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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	NC-07-1152-DMkK
)		
ROBERTA KIMMEL,)	Bk. No.	93-33089
)		
Debtor.)	Adv. No.	06-03169
)		
_____)		
WILLIAM B. ROOZ,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
ROBERTA KIMMEL,)		
)		
Appellee.)		
_____)		

Argued and Submitted on September 19, 2007
at San Francisco, California

Filed - November 8, 2007

Appeal from the United States Bankruptcy Court
for the Northern District of California

Honorable Dennis Montali, Bankruptcy Judge, Presiding

Before: DUNN, MARKELL and KLEIN, Bankruptcy Judges.

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1 DUNN, Bankruptcy Judge:
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3 This appeal turns on the meaning of the community property
4 discharge under 11 U.S.C. § 524(a)(3).¹ The bankruptcy court
5 ruled that the community property discharge entered in the case
6 of one spouse forever discharged the entire community from then-
7 existing community claims and that after-acquired community
8 property could not later be liable for such a claim,
9 notwithstanding a subsequent judgment against the non-filing
10 spouse in his separate individual capacity. Because this
11 conclusion was correct and rendered irrelevant all of the
12 appellant creditor's theories for attacking what was later done
13 with community property after a post-bankruptcy judgment was
14 obtained against the non-filing spouse, we AFFIRM.
15

16 **I. FACTS**

17 The dispute dates from 1991, when William B. Rooz ("Roоз")
18 sued David Kimmel and his wife Roberta Kimmel in the San Mateo
19 County (California) Superior Court ("1991 Litigation"). In 1993,
20 Roberta Kimmel filed a voluntary chapter 7 case, in which a
21 discharge was entered in 1994. Thereafter, the 1991 Litigation
22 proceeded against David Kimmel individually and resulted in a
23 judgment against him personally in May 1995 ("1995 Judgment").

24 In July 1995, the Kimmels entered into a written postnuptial
25 agreement ("Postnuptial Agreement") under California law, with
26 the intention and effect of transmuting Roberta Kimmel's future
27

28 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as in effect before October 17, 2005, the effective date of most of the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23.

1 wages from community property to her separate property.

2 Some ten years later, in October 2005, David Kimmel filed
3 his own voluntary chapter 7 case when Rooz began collection
4 activity by obtaining a writ of execution from the San Mateo
5 County Superior Court on the 1995 Judgment. Rooz asserts he
6 first learned of the Postnuptial Agreement when he attended David
7 Kimmel's § 341(a) meeting of creditors.

8 Rooz filed an adversary proceeding in David Kimmel's
9 bankruptcy case ("David Kimmel Bankruptcy Litigation"), seeking a
10 determination that the 1995 Judgment was nondischargeable. After
11 learning of the Postnuptial Agreement, Rooz amended his complaint
12 to add Roberta Kimmel as a defendant. The bankruptcy court held
13 that the 1995 Judgment debt was dischargeable as to David Kimmel,
14 and dismissed Rooz's claim against Roberta Kimmel for lack of
15 jurisdiction. We affirmed in a memorandum disposition, Rooz v.
16 Kimmel (In re Kimmel), No. NC-06-1252-PaDB (9th Cir. BAP December
17 29, 2006), which Rooz further appealed to the Ninth Circuit as
18 its No. 07-15155, and which has not yet been decided by that
19 court.

20 After Roberta Kimmel was dismissed from the David Kimmel
21 Bankruptcy Litigation, and while Rooz's prior appeal was pending
22 before us, Rooz commenced new litigation against Roberta Kimmel
23 in the San Mateo County Superior Court (the "2006 Litigation") to
24 recover a portion of the Kimmels' community property. He sought
25 to recover only that portion of such property consisting of David
26 Kimmel's community property interest in Roberta Kimmel's wages.
27 As that interest, however, had been transferred to Roberta Kimmel
28 under the Postnuptial Agreement, Rooz attacked the Postnuptial

1 Agreement as a fraudulent transfer under California's Uniform
2 Fraudulent Transfer Act. CAL. CIV. CODE § 3439, et seq. In
3 response, Roberta Kimmel reopened her 1993 bankruptcy case,
4 removed the 2006 Litigation to the bankruptcy court, and moved
5 for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c)
6 ("Rule 12(c) Motion"), which is made applicable in bankruptcy
7 adversary proceedings by Fed. R. Bankr. P. 7012(b).

8 In granting Roberta Kimmel's Rule 12(c) Motion, the
9 bankruptcy court determined that any attempt to collect the 1995
10 Judgment from Roberta Kimmel's wages, even if they remained
11 community property despite the Postnuptial Agreement, was barred
12 by the discharge injunction provided in § 524(a)(3), which arose
13 at the time Roberta Kimmel's discharge was entered in 1994.
14 Hence, the characterization of the 1995 transmutation of wages as
15 a fraudulent transfer was irrelevant. Alternatively, the
16 bankruptcy court held that Rooz's fraudulent transfer action was
17 barred by CAL. CIV. CODE § 3439.09(c), which provides that such an
18 action is extinguished after seven years. Rooz v. Kimmel (In re
19 Kimmel), 367 B.R. 166, 170-74 (Bankr. N.D. Cal. 2007).

20 This timely appeal ensued.

21 22 **II. JURISDICTION**

23 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
24 §§ 1334 and 157(b)(1) and (b)(2)(H) and (O). We have
25 jurisdiction pursuant to 28 U.S.C. § 158.

26 27 **III. ISSUE**

28 Whether the 1994 discharge of Roberta Kimmel protected

1 future-acquired community property from enforcement of a
2 discharged community claim.

4 IV. STANDARDS OF REVIEW

5 We review de novo the dismissal of a complaint on a motion
6 for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c).
7 Ventress v. Japan Airlines, 486 F.3d 1111, 1114 (9th Cir. 2007).

9 V. DISCUSSION

10 This appeal reflects an attempt to vitiate the discharge
11 entered in the 1993 Roberta Kimmel bankruptcy case. Rooz's cause
12 of action in the 1991 Litigation involved a claim that was
13 allowable as a community claim in the 1993 bankruptcy. The
14 black-letter law embodied in § 524(a)(3) provides that Roberta
15 Kimmel's discharge protects all after-acquired community property
16 from claims of creditors of either spouse. Hence, to the extent
17 the 1995 judgment against David Kimmel had validity, it only
18 could be enforced against him personally.

19 We focus on the effect of the § 524(a)(3) community property
20 discharge on California's rule that community property is liable
21 for debts of an individual spouse. CAL. FAM. CODE § 910.

23 A. Roberta Kimmel's Bankruptcy Discharge

24 Although Rooz concedes that the discharge injunction imposed
25 by § 524(a)(2) protects Roberta Kimmel from liability for causes
26 of action asserted in the 1991 Litigation, he contends that the
27 putative community property interest (after he avoids the 1995
28 transmutation as a fraudulent transfer) in her post-1995 wages is

1 vulnerable to enforcement of the 1995 Judgment against David
2 Kimmel. As the bankruptcy court correctly ruled, Rooz's theory
3 misconstrues and offends the community property discharge
4 injunction imposed by § 524(a)(3).

5 Understanding the community property discharge embodied in
6 § 524(a)(3) begins with the definitions of "creditor" and
7 "community claim" and the provision regarding community property
8 as property of the estate.

9
10 1. Rooz was a "creditor" on a "community claim" in 1993

11 Rooz unambiguously was a "creditor" holding a "community
12 claim" in the 1993 Bankruptcy.

13 The term "creditor," as defined by § 101(10), means:

14 (A) entity that has a claim against the debtor that
15 arose at the time of or before the order for relief
concerning the debtor;

16 . . .; or

17 (C) entity that has a community claim.

18 The term "community claim" is defined in § 101(7) as a:

19 . . . claim² that arose before the commencement of
20 the case concerning the debtor for which property of

21 ² Pursuant to § 101(5), a "claim" is a

22
23 (A) right to payment, whether or not such right is reduced
24 to judgment, liquidated, unliquidated, fixed, contingent,
25 matured, unmatured, disputed, undisputed, legal, equitable,
secured, or unsecured; or

26 (B) right to an equitable remedy for breach of performance
27 if such breach gives rise to a right to payment, whether or
28 not such right to an equitable remedy is reduced to
judgment, fixed, contingent, matured, unmatured, disputed,
undisputed, legal, equitable, secured, or unsecured.

1 the kind specified in section 541(a)(2) of this title
2 is liable, whether or not there is any such property at
3 the time of the commencement of the case.

3 (Emphasis added.)

4 At the time Roberta Kimmel filed her bankruptcy case in
5 1993, Rooz was a "creditor" by virtue of § 101(10) (A) and
6 § 101(10) (C). He had asserted a claim against Roberta Kimmel by
7 virtue of the 1991 Litigation in which he was suing both Kimmels.
8 Moreover, it was a "community claim" under § 101(7) because it
9 was enforceable against the property of the Kimmel community.

10 Because community claims may be asserted, and are subject to
11 discharge, in the bankruptcy of one spouse, the Bankruptcy Code
12 provides that community property is brought into the estate of
13 that spouse. The definition of property of the estate includes,
14 by virtue of § 541(a)(2):

15 All interests of the debtor and the debtor's spouse in
16 community property as of the commencement of the case
that is--

17 (A) under the sole, equal, or joint management and
18 control of the debtor; or

19 (B) liable for an allowable claim against the debtor,
20 or for both an allowable claim against the debtor and
an allowable claim against the debtor's spouse, to the
extent that such interest is so liable.

21 Construing §§ 101(7) and 541(a)(2) together, a community
22 claim, for bankruptcy purposes, is a prepetition claim for which
23 the Kimmels' community property was liable, whether or not such
24 claim had proceeded to a judgment or otherwise was liquidated on
25 the petition date.

26 In California, this is particularly significant because
27 California community property is exposed to claims against an
28

1 individual spouse. CAL. FAM. CODE § 910(a).³

2 A consequence of the alignment of §§ 101(7) and 541(a)(2) is
3 that the nonexempt community property existing at the time of the
4 filing of the petition is liable for payment of community claims.

5
6 2. Community claims can be discharged to the benefit of
7 the non-filing spouse

8 Under § 524(a)(3), Roberta Kimmel's discharge permanently
9 enjoined enforcement of the 1995 Judgment against all future-
10 acquired community property, including both her own and David
11 Kimmel's interests in her wages.⁴ Regardless of whether the

12
13 ³ California Family Code § 910(a) provides:

14 (a) Except as otherwise expressly provided by statute,
15 the community estate is liable for a debt incurred by
16 either spouse before or during marriage, regardless of
17 which spouse has the management and control of the
18 property and regardless of whether one or both spouses
19 are parties to the debt or to a judgment for the debt.

18 Family Code § 902 defines the term "debt" in § 910(a) as:

19 "Debt" means an obligation incurred by a married person
20 before or during marriage, whether based on contract,
21 tort, or otherwise.

22 ⁴ Section 524(a)(3) provides:

23 A discharge in a case under this title - . . .

24 (3) operates as an injunction against the commencement
25 or continuation of an action, the employment of
26 process, or an act, to collect or recover from, or
27 offset against, property of the debtor of the kind
28 specified in section 541(a)(2) of this title that is
acquired after the commencement of the case, on account
of any allowable community claim, except a community
claim that is excepted from discharge under section
523, 1228(a)(1), or 1328(a)((1) of this title, or that
would be so excepted, determined in accordance with the

(continued...)

1 community claim was attributable to the actions of the debtor
2 spouse, the nondebtor spouse, or both, the effect of § 524(a)(3)
3 is that all community property acquired post-bankruptcy is
4 protected by the discharge.

5 We previously have noted in dictum that § 524(a)(3) can
6 operate to provide nondebtor spouses with a de facto partial
7 discharge of their separate debts by enjoining a creditor from
8 attaching community property in which the nondebtor spouse has an
9 interest:

10 [A] nondebtor spouse in a community property state
11 typically benefits from the discharge of the debtor
12 spouse. According to Section 524(a)(3), after-acquired
13 community property is protected by injunctions against
14 collection efforts by those creditors who held
allowable community claims at the time of filing. This
is so even if the creditor claim is against only the
nonbankruptcy spouse; the after-acquired community
property is immune.

15 Burman v. Homan (In re Homan), 112 B.R. 356, 360 (9th Cir. BAP
16 1989) (citation omitted). In other words, the personal liability
17 of a nondebtor spouse that survives the bankruptcy only can be
18 enforced against property of the nondebtor spouse that is not
19 community property.

20 Although the nondebtor spouse is not actually discharged of
21 liability, the consequence of § 524(a)(3) is that the property
22 that is vulnerable to judgment enforcement against a nondebtor
23 spouse is diminished by the protection of after-acquired
24 community property. Hence, a judgment creditor of the nondebtor

25
26 ⁴(...continued)
27 provisions of sections 523(c) and 523(d) of this title,
28 in a case concerning the debtor's spouse commenced on
the date of the filing of the petition in the case
concerning the debtor, whether or not discharge of the
debt based on such community claim is waived.

1 spouse on a community claim loses the ability to collect from
2 anything other than the judgment debtor's separate property.

3 There is also a temporal aspect to the § 524(a)(3) discharge
4 injunction in the sense that it applies only so long as there is
5 community property. Dissolution of the marriage or death of a
6 spouse terminates the community, at which point after-acquired
7 community property loses its § 524(a)(3) protection. 4 COLLIER ON
8 BANKRUPTCY ¶ 524.02[3][c] (Alan N. Resnick & Henry J. Sommer eds.,
9 15th ed. rev. 2007).

10 None of this, however, means that nondischargeability
11 concepts do not apply to community claims. If a debt on a
12 community claim would be excepted from discharge in a bankruptcy
13 of the nondebtor spouse, then § 523(a)(3) provides that a
14 nondischargeability action directed at the nondebtor spouse can
15 be initiated in order to establish an exception to the allowable
16 community claims that are discharged. The operative statutory
17 language provides that the protection of after-acquired community
18 property from liability for a prepetition community claim does
19 not apply when the claim "is excepted from discharge . . . [or]
20 would be so excepted, determined in accordance with the
21 provisions of sections 523(c) and 523(d) of this title, in a
22 [hypothetical] case concerning the debtor's spouse commenced on
23 the date of the filing of the petition" 11 U.S.C.
24 § 524(a)(3).

25 Similarly, an objection to discharge may be focused on the
26 nondebtor spouse. Under § 524(b)(2), if the court would not
27 grant the nondebtor spouse a discharge in a hypothetical case
28 filed on the date of the filing of the debtor spouse's petition,

1 or if the nondebtor spouse has been denied a discharge within the
2 preceding six years, then the community property discharge does
3 not apply. 11 U.S.C. § 524(b)(2).⁵

4 The net result is that §§ 524(a)(3) and 524(b)(2) combine to
5 prevent a wrongdoer from hiding behind an innocent spouse's
6 discharge, but correlatively require the innocent spouse in a
7 community property state to bear some burden of responsibility
8 for the wrongdoing spouse. 4 COLLIER ON BANKRUPTCY ¶ 524.02[3].

9 These provisions for nondischargeability and objection-to-
10 discharge actions directed at the nondebtor spouse are, however,
11 subject to a diligent creditor requirement. The failure by
12 creditors to raise nondischargeability and discharge objection
13 issues in a timely manner in the case of the debtor spouse will
14 allow the community property discharge to be effected.

15 If creditors are not diligent, as one commentator has
16 explained, "the Devil himself could effectively receive a
17

18 ⁵ Section 524(b)(2) provides:

19 (b) Subsection (a)(3) of this section does not apply
20 if –

21 . . .

22 (2)(A) the court would not grant the debtor's spouse
23 a discharge in a case under chapter 7 of this title
24 concerning such spouse commenced on the date of the
25 filing of the petition in the case concerning the
26 debtor; and

27 (B) a determination that the court would not so
28 grant such discharge is made by the bankruptcy court
within the time and in the manner provided for a
determination under section 727 of this title of
whether a debtor is granted a discharge.

(Emphasis added.)

1 discharge in bankruptcy if he were married to Snow White.” Alan
2 Pedlar, Community Property and the Bankruptcy Act of 1978, 11 St.
3 MARY’S L.J. 349, 382 (1979); cf. Gonzales v. Costanza (In re
4 Costanza), 151 B.R. 588, 590 (Bankr. D.N.M. 1993) (“I would add:
5 if [the Devil] does not treat her better than his creditors,
6 [Snow White] will, by divorcing him, deny his discharge.”).

7 Roos did not file a complaint in Roberta Kimmel’s bankruptcy
8 case, either as a nondischargeability action or as an objection
9 to discharge, directed at either of the spouses.⁶ Accordingly,
10 Roos long ago waived his right to assert that Roberta Kimmel’s
11 discharge does not enjoin him from attaching after-acquired
12 community property to satisfy his claim against David Kimmel.
13 Even if her wages remain community property notwithstanding the
14 Postnuptial Agreement, David Kimmel’s interest in that community
15 property is immune pursuant to § 524(a)(3) from any attempt by
16 Roos to collect on the 1995 Judgment.

17
18 3. Community property assets automatically become estate
19 property when a bankruptcy case is commenced

20 At oral argument, Roos urged that, as a condition to a
21 debtor receiving a discharge of community debts, the debtor must
22 make community assets available for administration through the
23 bankruptcy estate. On Roberta Kimmel’s schedules of current
24

25 ⁶ As Roos had notice of the Roberta Kimmel bankruptcy case
26 at a time he was suing both spouses, none of the due process
27 concerns attendant to lack of notice regarding the nondebtor
28 spouse are present here. Pedlar, 11 St. MARY’S L.J. at 385 & 389-
90; accord, In re Schmiedel, 236 B.R. 393, 397-98 (Bankr. E.D.
Wis. 1999); Seattle First Nat’l Bank v. Marusic (In re Marusic),
139 B.R. 727, 732 n.3 (Bankr. W.D. Wash. 1992); In re Sweitzer,
111 B.R. 792, 797-99 (Bankr. E.D. Wis. 1990); 4 COLLIER ON
BANKRUPTCY ¶ 524.02[3][c].

1 income and current expenses (Schedules I and J) filed in her
2 bankruptcy case, she included no monthly income and no monthly
3 expenses, and instead stated that she had "no income and depends
4 entirely on her parents to provide for her needs." Rooz contends
5 this demonstrates that Roberta Kimmel failed to contribute her
6 community property wages for administration for the benefit of
7 creditors. We disagree.

8 Section 541 is self effectuating. Roberta Kimmel's
9 bankruptcy estate was created when she filed her voluntary
10 chapter 7 petition; community property in which she had an
11 interest automatically went into the estate by the mere fact of
12 its existence. Whether it was listed on the schedules is
13 irrelevant. To the extent back wages were owed to her at the
14 time she filed her petition in 1993, they were subject to
15 administration by the chapter 7 trustee.

16 Rooz did not challenge the accuracy of Roberta Kimmel's
17 schedules in 1993 by questioning her entitlement to discharge or
18 otherwise. Nor has he identified any property that existed but
19 was not scheduled. Nor is there any indication that the trustee
20 who administered Roberta Kimmel's bankruptcy estate failed to
21 perform the trustee's duties under § 704, which include an
22 obligation to collect property of the estate for the benefit of
23 creditors and to investigate the financial affairs of the debtor.

24 Finally, whether Roberta Kimmel had no income in 1993 that
25 became part of her bankruptcy estate is irrelevant to the
26 application of her chapter 7 discharge to postpetition community
27 property, such as postpetition wages.

28 The bankruptcy court correctly held that Roberta Kimmel's

1 discharge enjoined Rooz from attaching her post-discharge wages,
2 whether they were community property or separate property.

3
4 4. Post-Discharge Conduct Does Not Vitiating a Discharge

5 Rooz contends that Roberta Kimmel's post-discharge conduct
6 in participating in the 1995 Postnuptial Agreement creates a new
7 debt. His argument lacks merit for two independent reasons.

8 First, the chapter 7 discharge is absolute and, in light of
9 the anti-waiver provisions of § 524(a), does not admit of an
10 equitable exception that would permit it to be waived by post-
11 discharge conduct. Lone Star Sec. & Video, Inc. v. Gurrola (In
12 re Gurrola), 328 B.R. 158, 172 (9th Cir. BAP 2005). In the case
13 of § 524(a)(3), the anti-waiver language is "whether or not
14 discharge of the debt based on such community claim is waived."
15 11 U.S.C. § 524(a)(3).

16 For the reasons we explained in Gurrola, Congress was
17 emphatic that the anti-waiver language in § 524(a) was "intended
18 to prevent waiver of discharge of a particular debt from
19 defeating the purposes of this section." Gurrola, 328 B.R. at
20 170 (quoting H.R. Rep. No. 95-595, at 366 (1977); S. Rep. No. 95-
21 989, at 80 (1978)).

22 Second, a false premise underlies Rooz's theory that, by
23 executing the Postnuptial Agreement, Roberta Kimmel made a
24 fraudulent conveyance that rendered the 1995 Judgment
25 uncollectible, thereby creating a new debt that is not
26 discharged. The false premise is that, in the absence of the
27 Postnuptial Agreement, the 1995 Judgment could have been
28 collected from community property.

1 As we have explained, § 524(a)(3) enjoins any act “to
2 collect or recover from” community property “that is acquired
3 after commencement of the case, on account of an allowable
4 community claim” that has not been excepted from discharge in the
5 bankruptcy case. 11 U.S.C. § 524(a)(3). Thus, it was impossible
6 for the community property (Roberta Kimmel’s future wages) that
7 was transmuted into separate property to have been a source of
8 recovery for Rooz. We agree with the bankruptcy court that
9 Rooz’s further efforts to collect from Roberta Kimmel’s post-
10 bankruptcy wages “likely violate [the discharge injunction of
11 § 524] and expose [Rooz] to sanctions.” Kimmel, 367 B.R. at 174
12 n.11.

13 The Seventh Circuit decision in McClellan v. Cantrell, 217
14 F.3d 890, 895 (7th Cir. 2000), upon which Rooz relies, does not
15 support his theory. No relevant event in that case occurred
16 post-bankruptcy. Rather, it involved a prepetition fraud, not
17 involving a misrepresentation, that was perpetrated by the debtor
18 in league with a sibling. The question was whether the term
19 “actual fraud” in § 523(a)(2) encompassed more than situations in
20 which there was a misrepresentation. The Seventh Circuit’s
21 answer in the affirmative merely served to sharpen the contours
22 of what constitutes a nondischargeable prepetition “actual fraud”
23 debt under § 523(a)(2) and has no bearing on the present case.

24
25 B. The Postnuptial Agreement

26 In the proceedings before the bankruptcy court, the parties
27 addressed at length the irrelevant question of the impact of the
28 provisions of California’s version of the Uniform Fraudulent

1 Transfer Act ("UFTA"), codified at CAL. CIV. CODE §§ 3439 et seq.,
2 on the Postnuptial Agreement.

3 The bankruptcy court gave Roosz's UFTA argument short shrift
4 because any such action was time-barred under CAL. CIV. CODE
5 § 3439.09(c)⁷ and because "if there were no time bar, Roosz's
6 claim would be barred by the Bankruptcy Code [§ 524(a)(3)]."
7 Kimmel, 367 B.R. at 170.

8 In view of the controlling effect of the community property
9 discharge injunction imposed by § 524(a)(3), the bankruptcy
10 court's conclusion (with which we have no quarrel) that the UFTA
11 cause of action filed eleven years after the challenged transfer
12 is barred was addressed to a moot point.

13 Regardless of whether the 1995 transmutation validly shifted
14 Roberta Kimmel's future wages from community to separate property
15 status, all wages she earned after filing her 1993 chapter 7 case
16 were immune from enforcement of Roosz's 1995 judgment against
17 David Kimmel, which was a discharged community claim as of 1994.⁸

18
19 C. The Rule 12(c) Motion

20 Under Fed. R. Civ. P. 12(c), judgment on the pleadings is
21

22 ⁷ Section 3439.09(c) of the California Civil Code provides:

23
24 Notwithstanding any other provision of law, a cause of
25 action with respect to a fraudulent transfer or
26 obligation is extinguished if no action is brought or
levy made within seven years after the transfer was
made or the obligation was incurred.

27 ⁸ Thus, Roosz's argument, made for the first time on appeal,
28 that the Postnuptial Agreement was invalid because it was not
recorded is unavailing.

1 proper when, taking all the allegations in the non-moving party's
2 pleadings as true, the movant is entitled to judgment as a matter
3 of law. Ventress, 486 F.3d at 1114 (quoting Fajardo v. County of
4 Los Angeles, 179 F.3d 698, 699 (9th Cir. 1999)).

5 As we have explained, Roberta Kimmel's discharge operates to
6 enjoin, as a matter of law under § 524(a)(3), any attempt by Rooz
7 to collect the 1995 Judgment from Roberta Kimmel's property, be
8 it her separate property, or either her own or David Kimmel's
9 interest in community property if the Postnuptial Agreement were
10 set aside. The judgment on the pleadings was correct.

11 12 **VI. CONCLUSION**

13 The court correctly determined that Rooz's claim, finalized
14 in the 1995 Judgment, was a community claim (1) that was
15 discharged in Roberta Kimmel's bankruptcy case, and (2) from
16 which all interests in her future wages were insulated,
17 regardless of whether her wages constitute community property.
18 Accordingly, the order of the court dismissing the 2006
19 Litigation pursuant to its grant of the Rule 12(c) Motion is
20 AFFIRMED.