

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Friday, July 19, 2024

Hearing Room 201

9:00 AM

9:23-10232 Gustavo Jose Berrocal

Chapter 13

Adv#: 9:23-01017 COASTHILLS CREDIT UNION, a California corporation v. BERROCAL,

#1.00 Motion in Limine

Hearing

RE: [44] Amended Application (related document(s): 42 Motion in Limine and proof of service filed by Defendant GUSTAVO J BERROCAL, JR,) and proof of service

Docket 44

**Tentative Ruling:**

**July 19, 2024**

*Background*

On March 31, 2023, Gustave Jose Berrocal, (the "Debtor") filed a voluntary petition for bankruptcy pursuant to Title 7 Chapter 13 of the United States Bankruptcy Code, (the "Petition"). *See* Case No. 9:23-bk-10232-RC Docket No. 1.

On May 13, 2023, Coasthills Credit Union, ("Coasthills") filed that *Complaint to Determine Dischargeability of Debt [11 U.S.C.A. §523]* (the "Adversary"). *See* 9:23-ap-01017 Docket No. 1. [FN1] Coasthills and the Debtor entered into that "Loan and Security Agreement and Disclosure Statement" in which the Debtor received a \$45,000.00 loan to be repaid with an interest rate of 9.490% (the "Loan"). *See* Proof of Claim, No. 5-1. The Debtor never made payment on the Loan to Coasthills. *See* Docket No. 36, p. 2. This is not disputed. *See id.*

Coasthills asserts the Debtor intended to never pay back the Loan. *See Docket* No. 1, p. 3. Coasthills also alleges the Debtor was engaged in acts of actual fraud when he misrepresented the purpose of the Loan when he obtained it from Coasthills. *Id.* at p. 5. Coasthills claims the Debtor promised he would use the Loan for home repairs when the Debtor actually invested it into a cryptocurrency fund. *Id.* Coasthills alleges that the Debtor's representations were false and that he knew they were false at the time they were made. *Id.* Coasthills says it would not have made the Loan had it known the Debtor intended to invest it in a cryptocurrency fund. *Id.* at p. 2.

Moreover, Coasthills claims that that because of the Debtor's fraudulent actions, it has

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Friday, July 19, 2024

Hearing Room 201

9:00 AM

CONT... **Gustavo Jose Berrocal**

**Chapter 13**

suffered monetary damages in the amount of \$46,351.90. *See id.* at p. 6. Thus, Coasthills through the Adversary requests that the Court declare that the amount owing under the Loan be non-dischargeable pursuant to 11 U.S.C. § 532(a)(2). *See id.*

On June 20, 2024, the Debtor filed that *Motion in Limine and Proof of Service*, (the "Motion"). *See* Docket No. 44. Pursuant to the Motion, the Debtor seeks to exclude any parol evidence concerning any alleged oral representations regarding what the Debtor intended to do with the Loan, because such testimony seeks to alter the terms of a fully integrated written contract. *See id.* at p. 3, lines 1-11. The Debtor alleges the parol evidence rule would preclude testimony concerning all alleged oral agreements made by the Debtor as the contract is fully integrated. *Id.*

On June 27, 2024, Coasthills filed *Plaintiff Coasthills Credit Union's Opposition to Defendant's Motion in Limine*, (the "Opposition"). *See* Docket No. 46. Coasthills argues that the Motion does not specify what evidence is to be excluded and that the Adversary falls under the fraud exception to the parol evidence rule. *See id.* at p. 2.

On June 28, 2024, the Debtor filed that *Reply to Opposition to Motion in Limine* (the "Reply"). *See* Docket No. 47. Through the Reply, the Debtor argue that parol evidence is not permitted to add to the terms of an integrated contract. *See id.* at p. 2.

*Analysis*

"Although the parol evidence rule results in the exclusion of evidence, it is not a rule of evidence but one of substantive law." *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.*, 55 Cal.4th 1169, 1174 (2013).

"The parol evidence rule is a fundamental rule of contract law which operates to bar extrinsic evidence contradicting the terms of a written contract...[E]xecuting a written contract [] supersedes all of the negotiations or stipulations concerning its matter which proceeded or accompanied the execution of the instrument..." *In re SCCC Assocs. II Ltd. Partnership*, 158 B.R. 1004, 1010 (Bankr. N.D. Cal 1993) (citing *BMW of North America, Inc. v. New Motor Vehicle Board*, 162 Cal.App.3d 980 (1984)).

"The parol evidence rule protects the integrity of written contracts by making their terms the exclusive evidence of the parties' agreement. However, an established exception to the rule allows a party to present extrinsic evidence to show that the agreement was tainted by fraud." *Riverisland, supra.* at 1171-72. *See In re Marriage*

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Friday, July 19, 2024

Hearing Room 201

9:00 AM

CONT...

**Gustavo Jose Berrocal**

**Chapter 13**

*of Schu*, 231 Cal.App.4th 394, 399 (2014) ("parol evidence is admissible to show fraud, accident or mistake"); *MacClelland v. Cellco P'ship*, 609 F.Supp.3d 1024, 1039 (N.D. Cal. 2022) ("evidence extrinsic to the contract is always permissible to prove fraud in the inducement of the contract pursuant to both common and statutory law"); *In re Baldwin*, 2012 Bankr. LEXIS 1110, at \*10 (Bankr. D. Haw. 2012) (parol evidence "is not admissible to change or contradict the terms of an unambiguous written agreement [however, it...] may be admissible for other purposes" such as showing subject intent to deceive or keep promises); and *Riverisland, supra*, at 1180-81 ("it was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud").

Moreover, when a plaintiff seeks a judgment under 11 U.S.C. §523(a)(2), the plaintiff does not seek to enforce the written agreement, but is instead seeking a judgment of nondischargeability and damages for fraud. *In re Allen*, 2018 Bankr. LEXIS 425, at \*11-14 (Bankr. C.D. Cal. 2018) Both causes of action under §523(a)(2) require proving that the Debtor committed a fraud. [FN2] As such, parol evidence does not prevent the plaintiff from introducing evidence at trial to support a theory of fraud. *See id.*

Further, "[a] claim for nondischargeability of a debt under 523(a)(2)(A), alleging fraudulent concealment, fraud and misrepresentation to obtain funds may be analyzed as a claim for fraud in the inducement under California law." *In re Castro*, 2011 WL 3300345 \*10 (9th Cir. BAP 2011)(internal citations omitted). "Where a creditor is induced to enter into an agreement by fraudulent misrepresentations, not only does California's law of fraud in the inducement apply, but any disclaimer in the agreement cannot be used to prevent the court from considering oral representations." *Id.* "California courts have consistently recognized as well-settled law that parol or extrinsic evidence is admissible to prove fraud in the inducement of a contract 'even though the contract recites that all conditions and representations are embodied therein.'" *Id.* (citing *Ron Greenspan Volkswagen, Inc. v. Ford Motor Land Dev. Corp.*, 32 Cal.App.4th 985, 990 (Cal. Ct. App. 1995)).

Here, Coasthills has clearly alleged that the Debtor committed a fraud under 11 U.S.C § 523(a)(2), and thus induced Coasthills into entering into the Loan by that fraud. The fraud exception to the parol evidence rule is present. Further, it is well established that the Court may review this matter as one of fraud in the inducement. Thus, although Coasthills may be unable to prove the fraud, it is entitled to introduce extrinsic evidence in an attempt to prove the fraud in inducing Coasthills into entering

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Friday, July 19, 2024

Hearing Room 201

9:00 AM

CONT... **Gustavo Jose Berrocal**  
in the loan agreement.

**Chapter 13**

*Conclusion*

The Motion is denied.

[FN1]

All subsequent citations refer to this Adversary docket unless otherwise noted.

[FN2]

To prevail in declaring a debt nondischargeable under 11 U.S.C. § 523(a)(2)(A), "the creditor is required to establish the following five elements: (1) the debtor made ... representations; (2) that at the time **he knew they were false**; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor justifiably relied on such representations; and that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made." *See In re Frazier*, 655 B.R. 1, 30 (E.D. Cal. 2023) (emphasis added). "The elements of a claim under §523(a)(2)(B) are: (1) a representation of fact by the debtor; (2) that was material; (3) that the debtor knew at the time to be false; (4) that the debtor made with the intention of deceiving the creditor." *In re Johnson*, 638 B.R. 782, 798 (Bankr. C.D. Cal. 2022).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Gustavo Jose Berrocal

Represented By  
Michael B Clayton

**Defendant(s):**

GUSTAVO J BERROCAL, JR,

Represented By  
Janet A Lawson

**Joint Debtor(s):**

Courtney Marie Berrocal

Represented By  
Michael B Clayton

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

**Friday, July 19, 2024**

**Hearing Room 201**

---

9:00 AM

**CONT... Gustavo Jose Berrocal**

**Chapter 13**

**Plaintiff(s):**

COASTHILLS CREDIT UNION, a

Represented By  
Karel Rocha

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
Northern Division  
Ronald A Clifford III, Presiding  
Courtroom 201 Calendar**

Friday, July 19, 2024

Hearing Room 201

9:00 AM

9:23-10232 Gustavo Jose Berrocal

Chapter 13

Adv#: 9:23-01017 COASTHILLS CREDIT UNION, a California corporation v. BERROCAL,

**#2.00** Trial Date Set

RE: [1] Adversary case 9:23-ap-01017. Complaint by COASTHILLS CREDIT UNION, a California corporation against GUSTAVO J BERROCAL, JR., (Nature[s] of Suit: [62] Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud) (Rocha, Karel)

Docket 1

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gustavo Jose Berrocal

Represented By  
Michael B Clayton

**Defendant(s):**

GUSTAVO J BERROCAL, JR,

Represented By  
Janet A Lawson

**Joint Debtor(s):**

Courtney Marie Berrocal

Represented By  
Michael B Clayton

**Plaintiff(s):**

COASTHILLS CREDIT UNION, a

Represented By  
Karel Rocha

**Trustee(s):**

Elizabeth (ND) F Rojas (TR)

Pro Se