

JUL 10 2007

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No.	CC-06-1390-KPaA
	)		
STEPHEN LAW,	)	Bk. No.	LA 04-10052-TD
	)		
Debtor.	)	Adv. No.	LA 06-01621-TD
	)		
STEPHEN LAW,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
CAU-MIN LI,	)		
	)		
Appellee,	)		
	)		

Argued and Submitted on June 21, 2007  
at Pasadena, California

Filed - July 10, 2007

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

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding

Before: KLEIN, PAPPAS and ALLEY,\*\* Bankruptcy Judges.

\*This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

\*\*Hon. Frank R. Alley, U.S. Bankruptcy Judge for the District of Oregon, sitting by designation.

1 The debtor, Stephen Law, appeals from a order granting  
2 summary judgment in favor of appellee, Cau-Min Li. We AFFIRM.

3  
4 FACTS

5 Appellee obtained a judicially confirmed arbitration award  
6 against the debtor from the Los Angeles Superior Court on October  
7 14, 1999 (Case no. KC025668) ("1999 State Court Judgment"). The  
8 judicially confirmed award provided that the debtor pay \$35,000  
9 to appellee within six months of the award. If the award  
10 remained unpaid after six months, then the debtor would be liable  
11 to appellee for \$131,821.74. The debtor did not appeal the  
12 judgment and did not make any payments to appellee within six  
13 months of the award.

14 On January 5, 2004, the debtor filed a chapter 7 bankruptcy  
15 case in the United States Bankruptcy Court, Central District of  
16 California. The court clerk's office sent a "Notice of Chapter 7  
17 Bankruptcy Case, Meeting of Creditors" to the debtor and his  
18 creditors that set the first meeting of creditors for February  
19 11, 2004, and set the deadline to determine dischargeability of  
20 certain debts for April 12, 2004.

21 On September 30, 2004, appellee filed a timely proof of  
22 claim to recover monies owed to him pursuant to the 1999 State  
23 Court Judgment. The debtor objected to the proof of claim.  
24 Appellee opposed the debtor's objection.

25 A hearing was held on March 9, 2005. The court overruled  
26 the debtor's objection to claim and allowed appellee's claim in  
27 the amount of \$188,330.05. The debtor did not appeal the court's  
28 ruling.

1 Debtor's discharge was denied by the bankruptcy court on  
2 September 27, 2005. Debtor appealed, and we affirmed the denial  
3 of discharge on December 29, 2006. Law v. Siegel (In re Law),  
4 BAP No. CC-05-1352. The debtor appealed our decision to the  
5 Ninth Circuit, which appeal is currently pending (Case No. 07-  
6 55194).

7 On March 15, 2006, the debtor filed a complaint against  
8 appellee to determine the discharge status of his debt to  
9 appellee and to object again to appellee's proof of claim.

10 On June 6, 2006, appellee filed a motion for summary  
11 judgment arguing that the debtor's complaint was barred by the  
12 doctrines of claim and issue preclusion, and also time barred by  
13 Federal Rule of Bankruptcy Procedure 4007(c). The debtor  
14 opposed.

15 A hearing took place on August 9, 2006. The court granted  
16 summary judgment in favor of appellee finding that it had  
17 previously determined the validity of appellee's proof of claim  
18 in March 2005, and therefore the debtor's objection was barred by  
19 claim and issue preclusion. The court also ruled that because  
20 the deadline to file a complaint to determine dischargeability of  
21 debt expired on April 12, 2004, the debtor's complaint filed on  
22 March 15, 2006, was not timely and thus barred by Rule 4007(c).

23 On August 30, 2006, the debtor filed a motion for  
24 reconsideration. The court denied the debtor's motion on October  
25 17, 2006, because the debtor provided no analysis pursuant to  
26 Federal Rules of Civil Procedure 59 and 60, and because the  
27 debtor's motion provided no argument or evidence which the court  
28 had not previously considered.

1 This timely appeal ensued.

2  
3 JURISDICTION

4 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334.  
5 We have jurisdiction under 28 U.S.C. § 158(a)(1).  
6

7 ISSUE

8 Whether the bankruptcy court erred when it granted summary  
9 judgment in favor of appellee, and subsequently denied  
10 reconsideration.  
11

12 STANDARD OF REVIEW

13 We review summary judgment de novo to assess whether there  
14 is a genuine issue of material fact and whether the moving party  
15 is entitled to judgment as a matter of law. Khaligh v. Hadaeqh  
16 (In re Khaligh), 338 B.R. 817, 823 (9th Cir. BAP 2006). We  
17 review the bankruptcy court's denial of a motion for  
18 reconsideration for an abuse of discretion. Smith v. Pac. Props.  
19 & Dev. Corp., 358 F.3d 1097, 1100 (9th Cir. 2004).  
20

21 DISCUSSION

22 I

23 On March 15, 2006, the debtor filed a complaint seeking a  
24 determination that the debt resulting from the 1999 State Court  
25 Judgment entered on October 14, 1999, was discharged.

26 Appellee argues that the complaint was to determine  
27 dischargeability of a debt under 11 U.S.C. § 523(c) and under  
28 Rule 4007(c), it must be filed no later than sixty days after the

1 first date set for the 11 U.S.C. § 341 meeting of creditors,  
2 which in this case was April 12, 2004.

3 The debtor counters that he did not file a complaint to  
4 determine the dischargeability of the 1999 State Court Judgment  
5 pursuant to § 523(c), but rather pursuant to 11 U.S.C.  
6 § 524(a)(1). We agree.

7 Section 524(a)(1) provides:

8 (a) A discharge in a case under this title -

9 (1) voids any judgment at any time obtained, to  
10 the extent that such judgment is a determination of the  
11 personal liability of the debtor with respect to any  
12 debt discharged under section 727 . . . of this title,  
13 whether or not discharge of such debt is waived.

14 We construe the debtor's complaint as seeking relief under  
15 § 524. There is, however, a fatal flaw in the debtor's theory.  
16 Because the debtor's discharge was denied, there is no discharge  
17 to enforce. Hence, the debtor's theory is not viable as a matter  
18 of law.

19 The court did not err dismissing the debtor's complaint.

## 20 II

21 The debtor's complaint also sought to relitigate appellee's  
22 claim that was filed on September 30, 2004, and previously  
23 allowed by the court after a contest.

24 The debtor had previously objected to appellee's proof of  
25 claim in February 2005. At a hearing in March 2005, the court  
26 considered the evidence, heard arguments of both parties, and  
27 overruled the debtor's objection. Appellee's claim was allowed  
28 in the amount of \$188,330.05. That order is final.

1 The debtor cannot now relitigate issues that have already  
2 been actually litigated and decided in a matter that was resolved  
3 by way of a final judgment. George v. City of Morro Bay (In re  
4 George), 318 B.R. 729, 733 (9th Cir. BAP 2004); Frankfort Digital  
5 Servs., Ltd. v. Neary (In re Reynoso), 315 B.R. 544, 551 (9th  
6 Cir. BAP 2004), aff'd, 477 F.3d 1117 (9th Cir. 2007); The Alary  
7 Corp. v. Sims (In re Assoc'd Vintage Group, Inc.), 283 B.R. 549,  
8 555 (9th Cir. BAP 2002). The court did not err in concluding  
9 that the res judicata rules of claim and issue preclusion  
10 operated to preclude re-litigation of the debtor's claim  
11 objection.

12 Furthermore, the court did not abuse its discretion when it  
13 denied the debtor's motion for reconsideration, which presented  
14 no new matters for consideration by the court.

15  
16 CONCLUSION

17 The bankruptcy court did not err when it granted summary  
18 judgment in favor of appellee, and subsequently denied  
19 reconsideration. The debtor's discharge had previously been  
20 denied, and the court had previously ruled on the debtor's  
21 objection to appellee's claim. AFFIRMED.  
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