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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-10-1139-HKiMk
 HUI WANG,)
 Debtor.) Bk. No. 09-19641-ER
) Adv. No. 09-01865-ER
 _____)
 HUI WANG,)
 Appellant,)
 v.) **M E M O R A N D U M**¹
 JUERGEN VOTTELER; HEIDI KURTZ,)
 Chapter 7 Trustee; UNITED)
 STATES TRUSTEE,)
 Appellees.)
 _____)

Argued and Submitted on September 23, 2010
at Pasadena, California

Filed - November 10, 2010

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

Honorable Ernest M. Robles, Bankruptcy Judge, Presiding

Appearances: _____
 Keith William Berglund, The Berglund Group, argued
 for Appellant Hui Wang
 Todd A. Picker, Law Offices of Todd Picker, argued
 for Appellee Juergun Votteler

Before: HOLLOWELL, KIRSCHER, and MARKELL, Bankruptcy Judges.

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 The bankruptcy court found that cause existed to grant
2 creditor Juergen Votteler (Votteler) relief from the automatic
3 stay to permit the debtor's appeal of a default judgment to
4 proceed in state court. The bankruptcy court determined that a
5 resolution of that appeal in favor of Votteler could result in
6 the efficient cost-effective resolution of an adversary
7 proceeding filed by him against the debtor. We **AFFIRM**.

8 I. FACTS

9 The debtor, Hui Wang (Wang) immigrated from China to the
10 United States in 2000. She met Robert Tringham (Tringham) in
11 2003, and became his live-in girlfriend/fiancé until October
12 2008. Tringham controlled a company called Finbar Securities
13 Corporation (Finbar) and held himself out as a successful,
14 licensed, international securities broker. Wang worked with
15 Tringham in his business endeavors, although she contends she was
16 not materially involved with any acquisition of investor funds or
17 involved in the management of Finbar's business activities.

18 Votteler met Tringham sometime in early 2006. In exchange
19 for Tringham and Finbar's securities investment services,
20 Votteler transferred almost \$3 million to Finbar as part of a
21 Wealth Management Agreement. However, according to Votteler, he
22 subsequently realized that Tringham's representation that he was
23 a stock broker was false and that the Wealth Management Agreement
24 was part of a fraudulent scheme.

25 On July 11, 2007, Votteler filed a complaint against
26 Tringham and Finbar in California state court alleging common law
27 fraud and conversion (the State Court Complaint). Votteler
28 alleged that Tringham falsely represented his position as a stock

1 broker or securities investor in order to deceive Votteler.
2 Votteler alleged that Tringham and/or his agents took Votteler's
3 money, hid it in various bank accounts and shell companies and
4 that Tringham then converted the money for his own use. The
5 State Court Complaint named John Doe defendants who allegedly
6 maintained and kept records for Tringham, acted as his agent,
7 with knowledge and in furtherance of Tringham's fraudulent
8 activities, and/or controlled companies that were alter-egos of
9 Tringham, which were knowingly used to perpetuate the fraudulent
10 scheme.

11 On September 17, 2007, Votteler amended the State Court
12 Complaint to include Wang, aka "Cindy Tringham," as a named John
13 Doe defendant. Votteler filed a proof of service with the state
14 court indicating that Wang had been personally served on
15 September 18, 2007.

16 On October 23, 2007, Votteler filed a Request for Entry of
17 Default against Wang on the basis that Wang had not filed an
18 answer to the State Court Complaint. The State Court granted the
19 request on November 5, 2007 (the Default).

20 Wang asserted that she only became aware of the State Court
21 Complaint on October 31, 2007, when Tringham told her about it.
22 Thereafter, she hired counsel² to file an answer, which was
23 accomplished on November 5, 2007, the same day the Default was
24 entered.

25
26 ² Wang hired the same attorney who had been representing
27 Tringham and Finbar on the State Court Complaint and who now
28 represents her in the bankruptcy case but no longer represents
Tringham.

1 The parties to the State Court Complaint entered into
2 settlement negotiations and agreed to not file any substantive
3 pleadings until at least December 2007. After settlement
4 discussions unraveled, Wang filed, on January 22, 2008, a motion
5 to vacate the Default and/or quash summons of the State Court
6 Complaint. Wang contended that the State Court Complaint was not
7 properly served and argued that the Default was the result of
8 mistake, inadvertence, or excusable neglect, as well as a lack of
9 due process under state and federal law.

10 On February 26, 2008, after a hearing was held on the
11 matter, the state court denied Wang's motion to vacate the
12 Default. A formal default judgment was entered on July 23, 2008,
13 against the Debtor, Tringham and Finbar, (and other named John
14 Doe defendants) jointly and severally, in the amount of
15 \$3,427,135.24 (the Default Judgment) "[u]pon consideration of
16 plaintiff's evidence submitted . . . showing, inter alia, that
17 plaintiff was defrauded, and his property converted by
18 defendants. . . ."

19 On September 19, 2008, Wang appealed the Default Judgment
20 (the Appeal), which was consolidated with the appeals by Tringham
21 and Finbar of the Default Judgment. Wang alleged that the state
22 court erred when it found that she was properly served and
23 afforded due process. The opening brief to the Appeal was due
24 sometime mid-May 2009.

25 At the same time the State Court Complaint was pending, the
26 Securities and Exchange Commission (SEC) filed a complaint
27 against Tringham and Finbar in California federal court. A
28 receiver (Receiver) was appointed in that case and Tringham was

1 later indicted and convicted on criminal charges related to
2 securities fraud.

3 Wang filed for chapter 7³ relief on April 24, 2009. She
4 listed Votteler as a judgment creditor in the amount of \$3.5
5 million on her schedules. Wang listed only two other creditors
6 on her Schedule F, with combined claims in the amount of \$2,701.
7 Wang revised her Schedule F on May 18, 2009, to include a claim
8 asserted by the Receiver in the amount of not less than
9 \$542,476.⁴

10 Just before filing bankruptcy, on April 13, 2009, the Debtor
11 filed a motion in state court to bifurcate her Appeal from
12 Tringham's and Finbar's. The motion was granted on June 4, 2009,
13 and the appellate proceedings were stayed by the state court
14 pending the resolution of Wang's bankruptcy case.

15 On July 20, 2009, Votteler filed a complaint alleging that
16 the Default Judgment was nondischargeable under § 523(a)(2)(A)
17 and (a)(6) (the Nondischargeability Complaint). Votteler made the
18 same allegations as he did in the State Court Complaint -- that
19 Tringham and Finbar, as part of a fraudulent scheme, defrauded
20 him and converted his money. Votteler alleged that Wang

21
22
23 ³ Unless otherwise indicated, all chapter and section
24 references in the text are to the Bankruptcy Code, 11 U.S.C.
§§ 101-1532.

25 ⁴ The claim is based on the Receiver's finding that
26 "Tringham made payments totaling \$474,859 to his ex-wife, Hui
27 Wang." The Receiver's report is part of Appellee's June 28, 2010
28 Request for Judicial Notice (RJN). Wang has opposed the RJN. We
DENY the RJN because the Receiver's report does not provide
information that is material to Votteler's arguments.

1 knowingly helped Tringham in his fraudulent scheme by funneling
2 money into a company she controlled with Tringham and by
3 transferring money from various bank accounts held by Tringham.
4 Votteler alleged Wang also converted his money for her own use.
5 As a result, Votteler contended the Default Judgment was
6 nondischargeable due to false pretenses, false representation, or
7 actual fraud under § 523(a)(2)(A), and willful and malicious
8 injury under § 523(a)(6).

9 On August 21, 2009, Wang filed a motion to dismiss the
10 Nondischargeability Complaint on the basis that it did not plead
11 fraud with the specificity required under Fed. R. Civ. P. 9.
12 Votteler amended the Nondischargeability Complaint on November 6,
13 2009. The amended complaint alleged that Wang was a knowing and
14 active participant in Tringham's fraudulent scheme, knew about
15 his misrepresentations, opened bank accounts to hide stolen
16 money, and used the money for her personal benefit. These
17 allegations tracked the allegations made against the John Doe
18 defendants in the State Court Complaint as both complaints
19 alleged that Wang acted with knowledge and in furtherance of
20 Tringham's fraudulent scheme by keeping false records or by
21 controlling companies that funneled money from investors for
22 Tringham's own use.

23 On November 17, 2009, the Debtor filed a second motion to
24 dismiss the Nondischargeability Complaint (the Motion to
25 Dismiss). Wang contended she was never involved in any material
26 aspect of Tringham's business operations and that she "never had
27 a chance to mount any defense" to the State Court Complaint.
28 Wang asserted, without elaborating, that she had been "a victim

1 of Tringham's deceptions and fraudulent conduct as much, if not
2 more, than any creditor of Tringham's estate."

3 On February 17, 2010, the bankruptcy court dismissed
4 Votteler's § 523(a)(6) claim of willful and malicious injury
5 because it found that the allegations contained in the
6 Nondischargeability Complaint, even if true, did not establish
7 that Wang committed any act with the intent to cause injury.
8 However, the § 523(a)(2)(A) claim was not dismissed and trial on
9 the Nondischargeability Complaint was set for September 2010.

10 On March 1, 2010, Votteler filed a motion for relief from
11 the automatic stay (Stay Relief Motion) for cause under
12 § 362(d)(1) on the grounds that Wang filed her bankruptcy case in
13 bad faith and that it would serve judicial economy to allow the
14 Appeal to proceed in state court. Votteler contended that the
15 Nondischargeability Complaint could be easily resolved if the
16 Appeal proceeded to conclusion because if the Default Judgment
17 was affirmed, the ruling would be preclusive of the issue of
18 whether Wang committed fraud under § 523(a)(2)(A).

19 On March 11, 2010, Wang filed an opposition to the Stay
20 Relief Motion. In her opposition, she argued there was no cause
21 to lift the stay. She asserted that because "she did not have a
22 chance to defend" the allegations contained in the State Court
23 Complaint, the Default Judgment did not constitute an actual
24 finding of fraud that could be given preclusive effect to the
25 issues raised in the Nondischargeability Complaint. She argued
26 that the Appeal could take months to conclude and therefore,
27 granting the stay relief would not result in a more expeditious
28

1 disposition of the Nondischargeability Complaint or save judicial
2 resources.

3 The bankruptcy court held a hearing on the Stay Relief
4 Motion on March 22, 2010. On April 8, 2010, the bankruptcy court
5 entered a memorandum decision and order granting Votteler relief
6 from the automatic stay to allow the Appeal to proceed in state
7 court and to temporarily halt proceedings on the
8 Nondischargeability Complaint until the Appeal was decided (the
9 Stay Relief Order). The bankruptcy court found that it was in
10 the interest of judicial economy to allow the Appeal to proceed.
11 The Debtor timely appealed. Wang has since filed her opening
12 brief with the state court on the Appeal.

13 II. JURISDICTION

14 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
15 § 157(b)(2)(G). We briefly address our jurisdiction under 28
16 U.S.C. § 158.

17 We lack jurisdiction to hear a moot appeal. I.R.S. v.
18 Pattullo (In re Pattullo), 271 F.3d 898, 900 (9th Cir. 2001). An
19 appeal may become moot when events transpire such that the
20 appellate court can grant no effective relief to the parties.⁵
21 Id. at 901; Church of Scientology of Calif. v. United States,
22 506 U.S. 9, 12 (1992).

23
24
25
26 ⁵ This is considered "constitutional mootness" because it
27 "derives from constitutional limitations on the federal court to
28 adjudicate only actual cases and live controversies." Clear
Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 33
(9th Cir. BAP 2008).

1 Wang has already filed her opening brief with the state
2 court on the Appeal. It is not required that Wang file a reply
3 brief or appear at oral argument. Therefore, the Appeal is now
4 proceeding in state court. Nevertheless, the Stay Relief Order
5 also temporarily halted litigation on the Nondischargeability
6 Complaint until the Appeal concluded. Even though we can do
7 nothing to stop the Appeal from proceeding, we could provide
8 relief to Wang if we were to reverse the bankruptcy court's Stay
9 Relief Order because the Nondischargeability Litigation would no
10 longer be on hiatus and Wang could proceed to a trial on the
11 merits. Therefore, because it is possible to provide relief, the
12 appeal is not moot, and we have jurisdiction to decide the
13 merits.⁶

14 III. ISSUE

15 Did the bankruptcy court abuse its discretion in granting
16 Votteler relief from the automatic stay so that the Appeal could
17 proceed in state court?

18 IV. STANDARDS OF REVIEW

19 We review a bankruptcy court's order granting relief from
20 the automatic stay for an abuse of discretion. Arneson v.
21 Farmers Ins. Exch. (In re Arneson), 282 B.R. 883, 887 (9th Cir.
22 BAP 2002); Kronemyer v. Am. Contractors Indemn. Co. (In re
23 Kronemyer), 405 B.R. 915, 919 (9th Cir. BAP 2009).

24 In determining whether the bankruptcy court abused its
25 discretion, we first "determine de novo whether the [bankruptcy]

27 ⁶ Accordingly we DENY the Appellee's September 15, 2010
28 Motion to Dismiss for Lack of Jurisdiction.

1 court identified the correct legal rule to apply to the relief
2 requested." United States v. Hinkson, 585 F.3d 1247, 1262 (9th
3 Cir. 2009). If the bankruptcy court identified the correct legal
4 rule, we then determine whether its "application of the correct
5 legal standard [to the facts] was (1) illogical, (2) implausible,
6 or (3) without support in inferences that may be drawn from the
7 facts in the record." Id. (internal quotation marks omitted).
8 Therefore, if the bankruptcy court did not identify the correct
9 legal rule, or its application of the correct legal standard to
10 the facts was illogical, implausible, or without support in
11 inferences that may be drawn from the facts in the record, then
12 the bankruptcy court has abused its discretion. Id.

13 **V. DISCUSSION**

14 Under § 362(d)(1), relief from the automatic stay may be
15 granted "for cause." The party seeking relief must establish a
16 prima facie case that cause exists for relief. Truebro, Inc. v.
17 Plumberex Specialty Prods., Inc. (In re Plumberex Specialty
18 Prods., Inc.), 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004); Duvar
19 Apt., Inc. v. Fed. Deposit Ins. Corp. (In re Duvar Apt., Inc.),
20 205 B.R. 196, 200 (9th Cir. BAP 1996). Once established, the
21 burden shifts to the debtor to show that stay relief is
22 unwarranted. Id.

23 Because "cause" is not defined by the Bankruptcy Code, what
24 constitutes cause is decided on a case-by-case basis. MacDonald
25 v. MacDonald (In re MacDonald), 755 F.2d 715, 717 (9th Cir.
26 1985); Christensen v. Tucson Estates, Inc. (In re Tucson Estates,
27 Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). Courts in the Ninth
28 Circuit have granted stay relief to permit the conclusion of

1 pending litigation in a nonbankruptcy forum when the litigation
2 involves multiple parties or is ready for trial. See Id. at
3 1169. Courts have also considered whether permitting the
4 conclusion of pending litigation is in the interest of judicial
5 economy or within the expertise of a state court. In re
6 MacDonald), 755 F.2d at 717.

7 Courts evaluate several non-exclusive factors to determine
8 if cause exists to permit pending litigation to continue in
9 another forum. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D.
10 Utah 1984); In re Plumberex Specialty Prods., Inc., 311 B.R. at
11 559 (the Curtis Factors). These factors are:

- 12 1. Whether the relief will result in a partial or
13 complete resolution of the issues;
- 14 2. The lack of any connection with or interference
15 with the bankruptcy case;
- 16 3. Whether the foreign proceeding involves the debtor
17 as a fiduciary;
- 18 4. Whether a specialized tribunal has been
19 established to hear the particular cause of action
20 and whether that tribunal has the expertise to
21 hear such cases;
- 22 5. Whether the debtor's insurance carrier has assumed
23 full financial responsibility for defending the
24 litigation;
- 25 6. Whether the action essentially involves third
26 parties, and the debtor functions only as a bailee
27 or conduit for the goods or proceeds in question;
- 28 7. Whether the litigation in another forum would
prejudice the interests of other creditors, the
creditor's committee and other interested parties;
8. Whether the judgment claim arising from the
foreign action is subject to equitable
subordination;
9. Whether movant's success in the foreign proceeding
would result in a judicial lien avoidable by the
debtor under Section 522(f);

1 10. The interests of judicial economy and the
2 expeditious and economical determination of
3 litigation for the parties;

4 11. Whether the foreign proceedings have progressed to
5 the point where the parties are prepared for
6 trial, and

7 12. The impact of the stay and the "balance of hurt."
8 see also Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re
9 Sonnax Indus., Inc.), 907 F.2d 1280, 1286 (2d Cir. 1990); Adelson
10 v. Smith (In re Smith), 389 B.R. 902, 918-19 (Bankr. D. Nev.
11 2008).

12 Votteler contended that if the Appeal proceeded to a final
13 judgment that affirmed the Default Judgment, it could be
14 dispositive of the fraud claims in the Nondischargeability
15 Complaint. Therefore, Votteler argued it would be in the
16 interest of judicial economy to lift the stay to allow the Appeal
17 to proceed. Votteler also asserted that the issues presented by
18 the Appeal were best resolved by the state court and that
19 proceeding in the state court would not prejudice Wang or the
20 other creditors. Votteler argued that the overall balance of
21 harms favored stay relief.

22 Wang contended that none of the Curtis Factors weighed in
23 Votteler's favor. Wang repeated her contention that the merits
24 of the State Court Complaint were never litigated or decided, and
25 therefore, could not be used to preclude litigation of the
26 Nondischargeability Complaint.

27 While the Curtis Factors are used to determine whether cause
28 exists for stay relief, not all the factors may be relevant to
29 the facts of a given case or afforded equal weight. In re Smith,
30 389 B.R. at 919; In re Kronemyer, 405 B.R. at 921. The

1 bankruptcy court identified and reviewed the Curtis Factors and
2 determined that the "pivotal issue" was "whether proceeding with
3 the state court action would resolve any issues for the
4 bankruptcy court." Memorandum Decision at 5. Thus, the
5 bankruptcy court analyzed whether, for purposes of finding cause
6 to lift the stay, the resolution of the Appeal could assist in
7 determining whether Votteler's claim was dischargeable. Because
8 the bankruptcy court found that collateral estoppel⁷ could
9 potentially be used to resolve the Nondischargeability Complaint,
10 it concluded "the balance of hurt, the interests of judicial
11 economy, and the lack of prejudice to creditors" weighed in favor
12 of stay relief. Id.

13 **A. Resolution Of Issues/Judicial Economy**

14 Votteler argued, and the bankruptcy court agreed, that stay
15 relief could result in the efficient resolution of the
16 Nondischargeability Complaint based on the principles of issue
17 preclusion. However, Wang argued that because "no issues related
18 to the substantive allegations of the [State Court Complaint]
19 were ever litigated," issue preclusion could not be applied to
20 the Nondischargeability Complaint. Appellant's Opening Br. at
21 13, 17; Reply at 5-8. Furthermore, Wang insists that because the
22 Default Judgment was appealed, it was not a final decision for
23 purposes of applying issue preclusion.

24
25 ⁷ Collateral estoppel is more accurately expressed as issue
26 preclusion, which includes the doctrines of direct estoppel and
27 collateral estoppel to foreclose re-litigation of matters that
28 have been previously litigated. Paine v. Griffen (In re Paine),
283 B.R. 33, 38-39 (9th Cir. BAP 2002) (citing Migra v. Warren
City School Dist. Bd. of Educ., 465 U.S. 75, 77 n.1 (1984)).

1 To be clear, the bankruptcy court did not determine that if
2 the Default Judgment was affirmed it would necessarily preclude
3 litigation of the Nondischargeability Complaint. Rather, the
4 bankruptcy court used the issue preclusion analysis only to
5 determine, pursuant to the Curtis Factors, whether stay relief
6 might result in the partial or complete resolution of the issues
7 in the Nondischargeability Complaint or whether stay relief would
8 be in the interest of judicial economy by providing an
9 expeditious and economical determination of litigation for the
10 parties.

11 Issue preclusion prevents re-litigation of an issue
12 previously decided in a prior judicial proceeding and applies to
13 nondischargeability proceedings. Grogan v. Garner, 498 U.S. 279,
14 285 n.11 (1991); Harmon v. Kobrin (In re Harmon), 250 F.3d 1240,
15 1245 (9th Cir. 2001). It is "intended to avoid inconsistent
16 judgments and the related misadventures associated with giving a
17 party a second bite at the apple." Lopez v. Emergency Serv.
18 Restoration, Inc. (In re Lopez), 367 B.R. 99, 104 (9th Cir. BAP
19 2007).

20 Bankruptcy courts must apply state law to determine the
21 preclusive effect of a state court judgment in a subsequent
22 bankruptcy court proceeding. Gayden v. Nourbakhsh (In re
23 Nourbakhsh), 67 F.3d 798, 800 (9th Cir. 1995); Newsom v. Moore
24 (In re Moore), 186 B.R. 962, 968 (Bankr. N.D. Cal. 1995);
25 28 U.S.C. § 1738 (federal courts must give "full faith and
26 credit" to state court judgments). In California, default
27 judgments are entitled to full faith and credit and may be given
28 preclusive effect. Carwin v. Healy (In re Healy), 2008 WL

1 2852871 *3 (Bankr. E.D. Cal. 2008); Bugna v. McArthur (In re
2 Bugna), 33 F.3d 1054, 1057 (9th Cir. 1994); see also, Christopher
3 Klein, et al., Principles of Preclusion and Estoppel in
4 Bankruptcy Cases, 79 AM. BANKR. L. J. 839, 854 (2005) ("whether an
5 issue necessary for entry of a default or consent judgment can be
6 relitigated will depend on the court where the judgment was
7 taken.").

8 Under California law, five requirements must be satisfied in
9 order for issue preclusion to apply: (1) the issue to be
10 precluded is identical to the issue in the former proceeding;
11 (2) the issue was actually litigated in the former proceeding;
12 (3) the issue was necessarily decided in the former proceeding;
13 (4) the judgment in the former proceeding is a final judgment on
14 the merits; and (5) the party against whom preclusion is sought
15 must be the same as in the former proceeding. Lucido v. Superior
16 Court, 51 Cal.3d 335, 341 (1990), cert. denied, 500 U.S. 920
17 (1991); Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (9th
18 Cir. BAP 1997).

19 Neither party disputed the presence of the first or fifth
20 factors in their arguments to the bankruptcy court. The
21 bankruptcy court analyzed the remaining factors and found that if
22 the Default Judgment was affirmed, issue preclusion could be
23 applied to partially or completely resolve the Non-
24 dischargeability Complaint.

25 Wang argues for the first time on appeal that there was no
26 identity of issues between the State Court Complaint and the
27 Nondischargeability Complaint, which Wang asserted contained
28 "invented new allegations" and a new theory of liability.

1 Appellant's Opening Br. at 13; Reply at 9. Generally, we do not
2 address issues raised for the first time on appeal. O'Rourke v.
3 Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957
4 (9th Cir. 1989). Nonetheless, we can easily dispense with the
5 argument. The elements necessary to establish that a debt is
6 nondischargeable under § 523(a)(2)(A), "mirror the elements of
7 common law fraud." In re Younie, 211 B.R. at 373-74 (citing Am.
8 Express Travel Related Servs. Co., Inc. v. Hashemi (In re
9 Hashemi), 104 F.3d 1122, 1125 (9th Cir. 1996), as amended, cert.
10 denied, 520 U.S. 1230 (1997)); In re Nourbakhsh, 67 F.3d at 800.
11 Because the State Court Complaint alleged facts sufficient to
12 support a claim based on common law fraud, it necessarily shared
13 an identity with the § 523(a)(2)(A) allegations contained in the
14 Nondischargeability Complaint.

15 Wang argues she was never given a chance to defend against
16 the State Court Complaint. She contends that the reason she did
17 not file a timely answer and the Default was entered was because
18 she did not receive proper service of the State Court Complaint.
19 The rationale behind finding that default judgments can be
20 preclusive is that defendants who are served with a summons and
21 complaint but fail to respond are presumed to admit all the facts
22 pled in the complaint. Harmon v. Kobrin (In re Harmon), 250 F.3d
23 1240, 1247 (9th Cir. 2001). Certainly, if the state appeals
24 court overturns the Default Judgment based on a lack of due
25 process or improper service, the Default Judgment will have no
26 preclusive effect. But default judgments are considered:

27 conclusive to the issues tendered by the complaint as
28 if it had been rendered after answer filed and trial

1 had on the allegations denied by the answer . . . Such
2 a judgment is res judicata as to all issues aptly
3 pleaded in the complaint and defendant is estopped from
4 denying in a subsequent action any allegations
5 contained in the former complaint.

6 In re Moore 186 B.R. at 971 (citations omitted). Therefore, a
7 default judgment can satisfy the "actually litigated" requirement
8 of issue preclusion.

9 However, for a default judgment to be actually litigated,
10 the material factual issues must have been both raised in the
11 pleadings and necessary to uphold the default judgment. Id. at
12 971-72; In re Harmon, 250 F.3d at 1247.

13 The State Court Complaint alleged facts supporting
14 Votteler's claims that Tringham, Finbar, and Wang committed
15 common law fraud and conversion. In entering the Default
16 Judgment, the state court expressly found that Votteler presented
17 evidence demonstrating that the defendants defrauded him and
18 converted his property. Thus, the factual issues of fraud were
19 raised in the pleadings and were necessary to the Default
20 Judgment. As a result, the State Court Complaint was "actually
21 litigated" and necessarily decided. Id.; see In re Younie, 211
22 B.R. at 374-75.

23 Wang cites to Schneiderman v. Bogdanovich (In re
24 Bogdanovich), 292 F.3d 104 (2d Cir. 2002)⁸ to support her

25 ⁸ The plaintiffs in Bogdanovich requested stay relief on the
26 basis that the resolution of an appeal of a jury verdict, if
27 affirmed, would preclude litigation of their nondischargeability
28 action. However, the Second Circuit found there was insufficient
information in the complaint, the transcript, and the jury

(continued...)

1 contention that only a final judgment on the merits can be used
2 to preclude a subsequent proceeding. We do not disagree.
3 However, the bankruptcy court undertook its analysis of issue
4 preclusion as a hypothetical simply to determine if stay relief
5 might resolve, efficiently and economically, issues in the
6 bankruptcy court. Wang conflates the bankruptcy court's analysis
7 under the Curtis Factors with the notion that the bankruptcy
8 court granted stay relief so that Votteler could try to "win on
9 appeal and then retroactively impose [issue preclusion] to
10 support the [D]efault [J]udgment." Appellant's Opening Br. at
11 15. As the bankruptcy court was careful to note, whether or not
12 issue preclusion actually does or will apply to the
13 Nondischargeability Complaint after the outcome of the Appeal is
14 left to decide at another time.

15 The bankruptcy court correctly analyzed the Curtis Factors
16 and found that because the litigation on the State Court
17 Complaint had progressed to the point where the parties had only
18 the opening briefs left to be submitted for the Appeal, there was
19 minimal cost or effort in allowing the Appeal to proceed. The
20 resolution of the Appeal would decide Wang's contentions that she
21 was not afforded the opportunity to defend against the
22 allegations contained in State Court Complaint and would
23 potentially assist the bankruptcy court in its determination of
24

25 ⁸(...continued)
26 verdict to know what specific allegations were submitted to the
27 jury. The court concluded that issue preclusion could not be
28 used because the court was unable to determine what issues were
"actually and necessarily" decided. 292 F.3d at 113-14.

1 the preclusive effect of the Default Judgment on the
2 Nondischargeability Complaint. Thus, the bankruptcy court found
3 that it would be in the interests of judicial economy to allow
4 the Appeal to proceed. This finding was not illogical,
5 implausible, or unsupported by the record, and therefore, was not
6 an abuse of discretion.

7 **B. Lack Of Prejudice To Creditors And Balance Of Hurt**

8 The bankruptcy court found that because the parties had only
9 the opening briefs left to prepare for the Appeal, "the minimal
10 expense of completing an appeal that may fully resolve the issue
11 [would] result in less hardship and prejudice to all parties
12 (including creditors) and be more expeditious and economical than
13 requiring both parties to re-litigate the action from the
14 beginning." Memorandum Decision at 6. Trial on the
15 Nondischargeability Complaint was approximately six months away.
16 While it appeared from the record that discovery had begun, it
17 was unclear whether it had concluded. Nevertheless, the trial
18 would necessarily demand more effort and cost to the parties and
19 the court than the submission of an appellate brief. Given that
20 Wang had very few creditors and received her bankruptcy discharge
21 on March 31, 2010, the other creditors were not prejudiced by
22 allowing the Appeal to proceed.

23 The bankruptcy court applied the correct rule of law by
24 analyzing the Curtis Factors to determine whether cause existed
25 to lift the stay, and by analyzing the correct legal standard for
26 issue preclusion as part of that analysis. As discussed, not all
27 the Curtis Factors apply to each case, nor must the factors be
28 given equal weight. The bankruptcy court's finding that the

1 resolution of the Appeal would promote judicial economy by
2 potentially resolving, efficiently, in part or in whole, the
3 issues raised by the Nondischargeability Complaint without
4 prejudice to the other parties is not illogical, implausible, or
5 unsupported by the facts in the record. Accordingly, we conclude
6 that the bankruptcy court did not abuse its discretion in
7 granting Votteler relief from the automatic stay so that the
8 Appeal could proceed to resolution in the state court.

9 **CONCLUSION**

10 For the foregoing reasons, we AFFIRM the bankruptcy court's
11 Stay Relief Order.