

OCT 22 2026

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT**ORDERED PUBLISHED****UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re: JASON MICHAEL EATMON and CHRISTINE ANN EATMON, Debtors.	BAP No. EC-25-1128-SBL
JASON MICHAEL EATMON, Appellant,	Bk. No. 22-22625
v. DANIEL LOCKWOOD; ROSEANNE LOCKWOOD, Appellees.	Adv. No. 23-02086
	OPINION

Appeal from the United States Bankruptcy Court
for the Eastern District of California
Ronald H. Sargis, Bankruptcy Judge, Presiding

APPEARANCES

Appellant Jason Michael Eatmon argued pro se; Jamie P. Dreher of Downey Brand LLP argued for appellees.

Before: SPRAKER, BRAND, and LAFFERTY, Bankruptcy Judges.

SPRAKER, Bankruptcy Judge:

INTRODUCTION

Chapter 7 debtor Jason Michael Eatmon appeals from a judgment after trial denying him a discharge under § 727(a)(2)(A) and (B)

and (a)(4)(A).¹ The bankruptcy court denied the discharge based on its finding that Jason knowingly and fraudulently omitted from his schedules a contract to write a book that was never completed.² Jason challenges the court's factual finding that he fraudulently intended to conceal his book contract rights.

This appeal raises a question as to the relationship between a court's general credibility findings and the specific finding of fraudulent intent sufficient to deny the debtor a discharge under § 727(a)(2) and (4). The bankruptcy court inferred that Jason fraudulently omitted the book contract from his schedules based on its findings that Jason's testimony *on other issues* lacked credibility.

We are well aware of the significant deference afforded trial courts on matters of credibility. We are equally aware that when intent hinges on the individual's credibility, such an intent finding generally is entitled to similar deference. Nonetheless, there is no temporal or causal relationship between the subject matter of the court's credibility findings and its fraudulent intent finding. We publish this decision to emphasize that in the context of § 727(a)(2) and (4), a finding of fraudulent intent cannot be based

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “Local Rule” references are to the Local Bankruptcy Rules for the Eastern District of California.

² We refer to the Eatmons and the appellees, the Lockwoods, individually by their first names for ease of reference. No disrespect is intended.

solely on findings that the debtor lacked credibility generally and unrelated to the specific fraudulent activity alleged. To hold otherwise would effectively excise the requirement of actual fraudulent intent from the statute.

The bankruptcy court's fraudulent intent finding was based on an inference that the court could not reasonably or permissibly draw from other inferences and from the facts in the record. Consequently, the court's fraudulent intent finding was clearly erroneous. *See United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). Therefore, denial of Jason's discharge under § 727(a)(2) and (4) must be REVERSED.

FACTS³

A. Prepetition litigation and events leading up to the Eatmons' bankruptcy filing.

The litigation between the parties originated from a management dispute involving an information technology business known as Development Group, Inc. ("DGI"). Daniel Lockwood is DGI's president. From roughly 2009 to 2019, Jason served as DGI's Vice President of Sales and Director of Business Development. Each held a 25% ownership interest in Development Group Holdings, LLC—DGI's parent company. Their spouses Roseanne and Christine held the other 25% shares, respectively.

³ We exercise our discretion, when appropriate, to take judicial notice of documents electronically filed in the underlying bankruptcy case and adversary proceeding. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

Discussions for the Lockwoods to buy the Eatmons' shares of the parent company began in 2018. But those negotiations were temporarily sidetracked when Daniel suspended Jason from his DGI employment (assertedly for cause) and Jason sued DGI, Daniel, and others in the Shasta County Superior Court. Despite the pending litigation, the parties finalized their buyout agreement in August 2019. The Lockwoods began making the required buyout payments to the Eatmons. Altogether, the Eatmons received over \$550,000 in buyout payments between August 2019 and December 2020.

Notwithstanding the buyout agreement, the state court litigation continued and expanded to include various additional claims and crossclaims. Additionally, DGI intervened in the litigation and asserted claims against Jason for breach of fiduciary duty and fraud, among other things. In December 2020, shortly before the state court trial was scheduled to occur, the parties entered into a handwritten settlement agreement purporting to resolve the state court litigation. The key terms of the settlement agreement included: (1) release of the Lockwoods from any further buyout payments; (2) final disposition of the pending claims and crossclaims; and (3) preparation of a more formal written settlement agreement. Jason has stated that he believed the settlement fully resolved the litigation with each side walking away without further liability to the other. On the other hand, the handwritten settlement stated that judgment would be entered against Jason on multiple claims and against Christine on

some of the crossclaims.

The parties never memorialized their settlement in a more-formal writing or specified the terms of any judgment. Instead, the Lockwoods and DGI sought and obtained enforcement of the handwritten settlement. In September 2021, the state court entered judgment against the Eatmons on the claims and crossclaims exactly as specified in the handwritten settlement. In December 2021, the state court awarded the Lockwoods and DGI their costs in the aggregate amount of \$67,515.60. And in February 2022, the state court awarded them attorney's fees and expenses in the aggregate amount of \$966,019.00. The Lockwoods and DGI then obtained an abstract of judgment for their total fees and costs, which they recorded with the Shasta County Assessor/Recorder in May 2022.

According to the Eatmons, they did not learn of their liability to the Lockwoods until September 13, 2022. At that time, Jason's then-employer informed him that the Lockwoods were enforcing a judgment against him by attempting to garnish his wages. The Eatmons filed their joint chapter 13 bankruptcy case roughly one month later, on October 14, 2022. Though the Eatmons scheduled a federal priority tax claim in the amount of \$20,578, the IRS filed a proof of claim asserting a priority claim of \$284,699.90. According to the chapter 13 trustee, this rendered the Eatmons' chapter 13 plan impracticable. In May 2023, based in large part on the IRS priority claim, the Eatmons converted their case from chapter 13 to chapter 7.

B. The objection to discharge.

The Lockwoods examined the Eatmons pursuant to Rule 2004 and thereafter commenced their adversary proceeding objecting to discharge of the debtors under § 727(a)(2), (3), (4), and (5). During the course of this litigation, the Lockwoods pointed to conduct they believed rose to the level of justifying denial of discharge, and the Eatmons attempted to explain why the conduct in question was not culpable.

1. Errors and omissions in schedules.

The Lockwoods pointed to a number of omissions and misstatements in the Eatmons' original schedules and in their first amendment to their schedules, which they filed in May 2023—a few days after the conversion of their case from chapter 13 to chapter 7. In part, the omissions from the original and amended schedules included:

- Several bank accounts held in the Eatmons' name;
- 2 or 3 retirement accounts;
- 2 life insurance policies;
- 3 or 4 firearms;
- Monthly rent from a parcel of real property that Christine and her brother were inheriting from their parents pursuant to the parents' family trust;
- The existence of this trust, naming Christine as one of the beneficiaries;⁴ and

⁴ Christine did list her 50% interest in the subject real property as one of her assets in the original and first amended schedules. As for the omitted rent collected, the

- A storage unit.

Most important for our purposes, the schedules omitted Jason's rights and liabilities under a publishing contract, pursuant to which Jason and his co-author, Jeb Blount, contemplated writing a book entitled "Business Outcome Selling Strategies (BOSS)."

The Eatmons also failed to disclose in their Statement of Financial Affairs ("SOFA") the sale of a camping trailer for \$5,000 within the last month before their bankruptcy. In addition, whereas the original schedules listed no sole proprietorships, the first amended schedules listed "Eatmon Consulting" as a sole proprietorship of the debtors. When questioned about this at trial, Jason denied having any sole proprietorship and seemed to have no understanding of what type of business qualifies as a sole proprietorship.⁵ As for misstatements, the Eatmons significantly misstated their income. For her part, Christine erroneously listed her net income rather than her gross income as asked for in the schedules.

At trial, the Eatmons proffered explanations for virtually all of the omissions. With respect to most of the omitted bank accounts and all the

court credited Christine's testimony: (1) that the rent largely defrayed the costs of her maintaining the property, and (2) her failure to properly account for the trust's income and expenses was the result of her lack of sophistication and not understanding the proper role a trustee should have played in managing the family trust property. The trust founded by Christine's parents is not particularly relevant to Jason's appeal.

⁵ The Eatmons again amended their schedules the day before the trial began in the objection to discharge adversary proceeding. The new schedules added several of the missing bank and retirement accounts. However, the BOSS book contract is still missing from these schedules.

omitted firearms, the Eatmons explained that they always had considered these items as the property of their children, even though they were the registered owner or co-owner of the subject property. As for the other omitted items, the Eatmons indicated that they simply forgot about the items, they were of minimal value, or both.

2. The Eatmons' use of funds.

Much of the litigation revolved around what happened to the buyout payments the Lockwoods made to the Eatmons and the income the Eatmons earned from their respective jobs. The Lockwoods alleged that the Eatmons either were concealing these funds or transferred them to defraud their creditors. To counter these allegations, the Eatmons attempted to account for their use of personal funds. This included Jason's wire transfers to Victoria Girona—\$4,800 and \$5,000 in 2018, and \$10,000 in 2020. The trial testimony indicated that Girona was Jason's friend and co-worker. She was employed at DGI between 2011 and 2019 and is Daniel's half-sister. The bankruptcy court was troubled by Jason's claimed lack of knowledge and inability to recall why he wired money to Girona. Despite its concern, the bankruptcy court broadly found that the bank records the Lockwoods had obtained during discovery adequately explained what happened to the Eatmons' money. According to the court, the Eatmons paid virtually all of it to their state court counsel, to the IRS, and to pay bills living a lifestyle beyond the means of a family of two adults and four children.

Jason's spending while employed at DGI also was a significant issue in the discharge action—at least for the Lockwoods. Daniel testified at length about how Jason allegedly fleeced DGI by claiming business expenses for buying goods and services for his own personal benefit and for the benefit of others. However, as the court pointed out, Jason's spending of DGI's money was reported to the company controller, and Daniel had access to this information. Furthermore, the court acknowledged that most or all of the DGI-related allegations were beyond the scope of the objection to discharge claims, which largely focused on Jason's conduct immediately before, and after, filing bankruptcy.

3. Pre-bankruptcy transactions.

The adversary proceeding also focused on the Eatmons' alleged pre-bankruptcy planning. In the spring of 2022, the Eatmons refinanced their house. As part of this refinancing, they paid roughly \$57,000 of their credit card debt. According to the Eatmons, the sole purpose of the refinancing was to take advantage of the favorable interest rates available at the time and to pay off higher-interest-rate debts. But the Lockwoods argued that the real purpose of the Eatmons' refinance was to shield their assets from exposure to the Lockwoods' \$1 million judgment. The Eatmons denied such intent and insisted they did not know about the judgment at the time of the refinance. They maintained that they did not learn of the judgment until the Lockwoods attempted to garnish Jason's wages roughly six

months later.⁶

It is also undisputed that in the month before the Eatmons filed their bankruptcy, they conducted a number of transactions in anticipation of their bankruptcy filing. During this period the Eatmons sold three vehicles and a camping trailer. They used the sale proceeds to purchase a new air conditioning unit, newer cars, an extended warranty for one car, a service contract for another car, and one or two couches. According to the Eatmons, they made all these transactions in anticipation of filing bankruptcy, with a goal of reducing their potential expenses going forward while in chapter 13.

4. The BOSS book contract.

Jason's testimony concerning the BOSS book largely dovetailed with a declaration and exhibits provided by Shannon Vargo, an officer of John Wiley & Sons, Inc., the would-be publisher of the proposed book ("Wiley Documents"). As the Wiley Documents indicated, in September 2018 Jason's prospective coauthor Jeb Blount sent Wiley a written proposal for the BOSS book. As reflected in the proposal, Blount was an experienced

⁶ Jason admitted that he knew beforehand that they had "lost" something in "appellate court" but maintained that he "never fully understood" the significance of "what happened" until he learned of the wage garnishment. It was only at that point, he said, that he understood the "magnitude" and "severity" of "this." According to Jason, his attorney in the state court matter routinely sent him copies of documents relating to the state court litigation, but he denied any recollection of having seen the papers relating to the fee motion, the fee judgment, or the resulting abstract of judgment before learning in September 2022 that his wages might be garnished.

author on business matters, with no less than ten books published—virtually all of them by Wiley. Though the proposal touted Jason’s credentials as a subject matter expert and frequent speaker and blogger on many tech industry issues, the proposal did not identify him as having any prior experience authoring books.

As reflected by both Jason’s testimony and the Wiley Documents, Wiley entered into the publishing contract with Blount and Jason in late 2018 for the eventual publication of the BOSS book. The contract anticipated publishing the book in or around 2020. Shortly after he entered into the contract, Jason received a \$12,500 advance against his compensation rights under the contract. Under the contract, the original date for the co-authors to deliver a completed manuscript to Wiley was May 1, 2019. Wiley’s internal emails between 2019 and 2021 suggest that the anticipated completion date was pushed back multiple times, and the book was not completed by the time the Eatmons filed their bankruptcy. Though Jason was included in the early emails from 2018 and 2019—produced as part of the Wiley Documents—the later emails pushing back the completion date do not appear to have been sent to Jason.

According to Jason, progress on writing the book was impeded by the COVID pandemic and other factors. Jason maintained that Blount was the lead author and was focused on a number of other works he was writing. As Jason explained, Blount was in the driver’s seat, and he was just “along for the ride.” Jason elaborated that Blount was an established,

well-regarded author, whereas he had no such history or experience, so a book on sales written just by him would not sell. He further indicated that Blount lost interest in co-authoring the BOSS book. As Jason put it, Blount told him that he learned that he did not like to jointly write books with others. And Blount evidently was more interested in writing about artificial intelligence and its impact on sales strategy. Thus, Jason maintained that he did not list the contract in his schedules because he concluded that there was little or no chance that the BOSS book ever would be completed and his rights under the contract were essentially worthless.

Jason did admit that a draft manuscript of the BOSS book existed at one point. However, Jason insisted that this manuscript was never completed and was abandoned because the content was rendered irrelevant by the COVID pandemic and the advent of artificial intelligence. On the other hand, Jason believed that he would need to repay the \$12,500 advance if the BOSS book never was completed, yet he still did not list repayment of the advance as a contingent debt in his schedules. He has argued that no such debt had arisen before he filed bankruptcy because the contract was never terminated.

C. The bankruptcy court's ruling.

After trial the bankruptcy court entered its oral ruling. The court recounted at length many notable parts of the evidence presented. The court generally accepted the Eatmons' accounting of their personal funds. Similarly, the court found that Jason's use of DGI's funds and assets was

not a valid basis for denial of their discharge. This caused the court to reject most of the Lockwoods' objection to discharge claims, including those under § 727(a)(3) and (a)(5), and parts of them under § 727(a)(2)(A) and (a)(2)(B).⁷ Yet, the bankruptcy court focused on Jason's omission of the BOSS book contract from the bankruptcy schedules.

The court did not wholly ignore the other errors and omissions in the schedules and SOFA. Nor did it ignore Jason's pre-bankruptcy conduct. The court referenced these transactions and events when assessing Jason's state of mind in omitting the contract. The court also factored in Jason's professed inability to recall the reasons for his payments to Gironda, particularly the \$10,000 payment to her in 2020. It found not credible his inability to recall the purpose for such a large personal expenditure. The court similarly discredited Jason's testimony that he did not know about the adverse attorney fee award and the state court judgment until the Lockwoods attempted to garnish his wages. More broadly, the court weighed Jason's repeated claims of his lack of recall, knowledge, and understanding against his conduct and his business and personal financial experience and found that his overall lack of credibility on those points militated in favor of finding that he knowingly and fraudulently omitted the BOSS book from his schedules.

Considering the totality of Jason's testimony, the court simply did

⁷ The Lockwoods have not cross-appealed the court's findings on these claims. Therefore, we need not discuss the rejected claims further.

not believe his explanation for why the contract was not listed in his schedules. Critical to its ruling, the court explained:

Now, when it comes to the Boss book, he had a contract. There was a contract. I did not -- as I said earlier -- find it credible when he says, "Oh, I haven't talked to my co-author on it for years." No. You had a contract. That wasn't disclosed. That's something he personally knows about. He got the advance and Christine knew of the advance, but wasn't involved in the transaction. He knew he had that asset and then that book was not disclosed.

Didn't bring in Wiley to say, we cancelled the contract, we had the right. If you read the contract, it says they can terminate the contract and how they'll walk away with their respective rights and interests and all and keep the advance. I don't have that. I just have, "I don't know," "I don't recall." And while Jason may not be the sophisticated financial savant that the plaintiffs paid [sic] him to be, he did [know] business. He did [know] transactions and he sure could spend money in doing it.

From this, the court inferred that Jason knowingly and fraudulently omitted the BOSS book contract based on his "pattern of conduct and the general lack of knowledge and information that he has--professes to have with respect to it[.]" The court thus concluded: "this is something that relates to his business, this is something that relates to what he's been doing and that it's in violation of Section 727(a)(2)(A) and bleeds into (a)(2)(B) because, again, the contract was part of the bankruptcy estate and it continued to be concealed after the petition." Based on this finding, the court denied Jason's discharge under § 727(a)(2)(A) and (B) and similarly

held that this required denial of his discharge under § 727(a)(4).

Unlike Jason, the court found Christine to be generally credible. Thus, the court believed her when she expressed ignorance and a lack of understanding and recall regarding various errors and omissions in the schedules and SOFA. This was consistent with the court's assessment of her relatively low level of financial sophistication and experience based in large part on her career experience as a grade school teacher and her role in the family structure. Ultimately, the court concluded that Jason was running the family's personal finances and Christine was hardly involved. As the court further observed: "One of the notes I made here, as I was listening to [Christine's] credible testimony, Jason [is] driving the bus and Christine [is] not even on the bus."

On June 16, 2025, the court entered judgment in favor of Christine on all the Lockwoods' claims under § 727 and entered judgment against Jason denying him his discharge under § 727(a)(2)(A), (a)(2)(B), and (a)(4)(A). On July 1, 2025, the court granted Jason an extension of time to appeal, and on July 18, 2025, Jason timely appealed.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157. We have jurisdiction under 28 U.S.C. § 158.

ISSUE

Did the bankruptcy court commit reversible error when it denied Jason his discharge under § 727(a)(2)(A), (a)(2)(B), and (a)(4)(A)?

STANDARDS OF REVIEW

In appeals from judgments under § 727(a): “(1) the bankruptcy court’s determinations of the historical facts are reviewed for clear error; (2) the selection of the applicable legal rules under § 727 is reviewed de novo; and (3) the application of the facts to those rules requiring the exercise of judgments about values animating the rules is reviewed de novo.” *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010) (citation modified). A finding of fact is clearly erroneous only if it is “illogical, implausible, or without support in the record.” *Id.*

DISCUSSION

The bankruptcy court denied Jason his discharge under § 727(a)(2)(A), (a)(2)(B), and (a)(4)(A). Under each of these grounds, the denial hinged on the court’s finding of fraudulent intent. Jason challenges the bankruptcy court’s findings regarding his state of mind. As relevant here, he urges us to hold that the bankruptcy court’s fraudulent intent finding was clearly erroneous. But before we delve into the court’s intent finding, we consider the metes and bounds of each claim the court relied on to deny Jason his discharge.

A. Governing law under § 727(a)(2)(A) and (a)(2)(B).

Under § 727(a)(2)(A), the court must grant the debtor his discharge unless “the debtor, with intent to hinder, delay, or defraud a creditor . . . has transferred, removed, destroyed, mutilated, or concealed . . . property of the debtor, within one year before the date of the filing of the petition.”

To prevail under § 727(a)(2)(A), the plaintiff must show, within one year of the bankruptcy filing: “1) a disposition of property, such as transfer or concealment, and 2) a subjective intent on the debtor’s part to hinder, delay or defraud a creditor through the act disposing of the property.” *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9th Cir. 1997). In turn, the requirements for denial of discharge under § 727(a)(2)(B) are generally the same, except the culpable disposition of property must relate to “property of the estate” and must occur postpetition. *See, e.g., Hansen v. Moore (In re Hansen)*, 368 B.R. 868, 876 (9th Cir. BAP 2007). Unlike § 727(a)(4), neither § 727(a)(2)(A) or (a)(2)(B) requires materiality. *See Fogal Legware of Switzerland, Inc., v. Wills (In re Wills)*, 243 B.R. 58, 65–66 (9th Cir. BAP 1999). Even when the culpable disposition of property occurs outside the statutory time periods specified in § 727(a)(2)(A) and (a)(2)(B), the debtor’s “continuing concealment” of his interest in the subject property during the statutory time period is actionable under § 727(a)(2). *See In re Lawson*, 122 F.3d at 1240-41.

Under § 727(a)(2), more than one state of mind will suffice. The plaintiff may establish either intent to defraud, intent to hinder, or intent to delay, one or more creditors. *In re Retz*, 606 F.3d at 1200 (citing *Bernard v. Sheaffer (In re Bernard)*, 96 F.3d 1279, 1281 (9th Cir. 1996)); *First Beverly Bank v. Adeeb (In re Adeeb)*, 787 F.2d 1339, 1343 (9th Cir. 1986). Here, however, the bankruptcy court specifically found an intent to defraud, so that is the focus of our review.

Intent to defraud is a question of fact. *Searles v. Riley (In re Searles)*, 317 B.R. 368, 379 (9th Cir. BAP 2004), *aff'd*, 212 F. App'x 589 (9th Cir. 2006). The bankruptcy court must find that the debtor acted with a subjective intent to defraud. *In re Retz*, 606 F.3d at 1196, 1200. Courts typically answer this question by “delv[ing] into the mind of the debtor” and inferring the debtor’s state of mind at the time he engaged in the culpable conduct. *In re Searles*, 317 B.R. at 379. In making this inference, the court may consider the “surrounding circumstances” and the debtor’s course of conduct. *Id.* at 379-80 (citing *Emmett Valley Assocs. v. Woodfield (In re Woodfield)*, 978 F.2d 516, 518 (9th Cir. 1992), and *Devers v. Bank of Sheridan (In re Devers)*, 759 F.2d 751, 753–54 (9th Cir. 1985)). However, denial of discharge under § 727(a)(2) must be based on an actual intent to defraud; “[c]onstructive fraudulent intent cannot be the basis for denial of discharge.” *In re Devers*, 759 F.2d at 753.

B. Governing law under § 727(a)(4)(A).

Under § 727(a)(4)(A), the court must grant the debtor his discharge unless “the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account.” “A false statement or an omission in the debtor’s bankruptcy schedules or statement of financial affairs can constitute a false oath.” *In re Retz*, 606 F.3d at 1196 (quoting *Khalil v. Devs. Sur. & Indem. Co. (In re Khalil)*, 379 B.R. 163, 172 (9th Cir. BAP 2007), *aff'd and adopted*, 578 F.3d 1167, 1168 (9th Cir. 2009)). To prevail on a § 727(a)(4)(A) claim, the plaintiff must establish the following elements by

a preponderance of evidence: “(1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently.” *Id.* at 1197 (quoting *Roberts v. Erhard (In re Roberts)*, 331 B.R. 876, 882 (9th Cir. BAP 2005), *aff’d and remanded*, 241 F. App’x 420 (9th Cir. 2007)).

Omissions of material assets or liabilities typically render a debtor’s schedules false for purposes of § 727(a)(4)(A). It is well established that the materiality of assets and liabilities in schedules is a low bar. “An omission or misstatement that detrimentally affects administration of the estate is material.” *Id.* at 1198 (citation modified). As we have previously recognized, materiality for purposes of § 727(a)(4)(A) is conceived of broadly. It includes any statement of fact that “bears a relationship to the debtor’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor’s property.” *In re Roberts*, 331 B.R. at 883 (quoting *In re Wills*, 243 B.R. at 62). Indeed, while one undisclosed asset or liability may have little or no independent value to the bankruptcy estate, it nonetheless may point interested parties to other significant assets or liabilities. Thus, it is not up to the debtor to decide what is material or not, even where the asset has little or no value. *Stanley v. Hoblitzell (In re Hoblitzell)*, 223 B.R. 211, 215 (Bankr. E.D. Cal. 1998); *see also Dych v. VanBrocklin (In re VanBrocklin)*, 566 B.R. 90, 99 (Bankr. N.D. Ga. 2017) (observing that § 727(a)(4)(A) “encourages full disclosure by debtors; it is not for the debtor to decide

whether information will be relevant to creditors”).

Yet, not every error and omission in the debtor’s schedules should lead to denial of discharge under § 727(a)(4)(A). Only when it has been proven that the debtors acted with culpable intent should their discharge be denied.⁸ To find fraudulent intent under § 727(a)(4), the process is essentially the same as it is under § 727(a)(2) because the same legal standards generally apply. *See, e.g., In re Wills*, 243 B.R. at 64–65. Though the court might sometimes focus on differing circumstances, *see In re Retz*, 606 F.3d at 1198-1200, it still must deduce from the debtor’s conduct and the surrounding circumstances whether the debtor’s state of mind was sufficiently culpable to justify denial of discharge, *In re Searles*, 317 B.R. at 379; *In re Wills*, 243 B.R. at 64.⁹

⁸ We note that the parties have not provided us with copies of the “Alternate Direct Testimony Declarations” submitted to the court prior to trial pursuant to Local Rule 9017-1. Failure to provide necessary parts of the record sometimes may justify dismissal of the appeal or summary affirmance. *Kyle v. Dye (In re Kyle)*, 317 B.R. 390, 393-94 (9th Cir. BAP 2004), *aff’d*, 170 F. App’x 457 (9th Cir. 2006); *McCarthy v. Prince (In re McCarthy)*, 230 B.R. 414, 416-17 (9th Cir. BAP 1999). But we have the discretion to disregard such procedural defects and to address the merits of the appeal, provided that the record made available permits us to understand the relevant issues and conduct an informed review. *In re Kyle*, 317 B.R. at 393-94. Here, nothing in any of the parties’ briefing or the bankruptcy court’s decision indicates that the court’s fraudulent intent finding hinged on anything in the Alternate Direct Testimony Declarations. The absence of any comment from the Lockwoods on this issue convinces us that our inability to access the Alternate Direct Testimony Declarations does not justify dismissal or summary affirmance under the circumstances presented here.

⁹ Here, the bankruptcy court relied on the exact same assessment of Jason’s state of mind to deny his discharge under both § 727(a)(2) and (a)(4). This is permissible because, as noted immediately above, the same legal standards generally apply.

C. Analysis of bankruptcy court’s fraudulent intent finding.

The testimony at trial confirmed that Jason had a pending contract to co-author the BOSS book and that he had received under the contract a prepetition advance. The book never has been completed, but at the time of trial the contract was still in force. Yet, Jason never listed the contract in his schedules. The failure to disclose it established a “disposition” of an asset for purposes of § 727(a)(2); it also constituted a false oath under § 727(a)(4)(A). The court concluded that when Jason omitted the BOSS book contract from his schedules, he did so knowing that this omission was false and with the intent to defraud his creditors—namely, the Lockwoods.

Jason has not disputed on appeal that he knowingly failed to disclose his contract rights and liabilities under the BOSS book contract. But he does question whether he was required to list the contract when it was undisputed that the book was not completed and allegedly had no value at the time he filed bankruptcy. In short, he challenges the materiality of the omission under § 727(a)(4)(A). Yet, as indicated above, it was for the chapter 7 trustee and Jason’s creditors to evaluate its significance—not Jason. He was obligated to include the contract in his schedules because his rights and duties thereunder raised issues as to whether the contract was significant to the estate regardless of its value. In short, the contract was material for purposes of the § 727(a)(4)(A) claim.

On appeal, Jason primarily challenges the bankruptcy court’s finding that he fraudulently concealed his rights under the BOSS Book contract by

omitting them from his schedules. This likewise is the primary focus of our analysis. The denial of discharge under both § 727(a)(2) and (a)(4)(A) required the Lockwoods to prove that Jason failed to disclose the contract with culpable intent. According to Jason, he lacked the requisite intent. He maintains that he incorrectly but innocently believed that the BOSS book contract was not worth scheduling. As he testified, he concluded the contract would never be fulfilled because the lead author had lost interest in the project during the COVID pandemic. Moreover, he could not write a marketable book on sales by himself. As he recounted, no genuine progress had been made on the book in years, and he testified that he had not spoken to the lead author about the book since before the pandemic.

Standing alone, Jason's explanation for failing to list the BOSS book contract certainly seems plausible on its face. It is also consistent with Shannon Vargo's declaration and the Wiley Documents. That evidence shows that Blount, as the lead author, submitted a written proposal to write the book in September 2018. The proposal identified Jason as the co-author. On behalf of the publisher, Vargo sent Jason an introductory email in December 2018 to discuss the book contract. Vargo sent another email to both Blount and Jason later that same month after all parties signed the contract. Jason then received his advance on the book royalties.

The Wiley Documents also included internal Wiley emails from 2019 discussing the status of the book. In August 2019, someone else at Wiley stated that she would check in with Blount on the progress of the book and

suggested that it was about 70% done. In November 2019, Blount emailed Vargo, Jason, and others to discuss marketing strategies for the book. The next emails produced by Vargo were additional internal Wiley messages from 2021, well after the onset of the COVID pandemic. Those emails renewed the inquiries regarding the book's status but were not addressed to Jason. The last email produced by Vargo was another internal Wiley email, dated November 1, 2023, noting that there were several titles that had been "suspended" including some involving Blount. A reference in this email suggested that the publication date be moved to 2027 for the BOSS book.

As for Jason's communications concerning the book, the only emails from Wiley that included Jason were those in 2018 related to the formation of the contract and the one from Blount in 2019 related to the marketing of the book. None of the internal emails included Blount or Jason. Regardless, Vargo's declaration and the Wiley Documents generally tend to corroborate Jason's account of the limited extent of his role in the BOSS book.

More to the point, this evidence clearly and cogently demonstrated that though the book contract was not terminated as of Jason's bankruptcy filing, the prospective publication date for the book was postponed multiple times over a period of years. Moreover, these emails establish that the book has never been finished. Nor is there any evidence of attempts to complete the book after the 2019 internal Wiley emails. This aligns with the

marketing materials admitted into evidence that initially showed a projected release date of November 1, 2021, and later showed one of August 6, 2024.¹⁰

Reasonable minds viewing this evidence might make different inferences regarding the likelihood that the book might ever be published. But nothing in this evidence contradicts or conflicts with Jason's view of the contract or his bleak assessment of whether the BOSS book would ever be published. Significantly, the court made no reference to the probative value or credibility of this evidence.

Despite the facial plausibility of Jason's testimony about the book and its consistency with the Vargo declaration and the Wiley Documents, the bankruptcy court rejected Jason's explanation. The court inferred from seemingly unrelated events that his explanation lacked credibility and that Jason intended to defraud his creditors by omitting the book contract from his schedules. In assessing Jason's subjective intent, the bankruptcy court considered a host of factors: general credibility, level of experience and sophistication in transacting business and in conducting his personal financial affairs, the proffered explanation for not scheduling the book contract, and his repeated claims of lack of knowledge and recall. In turn, the court's assessment of Jason's experience and sophistication was based in part on its understanding of his history of working at DGI and his

¹⁰ The context and significance of the marketing materials is unclear. However, the court did reference the projected August 6, 2024 release date in its oral ruling.

control over his family's finances. This included but was not limited to the steps he took in the spring and fall of 2022 to refinance his home, pay off his family's higher-interest-rate debt, and rearrange his personal property holdings to reduce the likelihood of costly expenses while in chapter 13.

Almost none of the reasons the court gave for its fraudulent intent finding had anything to do with the BOSS book contract itself. The one exception was the court's finding that it did not believe Jason when he said he had not had any contact with Blount about the book since before COVID. The court specifically found Jason's testimony that he had not spoken with Blount about the book since before COVID "just doesn't make sense" and "doesn't sound credible here." Given the entirety and range of the court's comments and findings, it does not appear that the court gave a huge amount of weight to this one specific finding. Instead, the bankruptcy court believed that the lack of communication with Blount just didn't add up based on Jason's general level of experience and sophistication with business matters and the previous communications about the book involving the marketing materials. But the court did not identify when it believed Jason talked to Blount between 2019 and 2022, or what it believed was discussed that was material to its finding that he fraudulently omitted the contract from his schedules. A discussion with Blount could support an inference that Jason knew the contract continued to exist at the time he filed bankruptcy, but there is nothing in the record to suggest that work on the book was proceeding or would proceed in the future. There is simply

nothing in the record to suggest why a conversation with Blount would be relevant to Jason's fraudulent intent to omit the contract.

Bluntly put, the bankruptcy court's fraudulent intent analysis is problematic. The Lockwoods advanced numerous bases to deny Jason's discharge, but the court exclusively relied on his failure to disclose the BOSS book contract. It is unclear why the seemingly unrelated factors the court relied upon to find Jason not credible would support a finding that he omitted the contract with the fraudulent intent required under § 727(a)(2) and (a)(4). For instance, we see little or no logical connection between Jason's historical spending habits and his state of mind regarding the omission of the contract. Similarly, his claimed inability to recall the reason for many of his expenditures and his claimed delay in understanding the significance of the \$1 million judgment seem, at best, only remotely relevant to any sort of inference about Jason's credibility and intent concerning his explanation for omitting the book contract. Nor is it clear how and why the court considered significant its finding that Jason lied about speaking to Blount at some undefined time and for some undefined purpose. Moreover, given the lack of any progress on the book, there is nothing in the record to suggest that Jason had an actual pecuniary incentive to fraudulently omit the contract from his schedules—especially when the Lockwoods already knew about the book.¹¹

¹¹ Though not disclosed in the Eatmons' schedules, the BOSS book project was not a secret. According to Gironda, Jason's friend and co-worker, the BOSS book project

We give broad deference to the court’s findings—especially those that largely rest on an assessment of the subject individual’s credibility. As the Seventh Circuit has observed, also addressing a § 727 claim, “[t]he intent determination often will depend upon a bankruptcy court’s assessment of the debtor’s credibility, making deference to the court’s finding particularly appropriate.” *In re Krehl*, 86 F.3d 737, 743 (7th Cir. 1996); *see also Hernandez v. New York*, 500 U.S. 352, 365 (1991) (outside the § 727 context, but still similarly holding that intent findings typically are entitled to especially broad deference because they routinely are based on the trial court’s assessment of credibility); *In re Retz*, 606 F.3d at 1196 (§ 727 decision stating that “[w]hen factual findings are based on determinations regarding the credibility of witnesses, we give great deference to the bankruptcy court’s findings”); *Williamson v. Fireman’s Fund Ins. Co.*, 828 F.2d 249, 252 (4th Cir. 1987) (“Because a determination concerning fraudulent intent depends largely upon an assessment of the credibility and demeanor of the debtor, deference to the bankruptcy court’s factual findings is particularly appropriate.”).

Here, the bankruptcy court used its general finding that Jason lacked

was “common knowledge” in DGI’s offices in and around 2018. Nor did the Lockwoods deny that they knew about Jason’s book project well before the bankruptcy. Their first amended complaint, the answer thereto, and the testimony presented at trial all referenced deposition testimony from 2020—before the bankruptcy filing—in which Jason answered questions about the status of his book project. Likewise, the Lockwoods’ counsel stated at Jason’s Rule 2004 examination that Jason’s “book deal” had been discussed during discovery in the state court lawsuit.

credibility to specifically find fraudulent intent. Under § 727(a)(2) and (a)(4) the Lockwoods were required to prove that Jason omitted the BOSS book from his schedules with fraudulent intent. It is well settled and recognized that courts may use circumstantial evidence and draw inferences from the debtor's course of conduct to find fraudulent intent. *In re Adeeb*, 787 F.2d at 1343; *In re Devers*, 759 F.2d at 753-54. But in this instance, the court found that Jason's course of conduct—his use and disclosure of his income and his prepetition activities—*did not* warrant denial of his discharge. Rather, it relied solely on its finding that Jason fraudulently omitted the BOSS book contract from his schedules to deny his discharge under § 727(a)(2) and (a)(4).¹²

Though deference is given to credibility determinations, there must be limits to this deference. As we have previously observed, “Congress created in § 727 a comprehensive scheme regulating the grant and denial of chapter 7 discharges. It was precise about states of mind, other elements, and defenses.” *Yadidi v. Herzlich (In re Yadidi)*, 274 B.R. 843, 852 (9th Cir. BAP 2002). For this reason, the intent requirement is strictly construed; only *actual* intent (as opposed to constructive intent) will suffice. *See In re*

¹² To be clear, we recognize that circumstantial evidence indicative of fraudulent intent may include “a pattern of falsity, . . . reckless indifference to and disregard of the truth.” *In re Retz*, 606 F.3d at 1198. But the bankruptcy court, here, did not specifically find any of these to be present in Jason's conduct. Nor does anything in the court's decision suggest that it implicitly relied on such alleged conduct by Jason to render its intent finding.

Retz, 606 F.3d at 1196; *In re Wills*, 243 B.R. at 64. Accordingly, a determination that the debtor generally lacks credibility cannot by itself support a finding of fraudulent intent necessary to deny a debtor's discharge where the credibility determination has little or no temporal or thematic connection to the specific conduct alleged to warrant that harsh result.

Jason offered a facially plausible explanation why he omitted the BOSS book contract. This explanation was consistent with Vargo's declaration and the Wiley Documents. Nothing in the record specifically challenges or controverts his explanation. Indeed, the only specific credibility determination related to the BOSS book contract—that Jason must have had some contact with Blount at some point between 2019 and the bankruptcy filing—is too vague to support a specific finding of fraudulent intent. In short, the record presented—and the court's other findings and inferences—did not permit the bankruptcy court to reasonably infer that Jason harbored a subjective fraudulent intent when he omitted the contract from his schedules.

To uphold the bankruptcy court's denial of Jason's discharge in this instance would effectively enable bankruptcy courts to deny discharge to any debtor they considered generally dishonest, without any true finding of actual fraudulent intent as required under § 727(a)(2) and (4). Rather, a court must logically tie the debtor's dishonesty to the specific conduct from which the denial of discharge litigation arose. To hold otherwise would be

tantamount to enabling the courts to fashion their own grounds for denial of discharge, which would fly in the face of Congress's carefully-crafted scheme. *See In re Yadidi*, 274 B.R. at 852.

In sum, there is simply no logical connection between the court's credibility findings and the fraudulent intent finding it purported to reach based on those credibility findings. Therefore, the court's finding of fraudulent intent is clearly erroneous and cannot support denial of the discharge under § 727(a)(2) or (4).¹³

CONCLUSION

For the reasons set forth above, we REVERSE the bankruptcy court's judgment denying Jason his discharge under § 727(a)(2)(A), (a)(2)(B), and (a)(4)(A).

¹³ Because we have determined that the court's fraudulent intent finding was clearly erroneous and that its denial of Jason's discharge must be reversed, there is no need for us to address Jason's other arguments.