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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:	)	BAP Nos.	NV-12-1122-DJuKi
		)		NV-12-1124-DJuKi
7	ROBERT R. BLACK and KELLY J.	)		(Related appeals)
	BLACK;)		
8	MICHAEL ALLEN CHERNINE,	)	Bk. Nos.	11-16998-BAM
		)		11-16999-BAM
9	Debtors.)		
		)	Adv. Nos.	11-01241-BAM
10	_____	)		11-01242-BAM
	ROBERT J. BLACK, JR.;)		
11	MICHAEL ALLEN CHERNINE,)		
)		
12	Appellants,)		
)		
13	v.	)	O P I N I O N	
)		
14	BONNIE SPRINGS FAMILY LTD.)		
	PARTNERSHIP; BONNIE SPRINGS)		
15	MANAGEMENT COMPANY; ALAN)		
	LEVINSON; BONNIE LEVINSON;)		
16	APRIL BOONE,)		
)		
17	Appellees.)		
	_____)		

Argued and Submitted on January 25, 2013
at Las Vegas, Nevada

Filed - February 11, 2013

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Bruce A. Markell, Bankruptcy Judge, Presiding

Appearances: Randy M. Creighton, Esq. of Black & Lobello argued
for appellants; Tyler Ryan Andrews Esq. of
Greenberg Traurig, LLP, argued for appellees.

Before: DUNN, JURY and KIRSCHER, Bankruptcy Judges.

1 DUNN, Bankruptcy Judge:

2
3 Appellees Bonnie Springs Family Limited Partnership and
4 Bonnie Springs Management Company (collectively, "Bonnie
5 Springs"), Alan Levinson, Bonnie Levinson and April Boone
6 (collectively with Bonnie Springs, "appellees") moved for summary
7 judgment on their complaint against the debtors, Michael Chernine
8 and Robert Black (collectively, "debtors"),¹ to except debts from
9 discharge under § 523(a)(6) ("exception to discharge
10 complaint").² The debts arose from a state court judgment
11 against both debtors for abuse of process and against Black for
12 nuisance. The bankruptcy court granted summary judgment in the
13 appellees' favor ("summary judgment order") giving issue
14 preclusive effect to the state court judgment. The debtors
15 appeal the bankruptcy court's summary judgment order. We AFFIRM.

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19 ¹ The debtors each filed his own chapter 7 bankruptcy
20 petition (Chernine, case no. 11-16999, and Black, case no. 11-
21 16998). The appellees initiated separate adversary proceedings
22 against each debtor (Chernine, adv. proc. no. 11-1242, and Black,
adv. proc. no. 11-1141).

23 The debtors and the appellees filed identical or nearly
24 identical motions and pleadings in each debtor's bankruptcy case
25 and adversary proceeding (e.g., motion for sanctions for
26 violation of the automatic stay, motion for summary judgment).
For the sake of convenience, we refer to these separate motions
and pleadings as one motion or pleading.

27 ² Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 **FACTS**

2 A. State Court Proceedings

3 The debtors were the principals of Land Baron Investments,
4 Inc. ("LBI"), a real estate development company. Alan Levinson,
5 Bonnie Levinson and April Boone were general partners of Bonnie
6 Springs, which owned a tract of undeveloped land located in Clark
7 County, Nevada ("property"). The property was located near the
8 Red Rock Canyon National Conservation Area, which was controlled
9 by the Bureau of Land Management ("BLM").

10 In December 2004, the debtors and LBI entered into an
11 agreement with Bonnie Springs to purchase the property
12 ("agreement"). LBI planned to develop the property into a
13 subdivision with a residence on each lot.

14 Under the agreement, the sale of the property was subject to
15 the following conditions: 1) LBI approving the preliminary title
16 report and exceptions to title; 2) LBI and Bonnie Springs both
17 approving a preliminary site plan; 3) Bonnie Springs providing
18 LBI all reports, surveys, engineering and other documents in its
19 possession; and 4) Bonnie Springs arranging for LBI to have the
20 right to use some of Bonnie Springs' treated wastewater for
21 landscaping purposes. The agreement also provided the debtors
22 and LBI several extensions to close escrow in exchange for
23 payments of \$50,000 for each extension ("extension payment").

24 The debtors and LBI failed to make an extension payment to
25 Bonnie Springs ("extension payment default") on September 18,
26 2007. They informed Bonnie Springs by letter that they would not
27 make the extension payment. The debtors and LBI instead proposed
28 a lower purchase price for the property. They also listed the

1 property for sale as a single parcel.

2 Meanwhile, on behalf of the debtors and LBI, Black filed a
3 complaint with the county commissioner ("county commissioner
4 complaint") requesting an investigation and inspection of a
5 nearby property. The county commissioner complaint involved
6 alleged environmental issues and health code violations occurring
7 at the Bonnie Springs Ranch ("ranch"), which was owned by the
8 appellees and located west of the property.³ It was not a part
9 of the property being sold to LBI and the debtors under the
10 agreement.

11 In June 2008, LBI initiated a state court action against the
12 appellees alleging breach of contract, breach of the implied
13 covenant of good faith and fair dealing and intentional
14 misrepresentation/non-disclosure, among other claims. The claims
15 were based, in part, on issues concerning water rights ("water
16 rights issues") and access to the property ("property access
17 issues"). Specifically, the debtors contended that they could
18 not complete recordation of the property map until the water
19 rights issues were resolved. They also contended that the only
20 way to access the property was by trespassing on BLM-controlled
21 land.

22 The appellees filed an answer and counter-complaint alleging
23 abuse of process against the debtors ("abuse of process claim")
24 and nuisance against Black ("nuisance claim"), among other
25 claims. The abuse of process and nuisance claims arose from the
26

27 ³ The Bonnie Springs Ranch consisted of restaurants,
28 western-themed shows, a petting zoo and a motel.

1 county commissioner complaint.

2 With respect to the abuse of process claim, the appellees
3 contended that, through Black, the debtors filed the county
4 commissioner complaint for the purpose of harassing, intimidating
5 and forcing Bonnie Springs into reducing the property's purchase
6 price. As for the nuisance claim, the appellees contended that
7 the county commissioner's investigations and inspections of the
8 ranch, instigated by Black, intentionally interfered with their
9 use and enjoyment of the ranch.

10 The appellees moved for partial summary judgment on the
11 property access issues ("property access motion"). The state
12 court granted the property access motion, determining that the
13 property was accessible by a public road. It further determined
14 that the debtors, not Bonnie Springs, bore the "contractual
15 burden" for any additional access required for the property.

16 The appellees also moved for partial summary judgment on the
17 water rights issues ("water rights motion"). The state court
18 granted the water rights motion. It determined that the
19 agreement did not provide for any additional water rights for the
20 debtors' proposed subdivision. The state court further
21 determined that the agreement did not require Bonnie Springs to
22 provide "notice" of water rights or any additional water for
23 subsequent development of the property. It also determined that
24 the debtors bore the burden to secure the water rights necessary
25 for development of the property. The state court's
26 determinations consequently disposed of the debtors' claims on
27 the property access issues and water rights issues.

28 The state court concluded, however, that issues of genuine

1 material fact remained as to the appellees' abuse of process and
2 nuisance claims, warranting a jury trial. The jury trial took
3 place in March 2011.

4 At the time of the jury trial, the state court instructed
5 the jury on the elements of abuse of process and nuisance. In
6 the jury instructions, the state court stated that "[t]he
7 elements required to establish the tort of abuse of process
8 [were]: 1) an ulterior purpose by [the debtors] other than
9 resolving a legal dispute, and 2) a willful act in the use of the
10 legal process not proper in the regular conduct of the
11 proceeding."

12 The state court explained that "an ulterior purpose" was
13 "any improper motive underlying the issuance of legal process."
14 It also explained that "a showing of malice and want of probable
15 cause [was] not necessary to recover for abuse of process."

16 The state court stated that "[t]he elements required to
17 establish the tort of nuisance [were]: 1) an intentional
18 interference by [the debtors] with [the appellees'] use and
19 comfortable enjoyment of life or property, and 2) the
20 interference was both substantial and unreasonable."

21 The state court instructed the jury that if it found that
22 the appellees "suffered damages as a proximate result of [the
23 debtors' and LBI's] conduct, and upon which conduct [it] base[d]
24 a finding of liability, [the jury] could consider whether [it]
25 should award punitive or exemplary damages against [the debtors]
26 for the sake of example and by way of punishment." The state
27 court told the jury that it could award such damages in its
28 discretion but only if it found "by clear and convincing evidence

1 that [the debtors] acted with oppression or malice in the conduct
2 upon which [the jury] based [its] finding of liability."

3 The state court defined "oppression" as "subjecting a person
4 to cruel and unjust hardship in conscious disregard of that
5 person's rights." It defined "malice" as "conduct carried on by
6 [the debtors] with a conscious disregard for the rights or safety
7 of others." It further explained that "a person acts with
8 conscious disregard of the rights or safety of others when he is
9 aware of the probable dangerous consequences of his conduct and
10 willfully and deliberately fails to avoid those consequences."

11 One month after the trial, the jury returned a verdict
12 against the debtors for a total of \$1.6 million in compensatory
13 damages. It awarded \$1.25 million against the debtors and LBI on
14 the abuse of process claim and \$350,000 against Black and LBI on
15 the nuisance claim.

16 The jury also found that the debtors and LBI acted with
17 oppression so as to justify a punitive damages award. It did not
18 find that they acted with malice, however. The jury awarded a
19 total of \$2.275 million in punitive damages against LBI only. It
20 did not award punitive damages against either debtor. However,
21 as conceded by the debtors' counsel at oral argument, the jury's
22 oppression findings applied to both the abuse of process and
23 nuisance claims.

24 On May 5, 2011, the appellees submitted a proposed judgment,
25 which the state court rejected because it contained a
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27
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1 typographical error.⁴

2 B. Relief from Stay Motions

3 Later that same day, the debtors filed their respective
4 chapter 7 bankruptcy petitions.⁵ Seven days later, the appellees
5 submitted to the state court an amended state court judgment; the
6 state court entered it on May 25, 2011.

7 The debtors filed a motion for sanctions for violation of
8 the automatic stay ("stay violation motion"). After a hearing,
9 the bankruptcy court granted the stay violation motion, finding
10 the amended state court judgment void as to the debtors. It
11 denied the debtors' request for punitive damages, though it
12 granted them attorney's fees until the time the appellees "[took]
13 some action in state court to ensure that [the amended state
14 court] judgment [did] not cover the debtors." Tr. of July 19,
15 2011 hr'g, 23:9-11.

16 The bankruptcy court granted the stay violation motion
17 without prejudice to any future efforts by the appellees "to seek
18 relief from the automatic stay to resubmit the [amended state
19 court judgment]." A month later, it entered an order on the stay
20 violation motion.

21 Shortly thereafter, the appellees filed a motion to annul
22 the automatic stay to confirm entry of the amended state court
23 judgment against the debtors ("stay annulment motion"). The

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25 ⁴ The proposed state court judgment listed the punitive
26 damages at \$2.2 million, not \$2.275 million.

27 ⁵ Black and his wife, Kelly Black, filed a joint chapter 7
28 petition. The appellees only named Black and Chernine as
defendants in the exception to discharge complaint.

1 bankruptcy court granted the stay annulment motion, allowing the
2 state court to enter a final judgment against the debtors. It
3 did not allow the appellees to seek an award of costs or
4 attorney's fees against the debtors in the state court action.
5 The bankruptcy court also permitted the debtors to appeal the
6 state court judgment, if they chose to do so.

7 C. Summary Judgment Motion

8 A month later, the appellees filed the exception to
9 discharge complaint. The appellees alleged that the debtors
10 "engag[ed] in a series of harassing measures aimed to intimidate
11 [them] into renegotiating the purchase price on the [p]roperty."
12 These "harassing measures" included initiating the state court
13 action against the appellees and filing the county commissioner
14 complaint. The appellees contended that these "harassing
15 measures" constituted willful and malicious injuries within the
16 meaning of § 523(a)(6). It therefore requested that the state
17 court judgment be excepted from discharge under § 523(a)(6).

18 Two months after the debtors filed their answer to the
19 exception to discharge complaint, the state court entered a
20 second amended judgment ("final state court judgment"). It
21 essentially confirmed the jury's determinations. The state court
22 also expressly stated that the final state court judgment was a
23 "final adjudication on all matters in this case, [and that] all
24 rulings from this case [were] final."⁶

25 In January 2012, the appellees moved for summary judgment
26

27 ⁶ The debtors appealed the final state court judgment to the
28 Nevada Supreme Court.

1 against the debtors ("summary judgment motion") in the adversary
2 proceedings. They contended that the final state court judgment
3 had issue preclusive effect because the debts that arose from it
4 resulted from "willful and malicious injuries" within the meaning
5 of § 523(a)(6). Specifically, the appellees argued that the
6 nuisance and abuse of process claims, as set forth under Nevada
7 law, met all of the elements for willful and malicious injury
8 under § 523(a)(6).

9 The debtors responded to the summary judgment motion,
10 arguing that issue preclusion did not apply. They conceded that
11 1) the final state court judgment was final and rendered on the
12 merits, 2) the same parties were involved in the state court
13 action and the adversary proceedings and 3) the issues had been
14 actually and necessarily litigated in the state court action.
15 The debtors also conceded that they acted willfully in committing
16 abuse of process and nuisance against the appellees and that
17 their actions were malicious.

18 The debtors argued, however, that the issues in the state
19 court action and adversary proceedings were not identical.
20 Specifically, they claimed that the element of willfulness for
21 the abuse of process and nuisance claims under Nevada law was not
22 identical to the element of willfulness under § 523(a)(6).

23 The debtors argued that, for the element of willfulness to
24 be met under § 523(a)(6), a debtor must act with specific intent;
25 i.e., the debtor must have intended to inflict the injury
26 willfully. To establish willfulness for an abuse of process
27 claim, however, the debtor must have had an ulterior purpose
28 other than to resolve a legal dispute. "Ulterior purpose," the

1 debtors continued, could be any improper motive underlying the
2 legal process, not simply the motive to inflict the injury.
3 Likewise, a nuisance claim does not take into account the acting
4 party's state of mind; it simply takes into account the degree of
5 interference by the debtor.

6 The bankruptcy court held a hearing on the summary judgment
7 motion ("summary judgment hearing"). It granted summary judgment
8 in the appellees' favor, orally stating its legal analysis and
9 conclusions.

10 The bankruptcy court noted at the summary judgment hearing
11 that the debtors had conceded a number of points. It
12 acknowledged that the only point in contention was whether the
13 debtors not only intended to commit abuse of process and nuisance
14 but that they "actually intended the consequences of [them]."

15 The bankruptcy court found the element of willfulness under
16 the abuse of process claim was virtually the same as that under
17 § 523(a)(6) because "[t]here was no good reason [for the debtors]
18 to do the acts that led to the judgment for abuse of process and
19 no reason to commit those acts other than to inflict an injury
20 willfully upon [the appellees]." Tr. of February 8, 2012 hr'g,
21 25:21-24. It noted that the finding of oppression supported this
22 conclusion because oppression required that the debtors' actions
23 "[had] to subject a person to cruel and unjust hardship . . .
24 [which] itself implies a mental state of an intent to injure."
25 Tr. of February 8, 2012 hr'g, 26:15-17.

26 The bankruptcy court reasoned that "if [the debtors were]
27 cruel, [they] necessarily intend[ed] to inflict some injury
28 without just purpose or cause, and it's the same with unjust

1 hardship." Tr. of February 8, 2012 hr'g, 26:19-21. It
2 determined that "[t]he unjust nature and the cruel nature
3 [elements of oppression] buttress[ed] the notion that there [had]
4 been an act that was done with the intent to injure willfully
5 [the appellees] in this case." Tr. of February 8, 2012 hr'g,
6 26:22-24.

7 The bankruptcy court applied the same reasoning to the
8 nuisance claim. It focused on the requirement that Black's
9 interference with the appellees' use and enjoyment of the
10 property had to be unreasonable. The bankruptcy court reasoned
11 that "one doesn't do something unreasonably if there [was] not a
12 concomitant and strong intent to injure willfully the other
13 party." Tr. of February 8, 2012 hr'g, 27:8-10.

14 The bankruptcy court entered the summary judgment order on
15 February 27, 2012. The debtors timely appealed.

16 17 **JURISDICTION**

18 The bankruptcy court had jurisdiction under 28 U.S.C.
19 §§ 1334 and 157(b) (2) (I). We have jurisdiction under 28 U.S.C.
20 § 158.

21 22 **ISSUES**

23 1) Did the bankruptcy court err in granting summary judgment
24 in the appellees' favor by giving issue preclusive effect to the
25 state court judgment?

26 2) Did the state court judgment for abuse of process satisfy
27 the element of "willfulness" for an exception to discharge
28 judgment under § 523(a) (6)?

1 that issue preclusion is available. See Miller v. County of
2 Santa Cruz, 39 F.3d 1030, 1032 (9th Cir. 1994). If we conclude
3 that issue preclusion is available, we review for abuse of
4 discretion the bankruptcy court's decision giving issue
5 preclusive effect to the state court's decisions. Id. We apply
6 a two-part test to determine objectively whether the bankruptcy
7 court abused its discretion. United States v. Hinkson, 585 F.3d
8 1247, 1261-62 (9th Cir. 2009) (en banc). First, we "determine de
9 novo whether the trial court identified the correct legal rule to
10 apply to the relief requested." Id. Second, we examine the
11 bankruptcy court's factual findings under the clearly erroneous
12 standard. Id. at 1262 & n.20.

13 We may affirm on any ground supported by the record. Shanks
14 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

16 DISCUSSION

17 The debtors and the appellees agree that we need only
18 resolve one question here. That question is this: Did the
19 bankruptcy court correctly determine that "willfulness" for abuse
20 of process and nuisance claims under Nevada law is congruent with
21 "willfulness" under § 523(a)(6)?⁷ We conclude that the
22 bankruptcy court correctly determined that "willfulness" under an
23 abuse of process claim was essentially the same as "willfulness"
24

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26 ⁷ As the appellees point out, within the Ninth Circuit, we
27 consider the requirements of "willfulness" and "maliciousness"
28 separately. In re Su, 290 F.3d at 1146. We do not address the
"maliciousness" element here, as the debtors concede that element
has been met.

1 under § 523(a)(6). Our conclusion is the same with respect to
2 the nuisance claim, as discussed below.

3
4 A. Elements and Definitions under § 523(a)(6)

5 Before we begin our analysis, we must set forth the elements
6 and their requirements under § 523(a)(6).

7 Section 523(a)(6) excepts from discharge debts arising from
8 “willful and malicious” injury by the debtor to another person.
9 For an injury to be willful, the debtor must have “a subjective
10 motive to inflict the injury or [a subjective belief] that injury
11 was substantially certain to occur as a result of his conduct.”
12 Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1208 (9th
13 Cir. 2001) (emphasis in original). See also In re Su, 290 F.3d
14 at 1142.

15 In other words, “[a] willful injury is a deliberate or
16 intentional injury, not merely a deliberate or intentional act
17 that leads to injury.” Barboza v. New Form, Inc. (In re
18 Barboza), 545 F.3d 702, 706 (9th Cir. 2008) (quoting Kawaauhau v.
19 Geiger, 523 U.S. 57, 61 (1998)) (internal quotation marks
20 omitted, emphasis in original). As established by In re Su,
21 “courts within the Ninth Circuit use a subjective approach in
22 determining willfulness, i.e., they look to whether the debtor
23 acted with the desire to injure or a belief that injury was
24 substantially certain to occur.” Partow v. Turner (In re
25 Partow), 2009 WL 7751420, at *6 (9th Cir. BAP Feb. 10, 2009).

26 Keeping these standards and definitions in mind, we now turn
27 to the issues at hand.

28 ///

1 B. Issue Preclusive Effect of State Court Judgment

2 Issue preclusion applies in exception to discharge
3 proceedings. Grogan v. Garner, 498 U.S. 279, 284 n.11 (1991).
4 As required under 28 U.S.C. § 1738, the Full Faith and Credit
5 Act, we apply Nevada's issue preclusion law to determine the
6 issue preclusive effect of the final state court judgment.
7 Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir.
8 2001).

9 Nevada uses a four-part test in determining whether issue
10 preclusion applies: "(1) the issue decided in the prior
11 litigation must be identical to the issue presented in the
12 current action; (2) the initial ruling must have been on the
13 merits and have become final; (3) the party against whom the
14 judgment is asserted must have been a party or in privity with a
15 party to the prior litigation; and (4) the issue was actually and
16 necessarily litigated." Five Star Capital Corp. v. Ruby, 194
17 P.3d 709, 713 (Nev. 2008) (quoting Univ. of Nevada v. Tarkanian,
18 879 P.2d 1180, 1191 (Nev. 1994)) (internal quotation marks
19 omitted).

20 The debtors argue that the bankruptcy court improperly
21 granted the summary judgment motion by giving issue preclusive
22 effect to the final state court judgment. But they only
23 challenge the bankruptcy court's application of the first element
24 of issue preclusion. They contend that, contrary to the
25 bankruptcy court's determination, willfulness for purposes of
26 abuse of process and nuisance claims under Nevada law is not the
27 same as willfulness under § 523(a)(6).

28 ///

1 1. Willfulness under Abuse of Process Claims

2 In Nevada, the elements of an abuse of process claim are
3 “(1) an ulterior purpose by the defendants other than resolving a
4 legal dispute, and (2) a willful act in the use of the legal
5 process not proper in the regular conduct of the proceeding.”
6 LaMantia v. Redisi, 38 P.3d 877, 879 (Nev. 2002). “An ulterior
7 purpose is any improper motive underlying the issuance of legal
8 process.” Posadas v. City of Reno, 851 P.2d 438, 445 (Nev.
9 1993). It is not necessary to show malice or want of probable
10 cause to recover for abuse of process. Id.

11 The debtors argue that “willfulness” under an abuse of
12 process claim involves a person’s “ulterior purpose,” which is
13 not the same as a “subjective motive to injure” or “belief that
14 injury was substantially certain to occur” under § 523(a)(6). An
15 ulterior motive can be any improper motive, they contend, not
16 necessarily a motive to inflict injury.

17 As the appellees note, the debtors are attempting to
18 separate the conduct of abuse of process from the injury of abuse
19 of process. But the tort of abuse of process does not make such
20 a distinction. Under Nevada law, the filing of a complaint
21 itself does not constitute an abuse of process. Laxalt v.
22 McClatchy, 622 F.Supp. 737, 752 (D. Nev. 1985). Rather, it is
23 “the action[] which the [filer takes] (or fail[s] to take) after
24 the filing of the complaint” that constitutes abuse of process.
25 Id. (emphasis in original). “[T]he gist of the tort [of abuse of
26 process] is . . . misusing or misapplying process justified in
27 itself for an end other than that which it was designed to
28 accomplish.” Id. at 751 n.3 (quoting Prosser, Law of Torts 856

1 (4th ed. 1971)). See also Nev. Credit Rating Bureau, Inc. v.
2 Williams, 503 P.2d 9, 12 (Nev. 1972) ("The action for abuse of
3 process hinges on the misuse of regularly issued
4 process") (emphasis added).

5 Here, as the bankruptcy court pointed out, there was no good
6 reason for the debtors to commit the acts that resulted in the
7 abuse of process judgment. The debtors' actions before and after
8 filing the county commissioner complaint reveal their intent to
9 injure the appellees by abusing process. For example, before
10 they filed the county commissioner complaint, the debtors
11 attempted to renegotiate a lower purchase price for the property.
12 They also tried to sell the property, even though they had not
13 made the extension payment and did not own it. Additionally,
14 after they filed the county commissioner complaint, the debtors
15 initiated the state court action against the appellees. Given
16 their actions, the debtors clearly misused the county
17 commissioner complaint for an end other than to investigate and
18 inspect environmental issues and health code violations; they
19 used it in an attempt to strong-arm Bonnie Springs into
20 renegotiating the purchase price for the property. See Laxalt,
21 622 F. Supp. at 752 (citing examples "of abusive measures taken
22 after the filing of the complaint, such as minimal settlement
23 offers or huge batteries of motions filed solely for the purpose
24 of coercing a settlement") (emphasis added).

25 The bankruptcy court determined that the state court's
26 finding of oppression further supported a finding of willfulness
27 under § 523(a)(6). It focused on the "cruel and unjust hardship"
28 portion of oppression, reasoning that, in subjecting the

1 appellees to "cruel and unjust hardship," the debtors necessarily
2 intended to inflict injury on it. The adjective "cruel" has been
3 variously defined as "willfully or knowingly causing pain or
4 distress to others," <http://dictionary.reference.com>, "disposed
5 to inflict pain or suffering: devoid of humane feelings,"
6 <http://www.merriam-webster.com/dictionary>, and "disposed to
7 inflict pain or suffering," <http://www.thefreedictionary.com>. A
8 finding of oppression requires that a person act with conscious
9 disregard of another person's rights or safety and with awareness
10 of the probable dangerous consequences of his conduct. As
11 debtors point out, "probable" is not necessarily the same as
12 "substantial certainty," as discussed in In re Jercich. However,
13 we agree with the bankruptcy court that "subjecting a person to
14 cruel and unjust hardship in conscious disregard of that person's
15 rights" supports a determination of subjective intent to injure
16 in the context of an abuse of process claim.

17 The bankruptcy court correctly determined that "ulterior
18 purpose" under an abuse of process claim equates with
19 "willfulness" under § 523(a)(6). It properly gave issue
20 preclusive effect to the state court judgment on the abuse of
21 process claim. We therefore determine that the bankruptcy court
22 did not err in granting summary judgment on the abuse of process
23 portion of the appellees' § 523(a)(6) claim.

24 2. Willfulness under Nuisance Claim

25 In Nevada, "[a]n actionable nuisance is an intentional
26 interference with the use and enjoyment of land that is both
27 substantial and unreasonable." Culley v. County of Elko, 711
28 P.2d 864, 866 (Nev. 1985) (emphasis added) (citing Jezowski v.

1 City of Reno, 286 P.2d 257 (Nev. 1955)). A nuisance is "such
2 unreasonable, unwarrantable or unlawful use by a person of his
3 own property, or his improper, indecent or unlawful conduct which
4 operates as an obstruction or injury to the right of another or
5 to the public and produces such material annoyance,
6 inconvenience, discomfort or hurt that the law will presume a
7 consequent damage." Jezowski, 286 P.2d at 260-61 (emphasis in
8 original) (citing Bliss v. Grayson, 56 P. 231, 240 (Nev. 1899)).

9 However, the state court's jury instruction with respect to
10 the nuisance claim focused, consistent with Culley, on Black's
11 "substantial and unreasonable intentional interference with [the
12 appellees'] use and enjoyment of their land," 711 P.2d at 866
13 (emphasis added):

14 The elements required to establish the tort of nuisance
15 are: 1) an intentional interference by [Black] with
16 [the appellees'] use and comfortable enjoyment of life
or property, and 2) the interference was both
substantial and unreasonable. (Emphasis added.)

17 Jury Instruction no. 19.

18 Coupled with the overlay of the oppression finding, adding
19 an element of subjective cruelty to the jury's necessary nuisance
20 finding that Black directed his interference specifically at the
21 appellees' use and enjoyment of their property, we conclude that
22 the bankruptcy court did not err in determining that summary
23 judgment was appropriate on the nuisance portion of the
24 appellees' § 523(a)(6) claim against Black.

26 CONCLUSION

27 The bankruptcy court correctly determined that the final
28 state court judgment on the abuse of process claim had issue

1 preclusive effect to except it from discharge under § 523(a)(6).
2 We conclude that "willfulness" for purposes of an abuse of
3 process claim is consistent with willfulness for purposes of
4 § 523(a)(6) in the context of this case. We conclude the same
5 with respect to the appellees' nuisance judgment against Black.
6 Accordingly, we AFFIRM the bankruptcy court's summary judgment
7 order.

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