

AUG 07 2014

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-13-1104-PaKiTa
	)	
ASHVINDER SINGH,	)	Bankr. No. 11-22770-AA
	)	
Debtor.	)	Adv. Proc. 12-01045-AA
	)	
ASHVINDER SINGH,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>MEMORANDUM</b> <sup>1</sup>
	)	
GURMUKH SINGH; JASBIR KAUR,	)	
	)	
Appellees.	)	
	)	

Submitted Without Oral Argument<sup>2</sup>  
on July 25, 2014

Filed - August 7, 2014

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

Honorable Charles E. Rendlen, III, Bankruptcy Judge, Presiding<sup>3</sup>

Appearances: Appellant Ashvinder Singh, pro se, on brief; Gary  
G. Barsegian on brief for appellees Gurmukh Singh  
and Jasbir Kaur.

<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.

<sup>2</sup> By order entered on April 2, 2014, and after notice to the parties and review of the briefs and record, the Panel unanimously determined oral argument is not needed. Rule 8012.

<sup>3</sup> U.S. Bankruptcy Judge for the Eastern District of Missouri, visiting judge.

1 Before: PAPPAS, KIRSCHER and TAYLOR, Bankruptcy Judges.

2 Chapter 7<sup>4</sup> debtor Ashvinder Singh ("Ashvinder")<sup>5</sup> appeals the  
3 judgment of the bankruptcy court excepting from discharge the  
4 debt he owed to appellees Gurmukh Singh ("Gurmukh") and Jasbir  
5 Kaur ("Jasbir", and together, the "Appellees") under  
6 § 523(a)(2)(A). We AFFIRM.

7 **FACTS**

8 The Appellees and Ashvinder, their nephew, are natives of  
9 India. The record does not indicate when Appellees came to  
10 America; however, the parties agree that Ashvinder came to live  
11 with Appellees at their home in California in 2000, and was still  
12 living there in 2005. The parties also agree that Ashvinder  
13 executed a Promissory Note in favor of the Appellees, dated  
14 December 6, 2005, in which he agreed to pay them \$30,000 in  
15 accordance with the "Wells Fargo (line of credit) bank terms."  
16 Beyond these bare facts, there is little agreement among the  
17 parties.

18 **The Alleged Representations Made by Ashvinder to Jasbir**

19 At the heart of this appeal is the Appellees' contention  
20 that Ashvinder made several false representations to Jasbir, on  
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22 <sup>4</sup> Unless otherwise indicated, all chapter and section  
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101 - 1532,  
24 all Rule references are to the Federal Rules of Bankruptcy  
25 Procedure, Rules 1001-9037, and all Civil Rule references are to  
the Federal Rules of Civil Procedure 1-86.

26 <sup>5</sup> Because several parties in this appeal have the same  
27 surname, for convenience we refer to each by their first name; no  
disrespect is intended.

1 which she relied to the Appellees' detriment. Because the  
2 parties contest whether the representations were made, we review  
3 the trial testimony of the parties, together with the bankruptcy  
4 court's credibility determinations set forth in its Trial  
5 Memorandum, entered February 20, 2013 (the "Memorandum").

6       Apparently, Ashvinder approached Gurmukh some time in 2005,  
7 seeking a loan of \$30,000. Gurmukh testified that he refused  
8 Ashvinder's request because Ashvinder already owed him \$32,000  
9 that he had not repaid. The bankruptcy court found Gurmukh's  
10 testimony on this point credible.

11       Jasbir testified that, in November 2005, Ashvinder told her  
12 that her husband, Gurmukh, intended to leave her and to return to  
13 India, taking all the family's money with him. Ashvinder  
14 suggested that Jasbir and Ashvinder go to Wells Fargo Bank where  
15 she could draw funds<sup>6</sup> on the Appellees' home equity line of  
16 credit. Ashvinder promised to take care of Jasbir and her  
17 daughters after Gurmukh left her. Jasbir's adult daughters,  
18 Avneet and Supreet Kaur ("Avneet" and "Supreet"), were present  
19 when Ashvinder made these representations to Jasbir, and they  
20 corroborated their mother's testimony. The bankruptcy court  
21 found the testimony of Jasbir, Avneet, and Supreet credible.

22       Gurmukh denied that he ever intended to leave Jasbir, take  
23 the family's money, and return to India. The bankruptcy court  
24

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25  
26       <sup>6</sup> There is some inconsistency in the record regarding the  
27 amount of money withdrawn from the Wells Fargo account. At  
28 different points in the record, the bankruptcy court and parties  
refer to \$137,000, \$140,000, and approximately \$140,000. The  
precise amount is not material to the issues on appeal.

1 also found this testimony credible.

2 Despite the testimony of the other witnesses, Ashvinder  
3 insisted that he never told Jasbir that her husband was leaving  
4 her, taking the family money, and returning to India or that he  
5 ever suggested that Jasbir withdraw funds from the bank. The  
6 bankruptcy court refused to credit Ashvinder's account of the  
7 facts, noting that he provided "little credible testimony."

8 Memorandum at 5.

9 Jasbir testified that she went with Ashvinder to Wells Fargo  
10 to withdraw \$137,000. Ashvinder spoke for Jasbir with a bank  
11 representative because she was not comfortable speaking English.  
12 Jasbir's only action at Wells Fargo was to sign the transaction  
13 authorization, acting upon Ashvinder's direction. She and  
14 Ashvinder then immediately went to a Washington Mutual Bank  
15 branch, where they opened a new account and deposited the funds.  
16 Jasbir testified that she was not aware that Ashvinder had opened  
17 this as a joint account. The bankruptcy court found Jasbir's  
18 testimony on these facts credible.

19 Ashvinder acknowledged that he drove Jasbir to Wells Fargo,  
20 but testified that he did not go into the bank with her.  
21 Ashvinder also denied going to Washington Mutual and denied  
22 opening a new account there with Jasbir. The bankruptcy court  
23 found that this testimony was not credible.

24 The bankruptcy court received documentary evidence at trial  
25 including a statement of activity on the joint account of Jasbir  
26 and Ashvinder at Washington Mutual for the period of November 25,  
27 2005 to December 22, 2005, which showed a deposit of \$140,500 and  
28 a withdrawal of \$140,500. Supreet also testified that she was a

1 teller at Washington Mutual at the time and was aware that the  
2 account set up with the initial deposit bore the names of both  
3 Ashvinder and Jasbir.

#### 4 **The Promissory Note and Settlement Agreement**

5 The parties also completely dispute the events leading up to  
6 the execution of the Promissory Note.

7 Gurmukh testified that he discovered \$140,000 was drawn from  
8 his equity line account at Wells Fargo, that he asked his wife  
9 about the circumstances, and that he then approached Ashvinder.  
10 According to Gurmukh, Ashvinder told him that Gurmukh had refused  
11 to loan him \$30,000, so Ashvinder obtained the funds "his way."  
12 Ashvinder said that he would return \$110,000, if Gurmukh would  
13 agree to lend him the \$30,000. Gurmukh went with Ashvinder to  
14 Washington Mutual, where Ashvinder had the bank give him a  
15 cashier's check for \$110,000 payable to Gurmukh. Ashvinder kept  
16 the remaining \$30,000, and this was the principal amount used in  
17 the Promissory Note that Ashvinder then wrote out and gave to  
18 Gurmukh and Jasbir. Because Gurmukh had no other funds, he felt  
19 he was forced to sign the Promissory Note agreeing to its terms.

20 The Promissory Note provides:

21 I Gurmukh Singh and Jasbir Kaur (joint party)  
22 willingly, loan Ashvinder Singh the amount of thirty  
23 thousand dollars, and it is to be paid back with  
24 interest according to the Wells Fargo (line of credit)  
25 Bank terms and conditions set thereby, and minimum  
26 monthly payment is required on the loan according to  
the Wells Fargo Bank terms and conditions. I Gurmukh  
Singh and Jasbir Kaur will provide loan statements for  
the purposes of determining loan payment (minimum  
monthly due) until the loan is paid in full.

27 The Promissory Note was dated December 6, 2005, and signed by  
28 Gurmukh, Jasbir, and Ashvinder, whose signatures were notarized

1 on the same date.

2           Although Ashvinder admits that he drafted the Promissory  
3 Note and that he signed it, he disputes all other aspects of  
4 Gurmukh's testimony regarding events leading to its creation.  
5 According to Ashvinder's testimony, he had no prior debt owed to  
6 Gurmukh. At the time of completing the Promissory Note, he  
7 approached Gurmukh to borrow \$30,000 to pay his college tuition,  
8 and Gurmukh told him "I will be more than happy to assist you  
9 with that." Ashvinder testified that Gurmukh gave him \$30,000 in  
10 cash and that he and Appellees signed the Promissory Note the  
11 same day (December 6, 2005). Ashvinder denied ever taking money  
12 from any joint account at Washington Mutual. He also denied  
13 going to the bank with Gurmukh or giving Gurmukh a cashier's  
14 check for \$110,000.

15           The bankruptcy court made a general finding concerning  
16 Ashvinder's credibility and his testimony about the events  
17 leading up to the signing of the Promissory Note: "The Defendant  
18 provided little credible testimony regarding the circumstances  
19 giving rise to the creation of the Promissory Note." Memorandum  
20 at 5. Of course, in addition to considering the parties'  
21 conflicting testimony, the bankruptcy court was given a copy of  
22 the Washington Mutual \$110,000 cashier's check executed on  
23 December 6, 2005, payable to Gurmukh Singh, and deposited in the  
24 Appellees' equity credit account at Wells Fargo.

25           As can be seen, the Promissory Note did not provide specific  
26 amounts for repayment or a payment schedule. It is not disputed  
27 that Ashvinder made some monthly payments to the Appellees under  
28 the Promissory Note, but he then defaulted at some point not

1 clear in the record.

2 The Appellees sued Ashvinder in Los Angeles Superior Court  
3 in November 2007 for fraud and breach of contract. The parties  
4 reached a Settlement Agreement, which was approved by the state  
5 court on September 17, 2008. According to the terms of the  
6 Settlement Agreement, the total amount of Ashvinder's debts to  
7 the Appellees was fixed at \$39,000. Ashvinder agreed to make  
8 monthly payments to the Appellees of \$150 for the first two  
9 years, \$250 in the third year, \$275 in the fourth year, \$300 in  
10 the fifth through seventh years, \$325 in the eighth and ninth  
11 year, with any remaining balance payable on September 15, 2018.<sup>7</sup>

12 Ashvinder made the required payments for two years, but  
13 defaulted in October 2010. The Appellees returned to the  
14 Superior Court to seek enforcement of the Settlement Agreement.  
15 The record does not reveal subsequent events in the state court.

16 **The Bankruptcy Case and Adversary Proceeding**

17 Ashvinder filed a chapter 7 petition on November 1, 2011.  
18 On his schedule F, he listed a debt of \$35,000 for a "personal  
19 loan" from the Appellees.

20 The Appellees commenced an adversary proceeding on  
21 February 3, 2012, seeking an exception to discharge of  
22 Ashvinder's debt to them under § 523(a)(2)(A). The complaint  
23 alleged that Ashvinder had created an elaborate scheme to defraud  
24 the Appellees. They alleged that after Gurmukh refused to lend  
25 Ashvinder \$30,000, Ashvinder made false representations to Jasbir

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26  
27 <sup>7</sup> The Settlement Agreement did not provide for accruing  
28 interest on the debt.

1 that persuaded her to draw the funds from the Wells Fargo equity  
2 account, that he made the representations with the intent to  
3 deprive the Appellees of their funds, and that Jasbir justifiably  
4 relied on the lies because Ashvinder was a close family member.  
5 Ashvinder's answer to the complaint denied these allegations and  
6 asserted various affirmative defenses. Although the Appellees  
7 alleged that Ashvinder owed them other debts, the parties  
8 stipulated before trial that the only debt for which the  
9 Appellees were seeking an exception to discharge was the debt  
10 evidenced by the Promissory Note.

11 A trial was conducted in the bankruptcy court on January 3,  
12 2014. As discussed above, the court heard testimony from  
13 Gurmukh, Jasbir, Ashvinder, Avneet, and Supreet. At the close of  
14 argument, the court requested post-trial briefs from the parties.  
15 The bankruptcy court also observed at that time: "I have got some  
16 serious credibility decisions to make in this case." Trial Tr.  
17 155:12-13.

18 In its Memorandum entered February 20, 2013, the bankruptcy  
19 court made extensive and precise credibility findings concerning  
20 each of the disputed material facts leading up to creation of the  
21 Promissory Note, finding without exception that the versions of  
22 the facts stated by Gurmukh, Jasbir, Avneet, and Supreet were  
23 credible, and that Ashvinder had "provided little credible  
24 testimony regarding the circumstances giving rise to the creation  
25 of the Promissory Note." Memorandum at 5. After discussing the  
26 relevant case law, the bankruptcy court concluded that the  
27 Appellees had established by a preponderance of the evidence all  
28 required elements for an exception to discharge. The court



1 calculated the Appellees' damages as follows: (1) the parties  
2 had stipulated that only funds traceable to the Promissory Note  
3 were at issue in the trial; (2) \$21,000 of the \$39,000 Settlement  
4 Agreement was traceable to the Promissory Note; (3) giving  
5 Ashvinder credit for payments made on the Promissory Note  
6 resulted in a \$18,092.28 debt excepted from discharge in  
7 Ashvinder's bankruptcy under § 523(a)(2)(A).

8 The bankruptcy court entered an Order and Judgment on  
9 February 20, 2013. Ashvinder filed a timely appeal on March 6,  
10 2013.

### 11 JURISDICTION

12 The bankruptcy court had jurisdiction under 28 U.S.C.  
13 §§ 1334 and 157(b)(2)(I). The Panel has jurisdiction under  
14 28 U.S.C. § 158.

### 15 ISSUE

16 Whether the bankruptcy court erred in determining that  
17 Ashvinder's debt to the Appellees was excepted from discharge  
18 under § 523(a)(2)(A).

### 19 STANDARD OF REVIEW

20 Whether a claim is excepted from discharge under  
21 § 523(a)(2)(A) presents mixed issues of law and fact which we  
22 review de novo. Diamond v. Kolcum (In re Diamond), 285 F.3d 822,  
23 826 (9th Cir. 2001). We review the bankruptcy court's findings  
24 of fact for clear error. Honkanen v. Hopper (In re Honkanen),  
25 446 B.R. 373, 378 (9th Cir. BAP 2011). Clear error is found when  
26 the reviewing court has a definite and firm conviction that a  
27 mistake has been committed. Lewis v. Ayers, 681 F.3d 992, 998  
28 (9th Cir. 2012). De novo review requires the Panel to

1 independently review an issue, without giving deference to the  
2 bankruptcy court's conclusions. First Ave. W. Bldg., LLC v.  
3 James (In re Onecast Media, Inc.), 439 F.3d 558, 561 (9th Cir.  
4 2006).

#### 5 DISCUSSION

6 The Panel is handicapped in this appeal by Ashvinder's  
7 failure to satisfy minimum requirements for the form and  
8 substance of his briefs. While Ashvinder is acting pro se, and  
9 we recognize our responsibility to view his submissions  
10 liberally, Hernandez v. Holland, 750 F.3d 843, 858 (9th Cir.  
11 2014), even pro se litigants are required to present a reasoned  
12 argument and to abide by our rules of procedure. Ghazali v.  
13 Moran, 46 F.3d 52, 53 (9th Cir. 1995). Ashvinder submitted a  
14 two-paragraph brief, composed almost exclusively of his  
15 conclusory statements, with no citations to cases or other  
16 authorities and no excerpts of record.

17 The Panel is not required to search the record unaided for  
18 error. Dela Rosa v. Scottsdale Mem. Health Sys, Inc., 136 F.3d  
19 1241 (9th Cir. 1998). We are aided, however, by the  
20 comprehensive Memorandum of the bankruptcy court, including the  
21 court's extensive, targeted credibility rulings concerning what  
22 appear to be the key disputed fact findings. The Appellees also  
23 provided adequate excerpts of record. Therefore, we have a  
24 sufficient record to review the bankruptcy court's decision to  
25 except Ashvinder's debt to the Appellees from discharge.

26 **The bankruptcy court did not err in deciding that Ashvinder's**  
27 **debt to the Appellees was excepted from discharge.**

28 Section 523(a) (2) (A) provides that: "A discharge . . . does

1 not discharge an individual debtor from any debt . . . (2) for  
2 money, property, services, or an extension, renewal, or  
3 refinancing of credit, to the extent obtained, by – (A) false  
4 pretenses, a false representation, or actual fraud[.]” To prove  
5 that a debt should be excepted from discharge under  
6 § 523(a) (2) (A), a creditor must establish five elements:  
7 (1) misrepresentation, fraudulent omission or deceptive  
8 conduct by the debtor; (2) knowledge of the falsity or  
9 deceptiveness of his statement or conduct; (3) an intent to  
10 deceive; (4) justifiable reliance by the creditor on the debtor's  
11 statement or conduct; and (5) damage to the creditor proximately  
12 caused by its reliance on the debtor's statement or conduct.  
13 Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir.  
14 2010); Oney v. Weinberg (In re Weinberg), 410 B.R. 19, 35 (9th  
15 Cir. BAP 2009). A creditor bears the burden of proving all five  
16 elements by a preponderance of the evidence. Grogan v. Garner,  
17 498 U.S. 279, 291 (1991); In re Weinberg, 410 B.R. at 35.

18 1. Misrepresentation. In the bankruptcy court's words,  
19 Plaintiff [Jasbir] Kaur and her daughters provided  
20 credible testimony that the Defendant told them  
21 Plaintiff [Gurmukh] Singh was leaving for India in  
22 order to convince Plaintiff Kaur to withdraw the  
\$140,000. The Plaintiffs provided credible testimony  
that the Defendant's story about Plaintiff Singh  
leaving for India was untrue.

23 Memorandum at 9. The bankruptcy court also found Ashvinder's  
24 testimony denying that he made these representations to Jasbir  
25 lacking in credibility. Here the bankruptcy court considered the  
26 testimony of five individuals, three of whom testified that  
27 Ashvinder made the statement in their presence, and two of whom  
28 testified that the statements were false; only Ashvinder

1 testified that he never made the statements.

2 Whether there has been a misrepresentation is a finding of  
3 fact reviewed for clear error. Candland v. Ins. Co. Of N. Am.  
4 (In re Candland), 90 F.3d 902, 904 (9th Cir. 1987). Where there  
5 are two permissible views of the evidence, the factfinders choice  
6 between them cannot be clearly erroneous. Anderson v. City of  
7 Bessemer City, N.C., 470 U.S. 564, 574, (1985). As an appellate  
8 tribunal, we must defer to the bankruptcy court's findings based  
9 on credibility and testimonial evidence. Rule 8013; Alaska  
10 Rent-A-Car, Inc. v. Avis Budget Grp., Inc., 709 F.3d 872, 880  
11 (9th Cir. 2014) (where a trial court's findings are based on  
12 evaluation of credibility, "a reviewing court should ordinarily  
13 give those findings great deference.").

14 We conclude that the bankruptcy court did not clearly err in  
15 finding that Ashvinder made the false representation to Jasbir  
16 that her husband intended to leave her and her family and to take  
17 all of the Appellees' money to India.

18 2. Knowledge of the falsity or deceptiveness of a statement  
19 or conduct, and an intent to deceive. Scienter and intent to  
20 defraud may be proven through circumstantial evidence, or by  
21 inferences drawn from a course of conduct. McCray v. Barrack  
22 (In re Barrack), 117 B.R. 598, 606 (9th Cir. BAP 1998). Intent  
23 to deceive may be inferred from the totality of the  
24 circumstances. Tallant v. Kaufman (In re Tallant), 281 B.R. 58,  
25 66 (9th Cir. BAP 1998).

26 In this case, the bankruptcy court made adequate findings  
27 concerning Ashvinder's intent to defraud the Appellees:

28 It is a fair inference that the Defendant knew his

1 story was untrue. The Plaintiffs provided additional  
2 credible testimony leading to the inference that the  
3 Defendant intentionally mislead Plaintiff Kaur and  
4 transferred the fraudulently obtained \$140,000.00 into  
5 his sole possession in order to gain the necessary  
6 leverage to force the Plaintiffs to sign the Promissory  
7 Note. . . . Finally, the copy of the cashier's check  
8 and the Washington Mutual Bank Statement support a  
9 finding that the Defendant knowingly made  
10 misrepresentations and engaged in deceptive conduct  
11 with intent to deceive. The Defendant provided no  
12 credible testimony to rebut any of the foregoing  
13 inferences.

14 Memorandum at 10.

15 Here the bankruptcy court concluded, based in part on his  
16 subsequent conduct, that Ashvinder knew the falsity of his  
17 representations to Jasbir and intended to deceive her. It is  
18 well established that trial courts can consider a party's  
19 subsequent conduct in determining knowledge and fraudulent intent  
20 as part of the totality of the circumstances. Williamson v.  
21 Busconi, 87 F.3d 602, 603 (1st Cir 1996); Stein v. Tripp  
22 (In re Tripp), 357 B.R. 544, 548 (Bankr. D. Ariz. 2006 ("a court  
23 may consider subsequent conduct to the extent that it provides an  
24 insight into the debtor's state of mind at the time of the  
25 representations"). And, again, witness credibility plays an  
26 important role in the trial court's determination of knowledge  
27 and fraudulent intent. Household Credit Servs. v. Ettell  
28 (In re Ettell), 188 F.3d 1141, 1143 (9th Cir. 1999).

29 The bankruptcy court was presented with clearly divergent  
30 testimony regarding the subsequent conduct of Ashvinder in  
31 fraudulently obtaining possession of the \$140,000 from Jasbir.  
32 In a stark example, Ashvinder testified that he did not drive  
33 Jasbir to Washington Mutual and that he did not open a joint  
34 checking account with her in which the \$140,000 was deposited.

1 Yet this testimony was contradicted, not only by Jasbir's  
2 testimony, but also by testimony from Supreet, a teller at the  
3 relevant Washington Mutual branch, that she observed that a joint  
4 account had been established, and that it bore the names of both  
5 Jasbir and Ashvinder. And, of course, the bankruptcy court was  
6 also given copies of the Washington Mutual statement of account  
7 indicating that it was a joint account in the names of Jasbir and  
8 Ashvinder.

9 Whether a party has knowledge of falsity and intends to  
10 deceive are questions of fact reviewed for clear error. Runnion  
11 v. Pedrazzini (In re Pedrazzini), 644 F.2d 756, 758 (9th Cir.  
12 1981). Based on the record and evidence, and given its  
13 credibility determinations, we conclude that the bankruptcy court  
14 did not clearly err when it determined that when Ashvinder made  
15 the representation that Gurmukh would leave Jasbir and take the  
16 family money with him, that he knew the statements were false,  
17 that he made the statements with the intent to deceive Jasbir,  
18 and that he successfully obtained the funds through his  
19 fraudulent representations.

20 3. Justifiable reliance. Section 523(a)(2)(A) requires  
21 that a creditor prove it justifiably relied on the debtor's false  
22 statements or misrepresentations. Field v. Mans, 516 U.S. 59,  
23 74-75 (1995). Justifiable reliance is a subjective standard,  
24 which turns on a creditor's knowledge under the particular  
25 circumstances. Citibank (South Dakota), N.A. v. Eashai  
26 (In re Eashai), 87 F.3d 1082, 1090 (9th Cir. 1996).  
27 "Justification is a matter of the qualities and characteristics  
28 of the particular plaintiff, and the circumstances of the

1 particular case, rather than of the application of a community  
2 standard of conduct to all cases." Field, 516 U.S. at 70.

3 The bankruptcy court found that Jasbir justifiably relied on  
4 Ashvinder's representations:

5 Plaintiff [Jasbir] Kaur and her daughters provided  
6 credible testimony that they all believed the  
7 Defendant's story about Plaintiff Singh leaving for  
8 India. The Defendant was evidently like a son to the  
9 Plaintiffs. Plaintiff [Jasbir] Kaur had little reason  
10 to doubt the Defendant and there was no other  
11 immediately available information that would have  
12 discredited his story. Plaintiffs provided further  
13 credible testimony that they believed the Defendant  
14 would keep the \$140,000 if they did not sign the  
15 Promissory Note.

16 Memorandum at 11.

17 Both Jasbir and Gurmukh testified that they regarded  
18 Ashvinder, whom they had helped raise, like a son; Avneet and  
19 Supreet testified that they considered Ashvinder like a brother,  
20 not just a cousin. The case law supports the notion that a  
21 creditor's reliance on a family member's, or close family  
22 friend's, representations may be justifiable. Ireland v. Ireland  
23 (In re Ireland), 2004 Bankr. LEXIS 1460 \*23 (Bankr. D. Kansas  
24 2004) (a family relationship "weighs heavily" in favor of finding  
25 justifiable reliance); In re Spar, 176 B.R. 321, 328 (Bankr.  
26 S.D.N.Y. 1994); see also In re Phillips, 804 F.2d 930, 933 (6th  
27 Cir. 1986) (finding that a family relationship even supported a  
28 finding of reasonable reliance, a more exacting standard than  
justifiable reliance).

Whether a party justifiably relied on a debtor's  
representation to his or her detriment is a question of fact  
reviewed for clear error. Deitz v. Ford (In re Deitz), 469 B.R.  
11, 34 (9th Cir. BAP 2012), aff'd and adopted \_\_\_ F.3d \_\_\_, 2014

1 WL 3703834 (9th Cir. July 28, 2014). We conclude that the  
2 bankruptcy court did not clearly err in finding that Jasbir  
3 justifiably relied on Ashvinder's false representations.

4 4. Causation. To support a fraud exception to discharge,  
5 the Appellees must show that any damages they suffered were  
6 proximately caused by Jasbir's justifiable reliance on  
7 Ashvinder's misrepresentations and deceptive conduct.

8 In re Weinberg, 410 B.R. at 35. On this topic, the bankruptcy  
9 court found:

10 The Plaintiffs presented sufficient evidence showing  
11 that the Promissory Note only came into being due to  
12 the Defendant's misrepresentations and deceptive  
13 conduct. The Plaintiffs made a sufficient showing that  
14 they would never have signed the Promissory Note had it  
15 not been for the Defendant's misrepresentations and  
16 deceptive conduct. Further, the Plaintiffs made a  
17 sufficient showing that at least a portion of the  
18 Settlement Amount is traceable to the Promissory Note.  
19 . . . So, the portion of the Settlement Amount  
20 traceable to the Promissory Note was proximately caused  
21 by the Plaintiff's justified reliance on the  
22 Defendant's misrepresentations and deceptive conduct  
23 and is nondischargeable pursuant to § 523(a)(2)(A).

24 Memorandum at 11.

25 Ashvinder has not challenged the bankruptcy court's  
26 computation of the amount he owes to the Appellees on account of  
27 the subject transactions. We also think the bankruptcy court's  
28 approach is sound.

Ashvinder's misrepresentations to Jasbir, which deprived the  
Appellees of \$140,000, eventually resulted in the parties'  
execution of the Promissory Note. When Ashvinder defaulted under  
the Promissory Note, the Appellees were required to pursue  
collection of his debt to them in state court, an action  
eventually resolved in the Settlement Agreement. Ashvinder then



1 later defaulted in performing his obligations under the  
2 Settlement Agreement.

3 "Once it is established that specific money or property has  
4 been obtained by fraud . . . 'any debt' arising therefrom is  
5 excepted from discharge." Cohen v. de la Cruz, 523 U.S. 213, 218  
6 (1998). And it is of no moment that the debt originally arising  
7 from a debtor's fraud is later incorporated into the terms of a  
8 settlement agreement. Archer v. Warner, 538 U.S. 314, 321 (2003)  
9 (denying discharge of debt for money promised in a settlement  
10 agreement that settled and released a prior fraud claim).

11 Here, the bankruptcy court properly linked Ashvinder's  
12 liability to the Appellees to the original transaction involving  
13 the equity account, to the Promissory Note, and then to the  
14 Settlement Agreement, determining that the balance due from  
15 Ashvinder to the Appellees, after credits for payments, was  
16 \$18,092.28. In a discharge exception action, the bankruptcy  
17 court's findings concerning proximate cause and calculation of  
18 damages are findings of fact reviewed for clear error. Britton  
19 v. Price (In re Britton), 950 F.2d 602, 605 (9th Cir. 1991).  
20 Here, the bankruptcy court did not clearly err in its  
21 calculations of the amount due from Ashvinder to the Appellees.

22 Having determined that the Appellees established the  
23 required facts, we conclude that the bankruptcy court did not err  
24 in deciding that Ashvinder's debt was excepted from discharge.

#### 25 **CONCLUSION**

26 We AFFIRM the judgment of the bankruptcy court.  
27  
28