

**AUG 17 2006**

**HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT**

**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

|                             |   |          |                 |
|-----------------------------|---|----------|-----------------|
| In re:                      | ) | BAP No.  | CC-05-1306-KPaB |
|                             | ) |          |                 |
| AMERICAN COMPUTER & DIGITAL | ) | Bk. No.  | LA 04-19259-TD  |
| COMPONENTS, INC.,           | ) |          |                 |
|                             | ) | Adv. No. | LA 04-02085-TD  |
| Debtor.                     | ) |          |                 |

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ALAN SHEEN and JAMES SHEEN,  
Appellants,

v.

**MEMORANDUM**

HARRIS TRUST AND SAVINGS  
BANK, et al.,  
Appellees.

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Argued and Submitted on July 14, 2006  
at Pasadena, California

Filed - August 17, 2006

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding.

Before: KLEIN, PAPPAS and BRANDT, Bankruptcy Judges.

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\*This disposition is not appropriate for publication and may not be cited except when pertinent under the doctrine of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

1 This is a sufficiency of the evidence appeal from a  
2 \$20,295,111.00 fraud judgment against two principals of the  
3 debtor corporation. We AFFIRM.

4  
5 FACTS

6 The debtor ("ACDC") was founded in 1985 by Alan Sheen, aka  
7 Hui-Tse Sheen, and his brother James Sheen, aka Hui-Ying Sheen.  
8 The Sheens were officers and principal shareholders of ACDC,  
9 owning a total of about 86% of the stock. Vincent Tseng was the  
10 chief financial officer.

11 From its inception until 2000, ACDC was a successful company  
12 that primarily manufactured and distributed computer memory  
13 products known as DRAM, or dynamic random access memory, and also  
14 distributed storage and computer peripheral products. Until  
15 2000, ACDC was purportedly the "second largest third-party DRAM  
16 Module manufacturer in the world."

17 ACDC was located at the Cloverleaf Business Park in Baldwin  
18 Park, California, which was wholly owned by Alan Sheen and James  
19 Sheen through SNS Cloverleaf, LLP ("SNS Cloverleaf").

20 Alan Sheen described ACDC as a "diversified organization  
21 with a group of subsidiaries and affiliated companies." Alan  
22 Sheen wholly owned the following companies: Universal Buslink;  
23 Raylink, Inc.; Only Components dba LA Components; Memoryonly.com;  
24 Only Group, Inc.; and Cubig Group, LLC.

25 Universal Buslink and Raylink were tenants in the  
26 Cloverleaf Business Park along with ACDC and other related Sheen  
27 entities, including Butterfly Media, LA Depot, and Ambus  
28 Commercial Manufacturing.

1 In 2000, the nature of the market changed. Memory modules  
2 became standardized, low-margin commodities. In response to the  
3 changed market, ACDC began to transform itself into a consumer  
4 electronic wholesaler.

5 During this period, ACDC and the Sheens started experiencing  
6 business and financial problems. In 2003, ACDC's major Asian  
7 vendors "shut off" their credit. Further, Universal Buslink was  
8 in default on a \$10,000,000 loan with Cathay Bank, which was  
9 guaranteed by SNS Cloverleaf, James Sheen, and Alan Sheen.

10 In the midst of these financial struggles, ACDC entered into  
11 a Credit Agreement and executed a Revolving Note with Harris  
12 Trust and Savings Bank ("Harris Bank") dated June 4, 2002. As  
13 security for ACDC's obligations under the Credit Agreement and  
14 Note, ACDC granted to Harris Bank a first priority security  
15 interest in substantially all of ACDC's personal property and  
16 fixtures ("collateral"), which security interest was perfected by  
17 filing a UCC-1 financing statement. Harris Bank replaced ACDC's  
18 then existing lender, Congress Financial.

19 The loan was a revolving line of credit with daily  
20 availability calculated from borrowing base certificates prepared  
21 by ACDC and presented to Harris Bank. The Credit Agreement  
22 limited Harris Bank's commitment to extend credit to the lesser  
23 of \$17 million or ACDC's Borrowing Base (85% or such lesser  
24 percentage as Harris Bank may determine from time to time) of  
25 ACDC's Eligible Accounts as defined in the Credit Agreement.

26 In early 2004, an unusual number of returned checks gave  
27 rise to a \$3.7 million overdraft position on ACDC's loan account  
28

1 with Harris Bank. As a consequence, Harris Bank initiated an  
2 investigation of ACDC.

3 Harris Bank retained Brandlin & Associates ("Brandlin") to  
4 take steps to safeguard its interests and its accounts receivable  
5 and inventory collateral. It further retained Brandlin to  
6 investigate potentially fraudulent activity through forensic  
7 accounting and to assist in analyzing the collateral.

8 Brandlin's Steven Lee, accompanied by William Robin, a  
9 Harris Bank officer, first visited the offices of ACDC on March  
10 22, 2004. Through that date, ACDC's reported total daily sales  
11 had averaged \$1 million. On March 23, 2004, the reported total  
12 daily sales were less than \$200,000. By the first week of April,  
13 the daily sales fell to de minimis amounts.

14 From March 31, 2004 to mid-June 2004, a Brandlin  
15 representative visited ACDC's site almost daily to perform such  
16 activities as: monitoring the movement of inventory, daily cash  
17 receipts, and cash outflows; reviewing available records;  
18 assessing collectability of accounts receivable; performing  
19 accounts receivable confirmations; analyzing inventory records;  
20 and physically counting inventory.

21 After Brandlin conducted its investigation, it reported that  
22 it had uncovered several types of fraud, including: (1) failure  
23 by the Sheens to disclose loans to ACDC in excess of \$23 million  
24 from Raylink, a company founded by Alan Sheen, and from other  
25 tenants in the Cloverleaf Business Park; (2) falsification of  
26 borrowing base certificates which Harris Bank relied on in making  
27 advances under the Credit Agreement; (3) fraudulent reporting of  
28 sales activity creating fictitious and uncollectible accounts

1 receivable; (4) check kiting activity to create the illusion of  
2 sales and the illusion that accounts receivable were collectible  
3 and performing accounts; and (5) misrepresentation and  
4 overstatement of value of inventory on hand.

5       Based on this information from Brandlin, Harris Bank filed a  
6 verified state-court complaint against ACDC, Alan Sheen, and  
7 Does, alleging: (1) breach of written contract and revolving  
8 note; (2) breach of account agreement; (3) fraud; (4) conversion;  
9 (5) civil conspiracy; and (6) alter ego liability. The action  
10 was filed in Los Angeles County (California) Superior Court as  
11 No. BC314137 on April 21, 2004.

12       On April 22, 2004, ACDC commenced a chapter 11 case, which  
13 was converted to chapter 7 on June 17, 2004.

14       The trustee removed the Harris Bank lawsuit to the  
15 bankruptcy court, which ultimately severed and set a trial on the  
16 state-law causes of action against the Sheens personally. The  
17 order explained that Harris Bank's claims against ACDC would be  
18 handled as part of the claims process.

19       The court held a three-day trial (May 24-27, 2005) on the  
20 causes of action against the Sheens, after which it entered a  
21 judgment against both Alan and James Sheen for \$20,295,111.00 for  
22 fraud, conversion, and civil conspiracy.

23       The court made detailed findings of fact and conclusions of  
24 law to support its judgment against the Sheens. It found that  
25 commencing in 2003, Alan and James Sheen caused ACDC to engage in  
26 transactions designed to conceal its true financial condition  
27 from Harris Bank for the purpose of inducing Harris Bank to lend  
28 money to ACDC and not declare the loan in default.

1           The transactions included purchase and sale transactions  
2 between ACDC and other tenants in the Cloverleaf Business Park  
3 that were not arm's length transactions and that should not have  
4 been included in the borrowing base certificates. Substantial  
5 amounts of reported sales from ACDC to customers were not true  
6 sales but created accounts that were not "eligible" accounts for  
7 purposes of ACDC's borrowing base certificates within the terms  
8 of the Credit Agreement. Moreover, the Sheens caused consignment  
9 sales to be recorded on the books and records as true sales.  
10 Additionally, inventory was circulated between ACDC, R&R  
11 Electronics, Shecom Corporation, LPC Technologies, and Only  
12 Components to create the illusion of economic activity.

13           The court further held that in order to create the illusion  
14 of economic activity and to create the illusion of eligible  
15 collateral to support Harris' advances and to divert cash from  
16 Harris' advances, substantial payments were made between ACDC and  
17 other tenants in the Cloverleaf Business Park, including  
18 Butterfly Group, Inc., dba Butterfly Media, LA Semiconductors,  
19 Inc., dba LA Depot, Only Components dba LA Components, Raylink,  
20 Cititronics, SNS Cloverleaf, and Buslink.

21           The court held that loans made by tenants in the Cloverleaf  
22 Business Park and/or SNS Cloverleaf to ACDC were, in further  
23 violation of the Credit Agreement, not disclosed to Harris Bank  
24 in ACDC's financial statements or in any other documents.

25           The court held that ACDC's payments to Raylink in the amount  
26 of \$23 million from November 2003 through January 2004 were not  
27 made in the ordinary course of business. All checks to Raylink  
28 were signed by either Alan or James Sheen.

1 Finally the court held that ACDC and the Sheens engaged in a  
2 check-kiting scheme with SNS Cloverleaf and SNS Cloverleaf's  
3 tenants in the business park to create the illusion of economic  
4 activity that did not exist.

5 As noted, the judgment was entered against the Sheens for  
6 \$20,295,111.00.

7 This timely appeal ensued.

#### 9 JURISDICTION

10 The bankruptcy court had subject-matter jurisdiction under  
11 28 U.S.C. § 1334(b) over this non-core proceeding because, to the  
12 extent that plaintiff recovers from defendants, the plaintiff's  
13 claims against the bankruptcy estate will be reduced. Fietz v.  
14 Great W. Sav. (In re Fietz), 852 F.2d 455, 457 (9th Cir. 1988).  
15 The parties consented to have the non-core proceeding heard and  
16 determined by a bankruptcy judge per 28 U.S.C. § 157(c)(2). We  
17 have jurisdiction under 28 U.S.C. § 158(a)(1).

#### 19 ISSUE

20 Whether the court erred in concluding that there was  
21 sufficient evidence of fraud, conversion and civil conspiracy.

#### 23 STANDARD OF REVIEW

24 Whether there was proof of an essential element of a cause  
25 of action is a factual determination reviewed for clear error.  
26 Am. Express Travel Related Co., Inc. v. Vinhnee (In re Vinhnee),  
27 336 B.R. 437, 443 (9th Cir. BAP 2005). A factual finding is not  
28

1 clearly erroneous if it is supported by evidence that the trier  
2 of fact was entitled to believe.

3  
4 DISCUSSION

5 The Sheens argue that they took a "hands off" approach to  
6 the portions of ACDC business in which the fraud occurred and, by  
7 inference, that somebody else did it. The problem, however, is  
8 that the trial court believed they were "hands on" managers who  
9 actively participated in all aspects of ACDC's business.  
10 Credibility plainly played a significant role in the trial. It  
11 is apparent from the findings that the court disbelieved the  
12 Sheens' testimony and believed the evidence to the contrary.

13  
14 I. FRAUD

15 To prevail on its fraud claim under California law, Harris  
16 Bank had to prove: (1) misrepresentation (false representation,  
17 concealment, or non-disclosure); (2) knowledge of its falsity;  
18 (3) intent to defraud, i.e., to induce reliance; (4) justifiable  
19 reliance; and (5) resulting damages. Bank of the W v. Valley  
20 Nat'l Bank of Az., 41 F.3d 471, 477 (9th Cir. 1994); 5 WITKIN,  
21 SUMMARY OF CALIFORNIA LAW, TORTS § 772 (10th ed. 2005) ("WITKIN").  
22

23 A. Misrepresentation

24 The Sheens argue that they made no factual  
25 misrepresentations to Harris Bank concerning inventory or  
26 accounts receivable. They quote lengthy testimony from their own  
27 written declarations that were accepted in evidence at trial in  
28 lieu of direct examination, wherein they stated that they did not



1 engage in fraud; had no knowledge of alleged fraudulent acts nor  
2 acts of malfeasance and only became aware of Harris Bank's  
3 concerns in January 2004 from communications with Vincent Tseng;  
4 and had no involvement in ACDC's sales.

5 The bankruptcy court disbelieved this declaration testimony  
6 and concluded that appellants made misrepresentations of material  
7 fact, regarding the true levels of inventory and valid,  
8 collectible, and/or "eligible" accounts receivable. We are  
9 obliged to give "due regard" to "the opportunity of the trial  
10 court to judge of the credibility of the witnesses." Fed. R.  
11 Civ. P. 52(a), incorporated by, Fed. R. Bankr. P. 7052.

12 James Sheen, however, asserts that the evidentiary basis for  
13 the court's finding is inadequate because Harris Bank did not  
14 retain a computer parts expert who understood ACDC's business and  
15 could provide a proper inventory and analysis. We are not  
16 persuaded.

17 Ample evidence supports the court's findings that appellants  
18 made misrepresentations of material fact regarding the true level  
19 of inventory. David Bell testified that when he visited ACDC's  
20 site, he discovered that inventory consisting of memory products  
21 ("Intel Pentium IV processors") had been rendered essentially  
22 useless because the memory chip had been removed from the box.<sup>1</sup>  
23 The altered items, however, were carried in ACDC's inventory.  
24 Decl. of David R. Bell at pp. 15-16.

25 The court further held that the Sheens made false  
26 representations in ACDC's borrowing base certificates to induce

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27  
28 <sup>1</sup>The court overruled the Sheens' objections to David Bell's  
declaration. Tr. 5/24/05 at 2.

1 Harris Bank to continue to make advances to ACDC. The court  
2 concluded that these transactions included purchase and sale  
3 transactions between ACDC and other tenants in the Cloverleaf  
4 Business Park that were not arm's length transactions from 2003  
5 through ACDC's bankruptcy filing.

6 Credible testimony supports the court's findings regarding  
7 the transactions between ACDC and related entities. Based on the  
8 forensic accounting analysis, the flow of inventory movement  
9 between ACDC and related entities was in a circular pattern with  
10 no value added to the inventory as it was sold and purchased  
11 between entities.<sup>2</sup> As Harris Bank points out, under this scheme,  
12

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13 <sup>2</sup>David Bell's declaration explains that ACDC's business  
14 records reflected that sales to related parties accounted for 45%  
15 of the total net sales from October 1, 2003 through February 29,  
16 2004 (\$49,386,771). The related party sales were primarily to LA  
17 Depot, Butterfly Media and Raylink. The salesperson was Alan  
18 Sheen and the "purchasers" were all located in buildings in the  
19 Cloverleaf Business Park near the ACDC site. The total profits  
20 for these sales were \$199,703. Additional analysis of the  
21 related party sales revealed that certain inventory was sold back  
22 and forth between the same parties with inventory sold at only 25  
23 cents profit per unit or with no profit.

24 Based on a review of 403 invoices, from January 30, 2004  
25 through March 12, 2004, total purchases made by ACDC from LA  
26 Semiconductors (another related entity) was \$15,635,422.  
27 Purchases from LA Semiconductors were sold to Butterfly Media, at  
28 a profit of twenty-five cents per unit (another related entity).  
29 Mr. Bell testified that the twenty-five cents per unit profit  
30 presented no material value added benefit to the inventory part,  
31 but rather allowed ACDC to create the illusion of a bona fide  
32 sale and accounts receivable. The total sales to LA Depot dba LA  
33 Semiconductors for the same period were \$50,932,839, which  
34 approximates 22% of LA Semiconductors' purchases or costs of  
35 sales.

36 Mr. Bell concluded that "it appears that the flow of  
37 inventory movement is in a circular pattern and no value is added  
38 to the inventory as it is sold and purchased between entities."  
39 Decl. of David R. Bell at 9.

1 ACDC purchased product from Shecom, which ACDC then sold to R&R,  
2 which then R&R sold back to Shecom with little or no mark up.  
3 Findings of Fact & Conclusions of Law at 5 & Decl. of Steve Lee  
4 at 10.

5 Moreover, the bankruptcy court's conclusion that appellants  
6 made misrepresentations of material fact regarding the true  
7 levels of "eligible" accounts receivable is supported by the  
8 record. The trial court believed the testimony of Harris Bank's  
9 expert Steve Lee, who testified that the accounts receivable  
10 supporting the borrowing base certificate were in large measure  
11 ineligible. Tr. 5/26/05 at 15.

12 From the first of January 2003 until the collapse of ACDC,  
13 ACDC purchased almost \$100 million from L.A. Semi-Conductor and  
14 sold it through its dba L.A. Depot for \$70 million. The \$70  
15 million went into the eligible accounts receivable. For the most  
16 part, however, it was not eligible because the accounts  
17 receivable that were generated when a sale was made to a related  
18 party were ineligible under the borrowing base certificate. Tr.  
19 5/24/05 at 270 & Tr. 5/26/05 at 15. The gross amount of sales  
20 that were made to a party that was both a customer and a vendor  
21 were ineligible under the borrowing base certificate. Tr.  
22 5/26/05 at 15.

23 The court further held that Alan and James Sheen made false  
24 representations by concealing loans that were made to ACDC from  
25 related parties, as well as by concealing loans that ACDC made to  
26 related parties. The court found that the Sheens did not  
27 disclose that tenants of the SNS Cloverleaf Business Park,  
28 including Raylink, made loans to ACDC during 2003 and 2004.

1 ACDC's monthly financial statements did not disclose any loans  
2 from either SNS Cloverleaf or any of the tenants within the  
3 business park. Moreover, ACDC made a total of \$23 million in  
4 payments to Raylink from November 2003 to January 2004, \$21  
5 million of which is not accounted for in ACDC's financial records  
6 nor supported by its financial statements. The checks totaling  
7 \$23 million were signed by Alan and James Sheen and were never  
8 disclosed to the bank. Decl. of Steve Lee at 25 & Tr. 5/24/05 at  
9 80-81.

10 We cannot say that the court's conclusion was clearly  
11 erroneous. Moreover, we are not persuaded by the Sheens that the  
12 nondisclosures were not material. Likewise, the representations  
13 that were made as part of the borrowing base certificate were  
14 material to Harris Bank in determining whether to make advances  
15 under the revolving line of credit. Tr. 5/23/05 at 81.<sup>3</sup>

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16  
17 <sup>3</sup>The following exchange occurred at trial between counsel  
18 for Harris Bank and Lawrence Mizera, Vice President of Special  
Accounts Management Unit for Harris Bank:

19 Q Is there anything that you saw in the records of  
20 Harris Bank that indicated that Harris was aware  
of these loans from Raylink to ACDC?

21 A Absolutely not. Nothing in the records.

22 Q Is there anything in the records indicating that  
23 Harris was aware from disclosures by ACDC of loans  
24 from other tenants within the Clover Leaf Business  
Park?

25 A I don't believe that there was anything that I've  
26 come across. I believe if there was, it would  
27 have caused great concern of the bank, if we would  
have knowledge of that.

28 Q From your review of the records and your  
(continued...)

1           B. Knowledge of Falsity & Intent to Defraud

2           The second and third elements of fraud, consisting of  
3 knowledge of falsity as well as intent to induce reliance, relate  
4 to state of mind. These elements may be proved by inference and  
5 by the circumstances surrounding the transaction and the  
6 relationship and interests of the parties. Hart v. Browne, 163  
7 Cal. Rptr. 356, 361 (Cal. Ct. App. 1980).

8           Although the Sheens assert that they had no knowledge or  
9 involvement in the preparation of borrowing base certificates,  
10 but merely signed them in reliance upon CFO Vincent Tseng's  
11 expertise,<sup>4</sup> the court did not believe them. The court's  
12 disbelief was well founded. For one, the borrowing base  
13 certificates were signed by Alan and James Sheen, whereby each of  
14 them certified the amount of new sales, collections, total loans  
15 and other liabilities, new collateral balance, eligible and  
16

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17           <sup>3</sup>(...continued)

18                           knowledge, is there anything indicating that  
19                           Harris was aware that the credit lines from ACDC's  
20                           major Asian vendors had shut off their credit in  
21                           2003?

22           A           I don't recollect knowledge of that.

23           Q           In your experience, would that have been a  
24                           material fact?

25           A           It probably would have been a material and adverse  
26                           change as defined in the credit agreement.

27 Tr. 5/24/05 at 80-81.

28           <sup>4</sup>Vincent Tseng "disappeared" in the spring of 2004. The  
Sheens alleged that they "relied at all times on Tseng's advice  
and representations as to ACDC's financial conditions and  
operations." The court, however, was persuaded to the contrary.  
Trial Br. of Defendants Alan Sheen and James Sheen at 7.

1 ineligible accounts, in computing the amount of the borrowing  
2 base for the applicable period. Rebuttal Decl. of Lawrence A.  
3 Mizera at 3.

4 Moreover, the evidence supports the conclusion that the  
5 Sheens had direct involvement in purchases and sales that were  
6 incorrectly included in the borrowing base certificate. ACDC's  
7 business records from October 1, 2003 through April 16, 2004  
8 indicate that total sales for that period were \$130,160,286.  
9 Alan Sheen accounted for 48 percent of those sales (\$62,452,661 =  
10 48%).

11 At trial it was pointed out that ACDC did not have many  
12 layers of management like an Enron-type company "where people can  
13 plausibly deny that they knew what was happening." The Sheens  
14 were on site five to seven days a week for the past fifteen years  
15 and could not plausibly deny that these transactions happened  
16 without their knowledge. Tr. 5/24/05 at 8.

17 The Sheens' intent to induce reliance can be inferred from  
18 the surrounding circumstances which indicate the financial chaos  
19 they were trying to conceal as they attempted to keep afloat.  
20 The evidence showed that in 2003 ACDC's major Asian vendors "shut  
21 off" their credit and Universal Buslink was in default on its  
22 \$10,000,000 loan with Cathay Bank (which was guaranteed by SNS  
23 Cloverleaf, James Sheen and Alan Sheen). During this time, the  
24 Sheens were able to continue to pay themselves \$500,000 per year  
25 through the Harris Bank loan.

26 The court's conclusion that the Sheens knew they were  
27 making false material representations and intended to defraud is  
28 supported by ample evidence in the record.

1 C. Actual Reliance & Justifiable Reliance (Causation)

2  
3 1. *Actual Reliance*

4 Harris must show "actual" reliance, i.e., that the  
5 representation was an "immediate cause" that altered their legal  
6 relations. Wilhem v. Pray, 231 Cal. Rptr. 355, 358 (Cal. Ct.  
7 App. 1986).

8 The Sheens argue that Harris Bank failed as a matter of law  
9 to present evidence of causation. Specifically, they point out  
10 that Harris Bank funded the loan in June 2002 and Steve Lee of  
11 Brandlin & Associates admitted during trial that he had conducted  
12 no analysis before January 2003 of the existence of fraudulent  
13 conduct. Moreover, they contend as of January 2003 the entire  
14 credit line of \$17,000,000 had been advanced to ACDC based upon  
15 ACDC's proper conduct demonstrated by its borrowing base  
16 certificates submitted to Harris Bank.

17 The Sheens' first argument is based on the false premise  
18 that the loan was a term loan and that the entire loan balance  
19 was advanced before any fraud occurred. Instead, the loan was a  
20 revolving loan with daily availability calculated from borrowing  
21 base certificates prepared by ACDC. The Bank relied on the  
22 accuracy of the borrowing base certificates in making daily  
23 advances to ACDC.<sup>5</sup> Decl. of Lawrence A. Mizera at 4. But for

24  
25 <sup>5</sup>Steve Lee testified:

26 [A] borrowing base certificate in an asset-based loan is the  
27 life blood of the loan. It's what the bank relies on to  
28 lend money. And that borrowing base - the certification of  
that borrowing base, it's required that there's an officer  
(continued...)

1 the Sheens misrepresentations in the borrowing base certificates,  
2 the Bank would have declared the loan in default.

3 Although the Sheens contend that Harris Bank failed to prove  
4 causation in that there was no evidence that showed a specific  
5 wire advance to ACDC connected to a specific fraudulent act, such  
6 precision was not required. Clemente v. California, 707 P.2d  
7 818, 828 (Cal. 1985) ("If plaintiff's inability to prove his  
8 damages with certainty is due to defendant's actions, the law  
9 does not generally require such proof."); Small v. Fritz Co.,  
10 Inc., 65 P.3d 1255, 1270 (Cal. 2003).

11 We are persuaded that there is ample evidence to support the  
12 court's conclusion that Harris Bank actually relied on the  
13 Sheens' misrepresentations.

14  
15 *2. Justifiable Reliance*

16 Harris Bank must show not only actual reliance, but  
17 justifiable reliance, i.e., that the circumstances were such that  
18 it was justified in accepting the defendant's statements without  
19 an independent inquiry or investigation. 5 WITKIN, Torts § 812  
20 (citing cases).

21 The Sheens argue that Harris cannot contend that it  
22 "reasonably relied" on materially false information because no  
23

24  

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<sup>5</sup>(...continued)

25 of the company sign[ing] that borrowing base. And the  
26 expectations are, the officer of the company is  
27 knowledgeable and understands and agrees and certifies that  
28 that borrowing base is accurate.

Tr. 5/24/05 at 81.



1 false information was provided to it and Harris Bank's conduct  
2 triggered the loss of value in ACDC's inventory and receivables.<sup>6</sup>

3 The Sheen's argument is circular and not supported by the  
4 evidence. As mentioned above, the Bank relied on the borrowing  
5 base certificates to make daily advances. The circumstances were  
6 such that Harris Bank was justified in accepting the Sheens'  
7 representation without independent inquiry. The Sheens'  
8 representations were such that Harris Bank was justified in  
9 in accepting the Sheens' representations. The Sheens'  
10 representations were neither preposterous nor so patently and  
11 obviously false that the Bank would have had to have had its eyes  
12 closed to avoid discovering the truth. Seeger v. Odell, 115 P.2d  
13 977, 981 (Cal. 1941), cited with approval, Atari Corp. v. Ernst &  
14 Winney, 981 F.2d 1025, 1031 (9th Cir. 1992).

15 The Sheens further argue that Harris had complete and ready  
16 access to all ACDC bank records and documents at all times. The  
17 bank records and documents, however, among other things, do not  
18 evidence the loans that were made from Raylink and other tenants  
19 to ACDC or vis-a-versa nor speak to the other activity designed  
20 to create an illusion of economic activity. Tr. 5/25/05 at 80.

21 The evidence supports the court's finding that the Bank's  
22 reliance was justifiable under the circumstances.

---

26 <sup>6</sup>The Sheens' opening brief states in bold: "There was  
27 simply no reasonable reliance by Harris because ACDC's and  
28 Harris' bank records concealed nothing and fully reflected all  
transactions." Appellant's Opening Brief at 17.

1           D. DAMAGES

2           The bankruptcy court held that Harris Bank was damaged in  
3 the amount of the outstanding balance due under the Credit  
4 Agreement and Note, which was \$20,295,111, plus interest, costs,  
5 and attorneys' fees. The court's finding is supported by the  
6 testimony of Harris Bank's expert Steve Lee, who concluded that  
7 the Bank suffered over \$20 million in damages.

8           As the Bank summarizes, Steve Lee identified the following  
9 damages, some of which are cumulative: (1) \$3,335,414 based on  
10 the fictitious and circular sales between R&R, Shecom and ACDC;  
11 (2) \$2,334,624 based on fictitious sales involving LA Depot and  
12 LA Semiconductors; (3) \$1,488,714 based on fictitious sales  
13 involving Butterfly Media; (4) \$9,426,396 based on fictitious  
14 and/or ineligible accounts associated with LCK International,  
15 Suncrest Enterprises, Only Components, and Southwest Memory; (5)  
16 \$7,200,000 based on over-valuing and misrepresenting inventory  
17 collateral; (6) \$20 million based on payments to Raylink for  
18 undisclosed and nonsubordinated loans; and (7) \$3,700,000 in  
19 account overdrafts based on the return of insufficient funds  
20 checks.

21           In sum, the court's conclusions regarding damages were  
22 supported by the evidence presented by Harris Bank. We note that  
23 the Sheens did not introduce any contrary expert testimony.

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25                                           II. CIVIL CONSPIRACY

26           The standard statement by the California Supreme Court of  
27 California law regarding the elements and significance of a civil  
28 conspiracy is:

1 The elements of an action for civil conspiracy are the  
2 formation and operation of the conspiracy and damage  
3 resulting to plaintiff from an act or acts done in  
4 furtherance of the common design .... In such an action the  
5 major significance of the conspiracy lies in the fact that  
6 it renders each participant in the wrongful act responsible  
7 as a joint tortfeasor for all damages ensuing from the  
8 wrong, irrespective of whether or not he was a direct actor  
9 and regardless of the degree of his activity.

6 Applied Equip. Corp. v. Litton Saudi Arabia Ltd., 869 P.2d 454,  
7 511 (Cal. 1994).

8 In other words, civil conspiracy under California is not an  
9 independent tort. Rather, it is a basis for imposing joint  
10 tortfeasor liability. 5 WITKIN, TORTS § 45.

11 The Sheens' civil conspiracy argument on appeal is two  
12 sentences long:

13 Here, the purported conspiracy is between Appellants A.  
14 Sheen and J. Sheen to allegedly "defraud" Harris. Because  
15 neither defendant engaged in fraudulent conduct, neither is  
16 liable for civil conspiracy.

16 Appellant's Opening Brief at 19.

17 This argument necessarily collapses with our conclusion that  
18 the court did not err in concluding that the Sheens are liable  
19 for civil fraud.

### 21 III. CONVERSION

22 Conversion is the wrongful exercise of dominion over  
23 personal property of another. 5 WITKIN, TORTS § 699.

24 As with the civil conspiracy argument, the Sheens' argument  
25 regarding conversion is conclusory and only two sentences long.  
26 The heart of their argument is: "Appellants never attempted to  
27 prevent Harris from gaining access to or controlling its  
28 collateral under the Credit Agreement. Appellants accordingly

1 have not personal liability for conversion." Since the Sheens  
2 provide no support for their assertions and since our review of  
3 the record supports the contrary conclusion reached by the court,  
4 the appellants have not carried their appellate burden to  
5 demonstrate the existence of error.

6  
7 CONCLUSION

8 For the foregoing reasons, we AFFIRM.  
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