

Ticor Title Ins. Co. v. Brandenfels, Adversary No. 13-3159
Sally Jane Brandenfels, Case No. 13-32532
Appellate No. 15-60075 9th Cir.

07/05/2017 ELP

Unpublished

Ninth Circuit opinion affirming the BAP, which had affirmed the bankruptcy court's denial of debtor's discharge under § 727(a)(3). The court held that the bankruptcy court applied the correct legal standard for determining whether debtor kept adequate records. Under § 727(a)(3), the creditor must first prove that the debtor failed to maintain and preserve adequate records, and that such failure makes it impossible to ascertain the debtor's financial condition and business transactions. Then the burden shifts to the debtor to justify the inadequacy or lack of records.

The bankruptcy court properly determined that debtor failed to maintain adequate records. Debtor's own testimony supported the court's finding that the inadequacies in the records were not justified.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 05 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: SALLY JANE BRANDENFELS,

Debtor,

SALLY JANE BRANDENFELS,

Appellant,

v.

TICOR TITLE INSURANCE CO.,

Appellee.

No. 15-60075

BAP No. 14-1145

BAP, Portland Bankruptcy Court

MANDATE

The judgment of this Court, entered June 13, 2017, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rebecca Lopez
Deputy Clerk
Ninth Circuit Rule 27-7

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

JUN 13 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: SALLY JANE BRANDENFELS,

No. 15-60075

Debtor,

BAP No. 14-1145

SALLY JANE BRANDENFELS,

MEMORANDUM*

Appellant,

v.

TICOR TITLE INSURANCE CO.,

Appellee.

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Kirscher, Jury, and Faris, Bankruptcy Judges, Presiding

Submitted June 9, 2017**
Portland, Oregon

Before: GOULD and RAWLINSON, Circuit Judges, and RAYES, *** District

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

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

*** The Honorable Douglas L. Rayes, United States District Judge for the District of Arizona, sitting by designation.

Judge.

Chapter 7 debtor Sally Brandenfels appeals a decision of the Bankruptcy Appellate Panel (“BAP”) affirming the bankruptcy court’s decision granting Tigor Title Insurance Company’s (“Tigor”) motion to deny a discharge under 11 U.S.C. § 727(a)(3). We have jurisdiction under 28 U.S.C. § 158(d)(1) and affirm.

We conclude, contrary to Brandenfels’s argument, that the bankruptcy court applied the correct legal standard when addressing Tigor’s claim that Brandenfels did not keep adequate records. Under our case law, Section 727(a)(3) creates a burden-shifting framework. The creditor must first prove “(1) that the debtor failed to maintain and preserve adequate records, and (2) that such failure makes it impossible to ascertain the debtor’s financial condition and material business transactions.” *Caneva v. Sun Cmtys. Operating Ltd. P’ship (In re Caneva)*, 550 F.3d 755, 761 (9th Cir. 2008) (internal quotation marks omitted). “[T]he burden of proof then shifts to the debtor to justify the inadequacy or nonexistence of the records.” *Id.* (internal quotation marks omitted).

Here, the bankruptcy court properly concluded that Brandenfels unjustifiably failed to keep adequate records. The bankruptcy court identified three valid grounds for concluding that the records were inadequately kept: (1) that Brandenfels could not account for substantial cash withdrawals taken from her company’s corporate account; (2) that she failed to split her records by indicating

which expenditures were personal and which were business related; and (3) that she failed to explain her payments of corporate funds to third parties. *See Stewart Enters., Inc. v. Horton (In re Horton)*, 621 F.2d 968, 971–92 (9th Cir. 1980); *Caneva*, 550 F.3d at 761–62. In light of Brandenfels’s own testimony that she took measures to avoid Ticor’s garnishments, the bankruptcy court properly found that the inadequacies in Brandenfels’s records were unjustified.

Ticor did not abandon its claim under Section 727(a)(3). The bankruptcy court and the parties discussed the issue of Brandenfels’s recordkeeping at length at trial and the bankruptcy court expressly confirmed with Ticor’s counsel that Ticor was not withdrawing its Section 727(a)(3) claim.

AFFIRMED.