

NOV 30 2010

SUSAN M SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No. EC-10-1017-DHMo
		)	
6	MICHAEL T. CAREY and	)	Bk. No. 04-29060
	LEONE R. CAREY,	)	
7		)	Adv. Pro. No. 09-2632
	Debtors.	)	
8	_____	)	
		)	
9	MICHAEL T. CAREY;	)	
	LEONE R. CAREY,	)	
10		)	
	Appellants,	)	
11		)	
	v.	)	<b>M E M O R A N D U M<sup>1</sup></b>
12		)	
	UNITED STATES OF AMERICA,	)	
13		)	
	Appellee.	)	
14	_____	)	

Argued and Submitted on November 18, 2010  
at Sacramento, California

Filed - November 30, 2010

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

Hon. Thomas C. Holman, Bankruptcy Judge, Presiding

---

Appearances: Leone R. Carey argued, pro se, for the Appellants.  
Adam D. Strait from the United States Department  
of Justice argued for the Appellee.

---

<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 Before: DUNN, HOLLOWELL AND MONTALI,<sup>2</sup> Bankruptcy Judges.

2  
3 Pro se debtors, Michael and Leone Carey, appeal the  
4 bankruptcy court's order dismissing their adversary proceeding in  
5 which they sought to enjoin the United States from executing on  
6 federal tax liens against them.<sup>3</sup> In dismissing the debtors'  
7 adversary proceeding, the bankruptcy court determined that, under  
8 the Anti-Injunction Act, 26 U.S.C. § 7421(a), it lacked subject  
9 matter jurisdiction to hear the matter. We AFFIRM.

10  
11 **FACTS**

12 The debtors filed their chapter 7 petition on September 7,  
13 2004. Prior to the petition date, the United States, through its  
14 agency, the Internal Revenue Service ("IRS"), acquired federal  
15 tax liens against the debtors based on unpaid federal income  
16 taxes<sup>4</sup> for the tax years 1995 through 2000. The United States  
17 also obtained rulings against the debtors in the United States

18 //

19 //

20 \_\_\_\_\_  
21 <sup>2</sup> Hon. Dennis Montali, Bankruptcy Judge for the Northern  
22 District of California, sitting by designation.

23 <sup>3</sup> Unless otherwise indicated, all chapter, section and rule  
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
25 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as  
26 enacted and promulgated prior to October 17, 2005, the effective  
date of most of the provisions of the Bankruptcy Abuse Prevention  
and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23.

27 <sup>4</sup> As of November 18, 2004, the debtors owed approximately  
28 \$6.5 million for unpaid federal income taxes, plus penalties and  
interest.

1 Tax Court prepetition.<sup>5</sup> The tax court determined that the  
2 debtors underreported their income for 1995 and 1997, which gave  
3 rise to a total of \$925,687.59 in federal income tax liabilities  
4 for those years.

5 On December 15, 2004, the United States filed a complaint  
6 against the debtors seeking to deny the debtors' discharge under  
7 § 727(a)(2), (4) and (5)<sup>6</sup> for failing to disclose certain real  
8 properties on their schedules<sup>7</sup> and to except from discharge the  
9 debtors' federal income tax liabilities for 1995 through 2000  
10 under § 523(a)(1)(A) and (C) ("nondischargeability action")  
11 (adv. proc. no. 09-2548).<sup>8</sup> The United States also sought a

---

12  
13 <sup>5</sup> The tax court issued its rulings in two published  
14 decisions, Residential Management Servs. Trust v. Comm'r, 82  
15 T.C.M. (CCH) 874 (2001); and Carey v. Comm'r, 86 T.C.M. (CCH) 420  
(2003).

16 <sup>6</sup> Section 727(a) lists specific grounds for the denial of a  
17 debtor's discharge. Among those grounds, the bankruptcy court  
shall deny a debtor's discharge if it is shown that:

18 (2) the debtor transferred, removed or concealed his or her  
19 property, with intent to hinder, delay or defraud a  
20 creditor, within one year prior to the petition;

21 . . .

22 (4) the debtor knowingly and fraudulently made a false oath  
in connection with the bankruptcy case; or

23 (5) the debtor failed to adequately explain any loss of  
assets or deficiency of assets to meet his or her  
24 liabilities.

25 <sup>7</sup> The debtors did not list on their schedules real  
26 properties located in Palo Cedro, Redding and Bella Vista,  
California (collectively, "California real properties"), as well  
as five residential care facilities.

27 <sup>8</sup> Under § 523(a)(1), certain tax debts are excepted from  
28 discharge, including taxes:

(continued...)

1 determination that the entry of discharge in the bankruptcy case  
2 would not affect its federal tax liens against any property the  
3 debtors acquired prepetition.

4 The United States moved for summary judgment on the § 523(a)  
5 claims for relief only ("partial summary judgment motion").<sup>9</sup>  
6 After a hearing, the bankruptcy court granted the United States's  
7 partial summary judgment motion, ruling that the debtors' federal  
8 income tax liabilities for 1995 through 2000 were excepted from  
9 discharge.

10 With respect to the § 523(a)(1)(C) claim for relief, the  
11 bankruptcy court determined that "[t]he undisputed evidence  
12 before [it was] overwhelming that the [debtors] filed fraudulent  
13 returns for the years 1995 through 2000." Memorandum Decision,  
14 12:28, 13:1-2. It also determined that the debtors willfully  
15

---

16 <sup>8</sup>(...continued)

17 (A) of the kind and for the periods specified in § 507(a)(3)  
18 or 507(a)(8), whether or not a claim for such tax was filed  
or allowed; . . . or

19 (C) with respect to which the debtor made a fraudulent  
20 return or willfully attempted in any manner to evade or  
defeat such tax.

21 Section 507 provides the order of priority in which certain  
22 claims are paid. Under § 507(a)(8), allowed unsecured claims of  
23 a governmental unit for certain kinds of prepetition taxes are  
priority claims.

24 <sup>9</sup> The debtors also moved for summary judgment, which the  
25 bankruptcy court treated as a response to the United States's  
26 motion for partial summary judgment. The bankruptcy court  
27 determined that the debtors' summary judgment motion did not  
28 address the elements for summary judgment in their favor. The  
bankruptcy court accordingly denied the debtors' summary judgment  
motion, entering its order on April 27, 2005.

1 tried to evade their federal income tax liabilities. The  
2 bankruptcy court found that the debtors underreported their  
3 income, failed to keep adequate records of their income and  
4 expenses, and established sham trusts to hide their income and to  
5 avoid personal tax liability, among other acts. Such conduct,  
6 the bankruptcy court concluded, demonstrated the debtors' intent  
7 to file fraudulent federal income tax returns and to evade their  
8 federal income tax liabilities for the years 1995 through 2000.

9 With respect to the § 523(a)(1)(A) claim for relief, the  
10 bankruptcy court determined that, even without a showing of  
11 fraud, the debtors' federal income tax liabilities for 1997 and  
12 2000 were excepted from discharge, as the taxes for those years  
13 constituted priority claims under § 507(a)(8). The bankruptcy  
14 court also determined that, regardless of discharge, all of the  
15 debtors' federal income tax liabilities, except those for the  
16 1997 tax year, would remain secured by the federal tax liens  
17 against the debtors' assets.

18 On April 27, 2005, the bankruptcy court entered its  
19 memorandum decision and order granting the United States's  
20 partial summary judgment motion. Three months later, the  
21 bankruptcy court entered judgment in favor of the United States  
22 on the § 523(a) claims for relief ("§ 523(a) judgment").<sup>10</sup> The  
23

---

24  
25 <sup>10</sup> The bankruptcy court initially declined to enter judgment  
26 on the United States's partial summary judgment motion because it  
27 had not made any determinations as to the § 727(a) claims for  
28 relief. Later, in its motion to dismiss the § 727(a) claims for  
relief, the United States renewed its request that the bankruptcy  
court enter judgment in favor of the United States as to the  
§ 523(a) claims for relief it asserted in its complaint, and that  
request was granted.

1 debtors appealed the § 523(a) judgment to the Bankruptcy  
2 Appellate Panel ("BAP")(BAP case no. EC-05-1217), which dismissed  
3 the debtors' appeal for failure to prosecute. The § 523(a)  
4 judgment is final.

5       Shortly before entry of the § 523(a) judgment, the United  
6 States moved to dismiss with prejudice the § 727(a) claims for  
7 relief ("§ 727(a) dismissal motion"). The United States asserted  
8 that it did not wish to continue litigation of the remaining  
9 claims for relief as it already had obtained a ruling excepting  
10 from discharge nearly all of the debtors' federal income tax  
11 liabilities. Over the debtors' opposition, the bankruptcy court  
12 granted the United States's § 727(a) dismissal motion and entered  
13 an order thereon ("§ 727(a) dismissal order").

14       On October 27, 2005, the United States filed a complaint  
15 against the debtors in the United States District Court seeking  
16 judgment against the debtors for the unpaid federal income taxes  
17 ("district court action").<sup>11</sup> The United States also sought to  
18 execute on its federal tax liens against the debtors by selling  
19 the California real properties.

20       The United States moved for summary judgment against the  
21 debtors in the district court action. The district court granted  
22 the United States's summary judgment motion on the following  
23 grounds: (1) the tax court and the bankruptcy court already  
24 adjudicated the debtors' federal income tax liabilities, and  
25

---

26       <sup>11</sup> Before proceeding with the district court action, the  
27 United States obtained from the bankruptcy court an order  
28 granting relief from stay. See Order Granting Motion for Relief  
from Stay, main case docket no. 22.

1 (2) the debtors failed to present any evidence showing that the  
2 United States's federal tax assessments were incorrect or invalid  
3 and that the debtors did not owe approximately \$6.5 million in  
4 federal income tax liabilities.

5 On July 5, 2007, the district court entered an order  
6 ("district court order") providing that, as of February 28, 2007,  
7 the debtors owed approximately \$7.5 million in federal income tax  
8 liabilities for 1995 through 2000. The district court order  
9 further provided that the United States could enforce its federal  
10 tax liens against the debtors by selling the California real  
11 properties. The district court order also authorized the United  
12 States Marshal to take any actions necessary to remove any  
13 occupants from the California real properties if they failed to  
14 vacate the California real properties within the prescribed time.  
15 The district court entered judgment consistent with its order  
16 ("district court judgment").

17 The debtors appealed the district court order and judgment.  
18 The Ninth Circuit affirmed the district court, determining that  
19 it properly granted summary judgment in the United States's favor  
20 because the debtors failed to controvert the federal tax  
21 assessments. The Ninth Circuit further concluded that the  
22 bankruptcy court found that the debtors' federal income tax  
23 liabilities were excepted from discharge due to their filing  
24 fraudulent tax returns and willful tax evasion. The district  
25 court judgment is final.

26 The chapter 7 trustee filed a no asset report, indicating  
27 that there were no funds available from the estate for  
28 distribution to creditors. The debtors received their discharge

1 on August 9, 2005. The United States's adversary proceeding  
2 closed on February 6, 2006. The debtors' bankruptcy case closed  
3 on February 15, 2006.

4 Two months after their bankruptcy case was reopened on the  
5 debtors' motion on July 30, 2009, the debtors filed a complaint  
6 and a motion for a temporary restraining order ("TRO motion")  
7 against the United States seeking to enjoin the United States  
8 from executing on the district court judgment. The debtors  
9 contended that the United States could not execute on the federal  
10 tax liens because they did not owe any federal income taxes and,  
11 even if they did owe federal income taxes, the debtors received a  
12 discharge which released them from their federal income tax  
13 liabilities.

14 The United States moved to dismiss the debtors' adversary  
15 proceeding under Fed. R. Civ. P. 12(b)(1) and (b)(6) ("United  
16 States's motion to dismiss"). The United States argued that the  
17 debtors' adversary proceeding should be dismissed because the  
18 bankruptcy court lacked subject matter jurisdiction to hear it  
19 under the Anti-Injunction Act, 26 U.S.C. § 7421(a). The Anti-  
20 Injunction Act prohibits parties from filing suit seeking to  
21 restrain the collection of any tax. In seeking to prevent the  
22 United States from foreclosing its federal tax liens, the United  
23 States argued, the debtors' complaint and TRO motion ran afoul of  
24 the Anti-Injunction Act. The bankruptcy court thus had no  
25 authority to hear the adversary proceeding.

26 //

27 //

28 //



1 The United States further contended that res judicata<sup>12</sup>  
2 barred the debtors from seeking an injunction against the United  
3 States because the district court already had entered judgment  
4 allowing the United States to foreclose its federal tax liens.

5 Moreover, the United States asserted that, contrary to the  
6 debtors' contentions, the discharge in their bankruptcy case did  
7 not relieve them of their federal income tax liabilities, since  
8 the bankruptcy court determined in the § 523(a) judgment that the  
9 debtors' federal income tax liabilities for 1995 through 2000  
10 were excepted from discharge. The § 523(a) judgment became final  
11 once the BAP dismissed the debtors' appeal, and the debtors made  
12 no further appeal.

13 The debtors opposed the United States's motion to dismiss,  
14 contending that the bankruptcy court had authority to determine  
15 their request for injunctive relief, as the district court order  
16 and judgment were void and went against the bankruptcy court's  
17 own orders (i.e., the § 727(a) dismissal order and discharge).  
18 The debtors claimed that the district court order was a  
19 collateral attack on the § 727(a) dismissal order and discharge.  
20 According to the debtors, the § 727(a) dismissal order eliminated  
21 the debtors' federal income tax liabilities. Once it dismissed  
22 the denial of discharge claims for relief with prejudice, the  
23

---

24 <sup>12</sup> Although the parties to this appeal argue about the "res  
25 judicata" effects of the § 523(a) judgment and the district court  
26 order and judgment, the Supreme Court now generally uses the term  
27 "claim preclusion" instead of "res judicata." Taylor v.  
28 Sturgell, 553 US. 880, 895 (2008). See Paine v. Griffin (In re  
Paine), 283 B.R. 33, 38 (9th Cir. BAP 2002). Hereafter, we use  
the term "claim preclusion" in lieu of "res judicata."

1 debtors argued the United States could not proceed with the  
2 district court action; the § 727(a) dismissal order and discharge  
3 were claim preclusive as to the issue of the debtors' federal  
4 income tax liabilities. Thus, they argued that the district  
5 court order contravened the § 727(a) dismissal order and  
6 discharge, and accordingly, it was void. The debtors therefore  
7 sought injunctive relief from the bankruptcy court as only it had  
8 authority to enforce its own orders.

9 The debtors also claimed that the district court order was  
10 void because the United States did not have federal tax liens  
11 against the debtors. The debtors asserted that the United States  
12 did not have any federal tax liens against them because the  
13 chapter 7 trustee disallowed the United States's proofs of claim,  
14 as evidenced by the claims register which listed the claims  
15 as \$0.

16 At the hearing on January 5, 2010, the bankruptcy court  
17 granted the United States's motion to dismiss under Fed. R. Civ.  
18 P. 12(b)(1) based on the Anti-Injunction Act. The bankruptcy  
19 court declined to rule on the other grounds offered by the United  
20 States in its motion to dismiss, however, as the bankruptcy court  
21 determined that it lacked subject matter jurisdiction.

22 At the January 5, 2010 hearing, the bankruptcy court noted  
23 that the debtors misapprehended the scope of the discharge after  
24 it entered the § 523(a) judgment. The bankruptcy court stated  
25 that "there [was] a very basic misunderstanding on the part of  
26 the [debtors] about the effect of the bankruptcy case. They seem  
27 to think that the tax debts were discharged because a discharge  
28 was entered in the case." Tr. of January 5, 2010 hr'g, 6:12-15.

1 The bankruptcy court went on to explain that, contrary to the  
2 debtors' belief, "the discharge [in the bankruptcy case did] not  
3 discharge particular debts that have been determined by the court  
4 to be nondischargeable, which [was] what occurred here." Tr. of  
5 January 5, 2010 hr'g, 6:22-24.

6 The bankruptcy court entered its order dismissing the  
7 debtors' adversary proceeding ("Rule 12(b)(1) order") on  
8 January 13, 2010.<sup>13</sup> The debtors timely appealed.

#### 10 **ISSUE**

11 Did the bankruptcy court err in dismissing the debtors'  
12 adversary proceeding?

#### 14 **STANDARD OF REVIEW**

15 We review de novo a dismissal for lack of subject matter  
16 jurisdiction under Fed. R. Civ. P. 12(b)(1). Bianchi v.  
17 Rylaarsdam, 334 F.3d 895, 898 (9th Cir. 2003). We may affirm a  
18 dismissal on "any basis fairly supported by the record." Corrie  
19 v. Caterpillar, Inc., 503 F.3d 974, 979 (9th Cir. 2007).

#### 21 **JURISDICTION**

22 The bankruptcy court had the authority to determine its  
23 jurisdiction to hear a matter. Calif. State Brd. of Equalization  
24 v. Harleston (In re Harleston), 275 B.R. 546, 549 (9th Cir. BAP

---

26 <sup>13</sup> Shortly after entry of the Rule 12(b)(1) order, the  
27 debtors filed a motion to reconsider and a motion to vacate the  
28 Rule 12(b)(1) order, both of which the bankruptcy court denied on  
April 27, 2010.

1 2002)(citation omitted). The bankruptcy court also had  
2 jurisdiction under 28 U.S.C. § 157(b)(1). We have jurisdiction  
3 under 28 U.S.C. § 158.

4  
5 **DISCUSSION**

6 A. Anti-Injunction Act

7 On appeal, the debtors advance the same arguments they made  
8 in their opposition to the United States's motion to dismiss.  
9 The bankruptcy court did not find the debtors' arguments  
10 persuasive. Neither do we. In fact, we find them frivolous.  
11 Based on our reading of the Anti-Injunction Act, 26 U.S.C.  
12 § 7421(a), we agree with the United States that it prevents the  
13 bankruptcy court from entertaining the debtors' request for  
14 injunctive relief.

15 The Anti-Injunction Act provides that, with certain  
16 exceptions,

17 [n]o suit for the purpose of restraining the assessment or  
18 collection of any tax shall be maintained in any court by  
19 any person, whether or not such person is the person against  
whom such tax was assessed.

20 In other words, the Anti-Injunction Act "not only prohibits  
21 suits to restrain the assessment or collection of a tax, but also  
22 prevents [the bankruptcy court] from granting such equitable  
23 relief." Blech v. United States, 595 F.2d 462, 466 (9th Cir.  
24 1979)(quoting Shannon v. United States, 521 F.2d 56, 58 (9th Cir.  
25 1975), cert. denied, 424 U.S. 965 (1976))(quotation marks  
26 omitted). The "manifest purpose" of the Anti-Injunction Act is  
27 to allow the United States to assess and collect taxes without  
28 judicial intervention. Enochs v. Williams Packing & Navigation

1 Co., 370 U.S. 1, 7 (1962). "Thus, absent an exception, no court  
2 has jurisdiction to entertain an action for injunctive relief  
3 against the assessment or collection of a tax by the IRS." Ray  
4 Stevens Paving Co. v. United States (In re Ray Stevens Paving  
5 Co.), 145 B.R. 647, 649 (D. Ariz. 1992).

6 The Anti-Injunction Act is "strictly enforced." Maxfield v.  
7 United States Postal Serv., 752 F.2d 433, 434 (9th Cir. 1984).  
8 If the action does not fall within any of the exceptions to the  
9 Anti-Injunction Act, the bankruptcy court must dismiss the action  
10 for lack of subject matter jurisdiction. Elias v. Connett, 908  
11 F.2d 521, 523 (9th Cir. 1990). Even if the taxpayer satisfies  
12 one of the exceptions under the Anti-Injunction Act, he or she  
13 still must allege sufficient grounds to warrant equitable relief.  
14 Id.

15 The debtors do not deny that they sought to enjoin the  
16 United States from executing on the district court judgment and  
17 collecting taxes. Even if they attempted to do so, their  
18 complaint and TRO motion clearly set forth the debtors' objective  
19 to stop the IRS's tax collection efforts. Therefore, the  
20 debtors' adversary proceeding must fall within one of the  
21 statutory or judicially-created exceptions to application of the  
22 Anti-Injunction Act in order for the bankruptcy court to hear it.

23 As the United States points out, none of the statutory  
24 exceptions apply. See, e.g., 26 U.S.C. § 6015(e)(relief from  
25 joint and several liability on joint return); § 6212(a) and  
26 (c)(notice of deficiency); § 6672(b)(enjoining premature actions  
27 for violations of § 6224(a)).

28 Nor does the debtors' request for injunctive relief fall

1 within either of the two judicially-created exceptions when an  
2 action is allowed: (1) where the taxpayer lacks alternative means  
3 to contest the legality of a particular tax, South Carolina v.  
4 Regan, 465 U.S. 367, 370-72 (1984), or (2) if it is clear that  
5 under no circumstances could the Government ultimately prevail,  
6 and the taxpayer will suffer irreparable injury without  
7 injunctive relief, Elias, 908 F.2d at 525 (citation omitted).  
8 The taxpayer bears the burden to plead and prove facts  
9 demonstrating that the United States cannot prevail. Id. The  
10 United States only needs to have "a good faith basis for its  
11 claim in order to obtain a dismissal." Id. (citation omitted).

12 With respect to the first judicial exception, the debtors  
13 litigated the validity of the federal tax liens before the  
14 district court and the tax court. Both the district court and  
15 the tax court found that the debtors were liable for federal  
16 income taxes. Their determinations are final.

17 With respect to the second judicial exception, the debtors  
18 have not shown that the United States could not prevail. In  
19 fact, the United States prevailed on appeal as to the debtors'  
20 federal income tax liabilities; the Ninth Circuit affirmed the  
21 district court judgment, determining that the debtors failed to  
22 controvert the federal income tax assessments, after the  
23 bankruptcy court already had entered a judgment excepting the  
24 debtors' tax liabilities from discharge.

25 However, the debtors focus their arguments on why the Anti-  
26 Injunction Act should not apply. The debtors first argue that  
27 the United States submitted to the bankruptcy court's  
28 jurisdiction by filing proofs of claim. We agree with the United

1 States that the debtors' argument confuses the United States's  
2 limited possible waiver of sovereign immunity with the withdrawal  
3 of jurisdiction under the Anti-Injunction Act. See  
4 § 106(b)(providing that a governmental unit that filed a proof of  
5 claim is deemed to have waived sovereign immunity with respect to  
6 a claim against the governmental unit that is property of the  
7 estate and that arose out of the same transaction or occurrence  
8 out of which the governmental unit's claim arose). The Anti-  
9 Injunction Act limits the authority of the bankruptcy court. See  
10 26 U.S.C. § 7421. Simply because the United States participated  
11 in the debtors' bankruptcy case does not mean that the bankruptcy  
12 court can ignore the provisions of the Anti-Injunction Act. See  
13 Am. Bicycle Ass'n v. United States (In re Am. Bicycle Ass'n),  
14 895 F.2d 1277, 1280 (9th Cir. 1990)("We hold that [the]  
15 proscription [of the Anti-Injunction Act] is not overridden by  
16 the general grant of authority provided in section 105(a) of the  
17 Bankruptcy Code.").

18 The debtors next contend that claim preclusion barred the  
19 district court from entering the district court judgment against  
20 them. They argue that the district court judgment was a  
21 collateral attack on the § 727(a) dismissal order and discharge.  
22 The debtors claim that the United States was precluded from  
23 raising the issue of their federal income tax liabilities in the  
24 district court action, as the issue had been resolved through  
25 dismissal of the nondischargeability action and their discharge  
26 in the bankruptcy case. Because the bankruptcy court already  
27 adjudicated the issue of the debtors' federal income tax  
28 liabilities, the debtors argue, the district court order was

1 void. The debtors then reason that only the bankruptcy court had  
2 the authority to enforce the § 727(a) dismissal order and  
3 discharge against the void district court order.

4 As the bankruptcy court pointed out at the January 5, 2010  
5 hearing, the debtors misapprehend the effect of the discharge on  
6 their federal income tax liabilities after the bankruptcy court  
7 entered the § 523(a) judgment. The debtors also appear to  
8 misapprehend the scope of the § 727(a) dismissal order.

9 Generally, a discharge in a chapter 7 bankruptcy case  
10 discharges the debtor from all debts that arose before the date  
11 of the order for relief, save for those debts that are excepted  
12 from discharge by § 523. 11 U.S.C. § 727(b). See also Watson v.  
13 Shandell (In re Watson), 192 B.R. 739, 748 (9th Cir. BAP 1996),  
14 aff'd, 116 F.3d 488 (9th Cir. 1997). Section 524 only enjoins  
15 creditors from trying to collect from the debtor debts that have  
16 been discharged. Watson, 192 B.R. at 748. Here, as evidenced by  
17 the § 523(a) judgment, the bankruptcy court determined that the  
18 debtors' federal income tax liabilities for 1995 through 2000  
19 were excepted from discharge (i.e., not discharged) under  
20 § 523(a)(1)(A) and (C). As noted above, the § 523(a) judgment is  
21 final.

22 The debtors apparently believe that the § 727(a) dismissal  
23 order somehow dismissed not only the § 727(a) claims for relief,  
24 but also the § 523(a) claims. That is not the case. The  
25 § 727(a) dismissal order specifically states that "counts one  
26 [§ 727(a)(2)], two [§ 727(a)(4)], and three [§ 727(a)(5)] of the  
27 complaint are dismissed with prejudice" and that "a separate  
28 judgment will be entered concerning the fourth, fifth and sixth



1 causes of action [concerning § 523(a)(1)(C) and (A) and the tax  
2 liens] of the complaint." Plainly reading the language of the  
3 § 727(a) dismissal order, only the § 727(a) claims for relief  
4 were dismissed. The bankruptcy court already ruled and issued an  
5 order on the § 523(a) claims for relief. It issued the § 523(a)  
6 judgment at a later date.

7  
8 B. Claim Preclusion and Law of the Case

9       Alternatively, even if jurisdiction was not precluded by the  
10 Anti-Injunction Act, based on the proofs of claim filed by the  
11 United States, claim preclusion and/or law of the case barred the  
12 debtors' adversary proceeding. Although the bankruptcy court did  
13 not rule on these grounds, we may affirm on any basis supported  
14 by the record. Corrie, 503 F.3d at 979. Here, the record is  
15 replete with facts sufficient to support our conclusions.

16       Claim preclusion "provides that a final judgment on the  
17 merits of an action precludes the parties from relitigating all  
18 issues connected with the action that were or could have been  
19 raised in that action." Rein v. Providian Fin. Corp., 270 F.3d  
20 895, 898-99 (9th Cir. 2001). To apply claim preclusion, four  
21 elements must be present: (1) the parties were identical in the  
22 litigation; (2) the prior judgment was rendered by a court of  
23 competent jurisdiction; (3) there was a final judgment on the  
24 merits; and (4) the same claim was involved in both suits. Id.  
25 at 899.

26       If it had determined it had jurisdiction, the bankruptcy  
27 court could have applied claim preclusion to support dismissal of  
28 the debtors' adversary proceeding. The debtors and the United

1 States both clearly have been involved from the start in all the  
2 litigation regarding the debtors' federal income tax liabilities.  
3 In their complaint and TRO motion, the debtors alleged that the  
4 United States did not have any federal tax liens because the  
5 debtors did not owe any federal income taxes and, even if the  
6 debtors did owe federal income taxes, they were discharged in the  
7 debtors' bankruptcy. This issue already has been litigated to a  
8 final judgment before the bankruptcy court in the  
9 nondischargeability action, where it found that the debtors had  
10 federal income tax liabilities that were excepted from discharge.  
11 The bankruptcy court entered judgment in the United States's  
12 favor, which became final once the appeal to the BAP was  
13 dismissed. (Notably, the Ninth Circuit also determined in the  
14 appeal of the district court judgment that the bankruptcy court  
15 correctly found that the debtors' federal income tax liabilities  
16 were excepted from discharge.)

17 As the United States points out, claim preclusion also can  
18 be applied in light of the district court action where it  
19 determined that the debtors owed federal income taxes for 1995  
20 through 2000. The district court entered final judgment in favor  
21 of the United States, which was appealed to the Ninth Circuit.  
22 The Ninth Circuit affirmed the district court, noting that the  
23 debtors did not controvert the federal income tax assessments.

24 Various courts have determined that the debtors owed federal  
25 income taxes for 1995 through 2000, which were not discharged in  
26 bankruptcy. These facts bar the debtors from seeking injunctive  
27 relief against the United States, as the issues already have been  
28 litigated and determined through the entry of final judgments in

1 at least two courts.<sup>14</sup>

2       Additionally, the law of the case doctrine precluded the  
3 debtors from proceeding with their complaint and TRO motion.  
4 Under the law of the case doctrine, a court is barred from  
5 reconsidering an issue that the same court or a higher court  
6 already decided in the same case. Milgard Tempering, Inc. v.  
7 Selas Corp. of Am., 902 F.2d 703, 715 (9th Cir. 1990). For the  
8 law of the case doctrine to apply, the court must have expressly  
9 or by necessary implication decided the issue. Id. However,  
10 even if the law of the case doctrine applies, the court may  
11 decide, in its discretion, to revisit the issue if: "(1) the  
12 first decision was clearly erroneous and would result in manifest  
13 injustice; (2) an intervening change in the law has occurred; or  
14 (3) the evidence on remand [is] substantially different." Id.

15       The bankruptcy court could not reconsider the issue of the  
16 debtors' federal income tax liabilities because it already  
17 expressly determined in the nondischargeability action that they  
18 were excepted from discharge. The district court also explicitly  
19 decided that the debtors owed federal income taxes for the years  
20 1995 through 2000. The Ninth Circuit affirmed the district court  
21 and determined that the bankruptcy court had been correct in  
22 excepting the debtors' federal income tax liabilities from  
23 discharge. The issue of the debtors' federal income tax  
24 liabilities went through three courts, all of which determined  
25 that the debtors had federal income tax liabilities. And, as we  
26 noted earlier, all those decisions are final.

---

27  
28       <sup>14</sup> Three, if the tax court decisions are considered.

1 **CONCLUSION**

2 Based on our review of the record, we conclude that the  
3 bankruptcy court did not err in dismissing the debtors' adversary  
4 proceeding, as it lacked subject matter jurisdiction under the  
5 Anti-Injunction Act. Alternatively, claim preclusion and law of  
6 the case barred the debtors' adversary proceeding. We AFFIRM.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28