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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NOT FOR PUBLICATION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:)	
JUNG SUP LEE and KYUNG CHA LEE,)	BAP No. WW-04-1505-JuMaS
)	Bk. No. 03-17022
)	Adv. No. 04-01117
)	
Debtors.)	
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JUNG SUP LEE,)	
)	
Appellant,)	M E M O R A N D U M ¹
v.)	
)	
TCAST COMMUNICATIONS, INC.,)	
)	
Appellee.)	
)	
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Argued and Submitted on
July 22, 2005 at Seattle, Washington

Filed - November 9, 2005

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

Honorable Samuel J. Steiner, Bankruptcy Judge, Presiding

Before: JURY,² MARLAR and SMITH, 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, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

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

1 After Jung Sup Lee ("Lee") and his wife, Kyung Cha Lee,
2 filed for bankruptcy, TCAST Communications, Inc. ("TCAST") filed
3 a complaint against Lee to determine whether a certain debt owed
4 to it was non-dischargeable pursuant to § 523(a)(2)(A).³ TCAST
5 moved for summary judgment in the adversary proceeding, which the
6 bankruptcy court granted in its favor. Lee timely appealed.

7 Based on issue preclusion, claim preclusion, and full faith
8 and credit, we AFFIRM the bankruptcy court's decision.

9
10 I. FACTS

11 Lee operated TTI Telecommunications, Inc. ("TTI"), a
12 Washington corporation which sold long-distance calling cards
13 wholesale to retailers. On October 25, 2000, TTI entered into a
14 written carrier service agreement ("Agreement") with TCAST.
15 Under the Agreement, TTI agreed to pay fees to TCAST in order to
16 provide telephone communication services to TTI. Specifically,
17 TTI agreed to tender a cash deposit in advance based on one month
18 of projected use. TTI also agreed to pay an increased advance
19 deposit as it increased its usage over time. Later, TCAST agreed
20 to allow TTI to pay current charges on a weekly basis in lieu of
21 an increased deposit.

22 Between May 7 and May 18, 2001, TTI tendered five checks to
23 TCAST, totaling \$369,380.84, in payment for its services. The
24 checks bounced due to insufficient funds.

25 TCAST filed a complaint against TTI and Lee on various
26 causes of action, including fraud and breach of contract, in the
27 Los Angeles County (California) Superior Court. In its

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³ Unless otherwise indicated, all chapter, section, and
rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330
and to the Federal Rules of Bankruptcy Procedure, Rules 1001-
9036.

1 complaint, TCAST requested both compensatory and punitive damages
2 against TTI and Lee. Although TCAST specified the amount of
3 compensatory damages in its complaint, it failed to specify an
4 amount for punitive damages.⁴

5 Lee, appearing through counsel, filed an answer to the
6 complaint. TCAST served a set of interrogatories on Lee, to
7 which Lee and TTI failed to respond. After issuing two lesser
8 discovery sanctions, the court, upon motion by TCAST, granted
9 terminating sanctions, striking the answer, granting default
10 judgment against TTI and Lee, and awarding compensatory and
11 punitive damages. The court entered the default judgment,
12 awarding both compensatory and punitive damages, on February 14,
13 2002.

14 TCAST registered the California default judgment in
15 Washington on June 13, 2002. Lee moved to set aside the
16 California default judgment in the King County (Washington)
17 Superior Court on the grounds that the California court lacked
18 personal jurisdiction and that he had no notice of the discovery
19 requests, claiming he failed to respond due to excusable neglect
20 caused by the negligence of his California counsel. The court
21 denied the motion, finding an insufficient basis for collateral
22 attack and that the California default judgment was entitled to
23 full faith and credit ("Washington judgment").

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25
26 ⁴ TCAST requested \$251,268.25 in compensatory damages but
27 only requested punitive damages "in an amount to punish TTI and
28 Lee and to deter others from engaging in similar misconduct."
Complaint for Breach of Contract, Common Counts, Fraud, and
Violation of Civ. Code § 1719 (June 5, 2001), at 28. TCAST later
provided an amount for punitive damages in a declaration in
support of the entry of judgment, filed February 1, 2002. In the
declaration, TCAST requested an award of \$369,380.84 in punitive
damages. See Declaration of Joel Wadman in Support of Entry of
Judgment (February 1, 2002), at 51.

1 Lee and his wife filed a voluntary Chapter 11 petition on
2 May 29, 2003, which case was converted to Chapter 7 on October
3 11, 2003. TCAST filed a non-dischargeability complaint under
4 § 523(a)(2)(A) against Lee on March 11, 2004.⁵ TCAST first moved
5 for summary judgment under the doctrine of issue preclusion
6 (i.e., collateral estoppel) with respect to the compensatory
7 damages portion of the state court judgment. The bankruptcy
8 court granted the motion for summary judgment, reserving the
9 issue of non-dischargeability of the punitive damages portion of
10 the judgment for later determination. The bankruptcy court
11 entered its decree with respect to the compensatory damages
12 ("compensatory damages decree") on June 24, 2004.

13 TCAST then moved for summary judgment with respect to the
14 punitive damages portion of the judgment under the Rooker-Feldman
15 doctrine and claim preclusion (i.e., res judicata). The
16 bankruptcy court granted the motion, finding that claim
17 preclusion fully applied to the issues actually raised by Lee
18 before the Washington court in its review of the California
19 default judgment, as well as to other issues that Lee could and
20 should have raised at that time. The bankruptcy court also found
21 that the Rooker-Feldman doctrine barred it from reviewing the
22 California and Washington judgments. The bankruptcy court then
23 entered its decree with respect to the punitive damages award
24 ("punitive damages decree") on September 30, 2004. Lee filed his
25 notice of appeal of both decrees on October 6, 2004.

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27
28 ⁵ It appears from the record that TCAST named Lee as the
only defendant in the adversary proceeding.

1 II. JURISDICTION

2 The bankruptcy court had jurisdiction under 28 U.S.C. § 1334
3 and § 157(b) (1) and (b) (2). This panel has jurisdiction under 28
4 U.S.C. § 158 (b) (1).

5
6 III. ISSUES

7 (1) Whether the bankruptcy court erred in granting summary
8 judgment for TCAST by finding that issue preclusion rendered the
9 compensatory damages portion of the state court judgment non-
10 dischargeable under § 523(a) (2) (A).

11 (2) Whether the bankruptcy court erred in granting summary
12 judgment for TCAST by finding that full faith and credit barred
13 it from reviewing the Washington judgment in its consideration of
14 the punitive damages portion of the judgment.

15 (3) Whether the bankruptcy court erred in granting summary
16 judgment for TCAST by finding that claim preclusion barred Lee
17 from asserting claims he could and should have made before the
18 Washington court in its review of the punitive damages portion of
19 the California default judgment.⁶

20
21 IV. STANDARD OF REVIEW

22 We review the summary judgment of the bankruptcy court de
23 novo. Tobin v. Sans Souci Ltd. P'ship (In re Tobin), 258 B.R.
24 199, 202 (9th Cir. BAP 2001) (citation omitted). Viewing the

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27 ⁶ Because we conclude that the bankruptcy court correctly
28 applied issue preclusion and claim preclusion to the Washington
judgment, we do not need to reach the issue of whether the
bankruptcy court was prohibited from reviewing the Washington
judgment by the Rooker-Feldman doctrine.

1 evidence in the light most favorable to the non-moving party, we
2 must determine "whether there are genuine issues of fact and
3 whether the trial court correctly applied relevant substantive
4 law." Id. (citation omitted).

5 We review the applicability of issue preclusion de novo.
6 Id. (citation omitted). We review the applicability of claim
7 preclusion de novo. United States v. Schimmels (In re
8 Schimmels), 127 F.3d 875, 880 (9th Cir. 1997) (citation omitted).

10 V. DISCUSSION

11 A. Compensatory Damages

12 Lee argues that the bankruptcy court erred in finding that
13 issue preclusion applied to the compensatory damages portion of
14 the default judgment because TCAST failed to establish all the
15 elements of issue preclusion required for § 523(a)(2)(A) non-
16 dischargeability. Specifically, Lee asserts that TCAST did not
17 establish that the issue of fraud was actually litigated and
18 necessarily decided.

19 Lee contends that § 523(a)(2)(A) requires a creditor to show
20 that the debtor directly obtained its services through fraudulent
21 conduct. Lee asserts, however, that he did not obtain the
22 services of TCAST through his misrepresentations; TCAST had
23 provided its services *before* Lee issued the bad checks.
24 Furthermore, even if Lee had obtained the services of TCAST by
25 issuing these bad checks, only that portion of the debt incurred
26 through such fraud is non-dischargeable. The California court
27 made no such findings, however. As such, Lee concludes, the
28 issue of whether he obtained the services of TCAST through fraud

1 had not been actually litigated and necessarily decided.

2 Lee's argument fails, however, because § 523(a)(2)(A) does
3 not require a finding of a receipt of a benefit through the
4 fraudulent conduct. Muegler v. Bening, 413 F.3d 980, 983-84 (9th
5 Cir. 2005).

6 The doctrine of issue preclusion applies to dischargeability
7 proceedings under § 523(a). Grogan v. Garner, 498 U.S. 279, 284
8 n. 11 (1991). When determining the effect of a state court
9 judgment, we must apply, as a matter of full faith and credit,
10 the state's law of issue preclusion. Gayden v. Nourbakhsh (In re
11 Nourbakhsh), 67 F.3d 798, 800 (9th Cir. 1995).

12 Under California law, issue preclusion applies only if all
13 of the following requirements have been met:

14 (1) The issue sought to be precluded must be
15 identical to that decided in the former
proceeding;

16 (2) The issue must have been actually litigated in
17 the former proceeding;

18 (3) The issue must have been necessarily decided
in the former proceeding;

19 (4) The decision in the former proceeding must be
20 final and on the merits;

21 (5) The party against whom issue preclusion is
22 sought must be the same as, or in privity with,
the party to the former proceeding.

23 See Harmon v. Korbin (In re Harmon), 250 F.3d 1240, 1245 (9th
24 Cir. 2001) (citations omitted).

25 The party asserting issue preclusion has the burden of
26 establishing these requirements. Id. (citation omitted).

27 Section 523(a)(2)(A) provides that a discharge does not
28 include any debt for money, property, or services "to the extent

1 obtained by false pretenses, a false representation, or actual
2 fraud" (emphasis added). In order to establish that the debt had
3 been obtained through fraud and is thus non-dischargeable under §
4 523(a) (2) (A), the creditor must demonstrate, by a preponderance
5 of evidence, that:

6 (1) The debtor made representations;

7 (2) The debtor knew the representations had been
8 false at the time he or she made them;

9 (3) The debtor made these representations with the
10 intent and purpose of deceiving the creditor;

11 (4) The creditor relied on such representations;
12 and

13 (5) The creditor sustained the alleged loss and
14 damage as a proximate result of these
15 representations.

16 See American Express Travel Related Services v. Hashemi (In re
17 Hashemi), 104 F.3d 1122, 1125 (9th Cir. 1996).

18 The elements of fraud under § 523(a) (2) (A) match the
19 elements of common law fraud and of actual fraud under California
20 law. Younie v. Gonya (In re Younie), 211 B.R. 367, 373-74 (9th
21 Cir. BAP 1997), aff'd 163 F.3d 609 (9th Cir. 1998) (citations
22 omitted).

23 Lee contends that § 523(a) (2) (A) requires the creditor to
24 show that it had sustained damages by providing services which
25 the debtor directly obtained through his or her fraudulent
26 conduct. In other words, Lee asserts that TCAST must demonstrate
27 that he issued the checks *in exchange for* its services. Lee
28 argues that the phrase "obtained by" requires TCAST to show, in
addition to the fraud, that Lee obtained a benefit from his

1 fraudulent conduct.⁷

2 A recent Ninth Circuit decision clarifies that there is no
3 additional requirement for § 523(a)(2)(A) nondischargeability.
4 See Muegler v. Bening, 413 F.3d 980 (9th Cir. 2005). Rather, the
5 only consideration material to a determination of the debt's non-
6 dischargeability is whether the debt arose from fraud. Id. at
7 984 (citation omitted).

8 The Ninth Circuit held that "a [mere] finding of debt due to
9 fraud is *all* that is necessary to satisfy § 523(a)(2)(A)." Id.
10 at 984 (emphasis added). In Muegler, the federal district court
11 found the debtor guilty of committing intentional fraud under
12 Missouri law. Id. at 981. A jury awarded the creditors
13 compensatory and punitive damages. Id. The debtor attempted to
14 discharge his debt to his creditors through bankruptcy. Id. The
15 creditors then initiated an adversary proceeding against the
16 debtor, moving for summary judgment under § 523(a)(2)(A). Id. at
17 982. The bankruptcy court ruled in favor of the creditors,
18 finding that issue preclusion barred the debtor from challenging
19 the fraud ruling. Id. On appeal, the debtor contended that the
20 creditors failed to establish all of the elements of issue
21 preclusion for fraud - specifically, identity of the issues -
22 under Missouri law. Id. at 982. The debtor argued that

24 ⁷ Lee cites Fleming v. Preston (In re Preston), 47 B.R. 354
25 (E.D. Va. 1983) and Snap-On Tools Corp. v. Couch (In re Couch),
26 154 B.R. 511 (Bankr. S.D. Ind. 1992) to support his argument that
27 because he had already incurred the debt before he issued the
28 checks, he did not "obtain" the services of TCAST through the
checks. In Preston and Couch, the debtors obtained the loans or
property from the creditors before they issued the bad checks to
repay the creditors. Here, under the Agreement, Lee could not
obtain the services of TCAST without first paying it. Thus,
unlike the debtors in Preston and Couch, Lee obtained the
services by reason of issuing the bad checks.

1 § 523(a)(2)(A) required the creditors to show that he obtained a
2 direct or indirect benefit from his misrepresentations. Id.
3 Since the Missouri jury did not need to find that the debtor
4 obtained such a benefit from his fraud, the debtor maintained
5 that the creditors failed to establish identity of the issues
6 necessary for issue preclusion under § 523(a)(2)(A). Id.

7 The Ninth Circuit held that the court did not need to
8 determine that the debtor received a benefit in order to
9 establish fraud under § 523(a)(2)(A). Id. at 984. The Ninth
10 Circuit acknowledged that it had previously found that a debtor
11 must receive a direct or indirect benefit from his or her
12 fraudulent conduct. Id. at 983 (citing In re Arm, 87 F.3d 1046,
13 1049 (9th Cir. 1996)). The court noted, however, that these
14 decisions occurred *before* the decision of the Supreme Court in
15 Cohen v. De La Cruz, 523 U.S. 213, 223 (1998). Muegler, 413 F.3d
16 at 983. In Cohen, the Supreme Court ruled that a simple finding
17 of debt arising from fraud is sufficient to meet the requirements
18 of § 523(a)(2)(A). Id. (citation omitted). Based on the holding
19 in Cohen, the Ninth Circuit held that “[i]t is only the fact of
20 an adverse fraud judgment, and nothing more, that is required for
21 a debt to be non-dischargeable . . . [thus] the receipt of a
22 benefit is no longer an element of fraud under § 523(a)(2)(A).”
23 Id. at 984.

24 Applying the Muegler holding to the instant case, the
25 bankruptcy court did not need a California finding that Lee had
26 directly obtained services from TCAST, by issuing the bad checks,
27 in order to determine that the debt based on fraud was non-

1 dischargeable. The fraud finding alone was sufficient.⁸

2
3 B. Punitive Damages

4 Lee contends that the bankruptcy court erred in giving the
5 Washington judgment preclusive effect under full faith and credit
6 because the underlying default judgment was void under California
7 law. Lee argues that although California law allows a trial
8 court to award punitive damages,⁹ the California court exceeded
9 its jurisdiction by granting \$369,380.84 in punitive damages
10 because TCAST failed to specify that amount in its complaint and
11 Lee had no prior notice of the amount.

12 Lee also asserts that claim preclusion does not prevent him
13 from raising the issue of whether the punitive damages portion of
14 the California default judgment was void because no final
15 determination has ever been made on that issue. He asserts that
16 he did not raise the issue before the Washington court and the
17 Washington court did not bar him from raising it in the
18 California court. Lee further contends that the Rooker-Feldman

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20 ⁸ TCAST also set forth sufficient facts to demonstrate that
21 the damages it sustained were the proximate result of Lee's
22 fraudulent conduct pursuant to § 523(a)(2)(A). TCAST
23 demonstrated in the California action that TTI and Lee induced
24 TCAST to continue providing services by tendering the checks,
25 even though neither TTI nor Lee had sufficient funds to honor
26 them. Had TCAST known this circumstance, TCAST would have
27 discontinued its services. The fact that TCAST had requested a
28 compensatory damage award less than the total amount of the
checks indicates that the award was the actual value of services
induced by Lee's fraud and did not include any pre-existing debt.

⁹ California Code of Civil Procedure ("CCP") § 3294(a)
provides: "[i]n an action for the breach of an obligation not
arising from contract, where it is proven by clear and convincing
evidence that the defendant has been guilty of oppression, fraud,
or malice, the plaintiff, in addition to the actual damages, may
recover damages for the sake of example and by way of punishing
the defendant." CAL. CIV. CODE § 3294(a) (West 2004).

1 doctrine did not prevent the bankruptcy court from reviewing the
2 Washington judgment because it involved an issue of non-
3 dischargeability, which falls within the exclusive jurisdiction
4 of the bankruptcy court.

5 Contrary to the arguments advanced by Lee, the bankruptcy
6 court could not review the Washington judgment because: (1) full
7 faith and credit compelled the bankruptcy court to recognize and
8 enforce the Washington judgment; and (2) claim preclusion
9 prevented the bankruptcy court from re-determining the issues
10 that were already raised before the Washington court, plus any
11 issues that Lee failed to assert.

12 1. Full faith and credit bars the bankruptcy court from
13 reviewing the Washington judgment.

14 28 U.S.C. § 1738 provides that the judicial proceedings of
15 any court "shall have the same full faith and credit in every
16 court of the United States . . . as they have by law or usage in
17 the courts of such State". As such, federal courts must give
18 state court judgments the same preclusive effect that those
19 judgments would enjoy under the law of the state in which the
20 judgment was rendered. Far Out Productions, Inc. v. Oskar, 247
21 F.3d 986, 993 (9th Cir. 2001).

22 Here, the bankruptcy court was asked to review the
23 Washington judgment. Under full faith and credit, the bankruptcy
24 court must apply Washington state law in determining whether it
25 should give preclusive effect to the Washington judgment.

26 Under Washington state law, full faith and credit requires
27 courts to recognize and enforce valid sister-state judgments.
28 Effert v. Kalup (In re Marriage of Effert), 723 P.2d 541, 542

1 (Wash. Ct. App. 1986). Generally, the validity of a sister-state
2 judgment cannot be collaterally attacked unless the sister-state
3 court lacked personal or subject matter jurisdiction, committed a
4 constitutional violation, or issued a judgment obtained through
5 fraud. Id.; State v. Berry, 5 P.3d 658, 662 (Wash. 2000).
6 Absent such circumstances, a party may not challenge the sister-
7 state judgment. See Effert, 723 P.2d at 542-43. In other words,
8 the Washington court will recognize and enforce a sister-state
9 judgment even if such judgment was based on an error of law or
10 fact. See id.; see also e.g., Idaho Dep't. Of Health & Welfare
11 v. Holjeson, 708 P.2d 661, 664-65 (Wash. Ct. App. 1985).

12 Here, though Lee attempted to collaterally attack the
13 California default judgment in the bankruptcy court, he did not
14 collaterally attack the Washington judgment. Lee did not allege
15 that the Washington court lacked jurisdiction, violated his
16 constitutional rights, or issued a judgment produced through
17 fraud. Rather, Lee collaterally attacked the California default
18 judgment, even though the bankruptcy court lacked the power to
19 review it. The judgment subject to the review of the bankruptcy
20 court was the Washington judgment, not the underlying California
21 default judgment.

22 2. Claim preclusion bars the bankruptcy court from reviewing
23 the Washington judgment.

24 Under the doctrine of claim preclusion, a party cannot bring
25 a claim "if a court of competent jurisdiction has rendered a
26 final judgment on the merits of the claim in a previous action
27 involving the same parties or their privies." Siegel v. Federal
28 Home Loan Mortgage Corp., 143 F.3d 525, 528 (9th Cir. 1998)

1 (quoting Robertson v. Isomedix, Inc. (In re Int'l Nutronics), 28
2 F.3d 965, 969 (9th Cir. 1994)). Claim preclusion applies "where:
3 (1) the parties are identical or in privity; (2) the judgment in
4 the prior action was rendered by a court of competent
5 jurisdiction; (3) there was a final judgment on the merits; and
6 (4) the same claim or cause of action was involved in both
7 suits." Rein v. Providian Fin. Corp., 270 F.3d 895, 899 (9th
8 Cir. 2001) (citing Owens v. Kaiser Found. Health Plan, Inc., 244
9 F.3d 708, 713 (9th Cir. 2001); Siegel, 143 F.3d at 528-29.

10 All of the elements of claim preclusion are present in the
11 instant case. First, both of the motions before the bankruptcy
12 court and the Washington court involved Lee and TCAST. Second,
13 the Washington court, as a court of general jurisdiction, had the
14 power to hear and decide the motion to set aside the California
15 default judgment. WASH. REV. CODE ANN. § 2.08.010 (West 2005).
16 Third, the Washington court also entered an order denying the
17 motion with prejudice in the Washington court on the ground that
18 Lee failed to establish a sufficient basis to collaterally attack
19 the California default judgment. Finally, Lee made the same
20 claim before the bankruptcy court and the Washington court - that
21 the default judgment was void under California law. Since all
22 the necessary elements are satisfied, claim preclusion bars
23 further review.

24 25 VI. CONCLUSION

26 The bankruptcy court correctly granted summary judgment on
27 the compensatory damages portion of the state court judgment in
28 favor of TCAST. TCAST met all the elements necessary for issue

1 preclusion under § 523(a)(2)(A) by showing that the issue of
2 fraud had been actually litigated and necessarily decided. Under
3 current Ninth Circuit case law, § 523(a)(2)(A) does not require
4 the bankruptcy court to find whether Lee received a benefit
5 through his misrepresentation, but only to find whether the debt
6 arose from the fraudulent conduct. TCAST only needed to
7 demonstrate that it sustained damages as a proximate result of
8 Lee's fraud. Therefore, the issue was actually litigated and
9 necessarily decided by virtue of the entry of the California
10 default judgment. As such, issue preclusion applied.

11 The bankruptcy court also correctly granted summary judgment
12 in favor of TCAST on the punitive damages portion of the
13 judgment. Although the default judgment may have been void under
14 California law, full faith and credit prevented the bankruptcy
15 court from reviewing the Washington judgment. Furthermore,
16 because the Washington court made a final judgment involving the
17 same parties and the same claim regarding the validity of the
18 California default judgment, the doctrine of claim preclusion
19 applied.

20 AFFIRMED.