

1 Before the Panel is Miller Hay & Trucking Inc.'s (MHT)
2 appeal of the bankruptcy court's judgment which held that the
3 debt created when MHT and the Debtors entered into agreements to
4 settle a debt in January and April 2014 was not excepted from
5 discharge under 11 U.S.C. § 523(a)(2)(A). For the reasons stated
6 below, we AFFIRM.³

7 I. FACTS

8 The facts are largely undisputed. Whether the bankruptcy
9 court's discovery and evidentiary rulings were correct are hotly
10 contested.

11 A. The Settlements

12 Prepetition, MHT delivered hay to the Debtors' dairy,
13 resulting in an asserted claim of approximately \$194,000. Based
14 on the debt, MHT sued the Debtor in California Superior Court
15 (State Court).

16 On January 22, 2014, the parties engaged in settlement
17 negotiations, eventually reaching an agreement that they placed
18 on the record before the State Court (January Agreement). Key
19 provisions of the January Agreement included: 1) the delivery by
20 the Souzas of a \$20,000 check payable to MHT by January 31, 2014;
21 and 2) the turnover by the Souzas of 35 "reasonably healthy beef
22 animals" to be made available for turnover on January 31, 2014.
23 As to the cows, the Debtors were to make a good faith effort to
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25 ³ Unless otherwise indicated, all chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,
27 "Rule" references are to the Federal Rules of Civil Procedure,
28 "Bankruptcy Rule" references are to the Federal Rule of
Bankruptcy Procedure, and "FRE" references are to the Federal
Rules of Evidence.

1 determine that they were more than four years old. MHT had the
2 option, at its own expense, to have a veterinarian examine the
3 animals to verify that they were not greater than four years old
4 and that they were reasonably healthy, and MHT would have the
5 right to reject the animals if they were not.⁴

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7 ⁴ From the January 22, 2014, hearing:

8 THE COURT: 11:01 AM On record once again in Miller Hay
9 And I believe we do have a resolution. So who wishes
10 to begin reciting?

11 ...
12 MR. FARLEY: So I believe the resolution is as follows: My
13 client will deliver to Mr. Little's office a check
14 payable to Miller Hay in the amount of \$20,000 no later
15 than close of business January 31st, 2014. In addition,
16 my client will segregate at the dairy site 35 animals.
17 That they will make a good faith effort to determine
18 those animals are not greater than four years old. But I
19 want to advise the Court, I don't mean to be facetious,
20 but animals don't come with birth certificates. So we
21 will do a good-faith effort they are not going to be more
22 than four years old. And they will be reasonably healthy
23 beef animals. In other words, generally speaking, to a
24 dairyman that means the animal is no longer giving good
25 milk or not milking. And then I understand that Mr.
26 Little's client wishes that at his own expense, their own
27 expense, to have a veterinarian examine the animals. If
28 for some reason they opt to reject the animals, then the
parties will have to meet and confer through their
lawyers to project -- through their lawyers regarding
projected animals. On January 31st, those animals will be
segregated for pickup at about 10:00 a.m. at their cost.
I think that's it.

MR. LITTLE: To that, Your Honor, I would add that the -
that obviously animals don't come with birth
certificates, but they do come with brand and
veterinarian records. And we will be exercising our right
to vet check these animals to make sure that they are not
greater than four years old and that they are reasonably
healthy. If they are not, they will be rejected. And I
hope that doesn't happen because we'd be back in front of
(continued...)

1 Prior to January 31, 2014, a \$20,000 cashier's check was
2 delivered to MHT and, by agreement of the parties, held by its
3 counsel pending the completion of the settlement. On January 31,
4 2014, Mr. Souza segregated 35 cows for delivery (Cows). After
5 inspection by its veterinarian, MHT rejected delivery of the
6 Cows.

7 Arguing alleged non-performance, MHT filed a motion to
8 compel performance under Cal. Civ. Proc. Code § 664.6 (664
9 Motion).⁵ On April 28, 2014, prior to a scheduled hearing on the
10 664 Motion, the parties again settled the matter by agreeing to
11 the same terms as the January Agreement, except that delivery of
12 the animals was to take place on May 9, 2014 (April Agreement).

13 On April 29, 2014, the day after reaching the April
14 Agreement, the Debtors filed for chapter 7 relief. The delivery
15 of 35 cows never occurred. Eventually, the \$20,000 was returned.

16 **B. The Trial**

17 MHT filed an adversary complaint against the Debtors on
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19 ⁴(...continued)
20 Your Honor.

21 Settle. Hrg. Transc. 3:7 - 4:19 (Jan. 22, 2014).

22 ⁵ Cal. Civ. Proc. Code § 664.6:

23 If parties to pending litigation stipulate, in a
24 writing signed by the parties outside the presence of
25 the court or orally before the court, for settlement of
26 the case, or part thereof, the court, upon motion, may
27 enter judgment pursuant to the terms of the settlement.
28 If requested by the parties, the court may retain
jurisdiction over the parties to enforce the settlement
until performance in full of the terms of the
settlement.

1 August 4, 2014, alleging nondischargeability under § 523(a)(2)(A)
2 and objecting to discharge under § 727(a). MHT filed its first
3 amended complaint on October 6, 2014. Before trial, the parties
4 stipulated to dismissal of the § 727 claims.

5 At the opening of trial, counsel for MHT stated that it was
6 no longer pursuing one of its § 523(a)(2)(A) claims -- fraud in
7 inducing delivery of the hay. Instead, it would only be pursuing
8 § 523(a)(2)(A) claims on the grounds that the Debtors
9 fraudulently entered into the January and April Agreements.

10 During the course of the trial, the Court made three
11 discovery and evidentiary rulings that are the subject of this
12 appeal: that it was harmless under Rule 37⁶ for Debtors to not
13 disclose in their Rule 26⁷ Statement the sale of the Cows to a
14 third party; that MHT waived its hearsay objection to Mr. Souza's
15 testimony as to the sale of the Cows; and that the cross
16 examination of Mr. Souza regarding a vacation home was not
17 sufficiently probative to proceed over Debtors' objection.

18 During direct examination, Mr. Souza testified that after
19 MHT rejected the Cows, all but one were transported to an auction
20 yard and sold. MHT initially objected to Mr. Souza's testimony on
21 this subject because no sale documents had been previously
22 disclosed and provided as required under Rule 26. When the
23 bankruptcy court noted that no one was attempting to introduce a
24 sale document, MHT moved the bankruptcy court to bar Mr. Souza
25 from testifying regarding the sale because the Debtors' Rule 26

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27 ⁶ As incorporated by Bankruptcy Rule 7037.

28 ⁷ As incorporated by Rule 7026.

1 disclosure concerning Mr. Souza's testimony did not include this
2 topic.⁸ The bankruptcy court considered the matter under Rules 26
3 and 37 and determined that the Debtors had violated Rule 26 by
4 not disclosing Mr. Souza's testimony regarding the sale, but
5 found the non-disclosure "harmless." Accordingly, the bankruptcy
6 court overruled the objection and Mr. Souza proceeded to testify
7 regarding the sale.

8 The next trial day - but a short time later in actual trial
9 time -- MHT cross examined Mr. Souza regarding the sale of the
10 Cows. The cross examination revealed that Mr. Souza had no
11 personal knowledge of the sale; instead, he only knew of it
12 because of undisclosed sale receipts. Having elicited this
13 testimony, MHT moved to strike Mr. Souza's prior testimony as
14 hearsay. The bankruptcy court denied the motion, ruling that MHT
15 waived its hearsay objection by failing to object to the
16 foundation of Mr. Souza's earlier testimony.

17 Mr. Souza testified on direct examination that the Debtors'
18 daughters were to be the source of funds and the cattle necessary
19 to fulfill the settlement. During the cross-examination, MHT
20 asked a series of questions regarding the Debtors' daughters'
21 ownership of 4K Dairy (acquired from the Debtors in 2010), their
22 ability to fund the \$20,000 settlement payment, and their
23 involvement with 4K Dairy. The Debtors met this line of questions
24 with relevancy objections. MHT explained that the questions went
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26 ⁸ Debtors listed Mr. Souza as a witness offered to provide
27 "general information to refute the allegations in the complaint
28 in the above-entitled action." Tr. Transcr. 138:4-6 (Nov. 3,
2015).

1 to control of 4K because MHT's theory is that the transfer was a
2 sham and that the Debtors continued to control the dairy and its
3 operations. The bankruptcy court overruled the objections but
4 warned of its concern regarding relevancy. When MHT inquired
5 regarding the Debtors' sale of their vacation home to their
6 daughters in January 2012, Debtors again objected on grounds of
7 relevancy. MHT countered that it went to the Debtors' intention
8 to stall their Chapter 7 filing to evade a potential clawback
9 claim in bankruptcy. The Court sustained the Debtors' objection
10 citing FRE 403.

11 Ultimately, the bankruptcy court ruled in favor of the
12 Debtors and against MHT. It entered judgment denying MHT's claims
13 on November 10, 2015. MHT timely appealed.

14 **II. JURISDICTION**

15 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
16 § 157(b)(2)(I). The Panel has jurisdiction under 28 U.S.C. § 158.

17 **III. ISSUES**

- 18 1. Whether the bankruptcy court erred in allowing Mr. Souza's
19 testimony regarding the sale of the Cows under Rules 26 and
20 37 and not striking the testimony as hearsay;
- 21 2. Whether the bankruptcy court erred in limiting MHT's inquiry
22 at trial into the Debtor's transfer of assets to their
23 daughters; and
- 24 3. Whether the bankruptcy court was clearly erroneous in its
25 determination that MHT did not meet its burden under
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1 § 523(a)(2)(A) as to the April Agreement.⁹

2 **IV. STANDARD OF REVIEW**

3 Rulings regarding discovery sanctions are reviewed for an
4 abuse of discretion. Yeti by Molly, Ltd. v. Deckers Outdoor
5 Corp., 259 F.3d 1101, 1105 (9th Cir. 2001). The Panel gives
6 "particularly wide latitude" to the trial court's discretion when
7 making Rule 37 rulings. Id. at 1106. A bankruptcy court's
8 evidentiary ruling is reviewed for an abuse of discretion.
9 Slatkin v. Nelson (In re Slatkin), 525 F.3d 805, 811 (9th Cir.
10 2008). "Whether a requisite element of a § 523(a)(2)(A) claim is
11 present is a factual determination reviewed for clear error."
12 Tallant v. Kaufman (In re Tallant), 218 B.R. 58, 63 (B.A.P. 9th
13 Cir. 1998).

14 **V. DISCUSSION**

15 **A. Mr. Souza's Testimony**

16 The bankruptcy court determined that the Debtors violated
17 Rule 26(a)(1) and (3) by not disclosing the sale of the Cows on
18 January 31, 2014.¹⁰ It then determined under Rule 37(c)(1)¹¹ that

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20 ⁹ In its reply brief, MHT argues for the first time that
21 Ms. Souza should be held liable as a partner in the Alvin Souza
22 Dairy if it prevails under § 523(a). See Appellant Reply Br.
23 p. 1, n.1. However, "Issues not raised in the opening brief
24 usually are deemed waived." Dilley v. Gunn, 64 F.3d 1365, 1367
(9th Cir. 1995). To the extent MHT is asking the Panel to
25 overrule the bankruptcy court's decision regarding Ms. Souza, the
26 request is denied.

27 ¹⁰ Though not entirely clear from the transcript, it appears
28 the bankruptcy court found a violation of Rule 26(a)(1)(A)(I)
which requires the disclosure of "each individual likely to have
discoverable information—along with the subjects of that
information—that the disclosing party may use to support its

(continued...)

1 sanctions were unwarranted because the non-disclosure was
2 harmless.

3 The bankruptcy court did not abuse its discretion in finding
4 a violation of Rule 26 (and no one has so argued on appeal). Once
5 it found a violation of this rule, the bankruptcy court correctly
6 turned to Rule 37 to determine the proper sanctions - if any - as
7 Rule 37(c) (1) exists to give teeth to the requirements of
8 Rule 26. Yeti, 259 F.3d at 1106.

9 Rule 37(c) provides the penalties that may be imposed if a
10 party fails to make disclosures as required under Rule 26. A
11 party attempting to avoid sanctions has the burden of proof as to
12 why its actions were either "substantially justified or
13 harmless." Yeti, 259 F.3d at 1106-1107. Factors to consider when
14 determining if a violation of Rule 26 is harmless include:
15 "(1) prejudice or surprise to the party against whom the evidence
16 is offered; (2) the ability of that party to cure the prejudice;

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¹⁰ (...continued)
19 claims or defenses" and Rule § 26(a) (3) (A) (I) and (iii), which
20 require: "(I) the name and, if not previously provided, the
21 address and telephone number of each witness - separately
22 identifying those the party expects to present and those it may
23 call if the need arises ... and (iii) an identification of each
24 document or other exhibit, including summaries of other evidence
25 - separately identifying those items the party expects to offer
26 and those it may offer if the need arises."

27 ¹¹ Rule 37(c) (1) provides, in pertinent part:

28 If a party fails to provide information or identify a
witness as required by Rule 26(a) or (e), the party is
not allowed to use that information or witness to
supply evidence on a motion, at a hearing, or at a
trial, unless the failure was substantially justified
or is harmless.

1 (3) the likelihood of disruption of the trial; and (4) bad faith
2 or willfulness involved in not timely disclosing the evidence."
3 Lanard Toys Ltd. v. Novelty, Inc., 375 F. App'x 705, 713 (9th
4 Cir. 2010) (citing David v. Caterpillar, Inc., 324 F.3d 851, 857
5 (7th Cir.2003)). "A bankruptcy court abuses its discretion if it
6 applies the wrong legal standard, misapplies the correct legal
7 standard, or if its factual findings are clearly erroneous."
8 Pham v. Golden (In re Pham), 536 B.R. 424, 430 (B.A.P. 9th Cir.
9 2015). A finding of fact is clearly erroneous only if the finding
10 is "illogical, implausible, or without support in the record."
11 Retz v. Samson (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010).

12 In this instance, the bankruptcy court abused its discretion
13 when making its Rule 37 ruling because it used the wrong legal
14 standard by placing the burden of proof on MHT to prove how it
15 was harmed by the non-disclosure. The key passage from the trial
16 reads:

17 Court:

18 What I would like to hear the argument on is why this
19 isn't harmless. It seems to me that a party's
20 designation, though I agree was not sufficiently
21 specific to comply with the rule [26], it seems to me
22 that it is harmless because you should know that a
23 party ... is likely to give testimony on a broad
24 variety of subjects.

25 Tr. Transcr. 139:9-14 (Nov. 3, 2015). This statement led to MHT
26 addressing how it was harmed, rather than the Court requiring the
27 Debtors to demonstrate why non-disclosure was harmless. Moreover,
28 the bankruptcy court did little to explain why it concluded the
non-disclosure harmless. Therefore, the Panel cannot
independently determine if, under the Lanard Toys factors, the
Panel would reach the same decision. The bankruptcy court later

1 compounded its error when it cited to Mr. Souza's testimony
2 regarding the sale of the Cows as a basis for its final ruling.¹²

3 Later, when MHT elicited from Mr. Souza that he had no
4 firsthand knowledge of the sale, MHT objected to the testimony on
5 hearsay grounds. The bankruptcy court overruled the objection and
6 MHT claims that this, too, was error. However, the Panel finds
7 that the bankruptcy court did not abuse its discretion on this
8 front. FRE 103(a)(1)(A) requires a timely objection or motion to
9 strike. A review of the transcript shows that when Mr. Souza
10 testified earlier in the trial regarding the sale of the Cows,
11 his counsel did not lay foundation regarding personal knowledge
12 of the sale. Had MHT objected to the testimony on foundational
13 grounds at that point, it (and the bankruptcy court) would have
14 learned that Mr. Souza had no firsthand knowledge of the sale and
15 therefore no foundation from which to testify. The bankruptcy
16 court was within its discretion when it ruled that MHT waived its
17 ability to move to strike when it failed to object to Mr. Souza's
18 earlier testimony on foundational grounds.

19 _____
20 ¹² Although the Court did take into account the subsequent
21 sale of the cows in its final ruling, during trial the Court
22 indicated it would instead weigh Mr. Souza's testimony in light
of his lack of first hand knowledge of the sale:

23 But you've made your point, and that is he really
24 didn't know, and that goes to the weight I give his
25 testimony. So I am overruling the objection on both
26 grounds. I find waiver, but in the event that I -- I
27 find waiver by failing to raise the objection earlier.
But I think your point is, is that the testimony should
be given no weight anyway because he really doesn't
know, and at that -- and you've made your point there.

28 Tr. Transcr. 7:23-8:5 (Nov. 5, 2015).

1 **B. Ownership Testimony**

2 MHT also asserts that the bankruptcy court erred by limiting
3 MHT's attempts to elicit evidence regarding the ownership and
4 control of 4K Dairy -- the source of the cash component and the
5 Cows for the settlement, as well as the Debtors' transfer of a
6 vacation home to 4K Dairy. While a trial court has broad
7 discretion in excluding evidence under FRE 403, it must engage in
8 a balancing test to determine admissibility. Liew v. Official
9 Receiver & Liquidator (Hong Kong), 685 F.2d 1192, 1195 (9th Cir.
10 1982); United States v. Moran, 493 F.3d 1002, 1012 (9th Cir.
11 2007). When a court does not engage in explicit balancing, the
12 Panel reviews the ruling de novo. Id.

13 Here, the bankruptcy court balanced the relevancy of
14 additional testimony regarding ownership and control of 4K Dairy
15 and the transfer of the house against the time it would take to
16 explore the subjects. It was clear from the start of this line of
17 questioning that the bankruptcy court doubted its relevancy. See
18 Tr. Transcr. 47:11-17 (Nov. 5, 2015). Eventually, the Court
19 sustained the Debtors' objection under FRE 403 regarding the
20 daughters' control of 4K Dairy and the transfer of the house
21 finding that "[t]he probative value is far outweighed by the time
22 necessary to elicit the facts surrounding it, so this is not a
23 line of inquiry I will allow." Tr. Transcr. 49:16-19 (Nov. 5,
24 2015).¹³

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26 ¹³ Debtors argue that the entire line of questioning was
27 improper because it did not fall within the scope of the direct
28 examination and therefore should not have been allowed under
FRE 611(b). Debtors did not raise this objection at trial.

(continued...)

1 Since the bankruptcy court did engage in a balancing of the
2 issues, the question becomes whether the bankruptcy court abused
3 its discretion in omitting the testimony. In its ultimate ruling
4 regarding the April Agreement, the bankruptcy court focused not
5 on whether the Debtors had intended to deceive MHT, but instead
6 whether the daughters' intended to fund the settlement. Since the
7 bankruptcy court's ruling was premised on the fact that the
8 Debtors did not control the funding source of the settlement,
9 which was the very topic it cut off as not probative, excluding
10 testimony on this topic was error and an abuse of discretion.

11 **C. Did the Court Commit Reversible Error?**

12 MHT asks the Panel to rule that the bankruptcy court's
13 ruling was clearly erroneous, reverse the judgment, and find in
14 its favor. The Panel cannot reverse factual findings which
15 support a judgment of the bankruptcy court unless it has a
16 "definite and firm conviction that the bankruptcy court committed
17 a clear error of judgment." Price v. Lehtinen (In re Lehtinen),
18 332 B.R. 404, 411 (B.A.P. 9th Cir. 2005), aff'd, 564 F.3d 1052
19 (9th Cir. 2009). Further, the Panel can affirm a bankruptcy
20 court's ruling for any reason supported by the record. Encino
21 Bus. Mgmt. v. Prize Frize, Inc. (In re Prize Frize, Inc.),
22 150 B.R. 456, 461 n. 11 (B.A.P. 9th Cir. 1993), aff'd, 32 F.3d
23 426 (9th Cir.1994); Kimes v. Stone, 84 F.3d 1121, 1126 (9th Cir.
24 1996).

25 Though the Panel concludes that the bankruptcy court erred
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27 ¹³ (...continued)

28 Accordingly, the Panel will not consider it now.

1 in its Rule 37 and FRE 403 rulings, the errors were harmless. As
2 noted, MHT proceeded to trial under the theory that its claim was
3 non-dischargeable under 11 U.S.C. § 523(a)(2)(A), which provides
4 that a claim will not be discharged to the extent it is for
5 "money, property, (or) services" obtained by "false pretenses, a
6 false representation or actual fraud." To show nondischargeabili-
7 ty under § 523(a)(2)(A) the plaintiff must show:

- 8 (1) the debtor made a representation;
- 9 (2) the debtor knew the representation was false at the
10 time he or she made it;
- 11 (3) the debtor made the representation with the intent
12 to deceive;
- 13 (4) the creditor justifiably relied on the
14 representation; and
- 15 (5) the creditor sustained damage as a proximate result
16 of the misrepresentation having been made.

17 Van Zandt v. Mbunda (In re Mbunda), 484 B.R. 344, 350 (B.A.P. 9th
18 Cir. 2012), aff'd, 604 F. App'x 552 (9th Cir. 2015).

19 Accordingly, in order to prove a claim under § 523(a)(2)(A),
20 in addition to proving the Debtors had an intent to deceive, MHT
21 has the burden of demonstrating that it specifically relied on
22 the Debtors' misrepresentations and that it sustained damages as
23 a proximate result of the misrepresentations. Even if Mr. Souza
24 entered into the January and April Agreements with the intent to
25 deceive and delay as MHT urges, the record is devoid of any
26 evidence that MHT sustained damages as a proximate cause of its
27 reliance on the alleged misrepresentations.

28 To show proximate damages, MHT must have forgone valuable
collection remedies in relying on Mr. Souza's representations
that the Debtors would perform under the January and April
Agreements. See (Siriani v. Nw. Nat'l Ins. Co., of Milwaukee Wis.
(In re Siriani), 967 F.2d 302, 305 (9th Cir. 1992), as amended

1 (June 29, 1992) (addressing renewals of credit). The only damage
2 asserted before the bankruptcy court, \$80,000 referenced at
3 trial, is based on MHT's perceived value of the fully performed
4 January and April Agreements.¹⁴ This, however, is not a correct
5 measure for determining proximate damages. The correct measure is
6 the value of the collection remedies available to MHT and lost or
7 reduced due to its reliance on Mr. Souza's agreements to settle
8 the debt. Siriani, 967 F.2d at 307. MHT did not demonstrate that
9 by entering into the either the January or April Agreement it was
10 foregoing any available collection remedies, much less ones that
11 lost value because it relied on the Agreements.

12 There was no evidence presented that the Debtors had the
13 wherewithal to satisfy a judgment taken in January (or April) of
14 2014, such that MHT would actually have collected on a judgment.
15 Rather, the evidence presented was that the Debtors' daughters
16 were putting up the assets to meet the terms of the Agreements
17 because the Debtors had no cash or cattle for a settlement. Tr.
18 Transcr. 133:25 - 13:7 (Nov. 3, 2015). Thus, MHT has failed to
19 show that it sustained damages as a proximate cause of the
20 promises made by Mr. Souza on January 22 or April 28, 2014. See
21 also Chopra v. Chopra (In re Chopra), No. 10-52819 CN, 2013 WL
22 1681773, at *7-8 (Bankr. N.D. Cal. Apr. 17, 2013) (Siriani in a
23 settlement context means a plaintiff must "demonstrate that he

25 ¹⁴ See Tr. Transcr. 75:11-14 (Nov. 3, 2015), ascribing
26 anticipated value of \$60,000 for the cattle to be delivered, in
27 addition to the \$20,000 delivered check. During closing
28 arguments, counsel for MHT argued for an anticipated value of
\$40,000 for the cattle. See Tr. Transcr. 141:21-142:20 (Nov. 5,
2015).

1 forfeited valuable collection remedies as a result of the ...
2 [s]ettlement [a]greement").

3 At the hearing before the Panel, when questioned about
4 damages, counsel for MHT also suggested that MHT was damaged
5 insofar as it had given up the right to pursue and obtain a
6 judgment in the State Court. However, as the parties explained to
7 the State Court when they entered into the January Agreement, if
8 a disagreement arose as to the cattle, the parties would be back
9 before the State Court.¹⁵ In an attempt to resolve the dispute,
10 as contemplated in the January Agreement, Mr. Souza agreed on
11 April 28 to attempt a second transfer of cattle on or before
12 May 9, 2014. The suggestion that a default occurred is not quite
13 correct, insofar as the January and April Agreements contemplated
14 that the cattle presented might not be accepted. At that point,
15 MHT had the right to pursue its original claim. When questioned,
16 counsel for MHT could not explain to the Panel why securing a
17 State Court judgment prior to the bankruptcy would place it in a
18 superior position with respect to its claim. In summation, MHT
19 did not demonstrate that it sustained damage as a result of its
20 reliance on the unperformed January and April Agreements.

21 In the end, MHT failed to present evidence of a material
22 element of its claim under § 523(a)(2)(A). Accordingly, the
23 bankruptcy court's ruling denying MHT's complaint to deny the
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25 ¹⁵ This review of events supports the bankruptcy court's
26 conclusion that the Debtors complied with the terms of the
27 January Agreement. The Debtors delivered cattle. MHT exercised
28 its right of refusal and both parties thereafter engaged in an
attempt to resolve the disagreement. This is exactly what the
parties agreed to in open court in January 2014.

1 Debtor's discharge based on fraud or misrepresentation was not
2 error and will stand.

3 **VI. CONCLUSION**

4 For the foregoing reasons, the order of the bankruptcy court
5 is AFFIRMED.

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