

APR 02 2018

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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NOT FOR PUBLICATION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-17-1153-SKuTa |
| |) | | |
| ZOHRA MURTAZA, |) | Bk. No. | 8:14-bk-11655-TA |
| |) | | |
| Debtor. |) | Adv. No. | 8:14-ap-01199-TA |
| |) | | |
| ZOHRA MURTAZA, |) | | |
| |) | | |
| Appellant, |) | | |
| |) | | |
| v. |) | MEMORANDUM* | |
| |) | | |
| SHELLEY SLATEN; JOEL SIGMUND; |) | | |
| LESLIE SIGMUND; QAYYUM KOCHAI, |) | | |
| |) | | |
| Appellees. |) | | |

Argued and Submitted on March 22, 2018
at Pasadena, California

Filed - April 2, 2018

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

Honorable Theodor C. Albert, Bankruptcy Judge, Presiding

Appearances: Sally Gersten Sopkin argued for appellees Joel Sigmund, Leslie Sigmund and Shelley Slaten.**

Before: SPRAKER, KURTZ 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.

** No one appeared at oral argument on behalf of the appellant. Consequently, this Panel has taken appellant's position under submission based on her appeal briefs and on the record.

1 **INTRODUCTION**

2 Chapter 7¹ debtor Zohra Murtaza appeals from a judgment
3 after trial denying her discharge under § 727(a)(4)(A). The
4 bankruptcy court found that Murtaza knowingly and fraudulently
5 omitted some of her assets from her schedules. The court further
6 found that she incorrectly reported other aspects of her
7 finances, also with the intent to deceive her creditors. We
8 AFFIRM.

9 **FACTS**

10 **A. The Bankruptcy Court's Prior Summary Judgment Ruling and**
11 **Reversal on Appeal.**

12 Appellees Joel Sigmund, Leslie Sigmund, Shelley Slaten, and
13 Qayyum Kochai, plaintiffs below, sued Murtaza under
14 § 727(a)(4)(A) to deny her discharge for making false oaths in
15 her schedules and Statement of Financial Affairs ("SOFA").² They
16 are significant creditors of Murtaza. Three of them had obtained
17 judgments against Murtaza collectively in excess of \$4,000,000 in
18 2013. The judgment creditors were in the process of enforcing
19 their judgments and had continued a judgment debtor examination
20 to potentially compel the turnover of Murtaza's Mercedes when she
21 filed for bankruptcy.

22 This is the second time this matter has been before this
23

24 ¹ Unless specified otherwise, all chapter and section
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
26 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

27 ² At oral argument, counsel for appellees disclosed that
28 Kochai has since settled with Murtaza and is no longer a party to
this appeal.

1 Panel. In 2015, the bankruptcy court granted summary judgment in
2 favor of the plaintiffs, denying Murtaza her discharge. Murtaza
3 appealed the bankruptcy court's summary judgment ruling. We
4 vacated that ruling, holding that the bankruptcy court erred by
5 attempting to resolve on summary judgment genuine issues of
6 material fact concerning Murtaza's state of mind. Murtaza v.
7 Sigmund (In re Murtaza), Dkt. No. CC-15-1075-KuFTa, 2016 WL
8 1383890 (Mem. Dec.) (9th Cir. BAP Apr. 5, 2016). More
9 specifically, we held that whether Murtaza's errors and omissions
10 in her bankruptcy schedules and SOFA were made knowingly and
11 fraudulently were questions that needed to be determined by the
12 trier of fact.

13 On the other hand, our prior decision did not disturb other
14 key aspects of the bankruptcy court's summary judgment ruling.
15 Namely, we upheld the bankruptcy court's determination that
16 Murtaza had made a number of material errors and omissions
17 concerning her assets and finances. We identified the omissions
18 as follows:

- 19 • An interest in her son Zaid's bank account at U.S. Bank
20 resulting from her deposit of payroll checks into the
account to avoid judgment creditors.
- 21 • An interest in a debit card account into which her employer
22 would sometimes deposit her wages.
- 23 • An inheritance from her father's estate that was settled in
24 her favor in 2012 in an amount between \$200,000 and
\$350,000.
- 25 • An interest in certain businesses including, among others,
Orange Burger Burrito, Rent to Own Car and A 2 B Mortgage.
- 26 • A former interest in real property located on West Boulevard
27 in Los Angeles (or any reference to money lent against it).

28 In addition to the omissions, we identified the following

1 errors or misstatements in her bankruptcy schedules and SOFA:

- 2 • Overstatement of her net monthly take-home pay by more than
3 \$1,000.
- 4 • Understatement of her 2012 income by at least \$40,000 and
5 perhaps as much as \$54,000, by omitting her independent
6 contractor work for a business known as "Seasons at Laguna."
7
- 8 • An inability to reconcile the amount of contributions she
9 listed in her SOFA as received from family members with the
10 specific expenses she claimed they regularly paid on her
11 behalf.
- 12 • An overstatement of her household size as including five
13 persons. She later amended her SOFA to exclude her
14 ex-husband who had resided outside the country for a matter
15 of years, but she still claimed her 22-year old son as part
16 of her household.
- 17 • The listing of her sister, Mahbob Yar, on her Schedule B as
18 a lienholder on her 2010 Mercedes Benz but stating at her
19 Rule 2004 examination that she did not owe her sister any
20 money and that her sister actually owned the Mercedes
21 despite Murtaza being listed on the Certificate of Title as
22 the owner.

23 We remanded for trial on the issues pertaining to Murtaza's
24 state of mind: whether she knowingly and fraudulently made the
25 above-referenced errors and omissions.

26 **B Pretrial and Trial Proceedings on Remand and the Focus on
27 Murtaza's Inheritance.**

28 On remand, the parties engaged in pretrial proceedings that
resulted in the entry of a pretrial stipulation and order
containing about one hundred admitted facts, many of them
confirming the existence of the above-referenced errors and
omissions. Other admitted facts highlighted the conflicting pre-
and postpetition statements Murtaza made under oath about the
errors and omissions.

The primary focus of Murtaza's conflicting testimony
concerned the disposition of her share of the inheritance from

1 her father and the settlement his estate in 2012. During a
2 judgment debtor exam conducted by the plaintiffs four days before
3 she commenced her bankruptcy case, Murtaza asserted that she did
4 not have any interest in any decedent's estate and that she had
5 not inherited any money in the last several years. Similarly, in
6 her Schedule B, filed at the end of March 2014, she listed "none"
7 in response to the question asking about interests in decedents'
8 estates. Her Schedule B also indicated "none" for all other
9 types of contingent, liquidated, unliquidated or intangible
10 personal property of any kind. As determined on summary judgment
11 by the bankruptcy court and affirmed in the first appeal,
12 Murtaza's interest in the inheritance, or any claim she held
13 based on not receiving her share of the inheritance, should have
14 shown up somewhere on her Schedule B, and likely on her SOFA as
15 well, but it was not mentioned in either of these documents or in
16 her limited amendments to these documents.

17 In April 2014, at the meeting of creditors held pursuant to
18 § 341(a), Murtaza told a different story. She stated during that
19 examination that she had an interest in an inheritance she had
20 not yet received.³ Later on, during the plaintiffs' June 2014
21 Rule 2004 examination of Murtaza, she offered a more detailed
22 account of what happened to her inheritance. As Murtaza
23 explained, her father died roughly 35 years prior, but his estate

24
25 ³ Murtaza also testified at her meeting of creditors
26 examination that she read her bankruptcy schedules and SOFA
27 thoroughly before she signed them and believed the information
28 reported therein was correct. She further testified to her
belief that there were no errors or omissions she needed to bring
to the trustee's attention and that all of her assets and
creditors were listed in her schedules.

1 was not settled until 2012. Upon settlement of the estate, the
2 entirety of the proceeds from the sale of her father's property
3 in Afghanistan was forwarded to Rona, one of Murtaza's sisters.
4 Rona was responsible for distributing the inheritance amongst
5 Murtaza's siblings. According to Murtaza, Rona told Murtaza at
6 the time of distribution that Murtaza's share, roughly \$350,000,
7 would go to her brother Bilal to partially pay or offset monies
8 Bilal had lost investing in First AFG Financial, a finance
9 company formerly owned by Murtaza's ex-husband.⁴

10 At trial, Murtaza initially testified that she told her
11 bankruptcy counsel, Qais Zafari, "all about" the inheritance and
12 that her attorney decided she did not need to disclose any
13 interest in, or claims related to, the inheritance. Zafari
14 similarly testified about his decision to omit the inheritance
15 from Murtaza's bankruptcy schedules and SOFA. On cross-
16 examination, however, neither Zafari nor Murtaza was able to
17 recall the specifics regarding their discussion of the
18 inheritance. More importantly, when pressed, neither recalled
19 that Murtaza ever said anything other than that her father died
20 more than 30 years prior to her bankruptcy filing, and that she
21 did not receive any of her inheritance due to "conflicting family
22 reasons."

23 Additionally, Murtaza provided inconsistent testimony as to
24 her position vis-a-vis Bilal's taking her share of the
25 inheritance. According to Murtaza, at first she acquiesced to

26
27 ⁴ For the sake of clarity, we refer to Murtaza's siblings by
28 their first name. Some of them have the same last name as
Murtaza. No disrespect is intended.

1 Bilal's receipt of her share because of the losses Bilal
2 allegedly suffered from investing in First AFG Financial. Later
3 on, Murtaza stated that she changed her mind and questioned
4 Bilal's right to her inheritance share. Murtaza claimed that she
5 did not assert her entitlement to her inheritance until after she
6 filed bankruptcy. But on cross-examination, Murtaza was not
7 consistent about when she decided that she, rather than Bilal,
8 should receive her inheritance share.

9 The trial testimony of Murtaza's sister Mahbob Yar also was
10 at odds with Murtaza's. In late 2012, Rona apparently
11 transferred Murtaza's \$375,000 inheritance share to Mahbob. At
12 that time, Rona and Bilal told Mahbob that Bilal was entitled to
13 Murtaza's inheritance share because of Bilal's lost investment in
14 First AFG Financial. Also in 2012, Mahbob testified that she
15 purchased a Mercedes for Murtaza and titled the vehicle in her
16 name. Mahbob is listed as a lienholder, though Murtaza has
17 stated that she did not owe her sister anything for the car.
18 Testimony as to the source of the funds used to purchase the
19 Mercedes was equivocal at best.

20 In 2013, after receiving the \$375,000 but before Murtaza
21 commenced her chapter 7 case, Mahbob sent an email to Bilal
22 questioning how the \$375,000 should be treated for tax purposes.
23 At that time, Mahbob testified, the funds referred to in the 2013
24 email were disputed funds because Bilal had taken a larger
25 portion of their father's estate than he should have. Moreover,
26 Mahbob testified that Bilal (wrongly) claimed that his lost
27 investment in First AFG Financial was the financial
28 responsibility not only of Murtaza but also of her sisters.

1 Mahbob also paid Murtaza's mortgage after the inheritance
2 was received. The testimony as to the source of the funds Mahbob
3 used to pay Murtaza's mortgage was far from definitive. When
4 asked at trial whether she paid Murtaza's mortgage from the pot
5 of "disputed" monies she held, Mahbob answered, "Probably, I
6 don't know. Probably. We don't know. It could come from my
7 account." Later, she testified that she could not recall where
8 the money came from.⁵ Mahbob did testify that Bilal never
9 received the \$375,000. According to her, by the time of trial,
10 the \$375,000 was exhausted paying for Murtaza's litigation and
11 living expenses and for settling a claim brought by Murtaza's
12 chapter 7 trustee.

13 **C. The Bankruptcy Court's Decision After Trial.**

14 On April 24, 2017, the bankruptcy court entered its
15 memorandum of decision after trial finding in favor of the
16 plaintiffs on their sole claim for relief.⁶ The court
17 specifically found that Murtaza made the false oaths, as

18
19 ⁵ Remarking on this testimony, the bankruptcy court
20 concluded, "To be clear, it was never established in the evidence
21 that defendant received the very same inheritance monies
22 indirectly from her sisters to sustain her household immediately
23 preceding the petition in lieu of what Bilal may have taken."

24 ⁶ The bankruptcy court disposed of all of the plaintiffs'
25 other claims for relief by dismissing them without prejudice at
26 the time of the bankruptcy court's original summary judgment
27 ruling. Because our prior decision vacated the summary judgment
28 and remanded for trial, the plaintiffs' other claims technically
were reinstated at the time of remand. Nonetheless, plaintiffs
later abandoned these other claims by not raising them in the
pretrial stipulation and order, which superseded the parties'
pleadings. As a result, the bankruptcy court's judgment on
remand on the plaintiff's § 727(a)(4)(A) claim for relief
disposed of the sole claim tried by the parties.

1 identified above, both knowingly and fraudulently. The court's
2 findings focused heavily on the omitted interest in, or claim
3 arising from, her share of the inheritance. After recounting
4 many of the same inheritance-related events highlighted above,
5 the court determined that the dispute with Bilal over her share
6 of the inheritance must have been prominent in Murtaza's mind at
7 the time she filed her bankruptcy petition. The court also
8 determined that Murtaza's various, sometimes-conflicting,
9 explanations for omitting from her schedules and SOFA both the
10 inheritance and the dispute with Bilal were not credible or were
11 not made in good faith. Among others, the court specifically
12 rejected her claim that she decided she was entitled to her
13 inheritance share after she filed bankruptcy. The court
14 similarly rejected her claim that she was too naive or
15 unsophisticated to understand that the inheritance should have
16 been disclosed in her schedules and in her SOFA.

17 The court also ruled against her on her alleged reliance on
18 the advice of her bankruptcy counsel. The court reasoned that
19 Murtaza's claimed reliance on the advice of counsel did not
20 negate her fraudulent intent because the errors and omissions
21 should have been evident to her under the circumstances. The
22 court further concluded that the other false oaths previously
23 identified in its summary judgment ruling also could not be
24 explained credibly, or in good faith, by advice of counsel or by
25 Murtaza's claimed ignorance and naivete.

26 After receiving a belated post-trial brief from Murtaza, the
27 court issued a one-page addendum to its memorandum decision. The
28 bankruptcy court reiterated its rejection of Murtaza's advice of

1 counsel argument. According to the court, the argument was not
2 made in good faith. The court emphasized that, at the time she
3 filed her bankruptcy petition and schedules, Murtaza and her
4 sisters were actively disputing Bilal's share of the inheritance.
5 For this reason, her claim that she believed and relied upon her
6 counsel's advice in omitting the inheritance and the dispute with
7 Bilal was both unjustified and not supported by the record.

8 The bankruptcy court entered its judgment against Murtaza on
9 July 25, 2017, and Murtaza timely appealed.

10 **JURISDICTION**

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

14 **ISSUE**

15 Did the bankruptcy court commit reversible error when it
16 entered judgment in favor of the plaintiffs on their
17 § 727(a) (4) (A) cause of action?

18 **STANDARDS OF REVIEW**

19 In objection to discharge appeals, we review the bankruptcy
20 court's findings of fact under the clearly erroneous standard,
21 and its conclusions of law de novo. Retz v. Samson (In re Retz),
22 606 F.3d 1189, 1196 (9th Cir. 2010) (citing Searles v. Riley
23 (In re Searles), 317 B.R. 368, 373 (9th Cir. BAP 2004)). We also
24 review de novo the application of the facts to the applicable
25 legal rules, to the extent that application requires the
26 exercise of judgment about the values animating those rules.
27 In re Retz, 606 F.3d at 1196; see also Aspen Skiing Co. v.
28 Cherrett (In re Cherrett), 873 F.3d 1060, 1066 (9th Cir. 2017)

1 ("if the bankruptcy court applied fact to law in a way that
2 requires reference to the values that animate legal principles,
3 we review it as if it were a legal finding.").

4 DISCUSSION

5 A. Applicable Legal Standards.

6 Under § 727(a)(4)(A), debtors may be denied discharge for
7 making false oaths or accounts in connection with their
8 bankruptcy cases. To obtain relief under this provision, the
9 plaintiff has the burden of proof to establish by a preponderance
10 of the evidence: "(1) the debtor made a false oath in connection
11 with the case; (2) the oath related to a material fact; (3) the
12 oath was made knowingly; and (4) the oath was made fraudulently."
13 In re Retz, 606 F.3d at 1196 (quoting Roberts v. Erhard
14 (In re Roberts), 331 B.R. 876, 882 (9th Cir. BAP 2005)).

15 The errors and omissions in Murtaza's bankruptcy schedules
16 and in her SOFA constitute false oaths for purposes of the
17 statute. In re Retz, 606 F.3d at 1196. Murtaza has not
18 challenged on appeal that she made the false oaths or that they
19 were material. Her appeal focuses exclusively on the third and
20 fourth elements set forth above: whether she made the errors and
21 omissions in her schedules and SOFA knowingly and fraudulently.
22 The false oaths were made knowingly if Murtaza made them
23 deliberately or consciously. Khalil v. Developers Sur. & Indem.
24 Co. (In re Khalil), 379 B.R. 163, 173 (9th Cir. BAP 2007), aff'd,
25 578 F.3d 1167, 1168 (9th Cir. 2009) (citing In re Roberts,
26 331 B.R. at 883). The false oaths were made fraudulently if
27 Murtaza: (1) made them, (2) knowing at that time they were false,
28 and (3) with the intent and purpose of deceiving her creditors.

1 In re Retz, 606 F.3d at 1198-99.

2 To establish a § 727(a)(4)(A) claim for relief, constructive
3 fraud is insufficient. Id. at 1196. The plaintiffs must prove
4 actual fraudulent intent. Id. But circumstantial evidence, and
5 inferences drawn from the debtor's conduct, can be used to
6 establish the requisite intent. Id. at 1199. A pattern of
7 conduct by the debtor demonstrating a reckless indifference to
8 the truth can help support the bankruptcy court's fraudulent
9 intent finding, but reckless indifference is not sufficient, by
10 itself, to constitute fraudulent intent. Id.

11 **B. Sufficiency of the Evidence.**

12 On appeal, Murtaza primarily argues that there was
13 insufficient evidence that she knowingly and fraudulently made
14 the errors and omissions. She further argues that the bankruptcy
15 court ignored her credible and uncontroverted explanations for
16 her errors and omissions. We disagree. The evidence supports
17 the bankruptcy court's findings of knowledge and intent. As the
18 bankruptcy court cogently explained, based upon the timing of the
19 ongoing dispute with her brother, Murtaza was well aware of her
20 interest in, and claim for, her inheritance share at the time she
21 reviewed and signed her bankruptcy schedules under penalty of
22 perjury. The bankruptcy court also effectively found that
23 Murtaza's various "innocent" explanations for omitting the
24 inheritance were not credible.

25 The bankruptcy court gave detailed reasons why it did not
26 believe Murtaza's claims that she omitted the inheritance as a
27 result of inadvertence, a lack of sophistication, out of
28 deference to the male members of her family, or because her

1 attorney told her to. In essence, the bankruptcy court saw the
2 omission as part of Murtaza's efforts to keep her creditors at
3 bay. While the court focused upon Murtaza's interest in the
4 inheritance, the record is clear that Murtaza was very much aware
5 of her judgment creditors' collection efforts. Indeed, her son,
6 Zaid, candidly confirmed that Murtaza was placing her paychecks
7 into his bank account to avoid collection efforts and to ensure
8 that they were able to meet their living expenses.

9 On this record, we cannot say that the bankruptcy court's
10 findings were illogical, implausible or without support in the
11 record, as would be required to overturn these findings. See id.
12 at 1196. Moreover, we must give particular deference to the
13 bankruptcy court's credibility determinations, "because the
14 bankruptcy court, as the trier of fact, had the opportunity to
15 note 'variations in demeanor and tone of voice that bear so
16 heavily on the listener's understanding of and belief in what is
17 said.'" Id. (quoting Anderson v. City of Bessemer City, N.C.,
18 470 U.S. 564, 575 (1985)).

19 In its memorandum of decision, the bankruptcy court did not
20 separately discuss Murtaza's false oaths other than the omission
21 of the inheritance. Even so, the record supports the bankruptcy
22 court's knowledge and intent findings for most of these other
23 false oaths. For instance, the debtor did not disclose her
24 interest in her son Zaid's bank account at U.S. Bank, or the fact
25 that she sometimes would cash her paychecks and deposit the cash
26 in that account to keep the funds from being levied by her
27 creditors. At the time Murtaza filed her bankruptcy petition and
28 schedules, she should have been very conscious of her children's

1 bank accounts, particularly Zaid's U.S. Bank account. Just a few
2 days before her chapter 7 filing, at the judgment debtor's exam
3 conducted by the plaintiffs, they questioned her about her
4 interest in her children's bank accounts. Yet she still claimed
5 in her SOFA that all of the money in their accounts was theirs,
6 and she did not list at all Zaid's account at U.S. Bank. On this
7 record, the bankruptcy court's knowledge and intent findings
8 regarding Murtaza's omission of her son's U.S. Bank account were
9 not clearly erroneous. Given her stated purpose in transferring
10 the funds to Zaid, even if Murtaza was not named as an account
11 holder on the account itself, her failure to disclose the funds
12 she transferred to Zaid via his U.S. Bank account could support a
13 finding that she knowingly and fraudulently made a false oath.

14 As for the Mercedes vehicle her sister Mahbob purchased,
15 this was disclosed on Murtaza's Schedule B and in her SOFA. The
16 problem was how it was disclosed. In her Schedule B, Murtaza
17 contended that she did not own the vehicle and that Mahbob was
18 both the owner and a lienholder. Both Murtaza and Mahbob
19 repeated this claim in their trial testimony even though their
20 other admissions about the vehicle contradict their ownership
21 claims. These admissions include:

- 22 • Murtaza is listed as the vehicle's registered owner on the
23 official vehicle registration form or "pink slip."
- 24 • Mahbob purchased the vehicle for Murtaza's use;
- 25 • Mahbob transferred possession of the vehicle to Murtaza; and
- 26 • Both Murtaza and Mahbob intended Murtaza to be the person
27 financially responsible for insurance, maintenance, repairs,
and any "traffic issues" that might arise.

28 It is outlandish for Murtaza and Mahbob to claim that Mahbob

1 actually owned the vehicle given everything they did to vest
2 Murtaza with every conceivable indicia of ownership. In fact,
3 there is no plausible explanation why Mahbob would be listed on
4 title as a lienholder if she actually owned the vehicle. On the
5 evidence presented, Murtaza's repeated claim that Mahbob actually
6 owned the vehicle is, at best, misguided and, at worst, a rather
7 obvious ploy by Murtaza to impede the plaintiffs' efforts to
8 enforce their judgments against the vehicle. The bankruptcy
9 court's knowledge and intent findings regarding the Mercedes Benz
10 were not clearly erroneous.⁷

11 The same is true regarding the misstatements Murtaza made
12 regarding her income, her expenses, her family contributions, and
13 her household size. Considered in isolation, it is perhaps
14 understandable (and credible) that the errors she initially made
15 in reporting these items were the result of some inadvertent
16 mistake on her part or on the part of her counsel. Nonetheless,
17 when considered against the fact that she did not amend her
18 schedules to accurately report these items, and measured against
19 the number of other errors and omissions, the record supports the
20 bankruptcy court's determination that all of these errors and
21 omissions were part of a pattern of false oaths made by Murtaza
22

23 ⁷ In discussing this reporting error, the plaintiffs and the
24 bankruptcy court focused more on the fact that Murtaza identified
25 Mahbob as the holder of a lien against the Mercedes, when in fact
26 Murtaza later admitted that Mahbob was not a creditor of hers.
27 As we have explained above, we believe that Murtaza's
28 misstatement in her Schedule B that she is not the owner of the
car is far more material and far more egregious. It also is far
more illustrative of the efforts Murtaza was willing to go to in
her attempts to impede the plaintiffs' collection efforts.

1 demonstrating Murtaza's reckless indifference to the truth. From
2 this pattern and the other circumstances surrounding Murtaza's
3 errors and omissions, the bankruptcy court reasonably could and
4 did infer Murtaza's fraudulent intent. These findings also were
5 not clearly erroneous.

6 The above discussion addresses most of the errors and
7 omissions the bankruptcy court relied on in sustaining the
8 plaintiffs' objection to Murtaza's discharge. The handful of
9 other errors and omissions (we have not addressed in this
10 discussion) were cumulative in nature. Regardless of Murtaza's
11 knowledge and intent as to those other errors and omissions, our
12 analysis demonstrates that the bankruptcy court had ample factual
13 and legal grounds to support its judgment under § 727(a)(4)(A).⁸

14 **C. Advice of Counsel Argument.**

15 Citing Hultman v. Tevis, 82 F.2d 940, 941 (9th Cir. 1936),
16 Murtaza argues on appeal that the bankruptcy court erred when it
17 rejected her argument that, in making the errors and omissions,
18

19 ⁸ Citing Agai v. Antoniou (In re Antoniou), 515 B.R. 9, 23
20 (Bankr. E.D.N.Y. 2014), the bankruptcy court indicated that the
21 burden of production shifted to Murtaza to present a credible,
22 innocent explanation for her errors and omissions once the
23 plaintiffs established the existence of the errors and omissions.
24 Considering the case in its entirety, we are convinced that the
25 bankruptcy court did not materially deviate from the correct
26 standard of proof. See generally Rule 4005; Devers v. Bank of
27 Sheridan, Montana (In re Devers), 759 F.2d 751, 754 (9th Cir.
28 1985) ("it is axiomatic that the debtor cannot prevail if he
fails to offer credible evidence after the creditor makes a prima
facie case."). The numerous errors and omissions in her
schedules and SOFA, which Murtaza admitted to making and most of
which were never corrected, as well as her numerous conflicting
statements regarding her errors and omissions, were more than
sufficient to establish the plaintiffs' prima facie case as to
all of the elements for their § 727(a)(4)(A) claim.

1 she relied on the advice of her counsel. Murtaza contends that
2 the bankruptcy court imposed on her a duty to establish far more
3 than her own good faith. According to her, the bankruptcy court
4 impermissibly required her to have sufficient expertise in
5 bankruptcy law to critically assess the merits of her attorney's
6 legal advice. Murtaza posits that this requirement is
7 inconsistent with Hultman. To support this claim, Murtaza points
8 to the language in Hultman indicating that whether the attorney's
9 advice was correct was not a prerequisite to the bankrupt's
10 advice of counsel argument. Id.

11 Generally, a debtor who relies in good faith on the advice
12 of his or her counsel lacks the intent to deceive his or her
13 creditors. First Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d
14 1339, 1343 (9th Cir. 1986) (citing Hultman, 82 F.2d at 941).⁹
15 When good faith is absent, such as when it is evident that the
16 debtor's disclosures are incorrect or incomplete, the advice of
17 counsel argument will not save the debtor from an adverse intent
18 finding. See In re Retz, 606 F.3d at 1199. "A debtor cannot,
19 merely by playing ostrich and burying his head deeply enough in
20 the sand, disclaim all responsibility for statements which he has
21 made under oath." Id. (quoting Boroff v. Tully (In re Tully),
22 818 F.2d 106, 111 (1st Cir. 1987)).

23 Here, the bankruptcy court found that Murtaza's errors and
24 omissions were evident. Based on this finding, the bankruptcy

25
26 ⁹ "Advice of counsel is not regarded as a separate and
27 distinct defense but rather as a circumstance indicating good
28 faith which the trier of fact is entitled to consider on the
issue of fraudulent intent." Bisno v. United States, 299 F.2d
711, 719 (9th Cir. 1961).

1 court effectively concluded that Murtaza could not launder her
2 errors and omissions to remove any stain of her intent to deceive
3 by sharing with her counsel Zafari an incomplete and incorrect
4 view of her assets and finances and then getting him to make the
5 final decision as to how those assets and finances should be
6 reported based on the erroneous view she knowingly and
7 intentionally gave him. These findings were supported by the
8 record, especially with regard to the inheritance, the Mercedes,
9 and her son Zaid's bank account at U.S. Bank.

10 Murtaza's reliance on Hultman is misplaced. We acknowledge
11 that Hultman is still good law and is binding on this Panel. See
12 Ellison v. JPMorgan Chase Bank, N.A (In re Ellison), Dkt. No.
13 CC-16-1328-PaTaKu, 2017 WL 3976304 (Mem. Dec.) (9th Cir. BAP
14 Sept. 8, 2017) (identifying recent panel decisions relying on and
15 interpreting Hultman). Nonetheless, Murtaza ignores a critical
16 factor evident in Hultman: there, the debtor fully disclosed to
17 his attorney all of the facts concerning the debtor's questioned
18 conduct. Hultman, 82 F.2d at 941. Here, in contrast, Murtaza
19 only disclosed to Zafari a very narrow view of her inheritance
20 and of her son Zaid's U.S. Bank account, which restricted view
21 caused him to determine that there was no need for Murtaza to
22 disclose these items. As for the Mercedes, it appears that
23 Zafari simply accepted at face value Murtaza's representation
24 that Mahbob actually owned the vehicle, and held a lien on it,
25 even though those representations were supported by neither the
26 Certificate of Title for the vehicle, nor by the details
27 regarding the Mercedes that came out during Murtaza's and
28 Mahbob's testimony at trial. On these facts, the bankruptcy

1 court's finding that Murtaza did not, in good faith, rely on the
2 advice of her counsel was not clearly erroneous.

3 **CONCLUSION**

4 For the reasons set forth above, we AFFIRM the bankruptcy
5 court's judgment denying Murtaza her discharge.

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