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

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. EC-13-1200-PaJuKu
)	
KEVIN HEALY,)	Bankr. No. 10-38019
)	
Debtor.)	Adv. Proc. 10-2606
)	
_____)	
KEVIN HEALY,)	
)	
Appellant,)	
)	
v.)	MEMORANDUM ¹
)	
M. CYNTHIA ROSE,)	
)	
Appellee.)	
)	
_____)	

Argued and Submitted on May 14, 2015
at Sacramento, California

Filed - May 27, 2015

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

Honorable Michael S. McManus, Bankruptcy Judge, Presiding

Appearances: Appellant Kevin Healy argued pro se; Stephanie J. Finelli argued for appellee M. Cynthia Rose.

Before: PAPPAS, JURY, and KURTZ, 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 8024-1.

1 Chapter 7² debtor Kevin M. Healy ("Healy") appeals the
2 judgment of the bankruptcy court determining that his debt to
3 creditor M. Cynthia Rose ("Rose") is excepted from discharge under
4 § 523(a)(6). We AFFIRM.

5 I. FACTS

6 The Fee Dispute and the Arbitration

7 This litigation involves a contest between a lawyer and his
8 former client. The attorney, Healy, represented Rose from the
9 late 1990s until 2002. They did not part amicably. Rose disputed
10 that she owed certain fees to Healy, and she eventually filed a
11 complaint against him with the California State Bar.

12 The fee dispute was referred to a private arbitration. After
13 an evidentiary hearing, on March 29, 2002, the arbitrators found
14 in favor of Healy, and awarded him \$77,076.75, which was reduced
15 by \$1,750, representing his half of the \$3,500 filing fee. It is
16 not disputed that Rose claimed in the arbitration that she had
17 paid the entire \$3,500 while, in fact, she had only paid \$1,250.
18 In other words, while the award effectively gave Rose a credit
19 equal to one-half of the arbitration fee (\$1,750), she had only
20 paid \$1,250.

21 Healy obtained a copy of Rose's \$1,250 check before the
22 arbitration award was announced. Nevertheless, when it was
23 entered, he did not move to vacate or correct the arbitration
24 award, nor did he otherwise bring the fee payment discrepancy to

25
26 ² Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
28 Rule references are to the Federal Rules of Bankruptcy Procedure,
Rules 1001-9037, all Civil Rule references are to the Federal
Rules of Civil Procedure 1-86, and all Appellate Rule references
are to the Federal Rules of Appellate Procedure 1-48.

1 the attention of the arbitrators, or to Charles Bauer ("Bauer"),
2 Rose's attorney in the arbitration proceeding.

3 Rose paid the arbitration award to Healy, and Rose did not
4 appeal the award.

5 **The State Court Proceedings**

6 Over two years later, on April 27, 2004, Healy filed a civil
7 suit against Rose in Sacramento County Superior Court (the "State
8 Court") asserting that she had committed perjury during the
9 arbitration proceedings. Healy alleged that Rose had falsely
10 testified in the arbitration proceedings that she had paid \$3,500
11 for the arbitration fees when she had in fact only paid \$1,250.
12 Healy sought damages of \$1,250 (the difference between one-half of
13 \$3,500 and one-half of \$1,125), unspecified special damages, and
14 punitive damages of \$1 million.

15 On June 1, 2004, Rose filed a motion to dismiss the State
16 Court complaint under Cal. Code Civ. Proc. § 426.16, California's
17 anti-SLAPP statute. After the recusal of two judges, the case was
18 assigned to a third judge. On July 9, 2004, the State Court
19 notified the parties that a hearing on the dismissal motion would
20 be held on July 21, 2004. Healy did not file an opposition to the
21 dismissal motion; however, the day before the hearing on the
22 dismissal motion, Healy filed a letter with the State Court
23 demanding a stay of the proceedings because he was on duty with
24 the U.S. Naval Reserve, citing as authority Cal. Mil. & Vet. Code
25 § 403. The State Court denied Healy's demand for a stay because
26 the letter purportedly from Healy's commanding officer was not on
27 command letterhead, was addressed "To Whom It May Concern," and
28 failed to specify the dates when Healy would be on active duty.

1 At the hearing, the State Court granted Rose's motion to dismiss,
2 concluding that Healy could not recover based on Rose's testimony
3 in the arbitration proceeding because the "litigation privilege"
4 in Cal. Civ. Code § 47³ was an absolute defense to Healy's action
5 and, as a result, "as a matter of law plaintiff cannot show
6 probability of prevailing on the merits."

7 Rose then filed a motion for an award of attorney's fees and
8 costs she had incurred in securing the dismissal of Healy's
9 complaint and opposing his efforts to stay the action. The fee
10 motion was set to be heard on August 25, 2004.

11 Before the hearing on Rose's motion for fees and costs, Healy
12 filed a chapter 7 bankruptcy case on August 16, 2004. The
13 bankruptcy court later granted Rose relief from the automatic stay
14 to proceed with the State Court hearing on the motion for fees and
15 costs. Eight days after the stay relief order was entered,
16 Healy's first bankruptcy case was dismissed.

17 On February 24, 2005, Healy filed a motion in the State Court
18 under Cal. Code Civ. Proc. § 473⁴ to set aside the dismissal of
19 his complaint. The State Court denied the motion because Healy
20

21 ³ **§ 47. Privileged publication or broadcast**

22 A privileged publication or broadcast is one made: . . .

23 (b) In any (1) legislative proceeding, **(2) judicial**
24 **proceeding**, (3) in any other official proceeding
25 authorized by law, or (4) in the initiation or course of
26 any other proceeding authorized by law and reviewable
pursuant to Chapter 2 (commencing with Section 1084) of
Title 1 of Part 3 of the Code of Civil Procedure . . .

27 Cal. Civ. Code § 47(b) (2015) (emphasis added).

28 ⁴ Cal. Code Civ. Proc. § 473 is similar to Civil Rule 60(b).

1 had not demonstrated mistake, inadvertence, or excusable neglect,
2 had not filed a required affidavit, and had not shown that Cal.
3 Civ. Code § 47 was not an absolute defense to his complaint. The
4 State Court further found that Healy had not acted in good faith
5 in seeking a stay of proceedings under Cal. Mil. & Vet. Code
6 § 403, and had instead sought protection under that act to
7 "deliberately and willfully attempt to evade ultimate
8 determination of the issues involved in the litigation."

9 On March 21, 2005, the State Court awarded Rose \$14,280 in
10 attorney's fees and \$734 in costs (the "First Fee Award"). Healy
11 paid the First Fee Award; it is not at issue in this appeal.

12 Healy appealed the dismissal and First Fee Award on May 20,
13 2005. On February 14, 2007, the California Court of Appeals
14 dismissed the appeal of the dismissal as untimely, affirmed the
15 First Fee Award, and awarded appellate attorneys fees and costs to
16 Rose, in an amount to be determined by the State Court. On
17 June 12, 2007, the State Court entered a judgment for Rose for
18 attorney's fees and costs of \$12,739.68 for the appellate fees and
19 costs (the "Second Fee Award").

20 Healy filed a motion for reconsideration of the Second Fee
21 Award. The State Court denied the motion in an order, a portion
22 of which was later read into the record at trial in the adversary
23 proceeding:

24 The complaint alleges fraud and deceit based on
25 statements made by [Rose] in a key arbitration
26 proceeding. The claims fall squarely within the plain
27 language of the anti-SLAPP statute. They are aimed at
28 the defendant's right to petition and right to freedom
of speech. They also lack even minimal merit.

1 Trial Tr. 155:12-16, November 9, 2012.⁵

2 On October 10, 2007, Rose filed a motion in the State Court
3 for an award of post-judgment attorney's fees of \$6,180 and costs
4 of \$243.68. The State Court heard the motion for post-judgment
5 attorney's fees on June 20, 2008, and, although Healy had not
6 submitted any opposition to the motion, the State Court permitted
7 him to argue against the merits of Rose's motion. The State Court
8 then awarded additional fees of \$11,400 in attorney's fees and
9 \$782.10 in costs (the "Third Fee Award").

10 **The Second Bankruptcy and the Adversary Proceeding**

11 Healy filed another chapter 7 petition on July 9, 2010. On
12 September 27, 2010, Rose filed an adversary complaint in the
13 bankruptcy court seeking an exception to discharge under
14 § 523(a)(6) for the Second and Third Fee Awards. The complaint
15 alleged that Healy had willfully and maliciously injured her
16 through his frivolous and vexatious litigation tactics. Rose
17 asked that the balance due on the Second and Third Fee Awards,
18 \$24,921 plus interest, be excepted from discharge.

19 A four-day trial in the adversary proceeding was held in
20 November 2012. Five witnesses testified: Healy (over three days),
21 Peter G. Mancuso (the former attorney for Healy), Bauer (Rose's
22 former counsel), and Douglas Whatley and Stehle Lanphier (attorney
23

24 ⁵ Rose attempted to collect the Second Fee Award. On
25 December 5, 2007, Healy was apparently scheduled to appear at an
26 examination. On the evening of December 4, Healy sent a fax to
27 Rose's attorney stating that the Second Fee Award was "paid and
28 stayed." Healy included a copy of a receipt from the sheriff for
\$13,087. Rose therefore cancelled the examination. However,
Rose's check to the sheriff was returned for insufficient funds
because, as the bankruptcy court would later find, there was less
than \$600 in Healy's account on the date the check was written.

1 colleagues of Healy).⁶ At the close of evidence, the bankruptcy
2 court took the issues under submission.

3 The bankruptcy court entered detailed findings of fact and
4 conclusions of law on March 29, 2013, siding with Rose and against
5 Healy on all material issues. The court's findings included the
6 following:

7 Healy is an attorney with significant litigation
8 experience. It is difficult to believe, and the court
9 does not believe, that he did not understand that
10 statements made by witnesses and parties in the context
11 of litigation are privileged. See Cal. Civ. Code
12 § 47(b).

13 There is no credible evidence that Healy consulted other
14 attorneys or did research into the viability of the
15 action against Rose.

16 The [State Court] complaint filed by Healy against Rose
17 is completely out of proportion to the amount in
18 controversy, \$1,125. It consists of 156 paragraphs,
19 demands not only the \$1,125 but unspecified special
20 damages and punitive damages (which demand was later
21 quantified by Healy at \$1 million), and includes
22 numerous allegations unrelated to the payment of the
23 arbitration fee.

24 The filing and prosecution of a suit against Rose in
25 state court for perjury was done to annoy and harass
26 Rose, with Healy's knowledge that the suit lacked merit.
27 In so doing, Healy acted deliberately, intentionally,
28 and for purpose of injuring Rose. His conduct resulted
in a willful injury to Rose.

Here, Healy filed and prosecuted a suit against Rose
even though he likely knew it lacked merit for the
purpose of harassing Rose. There was no just cause or
excuse for this conduct, particularly considering the
fact that Healy was an attorney, and his conduct
necessarily caused injury to Rose.

The bankruptcy court entered a judgment on April 9, 2013,
excepting Healy's debt to Rose under § 523(a)(6) from discharge

⁶ Rose did not testify. The bankruptcy court authorized Healy to take her deposition and he did so. However, Healy did not offer it into evidence at trial.

1 for the unpaid balance plus interest of the Second and Third Fee
2 Awards. Healy filed a timely appeal.

3 II. JURISDICTION

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

6 III. ISSUE

7 Whether the bankruptcy court erred in determining that
8 Healy's debt to Rose was excepted from discharge under
9 § 523(a)(6).

10 IV. STANDARD OF REVIEW

11 We review de novo whether a particular debt is excepted from
12 discharge under § 523(a)(6). Maaskant v. Peck (In re Peck),
13 295 B.R. 353, 360 (9th Cir. BAP 2003). The bankruptcy court's
14 findings of fact are reviewed for clear error. Oney v. Weinberg
15 (In re Weinberg), 410 B.R. 19, 28 (9th Cir. BAP 2009).

16 V. DISCUSSION⁷

17 In his brief, Healy characterizes his dispute with Rose as "a
18

19 ⁷ As a preliminary matter, we address Healy's motion filed
20 with this Panel on August 21, 2014, seeking a writ of mandamus or
21 other order voiding the state court's Second and Third Fee Awards
22 and dismissing the adversary proceeding. In it, Healy argues that
the Second and Third Fee Orders were void as a matter of law based
upon "new evidence" that the State Court judge who entered them
should have been disqualified. We decline to grant Healy any
relief on this motion.

23 By his motion, Healy is asking us to consider alleged "new
24 evidence" on appeal that was not submitted to the bankruptcy
25 court. This would be inappropriate. Miles v. Ryan, 691 F.3d
26 1127, 1142 (9th Cir. 2012) (noting that "We do not consider new
27 evidence produced on appeal."); see also United States v. Waters,
28 627 F.3d 345, 355 n.3 (9th Cir. 2010) ("Facts not presented to the
district court are not part of the record on appeal."). Further,
Healy did not raise this issue in either his opening or reply
brief. "We do not consider matters not specifically and
distinctly raised and argued in the opening brief[.]" Padgett v.
Wright, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).
Healy's motion is therefore **DENIED**.

1 convoluted and unintelligible Symphony[.]” Healy Op. Br. at 6. We
2 disagree. This is an appeal from a judgment wherein the
3 bankruptcy court determined that, as the result of Healy’s
4 malicious prosecution of the State Court action against Rose, his
5 obligation to pay her the litigation costs the State Court awarded
6 to Rose is excepted from discharge under § 523(a)(6). Healy
7 commenced and prosecuted a lawsuit against Rose alleging that she
8 committed perjury during the arbitration; the bankruptcy court
9 determined that Healy knew, or should have known, that statements
10 made by Rose in the course of the arbitration were absolutely
11 privileged under California law; but despite this, in suing Rose,
12 Healy acted deliberately, intentionally, and for the purpose of
13 injuring Rose. As explained below, the bankruptcy court’s
14 analysis was precisely on target.

15 **A. The bankruptcy court did not err in determining that Healy’s**
16 **challenges to the Second and Third Fee Awards lacked merit.**

17 The bankruptcy court found, as a matter of fact, that, “when
18 Healy filed the state court action accusing Rose of perjury, he
19 did so knowing it lacked legal merit and in order to harass his
20 former client.” The court supported its ruling with the following
21 factual findings:

- 22 - Healy made no attempt to modify the arbitration award.
- 23 - Healy never addressed the merits of Rose’s motion to
24 dismiss his lawsuit during the years the actions were pending in
25 the trial and appellate courts.
- 26 - Although Healy claimed to have consulted other attorneys
27 about the legal viability of his action against Rose, they
28 amounted to no more than “casual conversations with office-mates

1 and friends" and "none gave him legal opinions sanctioning the
2 suit."

3 - Healy produced no memoranda or notes concerning his own
4 legal research. Although he testified that he read a law review
5 article and did research on an "extrinsic fraud" theory, "he
6 presented no specific, on-point authority."

7 We find that each of these findings is supported in the
8 record by competent evidence. Based upon these findings, the
9 bankruptcy court determined that, when he filed and thereafter
10 prosecuted his suit against Rose, it had no merit and that Healy
11 knew, or should have known, that was so. Nevertheless, in the
12 bankruptcy court and this appeal, Healy has maintained that
13 California's statutory "litigation privilege" is not absolute.
14 Because of this, Healy contends, his suit against Rose was
15 commenced and pursued in good faith. We disagree.

16 Our review of the California case law concerning the
17 litigation privilege shows Healy's continuing position is
18 meritless, something the bankruptcy court found Healy understood
19 when he sued Rose, and thereafter pursued his action against her.
20 California's litigation privilege is codified in Cal. Civ. Code
21 § 47(b), quoted above. As described by the California Supreme
22 Court, the protections embodied in Cal. Civ. Code § 47(b) amount
23 to "an 'absolute' privilege, and [the statute] bars all tort
24 causes of action except a claim of malicious prosecution."
25 Hagberg v. Cal. Fed. Bank, 81 P.3d 244, 254 (Cal. 2004). The
26 purpose of Cal. Civ. Code § 47(b) is "to afford litigants and
27 witnesses the utmost freedom of access to the courts without fear
28 of being harassed subsequently by derivative tort actions."

1 Silberg v. Anderson, 786 P.2d 365, 373 (Cal. 1990). In
2 particular, this absolute litigation privilege bars any later
3 claims for relief or causes of action for a party's alleged
4 perjury. Flatley v. Mauro, 139 P.2d 2, 16 (Cal. 2006); Doctors'
5 Co. Ins. Servs. v. Super. Ct., 225 Cal. App. 3d 1284, 1300 (1990)
6 (the litigation privilege applies to subornation of perjury
7 because "it is in the nature of a statutory privilege that it must
8 deny a civil recovery for immediate wrongs – sometimes even
9 serious and troubling ones – in order to accomplish what the
10 Legislature perceives as a greater good"); Carden v. Getzoff,
11 190 Cal. App. 3d 907, 915 (1987). In addition, as is precisely
12 the case in this appeal, "statements made in the course of a
13 private, contractual arbitration proceeding are protected by the
14 litigation privilege." Moore v. Conliffe, 871 P.2d 204, 207 (Cal.
15 1994).

16 The bankruptcy court did not err when it decided that there
17 was no legal basis for Healy's State Court complaint against Rose.

18 **B. Healy knew or should have known that his complaint against
19 Rose lacked merit.**

20 In the course of Healy's testimony over three days of trial
21 in the bankruptcy court, and in his briefs in this appeal, he has
22 steadfastly argued that Cal. Civ. Code § 47(b) should not apply to
23 Rose's statements in the arbitration proceeding. Healy insists
24 that he has a good faith basis in the law to sue Rose. In
25 response, the bankruptcy court repeatedly demanded that Healy
26 provide some legal authority for that contention; Healy was unable
27 to cite to any. Reacting to this, the bankruptcy court found
28 that:

1 Healy is an attorney with significant litigation
2 experience. It is difficult to believe, and the court
3 does not believe, that he did not understand that
4 statements made by witnesses and parties in the context
of litigation are privileged. See Cal. Civ. Code
§ 47(b).

5 In this concise finding, the bankruptcy court determined that, as
6 a matter of fact, Healy, an experienced California litigator,
7 understood that Rose's statements in the arbitration proceedings
8 were absolutely privileged.

9 We must give substantial deference to the bankruptcy court's
10 findings because they were based in part on credibility
11 determinations concerning witness testimony. Anderson v. City of
12 Bessemer City, N.C., 470 U.S. 564, 573 (1985); Rosenbaum v. City &
13 Cnty. of San Francisco, 484 F.3d 1142, 1163 (9th Cir. 2007) (the
14 "trial court's credibility findings are subject to clear error and
15 deserve special deference"). Because the record amply supports
16 them, the bankruptcy court did not clearly err in its fact
17 findings.

18 **C. The bankruptcy court did not err in excepting the Second and**
19 **Third Fee Awards from discharge under § 523(a)(6).**

20 Because the gravamen of Healy's complaint in State Court was
21 that Rose had committed perjury in the arbitration proceeding, and
22 because Rose's statement was absolutely privileged under Cal. Civ.
23 Code § 47(b), the State Court awarded damages to Rose under Cal.
24 Code Civ. Proc. § 425.16, which provides, in relevant part:

25 § 425.16(a) The Legislature finds and declares that
26 there has been a disturbing increase in lawsuits brought
27 primarily to chill the valid exercise of the
28 constitutional rights of freedom of speech and petition
for the redress of grievances. The Legislature finds
and declares that it is in the public interest to
encourage continued participation in matters of public

1 significance, and that this participation should not be
2 chilled through abuse of the judicial process. To this
end, this section shall be construed broadly.

3 (b) (1) A cause of action against a person arising from
4 any act of that person in furtherance of the person's
5 right of petition or free speech under the United States
6 Constitution or the California Constitution in
connection with a public issue shall be subject to a
special motion to strike

7 (c) (1) Except as provided in paragraph (2), in any
8 action subject to subdivision (b), a prevailing
9 defendant on a special motion to strike shall be
entitled to recover his or her attorney's fees and costs
. . . .

10 (e) As used in this section, "act in furtherance of a
11 person's right of petition or free speech under the
12 United States or California Constitution in connection
13 with a public issue" includes: (1) any written or oral
statement or writing made before a legislative,
executive, or judicial proceeding, or any other official
proceeding authorized by law[.]

14 The State Court determined that Rose made her statements in
15 the arbitration proceeding in furtherance of her rights of free
16 speech under the U.S. and California Constitutions; that they were
17 statements made in a judicial proceeding; and that Healy had not
18 effectively opposed the anti-SLAPP motion. Under the plain
19 language of the California statute, Rose could invoke the anti-
20 SLAPP statute, and as the prevailing party in the State Court
21 action, under Cal. Civ. Code § 425.16(c), Rose could recover her
22 attorney's fees and costs incurred in defending against Healy's
23 baseless claims.

24 The bankruptcy court did not err in excepting the Second and
25 Third Fee Awards from discharge. Section 523(a)(6) excepts from
26 discharge debts arising from a debtor's "willful and malicious"
27 injury to another person or to the property of another. Barboza
28 v. New Form, Inc. (In re Barboza), 545 F.3d 702, 706 (9th Cir.

1 2008). The "willful" and "malicious" are conjunctive
2 requirements, subject to separate analysis. Id.; Carrillo v. Su
3 (In re Su), 290 F.3d 1140, 1146-47 (9th Cir. 2002).

4 Section "523(a)(6) renders a debt nondischargeable when there
5 is either a subjective intent to harm, or a subjective belief that
6 harm is substantially certain." Id. at 1144; see also Petralia v.
7 Jercich (In re Jercich), 238 F.3d 1202, 1208 (9th Cir. 2001). The
8 injury must be deliberate or intentional, "not merely a deliberate
9 or intentional act that leads to injury." Kawaauhau v. Geiger,
10 523 U.S. 57, 61-62 (1998); see also In re Barboza, 545 F.3d at 706
11 ("A willful injury is a deliberate or intentional injury, not
12 merely a deliberate or intentional act that leads to injury.")

13 An injury is "malicious," as that term is used in
14 § 523(a)(6), when it is: "(1) a wrongful act, (2) done
15 intentionally, (3) which necessarily causes injury, and (4) is
16 done without just cause or excuse." Jett v. Sicroff
17 (In re Sicroff), 401 F.3d 1101, 1106 (9th Cir. 2005). It is the
18 wrongful act that must be committed intentionally, rather than the
19 injury itself. See Murray v. Bammer (In re Bammer), 131 F.3d 788,
20 791 (9th Cir. 1997) ("This four-part definition does not require a
21 showing of . . . an intent to injure, but rather it requires
22 only an intentional act which causes injury.").⁸

23 The bankruptcy court correctly applied the Code and case law

24
25 ⁸ Healy criticizes the bankruptcy court's reliance upon
26 Murray v. Bammer (In re Bammer), 131 F.3d 788, 791 (9th Cir. 1997)
27 for the four-part malicious test because that decision was
28 published before the Supreme Court's decision in Geiger. However,
Geiger analyzed the willfulness prong of § 523(a)(6), not the
maliciousness prong. As indicated in In re Sicroff, the four-part
test for maliciousness discussed in Bammer remains good law, and
the bankruptcy court did not err in applying that test.

1 in determining that the debt based upon the Second and Third Fee
2 Awards was excepted from discharge under § 523(a)(6). After
3 listening to the witness testimony, and considering the other
4 evidence, the bankruptcy court found, as a matter of fact based in
5 part on its credibility determinations concerning Healy, that he
6 knew that the litigation privilege protected Rose's statements in
7 the arbitration, and that he thus knew that his lawsuit against
8 Rose lacked any merit. Healy's protests that he could proceed in
9 the face of the settled legal authorities on this issue, because
10 the law should be subject to good faith challenge, lacks any
11 substance here because he admitted that he had not researched that
12 legal issue, nor had he obtained any formal advice of counsel
13 concerning the viability of his claim. The bankruptcy court could
14 therefore conclude that Healy filed and prosecuted the "suit
15 against Rose to annoy and harass Rose, with Healy's knowledge that
16 the suit lacked merit." The bankruptcy court's findings of fact
17 were not clearly erroneous. We therefore conclude that the court
18 did not err in finding the willfulness prong of § 523(a)(6)
19 satisfied.

20 As to the maliciousness prong, the bankruptcy court concluded
21 that Healy's suit against Rose was an unlawful act, because his
22 claims against her were barred by the California litigation
23 privilege. Healy obviously prosecuted the action against Rose
24 intentionally, and his conduct necessarily caused financial injury
25 to Rose, requiring her to retain counsel to appear and defend
26 against Healy's baseless claim, as evidenced by the Second and
27 Third Fee Awards. And the bankruptcy court found that, as a
28 lawyer, Healy could offer no justification or excuse for his

1 conduct in prosecuting the meritless litigation against Rose. The
2 bankruptcy court properly found that the § 523(a)(6) maliciousness
3 prong was also satisfied.⁹

4 **VI. CONCLUSION**

5 The bankruptcy court's findings of fact were not clearly
6 erroneous. Upon de novo review, based upon those findings, we
7 conclude that the bankruptcy court did not err in determining that
8 Healy's debt to Rose is excepted from discharge under § 523(a)(6).
9 We AFFIRM the judgment of the bankruptcy court.

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28 ⁹ Healy's other arguments in this appeal all lack merit; we decline to discuss them.