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

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-12-1238-PaDKi
	)	
ROBERT LEWIN,	)	Bankr. No. 10-13047
	)	
Debtor.	)	Adv. No. 10-1427
_____	)	
	)	
PETER SZANTO,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>MEMORANDUM<sup>1</sup></b>
	)	
ROBERT LEWIN,	)	
	)	
Appellee.	)	
_____	)	

Argued and Submitted on June 20, 2013  
at Pasadena, California

Filed - July 3, 2013

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

Honorable Deborah Saltzman, U.S. Bankruptcy Judge, Presiding

Appearances: Appellant Peter Szanto and Appellee Robert Lewin  
argued pro se.

Before: PAPPAS, DUNN and KIRSCHER, Bankruptcy Judges.

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

1 Alleged creditor Peter Szanto ("Szanto") appeals the decision  
2 of the bankruptcy court dismissing his adversary complaint  
3 against chapter 7<sup>2</sup> debtor Robert Lewin ("Lewin") for lack of  
4 standing. We VACATE and REMAND.

5 **FACTS**

6 Szanto is a licensed real estate broker in California. Lewin  
7 is a member of the California bar.

8 The dispute between Szanto and Lewin began in 2003 and  
9 eventually spawned several civil actions and probate proceedings.

10 We have inadequate information in the record to detail these  
11 matters, except that they appear to implicate disputes between  
12 Lewin and Szanto, and other members of Szanto's family, including  
13 his late son Phillip, over family trust and estate matters. Lewin  
14 was seemingly involved in these disputes as a friend and attorney  
15 of Phillip.

16 Of direct interest in this appeal is a lawsuit filed in state  
17 court on May 14, 2008, Szanto v. Lewin, no. 499366 (Superior Court  
18 Riverside County) (the "Riverside Action"). Szanto's complaint  
19 against Lewin alleged two causes of action: (1) That Lewin  
20 negligently interfered with Szanto's business plans for his son.  
21 More specifically, Szanto alleged that he had trained his son to  
22 be his partner in his real estate brokerage business, and although  
23 Phillip had qualified as a broker, he was spending increasing  
24 amounts of time in Lewin's company. (2) For intentional torts, and  
25 in particular, that Lewin removed mail from Szanto's mailbox; that

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26  
27 <sup>2</sup> 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. The  
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 Lewin made untrue statements to San Mateo Protective Services so  
2 as to obtain personal information about Szanto; that Lewin  
3 intentionally trespassed in Szanto's home with intent to commit a  
4 felony; that Lewin intentionally published untrue statements about  
5 Szanto; and that Lewin represented to Phillip that Lewin loved  
6 Phillip more than his father, Szanto. When Lewin did not respond  
7 to Szanto's complaint, a clerk's default was entered against Lewin  
8 in the Riverside Action on May 11, 2009. However, no default  
9 judgment was entered by the state court.

10 Lewin filed a chapter 13 petition on February 3, 2010.  
11 Neither his schedules nor his statement of financial affairs  
12 mentioned the pending legal proceedings with Szanto. Lewin  
13 converted the case to one under chapter 7 on March 24, 2010.

14 On May 17, 2010, Szanto filed a motion for relief from the  
15 automatic stay in the bankruptcy case seeking permission to  
16 continue his prosecution of the Riverside Action. Lewin responded  
17 on June 4, 2010, arguing that Szanto's claims in the Riverside  
18 Action were frivolous and a sham, and noting that a judgment had  
19 not been entered. The bankruptcy court held a hearing on Szanto's  
20 motion on June 17, 2010, with Szanto and Lewin both appearing pro  
21 se. After apparently reciting its oral findings and conclusions,  
22 the court granted the motion authorizing Szanto "to proceed to  
23 judgment in the state court"; a transcript of this hearing is  
24 neither included in the excerpts nor on the bankruptcy court's  
25 docket. Lewin did not appeal this order.

26 Szanto then commenced the adversary proceeding involved in  
27 this appeal on July 6, 2010. The complaint somewhat tracked the  
28 allegations made in the state court complaint. Szanto's first

1 claim for relief in the complaint sought an exception to discharge  
2 under § 523(a)(6) for the debts arising from the various  
3 intentional torts Lewin allegedly committed as asserted in the  
4 Riverside Action. The second claim for relief, read liberally,  
5 requests that Lewin be denied a discharge under § 727(a)(2)  
6 because Lewin had allegedly concealed assets, including a gold  
7 Rolex watch and a gold Montblanc pen, and because Lewin's  
8 statement in his schedules that a valuable stamp collection was  
9 worth only \$2500 was false. Szanto's third claim alleged that  
10 Lewin's bankruptcy was filed in bad faith, to avoid a possible  
11 judgment in the Riverside Action. There is no specific relief  
12 requested concerning this claim.

13 Lewin filed an answer to the complaint on August 18, 2010,  
14 asserting, inter alia, that: (1) Szanto was not a creditor because  
15 he held no viable claim against Lewin; (2) no judgment had been  
16 entered in the Riverside Action; (3) Lewin, as attorney for  
17 Phillip, was immune from prosecution for the actions he took in  
18 representing his client; and (4) Szanto is an adjudged vexatious  
19 litigant.

20 Szanto sought to amend his complaint on November 24, 2010, to  
21 add claims for denial of Lewin's discharge under § 727(a)(3) and  
22 (4). He also sought to compel discovery responses from Lewin and  
23 requested an award of discovery sanctions, an order rejecting the  
24 U.S. Trustee's report filed in Lewin's case, and requiring the  
25 U.S. Trustee to reexamine Lewin's schedules and reevaluate Lewin's  
26 eligibility for bankruptcy relief under the means test. Lewin  
27 responded to Szanto's request to amend the complaint on  
28 December 16, 2010, again asserting that Szanto was not a creditor

1 and was a vexatious litigant. The bankruptcy court held a hearing  
2 on Szanto's various motions on December 20, 2010. There is no  
3 transcript in the record or docket, but the court's docket entry  
4 indicates that Szanto's motions were denied. On April 12, 2011,  
5 the bankruptcy court entered an order denying all of Szanto's  
6 motions.

7 The bankruptcy court then, sua sponte, on May 10, 2011,  
8 entered an Order to Show Cause ("OSC 1") directing Lewin to appear  
9 and explain why his answer should not be stricken and default  
10 entered against him for his failure to defend. Szanto moved for  
11 summary judgment on May 12, 2011, arguing that there were no  
12 issues of material fact to be determined and judgment should be  
13 entered in the adversary in his favor as a matter of law.

14 Lewin and Szanto exchanged a series of replies and objections  
15 to OSC 1 and the summary judgment motion, generally arguing about  
16 Szanto's creditor status and Lewin's assertions that Szanto's  
17 claims were without merit and whether unresolved material  
18 questions of fact remained.

19 The bankruptcy court held a hearing on Szanto's motion for  
20 summary judgment on June 24, 2011. There is no transcript of the  
21 hearing in the record or docket. However, the court's minute  
22 entry on the docket states:

23 DENIED. Tentative Ruling. This is the Plaintiff's  
24 motion for summary judgment. It is the moving party's  
25 burden to establish grounds for summary judgment -  
26 specifically, that the pleadings, the discovery and  
27 disclosure materials on file, and any affidavits show  
28 that there is no genuine issue as to any material fact  
and that the movant is entitled to judgment as a matter  
of law. Fed. R. Civ. P. 56(c)(2); see Celotex Corp. v.  
Catrett, 477 U.S. 317, 322 (1986); see also  
In re Mannie, 258 B.R. 440, 443 (Bankr. N.D. Cal. 2001).  
Here the Plaintiff has filed an adversary proceeding to

1 determine that Defendant's debt is not dischargeable  
2 under section 523(a)(6) of the Bankruptcy Code.  
3 However, the Plaintiff falls far short of meeting its  
4 burden. Nowhere does Plaintiff specify the exact debt  
5 or claim he seeks to have determined nondischargeable,  
6 let alone list a specific damage figure amount. The  
7 parties are engaged in litigation (although the  
8 Plaintiff has agreed to dismiss certain actions) and  
9 there is no evidence of any judgment or default judgment  
10 in any court. There are still actions pending in state  
11 court. At this stage, there are genuine issues of  
12 material fact yet to be determined including the  
13 existence and amount of the debt at issue.

14 As can be seen, the bankruptcy court's docket entry identifies  
15 this notation as a "tentative ruling," but places the word DENIED  
16 in caps. There is no indication in the docket that a formal order  
17 was entered denying the motion for summary judgment.

18 The bankruptcy court, again acting sua sponte, on December 9,  
19 2011, entered another Order to Show Cause to Lewin to appear and  
20 explain why the court should not strike his answer and enter  
21 default ("OSC 2"). Lewin and Szanto again exchanged responses,  
22 with Szanto suggesting that Lewin failed to attend hearings, and  
23 Lewin answering that he had attended all noticed court proceedings  
24 and hearings.

25 There is no indication in the docket that the bankruptcy  
26 court ever heard or ruled on OSC 2. Instead, on February 22,  
27 2012, the court entered yet another sua sponte Order to Show Cause  
28 ("OSC 3"), but this time it was directed to Szanto and commanded  
him to appear at a hearing and explain why the adversary  
proceeding should not be dismissed because Szanto is not a  
creditor and thus lacks standing to prosecute the action. In  
OSC 3, the bankruptcy court explained that,

The Bankruptcy Code defines a "creditor" to be only  
those entities holding a "claim against the debtor that  
arose at the time of or before the order for

1 relief. . . . 11 U.S.C. § 101(10)(A). Further, the  
2 Bankruptcy Code defines "claim" to mean a right to  
3 payment" (see 11 U.S.C. § 101(5)(A) that the U.S.  
4 Supreme Court characterizes as "nothing more nor less  
5 than an enforceable obligation." Penna. Dep't of Pub.  
6 Welfare v. Davenport, 495 U.S. 552, 559 (1990)(emphasis  
7 added); Johnson v. Home State Bank, 501 U.S. 78, 83-84  
8 (1991). [Szanto] must appear and show cause and explain  
9 how entry of a default without the corresponding default  
10 obligation under California law sufficiently constitutes  
11 a legally "enforceable obligation" as contemplated by  
12 the U.S. Supreme Court in [Davenport].

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Meanwhile, in the Riverside Action, in February 2012, Lewin had been successful in setting aside the default that had been entered against him; we do not have any information in the record or docket why the state court did so. We know, however, that Szanto immediately filed a First Amended Complaint in the Riverside Action on February 27, 2012, wherein he reasserted the causes of action against Lewin for tortious interference with business advantage, alienation of affection, identify theft, conversion, invasion of privacy, and wrongful death.

A default was again entered in the Riverside Action against Lewin on March 29, 2012. Lewin again moved to set aside the default on April 11, 2012, asserting, inter alia, that he had appeared in the Riverside Action on February 24, 2012, that Szanto's proof of service of the First Amended Complaint was a "lie and sham," and that, in any case, Cal. Code Civ. Proc. § 739 provides that a default must be set aside when an attorney presents a declaration that his failure to respond was a result of mistake. Lewin asserts that he filed a cross-complaint in the Riverside Action, but we have no information in the record concerning that cross-complaint.

Szanto then removed the complaint and cross-complaint to the

1 U.S. District Court for the Central District of California on  
2 April 11, 2012, asserting jurisdiction based on diversity of  
3 citizenship. Both Lewin and Szanto report that the District Court  
4 remanded the Riverside Action to the state court. We have no  
5 further information on the status of the Riverside Action in the  
6 record or docket.

7 The bankruptcy court held a hearing on OSC 3, the order to  
8 Szanto to explain why the adversary should not be dismissed, on  
9 May 10, 2012. After hearing from Szanto and Lewin, who both  
10 appeared without counsel, the court announced its decision on the  
11 record:

12 Any creditor may file a complaint to obtain a  
13 determination of the dischargeability of debt. . . . A  
14 creditor is any entity that has a claim against the  
15 debtor that arose at the time or before the order for  
16 relief. . . . The definition of claims [is] found in  
17 Section 101(5) . . . a right to payment whether or not  
18 reduced to judgment, liquidated, unliquidated, fixed,  
19 contingent, matured, unmatured, disputed, undisputed,  
20 legal, equitable, secured or unsecured, or a right to an  
21 equitable remedy. . . . Pa. Dep't of Pub. Welfare v.  
22 Davenport . . . states that a right to payment is  
23 nothing more nor less than an enforceable obligation.  
24 We've got substantial guidance from all the case law  
25 that a claim is to be defined broadly because the  
26 Bankruptcy Code contemplates that all of the debtor's  
27 legal obligations ought to be dealt with within the  
28 context of the bankruptcy case. . . . [U]nder California  
law, does the Plaintiff have an enforceable obligation  
against the Defendant. . . . The Plaintiff has argued  
. . . there is still this entry of default, and that  
creates the right to payment that gives the Plaintiff  
standing in this case. I don't agree that that's a  
correct statement of the law. . . . While we have an  
entry of default under California law, that simply  
doesn't establish a legally enforceable  
obligation. . . . So, for that reason, I am going to  
enter an order dismissing this cause of action.

26 Hr'g Tr. 24:11-27:11, May 10, 2012.

27 The bankruptcy court entered an order dismissing the  
28



1 adversary proceeding on May 15, 2012.<sup>3</sup> Szanto filed a timely  
2 appeal on May 29, 2012.

3 **JURISDICTION**

4 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
5 and 157(b)(2)(A) and (I). We have jurisdiction under 28 U.S.C.  
6 § 158.

7 **ISSUE**

8 Whether the bankruptcy court erred in dismissing Szanto's  
9 adversary proceeding for lack of standing.

10 **STANDARD OF REVIEW**

11 A trial court's sua sponte dismissal of an action for lack of  
12 standing is reviewed de novo. Bernhardt v. Cnty. of Los Angeles,  
13 279 F.3d 862, 867 (9th Cir. 2002).

14 **DISCUSSION**

15 Rule 4007(a) provides that "a debtor or any creditor may file  
16 a complaint to obtain a determination of the dischargeability of  
17 any debt." See also § 523(c) (providing that the bankruptcy court  
18 may, "upon request of a creditor to whom such debt is owed"  
19 determine whether a debt is excepted from discharge under  
20 § 523(a)(2), (4), or (6)). Further, § 727(c)(1) provides that  
21 "the trustee, a creditor, or the United States trustee may object  
22 to the granting of a discharge under subsection (a) of this  
23 title." Szanto is not the debtor, trustee or United States  
24 trustee in this case, and thus may only prosecute a complaint for  
25 exception to discharge, or for denial of Lewin's discharge, if he

26 \_\_\_\_\_  
27 <sup>3</sup> Szanto filed a motion to vacate the dismissal on May 22,  
28 2012. The bankruptcy court denied the motion in an order entered  
on May 23, 2012.

1 is a "creditor."

2 As it explained at the May 10, 2013 hearing on OSC 3, the  
3 bankruptcy court dismissed Szanto's complaint because he was not a  
4 creditor and therefore lacked standing to pursue this action for  
5 an exception to discharge. The case law instructs us that we are  
6 to review sua sponte dismissals for lack of standing as if raised  
7 in a motion to dismiss under Civil Rule 12(b)(6), made applicable  
8 in bankruptcy adversary proceedings by Rule 7012, and that we must  
9 accept all factual allegations of the complaint as true and draw  
10 all reasonable inferences in favor of Szanto. Jewel v. Nat'l Sec.  
11 Agency, 673 F.3d 902, 907 (9th Cir. 2011).

12 Although perhaps poorly drafted, Szanto's complaint appears  
13 to seek the following relief: (1) an exception to discharge of  
14 his claims raised in his state court action under § 523(a)(6);  
15 (2) a denial of discharge under § 727(a) for concealment of  
16 assets; and (3) denial of discharge for Lewin's bad faith in  
17 filing the bankruptcy case. Our review of the facial allegations  
18 in the complaint is guided by instructions from the Supreme Court.  
19 "[D]etailed factual allegations" are not required. Bell Atl.  
20 Corp. v. Twombly, 550 U.S. 544, 555 (2007). But,

21 a complaint must contain sufficient factual matter,  
22 accepted as true, to "state a claim to relief that is  
23 plausible on its face." [Twombly, 550 U.S. at 570]. A  
24 claim has facial plausibility when the plaintiff pleads  
factual content that allows the court to draw the  
reasonable inference that the defendant is liable for  
the misconduct alleged. [Twombly, 550 U.S. at 556].

25 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).<sup>4</sup>

26

27 <sup>4</sup> It appears that the bankruptcy court only considered  
28 Szanto's complaint as seeking exception to discharge for his  
(continued...)

1 A review of Szanto's complaint shows that he pled a claim for  
2 exception to discharge under § 523(a)(6) for intentional torts he  
3 had asserted in a state court lawsuit (tortious interference with  
4 business advantage, theft of mail, deprivation of civil rights,  
5 alienation of affection, abuse of judicial process, malicious  
6 prosecution, barratry, defamation, subornation of fraudulent real  
7 property transfer and intentional infliction of emotional  
8 distress). It is not challenged that intentional torts may form  
9 the basis for an exception to discharge under § 523(a)(6), yet  
10 there still must be proof of willful and malicious injury.  
11 Kawaauhau v. Geiger, 523 U.S. 57, 63 (1998).<sup>5</sup> However, the  
12 bankruptcy court did not examine the claims in the complaint for  
13 their plausibility. Rather, the court based its dismissal on its  
14 conclusion that Szanto lacked standing. See Chubb Custom Ins. Co.  
15 v. Space Sys., 710 F.3d 946, 952 (9th Cir. 2013) (holding that a  
16 trial court may dismiss a claim under Civil Rule 12(b)(6) where a  
17 complaint is not plausible because the party bringing the

18 \_\_\_\_\_  
19 <sup>4</sup>(...continued)  
20 claims. Of course, Szanto's complaint also contained a claim for  
21 denial of discharge under § 727(a). To the extent that Szanto has  
22 presented in the complaint factual allegations that Lewin failed  
23 to properly account for valuable assets, i.e., a gold Rolex watch,  
a gold Montblanc pen, and an undervalued stamp collection,  
although inartfully pled, it would appear Szanto has met the  
minimum threshold factual presentation for facial plausibility of  
a claim for denial of discharge. Iqbal, 556 U.S. at 663.

24 <sup>5</sup> At least as to one of those asserted torts, theft of mail  
25 (which we interpret to implicate the tort of conversion, an  
26 intentional tort under California law), Szanto asserted in the  
27 complaint as fact known to him personally that his mail had been  
28 stolen from his residence, that he had reported it to the  
U.S. postal inspectors, and that Lewin had returned part of it.  
Although a weak argument, it was sufficient to meet the minimum  
threshold factual presentation for facial plausibility of at least  
one claim in the complaint. Iqbal, 556 U.S. at 663.

1 complaint does not have standing.).

2       As it explained, the bankruptcy court's decision was premised  
3 on the interplay of several terms in the Bankruptcy Code and one  
4 Supreme Court decision. The court's reasoning, as set forth in  
5 OSC 3, appears to be as follows: The Code provides that a  
6 creditor is any "entity that has a claim against the debtor that  
7 arose at the time of or before the order for relief."  
8 § 101(10)(A). A claim, in turn, is defined as a "right to  
9 payment, whether or not reduced to judgment, liquidated,  
10 unliquidated, fixed, contingent, matured, unmatured, disputed,  
11 undisputed, legal, equitable, secured, or unsecured[.]"  
12 § 101(5)(A). The Supreme Court has observed that a "right to  
13 payment is "nothing more nor less than an enforceable obligation."  
14 Pa. Dep't of Pub. Welfare v. Davenport, 495 U.S. 552, 558 (1990).  
15 Since no judgment had been entered in Szanto's favor against Lewin  
16 in the Riverside Action, Lewin did not have an enforceable  
17 obligation under California law to pay Szanto. Therefore, Szanto  
18 is not a creditor in Lewin's bankruptcy case and lacks standing to  
19 prosecute the adversary proceeding.

20       However, the bankruptcy court's analysis that the Supreme  
21 Court in Davenport equated the "enforceable obligation" definition  
22 for a claim with the entry of a judgment in favor of the creditor  
23 is shaky. The cases interpreting Davenport we have located  
24 instead hold that the term "enforceable obligation" refers to a  
25 potentially enforceable obligation - not necessarily one reduced  
26 to judgment, but rather one capable of being enforced:

27       There is no claim against a debtor's bankruptcy estate  
28       without a "right to payment," however uncertain, and a  
      claim must ultimately find some foundation in an

1 obligation that a creditor – at some point in time and  
2 under some conditions – could enforce against a debtor.  
3 Such right need not be immediately enforceable at the  
4 time of filing for the right to constitute a claim. A  
5 claim may be contingent or unmatured yet remain a claim  
6 for purposes of bankruptcy law. At the time of a  
7 bankruptcy petition, however, there must be a right at  
8 least potentially enforceable by a creditor.

6 In re Spencer, 457 B.R. 601, 606 (E.D. Mich. 2011);

7 In re Schechter, Bankr. LEXIS 3796 at \*13 (Bankr. E.D. Va. 2012)  
8 (same).

9 That the Supreme Court meant that the obligation upon which a  
10 claim is founded must be enforceable at some point in time and  
11 under some circumstances is evidenced by the context in Davenport.

12 Our construction of the term "debt" is guided by the  
13 fundamental canon that statutory interpretation begins  
14 with the language of the statute itself. Landreth  
15 Timber Co. v. Landreth, 471 U.S. 681, 685 (1985).  
16 Section 101(11) of the Bankruptcy Code defines "debt" as  
17 a "liability on a claim." This definition reveals  
18 Congress' intent that the meanings of "debt" and "claim"  
19 be coextensive. See also H.R. Rep. No. 95-595, p. 310  
20 (1977); S. Rep. No. 95-989, p. 23 (1978). Thus, the  
21 meaning of "claim" is crucial to our analysis. A  
22 "claim" is a "right to payment, whether or not such  
23 right is reduced to judgment, liquidated, unliquidated,  
24 fixed, contingent, matured, unmatured, disputed,  
25 undisputed, legal, equitable, secured, or unsecured."  
26 11 U.S.C. § 101(4)(A). . . . As is apparent, Congress  
27 chose expansive language in both definitions relevant to  
28 this case. For example, to the extent the phrase "right  
to payment" is modified in the statute, the modifying  
language ("whether or not such right is . . .") reflects  
Congress' broad rather than restrictive view of the  
class of obligations that qualify as a "claim" giving  
rise to a "debt." See also H.R. Rep. No. 95-595, supra,  
at 309 (describing definition of "claim" as "broadest  
possible" and noting that Code "contemplates that all  
legal obligations of the debtor . . . will be able to be  
dealt with in the bankruptcy case"); accord, S. Rep.  
No. 95-989, supra, at 22.

26 Davenport, 495 U.S. at 557-58. As can be seen, in Davenport,  
27 the Court was explicating its long-held view that Congress meant  
28 the broadest possible interpretation of "claim" in the Code, that

1 a claim need not be reduced to judgment, and that a claim could  
2 include, as explicitly provided in the statute, contingent,  
3 unliquidated, disputed claims – claims which by their definition  
4 would not be reduced to judgment or necessarily presently  
5 enforceable.

6 In the Code, “[t]he term ‘claim’ means - right to payment  
7 whether or not such right is reduced to a judgment, liquidated,  
8 unliquidated, fixed, contingent, mature, unmatured, disputed,  
9 undisputed, legal, equitable, secured or unsecured . . . .”

10 § 101(5)(A). Obviously, Szanto’s intentional tort claims asserted  
11 in state court against Lewin are disputed and unliquidated; they  
12 are also contingent. A claim is "contingent" when the debtor's  
13 legal duty to pay it does not come into existence until triggered  
14 by the occurrence of a future event. Imagine Fulfillment Servs.,  
15 LLC v. DC Media Capital, LLC (In re Imagine Fulfillment Servs.,  
16 LLC), 489 B.R. 136, 148 (Bankr. C.D. Cal. 2013); Lubit v. Chase  
17 (In re Chase), 372 B.R. 125, 132 (Bankr. S.D.N.Y. 2007) (same).  
18 The Ninth Circuit has held that intentional tort claims are  
19 contingent. Engquist v. Or. Dep't of Agric., 478 F.3d 985, 1003  
20 (9th Cir. 2007) (tort claims are contingent “by their nature”);  
21 In re Consol. U.S. Atmospheric Testing Litig., 820 F.2d 982, 989  
22 (9th Cir. 1987) (tort claims are contingent because their value is  
23 inchoate until reduced to judgment).

24 Clearly, then, while Szanto did not have the benefit of a  
25 state court judgment adjudging Lewin liable to him for specific  
26 damages on his tort claims, they were no less “claims” for  
27 purposes of the bankruptcy case. The bankruptcy court's apparent  
28 requirement that a “right to payment” on account of an intentional

1 tort obligation requires a judgment in order to constitute an  
2 enforceable obligation is inconsistent with Bankruptcy Code  
3 provisions indicating a judgment is not a condition of a claim.  
4 United States v. Galletti, 541 U.S. 114, 124 n.5 (2004) (citing  
5 § 101(5)(A) for the proposition that a claim is allowable in  
6 bankruptcy "whether or not such right is reduced to judgment.").<sup>6</sup>  
7 Courts may not give effect to one provision of a statute that  
8 renders another provision of that statute superfluous. New  
9 Process Steel v. NLRB, 130 S. Ct. 2635, 2644 (2010). In this  
10 case, the bankruptcy court's interpretation of the "enforceable  
11 obligation" language in Davenport is at odds with the actual text  
12 of the Bankruptcy Code recognizing that Szanto may hold a claim in  
13 the bankruptcy case "whether or not such right is reduced to  
14 judgment, liquidated, unliquidated, fixed, contingent, matured,  
15 unmatured, disputed, undisputed, legal, equitable, secured or  
16 unsecured[.]" § 101(5)(A). On the basis of the allegations in  
17 his complaint, Szanto was a creditor (i.e., an entity that held a  
18 claim against Lewin that arose before the bankruptcy) and, as  
19 such, he had standing to pursue an exception to discharge for  
20 purposes of Rule 4007(a). Since Szanto was a creditor of Lewin's  
21 bankruptcy estate, he also had standing under § 727(c) to assert a  
22 claim for denial of Lewin's discharge.

### 23 CONCLUSION

24 Szanto is a creditor in Lewin's bankruptcy case, and the  
25 bankruptcy court therefore erred in dismissing the complaint on

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26  
27 <sup>6</sup> It also seems inconsistent that, on the one hand, the  
28 bankruptcy court would grant Szanto stay relief to pursue his  
state court claims against Lewin and then, later, rule that Szanto  
was not a creditor because he held no enforceable obligation.

1 the grounds that Szanto lacked standing because he was not a  
2 creditor. We therefore VACATE the bankruptcy court's order  
3 dismissing Szanto's complaint with prejudice and REMAND this  
4 matter for further proceedings.<sup>7</sup>

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27 <sup>7</sup> On remand, the bankruptcy court may consider a stay of  
28 this adversary proceeding pending resolution of the causes of  
action in the state court.