

MAR 17 2017

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

|                 |   |                    |                  |
|-----------------|---|--------------------|------------------|
| In re:          | ) | BAP No.            | CC-16-1241-TaFC  |
| JON W. CHAFFEE, | ) | Bk. No.            | 8:14-bk-12834-SC |
|                 | ) | Adv. No.           | 8:14-ap-01215-SC |
| Debtor.         | ) |                    |                  |
| _____           | ) |                    |                  |
| B. CASEY YIM,   | ) |                    |                  |
|                 | ) |                    |                  |
| Appellant,      | ) |                    |                  |
| v.              | ) | <b>MEMORANDUM*</b> |                  |
| JON W. CHAFFEE, | ) |                    |                  |
|                 | ) |                    |                  |
| Appellee.**     | ) |                    |                  |
| _____           | ) |                    |                  |

Argued and Submitted on February 23, 2017  
at Pasadena, California

Filed - March 17, 2017

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

Honorable Scott C. Clarkson, Bankruptcy Judge, Presiding

Appearances: B. Casey Yim, pro se.

Before: TAYLOR, FARIS, and CLEMENT,\*\*\* 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(c)(2).

\*\* Debtor-Appellee did not file a brief.

\*\*\* The Hon. Fredrick E. Clement, United States Bankruptcy Judge for the Eastern District of California, sitting by designation.

1 **INTRODUCTION**

2 B. Casey Yim appeals from the bankruptcy court's judgment  
3 in favor of debtor Jon Chaffee in an adversary proceeding  
4 objecting to discharge of Yim's claim under § 523(a)(2)(A) and  
5 (a)(2)(B).<sup>1</sup> We AFFIRM the bankruptcy court.

6 **FACTS**

7 On June 10, 2013, Yim agreed to sell Debtor property in  
8 Newport Beach for \$2,475,000. To memorialize the agreement,  
9 they entered into a purchase and sale agreement (the "PSA  
10 Contract"). For the purposes of this nondischargeability  
11 action, Debtor and Yim stipulated to, among others, the  
12 following facts:

- 13 5. The transaction was to be performed as an "All Cash"  
14 transaction without loan or financing contingencies  
15 permitted to the buyer (Chaffee). PSA Contract, paras. 3.  
16 J. and K (Plaintiff's Trial Exhibit 1).
- 17 6. Specifically, under the aforesaid PSA Contract, para. 3.j.,  
18 the transaction was expressly stated to be an "All Cash"  
19 transaction, without loan or financing contingencies.
- 20 7. Under para. 3.K. of the PSA Contract (Plaintiff's Trial  
21 Exh. 1), debtor-defendant agreed and represented, in  
22 writing, that "Buyer's failure to secure alternate  
23 financing does not excuse buyer from the obligation to  
24 purchase the property and close escrow as specified in this  
25 purchase agreement [the 'PSA Contract' herein]"

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26  
27 <sup>1</sup> Unless otherwise indicated, all chapter and section  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

- 1 8. At the time the parties entered into the PSA Contract, the  
2 debtor-defendant did not intend to perform the contract as  
3 an "All Cash" transaction without a loan or funding  
4 contingency to be obtained from a third party lending or  
5 financing source.
- 6 9. At the time the parties entered into the PSA Contract, the  
7 debtor defendant did not have liquid assets or cash of his  
8 own to purchase the subject property as an "All Cash"  
9 transaction.
- 10 10. At the time the parties entered into the transaction, the  
11 debtor defendant did not have any written or contractual  
12 commitment from any third party lending or financing source  
13 to provide the funds need to permit defendant to purchase  
14 the subject property as an "All Cash" transaction.
- 15 11. At the time the parties entered into the PSA Contract,  
16 defendant could not and had no financial ability to perform  
17 the contact as an "All Cash" transaction as represented in  
18 his written PSA Contract signed by him on or about June 10,  
19 2013. (Exhibit 1)
- 20 12. Defendant Chaffee never intended to perform the subject PSA  
21 contract dated June 10, 2013, as an "All Cash" transaction  
22 without any third-party loan or financing contingency at  
23 the time the parties entered into the PSA Contract and at  
24 all times thereafter.
- 25 13. Defendant instead intended to perform by making financing  
26 arrangements for payment funding from some other third  
27 party lending or financing source.
- 28 14. Defendant did not disclose to Plaintiff his intent to not

1 perform as an "All Cash" transaction.

2 15. Defendant did not disclose to plaintiff-Seller his true  
3 intent to condition his performance upon loans or financing  
4 arrangements from third-party lending or financing sources.

5 16. Plaintiff relied on Defendants "selected method of  
6 financing" under the PSA Contract as "All Cash" in entering  
7 into the PSA Contract with defendant.

8 17. Under the PSA Contract, para. 3 (K) (Plaintiff's Exhibit  
9 1), the parties expressly covenanted and represented, in  
10 writing, as follows:

11 "Seller has relied on Buyer's representation of the  
12 type of financing specified (including, . . . all cash).  
13 If buyer seeks alternate financing, (i) Seller has no  
14 obligation to cooperate with Buyer's efforts to obtain such  
15 financing; and (ii) Buyer shall also pursue the financing  
16 method specified in this Agreement. Buyer's failure to  
17 secure alternate financing does not excuse Buyer from the  
18 obligation to purchase the Property and close escrow as  
19 specified in this Agreement."

20 18. Defendant did not have his own funds, nor did he obtain  
21 third-party loan financing to pay the purchase price, and  
22 therefore breached the subject PSA Contract by failure to  
23 pay by the contracted closing date, July 10, 2013.

24 19. Plaintiff was able to find and arrange for another buyer  
25 for the property to mitigate his damages; however the  
26 replacement buyer's contracted re-sale price was only  
27 \$2,375,000, or \$100,000 lower than Defendant's contract  
28 price; and did not close until Dec. 13, 2013.

1 In September 2013, Yim sued Debtor in California state  
2 court for breach of contract and specific performance. Yim  
3 obtained a default judgment for \$328,166.08, plus post-judgment  
4 interest.

5 **Debtor files bankruptcy; Yim brings a nondischargeability**  
6 **action.** In May 2014, Debtor filed a voluntary chapter 7  
7 petition. Yim later commenced an adversary proceeding seeking  
8 to hold the default judgment nondischargeable under § 523(a)(2).  
9 Eventually, the parties prepared a joint pretrial stipulation  
10 and proposed order. After some procedural missteps, the matter  
11 was set for trial by declaration. Yim submitted a trial brief,  
12 his declaration, and his trial exhibits. Debtor also submitted  
13 a declaration and trial exhibits.

14 The bankruptcy court heard the matter, but Debtor did not  
15 appear. On Yim's oral motion, the bankruptcy court struck  
16 Debtor's declaration and trial exhibits. The bankruptcy court  
17 reviewed the pretrial order and factual admissions; it then  
18 engaged in an extensive colloquy with Yim about the case.  
19 Finally, the hearing concluded with the bankruptcy court's oral  
20 ruling that Yim failed to prove the required elements by a  
21 preponderance of the evidence. The bankruptcy court later  
22 issued a memorandum decision. Bankruptcy Court's Memorandum of  
23 Decision Regarding Non-Dischargeability Proceeding Under  
24 §§ 523(a)(2)(A) and (a)(2)(B), Aug. 19, 2016 ("Mem. Dec."). Yim  
25 does not challenge the decision under § 523(a)(2)(B) on appeal.  
26 The bankruptcy court then entered judgment in Debtor's favor and  
27 against Yim. Yim timely appealed.



1 firm conviction that a mistake has been committed.” Anderson v.  
2 City of Bessemer City, 470 U.S. 564, 573 (1985) (internal  
3 citation omitted).

#### 4 DISCUSSION

5 Section 523(a)(2)(A) excepts from discharge a debt  
6 resulting from “false pretenses, a false representation, or  
7 actual fraud, other than a statement respecting the debtor’s or  
8 an insider’s financial condition.” 11 U.S.C. § 523(a)(2)(A).  
9 The creditor bears the burden of proving § 523(a)(2)(A)’s  
10 applicability by a preponderance of the evidence. Ghomeshi v.  
11 Sabban (In re Sabban), 600 F.3d 1219, 1222 (9th Cir. 2010). In  
12 the Ninth Circuit, the five elements for a § 523(a)(2)(A)  
13 nondischargeability claim are:

14 (1) misrepresentation, fraudulent omission or  
15 deceptive conduct by the debtor; (2) knowledge of the  
16 falsity or deceptiveness of [the debtor’s] statement  
17 or conduct; (3) an intent to deceive; (4) justifiable  
18 reliance by the creditor on the debtor’s statement or  
19 conduct; and (5) damage to the creditor proximately  
20 caused by its reliance on the debtor’s statement or  
21 conduct.

19 Turtle Rock Meadows Homeowners Ass’n v. Slyman (In re Slyman),  
20 234 F.3d 1081, 1085 (9th Cir. 2000); see In re Sabban, 600 F.3d  
21 at 1222; Oney v. Weinberg (In re Weinberg), 410 B.R. 19, 35 (9th  
22 Cir. BAP 2009).

23 We start with a notable absence: Debtor. Debtor did not  
24 file a brief in this appeal. He also failed to show up at the  
25 July 27, 2016 hearing, which was to be a trial on the merits.<sup>2</sup>

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27 <sup>2</sup> In affirming, we do not condone Debtor’s non-  
28 participation.

1 Accordingly, the bankruptcy court essentially transformed the  
2 trial into a default prove-up hearing and engaged Yim (an  
3 attorney) in a substantive conversation about his case's merits.  
4 That said, we do not treat the discussion as evidentiary because  
5 the bankruptcy court did not receive Yim's testimony under oath  
6 (other than through his declaration).

7 The bankruptcy court concluded that Yim failed to prove any  
8 of the elements by a preponderance of the evidence. Thus, to  
9 prevail in this appeal, Yim must show that the bankruptcy court  
10 erred in every respect.

11 **A. The bankruptcy court properly concluded that Yim failed to**  
12 **establish the first and second elements of § 523(a)(2)(A).**

13 Considering the first and second elements in tandem, the  
14 bankruptcy court concluded that Yim failed to prove either that  
15 Debtor made a representation that he knew at the time was false  
16 or that Debtor made a fraudulent omission. We consider each  
17 separately.

18 *A knowing misrepresentation.* The bankruptcy court  
19 explained:

20 Plaintiff never alleged that Defendant made an oral  
21 promise or representation at all. The only source of  
22 any alleged misrepresentation is the Agreement, the  
23 AKM Letter, and the joint pretrial stipulation. In  
24 other words, Plaintiff does not point to any other  
25 source (oral or written) for Defendant's alleged  
26 misrepresentation. However, none of the sources cited  
27 by Plaintiff support his assertion that Defendant  
28 "Represented that he had sufficient liquid cash assets  
to perform without requiring loan financing."

26 Mem. Dec. at 6.

27 On appeal, Yim argues that the bankruptcy court erred by  
28 substituting its interpretation of the Agreement for the



1 parties' "mutual understanding" of the Agreement as reflected in  
2 the joint stipulation. He asserts the "fraud, false pretense  
3 and false representation claim in this case is simple." Apt's  
4 Opening Br. at 5. In particular, he argues:

5       The PSA represented an offer made by debtor to  
6       purchase the property as an "All Cash" transaction,  
7       which the parties stipulated meant that there would be  
8       no loan or financing contingency allowed to the  
9       debtor-buyer. . . . The parties stipulated to the  
10       meaning of these terms of the PSA contract—"All Cash;  
11       no loan contingency."

12 Id. at 11-12 (record citations omitted). Yim essentially  
13 interprets Debtor's checking the "all cash" box as a  
14 representation that when Debtor signed the Agreement on June 10,  
15 2013, he had the cash on hand to pay \$2,475,000. But nothing  
16 Yim points to establishes this representation; we thus agree  
17 with the bankruptcy court. As the bankruptcy court observed,  
18 Yim pointed to only three sources: the PSA Contract; the joint  
19 pretrial stipulation; and a "line of credit" letter (the "AKM  
20 Letter").

21       First, we turn to the PSA Contract. Yim and Debtor signed  
22 a California form residential real estate purchase agreement.  
23 They agreed, among other things, that Debtor would buy a  
24 property for \$2,475,000. PSA Contract ¶ 1.B and 1.C. Under the  
25 finance terms section, they provided for no deposit and agreed  
26 that the contract was not contingent on an appraisal. PSA  
27 Contract ¶ 3.A and 3.I. They checked the "ALL CASH OFFER" box,  
28 which also provides: "Buyer shall, within 7 . . . Days After  
Acceptance, Deliver to Seller written verification of sufficient  
funds to close this transaction." PSA Contract ¶ 3.J. The very  
next line states:

1 BUYER STATED FINANCING: Seller has relied on Buyer's  
2 representation of the type of financing specified  
3 (including but not limited to, as applicable, amount  
4 of down payment, contingent or non contingent loan, or  
5 all cash). If Buyer seeks alternate financing,  
6 (i) Seller has no obligation to cooperate with Buyer's  
7 efforts to obtain such financing, and (ii) Buyer shall  
8 also pursue the financing method specified in this  
9 Agreement. Buyer's failure to secure alternate  
10 financing does not excuse buyer from the obligation to  
11 purchase the Property and close escrow as specified in  
12 this Agreement.

13 PSA Contract ¶ 3.K. The PSA Contract does not require or  
14 represent that the buyer has sufficient cash on hand to purchase  
15 the property on the day of execution. As the bankruptcy court  
16 explained, the Agreement "contemplates that even a buyer with an  
17 'all cash' offer may seek alternate financing, so long as the  
18 buyer also pursues the 'all cash' method of financing." Mem.  
19 Dec. at 9. Indeed, the Agreement's default terms (which Yim and  
20 Debtor agreed to) give Debtor seven days to provide proof of  
21 funds.

22 Second, the pretrial order's stipulated facts do not  
23 contradict this. They rightly reflect that the transaction was  
24 "All Cash" and "without loan or financing contingencies". They  
25 also state that, under ¶ 3.K, Debtor agreed that his failure to  
26 obtain alternate financing would not excuse his obligation to  
27 purchase the property. But the pretrial order does not  
28 establish that Debtor represented that he had \$2,745,000 in cash  
or other liquid assets on June 10, 2013.

Last, the AKM Letter does not represent that Debtor had

1 \$2,745,000 cash on hand. Yim does not argue otherwise.<sup>3</sup>

2 What, then, did Debtor represent? He represented that he  
3 would purchase the property from Yim on July 10, 2013. As it  
4 turns out, Debtor was unable to purchase the property on  
5 July 10. But, as Yim concedes in the stipulated facts, Debtor  
6 "intended to perform by making financing arrangements for  
7 payment funding from some other third party lending or financing  
8 source." Thus, at the time Debtor made the representation, he  
9 did not know it would be false. Indeed, the facts reflect the  
10 opposite: Debtor intended to perform.

11 Yim's insistence that Debtor made a misrepresentation  
12 derives from his misinterpretation of what "all cash" and  
13 "without loan or financing contingencies" mean.<sup>4</sup> From Debtor's  
14 perspective, if there are loan or financing contingencies,  
15 Debtor's inability to satisfy the contingency (i.e., to timely  
16 obtain a loan) would excuse him from having to pay the full  
17 \$2,745,000 on July 10 (in a typical scenario, he might forfeit a  
18 deposit). Absent these contingencies, Debtor's failure to  
19 procure a loan or other financing does not excuse his payment;  
20 he is obligated for the full amount. From Yim's perspective:  
21 with contingencies, Yim does not have a claim for breach of

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22  
23 <sup>3</sup> At oral argument, Yim pointed to paragraph 7 of his  
24 trial declaration. But this, also, does not contain a  
25 representation from Debtor that he had sufficient cash on  
26 June 10, 2013.

26 <sup>4</sup> Yim is clearest in paragraph 6 of his trial declaration:  
27 "This 'all cash' term **meant to me** that . . . [Debtor] had  
28 sufficient liquid assets or cash to pay the purchase price  
without qualifying for or obtaining a loan or outside financing  
from any third party source." (Emphasis added.)

1 contract because the contract is not breached; without  
2 contingencies, Yim has a claim for breach of contract.

3 The stipulated facts do not even establish that Debtor  
4 intended to condition his liability under the contract on his  
5 obtaining a loan; rather, they show that he intended to  
6 "condition" his performing on his obtaining third-party  
7 financing. As it turns out, this was naive on Debtor's part:  
8 Yim held Debtor to the contract and obtained a judgment.

9 In short, by checking the "all cash" box, Debtor  
10 represented that he would pay Yim \$2,745,000 on July 10 and that  
11 an inability to obtain funding would not excuse this. Under the  
12 stipulated facts, Debtor intended to pay Yim \$2,745,000 on  
13 July 10. Accordingly, the bankruptcy court did not err when it  
14 concluded that Yim failed to prove, by a preponderance of the  
15 evidence, that at the time Debtor made the representation he  
16 knew it was false.

17 *A Fraudulent Omission.* The bankruptcy court concluded that  
18 Yim failed to prove that Debtor made a fraudulent omission:  
19 "Here, [Yim] has not established that [Debtor] had a duty to  
20 disclose his intention to pursue financing or that such fact was  
21 basic to the transaction." Mem. Dec. at 11. The bankruptcy  
22 court went even further: "Even if [Debtor] was under a duty to  
23 disclose, [Yim] cannot claim that he was ignorant of [Debtor's]  
24 intention to pursue financing . . . ." Id.

25 On appeal, Yim seems to argue that Debtor made a fraudulent  
26 omission:

27 Debtor admitted that he did not have sufficient cash  
28 to perform, and had no ability to get the cash from a  
third party lending source. The Debtor also admitted

1 that he failed to disclose to Yim (concealed) his  
2 intent not to perform under the PSA terms, and he  
3 failed to disclose his true intentions to condition  
his performance upon obtaining third-party financing  
in blatant contradiction of the agreed contract terms.

4 Apl't's Opening Br. at 15 (record citations omitted). But Yim  
5 does not argue that Debtor was under a duty to disclose. This  
6 is fatal. "A debtor's failure to disclose material facts  
7 constitutes a fraudulent omission under § 523(a)(2)(A) if the  
8 debtor was under a duty to disclose and the debtor's omission  
9 was motivated by an intent to deceive." Harmon v. Kobrin  
10 (In re Harmon), 250 F.3d 1240, 1246 n.4 (9th Cir. 2001) (citing  
11 Citibank (South Dakota), N.A. v. Eashai (In re Eashai), 87 F.3d  
12 1082, 1089-90 (9th Cir. 1996)). Nor does Yim challenge the  
13 bankruptcy court's further finding that, even if Debtor were  
14 under a duty to disclose, Yim was not ignorant of Debtor's  
15 "true" intent.

16 In sum, we agree with the bankruptcy court that Yim failed  
17 to prove the first and second elements of § 523(a)(2)(A).  
18 Having determined that the bankruptcy court did not err when it  
19 concluded that Yim failed to establish a knowingly false  
20 representation by a preponderance of the evidence, we could stop  
21 here. Yim's case fails without a misrepresentation. That said,  
22 we briefly consider another element – one where Yim disagrees  
23 with the bankruptcy court's application of the underlying legal  
24 standard. He is wrong there, as well.

25 **B. The bankruptcy court properly concluded that Yim failed to**  
26 **establish justifiable reliance by a preponderance of the**  
**evidence.**

27 On the fourth element, the bankruptcy court found that Yim  
28 "is a sophisticated and experienced business attorney who has

1 conducted many trials in state and federal court, including real  
2 estate trials." Mem. Dec. at 14. And it "h[e]ld Plaintiff to  
3 that level of capacity, knowledge, and sophistication." Id.  
4 Next, the bankruptcy court found that "there were numerous,  
5 obvious 'red flags' which should have compelled [Yim] to  
6 investigate further." Id. at 14-17. For example, Debtor and  
7 Yim did not have a prior relationship. Id. at 14-15. Yim did  
8 not perform any due diligence or investigate Debtor's  
9 creditworthiness. Id. at 15. Yim did not seek a deposit. Id.  
10 Instead, Yim relied on a letter that, by its very terms, should  
11 have raised red flags. Id.

12 On appeal, Yim contends that the bankruptcy court imposed  
13 on him a heightened standard of reliance, when under relevant  
14 case law "only a relaxed 'justifiable reliance' standard need be  
15 shown . . ." Aplt's Opening Br. 32. Yim correctly observes  
16 that justifiable reliance is not an objective standard; it is a  
17 subjective standard. But he perhaps misunderstands what a  
18 subjective standard is: he suggests that a subjective standard  
19 is always more relaxed than an objective, reasonable person  
20 standard. Not always so.

21 "[A] creditor's reliance on a debtor's misrepresentation  
22 need be only justifiable, not reasonable," for § 523(a)(2)(A)  
23 purposes. In re Eashai, 87 F.3d at 1090. Justifiable reliance  
24 "turns on a person's knowledge under the particular  
25 circumstances." Id. The bankruptcy court "must look to all of  
26 the circumstances surrounding the particular transaction, and  
27 must particularly consider the subjective effect of those  
28 circumstances upon the creditor." In re Kirsh, 973 F.2d

1 at 1460. It "is a matter of the qualities and characteristics  
2 of the particular plaintiff, and the circumstances of the  
3 particular case, rather than of the application of a community  
4 standard of conduct to all cases." In re Eashai, 87 F.3d at  
5 1090 (internal quotation marks and citations omitted). In some  
6 cases, justifiable reliance requires the creditor to investigate  
7 somewhat. Field v. Mans, 516 U.S. 59, 76 (1995) ("[These  
8 particular creditors] may recover, at common law and in  
9 bankruptcy, but lots of creditors are not at all naive. The  
10 subjectiveness of justifiability cuts both ways . . . .").<sup>5</sup>

11 Here, the bankruptcy court properly identified justifiable  
12 reliance as a subjective standard and then properly applied the  
13 facts. First, Yim does not dispute that he is an attorney with  
14 substantial litigation and real estate experience.<sup>6</sup> Second, Yim  
15 does not challenge the bankruptcy court's numerous findings of  
16 obvious red flags in this particular case that should have  
17 compelled him, an experienced real estate attorney,<sup>7</sup> to

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19 <sup>5</sup> In others, a "person is justified in relying on a  
20 representation of fact although he might have ascertained the  
21 falsity of the representation had he made an investigation."  
22 In re Eashai, 87 F.3d at 1090 (internal quotation marks and  
23 citations omitted).

24 <sup>6</sup> To the extent the bankruptcy court based its factual  
25 finding on the argumentative colloquy at the hearing, this was  
26 harmless because Yim had earlier provided the bankruptcy court a  
27 declaration: "I have over 35 years of litigation experience, and  
28 have actual trial and arbitration experience, in commercial,  
contract, real estate, and Professional Liability cases."

29 <sup>7</sup> See, e.g., In re Kirsh, 973 F.2d at 1460 ("Parks was no  
ordinary person. In fact, he was not even an ordinary attorney."  
(continued...))

1 investigate further. Mem. Dec. at 14. Third, Yim argues that  
2 the bankruptcy court inappropriately rejected his undisputed  
3 testimony that he was fully justified in relying on the AKM  
4 Letter. We do not agree with Yim's implicit argument that his  
5 conclusory<sup>8</sup> testimony prevents the bankruptcy court from  
6 evaluating justifiable reliance; in any event, he fails to  
7 challenge the bankruptcy court's identification of the  
8 transaction's **other** red flags, such as the lack of a deposit,<sup>9</sup>  
9 which should have compelled him to investigate further. Fourth,  
10 Yim's reliance on Barnes v. Roberts (In re Roberts), 538 B.R. 1  
11 (Bankr. C.D. Cal. 2015), is misplaced. It does not stand for  
12 the legal proposition that justifiable reliance will never  
13 require a creditor to investigate further. Instead,  
14 In re Roberts rightly states that justifiable reliance depends  
15 on the particular circumstances of each case. Id. at 10-11.  
16 What's more, its facts show a creditor who, unlike Yim,

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17  
18  
19  
20 <sup>7</sup>(...continued)

21 He had been practicing for twenty years and concentrated on  
22 business law. He was well aware of the fact that standard  
23 practice in California was for lenders to obtain title reports.  
24 Lenders do not merely rely upon the representations of  
25 borrowers. . . . A person with Parks' knowledge, experience and  
26 competence should have ordered [a title report].").

27 <sup>8</sup> Yim's conception of justifiable reliance is suspect;  
28 accordingly, his "testimony" about it is equally suspect.

29 <sup>9</sup> Mem. Dec. at 15; id. at 15 n.2 ("A debtor's ability to  
30 fund a deposit is relevant to the justifiable reliance  
31 analysis." (citing In re McClendon, 415 B.R. 170 (Bankr. D. Md.  
32 2009))).



1 investigated extensively.<sup>10</sup>

2 In short, Yim believes that justifiable reliance means no  
3 creditor will ever have to investigate a debtor's  
4 representations – put differently, he believes a subjective  
5 standard should be applied uniformly across all cases. But a  
6 subjective standard does not apply categorically. And Yim  
7 otherwise fails to dispute the bankruptcy court's particular  
8 application of the subjective standard to him.

9 Yim alternatively argues that he did not need to establish  
10 justifiable reliance because Debtor failed to disclose a  
11 material fact. Aplt's Opening at 25. But Yim must show that  
12 Debtor was under a duty to disclose. Apte v. Japra  
13 (In re Apte), 96 F.3d 1319, 1323 (9th Cir. 1996) ("Indeed, the  
14 nondisclosure of a material fact **in the face of a duty to**  
15 **disclose** has been held to establish the requisite reliance and  
16 causation for actual fraud under the Bankruptcy Code." (emphasis  
17 added)). And Yim concedes the bankruptcy court's conclusion  
18 that he failed to establish: (1) that Debtor was under a duty to  
19 disclose; and (2) even if Debtor were under a duty to disclose,  
20 that Yim was ignorant of Debtor's intent to seek alternate  
21

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22  
23 <sup>10</sup> See id. at 13 ("Barnes investigated all the disclosed  
24 parties and because he found no red flags initially, he invested  
25 in the Venture."); id. at 18 ("Barnes is a sophisticated  
26 investor but he had no previous experience with investing in  
27 this type of venture. . . . Barnes did his due diligence in  
28 investigating the key partners in the Venture and looked at  
Manjar and CFI prior to investing. Barnes was thorough in his  
investigation and follow-up questioning into the Venture prior  
to investing and did not act in an unusual or unreasonable  
manner.").

1 financing. Thus, Debtor's alleged non-disclosure does not  
2 establish justifiable reliance.

3 In sum, the bankruptcy court properly found that Yim failed  
4 to prove the fourth element of a § 523(a)(2)(A) claim.

5 **C. Husky does not alter our conclusion.**

6 Yim also argues that the bankruptcy court misapplied the  
7 Supreme Court's then-recent decision in Husky International  
8 Electronics, Inc. v. Ritz, 136 S. Ct. 1581 (2016). His analysis  
9 is not clear, and he completely misreads the case in part.

10 Compare Aplt's Opening Br. at 19 ("The Court further held that  
11 'actual fraud' . . . also covers 'acts of deception that 'may  
12 exist without the imputation of bad faith or immorality.'"),  
13 with Husky, 136 S. Ct. at 1586 ("'Actual' fraud stands in  
14 contrast to 'implied' fraud or fraud 'in law,' which describe  
15 acts of deception that 'may exist without the imputation of bad  
16 faith or immorality.'"). That aside, he argues the bankruptcy  
17 court erred in two respects: first, "by refusing to accept the  
18 admitted terms of the parties' contract itself (all cash, no  
19 loan contingency) as evidence of the fraud and of Debtor's  
20 intent to deceive"; and second, by refusing "to accept Debtor's  
21 own admission of his actual fraud in the Joint Stipulation."

22 We disagree. First, as a general matter, Husky holds that  
23 the "term 'actual fraud' in § 523(a)(2)(A) encompasses forms of  
24 fraud, like fraudulent conveyance schemes, that can be effected  
25 without a false representation." Husky, 136 S. Ct. at 1586.  
26 This does not alter the Ninth Circuit's elemental recitation for  
27 misrepresentation or false pretenses. Second, we have already  
28 addressed how Yim misunderstands the PSA Contract's terms and

1 the pretrial stipulation's facts. The bankruptcy court did not  
2 misapply Husky.

3 **CONCLUSION**

4 Based on the foregoing, we AFFIRM.  
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