



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
March 15, 2021

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:

Case No. 19-11988-mkn

CLARENCE MOSES WILLIS  
dba MAJOR ALARM CO  
dba FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Chapter 7

Debtor.

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Adv. Proc. No. 19-01092-mkn

Plaintiff,

v.

Date: January 28, 2021

Time: 1:30 p.m.

CLARENCE MOSES WILLIS,

Defendant.

**ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT<sup>1</sup>**

On January 28, 2021, the court heard Plaintiff's Motion for Summary Judgment ("SJ Motion"), brought by Federal National Mortgage Association ("FNMA" or "Plaintiff"). The

<sup>1</sup> In this Order, all references to "ECF No." are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of court. All references of "AECF No." are to the documents filed in the above-captioned adversary proceeding. All references to "Section" or "§§ 101-1532" are to the provisions of the Bankruptcy Code. All references to "NRS" are to the Nevada Revised Statutes. All references to "Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure. All references to "Civil Rule" are to the Federal Rules of Civil Procedure.

1 appearances of counsel were noted on the record. After arguments were presented, the matter  
2 was taken under submission.

### 3 **BACKGROUND<sup>2</sup>**

4 On April 2, 2019, pro se debtor Clarence Moses Willis (“Debtor” or “Defendant”) filed a  
5 voluntary Chapter 13 petition. (ECF No. 1).<sup>3</sup>

6 On April 16, 2019, Debtor filed his schedules of assets and liabilities (“Schedules”) along  
7 with his statement of financial affairs (“SOFA”). (ECF No. 15). Both the Schedules and the  
8 SOFA are signed under penalty of perjury. In Part 1 of his property Schedule “A/B,” Debtor  
9 attests that he owns or has a legal or equitable interest in a single-family home with a street  
10 address of 330 Garden Lane, Fernley, NV, 89408 (“Garden Property”). He attests that the  
11 Garden Property has a value of \$200,000 and the value of his portion also is \$200,000. In Part 4  
12 of his property Schedule “A/B,” Debtor also attests that he owns or has a legal or equitable  
13 interest in the “Trade Name – FEDERAL NATIONAL MORTGAGE ASSOCIATION” as well  
14 as a license, franchise or general intangible interest in “FEDERAL NATIONAL MORTGAGE  
15 ASSOCIATION-State License-NV20151296475.” In Part 4 of the same property Schedule  
16 “A/B,” Debtor also attests that he has no claims against third parties, nor any contingent or  
17 unliquidated claims of any nature, including counterclaims. In his Schedule “C,” Debtor did not  
18 claim an exemption in any property not listed in his property Schedule “A/B.” In Part 2 of his  
19 unsecured creditor Schedule “E/F,” Debtor attests that Federal National Mortgage Association  
20 has a disputed claim in the amount of \$103,000 that was incurred on 06/01/2018 based on a Final  
21 Judgment. In Part 4 of his SOFA, Debtor attests that a legal action entitled Federal National M

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22 <sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the  
23 docket in the above-captioned adversary proceeding and the above-captioned Bankruptcy Case  
24 See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04,  
25 Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015)  
26 (“The Court may consider the records in this case, the underlying bankruptcy case and public  
records.”).

27 <sup>3</sup> On September 12, 2018, Debtor, in pro se, commenced a previous Chapter 7  
28 proceeding, denominated Case No. 18-15439-MKN (“2018 Case”). On April 1, 2019, an order  
was entered dismissing the 2018 Case without prejudice. The next day, Debtor commenced the  
instant bankruptcy proceeding.

1 v. Clarence M. Willis, Case No. 2:15-cv-02366, was commenced in USDC-Nevada, and is on  
2 appeal.

3 On June 12, 2019, the Chapter 13 proceeding was converted to Chapter 7 at Debtor's  
4 request. (ECF No. 36). The converted case was assigned to Lenard E. Schwartz, a panel  
5 Chapter 7 trustee ("Chapter 7 Trustee"). (ECF No. 38).

6 On July 1, 2019, Debtor, in pro se, commenced an adversary proceeding against an  
7 attorney and the law firm that apparently had represented Federal National Mortgage  
8 Association, denominated Adversary Proceeding No. 19-01069-MKN ("Willis Adversary").  
9 Debtor alleged that defendants engaged in misconduct during the instant bankruptcy case from  
10 April 8, 2019, through July 1, 2019, that would entitle him to various relief.

11 On August 20, 2019, Debtor filed an amended complaint in the Willis Adversary. The  
12 amended complaint therein alleged that the same defendants engaged in misconduct in the  
13 Debtor's 2018 Case on December 18, 2018, as well as in the Debtor's current bankruptcy case.  
14 In other words, the misconduct allegedly occurred both before and after the current bankruptcy  
15 case was commenced. Based on the alleged misconduct, the Willis Adversary sought to recover  
16 \$250,000 in damages as well as other relief.

17 On August 30, 2019, the Chapter 7 Trustee reported that there are no assets available for  
18 distribution to creditors in the case. (ECF No. 50).<sup>4</sup>

19 On September 13, 2019, Plaintiff filed a complaint against the Debtor commencing the  
20 above-captioned adversary proceeding ("Adversary Complaint"). (AECF No. 1). Plaintiff seeks  
21 to deny the Debtor a Chapter 7 discharge under Section 727(a)(4)(A) [false oath] and to  
22 determine dischargeability of debt under Section 523(a)(2) [fraud and misrepresentation] and  
23 under Section 523(a)(6) [willful and malicious injury].

24 On October 21, 2019, Debtor, in pro se, filed an answer to the Adversary Complaint  
25 ("Answer") along with an affidavit in support thereof. (AECF No. 8 and 9).

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27 <sup>4</sup> Despite the "no asset" report filed by the Chapter 7 Trustee, the case remains open and  
28 no property of the bankruptcy estate has been abandoned under Section 554(c). Similarly, no  
property of the bankruptcy estate has been abandoned under Sections 554(a) or (b).

1 On November 12, 2019, an order was entered dismissing the Willis Adversary for failure  
2 to state a claim for which relief may be granted, without leave to amend.<sup>5</sup> The order dismissing  
3 the Willis Adversary was not appealed and is final.

4 On February 5, 2020, an order was entered approving the parties' stipulation to stay this  
5 adversary proceeding pending the outcome of the Debtor's appeal to the Ninth Circuit Court of  
6 Appeals ("Ninth Circuit") of a judgment ("Final Judgment") entered by the U.S. District Court  
7 for the District of Nevada ("USDC").<sup>6</sup> (AECF No. 13). That Final Judgment awarded a variety  
8 of relief in favor of the Plaintiff and against the Defendant, including an award of punitive  
9 damages in the amount of \$103,300. No compensatory damages were awarded.

10 On September 15, 2020, an order was entered by this bankruptcy court vacating the stay  
11 of this adversary proceeding because the Ninth Circuit had entered an order affirming the  
12 USDC's Final Judgment.<sup>7</sup> (AECF No. 19). The order vacating the stay established a deadline of  
13 January 7, 2021, for completion of discovery in this adversary proceeding. The order also  
14 scheduled a conference to be held on January 28, 2021, for the purpose of setting a trial or other  
15 proceedings in this matter.

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18 \_\_\_\_\_  
19 <sup>5</sup> Debtor's original complaint and amended complaint in the Willis Adversary, as well as  
20 the order dismissing the proceeding without leave to amend, appear on the docket for that  
adversary proceeding as document numbers 1, 12, and 31.

21 <sup>6</sup> A copy of the Final Judgment is attached as Exhibit "1" to the Adversary Complaint.  
22 That Final Judgment was entered on April 26, 2018, in a civil proceeding entitled Federal  
23 National Mortgage Association, plaintiff v. Ernest C. Aldridge; Clarence Moses Willis; et al.,  
24 defendants, denominated Case No. 2:15-cv-02366-JCM-GWF ("USDC Action"). The complaint  
25 in the USDC Action asserted 19 causes of action separately and jointly, against four individuals  
26 and entities, including the Debtor. The causes of action against the Debtor included claims for  
declaratory relief, quiet title, fraud, conspiracy to defraud, slander of title, fraudulent  
conveyance, injunctive relief, trespass, federal racketeering, and violation of 12 U.S.C.  
§1723a(e).

27 <sup>7</sup> The Ninth Circuit mandate affirming the district court's Final Judgment apparently was  
28 entered on July 1, 2020. No petition for rehearing, rehearing *en banc*, or for writ of certiorari  
was filed.

1 On November 24, 2020, Plaintiff filed the instant SJ Motion along with a separate  
2 statement of undisputed facts (“SUF”).<sup>8</sup> (AECF Nos. 36 and 37). The SJ Motion was noticed to  
3 be heard on January 28, 2021. (AECF No. 38).

4 On December 9, 2020, a stipulation and order were entered granting Debtor until  
5 December 28, 2020, to file a response to the SJ Motion and Plaintiff until January 12, 2021, to  
6 file a reply. (AECF Nos. 40 and 41).

7 On December 14, 2020, Debtor filed a Motion for Leave to File Counterclaim  
8 (“Counterclaim Motion”) and noticed it to be heard on January 20, 2021. (AECF No. 47 and  
9 48).

10 On December 30, 2020, Debtor filed an opposition (“Opposition”) to the SJ Motion.  
11 (AECF No. 52).

12 On January 6, 2021, Plaintiff filed an opposition to the Counterclaim Motion. (AECF  
13 No. 53).

14 On January 12, 2021, Plaintiff filed a reply in support of the SJ Motion (“Reply”).  
15 (AECF No. 54).

16 On January 19, 2021, Debtor filed a reply in support of the Counterclaim Motion.  
17 (AECF No. 56).

18 On January 20, 2021, the hearing on the Counterclaim Motion was continued to January  
19 28, 2021, so that it could be heard concurrently with the SJ Motion.<sup>9</sup>

20 **DISCUSSION**

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22  
23 <sup>8</sup> Attached to the SUF as Exhibits “A” through “Z” are a copies of a variety of  
24 documents, pleadings, memoranda and materials recorded in county records or filed in other  
25 court proceedings. No objection to the authenticity or admissibility of the exhibits has been  
26 presented. Included as Exhibit “V” is a copy of the Ninth Circuit’s memorandum decision filed  
27 on June 9, 2020, affirming the Federal Judgment. Other than copies of Debtor’s Schedules and  
SOFA, none of the exhibits include statements made by the Debtor under penalty of perjury,  
either before a judicial tribunal, during a deposition, or in response to discovery.

28 <sup>9</sup> The Counterclaim Motion is the subject of a separate order entered contemporaneously  
herewith.

1 The Adversary Complaint objects to entry of a Chapter 7 discharge under Section 727,  
2 and also seeks a determination of dischargeability of debts under Section 523. As to the latter,  
3 the debts are reflected by the Final Judgment entered in the USDC Action. See Adversary  
4 Complaint at ¶¶ 1, 105-106. Inasmuch as the Ninth Circuit has affirmed the Final Judgment  
5 entered by the USDC, Plaintiff now seeks summary judgment to deny Debtor a Chapter 7  
6 discharge and determining that the debts reflected by the Federal Judgement are non-  
7 dischargeable. See SJ Motion at ¶ 3.

8 **A. Preclusive Effect of the Final Judgment.**

9 Issue preclusion applies in proceedings to deny a discharge. See Asphalt Professionals,  
10 Inc. v. Davis (In re Davis), 2019 WL 406680, at \*8 (9th Cir. Jan. 31, 2019). Issue preclusion  
11 also applies in proceedings to determine dischargeability of a debt, see Grogan v. Garner, 498  
12 U.S. 279, 284 n.11 (1991), but claim preclusion does not bar assertion of fraud or other theories  
13 of nondischargeability in a subsequent bankruptcy. See Brown v. Felson, 442 U.S. 127, 133-139  
14 (1979). Issue preclusive prevents re-litigation of an issue of fact or law that was decided in a  
15 prior proceeding. The preclusive effect of a federal-court judgment is determined by federal  
16 common law.” Taylor v. Sturgell, 128 S. Ct. 2161, 2171 (2008). Federal common law requires:  
17 (1) that the issue was identical in both proceedings, (2) that the issue was actually litigated and  
18 decided in the prior proceeding, (3) that there was a full and fair opportunity to litigate the issue,  
19 and (4) the issue was necessary to decide the merits. See Howard v. City of Coos Bay, 871 F.3d  
20 1032, 1041 (9th Cir. 2017).<sup>10</sup>

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23 <sup>10</sup> Where issue preclusion is applied by a federal court to a prior judgment of a state court,  
24 the federal court must apply the preclusion rules of the state issuing the judgment. See Migra v.  
25 Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984); White v. City of Pasadena, 671  
26 F.3d 918, 926 (9th Cir. 2012). In Nevada, issue preclusive effect is given to a prior state court  
27 judgment when the following are established: (1) the issue decided in the prior litigation must be  
28 identical to the issue presented in the current action; (2) the initial ruling must have been on the  
merits and have become final; (3) the party against whom the judgment is asserted must have  
been a party or in privity with a party to the prior litigation; and (4) the issue was actually and  
necessarily litigated. See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1055, 194 P.3d 709,  
713 (2008).

1 Where a debtor participates in a prior federal action but engages in misconduct resulting  
2 in entry of a default judgment, a bankruptcy court may give issue preclusive effect to the default  
3 judgment in a subsequent bankruptcy proceeding. See Fed. Deposit Ins. Co. v. Daily (In re  
4 Daily), 47 F.3d 365, 368-369 (9th Cir. 1995). Compare Krystal v. Haynie (In re Haynie), 621  
5 B.R. 456 (Bankr. D. Idaho 2020) (issue preclusive effect given to prior state court judgment  
6 entered in civil action in which the debtor participated). See also In re Rodriguez Investments,  
7 LLC, 2020 WL 1182579, at \* 6 (Bankr. D. Alaska Mar. 10, 2020) order is not entered on a  
8 default basis where the party fails to fully participate in an evidentiary hearing).

### 9 **B. Summary Judgment Standards.**

10 A motion for summary judgment filed in an adversary proceeding is governed by Civil  
11 Rule 56 which is applicable in this matter under Bankruptcy Rule 7056. See Silva v. Smith's  
12 Pac. Shrimp, Inc. (In re Silva), 190 B.R. 889, 891 (B.A.P. 9th Cir. 1995). Under Civil Rule  
13 56(a), summary judgment may be granted only if “the movant shows that there is no genuine  
14 dispute as to any material fact and that the movant is entitled to judgment as a matter of law.”  
15 Fed. R. Civ. P. 56(a).

16 For summary judgment purposes “[m]aterial facts are those that may affect the outcome  
17 of the case.” Farmer v. Las Vegas Metro. Police Dep’t, 423 F. Supp. 3d 1008, 1013 (D. Nev.  
18 2019), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1985). Findings of fact may  
19 not be entered because summary judgment may only be granted where there are no disputed  
20 issues of fact. See Animal Legal Def. Fund v. U.S. Food & Drug Admin., 836 F.3d 987, 989-90  
21 (9th Cir. 2016). A genuine issue of material fact exists when “the evidence is such that a  
22 reasonable jury could return a verdict for the nonmoving party.” Id. The moving party’s  
23 evidence is judged by the same standard of proof applicable at trial. See Celotex Corp. v.  
24 Catrett, 477 U.S. 316, 323 (1986); see also Southern Calif. Gas Co. v. City of Santa Ana, 336  
25 F.3d 885, 888 (9th Cir. 2003). The burden of proof is on the party seeking the summary  
26 judgment, but the inferences are viewed in favor of the opposing party. See Eastman Kodak Co.  
27 v. Image Technical Services, Inc., 504 U.S. 451, 456 (1992); see also Miller v. Glenn Miller  
28 Prods., Inc., 454 F.3d 975, 987 (9th Cir. 2006). A preponderance of the evidence standard

1 applies to proceedings to deny discharge under Section 727 and to determine dischargeability of  
2 debt under Section 523. See Grogan v. Garner, 498 U.S. 279, 286 (1991).

3       Once the moving party demonstrates the absence of disputed material facts, the  
4 responding party must provide admissible evidence raising a genuine dispute. The responding  
5 party cannot rely solely on conclusory allegations unsupported by factual data. See Farmer v.  
6 Las Vegas Metro. Police Dep't, 423 F. Supp.3d at 1014 (“the nonmoving party cannot avoid  
7 summary judgment by relying solely on conclusory allegations that are unsupported by factual  
8 data [ . . . ] Instead, the opposition must go beyond the assertions and allegations of the pleadings  
9 and set forth specific facts by producing competent evidence that shows a genuine issue for  
10 trial.”) (external citations omitted).

11       Factual disputes presented by the evidence are not resolved by summary judgment, and  
12 assessments of witness credibility and intent ordinarily are ill-suited to resolution by summary  
13 judgment. See Fogel Legware, etc. v. Wills (In re Wills), 243 B.R. 58, 65 (B.A.P. 9th Cir.  
14 1999). See also Reaves v. Thurston (In re Thurston), 2013 WL 3497674 at \* 6 (B.A.P. 9th Cir.  
15 2013). See, e.g., Plise v. Krohn (In re Plise), 719 Fed.Appx. 622 (9th Cir. 2018) (bankruptcy  
16 court erred in rejecting defendant’s summary judgment affidavit attesting as to his intent on a  
17 false oath claim).

18       In connection with the instant SJ Motion, Plaintiff relies on the materials attached to the  
19 SUF, see note 8, supra, while Debtor submits copies of a number of documents that are largely  
20 immaterial to the arguments and record offered by the Plaintiff. See Opposition at ¶¶ 7-12 and  
21 Exhibits attached thereto.<sup>11</sup> Neither side disputes the authenticity of the copies of the documents  
22 offered by the other side.

23  
24       <sup>11</sup> Most of the papers attached to Debtor’s Opposition consists of a copy of the SUF and  
25 26 attached exhibits submitted by the Plaintiff. Exhibit “4” to that Opposition is a copy of a  
26 quitclaim deed recorded in Lyon County, Nevada, on December 21, 2020. In that quitclaim  
27 deed, Debtor purports to transfer an interest in the Garden Property to an entity identified as 330  
28 Garden Lane Land Trust. The Final Judgment entered by the USDC on April 28, 2018, however,  
declared the Plaintiff to be the true and lawful owner of that real property as well as other  
properties. More important, the Final Judgment also permanently enjoined the Debtor from,  
among other things, conveying, otherwise alienating or encumbering any real property in which  
the chain of title reflects the Plaintiff as the owner of record. Whether Exhibit “4” offered by the



1 Having considered the allegations of the SJ Motion, the materials submitted, and the  
2 written and oral arguments presented, the court concludes there are no genuine disputes of  
3 material fact and that Plaintiff is entitled to judgment as a matter of law.

4 **C. Denial of Chapter 7 Discharge under Section 727(a)(4).**

5 Under Section 727(b), a Chapter 7 discharge applies to “all debts that arose before the  
6 [bankruptcy petition date].…” 11 U.S.C. §727(b). A bankruptcy discharge “operates as an  
7 injunction against the commencement or continuation of an action, the employment of process,  
8 or an act, to collect, recover or offset any such debt as a personal liability of the debtor…” 11  
9 U.S.C. §524(a)(2). Through this adversary proceeding, Plaintiff seeks, *inter alia*, to deny Debtor  
10 a discharge in bankruptcy as well as the protection afforded by a discharge. Plaintiff maintains  
11 that a discharge must be denied under Section 727(a)(4) because Debtor “knowingly and  
12 fraudulent[ly] made a false oath or account or presented or used a false claim.” See SJ Motion at  
13 ¶ 80. In keeping with the purposes of allowing otherwise “honest but unfortunate“ debtors a  
14 ‘fresh start,’ the Ninth Circuit requires claims under Section 727 to be construed liberally in  
15 favor of debtors and strictly against the parties who object to discharge. See Retz v. Samson (In  
16 re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010).

17 To prevail on a claim under Section 727(a)(4)(A), a plaintiff must establish: “(1) the  
18 debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3)  
19 the oath was made knowingly; and (4) the oath was made fraudulently.” Roberts v. Erhard (In re  
20 Roberts), 331 B.R. 876, 882 (B.A.P. 9th Cir. 2005), aff’d and remanded, 241 Fed. Appx. 420  
21 (9th Cir. 2007) (external citation omitted). In this circuit, “a false statement or an omission in a  
22 debtor’s statement of financial affairs or schedules can constitute a false oath.” See In re Retz,  
23 606 F.3d at 1196, quoting Khalil v. Developers Sur. & Indem. Co. (In re Khalil), 379 B.R. 163,  
24 172 (B.A.P. 9th Cir. 2007), aff’d, 578 F.3d 1167, 1168 (9th Cir.2009). Because Section  
25 727(a)(4) requires that the debtor “knowingly” and “fraudulently” made a false oath, proof of  
26 actual intent is required. See Devers v. Bank of Sheridan (In re Devers), 759 F.2d 751, 753 (9th  
27  
28 Debtor evidences his knowing violation of the permanent injunction entered by the USDC is not  
before this court. Moreover, whether criminal or civil contempt sanctions would be appropriate  
for violation of the permanent injunction also is not before this court.

1 Cir. 1985). Actual intent may be established by circumstantial evidence or inferences drawn  
2 from the debtor's conduct. Id. at 753-54.

3 Here, the Final Judgment entered on April 26, 2018, provided in pertinent part as follows:

- 4 • IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff,  
5 the federally chartered, government sponsored enterprise known as Federal  
6 National Mortgage Association, which is also known as Fannie Mae, is the  
7 true, lawful owner of the following real properties (collectively, the "Subject  
8 Properties"), and title to the same is hereby quieted in the name of Federal  
9 National Mortgage Association (Fannie Mae):
  - 10 ○ 330 Garden Lane, Fernley, Nevada 89408 ("Garden Property"),...
- 11 • IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Clarence  
12 Moses Willis was not authorized by Federal National Mortgage Association to  
13 convey or cause to be conveyed the Subject Properties, and the purported  
14 conveyances of the Subject Properties away from Federal National Mortgage  
15 Association were the result of fraud, and therefore the following recorded  
16 instruments are void ab initio, are of no force and effect, and are hereby  
17 expunged from the public record:
  - 18 ○ A Quitclaim Deed recorded against the Garden Property, recorded in the  
19 Official Records of Lyon County, Nevada as Document No. 542059;...
  - 20 ○ A Grant, Bargain, Sale Deed recorded against the Garden Property,  
21 recorded in the Official Records of Lyon County, Nevada as Instrument  
22 No. 544697...
- 23 • IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and  
24 all rights, title, or interest in or to the Subject Properties derived from any of  
25 the above referenced instruments is void ab initio and of no force and effect.
- 26 • IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Clarence  
27 Moses Willis is permanently enjoined from (1) using the words "Federal  
28 National Mortgage Association" or "Fannie Mae" or any combination of these  
words in any document that purports to provide or convey title to real property  
to or from Fannie Mae; (2) applying for or using business licenses, tax  
permits, fictitious firm names or any other license, permit, or permission from  
any municipal, state, or federal agency in the name of "Federal National  
Mortgage Association" or "Fannie Mae"; (3) purchasing, acquiring, accepting  
transfer of, conveying, selling, or otherwise alienating or encumbering any  
real property in which the chain of title of the property or the county assessors  
office reflects "Federal National Mortgage Association" or "Fannie Mae" as  
the owner of record of the property.
- IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Federal  
National Mortgage Association is entitled to judgment from and against  
Clarence Moses Willis for punitive damages in the amount of \$103,300 for  
violation of 12 U.S.C. §1723a(e). The amount of punitive damages which  
represents damages in the amount of \$100 for each day that Clarence Moses  
Willis has violated the statute by using the name "Federal National Mortgage  
Association" from May 11, 2015 to March 9, 2018.

- IT IS SO ORDERED, ADJUDGED and DECREED.

1  
2 Final Judgment at 1:24 to 5:7 (emphasis added).<sup>12</sup> There is no evidence in the record that the  
3 Final Judgment was stayed at any time before or after it was affirmed by the Ninth Circuit in July  
4 2020. In other words, Debtor has been bound by the terms of the Final Judgment from the date it  
5 was entered on April 26, 2018.

6 Despite the binding effect of the Final Judgment, there is no dispute that Debtor  
7 commenced the instant bankruptcy proceeding on April 2, 2019, and filed his Schedules and  
8 SOFA under penalty of perjury on April 17, 2019. There is no dispute that the Debtor had actual  
9 knowledge of the Final Judgment because he referred to both the Final Judgment and the USDC  
10 Action in his Schedules and SOFA. Despite title in the Garden Property having been quieted in  
11 the name of the Plaintiff, Debtor nonetheless stated under penalty of perjury in Schedule “A/B”  
12 that he owns or has a legal or equitable interest in the Garden Property. Despite title in the  
13 Garden Property having been quieted in the name of the Plaintiff, Debtor nonetheless stated  
14 under penalty of perjury in Schedule “A/B” that he owns an interest in the Garden Property  
15 valued at \$200,000. Despite the language in the Final Judgment determining that the Debtor was  
16 not authorized by the Plaintiff to convey title to the Garden Property and that the purported  
17 conveyance was the result of fraud, Debtor nonetheless stated under penalty of perjury in  
18 Schedule “A/B” that he owns or has a legal or equitable interest in the Garden Property. Despite  
19 the language in the Final Judgment declaring a purported quitclaim deed and a purported grant  
20 deed to the Garden Property to be the result of fraud, and therefore to be void ab initio, Debtor  
21 nonetheless stated under penalty of perjury in Schedule “A/B” that he owns or has a legal or  
22 equitable interest in the Garden Property. Despite the language of the Final Judgment  
23 permanently enjoining the Debtor from encumbering any real property in which the chain of title  
24

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25  
26 <sup>12</sup> Footnote 1 to the Final Judgment specifically provides: “All references in this  
27 Judgment to Federal National Mortgage Association or Fannie Mae are to the federally  
28 chartered, government sponsored enterprise known as Federal National Mortgage Association or  
Fannie Mae, and do not refer to the Nevada entity or business purportedly created by Clarence  
Moses Willis which bears the name “Federal National Mortgage Association.””

1 reflects the Plaintiff, Debtor nonetheless attests in Schedule “A/B” that he owns or has a legal or  
2 equitable interest in the Garden Property.

3 Because the USDC previously determined that Debtor’s actions concerning the Garden  
4 Property, and other real property parcels, were the result of fraud,<sup>13</sup> summary judgment under  
5 Section 727(a)(4) is appropriate. Based on the record, Debtor’s claim to an interest in the  
6 Garden Property as well as an interest in the Plaintiff was false when he filed his Schedules and  
7 SOFA. Based on the record, Debtor’s claims were material to his burdens for initially seeking  
8 relief under Chapter 13 and also to the administration of his bankruptcy estate when the case was  
9 voluntarily converted to Chapter 7. Based on the record, Debtor’s claims to an interest in the  
10 Garden Property as well as in the Plaintiff were knowingly false because he had actual  
11 knowledge of the fact that USDC already had rejected his claims when he filed his Schedules  
12 and SOFA. Based on the record, Debtors claims to an interest in the Garden Property as well as  
13 in the Plaintiff were made fraudulently because the USDC already had determined that the prior  
14 quit claim deed and grant deed were the result of fraud, and that the Debtor was permanently  
15 enjoined encumbering the Garden Property. Moreover, the record submitted by the Debtor  
16 further evidences that the Debtor knowingly and fraudulently continues to convey or alienate the  
17 Garden Property in violation of the Final Judgment. See discussion at note 6, supra.

18 Under these circumstances, the court concludes that there is no genuine dispute as to the  
19 materials facts entitling Plaintiff to judgment as a matter of law under Section 727(a)(4).

20 **D. Determination of Dischargeability under Sections 523(a)(2) and (a)(6).**

21 Although the court has determined that a Chapter 7 discharge should be denied under  
22 Section 727(a)(4), the court also has considered Plaintiff’s claims under Section 523.

23 **1. The Claim under Section 523(a)(2).**

24 Plaintiff alleges that the debt encompassed by the Final Judgment is nondischargeable  
25 under Section 523(a)(2)(A). A debt under bankruptcy law means liability on a claim. See 11  
26 U.S.C. §101(12). A claim means a right to payment, whether or not such right is reduced to

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27 <sup>13</sup> As discussed at note 6, supra, the complaint on which the Final Judgment was entered  
28 included multiple causes of action against the Debtor, including claims based on fraud,  
conspiracy to defraud, and fraudulent conveyance.

1 judgment...” 11 U.S.C. §101(5)(A). A claim also means a “right to an equitable remedy for  
2 breach of performance if such breach gives rise to a right to payment...” 11 U.S.C. §101(5)(B).  
3 Under Section 523(a)(2)(A), a Chapter 7 discharge does not include a debt “for money, property,  
4 services or an extension ... of credit to the extent obtained by false pretenses, false  
5 representations, or actual fraud...” So if the Final Judgment in favor of the Plaintiff reflects a  
6 debt for money or property obtained by false pretenses, false representations or actual fraud, it is  
7 excepted from discharge in Chapter 7.

8         In this instance, there is no dispute that the Final Judgment was entered nearly a year  
9 before the Debtor commenced the current bankruptcy case, that the Final Judgment was never  
10 stayed pending appeal, and that the Final Judgment was affirmed on appeal. There is no dispute  
11 that the USDC found that the Debtor obtained title to the Garden Property and other parcels of  
12 real property by fraudulently conveying title away from the Plaintiff and to the Debtor through  
13 various recorded instruments, including quitclaim deeds and grant deeds. There is no dispute  
14 that under the Final Judgment, title to the Garden Property and the other parcels of real property  
15 has been quieted in the name of the Plaintiff. Under these circumstances, the court concludes  
16 that the Debtor obtained property of the Plaintiff prior to the commencement of the bankruptcy  
17 case. The only remaining question is whether the Garden Property and other parcels were  
18 obtained by false pretenses, false representations or actual fraud within the meaning of Section  
19 523(a)(2)(A).

20         To establish a claim based on false pretenses or false representations, the plaintiff must  
21 establish the following five elements: misrepresentation, fraudulent omission or deceptive  
22 conduct by the debtor; knowledge of the falsity or deceptiveness of the statement or conduct; an  
23 intent to deceive; justifiable reliance by the creditor on the debtor’s statement or conduct; and,  
24 damage to the creditor proximately caused by its reliance on the debtor’s statement or conduct.  
25 See Wickam v. Ivar (In re Werner), 817 Fed. Appx. 432, 435 (9th Cir. 2020).

26         To establish a claim based on actual fraud that does not include a prior representation,  
27 proof of common-law fraud may be sufficient to deny discharge of a particular debt under  
28 Section 523(a)(2)(A). See Husky International Electronics, Inc. v. Ritz, 136 S.Ct. 1581, 1586

1 (2016). Actual fraud denotes wrongful intent and may encompass schemes where a debtor  
2 transfers assets to impair a creditor's ability to collect a debt. Id. at 1587. As a result, actual  
3 fraud prohibited by Section 523(a)(2)(A) may include fraudulent conveyances of property that  
4 place assets out of reach of creditors.

5 Plaintiff in the instant case does not identify the statements, representations, or conduct of  
6 the Debtor that led to the receipt of title to the Garden Property or other real property parcels.  
7 Moreover, Plaintiff does not specify how it could have actually or justifiably relied on any  
8 statements, representations or conduct of the Debtor. In essence, Plaintiff has not met its burden  
9 on summary judgment of establishing the absence of general dispute as to essential elements of  
10 its claim for false pretenses or false representation.

11 Plaintiff has met its burden, however, on its claim for actual fraud. There is no dispute  
12 that the USDC found that the Debtor obtained title to the Garden Property and other parcels of  
13 real property by fraudulently conveying title away from the Plaintiff and to the Debtor through  
14 various recorded instruments, including quitclaim deeds and grant deeds. There is no dispute  
15 that the Final Judgment was entered nearly a year before the Debtor commenced the current  
16 bankruptcy case, that the Final Judgment was never stayed pending appeal, and that the Final  
17 Judgment was affirmed on appeal. The USDC specifically found in the Final Judgment that the  
18 Debtor was not authorized by the Plaintiff to convey the Garden Property or any of the other real  
19 property parcels that were quieted in Plaintiff's name. The USDC also specifically found that  
20 the Debtor's purported conveyances were the result of fraud. Although it appears that the Debtor  
21 obtained title to the Garden Property (and other real property parcels) through a fraudulent  
22 scheme of using Plaintiff's name on the recorded documents to convey title to himself rather  
23 than conveying title to a third-party, the court concludes that actual fraud within the meaning of  
24 Section 523(a)(2)(A) may encompass such conduct.

25 Under these circumstances, the court concludes that there is no genuine dispute as to the  
26 material facts entitling Plaintiff to judgment as a matter of law under Section 523(a)(2)(A).<sup>14</sup>

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27 <sup>14</sup> The Final Judgment granted declaratory and injunctive relief in favor of the Plaintiff  
28 and also awarded \$103,300 in punitive damages for the Debtor's violation of 12 U.S.C.  
§1723a(e). There were no damages of any kind awarded for any other claim. To the extent the

1                   **2. The Claim under Section 523(a)(6).**

2                   To establish willful injury under Section 523(a)(6), the plaintiff must prove that the  
 3 debtor had a subjective motive to inflict injury on the creditor, or, that the debtor believed that  
 4 injury was substantially certain to result from the conduct. See Garcia v. Fawzy (In re Garcia),  
 5 2020 WL 5203201, at \*5 (B.A.P. 9th Cir. Sep. 1, 2020), citing Ormsby v. First Am. Title Co. of  
 6 Nev. (In re Ormsby), 591 F.3d 1199, 1206 (9th Cir. 2010). A “willful injury” is a deliberate or  
 7 intentional injury, not merely a deliberate or intentional act that leads to injury. See Barboza v.  
 8 New Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th Cir. 2008), citing Kawauhau v. Geiger,  
 9 523 U.S. 57, 61 (1998). Demonstration of the additional requirement of a malicious injury  
 10 necessitates proof of four separate elements: a wrongful act; done intentionally; that necessarily  
 11 caused injury; and, without just cause or excuse. See Hamm v. Burcar (In re Hamm), 2020 WL  
 12 5814362, at \*6 (B.A.P. 9th Cir. Sep. 29, 2020), citing Petralia v. Jercich (In re Jercich), 238 F.3d  
 13 1202, 1208 (9th Cir. 2001).

14                   Applying the necessary findings encompassed by the Final Judgment, Plaintiff has  
 15 established willful injury under Section 523(a)(6). The Final Judgment indicates that the Debtor  
 16 used Plaintiff’s name on various recorded documents to convey title to the Garden Property as  
 17 well as other parcels of real property. The USDC also found that Debtor was not authorized by  
 18 the Plaintiff to convey the Garden Property or any of the other properties. The court also found  
 19 that the conveyances by the Debtor were the result of fraud. These findings are sufficient to  
 20 establish a willful injury under Section 523(a)(6). The USDC also specifically found that Debtor  
 21 violated 12 U.S.C. §1723a(e) by using Plaintiff’s name from May 11, 2015, through March 9,  
 22 2018.<sup>15</sup> Based on that finding, the USDC awarded punitive damages against the Debtor and in  
 23 \_\_\_\_\_  
 24 Final Judgment created a right to an equitable remedy for breach of performance that may give  
 25 rise to a right of payment under Section 101(5)(B), e.g., compensatory sanctions for civil  
 contempt, the other relief encompassed by the Final Judgment constitutes a debt that is excepted  
 from discharge under Section 523(a)(2)(A).

26                   <sup>15</sup> 12 U.S.C. § 1723a(e) provides in pertinent part:

27                   No individual, association, partnership, or corporation, except the  
 28                   bodies corporate named in section 1717(a)(2) of this title, shall  
 hereafter use the words “Federal National Mortgage Association,”  
 “Government National Mortgage Association,” or any combination

1 favor of Plaintiff in the amount of \$103,300. These additional findings encompassed by the  
2 Final Judgment are sufficient to establish the malicious injury elements of Section 523(a)(6).<sup>16</sup>

3 Under these circumstances, the court concludes that there is no genuine dispute as to the  
4 materials facts entitling Plaintiff to judgment as a matter of law under Section 523(a)(6).<sup>17</sup>

5 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Summary Judgment,  
6 brought on behalf of Federal National Mortgage Association, Adversary Docket No. 36, be, and  
7 the same hereby is, **GRANTED** with respect to the claims brought under 11 U.S.C. §§ 727(a)(4),  
8 523(a)(2)(A), and 523(a)(6).

9 **IT IS FURTHER ORDERED** that Plaintiff shall submit a form of judgment in its favor  
10 and against Defendant Clarence Moses Willis as prayed in the adversary complaint.

11 **IT IS FURTHER ORDERED** that the status conference in the above-captioned  
12 adversary proceeding currently scheduled for March 25, 2021 at 10:00 a.m., is hereby  
13 **VACATED**.

14  
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18 \_\_\_\_\_  
19 of such words, as the name or a part thereof under which the  
20 individual, association, partnership, or corporation shall do  
21 business.

22 <sup>16</sup> As summarized in note 6, supra, the claims against the Debtor for which the Final  
23 Judgment was entered apparently did not include a cause of action for conversion. It is well  
24 established that a claim for intentional conversion also may be nondischargeable as a willful and  
malicious injury under Section 523(a)(6). See, e.g., In re Ormsby, 591 F.3d at 1206-1207  
(summary judgment granted on claim under Section 523(a)(6) based on prior Nevada state court  
judgment for misappropriation and conversion).

25 <sup>17</sup> The Final Judgment granted declaratory and injunctive relief in favor of the Plaintiff  
26 and also awarded \$103,300 in punitive damages for the Debtor's violation of 12 U.S.C.  
27 §1723a(e). There were no damages of any kind awarded for any other claim. To the extent the  
28 Final Judgment created a right to an equitable remedy for breach of performance that may give  
rise to a right of payment under Section 101(5)(B), e.g., compensatory sanctions for civil  
contempt, the other relief encompassed by the Final Judgment constitutes a debt that is excepted  
from discharge under Section 523(a)(6).



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