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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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.)	M E M O R A N D U M¹
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.

¹ 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,² 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.³ 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 taxes⁴ 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 ² Hon. Dennis Montali, Bankruptcy Judge for the Northern
22 District of California, sitting by designation.

23 ³ 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 ⁴ 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.⁵ 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)⁶ for failing to disclose certain real
8 properties on their schedules⁷ 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).⁸ The United States also sought a

12
13 ⁵ 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 ⁶ 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
liabilities.

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

27 ⁸ 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").⁹
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 ⁸(...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
19 or allowed; . . . or

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

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

27 ⁹ The debtors also moved for summary judgment, which the
28 bankruptcy court treated as a response to the United States's
motion for partial summary judgment. The bankruptcy court
determined that the debtors' summary judgment motion did not
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").¹⁰ The
23

24
25 ¹⁰ 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").¹¹ 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 ¹¹ 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 judicata¹²
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 ¹² 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, 2010.¹³ 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 ¹³ 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.¹⁴

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 ¹⁴ 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.

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