

NOT FOR PUBLICATION

APR 07 2011

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	NV-10-1092-HKiD
)		
BRADLEY J. FITCH and JULIE A. SERPA-FITCH,)	Bk. No.	07-51249
)		
Debtors.)	Adv. No.	07-05122
)		
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JULIE SERPA,)		
)		
Appellant,)	MEMORANDUM¹	
)		
v.)		
)		
DON BARNES; JEANNE BARNES,)		
)		
Appellees.)		
)		
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Argued and Submitted on February 18, 2011
at Las Vegas, Nevada

Filed - April 7, 2011

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable John L. Peterson, Bankruptcy Judge, Presiding.

Appearances: William M. O'Mara of The O'Mara Law Firm, P.C.
argued for the Appellant; Del Hardy of Hardy Law Group argued for the Appellee.

Before: HOLLOWELL, KIRSCHER, and DUNN, Bankruptcy Judges.

¹ 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 8013-1.

1 The debtor challenges the bankruptcy court's factual
2 findings made in its determination that a loan obligation to the
3 debtor's former employer was nondischargeable under
4 § 523(a)(2)(A).² We AFFIRM.

5 **I. FACTS**

6 Julie Serpa (Serpa) and Bradley Fitch (Fitch) (collectively,
7 the Debtors) were husband and wife. They owned two businesses,
8 Fitch Aviation and Fitch Transportation. Serpa was the
9 bookkeeper for the Debtors' businesses. Additionally, Serpa
10 worked as a part-time bookkeeper for Jeanne Barnes (Barnes), who
11 owned several small businesses. She worked for Barnes for over a
12 decade. During the course of the relationship between Serpa and
13 Barnes, Barnes lent Serpa \$50,000 to help the Debtors with the
14 Fitch Transportation business.³ The money was later repaid with
15 interest.

16 On September 20, 2005, Serpa sent Barnes an email asking to
17 borrow money. Serpa told Barnes that she needed to borrow
18 \$200,000 for deposit into the Fitch Aviation bank account in
19 order to increase the business' credit line and that she would
20 return the money after 60 days.

21 Based on these conditions, Barnes agreed to lend Serpa
22

23 ² Unless otherwise indicated, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. § 101-1532. All
25 Rule references are to the Federal Rules of Bankruptcy Procedure,
Rules 1001-9037.

26 ³ It is unclear from the record if the loan was actually
27 made to Serpa personally, the Debtors, or the business. However,
28 both parties agree that Barnes lent \$50,000 to the Debtors for
their business.

1 \$200,000 (the Loan). On September 23, 2005, they memorialized
2 their agreement and executed a promissory note in the amount of
3 \$200,000 (the Loan Agreement), with 12% interest, compounded
4 monthly. Pursuant to the Loan Agreement, Serpa was obligated to
5 repay the Loan within 60 days, or by November 23, 2005, and pay
6 \$4,000 in interest. Additionally, the Loan Agreement provided
7 that:

8 A ten-day grace period will be allowed if additional
9 time is needed. If payment is not made in full on 12-
10 4-05 (60 days plus 10 day grace period), a penalty of
11 \$200 plus \$2,000.00 interest will be due and an
12 additional 120 days will be allowed. During the
13 extension, an interest payment of \$2,000.00 is payable
14 monthly plus a \$200.00 late fee will also be due
15 monthly. . . . After 120 days and no payment has been
16 made foreclosure will begin on [the Debtors'] real
17 property.

18 Although the Note referenced a security interest on the
19 Debtors' real property that served as their residence (the Home),
20 no deed of trust was executed at that time. On September 25,
21 2005, Barnes wrote a check to Serpa for \$200,000. Serpa
22 deposited the money into Fitch Aviation's bank account. On
23 September 29, 2005, Serpa, presumably acting within her role as
24 bookkeeper, wrote her husband a check, drawn on the Fitch
25 Aviation account, in the amount of \$100,000. Fitch then
26 deposited the \$100,000 check into the Debtors' personal bank
27 account.⁴

28 ⁴ Serpa characterizes this account as belonging to Fitch.
However, the Debtors' bankruptcy schedules show only one Wells
Fargo Account, a personal joint banking account. We are entitled
to take judicial notice of the underlying bankruptcy documents.
O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d
(continued...)

1 The Debtors failed to repay the money within 60 days.
2 Barnes followed up with Serpa about repayment of the Loan several
3 times. Serpa told her that the Debtors were trying to sell an
4 airplane or to refinance their home in order to repay the Loan.
5 In early 2006, Fitch emailed Barnes explaining that the Debtors
6 were trying to put a deal together by either selling assets or
7 raising additional capital in order to repay the Loan. In the
8 meantime, he explained, they were out of cash and credit and
9 would not be able to make the required interest payments. In
10 March 2006, Serpa emailed Barnes informing her the Debtors were
11 meeting with investors and that things were "looking up."

12 On March 11, 2006, the Debtors executed a deed of trust on
13 the Debtors' Home in favor of Barnes as security for the Loan.
14 Barnes did not record the deed of trust because, according to
15 Barnes, the title report showed there was no equity in the Home.
16 On April 19, 2006, the parties executed a renegotiated Loan
17 Agreement, lowering the amount of interest to 10% and extending
18 repayment to April 23, 2007.

19
20

21 ⁴(...continued)
22 955, 957-58 (9th Cir. 1989).

23 In taking judicial notice of the bankruptcy schedules, we
24 also briefly address Serpa's contention, made at length in her
25 Reply Brief on appeal, that it was improper for the bankruptcy
26 court to take judicial notice of the Debtors' bankruptcy
27 schedules. The bankruptcy court had reviewed how the Loan was
28 listed on the Debtors' schedules. However, whether judicial
notice was appropriate under Rule 9017, Fed. R. Evid. 201(c) or
801(d) is irrelevant because the bankruptcy court's factual
finding about the Loan's characterization in the schedules was
immaterial to its factual findings that established the elements
of § 523(a)(2)(A).

1 Sometime in August 2006, the Northern Nevada Bank (the Bank)
2 and Fitch Aviation entered into a debt modification agreement,
3 which resulted in extending Fitch Aviation's credit line to
4 \$420,000. Even though the credit line was increased, the Debtors
5 did not repay Barnes.

6 In February 2007, Serpa informed Barnes that the Debtors
7 were "planning to have everything taken care of" so that they
8 could repay the Loan by April. However, no payment was
9 forthcoming. At the end of April 2007, Barnes wrote to Serpa,
10 "What's going on? No payment, no phone call? Let us know what
11 is happening." In May 2007, Fitch responded to Barnes that "the
12 airplane deal" had not yet closed and that the Debtors needed
13 additional time to pay. He explained that they were also working
14 with Bank of America for an equity line of credit to satisfy the
15 Loan. In June 2007, Serpa emailed Barnes that they were still
16 working on the means to repay the Loan.

17 On September 17, 2007, the Debtors filed for chapter 7
18 bankruptcy. Fitch Transportation and Fitch Aviation were listed
19 as co-debtors. Serpa and Fitch divorced during the course of the
20 bankruptcy.

21 On November 2, 2007, Barnes filed a complaint against the
22 Debtors alleging that the Loan was nondischargeable under
23 § 523(a)(2) and (a)(4) (the Complaint). Barnes' claim under
24 § 523(a)(4) was dismissed with prejudice on March 5, 2008, when
25 the bankruptcy court found that no fiduciary relationship existed
26 between Barnes and the Debtors. However, Barnes pursued the
27 Complaint under § 523(a)(2).

28 On September 25, 2009, the bankruptcy court granted summary

1 judgment in favor of Fitch, finding that Fitch never contacted
2 Barnes or made any representations to Barnes before Barnes made
3 the Loan.

4 A trial was held on January 28, 2010, to determine whether,
5 as to Serpa, the Loan was nondischargeable. After the trial, the
6 bankruptcy court took the matter under advisement. It issued
7 written findings of fact and conclusions of law on March 1, 2010,
8 along with a nondischargeable judgment against Serpa in the
9 amount of \$200,000 (the Judgment). Serpa timely appealed.

10 **II. JURISDICTION**

11 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
12 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.
13 § 158.

14 **III. ISSUES**

15 Did the bankruptcy court err in finding that the Loan was
16 nondischargeable?

17 **IV. STANDARDS OF REVIEW**

18 Whether a claim is dischargeable presents mixed issues of
19 law and fact, which we review de novo. Peklar v. Ikerd (In re
20 Peklar), 260 F.3d 1035, 1037 (9th Cir. 2001). The Ninth Circuit
21 has held that the bankruptcy court's findings made in the context
22 of a dischargeability analysis are factual findings reviewed
23 under the clearly erroneous standard. Candland v. Ins. Co. of N.
24 Am. (In re Candland), 90 F.3d 1466, 1469 (9th Cir. 1996). Thus,
25 whether a creditor has proven an essential element of a cause of
26 action under § 523(a)(2)(A) is a factual determination reviewed
27 for clear error. Am. Express Travel Related Servs. Co., Inc. v.
28 Vee Vinhnee (In re Vee Vinhnee), 336 B.R. 437, 443 (9th Cir. BAP

1 2005); Cossu v. Jefferson Pilot Sec. Corp. (In re Cossu), 410
2 F.3d 591, 595-96 (9th Cir. 2005).

3 A finding is clearly erroneous if it is "illogical,
4 implausible, or without support in the record." Retz v. Samson
5 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010) (citing United
6 States v. Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009)
7 (en banc)). The clearly erroneous standard does not "entitle a
8 reviewing court to reverse the finding of the trier of fact
9 simply because it is convinced that it would have decided the
10 case differently." Anderson v. City of Bessemer City, N.C., 470
11 U.S. 564, 573 (1985).

12 Moreover, when factual findings are based on determinations
13 regarding the credibility of witnesses, we give great deference
14 to the bankruptcy court's findings, because the bankruptcy court,
15 as the trier of fact, had the opportunity to note "variations in
16 demeanor and tone of voice that bear so heavily on the listener's
17 understanding of and belief in what is said." Id. at 575; see
18 also Rule 8013.

19 V. DISCUSSION

20 The Bankruptcy Code excepts from discharge any debt for
21 money, property, services, or credit obtained by false pretenses,
22 a false representation, or actual fraud. 11 U.S.C.
23 § 523(a)(2)(A). To prevail on a claim under § 523(a)(2)(A), a
24 creditor must demonstrate five elements: (1) misrepresentation,
25 fraudulent omission or deceptive conduct by the debtor;
26 (2) knowledge of the falsity or deceptiveness of the debtor's
27 statement or conduct; (3) an intent to deceive; (4) justifiable
28 reliance by the creditor on the debtor's statement or conduct;

1 and, (5) damage to the creditor proximately caused by its
2 reliance on the debtor's statement or conduct. Turtle Rock
3 Meadows Homeowners Ass'n v. Slyman (In re Slyman), 234 F.3d 1081,
4 1085 (9th Cir. 2000); In re Candland, 90 F.3d at 1469.

5 The creditor bears the burden of proving each element of
6 § 523(a)(2)(A) by a preponderance of the evidence. Grogan v.
7 Garner, 498 U.S. 279, 287 (1991). In order to strike a balance
8 between allowing debtors a fresh start and preventing a debtor
9 from retaining the benefits of property obtained by fraudulent
10 means, § 523(a)(2)(A) is strictly construed against creditors and
11 in favor of debtors. In re Slyman, 234 F.3d at 1085; Ghomeshi v.
12 Sabban (In re Sabban), 384 B.R. 1, 5 (9th Cir. BAP 2008), aff'd,
13 600 F.3d 1219, 1222 (9th Cir. 2010).

14 Serpa contends that the bankruptcy court erred in its
15 factual findings.⁵ Serpa contends that the bankruptcy court's
16 findings do not support the conclusion that she made a false
17 representation to Barnes with the intention to deceive her.
18 Additionally, she challenges the bankruptcy court's finding that
19 Barnes relied on Serpa's representation or that Barnes had
20 resulting damages.

21 1. False Representation Made With Intent To Deceive

22 The determination of nondischargeability under
23 § 523(a)(2)(A) is a question of federal, not state law, and
24 mirrors the common law elements of fraud. Therefore, courts
25 interpret the elements of § 523(a)(2)(A) consistent with the

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27 ⁵ However, almost all of the complaints that Serpa has with
28 the bankruptcy court's factual findings are ultimately immaterial
or irrelevant to the elements of § 523(a)(2)(A).

1 common law definition of "actual fraud" set forth in the
2 Restatement (Second) of Torts. Field v. Mans, 516 U.S. 59, 69
3 (1995).

4 Under the Restatement, a person is liable for damages
5 resulting from his or her misrepresentation of fact made for the
6 purpose of inducing another to act (or refrain from action) in
7 reliance on the misrepresentation. Restatement (Second) of Torts
8 § 525 (1977). The misrepresentation is fraudulent

9 if the maker (a) knows or believes that the matter is
10 not as he represents it to be, (b) does not have the
11 confidence in the accuracy of his representation that
12 he states or implies, or (c) knows that he does not
13 have the basis for his representation that he states or
14 implies.

15 Restatement (Second) of Torts § 526 (1977); Gertsch v. Johnson &
16 Johnson (In re Gertsch), 237 B.R. 160, 168 (9th Cir. BAP 1999).

17 Thus, the scienter requirement for a fraudulent misrepresentation
18 is established if it was made with actual knowledge of the
19 falsity of the statement or reckless disregard for its truth.
20 Houtman v. Mann (In re Houtman), 568 F.2d 651, 656 (9th Cir.
21 1978); In re Gertsch, 237 B.R. at 167.

22 In evaluating whether a debtor intended to deceive a
23 creditor by misrepresentation or false pretenses, the bankruptcy
24 court must look at the debtor's intention at the time the
25 misrepresentation was made. In re Bath, 2010 WL 4118109, at *7
26 (Bankr. E.D. Pa. 2010). Because direct evidence of intent to
27 deceive is rarely available, "the intent to deceive can be
28 inferred from the totality of the circumstances, including
reckless disregard for the truth." In re Gertsch, 237 B.R. at
167-68; Household Credit Servs., Inc. v. Ettell (In re Ettell),

1 188 F.3d 1141, 1145 n.4 (9th Cir. 1999) ("reckless conduct could
2 be sufficient to establish fraudulent intent").

3 Serpa contends there are many errors with the bankruptcy
4 court's findings; however, she does not dispute she told Barnes
5 that the Loan was to be used to increase Fitch Aviation's credit
6 line and would quickly be repaid. Instead, Serpa argues that
7 because the initial email from Serpa to Barnes asking for the
8 Loan was not in evidence (having not been kept by Barnes),
9 Barnes' testimony is suspect. Misrepresentations may be oral,
10 written, or include other conduct that amounts to an assertion
11 not in accordance with the truth. See Comment (b) to Restatement
12 (Second) of Torts (1977). Therefore, the oral representations
13 between Serpa and Barnes may form the basis for a finding of the
14 fraudulent misrepresentation. Barnes' failure to produce the
15 email does not bar her claim.

16 Barnes testified that in her communications with Serpa prior
17 to the Loan, Serpa explained that the Loan would be put into the
18 Fitch Aviation account to help increase the business credit line
19 and would be returned in 60 days:

20 [BARNES]: I get an email from [Serpa] around the 19th
21 of September, about borrowing two hundred thousand
22 dollars to put in a credit line for sixty days. . . .
23 So I called [Serpa] and I said, 'What is this?' And
24 she said, 'We need to borrow two hundred thousand
25 dollars to put into our credit line for sixty days.'
26 So I said, 'It's going to sit in the bank for sixty
27 days?' And she said, 'Yes.' And then I said, 'What
28 happens after the sixty days?' And she says, 'After
the sixty days you get your money back.' And I said,
'That's all there is to it?'

26 Trial Tr. at 39:10-24.

27 Serpa's testimony is consistent with Barnes' understanding:

28 [BARNES' COUNSEL]: And you wrote her in that e-mail and

1 said that you needed to increase your credit line by
2 two hundred thousand dollars?

3 [SERPA]: As I recall, yes.

4 [BARNES' COUNSEL]: And that you indicated to her that
5 you only needed the money for sixty days?

6 [SERPA]: This is what [Fitch] told me that we--
7 Everything that I--all the information I was getting, I
8 got it from [Fitch].

9 . . .

10 [BARNES' COUNSEL]: How were you supposed to pay the
11 money back within sixty days then?

12 [SERPA]: That was [Fitch]'s worries, not mine...that
13 was my ex-husband's. He was going to repay the money
14 in sixty days.

15 Trial Tr. at 12:9-20; 14:6-11.

16 Serpa testified that she wrote the email asking for a loan
17 to increase the Fitch Aviation credit line and repeatedly made
18 the contention that the Loan would be used to increase the
19 business' credit line. Although Serpa also stated that she told
20 Barnes the money would be used to operate the business, Barnes
21 testified that she would not have made the Loan if she knew the
22 money would be used in the operation of the business.

23 On appeal, Serpa argues that there was never any
24 representation made that the Loan proceeds were to have been
25 placed in a "restricted account to secure the loan." We agree,
26 but whether or not the account was restricted is immaterial. The
27 fact that there was no discussion about a restricted account does
28 not change the fact that Serpa represented to Barnes that the
29 Loan proceeds would be placed into Fitch Aviation's account
30 solely for the purpose of increasing its credit line.

31 The terms of the Loan Agreement provided for repayment

1 within 60 days. Even though the Loan Agreement offered a grace
2 period and a possible extension of 120 days, the extension does
3 not alter the representation made by Serpa to Barnes that the
4 Loan was short-term. Based upon Barnes' and Serpa's testimony,
5 as well as the Loan Agreement, there is ample evidence in the
6 record to support the bankruptcy court's finding that Serpa
7 represented to Barnes that the Loan would be used to increase
8 Fitch Aviation's credit line and be repaid within 60 days.

9 The bankruptcy court's determination that this
10 representation was fraudulent and made with the intent to induce
11 Barnes into providing the Loan is not illogical, implausible, or
12 without support in inferences from the record. Serpa testified
13 that she believed having additional money in the Fitch Aviation
14 account would result in an increase in the credit line based on a
15 conversation with a representative from the Bank. However, the
16 Bank representative testified that he did not have a conversation
17 with either of the Debtors about increasing Fitch Aviation's
18 credit line by adding \$200,000 to its account. Fitch Aviation's
19 credit line, he testified, did increase over time, but the
20 increases were pursuant to stipulations regarding the paying down
21 of the credit line and pursuant to increased pledges of deeds of
22 trust and other security for the line of credit. The Bank
23 representative testified that simply putting cash into the
24 business bank account would not result in an increase in the
25 credit line. He stated the Bank's policy was to require a cash-
26 secured loan before any credit would be increased. The
27 bankruptcy court did not find it credible that Serpa would use
28 the Loan proceeds to increase the credit line, since there was no

1 arrangement made with the Bank to do so. As noted above, we
2 defer to the bankruptcy court's credibility determinations. Rule
3 8013.

4 The evidence presented indicated that Serpa knew that Fitch
5 Aviation had other uses for the Loan proceeds. Serpa testified
6 that while "she did not know about what was happening in the
7 business," she was nevertheless aware that mechanic's liens had
8 been placed on Fitch Aviation's airplanes sometime around the
9 time of the Loan,⁶ and she was aware that over \$100,000 in liens
10 needed to be paid off before the business could resume. Indeed,
11 Serpa testified that some of the Loan proceeds were, in fact,
12 used to satisfy those mechanic's liens.

13 Furthermore, almost immediately after depositing the Loan,
14 Serpa drew out \$100,000 for deposit in the Debtors' personal bank
15 account. She explained that this was done, on advice of her
16 accountant, because the Loan was a "personal loan" and could not
17 be on Fitch Aviation's books. The bankruptcy court did not find
18 her explanation credible since the remaining \$100,000 was not
19 similarly diverted. The bankruptcy court found that Serpa's
20 actions directly after depositing the Loan proceeds demonstrated
21 that she never intended to use the Loan to increase Fitch
22 Aviation's credit line (or even to use it for business
23 operations) and repay it within 60 days.

24 _____
25 ⁶ It is unclear when the mechanic's liens were placed on the
26 airplanes. Serpa testified that a relationship between Fitch and
27 a former employee or partner had soured. However, by November
28 2005, the mechanic's liens were in place because Serpa testified
that \$100,000-\$115,000 of the Loan proceeds were used to satisfy
those liens.

1 Thus, based on the evidence in the record, the testimony
2 given at trial, the bankruptcy court's credibility
3 determinations, and Serpa's conduct immediately after the deposit
4 of the Loan proceeds, we cannot conclude that the bankruptcy
5 court clearly erred when it found that Serpa knew the
6 representations she made to Barnes were false at the time she
7 made them, or that, at a minimum, she acted with reckless
8 disregard of the truth. Accordingly, we conclude that the
9 bankruptcy court did not err in determining that the first three
10 elements required under § 523(a)(2)(A) were satisfied.

11 2. Damages As A Result Of Reliance On The False Representation

12 A creditor must establish that it relied on a debtor's false
13 representation. The Supreme Court has held that the degree of
14 the creditor's reliance need only be justifiable, not reasonable.
15 Field v. Mans, 516 U.S. 59, 74 (1995); Citibank (South Dakota),
16 N.A. v. Eashai (In re Eashai), 87 F.3d 1082, 1090 (9th Cir.
17 1996). Justification "is a matter of the qualities and
18 characteristics of the particular plaintiff, and the
19 circumstances of the particular case, rather than of the
20 application of a community standard of conduct to all cases."
21 Id. at 71 (quoting Restatement (Second) of Torts § 545A cmt b
22 (1976)).

23 The bankruptcy court found that Serpa induced Barnes to
24 provide the Loan based on a fraudulent misrepresentation. It
25 found that Barnes, being a long-time business associate and
26 friend of Serpa's, provided the Loan in reliance on Serpa's
27 representation that the Loan was a short-term loan for the
28 purpose of increasing Fitch Aviation's credit line. After

1 reviewing the record, we cannot say that the bankruptcy court's
2 finding was illogical, implausible, or without support from the
3 evidence before it.

4 Serpa argues that there is no evidence that Barnes would
5 have acted any differently if she had known the true purposes of
6 the Loan. However, Barnes testified that she would not have made
7 the Loan if she knew that the Debtors would use it to pay the
8 operating expenses of Fitch Aviation, or to use while they looked
9 for other investors in the business. She testified that she
10 trusted Serpa as a friend and an employee.

11 Serpa contends that Barnes is a competent business woman,
12 and if Barnes had relied on a representation that the Loan would
13 be placed in a restricted account to be used as security, she
14 would not have executed a promissory note with a 120-day
15 extension and secure it with a deed of trust. First, there is no
16 evidence in the record that supports a claim that Barnes was told
17 that the Loan proceeds were being placed in a restricted account.
18 Secondly, while the Loan Agreement provided the opportunity to
19 extend its terms in the event the Loan was not repaid in 60 days,
20 the extension required penalty payments, which is consistent with
21 Barnes' understanding that it was to be a short-term loan.
22 Barnes, having dealt with banks before on business issues,
23 testified that the extensions were included in the event the Bank
24 moved more slowly in increasing the credit line than the Debtors'
25 anticipated.

26 Furthermore, although the Loan Agreement referenced a
27 security interest in the Debtors' Home, a deed of trust was not
28 executed until over a year later when the Loan Agreement was re-

1 negotiated. None of these terms, however, negate the Serpa's
2 representation, at the time the Loan was made, that the Note
3 would be repaid in 60 days.

4 A person is justified in relying on a representation even
5 though he or she might have ascertained the falsity had they
6 conducted an investigation. Field v. Mans, 516 U.S. at 71; Apte
7 v. Romesh Japra, M.D., F.A.C.C., Inc. (In re Apte), 96 F.3d 1319,
8 1322 (9th Cir. 1996) (citing In re Eashai, 87 F.3d at 1090-91).
9 However, a person cannot prevail under § 523(a)(2)(A) if he or
10 she "blindly relies upon a misrepresentation the falsity of which
11 would be patent" to him or her. Field v. Mans, 516 U.S. at 70
12 (citations omitted). Here, there is no evidence that Barnes
13 could have easily discovered the falsity of Serpa's
14 representations. Barnes had no ability to determine what the
15 Bank's arrangements were with Fitch Aviation regarding an
16 increase of its credit line. She relied on Serpa's word; she
17 trusted her as a friend and employee. Accordingly, the
18 bankruptcy court did not err in finding that Barnes justifiably
19 relied on Serpa's fraudulent misrepresentation in making the
20 Loan.

21 Serpa contends that Barnes' loss of money was caused because
22 she chose not to record the deed of trust, not because she relied
23 on Serpa's fraudulent misrepresentation. The deed of trust was
24 executed in March 2006, long after the parties entered into the
25 Loan Agreement. The Loan Agreement was modified and the deed of
26 trust taken because Barnes was unable to collect on the Loan.

27 Causation or proximate cause entails (1) causation in fact,
28 which requires a defendant's misrepresentations to be a

1 substantial factor in determining the course of conduct that
2 results in loss, and (2) legal causation, which requires a
3 creditor's loss to "reasonably be expected to result from the
4 reliance." Beneficial Calif., Inc. v. Brown (In re Brown), 217
5 B.R. 857, 862 (Bankr. S.D. Cal. 1998) (citing Restatement
6 (Second) of Torts § 546, 548A (1976)). We have already concluded
7 that the bankruptcy court did not err when it determined that
8 Barnes demonstrated she provided the Loan in reliance on Serpa's
9 fraudulent misrepresentations. The Loan was not repaid and
10 Barnes, therefore, suffered an actual loss as a result.
11 Accordingly, we conclude that the bankruptcy court did not err in
12 determining that the Loan is nondischargeable as to Serpa. See
13 Restatement (Second) of Torts § 525 (1977).

14 **VI. CONCLUSION**

15 Because we have concluded that the bankruptcy court did not
16 make clearly erroneous factual findings supporting its
17 determination that all the elements of § 523(a)(2)(A) were met,
18 we AFFIRM the bankruptcy court's Judgment.
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