NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: JOSEPH ELLISON, Debtor, _____ JOSEPH ELLISON, Appellant, v. JP MORGAN CHASE BANK NA and J.P. MORGAN SECURITIES, LLC, Appellees.	No. 17-60071 BAP No. 16-1328 MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Pappas, Kurtz, and Taylor, Bankruptcy Judges, Presiding

Argued and Submitted March 8, 2019
Pasadena, California

Before: SCHROEDER and OWENS, Circuit Judges, and CHRISTENSEN,** Chief District Judge.

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

** The Honorable Dana L. Christensen, Chief United States District Judge for the District of Montana, sitting by designation.

Joseph Ellison, a Chapter 7 debtor, appeals from the Bankruptcy Appellate Panel's ("BAP") decision affirming the bankruptcy court's judgment denying him a discharge under 11 U.S.C. § 727(a)(2)(A). As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. §§ 158(d) and 1291, and we affirm.

A debtor is denied a discharge under § 727(a)(2)(A) if two requirements are met: "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). Ellison does not dispute that he conducted multiple property transfers within one year prior to filing for bankruptcy, but he argues that he did not have the requisite intent to satisfy the second requirement.

However, the bankruptcy court did not clearly err in concluding that Ellison acted with intent to hinder or delay a creditor. *See id.* (stating that, on appeal from the BAP, we review the underlying bankruptcy court's factual findings for clear error); *Bernard v. Sheaffer (In re Bernard)*, 96 F.3d 1279, 1281 (9th Cir. 1996) (explaining that a finding of intent to "defraud" is not needed because "[i]ntent to hinder or delay is sufficient"). The bankruptcy court here evaluated numerous factors in the totality of the circumstances, and the record reflects sufficient evidence of Ellison's intent. *See Emmett Valley Assocs. v. Woodfield (In re*

Woodfield), 978 F.2d 516, 518 (9th Cir. 1992) ("We may infer the intent from the circumstances surrounding the transaction.").

Specifically, the bankruptcy court properly considered Ellison's sizeable prepayments on his mortgages. While "[t]he mere fact that a bankrupt has made a preferential payment or transfer to one of his creditors is no ground for denying a discharge," *Hultman v. Tevis*, 82 F.2d 940, 941 (9th Cir. 1936), courts may consider preferential payments as part the broader "course of conduct" that may establish intent, *First Beverly Bank v. Adeeb (In re Adeeb)*, 787 F.2d 1339, 1343 (9th Cir. 1986) (citation omitted). Similarly, the bankruptcy court did not err in considering Ellison's conversion of nonexempt assets into exempt assets. After all, the general rule that courts should have "tolerance of basic bankruptcy exemption planning" does not prevent courts from inferring discharge-disqualifying intent from such transfers and the surrounding circumstances. *Wolkowitz v. Beverly (In re Beverly)*, 374 B.R. 221, 242 (BAP 9th Cir. 2007). The bankruptcy court also correctly determined that Ellison's transfer of community property funds from his personal bank account to his wife's law office bank account was additional evidence of his intent to "hinder or delay" a creditor because of the practical difficulties in collecting these funds. *In re Bernard*, 96 F.3d at 1281.

In addition, the bankruptcy court properly analyzed Ellison's admissions in his Bankruptcy Rule 2004 examination and trial as part of the totality of the

circumstances. *See In re Woodfield*, 978 F.2d at 518. For instance, Ellison admitted that his transfer of funds from his personal bank account to a corporation owned entirely by him "was a panicky thing" he did because he "didn't know what was going to happen" and "was afraid people were going to come and take all [his] money away." Ellison also testified that his prepayments on his mortgages were an attempt to prioritize keeping his home. Ellison even stated that he was particularly concerned that his former attorney would be "coming in and attaching his assets" to collect unpaid fees. The bankruptcy court's finding that Ellison intended to hinder or delay a creditor—based on these admissions and additional circumstantial evidence—was not "illogical, implausible, or without support in the record." *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010); *see id.* ("When factual findings are based on determinations regarding the credibility of witnesses, we give great deference to the bankruptcy court's findings . . . .").

Finally, the record does not support Ellison's assertion that he conducted his pre-bankruptcy transfers in good-faith reliance on the advice of his former counsel.

AFFIRMED.