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NOT FOR PUBLICATION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-14-1176-DKiG
	)	
RITCHIE R. ROBERTS,	)	Bk. No. 11-59389
	)	
Debtor.	)	Adv. No. 12-01329
	)	
_____	)	
RITCHIE R. ROBERTS,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>MEMORANDUM<sup>1</sup></b>
	)	
PACIFIC RESOURCE CREDIT	)	
UNION,	)	
	)	
Appellee.	)	
_____	)	

Submitted Without Oral Argument  
on January 21, 2016

Filed - January 27, 2016

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

Honorable Robert N. Kwan, Bankruptcy Judge, Presiding

Appearances: Andrew Edward Smyth on brief for appellant;  
A. Lysa Simon on brief for appellee.

Before: DUNN, KIRSCHER AND GAN,<sup>2</sup> 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 8024-1.

<sup>2</sup> Hon. Scott H. Gan, United States Bankruptcy Judge for the District of Arizona, sitting by designation.

1 Pre-petition, chapter 7<sup>3</sup> debtor Ritchie R. Roberts applied  
2 to Pacific Resource Credit Union (the "Credit Union") for  
3 multiple lines of credit and for subsequent increases in those  
4 lines of credit. The Credit Union approved the applications, and  
5 eventually Mr. Roberts became unable to pay his debts to the  
6 Credit Union. After Mr. Roberts filed his chapter 7 petition,  
7 the Credit Union brought an adversary proceeding seeking to have  
8 Mr. Roberts' debts to it declared nondischargeable. The  
9 bankruptcy court, finding that Mr. Roberts had intentionally  
10 misrepresented his income and expenses in connection with his  
11 credit applications, entered judgment in favor of the Credit  
12 Union declaring the debts nondischargeable under § 523(a)(2)(A).  
13 Mr. Roberts appeals. We AFFIRM.

#### 14 I. FACTUAL BACKGROUND

##### 15 A. The underlying debts

##### 16 1. The credit card

17 Mr. Roberts became a member of the Credit Union in June  
18 2004, while he was employed as an electrician with BP West Coast  
19 Products, LLC ("BP West"). He applied for a credit card,  
20 indicating that he was earning \$5,000 per month (i.e., \$60,000  
21 per year). Based on that income, Mr. Roberts only qualified for  
22 a "share secured" credit card, which required him to place funds  
23 into a savings account at the Credit Union to be held as  
24 collateral. A year later, in August 2005, Mr. Roberts applied  
25 for an unsecured credit card ("Credit Card Application"), this  
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27 <sup>3</sup> Unless otherwise indicated, all chapter and section  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 time representing that he was earning \$100,000 per year from his  
2 job at BP West, plus \$80,000 in other income. He also indicated  
3 that he was the owner of his home, valued at \$60,000, with a  
4 mortgage balance of \$0 and no monthly payment. The Credit Card  
5 Application was approved. In April 2006, Mr. Roberts applied for  
6 an increase in his credit limit from \$500 to \$2,000 ("Credit Card  
7 Increase Request"). Based on Mr. Roberts' representation that  
8 his income was then \$110,000 per year, the Credit Union granted  
9 the Credit Card Increase Request.

## 10 **2. The HELOC**

11 In addition to his credit card, Mr. Roberts also applied to  
12 the Credit Union for a Home Equity Line of Credit ("HELOC") on  
13 November 5, 2005. On his application ("HELOC Application"),  
14 Mr. Roberts indicated that his base monthly employment income was  
15 \$10,000 (i.e., \$120,000 per year). Based upon the pay stubs  
16 Mr. Roberts submitted with the application, however, the Credit  
17 Union concluded that his actual income was significantly less and  
18 denied the application. The Credit Union requested additional  
19 proof of Mr. Roberts' income, along with his tax returns for 2003  
20 and 2004, to demonstrate job and income stability.

21 About a month later, Mr. Roberts sent the Credit Union a  
22 letter that read as follows: "Here I send you the last statement  
23 and also the gross income yearly any questions call me . . . my  
24 salary came from \$24.00 an hour to \$31.65 an hour, also some  
25 extra over time worked; help me to make \$100,000 a year Thank  
26 you!" (punctuation as in original) Enclosed with the letter was  
27 a document appearing to be a pay statement printed from a BP West  
28 computer, which indicated that Mr. Roberts' year-to-date earnings

1 as of December 2, 2005, were \$98,416.47. Based on that income  
2 figure, taken together with Mr. Roberts' letter stating that his  
3 hourly wage had increased recently, the Credit Union decided that  
4 Mr. Roberts' \$10,000 monthly income, as stated in the HELOC  
5 application, was credible after all. Mr. Roberts also submitted  
6 documents that he identified as copies of his tax returns from  
7 2003 and 2004, which reflected income of \$60,000 during 2003.  
8 The Credit Union extended Mr. Roberts a HELOC in the amount of  
9 \$57,000, secured by a deed of trust on Mr. Roberts' home.

10 In the summer of 2006, Mr. Roberts submitted an application  
11 to have his HELOC credit limit increased from \$57,000 to \$116,000  
12 ("HELOC Increase Application"). He indicated that he was earning  
13 a total of \$120,000 per year at BP West, comprising \$80,000 base  
14 employment income, \$30,000 overtime pay and \$10,000 in bonuses.  
15 He also reported \$10,000 per year of rental income. Based on  
16 this information, together with the information Mr. Roberts  
17 previously had submitted with his original HELOC Application less  
18 than a year earlier, the Credit Union agreed to increase  
19 Mr. Roberts' HELOC credit limit as requested. The credit balance  
20 on Mr. Roberts' original HELOC was paid through this increase.

### 21 **3. The state court lawsuit**

22 Mr. Roberts made payments on the HELOC and on his credit  
23 card account for the next several months. Then, in August 2007,  
24 he lost his job at BP West, after which he struggled to continue  
25 making payments. After October 2007, Mr. Roberts made no further  
26 payments on either account. Eight months later, the holder of  
27 the first deed of trust on Mr. Roberts' home foreclosed, and the  
28 home was sold at a trustee's sale, extinguishing the Credit

1 Union's security interest.

2 In 2010, the Credit Union sued Mr. Roberts in California  
3 state court for breach of contract based on Mr. Roberts' failure  
4 to pay amounts due on the credit card account and the HELOC. The  
5 state court granted summary judgment in favor of the Credit  
6 Union.

7 **B. Mr. Roberts' bankruptcy case and the adversary proceeding**

8 **1. Pretrial proceedings**

9 Soon after the state court announced its decision to enter  
10 summary judgment against him, Mr. Roberts filed his chapter 7  
11 petition. The Credit Union filed an adversary complaint seeking  
12 to have Mr. Roberts' debts to it declared non-dischargeable.  
13 According to the complaint, Mr. Roberts had intentionally and  
14 fraudulently overstated his income and understated his expenses  
15 in connection with the Credit Card Application, the HELOC  
16 Application, the Credit Card Increase Request and the HELOC  
17 Increase Application. The Credit Union further alleged that the  
18 pay statements and tax forms Mr. Roberts had submitted in support  
19 of his applications were "fraudulent" and "counterfeit."

20 The Credit Union moved for summary judgment or, in the  
21 alternative, for partial summary adjudication. The bankruptcy  
22 court denied the request for summary judgment but granted partial  
23 summary adjudication as to the history of the underlying debts  
24 and the amounts owed. The parties proceeded to trial on the  
25 remaining issues.

26 **2. The trial**

27 At trial, the bankruptcy court heard testimony from Rudy  
28 Martin, director of lending and collections at the Credit Union.

1 Mr. Martin testified at length about the Credit Union's criteria  
2 for evaluating credit applications and extending credit and in  
3 particular about the Credit Union's handling of Mr. Roberts'  
4 various credit applications. Mr. Martin told the bankruptcy  
5 court that the Credit Union would have denied Mr. Roberts'  
6 applications if it had been aware of his actual income and  
7 expenses.

8 Further testimony came from Cheryl Monteleone Rietzel, a  
9 representative of BP West, who testified as to Mr. Roberts'  
10 actual income as reflected by BP West records. His income,  
11 according to Ms. Monteleone, was significantly less than what he  
12 represented it to be in connection with his credit applications.  
13 She testified that the pay statements Mr. Roberts had submitted  
14 with the HELOC Application were not generated by BP West and did  
15 not accurately represent his income.

16 Carl Moen, who had been Mr. Roberts' employer in 2003,  
17 testified concerning Mr. Roberts' employment history at his  
18 company. Mr. Moen testified that the 2003 tax documents  
19 Mr. Roberts had submitted to the Credit Union did not accurately  
20 reflect Mr. Roberts' income and work history at Mr. Moen's  
21 company.

22 Mr. Roberts testified in his own behalf. He stated that he  
23 had not intended to defraud the Credit Union and that the  
24 inaccuracies in his stated income and expenses were inadvertent.  
25 Specifically, Mr. Roberts said that he had calculated his income  
26 to include deferred and non-cash income, which he asserted would  
27 account for the discrepancies pointed out by the Credit Union.  
28 As to the allegedly falsified documents, Mr. Roberts denied

1 having falsified them. With respect to the 2003 tax return,  
2 Mr. Roberts testified that the version he had submitted to the  
3 Credit Union was genuine, and that the discrepant version the  
4 Credit Union introduced at trial - showing far lower income in  
5 2003 - had been a draft that was not submitted to the IRS.

6 The Credit Union called Mr. Roberts' tax preparer, Richard  
7 Vasquez, to rebut Mr. Roberts' testimony regarding the tax forms  
8 he had submitted to the Credit Union. Mr. Vasquez testified that  
9 the tax preparer's signature on the 2003 tax return Mr. Roberts  
10 had submitted to the Credit Union was not his.

### 11 **3. The bankruptcy court's findings and conclusions**

12 After the four-day trial, the bankruptcy court entered  
13 extensive findings of fact and conclusions of law ("Findings and  
14 Conclusions"). First, the bankruptcy court made findings as to  
15 Mr. Roberts' actual income at the relevant times. It concluded  
16 that his income did not exceed \$81,970.15 in 2005, even when  
17 calculated to include deferred income. Mr. Roberts "did not earn  
18 \$120,000.00 per year for either year 2005 or year 2006 working  
19 for BP West." The bankruptcy court further found that  
20 Mr. Roberts had access to accurate information concerning his  
21 income using his employer's computer system and that he  
22 previously had used that system to view his income information.

23 The bankruptcy court found that Mr. Roberts had made the  
24 following misrepresentations in connection with obtaining money  
25 and credit from the Credit Union:

26 (1) In connection with the Credit Card Application and the  
27 Credit Card Increase Request, Mr. Roberts misrepresented his  
28 income and his mortgage and rental obligations. Specifically, he

1 represented at the time of the Credit Card Application that he  
2 had \$100,000 of yearly employment income from BP West and \$80,000  
3 of other income, and he stated that he had \$0 in secured payment  
4 obligations related to his residential property. At the time of  
5 the Credit Card Increase Request, he represented that he was  
6 earning \$110,000 per year.

7 The bankruptcy court went on to make lengthy additional  
8 findings concerning Mr. Roberts' actual income and expenses,  
9 which differed materially from the figures reported on the Credit  
10 Card Application. On the Credit Card Application, Mr. Roberts  
11 did not include information concerning his mortgage payments on  
12 his home or his payment obligations with respect to any of the  
13 rental properties he owned. Specifically with regard to the  
14 Credit Card Increase Request, the bankruptcy court found that  
15 Mr. Roberts' income at the time was \$85,458.25 per year,  
16 including deferred income and benefits.

17 (2) On the HELOC Application, Mr. Roberts misrepresented  
18 his income. On the HELOC Application form, Mr. Roberts wrote  
19 that his base income at BP West was \$120,000 per year, which was  
20 much higher than the amount the court found to be his actual  
21 income. After the Credit Union had informed Mr. Roberts that the  
22 income reflected on his pay stub was insufficient to permit the  
23 Credit Union to grant the HELOC, Mr. Roberts responded by  
24 providing a false pay stub to support his asserted income, along  
25 with a cover letter explaining the discrepancy. The information  
26 in the pay statement and cover letter was false.

27 (3) Again in connection with the HELOC Application,  
28 Mr. Roberts misrepresented his work history by submitting an



1 apparently falsified tax return for 2003. Based on a comparison  
2 between the tax return Mr. Roberts submitted to the Credit Union  
3 and the tax return filed with the IRS, together with the  
4 testimony of Mr. Roberts' tax preparer that he did not prepare  
5 the questioned return, the bankruptcy court found that the  
6 document was falsified.

7 The bankruptcy court found that Mr. Roberts in fact earned  
8 \$17,951 in wages in 2003, in contrast to the \$60,004 reflected in  
9 the false tax return. The court found Mr. Roberts' testimony  
10 that the rest of that amount had been earned from another  
11 employer, which Mr. Roberts could not identify, was not credible.  
12 There was "no reasonable explanation" for the inaccuracy in the  
13 false tax return other than that the document was fabricated,  
14 either by Mr. Roberts or on his behalf.

15 (4) When Mr. Roberts applied for the HELOC Increase, he  
16 once again misrepresented his income and expenses, this time  
17 reporting total income of \$120,000 per year from his job with  
18 BP West and \$10,000 per year of net rental income. The  
19 bankruptcy court found that Mr. Roberts' actual income from  
20 BP West, even including deferred income, was \$15,000 less than  
21 represented in the HELOC Increase Application. As to the rental  
22 income, the bankruptcy court found that Mr. Roberts experienced a  
23 net loss from his rental properties during the relevant period,  
24 and even his gross rental income was less than \$10,000 based on  
25 his tax returns.

26 In the same application, Mr. Roberts misrepresented his  
27 assets and expenses by neglecting to disclose loans he had  
28 pledged against his 401(k) account.

1 The bankruptcy court found that Mr. Roberts knew that these  
2 representations were false at the time he made them. It also  
3 found that Mr. Roberts had made the misrepresentations with the  
4 intent to deceive the Credit Union. This determination was  
5 supported, the bankruptcy court noted, by the fact that  
6 Mr. Roberts had gone "to the extraordinary lengths" of providing  
7 false documentation to the Credit Union.

8 The court found that the Credit Union justifiably (or  
9 reasonably<sup>4</sup>) relied on Mr. Roberts' misrepresentations when it  
10 granted the Unsecured Credit Card Application, the Credit Card  
11 Increase Request and the HELOC Increase Application.<sup>5</sup> The court  
12 noted that the Credit Union did not simply rely on Mr. Roberts'  
13 application to determine his creditworthiness for the HELOC, nor  
14 did it rely solely on the value of the collateral. Instead, it  
15 required documentation to support the application. Specifically  
16 with regard to the HELOC Increase request, the bankruptcy court  
17 found that the Credit Union reasonably relied on the  
18 documentation Mr. Roberts had provided with the original HELOC

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19  
20 <sup>4</sup> Throughout its Findings and Conclusions, the bankruptcy  
21 court occasionally referred to "reasonable" reliance, as opposed  
22 to "justifiable" reliance. As discussed below, the applicable  
23 standard is justifiable reliance. To the extent the bankruptcy  
24 court made findings as to the stricter standard of reasonable  
25 reliance, any error was harmless with respect to Mr. Roberts.

26 <sup>5</sup> The original HELOC was paid off when the HELOC Increase  
27 Application was granted. Therefore, the court had no need to  
28 find reliance with respect to the grant of the original HELOC.  
However, with respect to the HELOC Increase Application, the  
bankruptcy court found that the Credit Union justifiably relied,  
among other things, on Mr. Roberts' misrepresentations made in  
2005 in connection with the original HELOC Application.

1 Application, as that documentation had been submitted only eight  
2 months prior.

3 The court found that the misrepresentations were material  
4 because Mr. Roberts would not have qualified for the credit card  
5 or the HELOC on the basis of his true income and expenses.

6 Finally, the bankruptcy court found that Mr. Roberts'  
7 misrepresentations were the cause of the Credit Union's damages  
8 "because [Mr. Roberts] did not in fact have the financial  
9 resources to repay the amounts loaned and he defaulted on [his  
10 obligations]."

11 In its conclusions of law, the bankruptcy court noted that  
12 the adversary complaint did not specify the subsection of § 523  
13 on which the Credit Union was relying for relief. After  
14 discussing § 523(a)(2)(A) and (a)(2)(B), the bankruptcy court  
15 concluded that the applicable provision of § 523(a)(2) was  
16 subdivision (A). It laid out the elements that a plaintiff must  
17 prove to prevail on a non-dischargeability claim under  
18 § 523(a)(2)(A):

- 19 (1) misrepresentation, fraudulent omission or  
deceptive conduct by the debtor;
- 20 (2) knowledge of the falsity or deceptiveness of his  
statement or conduct;
- 21 (3) an intent to deceive;
- 22 (4) justifiable reliance by the creditor on the  
debtor's statement or conduct[;] and
- 23 (5) damage to the creditor proximately caused by its  
reliance on the debtor's statement or conduct.

24 Based upon its fact findings, the bankruptcy court concluded  
25 that the Credit Union had satisfied all five of these elements.  
26 Consistent with its Findings and Conclusions, the bankruptcy  
27 court entered judgment awarding the Credit Union a total of  
28 \$165,542.74, including interest and late fees, and declaring that

1 amount non-dischargeable under § 523(a) (2) (A) .

2 This timely appeal followed.

3 **II. JURISDICTION**

4 The bankruptcy court had jurisdiction under 28 U.S.C.  
5 §§ 1334 and 157(b) (2) (I) . We have jurisdiction under 28 U.S.C.  
6 § 158.

7 **III. ISSUES**

8 1. Whether the bankruptcy court erred in applying  
9 § 523(a) (2) (A) rather than § 523(a) (2) (B) .

10 2. Whether the bankruptcy court erred in its application of  
11 § 523(a) (2) (A) .

12 **IV. STANDARDS OF REVIEW**

13 We review the bankruptcy court's findings of fact for clear  
14 error and its conclusions of law de novo. Bronitsky v. Bea  
15 (In re Bea), 533 B.R. 283, 285 (9th Cir. BAP 2015). Clear error  
16 exists only where the bankruptcy court's factual findings are  
17 illogical, implausible or unsupported by inferences that may be  
18 drawn from facts in the record. Americans for Prosperity Found.  
19 v. Harris, \_\_\_ F.3d \_\_\_, \_\_\_; 2015 WL 9487728 at \*2 (9th Cir.  
20 Dec. 29, 2015); United States v. Hinkson, 585 F.3d 1247, 1263  
21 (9th Cir. 2009) (en banc).

22 **V. DISCUSSION**

23 **A. The bankruptcy court properly applied § 523(a) (2) (A) rather**  
24 **than § 523(a) (2) (B)**

25 The bankruptcy court made it clear that its determination of  
26 non-dischargeability was premised on subdivision (A) only and  
27 expressly ruled against the Credit Union "to the extent it  
28

1 allege[d] a claim under Section 523(a)(2)(B)."<sup>6</sup>

2 Section 523(a)(2) creates an exception to discharge for  
3 debts incurred "for money, property, services, or an extension,  
4 renewal, or refinancing of credit, to the extent obtained" by  
5 either of two categories of misrepresentation, which are spelled  
6 out in subdivisions (A) and (B) respectively. Subdivision (A)  
7 concerns "false pretenses, a false representation, or actual  
8 fraud," but expressly excludes "a statement respecting the  
9 debtor's or an insider's financial condition." Subdivision (B)  
10 covers precisely the ground excluded from subdivision (A) -  
11 statements concerning the debtor's or an insider's financial  
12 condition - but with certain limitations: (i) the statement must  
13 have been in writing; and (ii) the creditor must have reasonably  
14 relied on the statement. This second limitation is significant,  
15 because liability based on actual fraud under subdivision (A)  
16 requires only "justifiable" rather than "reasonable" reliance by  
17 the creditor on the debtor's misrepresentation. Field v. Mans,  
18 516 U.S. 59, 74-75 (1995).

19 For purposes of § 523(a)(2), a "statement respecting the  
20 debtor's . . . financial condition" is a statement presenting "a

21 \_\_\_\_\_  
22 <sup>6</sup> The bankruptcy court stated on page 29 of its Findings and  
23 Conclusions: "Defendant is not entitled to discharge his debts  
24 owed to the Credit Union on his unsecured credit card account and  
25 his July 2006 HELOC pursuant to 11 U.S.C. § 523(a)(2)(A) and  
26 (a)(2)(B)."

27 Nevertheless, the court went on to state on page 32: "[T]he  
28 court determines that the false representations at issue in this  
case fall within the scope of Section 523(a)(2)(A) rather than  
Section 523(a)(B) [sic][.]" Notwithstanding this apparent  
contradiction, it is quite clear that the bankruptcy court based  
its ultimate determination on subdivision (A) only.

1 picture of the debtor's overall financial health," such as a  
2 balance sheet. Barnes v. Belice (In re Belice), 461 B.R. 564,  
3 577-78 (9th Cir. BAP 2011) (quoting Cadwell v. Joelson  
4 (In re Joelson), 427 F.3d 700, 714 (10th Cir. 2005)). Such a  
5 statement must contain "information as to the debtor's . . .  
6 overall net worth or overall income flow." In re Belice,  
7 461 B.R. at 578, quoting In re Joelson, 427 F.3d at 714.  
8 Statements that provide some information concerning a debtor's  
9 income and expenses do not meet this definition if they do not  
10 "reveal anything meaningful or comprehensive about [the debtor's]  
11 overall net worth." In re Belice, 461 B.R. at 579.

12 Here, the information contained in the applications did not  
13 present a picture of Mr. Roberts' overall financial health. The  
14 applications requested information concerning the debtor's  
15 employment income, his rental income, and a subset of his  
16 liabilities and expenses, including his monthly mortgage payments  
17 and the amount owed on his home loan. This is not equivalent or  
18 analogous to a balance sheet. In connection with the  
19 applications, the Credit Union did not request, and Mr. Roberts  
20 did not provide, comprehensive information about his overall net  
21 worth. The bankruptcy court properly concluded that  
22 § 523(a)(2)(A), rather than (a)(2)(B), should govern its  
23 analysis.<sup>7</sup>

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24  
25 <sup>7</sup> Many of Mr. Roberts' arguments on appeal refer to  
26 § 523(a)(2)(B). Although he does not expressly argue that the  
27 bankruptcy court erred by applying subdivision A, his arguments  
28 presuppose as much. Because we have concluded that the  
bankruptcy court properly excluded subdivision B from its

(continued...)

1 **B. The bankruptcy court did not err in its application of**  
2 **§ 523(a)(2)(A)**

3 To establish non-dischargeability under § 523(a)(2)(A) based  
4 on actual fraud, a plaintiff must prove each of the following  
5 elements by a preponderance of the evidence:

- 6 (1) [T]he debtor made representations;  
7 (2) that at the time he knew they were false;  
8 (3) that he made them with the intention and purpose of  
deceiving the creditor;  
9 (4) that the creditor relied on such representations;  
[and]  
10 (5) that the creditor sustained the alleged loss and  
damage as the proximate result of the misrepresentations  
having been made.

11 Sabban v. Ghomeshi (In re Sabban), 600 F.3d 1219, 1222 (9th Cir.  
12 2010) (internal quotations omitted). The plaintiff also must  
13 prove that its reliance on the defendant's representations was  
14 justifiable. Turtle Rock Meadows Homeowners Ass'n v. Slyman  
15 (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000). As noted  
16 above, the bankruptcy court identified these elements and made  
17 factual findings regarding each of them.

18 **1. Misrepresentations, knowledge of falsity and intent to**  
19 **deceive**

20 Mr. Roberts argues that the inaccuracies in the information  
21 he provided to the Credit Union were immaterial and inadvertent.  
22 Specifically, he argues that, even if his representations of  
23 income and expenses were false, they were "substantially true"  
24 in that he actually had the ability to repay the extensions of  
25 credit at the time. In other words, the substance of

26 \_\_\_\_\_  
27 <sup>7</sup>(...continued)  
28 analysis, we do not address Mr. Roberts' arguments concerning  
subdivision B any further.

1 Mr. Roberts' representations was that he had the financial  
2 wherewithal to repay the Credit Union, and the exact amounts he  
3 stated on the application forms should be treated as immaterial  
4 details.

5 Contrary to this argument, Mr. Roberts' representations did  
6 not simply equate to a representation of his ability to repay  
7 the amounts owed. Rather, he made specific representations of  
8 the amounts of his income and expenses, which the bankruptcy  
9 court found to be materially false. This finding was based in  
10 part on Mr. Martin's detailed testimony regarding the Credit  
11 Union's procedures for evaluating credit applications and his  
12 statement that Mr. Roberts would not have qualified for any  
13 unsecured credit if he had disclosed his income and expenses  
14 accurately. We perceive no clear error in the finding that the  
15 representations were knowingly and materially false.

16 Nor are we persuaded that the bankruptcy court clearly  
17 erred in finding that Mr. Roberts' false statements were  
18 intended to deceive the Credit Union. Mr. Roberts argues that  
19 he used a "reasonable method" of calculating his income, which  
20 included his anticipated deferred income. But the bankruptcy  
21 court spelled out in detail in its Findings and Conclusions  
22 that, even giving Mr. Roberts the benefit of every doubt  
23 concerning his income calculations, he overstated his income by  
24 \$15,000 on the HELOC Application. The finding that this  
25 misrepresentation was intentionally deceptive was not clearly  
26 erroneous.

27 Much the same can be said regarding Mr. Roberts' failure to  
28 disclose his mortgage obligations on the Credit Card



1 Application. Although Mr. Roberts argues that his omission of  
2 some of these obligations was due to confusion regarding the  
3 application form, the bankruptcy court did not clearly err by  
4 finding that his representation of \$0 in mortgage payment  
5 obligations was intentionally deceptive. See Citibank (South  
6 Dakota), N.A. v. Eashai (In re Eashai), 87 F.3d 1082, 1089 (9th  
7 Cir. 1996) (omission can constitute misrepresentation when there  
8 is a duty to disclose).

## 9 **2. Justifiable reliance**

10 Next, Mr. Roberts argues that the bankruptcy court erred in  
11 its finding that the Credit Union justifiably relied on  
12 Mr. Roberts' misrepresentations. He argues that the proper  
13 standard is that of the "ordinary and average person." Although  
14 it is true that "reasonable reliance" under § 523(a)(2)(B) is  
15 judged by the standard of the "reasonably prudent person," see  
16 Heritage Pac. Fin., LLC v. Machuca (In re Machuca), 483 B.R.  
17 726, 736 (9th Cir. BAP 2012), that standard does not apply under  
18 § 523(a)(2)(A). Rather, the "less demanding" standard of  
19 "justifiable reliance" applies. Field v. Mans, 516 U.S. at 439.

20 "Justification is a matter of the qualities and  
21 characteristics of the particular plaintiff, and the  
22 circumstances of the particular case[.]" Id. at 444 (quoting  
23 Restatement (Second) of Torts § 545A, cmt b). Although a  
24 creditor "cannot purport to rely on preposterous  
25 representations," it "ordinarily has no duty to investigate the  
26 truth of a representation[.]" In re Eashai, 87 F.3d at 1090-91  
27 (quoting Romesh Japra, M.D., F.A.C.C., Inc. v. Apte  
28 (In re Apte), 180 B.R. 223, 229 (9th Cir. BAP 1995)).

1 Here, the Credit Union did not rely on "preposterous  
2 representations." Mr. Roberts has not shown that the Credit  
3 Union had any reason to doubt the truth of his representations  
4 of income and expenses. With respect to the HELOC Application  
5 and the HELOC Increase Application, the Credit Union relied on  
6 pay statements and tax returns whose authenticity it had no  
7 reason to doubt at the time. The bankruptcy court did not err  
8 in finding that the Credit Union justifiably relied on these  
9 representations.

### 10 **3. Causation**

11 Finally, Mr. Roberts argues that the bankruptcy court's  
12 analysis of the causation element was flawed. He argues that  
13 the Credit Union's loss was not the result of his  
14 misrepresentations. Rather, it was the loss of his job at BP  
15 West that caused him to cease making payments, and at that point  
16 he would have been unable to make the payments even if his  
17 income initially had been as high as he represented it to be.

18 There is no need to indulge in speculation about what would  
19 have happened if Mr. Roberts' income had been as high as he told  
20 the Credit Union it was. Nor is the bankruptcy court's finding  
21 of causation undermined by the fact that Mr. Roberts' job loss  
22 immediately precipitated his inability to pay his debts to the  
23 Credit Union. The bankruptcy court found, with ample support  
24 from the record, that the Credit Union would have denied  
25 Mr. Roberts' credit applications if it had known the true state  
26 of his income and expenses. Indeed, this is precisely what  
27 happened when Mr. Roberts first applied for the unsecured credit  
28 card and the HELOC. It was only after he supplied false

1 information that the Credit Union changed its decisions. If the  
2 Credit Union had not extended credit to Mr. Roberts, he could  
3 not have defaulted.

4 Mr. Roberts then argues that his omission of any mention of  
5 his mortgage obligations on the Credit Card Application was not  
6 the cause of the Credit Union's loss, because the Credit Union  
7 would have approved the Credit Card Application even if he had  
8 disclosed the existence of his mortgage. But the bankruptcy  
9 court never found that this misrepresentation, standing alone,  
10 was the cause of the Credit Union's loss in its entirety. What  
11 the court found was that, "had the Credit union known  
12 [Mr. Roberts'] actual income and his outstanding debt  
13 obligations, [he] would not have qualified for any unsecured  
14 credit from the Credit Union." This finding was not clearly  
15 erroneous.

## 16 VI. CONCLUSION

17 Based on the foregoing, we conclude that the bankruptcy  
18 court did not err in its legal conclusions, nor did it clearly  
19 err in its factual findings. We AFFIRM.