

DEC 05 2012

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

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No.	NC-11-1579-JoJuKi
6	SUNG HO CHA and	)	Bk. No.	10-14098
7	YOUHNG LIM PARK,	)		
8	Debtors.	)		
9	_____	)		
10	SUNG HO CHA; YOUNG LIM PARK,	)		
11	Appellants,	)		
12	v.	)	<b>O P I N I O N</b>	
13	JEFF RAPPAPORT,	)		
14	Appellee.	)		
15	_____	)		

Argued and Submitted on May 17, 2012  
at San Francisco, California

Filed - December 5, 2012

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

Honorable Alan Jaroslovsky, Bankruptcy Judge, Presiding

\_\_\_\_\_  
Appearances: Dennis D. Davis, Esq., Goldberg, Stinnett, Davis & Linchey PC, argued for Appellants Sung Ho Cha and Young Lim Park; Neil Ison, Esq. argued for Appellee Jeff Rappaport.

\_\_\_\_\_  
Before: JOHNSON<sup>1</sup>, JURY and KIRSCHER, Bankruptcy Judges.

\_\_\_\_\_  
<sup>1</sup> Hon. Wayne Johnson, Bankruptcy Judge for the Central District of California, sitting by designation.

1 JOHNSON, Bankruptcy Judge:  
2

3 This appeal arises from the decision of the bankruptcy  
4 court finding that a state court judgment against the debtors  
5 Sung Ho Cha ("Cha") and Young Lim Park ("Park") (collectively,  
6 the "Debtors") for failing to pay rent is nondischargeable as to  
7 Cha and nondischargeable as to Park only to the extent of the  
8 Debtors' community property. For the reasons set forth below,  
9 we AFFIRM the decision of the bankruptcy court.

10 **I. FACTS**

11 In 2008, the Debtors executed a written agreement  
12 ("Lease") with Jeff Rappaport ("Rappaport") to lease the real  
13 property located at 5 Rolling Hills Road, Tiburon, California  
14 ("Property"). The Debtors moved into the Property but rarely  
15 paid any rent.<sup>2</sup> After many months, Rappaport recovered  
16 possession of the Property and obtained a state court judgment  
17 for unpaid rent in the amount of \$46,151.11 ("State Court  
18 Judgment").

19 At the time the parties executed the Lease, Cha provided  
20 Rappaport with a signed financial statement which indicated  
21 that in 2008 his income was \$7,000 every two weeks. The  
22 statement also indicated Cha possessed cash and bank deposits  
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24 <sup>2</sup> The trial court stated in its "Memorandum After Trial" that  
25 the Debtors "never paid any rent" but Rappaport testified at trial  
26 that the Debtors did pay rent for the first month and "small amounts  
27 and then tiny amounts" thereafter. This difference, however, is not  
28 material to this appeal and the Debtors have not raised it on appeal.  
The Debtors do not dispute that overall they failed to pay in excess  
of \$46,000 in rent. Likewise, they do not dispute that the financial  
statement provided by Cha was materially false.

1 of \$50,000. When the Debtors filed a voluntary chapter 7  
2 petition,<sup>3</sup> Rappaport commenced an adversary proceeding against  
3 the Debtors contending the statements in the financial  
4 statement were false and, therefore, the State Court Judgment  
5 was nondischargeable pursuant to sections 523(a)(2)(A) and  
6 523(a)(2)(B). At trial, the bankruptcy court determined the  
7 financial statement was materially false and the Debtors do not  
8 contend otherwise on appeal. The Debtors offered no evidence  
9 at trial in support of the representations in the financial  
10 statement and they do not contend on appeal that the trial  
11 judge erred in finding the financial statement was false. The  
12 trial court entered judgment in favor of Rappaport and the  
13 Debtors appealed.

## 14 **II. JURISDICTION**

15 The bankruptcy court properly exercised jurisdiction  
16 pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(I). This Panel has  
17 jurisdiction over appeals pursuant to 28 U.S.C. § 158.

## 18 **III. ISSUES**

19 The Debtors raise only two arguments on appeal. First,  
20 they contend that Rappaport lacked standing to prosecute the  
21 adversary proceeding against the Debtors. Second, they contend  
22 that the form of the judgment against Park is improper.

## 23 **IV. STANDARD OF REVIEW**

24 Standing is a legal issue which this Court reviews de  
25

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26 <sup>3</sup> Unless otherwise indicated, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
28 "Rule" references are to the Federal Rules of Bankruptcy  
Procedure.

1 novo. Loyd v. Paine Webber, Inc., 208 F.3d 755, 758 (9th Cir.  
2 2000); In re Aheong v. Mellon (In re Aheong), 276 B.R. 233, 238  
3 (9th Cir. BAP 2002). De novo means review is independent, with  
4 no deference given to the trial court's conclusion. Barclay v.  
5 Mackenzie (In re AFI Holding, Inc.), 525 F.3d 700, 702 (9th  
6 Cir. 2008).

7 Whether the bankruptcy court erred in entering judgment  
8 against Park raises a question of law. This Court reviews the  
9 bankruptcy court's conclusion of law de novo. Alsberg v.  
10 Robertson (In re Alsberg), 68 F.3d 312, 314 (9th Cir. 1995).

## 11 V. STANDING

### 12 A. Introduction

13 The Debtors contend Rappaport lacked standing to prosecute  
14 the adversary proceeding against them. It is undisputed that  
15 the owner of record of the Property was Western Liability  
16 Insurance Company ("Western"), a company created by Rappaport's  
17 father. Because the adversary proceeding was filed by  
18 Rappaport (not Western), the Debtors challenged his standing.

19 Rappaport executed the Lease with his personal signature  
20 "Jeff Rappaport" above the heading "Jeff Rappaport (for Western  
21 Liability Insurance)". His signature and similar headings also  
22 appear on the Lease/Rental Mold and Ventilation Addendum, the  
23 Water Heater and Smoke Detector Statement of Compliance, the  
24 Lead-Based Paint and Lead-Based Paint Hazard Disclosure, the  
25 Acknowledgment and Addendum and the Pet Agreement Addendum.  
26 When the Debtors challenged the standing of Rappaport, he  
27 testified at trial that there was an assignment from Western to  
28 Rappaport "for the rights to rent the property out." The

1 testimony by Rappaport and the objections of counsel indicated  
2 that a written assignment existed but counsel for Rappaport  
3 apparently failed to designate the document as a trial exhibit.  
4 There are references in the record suggesting that Rappaport  
5 submitted the written assignment to the court at a prior  
6 hearing but not at trial. When Rappaport asked the court to  
7 take judicial notice of the document at trial, the court  
8 declined to do so.<sup>4</sup>

9 The Debtors do not contend that no assignment exists.  
10 They never contended that an assignment did not exist and they  
11 offered no evidence at trial to rebut Rappaport's testimony.  
12 Rather, they contend Rappaport lacks standing because he failed  
13 to present the written assignment at trial and, therefore,  
14 failed to satisfy his burden of proving the existence of an  
15 assignment.

16 As a result, this is not a situation in which the trial  
17 court weighed competing evidence regarding standing because the  
18 Debtors presented none. Instead, the Debtors contend they need  
19 not present any evidence at trial regarding Rappaport's  
20 standing because the plaintiff bears the burden of proving his  
21 standing and the evidence he presented was insufficient for  
22 that purpose. We agree that the plaintiff bears the burden of  
23 proof but find the plaintiff has done so in this case.

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24  
25  
26 <sup>4</sup> We find no error in the decision of the trial court to  
27 decline to take judicial notice of the document. We agree with the  
28 trial court that Rappaport failed to properly present the written  
assignment as an exhibit for trial. Therefore, the trial court  
properly rejected Rappaport's attempt to rectify this error by asking  
the court to take judicial notice of a document in the court's file  
but not brought to trial or designated as a trial exhibit.

1           B.    Legal Standard

2           Rule 7017 of the Federal Rules of Bankruptcy Procedure  
3 incorporates and applies Rule 17(a) of the Federal Rules of  
4 Bankruptcy Procedure to adversary proceedings. Rule 17(a)  
5 states that every action must be prosecuted in the name of the  
6 real party in interest. "This rule requires that the party who  
7 brings an action actually possess, under the substantive law,  
8 the right sought to be enforced. Such a requirement is in  
9 place 'to protect the defendant against a subsequent action by  
10 the party actually entitled to recover, and to insure generally  
11 that the judgment will have its proper effect as res  
12 judicata.'" United HealthCare Corp. V. Am. Trade Ins. Co.,  
13 Ltd., 88 F.3d 563, 568-69 (8th Cir. 1996) (quoting Fed. R. Civ.  
14 P. 17(a), Advisory Comm. Note); Pac. Coast Agric. Exp. Ass'n v.  
15 Sunkist Growers, Inc., 526 F.2d 1196, 1208 (9th Cir. 1975).

16           "In an action involving an assignment, a court must ensure  
17 that the plaintiff-assignee is the real party in interest with  
18 regard to the particular claim involved by determining:  
19 (1) what has been assigned; and (2) whether a valid assignment  
20 has been made." Carter v. Brooms (In re Brooms), 447 B.R. 258,  
21 265 (9th Cir. BAP 2011) (quoting 6A Charles Alan Wright, Arthur  
22 R. Miller, Mary Kay Kane & Richard L. Marcus, Federal Practice  
23 and Procedure § 1545 (3d ed. 2010)).

24           C.    The Evidence in the Record

25           After reviewing the record, it is clear that Rappaport  
26 could have made it easier for the trial court by simply  
27 designating the written assignment as a trial exhibit and  
28 arranging for a witness to authenticate the document. But the

1 failure to do so is not fatal in this instance. The record on  
2 appeal provides several different kinds of evidence upon which  
3 this court can affirm the decision of the trial court.

4 1. The State Court Judgment

5 First, the record on appeal includes the State Court  
6 Judgment. This is the most important evidence. The State  
7 Court Judgment is a default judgment against Cha and in favor  
8 of Rappaport in the amount of \$46,151.11. The judgment clearly  
9 finds that Cha is liable to Rappaport for \$46,151.11.

10 Therefore, principles of preclusion apply.

11 The state court found that Cha owes Rappaport \$46,151.11.  
12 The state court determined the amount of the debt and the  
13 identity of the obligee. Both are necessary to its holding.  
14 The Debtors want the bankruptcy court to disregard the State  
15 Court Judgment but Ninth Circuit law provides otherwise.

16 In Daghighfekr v. Mekhail (In re Daghighfekr), 161 B.R.  
17 685 (9th Cir. BAP 1993), Mohammad Daghighfekr physically  
18 assaulted Laurence Mekhail (beating him until he was  
19 unconscious) prior to the commencement of a bankruptcy case.  
20 Mr. Mekhail sued in state court and obtained a judgment by  
21 default for \$614,793 including \$500,000 in punitive damages.  
22 When Mr. Daghighfekr later filed a bankruptcy case, Mr. Mekhail  
23 filed an action under section 523(a)(6) to have the state court  
24 judgment declared nondischargeable.

25 Like Cha, Mr. Daghighfekr did not dispute that his conduct  
26 violated section 523. Mr. Daghighfekr acknowledged that he  
27 committed the assault (just like Mr. Cha does not dispute his  
28 fraud). Instead, Mr. Daghighfekr contended that a state court

1 judgment obtained by default "has no preclusive effect on a  
2 bankruptcy court as to either the nature of the act causing the  
3 injury or the amount of damages awarded." Id. at 686. The BAP  
4 disagreed and stated that "while a default judgment or an  
5 unopposed summary judgment has no preclusive effect as to the  
6 issue of the willful and malicious nature of the injury on  
7 which the judgment is based, once this issue has been  
8 determined by the bankruptcy court, the judgment itself is *res*  
9 *judicata* as to the amount of the judgment." Id. Mr.  
10 Daghighfekr challenged the amount of the damages he owed to Mr.  
11 Mekhail but the BAP rejected the challenge. The BAP held it  
12 was bound by the state court judgment. See also In re Comer v.  
13 Comer (In re Comer), 723 F.2d 737, 740 (9th Cir. 1984) (holding  
14 that "res judicata barred the bankruptcy court from looking  
15 behind the default judgment to determine the actual amount of  
16 the obligation.").

17 This holding directly applies to Cha. Like Mr.  
18 Daghighfekr, Cha does not challenge whether or not section 523  
19 applies to his conduct. Cha admits he committed fraud just as  
20 Mr. Daghighfekr admitted he assaulted Mr. Mekhail. Damages  
21 arising from both actions are nondischargeable under section  
22 523. Therefore, the amount of the damages in the State Court  
23 Judgment is binding.

24 And while Cha challenges the standing of Rappaport in this  
25 appeal, that issue was necessarily decided by the state court.  
26 When a state court issues a judgment in favor of a party in a  
27 specific amount, both the obligee and the amount of damages are  
28 determined but issues related to section 523 are not



1 necessarily determined. Therefore, the State Court Judgment is  
2 binding as to the former, but not the latter.

3 A judgment by default is as conclusive as to the issues  
4 asserted in the complaint as if an answer had been filed and  
5 the issues had been litigated. Fitzgerald v. Herzer, 117 P.2d  
6 364, 366 (Cal. Ct. App. 1947) (citing Maddux v. County Bank, 62  
7 P. 264, 266 (1900)). "Such a judgment is res judicata as to  
8 all issues aptly pleaded in the complaint and defendant is  
9 estopped from denying in a subsequent action any allegations  
10 contained in the former complaint." Fitzgerald, 117 P.2d at  
11 366 (citing Horton v. Horton, 116 P.2d 605, 608 (1941)).

12 However, the California Supreme Court has placed two  
13 limitations on this rule. Williams v. Williams (In re  
14 Williams' Estate), 223 P.2d 248 (Cal. 1950). The first, which  
15 is not disputed in this case, is that the defendant must be  
16 aware of the litigation. The second limitation concerns which  
17 issues are "actually litigated" in actions resulting in default  
18 judgments. "The Williams' Estate Court limited the principle  
19 that a defaulting defendant 'is presumed to admit all the facts  
20 which are well pleaded in the complaint' by allowing an issue  
21 to have preclusive effect 'only where the record shows  
22 an express finding upon the allegation' for which preclusion is  
23 sought." Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1247  
24 (9th Cir. 2001) (quoting In re Williams' Estate, 223 P.3d at  
25 252, 254). "Thus, a court's silence concerning a pleaded  
26 allegation does not constitute adjudication of the issue." Id.  
27 (quoting In re Williams' Estate, 223 P.2d at 253). "However,  
28 the express finding requirement can be waived if the court in

1 the prior proceeding necessarily decided the issue: As a  
2 conceptual matter, if an issue was necessarily decided in a  
3 prior proceeding, it was actually litigated." Id. at 1248.

4 Here, it was impossible for the state court to enter  
5 judgment in favor of Rappaport without finding he had standing.  
6 Therefore, the issue of standing was necessarily decided in the  
7 prior proceeding. Because the issue of Rappaport's standing  
8 was necessarily decided and therefore actually litigated,  
9 Rappaport can rely upon the State Court Judgment in asserting  
10 his standing in the bankruptcy court.

## 11 2. Rappaport's Testimony

12 Second, Rappaport's testimony at trial indicates that a  
13 written assignment exists and that he is the assignee. The  
14 Debtors objected to this testimony as hearsay but the trial  
15 court overruled the objection and we find no error. While the  
16 better evidence at trial would have been for Rappaport to  
17 introduce the written document into evidence, Rappaport is not  
18 precluded from testifying that he is the assignee of rights and  
19 that the assignment is reflected in a written document.

20 For example, debtors can testify that they own a home and  
21 that their ownership interest is memorialized in a deed. The  
22 fact that the legal rights are transferred by the written  
23 document (i.e. the deed) does not prevent the debtors from  
24 claiming the ownership interest or testifying that a written  
25 document exists. To be sure, the hearsay objection would be  
26 well grounded if the Debtors testified regarding the specific  
27 contents of the deed and Rappaport's testimony would run afoul  
28 of the hearsay rule if he testified regarding the specific

1 provisions of the written document. But simply testifying that  
2 he claims certain legal rights (in this case as an assignee)  
3 and that this status is memorialized in a written document is  
4 not hearsay.

5 Of course, this is not the best evidence and it can often  
6 be quickly undermined at trial by cross-examination or the  
7 presentation of contrary evidence. Indeed, in some instances,  
8 the written document itself might be the best source to impeach  
9 generalized statements such as Rappaport's. But the Debtors  
10 made no such effort at trial. The general statements of  
11 Rappaport regarding the assignment went unchallenged.

12 D. Conclusion

13 Accordingly, in light of the terms of the State Court  
14 Judgment and the testimony of Rappaport, the court concludes  
15 that the trial court did not err in holding that Rappaport had  
16 standing.

17 **VI. FORM OF JUDGMENT**

18 The Debtors also allege that the bankruptcy court erred in  
19 entering judgment against Park because the bankruptcy court  
20 found that no evidence was presented against Park. In its  
21 Memorandum After Trial, the bankruptcy court stated that  
22 "Rappaport produced no evidence that Cha's wife, defendant  
23 Young Lim Park, had anything to do with the false financial  
24 statement. Accordingly, only her interest in the community  
25 property of the marriage and not her separate property is  
26 liable for a nondischargeability judgment pursuant to  
27 § 524(a)(3) of the Bankruptcy Code." In addition, the  
28 bankruptcy court's judgment found "[t]he judgment in Marin

1 County Superior Court case number CIV-094947 dated January 12,  
2 2010 is deemed non-dischargeable as to Defendant Young Lim Park  
3 only to the extent of her interest in the community property of  
4 the marriage and not her separate property."

5 The parties agree on appeal that the State Court Judgment  
6 was entered against Cha only and that the bankruptcy court  
7 found that Park had nothing to do with the false financial  
8 statement. The bankruptcy court judgment found that the State  
9 Court Judgment is nondischargeable as to Park only against the  
10 community property of the Debtors and the Debtors appear to  
11 agree that a judgment which is nondischargeable  
12 as to one spouse (but not the other) is enforceable against all  
13 community property. Thus, the parties agree on the substance  
14 of the law but the Debtors disapprove of the specific language  
15 used in the judgment. In fact, the Debtors admit in their  
16 opening brief that "the Court entered a Judgment against Park  
17 that does nothing more than restate what the law already  
18 provides." For this reason, we see no cause to reverse. While  
19 the Debtors may not have drafted the judgment with the same  
20 wording used by the bankruptcy court, they agree with the  
21 substance of the judgment.

22 **VII. CONCLUSION**

23 For the reasons set forth above, the bankruptcy court did  
24 not err in finding that Rappaport had standing to bring the  
25 adversary proceeding against the Debtors nor did the bankruptcy  
26 court err in entering judgment against Park only to the extent  
27 of the Debtors' community property. We AFFIRM.