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NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No. CC-10-1287-DKiPa
6	RAY CAI and PEILIN HU,	)	Bk. No. 08-31525-BR
7	Debtors.	)	Adv. No. 09-01265-BR
8	_____	)	
9	RAY CAI,	)	
10	Appellant,	)	
11	v.	)	<b>M E M O R A N D U M<sup>1</sup></b>
12	SHENZHEN SMART-IN INDUSTRY	)	
13	CO., LTD.; YI DANSHAN INDUSTRY	)	
14	CO. LTD.; GUAN HANG SHOES, a	)	
15	Chinese Corporation; HONGKONG	)	
16	GUAN HANG INTERNATIONAL GROUP	)	
17	CO. LTD.; HUIDONG WANDA	)	
18	INDUSTRY CO., LTD.; HUIZHOU	)	
19	WANDA SHOES CO., LTD.;	)	
20	IRENE HU,	)	
21	Appellees.	)	
22	_____	)	

Argued and Submitted on January 21, 2011  
at Pasadena, California

Filed - February 2, 2011

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

Honorable Barry Russell, Bankruptcy Judge, Presiding

Appearances: Kathleen P. March argued for the Appellant.  
Steve Qi argued for the Appellees.

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

<sup>1</sup> 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 bankruptcy court failed to make complete findings to  
2 support a judgment that the debts at issue were excepted from the  
3 debtor appellant's chapter 7<sup>2</sup> discharge. "We may not find facts  
4 on appeal; we may only review findings made by the courts below  
5 us." United States v. Ziegler, 497 F.3d 890, 900 (9th Cir. 2007)  
6 (Kozinksi, J.)(dissenting from order denying petition for  
7 rehearing en banc). Accordingly, we VACATE the judgment and  
8 REMAND the case to the bankruptcy court for further findings, as  
9 appropriate.

### 11 I. FACTS

12 In 2003, Appellant, Ray Cai, began operating Citicross Corp.  
13 ("Citicross"), for the purpose of importing and distributing  
14 women's shoes manufactured in China.

15 The Appellees are Shenzhen Smart-In Co., Ltd. ("Shenzhen  
16 Smart-In"), Yi Dan Shan Industry Co., Ltd. ("Yi Dan Shan"),  
17 Huidong Wanda Industry Co., Ltd. and Huizhou Wanda (together  
18 "Wanda"), and Guan Hang Shoes and Guan Hang International Group  
19 Co., Ltd. (together "Guan Hang"). The Appellees all are  
20 manufacturers and/or distributors of shoes made in China.

21 Between mid-2005 and early 2006, Citicross<sup>3</sup> began purchasing  
22

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

28 <sup>3</sup> Appellees allege that all of the interactions were with  
Mr. Cai; they do not reference Citicross notwithstanding that  
Citicross was the entity identified on both the orders and the  
invoices for the orders.

1 shoes from the Appellees. After the shoes were manufactured, a  
2 Citicross employee in China would inspect them, accept delivery,  
3 and arrange for shipment to the United States.<sup>4</sup> Approximately  
4 two weeks after shipment, Appellees would send invoices for the  
5 orders. By their terms, the invoices were to be paid within 30  
6 days of the date of the invoice. Citicross initially placed  
7 small orders with the Appellees and made payments for those  
8 orders according to the invoice terms.

9 After a time, Citicross began placing substantially larger  
10 orders with Appellees.

#### 11 Shenzhen Smart-In

12 In February 2006, Citicross placed nine orders with Shenzhen  
13 Smart-In for approximately \$578,367. Because of the drastic  
14 change in the quantity of shoes ordered, before undertaking to  
15 fulfill the orders, Dawson Li Guan, Shenzhen Smart-In's  
16 president, owner, and manager, contacted Mr. Cai to determine  
17 whether he had sufficient funding to pay for the orders. In  
18 response to Mr. Guan's inquiry, Mr. Cai assured Mr. Guan that he  
19 had sufficient funds ready for payment, and that the invoices  
20 would be promptly paid consistent with the prior transactions.  
21 Based on Citicross's prior timely payments and on Mr. Cai's  
22 assurance that sufficient funds were available to pay the  
23 invoices, Shenzhen Smart-In manufactured and delivered the  
24 orders. When the time arrived for payment of the February  
25 invoices, Citicross did not pay them. Mr. Guan spoke again with

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26  
27 <sup>4</sup> Some of the shipments were made to Citicross customers  
28 in South America.

1 Mr. Cai and was assured that he had funds and simply needed more  
2 time to make the payment.

3 Despite failing to make payment for the February invoices,  
4 Citicross placed five orders totaling \$209,032.20 with Shenzhen  
5 Smart-In in March 2006. Mr. Guan testified that although  
6 Shenzhen Smart-In had not been paid for the February orders,  
7 based on Mr. Cai's assurance that payment would be made shortly,  
8 it manufactured and delivered Citicross's March 2006 orders.

9 This pattern repeated itself many times with Shenzhen  
10 Smart-In. In May 2006, having not yet paid for the February 2006  
11 and March 2006 orders, Citicross placed an order for \$45,360  
12 worth of shoes. Mr. Guan stated that the May 2006 order was  
13 filled "[b]ecause of the trust developed when [Mr.] Cai was  
14 making prompt payments for previous purchases." Declaration of  
15 Guan Li at 3:5-8. In June 2006, Citicross placed three orders  
16 totaling \$38,116.80. In August 2006, Citicross placed three  
17 orders totaling \$92,601.20. In September 2006, Citicross placed  
18 an order in the amount of \$8,376. In October 2006, Citicross  
19 placed an order in the amount of \$70,776. Each month Shenzhen  
20 Smart-In fulfilled the orders based on Mr. Cai's assurance of  
21 payment.

22 Ultimately, the amount of the unpaid invoices Citicross owed to  
23 Shenzhen Smart-In totaled approximately \$1.2 million.<sup>5</sup>

24 The experience of the remaining Appellees was similar.

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26 <sup>5</sup> At trial Mr. Guan testified that of the approximately  
27 \$4 to \$5 million in orders filled for Citicross, the unpaid  
28 balance owed to Shenzhen Smart-In was \$958,000. Tr. of May 19,  
2010 Trial at 26:22-27:10.



1 [Mr.] Cai was making prompt payments for previous purchases."  
2 Declaration of Li Haizhong at 4:9-11. In July 2006, Citicross  
3 placed four orders with Yi Dan Shan totaling \$137,337. In August  
4 2006, Citicross placed five orders with Yi Dan Shan totaling  
5 \$145,314. Each month Yi Dan Shan fulfilled the orders based on  
6 Mr. Cai's assurance of payment. After August 2006, Yi Dan Shan  
7 refused to accept further orders from Citicross based on unpaid  
8 invoices. Ultimately, the amount of the unpaid invoices  
9 Citicross owed to Yi Dan Shan totaled more than \$1 million.<sup>6</sup>

10 Wanda

11 Between September 2005 and August 2006, Citicross generally  
12 made prompt payments for merchandise ordered from and delivered  
13 by Wanda. Beginning in September 2006, payments on Citicross's  
14 accounts with Wanda stopped. However, Citicross continued to  
15 place orders with Wanda, and Mr. Cai assured Shengda Chen,  
16 Wanda's general manager, that he had "secured the funding to pay  
17 for the merchandise ordered." Declaration of Chen Sheng Da at  
18 3:9-11. Citicross placed an order with Wanda for \$93,483 worth  
19 of shoes on September 21, 2006; on October 10, 2006, Citicross  
20 placed another order with Wanda for \$44,838 worth of shoes. When  
21 these orders were placed, Wanda manufactured and shipped the  
22 shoes because Mr. Cai reassured Mr. Chen that he had funds for  
23

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24 <sup>6</sup> At trial Mr. Li testified that of the approximately  
25 \$2 million in orders filled for Citicross, the unpaid balance  
26 owed to Yi Dan Shan was \$833,229.54, the result of orders placed  
27 in April 2006, May 2006 and July 2006 in an amount of over  
28 \$900,000. Tr. of May 19, 2010 Trial at 59:22-61:19. In January  
2007, Yi Dan Shan fulfilled two orders from Citicross but  
required cash payments prior to acceptance of the orders.

1 payment but simply needed more time to make the payment.  
2 Payment, however, was not forthcoming. Thereafter Wanda refused  
3 to accept future orders from Citicross except on a cash basis.  
4 On May 21, 2007, using a copy of a wire transfer order from  
5 February 21, 2007 with the month changed, Citicross ordered  
6 nearly 3,000 additional pairs of shoes from Wanda. Wanda  
7 manufactured the ordered shoes based on the "falsified" wire  
8 transfer, which Wanda asserts was used by Mr. Cai to induce Wanda  
9 to manufacture shoes without the required prepayment.<sup>7</sup>

10 Guan Hang

11 Between August 2005 and July 2006, Citicross made prompt  
12 payments for merchandise ordered from and delivered by Guan Hang.  
13 In August 2006, Citicross placed what Yu Bin, Guan Hang's owner  
14 and manager, characterized as a "huge order" for \$1 million worth  
15 of shoes.<sup>8</sup> Because the August 2006 order was so large, Mr. Yu  
16 contacted Mr. Cai and asked if he had sufficient funds to pay. In  
17 response to his inquiry Mr. Cai assured Mr. Yu that he had  
18 sufficient funds ready for payment, and that the invoices would  
19 be paid promptly. Mr. Yu testified that Guan Hang was happy with  
20 the order in that it was an affirmation of the quality of product

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21  
22  
23 <sup>7</sup> At trial Mr. Chen testified that of the approximately  
24 \$1 million in orders filled for Citicross, the unpaid balance  
25 owed to Wanda was about \$410,000. Tr. of May 19, 2010 Trial at  
36:13-37:6.

26 <sup>8</sup> The evidence is inconsistent about the amount of the  
27 August 2006 order. In his declaration, Mr. Yu states at 3:11  
28 that the August 2006 order was in the amount of \$1,000,000.  
However, at 3:17-21 he states that in August 2006, Citicross  
placed 5 orders totaling \$319,869.99.

1 they manufactured. Guan Hang manufactured and delivered the  
2 August 2006 order. When the time arrived for payment of the  
3 August invoices, Citicross did not pay them. Mr. Yu spoke again  
4 with Mr. Cai and was assured that he had funds and simply needed  
5 more time to make the payment.

6 Despite failing to make payment for the August 2006 order,  
7 Citicross placed three orders totaling \$87,219 with Guan Hang in  
8 September 2006. With respect to the September 2006 orders,  
9 Mr. Yu testified that "[e]ach invoice was sent and received by  
10 [Mr.] Cai and all merchandise were manufactured and shipped."  
11 Declaration of Yu Bing at 3:26-27. After shipment, Mr. Yu  
12 promptly requested payment for both the September 2006 orders and  
13 payment for the August 2006 orders, at which time Mr. Cai told  
14 him that he needed more time to make the payments and assured  
15 Mr. Yu that "the funds were there." Id. at 3:27-4:2.

16 In October 2006, having still not paid for the August 2006  
17 and September 2006 orders, Citicross placed six orders with Guan  
18 Hang totaling \$521,229.90. Mr. Yu testified that Guan Hang  
19 accepted the October 2006 orders "[b]ecause of the trust  
20 developed when [Mr.] Cai was making prompt payments for previous  
21 purchases." Id. at 4:5-6. However, because of the quantity and  
22 cost of the October 2006 orders, Mr. Yu asked Mr. Cai if he had  
23 sufficient funding to purchase the October 2006 orders and to pay  
24 for the August 2006 and September 2006 orders; Mr. Cai assured  
25 Mr. Yu that payments would be made promptly for all of the  
26 orders.

27 It appears that unlike the other Appellees, Guan Hang may  
28 have required deposits from Citicross before it would manufacture



1 shoes to fill Citicross's orders. However, for at least the  
2 October 2006 orders, it appears the deposits were not made as  
3 required. Further, Mr. Yu intimates that some payments were  
4 made. Ultimately, the amount of the unpaid invoices Citicross  
5 owed to Guan Hang totaled \$463,245.23.<sup>9</sup>

6 Collection Efforts and Litigation

7 When collection efforts from China proved unsuccessful, the  
8 Appellees, through their owners, came to the United States in  
9 2007 and negotiated acknowledgments of debt or repayment  
10 agreements ("Debt Acknowledgments"): Wanda on January 9; Shenzhen  
11 Smart-In on February 12; Guan Hang on August 3; and Yi Dan Shan  
12 on August 6. As reflected by the translations, the debtor or  
13 obligor in the documents was Citicross. Mr. Cai signed the  
14 documents as the legal representative of Citicross.<sup>10</sup>

15  
16  
17 <sup>9</sup> At trial, Mr. Yu testified that of the approximately  
18 \$1.1 million in orders filled for Citicross, the unpaid balance  
19 owed Guan Hang was about \$460,000. Transcript of May 19, 2010  
20 Trial at 53:10-18.

21 <sup>10</sup> The Wanda debt acknowledgment is an exception. It is  
22 called a "Statement of Outstanding Balance" and states:  
23 "This is to verify that as of January 05, 2007, Ray Cai of  
24 CITICROSS, an American corporation, owes Huidong Wanda Industry  
25 Co., Ltd. . . . a total amount of \$479,281.00. Our company will  
26 plan to make a payment of \$200,000.00 to \$250,000.00 to your  
27 company before February of 2007 with the remaining balance to be  
28 paid successively before March, 2007." The signature block is  
marked "Debtor" and is signed by Ray Cai, with no reference to  
the corporation. The actual document was prepared on Citicross  
letterhead. In his Opening Brief on appeal, Mr. Cai asserts that  
the translation of the Wanda debt acknowledgment is a translation  
error, that in the underlying Chinese document the word  
"Citicross" is stated so that it appears Mr. Cai signed the Wanda  
debt acknowledgment for Citicross. Appellant's Opening Brief at  
p. 26 n.10.

1 Armed with the Debt Acknowledgments, the Appellees filed a  
2 complaint against Citicross and Mr. Cai on September 25, 2007, in  
3 the California Superior Court ("State Court Litigation"). The  
4 claims for relief asserted in the complaint included breach of  
5 contract as well as fraud and deceit. Trial in the State Court  
6 Litigation was set for December 15, 2008. On December 10, 2008,  
7 Mr. Cai and his wife, Peilin Hu, filed a voluntary chapter 7  
8 petition.

9 The Appellees obtained a default judgment against Citicross  
10 in the State Court Litigation which was entered on January 9,  
11 2009. The default judgment was entered in favor of the Appellees  
12 on all six claims for relief, including the claim for relief for  
13 fraud and deceit.

14 Appellees then commenced an adversary proceeding against  
15 Mr. Cai and Ms. Hu in the bankruptcy court. Both the original  
16 and the amended adversary proceeding complaints assert claims for  
17 relief under §§ 727(a)(3), 727(a)(4)(c), and 727(a)(5). The  
18 Adversary Proceeding Cover Sheet asserts that the nature of the  
19 suit included claims under § 548 for fraudulent transfer, § 727  
20 for objection to discharge, and § 523(a)(2) for  
21 nondischargeability of debt. At a status hearing on the amended  
22 complaint, the bankruptcy court clarified that the § 727(a)(4)(c)  
23 claim for relief would be considered a claim for relief under  
24 § 523(a)(2).

25 Direct testimony was presented by declaration. A two-day  
26 trial followed for cross-examination and argument. The  
27 bankruptcy judge gave his oral ruling at the conclusion of  
28 argument. He ruled that Appellees had failed to establish any

1 claim for relief under § 727, and that they had failed to  
2 establish a claim for relief against Ms. Hu under § 523. The  
3 bankruptcy judge determined that the Appellees were entitled to  
4 judgment against Mr. Cai pursuant to § 523(a)(2)(A). The only  
5 findings made by the bankruptcy court in support of this judgment  
6 were (1) that Mr. Cai did not intend to keep his promises to pay,  
7 and (2) that Mr. Cai's asserted reasons for not paying were not  
8 credible.

9 The bankruptcy court entered judgment against Mr. Cai in a  
10 form to which he had objected. Mr. Cai filed a timely notice of  
11 appeal.

## 12 13 **II. JURISDICTION**

14 The bankruptcy court had jurisdiction under 28 U.S.C.  
15 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.  
16 § 158.

## 17 18 **III. ISSUE**

19 Whether the bankruptcy court erred when it determined that  
20 the Appellees were entitled to an exception to discharge judgment  
21 against Mr. Cai.

## 22 23 **IV. STANDARD OF REVIEW**

24 In the context of an appeal from a judgment determining a  
25 debt to be nondischargeable, the issues often present mixed  
26 questions of law and fact. Murray v. Bammer (In re Bammer),  
27 131 F.3d 788, 792 (9th Cir. 1997). Such issues are reviewed  
28 "de novo because they require consideration of legal concepts and

1 the exercise of judgment about the values that animate legal  
2 principles." Id. See also Miller v. United States, 363 F.3d  
3 999, 1004 (9th Cir. 2004)(citing Diamond v. Kolcum (In re  
4 Diamond), 285 F.3d 822, 826 (9th Cir. 2002)); Suarez v. Barrett  
5 (In Re Suarez), 400 B.R. 732, 736 (9th Cir. BAP 2009).

6  
7 **V. DISCUSSION**

8 A chapter 7 discharge will not discharge an individual  
9 debtor from any debt

10 for money, property, services, or an extension,  
11 renewal, or refinancing of credit, to the extent  
12 obtained by --

13 (A) false pretenses, a false representation, or  
14 actual fraud, other than a statement respecting  
15 the debtor's or an insider's financial condition

16 . . .

17 Sec. 523(a)(2)(A). The elements for establishing that a debt is  
18 nondischargeable under § 523(a)(2)(A) are well established by  
19 Ninth Circuit authority.

20 The Ninth Circuit employs a five-part test for  
21 determining when a debt is non-dischargeable under  
22 § 523(a)(2)(A). The creditor must show: (1) that the  
23 debtor made the representations; (2) that the debtor  
24 knew they were false; (3) that the debtor made them  
25 with the intention and purpose of deceiving the  
26 creditor; (4) that the creditor relied on the  
27 statements; (5) that creditor sustained damages as the  
28 proximate result of the representations. In re  
Britton, 950 F.2d 602, 604 (9th Cir.1991).

29 Cowen v. Kennedy (In re Kennedy), 108 F.3d 1015, 1018 n.2  
30 (9th Cir. 1997). Appellees bear the burden of proving, by a  
31 preponderance of the evidence, each of the elements of their  
32 claim for relief under § 523(a)(2)(A). Grogan v. Garner,  
33 498 U.S. 279, 291 (1991).

34 Mr. Cai asserts that the bankruptcy court erred in

1 determining the debts to Appellees are nondischargeable in his  
2 chapter 7 case pursuant to § 523(a)(2)(A). However, because the  
3 record does not reflect that the bankruptcy court made complete  
4 findings in support of the judgment, we are unable to determine  
5 at this time whether such error was committed.

6 Fed. R. Civ. P. 52(a)(1) provides:

7 . . . In an action tried on the facts without a  
8 jury . . . , the court must find the facts specially and  
9 state its conclusions of law separately. The findings  
10 and conclusions may be stated on the record after the  
close of the evidence or may appear in an opinion or a  
memorandum of decision filed by the court. . . .

11 Fed. R. Civ. P. 52 applies in adversary proceedings. See Rule  
12 7052. "[T]he ultimate test as to the adequacy of findings will  
13 always be whether they are sufficiently comprehensive and  
14 pertinent to the issues to provide a basis for decision, and  
15 whether they are supported by the evidence." Carr v. Yokohama  
16 Specie Bank, Ltd., 200 F.2d 251, 255 (9th Cir. 1952).

17  
18 A. Representations Made By Mr. Cai

19 On appeal Mr. Cai asserts that the bankruptcy court erred by  
20 not finding that Mr. Cai's representations to Appellees  
21 constituted statements respecting the financial condition of  
22 Mr. Cai or Citicross. Mr. Cai contends that because the  
23 representations were not in writing, Appellees' claim for relief  
24 was not actionable.

25 A statement regarding a debtor's financial condition can  
26 form the basis for a nondischargeable debt only if the statement  
27 is in writing. Spencer v. Bogdanovich (In re Bogdanovich),  
28 292 F.3d 104, 111 (2d Cir. 2002). Stated conversely, if a

1 statement regarding a debtor's financial condition is oral, it  
2 cannot support a judgment of nondischargeability. Id. See also  
3 §§ 523(a)(2)(A) and (B).

4 The record suggests Mr. Cai's oral representations varied  
5 from (1) he had sufficient funds ready for payment and that the  
6 invoices would be promptly paid to (2) he had secured the funding  
7 to pay for the merchandise ordered. Mr. Cai asserts on appeal  
8 that the statements upon which Appellees base their § 523(a)(2)  
9 claim for relief constitute oral statements of financial  
10 condition and therefore cannot support an exception to discharge  
11 judgment. At oral argument, Appellees conceded through counsel  
12 that the "lies" of Mr. Cai, which form the basis of their  
13 complaint, were that he had "present financial resources to pay"  
14 for the orders.

15 In determining whether a statement relates to a  
16 debtor's financial condition, courts agree the term is  
17 not limited to formal financial statements. See  
18 Norcross v. Ransford (In re Ransford), 202 B.R. 1, 4  
19 (Bankr. D. Mass. 1996). Two views have emerged over  
20 how to interpret the scope of § 523(a)(2)(A)'s  
21 exception. A broad interpretation would include any  
22 statement that reflects the financial condition of the  
23 debtor. Id. On the other hand, a narrow  
24 interpretation would find that a statement relates to  
25 financial condition only when it provides information  
26 "as to [a debtor's] overall financial health." Id.

27 In re Bogdanovich, 292 F.3d at 112. Neither the Ninth Circuit  
28 nor this panel has decided to date whether to apply the broad or  
the narrow interpretation of what constitutes a statement of  
financial condition. We are not in a position to decide the  
issue here, because the bankruptcy court made no finding as to  
the specific representations upon which it based the  
nondischargeable judgment in Appellees' favor. Before we can  
review whether the statements of Mr. Cai are actionable under

1 § 523(a)(2)(A), we must know which statements the bankruptcy  
2 court considered to be the representations upon which Appellees  
3 relied in fulfilling the Citicross orders, and whether those  
4 statements constitute statements of financial condition or have a  
5 broader import. Id.

6  
7 B. Theory of Personal Liability

8 Section 523 excepts certain debts from a debtor's discharge.  
9 Debt "means liability on a claim." § 101(12). Claim means  
10 "right to payment." § 101(5)(A). Thus, to obtain a § 523  
11 judgment against Mr. Cai, Appellees had to demonstrate that they  
12 have a right to payment from Mr. Cai.

13 Appellees obtained a judgment in the State Court Litigation  
14 against Citicross for the debts at issue in the adversary  
15 proceeding. Although Mr. Cai was a party to the State Court  
16 Litigation, the judgment expressly did not apply to him by virtue  
17 of the pending bankruptcy case. In addition, the Debt  
18 Acknowledgments refer to the debts of Citicross and do not appear  
19 to impose personal liability for the corporate debts on Mr. Cai.  
20 There has been no finding that Mr. Cai personally "obtained  
21 money, property, services, or an extension, renewal, or  
22 refinancing of credit" within the meaning of § 523(a)(2)(A). In  
23 their trial memorandum, Appellees argued that the debtor also is  
24 liable for the debts on an alter ego theory.

25 The determination of whether or not to pierce the  
26 corporate veil and hold a shareholder personally liable  
27 for corporate debts is based on three factors: the  
28 amount of respect given to the separate identity of the  
corporation by its shareholders, the degree of  
injustice visited on the litigants by recognition of  
the corporate entity, and the fraudulent intent of the  
incorporators.

1 Tobin v. Sans Souci Ltd. P'ship (In re Tobin), 258 B.R. 199, 204  
2 (9th Cir. BAP 2001), quoting Board of Trustees of Mill Cabinet  
3 Pension Trust Fund v. Valley Cabinet & Mfg. Co., 877 F.2d 769,  
4 772 (9th Cir. 1989).

5         The bankruptcy court made no finding that Mr. Cai  
6 sufficiently disregarded the separate corporate identity of  
7 Citicross to be liable for its debts. Nor was there a finding  
8 that the Debt Acknowledgments imposed liability for payment on  
9 Mr. Cai personally. We believe a finding of liability on some  
10 basis is necessary where it is not clear from the record whether  
11 Mr. Cai was promising to make payments to the Appellees himself,  
12 as the Appellees appear to suggest. However, in any event,  
13 Mr. Cai's fraud may provide a sufficient basis on its own to  
14 establish his personal liability. Ghomeshi v. Sabban (In re  
15 Sabban), 600 F.3d 1219, 1222-23 (9th Cir. 2010).

16  
17 C. Reliance

18         In 1995, the Supreme Court ruled that a party seeking to  
19 have a debt excepted from discharge under § 523(a)(2)(A) as being  
20 the result of a false representation must demonstrate that its  
21 reliance on the false representation was "justifiable" under the  
22 circumstances. Field v. Mans, 516 U.S. 59 (1995).

23         We assume for the limited purpose of this discussion that  
24 Mr. Cai made the assurances of payment as alleged by Appellees.  
25 Here, the bankruptcy court made no finding that Appellees relied,  
26 justifiably or otherwise, on the promises of Mr. Cai to pay for  
27 the Citicross orders. As is apparent from the record on appeal,  
28 this determination could not be straightforward in light of



1 (1) the concerns for payment expressed by each Appellee when the  
2 size of Citicross's orders first increased substantially, (2) the  
3 failure of Citicross or Mr. Cai to make payment after the initial  
4 assurance was given, (3) the repeated assurances of payment  
5 requested by Appellees and given by Mr. Cai, (4) the decision of  
6 Appellees to manufacture and ship additional large orders based  
7 on their experience with prompt payment that predated the quickly  
8 multiplying defaults on newer, substantially larger, orders in  
9 spite of Appellees' requests for payment assurances.

10  
11 D. Causation

12 The record reflects that Mr. Cai and Appellees put forth  
13 divergent views as to why the debts were not paid. Appellees  
14 contended that Mr. Cai gave payment assurances with no intent  
15 that he or Citicross would make payment, and that Mr. Cai's  
16 continued assurances were made for the purpose of deferring  
17 collection while Ms. Hu transferred cash from Citicross to  
18 Mr. Cai and her personal accounts. Mr. Cai asserted that  
19 Citicross's debts to Appellees were not paid because the  
20 Appellees delivered defective products that not only would not  
21 sell, but which damaged Citicross's relationships with its  
22 customers to the point that Citicross could not continue in  
23 business. The bankruptcy court found that Mr. Cai was not a  
24 credible witness and discounted his excuses for nonpayment as a  
25 result. Although this suggests that the bankruptcy court  
26 believed Appellees' versions of the facts, the bankruptcy court  
27 made no finding that the Appellees adequately supported their  
28 contentions with evidence in order to meet their burden of proof

1 on the issue of causation.

2  
3 E. Remand Is Appropriate In Light Of The Need For Further  
4 Findings

5 In the absence of complete findings, we may vacate a  
6 judgment and remand the case to the bankruptcy court to make the  
7 required findings. See United States v. Ameline, 409 F.3d 1073  
8 (9th Cir. 2005)(en banc). We note that a bankruptcy court's  
9 failure to make factual findings as required by Fed. R. Civ.  
10 P. 52(a) does not require reversal and remand unless a full  
11 understanding of the issues under review is not possible without  
12 aid of the findings. See Simeonoff v. Hiner, 249 F.3d 883, 891  
13 (9th Cir. 2001). In this instance, it is not clear without  
14 further findings from the bankruptcy court that the Appellees  
15 carried their burdens of proof on all of the elements of the  
16 § 523(a)(2)(A) claim for relief.

17 Because we are vacating the judgment, we do not address  
18 (1) Mr. Cai's issues on appeal relating to the form of the  
19 judgment, or (2) Mr. Cai's assertion that there was insufficient  
20 evidence in the record to support a judgment in favor of Guan  
21 Hang where the bankruptcy court had stricken Mr. Yu's declaration  
22 and testimony for lack of foundation, yet admitted into evidence  
23 the unauthenticated documents attached to the stricken  
24 declaration.

25  
26 **VI. CONCLUSION**

27 The bankruptcy court failed to make the requisite findings  
28 to support its judgment that Appellees' debts were excepted from

1 Mr. Cai's discharge. Accordingly, we VACATE the judgment and  
2 REMAND the case to the bankruptcy court for further findings, as  
3 appropriate.

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