SO ORDERED.

Dated: March 30, 2026

Madeleine C. Wanslee

Madeleine C. Wanslee, Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re: **NICOLE KAY MUSIKANTOW**, Debtor.	Chapter 13 Case No. 2:22-bk-05308-MCW
YA-YA HOLDINGS, LLC, Plaintiff, v. **NICOLE KAY MUSIKANTOW**, Defendant.	Adversary No. 2:22-ap-00274-MCW **MEMORANDUM DECISION ON ADVERSARY COMPLAINT TO DETERMINE NON-DISCHARGEABILITY; FRAUDULENT INTENT OF NON-FILING SPOUSE NOT IMPUTED TO DEBTOR**

This adversary proceeding asks whether a debt may be excepted from discharge under 11 U.S.C. § 523(a)(2)(A), (a)(4), or (a)(6).[1] The Ninth Circuit has long instructed that these provisions are confined to their terms and applied with care in light of the Code's fresh-start policy. The creditor bears the burden of proving each element by a preponderance of the evidence, and must do so as to this Debtor. On this record, that showing is not made. The evidence may point to conduct by the Debtor's spouse that raises serious concerns sounding in fraud. But § 523 does not ordinarily operate by association. It normally requires proof that the debtor herself engaged in actual fraud or made a knowingly false representation; that she stood in the kind of express or technical fiduciary capacity the statute demands and committed defalcation within it;

[1] Unless otherwise indicated, all chapter and section references are to the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532, "Bankruptcy Rule" references are to the FEDERAL RULES OF BANKRUPTCY PROCEDURE, and "Civil Rule" references are to the FEDERAL RULES OF CIVIL PROCEDURE.

or that she acted with the deliberate intent to cause injury, not merely with knowledge that injury might result. None of that is established here. The marital relationship, without more, cannot supply the missing elements or justify imputing another's wrongdoing for purposes of nondischargeability. Because the Plaintiff has not carried its burden, the debt is dischargeable as to this Debtor.

Background

This dispute stems from Plaintiff's investment in Minibarbershop AZ, LLC, a business being developed for operation in California by the Plaintiff's husband, Evan Musikantow. Despite the investment of hundreds of thousands of dollars, the Minibarbershop never opened for business. Following the deterioration of their business relationship, the Plaintiff obtained a judgment against the Debtor, Evan Musikantow, and Minibarbershop AZ, LLC. Jason Caramanis, acting as the Plaintiff's representative, testified on behalf of the entity.

Following a trial of this matter, the parties completed post-trial briefing, and the Court took the matter under advisement (see Dkt. Nos. 132, 133, 134, and 135). The issue to be determined by the Court is whether sufficient facts have been established by admissible evidence for this Court to find that the debt is not subject to the discharge in this bankruptcy proceeding. The Adversary Complaint filed by Plaintiff Ya-Ya Holdings, LLC ("Ya-Ya Holdings") seeks a nondischargeability determination against Debtor Nicole Musikantow as the sole defendant.[2] The Court makes no determinations about whether the debt is dischargeable as to the non-filing spouse, Evan Musikantow, as to his sole and separate property, or to his interest in the marital community property.

The Plaintiff's Adversary Complaint sought a determination that a debt arising from a default judgment entered on September 20, 2016, by the Orange County Superior Court in case

[2] Evan Musikantow is the Debtor's non-filing spouse. The Court takes judicial notice of other proceedings in the administrative case. The Debtor has been married to Evan Musikantow since March 2009 and was married to him during all transactions relevant to this adversary proceeding.

number 30-2016-00834987 ("California Default Judgment"), is nondischargeable under 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). The Debtor, in response, contended that the judgment was entered in error, and returned to state court to seek relief.

Ms. Musikantow was unsuccessful in her efforts to alter, amend, or set aside the California Default Judgment in the California state courts. This Court has previously observed, consistent with the Rooker-Feldman doctrine,[3] that a bankruptcy court does not function as an appellate court to review or overturn state court judgments. Accordingly, this Court lacks authority to set aside or disregard the California Default Judgment.

At the same time, principles of issue preclusion apply where the requisite elements are satisfied. Thus, this Court will not revisit or disturb state court findings of fact or conclusions of law to the extent they were actually litigated, necessarily decided, and are otherwise entitled to preclusive effect in this proceeding.[4]

While the state court is fully competent to adjudicate state law causes of action, such as fraud, conversion, and other intentional torts, and its determinations on those issues may carry preclusive weight here, it does not decide the ultimate question of dischargeability. That determination is reserved to the federal courts, and in particular to the bankruptcy court, which has exclusive jurisdiction to decide whether a debt is excepted from discharge under the applicable provisions of 11 U.S.C. § 523(a).[5] Here, the California Default Judgment conclusively

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[3] Lower United States federal courts, including this court, do not sit in direct review of state court decisions. Rooker v. Fidelity Trust Co., 230 U.S. 413 (1923) and D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983).

[4] Issue preclusion applies in § 523(a) nondischargeability actions. Grogan v. Garner, 498 U.S. at 284. The federal court applies the state law where the judgment was entered to determine the preclusive effect of that judgment. Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 800 (9th Cir. 1995); see also 28 U.S.C. § 1738 ("Such . . . judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.").

[5] "Since 1970 . . . the issue of nondischargeability has been a matter of federal law governed by the terms of the Bankruptcy Code." Grogan v. Garner, 498 U.S. at 284 (citing Brown v. Felsen, 442 U.S. 127, 129-30, 136 (1979)).

establishes the existence and amount of the debt as to Evan Musikantow, Nicole Musikantow (f/k/a Nicole Zuber), and Minibarbershop AZ, LLC, in the amount of $387,893.54.

On February 12, 2024, the Plaintiff filed a *Motion for Summary Judgment* ("Motion") (Dkt. No. 49), seeking to apply issue preclusion to the California Default Judgment and to except the debt from discharge.[6] Following a hearing (see Minute Entry at Dkt. No. 70), this Court granted the Motion in part and denied it in part. The Court concluded that, in principle, issue preclusion could apply. However, upon review of the California complaint and the resulting default judgment, the Court found an absence of specific findings by the state court. As a result, the Court could not determine whether the issues necessary to establish nondischargeability, namely, whether the Debtor engaged in conduct satisfying the elements of § 523(a)(2)(A), (a)(4), or (a)(6), were actually litigated and necessarily decided, nor whether any findings were made as to the Debtor's conduct in the underlying transactions.

The Court did find that the underlying Adversary Complaint alleged affirmative conduct by the Debtor, suggesting that she was not merely a passive beneficiary of her spouse's actions. In particular, the allegations include that the Debtor received a substantial portion of the funds at issue and used those proceeds for personal expenses. To the extent the California Default Judgment established the existence and amount of the debt, the Court granted summary judgment. However, because the record did not support issue-preclusive findings as to the elements of nondischargeability, further proceedings were required to determine whether the debt is excepted from discharge under § 523(a). An *Order Granting in Part and Denying in Part*

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[6] The Plaintiff's written *Closing Argument* (Dkt. No. 133) acknowledges that claims were brought under § 523(a)(2), (a)(4), and (a)(6), but focuses almost entirely on § 523(a)(2). Its conclusion asserts that "Debtor's conduct warrants a finding that her debt owed to Ya-Ya Holdings, arising from the California default judgment for fraud, is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)." The brief offers only five sentences and an undeveloped reference to § 523 (a)(4) or (a)(6), without addressing the required elements for either subsection. Similarly, the Plaintiff's *Reply Closing Argument* (Dkt. No. 135) omits any reference to subsections (a)(4) or (a)(6) and again limits its conclusion to § 523(a)(2), concluding that "Debtor is not an innocent spouse, she received benefits of an investment obtained by fraudulent means, and her conduct warrants a finding that her debt owed to Ya-Ya Holdings is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)." This reply reinforces the exclusive focus on subsection 523(a)(2) and appears to abandon any claims under subsections 523(a)(4) and (a)(6), instead resting on an imputation theory tied to Evan Musikantow's alleged conduct.

Without Prejudice Plaintiff Ya-Ya Holdings' Motion for Summary Judgment was entered on May 14, 2024 (Dkt. No. 65).

Legal Standards

A creditor seeking to except a debt from discharge under 11 U.S.C. § 523(a) bears the burden of proving, by a preponderance of the evidence, each element of the statutory exception. Grogan v. Garner, 498 U.S. 279, 291 (1991); Oney v. Weinberg (In re Weinberg), 410 B.R. 19, 35 (9th Cir. BAP 2009) (11 U.S.C. § 523(a)(2)(A)); Mele v. Mele (In re Mele), 501 B.R. 357, 363 (9th Cir. BAP 2013) (11 U.S.C. § 523(a)(4)).

A fundamental policy of the Bankruptcy Code is to provide debtors with a fresh start through the discharge of debts. To protect that fresh start, exceptions under § 523(a) are strictly construed against creditors and in favor of debtors. Parks v. Angelus Block Co (In re Parks), 571 Fed. Appx. 523, 525 (9th Cir. 2014) (citing Snoke v. Riso (In re Riso), 978 F.2d 1151, 1154 (9th Cir. 1992)). Section 523(a)(2)(A) provides:

> (a) A discharge under section . . . 1328(b) of this title does not discharge an individual debtor from any debt—
> . . .
> (2) for money, property, services, or an extension, renewal, or refinancing of credit to the extent obtained by—
> (A) false pretenses, a false representation or actual fraud, other than a statement respecting the debtor's or an insider's financial condition[.]

11 U.S.C. § 523(a)(2)(A).

A plaintiff asserting fraud under § 523(a)(2)(A) must prove that the debtor: (1) made a representation; (2) knew it was false; (3) intended to deceive the creditor; (4) induced justifiable reliance by the creditor; and (5) caused the creditor to suffer proximate harm. In re Weinberg, 410 B.R. at 35. Section 523(a)(4) provides:

> (a) A discharge under section . . . 1328(b) of this title does not discharge an individual debtor from any debt—
> . . .
> (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny[.]

11 U.S.C. § 523(a)(4).

Section 523(a)(4) is written in the disjunctive: a debt is nondischargeable if incurred through (1) fraud or defalcation while acting in a fiduciary capacity; (2) embezzlement; or (3) larceny. Peltier v. Van Loo Fiduciary Servs., LLC (In re Peltier), 643 B.R. 349, 359 (9th Cir. BAP 2022) (citing Bullock v. BankChampaign, N.A., 569 U.S. 267, 275 (2013)). Embezzlement or larceny does not require a fiduciary relationship. In re Peltier, 643 B.R. at 359 (citing Transamerica Com. Fin. Corp. v. Littleton (In re Littleton), 942 F.2d 551, 555 (9th Cir. 1991)).

Fraud or defalcation in a fiduciary capacity requires the creditor to show (1) an express trust existed; (2) the debt resulted from fraud or defalcation; and (3) the debtor acted as a fiduciary when the debt arose. In re Peltier, 643 B.R. at 359 (citing In re Mele, 501 B.R. at 363 and Otto v. Niles (In re Niles), 106 F.3d 1456, 1459 (9th Cir. 1997)). Defalcation requires a "culpable state of mind," shown by bad faith, moral turpitude, or an intentional wrong. Bullock, 569 U.S. at 269, 273-74.

Embezzlement which is "the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come" requires proof of (1) rightful possession by a nonowner; (2) appropriation for use other than which [it] was entrusted; and (3) circumstances indicating fraud." In re Peltier, 643 B.R. at 359-60 (quoting In re Littleton, 942 F.2d at 555). Larceny is defined as "felonious taking of another's personal property with intent to convert it or deprive the owner of the same." Id. (citing Ormsby v. First Am. Title Co. of Nev. (In re Ormsby), 591 F.3d 1199, 1205 (9th Cir. 2010)). The distinction is that embezzlement involves property initially entrusted to a nonowner, whereas larceny involves property never rightfully possessed. Both require wrongful or felonious intent. Bullock, 569 U.S. at 273-75.

Section 523(a)(6) provides:

> (a) A discharge under section . . . 1328(b) of this title does not discharge an individual debtor from any debt—
>
> . . .

> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity[.]

11 U.S.C. § 523(a)(6).

The United States Supreme Court has clarified that § 523(a)(6) covers "only acts done with the actual intent to cause injury," not merely acts done intentionally that happen to cause harm. Kawaauhau v. Geiger, 523 U.S. 57, 61-64 (1998). The focus is on the debtor's "subjective . . . state of mind" and applied only when the debtor knows "harm to the creditor was substantially certain." Thiara v. Spycher Brothers (In re Thiara), 285 B.R. 420, 432 (9th Cir. BAP 2002) (citing Carrillo v. Su (In re Su), 290 F.3d 1140, 1146 (9th Cir. 2002)). The "willful" and "malicious" injury requirements are conjunctive but analyzed separately. Su, 290 F.3d at 1146-47.

A "willful" injury is a deliberate or intentional injury, not merely an intentional act that causes harm. Barboza v. New Form (In re Barboza), 545 F.3d 702, 706 (9th Cir. 2008) (quoting Geiger, 523 U.S. at 61 (internal quotation marks omitted)). The Ninth Circuit Bankruptcy Appellate Panel ("BAP") explains that "the Supreme Court in Geiger effectively adopted a narrow construction and the most blameworthy state of mind" for § 523(a)(6) nondischargeability. Plyam v. Precision Dev., LLC (In re Plyam), 530 B.R. 456, 464 (9th Cir. BAP 2015). To satisfy this element, the plaintiff must show the debtor either intended the harm or knew it was substantially certain to occur. Su, 290 F.3d at 1144. The Ninth Circuit presumes that a debtor knows the natural consequences of his actions. In re Ormsby, 591 F.3d at 1206.

A malicious injury requires "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." Barboza, 545 F.3d at 706. The intent requirement applies to the act, not the injury itself. In re Sicroff, 401 F.3d 1101, 1106 (9th Cir. 2005). Malice may be inferred based on the nature of the wrongful act. Ormsby, 591 F.3d at 1207.

Tortious conduct is generally required for nondischargeability under § 523(a)(6). Lockerby v. Sierra, 535 F.3d 1038, 1040 (9th Cir. 2008); see also Geiger, 523 U.S. at 61, 64

(noting that § 523(a)(6) encompasses intentional torts, not negligent or reckless torts.) (citation omitted). Bankruptcy courts apply state law to determine whether an act is tortious. See generally Lockerby, 535 F.3d at 1041.

Analysis

The Court has reviewed the stipulated facts in the Joint Pretrial Statement and the trial transcript (Dkt. Nos. 122 & 136). After careful review, the Court finds that Plaintiff's representative, Mr. Caramanis, testified that he received no representations from Ms. Musikantow. Both Ms. and Mr. Musikantow testified that Nicole Musikantow was not involved in any business negotiations or financing arrangements between Ya-Ya Holdings, LLC, and either Evan Musikantow or Minibarbershop AZ, LLC. Testimony further established that Ms. Musikantow was not an officer, director, or manager of Minibarbershop AZ, LLC, the entity in which Ya-Ya Holdings and Mr. Caramanis made their investment, and which developed the California business locations.

As such, there is no evidence that Ms. Musikantow took any direct action that would render the debt from the California Default Judgment nondischargeable under § 523(a)(2)(A), (a)(4), or (a)(6). There is no showing that she made any representations to Ya-Ya Holdings or Mr. Caramanis, knowingly misrepresented information with intent to deceive, or caused justifiable reliance resulting in damages. The Plaintiff has therefore not met the elements required under § 523(a)(2)(A).

Regarding fraud or defalcation while acting in a fiduciary capacity, there is no evidence of an express trust or that Ms. Musikantow acted as a fiduciary when the debt was created. Even assuming such a fiduciary relationship existed, there is no evidence of her "culpable state of mind," which is required to establish defalcation.

As to embezzlement, the evidence shows that Plaintiff's funds were never entrusted to Ms. Musikantow, and she was not involved in her husband's business operations or negotiations. No testimony established that she directly possessed or misappropriated Plaintiff's funds.

Similarly, the Plaintiff failed to establish larceny. Mr. Caramanis testified that during a single meeting in late 2014, when he was considering an additional $100,000 investment after his initial $250,000,[7] he reviewed business financials and observed what he believed to be personal expenses, including a Disneyland trip, automobile tires, and other charges, as well as payments to Ms. Musikantow and the presence of a personal debit or credit card on the account. However, this testimony was conclusory, uncorroborated by any records, and based solely on that meeting. It is unclear whether the referenced expenses were attributable to Ms. Musikantow, Mr. Musikantow, or both, as Mr. Caramanis generally stated that "they" were using company funds for "their" personal expenses. His assertion that "Nicole and Evan" used the business account as a personal account was similarly conclusory without corroborating evidence.

Mr. Caramanis further testified that Evan Musikantow explained that payments to Ms. Musikantow were for design work she performed for the company, though Mr. Caramanis opined that her work was nonexistent because he did not observe her in Los Angeles. Ms. Musikantow, by contrast, testified that she was unaware of the alleged personal expenses and that her design company was retained as an independent contractor.

Ms. Musikantow testified that she was unaware of the company paying for any Disneyland trip. She did testify that because her kids were in competitive dance that she was at Disneyland every year for those competitions, and she paid for those trips because she had to be there as a "dance mom." Ms. Musikantow also testified that she knew nothing about buying tires or any other personal expenses paid directly by the business. Ms. Musikantow testified that her design company was hired like any other contractor doing work on the business locations; and when responding to a question about fees charged for a location where not much work had been completed, she testified that much of the design work is done up front before they break ground on construction or even before permitting can be completed.

[7] Ya-Ya Holdings, LLC, through Mr. Caramanis, did make the additional $100,000 investment into the California business venture.

The Court finds that the Plaintiff has not demonstrated specific fraudulent intent, wrongful appropriation, or felonious taking by Ms. Musikantow. Plaintiff has therefore failed to establish nondischargeability under § 523(a)(4).

The Court also finds that Plaintiff has not shown that Ms. Musikantow's actions caused a willful or a malicious injury to Plaintiff or Plaintiff's property under § 523(a)(6). There was no clear information adduced at trial or in the written closing arguments that would point to any alleged specific tortious conduct. Tortious conduct is generally a required element for a debt to be nondischargeable under § 523(a)(6).

Based on the foregoing, the Court concludes that the Plaintiff has failed to meet its burden of production and burden of persuasion that the Debtor's actions render the debt from the California Default Judgment nondischargeable under § 523(a)(2)(A), (a)(4), or (a)(6). Judgment will not be entered in favor of the Plaintiff on this basis.

Imputation of Evan Musikantow's Alleged Wrongful Conduct Upon Nicole Musikantow

As noted above, Evan Musikantow is not a co-debtor or a party to this adversary proceeding. Although he was subject to the same California Default Judgment entered in Orange County, the judgment is not entitled to issue preclusion here. While fraud was alleged, the judgment also encompassed other causes of action, including breach of contract; the issues were not actually litigated, the parties are not identical, and a finding of fraud was not necessary to the judgment.

As further noted, although the Adversary Complaint asserts claims under § 523(a)(2)(A), (a)(4), and (a)(6), the Plaintiff's closing briefing focuses primarily on § 523(a)(2)(A), offering only brief, conclusory assertions as to § 523(a)(4) and (a)(6) without addressing their required elements. Plaintiff expressly states, "Should this Court find that Section (a)(2) does not provide a basis to find the debt nondischargeable, then it should be found nondischargeable under either of the other two Sections."

Plaintiff's principal argument rests on its assertion that "substantial evidence" establishes that "Evan Musikantow committed fraud." Because Evan is not a party to the action or the underlying bankruptcy case, he has had no opportunity to defend in this Court against those allegations. Nevertheless, solely for purposes of analyzing imputation, the Court assumes, without finding, that Evan Musikantow committed fraud sufficient to satisfy § 523(a)(2)(A) and that the debt would be nondischargeable as to him. **This assumption is made only to determine whether any such conduct may be imputed to Nicole Musikantow and does not constitute a finding as to Evan's liability or dischargeability.**

Plaintiff has also not addressed the liability of the marital community property or argued that any community debt should be excepted from discharge. See Arcadia Farms Ltd. v. Rollinson (In re Rollinson), 322 B.R. 879 (Bankr. D. Ariz. 2005). As Judge Haines explained in Rollinson, marital status alone is insufficient to impute nondischargeability to an "innocent spouse" absent an agency relationship between the spouses. Rollinson at 884 (citing Tsurukawa v. Nikon Precision, Inc. (In re Tsurukawa), 258 B.R. 192, 198 (9th Cir. BAP 2001)). The "innocent spouse" analysis pertains only to the dischargeability of the spouse's individual liability; if the parties remain married at the time of filing, post-petition community property may still be liable for nondischargeable community debt. Id. at 884-85.

Here, the Court has made no determination regarding the dischargeability of any debt as to Evan Musikantow. He is not a debtor or a party to this proceeding, and the Court therefore lacks jurisdiction to enter any binding determination as to his liability or discharge. Plaintiff nevertheless seeks to impute Evan's alleged fraud arising from the unfinished expansion of the Minibarbershop business locations to California to the Debtor. It argues that courts have imputed fraud under partnership or agency principles, even absent an innocent party's knowledge or participation, and contend that the same principle should apply in the spousal content.

Although not cited by the Plaintiff, Bartenwerfer v. Buckley, 598 U.S. 69 (2023), addresses this issue. There, the Supreme Court reaffirmed that fraud may be imputed to an

innocent debtor based on a partnership or agency relationship. The underlying facts are critical. Also important is Justice Sotomayor's concurring opinion. The debtors there entered a business partnership, before their marriage, to purchase, renovate, and sell the subject real property in San Francisco. David managed the project and knowingly concealed material defects in the property from the buyer, resulting in liability for fraud. In subsequent nondischargeability proceedings under § 523(a)(2)(A), the bankruptcy court imputed the fraudulent intent to Kate, the other partner who was largely uninvolved. The Ninth Circuit BAP reversed, finding there was fraud on the part of David, but that the fraud would only be imputed to Kate if she knew of David's fraud. The Ninth Circuit reversed the BAP holding that a debtor who is liable for her partner's fraud cannot discharge the debt in bankruptcy regardless of her own culpability. The Supreme Court affirmed, holding that a debtor may not discharge a debt for a partner's fraud regardless of personal culpability.

Importantly, the Supreme Court emphasized that imputation arises from a "special relationship," such as partnership or agency. 598 U.S. at 82. The Bartenwerfers entered a business partnership before they were married, and that business partnership remained throughout the renovation and the selling of this particular piece of real property. The Supreme Court stated, "Ordinarily, a faultless individual is responsible for another's debt only when the two have a special relationship, and even then, defenses to liability are available." 598 U.S. at 82. The concurrence put a finer point on the partnership relationship between the two subsequently married Debtors when agreeing with the outcome of the decision. Justice Sotomayor pointed out that "The Bankruptcy Court found that petitioner and her husband had an agency relationship and obtained the debt at issue after they formed a partnership" Id. at 84. Thus, Bartenwerfer v. Buckley does not expand imputation based solely on marital status; rather it reaffirms that imputation depends on established partnership or agency principles. This is consistent with longstanding Ninth Circuit authority, including the 2001 Tsurukawa I ruling, which requires more than the mere existence of a marital relationship to impute fraud.

Plaintiff relies on Tsurukawa II[8] both for the elements of common law fraud and for the proposition that fraud may be imputed to a spouse under partnership or agency principles. Plaintiff concedes that the Debtor did not make the alleged misrepresentations, but contends she was sufficiently involved in the business to be held responsible for the resulting wrongdoing. On that basis, Plaintiff asserts that the Debtor and Evan Musikantow were business partners.

The Court finds that Plaintiff's conclusion that the Debtor was a partner in the California business is not supported by the evidence. Although the Debtor testified that she helped develop the original business concept in Arizona, the expansion into California was undertaken through a separate legal entity. It is undisputed that the Debtor held no ownership interest in that entity. She testified that, unlike her involvement in the Arizona venture, her role in the California expansion was limited to performing design work and that she was neither an owner nor a partner.

This testimony is consistent with Mr. Caramanis' own account. He questioned why payments were made to Ms. Musikantow, stating that he did not observe her involvement in Los Angeles and believed her contributions were minimal or nonexistent. However, such observations do not establish a partnership relationship; rather, they are consistent with the Debtor's characterization of her role as limited and project-based. The Debtor testified that she performed design services as an independent contractor and explained that such work is typically completed in the early stages of development, prior to permitting and construction.

The Court therefore finds that, while the Debtor may have been involved in the Arizona venture, she was not a partner in the California venture. The evidence establishes, at most, that she acted as a contractor providing design services. There is no credible evidence that she was held out as a partner, exercised control over the business, or possessed authority consistent with

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[8] The Plaintiff cites to the later version in Tsurukawa II, 287 B.R. 515 (9th Cir. BAP 2002), rather than the earlier decision relied upon by Judge Haines in Rollinson. Following remand in the initial decision, Tsurukawa I, the case returned to the BAP to address whether a partnership or agency relationship existed between the spouses. The BAP reiterated that "to impute fraud to a spouse, there must be a 'partnership or other agency relationship.'" 287 B.R. at 527 (citing Tsurukawa I and Fifth Circuit authority). It further reaffirmed this principle, stating: "We adhere to that view." 287 B.R. 527.

a partnership or agency relationship. Evidence that she received payments, or may have had access to a debit or credit card, does not alter this conclusion, particularly where she testified that such payments were for legitimate design work and denied that company funds were used for personal expenses.

The Court concludes that the Plaintiff has failed to establish, by a preponderance of the evidence, the elements necessary to impute Evan Musikantow's alleged fraud to the Debtor. Under Bartenwerfer v. Buckley and Tsurukawa I/Tsurukawa II, imputation requires a partnership or agency relationship. No such relationship has been proven here. The Plaintiff concedes that the Debtor did not make the alleged misrepresentations, and the evidence does not support a finding that she was a partner in the California venture. At most, the Debtor provided limited services as a contractor, which is insufficient to support imputation. For the foregoing reasons,

IT IS ORDERED that judgment is entered in favor of the Debtor, Nicole Musikantow, and against the Plaintiff, Ya-Ya Holdings, LLC, on the issue of whether the debt arising from the California Default Judgment is excepted from discharge in this Chapter 13 case. Upon the Debtor's completion of her confirmed Chapter 13 Plan and entry of a Discharge under 11 U.S.C. § 1328, her personal liability on that debt shall be discharged.

IT IS FURTHER ORDERED that this ruling makes no findings or conclusions regarding the liability or potential dischargeability of the non-filing spouse, Evan Musikantow, nor as to whether marital community property may remain liable. This ruling is limited to the determination that Nicole Musikantow's separate property, and her interest in any marital community property, are not subject to a nondischargeability determination based on her conduct, or the failed attempt to impute liability to her. Any future determination regarding Evan Musikantow's liability, and its effect on marital community property, may alter that result.

IT IS FURTHER ORDERED that a judgment of dismissal consistent with this Memorandum Decision will be entered contemporaneously.

SIGNED AND DATED ABOVE.