

**FILED**  
**January 11, 2006**  
**U.S. Bankruptcy**  
**Court**  
**Santa Rosa, CA**

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7 UNITED STATES BANKRUPTCY COURT  
8 NORTHERN DISTRICT OF CALIFORNIA

9 In re

10 DION REIF,

No. 03-12823

11 Debtor(s).  
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12 DAVID KURLAND,

13  
14 Plaintiff(s),

15 v.

A.P. No. 04-1018

16 DION REIF,

17 Defendant(s).  
\_\_\_\_\_ /

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19 Memorandum of Decision  
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21 In the summer of 2000, plaintiff David Kurland was in dire financial straits, even to the point of  
22 contemplating suicide. He had purchased an interest in a business known as Downtown Autobody, LLC,  
23 and had loaned the business about \$500,000.00. Not only was the business failing, but Kurland had  
24 personally guaranteed hundreds of thousands of dollars of business debt.

25 The other principal of the business was Chapter 7 debtor and defendant Dion Reif. When  
26 Kurland told Reif about his dire situation, Reif found a new investor, A.C. Patel, to take out Kurland. In

1 September, 2004, the parties entered into an agreement whereby Kurland would sell his interest in the  
2 LLC for \$1 million (the approximate balance owed to him on his loans, plus accrued interest). <sup>1</sup> Patel  
3 personally guaranteed this obligation, plus agreed to indemnify Kurland against claims made on him by  
4 business creditors.

5 The Patel deal was a godsend for Kurland, which he freely admitted. It saved him from personal  
6 and well as financial disaster. Although Patel later resisted meeting his obligations, alleging that he had  
7 been fraudulently induced to enter into the deal, he subsequently settled with Kurland for over  
8 \$400,000.00. Had Patel not entered into the picture, Kurland would have lost everything and been on the  
9 hook for much more to business creditors.

10 Kurland has somehow convinced himself that Reif owes him a nondischargeable debt. He does  
11 not allege that Reif lied to him, but rather that Reif withheld information about Patel. Here in Kurland's  
12 own words, is his statement of the case:

13 Q. What exactly do you contend that [Reif] did not tell you that he should have told you?

14 A. How good Mr. Patel's word was, how good Mr. Patel's ability to perform would be, that he  
15 was performing in a reasonable and predictable way, and he did not do those things for me.

16 Kurland's case is so utterly without merit on every legal and factual level that it is difficult to  
17 know where to begin. Reif did not know that Patel's word was not good, or that Patel had no ability to  
18 perform. Reif thought Patel's word was good and that he had the ability to perform. Patel's word *was*  
19 good, and he *did* have the ability to perform. Kurland had privately investigated Patel, and *knew* Patel  
20 had the ability to perform. The evidence does not justify the finding of a single element of fraud, let  
21 alone establish a nondischargeable debt.

22 Even if the evidence had established some sort of intentional non-disclosure (which it does not),  
23 Kurland suffered no damages. At the very worst, Kurland would have been no better off than if no angel  
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25 <sup>1</sup>Kurland also agreed to transfer his interest in the real property on which the business was  
26 conducted, which had little or no equity.

1 had been found. There is not the slightest indication that anyone else could have been found had Patel  
2 not agreed to invest. Debts are nondischargeable under § 523(a)(2) of the Bankruptcy Code only to the  
3 extent that money or property is obtained by false pretenses. Kurland was already owed \$1 million  
4 before Patel was brought in; he was not induced to part with anything other than a worthless interest in a  
5 failing business and an interest in real property lacking equity. How Kurland can claim the entire note as  
6 his damages for fraud is beyond the understanding of the court even if fraud had been shown.

7 Kurland's reliance on defalcation in a fiduciary capacity under § 523(4) of the Bankruptcy Code  
8 is entirely misplaced. In order for a debt to be nondischargeable under that section, there must be an  
9 express trust. *In re Lewis*, 97 F.3d 1182, 1185 (9<sup>th</sup> Cir. 1996). The trust may be created by agreement  
10 or statute; California law makes partners trustees of partnership property, so a partner is liable under §  
11 523(a)(4) for improper use of partnership property. *Ragsdale v. Haller*, 780 F.2d 794, 796 (9<sup>th</sup>  
12 Cir.1986). However, broad general concepts of fiduciary duty under state law are inapplicable in the  
13 dischargeability context. *In re Cantrell*, 329 F.3d 1119, 1125 (9<sup>th</sup> Cir. 2003). Kurland's theory that  
14 Reif is liable to him, even absent any fraud, for failing to inform him about Patel's supposed  
15 untrustworthiness or an entirely innocent agreement made with Patel after Kurland was out of the picture  
16 does not hold water because they arise out of general state law notions of fiduciary duty and not misuse  
17 or failure to account for partnership assets. See *In re Niles*, 106 F.3d 1456, 1463 (9<sup>th</sup> Cir.,  
18 1997)[defalcation by real estate broker in relation to client funds rendered this claim nondischargeable,  
19 but not other claims based on general breach of fiduciary duty under state law].<sup>2</sup>

20 For the foregoing reasons, Kurland will take nothing by his complaint which will be dismissed,  
21 with prejudice. Reif shall recover his costs of suit.

22 This memorandum constitutes the court's findings and conclusions pursuant to FRCP  
23 52(a) and FRBP 7052. Counsel for Reif shall submit an appropriate form of judgment forthwith.

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25 <sup>2</sup>This discussion of the law is entirely gratuitous. Kurland did not produce evidence sufficient to  
26 justify a finding of any sort of liability even if the court were to adopt his view of the law. There was no  
breach of fiduciary duty shown, let alone defalcation in a fiduciary capacity.

1 Dated: December 15, 2004

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Alan Jaroslovsky  
U.S. Bankruptcy Judge