

8

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 22-20327-B-7
ALMA ANGELINA CHAVEZ-NUNEZ,) Adversary No. 22-2108
Debtor(s).)

KIMBERLY HUSTED, in her
capacity as trustee for the
bankruptcy estate of Alma
Angelina Chavez-Nunez,

Plaintiff(s),

v.

ALMA ANGELINA CHAVEZ-NUNEZ,

Defendant(s).

FILED
AUG -6 2024
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

MEMORANDUM DECISION AFTER TRIAL

I.

Introduction

Trial in this matter was held on April 29, 2024. The court heard testimony from plaintiff Kimberly Husted in her capacity as the trustee appointed in the parent chapter 7 case, defendant/chapter 7 debtor Alma Angelina Chavez-Nunez, and defendant's son Victor Nunez. At the parties' request, the court allowed written closing arguments.

The court has reviewed and takes judicial notice of the docket in this adversary proceeding, the docket in the parent chapter 7 case, and the claims register in the parent chapter 7 case. See Fed. R. Evid. 201(c)(1). The court has also reviewed

1 and considered the parties' pretrial briefs, trial testimony and
2 exhibits, and the parties' written closing arguments. The court
3 issues this memorandum decision as its findings of fact and
4 conclusions of law. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P.
5 7052.

7 II.

8 Jurisdiction and Venue

9 The court has jurisdiction over this adversary proceeding
10 pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding
11 under 28 U.S.C. § 157(b)(2)(A), (J), and (O). Venue is proper
12 under 28 U.S.C. §§ 1408, 1409.

14 III.

15 Analysis and Discussion

16 Trial proceeded on the following five claims for relief
17 alleged in the complaint:

18 (1) prepetition transfers of property of the debtor by
19 the debtor to her adult children within one year before
20 the petition was filed with the intent to hinder,
21 delay, or defraud creditors or an officer of the estate
22 charged with possession of estate property under 11
23 U.S.C. § 727(a)(2)(A) in the First Claim for Relief;

24 (2) postpetition transfers of property of the estate by
25 the debtor to her adult children with the intent to
26 hinder, delay, or defraud creditors or an officer of
27 the estate charged with possession of estate property
28 under 11 U.S.C. § 727(a)(2)(B) in the Second Claim for
Relief;

(3) unjustified concealment, destruction, mutilation,
falsification, or failed preservation of recorded
information from which the debtor's financial condition
or business transactions could be considered under 11
U.S.C. § 727(a)(3) in the Third Claim for Relief;

(4) knowingly and fraudulently making a false oath in

1 or in connection with the bankruptcy case under 11
2 U.S.C. § 727(a)(4)(A) regarding transfers by defendant
3 to her adult children in the Fourth Claim for Relief;
4 and

5 (5) knowingly and fraudulently withholding recorded
6 information relating to the debtor's property or
7 financial affairs from an officer of the estate
8 entitled to possession of such records under 11 U.S.C.
9 § 727(a)(4)(D) in the Fifth Claim for Relief.

10 A. The First, Second, and Fourth Claims for Relief

11 Common to the First, Second, and Fourth Claims for Relief is
12 that they all concern transfers defendant made to her adult
13 children from defendant's business and personal accounts.
14 Plaintiff's accountant (i.e., the accountant employed in the
15 parent chapter 7 case) analyzed these transfers. Trustee's
16 Closing Brief, Docket 62, at 4:26-27 ("[T]he picture of the
17 Debtor and her businesses' financial disposition has only been
18 derived by extensive third-party discovery and the analysis of
19 the estate's accountant."); see also Trial Transcript, Docket 63,
20 at 21:1-5, 31:3-7, 59:10-25. However, the accountant was not
21 present during trial and did not testify. Trial Tr. at 61:9-17.
22 Without the accountant's testimony about defendant's transfers,
23 plaintiff is unable to establish or substantiate any aspect of
24 the §§ 727(a)(2)(A), 727(a)(2)(B), or 727(a)(4)(A) claims in the
25 First, Second, and Fourth Claims for Relief- the transfers that
26 form the basis of these claims in particular.¹

27 ¹Plaintiff's testimony about these transfers based on what
28 the accountant told plaintiff about the transfers makes
29 plaintiff's testimony hearsay and inadmissible. See Fed. R.
30 Evid. 802. Plaintiff acknowledged that her testimony about
31 defendant's transfers to Victor Nunez, defendant's son, was based
32 on what the accountant told her about the transfers. Trial Tr.
33 at 59:10-25, 61:9-15. Plaintiff also testified that the
34 accountant was the better person to testify about transfers

1 The absence of the accountant's testimony also means that
2 the only admissible evidence regarding the purpose of defendant's
3 transfers is defendant's testimony that she gave her adult
4 children money from her personal and business accounts for
5 education and business-related purposes. Id. at 12:13-18, 13:21-
6 14:2, 15:2-9, 41:16-43:21. Because that testimony provides a
7 legitimate explanation for the transfers, the court will not
8 infer that defendant made the transfers with a fraudulent intent.
9 See Emmett Valley Assocs. v. Woodfield (In re Woodfield), 978
10 F.2d 516, 518 (9th Cir. 1992). Without the inference, and
11 without any other admissible evidence to support any fraudulent
12 intent associated with the transfer-based claims in the First,
13 Second, and Fourth Claims for Relief, on this separate and
14 independent basis, plaintiff has not met the burden necessary to
15 deny defendant a discharge under §§ 727(a)(2)(A), 727(a)(2)(B),
16 or 727(a)(4)(A). Judgment will therefore be entered for
17 defendant and against plaintiff on the First, Second, and Fourth
18 Claims for Relief.

19 B. The Third Claim for Relief

20 The Ninth Circuit has stated that a debtor cannot escape
21 denial of a discharge under § 727(a)(3) by merely asserting that
22 business records do not exist and there is some duty to create
23 records to accurately document business affairs. Caneva v. Sun
24 Cmtys. Operating Ltd. P'ship (In re Caneva), 550 F.3d 755, 762
25 (9th Cir. 2008). At the same time, the Ninth Circuit has also

26
27
28 _____ between defendant's business and personal bank accounts. Id. at
59:10-25.

1 stated that when a debtor produces all the records it has the
2 party objecting to the debtor's discharge under § 727(a)(3) must
3 produce evidence to demonstrate why the records produced are
4 inadequate. Olympic Coast Inv. v. Wright (In re Wright), 364
5 B.R. 51, 69 (Bankr. D. Mont. 2007), aff'd, 2008 WL 160828(D.
6 Mont. Jan. 15, 2008), aff'd, 340 Fed. Appx. 422 (9th Cir. 2009).

7 Defendant gave plaintiff some financial records. Trial Tr.
8 at 22:21-24, 23:20-22. Missing, however, is admissible evidence
9 as to how or why the records defendant gave plaintiff were
10 inadequate. More precisely, there was no testimony from the
11 accountant, as the individual who reviewed and analyzed the
12 records defendant gave plaintiff, explaining why the records
13 defendant gave plaintiff were insufficient or inadequate. As a
14 result, plaintiff has not satisfied her burden under § 727(a)(3).
15 Judgment on the Third Claim for Relief will therefore be entered
16 for defendant and against plaintiff.

17 C. The Fifth Claim for Relief

18 Defendant operated several businesses under the umbrella of
19 Tahoe Maintenance, Inc. Trial Tr. at 26:25-27:3, 34:3-5.

20 Defendant initially told plaintiff that she managed her
21 business with Quickbooks but when plaintiff obtained a copy of
22 defendant's Quickbooks, defendant told plaintiff she used an
23 Excel ledger to manage her business. Id. at 25:19-23; see also
24 16:7-10, 23:3-5. Whereas Quickbooks apparently was used solely
25 as an invoicing program and is now used postpetition, id. at
26 26:1-2, 34:3-10, the Excel ledger was used for prepetition
27 business management and for preparation of defendant's taxes.
28 Id. at 16:8-10, 23:3-8, 34:3-10. Although plaintiff made

1 "multiple" requests for the Excel ledger, defendant never gave it
2 to plaintiff. Id. at 26:3-9. When defendant was asked if she
3 ever gave the Excel ledger to plaintiff, defendant offered no
4 explanation and testified only that she did not recall. Id. at
5 34:11-13.

6 Plaintiff also repeatedly asked defendant for documents
7 regarding defendant's dispute with the IRS. Id. at 21:13-22:3;
8 27:21-28:1. These documents concerned defendant's income and
9 expenses and defendant's federal tax liability to the IRS of
10 nearly \$7,000,000.00. Id. at 22:3-9; see also Claim No. 4-1. As
11 with the Excel ledger, these documents were never produced. Id.
12 at 21:13-22:3; 27:21-28:13. Defendant offered no testimony
13 explaining her failure to give these documents to plaintiff.

14 The Excel ledger and the IRS documents are records that
15 concern defendant's financial affairs. Defendant used these
16 documents to operate and manage her business. She also used
17 these documents to prepare her taxes.

18 Defendant knowingly withheld the Excel ledger and the IRS
19 documents from plaintiff. Given the extent to which the
20 defendant used these documents to operate and manage her business
21 and prepare her taxes, no doubt defendant knew that she had
22 possession or control of these documents. Plaintiff's testimony
23 that defendant never produced these documents despite repeated
24 requests is not rebutted. Plaintiff's testimony on this point is
25 credible and the court believes it.

26 Defendant also fraudulently withheld the Excel ledger and
27 the IRS documents from plaintiff. Fraudulent intent under §
28 727(a)(4)(D) may be established by circumstantial evidence, or by

1 inferences drawn from a course of conduct. Hansen v. Moore (In
2 re Hansen), 368 B.R. 868, 877 (9th Cir. BAP 2007). In other
3 words, the requisite fraudulent intent "can be established with
4 circumstantial evidence such as when a debtor's conduct is
5 evasive or persistently uncooperative or a debtor fails to
6 explain his noncompliance with an order directing him to produce
7 documents." In re Friedberg, 516 B.R. 205, 212 (Bankr. D. Conn.
8 2014); see also In re Young, 346 B.R. 597, 615-16 (Bankr.
9 E.D.N.Y. 2006).

10 Defendant's unexplained failure to give plaintiff the Excel
11 ledger and the IRS documents despite plaintiff's repeated
12 requests for these documents is evasive and persistently
13 uncooperative conduct. As such, there is sufficient
14 circumstantial evidence to establish that defendant withheld
15 records concerning her financial affairs from plaintiff with the
16 fraudulent intent necessary to deny defendant a discharge under §
17 727(a)(4)(D). Plaintiff's objection to defendant's discharge on
18 this basis will therefore be sustained, judgment will be entered
19 for plaintiff and against defendant on the Fifth Claim for
20 Relief, and defendant's discharge will be denied.

21
22 **IV.**

23 **Conclusion**

24 Based on the foregoing, defendant's chapter 7 discharge is
25 **DENIED.**

26 A separate judgment will issue.

27 Dated: August 6, 2024.

28 
UNITED STATES BANKRUPTCY JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

J. Russell Cunningham
1830 15th St
Sacramento CA 95811

John G. Downing
10075 West River Street Suite 205
Truckee CA 96161