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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NOT FOR PUBLICATION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: ALMA ANGELINA CHAVEZ-NUNEZ, Debtor.	BAP No. EC-24-1132-SCB Bk. No. 22-20327
ALMA ANGELINA CHAVEZ-NUNEZ, Appellant, v. KIMBERLY J. HUSTED, Chapter 7 Trustee, Appellee.	Adv. No. 22-02108 MEMORANDUM*

Appeal from the United States Bankruptcy Court
for the Eastern District of California
Christopher D. Jaime, Bankruptcy Judge, Presiding

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

INTRODUCTION

Chapter 7¹ debtor Alma Angelina Chavez-Nunez appeals from a judgment pursuant to § 727(a)(4)(D) denying her a discharge. The bankruptcy court held that Chavez-Nunez was not entitled to a discharge

* 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.

because she knowingly and fraudulently withheld from the chapter 7 trustee Kimberly Husted certain documents concerning her financial condition and business affairs. The sole issue raised on appeal is whether the court clearly erred when it found that this withholding of documents was knowing and fraudulent.

Chavez-Nunez has failed to establish that the bankruptcy court's findings regarding her state of mind were clearly erroneous. Therefore, we AFFIRM.

FACTS²

Chavez-Nunez is no stranger to the bankruptcy court. The underlying bankruptcy case is her sixth since 2012. All of her prior cases were dismissed. She commenced her latest case under chapter 11 in February 2022. At the time of the current bankruptcy Chavez-Nunez conducted business through her company Tahoe Maintenance, Inc., which provided: (1) snow removal; (2) yard work; (3) bookkeeping and tax preparation; and (4) house cleaning. The bankruptcy court appointed a chapter 11 trustee in April 2022 and converted the case to chapter 7 in July 2022. The court based its conversion ruling, in part, on Chavez-Nunez having obstructed the chapter 11 trustee's efforts to obtain financial information about the operation of the business enterprises.

² 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).

In December 2022, Husted sued Chavez-Nunez. Husted's complaint contained five claims for denial of discharge under § 727(a), but the sole claim at issue in this appeal concerns § 727(a)(4)(D). The trustee alleged that Chavez-Nunez knowingly and fraudulently failed to turn over certain documents regarding her financial condition and business affairs, despite repeated requests. After trial in April 2024, the bankruptcy court issued a memorandum decision in favor of Chavez-Nunez on all but the § 727(a)(4)(D) claim. On that claim, the bankruptcy court found in favor of Husted. Though Chavez-Nunez initially claimed that she financially managed all of her business activities through QuickBooks, she later admitted that before she filed her latest bankruptcy, she used an Excel spreadsheet as a ledger to manage her businesses ("Excel Ledger"). Chavez-Nunez made some of her QuickBooks data available to the trustee, but she admitted that she used this program prepetition solely for invoicing. In contrast, Chavez-Nunez used the Excel Ledger prepetition to manage her businesses and prepare her taxes.

The bankruptcy court further found that despite repeated trustee requests, Chavez-Nunez never produced the Excel Ledger and never explained her failure to produce it. She merely testified that she did not recall if she produced it. Chavez-Nunez similarly failed to produce to the trustee, without explanation, any documents concerning her dispute with the IRS arising from its disputed claim for nearly \$7 million ("IRS Documents").

Of prime importance to this appeal, the bankruptcy court additionally found that Chavez-Nunez's withholding of the Excel Ledger and the IRS Documents was knowing and fraudulent.

The bankruptcy court entered judgment in favor of Husted on the § 727(a)(4)(D) claim on August 6, 2024, and Chavez-Nunez 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

Whether the bankruptcy court clearly erred when it found that Chavez-Nunez's failure to produce her Excel Ledger and the IRS Documents was both knowing and fraudulent.

STANDARD OF REVIEW

The bankruptcy court's findings regarding the debtor's state of mind for purposes of a § 727 claim are questions of fact subject to the clearly erroneous standard. *See Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1197 (9th Cir. 2010). Factual findings are not clearly erroneous unless they are illogical, implausible, or without support in the record. *Id.* at 1196.

DISCUSSION

Section 727(a) identifies the types of debtor misconduct that justify denial of discharge. In relevant part, § 727(a)(4)(D) directs the court to deny debtor a discharge when "the debtor **knowingly and fraudulently**, in or in

connection with the case . . . (D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs" 11 U.S.C. § 727(a)(4)(D) (emphasis added).

The only issue that Chavez-Nunez has raised on appeal concerns her state of mind.³ She maintains that she did not knowingly and fraudulently withhold from Husted the Excel Ledger and the IRS Documents. She contends that Husted did not meet her burden to show that she (Chavez-Nunez) harbored the requisite state of mind to justify denial of discharge under § 727(a)(4)(D).

To support this contention, Chavez-Nunez primarily claims that her conceded failure to present the Excel Ledger and the IRS Documents to Husted was the result of her poor health. She points to a serious automobile collision she was involved in during 2016 and the lingering effects on her health. In addition, she insists that the withheld documents—particularly the IRS Documents—were helpful to her rather than detrimental because they supported the expense claims she had submitted but that the IRS rejected. She thus contends that she had no logical reason or motive to withhold them. Finally, Chavez-Nunez claims that the QuickBooks data she made available to Husted included all information from the Excel Ledger, and Husted lacked personal knowledge of the

³ Chavez-Nunez has not challenged the bankruptcy court's finding that she withheld both the Excel Ledger and the IRS Documents.

contents of the QuickBooks data, so she was not competent to refute this claim.

The party objecting to the debtor's discharge bears the burden of proof to establish by a preponderance of evidence the elements necessary to support a denial of discharge. *Khalil v. Devs. Sur. & Indem. Co. (In re Khalil)*, 379 B.R. 163, 172 (9th Cir. BAP 2007), *aff'd*, 578 F.3d 1167 (9th Cir. 2009). To establish that Chavez-Nunez acted "knowingly," Husted needed to prove that she acted "deliberately and consciously." *Id.* at 173 (quoting *Roberts v. Erhard (In re Roberts)*, 331 B.R. 876, 883 (9th Cir. BAP 2005)). And to demonstrate that Chavez-Nunez's actions were fraudulent, Husted was required to prove that Chavez-Nunez acted with the intent and purpose to deceive her creditors. *See In re Retz*, 606 F.3d at 1198-99.

Importantly, a plaintiff objecting to a debtor's discharge is not required to obtain from the debtor an admission that she acted knowingly and fraudulently; rather, the court can infer the debtor's state of mind from "circumstantial evidence or by inferences drawn from the debtor's conduct." *Id.* at 1199 (citing *Devers v. Bank of Sheridan, Mont. (In re Devers)*, 759 F.2d 751, 753-54 (9th Cir.1985)). Here, the bankruptcy court inferred that Chavez-Nunez had acted knowingly and fraudulently from the surrounding circumstances. According to the court, Chavez-Nunez's "unexplained failure to give plaintiff the Excel ledger and the IRS documents despite plaintiff's repeated requests for these documents" constituted "evasive and persistently uncooperative conduct." The court

obviously was aware of Chavez-Nunez's claims of poor health but evidently gave her testimony on this point little or no weight in terms of assessing her state of mind. Far from being clearly erroneous, the bankruptcy court's assessment and weighing of the evidence regarding Chavez-Nunez's health was eminently reasonable. This is especially so because Chavez-Nunez and her bankruptcy counsel failed to link her health in any meaningful way to her alleged inability to gather and produce the Excel Ledger or the IRS Documents.

As for Chavez-Nunez's claim that the information in the IRS Documents was beneficial to her and not detrimental, we only have her self-serving statements to support this claim. She never produced the subject documents—or anything else—to corroborate this point. Neither the trustee, nor the bankruptcy court, were required to accept on faith Chavez-Nunez's assurances regarding the import of documents she failed to produce. Indeed, we afford "singular deference" to the trial court's credibility determinations. *Cooper v. Harris*, 581 U.S. 285, 309 (2017). This follows from the trial court's first-hand familiarity with the witnesses and the litigation. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 574-75 (1985).

With respect to Chavez-Nunez's claim that the QuickBooks data she presented to Husted included the same information as subsumed within the Excel Ledger, we again only have Chavez-Nunez's word for this. She, once again, failed to produce the Excel Ledger to prove this point. She

never denied that she possessed the Excel Ledger or that she failed to produce it to Husted despite repeated requests. Nor did she ever explain her failure to produce the Excel Ledger. Moreover, as Husted testified, Chavez-Nunez had admitted under oath that the Excel Ledger contained financial information regarding Chavez-Nunez's business activities and finances not contained in the QuickBooks data presented to the trustee. Chavez-Nunez never attempted to refute that she made this admission or to explain why she made it.⁴

At bottom, the bankruptcy court's inference of knowing conduct and fraudulent intent is not clearly erroneous on the instant record. Even if the evidence presented at trial reasonably could have supported a contrary inference in favor of Chavez-Nunez, "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.* at 574 (citing *United States v. Yellow Cab Co.*, 338 U.S. 338, 342 (1949)). Because Chavez-Nunez has failed to establish that the

⁴ At oral argument, Chavez-Nunez argued that the bankruptcy court's finding of fraudulent intent for purposes of § 727(a)(4)(D) was logically inconsistent with its denial of the claim under § 727(a)(3) challenging the adequacy of financial records she had produced. Chavez-Nunez confuses the denial of the § 727(a)(3) claim with a finding that she kept and preserved the necessary business records to explain and establish her financial condition. No such finding was made. The denial of the § 727(a)(3) claim did not excuse Chavez-Nunez from producing the Excel Ledger or the IRS Documents. Nor did it preclude the bankruptcy court from finding that Chavez-Nunez withheld those documents with an intent to deceive Husted and her creditors. We also note that Chavez-Nunez failed to raise this argument in her opening appeal brief. This, by itself, would justify our declining to consider it. *See Deitz v. Ford (In re Deitz)*, 469 B.R. 11, 25 (9th Cir. BAP 2012), *aff'd and adopted*, 760 F.3d 1038 (9th Cir. 2014).

bankruptcy court's findings regarding her state of mind were clearly erroneous, we AFFIRM.

CONCLUSION

For the reasons set forth above, we AFFIRM.