

Dated: September 16, 2021



*Daniel P. Collins*

Daniel P. Collins, Bankruptcy Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In re:

RICHARD PAUL BROWN and  
BELINDA GAIL BROWN,

Debtors.

Chapter 7

Case No. 2:18-bk-00723-DPC

Adversary No. 2:18-ap-00057-DPC

K.A. FUCIARELLI, a married individual  
dealing with his sole and separate property;  
and THE FUCIARELLI GROUP, LLC, an  
Arizona limited liability company,

Plaintiffs,

v.

RICHARD PAUL BROWN and  
BELINDA GAIL BROWN, husband and  
wife,

Defendants.

**Findings of Fact and Conclusions  
of Law**

1 Plaintiffs K.A. Fuciarelli (“Dr. Fuciarelli”) and The Fuciarelli Group, LLC  
2 (collectively “Plaintiffs”) filed an Amended Complaint (DE 68) in this action to  
3 Determine the Dischargeability of Debt under 11 U.S.C. § 523(a)(2)(A) and (B) against  
4 debtors Richard P. Brown (“Mr. Brown”) and Belinda G. Brown (husband and wife)  
5 (collectively the “Defendants”). Through an order dated March 25, 2019 (DE 107), the  
6 Court dismissed Dr. Fuciarelli’s claim under 11 U.S.C. § 523(a)(2)(B), leaving the claim  
7 under 11 U.S.C. § 523(a)(2)(A) for trial.

8 The case came before the Court for trial on August 23, 2021. Having considered  
9 the evidence presented, and the law as it applies to the facts established, the Court now  
10 makes these findings of fact and conclusions of law.

### 11 **Findings of Fact**

12 1. Dr. Fuciarelli resided in Maricopa County, Arizona at all times material to  
13 this action. He filed this action in connection with his sole and separate property.

14 2. The Fuciarelli Group, LLC is an Arizona limited liability company that  
15 engaged in transactions in Maricopa County at all times material to this action.

16 3. Defendants are the debtors in the above bankruptcy action and at all times  
17 material to the Amended Complaint’s allegations were Arizona residents.

18 4. At all material times, the Defendants were married and Mr. Brown acted  
19 for the benefit and on behalf of his sole and separate property and marital community.  
20 Through the fraud described below, he benefited his sole and separate property and his  
21 marital community with Belinda G. Brown.

#### 22 **A. Nature of Action**

23 5. This case involves a \$1 million investment that Plaintiffs were fraudulently  
24 induced to make in a company named Hot Salsa Interactive, LLC (“Hot Salsa”). As  
25 represented by Mr. Brown, Hot Salsa developed mobile-phone apps and provided  
26 computer-technology services to businesses and the federal government. Until Plaintiffs  
27 invested, the company’s sole member and owner was Mr. Brown. Mr. Brown was Hot  
28 Salsa’s sole manager.

1           6.     Mr. Brown represented that Plaintiffs' \$1 million would be used as  
2 business working capital and to hire new employees and expand Hot Salsa's business.  
3 Instead, over half of the money was diverted to pay the Defendants' delinquent federal  
4 taxes and other personal expenses including their home mortgages in Arizona and  
5 Australia.

6           7.     Prior to this action, Plaintiffs sued Defendants in Maricopa County  
7 Superior Court Case No. CV2016-017253 for common-law fraud and securities fraud.  
8 After the Defendants' bankruptcy stayed the state-court action, Plaintiffs filed this  
9 action.

10           **B. Background to the Investment**

11           8.     Mr. Brown represented himself to Plaintiffs as a successful businessman  
12 who owned Hot Salsa, which Mr. Brown claimed was a growing business with federal  
13 contracts and other customers. He claimed that the company could become that much  
14 more successful if he had additional working capital to hire new programmers.

15           9.     Dr. Fuciarelli perceived that Mr. Brown's lifestyle corroborated his  
16 claimed success.

17           10.    The Defendants' appearance of success was a façade. Hot Salsa was not  
18 a successful company. By 2014, Hot Salsa and the Defendants owed over \$300,000 in  
19 back taxes and had an outstanding federal tax lien of \$191,000 for their 2012 taxes.

20           11.    Hot Salsa's and Defendants' desperate financial straits motivated  
21 Mr. Brown to mislead Plaintiffs about the use that he would make of their investments  
22 and the nature of Hot Salsa's business.

23           12.    Over the years, Dr. Fuciarelli and his wife became friends with the  
24 Defendants and socialized with them. Dr. Fuciarelli trusted Mr. Brown enough that he  
25 asked him to be his second daughter's godfather. Mr. Brown agreed and met with  
26 Dr. Fuciarelli's priest.

27           13.    During 2014, Dr. Fuciarelli and Mr. Brown began discussing an  
28 investment in Hot Salsa. In October of that year, Mr. Brown had his attorneys prepare

1 a term sheet for the investment. The investment was to be an equity investment in Hot  
2 Salsa, which was organized as a limited-liability company. Mr. Brown told  
3 Dr. Fuciarelli the investment and its paperwork had to comply with SEC rules and  
4 regulations.

5 14. By the end of November 2014, Mr. Brown had persuaded Dr. Fuciarelli  
6 to advance \$100,000 to Hot Salsa as a bridge loan. Dr. Fuciarelli then made two  
7 additional bridge loans of \$200,000 each in December of that year. In February 2015,  
8 the investment paperwork and SEC documentation was completed and Dr. Fuciarelli's  
9 company, The Fuciarelli Group, LLC, advanced another \$500,000 through two wire  
10 transfers. At that point, the entire \$1 million was credited as a 10% equity investment  
11 in Hot Salsa owned by The Fuciarelli Group, LLC.

12 15. Mr. Brown immediately used the third bridge loan in December 2014 to  
13 write a \$190,000 check to the IRS for the Defendants' delinquent federal taxes.

14 16. If Plaintiffs had known that Mr. Brown intended to use their investments  
15 to pay his taxes or personal living expenses, they would have never invested any money  
16 and they would have refused to sign Hot Salsa's Operating Agreement and Subscription  
17 Agreement.

18 17. Hot Salsa's Operating Agreement (¶ 5.8) provided that Mr. Brown would  
19 receive a salary of \$12,500 a month as compensation for his services as the Hot Salsa's  
20 manager. Mr. Brown paid no attention to the salary cap. He treated Hot Salsa's  
21 checking account as a personal account and withdrew from that account, with his wife,  
22 between \$30,000 to \$40,000 a month as direct draws, ATM withdrawals, and payments  
23 of the Defendants' personal living and recreational expenses.

24 18. Mr. Brown caused checks to be written to pay his personal taxes, home  
25 mortgage (\$8,558/month), utilities and landscaping, country-club and health-club fees,  
26 and payments on his Tesla (\$2,004/month) and his wife's Mercedes (\$1,058.28/month).  
27 Without Dr. Fuciarelli's knowledge, between November 2014 and May 2015, taxes and  
28 other personal expenses totaling \$504,647 were paid on the Defendants' behalf through

1 Hot Salsa's checking account.

2 19. In short, it was only by diverting Dr. Fuciarelli's investment funds to pay  
3 their personal bills that the Defendants were able to continue their extravagant lifestyle.

4 **C. Dr. Fuciarelli Discovers Mr. Brown's Fraud**

5 20. Dr. Fuciarelli began discovering Mr. Brown's fraud in May 2015 when he  
6 was preparing to invest another \$1 million. Dr. Fuciarelli asked to see some of Hot  
7 Salsa's financial records. In response, Mr. Brown sent him some of Hot Salsa's  
8 checking records for the period after he had invested.

9 21. A series of text messages between Dr. Fuciarelli and Mr. Brown two days  
10 after the checking records were sent capture Dr. Fuciarelli's anger and shock. He wrote  
11 that he was "totally spooked" by what he was seeing; that "you let me down huge;" and  
12 demanded that his money be repaid. The text exchange reads:

13 5/19/15 4:02 p.m.

14 **Dr. Fuciarelli:**

15 Rick, I need for you to know that I am totally spooked at what I am  
16 seeing on the statements. I would ask that for our next meeting you have  
17 the statements in hand for Jan thru April with a written description for  
18 each debit and credit paid. Before then, can you please tell me what the  
55k and 110k checks on the Feb statement were for? Thank you

19 **Mr. Brown:**

20 I'll have statements in hand and go over everything. Sorry to have  
spooked you. Hopefully when we meet you will feel comfortable

21 **Dr. Fuciarelli:**

22 Please have written description for each. And let me know about the  
23 checks for 55 and 110 K in advance

24 **Mr. Brown:**

25 Taxes paid

26 Other check for 55k was a loan repayment

27 **Dr. Fuciarelli:**

28 That's for 2012 taxes? What loan for 55 k if not sba?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Mr. Brown:**

I borrowed money from my mother and paid her back.

I'll show you a copy of the Check

**Dr. Fuciarelli:**

You never told me that you borrowed money from her, only sba. You also never said you owed back taxes. Investment was supposed to be for working capital, hiring key employees, etc!

**Mr. Brown:**

My apologies. I'm not trying to hide anything from you. I can go over every item with you

**Dr. Fuciarelli:**

You hid everything from me! What is wrong with you!

**Mr. Brown:**

Perhaps we talk in person.

**Dr. Fuciarelli:**

You let me down huge! How could you?? Why would you??

5/20/15 7:15 a.m.

**Dr. Fuciarelli:**

Please indicate when I can expect a check from you this month that returns my one million dollar investment made to hot salsa

22. By May 2015, Plaintiffs' entire \$1 million investment in Hot Salsa had been dissipated by Defendants. Contrary to Mr. Brown's representations to Plaintiffs that the \$1 million would be used for working capital and to hire new employees, at least \$504,647 of the money was used to pay the Defendants' delinquent taxes, mortgages, auto payments, and other personal expenses.

23. Further, during the course of discovery, Mr. Brown admitted that Hot Salsa had no government contracts as he had previously represented to Dr. Fuciarelli.

24. Mr. Brown misrepresented to Dr. Fuciarreli that Hot Salsa had government contracts.

1 25. Mr. Brown failed to disclose to Dr. Fuciarelli the Defendants’ significant  
2 tax debt and other liabilities, which if they had been known to Dr. Fuciarelli, would  
3 have stopped Plaintiffs from investing any money with the Defendants or Hot Salsa.

4 26. Dr. Fuciarelli would not have invested any money with Hot Salsa if  
5 Mr. Brown had not made the misrepresentations set forth above or if Mr. Brown had  
6 disclosed the above material information to Dr. Fuciarelli.

7 27. Regardless of the source of the \$1 million investment, it was the parties  
8 intent from the outset that The Fuciarelli Group, LLC would be credited the full \$1  
9 million for its investment in Hot Salsa.

### 10 **Conclusions of Law**

11 28. Plaintiffs’ complaint is based on 11 U.S.C. § 523(a)(2)(A). Section  
12 523(a)(2)(A) prohibits the discharge of any debt for money or property obtained by  
13 “false pretenses, a false representation, or actual fraud.” The Ninth Circuit uses a five-  
14 part test to determine whether a debt is nondischargeable under § 523(a)(2)(A):

- 15 • The debtor made a representation;
- 16 • The debtor knew the representation was false when made;
- 17 • The debtor made the misrepresentation with the intention of deceiving  
18 the creditor;
- 19 • The creditor relied on the debtor’s representation;
- 20 • The creditor sustained a loss as a proximate result of the debtor’s false  
21 representation.

22 *In re Britton*, 950 F.2d 602, 604 (9th Cir. 1991); *see also Ghomeshi v. Sabban (In re*  
23 *Sabban)*, 600 F.3d 1219, 1222 (9th Cir. 2010).

24 29. Plaintiffs carried their burden of proof on all elements of their claim  
25 against the Defendants under 11 U.S.C. § 523(a)(2)(A) and established that they are  
26 entitled to relief. *See Oney v. Weinberg (In re Weinberg)*, 410 B.R. 19, 35 (B.A.P. 9th  
27 Cir. 2009); *Grogan v. Garner*, 498 U.S. 279, 287-88, 111 S. Ct. 654, 660 (1991). The  
28 Fuciarelli Group, LLC is entitled to a judgment, which will be entered in the court

1 record by the Court with these findings of fact and conclusions of law, concluding that  
2 The Fuciarelli Group, LLC is entitled to a \$1 million judgment against Defendants, plus  
3 pre-judgment interest from the dates of the investment, through the date of the judgment  
4 at the federal rate, plus post-judgment interest from the date of the judgment at the  
5 federal rate, plus allowable court costs.

6 30. *Mr. Brown's representations.* Mr. Brown represented to Dr. Fuciarelli that  
7 "we would be using the money for working capital and to hire employees." Similarly,  
8 the Operating Agreement and Subscription Agreement represented and confirmed that  
9 all capital contributions would be used for business purposes. Mr. Brown also  
10 represented that Hot Salsa did business with the government under federal contracts.

11 31. *The representations' falsity.* Contrary to what he represented, Mr. Brown  
12 immediately began using Dr. Fuciarelli's investments to pay \$300,000 in delinquent  
13 personal taxes and to pay his family's living and other personal expenses. Likewise,  
14 contrary to Mr. Brown's representation about federal contracts, Hot Salsa was not a  
15 party to any federal contracts and had no revenue from federal contracts. Nor did the  
16 company do any work under any federal contracts. Mr. Brown knew that his  
17 representations were false, and he made them with the intention and purpose of  
18 deceiving Plaintiffs.

19 32. *Materiality.* By misrepresenting his intended use of Dr. Fuciarelli's  
20 investments, Mr. Brown made material misrepresentations. *See* RESTATEMENT  
21 (SECOND) OF TORTS § 525, cmt. c (1977) (statements that a person has an intention that  
22 he does not have are false representations). Misrepresentations regarding the intended  
23 use of an investor's money have repeatedly been held fraudulent. Falsely representing  
24 that Hot Salsa had federal contracts that had produced hundreds of thousands of dollars  
25 in revenue was also a material misrepresentation by Mr. Brown to Plaintiffs.

26 33. *Intent to deceive.* As evidenced by how Mr. Brown immediately began  
27 spending Dr. Fuciarelli's investments to pay Mr. Brown's taxes and other personal  
28 expenses, Mr. Brown intended to deceive Dr. Fuciarelli when he told him that the money



1 would be used for business working capital, to expand the business, and to hire new  
2 employees. The hundreds of thousands of dollars that Mr. Brown used to pay personal  
3 taxes and living expenses could not be used for Hot Salsa's business purposes.  
4 Mr. Brown's intent to mislead Dr. Fuciarelli is also evidenced by his conduct in having  
5 Dr. Fuciarelli sign an operating agreement and subscription agreement that falsely stated  
6 that Plaintiffs' investments would be used for business purposes. Mr. Brown's intent to  
7 mislead is also evidenced by his false representation that Hot Salsa had federal contracts  
8 from which it generated substantial revenue when no such contracts or revenue existed.

9       34. *Reliance.* In deciding to invest, Dr. Fuciarelli trusted Mr. Brown and  
10 justifiably relied on Mr. Brown's representations that Hot Salsa had federal contracts  
11 and that Plaintiffs' investments would be used for business working capital and to hire  
12 new employees. Plaintiffs would never have invested with Mr. Brown or signed an  
13 operating agreement or subscription agreement if Dr. Fuciarelli had known that  
14 Mr. Brown was misleading him about the federal contracts or that Plaintiffs' investments  
15 would be diverted to pay the Defendants' taxes and living expenses.

16       35. *Loss and damages.* As a result of being misled by Mr. Brown, Plaintiffs'  
17 entire \$1 million investment was lost. Defendants filed bankruptcy, making no attempt  
18 to reorganize or continue Hot Salsa's business. Plaintiffs have received no return on  
19 their investments, which are now worthless. The Fuciarelli Group, LLC has sustained  
20 damages in the principal amount of \$1 million USD and this damage is the proximate  
21 result of the misrepresentations made to Plaintiffs by Mr. Brown.

22       36. *Marital-community liability.* Fraudulent or malicious conduct by a spouse  
23 binds the marital community when a direct benefit to the community is shown. *Selby v.*  
24 *Savard*, 655 P.2d 342, 349 (Ariz.1982).

25       37. *Marital-community benefit.* The Defendants' marital community directly  
26 benefited from Mr. Brown's conduct by using Dr. Fuciarelli's money to pay taxes owed  
27 by them, as well as by using the money to fund their living expenses (mortgage  
28 payments, utilities, and landscaping) and recreational expenses (golf-club and health-

1 club fees). *In re Rollinson*, 322 B.R. 879, 882 (Bankr. D. Ariz. 2005) (finding direct  
2 community benefit where funds embezzled by spouse were used to pay family  
3 expenses).

4 38. Plaintiffs' demand for punitive damages is denied as Plaintiffs have failed  
5 to carry the burden of proof required for an award of punitive damages.

6 39. The Fuciarelli Group, LLC is entitled to pre-judgment interest from the  
7 Defendants at the federal rate under 28 U.S.C. § 1961(a) from the time of the  
8 investments through the date of the judgment in this matter. *See In re Acequia, Inc.*, 34  
9 F.3d 800, 818 (9th Cir. 1994) (*citing Purcell v. United States*, 1 F.3d 932, 942-43 (9th  
10 Cir. 1993)) ("Awards of prejudgment interest are governed by considerations of  
11 fairness and are awarded when it is necessary to make the wronged party whole.").

12 40. The Fuciarelli Group, LLC is entitled to post-judgment interest from the  
13 Defendants at the federal rate under 28 U.S.C. § 1961(a) from the date of the judgment  
14 until paid in full.

15 41. The Fuciarelli Group, LLC is entitled to recover their taxable costs from  
16 the Defendants.

17 42. The judgment to be entered against the Defendants and in favor of The  
18 Fuciarelli Group, LLC is not discharged through the Defendants' bankruptcy.

19 43. Judgment shall be entered against the Defendants and in favor of The  
20 Fuciarelli Group, LLC. Mr. Brown shall be individually liable and the community  
21 property of the Defendants but will not be entered against Mrs. Brown's sole and  
22 separate property outside of her community property with Mr. Brown for which  
23 Mr. Brown has no interest or entitlement.

24 Based on the forgoing, **IT IS ORDERED** directing counsel for Plaintiffs to  
25 prepare and provide to this Court a form of judgment consistent with these Findings of  
26 Fact and Conclusions of Law.

27 **DATED AND SIGNED ABOVE**

28