry  
11 contacts.

12 In exchange for these services, Joudeh maintains, Truppa  
13 promised her 15% of Summit net profits, co-management of the  
14 Summit, the title and position of Summit Director, a percentage  
15 commission of any Summit sponsorship funds, a salary to replace  
16 the percentage commission as soon as the Summit had sufficient  
17 funds to pay her a salary, and 20% ownership of the company  
18 owning Summit.

19 Joudeh's story of an August 2013 agreement is contradicted  
20 by emails the parties exchanged after the September 2013 summit,  
21 in early November 2013. In them, Joudeh refers to her "deal with  
22 the fest" and makes it clear - in her own words - that this deal  
23 was just being proposed by her and had not been agreed to or  
24 promised by Truppa. Also, there is no mention of any prior  
25 proposals, negotiations, agreements or promises concerning  
26 Joudeh's proposed deal.

27 Another series of emails - from the spring of 2014 -  
28 clearly reflect that the parties still had not struck a deal and

1 that they still were discussing proposed deal terms. Indeed,  
2 Joudeh's emails express frustration over the lack of progress on  
3 specific terms: the fact that she initially thought the parties  
4 had reached an "understanding on" some of the individual deal  
5 terms only to find out later that Truppa had taken those terms  
6 "off the table." This is the language of negotiation and not the  
7 language of a promise or an agreement.

8         Shortly thereafter, in or around April 2014, Truppa rejected  
9 Joudeh's "final and best offer" and the parties terminated their  
10 negotiations. In August 2014, Joudeh filed a lawsuit in the Los  
11 Angeles County Superior Court against the Festival and Truppa,  
12 and in March 2015, Truppa commenced his chapter 7 bankruptcy  
13 case.<sup>2</sup> In Truppa's bankruptcy case, Joudeh initiated an  
14 adversary proceeding seeking to except from discharge her  
15 disputed claim against him and objecting to his receipt of a  
16 discharge from any of his debts.

17         The operative version of Joudeh's complaint - her second  
18 amended complaint - states claims for relief under  
19 §§ 523(a)(2)(A), 523(a)(6) and 727(a)(4)(A). Joudeh's  
20 §§ 523(a)(2)(A) and 523(a)(6) claims were based on her  
21 allegations that Truppa, during the summer of 2013, fraudulently  
22 entered into a binding agreement with her without any intention  
23

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24         <sup>2</sup>The parties' excerpts of record only include a fraction of  
25 the materials in the bankruptcy court's summary judgment record.  
26 Notwithstanding their omissions, we have exercised our discretion  
27 to review the full record, which is available to us via the  
28 bankruptcy court's electronic docket and the document images  
attached thereto. See Franklin High Yield Tax-Free Income Fund  
v. City of Stockton, Cal. (In re City of Stockton, Cal.),  
542 B.R. 261, 265 n.2 (9th Cir. BAP 2015).

1 to ever perform his part of the agreement. Joudeh's  
2 § 727(a)(4)(A) claim was based on her allegations that Truppa  
3 fraudulently omitted certain assets, liabilities and income from  
4 his bankruptcy schedules.

5 Truppa filed a summary judgment motion, which the bankruptcy  
6 court granted. The bankruptcy court pointed out that the only  
7 evidence Joudeh submitted in support of her § 523 claims was her  
8 own two-page declaration, which the court described as  
9 conclusory. The bankruptcy court further explained that Joudeh  
10 had done nothing to counter Truppa's email evidence that the  
11 parties were discussing terms for a proposed agreement in  
12 November of 2013 - months after Joudeh alleged the agreement had  
13 been entered into. The bankruptcy court additionally observed  
14 that the spring 2014 emails (again, which Joudeh did nothing to  
15 counter) further contradicted Joudeh's claim that the parties had  
16 reached a final, binding agreement in the summer of 2013.  
17 Indeed, the court noted, Joudeh's own statements in the emails  
18 acknowledge that no deal had been reached between the parties.

19 In ruling on Joudeh's § 727(a)(4)(A) claim, the bankruptcy  
20 court determined that there was no proof that Truppa actually  
21 owned the assets he allegedly omitted. Nor was there any proof  
22 that he received any undisclosed income. As for omitted  
23 liabilities, the only omitted liability Joudeh complained of was  
24 Joudeh's own disputed claim. The bankruptcy court noted that,  
25 while Joudeh's claim was not listed on Truppa's initial Schedule  
26 F, Joudeh's lawsuit was listed in Truppa's initial statement of  
27 financial affairs. The court further noted that Joudeh's claim  
28 was added to Truppa's amended Schedule F within two days of his

1 § 341(a) meeting of creditors.

2 In addition to the general lack of evidence of omitted  
3 assets and liabilities, the bankruptcy court alternately held  
4 that any such omitted assets and liabilities were immaterial and  
5 were not knowingly or fraudulently concealed.

6 The bankruptcy court entered summary judgment in favor of  
7 Truppa on August 23, 2016, and Joudeh timely appealed.

### 8 **JURISDICTION**

9 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
10 §§ 1334 and 157(b) (2) (I) and (J), and we have jurisdiction under  
11 28 U.S.C. § 158.

### 12 **ISSUE**

13 Did the bankruptcy court commit reversible error when it  
14 granted summary judgment in favor of Truppa?

### 15 **STANDARD OF REVIEW**

16 We review de novo the bankruptcy court's summary judgment  
17 ruling. Salven v. Galli (In re Pass), 553 B.R. 749, 756 (9th  
18 Cir. BAP 2016).

19 When we review a matter de novo, we give no deference to the  
20 bankruptcy court's ruling. Ulrich v. Schian Walker, P.L.C.  
21 (In re Boates), 551 B.R. 428, 433 (9th Cir. BAP 2016); Barnes v.  
22 Belice (In re Belice), 461 B.R. 564, 572 (9th Cir. BAP 2011).

### 23 **DISCUSSION**

#### 24 **1. Summary Judgment Standards**

25 Summary judgment should be granted when there are no genuine  
26 issues of material fact and when the movant is entitled to  
27 prevail as a matter of law. Civil Rule 56 (made applicable in  
28 adversary proceedings by Rule 7056); Celotex Corp. v. Catrett,

1 477 U.S. 317, 322-23 (1986). Material facts are those that may  
2 affect the outcome of the case under applicable substantive law.  
3 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). And  
4 issues are genuine only if the trier of fact reasonably could  
5 find in favor of the nonmoving party on the evidence presented.  
6 Far Out Prods., Inc. v. Oskar, 247 F.3d 986, 992 (9th Cir. 1997).

7 In fact, Civil Rule 56 “mandates” entry of summary judgment  
8 when, after adequate time for discovery, the nonmoving party  
9 fails to present evidence in response to the summary judgment  
10 motion sufficient to establish an essential element of that  
11 party’s case, on which that party will bear the burden of proof  
12 at trial. Celotex, 477 U.S. at 322-23. As the Supreme Court in  
13 Celotex explained, “In such a situation, there can be ‘no genuine  
14 issue as to any material fact,’ since a complete failure of proof  
15 concerning an essential element of the nonmoving party’s case  
16 necessarily renders all other facts immaterial.” Id.

17 Thus, while the movant has the initial burden of identifying  
18 the portions of the record demonstrating the absence of a genuine  
19 issue of material fact, id. at 323, once the movant has come  
20 forward with uncontroverted facts entitling it to relief, the  
21 burden then shifts to the nonmovant to demonstrate that there are  
22 specific and genuine issues of material fact necessitating a  
23 trial. Id. at 324. The nonmovant must go beyond the pleadings  
24 and introduce or point to specific evidence in the record  
25 supporting its position. Id.

26 When considering summary judgment, we must view all facts  
27 genuinely in dispute “in the light most favorable to the  
28 non-moving party.” Scott v. Harris, 550 U.S. 372, 380 (2007).

1 And we must draw all reasonable inferences in the nonmoving  
2 party's favor. Id. at 378. Nonetheless, "[e]ven in cases where  
3 elusive concepts such as motive or intent are at issue, summary  
4 judgment may be appropriate if the nonmoving party rests merely  
5 upon conclusory allegations, improbable inferences, and  
6 unsupported speculation." Gertsch v. Johnson & Johnson Fin.  
7 Corp. (In re Gertsch), 237 B.R. 160, 165 (9th Cir. BAP 1999)  
8 (quoting Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8  
9 (1st Cir. 1990)).

## 10 **2. The Bankruptcy Court's § 523(a) (2) (A) Ruling**

11 Section 523(a) (2) (A) excepts from discharge debts "for  
12 money, property, services . . . to the extent obtained by . . .  
13 false pretenses, a false representation, or actual fraud . . . ."  
14 As set forth in her second amended complaint, Joudeh based her  
15 § 523(a) (2) (A) claim on a theory of promissory fraud, which  
16 generally requires:

17 (1) a promise made regarding a material fact without  
18 any intention of performing it; (2) the existence of  
19 the intent not to perform at the time the promise was  
20 made; (3) intent to deceive or induce the promisee to  
enter into a transaction; (4) reasonable reliance by  
the promisee; (5) nonperformance by the party making  
the promise; and (6) resulting damage to the promisee.

21 Behnke v. State Farm Gen. Ins. Co., 127 Cal. Rptr. 3d 372, 380  
22 (Cal. App. 2011).<sup>3</sup>

23 \_\_\_\_\_  
24 <sup>3</sup>On the one hand, California law generally controls whether  
25 Truppa has any liability to Joudeh. See Hassanally v. Republic  
26 Bank (In re Hassanally), 208 B.R. 46, 49 (9th Cir. BAP 1997)  
27 (citing Butner v. United States, 440 U.S. 48, 54-55 (1979)). On  
28 the other hand, the Restatement (Second) of Torts typically  
informs us as to what constitutes nondischargeable fraud. See  
Field v. Mans, 516 U.S. 59, 68-70 (1995); Apte v. Romesh Japra,  
(continued...)

1 It is axiomatic that there can be no claim for promissory  
2 fraud without evidence of a promise made. See generally  
3 Restatement (Second) of Torts § 530(1), cmt. c (1976) ("Since a  
4 promise necessarily carries with it the implied assertion of an  
5 intention to perform it follows that a promise made without such  
6 an intention is fraudulent and actionable in deceit."); Lazar v.  
7 Superior Court, 49 Cal. Rptr. 2d 377, 381 (Cal. 1996) ("A promise  
8 to do something necessarily implies the intention to perform;  
9 hence, where a promise is made without such intention, there is  
10 an implied misrepresentation of fact that may be actionable  
11 fraud.").

12 The bankruptcy court, here, correctly noted that Joudeh's  
13 statements in her own emails flatly contradicted her assertions  
14 that Truppa promised her certain entitlements in exchange for her  
15 services. In this respect, this appeal reminds us of Scott v.  
16 Harris, supra. The Scott court held:

17 When opposing parties tell two different stories, one  
18 of which is blatantly contradicted by the record, so  
19 that no reasonable jury could believe it, a court  
should not adopt that version of the facts for purposes  
of ruling on a motion for summary judgment.

20 Scott, 550 U.S. at 380. In Scott, the Supreme Court was  
21 presented with a video depicting a car chase that was  
22 fundamentally at odds with the plaintiff's version of events.  
23 Id. at 379. The plaintiff in Scott contended that Officer  
24 Scott's actions in intentionally bumping his car near the end of

25 \_\_\_\_\_  
26 <sup>3</sup>(...continued)  
27 M.D., F.A.C.C., Inc. (In re Apte), 96 F.3d 1319, 1324 (9th Cir.  
28 1996). Thus, we look to both California law and the Restatement  
for guidance in resolving the parties' dispute regarding Truppa's  
alleged debt to Joudeh and its potential nondischargeability.

1 the car chase forced him from the road, caused him grievous  
2 bodily injury and constituted an excessive use of force. Id. at  
3 375. On review to the Eleventh Circuit Court of Appeals, the  
4 Eleventh Circuit affirmed the district court's denial of Officer  
5 Scott's motion for summary judgment, opining that, on summary  
6 judgment, the court was obliged to accept the plaintiff's  
7 conflicting account of the car chase, notwithstanding what the  
8 car chase video showed. Id. at 375, 378-79, 380-81.

9 The Supreme Court reversed, explaining that the video "quite  
10 clearly" contradicted plaintiff's version of the car chase and  
11 that the plaintiff had not challenged the video as being altered  
12 in any way. Nor did plaintiff argue "that what it depicts  
13 differs from what actually happened." Id. at 378. The Supreme  
14 Court, more than once, acknowledged the court's duty to view the  
15 facts and make reasonable inferences in the light most favorable  
16 to the nonmoving party, id. at 377, 78, but still held that  
17 Officer Scott was entitled to summary judgment because the  
18 plaintiff's "version of events is so utterly discredited by the  
19 record that no reasonable jury could have believed him. The  
20 Court of Appeals should not have relied on such visible fiction;  
21 it should have viewed the facts in the light depicted by the  
22 videotape." Id. at 380-81.

23 Here, the role of Scott's videotape is played by Joudeh's  
24 own emails. Joudeh made no attempt in the bankruptcy court to  
25 challenge the authenticity of the emails or to argue that they do  
26 not accurately depict the true nature and status of the parties'  
27 discussions regarding Joudeh's role in the Festival and  
28 its seminars and pitch sessions. Nor has she done so on appeal.

1 She simply has told a different story that is at odds with her  
2 own emails - a story which she told in a conclusory, two-page  
3 declaration.

4 Thus, in keeping with Scott, we hold that Joudeh's assertion  
5 that Truppa promised her certain entitlements in exchange for her  
6 services was so utterly discredited by her own emails that no  
7 reasonable jury could have believed her. As a result, Joudeh  
8 failed her summary judgment burden of pointing to evidence in the  
9 record demonstrating an essential element of her promissory fraud  
10 claim: the existence of a promise Truppa made with no intent to  
11 perform.

12 Perhaps realizing that her promissory fraud claim suffered  
13 from a fatal deficiency, Joudeh's summary judgment opposition,  
14 and her appeal brief, also alluded to a different subspecies of  
15 fraud - namely fraudulent concealment. However, Joudeh did not  
16 allege fraudulent concealment in her second amended complaint.  
17 Moreover, her two-page declaration in opposition to Truppa's  
18 summary judgment motion only made a passing reference to Truppa's  
19 alleged nondisclosure. According to Joudeh, Truppa never told  
20 her that the seminar and pitch session aspects of the Festival  
21 were part of a nonprofit organization and that there could be no  
22 profits or ownership for her to share in as she had proposed.  
23 Joudeh further complains that "[Truppa] continued discussions  
24 with me as if there was to be a for-profit business."

25 Assuming without deciding that Joudeh somehow preserved for  
26 appeal her fraudulent concealment claim (even though she never  
27 alleged fraudulent concealment in her complaint), this claim  
28 suffers from a defect similar to her promissory fraud claim.

1 More specifically, Joudeh did not meet her summary judgment  
2 burden of pointing to facts in the record from which a reasonable  
3 trier of fact could find all of the elements of a fraudulent  
4 concealment claim.

5       Among other things, a fraudulent concealment claim requires  
6 proof that the defendant had a duty to disclose the information  
7 allegedly concealed. Restatement (Second) of Torts § 551 (1977);  
8 LiMandri v. Judkins, 60 Cal. Rptr. 2d 539, 543-44 (Cal. 1997);  
9 Hoffman v. 162 North Wolfe LLC, 175 Cal. Rptr. 3d 820, 826-27  
10 (Cal. App. 2014). In the absence of a fiduciary relationship, a  
11 duty to disclose typically does not arise unless there exists  
12 between the parties a relationship from some sort of business  
13 transaction - like that "between seller and buyer, employer and  
14 prospective employee, doctor and patient, or parties entering  
15 into any kind of contractual agreement." Hoffman, 175 Cal. Rptr.  
16 3d at 827 (citing LiMandri, 60 Cal. Rptr. 2d at 543).

17       The problem with Joudeh's fraudulent concealment claim is  
18 that the so-called business transaction between Joudeh and Truppa  
19 did not advance to a point where Truppa became subject to any  
20 duty to disclose. As pointed out above, Joudeh's own emails  
21 establish that the parties never reached agreement on Joudeh's  
22 future involvement in the Festival. Furthermore, Joudeh has not  
23 cited any authority establishing that parties involved in  
24 contract negotiations that **do not** result in the parties entering  
25 into a contract owe any disclosure duty to one another. Nor are  
26 we aware of any such authority. Furthermore, Joudeh did not  
27 demonstrate (or even allege) any other basis under which a duty  
28 to disclose might have arisen.

1 In short, summary judgment was correctly granted against  
2 Joudeh's § 523(a)(2)(A) claim because there was no evidence in  
3 the record to support essential elements of her two fraud  
4 theories.<sup>4</sup>

### 5 **3. The Bankruptcy Court's § 727(a)(4)(A) Ruling**

6 Under § 727(a)(4)(A), the court may deny a debtor a  
7 discharge if the debtor "knowingly and fraudulently, in or in  
8 connection with the case . . . made a false oath or account  
9 . . . ." The creditor must prove that: "(1) the debtor made a  
10 false oath in connection with the case; (2) the oath related to a  
11 material fact; (3) the oath was made knowingly; and (4) the oath  
12 was made fraudulently." Retz v. Samson (In re Retz), 606 F.3d  
13 1189, 1197 (9th Cir. 2010). The principal purpose of  
14 § 727(a)(4)(A) is to insure that the trustee and creditors have  
15 accurate and complete information to work with without having to  
16 conduct costly and time-consuming investigations. Fogal Legware  
17 of Switz., Inc. v. Wills (In re Wills), 243 B.R. 58, 63 (9th Cir.  
18 BAP 1999) (citing Aubrey v. Thomas (In re Aubrey), 111 B.R. 268,  
19 274 (9th Cir. BAP 1990)). Thus, omissions in the debtor's  
20 schedules can constitute false oaths for purposes of  
21 § 727(a)(4)(A). Searles v. Riley (In re Searles ), 317 B.R. 368,  
22 377 (9th Cir. BAP 2004); In re Wills, 243 B.R. at 62.

#### 23 **a. Omissions**

24 Joudeh initially complained of three different types of  
25

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26 <sup>4</sup>Because Joudeh's opening appeal brief contains no argument  
27 pertaining to her § 523(a)(6) claim, we decline to address it.  
28 See Christian Legal Soc'y v. Wu, 626 F.3d 483, 485 (9th Cir.  
2010); Brownfield v. City of Yakima, 612 F.3d 1140, 1149 n.4 (9th  
Cir. 2010).

1 alleged omissions: (1) Truppa did not list her as a creditor in  
2 his initial Schedule F; (2) Truppa did not list as income expense  
3 reimbursements he received from the Festival; and (3) Truppa did  
4 not list as assets certain films he allegedly owned. On appeal,  
5 Joudeh has focused exclusively on the allegedly omitted films,  
6 and she confirmed at oral argument before this Panel that her  
7 appeal of the bankruptcy court's § 727(a)(4)(A) ruling was  
8 limited to the issue of the omitted films. Accordingly, we will  
9 limit our review of the § 727(a)(4)(A) ruling to this issue.

10 To support her allegation that Truppa or his unincorporated  
11 sole proprietorship - Truppa Entertainment - owned certain films,  
12 Joudeh relied on Truppa's discovery responses. In those  
13 responses, Truppa made the following rather ambiguous statement  
14 in response to Joudeh's request for admission that he did not  
15 list in his bankruptcy schedules any "interest" he had in any  
16 films: "Admit with explanation. I do not have any interest in  
17 films with any value." In responding to a similar question  
18 regarding Truppa not listing any interest Truppa Entertainment  
19 might have in any films, Truppa similarly stated: "Admit with  
20 explanation. Truppa Entertainment does not have any interest in  
21 films with any value." Of course, the phrasing of these two  
22 responses suggests, by negative implication, that Truppa and/or  
23 his sole proprietorship Truppa Entertainment might have had an  
24 ownership interest in some films Truppa considers valueless.

25 In his declaration accompanying his reply brief, Truppa  
26 attempted to "clarify" his statement regarding his interest in  
27 films: "With respect to what I did and did not list as assets as  
28 far as films go, I do not own any interest in any films, and my

1 services and [those of] my company Truppa Entertainment have  
2 always been work-for-hire or work-for credit.”

3 The bankruptcy court determined on the summary judgment  
4 record that there was no evidence from which a reasonable trier  
5 of fact could conclude that either Truppa or his sole  
6 proprietorship Truppa Entertainment owned any films. While  
7 Truppa’s reply declaration statement is unequivocal and  
8 straightforward by itself, Truppa’s prior discovery responses  
9 clouded the issue. We recognize that Truppa cannot (and did not  
10 need to) prove the negative - his nonownership of any films - and  
11 that his ambiguous discovery responses were slim evidence of  
12 actionable omissions. Even so, we are persuaded that a  
13 reasonable trier of fact could disbelieve Truppa’s attempts to  
14 clarify his prior discovery responses and could infer from those  
15 discovery responses some sort of undisclosed film ownership  
16 interests. Even a single omission from the debtor’s schedules  
17 may be sufficient to state a claim under the plain language of  
18 § 727(a)(4)(A). See U.S. Tr. v. Stokes (In re Stokes), 451 B.R.  
19 44, 85-86 (Bankr. D. Mont. 2011).

20 **b. Materiality**

21 Additionally, the bankruptcy court concluded that all of the  
22 alleged omissions were immaterial. In reaching this conclusion,  
23 the bankruptcy court seemingly looked at all of the surrounding  
24 circumstances and apparently determined that the alleged  
25 omissions were insignificant when viewed in the context of the  
26 case. We disagree with the bankruptcy court’s methodology. The  
27 § 727(a)(4)(A) materiality standard is very broad and includes  
28 just about any information that has any bearing on the debtor’s

1 finances. As stated by the Ninth Circuit, "A fact is material if  
2 it bears a relationship to the debtor's business transactions or  
3 estate, or concerns the discovery of assets, business dealings,  
4 or the existence and disposition of the debtor's property."  
5 In re Retz, 606 F.3d at 1196 (internal quotation marks omitted)  
6 (quoting Khalil v. Developers Sur. & Indem. Co. (In re Khalil),  
7 379 B.R. 163, 173 (9th Cir. BAP 2007), aff'd & adopted, 578 F.3d  
8 1167, 1168 (9th Cir. 2009)); see also Garcia v. Coombs  
9 (In re Coombs), 193 B.R. 557, 566 (Bankr. S.D. Cal. 1996)  
10 (considering materiality at length and concluding that "there is  
11 little that will prove to be immaterial for purposes of required  
12 disclosure if it aids in understanding the debtor's financial  
13 affairs and transactions"). Under the prevailing legal standard,  
14 we simply cannot say that the allegedly omitted films were  
15 immaterial under § 727(a)(4)(A).

16 **c. Knowingly and Fraudulently**

17 In the § 727(a)(4)(A) context, the debtor's conduct was  
18 knowing if he or she acted deliberately or consciously and the  
19 debtor's conduct was fraudulent if (1) the debtor made the false  
20 statements or omissions in his or her bankruptcy schedules,  
21 (2) knowing that the misstatements or omissions were inaccurate  
22 at the time he or she made them, and (3) with the intention and  
23 purpose of deceiving his or her creditors. See In re Khalil,  
24 379 B.R. at 173 (citing Roberts v. Erhard (In re Roberts), 331  
25 B.R. 876, 884 (9th Cir. BAP 2005), aff'd, 241 F. App'x 420 (9th  
26 Cir. 2007)).

27 The debtor's fraudulent intent may be demonstrated by  
28 circumstantial evidence and inference, and the court may infer

1 fraudulent intent based on a "pattern of falsity." In re Wills,  
2 243 B.R. at 62. "Reckless indifference or disregard for the  
3 truth . . . is not sufficient, alone, to constitute fraudulent  
4 intent." In re Retz, 606 F.3d at 1199 (citing In re Khalil,  
5 379 B.R. at 173-75).

6 Nothing in the record or in Truppa's alleged nondisclosures  
7 comes anywhere close to rising to the level of a pattern of  
8 falsity or a reckless indifference or disregard for the truth.  
9 Thus, the viability of Joudeh's § 727(a)(4)(A) claim hinges on  
10 whether no reasonable trier of fact could have inferred Truppa's  
11 culpable state of mind from his failure to disclose the allegedly  
12 omitted films.

13 This is a difficult standard for the summary judgment movant  
14 to meet. Indeed, "[s]ummary judgment is ordinarily not  
15 appropriate in a § 727 action where there is an issue of intent."  
16 In re Wills, 243 B.R. at 65; see also In re Gertsch, 237 B.R. at  
17 165 ("Where intent is at issue, summary judgment is seldom  
18 granted."). On the other hand, "Even in cases where elusive  
19 concepts such as motive or intent are at issue, summary judgment  
20 may be appropriate if the non-moving party rests merely upon  
21 conclusory allegations, improbable inferences, and unsupported  
22 speculation." In re Gertsch, 237 B.R. at 165 (quoting  
23 Medina-Munoz, 896 F.2d at 8).

24 Notwithstanding the inherent difficulty of granting summary  
25 judgment where intent is at issue, some bankruptcy courts in our  
26 circuit have granted summary judgment on § 727(a)(4)(A) claims,  
27 and we have reviewed and upheld some of those judgments. See,  
28 e.g., Sfadia v. Dongkuk Int'l, Inc. (In re Sfadia), 2007 WL

1 7540987, at \*13 (Mem. Dec.) (9th Cir. BAP Sept. 5, 2007);  
2 In re Aubrey, 111 B.R. at 274; U.S. Tr. v. Totten (In re Totten),  
3 2014 WL 690616, at \*5-6 (Mem. Dec.) (Bankr. D. Haw. Feb. 20,  
4 2014); see also Wicklund v. Robert D. Johnson Trust  
5 (In re Wicklund), 2016 WL 5339412, at \*10 (W.D. Wash. Mar. 28,  
6 2016);

7 The bankruptcy court made no specific intent assessment with  
8 respect to Truppa's nondisclosure of the allegedly omitted films.  
9 Nor can we independently conceive how the bankruptcy court could  
10 have conclusively determined on summary judgment that Truppa did  
11 not harbor a fraudulent intent in not disclosing the films. At  
12 bottom, in the summary judgment context, we are obliged to make  
13 our own independent determination as to whether no reasonable  
14 trier of fact could have found for Joudeh on the intent and  
15 knowledge issues. On this record, we are persuaded that a trier  
16 of fact reasonably could have inferred from the presented facts -  
17 when taken in the light most favorable to Joudeh - that Truppa  
18 knowingly and fraudulently omitted from his schedules his  
19 interest in certain undisclosed films.

20 In sum, the bankruptcy court erred when it granted summary  
21 judgment in favor of Truppa on Joudeh's § 727(a)(4)(A) claim.

## 22 **CONCLUSION**

23 For the reasons set forth above, the bankruptcy court's  
24 summary judgment is AFFIRMED IN PART and REVERSED IN PART, and  
25 this matter is REMANDED for further proceedings consistent with  
26 this decision.