

AUG 09 2017

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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NOT FOR PUBLICATION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

In re:	)	BAP No.	CC-16-1356-KuFTa
	)		
JENNIFER ANN EVANS,	)	Bk. No.	2:14-bk-22827-VZ
	)		
Debtor.	)	Adv. No.	2:14-ap-01619-VZ
	)		
_____	)		
JEFFREY TRAINOR,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
JENNIFER ANN EVANS,	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on May 18, 2017  
at Pasadena, California

Filed - August 9, 2017

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

Honorable Vincent Zurzolo, Bankruptcy Judge, Presiding

Appearances: Peter Alan Davidson of Ervin Cohen and Jessup  
argued for appellant; Dennis McGoldrick argued for  
appellee.

Before: KURTZ, FARIS and TAYLOR, 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 Jeffrey Trainor appeals from a judgment after trial in  
3 favor of Chapter 7<sup>1</sup> debtor Jennifer Ann Evans, which judgment  
4 denied him any relief on his objection to discharge complaint.

5 The bankruptcy court found that it had "significant issues"  
6 with Evans' credibility and also found that the bankruptcy  
7 schedules Evans submitted on her own behalf and on behalf of her  
8 wholly-owned company were among the worst the court had seen in  
9 28 years on the bench - in terms of misstatements and omissions.  
10 The bankruptcy court nonetheless ultimately found that Evans did  
11 not harbor an intent to deceive her creditors or the bankruptcy  
12 trustee when she knowingly made the material misstatements and  
13 omissions.

14 Under the applicable clearly erroneous standard, we cannot  
15 say that the bankruptcy court's decision finding no intent to  
16 deceive was illogical, implausible or without support in the  
17 record. Accordingly, we AFFIRM.

18 **FACTS**

19 At one time, Trainor had both personal and business  
20 relationships with Evans. Trainor initially was Evans' business  
21 partner, but the parties later took steps to recharacterize  
22 Trainor's equity investment in Evans' clothing manufacturing  
23 company - Evans Production Co-Op LLC - as a loan. Later, when  
24 Evans did not repay the loan, Trainor sued the Co-Op in state  
25

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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.

1 court to recover the principal loan amount, interest and  
2 attorney's fees.

3 This litigation ultimately led to the Co-Op filing a  
4 chapter 11 petition. Trainor filed a motion to dismiss or  
5 convert the Co-Op's chapter 11 case, which in turn resulted in  
6 the conversion of the Co-Op's bankruptcy case to chapter 7. The  
7 motion to dismiss or convert was based in large part on asserted  
8 errors and omissions in the Co-Op's bankruptcy schedules and its  
9 statement of financial affairs. Even though Evans knew of many  
10 of the errors and omissions in the Co-Op's schedules and  
11 statement of financial affairs by no later than February 2014 -  
12 when the Co-Op's § 341(a) meeting of creditors was held - Evans  
13 only filed amendments to the Co-Op's bankruptcy commencement  
14 documents after Trainor filed his May 2014 motion to dismiss or  
15 convert.

16 In July 2014, around the same time Trainor's motion to  
17 convert was granted, Evans filed her personal bankruptcy case.  
18 Trainor filed his objection to discharge complaint in September  
19 2014. The sole relevant claim for relief sought to deny Evans  
20 her discharge based on §§ 727(a)(4)(A) and 727(a)(7) and based on  
21 the numerous errors and omissions in the Co-Op's bankruptcy  
22 commencement papers and in Evan's personal bankruptcy  
23 commencement papers.<sup>2</sup>

24 Roughly one year later, Trainor filed a summary judgment  
25 motion which resulted in summary adjudication in favor of Trainor

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26  
27 <sup>2</sup>Trainor's complaint also stated a claim for relief under  
28 § 727(a)(6), but he has not challenged on appeal the bankruptcy  
court's ruling denying him relief under that subsection.

1 on all issues except for those regarding Evans' state of mind -  
2 whether she knowingly and fraudulently made the misstatements and  
3 omissions in her own schedules and statement of financial affairs  
4 and in the Co-Op's filings. As the bankruptcy court put it:

5 Evans made multiple false statements under oath of  
6 material facts in Co-op's Schedules and Statement of  
7 Financial Affairs, its Amended Schedules and in her own  
8 Schedules; however, whether Evans made the statements  
with fraudulent intent is a controverted issue of  
material fact which must be determined at trial . . . .

9 Findings Of Fact And Conclusions Of Law In Support Of Order On  
10 Motion For Summary Judgment Or, In The Alternative, For Summary  
11 Adjudication Of Issues (Nov. 23, 2015) at 14:6-9.<sup>3</sup>

12 The findings and conclusions contained a lengthy listing of  
13 specific, admitted misstatements and omissions from Evans' and  
14 the Co-Op's bankruptcy commencement documents. Most of these  
15 same admissions were carried forward as admitted facts in the  
16 parties' joint pretrial stipulation.<sup>4</sup>

17 After a one-day trial on the state of mind issues, at which  
18 only Evans testified, the bankruptcy court orally stated its  
19 findings of fact from the bench.<sup>5</sup> The bankruptcy court first

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21 <sup>3</sup>Neither party included the summary judgment findings of  
22 fact and conclusions of law in their excerpts of record. But we  
23 can take judicial notice of this document's filing and contents.  
O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d  
24 955, 957-58 (9th Cir. 1989); Mullis v. Bankr. Ct., 828 F.2d 1385,  
1388 & n.9 (9th Cir. 1987).

25 <sup>4</sup>The specific misstatements and omissions are identified in  
the discussion section set forth below.

26 <sup>5</sup>The judgment refers to written findings of fact and  
27 conclusions of law, but there were no such written findings and  
28 conclusions issued after trial. Perhaps the bankruptcy court was  
(continued...)

1 gave a general assessment of Evans' credibility. Without  
2 specifying precisely on which subjects it found Evans credible  
3 and which it did not, the court stated that Evans' credibility  
4 fell somewhere in the middle of the pack in terms of witnesses  
5 who had testified before the court. At the same time, the court  
6 also stated it had "significant issues" concerning Evans'  
7 credibility. The court offered the following explanation in  
8 support of its general credibility finding:

9       There are many witnesses who have a very difficult time  
10       answering the question that is asked of them. They  
11       attempt to avert or evade the question and offer  
12       sometimes an explanation, but sometimes not even an  
13       explanation, an attempt to shunt away from the question  
14       itself and to place blame or responsibility for the  
15       target of the question on somebody else and you [Evans]  
16       did that repeatedly.

17 Hr'g Tr. (Sept. 21, 2016) at 123:6-13.

18       Next, the bankruptcy court noted that the purpose of the  
19       trial was to enable the court to determine whether Trainor could  
20       establish, by a preponderance of the evidence, that Evans  
21       knowingly and fraudulently made the admitted misstatements and  
22       omissions.

23       The court found that Evans knew that at least several of her  
24       material misrepresentations were false when she made them -  
25       particularly those regarding the Co-Op's income, the IRS's levies  
26       on property of the Co-Op, the amounts of the IRS's claims, and  
27       insider payments from the Co-Op to herself and her mother. The

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28       <sup>5</sup>(...continued)  
referring to the findings and conclusions it entered when it  
granted summary adjudication in favor of Trainor. Regardless,  
the key findings we must examine were made orally on the record,  
immediately following the trial.

1 court specifically pointed to: (1) Evans' protestations of  
2 ignorance as to the existence of her misstatements and omissions;  
3 (2) her asserted reliance on others to fill in the schedules  
4 correctly; and (3) her repeated inability to "notice" the extant  
5 defects in the documents when she reviewed and signed them under  
6 penalty of perjury. The bankruptcy court indicated that these  
7 statements and conduct were inexplicable, not credible, reckless  
8 or a combination of all three. On that basis, the court  
9 determined that Evans knowingly made at least some of the  
10 material misstatements and omissions.

11 On the same evidence, however, the bankruptcy court declined  
12 to find an intent to deceive. The court gave significant weight  
13 to what it perceived as a lack of motive. As the court  
14 explained:

15 I looked very carefully in trying to understand what  
16 advantage or benefit Ms. Evans would gain from looking  
17 at all of these false statements, especially in light  
18 of the fact that she knew she was being scrutinized,  
19 not only by Mr. Trainor but by the IRS, which was a  
20 precipitating factor in the Co-op filing. I mean  
sometimes when people are chased by creditors they lie  
and hide assets, but I just don't see that kind of non-  
disclosure or false statement of fact here that leads  
to the inference that she acted fraudulently.

21 Hr'g Tr. (Sept. 21, 2016) at 127:18-128:2.

22 The bankruptcy court conceded that it only could recall a  
23 few instances in 28 years on the bench when it had seen worse  
24 examples of misstatements and omissions in schedules and  
25 statements of financial affairs. The bankruptcy court further  
26 acknowledged Evans' continuing obligation to correct the  
27 documents once she admitted to learning of their inaccuracy and  
28 her failure to do so. Notwithstanding these additional factors,

1 the court ultimately found that “[i]t’s very close, but I just  
2 don’t see enough there to draw that inference” that Evans acted  
3 fraudulently. Hr’g Tr. (Sept. 21, 2016) at 128:17-18.

4 The bankruptcy court entered its judgment in favor of Evans  
5 on October 6, 2016, and Trainor timely appealed.

#### 6 JURISDICTION

7 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
8 §§ 1334 and 157(b) (2) (J), and we have jurisdiction under  
9 28 U.S.C. § 158.

#### 10 ISSUE

11 Did the bankruptcy court commit reversible error when it  
12 denied Trainor relief on his claim under §§ 727(a) (4) (A) and  
13 727(a) (7)?

#### 14 STANDARDS OF REVIEW

15 In objection to discharge appeals: “(1) the [bankruptcy]  
16 court’s determinations of the historical facts are reviewed for  
17 clear error; (2) the selection of the applicable legal rules  
18 under § 727 is reviewed de novo; and (3) the application of the  
19 facts to those rules requiring the exercise of judgments about  
20 values animating the rules is reviewed de novo.” Retz v. Samson  
21 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010) (quoting  
22 Searles v. Riley (In re Searles), 317 B.R. 368, 373 (9th Cir. BAP  
23 2004) aff'd, 212 Fed. Appx. 589 (9th Cir. 2006)).

24 Whether a debtor has the requisite fraudulent intent is a  
25 question of fact reviewed under the clearly erroneous standard.  
26 See In re Retz, 606 F.3d at 1197. Under that standard, we only  
27 can reverse if the bankruptcy court’s finding was illogical,  
28 implausible or without support in the record. Id. at 1199.

1 **DISCUSSION**

2 Under § 727(a)(4)(A), the bankruptcy court must deny the  
3 debtor a discharge when the debtor knowingly and fraudulently  
4 makes a false oath or account in or in connection with the case.  
5 Misstatements and omissions in the debtor's bankruptcy schedules  
6 or statement of financial affairs can qualify as false oaths for  
7 purposes of § 727(a)(4)(A). In re Retz, 606 F.3d at 1196 (citing  
8 Khalil v. Developers Sur. & Indem. Co. (In re Khalil), 379 B.R.  
9 163, 172 (9th Cir. BAP 2007), aff'd and adopted, 578 F.3d 1167,  
10 1168 (9th Cir. 2009)). Among other things, § 727(a)(7) bars the  
11 debtor's discharge when, during the pendency of the debtor's  
12 case, or within one year of the debtor's petition filing, the  
13 debtor engages in the same type of conduct prohibited by  
14 § 727(a)(4)(A) in connection with another bankruptcy case.

15 A plaintiff bringing a claim under § 727(a)(4)(A) must prove  
16 by a preponderance of the evidence that: "(1) the debtor made a  
17 false oath in connection with the case; (2) the oath related to a  
18 material fact; (3) the oath was made knowingly; and (4) the oath  
19 was made fraudulently." In re Retz, 606 F.3d at 1197 (quoting  
20 Roberts v. Erhard (In re Roberts), 331 B.R. 876, 882 (9th Cir.  
21 BAP 2005)). To establish a § 727(a)(7) claim based on the same  
22 type of conduct, the same elements logically are required, albeit  
23 the "false oath" must be made in another bankruptcy case.

24 Here, the only issue in dispute on appeal is whether Evans  
25 fraudulently made the bankruptcy commencement document  
26 misstatements and omissions in her own bankruptcy case and in the  
27 Co-Op's case. All of the other elements in support of Trainor's  
28 §§ 727(a)(4)(A) and (a)(7) claims were established during the



1 course of the adversary proceeding by summary adjudication or  
2 after trial, and Evans has not cross-appealed the bankruptcy  
3 court's other rulings.

4 The fraudulent intent required is the same type of actual  
5 fraudulent intent that would be required to prove a common law  
6 fraud claim. In re Roberts, 331 B.R. at 884. Constructive  
7 fraudulent intent will not suffice. Id. Accord In re Khalil,  
8 379 B.R. at 172. To establish the debtor's fraudulent intent,  
9 the plaintiff must show: (1) that the debtor made the  
10 misstatements or omissions; (2) that he or she knew they were  
11 false at the time he or she made them; and "(3) that he [or she]  
12 made them **with the intention and purpose of deceiving the**  
13 **creditors.**" In re Khalil, 379 B.R. at 173 (citing In re Roberts,  
14 331 B.R. at 884) (emphasis added).

15 This appeal hinges on the third factor. The bankruptcy  
16 court's ruling on the other § 727(a)(4)(A) elements established  
17 the existence of the first two intent factors. Seldom do  
18 fraudfeasors break down and admit that they intended to deceive.  
19 Instead, intent to deceive typically is inferred from  
20 circumstantial evidence regarding the debtor's conduct, demeanor  
21 and the nature and extent of his or her misstatements and  
22 omissions. In re Roberts, 331 B.R. at 884. For instance, a  
23 pattern of falsity, a reckless indifference to the truth and a  
24 failure to amend bankruptcy commencement documents to correct  
25 known errors and omissions all can be probative of intent to  
26 deceive - but none of these types of conduct, in isolation, is  
27 the equivalent of an intent to deceive. See In re Khalil,  
28 379 B.R. at 174-76. Indeed, in Khalil, this panel adopted the

1 reasoning from Garcia v. Coombs (In re Coombs), 193 B.R. 557  
2 (Bankr. S.D. Cal. 1996), which stated in part:

3 Neither sloppiness nor an absence of effort by the  
4 debtor supports, by itself, an inference of fraud.  
5 Courts which hold otherwise are simply devising a  
6 court-made prophylactic rule that the debtor must make  
substantial effort to provide accurate and complete  
schedules. Had the Congress intended to make such a  
rule, it could have done so easily . . . .

7 The essential point is that **there must be something**  
8 **about the adduced facts and circumstances which suggest**  
9 **that the debtor intended to defraud creditors** or the  
estate. For instance, **multiple omissions of material**  
10 **assets or information may well support an inference of**  
11 **fraud if** the nature of the assets or transactions  
suggests that the debtor was aware of them at the time  
of preparing the schedules and that **there was something**  
12 **about the assets or transactions which, because of**  
13 **their size or nature, a debtor might want to conceal.**

13 In re Coombs, 193 B.R. at 565 (emphasis added).

14 That being said, we also stated in Khalil that, while proof  
15 of the debtor's motivation to deceive can be probative of the  
16 debtor's intent to deceive, such proof is not a pre-requisite for  
17 finding an intent to deceive. As we explained in Khalil:

18 Motive can support a finding of knowing and fraudulent  
19 intent, but it is not indispensable. A bankruptcy  
20 court might find that a debtor's reckless indifference  
to the truth is part of an attempt to fly "below the  
21 trustee's radar screen" . . . or to protect family or  
22 friends from intrusive discovery or preference or  
fraudulent transfer actions, or simply to make  
23 investigation difficult for the bankruptcy trustee or  
creditors. Alternatively, the court might never know  
24 the debtor's motive, but the number of misstatements or  
omissions, or the size or nature of a single one, might  
suffice to support a finding that a debtor knowingly  
and fraudulently made a false oath or account.

25 In re Khalil, 379 B.R. at 176 (citing Hansen v. Moore  
26 (In re Hansen), 368 B.R. 868, 878 (9th Cir. BAP 2007)).

27 On appeal, Trainor argues that the bankruptcy court  
28 committed an error of law by effectively requiring a showing of

1 Evans' motivation for allegedly wanting to deceive her creditors  
2 and the Co-Op's creditors. We understand why Trainor makes this  
3 argument. When the bankruptcy court declined to find an intent  
4 to deceive, it distinguished this case from other cases where an  
5 intent to deceive had been found by noting the absence, here, of  
6 any apparent advantage or benefit that Evans might have derived  
7 from the nature and extent of the misstatements and omissions she  
8 made.

9 Even so, we simply do not read the bankruptcy court's  
10 reasoning as based on a per se rule that it would not or could  
11 not find an intent to deceive absent an apparent motivation for  
12 deception. Instead, when read in context, we understand the  
13 court's reasoning to mean that, given the facts and circumstances  
14 of this particular case, including Evans' testimony, her demeanor  
15 on the stand, and the nature and extent of her admitted  
16 misstatements and omissions, and because it did not perceive  
17 anything in the misstatements and omissions suggesting that Evans  
18 wanted to conceal the true facts from her creditors or the  
19 Co-Op's creditors, the court could not find an intent to deceive.  
20 In this sense, the bankruptcy court's reasoning here echoes the  
21 reasoning Khalil adopted from Coombs; the court's reasoning did  
22 not impose motive to defraud as a prerequisite to finding an  
23 intent to deceive - as Khalil warned against.

24 Alternately, Trainor argues on appeal that the bankruptcy  
25 court's factual findings that Evans had no motive to defraud and  
26 no intent to deceive were clearly erroneous.

27 We acknowledge that there was ample evidence in the record  
28 that would have supported findings of a motive to defraud and an

1 intent to deceive. As the bankruptcy court pointed out, Evans'  
2 bankruptcy filing and the Co-Op's bankruptcy filing were among  
3 the worst bankruptcy filings the court had ever seen in terms of  
4 errors and omissions. The bankruptcy court also correctly  
5 recognized that Evans' failure to correct the Co-Op's and her own  
6 schedules by amendment also could help support a finding of  
7 intent to deceive. On top of these circumstances weighing in  
8 favor of a fraudulent intent finding, there were the  
9 misstatements and omissions themselves.

10 Some of the misstatements and omissions seem relatively  
11 innocuous in terms of assessing Evans' motive and intent. These  
12 include: (1) an omission of a minor balance in the Co-Op's bank  
13 account; (2) deviations in the valuing of the Co-Op's inventory  
14 and furniture; (3) the failure to report one lawsuit against the  
15 Co-Op; (4) the failure to report one or two executory contracts;  
16 (5) an error in the listing of the Co-Op's twenty largest  
17 creditors; and (6) the failure to correctly report in the Co-Op's  
18 bankruptcy commencement documents Evans' personal items held at  
19 the Co-Op. None of these misstatements and omissions are  
20 necessarily indicative of fraudulent motive or an intent to  
21 deceive.

22 But there were a number of other misstatements and omissions  
23 that could be considered quite indicative of fraudulent motive  
24 and intent to deceive. These include: (1) erroneous reporting of  
25 the Co-Op's 2012 "business income" as \$60,061.00 when it actually  
26 was \$734,963.52; (2) erroneous reporting of the Co-op's 2013  
27 "business income" as \$52,188.00 when it actually was \$707,540.00;  
28 (3) numerous unreported out-of-the-ordinary-course transfers and

1 payments from the Co-Op to Evans during the two years prior to  
2 the Co-Op's bankruptcy; (4) omission or erroneous reporting of  
3 payments to other family members; (5) omission from the Co-Op's  
4 schedules of the Co-Op's claims against Evans; (6) scheduling of  
5 Evans as a creditor of the Co-Op when she was not a creditor;  
6 (7) Evans not scheduling the Co-Op as one of her creditors;  
7 (8) erroneous reporting of the IRS's secured claim against the  
8 Co-Op in the amount of \$253,678 when it actually was \$116,302.34;  
9 (9) omitting the IRS's unsecured priority claim in the amount of  
10 \$13,757.11; (10) misstating the amounts the Co-Op owed to Evans'  
11 mother, stepfather and grandmother; and (11) omitting from the  
12 Co-Op's schedules Evans' status as a co-debtor on a number of  
13 debts owed to the IRS, the Employment Development Department and  
14 others.

15 In terms of assessing Evans' motive and intent, there were  
16 yet other misstatements and omissions that fall somewhere in  
17 between the two extremes set forth above. These include:

18 (1) omitting from the Co-Op's Schedule F some of its unsecured  
19 creditors; (2) failing to list any secured creditors on the  
20 Co-Op's amended schedules; (3) not listing a particular unsecured  
21 creditor - Richard Avila - who was paid postpetition for a  
22 prepetition debt; (4) not listing payments to a particular  
23 creditor - Dan Taylor - who was paid within the 90-day preference  
24 period; (5) erroneously identifying the date the Co-Op paid a law  
25 firm retainer as January 13, 2013, when the retainer actually was  
26 paid in 2014; and (6) mis-scheduling of the IRS's and Employment  
27 Development Department's claims as unsecured claims in Evans'  
28 personal schedules.

1 Our acknowledgment of the existence of substantial evidence  
2 permitting the bankruptcy court to reasonably infer Evans' motive  
3 to defraud and intent to deceive, however, does not mandate  
4 reversal. The critical question we must answer is whether, on  
5 the record presented, it was unreasonable for the court to infer  
6 that Evans did not have a motive to defraud and an intent to  
7 deceive despite all the evidence available that would have  
8 permitted such inferences. See generally United States v.  
9 Hinkson, 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc)  
10 (identifying third clearly erroneous factor as whether the  
11 subject finding is "without support in inferences that may be  
12 drawn from the record"). We hold that the bankruptcy court's  
13 inference that Evans had no motive to defraud or intent to  
14 deceive was not unreasonable.

15 Even though the bankruptcy court expressed some concern  
16 regarding the credibility of some of Evans' statements, it  
17 obviously credited Evans' testimony in which she expressed  
18 confusion over the meaning of a number of terms like "co-debtor,"  
19 "insider" and "executory contract" and how that confusion  
20 negatively affected the information she provided in her schedules  
21 and statement of financial affairs. For instance, as result of  
22 her confusion, Evans did not disclose in her initial statement of  
23 financial affairs certain insider payments made to herself and  
24 her sister-in-law (who for a time was employed by the Co-Op as  
25 its bookkeeper). As Evans testified:

26 I did not think of myself [or my sister-in-law] as an  
27 insider. I didn't understand the term. I thought an  
28 insider was -- it sounds naive, but I thought it was  
someone scandalous that you were passing things to. I  
didn't know it was myself as the CEO or the formal

1 bookkeeper who was paid formally.

2 Trial Tr. (Sept. 21, 2016) at 80:7-12.

3 Similarly, the following colloquy between Evans and  
4 plaintiff's counsel demonstrates her confusion over the term  
5 executory contract and how that confusion led to conflicting  
6 answers regarding whether a certain advertising contract needed  
7 to be listed as an executory contract:

8 Q. When you amended the schedules in Schedule G, you  
9 didn't list MnM Publishing. Why was that?

10 A. . . . For the revised schedules, it would have been  
11 changed due to the attorney saying it needed to be done  
12 differently. I was very up front about what it was. I  
13 wasn't sure what -- how it should be handled and I took  
14 their advice on it and I signed based on their advice  
15 on filling out the schedules.

16 Q. But you knew that you did have an executory contract  
17 with MnM Publishing when -

18 A. I don't what an executive --

19 Q. -- when co-op filed bankruptcy, correct?

20 A. I still do not know what an executory contract is.

21 Trial Tr. (Sept. 21, 2016) at 64:3-65:2.

22 At bottom, time and time again, Evans in essence claimed  
23 ignorance, confusion, naivete, and haplessness as explanations  
24 for her many errors and omissions. The bankruptcy court  
25 obviously credited many of these explanations, as nothing else  
26 explains the bankruptcy court's finding on Evans' lack of  
27 deceitful intent. "[W]henever, from facts found, other facts  
28 may be inferred which will support the judgment, such inferences  
will be deemed to have been drawn. The findings of fact by a  
trial court must receive such a construction as will uphold,  
rather than defeat, its judgment.'" Brock v. Big Bear Market

1 No. 3, 825 F.2d 1381, 1384 (9th Cir. 1987) (quoting Wells Benz,  
2 Inc. v. United States, 333 F.2d 89 (9th Cir. 1964)).

3 As an appellate review panel, we are not entitled to  
4 substitute our view of the evidence for that of the bankruptcy  
5 court. Anderson v. City of Bessemer City, 470 U.S. 564, 573  
6 (1985). "Where there are two permissible views of the evidence,  
7 the factfinder's choice between them cannot be clearly  
8 erroneous." Id. at 574. It makes no difference that we likely  
9 would have decided the case differently. Id. at 573. The  
10 limitations on our appellate review are clear: we cannot reverse  
11 unless one or more of the factual findings underpinning the  
12 bankruptcy court's decision were illogical, implausible or  
13 unsupported by the record. See In re Retz, 606 F.3d at 1199. We  
14 perceive no such reversible error here. The bankruptcy court  
15 considered all of the evidence before it, which included Evans'  
16 course of conduct, her knowledge that she was being aggressively  
17 pursued by both Trainor and the IRS, her numerous misstatements  
18 and omissions, her testimony at trial, her demeanor on the stand,  
19 her apparent level of financial sophistication (both as an  
20 individual and as a business person), her excuses for not  
21 providing more accurate bankruptcy commencement documents, and  
22 her sometimes mediocre credibility in that regard. The  
23 bankruptcy court effectively concluded that Evans had acted  
24 cavalierly but not with a motive to defraud or an intent to  
25 deceive. We cannot say that this conclusion was illogical,  
26 implausible or without support in the record, so we must affirm.

27 **CONCLUSION**

28 For the reasons set forth above, we AFFIRM the bankruptcy



1 court's judgment after trial in favor of Evans.

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