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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NOT FOR PUBLICATION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.	NV-14-1358-KuDJu
	)		
MARK J. ESCOTO,	)	Bk. No.	13-10096
	)		
Debtor.	)	Adv. No.	13-01058
	)		
ROBERT G. HILLSMAN,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
MARK J. ESCOTO,	)		
	)		
Appellee.	)		
	)		

Argued and Submitted on March 19, 2015  
at Las Vegas, Nevada

Filed - May 15, 2015

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

Honorable Mike K. Nakagawa, Bankruptcy Judge, Presiding

Appearances: Candace Carlyon of the Carlyon Law Group, PLLC  
argued for appellant Robert G. Hillsman; Samuel A.  
Schwartz of The Schwartz Law Firm argued for  
appellee Mark J. Escoto.

Before: KURTZ, DUNN and JURY, Bankruptcy Judges.

\* 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 8024-1.

1 **INTRODUCTION**

2 The plaintiff, Dr. Robert Hillsman, commenced a  
3 non-dischargeability action against the defendant, Dr. Mark J.  
4 Escoto, in Escoto's chapter 7<sup>1</sup> bankruptcy case. Hillsman alleged  
5 that Escoto fraudulently concealed a material fact and thereby  
6 induced Hillsman to extend the term of an existing loan. Citing  
7 Stevens v. Nw. Nat'l Ins. Co. (In re Siriani), 967 F.2d 302 (9th  
8 Cir. 1992), the court found that, while Escoto committed the  
9 alleged fraudulent act, Hillsman failed to demonstrate that his  
10 damages were a proximate result of Escoto's concealment.

11 On appeal, Hillsman contends that the bankruptcy court erred  
12 in its proximate cause analysis. First, Hillsman submits that the  
13 court applied an incorrect legal standard by requiring him to  
14 show that collection remedies existed at the time he agreed to  
15 extend the loan and that the value of those remedies dissipated  
16 during the extension. Further, Hillsman challenges the bankruptcy  
17 court's finding that he failed to satisfy the proximate cause  
18 standard articulated by the court.

19 The bankruptcy court did not consider whether all of the  
20 elements for nondischargeability under § 523(a)(2)(A) existed at  
21 the time Escoto's debt to Hillsman first became due. At that  
22 time, Escoto effectively may have obtained an extension of credit  
23 by failing to disclose a material fact. Accordingly, we VACATE  
24 and REMAND, so the bankruptcy court can make additional or  
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26 <sup>1</sup> Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
28 all "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1 amended findings as of that time.

2 **FACTS**

3 In July of 2005, Escoto sued the contractor and certain  
4 subcontractors that built his home. He alleged injury to his  
5 property and family resulting from mold caused by negligent  
6 construction. While his lawsuit was pending, Escoto asked  
7 Hillsman, a friend and patient, for a loan to fund the  
8 litigation.

9 In March of 2008, Hillsman lent Escoto \$200,000. The debt is  
10 evidenced by a demand promissory note bearing interest at the  
11 rate of seven percent (7%) per annum, and providing for interest  
12 only payments during the term of the note. The note was due on  
13 demand, on settlement of Escoto's state court litigation, or on  
14 March 11, 2011. Finally, the note referenced Escoto granting  
15 security interests in his dental practice, office building, and  
16 other personal property but Hillsman never took steps to perfect  
17 the security interests.

18 In July of 2008, Escoto settled with all defendants in the  
19 construction defect litigation except for the plumbing  
20 subcontractor. This \$350,000 settlement was approved by the state  
21 court overseeing the litigation. In October of 2009, Escoto  
22 settled with the remaining defendant for an additional \$350,000.  
23 The state court approved that settlement in November of 2009.  
24 Despite numerous and extended interactions between the friends,  
25 Escoto did not tell Hillsman about either settlement. According  
26 to the pretrial order that was entered in this adversary  
27 proceeding, Escoto's debt to Hillsman was secured by the  
28 settlement proceeds.

1           During the summer of 2009, Escoto divorced Shirley Ann  
2 Escoto. Ms. Escoto testified that the state court set aside the  
3 decree because Escoto made fraudulent representations during the  
4 case. Ms. Escoto also testified that some time after the entry of  
5 the divorce decree, Escoto withdrew \$370,000 from their joint  
6 bank account. Hillsman failed to produce additional information  
7 regarding the source, disposition and whereabouts of these funds.  
8 The Escotos are now divorced.

9           The promissory note evidencing Escoto's debt to Hillsman had  
10 a maturity date of March 11, 2011. Before that date, Escoto  
11 failed to make several interest payments required by the note. In  
12 March of 2011, Escoto requested an extension of the loan term.  
13 Unaware of the two settlements, Hillsman agreed to the request,  
14 and the parties executed an agreement extending the repayment  
15 period for one year but otherwise leaving the terms of the demand  
16 promissory note unchanged. Escoto's delinquency under the terms  
17 of the note continued. In August of 2012, the two friends met and  
18 Escoto reaffirmed his commitment to repay the note but once again  
19 did not disclose the settlements.

20           On January 4, 2013, approximately five months after their  
21 encounter, Escoto filed a chapter 7 petition. After receiving  
22 notice of the petition, Hillsman contacted an attorney and  
23 finally learned that Escoto had settled the construction defect  
24 litigation four years earlier.

25           Eight days before he filed his bankruptcy petition, Escoto  
26 submitted a financial statement in connection with his divorce  
27 proceeding. The information contained in that statement  
28 conflicted with the information Escoto subsequently provided in

1 his bankruptcy statements and schedules. In his divorce  
2 proceeding, he stated his monthly income was \$6,583. On his  
3 bankruptcy Schedule I and Form B22A, he stated his monthly income  
4 was \$19,623.57. At trial, Escoto conceded that he had provided  
5 conflicting information in the two pending cases but explained  
6 that he had used different professionals to prepare the  
7 documents.

8       During the discovery process, Hillsman's counsel deposed  
9 Escoto on three separate occasions. At these depositions, Escoto  
10 testified inconsistently. For example, he initially disclosed  
11 only one settlement. Only after Hillsman's counsel obtained proof  
12 of a second settlement did Escoto concede the existence of two  
13 distinct \$350,000 settlements. Escoto's inconsistencies endured  
14 at trial where, among other things, he testified for the first  
15 time that he could identify a specific date on which he informed  
16 Hillsman about the settlements. Additionally, his trial testimony  
17 appeared to conflict with his deposition testimony about the  
18 amount of his income in 2012.

19       At the conclusion of trial, the trial court found that  
20 Hillsman did not learn of the settlements until after Escoto  
21 filed his chapter 7 petition, that settlement of the litigation  
22 was a maturity event requiring repayment of the debt, that Escoto  
23 had a duty to disclose the two settlements to Hillsman, and that  
24 Escoto's failure to do so amounted to a fraudulent concealment on  
25 which Hillsman justifiably relied when agreeing to extend the  
26 maturity date of the loan. Citing Escoto's extensive lack of  
27 candor that spanned several years and multiple forums, the trial  
28 court found that he was not a credible witness. The court further

1 found that Hillsman had proved all elements necessary to  
2 establish the debt as nondischargeable with the exception of  
3 proximate cause. Specifically, the bankruptcy court ruled that  
4 Hillsman failed to demonstrate that he possessed valuable  
5 collection remedies on the date of the extension and that those  
6 remedies lost value during the renewal period.

7 In coming to this conclusion, the bankruptcy court examined  
8 the value of the potential remedies available to Hillsman at the  
9 time he agreed to the extension. Noting that there was no equity  
10 in the pledged properties, even if Hillsman had perfected his  
11 liens, the bankruptcy court discounted Hillsman's remedies as a  
12 secured creditor. As an unsecured creditor, Hillsman could pursue  
13 informal collection remedies such as telephone calls and  
14 correspondence but the bankruptcy court found little value in  
15 these activities. The court then considered Hillsman's ability to  
16 obtain a judgment and found that he failed (1) to identify assets  
17 available to satisfy a judgment that Escoto could not exempt  
18 under state law; and (2) to demonstrate how the value of his  
19 status as a judgment creditor declined over the extension period.  
20 Finally, the bankruptcy court contemplated Hillsman's equitable  
21 remedies in the form of a constructive trust created to recognize  
22 Hillsman's interest in the settlement proceeds. The court found  
23 such equitable remedies unavailable as the record indicated that  
24 Escoto had disposed of the proceeds prior to the extension date.

25 The bankruptcy court entered judgment in favor of Escoto on  
26 July 3, 2014. Hillsman timely filed his notice of appeal on  
27 July 15, 2014.

28

1 **JURISDICTION**

2 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
3 §§ 1334 and 157(b) (2) (I). This Panel has jurisdiction under  
4 28 U.S.C. § 158.

5 **ISSUES**

- 6 1. Did the bankruptcy court err by requiring Hillsman to show  
7 that valuable collection remedies existed at the time of the  
8 loan extension and that those remedies lost value during the  
9 extended repayment period?
- 10 2. If the bankruptcy court applied the correct legal standard,  
11 did it err in finding that Hillsman failed to sufficiently  
12 demonstrate that such remedies existed and that those  
13 remedies lost value during the extension?
- 14 3. Did the bankruptcy court err by using the wrong time line in  
15 its proximate cause analysis? Specifically, should the court  
16 have considered an extension of credit to occur upon  
17 settlement of the construction defect litigation rather than  
18 confining its analysis to the later extension agreement?

19 **STANDARDS OF REVIEW**

20 In appeals of non-dischargeability rulings, we review the  
21 bankruptcy court's findings of fact for clear error and its  
22 conclusions of law de novo. Oney v. Weinberg (In re Weinberg),  
23 410 B.R. 19, 28 (9th Cir. BAP 2009), aff'd, 407 Fed. Appx. 176  
24 (9th Cir. 2010).

25 A bankruptcy court's findings regarding proximate cause  
26 under § 523(a) (2) (A) may be reversed only if clearly erroneous.  
27 Britton v. Price (In re Britton), 950 F.2d 602, 604 (9th Cir.  
28 1991). We do not consider a finding of fact clearly erroneous

1 unless the finding is "illogical, implausible, or without support  
2 in the record." Retz v. Samson (In re Retz), 606 F.3d 1189, 1196  
3 (9th Cir. 2010).

#### 4 DISCUSSION

##### 5 **A. The bankruptcy court applied the correct legal standard for** 6 **determining proximate cause.**

7 Section 523(a) (2) (A) operates to except a debt from  
8 discharge when "an extension, a renewal, or a refinancing" of an  
9 existing obligation is obtained by "false pretenses, a false  
10 representation, or actual fraud, other than a statement  
11 respecting the debtor's or an insider's financial condition." In  
12 order to prevent the discharge of a particular debt under  
13 § 523(a) (2) (A), a creditor must prove:

14 (1) misrepresentation, fraudulent omission<sup>2</sup> or deceptive  
15 conduct by the debtor;

16 (2) knowledge of the falsity or deceptiveness of his  
17 statement or conduct;

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18  
19 <sup>2</sup> When, as here, the fraud consists of a fraudulent omission  
20 or concealment, the creditor must show that the omission was  
21 material. See Apte v. Japra (In re Apte), 96 F.3d 1319, 1323-24  
22 (9th Cir. 1996). If materiality is established, then the court  
23 typically may presume that the creditor justifiably relied on the  
24 omission. Tallant v. Kaufman (In re Tallant), 218 B.R. 58, 68  
25 (9th Cir. BAP 1998) (citing In re Apte, 96 F.3d at 1323).  
26 Materiality also frees the creditor from proving some aspects of  
27 causation - that he or she would have acted differently but for  
28 the fraudulent omission. In re Apte, 96 F.3d at 1323. But nothing  
in In re Apte or In re Tallant suggests that proof of materiality  
renders it unnecessary for the creditor to prove whether and to  
what extent he or she incurred damages as a result of the fraud.  
Nor are we persuaded that these decisions should be interpreted  
in such a broad fashion as to entirely displace the causation and  
damages elements ordinarily required for a judgment of  
non-dischargeability.



1 (3) an intent to deceive;

2 (4) justifiable reliance by the creditor on the debtor's  
3 statement or conduct;

4 (5) damage to the creditor proximately caused by its  
5 reliance on the debtor's statement or conduct. In re Weinberg,  
6 410 B.R. at 35 (citing Turtle Rock Meadows Homeowners Ass'n v.  
7 Slyman (In re Slyman), 234 F.3d 1080, 1085 (9th Cir. 2000)); see  
8 also Eugene Parks Law Corp. Defined Benefit Pension Plan v. Kirsh  
9 (In re Kirsh), 973 F.2d 1454, 1457 (9th Cir. 1992). The creditor  
10 must prove each element by a preponderance of the evidence.  
11 Grogan v. Garner, 498 U.S. 279, 284 (1991).

12 Focusing on the final element, the Ninth Circuit has  
13 clarified the nature of proximate cause in a renewal context. To  
14 prove causation on a § 523(a)(2)(A) claim based on an extension,  
15 a renewal, or a refinance, a creditor must show "that it had  
16 valuable collection remedies at the time it agreed to renew, and  
17 that such remedies lost value during the renewal period."  
18 In re Siriani, 967 F.2d at 306. See also Cho Hung Bank v. Kim  
19 (In re Kim), 163 B.R. 157, 161 (9th Cir. BAP 1994), aff'd,  
20 62 F.3d 1511 (9th Cir. 1995).

21 The debtors in Siriani borrowed \$1.2 million to purchase an  
22 apartment building in connection with their involvement in a  
23 limited partnership. As part of the loan agreement, the lender  
24 required a financial guaranty bond. Northwestern Insurance  
25 Company agreed to issue a bond so long as the debtors indemnified  
26 it for any claims the lender made against the bond. Unable to  
27 repay the loan within the original term, the debtors sought an  
28 extension and a renewal of the bond with Northwestern. To obtain

1 the renewal, the debtors submitted financial documents which  
2 understated their personal obligations. The debtors defaulted on  
3 the loan and failed to comply with the terms of the indemnity  
4 agreement after the lender collected from Northwestern. A short  
5 time later, another creditor filed an involuntary petition  
6 against the debtors and Northwestern initiated a  
7 non-dischargeability action.

8 The bankruptcy court ruled against Northwestern for a  
9 failure to demonstrate that its loss arose from the fraudulently  
10 obtained renewal. While the creditor had shown that "it possessed  
11 valuable collection rights at the time it contemplated the  
12 renewal, and that those rights became worthless during the  
13 renewal period," the bankruptcy court ruled that Northwestern had  
14 failed to show proximate cause as it presented no evidence "that  
15 it would have exercised those rights with sufficient alacrity to  
16 avoid preference problems." Id. The parties appealed and the  
17 Bankruptcy Appellate Panel reversed.

18 Affirming the reversal, the Ninth Circuit agreed with the  
19 bankruptcy court to the extent that proximate cause required  
20 Northwestern to show "that it had valuable collection remedies at  
21 the time of the renewal, and that such remedies lost value during  
22 the renewal period." Id. However, the court declined to impose a  
23 "creditor's diligence" requirement forcing a creditor to show  
24 "that it would have exercised its collection remedies in a  
25 sufficiently timely fashion to collect the debt." Id. The court  
26 reasoned that such a requirement would impose too great a burden  
27 on defrauded creditors and would force bankruptcy courts "to  
28 divine what might have happened." Id.

1 To comply with Siriani and demonstrate that the extension  
2 proximately caused his loss, Hillsman needed to show: (1) that he  
3 possessed valuable collection remedies at the time the loan term  
4 was extended; and (2) a depreciation in the value of those  
5 remedies during the extended repayment period. See In re Kim,  
6 163 B.R. at 161. While Hillsman observes that § 523(a)(2)(A) does  
7 not contain the specific standard articulated in Siriani, neither  
8 the bankruptcy court nor this Panel may disregard Siriani.  
9 Accordingly, we find that the bankruptcy court did not commit  
10 reversible error by applying the proximate cause standard  
11 specified in Siriani.

12 **B. The bankruptcy court's finding that Hillsman failed to**  
13 **establish proximate cause with respect to the extension**  
14 **agreement is not clearly erroneous.**

15 At the outset, the Panel notes that, "[t]he bankruptcy  
16 court's finding of proximate cause is reviewed for clear error,  
17 'even though the finding may depend to some extent upon law.'" In re Siriani, 967 F.2d at 304 (quoting Rubin v. West  
18 (In re Rubin), 875 F.2d 755, 758 (9th Cir. 1989)).

20 Hillsman contends that if the bankruptcy court correctly  
21 applied Siriani's proximate cause standard, it erred because  
22 Hillsman presented evidence sufficient to overcome the burden  
23 imposed by Siriani with respect to the period of time the  
24 extension agreement was in effect. To support his position,  
25 Hillsman points to assets and funds potentially in Escoto's  
26 possession at various points in time. These include \$370,000  
27 withdrawn from a bank account, approximately \$160,000 of income  
28 Escoto claimed in 2011, Escoto's monthly earnings of \$19,623.57

1 in 2012, income from Escoto's businesses, and a Land Rover that  
2 Escoto eventually sold for \$23,500. While Hillsman's evidence  
3 shows that Escoto received a substantial amount of money over an  
4 extended period of time, this evidence alone does not satisfy  
5 Siriani.

6 Identifying funds to which Escoto may have had access is  
7 insufficient. Siriani requires a creditor to demonstrate the  
8 existence of valuable collection remedies at a specific point in  
9 time. By simply pointing to evidence of certain funds, Hillsman  
10 did not necessarily place these funds in Escoto's possession at  
11 the time the extension agreement was entered into or during the  
12 extension period. For instance, Ms. Escoto testified that Escoto  
13 withdrew \$370,000 from the couple's joint bank account on an  
14 unidentified date. Even if the Panel assumes her testimony is  
15 true, Hillsman provided no evidence that Escoto possessed these  
16 funds at any time relevant to the extension agreement.

17 A second defect with Hillsman's argument is that placing  
18 assets or funds in Escoto's possession at the relevant time does  
19 not end the proximate cause analysis. In addition to identifying  
20 the existence of remedies, Siriani requires a creditor to show a  
21 reduction in the value of such remedies during a specific period  
22 of time. Assuming Escoto possessed funds or available assets at  
23 the requisite point in time, Hillsman did not present any  
24 evidence that these funds or assets were dissipated during the  
25 extension period. As an example of this defect, Hillsman points  
26 out that Escoto sold a Land Rover he may have possessed at the  
27 time of the extension. However, the record shows that the sale of  
28 the Land Rover occurred approximately one year after the

1 expiration of the extension. Hillsman does not explain how this  
2 translated into the loss of a valuable remedy during the  
3 extension period.

4 The bankruptcy court recognized such deficiencies in the  
5 record before it. After examining his status as a secured  
6 creditor, an unsecured creditor, and a judgment creditor, the  
7 bankruptcy court found that Hillsman had neither demonstrated the  
8 existence of valuable collection remedies available when the  
9 extension agreement was entered into or how such remedies lost  
10 value during the extension period.

11 We cannot hold that the bankruptcy court committed  
12 clear error simply because it declined to draw certain inferences  
13 from an inconclusive record. Rather than speculating about the  
14 nature and extent of assets and any associated collection  
15 remedies available when the extension agreement was negotiated,  
16 the bankruptcy court made a factual determination based on the  
17 record before it: "Hillsman has failed to meet his burden of  
18 proof under Section 523(a) (2) (A)." Our review of the record does  
19 not reveal any factual findings on this issue that are  
20 "illogical, implausible, or without support in the record."  
21 In re Retz, 606 F.3d at 1196. Consequently, we cannot conclude  
22 that the bankruptcy court committed clear error regarding this  
23 issue.

24 **C. The bankruptcy court erred by limiting its proximate cause**  
25 **analysis to the date of the extension agreement.**

26 Hillsman's final argument calls into question the timing of  
27 Escoto's fraudulent conduct as determined by the bankruptcy  
28 court. According to Hillsman, Escoto's failure to disclose the

1 settlements fraudulently induced Hillsman to effectively forbear  
2 from immediately demanding repayment of the loan and that this  
3 forbearance amounted to an extension of credit. Because the  
4 forbearance predates the extension agreement, Hillsman submits  
5 that the bankruptcy court should have applied the proximate cause  
6 analysis beginning on the date of settlement, rather than  
7 focusing solely on the date Hillsman voluntarily agreed to extend  
8 the loan. Hillsman posits that such an analysis would have  
9 satisfied the Siriani requirements since Escoto's fraudulent  
10 omissions and depletion of the settlement proceeds allegedly  
11 denied Hillsman the opportunity to collect from those monies.

12 In examining Hillsman's argument, it is important to keep in  
13 mind what occurred at trial. In a joint pretrial memorandum,  
14 Hillsman informed the bankruptcy court that he would proceed only  
15 under his § 523(a)(2)(A) claim for Escoto's fraudulent omission  
16 in relation to the settlement. Hillsman did not pursue a claim  
17 for Escoto's conversion of the settlement proceeds nor did  
18 Hillsman allege fraud in relation to the original loan  
19 transaction. At trial, although he alleged fraud upon  
20 consummation of the settlements, the main thrust of Hillsman's  
21 argument focused on Escoto's concealment in relation to the  
22 extension agreement. At the conclusion of trial, the bankruptcy  
23 court rendered a memorandum decision finding that Escoto's  
24 concealment amounted to fraud and induced Hillsman to grant the  
25 extension. Nevertheless, the court ruled against Hillsman for his  
26 failure to demonstrate that he had lost valuable collection  
27 remedies existing at the time he agreed to extend the repayment  
28 term. Importantly, the memorandum decision does not address the

1 contention that Escoto effectively obtained an extension of  
2 credit earlier - at the time he first failed to disclose the  
3 settlement(s).

4 In the parties' joint pretrial memorandum, Hillsman cited  
5 Field v. Mans, 516 U.S. 59, 116 S.Ct. 437, 133 L.Ed.2d 351  
6 (1995), in support of the notion that Escoto's fraudulent  
7 nondisclosure amounted to an extension and, thus, rendered the  
8 debt nondischargeable.

9 In Field v. Mans, the Fields sold real property to a  
10 corporation wholly owned by Mans. A second mortgage containing a  
11 due on sale clause secured a portion of the purchase price along  
12 with Mans' personal guarantee. Shortly after the transaction,  
13 Mans caused his corporation to transfer the property to a newly  
14 formed partnership. Within a few days of this second transfer,  
15 Mans' attorney wrote to the Fields requesting a waiver of the due  
16 on sale clause in a manner suggesting that the second transfer  
17 had not yet occurred. The Fields offered to waive the clause in  
18 exchange for \$10,000. Mans responded in a second letter refusing  
19 the offer but again failing to disclose the transfer. The  
20 discussion ceased, and Mans never disclosed the transfer. The  
21 Fields finally learned of the transfer upon Mans' filing of a  
22 bankruptcy petition. They reacted by filing a complaint alleging  
23 that Mans' misdirection fraudulently induced them to forbear from  
24 exercising their rights under the due on sale clause and that  
25 their forbearance amounted to an extension of credit. The Fields  
26 further asserted that, because of this, Mans' personal obligation  
27 was non-dischargeable under § 523(a)(2)(A).

28 The bankruptcy court found that, while the Fields may have

1 relied on Mans' misrepresentation in forbearing, their reliance  
2 was not reasonable. Therefore, the court concluded that the debt  
3 was dischargeable. The circuit court affirmed. See Field v. Mans,  
4 36 F.3d 1089 (1st. Cir. 1994). Upon further appeal, the Supreme  
5 Court granted certiorari and concluded that the applicable  
6 standard to determine non-dischargeability under § 523(a)(2)(A)  
7 is justifiable, rather than reasonable, reliance. Field v. Mans,  
8 516 U.S. at 74-75. The Court remanded the matter to the  
9 bankruptcy court for further proceedings.

10 On remand, Mans questioned whether the Fields' forbearance  
11 equated to an extension within the meaning of § 523(a)(2). See  
12 Field v. Mans (In re Mans), 203 B.R. 355 (Bankr. D.N.H. 1996).  
13 Upon a second appeal, the First Circuit held that a forbearance  
14 from the exercise of a right to accelerate the maturity date of  
15 an existing debt constitutes an extension of credit for the  
16 statute's purpose. Field v. Mans, 157 F.3d 35, 45-46 (1st Cir.  
17 1998). While the court acknowledged that "the concealed sale was  
18 not technically a new 'agreement' concerning the existing credit,  
19 it triggered legal rights ... which markedly altered the credit  
20 relationship between the parties." Field v. Mans, 157 F.3d at 43.  
21 Further, "by deceiving [the Fields] into continuing a credit  
22 arrangement they now had the right to terminate, the fraud  
23 related to what can properly be called 'an extension of credit.'" Id.  
24 Id.

25 In arriving at its conclusion, the court examined the  
26 policies behind discharge exceptions under § 523(a)(2) and stated  
27 that such considerations "militate against a narrow and  
28 hyper-technical parsing of the individual terms" contained in the



1 statute. Field v. Mans, 157 F.3d at 44. Too narrow a reading, the  
2 court reasoned, would result in situations where “one dishonest  
3 debtor would receive a ‘new beginning’ while another, who engaged  
4 in fraudulent conduct that was virtually identical, would not -  
5 for reasons unrelated to the object of denying bankruptcy  
6 protection to debtors whose debts were procured by fraud.” Id. In  
7 essence, rigidly interpreting the term “extension” in a way that  
8 renders dissimilar results in substantively similar situations  
9 conflicts with the purpose of § 523(a)(2).

10 This Panel agrees with the First Circuit’s reasoning and  
11 considers it appropriate to apply the First Circuit’s holding to  
12 the facts of this case. Escoto’s settlement of the construction  
13 defect litigation triggered Hillsman’s right to immediate  
14 repayment of Escoto’s debt. Escoto’s concealment deprived  
15 Hillsman of the ability to exercise that right, and Escoto  
16 thereby effectively procured a forbearance. The fact that Escoto  
17 obtained the forbearance without Hillsman’s knowledge serves to  
18 further illustrate the surreptitious nature of the fraud. Escoto  
19 should not be permitted to benefit from an overly narrow  
20 definition of the term “extension” that is disconnected from the  
21 statute that informs its meaning. As the First Circuit stated in  
22 Field v. Mans, “[i]t is no great leap to say that fraudulent  
23 concealment and frustration of [Hillsman’s] acceleration right  
24 was tantamount to an ‘extension’ ... of the existing credit.” Id.  
25 Thus, the Panel concludes that Escoto’s concealment of the  
26 settlement(s) resulted in an extension of credit for purposes of  
27 § 523(a)(2).

28 In light of our holding that Escoto effectively obtained an

1 extension of credit when he failed to disclose the settlement and  
2 thereby prevented Hillsman from immediately demanding repayment  
3 in accordance with the terms of the note, on remand, the  
4 bankruptcy court will need to focus on this earlier time period  
5 and make additional or amended findings in order to determine  
6 whether all of the § 523(a)(2)(A) elements were satisfied. We  
7 express no opinion on what sort of findings the bankruptcy court  
8 should make on remand.

9 **CONCLUSION**

10 For the reasons set forth above, we VACATE the bankruptcy  
11 court's judgment, and we REMAND for additional or amended  
12 findings.