

AUG 19 2014

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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**NOT FOR PUBLICATION**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-13-1566-KiTaPa
	)		
STEVEN CARL GRONLUND and	)	Bk. No.	6:12-14417
GINA MARIE GRONLUND,	)		
	)	Adv. No.	6:12-1173
Debtors.	)		
_____	)		
	)		
STEVEN CARL GRONLUND,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
KARL T. ANDERSON, Chapter 7	)		
Trustee,	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on July 25, 2014,  
at Pasadena, California

Filed - August 19, 2014

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

Honorable Deborah J. Saltzman, Bankruptcy Judge, Presiding

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Appearances: Andrew Edward Smyth, Esq., argued for appellant  
Steven Carl Gronlund; Thomas J. Polis, Esq., of  
Polis & Associates, APLC, argued for appellee, Karl  
T. Anderson, Chapter 7 Trustee.

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Before: KIRSCHER, TAYLOR and PAPPAS, Bankruptcy Judges.

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<sup>1</sup> This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may have  
(see Fed. R. App. P. 32.1), it has no precedential value. See 9th  
Cir. BAP Rule 8013-1.

1 Appellant, Steven Carl Gronlund ("Debtor"), appeals the  
2 bankruptcy court's decision to deny his discharge at the request  
3 of Appellee, chapter 7<sup>2</sup> trustee Karl T. Anderson ("Trustee"). The  
4 bankruptcy court denied Debtor's discharge under § 727(a)(2)(A)  
5 and (B) and § 727(a)(4)(A) because he concealed and failed to  
6 disclose a material asset in his bankruptcy schedules and  
7 statement of financial affairs. We AFFIRM.

#### 8 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

9 Debtor has twenty years of experience owning and operating  
10 businesses, including mortgage and real property rental  
11 businesses. On February 23, 2012, Debtor and Gina Gronlund, his  
12 wife and co-debtor, filed their chapter 7 bankruptcy case.  
13 Debtor's initial Schedule B was very detailed, even listing pots  
14 and pans and where they were located in Debtor's residence.  
15 However, Debtor did not list a note related to Mexican real  
16 property ("Mexican property"), which he eventually valued at  
17 \$450,000 (the "Mexican Note"). Pursuant to the terms of the  
18 Mexican Note, Debtor received a \$2,500 "interest-only" payment  
19 each month. Debtor had been receiving payments on the Mexican  
20 Note since May 2008. The interest income was not specifically and  
21 separately listed in his initial Schedule I, nor was it listed in  
22 his initial Schedule G. Debtor testified, however, that the  
23 \$2,500 payments might be included in the \$9,000 per month gross  
24 income listed in his initial Schedule I.

25 Debtor signed his bankruptcy schedules under penalty of

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26  
27 <sup>2</sup> Unless specified otherwise, all chapter and code  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
all rule references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1 perjury. He appeared at the § 341(a) meeting of creditors  
2 ("§ 341(a) meeting") and answered the Trustee's questions under  
3 oath. At the beginning of the meeting, Debtor reaffirmed that his  
4 bankruptcy schedules were accurate and needed no corrections.  
5 During the meeting, however, Trustee reviewed Debtor's tax return  
6 and noticed a large amount of earned interest income. Trustee  
7 asked Debtor about it. Debtor accurately stated that the earned  
8 interest income on his tax return reflected a \$2,500 monthly  
9 payment he received on a note secured by Mexican property he sold  
10 to Sayed Rezai ("Rezai"). Trustee noted that this asset and  
11 income were not reflected in Debtor's schedules; Debtor agreed.  
12 When Trustee first asked about Rezai, Debtor responded, "Sayed  
13 Rezai, he is a -- somebody who bought my -- bought a property down  
14 in Big Bear." § 341(a) Tr. (Mar. 30, 2012) at 24:5-6. Later,  
15 Debtor corrected himself, stating the property in question was  
16 located in Mexico, not Big Bear, California. Debtor testified  
17 that Rezai lived in Mexico, that he was not sure whether Rezai had  
18 a place in the United States and that "[s]ometimes he doesn't pay  
19 me." Id. at 26:3. However, moments later when Trustee asked  
20 about the timing of the \$2,500 payments, Debtor testified that  
21 they "just come[] in every month." Id. at 28:8-9. Debtor also  
22 testified that he "didn't even think about" the Mexican Note  
23 because he had sold the Mexican property years before. Id. at  
24 24:15-22. Trustee continued the meeting to allow Debtor to amend  
25 his schedules to include the Mexican Note. Id. at 30:13-14.

26 **A. Trustee's adversary complaint**

27 Debtor did not file amended schedules in the six weeks  
28 following the § 341(a) meeting, so on May 17, 2012, Trustee filed

1 an adversary complaint seeking to deny Debtor's discharge.  
2 Trustee's complaint alleged Debtor affirmatively concealed the  
3 beneficial interest he held in the Mexican Note and made a false  
4 oath. The complaint pled claims for relief under § 727(a)(2)(A)  
5 and (a)(4)(A).

6 One week after Trustee filed the adversary proceeding, Debtor  
7 filed amended schedules. The Mexican Note, valued at \$450,000,  
8 and the \$2,500 monthly income were added. However, the amended  
9 schedules also asserted that the Mexican Note was over-encumbered  
10 by debts owed to Debtor's mother, his in-laws and the federal  
11 government of Mexico for Maritime Zone Taxes. These encumbrances  
12 were not listed in the original schedules. Further, Debtor had  
13 not mentioned these debts at the § 341(a) meeting when the Mexican  
14 Note was discussed. The Debtor alleged that the value of the  
15 insider claims secured by the Mexican Note totaled \$390,000 and  
16 the tax liability totaled \$80,000. No proofs of claim on any of  
17 these purported encumbrances were ever filed. Although the record  
18 is missing certain exhibits admitted at trial, Debtor introduced  
19 documents that he believed established the purported encumbrances  
20 against the Mexican Note. It is clear, however, that the  
21 bankruptcy court did not find these exhibits to be credible.

22 In Trustee's Trial Brief, Trustee argued that Debtor's  
23 discharge should be denied because he made a false oath in  
24 connection with the case and concealed the Mexican Note. Trustee  
25 argued that the combined evidence of Debtor failing to list the  
26 Mexican Note on his schedules, failing to disclose it during the  
27 first 30 minutes of examination at the § 341(a) meeting and, after  
28 disclosing it, claiming it was over-encumbered by insider claims

1 without documentary proof, proved Debtor's false oath under  
2 § 727(a)(4)(A) and concealment under § 727(a)(2)(A) and (B).

3 In his trial declaration, Trustee testified: that Debtor  
4 received 48 payments on the Mexican Note during the four years  
5 preceding his filing bankruptcy; that the 48 payments amounted to  
6 approximately \$130,000, which the Trustee considered an  
7 "economically significant" asset; and that the checks Debtor  
8 received from Rezai arrived "each and every month," despite  
9 Debtor's claim at the § 341(a) meeting that sometimes he was not  
10 paid. Although Trustee stated in his declaration that a copy of  
11 the cancelled checks were attached as Exhibit #3, they were not,  
12 and we do not have a copy of them in the record. In any event,  
13 the checks were offered at trial and admitted. Trustee also  
14 testified that the checks Rezai sent to Debtor came from Rezai's  
15 personal residence in Escondido, California, despite Debtor's  
16 claim at the § 341(a) meeting that Rezai lived in Mexico.

17 Mauricio Leon de la Barra ("de la Barra") testified for  
18 Trustee as Special Mexican Real Estate Counsel. In his trial  
19 declaration, de la Barra testified: that what was being referred  
20 to as a "promissory note," the Mexican Note, throughout the  
21 adversary proceeding was more accurately described as a beneficial  
22 interest in a Mexican trust; that under Mexican law, an  
23 encumbrance in real property is perfected by recording the  
24 corresponding lien in the Public Registry of Property in the  
25 locality in which the real property is located; that he conducted  
26 a public records search for the Mexican property in January 2013;  
27 and that he found no encumbrances recorded against the Mexican  
28 property. Importantly, de la Barra further testified that the

1 value of the Mexican Note was approximately \$530,000.

2 In Debtor's Trial Brief he argued that he lacked the  
3 requisite intent to satisfy the elements of both the false oath  
4 claim and the concealment claim because his omission of the  
5 Mexican Note in his initial schedules was inadvertent and not  
6 purposeful.

7 In his trial declaration, Debtor testified: that at the time  
8 he filed for bankruptcy his personal life and business dealings  
9 were chaotic; that his elderly in-laws lived with him and were  
10 failing in health; that he was supporting his severely injured  
11 brother-in-law and his family; that he was recovering from having  
12 to testify as a witness in a trial prosecuting his friend for  
13 murder, which depressed him; and that he was delinquent and  
14 defaulting on loans which led to eleven separate foreclosures of  
15 income-producing real properties. Debtor further testified that  
16 his income decreased during this time, that he was being sued by  
17 several lenders and that a restaurant he owned failed. He  
18 testified that historically he paid little attention to the  
19 details of his business transactions, but that "during this  
20 period[,] [he] paid virtually no attention to the everyday  
21 financial aspects of [his] businesses."

22 Debtor hired attorney Gary Quackenbush ("Quackenbush") to  
23 prepare and file his bankruptcy petition. Debtor directed his  
24 business bookkeeper, Laurie Provost ("Provost"), and business  
25 employee, Linda Meyer ("Meyer"), to "assist in the preparation and  
26 transmission of the necessary information to Quackenbush" rather  
27 than doing it himself. He asked Provost and Meyer to do this  
28 because of "[his] personal situation, the complexity of [his]

1 finances and because of their knowledge of [his] financial  
2 affairs." Debtor testified that Quackenbush received all the  
3 information necessary to accurately fill out his bankruptcy forms  
4 by February of 2012. Quackenbush gave Debtor a first draft of the  
5 petition and schedules later that month, which Debtor testified,  
6 were "replete with errors of all kind[s]"; Debtor, Provost and  
7 Meyer corrected them. Debtor stated he saw a second draft that  
8 also contained errors. Debtor testified he signed the third draft  
9 prepared by Quackenbush trusting that the petition and schedules  
10 were complete and accurate. Debtor terminated Quackenbush on  
11 July 24, 2012, shortly after Trustee filed his adversary  
12 complaint.

13 Provost testified in her trial declaration: that it was her  
14 duty as "point person" to be the primary contact with  
15 Quackenbush's office during the preparation of Debtor's bankruptcy  
16 petition and schedules; that Meyer was responsible for gathering  
17 information regarding Debtor's real properties and related  
18 matters; and that completing information requests from  
19 Quackenbush's office was challenging because of the fluctuating  
20 nature of Debtor's financial affairs.

21 Meyer testified in her trial declaration: that she supplied  
22 Provost a list of Debtor's real properties; and that her property  
23 list included the Mexican property as she received the monthly  
24 payments related to it.

25 **B. The trial on Trustee's adversary complaint**

26 The bankruptcy court held a three-day trial in October 2013.  
27 Several witnesses testified, including Trustee, Debtor, de la  
28 Barra, Provost, Meyer and Gina Gronlund.

1 At trial, a transcript of the § 341(a) meeting was admitted  
2 into evidence and an audio recording of it was played.

3 Provost testified that she gathered the necessary information  
4 for Debtor's bankruptcy, including information about Debtor's real  
5 properties that she had received from Meyer, and transmitted it to  
6 Quackenbush's office. However, she testified it was not her job  
7 to review and correct the information. She testified that only  
8 Debtor reviewed and corrected the information supplied to  
9 Quackenbush.

10 Meyer testified that she also never reviewed drafts of the  
11 bankruptcy forms and that her only role was to gather information  
12 and give it to Provost. Meyer also reaffirmed her declaratory  
13 testimony that the Mexican property was included on the list of  
14 Debtor's real properties she supplied to Provost. After closing  
15 argument, the bankruptcy court took the matter under submission.

16 The bankruptcy court recited its oral findings of fact and  
17 conclusions of law on the record on October 16, 2013. After  
18 observing Debtor's demeanor while testifying under oath and  
19 examining the transcript of the § 341(a) meeting and audio  
20 recording of it, the court found that Debtor was not a credible  
21 witness because of inconsistencies in his testimony. The court  
22 denied Debtor's discharge for intentionally concealing the Mexican  
23 Note before and after filing bankruptcy in violation of  
24 § 727(a)(2)(A) and (B) and for knowingly and fraudulently, in  
25 connection with the case, making a false oath or account in  
26 violation of § 727(a)(4)(A) by omitting the Mexican Note from his  
27 schedules.

28 The bankruptcy court entered a judgment consistent with its

1 oral ruling on October 31, 2013. This timely appeal followed.

## 2 **II. JURISDICTION**

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

## 5 **III. ISSUES**

6 1. Did the bankruptcy court err when it denied Debtor's  
7 discharge under § 727(a) (2) (A) and (B)?

8 2. Did the bankruptcy court err when it denied Debtor's  
9 discharge under § 727(a) (4) (A)?

## 10 **IV. STANDARDS OF REVIEW**

11 In an action for denial of discharge, we review: (1) the  
12 bankruptcy court's determinations of the historical facts for  
13 clear error; (2) its selection of the applicable legal rules under  
14 § 727 de novo; and (3) its application of the facts to those rules  
15 requiring the exercise of judgments about values animating the  
16 rules de novo. Searles v. Riley (In re Searles), 317 B.R. 368,  
17 373 (9th Cir. BAP 2004), aff'd, 212 F. App'x 589 (9th Cir. 2006).

18 Factual findings are clearly erroneous if they are illogical,  
19 implausible or without support in the record. Retz v. Samson  
20 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010). We give great  
21 deference to the bankruptcy court's findings when they are based  
22 on its determinations as to the credibility of witnesses. Id.  
23 (noting that as the trier of fact, the bankruptcy court has "the  
24 opportunity to note variations in demeanor and tone of voice that  
25 bear so heavily on the listener's understanding of and belief in  
26 what is said.") (citation and quotation marks omitted). If two  
27 views of the evidence are possible, the trial judge's choice  
28 between them cannot be clearly erroneous. Anderson v. City of

1 Bessemer City, N.C., 470 U.S. 564, 573-75 (1985).

2 **V. DISCUSSION**

3 Debtor argues that the evidence does not support the  
4 bankruptcy court's decision that he violated § 727(a)(2) or  
5 (a)(4)(A). Specifically, Debtor argues the bankruptcy court's  
6 denial of discharge was in error because it "ignored" that he  
7 voluntarily disclosed the omitted Mexican Note at the § 341(a)  
8 meeting. Debtor also argues the bankruptcy court erred in finding  
9 he attempted to conceal it when he testified that the \$2,500  
10 monthly interest payments he received were sometimes late or  
11 missed. In addition, Debtor argues that claiming the existence of  
12 encumbrances against the Mexican Note, even if not recorded,  
13 cannot be considered a "concealment."

14 In short, Debtor disputes the bankruptcy court's findings of  
15 fact. He does not argue that the court applied an incorrect  
16 standard of law. Therefore, our review is limited to determining  
17 whether the bankruptcy court's findings are illogical, implausible  
18 or without support in the record.

19 **A. The bankruptcy court did not err in denying Debtor's**  
20 **discharge under § 727(a)(2).**

21 The bankruptcy court denied Debtor's discharge under both  
22 subsections of § 727(a)(2). That section states:

23 The court shall grant the debtor a discharge, unless  
24 . . . the debtor, with intent to hinder, delay, or  
25 defraud a creditor or an officer of the estate charged  
26 with custody of property under this title, has  
27 transferred, removed, destroyed, mutilated, or concealed,  
28 or has permitted to be transferred, removed, destroyed,  
mutilated, or concealed[,] (A) property of the debtor,  
within one year before the date of the filing of the  
petition, or (B) property of the estate, after the date  
of the filing of the petition.

1 § 727(a)(2)(A), (B). A party seeking denial of discharge under  
2 § 727(a)(2) must prove two things: "(1) a disposition of  
3 property, such as transfer or concealment, and (2) a subjective  
4 intent on the debtor's part to hinder, delay or defraud a creditor  
5 through the act [of] disposing of the property." Hughes v. Lawson  
6 (In re Lawson), 122 F.3d 1237, 1240 (9th Cir. 1997).

7 **1. Concealment**

8 Debtor argues the evidence does not support his intentional  
9 concealment of the Mexican Note. Specifically, Debtor disagrees  
10 that his testimony "[s]ometimes [Rezai] doesn't pay me," should  
11 have been considered an act of concealment. Additionally, Debtor  
12 argues that the insider encumbrances included in his amended  
13 schedules should not be considered evidence of concealment.

14 The bankruptcy court outlined what it found as evidence of  
15 Debtor's concealment of the Mexican Note. The evidence included  
16 failing to list the asset on the initial schedules, failing to  
17 list the \$2,500 monthly payments from it, failing to disclose it  
18 "in response to several questions at the [§] 341(a) meeting of  
19 creditors," and Debtor's "evasive" and "contradict[ory]" answers  
20 concerning when Rezai makes payments on the Mexican Note. Trial  
21 Tr. (Oct. 16, 2013) 3:11-4:2. The court also found that Debtor's  
22 later claim that the Mexican Note was over-encumbered was evidence  
23 of concealment. Although the court included the timing of Rezai's  
24 payments to Debtor and the purported insider encumbrances in its  
25 analysis, the court also based its finding on two other  
26 circumstances of concealment that Debtor does not dispute: he  
27 failed to list the Mexican Note, and he failed to disclose it in  
28 response to questions during the beginning of the § 341(a)

1 meeting.

2 Debtor argues that because he voluntarily disclosed the  
3 \$2,500 monthly interest payments when directly asked about the  
4 Mexican Note at the § 341(a) meeting, his discharge should not be  
5 denied because it shows the omission was inadvertent. Based on  
6 the above evidence, the bankruptcy court disagreed and described  
7 Debtor as "less than credible." Id. at 10:8-13. The record shows  
8 that Debtor's testimony was contradictory on several points. Even  
9 if Debtor volunteered the information about the \$2,500 monthly  
10 interest payments when asked about it at the § 341(a) meeting, the  
11 bankruptcy court was free to consider all of the relevant evidence  
12 on this point and conclude that his omission of the Mexican Note  
13 was not inadvertent. Anderson, 470 U.S. at 573-75.

14 Further, Debtor's voluntary disclosure of the Mexican Note at  
15 the § 341(a) meeting does not overcome Debtor's failure to  
16 schedule it. Schedules are paramount for disclosure to creditors  
17 in chapter 7. Creditors rely on accurate schedules to determine  
18 whether to file a proof of claim. Revealing a valuable asset  
19 during the § 341(a) meeting is not sufficient to notify creditors  
20 because they rarely attend.

21 The evidence shows the timing of Debtor's concealment of the  
22 Mexican Note was both before and after filing bankruptcy.  
23 Prepetition, Debtor concealed the Mexican Note by failing to list  
24 it in his schedules and statement of financial affairs. He blamed  
25 his staff, his attorney, and his chaotic life for his failure to  
26 list the property. However, he signed the petition, schedules,  
27 and statement of financial affairs under penalty of perjury.  
28 Postpetition, Debtor failed to disclose the Mexican Note until

1 directly asked about it at the § 341(a) meeting. He was evasive  
2 in his answers about where the property was located, where Rezai  
3 lived, when he sold the property to Rezai, and how much Rezai  
4 still owed him and claimed he forgot about it. After disclosing  
5 the Mexican Note, he claimed he sometimes did not receive the  
6 payments on it. Finally, once he amended his schedules to reflect  
7 the Mexican Note, Debtor asserted that it was fully pledged to pay  
8 insider claims and, therefore, had no value. However, while  
9 Debtor attempted to substantiate these encumbrances at trial by  
10 submitting various documents (which are not included in the  
11 record), the bankruptcy court found the purported encumbrances  
12 were "nonexistent." Trial Tr. (Oct. 16, 2013) 9:10-11.

13 The evidence presented supports the bankruptcy court's  
14 finding that Debtor concealed the Mexican Note both before and  
15 after filing bankruptcy within the meaning of § 727(a)(2)(A) and  
16 (B). Therefore, the court's finding that Debtor concealed it is  
17 not illogical, implausible or without support in the record.

## 18 **2. Intent to hinder, delay or defraud**

19 Debtor also argues the evidence does not support the  
20 bankruptcy court's finding that he had the requisite intent to  
21 hinder, delay or defraud. Specifically, he argues "[t]here is no  
22 actual fraud in this case." Debtor's argument on this point is  
23 misplaced because actual fraud is not required.

24 A debtor's intent need not be fraudulent to meet the  
25 requirements of § 727(a)(2). Because the language of the statute  
26 is in the disjunctive, it is sufficient if the debtor's intent is  
27 to hinder or delay a creditor. Bernard v. Sheaffer  
28 (In re Bernard), 96 F.3d 1279, 1281 (9th Cir. 1996).

1           The bankruptcy court found that, based on Debtor's conduct  
2 and the circumstances surrounding the filing of the petition and  
3 conduct after the petition was filed, Debtor had the requisite  
4 intent to hinder, delay or defraud. Important to the court was  
5 Debtor's twenty years of work experience and sophistication in  
6 real estate matters and the mortgage industry. With that in mind,  
7 the court found that "[Debtor's] assertion that he just forgot to  
8 schedule this property and its income or relied on his employees  
9 or counsel[,] don't relieve [him] of his obligations and, in fact,  
10 are just not credible." Trial Tr. (Oct. 16, 2013) 4:21-5:2. The  
11 court found that Debtor's employees did include the Mexican Note  
12 in a list they prepared. The court then discussed the testimony  
13 of these same employees confirming that, although they gathered  
14 information for the preparation of the bankruptcy schedules, it  
15 was understood by everyone that Debtor was responsible for what  
16 the schedules contained. Another fact showing Debtor's intent was  
17 his omission of the only asset he owned of any value – the Mexican  
18 Note – as all of his other assets "were of no value or were  
19 underwater." Id. at 8:14-19.

20           The combination of Debtor's business sophistication and the  
21 fact that the "only asset of value" was omitted support the  
22 bankruptcy court's finding that Debtor's concealment of the  
23 Mexican Note was to hinder, delay or defraud his creditors within  
24 the meaning of § 727(a)(2). The record also supports the court's  
25 finding that Debtor, at minimum, acted with reckless indifference  
26 to the truth, thereby establishing that his discharge could be  
27 denied under § 727(a)(2). Id. at 10:25-11:2.

28           Accordingly, the bankruptcy court did not err in denying

1 Debtor's discharge under § 727(a)(2)(A) and (B).

2 **B. The bankruptcy court did not err in denying Debtor's**  
3 **discharge under § 727(a)(4)(A).**

4 Section 727(a)(4)(A) states: "The court shall grant the  
5 debtor a discharge, unless . . . the debtor knowingly and  
6 fraudulently, in or in connection with the case made a false oath  
7 or account." § 727(a)(4)(A). "A false statement or an omission  
8 in the debtor's bankruptcy schedules or statement of financial  
9 affairs can constitute a false oath." Khalil v. Developers Sur. &  
10 Indem. Co. (In re Khalil), 379 B.R. 163, 172 (9th Cir. BAP 2007).

11 To obtain a denial of discharge under § 727(a)(4)(A), the  
12 objector must show: "(1) the debtor made a false oath in  
13 connection with the case; (2) the oath related to a material fact;  
14 (3) the oath was made knowingly; and (4) the oath was made  
15 fraudulently." In re Retz, 606 F.3d at 1197.

16 **1. False Oath**

17 The bankruptcy court found that Debtor omitted the Mexican  
18 Note from his schedules and statement of financial affairs, failed  
19 to list the \$2,500 payments he received from Rezai in his monthly  
20 income, and failed to disclose the Mexican Note in response to  
21 several questions at the § 341(a) meeting. The court also found  
22 that Debtor's answers were evasive once he disclosed its  
23 existence. Further, after disclosing the Mexican Note in his  
24 amended schedules, Debtor claimed, without any documentary  
25 evidence in support, it was over-encumbered and valueless.

26 Debtor does not dispute that he omitted the Mexican Note.  
27 Nor does he dispute that he represented the Mexican Note was over-  
28 encumbered in his amended schedules. The evidence in this case

1 established that Debtor made a false oath. Therefore, the  
2 bankruptcy court did not clearly err in finding that Debtor made a  
3 false oath in his original schedules, statement of financial  
4 affairs and his amended schedules.

## 5           **2.       Materiality**

6           A fact is material "'if it bears a relationship to the  
7 debtor's business transactions or estate, or concerns the  
8 discovery of assets, business dealings, or the existence and  
9 disposition of the debtor's property.'" In re Khalil, 379 B.R. at  
10 173. An omission or misstatement that "detrimentally affects  
11 administration of the estate" is material. Wills v. Wills  
12 (In re Wills), 243 B.R. 58, 63 (9th Cir. BAP 1999) (citing  
13 6 Lawrence P. King et al., COLLIER ON BANKRUPTCY ¶ 727.04[1][b] (15th  
14 ed. rev. 1998)).

15           Debtor's oath related to a material fact. The existence of  
16 the Mexican Note is material because it is a valuable asset worth  
17 at least \$450,000 based on Debtor's own testimony or approximately  
18 \$530,000 based on de la Barra's testimony. Further, it clearly  
19 bears a relationship to Debtor's business transactions or estate  
20 and, because of its highly valuable nature, its omission  
21 detrimentally affected the administration of the estate. Debtor  
22 disputed the overall value of the Mexican Note claiming it was  
23 over-encumbered with security interests in connection with several  
24 loans he received from his mother and his in-laws. However, after  
25 considering Debtor's paltry documentary evidence of this, the  
26 bankruptcy court found that the purported security interests  
27 claimed by Debtor were "nonexistent." No evidence existed of any  
28 loan payments made to Debtor's mother or his in-laws. No

1 documents existed showing any transfer of the beneficial interest  
2 from Debtor to his mother or his in-laws. No recordation of any  
3 loan, security interest or beneficial interest transfer existed in  
4 the property records in Mexico.

5 The bankruptcy court found that the Mexican Note was worth  
6 "at least \$300,000, probably closer to \$400,000, earning \$2,500  
7 per month in interest, when at the time the initial schedules were  
8 filed, the Debtor's total income was \$9,000." Trial Tr. (Oct. 16,  
9 2013) at 11:17-24. Put simply, because of the value of the  
10 Mexican Note, the bankruptcy court found "[t]he omission was  
11 material." Id. at 11:24. We see no clear error in that finding.

### 12 3. Knowingly Made

13 A debtor "'acts knowingly if he or she acts deliberately and  
14 consciously.'" In re Khalil, 379 B.R. at 173 (quoting Roberts v.  
15 Erhard (In re Roberts), 331 B.R. 876, 883 (9th Cir. BAP 2005)).

16 The bankruptcy court found Debtor knowingly omitted the  
17 Mexican Note because Debtor "consciously signed the schedules and  
18 the various declarations related to the schedules and statements  
19 of financial affairs, later signed the amended schedules declaring  
20 that these documents were true and correct, and the Defendant made  
21 the same statements and testified in the same manner at the  
22 [§] 341(a) meeting." Trial Tr. (Oct. 16, 2013) 12:2-7. Further,  
23 the record shows Debtor revised two initial drafts of his  
24 schedules that were both "replete with errors of all kind[s]," but  
25 later testified that he signed the third draft believing them to  
26 be complete and accurate. The bankruptcy court also found "[t]he  
27 asset provided \$2500 of interest per month at the time the case  
28 was filed." Id. at 8:20-21. The court went on, "[t]his is a

1 substantial portion of the Debtor's monthly income of about \$9,000  
2 a month in the original schedules," and so "it's not something  
3 that someone just forgets." Id. at 8:21-24. We do not perceive  
4 any clear error in the bankruptcy court's finding that Debtor's  
5 false oath was made knowingly.

#### 6 **4. Fraudulent Intent**

7 A debtor acts with fraudulent intent when: (1) the debtor  
8 makes a misrepresentation; (2) that at the time he or she knew was  
9 false; and (3) with the intention and purpose of deceiving  
10 creditors. In re Retz, 606 F.3d at 1198-99. Fraudulent intent is  
11 typically proven by circumstantial evidence or by inferences drawn  
12 from the debtor's conduct. Id. at 1199. Circumstantial evidence  
13 may include showing a reckless indifference or disregard for the  
14 truth. Id.; In re Wills, 243 B.R. at 64 (intent may be  
15 established by a pattern of falsity, debtor's reckless  
16 indifference, or disregard of the truth).

17 The bankruptcy court found that the evidence establishing  
18 Debtor's intent and the denial of his discharge under § 727(a)(2)  
19 also supported a finding of fraudulent intent under  
20 § 727(a)(4)(A). Alternatively, the evidence showed that Debtor  
21 had at least acted with a reckless indifference to the truth,  
22 which also satisfies the requisite intent under § 727(a)(4)(A).  
23 We agree. The evidence supports the bankruptcy court's finding  
24 that Debtor acted with fraudulent intent to deceive creditors when  
25 he omitted the Mexican Note from his schedules and statement of  
26 financial affairs. Thus, it is not clearly erroneous.

27 The bankruptcy court did not err when it determined that  
28 Debtor knowingly and fraudulently made a false oath in connection

1 with his case that related to a material fact. Therefore, it did  
2 not err in denying Debtor's discharge under § 727(a)(4)(A).

3 **VI. CONCLUSION**

4 For the reasons set forth above, we AFFIRM.  
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