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NOT FOR PUBLICATION

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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In re:)	BAP No. WW-05-1109-MaSJ
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JOHN EARLY COOPER,)	Bk. No. 04-10519
)	
Debtor.)	
_____)	
)	
JOHN EARLY COOPER,)	
)	
Appellant,)	
)	<u>MEMORANDUM</u> ¹
v.)	
)	
BARRY VANDENBRINK,)	
)	
Appellee.)	
_____)	

Argued and Submitted on July 22, 2005
at Seattle, Washington

Filed - October 7, 2005

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Samuel J. Steiner, Bankruptcy Judge, Presiding.

Before: Marlar, Smith and Jury,² Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th cir. BAP Rule 8013-1.

² Hon. Meredith A. Jury, United States Bankruptcy Judge for the Central District of California, sitting by designation.

1 Manufacturing Co. ("Union"). Debtor was the president and Judy
2 Cooper was the bookkeeper.

3 On March 29, 2001, Appellee Barry Vandenbrink ("Vandenbrink")
4 and Debtor signed a contract for Vandenbrink's employment as a
5 salesman. Vandenbrink worked for Union for only one month--from
6 April 9, 2001, until he was terminated on May 11, 2001.

7 In 2001, Vandenbrink filed a state court lawsuit against
8 Union for "Unpaid Salary and Wages and Breach of Contract"
9 damages, including double damages, which are available under
10 Washington's labor statutes. On the eve of trial, Union filed a
11 chapter 7 petition.⁴

12 In 2002, while the Union bankruptcy case was pending, Judy
13 Cooper filed both a petition for dissolution of the marriage and
14 an individual chapter 11 petition. Her bankruptcy estate was
15 comprised solely of the couple's community property. Her chapter
16 11 plan was intended to deal with claims against the community or
17 payable from community assets,⁵ and it was confirmed in February,
18 2003.

19 Vandenbrink filed a proof of claim in Judy Cooper's
20 bankruptcy case in the amount of \$117,818.45 and designated, in

22 ⁴ In the corporation's bankruptcy case, Vandenbrink filed an
23 unsecured nonpriority proof of claim in the amount of \$117,818.45
24 for unpaid compensation. Apparently, it was deemed allowed as an
25 unsecured claim and, as such, did not receive any distribution.
26 We take judicial notice of the docket and Trustee's Final Report
(Dkt. no. 86) in Case No. 02-24241. The Union case was closed in
27 May, 2005.

28 ⁵ Debtor stated that it was the couple's intention to deal
with all of the community debts in Judy Cooper's bankruptcy case
"and the resulting property, as divided, would be free and clear
from the claims of the community creditors." Motion for
Reconsideration (March 1, 2005), p. 5.

1 part, as an unsecured priority claim. He attached his affidavit,
2 dated September 26, 2002, stating that he had been hired by "John
3 Cooper for Union Manufacturing" as an outside salesman with a base
4 salary of \$42,000 per year. He stated that, pursuant to the
5 employment contract, he was to receive a 1.9% commission on each
6 account, a \$350 per month car lease allowance, and reimbursement
7 for gasoline and cell phone expenses. He further stated that he
8 obtained, over his one month of employment, approximately
9 \$1,743,000 in "quotes" for jobs, a number of which were accepted
10 and performed by Union. He also attached a copy of the employment
11 contract, which he and Debtor had signed.

12 Judy Cooper filed a written objection to the proof of claim
13 on two grounds: (1) the debt was not her obligation or liability;
14 and (2) the proof of claim was untimely. Following an omnibus
15 hearing, the bankruptcy court disallowed the Vandenbrink claim,
16 along with several others, finding only that "certain claimants
17 have either failed to substantiate the basis of their claim, or
18 the basis for asserting liability against the estate of the Debtor
19" First Omnibus Order on Debtor's Objections to Claims
20 (July 18, 2003), p. 2 ("First Omnibus Order"). The untimeliness
21 issue was not addressed by the bankruptcy court, and therefore it
22 was unclear whether Vandenbrink's claim had been disallowed on the
23 merits or simply because it was untimely.

24 Meanwhile, Vandenbrink filed an amended complaint in state
25 court substituting Debtor as the defendant. Trial on that
26 complaint was stayed after Debtor filed an individual chapter 11
27 petition on January 16, 2004.

28 In Debtor's bankruptcy case, Judy Cooper sought and obtained

1 relief from the automatic stay in order to: (1) complete
2 distributions under her chapter 11 plan and transfer the balance
3 of community funds into a trust account to be distributed upon
4 dissolution; and (2) complete the marital dissolution in superior
5 court, which would divide the remainder of the community property.

6 On June 14, 2004, the couple agreed to findings of fact and
7 conclusions of law in their dissolution proceeding. They agreed
8 that neither Debtor nor Judy Cooper had separate property, but
9 that their community property was liable for community debts as
10 addressed in the parties' bankruptcies. A decree of dissolution
11 was also entered at that time, which divided the remaining
12 community property between the spouses pursuant to a mediated
13 settlement.⁶

14 Vandenberg then filed a proof of unsecured nonpriority claim
15 against Debtor's estate in the amount of \$192,059 for unpaid
16 compensation for services performed from "April 2001 to May 2001."
17 The only attachment was an itemization.⁷

18 Debtor filed a written objection to Vandenberg's proof of
19 claim based on res judicata (claim preclusion) or collateral

20
21 ⁶ A copy of the dissolution decree is not in the excerpts of
22 record, but is referenced in the "Agreed Findings of Fact and
Conclusions of Law."

23 ⁷ The \$192,059 claim was itemized as follows:

24 \$38,500.00 in unpaid salary
25 \$20,195.00 in unpaid commissions
26 \$468.00 in unpaid employee expenses
27 \$8,158.00 in unpaid automobile lease expenses
28 \$200 in unpaid cellular phone expenses
\$59,063.00 in double damages
\$40,475.00 in interest
\$25,000 in attorneys' fees

Proof of Claim (January 30, 2004).

1 estoppel (issue preclusion). He attached a copy of Vandenbrink's
2 proof of claim which was filed in Judy Cooper's bankruptcy case,
3 her objection thereto, and the bankruptcy court's First Omnibus
4 Order disallowing that claim. Debtor maintained that
5 Vandenbrink's claim in Judy Cooper's case had actually been
6 asserted against the community assets. Since Debtor's bankruptcy
7 estate consisted of the community property, he argued that his
8 estate was "in privity" with Judy Cooper's and, therefore, the
9 disallowance of Vandenbrink's claim in Judy Cooper's bankruptcy
10 case was res judicata.

11 Vandenbrink responded to the objection by arguing that the
12 instant proof of claim did not meet the requirements for
13 collateral estoppel, or issue preclusion, because the issue of
14 Debtor's individual liability had not been actually litigated in
15 Judy Cooper's case. He also argued that it was unclear whether a
16 final decision on the merits of the claim was ever rendered in
17 Judy Cooper's bankruptcy case. He attached copies of the original
18 and amended complaints.

19 At a February 18, 2005 hearing on the claim objection, the
20 bankruptcy court orally overruled Debtor's objection and allowed
21 Vandenbrink's claim. The court explained:

22 Well, I don't think collateral estoppel applies here.
23 First of all, we're talking about different parties in the
24 Judy Cooper case. And in this case, certainly, the Judy
25 Cooper case could have brought in the marital community,
but this is the first time we've considered the individual
liability of John Early Cooper. And he wasn't involved in
that other case.

26 Beyond that, it appears to me that another element of
collateral estoppel hasn't been satisfied, namely, that

27

28

1 the claim had been fully litigated on the merits.⁸

2 Tr. of Proceedings (Feb. 18, 2005), p. 9:2-13.

3 Debtor filed a motion for reconsideration of the court's oral
4 ruling, pursuant to § 502(j) and Rule 3008. For the first time in
5 the proceedings, he requested an evidentiary hearing on the merits
6 of the claim.

7 Without holding further hearings on the matter, the
8 bankruptcy court entered an order granting Vandenbrink's claim in
9 its entirety in the amount of \$184,747.⁹ That order was timely
10 appealed. A separate order was entered by the bankruptcy court
11 denying the motion for reconsideration.¹⁰

12

13

14 ⁸ Under the doctrine of collateral estoppel, or issue
15 preclusion, a party that has once litigated a factual or legal
16 issue and lost may be precluded from relitigating the same issue
17 in a subsequent proceeding. See Montana v. United States, 440
18 U.S. 147, 153 (1979); Allen v. McCurry, 449 U.S. 90, 94 (1980).

19 In this appeal, Debtor has not challenged the court's ruling
20 as to issue preclusion, and therefore its decision not to bar
21 Vandenbrink's proof of claim on that basis has been waived. Law
22 Offices of Neil Vincent Wake v. Sedona Inst. (In re Sedona Inst.),
23 220 B.R. 74, 76 (9th Cir. BAP 1998) (arguments not specifically
24 and distinctly made in an appellant's opening brief are waived and
will not ordinarily be considered).

20 Although the court used the term "collateral estoppel," in
21 part because it focused on the issue of Debtor's liability, its
22 ruling is equally applicable to res judicata, or claim preclusion.
23 Indeed, the bankruptcy court noted the alternate usage of the
24 terms by the parties, when it stated at the hearing: "Well, how
can you have a collateral estoppel situation or an issue of
preclusion, call it what you will, in effect with different
parties?" Tr. of Proceedings (Feb. 18, 2005), p. 4:21-25
(emphasis added).

25 ⁹ It is not apparent from the record how the court arrived
26 at this figure when the proof of claim was in the amount of
\$192,059.

27 ¹⁰ Although Debtor did not specifically appeal the
28 reconsideration order, we may review it because both parties have
made it an issue in this appeal. See Munoz v. Small Business
Admin., 644 F.2d 1361, 1364 (9th Cir. 1981).

1 **DISCUSSION**

2
3 A duly filed proof of claim is presumptively valid and deemed
4 allowed, unless a party in interest objects. See Garner v. Shier
5 (In re Garner), 246 B.R. 617, 620 (9th Cir. BAP 2000); Fed. R.
6 Bankr. P. 3001(f), 3007; 11 U.S.C. § 502(a). The filing of an
7 objection to a proof of claim "creates a dispute which is a
8 contested matter" within the meaning of Bankruptcy Rule 9014 and
9 must be resolved after notice and opportunity for hearing. See
10 Adv. Comm. Notes to Fed. R. Bankr. P. 9014; Jorgenson v. State
11 Line Hotel, Inc. (In re State Line Hotel, Inc.), 323 B.R. 703, 710
12 (9th Cir. BAP 2005).

13 The party objecting to the proof of claim must produce
14 sufficient evidence to "show facts tending to defeat the claim by
15 probative force equal to that of [its] allegations." Lundell v.
16 Anchor Constr. Specialists, Inc. (In re Lundell), 223 F.3d 1035,
17 1039 (9th Cir. 2000) (alteration added) (quoting Wright v. Holm
18 (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991)). If the objector
19 produces sufficient evidence to negate the claim's validity, the
20 burden of persuasion shifts back to the claimant, who then has the
21 ultimate burden to demonstrate that the claim deserves to share in
22 the distribution of the debtor's assets. See Spencer v. Pugh (In
23 re Pugh), 157 B.R. 898, 901 (9th Cir. BAP 1993).

24 Here, Vandenbrink filed an unsecured proof of claim for
25 \$192,059 in unpaid compensation for services performed, attaching
26 only an itemization of the claim. Debtor objected to
27 Vandenbrink's proof of claim solely on legal grounds, i.e., that
28 it was barred by the doctrine of claim preclusion. His argument

1 was that it was a "community claim" that had already been
2 disallowed in Judy Cooper's bankruptcy case. Debtor attached the
3 prior proof of claim, the complaint and amended complaint, and
4 pertinent pleadings and orders from Judy Cooper's case.

5

6

A. Res Judicata (Claim Preclusion)

7

8 Res judicata, or claim preclusion, is a doctrine of finality
9 of decisions. Brown v. Felsen, 442 U.S. 127, 131 (1979). It
10 provides that a final judgment on the merits of an action
11 precludes the parties from relitigating all issues connected with
12 that action, and which were or could have been raised in the
13 action. Rein v. Providian Fin. Corp., 270 F.3d 895, 898-99 (9th
14 Cir. 2001). Claim preclusion is appropriate whenever:

15

(1) the parties are identical or in privity;

16

(2) the judgment in the prior action was rendered by a court
of competent jurisdiction;

17

(3) there was a final judgment on the merits; and

18

(4) the same claim or cause of action was involved in both
suits.

19

20 Id. at 899.

21

22

Factor No. 2: Prior Proceeding

23

24 The party asserting preclusion, in this case Debtor, has the
25 "burden of establishing what was litigated in the prior action and
26 determined by the prior judgment." Id. at 899 n.3.

27

28 Here, Debtor supplied the prior judgment--the bankruptcy
court's First Omnibus Order sustaining Judy Cooper's objection to

1 Vandenbrink's proof of claim in her bankruptcy case. Thus, Factor
2 No. 2 was satisfied. We now proceed to analyze the remaining
3 factors.

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Factor No. 1: Identical Parties or Privies

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8

Debtor contends that the bankruptcy court erroneously determined that an identity of parties did not exist.

9 Claim preclusion requires that the parties to the prior and
10 present action are either identical or in privity. It is well
11 settled that under certain circumstances a judgment may bar a
12 subsequent action by a person who was not a party to the original
13 litigation but whose interests were adequately represented by a
14 party. Such identity between the party and nonparty is known as
15 "privity."

16 "'Privity' ... is a legal conclusion 'designating a person so
17 identified in interest with a party to former litigation that he
18 represents precisely the same right in respect to the subject
19 matter involved.'" Hasso v. Mozsgai (In re La Sierra Fin. Servs.,
20 Inc.), 290 B.R. 718, 729 (9th Cir. BAP 2002) (quoting United
21 States v. Schimmels (In re Schimmels), 127 F.3d 875, 881 (9th Cir.
22 1997) (internal citation omitted)). A party in privity is bound
23 in the same way the party is bound. See Rivet v. Regions Bank of
24 La., 522 U.S. 470, 476 (1998) ("Under the doctrine of claim
25 preclusion, '[a] final judgment on the merits of an action
26 precludes the parties or their privies from relitigating issues
27 that were or could have been raised in that action.'" (citation
28 omitted). If the second action is on the same claim, preclusion

1 is an instance of direct estoppel as to that claim (claim
2 preclusion); if it is on a different claim, preclusion is an
3 instance of collateral estoppel. See RESTATEMENT (SECOND) OF JUDGMENTS,
4 § 13, cmt. g; § 17, cmt. c. (1982).

5 Debtor argues that he is the successor-in-interest to Judy
6 Cooper's estate because his bankruptcy estate consists of the
7 remnants of the same community property. Therefore, he maintains
8 that his estate is in privity with Judy Cooper's estate.

9 "[T]he community property of both spouses becomes property of
10 the estate when one spouse files a bankruptcy petition." Highland
11 Fed. Bank v. Maynard (In re Maynard), 264 B.R. 209, 214 (9th Cir.
12 BAP 2001); 11 U.S.C. § 541(a)(2). Section 541(a)(2) provides that
13 the bankruptcy estate shall consist of

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

- 16 (A) under the sole, equal, or joint management and
17 control of the debtor; or
18 (B) liable for an allowable claim against the
19 debtor, or for both an allowable claim against the
20 debtor's spouse, to the extent that such
interest is so liable.

21 11 U.S.C. § 541(a)(2).

22 To the extent Debtor suggests that the "community estate" is
23 the real "party" in interest in both proceedings, he confuses the
24 debtor's individual liability with the property interest that is
25 liable for the satisfaction of the debt. Under Washington law, a
26 community estate is not a separate and distinct juristic entity
27 apart from the spouses who compose the marital community. Bortle
28 v. Osborne, 155 Wash. 585, 589-90, 285 P. 425 (1930); Household

1 Fin. Corp. v. Smith, 70 Wash. 2d 401, 403, 423 P.2d 621 (1967).
2 Therefore, the community estate was not a party to the claim in
3 either case, but rather it represented property interests that
4 were accessible to Vandenbrink if he held a community claim. See
5 Case v. Maready (In re Maready), 122 B.R. 378, 381 (9th Cir. BAP
6 1991).

7 A debt is defined as "liability on a claim." Johnson v. Home
8 State Bank, 501 U.S. 78, 85 n.5 (1991); 11 U.S.C. § 101(12). A
9 claim is a "right to payment, whether or not such right is reduced
10 to judgment" 11 U.S.C. § 101(5)(A). A "community claim"
11 is defined in § 101(7) as a

12 claim that arose before the commencement of the case
13 concerning the debtor for which property of the kind
14 specified in section 541(a)(2) of this title is liable,
whether or not there is any such property at the time of
the commencement of the case;

15 11 U.S.C. § 101(7) (emphasis added).

16 "Unlike a claim, a 'community claim' is a debt owed by the
17 debtor *or the debtor's spouse*, which under state law could have
18 been satisfied from community property that would have passed to
19 the debtor's bankruptcy estate, whether or not such property
20 existed at the commencement of the case." F.D.I.C. v. Soderling
21 (In re Soderling), 998 F.2d 730, 733 (9th Cir. 1993) (quoting Alan
22 Pedlar, Community Property and the Bankruptcy Reform Act of 1978,
23 11 ST. MARY'S L.J. 349, 351-52 (1979) (emphasis in original)).

24 Thus, a creditor with a community claim may be a creditor of
25 either spouse's bankruptcy estate which includes community
26 property. See 11 U.S.C. § 101(10)(C). See also In re Monroe, 282
27 B.R. 219, 222 (Bankr. D. Ariz. 2002) (debtor spouse becomes liable
28 for debt, regardless of any personal liability, to the extent that

1 such obligation is payable out of her property, i.e., her interest
2 in community property).

3 Individual spousal liability for the debt is determined under
4 state law. Maready, 122 B.R. at 381 n.2. In this case, the
5 relevant state law is Washington's contract law and Washington
6 Revised Code ("RCW") § 49.52.050(2), which makes it a misdemeanor
7 for "any employer or officer, vice principal or agent of any
8 employer" who "[w]ilfully and with intent to deprive the employee
9 of any part of his wages, shall pay any employee a lower wage than
10 the wage such employer is obligated to pay such employee by any
11 statute, ordinance, or contract"

12 This statute is construed liberally "to see that the employee
13 shall realize the full amount of the wages which by statute,
14 ordinance, or contract he is entitled to receive from his
15 employer, and which the employer is obligated to pay, and,
16 further, to see that the employee is not deprived of such right,
17 nor the employer permitted to evade his obligation, by a
18 withholding of a part of the wages" Ellerman v.
19 Centerpoint Prepress, Inc., 143 Wash. 2d 514, 520, 22 P.3d 795
20 (2001) (citation omitted).

21 As a civil penalty for such a violation, RCW § 49.52.070
22 makes such "employer or officer, vice principal or agent of any
23 employer" liable for "twice the amount of the wages unlawfully
24 rebated or withheld by way of exemplary damages, together with
25 costs of suit and a reasonable sum for attorney's fees"

26 Thus, actions may lie under these labor provisions against an
27 employer and/or one acting for or on behalf of the employer in
28 order to determine their joint and several liability. See, e.g.,

1 Zhang v. Am. Gem Seafoods, Inc., 339 F.3d 1020, 1028 (9th Cir.
2 2003) (a case where a jury had found both corporate president and
3 corporation jointly and severally liable for breach of employment
4 contract and for double damages under RCW §§ 49.52.050(2) and
5 49.52.070), cert. denied, 541 U.S. 902 (2004). In fact,
6 Vandenbrink asserted separate claims and actions against Union,
7 Judy Cooper and Debtor, in each of their bankruptcy cases.

8 In Judy Cooper's bankruptcy case, Vandenbrink did not allege
9 that she was personally liable as a party to the contract or as an
10 employer, officer, vice principal or agent of Union. Rather, he
11 alleged that Debtor had signed the employment contract on behalf
12 of Union, which was the subject of his wage and breach of contract
13 claim. Therefore, he essentially asserted a contingent community
14 claim against Judy Cooper based on Debtor's alleged liability. At
15 that time, however, Debtor's liability had not been litigated,
16 there was no pending action to determine Debtor's liability either
17 in state court or bankruptcy court, nor was Debtor made a party to
18 the claim in the Judy Cooper case. Therefore, there was no
19 procedural vehicle whereby the Judy Cooper bankruptcy court could
20 determine Debtor's liability.

21 Judy Cooper objected to Vandenbrink's claim on the grounds
22 that she was not personally liable for the claim. Therefore, the
23 bankruptcy court's order on the claim could only have been final
24 and on the merits in regards to Judy Cooper's personal liability
25 or the community's based on her liability. Under Washington law,
26 Judy Cooper could not be held personally liable for community
27 obligations contracted solely by her husband. McLean v.
28 Burginger, 100 Wash. 570, 571, 171 P. 518 (1918). Moreover, under

1 § 541, each spouse's bankruptcy estate is a separate and distinct
2 entity, see Havelock v. Taxel (In re Pace), 67 F.3d 187, 192 (9th
3 Cir. 1995) and Farmer v. Crocker Nat'l Bank (In re Swift Aire
4 Lines, Inc.), 30 B.R. 490, 495 (9th Cir. BAP 1983), and both Judy
5 Cooper and Debtor were eligible to receive separate discharges of
6 their personal liability.

7 On the other hand, due to Debtor's subsequent bankruptcy
8 filing, a claim, whether separate or community, and based on his
9 conduct or personal liability, could still be asserted in his
10 case. Therefore, the bankruptcy court did not err in determining
11 that the same parties or their privies were not involved in both
12 proof of claim proceedings.

13
14 **Factor No. 3: Final Judgment on the Merits**

15
16 Only a judgment that is final and decided on the merits may
17 have res judicata effect. Here, the bankruptcy court ruled that
18 Vandenbrink's claim had not been "fully litigated on the merits"
19 in the Judy Cooper bankruptcy case.

20 The parties agree that the First Omnibus Order was ambiguous
21 as to the grounds for denying the Vandenbrink claim. Judy Cooper
22 had objected to the proof of claim on two grounds: that she was
23 not liable and that it was untimely. In disallowing the claim,
24 the order merely stated that "certain claims" were either
25 unsubstantiated or did not prove the debtor's liability.

26 Debtor has the burden of providing a record to support claim
27 preclusion. Debtor maintains that any disallowance was on the
28 merits, citing Siegel, 143 F.3d at 530 (holding that the court's

1 allowance and disallowance of proofs of claim are final
2 judgments). Indeed, § 502(b)(9), with some nonapplicable
3 exceptions, provides that the untimely filing of a proof of claim
4 is alone a sufficient basis for disallowing that claim.

5 When an objection is filed, a hearing must be held in which
6 the court formally acts on the claim. If the court then allows or
7 disallows the claim, the Ninth Circuit held that “there can be
8 little doubt about the ultimate res judicata effect” of that
9 allowance or disallowance. Siegel, 143 F.3d at 530. See also
10 Poonja v. Alleghany Props. (In re Los Gatos Lodge Inc.), 278 F.3d
11 890, 892-93 (9th Cir. 2002) (disallowance of claim after hearing
12 on objection that it had already been released by stipulation was
13 final order).

14 Siegel did not address a disallowance for untimeliness.
15 Siegel held that a proof of claim that was merely “deemed
16 allowed,” under § 502(a), was final, giving rise to res judicata
17 principles. Siegel, 148 F.3d at 529-30.

18 Even if the disallowance, here, was for untimeliness, and
19 such order was entitled to preclusive effect, its finality would
20 only apply to the merits of Judy Cooper’s personal nonliability
21 and the nonliability of her interest in the community property.
22 This is different from the central issue of Vandenbrink’s claim in
23 Debtor’s case, which was whether Debtor was liable to Vandenbrink,
24 and that issue could not have been resolved in Judy Cooper’s case
25 based on the claim’s procedural posture.

26 Secondly, assuming arguendo that the bankruptcy court
27 intended to include Vandenbrink’s claim among those “certain
28 claims” that were either unsubstantiated or did not prove Judy

1 Cooper's liability, such judgment could not have been on the
2 merits of a community claim based on Debtor's liability.

3 An unsubstantiated claim means that the claimant failed to
4 produce sufficient evidence to overcome the objection. See Pugh,
5 157 B.R. at 901. Here, Vandenbrink did not provide any evidence
6 to prove the liability of Judy Cooper or of her interest in the
7 community property. While his claim hinged on Debtor's liability
8 under Washington law, Debtor's liability was independent of Judy
9 Cooper's, and Debtor had never been a joint debtor nor a named
10 defendant in any prior pending action concerning the claim in her
11 case.¹¹

12 Therefore, even if the bankruptcy court disallowed
13 Vandenbrink's proof of claim in the Judy Cooper case on the
14 merits, it was only disallowed as to Judy Cooper's personal
15 liability. In that sense, Vandenbrink's claim in Debtor's
16 bankruptcy case had not been fully litigated on the merits, and
17 the element of claim preclusion which requires a final judgment on
18 the merits was not satisfied.

19
20 **Factor No. 4: Same Claim or Cause of Action**

21
22 Vandenbrink asserted a proof of claim in both bankruptcy
23 cases for damages based on unpaid wages and expenses. Whether the
24 same cause of action was involved for purposes of claim preclusion
25 requires the application of a four-factor test:

26 _____
27 ¹¹ Debtor cites to case law which holds that even a default
28 judgment can be res judicata. These cases are not on point,
because Debtor, who was not a party to the action, was not in
default.

- 1 (1) whether rights or interests established in the
2 prior judgment would be destroyed or impaired by
prosecution of the second action;
- 3 (2) whether substantially the same evidence is presented in
4 the two actions;
- 5 (3) whether the two suits involve infringement of the same
6 right; and
- 7 (4) whether the two suits arise out of the same
8 transactional nucleus of facts.

8 Siegel, 143 F.3d at 529.

9 In Judy Cooper's and Debtor's bankruptcy cases, Vandenbrink
10 filed different types of claims (partially unsecured priority and
11 unsecured), for different amounts (\$117,818.45 and \$192,059), with
12 different supporting documents. Even though the claims were not
13 identical, they were both asserted against the community property
14 interest of the respective spouse, the allegations supporting the
15 claims arose from the same transactional nucleus of facts, they
16 involved infringement of the same contractual and statutory rights
17 held by Vandenbrink, and the same evidence would likely be
18 presented.

19 Therefore, we hold that this factor was met.

20
21 In summary, although the same claim was asserted in both
22 bankruptcy cases and a court of competent jurisdiction had entered
23 an order, such order was not proven to be final and on the merits,
24 nor were the same parties or their privies involved in determining
25 liability for the underlying debt in both cases. Therefore, we
26 conclude that claim preclusion did not bar Vandenbrink's claim
27 against Debtor's estate.

1 **B. Evidentiary Hearing and § 502(j) Motion**

2
3 Debtor contends that the bankruptcy court should not have
4 allowed Vandenbrink's claim without first conducting an
5 evidentiary hearing.

6 Under the Bankruptcy Code and Rules, a properly filed claim
7 is prima facie valid. Fed. R. Bankr. P. 3001(f). If the claim
8 objector produces sufficient evidence to negate the claim's
9 validity, the burden of persuasion shifts back to the claimant,
10 who then has the ultimate burden to demonstrate that the claim
11 deserves to share in the distribution of Debtor's assets. See
12 Pugh, 157 B.R. at 901.

13 Here, Debtor's only objection was a legal one--that the claim
14 was barred by the doctrine of res judicata. Therefore, the
15 bankruptcy court was not required to set an evidentiary or
16 adversarial hearing but could rule strictly on the legal issue
17 presented. See Rule 9014(d) ("Testimony of witnesses with respect
18 to disputed material factual issues shall be taken in the same
19 manner as testimony in an adversary proceeding.")

20 It was not until the hearing on the contested motion that
21 Debtor maintains that his attorney announced that Debtor also
22 opposed the claim on the merits. The exchange to which he refers
23 appears to be¹² as follows:

24 THE COURT: Okay. Now, the debtor's not objecting to
25 any of the monetary components of the

26 ¹² Debtor refers us to A.A., p. 255, 1.9, which is a page
27 from Vandenbrink's response to the claim objection. See
28 Appellant's Opening Brief, p. 16. Apparently, he meant to refer
to the hearing transcript, instead. The excerpt, above, is from
page 225 of the excerpts.

1 claim.

2 [ATTORNEY]: We are with regard to Mr. VandenBrink in the
3 sense that we have contested the claim in
4 state court and brought this objection
5 believing that, in essence, the claim was
6 precluded based on the actions in Judy
7 Cooper's -

8 Tr. of Proceedings (Feb. 18, 2005), p. 6:6-13.

9 This excerpt, however, supports the proposition that the
10 legal objection in bankruptcy court was the sole objection raised
11 by Debtor. Debtor's attorney did not make an oral request for
12 discovery or for an evidentiary hearing on the claim.

13 It was not until after the court made its oral ruling at the
14 hearing, allowing Vandenbrink's proof of claim in its entirety,
15 that Debtor then filed his declaration and motion for
16 reconsideration in which he disputed the amount of Vandenbrink's
17 claim. Thus, Debtor's request for an evidentiary hearing on the
18 merits of the claim came too late--after he had already waived his
19 right to an evidentiary hearing.

20 Section 502(j) provides in pertinent part, that, "[a] claim
21 that has been allowed or disallowed may be reconsidered for cause.
22 A reconsidered claim may be allowed or disallowed according to the
23 equities of the case." 11 U.S.C. § 502(j).

24 A court does not abuse its discretion in denying such motion
25 when the party's sole reason for failing to raise an issue at the
26 proper time was his failure to appreciate the procedural
27 consequences of his action. Here, it was incumbent upon Debtor to
28 investigate and assert all of his available objections at the time
of the claim objection hearing. See Halverson v. Estate of
Cameron (In re Mathiason), 16 F.3d 234, 239 (8th Cir. 1994). It

1 was his own choice to limit his objection to the legal issue.
2 Therefore there was no "cause" for granting the § 502(j) motion.

3 Notwithstanding the lack of "cause," a court may review the
4 equities of the case. Here, Vandenbrink worked for Debtor's
5 corporation for only three weeks and asserted a claim for over
6 \$190,000. Debtor denied that Vandenbrink obtained purchase orders
7 or contract bids for which he was entitled to the claimed
8 commissions. Importantly, Debtor contended that he could not
9 confirm a chapter 11 plan if he had to absorb this debt.

10 And yet, Debtor had ample opportunity to object on these
11 grounds in a timely manner, and to request an evidentiary hearing,
12 but did not do so. Moreover, he did not present any corroborating
13 evidence to support any factual objections concerning
14 Vandenbrink's claim.

15 Therefore, we conclude that the bankruptcy court did not
16 abuse its discretion in denying Debtor's motion for
17 reconsideration.

18

19

CONCLUSION

20

21 Vandenbrink's proof of claim was presumptively valid. In
22 objecting to the proof of claim, Debtor did not establish the
23 elements of claim preclusion in order to bar the claim by virtue
24 of its disallowance in his ex-wife's individual bankruptcy case.
25 Nor did he present any rebuttal evidence, but instead he waived
26 his right to an evidentiary hearing. Therefore, the bankruptcy
27 court did not err in overruling Debtor's objection and allowing
28 the claim. Moreover, where Debtor had made such procedural

1 choices, the bankruptcy court did not abuse its discretion in
2 denying the motion for reconsideration of the claim allowance, for
3 cause. The bankruptcy court's order is therefore **AFFIRMED**.

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