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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JACK D. ROSE and VANESSA PALMA
ROSE,

Debtors-Appellants,

v.

DAVID M. REAVES, Chapter 7 Trustee,

Trustee-Appellee.

No. 17-16196

D.C. No. 2:16-cv-03868-HRH

MEMORANDUM*

JACK D. ROSE; VANESSA PALMA
ROSE,

Debtors-Appellees,

v.

DAVID M. REAVES, Chapter 7 Trustee,

Trustee-Appellant.

No. 17-16239

D.C. No. 2:16-cv-03868-HRH

Appeal from the United States District Court
for the District of Arizona
H. Russel Holland, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted February 6, 2019**
Phoenix, Arizona

Before: HAWKINS, M. SMITH, and HURWITZ, Circuit Judges.

Appellants, Jack D. Rose and Vanessa Palma Rose (“Appellants”), appeal the bankruptcy court’s denial of discharge under 11 U.S.C. § 727(a)(2)(A) for transferring property within a year of filing the petition with the intent to hinder, delay or defraud a creditor. The denial was affirmed by the district court, *In re Rose*, 574 B.R. 141, 148-56 (D. Ariz. 2017), and finding the bankruptcy court committed no clear error, *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009), we affirm as well.

Following a four-day trial, the bankruptcy court found that in the year prior to filing for bankruptcy, Jack D. Rose (“Rose”) had transferred money and deposited tax returns totaling over \$400,000 into the account of an entity, Highpoint Management Solutions, LLC (the “Highpoint account”), which had been formed just a few months earlier by Rose's former employee and close personal friend, Mubeen Aliniazee. Rose directed Aliniazee to disburse this money on Rose's behalf (using a separate ledger to keep track of Rose’s use of the Highpoint account). Rose also had a debit card for the Highpoint account and could withdraw money for personal expenses.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

In June 2010, a major creditor, Meridian Bank, obtained an \$8 million judgment against the Appellants and later pursued collection and garnishment of Rose's accounts. Meridian sought information from Rose about any accounts maintained “by or on behalf of him” in any depository, but Rose did not disclose the Highpoint account.

In May 2011, Rose filed for bankruptcy. By that time, he had spent all but approximately \$1,300 of the amounts he had deposited into the Highpoint account. He did not initially list the Highpoint account on any of his bankruptcy schedules because he believed he had zeroed out any deposits made to the account. He testified he had only used the Highpoint account because he had no account of his own into which he could deposit the money and pay his attorneys.

Eventually, the trustee discovered the Highpoint account and commenced an adversary proceeding seeking to deny discharge under various provisions of the Bankruptcy Code. The bankruptcy court had “little difficulty” finding that Rose was transferring his personal property to the Highpoint account for the purpose of hindering or delaying creditors, especially Meridian, and denied the discharge under 11 U.S.C. § 727(a)(2)(A).

The deposits into the Highpoint account were properly considered “transfers.” *In re Tenderloin Health*, 849 F.3d 1231, 1243-44 (9th Cir. 2017). Rose contends the

funds did not “remain transferred” at the time of the petition because he had caused the money to be paid out for various legitimate expenses, attempting to rely on our decision in *In re Adeeb*, 787 F.2d 1339 (9th Cir. 1986), but that case is wholly inapposite. In *Adeeb*, the debtor transferred real estate to friends pre-petition but then realized his error and had it transferred back to him before the petition for bankruptcy was filed. *Id.* at 1344-45. Here, Rose transferred the assets to the Highpoint account and spent them, and thus the funds remained out of the reach of his creditors. Rose argues there is insufficient evidence of his actual intent to defraud creditors, but this ignores that § 727(a)(2)(A) is written in the disjunctive and can also be satisfied by showing an intent to hinder or delay creditors. *See In re Retz*, 606 F.3d 1189, 1200 (9th Cir. 2010).

AFFIRMED.¹

¹ Because we affirm the denial of discharge under § 727(a)(2)(A), we need not address the trustee’s cross-appeal.