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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NOT FOR PUBLICATION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

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In re:	)	BAP Nos.	WW-17-1006-BKuF
	)		WW-17-1007-BKuF
CASCADE AG SERVICES, INC.,	)		(Cross-Appeals)
	)		
Debtor.	)	Bk. No.	12-18366-MLB
_____	)		
	)	Adv. No.	15-01060-MLB
VIRGINIA A. BURDETTE, Chapter	)		
7 Trustee,	)		
	)		
Appellant/Cross-Appellee,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
EMERALD PARTNERS, LLC, a	)		
Washington Limited Liability	)		
Company; MELANIE S. BRUCH, as	)		
Trustee for the Melanie Bruch	)		
Living Trust; CHRISTOPHER H.	)		
SHEAFE; R. KEITH STOREY, as	)		
Trustee of the Storey Family	)		
Living Trust; NANCY C. STOREY,	)		
as Trustee of the Storey	)		
Family Living Trust,	)		
	)		
Appellees/Cross-Appellants.)	)		
_____	)		

Argued and Submitted on September 28, 2017,  
at Seattle, Washington

Filed - November 2, 2017

Appeal from the United States Bankruptcy Court  
for the Western District of Washington

Honorable Marc L. Barreca, Bankruptcy Judge, Presiding

Appearances: Kevin Arnold Bay of Tousley Brian Stephens PLLC

<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 argued for appellant/cross-appellee; Danial D.  
2 Pharris of Lasher, Holzapfel, Sperry & Ebberson  
argued for appellees/cross-appellants.

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3  
4 Before: BRAND, KURTZ and FARIS, Bankruptcy Judges.

5 Chapter 7<sup>2</sup> trustee Virginia A. Burdette ("Trustee") appeals a  
6 judgment against Emerald Partners, LLC, Melanie S. Bruch,  
7 Christopher H. Sheafe, R. Keith Storey and Nancy C. Storey  
8 (collectively "Haller Farms"), ruling that the debtor's transfer  
9 of 2/3 of its 2011 blueberry crop proceeds to Sakuma Brothers  
10 Farms, Inc. ("Sakuma") was an avoidable fraudulent transfer under  
11 both federal and state law and awarding Trustee \$40,438 against  
12 Haller Farms – the intended beneficiary of that transfer. Trustee  
13 maintains that the avoidable fraudulent transfer by the debtor was  
14 the \$395,159 it expended for growing blueberries for the 2011  
15 growing season without payment from Haller Farms.

16 Haller Farms cross-appeals the court's ruling that it was the  
17 intended beneficiary of, and did benefit from, the debtor's  
18 contract with Sakuma to manage and control the blueberry operation  
19 in 2011 and the debtor's transfer of the 2/3 portion of the  
20 blueberry crop proceeds to Sakuma, which ultimately reduced the  
21 debt Haller Farms owed to Sakuma by \$40,438.

22 We AFFIRM.

23 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

24 **A. Background of the parties and their relationship**

25 Cascade Ag Services, Inc. ("Debtor") is the surviving  
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27 <sup>2</sup> Unless specified otherwise, all chapter, code and rule  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 corporation of four entities which were merged approximately two  
2 weeks before Debtor's chapter 11 bankruptcy filing on August 13,  
3 2012. The four predecessor entities were (1) Cascade Ag Services,  
4 Inc. ("Cascade Ag"), (2) Staffanson Harvesting, LLC, (3) Mountain  
5 View Produce, Inc., and (4) Sterling Investment Group, LLC. One  
6 or more of Debtor's predecessor entities was wholly or partially  
7 owned by Craig Staffanson, an experienced farmer.<sup>3</sup> Prior to the  
8 bankruptcy filing, Cascade Ag did business under the trade name  
9 "Pleasant Valley Farms." Its primary business was the growing and  
10 processing of cucumbers and cabbage into pickles and sauerkraut  
11 and selling its food products. Debtor's case was converted to  
12 chapter 7 on August 8, 2014.

13 The members of Haller Farms are tenants in common owners of  
14 agricultural land in Skagit County, Washington, which is leased to  
15 farmers.<sup>4</sup> Haller Farms has never been in the agricultural  
16 business as either growers or processors.

17 Cascade Ag and Staffanson Harvesting leased land from Haller  
18 Farms for its operations. The only formal business or legal  
19 relationship Debtor's predecessor entities had with Haller Farms  
20 was as lessees of its land. Other than Mr. Staffanson attending  
21 the Haller family's annual meetings to discuss generally the  
22 status of the entities' various farming operations, Haller Farms  
23

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24  
25 <sup>3</sup> Going forward, all references to "Debtor" include Cascade  
26 Ag Services, Inc. (as merged) and any of Debtor's predecessor  
27 entities.

28 <sup>4</sup> The individual members of Haller Farms are absentee owners  
of the land, residing in Washington, California and Arizona. They  
are the descendants of Granville and Henrietta Haller. The Haller  
family has continuously owned the land since the 1800s.

1 was not provided with ongoing farming updates or financial  
2 information concerning Debtor's predecessor entities.

3 **B. The Blueberry Field: 2002 through 2010 and 2012 through 2015**

4 In 2002, Staffanson Farms, Inc., a non-debtor entity that was  
5 co-owned by Mr. Staffanson, leased approximately 108 acres of land  
6 from Haller Farms and planted blueberry plants (the "Blueberry  
7 Field"). The blueberry plants, planting and related installation  
8 costs totaled \$434,158, owed to Oregon Blueberry Farms & Nursery.  
9 By the end of 2003, Staffanson Farms could not pay for the plants  
10 or field improvements and went out of business. Haller Farms  
11 entered into an agreement with Oregon Blueberry that the \$434,158  
12 could be paid on a non-recourse basis from the net profit of each  
13 year's crop (to be farmed by others) but only after payment of all  
14 costs of maintaining the field and producing the harvest. At all  
15 times relevant to this lawsuit, Haller Farms owned the blueberry  
16 plants and the land on which they were planted.<sup>5</sup>

17 Around 2004-2005,<sup>6</sup> Sakuma, a berry grower and processor owned  
18 by Steve Sakuma, began managing the Blueberry Field and farming  
19 blueberries. Sakuma entered into an agreement with Haller Farms  
20 to advance all costs of management, maintenance, and further  
21 establishment and improvement of the Blueberry Field in exchange  
22 for the right to purchase the fruit from each year's harvest.  
23 Sakuma agreed to pay market prices for the fruit from each harvest

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24  
25 <sup>5</sup> Staffanson Harvesting's 2009 lease with Haller Farms was  
26 revised to reflect that Haller Farms owned both the blueberry  
plants and the land on which they were planted.

27 <sup>6</sup> From 2003-2004, a company called Delta Breeze, Inc.  
28 managed the Blueberry Field and farmed blueberries. It then  
decided to terminate its involvement.

1 at the prices Sakuma paid its growers. The parties agreed that  
2 Sakuma's expenditures for the Blueberry Field would be non-  
3 recourse and unsecured, to be repaid only to the extent there were  
4 eventual profits realized – i.e., the difference between each  
5 year's annual costs and the value of the blueberries purchased by  
6 Sakuma. Thus, Haller Farms would receive no money from the  
7 blueberry crops until the debts to Sakuma and Oregon Blueberry  
8 were paid in full, with Sakuma being paid first. Mr. Sheafe, who  
9 was responsible for informing the other Haller family members of  
10 the Blueberry Field's progress, testified that "Sakuma essentially  
11 owned the revenue stream coming off the field until that was  
12 reduced to zero. . . . [Sakuma] got all the fruit. He sold it  
13 and kept the money."

14 With the exception of 2011, discussed below, Sakuma farmed,  
15 managed and paid all costs for the Blueberry Field from 2005  
16 through 2015. Haller Farms gave Sakuma complete control over  
17 management of the Blueberry Field and all decisions regarding the  
18 amount and types of expenditures made. Sakuma neither consulted  
19 nor advised Haller Farms of day-to-day or ongoing expenses that  
20 were incurred for the blueberry operation. Haller Farms would  
21 typically not know until the end of each calendar year whether  
22 Sakuma's blueberry operation generated a profit or loss that would  
23 reduce or increase the Sakuma debt. All Sakuma provided Haller  
24 Farms regarding the Blueberry Field was an annual income statement  
25 showing expenses, income and total annual profits or losses.

26 During Sakuma's management, one or more of Debtor's  
27 predecessor entities provided Sakuma with labor and materials for  
28 the blueberry operation and were paid by Sakuma when billed for

1 the work and materials provided. Sakuma's payments to the  
2 entities were added to the Blueberry Field expenses, and  
3 ultimately increased the Sakuma debt owed by Haller Farms.

4 Under the agreement between Sakuma and Haller Farms, each  
5 year, except for 2011, when Sakuma harvested the blueberries it  
6 credited itself for the market price based on prices Sakuma paid  
7 to other growers. Any revenue that exceeded annual costs was  
8 applied to reduce the Sakuma debt; any losses incurred increased  
9 the Sakuma debt.

10 Overall, farming blueberries on the Blueberry Field from 2005  
11 through 2010 was unprofitable. By 2010, the Sakuma debt was  
12 nearly \$1.3 million.<sup>7</sup> Haller Farms was concerned about the  
13 Blueberry Field's accumulating losses and its likelihood of  
14 profitability. In an April 2009 email, Mr. Sheafe expressed to  
15 the other Haller family members that "cost reduction" would be  
16 their focus for the 2009 growing season. In a March 2010 email  
17 from Mr. Sheafe to Mr. Storey, Mr. Sheafe stated that it was time  
18 to focus on controlling costs, noting that Haller Farms was  
19 "dangerously close to the point where we can not catch the expense  
20 of accruing payables due to the amount of money due to Sakuma."  
21 Mr. Sheafe indicated that blueberry operation costs had been  
22 reduced by using Debtor's labor instead of Sakuma's, noting that  
23 much of the labor provided by Debtor in 2009 "was not billed to  
24 Sakuma" and that "[g]oing forward, [Mr. Staffanson] anticipates  
25 providing all labor except harvest labor without requesting

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26  
27 <sup>7</sup> The blueberry operation accrued losses of \$274,532 in  
28 2005, \$291,788 in 2006, \$216,583 in 2007, \$298,846 in 2008,  
\$108,703 in 2009 and \$39,230 in 2010.

1 reimbursement from Sakuma."

2 At the end of 2015, Sakuma terminated its management of the  
3 Blueberry Field. At the time of trial, a different, unrelated  
4 entity was growing blueberries there.

5 **C. The Blueberry Field - 2011**

6 The focus of these cross-appeals lies in the transactions  
7 that occurred between the parties for the Blueberry Field's 2011  
8 crop year. In 2011, Sakuma was facing financial difficulties and  
9 did not want to work the Blueberry Field that year. Deciding that  
10 the Blueberry Field "had turned the corner" and was "ready to  
11 generate substantial profit," Mr. Staffanson (on behalf of Debtor)  
12 negotiated with Sakuma to manage and control the blueberry  
13 operation, providing all labor and materials free of charge in  
14 exchange for 1/3 of the proceeds of the blueberry harvest based on  
15 the prices Sakuma paid to growers (the "2011 Agreement"). The  
16 other 2/3 of the proceeds, after deductions for Sakuma's expenses,  
17 were to be credited to the accumulated Sakuma debt. Debtor had no  
18 obligation to expend any particular amount in growing the 2011  
19 blueberry crop under the 2011 Agreement; it was entirely in  
20 Debtor's discretion.

21 Mr. Sakuma, Mr. Sheafe and Mr. Staffanson all testified that  
22 they believed the 2011 Agreement gave Debtor the right to  
23 exclusive control over the Blueberry Field and crop, to contract  
24 with third parties and to make all decisions on expenditures for  
25 farming the field – the same rights Sakuma had in the years 2005-  
26 2010 and 2012-2015.

27 In performing the 2011 Agreement, Debtor expended \$395,159.23  
28 on farming blueberries. Following the 2011 blueberry harvest,

1 Debtor transferred the blueberries to Sakuma. Pursuant to the  
2 2011 Agreement, Sakuma valued the crop based on the prices it paid  
3 to growers and paid 1/3 of that amount (\$39,451) to Fairhaven  
4 Farms, an entity the bankruptcy court found sufficiently  
5 affiliated with Debtor so as to constitute a payment to Debtor.  
6 After deducting its expenses of \$38,465 from 2/3 of the proceeds,  
7 Sakuma applied the remaining proceeds - \$40,438 - to reduce the  
8 Sakuma debt.

9 **D. Trustee's claims against Haller Farms**

10 Trustee filed an adversary proceeding against Haller Farms  
11 asserting claims for (1) declaratory judgment, (2) breach of  
12 contract, (3) fraudulent transfer (both actual and constructive)  
13 and (4) unjust enrichment. For her first two claims, Trustee  
14 alleged that Haller Farms was engaged in a joint venture,  
15 partnership agreement or crop share agreement with Debtor to farm  
16 blueberries. She further alleged that Haller Farms was in breach  
17 of the parties' agreement by failing to pay Debtor all of the  
18 proceeds to which it was entitled. Trustee later dismissed these  
19 claims with prejudice, because she could not prove that a joint  
20 venture or crop share agreement to farm blueberries existed  
21 between Debtor and Haller Farms.

22 Haller Farms later moved for summary judgment on Trustee's  
23 remaining fraudulent transfer and unjust enrichment claims.  
24 Initially, for her unjust enrichment claim, Trustee had alleged  
25 that Haller Farms was unjustly enriched by receiving from Debtor  
26 at least \$1.9 million in contributions to the alleged joint  
27 blueberry venture with Haller Farms (which did not exist) without  
28 paying over to Debtor any of the business's proceeds. In



1 opposition to Haller Farms' summary judgment motion, Trustee  
2 alleged \$395,195 in free labor and materials Debtor provided to  
3 Sakuma for the Blueberry Field in 2011 benefitted Haller Farms by  
4 reducing the Sakuma debt with no payment from Haller Farms.

5 Trustee argued that Haller Farms had unquestionably received  
6 a benefit as a result of Debtor's uncompensated contributions of  
7 labor and materials, which served to support either her unjust  
8 enrichment or fraudulent transfer claims. As Trustee explained,  
9 Haller Farms would begin to make a profit on the blueberry  
10 operation once the advances made by Sakuma were paid off. Thus,  
11 anything Haller Farms could do to lower production costs was a  
12 direct and tangible benefit to Haller Farms; it decreased the  
13 amounts owed to Sakuma and advanced the time at which it would  
14 begin to see profits from blueberry operations. Therefore, argued  
15 Trustee, persuading Debtor to provide free labor instead of having  
16 to pay Sakuma for its labor was a direct benefit to Haller Farms.  
17 Trustee asserted that Haller Farms was aware of the free labor  
18 arrangement with Sakuma based on the correspondence between its  
19 members.

20 Haller Farms argued that Trustee's claim for unjust  
21 enrichment failed because no benefit had been conferred upon it.  
22 The Blueberry Field had produced only losses, a total of  
23 \$1.75 million between Sakuma's losses and the \$434,158 still owed  
24 to Oregon Blueberry. Haller Farms argued that it had never  
25 received, and would never receive, any profits or rent proceeds  
26 from blueberry operations. At best, argued Haller Farms, it may  
27 have been an incidental beneficiary of some nominal, uncompensated  
28 labor or services provided by Mr. Staffanson or Debtor to Sakuma,

1 but that did not obligate Haller Farms to make restitution.  
2 Mr. Staffanson stated that any use of labor or materials by Debtor  
3 for the Blueberry Field without reimbursement from Sakuma was  
4 limited and done only because he felt a moral obligation to the  
5 Haller family for getting them involved in the unprofitable  
6 blueberry crop, and because Debtor's successful pickle and cabbage  
7 operations were dependant on Haller Farms' continued willingness  
8 to lease land to Debtor. Haller Farms further argued that Trustee  
9 could not sue on the equitable theory of unjust enrichment for any  
10 unpaid-for labor or materials, because that was the subject matter  
11 of express contracts between Debtor and Sakuma for the years 2005-  
12 2010 and 2012; for 2011, Debtor's contract with Sakuma was 1/3 of  
13 the blueberry crop proceeds.

14 The bankruptcy court granted Haller Farms' first motion for  
15 summary judgment as to Trustee's claims for unjust enrichment and  
16 actual fraudulent transfer. However, it denied the motion as to  
17 Trustee's claim for constructive fraudulent transfer.

18 With the dismissal of Trustee's claims for unjust enrichment  
19 and actual fraudulent transfer, the only issue remaining for trial  
20 was whether Trustee could establish a constructive fraudulent  
21 transfer claim against Haller Farms based on the alleged transfers  
22 of labor and materials to it by Debtor.

23 **E. Trial on Trustee's remaining claim for constructive**  
24 **fraudulent transfer**

25 After a second round of unsuccessful summary judgment  
26 motions, the bankruptcy court conducted a two-day trial.

27 Mr. Staffanson testified extensively about the blueberry  
28 operation for 2011. He testified that 2011 appeared to be a good

1 year for Debtor to take over management of the Blueberry Field;  
2 the price of blueberries was on the rise and the plants had  
3 matured greatly due to Sakuma's efforts in prior years.  
4 Mr. Staffanson testified that he was optimistic about the 2011  
5 blueberry crop, and he believed the 2011 Agreement would be  
6 financially beneficial for Debtor. However, Mr. Staffanson  
7 testified that, between lower-than-expected prices received, the  
8 massive "shock" disease that detrimentally affected the plants  
9 that year and Debtor doing "a bad job on cost control," blueberry  
10 operations for 2011 were not as profitable as everyone had hoped.

11 Mr. Staffanson testified that Debtor, not Haller Farms, was  
12 the intended beneficiary of the 2011 Agreement. Both  
13 Mr. Staffanson and Mr. Sakuma testified that Haller Farms was not  
14 consulted before Sakuma and Debtor entered into the 2011  
15 Agreement, and that neither expected Haller Farms to receive any  
16 direct monetary benefit from it because Sakuma and Oregon  
17 Blueberry had to be paid off before Haller Farms would receive any  
18 profits from blueberry operations. However, Mr. Sakuma testified  
19 that, ultimately, getting Haller Farms "in a positive cash  
20 position to allow that farm to be run by [Mr. Staffanson]" and for  
21 Sakuma "to no longer be farmers but the receivers of a raw product  
22 that [Sakuma] would turn into market profit" was the "long-term  
23 goal" of all three parties.

24 Finally, Mr. Sheafe testified that Haller Farms did not learn  
25 of the 2011 Agreement between Debtor and Sakuma until early 2012.  
26 He testified that Haller Farms received no monetary benefit as a  
27 result of the 2011 Agreement.

28 After testimony from the witnesses, the court expressed its

1 concern over exactly "what" constituted the transfer or transfers  
2 that Trustee was alleging. Was it the entire \$395,159 Debtor  
3 spent on blueberry operations for 2011, or was it the 2/3 net  
4 return on the fruit that went toward reducing the Sakuma debt?  
5 Furthermore, was Haller Farms alleged to be the initial  
6 transferee, the intended beneficiary or an immediate transferee?  
7 The court ordered post-trial briefing on these issues, heard  
8 closing argument and took the matter under submission.

9 **F. The court's ruling**

10 The bankruptcy court entered its written Findings of Fact and  
11 Conclusions of Law.<sup>8</sup> The court found that Haller Farms was the  
12 intended beneficiary of the 2011 Agreement, and the transfer which  
13 was intended to and did benefit Haller Farms was the 2/3 in net  
14 proceeds Sakuma received from the 2011 blueberry harvest and  
15 applied to reduce the Sakuma debt owed by Haller Farms.

16 Accordingly, judgment was entered in favor of Trustee and  
17 against Haller Farms, jointly and severally, for \$40,438.00.

18 **II. JURISDICTION**

19 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
20 and 157(b) (2) (H). We have jurisdiction under 28 U.S.C. § 158.

21 **III. ISSUES**

- 22 1. Did the bankruptcy court err in determining that Debtor owned  
23 the 2011 blueberry crop?  
24 2. Did the bankruptcy court err in finding that Haller Farms was  
25 the intended beneficiary of, and did benefit from, the 2011

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27 <sup>8</sup> The bankruptcy court found that Debtor was insolvent at  
28 the time of the transfer in question. No party has appealed that  
ruling.

1 Agreement?

2 3. Did the bankruptcy court err by dismissing Trustee's unjust  
3 enrichment claim on summary judgment?

4 **IV. STANDARDS OF REVIEW**

5 We review the bankruptcy court's findings of fact for clear  
6 error and its conclusions of law de novo. Decker v. Tramiel  
7 (In re JTS Corp.), 617 F.3d 1102, 1109 (9th Cir. 2010). Factual  
8 findings are clearly erroneous if they are illogical, implausible  
9 or without support in the record. Retz v. Samson (In re Retz),  
10 606 F.3d 1189, 1196 (9th Cir. 2010). Whether a party is a  
11 "transferee" is a question of fact. See First Nat'l Bank of  
12 Barnesville v. Rafoth (In re Baker & Getty Fin. Servs., Inc.),  
13 974 F.2d 712, 722 (6th Cir. 1992).

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

17 **V. DISCUSSION**

18 A bankruptcy trustee may bring an action to avoid a  
19 prepetition transfer that is alleged to be constructively  
20 fraudulent under § 548(a)(1) or applicable state law as provided  
21 in § 544(b). In relevant part, § 548(a) provides:

22 (a)(1) The trustee may avoid any transfer . . . of an  
23 interest of the debtor in property . . . that was made or  
24 incurred on or within 2 years before the date of the  
filing of the petition, if the debtor voluntarily or  
involuntarily -

25 . . . .

26 (B)(I) received less than a reasonably equivalent  
27 value in exchange for such transfer or obligation;  
and

28 (ii)(I) was insolvent on the date that such

1 transfer was made or such obligation was incurred, or  
2 became insolvent as a result of such transfer or  
obligation . . . .

3 § 548(a)(1). In other words, to avoid a constructively fraudulent  
4 transfer under § 548(a)(1)(B), the trustee must prove: (1) the  
5 transfer involved property of the debtor; (2) the transfer was  
6 made within two years of the bankruptcy filing; (3) the debtor did  
7 not receive reasonably equivalent value for the property  
8 transferred; and (4) the debtor was insolvent, made insolvent by  
9 the transaction, operating or about to operate without sufficient  
10 capital or unable to pay debts as they become due. Hasse v.  
11 Rainsdon (In re Pringle), 495 B.R. 447, 462-63 (9th Cir. BAP  
12 2013). Washington law is substantially similar. See  
13 RCW 19.40.041(a)(2) and RCW 19.40.051(a).<sup>9</sup>

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16 <sup>9</sup> RCW 19.40.041(a)(2) provides for avoidance if the debtor  
17 made the transfer or incurred the obligation:

18 (2) without receiving reasonably equivalent value in exchange  
for the transfer or obligation, and the debtor

19 (I) was engaged or was about to engage in a business or  
20 a transaction for which the remaining assets of the  
debtor were unreasonably small in relation to the  
21 business or transaction, or

22 (ii) intended to incur, or believed or reasonably should  
23 have believed that he or she would incur, debts beyond  
his or her ability to pay as they become due.

24 RCW 19.40.041(a)(2)(I) and (ii).

25 RCW 19.40.051(a) provides that the trustee may avoid a  
transfer or obligation if the debtor:

26 Made the transfer or incurred the obligation without  
27 receiving a reasonably equivalent value in exchange for the  
transfer or obligation and the debtor was insolvent at that  
28 time or the debtor became insolvent as a result of the  
transfer or obligation.

1 **A. The bankruptcy court did not err in determining that Debtor**  
2 **owned the 2011 blueberry crop.**

3 Neither party contests the bankruptcy court's finding that  
4 Debtor was insolvent at the time of the transfer at issue or that  
5 the transfer was made within two years of the bankruptcy filing.  
6 The dispute lies in "what" Debtor transferred and whether Haller  
7 Farms was the "entity for whose benefit the transfer was made."

8 The bankruptcy court found that, by Debtor taking over the  
9 role of farmer, managing and controlling the blueberry operation  
10 for 2011, as Sakuma had done in years prior, Debtor owned and  
11 controlled the disposition of the 2011 blueberry crop it produced.  
12 Trustee contends the bankruptcy court erred when it found that  
13 Debtor, as opposed to Haller Farms, owned the 2011 blueberry crop.  
14 She maintains that no evidence in the record existed to support  
15 this finding. We disagree.

16 As a threshold matter for her constructive fraudulent  
17 transfer claim, Trustee had to prove that "property of the debtor"  
18 was transferred. A transfer of the debtor's property that  
19 otherwise would have been property of the estate is a prerequisite  
20 for a fraudulent transfer action under either § 544 or § 548.  
21 Wood v. Bright (In re Bright), 241 B.R. 664, 666 n.3 (9th Cir. BAP  
22 1999); Greenspan v. Orrick, Herrington & Sutcliffe LLP  
23 (In re Brobeck, Phleger & Harrison LLP), 408 B.R. 318, 337 (Bankr.  
24 N.D. Cal. 2009) ("both the 'property' and 'transfer' elements  
25 apply whether the claim is one for actual or constructive  
26 fraudulent transfer"). The existence of an interest in "property"  
27 is a question of state law, while the issue of whether such  
28 property was "transferred" is one of federal law. In re Bright,

1 241 B.R. at 666 n.3. See also Barnhill v. Johnson, 503 U.S. 393,  
2 398 (1992) (in the absence of controlling federal law, "property"  
3 and "interests in property" are creatures of state law); Butner v.  
4 United States, 440 U.S. 48, 55 (1979). Therefore, to determine  
5 whether the 2011 blueberry crop was property of Debtor, we turn to  
6 Washington law.

7 No written contract existed between Sakuma and Haller Farms  
8 for any of the years when Sakuma managed and controlled the  
9 Blueberry Field. Further, the 2011 Agreement between Sakuma and  
10 Debtor was not memorialized by a written contract. Nonetheless,  
11 Mr. Sakuma and Mr. Sheafe testified that Sakuma had complete and  
12 exclusive control over the Blueberry Field and resulting crops –  
13 the actual fruit harvested, not the plants – from 2005-2010 and  
14 2012-2015, and they and Mr. Staffanson testified that Debtor, by  
15 obtaining Sakuma's rights over the Blueberry Field in 2011, had  
16 complete and exclusive control over it and the resulting crop for  
17 2011. No party testified to the contrary. At one point, as  
18 Trustee notes, Mr. Sakuma also testified that the harvested fruit  
19 belonged to Haller Farms. However, which entity owned the fruit  
20 is a legal conclusion for the court to determine. See Cermak v.  
21 Babbitt, 234 F.3d 1356, 1361 (Fed. Cir. 2000) (nature of property  
22 interests is a question of law); Tarabishi v. McAlester Reg'l  
23 Hosp., 827 F.2d 648, 652 (10th Cir. 1987) ("Whether the facts  
24 establish a property interest is a question of law."). Therefore,  
25 the bankruptcy court was free to disregard Mr. Sakuma's contrary  
26 testimony.

27 Washington recognizes oral contracts. Lopez v. Reynoso,  
28 129 Wash. App. 165, 171 (2005) (In Washington, an agreement "can



1 be entirely oral, entirely in writing, or partly oral and partly  
2 in writing."). Further, the oral agreements here do not fall  
3 within the Statute of Frauds. See RCW 19.36.010.<sup>10</sup> Thus, the oral  
4 agreements between the parties were valid and enforceable and gave  
5 Debtor a property interest in the 2011 blueberry crop.

6 Moreover, because Debtor was a cash lessee of the Blueberry  
7 Field from Haller Farms and a rightful tenant in possession,  
8 Debtor held title to, and the absolute right to sell, the  
9 blueberry crop it grew and harvested in 2011.<sup>11</sup> See Loudon v.

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<sup>10</sup> RCW 19.36.010. Contracts, etc., void unless in writing.

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<sup>11</sup> Although the parties did not offer into evidence a written lease for the Blueberry Field from 2011 between Debtor and Haller Farms as they did with other years, it appears the parties did enter into a lease for that year based on correspondence between them. The language in the leases between the parties for the years 2007-2009 states that the amount of rent to be paid by Debtor was "an amount calculated as the result of blueberry crop proceeds from fruit sales less repayment of Sakuma paid field expense for maintenance and improvements and after repayment of accrued payables due Sakuma and Oregon Blueberry, if any." Thus, these prior leases were "cash" leases as opposed to "crop share agreement" leases, which could result in a different outcome as to ownership of the fruit once harvested. See 21A Am. Jur. 2d Crops § 23 (2017). Presumably, and no one has shown otherwise, the 2011 Blueberry Field lease was also a "cash" lease with the same payment terms as prior leases.

1 Cooper, 3 Wash. 2d 229, 240 (1940) (occupier of land is the owner  
2 of all crops harvested during the term of his occupancy, whether  
3 the occupant be a purchaser in possession, a tenant in possession,  
4 or a mere trespasser in possession, holding adversely); Benhart v.  
5 Gorham, 14 Wash. App. 723, 724 (1976) ("As between lessor and  
6 lessee, it is the general rule in Washington that title to the  
7 crops follows actual possession of the land"); 21A Am. Jur. 2d  
8 Crops § 23 (2017) ("Tenants who rent land for cash are owners of  
9 the crops and have an absolute right to sell them").

10 Accordingly, the bankruptcy court did not err when it  
11 determined that Debtor owned the 2011 blueberry crop and had  
12 exclusive control over its disposition.

13 Trustee further argues that, because the bankruptcy court  
14 erred in determining that Debtor owned the 2011 blueberry crop, it  
15 erroneously concluded that the \$395,159 it expended in labor and  
16 materials for the Blueberry Field in 2011 was not a fraudulent  
17 transfer to Haller Farms but rather an investment of its own labor  
18 and materials into its own blueberry crop. Because we conclude  
19 that the court did not err in determining that Debtor owned the  
20 2011 blueberry crop, Trustee's argument necessarily fails.

21 **B. The bankruptcy court did not err in finding that Haller Farms**  
22 **was the intended beneficiary of the 2011 Agreement between**  
**Debtor and Sakuma.**

23 To the extent a transfer is avoided under § 548, a trustee  
24 may recover the property or the value of the property from "the  
25 entity for whose benefit such transfer was made." § 550(a)(1).<sup>12</sup>

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27 <sup>12</sup> Section 550(a)(1) provides, in relevant part:

28 (continued...)

1 "The phrase 'or the entity for whose benefit such transfer was  
2 made' refers to those who receive a benefit as a result of the  
3 initial transfer from the debtor – not as the result of a  
4 subsequent transfer." Danning v. Miller (In re Bullion Reserve of  
5 N. Am.), 922 F.2d 544, 547 (9th Cir. 1991). "[I]n transferring  
6 the avoided funds, the debtor must have been motivated by an  
7 intent to benefit the individual or entity from whom the trustee  
8 seeks to recover. It is not enough that an entity benefit from  
9 the transfer; the transfer must have been **made for his benefit.**"  
10 Id. (emphasis in original). Additionally, "an entity need not  
11 actually benefit, so long as the transfer was **made** for his  
12 benefit." Id. (emphasis in original).

13 Haller Farms contends the bankruptcy court erred in  
14 concluding that the 2011 Agreement between Debtor and Sakuma was  
15 intended to benefit, and did benefit, Haller Farms. Haller Farms  
16 maintains that it was merely an incidental and remotely contingent  
17 beneficiary of the 2011 Agreement and therefore not liable to  
18 Trustee. We disagree.

19 At trial, Mr. Staffanson and Mr. Sakuma testified that they  
20 believed and intended that Debtor and Sakuma would be the only  
21 intended beneficiaries of the 2011 Agreement, because Haller Farms  
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23 <sup>12</sup>(...continued)

24 (a) Except as otherwise provided in this section, to the  
25 extent that a transfer is avoided under section 544, 545,  
26 547, 548, 549, 553(b), or 724(a) of this title, the trustee  
27 may recover, for the benefit of the estate, the property  
28 transferred, or, if the court so orders, the value of such  
property, from –

(1) the initial transferee of such transfer or the  
entity for whose benefit such transfer was made[.]

1 could not receive any revenue from the Blueberry Field until  
2 approximately \$1.7 million in debt was repaid to Sakuma and Oregon  
3 Blueberry from crop revenues. The men also testified that they  
4 caused their companies to enter into the 2011 Agreement because  
5 they believed the blueberry operation would be profitable in 2011  
6 and both would make money on the deal.

7       Based on the evidence that blueberry yields were trending  
8 upward, that net losses from blueberry operations were decreasing  
9 from 2008-2010 and that it was anticipated that 2011 would be a  
10 good crop year, the bankruptcy court found Mr. Staffanson's belief  
11 that operating expenses for 2011 would be less than the value of  
12 the blueberry harvest was optimistic, but reasonable. However, to  
13 the extent Mr. Staffanson believed that under the terms of the  
14 2011 Agreement Debtor could profit from or break even on the 2011  
15 blueberry harvest, the court found his testimony not credible.  
16 The court found it was not at all reasonable for a sophisticated  
17 farmer to believe that 1/3 of the blueberry harvest proceeds would  
18 equal or exceed the costs of producing the 2011 blueberry harvest.  
19 Furthermore, Mr. Staffanson had testified that he entered into the  
20 2011 Agreement, at least in part, due to a moral obligation he  
21 felt to the Haller family. For these reasons, the court found  
22 that the 2011 Agreement was intended to benefit Haller Farms and  
23 that Haller Farms did benefit from Debtor's transfer of the 2/3 of  
24 net proceeds from the 2011 blueberry crop to Sakuma.

25       Where two views of the evidence are possible, the trial  
26 judge's choice between them cannot be clearly erroneous. Anderson  
27 v. City of Bessemer City, 470 U.S. 564, 573-75 (1985); Ng v.  
28 Farmer (In re Ng), 477 B.R. 118, 132 (9th Cir. BAP 2012). In

1 addition, we give great deference to the bankruptcy court's  
2 factual findings when based upon its determinations as to the  
3 credibility of witnesses. In re Retz, 606 F.3d at 1196. Past  
4 history reveals that the blueberry operation was a financial  
5 failure. Even though losses were declining marginally from 2008-  
6 2010, the chance of Debtor actually making money under the 2011  
7 Agreement was remote. Moreover, Mr. Staffanson admitted that he  
8 felt a moral obligation to the Haller family to help curb their  
9 losses on the failing blueberry venture that his former business  
10 partner got them involved in. Considering this and the testimony  
11 from Mr. Sakuma and Mr. Staffanson, some of which the bankruptcy  
12 court found not credible, we cannot conclude that the court's  
13 finding that Haller Farms was the intended beneficiary of the 2011  
14 Agreement and that it benefitted from Debtor's transfer of the  
15 2/3 portion of net crop proceeds to Sakuma by reducing the Sakuma  
16 debt was illogical, implausible or without support in the record.

17 Even if the debt reduction here was a "hypothetical" benefit  
18 to Haller Farms, as it contends, because it made a small dent in a  
19 massive debt that will never be repaid to Sakuma, we must uphold  
20 the bankruptcy court's finding. Haller Farms did not actually  
21 have to benefit from the 2011 Agreement and the transfer of the  
22 2/3 of net crop proceeds to Sakuma to be liable to Trustee. The  
23 fact that the 2011 Agreement and transfer to Sakuma was **made** for  
24 Haller Farms' benefit is sufficient to establish its liability  
25 under § 550(a). In re Bullion Reserve of N. Am., 922 F.2d at 547  
26 (entity need not actually benefit as long as the transfer was made  
27 for its benefit).

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1 **C. The bankruptcy court did not err by dismissing Trustee's**  
2 **unjust enrichment claim on summary judgment.**

3 Trustee contends the bankruptcy court erred by dismissing her  
4 unjust enrichment claim on summary judgment because she offered  
5 evidence supporting each of the claim's elements under Washington  
6 law. The bankruptcy court determined that the record lacked any  
7 evidence that Debtor requested or expected either Sakuma or Haller  
8 Farms to pay for any uninvoiced labor and materials it provided.  
9 Because of this, the court found that Debtor was nothing more than  
10 a mere "volunteer" to the blueberry operation with respect to any  
11 uninvoiced, uncompensated services, which precluded a claim for  
12 unjust enrichment for the years other than 2011.

13 As for 2011, the court found that Debtor did not expect to be  
14 compensated for anything beyond the 1/3 sale proceeds split it  
15 contracted for. Therefore, regardless of whether Haller Farms  
16 benefitted from Debtor's uninvoiced, uncompensated services for  
17 that year, the court found that retention of the benefit was not  
18 unjust under the circumstances. Trustee contests only the court's  
19 decision respecting the \$395,159 Debtor expended in labor and  
20 materials for the Blueberry Field in 2011.

21 "Unjust enrichment is the method of recovery for the value of  
22 the benefit retained absent any contractual relationship because  
23 notions of fairness and justice require it." Young v. Young,  
24 164 Wash. 2d 477, 484 (2008). To prevail on her unjust enrichment  
25 claim, Trustee had to establish that: (1) Debtor conferred a  
26 benefit on Haller Farms; (2) Haller Farms knew of the benefit; and  
27 (3) Haller Farms accepted or kept the benefit under inequitable  
28 circumstances. Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc.,

1 61 Wash. App. 151, 159-60 (1991).

2 "A person can be enriched by merely receiving a benefit.  
3 However, the mere fact that a person benefits another is not  
4 sufficient to require the other to make restitution. It is well  
5 established that unjust enrichment and liability only occur where  
6 money or property has been placed in a party's possession such  
7 that in equity and good conscience the party should not retain  
8 it." Lynch v. Deaconess Med. Ctr., 113 Wash. 2d 162, 165-66  
9 (1989) (internal citations omitted). To be unjust as between the  
10 two parties, the party conferring the benefit must not be a  
11 volunteer. Id. at 165 (the enrichment of the defendant must be  
12 unjust and the plaintiff cannot be a mere volunteer).

13 Trustee makes much of the bankruptcy court's finding that  
14 Debtor was a "volunteer" to the blueberry operation with respect  
15 to any uninvoiced, uncompensated services. However, that does not  
16 appear to be the court's ruling with respect to the \$395,159  
17 Debtor expended in labor and materials for the Blueberry Field in  
18 2011. Furthermore, whether the court should have made that  
19 factual finding on summary judgment is debatable. In any event,  
20 the record does not support Trustee's unjust enrichment claim.

21 Under the 2011 Agreement, Debtor provided \$395,159 in labor  
22 and materials for the Blueberry Field. The record and the law at  
23 the time of Haller Farms' first summary judgment motion reflect  
24 that Debtor owned and controlled the blueberry crop for that year.  
25 Its application of labor and materials to the Blueberry Field was  
26 for the purpose of producing its own blueberry crop. Debtor  
27 received payment for that labor and materials in the form of 1/3  
28 of the 2011 crop proceeds, which is exactly what it contracted for

