



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re:)
ESPINOZA, LUIS AND YOLANDA,)
Debtors,)
_____)
FRANCISCO NARANJO,)
Plaintiff,)
vs.)
LUIS AND YOLANDA ESPINOZA,)
Defendant.)
_____)

Case No. LA 04-19237SB
Adv. No. LA-05-01511SB

CHAPTER 7

**ORDER AWARDING JUDGMENT
TO DEFENDANT AFTER TRIAL**

DATE: December 8, 2005
TIME: 10:00 a.m.
CRTRM.: 1575 (Roybal)

This adversary proceeding came on for trial on December 8, 2005. David R. Chase appeared for plaintiff Francisco J. Naranjo ("Naranjo"). The defendants Luis and Yolanda Espinoza did not appear. After hearing Naranjo's testimony and evaluating the evidence presented, and good cause appearing therefor, the court makes the following findings of fact and conclusions of law:

1. Plaintiff presented no evidence relating to debtor Yolanda Espinoza.

1 Accordingly, she is entitled to judgment in her favor.

2 2. Some of the testimony given at trial was unintelligible because plaintiff
3 testified largely in Spanish, and the translation was unintelligible, particularly with respect
4 to the person to whom the testimony referred. The court disregards the unintelligible
5 testimony, and relies on the testimony for which the meaning can be deciphered.

6 3. The first amended complaint makes reference to a claim under Bankruptcy
7 Code § 523(a)(4). However, plaintiff made no reference to this provision, or any of the
8 language contained therein, at trial. The court concludes that the claim under § 523(a)(4)
9 is abandoned.

10 4. Plaintiff also refers in his complaint to § 523(c)(3). There is no such statutory
11 provision, and the court finds that the plaintiff has proven no such claim.

12 5. The plaintiff proceeded to trial on his claim against debtor Luis Espinoza
13 (“Espinoza”) under § 523(a)(2). This provision makes nondischargeable a debt “for money,
14 property, services . . . to the extent obtained by– (A) false pretenses, a false representation,
15 or actual fraud” Under Ninth Circuit law, the plaintiff must prove a claim for fraud to
16 prevail under this provision. *See, e.g., Mandalay Resort Group v. Miller (In re Miller)*, 310
17 B.R. 185, 199-202 (Bankr. C.D. Cal. 2004).

18 5. To recover under a claim for fraud under § 523(a)(2)(A), a creditor must
19 show:

20 (1) the debtor made the representations; (2) that
21 at the time he knew they were false; (3) that he
22 made them with the intention and purpose of
23 deceiving the creditor; (4) that the creditor relied
24 on such representation; (5) that the creditor
sustained the alleged loss and damage as a
proximate result of the representations having
been made.

25 *See, e.g., In re Cossu*, 410 F. 3d 591, 596 (9th Cir. 2005). In *Field v. Mans*, 516 U.S. 59
26 (1995), the U.S. Supreme Court further elaborated that any reliance under § 523(a)(2) must
27 be justifiable. *See also Diamond v. Kolcum (In re Diamond)*, 285 F. 3d 822, 827-28 (9th Cir.
28 2002) (same).

CERTIFICATE OF MAILING

I certify that a true copy of this **ORDER AWARDING JUDGMENT TO DEFENDANT**
AFTER TRIAL was mailed on 12/20/05 to the parties listed below:

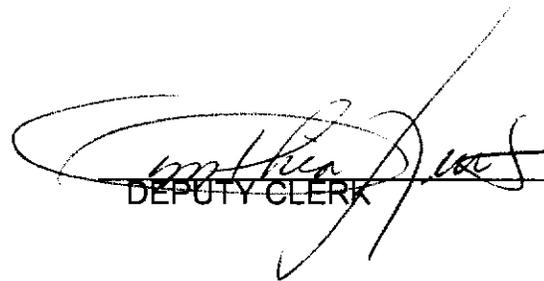
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DATED: 12/20/05


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