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U.S. Bankruptcy Appellate Panel of the Tenth Circuit

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UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE HAROLD D. KUWAZAKI and MICHELLE M. KUWAZAKI, Debtors.	BAP No. CO-09-057
NORMA J. BROWN, Plaintiff – Appellee, v. HAROLD D. KUWAZAKI and MICHELLE M. KUWAZAKI, Defendants – Appellants.	Bankr. No. 07-21829 Adv. No. 08-01150 Chapter 7 OPINION[*]

Appeal from the United States Bankruptcy Court
for the District of Colorado

Before CORNISH, Chief Judge, RASURE, and KARLIN, Bankruptcy Judges.

KARLIN, Bankruptcy Judge.

Debtors Harold and Michelle Kuwazaki (collectively, "Debtors") appeal a bankruptcy court order finding certain debts non-dischargeable. We affirm, in part, and remand for additional findings.

I. BACKGROUND[1]

[*] This unpublished opinion may be cited for its persuasive value, but is not precedential, except under the doctrines of law of the case, claim preclusion, and issue preclusion. 10th Cir. BAP L.R. 8018-6.

[1] Appellants opted not to incur the expense of obtaining and providing this Court with a transcript of the trial proceedings, and therefore cannot, and do not,

(continued...)

In 2003, Debtors and Appellee, Norma Brown ("Norma"), formed Advanced Technology, Inc. ("ATI"), a Colorado S-corporation. Norma is a former nun with little business experience; she became involved with ATI only to help her nephew, Harold. Harold was ATI's President, and his wife, Michelle, was its Vice President and Secretary. Although Norma was the company's Chief Executive Officer and owned 51% of the company stock, she had little to do with company operations. Harold worked with ATI's clients, and Michelle kept its books and paid the bills. In January 2004, Norma loaned ATI the sum of $50,000, using funds from an account she had with Edward Jones ("2004 Loan").

By 2005, ATI was struggling financially, due in large part to its significant credit card debt. A substantial portion of ATI's credit card debt was for non-business expenses, which included numerous cash advances to Harold and Michelle made at casinos, for groceries and personal services, and for their recreational travel. In late 2005, Harold asked Norma to loan ATI more money, telling her that the purpose for the loan was to pay off the company's debt.

When Norma questioned him about the debt, Harold replied that the debt was from purchases of equipment, business supplies, and parts. He failed to disclose that a substantial portion of the debt was actually from casino cash advances and payment of Harold and Michelle's personal expenses. Harold told Norma that a $130,000 loan would retire ATI's debt, although the debt was in fact much greater than he represented.

In January 2006, Norma agreed to loan ATI $150,000 (the "2006 Loan"). Harold knew that in order to fund that loan, Norma would have to borrow that amount from a third party lender, and execute a note (the "Mortgage Note") and

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[1] (...continued)
challenge the bankruptcy court's factual findings on appeal. When a trial transcript is not provided on appeal, this Court must accept the bankruptcy court's factual findings as correct. *Worthington v. Anderson*, 386 F.3d 1314, 1320 (10th Cir. 2004).

mortgage against her previously mortgage-free personal residence (the "Mortgage Loan"). Although ATI was supposed to execute a note in favor of Norma, Harold never caused such a note to be executed. The parties apparently agreed (perhaps after the fact) that ATI would repay Norma on the 2006 Loan by making the installment payments on the Mortgage Note.

In a January 7, 2006, meeting between Norma and Harold, which Michelle did not attend, Harold promised that the 2006 Loan proceeds would be used to pay ATI's debts, including the 2004 Loan Norma had previously made to ATI. Harold further promised that all ATI's other debts could and would be paid in full by the end of January with the loan proceeds or otherwise. The minutes from that meeting confirm that the 2006 Loan proceeds would be used to pay off the entire "$130,000+" debt by the end of January, that a business budget was to be established, that monthly financial reports would thereafter be given to all company officers—including Norma, and that monthly business meetings would commence. Harold also agreed that any future company purchase exceeding $500 would require Norma's approval.

When Norma received the proceeds from her Mortgage Loan, she wrote a check to her Edward Jones account in the amount necessary for ATI to repay the 2004 Loan, and wrote a second check to ATI for $98,358.31, which represented the balance of the 2006 Loan proceeds.[2] Despite representations that the 2006 Loan would be used to pay ATI's accumulated debt, Debtors continued to use ATI's funds (including the 2006 Loan proceeds) to gamble, take extravagant vacations (such as to Japan), and pay other personal expenses.

Debtors kept certain company credit cards hidden from Norma, both before

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[2] Although the exact balance of the 2004 Loan that was repaid with the 2006 Loan proceeds is unclear, the Court will refer to the amount of the payment of the 2004 Loan as $50,000, though it may have been more or less. In any event, after repaying the 2004 Loan, $98,358.31 was available to ATI to pay its remaining creditors.

and after the 2006 Loan, and secretly obtained new credit cards in ATI's name. Rather than retiring the rest of ATI's debt with the remaining proceeds of the 2006 Loan, as expressly promised, Debtors incurred even more debt in ATI's name, thus reducing the likelihood the company would ever be in a financial position to repay the 2006 Loan.

During the next twelve months, Debtors caused ATI to make monthly payments on Norma's $150,000 Mortgage Note. While Debtors jointly created and provided Norma with the promised monthly financial reports, the reports were not accurate as they reflected that ATI had paid debts that had not been paid and omitted numerous credit card debts. Debtors created these reports both to hide their misappropriation of the loan funds and to induce Norma to believe that the company was now profitable.[3] Furthermore, ATI could have been profitable, and could have repaid the 2006 Loan to Norma, had it not been for Debtors' repeated misappropriation of company assets. Thus, throughout 2006, Debtors hid their personal use of company assets from Norma by both making regular payments on the Mortgage Note and by providing her with false monthly financial reports they jointly created.

In late 2006, Norma learned directly from credit card companies that Debtors were using ATI credit cards to pay their personal expenses. After Norma confronted Harold in early 2007 about the improper credit card usage, ATI stopped paying Norma's Mortgage Note and ceased doing business. Debtors formed a new company called Digital Visions. Appropriating ATI's customer base, Digital Visions performed the same work as ATI, using ATI's equipment and office space. Debtors essentially transferred ATI assets to Digital Visions

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[3] As the bankruptcy court noted, "[h]ad a payment been missed, Norma would have known that further investigation was necessary. The jig would have been up. The Court therefore concludes that the payments do not negate the inference of intent to deceive." *Findings of Fact and Conclusions of Law* ("*Findings*") at 11, *in* App. at 199.

without consideration. The bankruptcy court valued those assets at $3,737.49.

Norma sued Debtors in state court in 2007 for, among other claims, fraud, breach of fiduciary duty and conversion. That action was stayed when Debtors filed a joint petition for Chapter 7 relief on October 17, 2007. Norma then filed an adversary proceeding in Debtors' bankruptcy case to establish the amount of her claims and obtain a declaration that her claims were non-dischargeable. After a two-day trial, the bankruptcy court awarded non-dischargeable damages to Norma against both Harold and Michelle.

II. APPELLATE JURISDICTION

A decision is considered final "if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'"[4] In this case, the order granting Norma a money judgment on her complaint is a final order. This Court has appellate jurisdiction over timely-filed appeals from "final judgments, orders, and decrees" of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district court hear the appeal.[5] Debtors timely filed their notice of appeal from the bankruptcy court's judgment, and no party elected to have this appeal heard by the district court. This Court therefore has appellate jurisdiction.

III. ISSUES AND STANDARD OF REVIEW

Harold and Michelle cannot, and for the most part do not, contest the bankruptcy court's factual findings, as they have chosen not to provide this Court with a trial transcript. Instead, they limit their argument on appeal to legal issues: (1) Whether the bankruptcy court applied the proper standard to calculate

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[4] *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

[5] 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002; 10th Cir. BAP L.R. 8001-3.

damages against Harold under 11 U.S.C. §§ 523(a)(2), (a)(4), and/or (a)(6);[6] and (2) Whether the bankruptcy court's factual findings support judgment against Michelle under §§ 523(a)(4) and/or (a)(6), and if so, whether damages were properly calculated. "The methodology [used] in calculating a damage award, such as determining the proper elements of the award or the proper scope of recovery, is a question of law."[7] To the extent that an award is determined by application of a statute, we review the bankruptcy court's application of the statute de novo. In addition, the trial court's fact findings must be sufficient to "indicate the factual basis for [its] general conclusion as to ultimate facts."[8]

IV. DISCUSSION

Norma filed this adversary proceeding against Harold and Michelle, claiming that the debt arising out of the 2006 Loan should not be discharged because the Debtors' conduct in inducing her to loan money to ATI and their personal use of the loan proceeds falls within certain exceptions to discharge, specifically 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6). Following a trial, where the bankruptcy court expressly found that Debtors' testimony was "inconsistent, evasive, and lacking credibility"[9] (and sometimes incredible), compared with Norma's very credible testimony, the court awarded Norma a non-dischargeable judgment in the amount of $135,492 against each Debtor pursuant to § 523(a)(4) or (a)(6).[10] In the alternative, the court also awarded a judgment in the same

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[6] Unless otherwise noted, all further statutory references in this decision will be to the Bankruptcy Code, codified as Title 11 of the United States Code.

[7] *S. Colo. MRI, Ltd. v. Med-Alliance, Inc.*, 166 F.3d 1094, 1100 (10th Cir. 1999).

[8] *Hjelle v. Mid-State Consultants, Inc.*, 394 F.3d 873, 880 (10th Cir. 2005) (internal quotation marks omitted).

[9] *Findings* at 2, *in* App. at 190.

[10] *Findings* at 22, *in* App. at 210; *Judgment* at 1, *in* App. at 211.

amount against Harold pursuant to § 523(a)(2)(A).[11] In addition, the bankruptcy court found both Debtors liable to Norma for an additional $3,737.49[12] for transferring assets to Digital Visions with the "purpose and actual intent to hinder, defraud, and delay Norma's collection efforts."[13]

The relevant provisions of § 523 are as follows:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--
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> . . .
>
> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--
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> (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;
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> . . .
>
> (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;[or]
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> . . .
>
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.[14]

A. Section 523(a)(2)(A)

The bankruptcy court determined that only Harold made false statements to Norma to induce her to make the 2006 Loan. Michelle's false statements to Norma consisted of creating false company financial records and presenting them to Norma as accurate, but these misrepresentations occurred only after the loan

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11 *Id.*

12 *Findings* at 22, *in* App. at 210; *Judgment* at 2, *in* App. at 212.

13 *Findings* at 8, *in* App. at 196. In their briefs, Debtors do not assert any legal error with respect to the $3,737.49 judgment, and therefore we do not review it.

14 11 U.S.C. § 523(a).

had been advanced. Thus, while Michelle's false statements were made to keep Norma from discovering Debtors' unauthorized use of the money she had advanced to ATI, Norma did not prove that any of Michelle's false statements had induced her to make the 2006 Loan.

To establish non-dischargeability under § 523(a)(2), which specifies that the debt be "obtained by" the debtor's fraud, a creditor must demonstrate a causal nexus between the fraud and the debt.[15] Finding that only Harold had fraudulently induced Norma to make the 2006 Loan to ATI, the bankruptcy court awarded § 523(a)(2) damages against Harold in the entire amount of the 2006 Loan, reduced only by the twelve mortgage payments ATI made on Norma's Mortgage Note, resulting in a judgment of $135,492.

Harold claims that the bankruptcy court miscalculated Norma's § 523(a)(2) damages by failing to further reduce her damages by the $50,000 she received from the 2006 Loan to repay her 2004 Loan. He argues that ATI only actually received $98,358.31 of the 2006 Loan, and that $50,000 of the 2006 Loan was used to repay a legitimate company debt (the 2004 Loan), and thus $50,000 of the 2006 Loan was not procured by fraud.

Although Harold's argument at first has some superficial appeal, the United States Supreme Court has specifically rejected it in *Cohen v. de la Cruz*.[16] In *Cohen*, the debtor appealed an award under § 523(a)(2) that included treble damages pursuant to state law, arguing that the additional damages award had not been "obtained by" fraud. The Supreme Court analyzed § 523(a)(2), and concluded that it prohibits discharge of any liability "arising from a debtor's fraudulent acquisition of money," which included an award of treble damages for

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15 *Archer v. Warner*, 538 U.S. 314, 325 (2003).

16 *Cohen v. de la Cruz*, 523 U.S. 213 (1998).

fraud.[17] In the process, the Supreme Court rejected a "restitutionary" interpretation of § 523(a)(2), stating, "if, as petitioner would have it, the fraud exception only barred discharge of the value of any money, property, etc., fraudulently obtained by the debtor, the objective of ensuring full recovery by the creditor would be ill served."[18] The Court noted that such an interpretation of § 523(a)(2) would allow a debtor "to discharge any liability for losses caused by his fraud in excess of the amount he initially received, leaving the creditor far short of being made whole."[19]

For the purposes of this appeal, Debtors admit that Harold fraudulently induced Norma to make the 2006 Loan, as the bankruptcy court held. Debtors likewise cannot contest the bankruptcy court's finding that the parties' agreement was that Norma would obtain $150,000 for the express purpose of paying all of ATI's debts, including her 2004 Loan. Norma fulfilled her agreement by borrowing $150,000, using approximately $50,000 of it to pay one of the company debts—her 2004 Loan– and turning the rest of the money over to the Debtors, who had agreed to use it to pay the remainder of ATI's debts. Instead, Debtors principally used the money to continue to gamble and make personal purchases having nothing whatsoever to do with ATI's business.

Thus, the entire $150,000 that was provided to ATI by Norma in accordance with the parties' agreement was "obtained by" Harold's fraud. That some of the proceeds were used to pay company debts is irrelevant to Norma's claim, at least under § 523(a)(2). As the *Cohen* Court explained, the phrase "to

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17 *Id.* at 221.

18 *Id.* at 222.

19 *Id.* at 223.

the extent obtained by" in § 523(a)(2) modifies "money," rather than "debt."[20] Therefore, once Norma established that the 2006 Loan was obtained by fraud, "'any debt' arising therefrom is excepted from discharge."[21]

In this case, the non-dischargeable "debt" consists of damages arising from the fraudulent 2006 Loan transaction. Regardless of how Debtors used the proceeds, Norma was still liable to the third-party lender on the Mortgage Note (and her home in danger of being foreclosed), a liability she would not have incurred but for Harold's fraud. The bankruptcy court found that the debt resulting from the fraud was $150,000, less payments ATI made on the Mortgage Note. The bankruptcy court deducted the actual payments made on the loan, twelve payments of $1,209 each, from $150,000, resulting in a judgment against Harold in the amount of $135,492.[22]

This Court agrees with the bankruptcy court that the mortgage payments differ from use of the 2006 Loan proceeds to pay off the 2004 Loan because the mortgage payments reduced the 2006 Loan debt, whereas payment of the 2004 Loan did not reduce the principal balance of the 2006 Loan in any amount. Norma was still obligated to pay $150,000 to her lender after the 2004 Loan was paid. In other words, use of proceeds of the 2006 Loan to pay ATI's prior debt to Norma did not reduce the amount of the 2006 Loan any more than if Norma had turned the full $150,000 over to ATI, and ATI had used that $50,000 to instead pay other legitimate ATI creditors. While that payment might have satisfied the

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[20] *Id.* at 218.

[21] *Id.*

[22] We note that the twelve payments did not likely reduce the principal of the Mortgage Note (or the 2006 Loan) in the full amount of each payment, but nothing in the bankruptcy court's opinion or in the record establishes an interest rate or the principal balance of either loan as of Debtors' petition date. As Norma has not appealed the amount of damages awarded under § 523(a)(2), we express no opinion as to whether the method used by the bankruptcy court in calculating damages in the amount of $135,492 is appropriate.

commitment to pay company debts, again, it would not have reduced the debt ATI owed to Norma or the debt Norma owed to her lender.

Accordingly, because the 2006 Loan was "obtained by" Harold's fraud, Norma can recover it in its entirety against him. Further, because we affirm the $135,492 award against Harold under § 523(a)(2)(A), we need not, and do not, consider the bankruptcy court's alternative awards against Harold pursuant to § 523(a)(4) and (a)(6), since this Court may affirm on any grounds for which there is an adequate record.[23]

B. Sections 523(a)(4) and (6)

We now turn to whether the bankruptcy court erred in finding that Michelle could not discharge a $135,492 debt owed to Norma under either § 523(a)(4) or (a)(6). Specifically, Michelle challenges whether the balance of the 2006 Loan is the appropriate measure of damages.

Section 523(a)(4) bars discharge of a debt for, among other things, embezzlement, and § 523(a)(6) excepts debts from discharge that are the result of a debtor's "willful and malicious injury" to the plaintiff. The bankruptcy court determined that Michelle both embezzled funds under § 523(a)(4) and willfully and maliciously converted funds under § 523(a)(6).[24] "For purposes of establishing nondischargeability under section 523(a)(4), embezzlement is defined under federal common law as the fraudulent appropriation of property by a person

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[23] *In re Hodes*, 402 F.3d 1005, 1011 (10th Cir. 2005). The bankruptcy court also determined that Michelle was not liable to Norma under § 523(a)(2). Because neither Norma nor Michelle appealed that portion of the decision, we do not review it either.

[24] The Court also found that Michelle had committed fraud or defalcation while acting in a fiduciary capacity, another exception to discharge in § 523(a)(4). Michelle does not contest the factual determination that she embezzled funds, only contending that the embezzlement does not include any part of the 2006 Loan that was used for a legitimate business purpose. Therefore, this Court need not, and declines to, address whether the same conduct could also constitute fraud or defalcation while acting in a fiduciary capacity under § 523(a)(4).

to whom such property has been entrusted or into whose hands it has lawfully come."[25] Similarly, conversion is defined as the "wrongful possession or disposition of another's property as if it were one's own."[26] Although money is not typically subject to being "converted," conversion does apply where funds have been placed in the custody of another for a specific purpose but are diverted to another use by the custodian.[27]

Because Debtors did not provide us with a record of the evidence adduced at trial, we cannot review the bankruptcy court's factual finding that Michelle exerted unauthorized dominion or ownership over some of the proceeds of Norma's 2006 Loan, nor the finding that the taking was willful and malicious. Michelle further contends, however, that the bankruptcy court erred in calculating Norma's damages at $135,492, which of course is the precise amount the bankruptcy court found was the balance of the 2006 Loan. Michelle argues that the bankruptcy court should have instead required Norma to introduce evidence of the exact amounts that were in fact embezzled or converted to arrive at damages, and that the bankruptcy court's findings had to identify the specific amounts of funds it determined had been embezzled or misappropriated.

As the plaintiff, Norma had the burden to prove her damages.[28] Michelle is

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[25] *Klemens v. Wallace (In re Wallace)*, 840 F.2d 762, 765 (10th Cir. 1988) (internal quotation marks omitted).

[26] *Black's Law Dictionary* (8th ed. 2004).

[27] *Ogden v. Big Sky Motors, Ltd. (In re Ogden)*, 314 F.3d 1190, 1200 (10th Cir. 2002). *See also, Rhino Fund, LLLP v. Hutchins*, 215 P.3d 1186, 1196 (Colo. Ct. App. 2008); *Burke v. Napieracz*, 674 So.2d 756, 758 (Fla. Dist. Ct. App. 1996); *Dillard v. Payne*, 615 S.W.2d 53, 55 (Mo. 1981).

[28] *Homemakers, Inc. v. Salamone (In re Salamone)*, 78 B.R. 74, 77 (Bankr. E.D. Pa. 1987) ("requirement that the creditor prove the damages resulting from the embezzlement is implicit in the embezzlement exception to discharge"); John P. Ludington, *Bankruptcy: What constitutes embezzlement of funds giving rise to nondischargeable debt under 11 U.S.C.A. § 523(a)(4)*, 99 A.L.R. Fed. 124 § 43 (1990) ("the creditor [must] prove the damages resulting from the

correct that damages for conversion or embezzlement claims are limited to money or property that was used in an unauthorized way, which means that Norma's damages should not include any amounts that actually were used in accordance with the parties' agreement.[29] The issue is therefore whether the bankruptcy court could properly have found from the evidence presented that $135,492 (which was apparently calculated as the original 2006 Loan minus the twelve mortgage payments) was subjected to Michelle's unauthorized use.

The problem is that Debtors elected not to provide this Court with the full trial record, including the apparently voluminous bank and corporate records frequently referenced in the lengthy court decision. In fact, Norma argues that this was a tactical decision to deprive this court of the ability to review "the extremely prejudicial bank and credit card statements showing the ubiquitous charges for gambling and personal expenses by Appellants that ran the company further into debt crushing any chance for the company to pay back its debt."[30]

The bankruptcy court's decision makes numerous references to specific amounts, and categories of expense, that it found improper:

> 1. The opinion outlined a series of improper cash advances, ATM withdrawals, and purchases on ATI credit and/or debit cards, totaling $4,172.97, made immediately prior to disbursement of the 2006 Loan (but after Debtors were aware Norma's Mortgage Loan had closed and the transfer of money was imminent), which were used for Debtors' personal affairs, and another $8,042.80 of improper advances, withdrawals and purchases made immediately upon ATI's

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[28] (...continued)
embezzlement").

[29] *See, e.g., Int'l Fid. Ins. Co. v. Fox (In re Fox)*, 357 B.R. 770, 778 (Bankr. E.D. Ark. 2006) (only the portion of the property entrusted that is used inappropriately is non-dischargeable under § 523(a)(4)); *Telmark, LLC v. Booher (In re Booher)*, 284 B.R. 191, 214 (Bankr. W.D. Pa. 2002) (non-dischargeable debt under § 523(a)(4) is limited to amounts actually embezzled).

[30] *Appellee's Opening Brief* at 18.

receipt of the 2006 Loan proceeds;[31]

2. The opinion listed numerous checks written by Michelle, totaling $4,949.45 in February 2006, and $4,213.76 in March 2006, along with an additional $4,709.96 in casino ATM cash advances or withdrawals in March 2006, that Debtors opted to omit from the financial reports they compiled and gave to Norma, which reports were part of the consideration she sought before making the 2006 Loan.

It can certainly be inferred from the opinion that the court believed all of these itemized amounts were converted.[32]

In addition to very specific findings, the court's thorough opinion contained several more general references to the content and quality of the evidence received on this subject:

1. The opinion referenced that "[t]he company's bank statements and credit cards reflect casino withdrawals and cash advances *throughout the year*";[33]

2. The opinion noted that "[t]he company's bank and credit card statements also reflect further personal expenses *throughout* 2006. In the fall of 2006, Harold and Michelle traveled to Japan. Although the trip was a vacation, the expenses were charged to Advanced Technology's credit cards;"[34]

3. The opinion stated, based "on the evidence," that "Harold and Michelle's gambling and personal spending not only did not end, but increased immediately following the loan;"[35]

4. The decision noted the evidence established that "*[t]hroughout 2006*, Harold and Michelle continued to live large on the company's credit cards and bank account. Not only did they fail to reduce the company's debt, they took actions to increase it, taking out new credit cards and immediately maxing them out with gambling and other personal expenses, including a vacation to Japan."[36]

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31 *Findings* at 4, *in* App. at 192.

32 *Id.* at 6-7, *in* App. at 194-95.

33 *Id.* at 7, *in* App. at 195 (emphasis added).

34 *Id.* (emphasis added).

35 *Id.* at 10, *in* App. at 198.

36 *Id.* at 11, *in* App. at 199 (emphasis added).

Accordingly, although these specific findings may not provide the exact dollar amount of every improper check or withdrawal, they clearly show that the bankruptcy court found Michelle had embezzled or converted funds in excess of those separately itemized.

Michelle argues that the evidence presented at trial does not support a finding that Norma was damaged in the amount of at least $135,492 as a result of her conversion or embezzlement. Alternatively, she apparently argues that the court failed to make adequate findings of fact under Federal Rules of Civil Procedure 52(a),[37] to justify the total claimed damages.

"When the appellant intends to argue on appeal that the findings or conclusions of the district court are unsupported or contrary to the evidence, the appellant must include in the record a transcript of all the evidence relevant to such a finding or conclusion. Fed. R. App. P. 10(b)(2)."[38] Debtors elected not to provide that transcript, nor did they include any of the documentary evidence admitted at trial, and therefore we cannot review the sufficiency of the evidence.

Michelle also argues that the bankruptcy court's 22 page, single-spaced decision does not contain sufficient *findings* to support its damage award. In other words, although the opinion contains many itemized amounts, and many general references to the documentary evidence of conversion and embezzlement, she essentially argues that the court did not total the converted/embezzled amounts to arrive at the award, but instead simply used the amount of the unpaid 2006 Loan. The Court agrees that it appears that is how the court arrived at the precise judgment amount, since the conversion and embezzlement damages came

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[37] Rule 52(a) is made applicable to bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7052.

[38] *Vu v. Frank*, 972 F.2d 357, 1992 WL 192721, at *1 (10th Cir. 1996); *Oyler v. Jensen*, 76 F.3d 393, 1996 WL 50510, at *1 (10th Cir. 1996).

to such a precise number, and more importantly, because it exactly matched the unpaid amount of the 2006 Loan.

Trial courts are required by Federal Rules of Civil Procedure 52(a) to state their findings and conclusions. "[T]he touchstone for whether findings of fact satisfy Rule 52(a) is whether they are sufficient to indicate the factual basis for the court's general conclusion as to ultimate facts so as to facilitate a meaningful review of the issues presented."[39] However, findings of fact need not be "inordinately detailed,"[40] as long as "they afford the reviewing court a clear understanding of the factual basis for the trial court's decision."[41] Thus, "to facilitate appellate review, a district court must make clear on the record the findings of fact on which it relies."[42]

Although we were provided none of the trial evidence as part of the appellate record, we can immediately say that, as a matter of law, the portion of the 2006 Loan used to pay off the 2004 Loan cannot, by definition, be considered "unauthorized." Payment of this loan was expressly part of the promised consideration for making the loan. Furthermore, it fell into the "corporate debt" category that Harold had specifically represented would be paid in full either with the loan proceeds or with other corporate assets by January 2007. Maybe even more importantly, we know Norma agrees the payment of this debt was authorized, because she effectively paid that loan, herself, by remitting enough of

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[39] *Denmon v. Runyon*, 89 F.3d 849, 1996 WL 362743 at *1 (10th Cir. 1996) (internal quotation marks omitted) (Findings of fact need not be "inordinately detailed," provided they give the reviewing court "a clear understanding of the factual basis for the trial court's decision." *Id.*).

[40] *Colo. Flying Acad., Inc. v. United States*, 724 F.2d 871, 878 (10th Cir. 1984).

[41] *Bell v. AT & T*, 946 F.2d 1507, 1510 (10th Cir. 1991) (internal quotation marks omitted).

[42] *Bartee v. Michelin N. Am., Inc.*, 374 F.3d 906, 913 (10th Cir. 2004).

the $150,000 loan proceeds directly to her Edward Jones account to repay that loan. Therefore, Michelle did not exercise unauthorized dominion over at least $50,000 of the 2006 Loan proceeds, and that payment should not have been included in any award for conversion and/or embezzlement damages, assuming it was.

Because it appears from the face of the opinion that the trial court used the wrong measure of calculating damages under §§ 523(a)(4) and (6), we must remand its award of conversion and/or embezzlement damages against Michelle for further findings consistent with this opinion. It could well be that sufficient evidence was received showing that there were truly unauthorized transactions exceeding the $135,492 award (which of course by definition may not include repayment of the 2004 Loan or any other legitimate ATI business expenses). But because we are unable to definitely determine from the opinion that the bankruptcy court used the correct methodology for determining damages, we must remand that portion of the decision.

V. CONCLUSION

We affirm the non-dischargeable judgment against Harold, in the amount of $135,492, pursuant to § 523(a)(2)(A). We remand the § 523(a)(4) and (6) judgment in the amount of $135,492 against Michelle, for additional findings and a determination regarding the amount of damages that are non-dischargeable under §§ 523(a)(4) and/or (a)(6).[43]

[43] Because the judgment on the § 523(a)(4) and/or (6) claims holds Harold and Michelle jointly and severally liable, any reduction in the amount of judgment on remand will apply to both Michelle and Harold with respect to those claims, but will not affect the amount of Harold's separate liability under § 523(a)(2).