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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NOT FOR PUBLICATION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

6	In re:)	BAP No.	CC-05-1018-PMoN
7	EDITH CADALIN CAMANZO,)	Bk. No.	LA 04-17613-MT
8	Debtor.)	Adv. No.	LA 04-02089-MT
9	_____)		
10	EDITH CADALIN CAMANZO,)		
11	Appellant,)		
12	v.)	MEMORANDUM¹	
13	TERESIJA SIGMUND,)		
14	Appellee.)		
	_____)		

Argued on
June 22, 2005 at Pasadena, California
Submitted on July 18, 2005

Filed - November 10, 2005

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

Honorable Maureen A. Tighe, Bankruptcy Judge, Presiding

Before: PERRIS, MONTALI, and NEWSOME², Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, claim preclusion or issue preclusion. See 9th Circuit BAP Rule 8013-1.

² Hon. Randall J. Newsome, Chief Bankruptcy Judge for the Northern District of California, sitting by designation.

1 Debtor Edith Camanzo (debtor) appeals from a summary judgment
2 entered against her in favor of Teresija Sigmund (Sigmund) on
3 Sigmund's complaint to declare that a debt owed to her by debtor is
4 nondischargeable under § 523(a)(2)(A).³ The bankruptcy court
5 concluded that the elements of the fraud claim had been established
6 by an earlier state court judgment (the Second Modified Judgment)
7 and therefore that the debt owed by debtor to Sigmund under the
8 Second Modified Judgment is non-dischargeable in this bankruptcy
9 case. We affirm.

10 FACTS⁴

11 In 2001, Sigmund and debtor entered into an agreement under
12 which Sigmund would lease from debtor and reside in some
13 residential real property, with the option to purchase. The lease
14 payments were to be credited toward her intended purchase. In
15 January 2002, Sigmund and debtor executed sale escrow instructions
16 and opened an escrow account to complete a sale of the property for
17 \$165,000. A dispute arose in which each party claimed that,
18 between January and August 2002, the other failed to comply with
19 the agreement.

20 In September 2002, without Sigmund's knowledge and without
21 informing the escrow company, debtor executed and caused to be
22 recorded a quitclaim deed, transferring the property that was the
23 subject of the purchase agreement to Erwin Pardue, as trustee of
24

25 ³ Unless otherwise indicated, all chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330.

27 ⁴ Neither party provided a statement of facts in their
28 brief. We draw the facts from the bankruptcy court's Memorandum of
Decision on Sigmund's Motion for Summary Judgment and other
portions of the excerpts of record.

1 the Erwin Pardue West Coast Family Trust. The recording of this
2 quitclaim deed caused certain federal tax liens to encumber the
3 property which, together with state tax liens, totaled \$258,923.46.

4 In November 2002, Sigmund filed a lawsuit in state court (the
5 state court action) against debtor and Pardue,⁵ alleging a breach
6 of the sale escrow instructions. While that action was pending,
7 Pardue obtained an unlawful detainer judgment and evicted Sigmund
8 from the property.

9 The next summer, Sigmund filed an amended complaint in the
10 state court action alleging, *inter alia*, breach of contract, fraud,
11 and specific performance to compel completion of the property sale.
12 The parties participated in a settlement conference with state
13 court Judge Alan B. Haber. As a result of the settlement
14 conference, the parties entered into a Stipulated Judgment, which
15 incorporated Mutual Amended Escrow Instructions. Under the
16 Stipulated Judgment, debtor agreed to specifically perform and
17 complete the sale for a purchase price of \$180,000, which was an
18 increase of \$15,000 over the original sale price. In executing the
19 Mutual Amended Escrow Instructions, Pardue and debtor warranted
20 that:

21 there are no other liens on the [property] other than the
22 first Quality Loan Deed of Trust Lien, the 1950 Cloverfield
23 Homeowners Association lien and the Property Tax lien, nor
will [debtor] incur any new liens on the Property.

24 Mutual Amended Escrow Instructions at 2, ¶ 4.⁶

25 Shortly thereafter, upon reviewing a title report prepared for
26 the sale closing, Sigmund discovered the nearly \$260,000 in tax

27
28 ⁵ It is not clear when Sigmund learned that the property
had been transferred to Pardue.

⁶ The Homeowners Association lien totaled approximately
\$7,000, and the outstanding Los Angeles County property tax lien
about \$5,000.

1 liens on the property in addition to the liens debtor had disclosed
2 and warranted in the Mutual Amended Escrow Instructions.

3 Sigmund then filed a motion to enforce the settlement, asking
4 either for an order requiring debtor to provide clear title or, in
5 the alternative, for monetary damages and specific performance.

6 Following an evidentiary hearing on the motion to enforce the
7 settlement, Judge Haber found that, while the initial sale was
8 pending, debtor had executed and caused to be recorded the
9 quitclaim deed transferring the property to Pardue as trustee of
10 the Erwin Pardue West Coast Family Trust. Judge Haber found that
11 the property was encumbered by federal and state tax liens of more
12 than \$250,000 against Pardue, and that the transfer from debtor to
13 Pardue "was designed to frustrate and render [it a] virtual
14 impossibility for [Sigmund] to purchase the subject property."
15 Second Modified Judgment at 2.

16 Judge Haber noted that a "significant issue" for resolution
17 was whether debtor and Pardue were aware of the federal tax liens
18 before the quitclaim deed was recorded in September 2002. Based on
19 Pardue's "lack of credibility," Judge Haber found that debtor and
20 Pardue "were aware of the existence of said tax liens" before they
21 executed the Mutual Amended Escrow Instructions and Stipulated
22 Judgment in August 2003.

23 Judge Haber concluded that the quitclaim transfer was a
24 fraudulent transfer under California Civil Code § 3439.04. He
25 entered a Second Modified Judgment in which he (1) declared the
26 quitclaim deed null and void; (2) ordered certain encumbrances and
27 assessments (such as the Homeowners Association lien and the Los
28 Angeles County property taxes) paid from debtor's sale proceeds;

1 (3) entered judgment to quiet title; (4) ordered debtor to execute
2 all necessary documents to effectuate a sale of the property to
3 Sigmund; and (5) awarded Sigmund \$45,091 in attorneys' fees and
4 \$3,524.19 in costs. Additionally, under the court's "equitable and
5 legal powers under the Uniform Fraudulent Transfer Act to assess
6 monetary damages," the court awarded Sigmund money damages of
7 \$34,381.49 "as a consequence of the intentionally fraudulent
8 conduct" of debtor and Pardue.⁷

9 A few weeks later, on April 5, 2004, debtor filed this chapter
10 7 case. Sigmund filed an adversary complaint, seeking a
11 determination that the debt owed by debtor to Sigmund under the
12 Second Modified Judgment is nondischargeable under § 523(a)(2)(A).
13 Sigmund moved for summary judgment, asserting that, under the
14 principles of issue preclusion,⁸ the Second Modified Judgment
15 established that the debt is nondischargeable as a matter of law.

16 The bankruptcy court agreed, and entered judgment in favor of
17 Sigmund. Debtor appeals.

18 ISSUE

19 Whether the bankruptcy court erred in applying issue
20 preclusion to determine that the debt is nondischargeable under
21 § 523(a)(2)(A).

22
23 ⁷ The \$34,381.49 damages award was to be set off by a
24 \$16,500 judgment obtained by debtor and Pardue against Sigmund in
25 the unlawful detainer action, provided they executed an
26 Acknowledgment of Full Satisfaction of that judgment. In violation
27 of the Second Modified Judgment, debtor refused to execute the
28 necessary documents to complete the sale. Ultimately, an official
in the Superior Court Clerk's Office executed such documents on
behalf of debtor to complete the sale to Sigmund.

⁸ The familiar phrases collateral estoppel and res judicata
are expressed in modern terminology as, respectively, issue
preclusion and claim preclusion. See In re Paine, 283 B.R. 33, 38
(9th Cir. BAP 2002). In this Memorandum we use the term issue
preclusion to refer to the effect of a judgment in foreclosing
relitigation of a matter that has been litigated and decided.

1 STANDARD OF REVIEW

2 We review a bankruptcy court's ruling on a motion for summary
3 judgment de novo. In re Baird, 114 B.R. 198, 201 (9th Cir. BAP
4 1990). In reviewing a summary judgment order, our task is the same
5 as a trial court: Viewing the evidence in a light most favorable
6 to the non-moving party, we determine whether the bankruptcy court
7 correctly found that there was no genuine issue of material fact
8 and that the moving party was entitled to judgment as a matter of
9 law. Id.; In re De Laurentiis Entertainment Group Inc., 963 F.2d
10 1269, 1271-72 (9th Cir. 1992). We also review de novo the
11 bankruptcy court's application of issue preclusion. In re Tobin,
12 258 B.R. 199, 202 (9th Cir. BAP 2001).

13 DISCUSSION

14 1. Dischargeability under § 523(a)(2)(A)

15 Section 523(a)(2)(A) excepts from discharge any debt for
16 money, property, services or credit obtained by debtor's "false
17 pretenses, a false representation, or actual fraud." In re Jacks,
18 266 B.R. 728, 733 (9th Cir. BAP 2001). To prevail on a claim under
19 § 523(a)(2)(A), a creditor must establish, by a preponderance of
20 the evidence, (1) a misrepresentation, fraudulent omission or
21 deceptive conduct by the debtor; (2) knowledge by the debtor of the
22 falsity or deceptiveness of his statement or conduct; (3) an intent
23 to deceive; (4) justifiable reliance by the creditor on the
24 debtor's statement or conduct; and (5) damage to the creditor
25 proximately caused by his reliance on the debtor's statement or
26 conduct. In re Slyman, 234 F.3d 1081, 1085 (9th Cir. 2000). The
27 elements of § 523(a)(2)(A) mirror the elements of common law fraud,
28

1 and match those for actual fraud pursuant to California law.⁹ See
2 Tobin, 258 B.R. at 203. The bankruptcy court concluded that the
3 Second Modified Judgment established each of those elements, and
4 that issue preclusion applied to establish nondischargeability as a
5 matter of law.

6 2. Issue preclusion

7 Issue preclusion applies in bankruptcy dischargeability
8 proceedings. Grogan v. Garner, 498 U.S. 279, 284-285 (1991); In re
9 Sasson, 424 F.3d 864, 872 (9th Cir. 2005) (the doctrines of
10 preclusion play an important part in dischargeability proceedings
11 by preventing the relitigation of factual and legal issues already
12 determined by other courts). Application of the issue preclusion
13 doctrine is within the broad discretion of the trial court. In re
14 Gottheiner, 703 F.2d 1136, 1139 (9th Cir. 1983). The burden of
15 proof is on the party seeking to assert issue preclusion to
16 "introduce a record sufficient to reveal the controlling facts and
17 pinpoint the exact issues litigated in the prior action." Tobin,
18 258 B.R. at 202-03. In determining the preclusive effect of a
19 state court judgment, federal courts must apply the issue
20 preclusion law of the state in which the judgment was entered. In
21 re Bugna, 33 F.3d 1054, 1057 (9th Cir. 1994); In re Nourbakhsh, 67
22 F.3d 798, 800 (9th Cir. 1995).

23 Under California law, issue preclusion bars relitigation of an
24 issue "argued and decided" in an earlier proceeding when five
25 requirements are met: (1) the issue decided in the prior action is
26

27 ⁹ We disagree with debtor's assertion at oral argument that
28 receipt of a benefit obtained by fraud is an additional element
under § 523(a)(2)(A). See Muegler v. Bening, 413 F.3d 980, 983-84
(9th Cir. 2005) (receipt of benefit obtained by the debtor's fraud
is not additional element for § 523(a)(2)(A) dischargeability
exception).

1 identical to the issue presented in the second action; (2) the
2 issue was actually litigated; (3) its determination was necessary
3 in the prior action; (4) there was a final judgment on the merits;
4 and (5) the party against whom estoppel is sought was a party, or
5 was in privity with a party, to the prior action. Lucido v.
6 Superior Court, 51 Cal.3d 335, 341 (1990); In re Baldwin, 249 F.3d
7 912, 917-18 (9th Cir. 2001). In addition to meeting the threshold
8 requirements, California law allows for the application of issue
9 preclusion only if doing so furthers the underlying public policies
10 of preservation of the integrity of the judicial system, the
11 promotion of judicial economy, and the protection of litigants from
12 harassment by vexatious litigation. Lucido, 51 Cal.3d at 342-43;
13 Baldwin, 249 F.3d at 919.

14 We agree with the bankruptcy court, and the parties do not
15 dispute, that the last two requirements for application of issue
16 preclusion are satisfied; the Second Modified Judgment is a final
17 judgment on the merits, and debtor, the party against whom issue
18 preclusion is sought, was a party to the motion that resulted in
19 the judgment.

20 We also conclude that the state court decided issues that are
21 identical to those arising under § 523(a)(2)(A), that fraud was
22 actually litigated, and that the court's determination of fraud was
23 necessary to its decision.

24 The issue before the state court was whether to enforce the
25 settlement agreement, which the parties had entered into after
26 debtor's conduct had resulted in the attachment of liens to the
27 property that made performance of the settlement agreement
28 impossible. The court concluded that debtor had known, when she

1 entered into the settlement agreement, that there were tax liens
2 attached to the property that made her performance of the
3 settlement agreement impossible.

4 The state court also found another instance of fraud: that the
5 original quitclaim transfer from debtor to Pardue was a fraudulent
6 transfer. The court said that "the execution of and the
7 recordation of the September 11 Quitclaim Deed from defendant
8 Camanzo to defendant Pardue was designed to frustrate and render
9 [it a] virtual impossibility for plaintiff to purchase the subject
10 property." Second Modified Judgment at Finding (3). The court
11 then found that the quitclaim deed was a fraudulent transfer under
12 California's version of the Uniform Fraudulent Transfer Act, Cal.
13 Civ. Code § 3439.04(a) and (b), and declared the quitclaim deed
14 null and void. Id. at Judgment ¶ 2.

15 In addition, the court awarded monetary damages for the
16 fraudulent transfer. Id. at Judgment ¶ 3. The court said that,
17 "as a consequence of the intentionally fraudulent conduct of the
18 defendants, the Court orders that Plaintiff is entitled to monetary
19 damages in the amount of \$34,381.49" Id. at Judgment ¶ 5.

20 A transfer may be fraudulent because of either actual or
21 constructive fraud.¹⁰ Actual fraud is required before a debt
22 arising from a fraudulent transfer will be nondischargeable.

24 ¹⁰ California's fraudulent transfer statute provides that a
25 transfer is fraudulent as to a creditor either if the transfer was
26 made "[w]ith actual intent to hinder, delay, or defraud[,]" or if
27 it was made "[w]ithout receiving a reasonably equivalent value in
28 exchange for the transfer[,]" and the debtor either "[w]as engaged
or was about to engage in a business or a transaction for which the
remaining assets of the debtor were unreasonably small in relation
to the business or transaction[,]" or "[i]ntended to incur, or
believed or reasonably should have believed that he or she would
incur, debts beyond his or her ability to pay as they became due."
Cal. Civil Code § 3439.04(a)(1), (2). The first type of fraudulent
transfer involves actual fraud; the second does not.

1 "Actual fraud, by definition, consists of any deceit, artifice,
2 trick, or design involving direct and active operation of the mind,
3 used to circumvent and cheat another -- something said, done or
4 omitted with the design of perpetrating what is known to be a cheat
5 or deception." 4 Lawrence P. King, COLLIER ON BANKRUPTCY
6 ¶ 523.08[1][e] (15th ed. Rev. 1998).

7 The state court's findings in this case support application of
8 issue preclusion, because the court found that the fraudulent
9 transfer was based on actual fraud, and awarded damages for that
10 fraud in addition to setting aside the transfer. The state court
11 judgment established that debtor's transfer of the property to
12 Pardue in 2002 was done with the intent to frustrate and make it
13 impossible for Sigmund to complete her purchase of the property.
14 Debtor's transfer of the property to Pardue with the intent of
15 defeating the purchase agreement was actual fraud.

16 The state court judgment also established that debtor knew of
17 the deceptiveness of the conduct; the court found that the
18 quitclaim transfer was designed to frustrate the sale. The state
19 court judgment established the intent to deceive by that same
20 finding.

21 Debtor argues that the state court did not find either
22 justifiable reliance or damage as a result of the fraud. However,
23 debtor focuses on the second fraud, that which occurred when debtor
24 entered into the settlement agreement with Sigmund in 2003, knowing
25 at the time that she could not perform. Although the state court
26 did find that debtor knew about the tax liens when she entered into
27 the settlement agreement, it was not that conduct that the court
28 found justified damages. Instead, the state court found that the

1 earlier transfer by quitclaim deed was fraudulent, and that Sigmund
2 had suffered damages of \$34,381.49 "as a consequence of the
3 intentionally fraudulent conduct of the defendants" Second
4 Modified Judgment at Judgment ¶ 5.A. Because the court had said
5 earlier in the judgment that damages were being awarded under the
6 fraudulent transfer statute, the intentionally fraudulent conduct
7 to which the court referred had to relate to the intentionally
8 fraudulent conduct of debtor in quitclaiming the property when she
9 knew that action would result in the attachment of a huge tax lien
10 to the property. Those findings establish that Sigmund justifiably
11 relied on the fraud and incurred damages as a result of it.

12 Debtor's focus on the fraud involved in her signing of the
13 settlement agreement is understandable; the bankruptcy court did
14 the same thing. There were, however, two separate frauds here: the
15 first in 2002 when debtor transferred the property to Pardue with
16 the intent to make it impossible for debtor to complete the agreed
17 sale to Sigmund, and the second in 2003 when she signed a
18 settlement agreement warranting that there were no liens other than
19 the ones listed, when in fact she knew that there were liens of
20 more than \$250,000 on the property. The state court did not make
21 any findings that there was damage to debtor arising from the
22 second fraud, and the bankruptcy court therefore erred in relying
23 on that fraud in granting summary judgment. We can affirm,
24 however, for any reason supported by the record. In re Prize
25 Frize, Inc., 150 B.R. 456, 461 n.11 (9th Cir. BAP 1993), aff'd, 32
26 F.3d 426 (9th Cir. 1994); Kimes v. Stone, 84 F.3d 1121, 1126 (9th
27 Cir. 1996). The Second Modified Judgment establishes that the debt
28 that is the subject of the dischargeability complaint is based on

1 an award of damages arising from the first fraud, which occurred
2 when debtor fraudulently transferred the property by quitclaim deed
3 to Pardue. Because the fraudulent transfer was based on actual
4 fraud, and the court awarded damages based on that fraud, the state
5 court judgment established the elements of nondischargeable fraud
6 under § 523(a)(2)(A).

7 Debtor does not argue that the policy reasons for applying
8 issue preclusion (preservation of integrity of judicial system,
9 judicial economy, and protection from vexatious litigation) do not
10 apply here. We conclude that, based on the state court's findings
11 of actual fraud in the transfer of the property to Pardue in 2002,
12 with the intent to defeat the sale to Sigmund, which transfer
13 caused Sigmund damage, the bankruptcy court did not err in entering
14 summary judgment for Sigmund.

15 CONCLUSION

16 The bankruptcy court was correct in granting Sigmund summary
17 judgment, although for the wrong reasons. Therefore, we AFFIRM.

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