

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

TRANSMITTAL SHEET FOR OPINIONS FOR POSTING

<i>Will this opinion be published?</i>	No
<i>Bankruptcy Caption:</i>	In re Elena Lucas
<i>Bankruptcy No.:</i>	23bk02426
<i>Adversary Caption:</i>	North Vector, LLC v. Elena Luca
<i>Adversary No.:</i>	23ap00188
<i>Date of Issuance:</i>	September 10, 2024
<i>Judge:</i>	Deborah L. Thorne
<u><i>Appearances:</i></u>	
<i>Attorney for Plaintiff</i>	Matthew P. Barrette Kevin T. Brejcha Blitch Westley Barrette S.C. 1550 Spring Road, Suite 120 Oak Brook, IL 60523
<i>Attorney for Defendant</i>	John Holowach JMH Legal Group 150 S. Wacker Drive, 2400 Chicago, IL 60606

Summary:

Plaintiff moved for the court to find certain debts nondischargeable under §§ 523(a)(2) and (4). HELD: A portion of the debts is nondischargeable under § 523(a)(2); the rest is dischargeable.

## United States Bankruptcy Court, Northern District of Illinois

<b>JUDGE</b>	Deborah L. Thorne	<b>Case No.</b>	23-02426
<b>DATE</b>	September 10, 2024	<b>Adversary No.</b>	23-00188
<b>CASE TITLE</b>	In re Elena Luca; North Vector, LLC v. Elena Luca		
<b>TITLE OF ORDER</b>	Judgment on Dischargeability		

### STATEMENT

North Vector, LLC brought this adversary proceeding seeking an order that its claim against the debtor, Elena Luca, was nondischargeable under 11 U.S.C. § 523(a)(2)(A) and (a)(4). The court held a trial during which both sides presented testimony. The parties stipulated to the admissibility of all the exhibits. After listening to the evidence presented and judging the credibility of each witness, the court finds as explained below that \$34,322.86, a portion of North Vector's claim in Count I, is nondischargeable under 11 U.S.C. §523(a)(2)(A).<sup>1</sup> The remainder of North Vector's claim is dischargeable.

### Background

Elena Luca, debtor, is married to Grigori Negru, the founder and owner of GN Eagle. Originally, GN Eagle was the name under which Grigori drove his truck; it was later incorporated to allow Grigori to obtain a motor carrier license. Marina Smith, whose partner, Igor, was also in the trucking business, knew Elena because the two had worked together in the past. Igor's company, North Vector, owned a truck but did not have motor carrier authority. Marina testified that, because GN Eagle *did* have the required authority, North Vector entered a lease agreement with GN Eagle in July 2019, which Grigori signed on GN Eagle's behalf as its President. The lease allowed North Vector to drive for GN Eagle under its motor carrier authority. (Pl.'s Ex. 1.)

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<sup>1</sup> The evidence did not support findings of liability under Counts II and III.

Marina testified that she worked with Elena to coordinate loads and billing during the brief time that GN Eagle and North Vector operated under the lease agreement. Marina further testified that she trusted Elena because they were from the same country, they had the same cultural traditions, and she had once been invited to Elena's birthday party.

Under the agreement between GN Eagle and North Vector, North Vector would deliver loads under the name of GN Eagle, forward bills of lading to GN Eagle for the loads delivered, and receive payment from GN Eagle within fifteen days. In order for GN Eagle to maintain sufficient cashflow to pay North Vector, it factored its invoices and received a percentage of the value of the invoices within a few days. Presumably this factoring agreement would allow it to make payments to North Vector on a timely basis. GN Eagle received its agreed upon percentage from factoring the North Vector loads. During the short time that North Vector drove for GN Eagle, North Vector completed a number of shipments. (Joint Statement of Facts, ¶ 8.) Unfortunately, beginning in October, North Vector did not receive good payment for many of the loads delivered.

Elena worked in the GN Eagle office as a logistics manager. It was unclear whether she was an officer of GN Eagle. Most importantly, she had check signing authority for the GN Eagle bank account (*Id.* at ¶ 4- 6.) GN Eagle made payments for North Vector's deliveries by issuing checks from its bank account and then mailing them. Generally, it took seven to ten days for the checks to arrive in Vermont to North Vector. It was apparent that Elena and GN Eagle depended on the delay in the checks reaching North Vector. During the time it took for checks to reach Vermont, other payables presented themselves, including fuel and truck repairs. On occasion these payables took priority over the checks which were in transit to North Vector.

It appears based upon the testimony and a review of the bank statements that corporate formalities were completely ignored. In addition to relying on a "float" to manage the money going out of their GN Eagle account, Grigori and Elena did not maintain a separate checking account for their family. Instead, they used the GN Eagle accounts to pay many personal expenses. It was clear from the

testimony and the admitted exhibits that GN Eagle was insolvent during the 2019 period. The insolvency was based in some part by use of the GN Eagle debit card by Elena for the purchase of many personal items, including handbags, clothing, makeup and preschool tuition. Elena testified that her husband, Grigori gave her permission to use the GN Eagle debit card in an amount of \$400 per week, in lieu of a salary. The use of the debit card, however, with the lack of sufficient cash to pay all GN Eagle's expenses, including the North Vector invoices, created a situation where there just was not enough cash. To "manage" the poor cashflow, Elena, who had the ability to communicate directly with the bank, began issuing stop payment directions.

Marina testified that when she received the first of several stop payment notices from the bank, she contacted Elena immediately. The first check on which payment was stopped was dated September 18, 2019 and was for \$6,081.67. (Pl.'s Ex. 7.) The date on the notice the bank sent to North Vector alerting them to this fact was October 3, 2019. (*Id.*) When Marina reached out, Elena acted surprised that the payment had been stopped. She said that there was an issue with the bank, which she would fix and then reissue the check. That second check, dated September 27, 2019, was also returned by North Vector's bank with a "stop payment" notation. (Pl.'s Ex. 8.) It was for the same amount as the first stopped check: \$6,081.67. (*Id.*) The notice sent from the bank with this information was dated October 18, 2019. (*Id.*) Marina contacted Elena again, who assured her that as long as North Vector continued working, they would get paid. The check was sent a third time, and at that point it cleared. In November, an additional check received by North Vector was cancelled with a "stop payment" notation. (Pl.'s Ex. 9.) The check was dated November 7, 2019, and was for \$8,486.57. (*Id.*)

Elena admitted during her testimony that she told the bank to stop payment on these checks. But she explained that it was because Grigori, her husband and the GN Eagle owner, had told her to stop those payments every time. Yet Elena's explanation and testimony that she only operated at the direction of her husband were not credible. She appeared to be an intelligent woman, familiar with trucking logistics, banking generally, and directing stop payments. Her testimony was clearly rehearsed. The

evidence supported the fact that she issued over one hundred stop payment directions during a very short period. (Pl.'s Exs. 14, 15.) While it was not clear whether she was an officer of GN Eagle, it was clearly a family operation and one where corporate formalities were not evident. Given the amount of control Elena had over GN Eagle's finances and day-to-day business, it simply was not credible that she only ever stopped checks on the order of Grigori.

While certain of the communications between Marina and Elena related to past due invoices, other communications focused on maintaining delivery of loads by North Vector for GN Eagle. Specifically, Elena's assurances to Marina after the first bad check aimed to give Marina confidence that these were bank mistakes and that, if North Vector kept on delivering loads, North Vector would be paid with good funds. The result of North Vector's reliance on these assurances is evidenced by several invoices: Statement #10, which covers work performed between October 18 to October 31, and asserts a debt valuing \$12,043.76; Statement #11, which covers October 31 to November 15, valuing \$7,498.00; statement #12, which covers October 15 to November 22, valuing \$7,636.00; and Statement #13, which covers November 22 to November 26, valuing \$7,145.10. (Pl.'s Ex. 6.)

On November 26, 2019, Marina emailed Elena to request that payments be made on the cancelled and delayed payments to North Vector. (Pl.'s Ex. 10.) On that same day, Elena and Marina talked on the phone regarding the lack of payments. During the phone call they ended their working relationship. For several weeks after the relationship ended, North Vector continued to demand payment from GN Eagle for their multiple outstanding invoices. North Vector did not work for GN Eagle after November 26, 2019.

### **Discussion**

Plaintiff has the burden of proof under section 523(a) and must demonstrate their merits by a preponderance of the evidence. *Ojeda v. Goldberg*, 599 F.3d 712, 716 (7th Cir. 2010).

### **A. Jurisdiction**

The court has jurisdiction over this proceeding under 28 U.S.C. § 1334(a) and the district court's Internal Operating Procedure 15(a). Venue is proper under 28 U.S.C. § 1409(a). Cases brought under 11 U.S.C. § 523 are core proceedings under § 157(b)(2)(I), and the court may enter a final judgment.

### **B. Nondischargeable Debts Under 523(a)(2): Obtained by False Pretense, False Representation, or Actual Fraud**

Section 523(a)(2)(A) provides that a debt may not be discharged if it is:

(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).

To prove fraudulent misrepresentation, the plaintiff must show that: “(1) the debtor made a false representation or omission, (2) that the debtor (a) knew was false or made with reckless disregard for the truth and (b) was made with the intent to deceive, (3) upon which the creditor justifiably relied.” *Ojeda v. Goldberg*, 599 F.3d 712, 716-17 (7th Cir. 2010).

Elena clearly made false statements to Marina and North Vector. No evidence was presented that the bank mistakenly issued false stop payments on the checks. In fact, there was no evidence that the bank issued anything on its own, such as a “not sufficient funds” advice. There was not even any evidence that Grigori communicated with the bank at any time. The control of whether a check was stopped or went through was based solely on Elena's direction and control.

While the account upon which the stop payment directions were issued was one under the name of GN Eagle, it was clearly the “family” bank account. No evidence was presented that Elena and Grigori maintained any other account for use by the family. Thus, the corporate veil behind, which Elena claims she must be protected, does not exist.

## 1. Piercing the Corporate Veil

The debt alleged by North Vector arose from its contract with GN Eagle. For Elena Luca, a non-shareholder or owner, to be held responsible for this debt, the court must “pierce the corporate veil” and look past the corporate entity. To pierce the corporate veil in Illinois, “(1) there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist; and (2) circumstances must be such that adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice.” *BCL-Sheffield LLC v. Gemini Int. Inc. (In re Tolomeo)*, 537 B.R. 869, 876 (Bankr. N.D. Ill. 2015), *adopted sub nom. In re: Tolomeo*, No. 15 C 8118, 2015 WL 8741730 (N.D. Ill. Dec. 15, 2015) (quoting *Wachovia Secs., LLC v. Banco Panamericano, Inc.*, 674 F.3d 743, 751-52 (7th Cir. 2012)). Illinois courts have held that veil-piercing is not precluded even when a party lacks status as a shareholder, officer, director, or employee. *Tolomeo*, 537 B.R. at 878 (collecting cases); *see Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371, 381 (7th Cir. 2008) (“Under Illinois law, it is possible for a non-shareholder to be found personally liable under a veil-piercing theory.”).

Here, while Elena was not officially a shareholder, officer, or director, she was an employee and married to the sole owner of GN Eagle. No formalities were followed as to the money coming in and out of the company’s bank account. The personal and company funds were commingled. Elena controlled the company’s funds through her signing authority. Elena and Grigori testified that Elena did not receive a salary from GN Eagle. But neither Grigori nor Elena had a personal bank account, and multiple personal payments were made from the business account, including to Nordstrom, Sephora, Neiman Marcus, and Fashionphile. (Pl.’s Ex. 12, at 177, 184, 192.) Grigori testified that Elena could only use \$400 from the account each week--but if she used more, she simply had to tell him. Grigori testified that he had a weekly allowance of a similar amount, as well, though his amount was unclear. The parties frequently used more than \$400 during a week for personal expenses that were unrelated to the GN Eagle business. There was no enforcement of the allowance amount. These facts establish that the company’s

assets were diverted to Elena while the company was failing to pay its corporate debts.<sup>2</sup> There was such a unity of interest that the personalities between Elena, her husband, and GN Eagle cannot be separated.

Additionally, fraud would be sanctioned and injustice promoted if North Vector were unable to pierce the corporate veil of GN Eagle to Elena. As discussed below, Elena's misrepresentations to North Vector were fraudulent. Elena and Grigori also treated GN Eagle as their own private bank account, and when the creditors of the company went unpaid, GN Eagle shut down. To allow her to be shielded through the GN Eagle corporate entity and allow the debt created by her fraud to be discharged would sanction her fraud.

## **2. Elena's False Representations or Omissions**

A false representation consists of an express representation by statement or through conduct, whereas false pretenses are implied misrepresentations or conduct that fosters a false impression. *Handler v. Moore (In re Moore)*, 620 B.R. 617, 627-28 (Bankr. N.D. Ill. 2020); *see also Nite Lite Signs and Balloons, Inc. v. Philopulos (In re Philopulos)*, 313 B.R. 271, 281 (Bankr. N.D. Ill. 2004). An additional note, however, is that tendering a check for which the Debtor didn't have any assets is not a "false statement" because a check is not a "factual assertion." *See Goldberg Securities, Inc. v. Scarlata (In re Scarlata)*, 979 F.2d 521, 525 (7th Cir. 1992).

False representations are present in this case. Elena told Marina, who worked for North Vector, that the stopped checks were due to an issue with the bank. This was false. Elena testified that she had been told by her husband to issue stop payments on the checks. Elena knew that she had been the one to request the stop order and that it was not an issue with the bank. In fact—in October 2019 alone—Elena Luca directed the bank to issue twenty-two stop payments. (Pl.'s Ex. 12, at 176.) Elena also acted surprised when she was told that the first check had bounced due to a "stop payment" notation. Nothing about the "stop payments" notation on the checks was a surprise, nor was it some inadvertent mistake.

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<sup>2</sup> There was some evidence that, through the issuance of K-1 statements, Elena and Grigori claimed these personal disbursements as salary or distributions. But this does not change the fact that they each dipped into the corporate account to pay their personal expenses to the detriment of GN Eagle's creditors.



The misrepresentation that the bank had been the one to cause the checks to bounce also took the blame from GN Eagle, allowing the North Vector to believe at first that this was a rare, accidental occurrence, one upon which it relied.

### **3. Knowledge the Statements were False and Intent to Deceive**

Fraudulent intent may be determined from the totality of circumstances. *Gasunas v. Yotis (Yotis)*, 548 B.R. 485, 496 (Bankr. N.D. Ill. 2016) (citing *Cent. Credit Union of Ill. v. Logan (In re Logan)*, 327 B.R. 907, 911 (Bankr. N.D. Ill. 2005)). “Where a person knowingly or recklessly makes false representations which the person knows or should know will induce another to act, the finder of fact may logically infer an intent to deceive.” *Bleznitsky v. Jairath (In re Jairath)*, 259 B.R. 308, 315 (Bankr. N.D. Ill. 2001). Here, Elena told Marina and North Vector that the checks were stopped due to problems at her bank. Elena knew the bank had not made a mistake, and if she earnestly believed that it had, it was up to her to provide evidence of this. She did not; no evidence was provided that the bank made any mistakes. On the contrary, over one hundred checks had been stopped during 2019. (Pl.’s Exs. 14, 15.) This was a pattern of Elena managing the “float” between issuing a check and allowing it to be honored. GN Eagle ran out of money to pay creditors, stopped payment on their checks, waited for more funds to come in, and then perhaps tried to reissue payment. At the same time, however, Elena was using the company’s bank account as her own personal checking account.

Evidence and testimony demonstrate that at the same time Elena and Grigori were paying several creditors out of the GN Eagle account for their personal consumer goods, GN Eagle was struggling, and in fact had to shut down a few months later in December 2019. These circumstances show that Elena intended to hide GN Eagle’s dire financial situation and induce North Vector to continue making deliveries to keep funds rolling in to GN Eagle, while Elena used corporate funds for personal purchases.

### **4. North Vector’s Justifiable Reliance Upon Elena’s Assurances**

Justifiable reliance does not require a creditor to act reasonably; rather, they simply must not blindly rely on a misrepresentation that would have been obvious had the creditor made a cursory

examination of it. *Ojeda v. Goldberg*, 599 F.3d 712, 717 (7th Cir. 2010). The “creditor has no duty to investigate unless the falsity of the representation would have been readily apparent.” *Id.* Justifiable reliance is subjective rather than objective, and it requires “looking at the circumstances of a particular case and the characteristics of a particular plaintiff.” *Id.*

Here, North Vector justifiably relied on Elena and her representations. Marina testified that she trusted Elena at first, based on their history and cultural connections. Elena acted surprised when the checks were stopped, told Marina it was a problem with the bank, and did send some checks that went through. North Vector justifiably relied on Elena’s statements that the money would come through and continued to handle shipments while the debt to them built up, until it eventually came to a head in November of 2019. After multiple checks had been stopped, their working relationship ended.

#### **5. Amount Found Nondischargeable Under 523(a)(2)**

Under section 523(a)(2)(A), the underlying debt must be “*obtained by*” the false representation. 11 U.S.C. 523(a)(2)(A) (emphasis added). When nothing is obtained by the misrepresentation of a party, as when a debt pre-exists a misrepresentation, then that prior debt cannot be excepted from discharge under section 523. *See Bednarsz v. Brzakala (In re Brzakala)*, 305 B.R. 705, 710–11 (Bankr. N.D. Ill. 2004).

To calculate the non-dischargeable debt, therefore, we must count the invoices due from the time Elena made the misrepresentation (October 3rd) up to the time that North Vector justifiably relied on her statements and then stopped rendering services to GN Eagle (November 26th). The invoices for work completed before October 3rd cannot be included in the non-dischargeable debt, because these are the result of a breach of contract and are dischargeable under section 523(a)(2). The only debts that are nondischargeable are the invoices generated because of North Vector’s reliance on the fraudulent statements of Elena that the bank was making a mistake. They are listed above and, calculated together, the nondischargeable amount is \$34,322.86.

**C. Nondischargeable Debts Under 523(a)(4): Fiduciary Duty**

North Vector also argues that its claim is nondischargeable under section 523(a)(4). This requires a finding that Elena had a fiduciary duty to North Vector. This must be created where there is “a difference in knowledge or power between fiduciary and principal which . . . gives the former a position of ascendancy over the latter.” *Matter of Marchiando*, 13 F.3d 1111, 1116 (7th Cir. 1994).

No difference in power existed between Elena and North Vector. GN Eagle owed North Vector for services rendered under the lease. Essentially, they were two trucking companies with a commercial relationship. As a result, the claim under section 523(a)(4) is without merit.

**Conclusion**

The court holds that \$34,322.86, a portion of North Vector’s claim, is nondischargeable under 11 U.S.C. §523(a)(2)(A). The remainder of North Vector’s claim is dischargeable.

ENTER:

Dated: September 10, 2024



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Honorable Deborah L. Thorne  
United States Bankruptcy Judge