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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NOT FOR PUBLICATION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

<p>In re: FARID MORADI and LEEORA B. MORADI, Debtors.</p>	<p>BAP No. CC-25-1138-LCN</p>
<p>FARID MORADI; LEEORA B. MORADI, Appellants,</p>	<p>Bk. No. 2:23-bk-18088-DS</p>
<p>v.</p>	<p>Adv. No. 2:24-ap-01054-DS</p>
<p>MEHRAN JAVAHERIAN, Appellee.</p>	<p>MEMORANDUM*</p>

Appeal from the United States Bankruptcy Court
for the Central District of California
Deborah J. Saltzman, Bankruptcy Judge, Presiding

Before: LAFFERTY, CORBIT, and NIEMANN, Bankruptcy Judges.

INTRODUCTION

Farid and Leeora B. Moradi (“Debtors”) appeal the bankruptcy court’s judgment of nondischargeability under § 523(a)(2)(A).¹

* 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 Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, “Rule” references are to the Federal Rules of Bankruptcy Procedure, and “Civil Rule” references are to the Federal Rules of Civil

Prepetition, Mehran Javaherian (“Plaintiff”) lent Debtors and their companies money, the repayment of which funds Debtors personally guaranteed. But Debtors failed timely to repay the loans, and Plaintiff obtained a judgment for breach of the guaranty agreements in state court.

After Debtors learned that the state court would rule against them, an alleged insider recorded two deeds of trust against Debtors’ residence which, coupled with other liens and Debtors’ claim of a homestead exemption, completely consumed any equity in the property. Subsequently, Debtors filed for bankruptcy protection. Plaintiff, in turn, filed a complaint requesting nondischargeability of the state court judgment under § 523(a)(2)(A).

The entirety of Plaintiff’s claim under § 523(a)(2)(A) rested on his contention that Debtors fraudulently transferred the deeds of trust to a nondebtor party. Relying on the Supreme Court’s decision in *Husky International Electronics, Inc. v. Ritz*, 578 U.S. 355 (2016) (“*Husky*”), Plaintiff argued that Debtors’ participation in a fraudulent conveyance scheme established liability under § 523(a)(2)(A). The bankruptcy court agreed with Plaintiff, holding that *Husky* mandated nondischargeability of the state court judgment.

We disagree. To establish nondischargeability of a claim under § 523(a)(2)(A) based on an alleged fraudulent conveyance, a plaintiff must

demonstrate not only the existence of “actual fraud,” but also a causal connection between the fraud and the debt the plaintiff seeks to except from the discharge. While *Husky* provides that actually fraudulent conveyances may form the basis of a § 523(a)(2)(A) claim because such transfers qualify as “actual fraud,” and thus may satisfy one part of the § 523(a)(2)(A) determination, the case did not absolve plaintiffs from the obligation also to demonstrate causation, i.e., to show that money or property was “obtained by” the fraudulent act.

Plaintiff failed to establish such causation. Specifically, the debt Plaintiff sought to discharge arose from Debtors’ breach of guaranty agreements, not the subsequent fraudulent conveyances to a third party. In fact, Debtors did not obtain any money or property or services from the fraudulent conveyance, a requirement under § 523(a)(2)(A). And while Debtors may otherwise be subject to liability under § 523(a)(2)(A) based on alternative theories, Plaintiff has neither alleged nor proven any such theories nor articulated any damages that may be recovered from Debtors, as transferors.

We VACATE the bankruptcy court’s judgment and REMAND this matter for further proceedings consistent with this decision.

FACTS²

A. Prepetition Events

The facts relevant to our disposition are straightforward and undisputed. In 2010, Plaintiff invested \$987,500 in two of Mr. Moradi's companies and followed these investments with two loans to Debtors and/or their companies totaling \$450,000. Plaintiff and Debtors memorialized their obligations regarding these transfers in a guaranty agreement, through which Debtors personally guaranteed the repayment of the total amount of \$1,437,500 to Plaintiff.

Debtors did not timely repay Plaintiff. Plaintiff filed a lawsuit against Debtors in state court asserting claims for, among other things, breach of the guaranty agreement. On October 16, 2019, the state court granted Plaintiff's motion for summary judgment on the breach of guaranty claim.

On October 30, 2019, i.e., two weeks later, two deeds of trust were recorded in favor of Mehrdad Roshandel (the "DOTs"). Mr. Roshandel appears to be an insider of Debtors. The DOTs encumbered Debtors' real property located on Lindbrook Drive in Los Angeles (the "Lindbrook

² We have taken judicial notice of the bankruptcy court docket and various documents filed through the electronic docketing system. *See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.)*, 887 F.2d 955, 957-58 (9th Cir. 1989); *Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

Property”) and purportedly secured two promissory notes in the amounts of \$260,000 and \$542,500 in favor of Mr. Roshandel.³

Debtors thereafter appealed the state court judgment. After the appellate court vacated the initial judgment, the state court entered a second judgment in Plaintiff’s favor in the total amount of \$2,180,728.88 (the “State Court Judgment”). The State Court Judgment is final.

B. Debtors’ Bankruptcy Case and the Adversary Proceeding

In December 2023, Debtors filed a chapter 7 petition. Plaintiff promptly filed a proof of claim against the estate based on the State Court Judgment.

In their schedules and statements, Debtors valued the Lindbrook Property at \$2.9 million. Aside from the two DOTs totaling \$802,500 in favor of Mr. Roshandel, Debtors identified additional liens against the Lindbrook Property totaling \$1,496,000 and claimed a homestead exemption in the Lindbrook Property in the amount of \$601,500. As a result, Debtors’ schedules indicated that the Lindbrook Property lacked any equity.

In March 2024, Plaintiff filed a complaint against Debtors requesting nondischargeability of the State Court Judgment under § 523(a)(2)(A). The

³ One of the promissory notes and its related DOT are dated October 29, 2019, whereas the other promissory note and its related DOT are dated June 15, 2016. The parties dispute the authenticity of the dates on these documents. Nevertheless, there is no dispute that both DOTs were recorded on October 30, 2019, i.e., shortly after the state court granted Plaintiff’s motion for summary judgment.

complaint was based exclusively on Plaintiff's theory that the recordation of the DOTs constituted a fraudulent transfer, and that the existence of a fraudulent transfer hindering Plaintiff's ability to collect on the State Court Judgment rendered the entirety of the debt owed to Plaintiff nondischargeable under § 523(a)(2)(A). The complaint made clear that the legal basis of Plaintiff's theory was the Supreme Court's decision in *Husky*, 578 U.S. 355.

Later, Plaintiff moved for summary judgment on its sole claim of nondischargeability based on fraudulent transfers (the "MSJ"). In the MSJ, Plaintiff primarily set forth evidence and legal arguments related to fraudulent conveyances; a significant portion of the MSJ was dedicated to proving that the recordation of the DOTs qualified as an actually fraudulent transfer to Mr. Roshandel.⁴ To connect these arguments to their nondischargeability claim, Plaintiff briefly referenced *Husky* and stated, without much analysis, that *Husky* supported his theory that the existence of a fraudulent transfer established actual fraud for purposes of § 523(a)(2)(A).

⁴ Briefly, the basis of Plaintiff's fraudulent conveyance theory was that the DOTs and related promissory notes were illusory because: (i) the notes contained no terms of repayment; and (ii) one of the notes was premised on past consideration. Plaintiff also argued that the authenticity of the DOTs was suspect because the DOTs were executed shortly after the state court issued an adverse ruling against Debtors. Debtors contested these assertions in their opposition to the MSJ.

In February 2025, the bankruptcy court held a hearing on the MSJ and issued its oral ruling (the “Ruling”). In the Ruling, the bankruptcy court held that *Husky* was “clearly” and “squarely applicable” to the facts of this case.

Specifically, the court held that Plaintiff established that Debtors fraudulently conveyed the DOTs to Mr. Roshandel. Although the Ruling is brief, it appears the bankruptcy court primarily relied on, as the court put it, the “breathtaking” timing of the recordation of the DOTs, i.e., two weeks after the state court issued a ruling against Debtors.

The bankruptcy court concluded that, because Plaintiff had met his burden of proving that the DOTs were fraudulently transferred, the debt owed to Plaintiff was also nondischargeable under § 523(a)(2)(A). In other words, the bankruptcy court seemingly ruled that, under *Husky*, the establishment of a fraudulent conveyance also established nondischargeability under § 523(a)(2)(A).

In accordance with its Ruling, the court entered a judgment against Debtors excepting the entirety of the State Court Judgment from discharge under § 523(a)(2)(A). Debtors timely appealed.⁵

⁵ Recognizing that only the chapter 7 trustee (the “Trustee”) had standing to avoid the transfers of the DOTs, the bankruptcy court denied Plaintiff’s additional request in the MSJ to avoid the transfers of the DOTs. After initiation of this appeal, the Trustee filed a motion to sell the non-exempt portion of the Lindbrook Property to Debtors (the “Motion to Sell”). The Motion to Sell reflected the estate’s compromise with Debtors with respect to Debtors’ transfers of the DOTs. Rather than litigate a fraudulent transfer action against Debtors, the Trustee agreed to accept Debtors’

JURISDICTION

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

ISSUE

Did the bankruptcy court err in granting the MSJ?

STANDARD OF REVIEW

We review de novo a bankruptcy court's decision to grant summary judgment and except a debt from discharge under § 523. *Zuckerman v. Crigler (In re Zuckerman)*, 613 B.R. 707, 713 (9th Cir. BAP 2020).

Under de novo review, "we consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014).

DISCUSSION

In concluding that Debtors fraudulently conveyed the DOTs, the bankruptcy court emphasized the "breathtaking" timing of the transfers, impliedly concluding that the timing of the transfers qualified as a significant badge of fraud that established Debtors' intent.⁶ On appeal, the

payment of \$496,000 into the estate. The bankruptcy court later entered an order granting the Motion to Sell.

On appeal, Debtors filed a request for judicial notice asking the Panel to take judicial notice of the Motion to Sell and the bankruptcy court's order granting the same. BAP Dkt. 18. Plaintiff did not object to this request. Accordingly, we GRANT Debtors' request for judicial notice.

⁶ Pursuant to Cal. Civ. Code § 3439.04(b)(10), one of the badges of fraud courts consider when determining intent is "[w]hether the transfer occurred shortly before or shortly after a substantial debt was incurred."

parties largely ignore the court's findings regarding timing, instead focusing their arguments on whether there was a genuine dispute of material fact with respect to the validity of the DOTs and related promissory notes, and whether such validity or lack thereof established that Debtors acted with actual fraudulent intent in issuing the DOTs. Civil Rule 56(a); Rule 7056.⁷

To be sure, the recordation of the DOTs two weeks after Debtors incurred a substantial debt to Plaintiff was indeed "breathtaking." Whether that fact alone sufficiently establishes intent at the summary judgment stage is an issue we reserve for future determination. For purposes of this appeal, we are compelled to remand not because Debtors lacked fraudulent intent in the conveyance of the DOTs, but because Plaintiff failed otherwise to establish a claim under § 523(a)(2)(A).

The court relied exclusively on *Husky* to conclude that Plaintiff met his burden of proving a claim under § 523(a)(2)(A). But *Husky* involved only one facet of the overall § 523(a)(2)(A) analysis: whether actually fraudulent transfers qualify as the type of "actual fraud" that might form the basis of a § 523(a)(2)(A) claim. While this is clearly a crucial component of establishing a § 523(a)(2)(A) claim, Plaintiff disregarded the other

⁷ It is unclear if the bankruptcy court considered the validity of the DOTs as a basis for concluding that Debtors acted fraudulently. On remand, assuming Plaintiff is able to state a cognizable claim for nondischargeability based on fraudulent transfers, the bankruptcy court may, in its discretion, allow the parties to set forth new arguments and evidence regarding the applicable badges of fraud and actual fraudulent intent.

fundamental requirements of proving such a claim, namely, whether the damages requested by Plaintiff arose from the actual fraud.

The facts presented to the court did not demonstrate that the damages owed by Debtors were proximately caused by the fraudulent transfers. Instead, the debt Plaintiff sought to except from discharge arose from Debtors' breach of the guaranty agreements, which predated the fraudulent transfers.

While the fraudulent act here — Debtors' conveyance of the DOTs — may have removed \$802,500 of value from assets Plaintiff may have been able to pursue prepetition, the damages arising from that act are different from the preexisting debt owed to Plaintiff. Nor did Plaintiff demonstrate that any money or "value" Debtors received from Plaintiff was "obtained by" fraud, as is required for a claim under § 523(a)(2)(A). Instead, the court essentially concluded that Debtors' subsequent fraud transformed the State Court Judgment into a nondischargeable debt.

It is worth emphasizing that our conclusion herein does not foreclose any avenues of relief for defrauded victims. As the bankruptcy court itself recognized, upon Debtors' filing of a bankruptcy case, the Trustee had standing to avoid and recover fraudulent transfers for the benefit of the estate. Assuming that role, the Trustee negotiated a \$496,000 settlement with Debtors to be used for the benefit of creditors like Plaintiff. Given that the goal of fraudulent transfers is to shield assets, the recovery of such assets or their value for distribution to creditors is an appropriate remedy.

In addition, as we discuss further below, creditors in Plaintiff's position *may* be able to except from discharge damages arising from a fraudulent transfer in certain contexts. To do so, however, creditors must satisfy all of the statutory requirements of § 523(a)(2)(A).

For all the reasons discussed below, Plaintiff did not meet his burden of proving a claim under § 523(a)(2)(A).

A. Plaintiff did not establish a claim under § 523(a)(2)(A).

Section 523(a)(2)(A) excepts from the discharge “any debt . . . for money, property, services, or an extension, renewal, or refinancing of credit, *to the extent obtained by . . . false pretenses, a false representation, or actual fraud . . .*” (Emphases added). Here, Plaintiff's complaint and the subsequent MSJ rest entirely on the contention that Debtors' fraudulent conveyances were a type of “actual fraud” that transformed the State Court Judgment into a nondischargeable debt under § 523(a)(2)(A).

Thus, for purposes of this appeal, the plain language of § 523(a)(2)(A) requires consideration of at least two requirements of that statute.⁸ First, we must assess whether Debtors committed “actual fraud” by transferring equity in the Lindbrook Property to Mr. Roshandel. Second, we must determine whether the subject debt — the State Court Judgment — arose from Debtors' receipt of money or property “obtained by” the fraudulent

⁸ In their appellate briefs, Debtors also argue that Plaintiff failed to prove reliance. While reliance is an element of a § 523(a)(2)(A) claim based on misrepresentations, it is not a relevant concept for a § 523(a)(2)(A) claim based on a fraudulent transfer. *See Husky*, 578 U.S. at 365-66.

conveyances. In other words, even if Debtors committed “actual fraud,” we must analyze whether the subject debt was incurred by fraud. *Field v. Mans*, 516 U.S. 59, 78 (1995) (Ginsburg, J., concurring) (referring to the “obtained by” question as a causation issue); *see also O’Brien v. Montoya (In re Torres-Montoya)*, 584 B.R. 56, 62 n.7 (Bankr. D.N.M. 2018) (collecting cases highlighting that only damages that are proximately caused by fraud are nondischargeable).

The bankruptcy court relied exclusively on *Husky* to satisfy both prongs. But, as we discuss below, *Husky* mostly addressed the first question, i.e., whether fraudulent conveyances qualify as an “actual fraud” under § 523(a)(2)(A). Although the Supreme Court briefly discussed causation, that issue was not before the Court and, in any event, the Court’s commentary regarding causation undermines Plaintiff’s claim. In addition, contrary to the bankruptcy court’s conclusion, the facts in *Husky* are not analogous to the facts of this case.

There are no in-circuit cases discussing the causation requirement in a § 523(a)(2)(A) claim based on a fraudulent transfer. But, post-*Husky*, the Eleventh Circuit Court of Appeals thoroughly addressed the legal standard for causation in a case with analogous facts. *SE Prop. Holdings, LLC v. Gaddy (In re Gaddy)*, 977 F.3d 1051 (11th Cir. 2020). Although *Gaddy* is not binding on this Panel, we find the reasoning therein persuasive.

Prior to our analysis of Plaintiff’s claim, it is worth discussing both *Husky* and *Gaddy* in detail.

1. *Husky*

In *Husky*, the Supreme Court was tasked with deciding whether a fraudulent conveyance qualified as “actual fraud” for purposes of § 523(a)(2)(A). *Husky*, 578 U.S. at 357. The *Husky* plaintiff sold its products to Chrysalis Manufacturing Corp. (“Chrysalis”), which incurred a six-figure debt owed to the plaintiff. *Husky*, 578 U.S. at 357. Eventually, Daniel Lee Ritz, Jr., who owned 30% of Chrysalis stock and served as its director, transferred a significant portion of Chrysalis’ assets to himself. *Id.* at 357-58.

Ritz later filed for bankruptcy protection, after which time the plaintiff filed a nondischargeability complaint against him under § 523(a)(2)(A), arguing that Ritz’s transfers qualified as “actual fraud” for purposes of the statute. *Id.* at 358. Both the trial court and the Fifth Circuit concluded that § 523(a)(2)(A) did not contemplate the type of fraud asserted by plaintiff, holding that a claim under § 523(a)(2)(A) required a misrepresentation. *Id.* at 358-59.

The Supreme Court reversed. *Id.* at 359. In reaching its conclusion, the Court relied on a plain textual reading of § 523(a)(2)(A) as well as relevant congressional history. *Id.* at 359-60. Noting that a prior version of § 523(a)(2)(A) excepted only debts obtained by “false pretenses and false representations” from discharge, the Court found Congress’s addition of “actual fraud” to the language of the current statute notable. *Id.* Given that Congress generally does not amend statutes to add superfluous language,

the Court inferred that “actual fraud” must encompass conduct beyond “false representations.” *Id.* at 360.

Relying on the long history of fraudulent transfer laws, dating as far back as the Statute of 13 Elizabeth, the Court drew two conclusions: first, that a fraudulent transfer historically qualified as a type of “actual fraud” and, second, that a fraudulent conveyance claim does not require proof of an affirmative misrepresentation. *Id.* at 361-62. Thus, the Court reasoned, a fraudulent transfer qualifies as an “actual fraud” that may form the basis of a § 523(a)(2)(A) claim. *Id.*

As relevant to this appeal, the Court briefly addressed causation when it rejected Ritz’s argument that fraudulent conveyances can never form the basis of a § 523(a)(2)(A) claim because debtors who fraudulently transfer assets do not obtain money by their fraud; instead, such debtors transfer money away to third parties. *Id.* at 364-65. The Court quickly disposed of this argument by observing that debtors sometimes *receive* fraudulent transfers, as Ritz did here:

It is of course true that the transferor does not “obtain” debts in a fraudulent conveyance. But the recipient of the transfer—who, with the requisite intent, also commits fraud—can “obtain” assets “by” his or her participation in the fraud. If that recipient later files for bankruptcy, any debts traceable to the fraudulent conveyance will be nondischarg[e]able under § 523(a)(2)(A). Thus, at least sometimes a debt “obtained by” a fraudulent conveyance scheme could be nondischargeable under § 523(a)(2)(A). Such circumstances may be rare because a person who receives fraudulently conveyed assets is not

necessarily (or even likely to be) a debtor on the verge of bankruptcy, but they make clear that fraudulent conveyances are not wholly incompatible with the “obtained by” requirement.

Id. at 365 (citation modified).⁹

As is evident from this paragraph, the Court did not obviate § 523(a)(2)(A)’s “obtained by” requirement or otherwise dispute that causation is a necessary element of a § 523(a)(2)(A) claim based on fraudulent conveyances. Rather, the Court simply observed that causation does not present a problem in *every* nondischargeability action based on a fraudulent conveyance because, for instance, debtors sometimes receive fraudulent conveyances as the transferee, and thus obtain money by participating in the fraudulent scheme.

2. *Gaddy*

Unlike *Husky*, a main issue in *Gaddy* was whether the debtor’s participation in a fraudulent transfer scheme, as the *transferor*, satisfied the causation requirement of § 523(a)(2)(A). *Gaddy*, 977 F.3d at 1056-58. In *Gaddy*, the plaintiff’s predecessor, a bank, made two business loans to a company that debtor-defendant Jerry DeWayne Gaddy personally

⁹ The Court did not determine whether the facts before it satisfied the “obtained by” requirement; the Court acknowledged the plaintiff’s argument that Ritz “was both the transferor and the transferee in his fraudulent conveyance scheme” but noted that the Court would “take no position on that contention” and leave it for the Fifth Circuit “to decide on remand whether the debt to [the plaintiff] was ‘obtained by’ Ritz’ asset-transfer scheme.” *Id.* at 365 n.3.

guaranteed. *Gaddy*, 977 F.3d at 1054. After several missed payments on these loans, the bank warned Gaddy of a potential default. *Id.*

Less than two weeks after this warning, Gaddy transferred several of his assets to his wife, his daughter, and/or a newly formed limited liability company controlled by Gaddy and his family. *Id.* After defaults on both loans, the bank sued Gaddy in state court for breach of the guaranties. *Id.* The state court then entered a \$9.1 million judgment against Gaddy. *Id.*

Gaddy later filed for bankruptcy protection. *Id.* Subsequently, the plaintiff filed an adversary proceeding describing the allegedly fraudulent transfers made by Gaddy, noting that the transfers deprived the plaintiff of assets that could have been used to satisfy the \$9.1 million judgment, and requesting nondischargeability under § 523(a)(2)(A) and (a)(6) based on these allegations. *Id.*

The bankruptcy court dismissed the adversary proceeding, concluding that the claim under § 523(a)(2)(A) failed because the plaintiff “did not contend that the underlying debt from the guaranties was obtained by fraud or was anything other than a standard contract debt.” *Id.* at 1055.¹⁰

On appeal, the Eleventh Circuit affirmed. *Id.* at 1054. The *Gaddy* court first reiterated the basic causation requirement inherent in § 523(a)(2)(A)’s plain language and as long-ago articulated by the Supreme Court. *Id.* at

¹⁰ The court also dismissed the plaintiff’s § 523(a)(6) claim for similar causation issues. *Gaddy*, 977 F.3d at 1055.

1056 (citing *Cohen v. de la Cruz*, 523 U.S. 213, 218 (1998) (section 523(a)(2)(A) “prevents discharge of ‘any debt’ respecting ‘money, property, services, or . . . credit’ that the debtor has fraudulently obtained”). In concluding that the plaintiff did not adequately allege causation, the court stated:

[The plaintiff] does not—and cannot—argue that Gaddy or the entity whose debt he guaranteed fraudulently obtained money or property from [the plaintiff’s] predecessor. A state court awarded [the plaintiff] a judgment on its ordinary breach of contract claim, and that judgment makes no findings of fraud. The only fraud that [the plaintiff] alleges—Gaddy’s conveyances of real and personal property—happened years after Gaddy incurred the debt by signing the guaranties. The money that the bank loaned is obviously not traceable to those later conveyances.

Id.

Notably, the Eleventh Circuit rejected the plaintiff’s argument that *Husky* altered § 523(a)(2)(A)’s causation requirement. *Id.* at 1056-58.

Drawing a factual distinction from *Husky*, the *Gaddy* court stated that the debt in *Husky* appeared to have been created from the fraudulent transfer itself, whereas the debt owed by Gaddy predated his fraudulent transfers.

Id. As aptly stated by the court: the plaintiff’s “assertions fail not because Gaddy did not engage in ‘actual fraud’ by conveying his assets but because the . . . loans were not ‘obtained by’ fraud as required for exemption under § 523(a)(2)(A).” *Id.* at 1058. Stated another way, a plaintiff must satisfy the “obtained by” requirement even if they prove that the debtor engaged in “actual fraud.”

3. The record does not establish that the debt owed to Plaintiff was “obtained by” actual fraud.

Pursuant to these authorities, whether a debtor committed “actual fraud” is a distinct issue from the question of causation. Here, the bankruptcy court, relying exclusively on *Husky*, essentially collapsed the separate prongs of § 523(a)(2)(A) into one by holding that the establishment of a fraudulent transfer automatically established a claim under § 523(a)(2)(A), without addressing the separate requirement of causation.¹¹

But, as highlighted above, *Husky* primarily addressed whether fraudulent conveyances qualify as “actual fraud,” i.e., only one prong of the § 523(a)(2)(A) analysis. With respect to the second prong of causation, *Husky* is only minimally helpful.

In addition, contrary to the bankruptcy court’s conclusion, *Husky* is also factually distinguishable from this case. The debtor in *Husky* received money by transferring assets from Chrysalis to himself, and thus obtained money by operation of his fraudulent transfer. In other words, the *Husky* debtor was a transferee, whereas Debtors are transferors that did not receive money on account of their fraud.

¹¹ Post-*Husky*, courts have emphasized the requirement to prove causation by designating causation as an element of a fraudulent conveyance-based § 523(a)(2)(A) claim. See, e.g. *PRN Real Est. & Invs., Ltd. v. Cole*, 85 F.4th 1324, 1346–47 (11th Cir. 2023) (under *Husky* and *Gaddy*, creditors “must show that (a) the bankruptcy debtor obtained money, property, or services by actual fraud; and, (b) the debt to be excepted resulted from the debtor’s fraudulent receipt”); *In re Torres-Montoya*, 584 B.R. at 61-62 (“Three elements seem indisputable: there must be a valid debt; the debtor must have committed actual fraud; and the debt must have ‘arisen from’ the actual fraud.”).

The facts in *Gaddy* closely mirror the facts here: Debtors became indebted to Plaintiff pursuant to the loan and guaranty agreements, the breach of which formed the basis of the State Court Judgment. Plaintiff did not contend that Debtors committed fraud in connection with receiving money pursuant to these agreements. Rather, the purported fraud occurred *after* the indebtedness when Debtors conveyed the DOTs. That transfer may have yielded a *different* debt, as we discuss in our damages section below, but it bore no relation to the debt Plaintiff claimed against the estate or sought to except from the discharge.

During oral arguments, Plaintiff attempted to demonstrate causation by arguing that, even if Debtors did not receive money or value from the subject transfers, Debtors nevertheless received a benefit by shielding their assets from creditors. Referencing the Ninth Circuit Court of Appeals' decision in *Muegler v. Bening*, Plaintiff asserted that Debtors' receipt of a benefit was enough to establish that Debtors "obtained" something through their fraud. 413 F.3d 980 (9th Cir. 2005).

But that is not the conclusion the Ninth Circuit reached in *Muegler*. As relevant to this appeal, the *Muegler* court simply held that a claim under § 523(a)(2)(A) does not require a showing that a debtor receives a direct or indirect benefit from his or her fraudulent activity. *Id.* at 982-84. The Court of Appeals did not otherwise nullify the statutory requirement that money or value was obtained via fraud, a mandate enshrined by Congress in the plain language of § 523(a)(2)(A).

In fact, the *Muegler* holding aligns with the Supreme Court’s holding in *Husky*. The Court in *Husky* left open the possibility that a transferee of a fraudulent transfer might be liable under § 523(a)(2)(A) because a transferee obtains money by operation of a fraud. But transferees of fraudulent transfers do not necessarily receive a direct or indirect benefit, especially where the transferee holds the transferred asset in name only; instead, fraudulent transfers often benefit the *transferor* by allowing the transferor to shield his or her assets from creditors while still exerting control over the asset. In such a case, *Muegler* and *Husky* allow creditors to assert a claim of nondischargeability against the transferee, even if the transferee was not the real beneficiary of the transfer.

Those are not the facts before us. Plaintiff did not make this argument in the MSJ, and nothing in *Muegler* excuses a creditor’s burden to demonstrate causation. Whether or not Debtors received a benefit from the fraudulent transfer, Plaintiff was required to show that Debtors obtained money or value or services as a result of the fraud. The relevant debt here – the State Court Judgment – did not arise from the fraudulent conveyance and, consequently, Plaintiff failed to establish any causation between the subject debt and the alleged fraud.

B. Plaintiff has not established a claim based on imputation.

Post-*Husky*, certain courts interpreted the case as creating a bright line rule that a transferor of a fraudulent conveyance can never be liable under § 523(a)(2)(A). *See Cole*, 85 F.4th at 1346–47 (section 523(a)(2)(A) “can

only apply to the recipient of a fraudulent transfer because the transferor did not ‘obtain’ money, property, or services, and his debt necessarily resulted from an earlier event’); *SE Prop. Holdings, L.L.C. v. Green (In re Green)*, 968 F.3d 516, 521 n.13 (5th Cir. 2020) (“Here, [the debtor] is the transferor, not the recipient. Section 523(a)(2)(A) is thus inapplicable.”).

While it is true that transferors do not “obtain” money or property, and thus a direct claim under § 523(a)(2)(A) against a transferor would fail for lack of causation, the Supreme Court has opened other doors to liability under § 523(a)(2)(A). *Bartenwerfer v. Buckley*, 598 U.S. 69 (2023).

In *Bartenwerfer*, the Supreme Court held that a debt may be excepted from the discharge pursuant to § 523(a)(2)(A) even if the debtor was not the party that committed fraud. *Id.* at 74-81. Yet, the Court specified that in such cases, there must be a special relationship between the debtor and the fraudulent party (e.g., under partnership or agency law) to hold the debtor liable under § 523(a)(2)(A). *Id.* at 82-83.

Although Plaintiff does not directly set forth an imputation theory à la *Bartenwerfer*, Plaintiff asserts in his brief that *Mr. Roshandel*, as transferee, harbored fraudulent intent. Plaintiff does not articulate why Mr. Roshandel’s intent is relevant to a nondischargeability action against Debtors; after all, Mr. Roshandel is neither a defendant in this action nor a debtor subject to the reach of § 523(a)(2)(A). Nevertheless, a generous interpretation of Plaintiff’s assertions regarding Mr. Roshandel’s intent is

that Plaintiff believes Mr. Roshandel's liability as a transferee of a fraudulent conveyance should be imputed onto Debtors.

As a preliminary matter, Plaintiff did not submit any evidence with respect to Mr. Roshandel's intent and/or participation in the conveyance of the DOTs. Having failed to present the bankruptcy court with any relevant evidence or argument on imputation, we decline to adjudicate these issues on appeal.

Be that as it may, given Plaintiff's discussion of non-party, non-debtor Mr. Roshandel's intent, we briefly discuss imputation as a basis for *transferor* liability under § 523(a)(2)(A).

Bartenwerfer involved a debtor innocent of fraudulent intent; here, Plaintiff asserts that Debtors harbored fraudulent intent in connection with the transfers of the DOTs. *Bartenwerfer* nevertheless presents a wrinkle in the position taken by certain courts that transferors of a fraudulent conveyance cannot be liable under § 523(a)(2)(A).

To use the matter before us as an example, if Plaintiff:

(i) demonstrated that Mr. Roshandel received money or property as a transferee by committing actual fraud (i.e., harboring the requisite fraudulent intent); (ii) proved damages proximately caused by this fraud; and (iii) established a theory of liability, such as under agency or partnership law, that imposed liability on Debtors for Mr. Roshandel's fraudulently obtaining money or property, then Plaintiff may have

succeeded in holding Debtors liable under § 523(a)(2)(A), even if Debtors were the transferors of the conveyance.

Obviously, these are significant evidentiary and legal hurdles, and Plaintiff did not overcome any of them. For instance, although Plaintiff argued before the bankruptcy court and this Panel that Mr. Roshandel harbored fraudulent intent, the record does not reflect any evidence that would support that argument, and the bankruptcy court (understandably) made no findings or conclusions with respect to Mr. Roshandel's intent.

Moreover, as further discussed below, Plaintiff did not articulate any damages resulting from the fraudulent conveyance. Instead, Plaintiff requested nondischargeability of a debt predating the fraud. Finally, Plaintiff did not present any theories that would impute Mr. Roshandel's liability as a transferee onto Debtors.

Thus, while we disagree with the blanket statement made by some courts that transferors of fraudulent conveyances can *never* be held liable under § 523(a)(2)(A), we observe that Plaintiff has not yet presented any evidence or articulated any legal theories that would impose liability on Debtors. On remand, the bankruptcy court is free to consider evidence and arguments on any such evidence and/or theories.

C. The bankruptcy court's calculation of damages was in error.

To the extent a plaintiff successfully establishes liability on a fraudulent conveyance-based § 523(a)(2)(A) claim, we believe it is worth focusing on the appropriate damages that may flow from that claim. As we

discussed above, in this case, the bankruptcy court excepted the entirety of the State Court Judgment from discharge even though the damages memorialized in that judgment bore no relation to Debtors' fraud. But if Plaintiff could overcome the causation and liability obstacles outlined above, what type of damages might Plaintiff recover?

Under California law,¹² a creditor that proves a fraudulent transfer is generally limited to a money "judgment for the value of the asset transferred" against the transferee.¹³ Cal. Civ. Code § 3439.08(b)(1). This is sound: damages based on the value of the transferred asset directly remedy the harm caused by a fraudulent transfer, i.e., the shielding of an asset to prevent collection of that asset by a creditor.

These damages also comport with the causation requirement of § 523(a)(2)(A) because the money obtained by the fraud is the receipt of the transferred asset and the value thereof, not the amount of any preexisting judgment. And, as illustrated by this case, the value of a transfer does not necessarily mirror the value of the preexisting judgment. Here, Debtors transferred \$802,500 in equity to Mr. Roshandel, whereas they owed Plaintiff \$2,180,728.88 pursuant to the State Court Judgment. As a result, the harm suffered by Plaintiff respecting the fraudulent transfer was the

¹² The subject transfers occurred in California and Plaintiff's complaint employs California law with respect to its fraudulent transfer arguments.

¹³ Or, potentially, against a transferor liable by imputation in accordance with *Bartenwerfer*.

inability to access \$802,500 in equity that may have been used partially to satisfy the State Court Judgment.

Of course, as the Supreme Court has held, there may be additional damages *arising from the fraudulent conduct* that also are nondischargeable. *See Cohen*, 523 U.S. at 218 (“Once it is established that specific money or property has been obtained by fraud, however, ‘any debt’ arising therefrom is excepted from discharge.”).

Cohen helpfully illustrates the difference between money obtained by fraud and the debt arising from that fraud. In *Cohen*, the debtor obtained \$31,382.50 in excess rents, a fraudulent act under New Jersey consumer protection laws. *Id.* at 215. Under New Jersey law, however, perpetrators of such fraud were subject to treble damages plus reasonable attorneys’ fees and costs. *Id.* at 215-16. The Court concluded that even though the money actually obtained by the debtor amounted to \$31,382.50, the additional treble damages and attorneys’ fees were part of the overall liability arising from the fraud. *Id.* at 219-20.

Here, Plaintiff did not allege any additional damages. All the Panel can glean from the record is that the conveyances of the DOTs harmed Plaintiff to the tune of \$802,500, based on the value of the recorded DOTs. On remand, assuming Plaintiff is able to prove liability in the first place, Plaintiff may allege any additional damages *arising from the fraudulent conduct* and the bankruptcy court may consider the issue anew.

CONCLUSION

For the reasons set forth above, we VACATE the bankruptcy court's judgment and REMAND this matter to the bankruptcy court for further proceedings consistent with this decision.