

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ALASKA

In re:

GARIC HAYES and MAE HAYES,  
Debtors.

Bankruptcy Case No. 24-00086-GS  
Chapter 7

PETER BAUER and LEEANN BAUER,  
Plaintiffs,

Adversary Proc. No. 24-90005-GS

v.

GARIC HAYES and MAE HAYES,  
Defendants.

**MEMORANDUM DECISION AFTER  
TRIAL**

Trial

DATE: February 24, 2025

TIME: 9:30 a.m.

Plaintiffs Peter and LeeAnn Bauer contracted with Garic Hayes General Contractor LLC (GHGC) to build a custom house outside of Palmer, Alaska in the summer of 2021.

Unfortunately, the project was fraught with problems and GHGC never completed the construction. The Bauers now claim that debtors Garic Hayes and his wife Mae Hayes fraudulently induced them to enter the construction contract and pay monies to GHGC. The Bauers claim that the Hayeses are liable for the resulting damages and those damages are excepted from the discharge under § 523(a)(2)(A). The parties tried the case to the court on February 24, 2025, and March 24, 2025.

The Bauers' fraud claims come down to two material, disputed questions of fact. The first is whether the Hayeses fraudulently induced the Bauers to enter into the construction contract and make the initial deposit of \$190,500. According to the Bauers, Garic and Mae caused GHGC

1 to enter into the contract without any intent to perform.<sup>1</sup> The second question is whether they  
2 fraudulently induced the Bauers to make an additional deposit specifically for the purpose of  
3 purchasing lumber, which was never purchased.

4 The court has carefully reviewed the testimony of the witnesses and the exhibits admitted  
5 at trial. Having considered the totality of the evidence, the court concludes that the Hayeses  
6 intended to perform GHGC's contractual obligations when it entered the contract. The second  
7 claim presents a closer question, but the court finds that the Bauers have not met their burden of  
8 proof that either Garic or Mae fraudulently induced them to provide additional funds to purchase  
9 lumber even though it was never purchased. The court will, therefore, enter judgment in favor of  
10 the Hayeses and deny the Bauers' sole claim for relief under § 523(a)(2)(A).<sup>2</sup>

## 11 Facts

### 12 A. Garic Hayes General Contractor LLC.

13 Garic started working in construction when he was 21 years old in a cabinet shop in  
14 Wasilla, Alaska. He then became an independent subcontractor doing interior trim carpentry and  
15 cabinetry in the area. For a while, he left construction to work in a restaurant in Anchorage  
16 before joining Byler Contracting as its general manager. Garic testified at trial that while  
17 working at Byler Contracting, he was responsible for every one of its projects over the five years  
18 he was there. Garic estimated that he was responsible for close to 1,000 construction projects,  
19 involving both residential and commercial projects.

20 Garic left Byler Contracting in 2017 and started GHGC in 2018.<sup>3</sup> He testified that his  
21 new company built its first home in Settlers Bay in May 2018 on speculation. He stated that the  
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23 <sup>1</sup> Due the number of individuals, and multiple family members, referenced in this decision, the  
24 court will generally use first names for clarity. No disrespect is intended.

25 <sup>2</sup> The Bauers' complaint also stated claims under § 523(a)(4) and (6), but the Bauers abandoned  
these claims at trial.

26 <sup>3</sup> The Hayeses submitted GHGC's federal tax returns into evidence at trial. GHGC's first tax  
return is for 2018 and stated that it was for the tax year beginning March 7, 2018. The court  
assumes GHGC is the construction company Garic started.

house sold for a profit and won multiple awards in the local Parade of Homes. Overall, prior to his bankruptcy he estimated that his company entered roughly 50 contracts. Of these, he believes that GHGC completed all but five of those contracts – which were among the last five outstanding when the business closed in 2023.

GHGC's tax returns offer some insight into its financial life. The reported numbers reflect a sharp growth in income with increasing costs as the Covid pandemic arrived:

| Tax Description              | 2018         | 2019           | 2020           | 2021           |
|------------------------------|--------------|----------------|----------------|----------------|
| Gross receipts or sale       | \$ 685,482   | \$ 2,412,540   | \$ 2,451,244   | \$ 3,044,636   |
| Cost of goods and deductions | \$ (407,627) | \$ (1,894,233) | \$ (1,577,261) | \$ (2,816,458) |
| Total deductions             | \$ (221,393) | \$ (384,950)   | \$ (730,639)   | \$ (371,621)   |
| Net income                   | \$ 56,462    | \$ 133,357     | \$ 143,344     | \$ (143,443)   |
| Salaries and wages           | \$ 4,380     | \$ 65,624      | \$ 139,040     | \$ -           |

As reflected above, GHGC paid nominal salaries when it opened in 2018. As its income jumped over the next two years, it increased its salaries in 2019 and 2020, while still reporting positive net income for those two years. In 2021, however, no salaries were paid as GHGC's expenses overtook its income. It is unclear how much, if any, of the reported salaries in 2018-2020 were attributable to Garic.

#### **B. The Bauers' contract.**

In May 2021, during the Covid pandemic, the Bauers contacted Garic by email to inquire whether GHGC was available and able to build a custom home on land they owned in Palmer, Alaska. The Bauers had viewed a house during the 2019 Tour of Homes that the company had built and found it "endearing." The Bauers believed the house showed appealing features and artistic touches that made it feel special. The Bauers also viewed pictures of other houses the company had built and thought Garic and Mae had a good eye for taste and décor.

The Bauers engaged in preliminary discussions with Garic, Mae, and their representative Felicity Russell via email. Ms. Russell was a local realtor who worked for GHGC as the

1 transaction coordinator for the Bauers' house. During these early discussions, the Bauers advised  
2 GHGC that they would pay for the construction from their own funds rather than financing the  
3 project with a lender. The Bauers also forwarded "rough" draft design plans for their house,  
4 which they had been working on themselves. The Bauers were primarily concerned with  
5 finishing the plans and completing construction so they could move into their newly-built home  
6 by March 2022. At the beginning of June 2021, the Bauers forwarded images to GHGC prepared  
7 with Home Designer Pro software. Felicity advised the Bauers that GHGC worked with a drafter  
8 "so we can make all your design changes, additions, alterations, etc here, and that is not [an  
9 added] charge to you. You do not need to have finished plans to start with us."

10         Garic and Mae met the Bauers, in person, in late June 2021. Either at the meeting or  
11 shortly thereafter, they presented a construction contract for the Bauers' review. On June 29,  
12 2021, the Bauers emailed the Hayeses questions about the contract seeking specifics as to a  
13 number of the contract provisions. The next day, Peter reached out to a realtor not involved in  
14 the transaction for a referral to a real estate attorney to review the contract. The realtor was  
15 unable to provide one and the Bauers proceeded without counsel.

16         On June 30, 2021, Mae responded by email to the Bauers' questions concerning the  
17 contract and costs. She stated that she had revised the draft contract in response to the Bauers'  
18 email to clarify it. She also attempted to respond to the Bauers' specific questions raised in the  
19 June 29, 2021 email. The parties exchanged further emails to coordinate execution of the  
20 contract and wiring of funds to GHGC. On July 1, 2021, the parties signed the contract and the  
21 Bauers wired GHGC an initial deposit of \$190,500, representing 25% of the full contract price of  
22 \$762,000.

23         The contract estimated that GHGC would complete the project within 250 days of the  
24 project commencement – which was to be triggered upon execution of the contract. But as the  
25 Bauers acknowledged, the Hayeses were clear that the estimated date of completion was subject  
26 to delays caused by subcontractors and other factors largely beyond their control. As all parties

1 later testified, everyone understood that progress on the project assumed the timely completion  
2 of the Bauers' design plans and approval of the final version of those plans. This never occurred.

3 **C. Drafting the plans.**

4 Dirk Imlach was the draftsman GHGC used to prepare and finish the Bauers' design  
5 plans. At the time of the Bauers' project in 2021, Dirk had been working with Garic for roughly  
6 five years. He first began while Garic was employed by Byler Contracting as general manager  
7 and then continued with Garic when he started GHGC. Together, Dirk stated that he had worked  
8 with Garic on roughly 60 to 70 residential construction projects before the Bauers' house. Dirk  
9 also worked for several other contractors. According to Dirk, most of his design plans were  
10 completed within a month, though some projects could take two to three months. Dirk explained  
11 that he had books with preliminary plans available for home buyers to use, which could be  
12 modified and marked up as needed. Custom houses, however, required more iterations and more  
13 time to draft completed plans.

14 For the Bauers' project, Dirk drafted the first iteration of their design plans on July 8,  
15 2021. GHGC's office manager and project coordinator, Erin Faes, emailed the documents to the  
16 Bauers on July 13, 2021, together with Dirk's contact information. Throughout the rest of July  
17 and August 2021, the Bauers worked directly with Dirk on several iterations of their plans. Dirk  
18 would send them new drafts and Peter would respond with questions, comments, concerns, and  
19 potential design refinements. During these early days of the project, emails between Peter, Dirk  
20 and various company representatives suggest that progress was slowed largely due to (1) Peter's  
21 careful review and revision of various design details; and (2) Peter's work schedule, which  
22 generally limited his time to review design plans to evenings and weekends.

23 An email exchange between Felicity and Peter dated August 3, 2021, is fairly  
24 representative of communications during this time. Felicity inquired whether the Bauers had  
25 been "able to get in touch with Dirk about finishing up your plans." Peter responded: "We are  
26 keenly aware that time is slipping by. Please don't be shy about letting us know if we're

1 bumping against any hard cut-off dates for construction.” Felicity then replied: “Hello again, yes  
2 we are definitely getting nervous about timelines, we were hoping to have the foundation in  
3 already. If you guys can get plans wrapped up this week so we can have a final review and sign  
4 off by weeks [sic] end, that would be great.” Likewise, as of August 12, 2021, Peter  
5 acknowledged in an email that he and his wife hoped to make a final decision that evening to  
6 choose from several variations of their home design plan. Peter sent a series of emails the next  
7 day to Garic, Felicity, and Dirk, showing that the Bauers evidently had settled on a single design  
8 variation, but numerous design details remained. Notwithstanding the delays, Peter expressed his  
9 optimism that he would be able to “hack away” at the remaining details throughout the upcoming  
10 weekend, and hoped to meet with Dirk “to finish the drawings” by Monday or Tuesday of the  
11 coming week.

12 Dirk testified at trial that he prepared a total of eight sets of plans for the Bauers,  
13 involving a total of 16 iterations of those plans. He was unaware of any other project that he had  
14 worked on that had more than five iterations of the plans. Dirk said there came a point when he  
15 became concerned that he was receiving potentially conflicting directions and he generally  
16 considered the Bauers to be harder to deal with than his average customer. Dirk testified that his  
17 seventh version of the plans were dated December 3, 2021, and he delivered the last set of plans  
18 on December 17, 2021. Dirk’s plans were never finalized.

19 **D. Amendment of the construction contract.**

20 While the parties were modifying the plans, the Bauers emailed Garic on August 11,  
21 2021:

22 We’re seeing local retail lumber prices continuing to come down as futures get  
23 better (now below \$500). After iterating plans with Dirk, we think we need a few  
24 more sq ft and are hoping that reduced cost inputs to your spreadsheet might help  
25 us get across the finish line on the floor plan. Could you run the numbers below  
26 through your spreadsheet?

Garic responded to Peter the next day. He began by stating that he had “been keeping up  
with Dirk on the progress and metamorphosis of your plan.” As to the request to add additional

1 square footage, Garic stated that because the physical construction on the house had not begun,  
2 he was willing to offer four options to the Bauers to amend the contract. These options allowed  
3 the Bauers to increase the square footage of the house but still reduce the total cost based on the  
4 lower lumber costs. Each option included decks and a garage, but the main floor ranged from  
5 2,740 square feet to 3,350 square feet. Each option also included a basement with varying  
6 degrees of finished and unfinished space, and one included a “Jack-n-Jill” upstairs. The quoted  
7 lumber packages ranged from \$118,300 to \$131,900. Garic explained that all the options – and  
8 reduced prices – were based on the Bauers making an additional deposit to “allow me to  
9 purchase the lumber from the supplier immediately and thus secure my position on the pricing.”

10 On August 13, 2021, Peter emailed Dirk advising him about the change in the square  
11 footage for the house and forwarded two floor plans “that are identical EXCEPT for the  
12 additional bedroom area, which is INCOMPLETE in both of them.” This email appears to  
13 contain the first reference to the drawings for the roof. Peter raised a concern “that the roof over  
14 a very wide rectangular deck spanning both the family and dining might lose the craftsman  
15 look....” Shortly afterwards, Peter followed up with Garic, advising “I just sent Dirk a couple of  
16 fairly detailed drawings, excepting we haven’t quite nailed the jack-n-jill area. If he doesn’t find  
17 too many big ‘brokes’ in the rest of the house plan, we’re close.”

18 Mae responded to Peter that day, “[o]nce you select Garic will immediately create a  
19 change order and then we will need a check for the amount he specified in the change order so he  
20 can purchase the lumber package immediately.” A week later, Dirk sent the updated plan design  
21 to the Bauers and Garic, stating “I realize the plans are a little over the target SF on the First  
22 floor but I think this is very close and hope for some suggestions on where it is possible to shrink  
23 to meet the target.”

24 The parties continued to exchange emails and attach draft plans. On August 23, 2021,  
25 Felicity emailed Peter to advise him that Garic had “re-adjusted” the price of the project from  
26 \$755,200 to \$759,300 to reflect the cost to build the revised design plans Dirk sent to Garic as of

1 August 20, 2021. Additionally, Felicity reiterated that “this price will require pre-paying the  
2 lumber package as discussed, in order to secure that low lumber cost that we have access to right  
3 now.” Dirk and Peter again exchanged emails and draft plans over August 23-24, 2021. In the  
4 early afternoon on August 24, 2021, Felicity contacted the Bauers to set up a meeting that  
5 evening to finalize everything.

6 Sometime on August 24, 2021, the Bauers delivered a check to GHGC in the amount of  
7 \$134,059 to purchase lumber for the construction of their house. Later that evening the Bauers  
8 emailed a computer link to Felicity regarding roofing ideas for the house. The next day, however,  
9 the parties agreed to cancel the Bauers’ check and Peter wired the money to the company for the  
10 additional deposit.

11 **E. Construction begins.**

12 Despite the lack of completed plans, the parties decided to break ground and move  
13 forward with demolition and excavation at the project site and the pouring of the foundation. The  
14 Bauers and Mae met the excavator at the project site on September 1, 2021, to go over the  
15 process. This included what areas of the property needed to be cleared. The parties also  
16 discussed how and where various features such as the house, the driveway, and the septic system  
17 would be situated. The demolition and excavation work began sometime between September 10  
18 and September 13, 2021.

19 After excavation was completed, the Bauers emailed Felicity and Erin on September 13,  
20 2021, to inquire when Garic would be: (1) meeting with them on site to go over staking the  
21 property for the pouring of the foundation; and (2) meeting to review blueprints and drawings  
22 regarding details such as “roof lines, elevations, window/door/slider sizes and types.” Felicity  
23 responded that Garic would let them know when the foundation/concrete subcontractor was  
24 ready so that everyone could meet on site to place the basement/foundation corners. As for the  
25 design questions, Felicity explained: “our drafter just does basic elevation sketches that will  
26 outline the basic shape and dimensions, but not necessarily the architectural elements of



1 homes....” As for specific architectural elements that the Bauers had expressed their desire to  
2 incorporate, Felicity said she would need to check with Garic to “see how we address getting  
3 those elements the way you like them.” Regarding the roofline issue, Felicity commented: “I will  
4 find out about the approval process for the rooflines as well, I am unsure if that is something  
5 Dirk will draw in detail, or if we get those plans from the truss manufacturer who designs  
6 them—let me find out.”

7 On September 21, 2021, there was an exchange of phone calls and emails regarding the  
8 foundation. The Bauers were advised that the subcontractor was ready “to put stakes down,” but  
9 they expressed concerns that while they wanted to move quickly, they also wanted to proceed  
10 correctly. They also were concerned that Garic and Mae were leaving town soon and wanted to  
11 meet on site “to ensure the lot is set up correctly for the foundation pour[.]” Felicity replied by  
12 email, letting the Bauers know that she would meet with them and the subcontractor on site the  
13 next day.

14 During the same period, the parties continued to go back and forth regarding various  
15 design details, including versions of “concept drawings” concerning roofline details. The parties  
16 also began discussions for upgrading the Bauers’ windows from standard white windows to  
17 upgraded black windows. Felicity passed along Garic’s pricing for two different options and  
18 asked the Bauers to get back to her within a few days because Garic was ready to place the  
19 window order, which took a long lead time for delivery.

20 Sometime between September 22, 2021, and October 5, 2021, the foundation was poured.  
21 By all accounts, it was not poured correctly. According to the Bauers, the job was incorrectly  
22 staked, which led to mistakes in the orientation and positioning of the foundation. Garic blamed  
23 the subcontractor for the incorrect pour. The Bauers contacted Mae to meet in person at the site  
24 with Garic on October 5, 2021, to address the mistakes with the foundation. The Bauers and  
25 Garic exchanged emails and calls over the next couple of days to address the fixes needed to the  
26

1 foundation, discuss the roofing, and an extensive list of standard features the Bauers wanted. The  
2 parties later met by video on October 13, 2021, to further discuss the matter.

3 During the end of October or early November, some work was done as to the walls and  
4 backfilling the basement foundation. On November 7, 2021, the Bauers emailed Felicity:

5 Other than [Felicity's October 28, 2021, two-sentence email regarding the need to  
6 "backfill" the work area so that the foundation remediation work could occur], we  
7 haven't heard anything from anyone since our Oct 13th Zoom, so we did email Dirk this  
8 evening with the actual to-date basement foundation dimensions and a request for his  
9 next plan revision, including 3D roof view and more complete dimensioning than we've  
10 seen in prior concept drawings.

11 As excited as we were Friday evening to see progress [backfilling], we have to say that  
12 **work should be paused until we have gone through the red-line process with  
13 dimensioned plans.**

14 (Emphasis added).

15 By mid-November, the Bauers were concerned that virtually all of their contact during  
16 this period was with Felicity and not Garic. According to the Bauers, Dirk had sent them some  
17 drawings but none of those were complete. The Bauers also wrote: "It is REALLY important that  
18 we have a reasonable amount of time to review and red-line Dirk's latest drafting (even if not  
19 complete) BEFORE they lay any more foundation. So the sooner we can start reviewing, the less  
20 likely we are to either end up with further construction delays and problems."

21 As time went by, however, Dirk stopped taking direction from the Bauers. Instead, he  
22 insisted that the Bauers needed to go through Garic before anything further could be done on the  
23 plans. This increased the Bauers' frustration with the project as Peter noted to Felicity that as of  
24 December 1, 2021, it had been seven weeks without hearing directly from either Dirk or Garic.  
25 Garic responded on December 3, 2021, advising Peter that he had received and marked up Dirk's  
26 latest plans. Garic forwarded the revised plans to Peter the next day, prompting a further  
exchange of emails. These included Peter's request that the drawings include the interior  
dimensions and his statement that "[w]e are amenable to reworking the roof if needed."

1 In response to these emails, on December 13, 2021, Dirk responded that he “left the  
2 interior dimensions off as I did not want to confuse the plan with them as my understanding was  
3 that the push is to get the foundation dimensions confirmed/approved.” Peter responded that  
4 same day, stating “[a]s we expressed to you on the phone this evening, we are beyond frustrated  
5 and disappointed.” His email continued:

6       Garic and Mae asked us to wait a few days for a fully documented set of architectural  
7 drawings that we could redline. As of today, we’ve been waiting for TWO MONTHS and  
8 counting. This Dec 3rd version is a marginally revised, still incomplete, rough draft  
9 drawing. We also emailed Dirk separately on Nov 7th asking for dimensioned drawings  
and 3D views of the proposed rooflines, even if incomplete. As usual we got no reply.

10 While we have been waiting for a complete set of drawings, we have been compiling red  
11 line comments based on what info we did have. As you read our notes, it’ll be obvious  
12 that the entire list of concerns could have been addressed in the next couple of weeks  
after our [October 13, 2021] Zoom meeting.

13 Even if Dirk and/or Garic start communicating with us immediately, we don’t believe it  
14 is possible to close on a final set of plans in the next couple of days. No plan, no  
construction.<sup>4</sup>

15 Peter ended the email acknowledging receipt of Dirk’s response but stating that they were still  
16 awaiting “‘real’ drafting products.” A couple of hours later, Peter advised Garic and Dirk that  
17 “mutually signed plans are absolutely required before any further construction ... If the upcoming  
18 drawings are significantly more detailed than previously, we’ll take them. If not, just stand by.”  
19  
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21  
22 <sup>4</sup> Peter’s December 13 email seems to be directly in response to an email from Dirk to the Bauers  
23 also dated December 13, 2021, entitled “Builders plans draft,” with which he evidently  
24 forwarded revised plans but which he acknowledged did not contain interior dimensions. Dirk  
25 also informed the Bauers that the concrete plants would be shutting down for roughly a month  
26 within the next couple days. According to Dirk, the included plans only contained foundation  
dimensions in the hope that those could be immediately approved, so that the foundation  
subcontractor could re-pour the foundation before the concrete companies shut down for the  
holidays. Dirk also responded to Peter’s December 13 email on December 14, 2021. He denied  
that anyone was ignoring the Bauers and also attempted to explain how he had reasonably  
responded to all of the Bauers’ earlier questions and concerns.

1 Email communication continued between Felicity and the Bauers in early 2022. In  
2 February, Felicity suggested that the Bauers might want to consider hiring a different draftsman  
3 or an architect at their own expense to complete their plans. She pointed out that Garic believed  
4 Dirk's drawings met his needs to complete the project (provided the Bauers approved them), but  
5 she conveyed that Garic understood if they were unhappy with Dirk's plans and wanted to bring  
6 in their own plans prepared by someone else. Over the next couple of weeks, Felicity shared with  
7 the Bauers a handful of references for architects that Garic had worked with in the past and  
8 would recommend. The Bauers indicated that they would look into getting their own drawings.  
9 After that, there was some sporadic communication in August and September of 2022, regarding  
10 an unpaid surveyor who was attempting to collect directly from the Bauers. It is unclear whether  
11 or how that matter was resolved. The Bauers also asked if GHGC was still interested in building  
12 their house, stating that they now had a complete floor plan but still needed to hire an architect to  
13 create a full set of drawings.

14 In January 2023, the Bauers inquired about whether Garic's contracting company was  
15 prepared to build the house as contracted if the Bauers provided them with a complete set of  
16 plans. In response, Garic asked to see the plans. The Bauers expressed concern about incurring  
17 the cost of architects and other professionals to finish the design work unless Garic verbally  
18 committed to finishing the job. It is not clear how Garic finally responded but the Bauers began  
19 consulting with an architect and other professionals. In an email dated March 3, 2023, with Ace  
20 Concrete, Peter explained: "We stopped construction because Garic was trying to build without  
21 having finished drawings and the project was seriously going off the rails."

22 The Bauers consulted with professionals and focused on the defects in the existing  
23 foundation to determine whether they were remediable or whether the existing foundation  
24 needed to be demolished and the foundation re-poured from scratch. The architect, with the  
25 assistance of other professionals, conducted a survey of the existing work and produced a report  
26 concluding that the existing foundation was not salvageable.

1 In March 2023, Garic and Peter unsuccessfully sought to schedule an in-person meeting  
2 to discuss the project. After that, through written communications, Peter shared with Garic the  
3 results of the foundation survey. Garic disputed the results. He claimed that the survey was based  
4 on Anchorage building codes rather than those applicable in Wasilla and Palmer. According to  
5 Garic, the existing foundation passed an inspection conducted by an “independent IRC  
6 inspector.” Garic also expressed the concern that “you abruptly stopped the project then and  
7 essentially disappeared for months.” Garic then advised Peter that any future correspondence  
8 should be directed to his attorney.

9 **F. GHGC’s financial difficulties.**

10 Both Garic and Mae acknowledged at trial that GHGC was experiencing cash flow  
11 problems during Covid in the summer of 2021, when the company entered into the contract with  
12 the Bauers. They also conceded that their handling of the company’s finances was far from  
13 ideal—as money was commingled from multiple businesses and projects. They candidly  
14 admitted that they were often paying whatever bills immediately needed paying to keep  
15 everything afloat. At the same time, they credibly expressed their belief that in 2021 the  
16 contracting company could address its financial troubles. Garic detailed his efforts that summer  
17 to procure several working capital loans, as well as Covid loans, to continue the contracting  
18 business. Additionally, the Hayeses mortgaged their house to support the business. As Garic  
19 stated, he was still paying his bills and successfully completing projects through 2022.

20 The Bauers presented a much different account of GHGC’s finances at trial. They  
21 discovered that GHGC had been in financial difficulty prior to the date of their construction  
22 contract. The Bauers believe that in light of the financial problems, Garic and Mae never really  
23 intended to build their house or purchase the lumber for the Bauers. Instead, they claim that the  
24 Hayeses induced them to pay the two deposits solely for the purpose of obtaining the Bauers’  
25 money on false pretenses to use for other purposes. In support of their argument, they rely on the  
26 testimony of Kamiko Newsom and an audio recording she provided of a meeting in early July

2021 with Mae. During this meeting, Mae admitted to Kamiko that the contracting company was roughly \$500,000 to \$1,000,000 in debt. Mae also admitted that monies from multiple revenue sources—including Garic’s contracting company—were being “commingled” to pay the bills. According to Mae, she and Garic did not have the luxury of keeping finances separated under these financial conditions.

As it turned out, GHGC failed. The Hayeses lost their house and ended up filing personal bankruptcy in May 2024. This adversary proceeding followed.

### Analysis

#### A. Preliminary matters.

The Bauers contend that Garic and Mae Hayes fraudulently induced them into entering the construction contract with GHGC and making the initial payment as well as the subsequent payment to purchase lumber. Their claims sound in fraudulent misrepresentation as to GHGC’s ability and intent to build their house. But the Bauers contracted only with GHGC. The Hayeses cannot escape personal liability, however, for their tortious actions. Corporations and other business entities only act through their employees and agents as a matter of general agency law. *See In re ChinaCast Educ. Corp. Sec. Litig.*, 809 F.3d 471, 475 (9th Cir. 2015) (citing *Suez Equity Invs., L.P. v. Toronto–Dominion Bank*, 250 F.3d 87, 101 (2d Cir. 2001)). When an agent commits a tort such as fraud and causes the principal to enter into a contract with the third party, the agent is subject to liability for the fraud committed. Restatement (Third) Of Agency § 7.01 & comment b thereto (2006). Garic and Mae remain personally liable for any torts for which they are responsible or participated in as agents of GHGC. *Comm. for Idaho’s High Desert, Inc. v. Yost*, 92 F.3d 814, 823 (9th Cir. 1996) (“corporate officer or director is, in general, personally liable for all torts which he authorizes or directs or in which he participates, notwithstanding that he acted as an agent of the corporation and not on his own behalf.” (quoting *Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1021 (9th Cir. 1986))); *3685 San Fernando Lenders, LLC v. Compass USA SPE, LLC (In re USA Com. Mortg. Co.)*, 802 F. Supp.2d 1147, 1165 (D.

1 Nev. 2011) (“As managing members of Compass, Piskun and Blatt are personally liable for  
2 engaging in the conversion that plaintiffs proved was committed by Compass.”).

3 It is undisputed that Garic acted as GHGC’s agent on the Bauers’ project. In contrast, the  
4 parties have spent a significant amount of time arguing over Mae’s involvement. She was not a  
5 party to the contract and does not have any ownership interest in Garic’s company. Yet, in this  
6 instance privity of contract is largely irrelevant. She consistently acted on GHGC’s behalf  
7 throughout the construction project and played a pivotal role in procuring the funds from the  
8 Bauers. During that process, Mae and Garic both made representations or promises to the Bauers  
9 regarding GHGC. Both acted on behalf of GHGC while negotiating the Bauers’ contract and  
10 obtaining the original deposit as well as the funds for the purchase of the lumber. Both, therefore,  
11 may be held liable to the extent they each separately fraudulently induced the Bauers to pay the  
12 two deposits.

13 **B. The Bauers’ fraud claims.**

14 Because the Hayeses’ underlying liability was not liquidated prepetition, the court must  
15 engage in a two step process: first it must determine whether a debt exists under applicable law,  
16 and second, whether the debt is excepted from discharge under § 523(a). *Banks v. Gill Distrib.*  
17 *Ctrs., Inc.*, 263 F.3d 862, 868 (9th Cir. 2001); *see also Schindler v. Milliron (In re Milliron)*,  
18 2021 WL 4515239, at \*8 (Bankr. D. Alaska Sept. 30, 2021). The underlying fraud claims are  
19 governed by Alaska law while the nondischargeability claims under § 523(a)(2) are governed by  
20 federal law. *See Banks*, 263 F.3d at 868. If the Hayeses are not individually indebted to the  
21 Bauers under Alaska law, the second step becomes unnecessary. *Gidelski v. Anton (In re Anton)*,  
22 2013 WL 1747907, at \*2 (Bankr. E.D. Mich. Apr. 12, 2013). Fortunately, the elements to except  
23 a debt from discharge for fraud under § 523(a)(2)(A) largely mirror those required to state a  
24 claim for fraud under Alaska law. *In re Milliron*, 2021 WL 4515239, at \*8.

25 Section 523(a)(2)(A) excepts from discharge debts incurred through “false pretenses, a  
26 false representation, or actual fraud.” To establish actual fraud under § 523(a)(2)(A), a creditor

1 must prove by a preponderance of the evidence each of the following elements: “(1)  
 2 misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the  
 3 falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable  
 4 reliance by the creditor on the debtor’s statement or conduct; and (5) damage to the creditor  
 5 proximately caused by its reliance on the debtor’s statement or conduct.” *Oney v. Weinberg (In*  
 6 *re Weinberg)*, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009), *aff’d*, 407 F. App’x 176 (9th Cir. 2010)  
 7 (quoting *Turtle Rock Meadows Homeowners Ass’n v. Slyman (In re Slyman)*, 234 F.3d 1081,  
 8 1085 (9th Cir. 2000)). The elements for fraud under Alaska law are functionally the same.  
 9 *Deloycheet, Inc. v. Beach (In re Beach)*, 570 B.R. 300, 325 n.162 (Bankr. D. Alaska 2017)  
 10 (citing *Jarvis v. Ensminger*, 134 P.3d 353, 363 (Alaska 2006)). It bears repeating that negligence  
 11 in making a misrepresentation may support liability, but it does not suffice to except the debt  
 12 from discharge under § 523(a)(2)(A). *Mortg. Guar. Ins. Corp. v. Pascucci (In re Pascucci)*, 90  
 13 B.R. 438, 444 (Bankr. C.D. Cal. 1988); *Ries v. Sukut (In re Sukut)*, 357 B.R. 834, 840 (Bankr. D.  
 14 Colo. 2006).

15 Because the circumstances surrounding the two deposits differ, the court will consider  
 16 each deposit separately.

17 **1. Initial deposit of \$190,500.**

18 The Bauers paid \$190,500 to GHGC as the initial deposit for the construction of their  
 19 house. The record reveals no separate inducement to pay the deposit apart from entering the  
 20 construction contract. Accordingly, the claim is really one for fraudulent inducement to enter  
 21 into the construction contract. The Bauers contend that Garic and Mae knowingly and  
 22 intentionally misrepresented GHGC’s intent to build the house. There is no dispute that Garic  
 23 and Mae represented GHGC had the ability and intent to build the Bauers’ house. Nor is there  
 24 any dispute that the Bauers justifiably relied on the Hayeses’ representations regarding GHGC’s  
 25 ability and intent to build their home. It is also undisputed that GHGC failed to build the Bauers’  
 26 custom house resulting in a breach of GHGC’s contract that has damaged them. Thus, the Bauers



1 have established the elements of justifiable reliance and damages in support of a claim for  
2 fraudulent misrepresentation. However, they have not established the first three elements by a  
3 preponderance of the evidence.

4 In this instance Garic and Mae directly and indirectly represented that GHGC had the  
5 ability and intent to build the Bauers' house. The question is whether they misrepresented  
6 GHGC's ability or intent with both the knowledge the representation was false and the intent to  
7 deceive. "Both the knowledge and intent elements under § 523(a)(2)(A) may be established by  
8 circumstantial evidence and inferences drawn from a course of conduct." *Hirth v. Donovan (In re*  
9 *Hirth)*, 2014 WL 7048395, at \*10 (B.A.P. 9th Cir. Dec. 11, 2014) (citing *Tallant v. Kaufman (In*  
10 *re Tallant)*, 218 B.R. 58, 66 (B.A.P. 9th Cir. 1998)). Courts have generally accepted the  
11 Restatement's definition as to what suffices for knowledge of the false representation: "[a]  
12 misrepresentation is fraudulent if the maker (a) knows or believes that the matter is not as he  
13 represents it to be, (b) does not have the confidence in the accuracy of his representation that he  
14 states or implies, or (c) knows that he does not have the basis for his representation that he states  
15 or implies." *Gertsch v. Johnson & Johnson, Fin. Corp. (In re Gertsch)*, 237 B.R. 160, 168  
16 (B.A.P. 9th Cir. 1999) (quoting Restatement (Second) of Torts § 526 (Am. Law Inst. 1977)). One  
17 may, therefore, knowingly make a fraudulent representation "without knowledge of its falsity, if  
18 the person making it 'is conscious that he has merely a belief in its existence and recognizes that  
19 there is a chance, more or less great, that the fact may not be as it is represented.'" *Id.* (quoting  
20 Restatement (Second) of Torts § 526, cmt. e).

21 Recklessness may also be probative of an intent to deceive. However, "recklessness alone  
22 does not equate to fraudulent intent." *In re Hirth*, 2014 WL 7048395, at \*11. Rather, it must be  
23 viewed within the totality of the relevant circumstances. *In re Gertsch*, 237 B.R. at 167–68; *see*  
24 *also Gotcher v. Duffie (In re Duffie)*, 531 B.R. 847, 858 (Bankr. D. Mont. 2015), *aff'd*, 2017 WL  
25 5473879 (D. Mont. Nov. 14, 2017), *aff'd*, 801 F. App'x 572 (9th Cir. 2020). Even when  
26 considering a debtor's recklessness, "[t]he essential point is that there must be something about

1 the adduced facts and circumstances which suggest that the debtor intended to defraud creditors  
2 or the estate.” *Khalil v. Devs. Sur. & Indem. Co. (In re Khalil)*, 379 B.R. 163, 175 (B.A.P. 9th  
3 Cir. 2007). Ultimately, the court must determine whether the totality of the circumstances  
4 demonstrates an “overall impression of a deceitful debtor.” *Skinner v. Huggins (In re Skinner)*,  
5 2014 WL 6981949, at \*8 (B.A.P. 9th Cir. Nov. 20, 2014) (quoting *Nwas Okla., Inc. v. Kraemer*  
6 *(In re Kraemer)*, 2011 WL 3300360, at \*6 (B.A.P. 9th Cir. Apr. 21, 2011)).

7       Garic’s and GHGC’s ability to build the Bauers’ house is not seriously in dispute. The  
8 fact that GHGC failed to finish the Bauers’ house does not necessarily mean that they  
9 misrepresented their ability to do so. Garic had the requisite experience to build custom houses.  
10 He had done so through GHGC for several years before the Bauers’ contract and had  
11 considerable experience in residential construction. Indeed, the Bauers contracted with GHGC  
12 because they had viewed some of the houses he had successfully built. In short, the evidence  
13 presented at trial demonstrated that Garic and Mae did not misrepresent GHGC’s ability to build  
14 a custom house.

15       The Bauers also argue that Garic and Mae knowingly and fraudulently misrepresented  
16 their intent to build their house. They contend that neither of them had any actual intent to  
17 complete the construction. Again, at the time the Bauers entered into the construction contract  
18 with GHGC, the evidence amply demonstrates that Garic and Mae had the actual, subjective  
19 intent to build the custom house. “Partial performance, under the right circumstances, can be  
20 persuasive to counter a false promise allegation.” *Snapir v. Breliant (In re Snapir)*, 2017 WL  
21 5022354, at \*5 (B.A.P. 9th Cir. Nov. 3, 2017). As the bankruptcy court in *Ward v. Decret (In re*  
22 *Decret)*, 2017 WL 4097813, at \*2 (Bankr. C.D. Cal. Sept. 13, 2017) noted, “fraud may be  
23 inferred from an immediate failure to perform a promise, but initial performance in accordance  
24 with a promise negates any possible inference of fraud.” (cleaned up) (emphasis in original)  
25 (quoting *Kaylor v. Crown Zellerbach, Inc.*, 643 F.2d 1362, 1368 (9th Cir. 1981)).  
26

1 GHGC took significant steps in furtherance of the construction of the Bauers' home.  
2 Considerable time and effort were spent drafting and revising the plans for the house in an effort  
3 to comply with the Bauers' requirements. The Bauers were never able to provide GHGC plans –  
4 because they were never satisfied with the drawings. This was not for lack of effort. As Dirk  
5 testified, he drafted numerous versions, considerably more than typically required for a house,  
6 even a custom house. The emails between the Bauers, GHGC, and Dirk reflect Peter Bauer's  
7 growing frustration with completion of the plans culminating in December 2021, after which  
8 time the project essentially stopped at Peter's instruction.

9 It is clear that the failure to finalize the plans substantially impacted the construction  
10 project in multiple negative ways. As discussed further below, it prevented Garic from ordering  
11 the lumber package. The failure to finalize the plans also delayed the pouring of the foundation.  
12 Yet, GHGC was willing to proceed to excavate and clear the property and lay the concrete  
13 foundation without completed plans. This was presumably done in an effort to comply with the  
14 Bauers' desire to complete construction by March 2022. Consistent with this, GHGC and the  
15 Bauers exchanged multiple emails between June and December 2021. These email exchanges  
16 reflect additional meetings and calls evidencing ongoing efforts to work through the delays and  
17 the construction problems.

18 The Bauers see the construction errors as evidence that Garic and Mae never intended to  
19 build their house and evidence of their fraudulent intent. Indeed, all parties admit that the  
20 foundation was improperly set by GHGC's subcontractor. Yet again, Garic and GHGC attempted  
21 to work through this with the Bauers. They remained in contact with the Bauers and attempted to  
22 resolve the issue. The Bauers discount the significance of these communications, pointing out  
23 that most of the contact was with Felicity rather than Garic and Mae. The court fails to see how  
24 this is probative of Garic's and Mae's knowing fraudulent intent at the making of the contract.

25 In support of their fraud claims, the Bauers rely heavily on Kamiko Newsom's  
26 conversation with Mae in early July 2021. They see the conversation as the proverbial smoking

1 gun establishing a knowing and fraudulent misrepresentation of GHGC's intent not to build their  
2 house from the inception. Much was made of Mae's statements to Kamiko that "[w]e're down  
3 like 500 to \$1 million upside down." Mae also told Kamiko during the conversation that the  
4 company had no revenue and had been "in the red" for months.

5 It is clear Mae understood that GHGC was in financial trouble. Indeed, that was the  
6 reason GHGC had hired Kamiko— to address the company's lack of proper accounting and  
7 controls. Kamiko clearly had problems with the company's financial management and  
8 accounting systems. But GHGC hired her to help fix its financial problems, not to hide them.  
9 The discussion suggests that the problems with GHGC's financial controls and record-keeping  
10 were more than Kamiko anticipated. But the court does not take Mae's discussion of GHGC's  
11 financial condition as evidence of any knowing or fraudulent misrepresentation of GHGC's  
12 ability or intent to build the Bauers' house.

13 Nor does the court take Mae's statements as to GHGC's financial condition literally as  
14 the Bauers ask the court to do. Despite Mae's wide-ranging discussion of GHGC's financial  
15 condition in July 2021, no specific financial data was presented or referenced at that time. Nor  
16 did either party present any financial analysis at trial. Based on Mae's trial testimony and a  
17 review of the transcript of Mae's discussion with Kamiko, the court does not consider Mae's  
18 comments to be a literal statement of the company's financial position at that time. Mae was a  
19 real estate broker and appraiser. There is no evidence that Mae had any training in finance or  
20 accounting, or any specific role with GHGC in those areas. Both her discussion with Kamiko and  
21 the trial testimony reflect Mae's general understanding that GHGC was struggling financially  
22 and lacked adequate controls and accounting. But they also reflect a lack of precision and detail.  
23 Indeed, Garic testified that Mae did not know everything about the company's finances and that  
24 he did not believe GHGC was "contractor insolvent" at the time Mae had her discussion with  
25 Kamiko. While he never defined what he meant by that term, he described the financial nature of  
26 the construction business as "kind of terrifying" where the bills mount before payments on jobs

are received. Moreover, GHGC could not have operated if it was constantly accruing a monthly deficit of \$500,000 or more and had no revenue as Mae stated. GHGC's bank statements admitted at trial reflect that the company had roughly \$3 million in revenue between July and December 2021, the only months for which bank statements were submitted as evidence:

|                   | Jul-21                | Aug-21                | Sep-21                | Oct-21                | Nov-21                | Dec-21                |
|-------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Beginning Balance | \$ 9,152.89           | \$ 49,425.66          | \$ 146,163.38         | \$ 6,187.81           | \$ 68,896.03          | \$ 102,960.23         |
| Additions         | \$ 732,431.49         | \$934,369.68          | \$ 179,548.31         | \$ 545,274.06         | \$ 443,894.68         | \$ 126,681.83         |
| Less              | <u>\$(692,158.72)</u> | <u>\$(837,631.96)</u> | <u>\$(319,523.88)</u> | <u>\$(482,565.84)</u> | <u>\$(409,830.48)</u> | <u>\$(240,135.45)</u> |
| Ending Balance    | \$ 49,425.66          | \$146,163.38          | \$ 6,187.81           | \$ 68,896.03          | \$ 102,960.23         | \$ (10,493.39)        |

The problem for GHGC was that it spent slightly more than this amount over the same period. In light of the overall evidence, including the bank statements, the court takes Mae's conversation to mean that she understood GHGC did not generate enough monthly income to pay all of GHGC's obligations on a monthly basis and, more importantly, the timing of the payments on its projects was problematic. This is consistent with Mae's repeated references to GHGC's cash flow problems during her conversation with Kamiko. For these reasons, the court declines to apply Mae's statements regarding GHGC's finances literally.

Financial difficulties, and even insolvency, do not automatically equate to a knowing and fraudulent intent to misrepresent GHGC's ability and intent to construct the Bauers' house. *See Kunda v. Shaul (In re Shaul)*, 579 B.R. 231, 242-43 (Bankr. D. Or. 2017) ("The testimony did establish that debtors were experiencing financial distress during the course of [debtors'] dealings with plaintiff, including when they entered into the agreement and while the work on the project was on-going. That fact alone does not demonstrate an intent to deceive...."). Clearly, GHGC's finances were not good. But again, Garlic and Mae were trying to address those issues, not take advantage of them. They candidly admitted that they were not observing the distinctions between themselves and their business entities during this time given all that had transpired in

1 the prior Covid months. They hired Kamiko to reform GHGC's accounting and implement the  
2 necessary financial controls. The transcript of Mae's discussion with Kamiko makes this clear. It  
3 is also clear that Mae understood this would be a significant task.

4 While GHGC was attempting to improve its accounting and financial controls as of July  
5 2021, Garic was actively looking and applying for additional financing to address GHGC's cash  
6 flow problems. Garic testified that he sought working capital loans for GHGC and was working  
7 to acquire financing from Finance of America, which financed at least two GHGC construction  
8 projects. He also testified that he applied for the Covid era loans, including the Paycheck  
9 Protection Program (PPP), and a government loan for \$365,000 which was deposited the same  
10 day as the Bauers' second deposit. In December 2021, Garic and Mae mortgaged their home to  
11 secure repayment of a \$300,000 loan from the Plooy 2000 Trust, which had financed a number  
12 of GHGC's construction projects. Garic testified that these loan proceeds were used to help fund  
13 GHGC. This testimony was not contested.

14 On the other hand, the Bauers see GHGC's poor financial management as evidence of  
15 fraudulent intent. It can be – typically when the principals of the company are draining assets for  
16 their personal benefit at the expense of its creditors. The Bauers point to the Hayeses' use of  
17 GHGC monies to pay their personal expenses as evidence of wrongful behavior indicative of  
18 fraudulent intent. The Hayeses admit to using GHGC funds to pay their personal expenses. Yet,  
19 this must also be put in context. Garic testified that he did not take a salary from GHGC. Nor did  
20 Mae. They should have. But this merely further confirms GHGC's lack of proper accounting and  
21 controls that Kamiko was hired to address.

22 The parties have failed to offer any analysis of the personal payments from GHGC. The  
23 company's bank statements in evidence include numerous debits in small amounts, including  
24 restaurants and various entries that may well be for personal expenses. But without any further  
25 evidence or analysis of those charges, the court cannot tell how much of GHGC's money was  
26 used to pay for the Hayeses' personal expenses. As such, the court has no sense whether the

1 payments deviated materially from what Garic's reasonable salary should have been. While not  
2 condoning this activity, the court cannot, and does not, find that this alone is evidence of  
3 fraudulent intent to knowingly misrepresent GHGC's ability or intent to build the Bauers' house.  
4 Consistent with these problems, but further complicating the court's analysis, Mae  
5 acknowledged that her income from other sources was also commingled into GHGC's account.  
6 She testified that contrary to demonstrating their fraudulent intent, she and Garic did this to put  
7 money *into* GHGC from her earnings, including their family's Alaska permanent fund dividends.  
8 This testimony was not contradicted.

9 The court can appreciate the Bauers' point of view. They deposited money into a  
10 struggling company. Construction on their house was delayed. Once it began further problems  
11 occurred. All of this culminated in GHGC's failure to build their house and the loss of their  
12 deposits. But the Hayeses offer another version of events. GHGC was having cash flow problems  
13 coming out of Covid in 2021, but it took loans to establish working capital and started new jobs  
14 to correct those problems. Shortly before the Bauers' contract, GHGC hired Kamiko Newsom to  
15 fix its financial management and accounting. The Bauers' job was a promising part of that  
16 process as it was self-financed and was to be completed by the spring of 2022. GHGC took the  
17 job seriously and was ready to begin but the job never really got off the ground. This was not due  
18 to lack of money on GHGC's part, but because the Bauers never finalized their design plans. All  
19 parties believed they were close to finalizing the plans in August, when they amended the  
20 construction contract to add additional square footage while taking advantage of falling lumber  
21 prices. But the parties were never able to finalize those plans. The Bauers became frustrated with  
22 Garic and GHGC and halted the project in December 2021. GHGC continued with other projects  
23 until late 2022. Even then, the parties considered continuing the project as Garic was attempting  
24 to arrange additional financing with Finance of America, which GHGC had begun to use.

25 Both scenarios are plausible. But the Bauers bear the burden of proof. *Slyman*, 234 F.3d  
26 at 1085. The parties' testimony generally tracks the events corroborated by the emails admitted

1 into evidence. This includes the failure to finalize the design plans. To state the obvious, they  
2 differ in the inferences to be drawn from these facts. Ultimately, the court concludes and finds  
3 that the failure to finalize the design plans, including the frustration it caused, was the  
4 determinative event in this instance, not GHGC's financial problems. According to Dirk, the  
5 designs should have taken a month to complete, maybe two. The emails show that GHGC  
6 anticipated getting the foundation in much earlier than it happened, and then it did so without  
7 finalized plans. Late August appears to have been the pivotal point for the project when all the  
8 parties were hopeful the plans would be finalized, the lumber package purchased, and  
9 construction begun. After that, the emails show, and the trial testimony confirmed, that the  
10 relationship between the Bauers and GHGC began to deteriorate. Certainly, the problems with  
11 the foundation contributed to the deterioration of their relationship. Still, the emails and  
12 testimony reveal that both sides were genuine in their efforts to move forward. However, the  
13 Bauers remained dissatisfied with the design plans and became increasingly frustrated with the  
14 foundation problems. Dirk and Garic became increasingly frustrated with numerous and  
15 continuing changes and the Bauers' detailed requirements. All of this culminated in the email  
16 exchanges in December 2021, leading the Bauers to place the project on hold. Despite some mild  
17 efforts to restart the project, neither side was able to overcome their frustrations by that point.

18 The court finds Garic's testimony credible. His account of the events and explanations  
19 are consistent with the documentary evidence – both as to GHGC's financial condition and the  
20 project. Importantly, the court further credits Garic's and Mae's testimony that they were  
21 attempting to address GHGC's financial problems rather than run from them or take advantage  
22 of the situation. This, together with GHGC's efforts to construct the house, and address the  
23 problems that arose, are strong evidence against any knowing misrepresentation and fraudulent  
24 intent. When GHGC entered the construction contract, the relevant time for the Bauers' fraud  
25 claim, Garic and Mae believed that GHGC could and would be able to perform the contract.  
26 GHGC's efforts through the end of 2021 support this conclusion. Ultimately, GHGC breached its



1 contract, but the evidence fails to show that either Garic or Mae knowingly and fraudulently  
2 misrepresented GHGC's ability or intent to perform the contract.

3 For these reasons, the court holds that the Bauers have failed to carry their burden to  
4 prove that the Hayeses made a false statement or false promise with respect to the initial deposit  
5 regarding GHGC's ability and intent to perform, or that they did so with knowledge of the falsity  
6 or intent to deceive. Therefore, the Bauers have failed to establish their claim for fraud to hold  
7 the Hayeses liable for the initial deposit of \$190,500 or except that debt from discharge under  
8 § 523(a)(2)(A).

9 **2. Additional deposit of \$134,059.**

10 Roughly two months after entering the contract and paying the initial deposit, the Bauers  
11 amended the contract and paid an additional deposit of \$134,059. The parties agree that this  
12 payment was made so that GHGC could take advantage of a drop in lumber prices, which had  
13 risen significantly during the Covid pandemic. Indeed, it appears that Peter Bauer first proposed  
14 the idea to Garic as part of an effort to expand the square footage of the house. Garic worked up  
15 several options. The Bauers selected an option and the parties executed Amendment No. 1 to the  
16 Residential Construction Agreement on August 24, 2021. The Amendment expanded the square  
17 footage of the house while reducing the total purchase price by a minimal amount. Yet, the  
18 Amendment required an additional deposit of \$134,059, to enable GHGC to purchase the lumber  
19 necessary for the construction.

20 In essence, GHGC committed to take the risk as to the cost of the additional construction  
21 in exchange for the additional deposit. Both Garic and Mae made statements that the additional  
22 deposit would be used to purchase the necessary lumber for the project. No lumber was actually  
23 purchased for the Bauers' construction. For this discussion, the court assumes that: (1) the  
24 Bauers relied on Garic's statements that the additional deposit would be used to purchase the  
25 lumber package for the construction; (2) based on this reliance, the Bauers were induced to enter  
26 into the contract amendment and pay the additional deposit; and (3) as a result, they ultimately

1 lost the amount of the additional deposit when the contracting business failed without having  
2 ever built the Bauers' house. Again, the question becomes whether Garic and Mae knowingly  
3 and fraudulent misrepresented the use of the additional deposit.<sup>5</sup>

4 Garic credibly testified that completion of the design plans—and the Bauers' approval of  
5 them—was an “obvious” prerequisite to purchasing the lumber needed to build the Bauers'  
6 house. Without completion of the design plans, Garic testified that he was unable to calculate the  
7 amount of lumber to purchase – including the appropriate roofing trusses. The parties' emails  
8 reflect continuing discussions and disagreement concerning the roofing, beginning around this  
9 same time. But, as discussed above, the parties' contemporaneous email correspondence  
10 surrounding the discussion of the additional square footage and execution of the Amendment,  
11 shows that everyone anticipated the design plans would be promptly completed and approved.  
12 This evidently led everyone to believe that the design plans would not become a significant  
13 impediment to purchasing the lumber. But they clearly did.

14 The record is equivocal regarding whether the Bauers knew and understood that the  
15 lumber for their house could not be purchased until the design plans were completed and  
16 approved. At trial, Garic testified that “everyone” understood that no lumber could be purchased  
17 absent finalized plans. Peter acknowledged at trial that GHGC could not purchase the trusses  
18 without the final design plans, but he argues that GHGC should have purchased some lumber.  
19 Again, GHGC did not purchase any lumber.

20 This claim presents a close question given the additional deposit arose as part of a  
21 specific effort to lock in the lumber costs for the construction. But it remains the Bauers' burden  
22

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23 <sup>5</sup> The Bauers draw no distinction between Garic's statements and the separate statement(s) that  
24 Mae made regarding the additional deposit. A plaintiff must prove fraud as to each defendant.  
25 *Capp Equities, LLC v. Christine (In re Christine)*, 429 B.R. 882, 887 (Bankr. W.D. Mich. 2010).  
26 The court has concerns as to whether the Bauers have proven that Mae knowingly and  
fraudulently made a misrepresentation as to the additional deposit given her limited role in the  
Amendment. Her involvement seems to be limited to one confirmation email sent to the Bauers  
on August 13, 2024, after Garic's representation.

1 to prove by a preponderance of the evidence that Garic's statements regarding the use of the  
2 additional deposit were false or misleading. The exact relationship between the lumber purchase  
3 and the completion of the plans remains unclear. The design plans were never completed and  
4 approved. And the parties agree that there was no certainty as to the correct trusses to order. In  
5 fact, on October 3, 2021, Peter wrote to Felicity:

6 We didn't really care for the roof line drawings; they are quite a departure from  
7 the craftsman example picture from online that we shared with you. Not our  
8 strong suit, but we're doing the best to sketch it out. Accordingly, we strongly  
recommend that you DON'T order trusses until we have signed final drawings.

9 This supports Garic's explanation that GHGC could not order the lumber package for the  
10 project until the design plans were finalized – which everyone originally believed would happen  
11 quickly at the time they amended the contract and the Bauers paid the additional deposit. The  
12 evidence presented by the parties does not go into detail as to why this did not occur – but it  
13 appears that all parties had a role in it. For the reasons explained above, the court finds that the  
14 significance of the parties' failure to complete the design plans should not be understated. The  
15 Bauers played a significant role in that delay – together with GHGC. Based on the emails and  
16 testimony, the court concludes that the problems or disagreements as to the plans were genuine  
17 rather than any part of a scheme to defraud the Bauers. And the inability to finalize the plans had  
18 consequences for the construction project including the delay of GHGC's lumber purchase.

19 This leaves the court again with two equally plausible arguments supported by the  
20 evidence. The court credits the Hayeses' explanation as to why the lumber package was not  
21 purchased. Others may well disagree with this finding. But even if the court did not credit the  
22 Hayeses' explanation, it cannot find that the Bauers established that it is more likely than not that  
23 Garic (or Mae) made the statements concerning the additional deposit and entered into the  
24 Amendment knowing and intending *at that time* that GHGC would not use the funds to purchase  
25 the lumber and fraudulently intending to deceive the Bauers. Accordingly, the Bauers have failed  
26

1 to establish all the elements to support the underlying claim for fraud and to except from  
2 discharge the debt arising from the additional deposit of \$134,059.

3 **Conclusion**

4 For the reasons set forth above, judgment shall be entered in favor of the Hayeses. The  
5 Bauers have failed to prove that either Garic or Mae Hayes defrauded them and the resulting debt  
6 owed should be excepted from discharge under 11 U.S.C. § 523(a)(2).

7 DATE: September 22, 2025

8 /s/ Gary Spraker  
9 GARY SPRAKER  
United States Bankruptcy Judge

10 Serve: R. Crowther, Esq.  
11 G. Parvin, Esq.  
12 ECF Participants via NEF  
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|-----|--------------------|------------------------|
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TOTAL: 2