

SIGNED.

Dated: January 24, 2012



A handwritten signature in black ink, reading "James M. Marlar", is positioned above the printed name.

James M. Marlar, Chief Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In re:  
ENRICO BAFFERT LAOS and BETH  
ANNE LAOS,  
Debtors.

JOHN MUNIC ENTERPRISES, INC.,  
Plaintiff,  
vs.  
ENRICO BAFFERT LAOS and BETH  
ANNE LAOS, husband and wife,  
Defendants.

Chapter 7  
No. 4:11-bk-07828-JMM  
Adversary No. 4:11-ap-00793-JMM

**MEMORANDUM DECISION**

A trial was held on December 5-6, 2011 on Plaintiff's complaint, which seeks to hold a debt owed to it by the Defendants declared to be non-dischargeable. After reviewing all of the evidence, the court now rules.

**JURISDICTION**

This court has jurisdiction over this core matter, and may render a final judgment thereon. 11 U.S.C. §§ 157 and 1334; 11 U.S.C. § 523.



1           The purpose for the Munic loan was to save the Debtor couples' ranch property, in Elgin,  
2 Arizona, from imminent foreclosure (Ex. 12).

3           Ms. Laos, acting on behalf of her marital community and as agent for Mr. Laos under his  
4 notarized power of attorney, verbally and through written statements and documents,  
5 represented and gave the false impression to Plaintiff through Debtors' mortgage broker, Nova  
6 Financial & Investment Corporation ("Nova"), and to Plaintiff's counsel for this loan, Mr. Pace,  
7 that Ms. Laos had a liquid account with United Healthcare Group that was worth in excess of  
8 \$950,000 which could be pledged as part of the security for Plaintiff's loan to Defendants. This  
9 representation was false. In truth, the Defendants' accounts held no more than \$5,000 (Ex. 14).

10           But for the representation that the loan would be fully secured by this specific cash  
11 account of Defendants, the Plaintiff would not have made the loan.

12           In addition, Ms. Laos, acting on behalf of her marital community and as agent for Mr.  
13 Laos under his notarized power of attorney, verbally and through written statements and  
14 documents which she provided to her mortgage broker Nova and to Plaintiff's counsel Mr.  
15 Pace, falsely represented and gave the false impression to Plaintiff that Defendants were to  
16 receive a distribution of \$300,000 from the Laos Family Revocable Trust dated May 22, 2008.  
17 Such payment was to be received on or before August 29, 2009 (Ex. 6). The trust was also a  
18 sham, and never existed. Ms. Laos testified that she created the trust instruments, and all of the  
19 supporting documentation, out of whole cloth. Adding to this fabrication were a false "trustee,"  
20 Manuel Madrid, her farrier, and the grant of a "Financial Power of Attorney and Trustee" to  
21 Gabriella B. Laos, the parties' under-age daughter (Ex. 6). Moreover, the "grantor" of the trust  
22 instrument was Olivia B. Laos, another under-age daughter of the Defendants (Ex. 6). Even  
23 Olivia's address of 280 West Oak Hills Drive, Oracle, Arizona 85623 was simply made up. In  
24 truth, Olivia lived with the Defendants.

25           Ms. Laos also testified that, with regard to other attachments to the "trust" instrument,  
26 she made up assets and even faked the DeConcini, McDonald law firm's name. The trust never  
27 owned stock in Exxon/Mobil or Fluor Daniels, as represented. All information provided about  
28 the trust and its assets was completely false. So testified Ms. Laos.

1 One of the most significant misrepresentations given to Nova and Munic was the  
2 statement that the Defendants were to receive \$300,000 lump sum distributions on August 29,  
3 2009 (\$300,000), August 27, 2010 (\$300,000) and August 26, 2011 (\$300,000 or balance)  
4 (Ex. 7). Based upon this false misrepresentation, the Munic Note bore similar repayment terms  
5 (Ex. 2).

6 A "Schedule of Assets" was also given to Munic, to induce it to lend the Defendants  
7 \$900,000 (Ex. 9). Ms. Laos testified that, although that schedule listed liquid holdings of  
8 \$4,071,067, as well as 69,925 shares of Exxon/Mobil and 47,733 shares of Fluor Daniels stock,  
9 that she and her husband had never owned more than \$50,000 in liquid assets at any one time  
10 (Ex. 9).

11 In addition, with respect to the real property collateral located at 64 Appleton Lane in  
12 Elgin, Arizona, Ms. Laos also prepared a document, for Munic's consumption, that they had  
13 expended \$173,300 in improvements to the realty (Ex. 10). In fact, Ms. Laos testified that that  
14 document was also false, and that the couple had actually spent around \$50,000.

15 The scope of these admitted misrepresentations is staggering. In completely, reasonably  
16 and justifiably relying on the magnitude of this well-executed con, Munic lent Defendants  
17 \$900,000.

18 Ms. Laos openly admitted the falsity of her representation to induce Munic to lend  
19 \$900,000. She candidly, and without equivocation, acknowledged falsifying all of the material  
20 documents in the case. However, she stalwartly maintains that the entire fraud was strictly her  
21 doing, and that her husband, Enrico Laos, had nothing whatsoever to do with it. According to  
22 her, she was able to keep him completely in the dark while she manipulated a way to save the  
23 family ranch from foreclosure. And, she testified that Mr. Laos had never given her the power  
24 of attorney (Ex. 4).

25 No one, from Plaintiff's end, had any personal involvement with Mr. Laos.

26 For his testimony, Enrico Laos testified that he is a college graduate and a registered  
27 electrical engineer. He and Beth Anne Laos have been married about 20 years. He stated that  
28 although he would ask her questions about the status of their finances, especially the Elgin

1 property, she would somehow convincingly deflect the inquiries to avoid telling him the truth.  
2 He maintains that he had no knowledge about any of his wife's fraud on Munic.

3 The court finds Mr. Laos' testimony unconvincing, and worse, just not believable. He  
4 was certainly aware of the loan on the Elgin property which was coming due. His statements as  
5 to the source of the payoff to the foreclosing creditor, from a sale of the "Greer cabin," rings  
6 hollow. This is because he professed not to know what the cabin sold for, what it was worth,  
7 and what the payoff on its mortgage was.

8 In total, the entire scam appears to be centered on the defense of only one spouse  
9 defrauding everyone, including the husband, to insulate him--and possibly the marital  
10 community, from liability. The court finds that the entirety of the evidence tilts in favor of  
11 knowing involvement--at least on some significant level--of Enrico Laos. Plaintiff has proven  
12 his knowing involving a preponderance of the evidence. Accordingly, the court finds him  
13 equally liable for the fraud which victimized Munic.

14 Based upon the fraud--pre-bankruptcy--Munic brought suit in Superior Court and  
15 recovered a judgment against Enrico and Beth Laos, on February 28, 2011, for \$1,362,305.70  
16 (Ex. 1). The Superior Court made no findings on Enrico Laos' conduct in the nature of fraud.  
17 It entered judgment on the contract theory only, although it found that Beth Anne Laos had  
18 intentionally misrepresented her financial condition in order to induce Munic to lend the  
19 community money. The judgment was joint and several (Ex. 1).

## 20 21 THE LAW

22  
23 The creditor must prove the elements of § 523 by a preponderance of the evidence.  
24 Grogan v. Garner, 498 U.S. 279, 291, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991); In re Sabban,  
25 600 F.3d 1219, 1222 (9th Cir. 2010).

26 Section 523(a)(2)(A) provides:

- 27 (a) A discharge ... does not discharge an individual debtor from any debt-  
28 ....

1 (2) for money, property, services, or an extension, renewal, or  
2 refinancing of credit, to the extent obtained by-

3 (A) false pretenses, a false representation, or actual fraud, other  
4 than a statement respecting the debtor's or an insider's  
5 financial condition.

6 In order to establish that a debt is non-dischargeable under § 523(a)(2)(A), a creditor  
7 must establish five elements by a preponderance of the evidence:

- 8 (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;  
9 (2) knowledge of the falsity or deceptiveness of his statement or conduct;  
10 (3) an intent to deceive;  
11 (4) justifiable reliance by the creditor on the debtor's statement or conduct; and  
12 (5) damage to the creditor proximately caused by its reliance on the debtor's  
13 statement or conduct.  
14

15 In re Slyman, 234 F.3d 1081, 1085 (9th Cir. 2000). These elements must be proven by a  
16 preponderance of the evidence.

17 Whether the debt arises from fraud is the only consideration material to non-  
18 dischargeability. Consequently, whether or not the debtor received a benefit from the fraud is  
19 not a required element of proof. Muegler v. Bening, 413 F.3d 980, 983-84 (9th Cir. 2005)  
20 (citing Cohen v. de la Cruz, 523 U.S. 213, 223, 118 S.Ct. 1212, 140 L. Ed. 2d 341 (1998)).  
21

22 Our Ninth Circuit Court of Appeals has held:

23 The exception to dischargeability of debts under § 523(a)(2)(A) strikes a balance  
24 between competing goals. In order to avoid unjustifiably impairing a debtor's fresh  
25 start, we have held that the exception "should be construed strictly against creditors  
26 and in favor of debtors." . . . . At the same time, we have recognized that Congress  
27 created the exception "to prevent a debtor from retaining the benefits of property  
28 obtained by fraudulent means and to ensure that the relief intended for honest  
debtors does not go to dishonest debtors." . . . . In describing the reach and purpose  
of the exception, the Supreme Court has remarked that "it is 'unlikely that Congress  
... would have favored the interest in giving perpetrators of fraud a fresh start over  
the interest in protecting victims of fraud.'" Cohen, 523 U.S. at 223, 118 S.Ct.

1 1212 (quoting Grogan v. Garner, 498 U.S. 279, 287, 111 S.Ct. 654, 112 L.Ed.2d  
2 755 (1991)).

3 Sabban, 600 F.3d at 1222 (internal citations omitted).

4 The Bankruptcy Code's section 523(a)(2)(B) provides:

5 (a) A discharge ... does not discharge an individual debtor from any debt-  
6 ....

7 (2) for money, property, services, or an extension, renewal, or  
8 refinancing of credit, to the extent obtained by-  
9 . . . .

10 (B) use of a statement in writing--

11 (i) that is materially false;

12 (ii) respecting the debtor's or an insider's financial  
13 condition;

14 (iii) on which the creditor to whom the debtor is liable for  
15 such money, property, services, or credit reasonably  
16 relied; and

17 (iv) that the debtor caused to be made or published with  
18 intent to deceive.

19 The Ninth Circuit has restated the elements of § 523(a)(2)(B) as involving seven factors:  
20 "(1) a representation of fact by the debtor, (2) that was material, (3) that the debtor knew at the  
21 time to be false, (4) that the debtor made with the intention of deceiving the creditor, (5) upon  
22 which the creditor relied, (6) that the creditor's reliance was reasonable, [and] (7) that damage  
23 proximately resulted from the representation." In re Candland, 90 F.3d 1466, 1469 (9th Cir.  
24 1996).

25 "Material falsity" can be premised upon the inclusion of false information or upon the  
26 omission of information about the debtor's financial condition. In re Greene, 96 B.R. 279, 283  
27 (9th Cir. BAP 1986). These are "substantial inaccuracies of the type which would generally  
28 affect a lender's . . . decision." Candland, 90 F.3d at 1470.

1  
2 **APPLICATION OF THE LAW TO THE FACTS**  
3

4 All of the elements for a finding of non-dischargeability were satisfied by the testimony  
5 and the evidence.

6 Based upon Beth Anne Laos' admissions, and the totality of all of the evidence, the court  
7 will enter a § 523(a)(2) judgment against her, for fraud.

8 Based upon Beth Anne Laos' admissions and the totality of all of the evidence, the court  
9 will enter a § 523(a)(2) judgment against the marital community consisting of herself and her  
10 husband, Enrico Laos, for fraud.

11 Based upon a totality of the evidence, the court finds Enrico Laos' testimony, that he was  
12 ignorant of Beth Anne Laos' fraud upon Munic Enterprises, Inc. to be unconvincing and simply  
13 not credible. Munic has carried its burden of proof against Enrico Laos by showing, by a  
14 preponderance of the evidence, upon the totality of the evidence, the demeanor of the critical  
15 witnesses, and the reasonable inferences to be drawn therefrom, that Enrico Laos had sufficient  
16 knowledge of the fraudulent scheme to have judgment rendered against him, separately, for  
17 intentional fraud under 11 U.S.C. § 523(a)(2).  
18

19 **CONCLUSION**  
20

21 Judgment of non-dischargeability shall be entered for the Plaintiff on all legal theories  
22 noted herein, and jointly and severally against Beth Anne Laos, Enrico Laos and their marital  
23 community. Counsel for Plaintiff shall lodge a form of order within 15 days. Thereafter, any  
24 party aggrieved by its entry shall have 14 days to appeal. FED. R. BANKR. P. 8002.  
25

26 DATED AND SIGNED ABOVE.

27  
28 COPIES to be sent by the Bankruptcy Noticing  
Center ("BNC") to all parties to this adversary proceeding