



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 18, 2012

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No.: BK-S-11-11272-MKN
)	Chapter 7
GOLDFINGER GOLDFINGER, fka Ira Hugh)	
Feldman aka Goldfinger,)	
)	
Debtor.)	
_____)	
ALL AMERICAN JEWELRY & LOAN,)	Adv. Proc. No.: 11-01156-MKN
LLC,)	
Plaintiff,)	
v.)	
)	
GOLDFINGER GOLDFINGER, fka Ira Hugh)	
Feldman aka Goldfinger,)	
)	
Defendant.)	
_____)	

MEMORANDUM DECISION AFTER TRIAL

Only in Las Vegas.¹ And maybe in Bakersfield.²

¹ The City of Las Vegas, Nevada, is often promoted as a world class entertainment destination where extraordinary things occur and where “what happens here, stays here.”

² The City of Bakersfield, California, is sometimes referred to as “California’s Country Music Capital” and has drawn attention in Nevada’s bankruptcy court as the part-time home to a promoter of automobiles that can fly. See In re Trans Max Technologies, Inc., 349 B.R. 80 (Bankr.D.Nev. 2006) (order denying confirmation of Chapter 11 plan for the development of

1 On January 30, 2011, defendant Goldfinger Goldfinger, formerly known as Ira Hugh
2 Feldman (“Goldfinger”)³, filed a voluntary Chapter 7 petition. On June 20, 2011, plaintiff All
3 American Jewelry & Loan, LLC (“AA Jewelry”) filed an adversary complaint seeking a
4 determination that Goldfinger is prohibited under Section 523(a)(2)(A)⁴ from discharging a
5 certain debt in excess of \$600,000. On July 20, 2011, Goldfinger filed an answer to the
6 complaint.

7 On July 16, 2012, a trial was conducted. AA Jewelry was represented by counsel;
8 Goldfinger appeared *in propria persona*.⁵ In support of its case, AA Jewelry presented the
9 testimony of three witnesses and offered fourteen exhibits into evidence. Goldfinger cross-
10 examined each witness. At the completion of AA Jewelry’s case in chief, Goldfinger initially
11 was sworn in as a witness for his defense, but then declined to testify under oath. After closing
12 arguments were presented, the matter was taken under submission.

13 This memorandum decision constitutes the court’s findings of fact and conclusions of
14 law pursuant to FRBP 7052 and FRCP 52.

15 THE TRIAL TESTIMONY AND MATERIALS ADMITTED

16 Robert Noble (“Noble”) is the manager of AA Jewelry, which is a pawn shop located in
17 _____
18 flying car).

19 ³ According to the complaint and answer filed in this adversary proceeding, Ira Hugh
20 Feldman legally changed his name to Goldfinger on June 8, 2010. It is unclear whether
21 defendant’s chosen legal name is a reference to or a homage to the villain in the Ian Fleming
22 novel and subsequent James Bond film of the same name.

23 ⁴ In this memorandum decision, all references to "Section" shall be to provisions of the
24 Bankruptcy Code, 11 U.S.C. section 101 et seq. All references to “FRBP” are to the Federal
25 Rules of Bankruptcy Procedure and all references to “FRCP” are to the Federal Rules of Civil
26 Procedure.

⁵ Prior to trial, Goldfinger’s then-counsel filed a motion to withdraw from further
representation because Goldfinger would not pay for counsel’s services. The motion was heard
on notice to Goldfinger who did not oppose counsel’s request or appear at the hearing on the
motion. Goldfinger did not obtain new counsel or request a continuance of the trial.

1 Bakersfield, California. He had been in the pawn business since 1996 and owned the pawn
2 shop since 2001. Noble testified that he had been introduced to Goldfinger by another customer
3 several years before the transactions giving rise to the current litigation. Goldfinger frequently
4 did business at the pawn shop, commonly on the last Thursday of each month, by paying cash
5 for precious metal jewelry (also called “scrap”) collected by AA Jewelry.⁶ Goldfinger and
6 Noble developed a friendship over the years, and they would go to lunch and occasionally have
7 dinner together (along with their wives).

8 Jimmy Carrillo (“Carrillo”) also was employed by AA Jewelry. Carrillo testified that
9 whenever Noble was not at the pawn shop, he supervised the other employees. Carrillo also
10 conducted business several times with Goldfinger. Carrillo was familiar with Goldfinger as a
11 special customer who was trusted by his boss.

12 Noble testified that between April 2, 2008 and May 28, 2008, AA Jewelry made six
13 separate loans to Goldfinger totaling \$600,000, having interest rates of either 15% or 18%. As
14 the loans were made, they were to be secured by an appropriate amount of silver bars or silver
15 shot provided by Goldfinger to be kept at the pawn shop. For the loans totaling \$600,000,
16 Goldfinger provided 44,000 ounces of silver bars and shot which, at the time the final loans
17 became due, had a total value of \$774,000.⁷

18
19 ⁶ Goldfinger apparently would take scrap silver jewelry to a smelter facility so it could
20 be converted to silver bars or shot. There was no evidence introduced as to what Goldfinger
would do with other metals.

21 ⁷ All six loans were in \$100,000 increments. The borrowers on the loans are Ira
22 Feldman, Joyce Feldman, and/or the Feldman Family Trust. As part of the terms of the loan
23 agreements, AA Jewelry required Goldfinger to provide quantities of silver sufficient to ensure
24 that the loans outstanding would not exceed 80% of the value of the silver in AA Jewelry’s
25 possession. Noble testified that he would normally require that loans made by the pawn shop not
26 exceed 25% of the value of the collateral, but he allowed the higher loan-to-value ratio because
of his relationship of trust with Goldfinger. Moreover, Noble testified that AA Jewelry never
loaned any other customer such a large amount of money, but did so because he trusted
Goldfinger and because of the amount of collateral that was present. Some of the loans required
Goldfinger to provide 7,000 ounces of silver while others required him to provide 8,000 ounces.

1 Noble testified that the silver that Goldfinger brought to the pawn shop was sealed in
2 original smelter packaging. The silver bars and shot included stamps or seals from the smelter
3 facility and were often accompanied by receipts. Noble inspected the silver bars and shot for
4 seals and reviewed the receipts brought in by Goldfinger. Noble did not open the packaging to
5 test the contents because it would have reduced the value of the items. AA Jewelry held the
6 silver at its shop in two safes, one large and one small, to which only Goldfinger had the
7 combinations for the locks.⁸

8 Noble also testified that in the Spring of 2009, he agreed that Goldfinger could trade out
9 5,000 ounces of silver bars and shot from the safes to be replaced with 5,000 one-ounce silver
10 coins. Noble personally verified that an even exchange of 5,000 ounces of silver took place.
11 He testified that at some later point, he also agreed to modify the loan terms to make the interest
12 rate 15% for all the loans that AA Jewelry made to Goldfinger.⁹

13 Noble further testified that he planned to travel to Oregon in July 2009 for the birth of
14 his grandson. He departed for Oregon on July 24, 2009, and left Carrillo in charge. Noble
15 testified that the week before he left, he informed Goldfinger that he would be gone, apparently
16 because Goldfinger commonly purchased scrap on the last Thursday of each month. According
17 to Noble, Goldfinger never mentioned any interest in trading out more silver bars and shot from
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19 Copies of the loan documents were admitted into evidence as Exhibits "1" through "9".

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21 ⁸ Noble testified that there were four safes in the pawn shop premises. One of the safes
22 was brought into the shop by Goldfinger and only Goldfinger had the combination. Another safe
23 originally was owned by AA Jewelry and was sold to Goldfinger. Thereafter, the latter safe was
24 re-keyed so that only Goldfinger had the combination. A copy of the locksmith's invoice for
25 setting a new combination was admitted into evidence as Exhibit "10." The apparent purpose of
26 this "fail-safe" arrangement was to ensure that AA Jewelry had physical possession of the two
safes and their contents, while only Goldfinger could open the safes and only when Noble was
present.

⁹ The parties set out three new due dates for the loans: two loans were due on September
26, 2009, two on October 27, 2009, and two on November 27, 2009.

1 the safes.

2 Noble testified that Goldfinger showed up at the pawnshop on Wednesday, July 29,
3 2009, while Noble was on vacation. Noble stated that he received a telephone call from Carrillo
4 regarding Goldfinger's purchase of additional scrap after which time Goldfinger was put on the
5 phone. In his conversation with Goldfinger, Noble confirmed the weight of the scrap jewelry
6 that he had set aside for Goldfinger. At no time did Goldfinger or Carrillo mention to Noble
7 that additional silver bars and shot would be traded out of the safes.

8 Noble further testified that instead of substituting silver bars and shot from the safes
9 with silver coins, Goldfinger replaced the silver bars and shot with boxes marked with the
10 words ".999 Pure Silver 500." He testified that the boxes actually contained red bricks rather
11 than silver coins. He stated that Goldfinger completely emptied the smaller of the two safes and
12 filled the larger safe with the boxes of bricks. Noble also testified that Carrillo helped carry the
13 silver from the safe to Goldfinger's vehicle and the boxes of bricks from the vehicle to the safe,
14 but that Carrillo never inspected the actual contents of the marked boxes. Noble testified that
15 Goldfinger represented to Carrillo that he would return on Saturday, three days later, to replace
16 the missing collateral. However, Goldfinger did not show up on the following Saturday.

17 Carrillo testified that he had worked for AA Jewelry for more than 11 years. He was
18 familiar with Goldfinger and his friendship with Noble. Before Noble left for vacation on July
19 24, 2009, he told Carrillo that Goldfinger may be coming by the pawn shop to acquire
20 additional scrap. Carrillo testified that Noble actually gathered and weighed the scrap jewelry
21 and set it aside before he left on vacation. After Goldfinger arrived at the pawn shop on July
22 29, 2009, Carrillo stated that he called Noble about the scrap purchase from the office telephone
23 and eventually put Goldfinger on the phone. Carrillo returned to the sales floor while Noble
24 and Goldfinger were talking. He testified that he left Goldfinger alone in the office because he
25 was a trusted friend of Noble.

26 Carrillo testified that after the telephone conversation was completed, Goldfinger

1 requested Carrillo's assistance in moving the silver bars and shot from the safes to his vehicle.
2 Carrillo did not find this unusual given the relationship between Goldfinger and Noble, and he
3 did not question it. He testified that he would not allow any other customer to remove collateral
4 from the pawn shop on the promise to return it. Carrillo and other employees helped carry
5 boxes from Goldfinger's vehicle into the pawn shop where Goldfinger put the boxes into the
6 larger safe. Carrillo testified that he did not open any of the boxes or question Goldfinger about
7 their contents. He testified that Goldfinger seemed to be in a hurry and promised to return on
8 Saturday to bring the rest of the materials.

9 Noble testified that he spoke to Carrillo on Friday, July 31, 2009, whereupon he was
10 informed that Goldfinger had removed the silver from the safes. Thereafter, Noble called
11 Goldfinger who represented that 38,000 ounces of silver remained in the safes and that he
12 would replace the remaining silver on Saturday. Carrillo testified that he went to the pawn shop
13 on Saturday to meet Goldfinger but that he never showed up.

14 Noble testified that in early August 2009, Goldfinger came to the pawn shop to purchase
15 additional scrap and brought ten additional sealed boxes to be put into the smaller safe, all of
16 which bore the ".999 Pure Silver 500" marking. Noble thought the boxes were too light,
17 however, whereupon Goldfinger informed Noble that he about 5,000 ounces short and that he
18 would bring additional silver.¹⁰ In late August 2009, Goldfinger returned to purchase more
19 scrap and Noble requested him to open the safes. Goldfinger claimed that he did not have the
20 combination to the safes.

21 Noble testified that in late September 2009, Goldfinger returned to the pawnshop,
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23 ¹⁰ If the original amount of silver was 44,000 ounces and Goldfinger misrepresented to
24 Noble that 38,000 ounces remained in the safes, then being 5,000 ounces short meant that
25 Goldfinger brought only 1,000 ounces with him in early August 2009. Up to that point, Noble
26 still trusted Goldfinger's representation that he would be replenishing the silver. It is unclear
whether Noble actually opened any of the ten sealed boxes that Goldfinger put in the smaller
safe that day.

1 accompanied by a body guard, a “young girl,” and a man named Mel Meister,¹¹ to purchase
2 additional scrap. Noble’s business partner, Don Judkins, demanded that Goldfinger open the
3 safes. Goldfinger again claimed that he did not have the combinations. A confrontation ensued
4 after which Goldfinger departed the premises.¹² Noble testified that Goldfinger later promised
5 to wire transfer funds to AA Jewelry but that Goldfinger never did so.

6 Noble further testified that on or about September 27, 2009, he received an envelope in
7 the mail which contained the combinations to the small and large safes.¹³ A copy of the
8 envelope and the enclosure setting forth the combinations was admitted as Exhibit “11.”¹⁴
9 Thereafter, Noble opened the safes and examined the contents. The safes contained 31 boxes
10 bearing the handwriting “.999 Pure Silver 500.” Each box, however, contained only red bricks.
11 One typical box, opened slightly to expose a red brick, was admitted into evidence as Exhibit
12 “13.”¹⁵

13 Goldfinger’s former wife, Joyce Feldman (“Ms. Feldman”), testified that she worked
14 with her husband in the purchase of scrap jewelry until they separated. They were married for
15 29 years and were divorced on May 24, 2010. During their marriage, she would accompany

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17 ¹¹ According to the statement of financial affairs filed by Goldfinger in his bankruptcy
18 case, Mel Meister is an accountant or bookkeeper who provided services to Goldfinger.

19 ¹² Noble testified that Don Judkins demanded the combination to the safes and called
20 Goldfinger a thief. When Goldfinger left through the front door of the pawn shop, the body
21 guard and Mel Meister prevented Don Judkins from pursuing him.

22 ¹³ Noble testified that the original envelope currently is in the possession of the
23 Bakersfield Police Department.

24 ¹⁴ The envelope does not have a return address and is postmarked September 26, 2009,
25 from Santa Clarita, California. No evidence was introduced as to who mailed the envelope to
26 AA Jewelry.

¹⁵ AA Jewelry made an offer of proof that the remaining 30 boxes containing 400 pounds
of red bricks, bearing similar markings, were available to be wheeled into the courtroom. The
court ultimately declined the offer of proof as being unnecessary due to the undisputed testimony
that Exhibit “13” was representative of the other boxes found in the safes.

1 Goldfinger on his trips to Bakersfield to visit various pawn shops to buy scrap gold and other
2 metals. She also testified that she did about 95% of the paperwork for their business. Ms.
3 Feldman also would carry the tools used by Goldfinger to check the quality of the gold, as well
4 as carry the receipt book and other items. She testified that they drove a Honda Odyssey van
5 that had been modified to include a safe between the front seats. She did not know if the
6 modification to the vehicle included a reinforced suspension in addition to the installation of the
7 safe.¹⁶

8 Ms. Feldman testified that she is familiar with the loans that were obtained from AA
9 Jewelry. According to Ms. Feldman, the silver that was provided as collateral to AA Jewelry
10 came from silver that was stored at the couple's residence in Las Vegas.

11 Ms. Feldman also testified that Goldfinger told her that he was not going to repay the
12 loans and that he wanted to get the silver back. She stated that at Goldfinger's request, she
13 purchased red bricks from a Home Depot store in Las Vegas, accompanied by the couple's 23-
14 year old son.¹⁷ After she returned home, she went into the house while Goldfinger and her son
15 unloaded the bricks in their garage. Goldfinger informed Ms. Feldman that the bricks were
16 placed in various boxes that were kept at the residence to ship gold, silver and even cash. Ms.
17 Feldman identified the box admitted as Exhibit "13" as being one of the types of boxes kept at
18 the residence. She examined Exhibit "13" and testified that the brick exposed in the exhibit was
19 the same color as the ones she purchased for her former husband.¹⁸ Ms. Feldman also testified
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21 ¹⁶ Ms. Feldman also testified that the combinations to the safes maintained by Goldfinger
22 in the AA Jewelry pawn shop were kept in the safe located in the Honda Odyssey. The
23 combinations also were kept at their residence.

24 ¹⁷ It is not clear from the testimony whether Ms. Feldman purchased the red bricks only
25 after Goldfinger learned from Noble that he would be on vacation and that Carrillo would be
26 running the shop.

¹⁸ A corner of the box admitted as Exhibit "13" had been cut off, thereby exposing its
contents.

1 that the “.999 Pure Silver 500” written on the box was in her former husband’s handwriting.¹⁹

2 Ms. Feldman testified that she accompanied Goldfinger when he visited AA Jewelry at
3 the end of July 2009. They parked the Honda Odyssey in the alley behind the pawn shop and
4 she waited in the vehicle. Ms. Feldman observed two employees of AA Jewelry bring silver
5 bars and bags of shot from the shop to the vehicle and take boxes from the vehicle into the shop.
6 She did not keep track of the number of boxes taken in and out of the vehicle.

7 Ms. Feldman further testified that after Goldfinger filed his bankruptcy petition, she
8 visited AA Jewelry and looked at the boxes in the safes. She stated that the printing on the
9 boxes was in Goldfinger’s handwriting and that the boxes are the same as those the couple kept
10 at their prior residence. She indicated that she does not know what happened to the silver that
11 was removed from the safes and that she has explained to AA Jewelry her knowledge of the
12 events. Ms. Feldman testified that she was not motivated by revenge against her former
13 husband in disclosing her information to AA Jewelry or the court.

14 As previously noted, Goldfinger declined to testify under oath or otherwise refute the
15 testimony of Noble, Carrillo or Ms. Feldman. Instead, he challenged the credibility of each
16 witness.²⁰ As to Noble, Goldfinger’s cross-examination attempted to suggest that the 44,000
17 ounces of silver bars and shot had been lost or misplaced, or that someone else had secreted the
18 silver bars, bags of shot, or silver coins out of the pawn shop. As to Carrillo, his cross-

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20 ¹⁹ Exhibit “12” was admitted into evidence consisting of a single sheet of paper on which
21 the figures “.999” and “.9999” were written. Goldfinger’s deposition had been taken on July 22,
22 2010, in connection with a prior lawsuit filed by AA Jewelry in California. A copy of the
23 deposition had been filed with the court on July 11, 2012, as adversary proceeding docket
24 number 42. According to pages 203-205 of that deposition, the figures written on Exhibit “12”
25 were handwritten by Goldfinger at counsel’s request during the deposition. Those portions of
26 the deposition transcript were admitted into evidence at trial. The handwriting on Exhibit “12”
appears to be similar to the handwriting on the box admitted as Exhibit “13”. Testimony from a
handwriting expert, however, was not offered at trial.

²⁰ Except as may be discussed below, the court finds that the testimony of Noble,
Carrillo and Ms. Feldman was credible.

1 examination implied that Carrillo or his brother-in-law, Juan Romero, who also was employed
2 by AA Jewelry, were responsible for the missing items.²¹ As to Ms. Feldman, Goldfinger's
3 cross-examination attempted to suggest that his former wife's damning testimony was
4 motivated by revenge because he would not agree to pay her \$3,000 in alimony.²²

5 **APPLICABLE LEGAL STANDARDS**

6 A creditor seeking a nondischargeability determination under Section 523 bears the
7 burden of proof at trial. A preponderance of the evidence standard applies in discharge and
8 dischargeability proceedings even where the claim is based on allegations of fraud. See Grogan
9 v. Garner, 498 U.S. 279, 286 (1991). For the reasons explained below, the court concludes that
10 AA Jewelry has met its burden of proof.

11 AA Jewelry seeks to deny discharge of the \$600,000 loaned to Goldfinger, plus 15%

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13
14 ²¹ Carrillo testified that he did not have the combinations to either of Goldfinger's safes
15 and that his brother-in-law does not have access to the building. Goldfinger offered no evidence
16 that Carrillo or his brother-in-law have ever been accused of or investigated for criminal activity,
nor did he even ask Carrillo whether such accusations have ever been made.

17 ²² Goldfinger's cross-examination of his former wife was unusual, even by Las Vegas
18 standards. To impeach her credibility, Goldfinger asked a series of questions about the intimate
19 details of their married life, including, for example, whether Ms. Feldman was satisfied with the
20 couple's relationship in the bedroom, whether Ms. Feldman ever tried to arrange a friend to have
21 sexual relations with Goldfinger, and whether Ms. Feldman had an illicit affair during their
22 marriage. Goldfinger even had his former wife point out her partner in the affair, who happened
23 to be present in the courtroom audience. He further questioned his former wife regarding gifts
24 that he had given to her during their 29 year marriage. Goldfinger also asked questions about
25 Ms. Feldman's initial request for \$3,000 in spousal support (at the suggestion of the same
26 gentleman present in the courtroom), her recollection of calls or contacts from the Federal
Bureau of Investigation (F.B.I.), and her visit to a smelter located in Idaho. The court gave
substantial leeway to Goldfinger in questioning the witnesses, including his former wife, because
he was representing himself and because no objections were raised by counsel for AA Jewelry.
Ms. Feldman calmly responded to all of Goldfinger's questions and left no impression that her
testimony was motivated by revenge or was otherwise untruthful or inaccurate. In short, Ms.
Feldman's testimony was credible, especially in view of Goldfinger's decision not to testify
under oath to refute the testimony of any of the witnesses presented by AA Jewelry.

1 interest since March 2009, pursuant to Section 523(a)(2)(A).²³ The latter provides that a debtor
2 may not receive a discharge of debt:

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

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

8 11 U.S.C. § 523(a)(2)(A). Section 523(a)(2)(A) generally deals with claims for common law
9 fraud.

10 In order to prove fraud under Section 523(a)(2)(A), five elements must be established:
11 “(1) a misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge
12 of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4)
13 justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the
14 creditor proximately caused by its reliance on the debtor's statement or conduct.” In re Slyman,
15 234 F. 3d 1081, 1085 (9th Cir. 2000).²⁴ “Intent to defraud is a question of fact.” In re Kennedy,
16 108 F.3d 1015, 1018 (9th Cir. 1997). “Intent to deceive can be inferred from surrounding

17 ²³ It is not clear to the court why AA Jewelry did not also assert a claim on a conversion
18 theory pursuant to Section 523(a)(6). See, e.g., Peklar v. Ikerd (In re Peklar), 260 F.3d 1035 (9th
19 Cir. 2001) (conversion under state law may be nondischargeable upon a showing of willfulness
20 and malicious intent); Bino v. Bailey (In re Bailey), 197 F.3d 997 (9th Cir. 1999) (conversion of
21 lienholder's collateral may be nondischargeable if the result of willful and malicious conduct).

22 ²⁴ As to the fourth element, the type of reliance for a nondischargeability claim under
23 Section 523(a)(2)(A) is different from that required for a claim under Section 523(a)(2)(B).
24 Under the former provision, the plaintiff must demonstrate that he justifiably relied upon the
25 defendant's misrepresentations or omissions. See Field v. Mans, 516 U.S. 59, 74-75 (1995).
26 Unlike the objective, reasonable reliance standard applied under Section 523(a)(2)(B), justifiable
reliance is subjective, based upon the qualities and characteristics of the particular plaintiff, as
well as the circumstances of each particular case, rather than the application of a community
standard of conduct applicable to all cases. 516 U.S. at 71. Justifiable reliance, although
subjective, is not without some limits. A plaintiff is required to use his senses, and cannot
recover if he blindly relies upon a misrepresentation by the defendant, the falsity of which would
be patent had the plaintiff utilized his opportunity to make a cursory examination or
investigation. Id.

1 circumstances.” Id.

2 DISCUSSION

3 Based on the testimony of Carrillo and Noble, the court finds that Goldfinger omitted
4 telling Carrillo on July 29, 2009, that he had never sought or obtained authorization from Noble
5 to trade any of the silver contained in the safes. Goldfinger also omitted telling Carrillo that the
6 boxes that were traded for the silver contained red bricks. He misrepresented to Carrillo on July
7 29, 2009, that he would be returning to the pawn shop to replace collateral on the following
8 Saturday. Goldfinger omitted telling Noble on July 31, 2009, that he had replaced the silver
9 with boxes containing red bricks. He misrepresented to Noble on July 31, 2009, that 38,000
10 ounces of silver remained in the safes. He omitted telling Noble in late August and late
11 September 2009, that he had replaced the silver bars and shot with boxes of red bricks.
12 Goldfinger misrepresented to Noble in late August 2009 and late September 2009 that he did
13 not have the combination to the safes. He omitted telling Noble in late August 2009 and late
14 September 2009 that the combinations to the safes were located in the Honda Odyssey safe.

15 Based on the testimony of Carrillo and Ms. Feldman, the court finds that Goldfinger
16 knew that his omissions as to the true contents of the boxes, the safes, and the location of the
17 safe combinations were deceptive. Based on the testimony of Noble, Carrillo and Ms. Feldman,
18 the court finds that Goldfinger knew that his misrepresentations as to his return to the pawn
19 shop, the true contents of the safes, and the location of the safe combinations, were deceptive.

20 Goldfinger’s intent to deceive is inferred from all of the surrounding circumstances.
21 Goldfinger made only one previous trade of 5,000 ounces of silver coins for 5,000 ounces of
22 silver bars and shot in the Spring of 2009. That trade was personally handled by Noble after
23 specific arrangements were made with Noble. In July 2009, Noble told Goldfinger that he
24 would be on vacation and no discussion of an additional trade took place, not even of trading
25 only a small amount (let alone ALL of the silver). Instead of showing up on a Thursday,
26 Goldfinger arrived at the pawn shop on a Wednesday, knowing that Carrillo would be in charge

1 of the shop rather than Noble. In connection with completing a prearranged purchase of scrap
2 jewelry, Carrillo put Goldfinger on the telephone with Noble. After that conversation was
3 completed, Goldfinger enlisted Carrillo's assistance in trading the silver in the safes with the
4 boxes from his Honda Odyssey.

5 As previously noted, Goldfinger omitted telling Carrillo that he did not have Noble's
6 authorization to trade any silver. Goldfinger had previously obtained red bricks, inserted them
7 into boxes, and marked the boxes as containing ".999 Pure Silver 500." By knowingly placing
8 the erroneous markings on the boxes, no purpose can be inferred other than that Goldfinger
9 intended to deceive and mislead anyone viewing the boxes as to their true contents.²⁵ By not
10 informing Carrillo of the actual contents, and by removing the silver and trading it for the
11 misleading boxes, Goldfinger clearly intended to mislead Carrillo into believing that the trade
12 was similar to the prior transaction that had been authorized by Noble. By telling Carrillo that
13 he would return on the following Saturday, Goldfinger mislead Carrillo into believing that he
14 would ensure that the amount of silver collateral was sufficient. By not informing Noble that
15 the silver had been replaced by boxes containing red bricks, he intended to mislead Noble into
16 believing that silver collateral for the loans actually remained on the premises. By telling Noble
17 that 38,000 ounces of silver remained in the safes, Goldfinger purposely mislead Noble into
18 believing that the majority of the collateral was still in possession of AA Jewelry. By not
19 informing Noble in late August and late September that he had replaced the silver collateral
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21 ²⁵ When cross-examining his former wife, Goldfinger elicited testimony from Ms.
22 Feldman that the couple had been the subject of an F.B.I. investigation concerning an internet
23 transaction involving the sale of certain earrings in New York. According to that testimony,
24 Goldfinger had been arrested or detained, but Ms. Feldman did not explain whether that involved
25 allegations of deception or fraud. This is somewhat surprising because Goldfinger's cross-
26 examination of Carrillo attempted to infer that Carrillo or his brother-in-law should be suspects
in the loss of the silver collateral, when Goldfinger himself apparently had been investigated by
the F.B.I. In an effort to cast doubt on his former spouse's credibility, Goldfinger essentially
revealed information negatively impacting his own.

1 with boxes of bricks, and by misrepresenting his lack of possession of the safe combinations,
2 Goldfinger continued to conceal his removal of the silver bars, shot and coins. In short,
3 Goldfinger's misrepresentations and omissions were intended to deceive AA Jewelry into
4 believing that it had remained in possession of sufficient silver collateral to fully secure its
5 loans to Goldfinger.²⁶

6 Based on the testimony of Noble and Carrillo, the court finds that AA Jewelry actually
7 and justifiably relied on certain of the misrepresentations and omissions by Goldfinger. Not all
8 of the testimony, however, favors that conclusion. For example, Noble acknowledged that AA
9 Jewelry had never made loans of this amount to any customer. Moreover, he testified that loans
10 by AA Jewelry typically did not exceed 25% of the value of the collateral held by the pawn
11 shop. Additionally, Carrillo acknowledged that he typically does not allow any customer to
12 remove any collateral from the shop on the promise to return it. By any stretch of the
13 imagination, the loans to Goldfinger were not typical of AA Jewelry or even, perhaps, the pawn
14 business generally.

15 Noble also testified, however, that the friendship that he developed or hoped to develop
16 with Goldfinger created a relationship of trust that precipitated the large amount of the loans
17 and the higher loan-to-value ratios. Because the silver bars, bags of silver shot, and boxes of
18 silver coins all bore stamps or seals, and often were accompanied by receipts provided by
19 Goldfinger, Noble had additional reason to trust that the collateral was authentic and sufficient
20 to secure the loans. Noble had further reason to trust Goldfinger because in the only pre-
21 authorized trade of silver bars and shot in Spring 2009, Goldfinger had provided an equivalent

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23 ²⁶ Goldfinger obtained the series of loans from AA Jewelry from April 2, 2008 through
24 May 28, 2008. Noble's own testimony established that the silver on hand had a value of
25 \$774,000 when the loans outstanding were \$600,000. When cross-examining Ms. Feldman,
26 Goldfinger attempted to elicit testimony to the effect that he obtained the loans in order to buy
more scrap jewelry due to his belief that silver would substantially increase in value, thereby
producing a profit. The evidence is not sufficient to infer that Goldfinger intended to deceive AA
Jewelry at the inception of the loan transactions.

1 value in silver coins that Noble personally verified.

2 Noble had been Carrillo's boss for many years. Carrillo worked for AA Jewelry during
3 all of the years in which Noble did business with Goldfinger. Even though Carrillo would not
4 allow any other customer to remove collateral from the premises, he knew that Noble trusted
5 Goldfinger based on their personal relationship. Carrillo spoke to Noble on July 29, 2009, put
6 Goldfinger on the telephone with Noble, and had no reason to believe that the personal
7 relationship had changed.

8 Under these circumstances, Carrillo's reliance on Goldfinger's misrepresentations and
9 omissions was justified. Up to, but not including the point where Goldfinger misrepresented
10 and omitted information as to his possession of the safe combinations, Noble's reliance also was
11 justified. The long-standing business and personal relationship between the Debtor and Noble
12 created a level of trust that resulted in the pawn shop employees, like Carrillo, taking
13 Goldfinger at his word regarding silver exchanges. Although Goldfinger being in a rush and
14 leaving the small safe empty during the July 29, 2009 exchange might have raised red flags to a
15 reasonable pawn shop employee, here, Carrillo testified that he did not question Goldfinger's
16 trustworthiness because he was a special customer and friend of his boss, and he also had
17 several dealings with Goldfinger in the past. Moreover, Goldfinger assured Carrillo that he
18 would return to the pawn shop with additional collateral in just a few days. These facts did not
19 create a duty to investigate the contents of the boxes Goldfinger had placed inside the larger
20 safe. Similarly, even though a reasonable person might have been concerned about the light
21 weight boxes later brought by Goldfinger to fill the smaller safe, Noble still trusted Goldfinger
22 to remedy any shortage in silver based on their longstanding relationship.

23 As to Goldfinger's claimed lack of possession of the safe combinations, however, it was
24 not justifiable for Noble to rely on Goldfinger's representations because Noble knew that
25 Goldfinger always had the combinations in the past, including on the July 29, 2009 visit to the
26 pawn shop. Indeed, Goldfinger clearly had the safe combinations with him on his visits to the

1 pawn shop in late July and early August, and only represented that he did not have them when
2 questioned by Noble in late August and late September.²⁷

3 Goldfinger's undisclosed substitution of the red bricks for the 44,000 ounces of silver
4 directly caused economic damage to AA Jewelry. There was no collateral available to satisfy
5 the loans and Goldfinger did not have the funds available to satisfy the obligations.

6 Goldfinger's subsequent filing of a Chapter 7 bankruptcy proceeding virtually assured that AA
7 Jewelry would recover little, if any, on its claim rather than full payment. The court therefore
8 finds that Goldfinger's deception was the proximate cause of AA Jewelry's inability to obtain
9 full payment of the outstanding loans.

10 As to compensatory damages, AA Jewelry established that two loans of \$100,000 apiece
11 were due on September 26, 2009, two additional loans in the same amounts were due on
12 October 27, 2009, and the final two loans in the same amounts were due on November 27,
13 2009. All of the loans accrued interest at 15% per annum. Therefore, the court will award
14 damages in the full amount of each loan with interest at the loan rate accruing from the dates
15 each loan was due through the date of entry of judgment. Thereafter, interest shall accrue on
16 the judgment at the federal judgment rate. As none of the loan documents provide for an award
17 of attorney's fees, no attorney's fees shall be awarded.

18 As to exemplary damages, a plaintiff generally must establish the existence of
19 oppression, fraud or malice by clear and convincing evidence. Cf. Nev.Rev.Stat. § 42.005(1)
20 (oppression, fraud or malice must be established by clear and convincing evidence to recover
21
22

23
24 ²⁷ But by the time of Goldfinger's misrepresentations and omissions regarding
25 possession of the safe combinations, the silver collateral already had been removed. In other
26 words, even if Noble justifiably relied on Goldfinger's misrepresentations and omissions
regarding the safe combinations, those misrepresentations and omissions did not cause any
further damage to AA Jewelry because the silver collateral already had been removed.

1 exemplary damages); Cal.Civ. Code § 3294(a) (same).²⁸ For the reasons previously discussed,
2 AA Jewelry clearly established that Goldfinger engaged in fraud that is excepted from discharge
3 pursuant to Section 523(a)(2)(A). The testimonial, documentary and physical evidence
4 presented by AA Jewelry, coupled with Goldfinger's refusal to testify under oath, meets the
5 clear and convincing standard. Having considered the calculated, albeit crude manner in which
6 Goldfinger took advantage of his relationship with Noble and Carrillo, and Goldfinger's further
7 concealment of his conduct, the court finds that an award of exemplary damages in the amount
8 of \$500,000 is appropriate.

9 CONCLUSION

10 For the reasons set forth above, AA Jewelry is entitled to a judgment in its favor that is
11 excepted from discharge under Section 523(a)(2)(A). A judgment consistent with this
12 memorandum decision has been entered concurrently herewith.

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14
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24 ²⁸ Clear and convincing evidence is described as "evidence so clear, direct and weighty
25 and convincing as to enable the [factfinder] to come to a clear conviction, without hesitancy, of
26 the truth of the precise facts in issue." Cruzan by Cruzan v. Director, Missouri Dept. of Health,
497 U.S. 261, 285 n.11 (1990), quoting Matter of Jobes, 108 N.J. 394, 407-08, 529 A.2d 434,
441 (N.J. 1987).

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