

JUL 09 2015

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. AZ-14-1381-JuKiPa
)
 ROMAN A. KOSTENKO,) Bk. No. 2:12-bk-02741-DPC
)
 Debtor.)
)
 _____)
)
 MARTHA S. KOSTENKO,)
)
 Appellant,)
)
 v.) M E M O R A N D U M *
)
 ROMAN A. KOSTENKO; ERIC M.)
 HALEY, Chapter 7 Trustee,)
)
 Appellees.)
 _____)

Submitted on June 19, 2015
at Phoenix, Arizona

Filed - July 9, 2015

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable Daniel P. Collins, Chief Bankruptcy Judge, Presiding

Appearances: Jody A. Corrales of DeConcini McDonald Yetwin &
 Lacy, P.C. argued for appellant Martha S.
 Kostenko; Claudio E. Iannitelli of Cheifetz
 Iannitelli Marcolini PC argued for appellee Roman
 A. Kostenko; Stuart Bradley Rodgers of Lane &
 Nach PC argued for appellee Eric M. Haley,
 chapter 7 trustee.

Before: JURY, KIRSCHER, and PAPPAS, Bankruptcy Judges.

* 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 Appellant Martha S. Kostenko (Ms. Kostenko) is the former
2 wife of chapter 7¹ debtor Roman A. Kostenko (Debtor). After
3 Debtor received his § 727 discharge, but before the bankruptcy
4 case was fully administered and closed, the state court
5 conducted a trial and entered a judgment/decree (Divorce Decree)
6 dissolving the parties' marriage and dividing the community
7 property and debt.² Located under the heading "Division of
8 Property and Debts," and within a series of paragraphs
9 apportioning responsibility for various marital debt, was a hold
10 harmless provision. In dividing the property, the state court
11 determined that an unequal division of community property was
12 appropriate "to achieve equity." As a result, the state court
13 ordered Debtor to reimburse Ms. Kostenko one-half of a 2011 tax
14 refund and pay her a portion of the proceeds from the
15 liquidation of rental properties (Rentals), both of which were
16 included in Debtor's estate under § 541(a)(2).

17 After the state court issued the Divorce Decree,
18 Ms. Kostenko filed an amended proof of claim (Amended POC) in
19 the bankruptcy case asserting claims for her share of the 2011
20 tax refund and proceeds from the Rentals. Debtor objected to
21 the Amended POC and filed a motion to enforce the discharge
22 injunction (Enforcement Motion), claiming that the state court
23 imposed obligations on him for marital debt which was

24
25 ¹ Unless otherwise indicated, all chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 and
27 "Rule" references are to the Federal Rules of Bankruptcy
28 Procedure.

² The Divorce Decree also addressed support and other issues
not relevant to this appeal.

1 discharged.

2 The bankruptcy court sustained Debtor's objection to the
3 Amended POC and granted Debtor's Enforcement Motion. The court
4 found that (1) the state court did not have jurisdiction to
5 divide the community property which was property of the estate;
6 (2) the division of community debt related to prepetition
7 liabilities that were discharged in the bankruptcy case; and
8 (3) Ms. Kostenko did not have a claim but only an equity
9 interest in the community property, which had become property of
10 Debtor's estate. In the end, the court found that the
11 provisions in the Divorce Decree relating to the division of
12 property and debt were null and void.

13 Ms. Kostenko appeals from the orders sustaining Debtor's
14 objection to her Amended POC and granting his Enforcement
15 Motion. For the reasons explained below, we AFFIRM the
16 bankruptcy court's order on the Amended POC and AFFIRM in part
17 and VACATE in part the order granting Debtor's Enforcement
18 Motion.

19 I. FACTS

20 On February 15, 2012, Debtor, a family law attorney, filed
21 a chapter 13 petition. At the time, Debtor and Ms. Kostenko
22 were parties to a divorce action (Divorce Proceeding). As of
23 the filing date, the state court had not divided the community
24 property or debt.

25 Community assets consisted of real and personal property
26 valued at approximately \$455,000, with community secured and
27 unsecured liabilities of \$580,000. The primary assets included
28 the marital residence and three single-family Rentals, all

1 titled solely in Debtor's name, and listed in Debtor's
2 Schedule A. Most of the liabilities listed in Debtor's
3 schedules were community liabilities with the exception of his
4 student loans in the amount of \$14,590, two court reporting fees
5 totaling \$1,361.95, and child support owed in the amount of
6 \$700. Among the listed community debts, Debtor included a Citi
7 credit card and a Bank of America World Points (World Points)
8 credit card that were issued in Ms. Kostenko's name. In
9 Schedule F, Debtor listed Ms. Kostenko as an unsecured creditor
10 with a claim in an unknown amount due to the pending divorce.
11 Debtor also listed the divorce proceeding as pending in his
12 Statement of Financial Affairs.

13 Debtor filed a chapter 13 plan which sought to retain
14 ownership of the Rentals. Ms. Kostenko objected to confirmation
15 of the plan, contending that the plan was not proposed in good
16 faith, but instead for the improper purpose of avoiding Debtor's
17 priority domestic support obligations.

18 On May 11, 2012, the chapter 13 trustee issued an
19 Evaluation and Recommendation Report (Recommendation Report)
20 giving notice of the potential dismissal of Debtor's case if
21 certain conditions were not satisfied. One such condition
22 required Debtor to turn over all tax refunds to the trustee for
23 2011 and subsequent years as supplemental plan payments. In
24 July 2012, Debtor turned over the 2011 tax refund to the
25 trustee.

26 In October 2012, Ms. Kostenko filed a motion for relief
27 from the automatic stay to allow the parties to proceed with the
28 dissolution of marriage. Debtor objected to the motion insofar

1 as she sought relief from the stay for the division of community
2 property.

3 In December 2012, Ms. Kostenko filed an emergency motion to
4 dismiss Debtor's case, arguing that his plan was not proposed in
5 good faith but for the improper purpose of avoiding Debtor's
6 unsecured domestic support obligations. Ms. Kostenko also
7 complained that Debtor failed to disclose or divide the parties'
8 2011 tax refund which Debtor had received.

9 The bankruptcy court heard Ms. Kostenko's motion for relief
10 from the stay, her motion to dismiss, and Debtor's plan
11 confirmation at the same time. The court subsequently entered
12 an order finding that Debtor had failed to comply with the
13 trustee's Recommendation Report, failed to make timely plan
14 payments, and failed to remain current on his domestic support
15 orders. As a result, the bankruptcy court converted Debtor's
16 case to chapter 7. The order further granted Ms. Kostenko
17 limited relief from stay to proceed with the dissolution, but
18 stated that the division of property and debts would remain
19 under the jurisdiction of the bankruptcy court.

20 Eric H. Haley was appointed the chapter 7 trustee
21 (Trustee).

22 In late January 2013, Ms. Kostenko filed a motion to compel
23 Trustee to abandon to her one-half of the 2011 tax refund.
24 Ms. Kostenko maintained for various reasons that her portion of
25 the income tax refund should not belong to Debtor's bankruptcy
26 estate. Trustee objected, arguing that the full tax refund was
27 property of the estate under § 541 and that Debtor had a duty to
28 remit the refund to him under § 542. The bankruptcy court

1 denied Ms. Kostenko's motion.

2 In February 2013, Trustee filed a motion to sell the
3 Rentals free and clear of liens, which the bankruptcy court
4 granted. The properties were sold in July 2013, with net
5 proceeds exceeding \$108,000.

6 In early March 2013, Ms. Kostenko filed another motion to
7 dismiss Debtor's case, again arguing that he had filed the
8 bankruptcy case in bad faith. Ms. Kostenko asserted that Debtor
9 was using the bankruptcy system as a way to avoid an unfavorable
10 ruling by the state court regarding the division of the marital
11 property. Trustee argued in opposition that he expected a
12 substantial distribution to creditors and thus dismissal of the
13 case, which had been pending for over a year, would cause
14 prejudice to creditors who had filed claims and those who had
15 yet to file claims. Trustee also noted that Debtor had been
16 cooperative in the administration of the estate thus far. In
17 reply, Ms. Kostenko again asserted Debtor had filed the
18 bankruptcy case in bad faith and argued that she never consented
19 to the bankruptcy court retaining jurisdiction over the division
20 of assets. Ms. Kostenko requested dismissal of the case or, in
21 the alternative, requested the bankruptcy court to abstain
22 regarding the division of assets and debts and to remand those
23 issues to the state court to determine.

24 On April 11, 2013, Trustee filed a notice of trustee's
25 intent to abandon all personal property listed on Debtor's
26 schedules, but specified that the estate was retaining all
27 interests in the 2011 income tax refund, real property and
28 Debtor's law practice.

1 Meanwhile, Ms. Kostenko filed a claim of homestead
2 exemption against the marital property. Trustee objected to the
3 homestead on the ground that Ms. Kostenko had no interest in the
4 property.

5 In late April 2013, Debtor filed a notice claiming a
6 homestead exemption in the marital residence and explaining that
7 he did not previously claim the exemption because he and his
8 counsel erroneously believed he was not eligible for the
9 exemption because as of the Petition Date he did not reside in
10 the marital residence. Debtor filed an amended Schedule C
11 listing the homestead exemption. Debtor also objected to
12 Ms. Kostenko's claim of homestead exemption against the
13 property. Debtor asserted that she had no legal right to claim
14 the exemption because she had executed a disclaimer deed whereby
15 she disclaimed any interest in the property.

16 Ms. Kostenko responded by arguing Debtor was ineligible to
17 assert the homestead exemption because he did not occupy the
18 property on the petition date. As a result, Ms. Kostenko
19 asserted that only she could claim the exemption in the entire
20 property. Ms. Kostenko also noted that she and Trustee were
21 negotiating a settlement that would resolve her motion to
22 dismiss and Trustee's objection to her claimed homestead.

23 Thereafter, Trustee filed a motion to continue the hearing
24 on Ms. Kostenko's motion to dismiss and his objection to her
25 claimed homestead exemption since the settlement negotiations
26 were ongoing. Debtor opposed the continuance, arguing that
27 neither Trustee nor Ms. Kostenko had any right to enter into a
28 settlement regarding exempt property in which he asserted

1 rights.

2 Trustee then filed an application seeking approval of his
3 settlement with Ms. Kostenko. Pursuant to the agreement,
4 Ms. Kostenko would withdraw her motion to dismiss with prejudice
5 and, in return, Trustee would deliver to her a trustee's deed
6 transferring the estate's interest in the marital residence
7 subject to all interests, liens and encumbrances. Debtor
8 opposed the settlement to the extent Trustee awarded any portion
9 of the homestead exemption to either Ms. Kostenko or Debtor.

10 In response, Trustee amended his application stating that
11 he did not take a position as to who was entitled to claim a
12 homestead exemption on the property and that the bankruptcy
13 court should determine that issue. Trustee also confirmed that
14 when she entered into the settlement agreement Ms. Kostenko was
15 under the impression that she would be taking the interest of
16 the estate in the marital residence free of Debtor's claim of
17 homestead.

18 On August 8, 2013, the bankruptcy court entered an order
19 granting Trustee's amended application to settle with
20 Ms. Kostenko pursuant to the following terms: her motion to
21 dismiss would be dismissed with prejudice; Trustee would
22 withdraw his objection to her notice of homestead; Trustee would
23 transfer the estate's interest in the marital residence to
24 Ms. Kostenko subject to the parties' interest in the applicable
25 statutory homestead exemption of \$150,000; and Trustee would
26 abandon the estate's interest in Debtor's law practice.

27 Meanwhile, Ms. Kostenko filed a motion again requesting the
28 bankruptcy court to abstain from presiding over the division and

1 disposition of the marital residence and also from making any
2 decisions about the homestead exemption. Debtor opposed,
3 arguing that the court had expressly retained exclusive
4 jurisdiction over the division of property without objection
5 from Ms. Kostenko and thus the court should determine which of
6 the parties was entitled to claim the exemption. In reply,
7 Ms. Kostenko asserted that by virtue of Trustee's settlement
8 agreement with her, the marital residence was no longer property
9 of Debtor's estate and Trustee had disclaimed any interest in
10 the parties' competing claims to the homestead exemption.
11 Therefore, according to Ms. Kostenko, the determination of who
12 was entitled to the homestead exemption was moot since the
13 property was no longer property of the estate and thus no longer
14 subject to liquidation by Trustee.

15 On September 26, 2013, the bankruptcy court entered an
16 order on Ms. Kostenko's abstention motion, finding that the
17 \$150,000 homestead exemption relating to the marital property
18 belonged both to her and Debtor as a community property asset.
19 The order further stated: "The state court will determine how
20 to equalize the exemption with all other community property
21 assets and liabilities, pursuant to applicable community
22 property laws, for the reasons stated on the record."³ Finally,
23 the court found that the equity in the marital residence over
24 and beyond the \$150,000 homestead exemption belonged to

25
26 ³ There is no transcript of this hearing in the record but
27 this statement in the court's order seems to indicate that the
28 bankruptcy court thought the state court would divide the
property and debt by requiring Debtor to make some sort of
equalization payment.

1 Ms. Kostenko as her sole and separate property.

2 In November 2013, the parties entered into a binding
3 settlement agreement to sell the marital residence and equally
4 divide the net proceeds of the sale.

5 On November 25, 2013, Debtor received his discharge.

6 The parties subsequently returned to the state court to
7 complete their dissolution proceedings. In connection with the
8 upcoming divorce trial, Debtor and Ms. Kostenko filed their
9 Joint Pretrial Statement on January 24, 2014. There,
10 Ms. Kostenko requested the state court to order Debtor to
11 reimburse her for one-half of the 2011 tax refund. Ms. Kostenko
12 also sought \$33,500 from the proceeds obtained through the sale
13 of the Rentals. This amount was one-half of the proceeds that
14 remained after the secured community debts were paid on the
15 Rentals through Debtor's bankruptcy case. Ms. Kostenko
16 maintained that this amount should come out of Debtor's equity
17 in the marital residence. She also asserted that two community
18 debts remained - the Citi credit card with a balance \$3,989.15
19 and the World Points credit card with a balance of \$12,038.17.
20 Ms. Kostenko proposed that these balances be paid out of the
21 proceeds from the sale of the marital home.⁴

22 On January 30, 2014, the state court held a trial.

23 On March 12, 2014, the state court issued the Divorce
24 Decree dissolving the marriage and addressing, among other
25 things, the 2011 tax refund, the proceeds from the Rentals, and
26

27 ⁴ The marital home was no longer property of the estate
28 pursuant to Ms. Kostenko's settlement with Trustee.

1 the allocation of liability for community debt. The state court
2 first found that under Arizona law, an unequal division of
3 community property was appropriate to achieve equity.
4 Accordingly, the state court ordered Debtor to reimburse
5 Ms. Kostenko for her one-half share of the 2011 tax refund.
6 Concerning the Rentals, the state court stated there was some
7 question whether the bankruptcy court had continuing
8 jurisdiction over the parties' finances and therefore it ordered
9 the parties to file an update with the court no later than
10 April 1, 2014. However, the state court noted that Ms. Kostenko
11 was requesting payment for her interest in the Rentals after the
12 payment of secured community debt.

13 Under the heading "Debts," the state court ordered that if
14 the Citi and World Points credit cards debt was not discharged
15 in Debtor's bankruptcy, those debts should be divided equally.
16 In addition, the decree provided that "Father shall be solely
17 responsible for any credit card or debt in his name incurred
18 after service of the Complaint" and that "[a]ny community debts
19 that were not identified at the time of the trial shall be
20 divided equally between the parties." Finally, the decree
21 stated: "Each party shall indemnify and hold harmless from any
22 and all debts designated as the responsibility of that party by
23 the terms set forth in this Decree."⁵

24 On April 30, 2014, the marital property was sold.
25

26 ⁵ While Ms. Kostenko asked the state court to make orders
27 that related to Debtor's half of the exempt marital property,
28 which was no longer property of his estate, that is not what the
state court did.

1 On April 28, 2014, Ms. Kostenko filed an Amended POC. The
2 Amended POC asserted a claim for the sum of \$63,907.70 which was
3 comprised of claims for \$52,515.94 (50% community interest in
4 the equity from the Rentals), \$3,211 (50% community interest in
5 the 2011 tax refund), and the prior claim for unpaid child
6 support in the amount of \$8,180.76. Ms. Kostenko asserted that
7 the \$8,180.76 amount was a claim based on a "domestic support
8 obligation" entitled to priority under § 507(a)(1)(A) or (B).

9 Attached to the Amended POC was the Third Circuit's
10 decision in In re Ruitenberq, 745 F.3d 647 (3d Cir. 2014).
11 There, the Third Circuit held the chapter 7 Debtor's estranged
12 wife had an allowed prepetition claim against the estate based
13 upon her interest in the equitable distribution of marital
14 assets in divorce proceedings that were pending when the Debtor
15 filed his bankruptcy petition, even though the final judgment of
16 divorce had not yet been entered. According to the Third
17 Circuit, the wife's interest was unliquidated and contingent
18 upon a final decree apportioning the marital property and thus
19 "clearly" was a claim within the scope of § 101(5)(A).

20 Debtor filed an objection to and motion to expunge
21 Ms. Kostenko's Amended POC. Debtor argued that the Amended POC
22 was yet another attempt by Ms. Kostenko to circumvent the
23 bankruptcy court's reserved jurisdiction over division of
24 property and debt and to seize for herself any surplus equity
25 that Trustee may have left for distribution to Debtor, after all
26 of the creditors were paid. Debtor further asserted that the
27 bankruptcy estate held the full interest in the Rentals and 2011
28 tax refund under § 541(a)(2). Finally, Debtor maintained that

1 the Ruitenberq case was inapplicabile because it applied
2 New Jersey law, a non-community property jurisdiction. Debtor
3 asserted that no case had applied § 541(a)(2), which brings the
4 community property interests into the bankruptcy estate, in a
5 non-community law jurisdiction.

6 Trustee joined in Debtor's objection to Ms. Kostenko's
7 Amended POC and her reliance on Ruitenberq.

8 In light of the state court's rulings, Debtor also filed
9 the Enforcement Motion seeking to have the bankruptcy court
10 enforce the discharge injunction. Debtor maintained that the
11 hold harmless debt was a prepetition debt subject to his
12 discharge under the holding in Heilman v. Heilman
13 (In re Heilman), 430 B.R. 213 (9th Cir. BAP 2010). Debtor also
14 complained that the state court's order requiring him to
15 reimburse Ms. Kostenko for one-half of the 2011 tax refund and
16 proceeds from the Rentals violated the discharge injunction.

17 In response to the motion, Ms. Kostenko argued that the
18 holding in Heilman was inapplicabile because in that case the
19 Debtor filed for bankruptcy and obtained his discharge before
20 the divorce proceeding was initiated. In contrast, Debtor filed
21 the divorce proceeding prior to filing his petition and thus
22 Debtor cannot skirt his domestic support obligations to
23 Ms. Kostenko and hide behind his bankruptcy filing.

24 Ms. Kostenko further argued that the state court orders
25 allocating community property that was liquidated in the
26 bankruptcy court was not void and that the debts arising out of
27 the Divorce Decree were nondischargeable under § 523(a)(5) or
28 (15).

1 The bankruptcy court heard the Enforcement Motion and
2 Debtor's objection to and motion to expunge Ms. Kostenko's
3 Amended POC on June 30, 2014. After hearing argument, the court
4 ruled:

5 I think that -- and I'm going to order that the motion
6 of the Debtor is granted with respect to the credit
7 cards. The state court in the March 12, 2014[]
8 dissolution order says that the father shall be solely
9 responsible for any credit card or debt in his name
10 incurred after the service of the complaint. That is
11 a time period prior to the bankruptcy. So if he
12 incurs some debts post divorce proceeding but
13 pre-bankruptcy, I don't think the state court can hold
14 him liable for that because he has a discharge for all
15 of those debts that he incurred post dissolution
16 filing and pre-bankruptcy.

17 The [state] court goes on to say that any community
18 debts that were not identified at the time of the
19 trial should be divided equally between the parties.
20 Again, to the extent that there are credit card debts
21 like the Citi card and the WorldsPoint (sic) credit
22 card which were admittedly incurred pre-divorce,
23 pre-bankruptcy, and as community obligations, albeit
24 incurred by Mrs. Kostenko, those obligations were
25 discharged in the bankruptcy of Mr. Kostenko relative
26 to him and to the community, albeit not as to
27 Mrs. Kostenko.

28 The [state] court goes on to say that the Debtor
should ensure that the mother's name is removed from
all credit card accounts assigned to him and vice
versa. I don't think that there's bankruptcy stay
implications relative to that.

And the [state] court goes on then to say that each
party shall indemnify and hold harmless from any and
all debts designated as the responsibility of the
other party. I understand that's standard domestic
relations language. But it just simply can't be the
case that to the extent Mrs. Kostenko gets stuck with
liabilities that were discharged in the bankruptcy
that were community liabilities, I don't think that
the state court can then hold Mr. Kostenko liable on
an indemnity for those obligations. He got a
discharge and we can't have the state court after the
fact -- after the fact of the discharge, that is, then
start loading personal liability on him for such
things as this indemnity or hold harmless.

The tax refund I think everybody agrees is fully

1 property of the estate. And the state court is not
2 the party to decide -- or is not the jurisdiction to
3 decide where the tax refund goes. That's property of
4 the estate. The Trustee has control of that and is
5 going to be paying out those tax refunds according to
6 what the Bankruptcy Court is calling for. Which, by
7 the way, there will be a priority claim for the Debtor
8 for the amount -- I think it's an agreed-upon amount
9 of 5,485.57. That is the very first priority level.
10 And so the Debtor -- or I should say the Debtor's
11 ex-wife will get that straight off the top after
12 administrative claims are covered for the
13 administration of this case.

14 So then with respect to the rental properties, I
15 really think that what we have is described in the
16 Petersen[, 437 B.R. 858 (D. Ariz. 2010)] case. And
17 that while Mrs. Kostenko may have an interest in these
18 properties as properties of the community, all
19 community property comes into this bankruptcy. All
20 community liabilities and allowed claims against this
21 estate get paid from that before Mrs. Kostenko ever
22 would see anything from this bankruptcy estate. And
23 if it's going to be a shortfall -- and it certainly
24 sounds like everybody believes there will be a
25 shortfall -- she's not going to have an equity
26 position. And that's all she ever had in these rental
27 properties is an equity position. It didn't exist
28 prepetition and doesn't exist now. And so to the
extent that the state court was calling for
Mr. Kostenko to pay an equalization or in some other
way have an obligation to Mrs. Kostenko relative to
these rental properties, I think the state court has
overstepped the bounds there.

19

20 So with that -- and I guess I should also say that I
21 really don't believe I'm bound by the Third Circuit
22 decision. It comes from New Jersey where we don't
23 have community property laws in effect there. I think
24 it's just a completely different animal. And again, I
25 think the tieback to this case -- yes, Mrs. Kostenko
26 has an interest in community assets which belong to
27 this bankruptcy estate. But that interest is really
28 an equity position, not off the top before creditors
get their share of what they're entitled to in this
matter.

26 On July 17, 2014, the bankruptcy court entered the order
27 granting Debtor's Enforcement Motion. On the same date, the
28 bankruptcy court entered the order sustaining Debtor's objection

1 to and motion to expunge Ms. Kostenko's Amended POC.

2 On July 31, 2014, Ms. Kostenko filed a timely notice of
3 appeal from both orders. On September 26, 2014, a one-judge
4 order was issued permitting Ms. Kostenko to appeal both the
5 orders in a single appeal. On October 7, 2014, a one-judge
6 order authorized Trustee to be added as an appellee by
7 stipulation of the parties.

8 **II. JURISDICTION**

9 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
10 §§ 1334 and 157(b)(2)(A) and (B). We have jurisdiction under
11 28 U.S.C. § 158.

12 **III. ISSUES**

13 A. Whether the bankruptcy court erred by sustaining
14 Debtor's objection to Ms. Kostenko's Amended POC and by
15 expunging it; and

16 B. Whether the bankruptcy court erred by finding that the
17 discharge injunction applied to the obligations imposed on
18 Debtor under the division of property provisions in the Divorce
19 Decree.

20 **IV. STANDARDS OF REVIEW**

21 We review a bankruptcy court's legal conclusions, including
22 its interpretation of the Bankruptcy Code and state law, de
23 novo. In re Heilman, 430 B.R. at 216.

24 We review the bankruptcy court's order expunging
25 Ms. Kostenko's Amended POC de novo. Cont'l Ins. Co. v. Thorpe
26 Insulation Co. (In re Thorpe Insulation Co.), 671 F.3d 1011,
27 1020 (9th Cir. 2012).

28 The bankruptcy court's finding that a violation of the

1 § 524 discharge injunction has occurred is reviewed for clear
2 error. Sciarrino v. Mendoza, 201 B.R. 541, 543 (E.D. Cal 1996).
3 A finding is clearly erroneous if it is illogical, implausible,
4 or without support in the record. United States v. Hinkson,
5 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

6 **V. DISCUSSION**

7 Ms. Kostenko concedes that under § 541(a)(2)⁶, all
8 community property not yet divided by the state court at the
9 time of Debtor's bankruptcy filing is property of his estate,
10 subject to administration by the trustee and payment to
11 creditors. See Birdsell v. Petersen (In re Petersen), 437 B.R.
12 858, 867 (D. Ariz. 2010) (analyzing Arizona statutory law and
13 finding that none of the statutes took the community property
14 outside the ambit of the bankruptcy estate under § 541(a)(2)).
15 It follows that proceeds from the sale of the community property
16 during the bankruptcy case are also considered property of the

17
18 ⁶ Section 541(a) provides in part:

19 The commencement of a case under . . . this title
20 creates an estate. Such estate is comprised of all of
21 the following property, wherever located:

22 (2) All interests of the debtor and the debtor's spouse
23 in community property as of the commencement of the
case that is -

24 (A) under the sole, equal or joint management
25 and control of the debtor; or

26 (B) liable for an allowable claim against the
27 debtor, or for both an allowable claim
28 against the debtor and an allowable claim
against the debtor's spouse, to the extent
that such interest is so liable.

1 estate under §§ 541(a)(2) and (6). Non-exempt community
2 property is available to pay community debts according to the
3 priority scheme set forth in § 726(c)(2).

4 The bankruptcy court has exclusive jurisdiction over
5 property of the estate, including community property. 28 U.S.C.
6 § 1334(e)(1); § 541(a)(2). This exclusively is so even when
7 there is a concurrent dissolution proceeding in state court.
8 See Teel v. Teel (In re Teel), 34 B.R. 762, 763-64 (9th Cir. BAP
9 1983). Here, the bankruptcy court indisputably retained control
10 over the estate community property and its disbursement to
11 creditors under both its order granting Ms. Kostenko limited
12 relief from the stay to proceed with the dissolution proceeding
13 in the state court without a division of property and debt and
14 the supremacy clause, Article VI, Clause 2, of the U.S.
15 Constitution. See Id. at 764. The state court was thus
16 precluded from dividing the non-exempt community property and
17 debt before Debtor's case was closed. Accordingly, the
18 bankruptcy court properly found the property division provisions
19 under the Divorce Decree were null and void and ineffective.
20 Because Ms. Kostenko's claims in the Amended POC were based
21 solely on the property division provisions, the bankruptcy court
22 did not err in sustaining Debtor's objection to Ms. Kostenko's
23 Amended POC.⁷

24
25 ⁷ There is no dispute that Ms. Kostenko's priority claim
26 asserted in the Amended POC was proper. Under § 727(c)(2)(B), if
27 State law allows for community property to be liable for separate
28 debts, then community property would be available in bankruptcy
for those same debts. In re Merlino, 62 B.R. 836, 840 (Bankr.
(continued...)

1 Debtor's Enforcement Motion called into question the scope
2 of Debtor's discharge with respect to the state court's division
3 of community debt. The discharge under § 727(a) discharges the
4 Debtor from all debts that arise prior to the commencement of
5 the case. The discharge "voids any judgment at any time
6 obtained, to the extent that such judgment is a determination of
7 the personal liability of the Debtor with respect to any debt
8 discharged under section 727. . . ." § 524(a)(1). The
9 discharge also "operates as an injunction against the
10 commencement or continuation of an action, . . . to collect
11 . . . any such debt as a personal liability of the Debtor
12" § 524(a)(2).

13 The bankruptcy court's order granting the Enforcement
14 Motion provides:

15 1. The Debtor's Motion for (1) Enforcement of
16 Discharge Injunction -and- (2) To Declare Null and
17 Void Portions of Superior Court Order in Violation of
18 Discharge Injunction is hereby GRANTED.

19 2. The orders of the State Court referenced above as
20 paragraphs (a) through (e) are hereby declared null
21 and void and of no effect.⁸

22 ⁷(...continued)
23 W.D. Wash. 1986). Under Arizona law, community property is not
24 liable for either spouse's separate debts, except in those
25 situations involving the value of one spouse's contribution to
26 the community property. See Ariz. Rev. Stat. § 25-215(B).
27 Therefore, community property is not available to pay
28 Ms. Kostenko's support claims.

⁸ These provisions stated:

(a) that Ms. Kostenko's community debts (Citi Card
(\$2,860.50) and World Points Credit Card (\$8,900.00))
shall be divided equally between Ms. Kostenko and the
(continued...)

1 3. The State Court has no jurisdiction to impose
2 personal liability on the Debtor for discharged debts
following the Debtor's discharge.

3 It is undisputed that Debtor obtained his chapter 7
4 discharge and that this discharge enjoins collection of
5 prepetition claims against him, as noted above. Therefore, the
6 state court did not have jurisdiction to divide the property and
7 debt and the related provisions in the Divorce Decree are null
8 and void. Thus, the bankruptcy court's order under paragraphs
9 one and two was correct.

10 The third paragraph in the enforcement order is in the
11 nature of prospective declaratory relief. Generally,
12 "[d]eterminations regarding the scope of the discharge require a
13 declaratory judgment obtained in an adversary proceeding."
14 In re Munoz, 287 B.R. 546, 551 (9th Cir. BAP 2002) (citing
15 Rule 7001(9)). In Munoz, the Panel found that "[i]t is error to
16 circumvent the requirement of an adversary proceeding by using a
17 'contested matter' motion under [Rule] 9014." Id. Accordingly,

18
19 ⁸(...continued)
Debtor;

20
21 (b) that any community debts that were not identified
22 at the time of the trial shall be divided equally
between Ms. Kostenko and the Debtor;

23 (c) that each party shall indemnify and hold harmless
24 from any and all debts designated as the responsibility
of that party by the terms set forth in this Decree;

25 (d) that the Debtor shall reimburse Ms. Kostenko for
26 one half share of the parties' 2011 tax refund;

27 (e) that the Debtor shall reimburse Ms. Kostenko for
28 one half share of equity of the parties' rental
properties that is part of the bankruptcy estate.

1 while we affirm the bankruptcy court's decision that the debt
2 division provisions in the Divorce Decree are null and void, we
3 vacate paragraph three which provides prospective declaratory
4 relief to Debtor on the scope of the discharge injunction.

5 To be clear, our conclusions on appeal do not "terminate
6 the matter of division and distribution of property as between
7 the divorcing spouses. Jurisdiction over the division and
8 distribution of the parties' property as between themselves
9 pursuant to the divorce returns to the state court" once the
10 bankruptcy case is closed. Shulkin Hutton Inc. v. Treiger
11 (In re Owens), 2007 WL 7540999, at *6 (9th Cir. BAP June 25,
12 2007) (J. Klein concurring) (citing In re Teel, 34 B.R. at 764);
13 see also In re Herter, 457 B.R. 455 (Bankr. D. Idaho 2011),
14 aff'd, 2013 WL 588145, at *3 (D. Idaho Feb. 13, 2013) (noting
15 that it was not until the Debtor's bankruptcy case was closed
16 that the state court gained the ability to effectively transmute
17 community property to the separate property of the spouses).

18 It is possible that Ms. Kostenko may hold a
19 nondischargeable equitable claim which may be determined by the
20 state court after the case is closed. Ariz. Rev. Stat. § 25-318
21 authorizes the state court to allocate community liabilities
22 between the parties in effecting an equitable division of all
23 community property. Spector v. Spector, 17 Ariz. App. 221, 225,
24 496 P.2d 864, 867 (Ariz. Ct. App. 1972). The statute requires
25 that the division of property must be equitable, "though not
26 necessarily in kind." The Arizona Supreme Court had noted:

27 Obviously, the trial court may make adjustments to
28 accommodate the necessities of the situation. Where
physical assets are not readily divisible or

1 available, . . . the statute contemplates that the
2 court could compensate a spouse for his or her
3 interest in the assets, and, of necessity, that would
be by an award of money.

4 Martin v. Martin, 156 Ariz. 452, 458, 752 P.2d 1038, 1044 (Ariz.
5 1988). “‘Equitable’ means just that—it is a concept of fairness
6 dependent upon the facts of particular cases.” Toth v. Toth,
7 190 Ariz. 218, 221, 946 P.2d 900, 903 (Ariz. 1997).

8 The liquidation of Ms. Kostenko’s prepetition divorce
9 related claims after Debtor’s case is closed would not violate
10 the discharge injunction. Further, while the expungement of
11 Ms. Kostenko’s Amended POC may affect her right to distribution
12 from bankruptcy estate property, it does not prevent her from
13 pursuing collection of a prepetition debt even if Debtor
14 received his discharge because debts for property division in
15 divorce decrees are nondischargeable under § 523(a)(15). Short
16 v. Short (In re Short), 232 F.3d 1018, 1022-23 (9th Cir. 2000)
17 (holding that a property division claim comes within purview of
18 § 523(a)(15).

19 VI. CONCLUSION

20 In sum, we AFFIRM the bankruptcy court’s order on the
21 Amended POC. We AFFIRM in part and VACATE in part the
22 bankruptcy court’s order granting Debtor’s Enforcement Motion.
23 We AFFIRM the bankruptcy court’s order in paragraphs one and
24 two. We VACATE paragraph three of the order, which grants
25 Debtor prospective declaratory relief as to the dischargeability
26 of the division of property and debt claims because such relief
27 was procedurally improper.