

SEP 21 2015

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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NOT FOR PUBLICATION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-15-1019-KuPeTa |
|                           | ) |                    |                   |
| MARTIN PEMSTEIN and DIANA | ) | Bk. No.            | 12-15900-RK       |
| PEMSTEIN,                 | ) |                    |                   |
|                           | ) | Adv. No.           | 12-01291-RK       |
| Debtors.                  | ) |                    |                   |
| _____                     | ) |                    |                   |
|                           | ) |                    |                   |
| MARTIN PEMSTEIN,          | ) |                    |                   |
|                           | ) |                    |                   |
| Appellant,                | ) |                    |                   |
|                           | ) |                    |                   |
| v.                        | ) | <b>MEMORANDUM*</b> |                   |
|                           | ) |                    |                   |
| HAROLD PEMSTEIN,          | ) |                    |                   |
|                           | ) |                    |                   |
| Appellee.                 | ) |                    |                   |
| _____                     | ) |                    |                   |

Argued and Submitted on July 23, 2015  
at Pasadena, California

Filed - September 21, 2015

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

Honorable Robert Kwan, Bankruptcy Judge, Presiding

Appearances: Appellant Martin Pemstein argued pro se;  
Christopher L. Blank argued for appellee Harold  
Pemstein.

Before: KURTZ, PERRIS\*\* and TAYLOR, 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.

\*\*Hon. Elizabeth L. Perris, United States Bankruptcy Judge  
for the District of Oregon, sitting by designation.

1 **INTRODUCTION**

2 On remand from an appeal to this Panel, the bankruptcy court  
3 excepted from discharge under 11 U.S.C. § 523(a)(4)<sup>1</sup> Martin  
4 Pemstein's 2010 judgment debt to his brother Harold Pemstein.<sup>2</sup>  
5 Martin claims that, in light of the purported preclusive effect  
6 of a 2005 judgment and a 2006 stipulation, the bankruptcy court  
7 should not have given preclusive effect to the 2010 judgment,  
8 which held Martin liable for breach of his fiduciary duty to  
9 Harold in the amount of \$696,218.03. But Martin has not  
10 explained why we should depart from the well-established rule  
11 that, when the preclusive effect of two or more rulings would  
12 lead to contradictory results, the court before whom the current  
13 action is pending should give preclusive effect to the last  
14 previous judgment entered. In this case, that is the 2010  
15 judgment.

16 Accordingly, we AFFIRM the bankruptcy court's  
17 nondischargeability judgment.

18 **FACTS**

19 As set forth in our prior decision in Pemstein v. Pemstein  
20 (In re Pemstein), 492 B.R. 274 (9th Cir. BAP 2013), Harold and  
21 Martin are brothers and were partners in a California general  
22 partnership known as HMS Holding Company. They also owned and  
23 controlled, with others, a closely-held corporation known as the

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24  
25 <sup>1</sup>Unless specified otherwise, all chapter and section  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
27 all "Rule" references are to the Federal Rules of Bankruptcy  
28 Procedure, Rules 1001-9037.

<sup>2</sup>For ease of reference, we refer to Harold and Martin by  
their first names. No disrespect is intended.

1 Pemma Corporation. HMS owned several parcels of real property,  
2 which it leased to Pemma, and Pemma used the property to operate  
3 its business as a wholesaler of automotive transmission parts.

4 In 1998, the always-volatile working relationship between  
5 Harold and Martin completely fell apart. As the culmination of a  
6 battle for corporate control, Martin and his allies on Pemma's  
7 board of directors succeeded in ousting Harold from his role as  
8 an officer and director of Pemma. In fact, as of October 26,  
9 1998, Harold ceased to have any role in the management or  
10 governance of either HMS or Pemma, even though he continued to be  
11 a 50% partner in HMS and still held roughly one-third of Pemma's  
12 issued stock.

13 Since then, the parties have engaged in nearly two decades  
14 of litigation in both the state courts and in the bankruptcy  
15 courts. In 2005, Harold obtained a state court judgment ordering  
16 the dissolution of HMS and Pemma. Later in 2005, in an attempt  
17 to block the forced dissolution of these entities, Martin filed  
18 chapter 11 bankruptcy petitions on behalf of both HMS and Pemma.  
19 However, this tactic ultimately proved unsuccessful. In May  
20 2006, a chapter 11 trustee was appointed in both the HMS and  
21 Pemma bankruptcy cases, and in 2007, the Pemma bankruptcy case  
22 was converted to chapter 7, and the HMS bankruptcy case was  
23 dismissed.<sup>3</sup>

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25 <sup>3</sup>Because neither of the parties provided us with excerpts of  
26 record containing all of the documents we needed to fully  
27 consider the issues raised on appeal, we have exercised our  
28 discretion to review the bankruptcy court's case and adversary  
doctors. We can take judicial notice of the contents of these  
(continued...)

1 In January 2010, the Orange County Superior Court entered  
2 judgment against Martin for \$696,218.03 based on Harold's claim  
3 that Martin owed him collected and uncollected rents from HMS's  
4 lease of the real property to Pemma. The state court did not  
5 issue a statement of decision in support of the 2010 judgment,  
6 but the judgment itself provided as follows:

7 The Court finds for the Plaintiff Harold Pemstein  
8 against Martin Pemstein finding that Martin Pemstein  
9 breached his duty of care to Harold Pemstein in the  
10 collection of rent on behalf of HMS Properties. The  
11 Court finds that the breach caused Harold Pemstein  
12 damages of \$295,871.00 in principal and \$400,347.03 in  
13 interest.

14 Judgment (Jan. 5, 2010) at 1:25-28.

15 In April 2010, Martin and his wife Diana commenced their  
16 joint personal chapter 11 case, and in April 2012 the bankruptcy  
17 court confirmed their chapter 11 plan. Meanwhile, Harold timely  
18 commenced an adversary proceeding against both Martin and Diana  
19 seeking to except from discharge the 2010 judgment debt under  
20 §§ 523(a)(4) and (a)(6). Harold's adversary complaint also  
21 objected to their discharge under §§ 727(a)(2)(A) and (a)(3). In  
22 August 2012, the bankruptcy court entered a judgment after trial  
23 ruling against Harold on all claims. Among other things, the  
24 bankruptcy court concluded that neither the 2010 judgment nor  
25 Harold's evidence at trial established that Martin actually had  
26 received rents for which he failed to account, and consequently  
27 there was no defalcation within the meaning of § 523(a)(4).

28 \_\_\_\_\_  
<sup>3</sup>(...continued)  
dockets and the imaged documents attached thereto. See O'Rourke  
v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955,  
957-58 (9th Cir. 1989); Atwood v. Chase Manhattan Mrtg. Co.  
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 On appeal, we vacated the bankruptcy court's § 523(a)(4)  
2 ruling and remanded for further proceedings. In re Pemstein,  
3 492 B.R. at 276-77. We held that, after taking into account  
4 Harold's operative state court complaint and the language of the  
5 2010 judgment, the Orange County Superior Court necessarily found  
6 that Martin was liable for breach of his fiduciary duty to Harold  
7 in the amount of \$696,218.03. Id. at 282-83; see also id. at  
8 278. We further held that the bankruptcy court erred when it  
9 concluded that this breach of fiduciary duty could not qualify as  
10 a defalcation within the meaning § 523(a)(4). We reasoned that,  
11 regardless of whether the 2010 judgment was based on rents Martin  
12 received but failed to account for or based on rents he should  
13 have received but did not collect, either conduct fell within  
14 § 523(a)(4)'s definition of defalcation. We remanded for the  
15 bankruptcy court to decide whether, and to what extent, issue  
16 preclusion should be applied to the Orange County Superior  
17 Court's breach of fiduciary duty finding. We also remanded for  
18 the bankruptcy court to decide whether to allow the presentation  
19 of additional evidence regarding Martin's state of mind in  
20 committing the breach of fiduciary duty in light of Bullock v.  
21 BankChampaign, N.A., 133 S. Ct. 1754, 1759-60 (2013), which held  
22 that defalcation requires bad faith, moral turpitude, intentional  
23 wrongfulness, or a heightened state of recklessness.

24 On remand, the bankruptcy court permitted the parties to  
25 present additional evidence and thereafter entered findings of  
26 fact and conclusions of law in which it ruled: (1) that all of  
27 the elements for issue preclusion applied to the 2010 judgment;  
28 (2) that the only issue not resolved by the 2010 judgment was

1 Martin's state of mind in committing his breach of fiduciary  
2 duty; and (3) that Harold had established by a preponderance of  
3 the evidence that Martin intentionally had deprived Harold of his  
4 share of the collected and uncollected rents from HMS's real  
5 property.

6 Martin filed a reconsideration motion, which in essence  
7 sought amendment of the bankruptcy court's findings of fact and  
8 conclusions of law. The bankruptcy court denied the motion by  
9 order entered on January 6, 2015.<sup>4</sup> On that same day, the  
10 bankruptcy court entered judgment against Martin under  
11 § 523(a)(4) excepting the 2010 judgment debt from discharge.  
12 Martin timely filed his notice of appeal on January 20, 2015.

#### 13 JURISDICTION

14 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
15 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.  
16 § 158.

#### 17 ISSUE

18 Did the bankruptcy court correctly determine that Martin's  
19 indebtedness to Harold was nondischargeable under § 523(a)(4)?

#### 20 STANDARD OF REVIEW

21 We review de novo the bankruptcy court's legal conclusions,  
22 and we review for clear error its factual findings. Oney v.  
23 Weinberg (In re Weinberg), 410 B.R. 19, 28 (9th Cir. BAP 2009),  
24

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25 <sup>4</sup>Martin has not specifically argued on appeal that the  
26 bankruptcy court erred in denying his reconsideration motion. On  
27 the other hand, Martin has asserted on appeal several of the same  
28 arguments that he made in his reconsideration motion. To the  
extent Martin has reiterated the same arguments in his opening  
appeal brief, we address them in the discussion section, below.

1 aff'd, 407 Fed.Appx. 176 (9th Cir. 2010). Findings of fact are  
2 clearly erroneous only if they are illogical, implausible, or  
3 without support in the record. Retz v. Samson (In re Retz),  
4 606 F.3d 1189, 1196 (9th Cir. 2010).

5 We utilize a two-step process to review the bankruptcy  
6 court's issue preclusion ruling. First, we review de novo the  
7 bankruptcy court's determination regarding the availability of  
8 issue preclusion. Lopez v. Emergency Serv. Restoration, Inc.  
9 (In re Lopez), 367 B.R. 99, 103 (9th Cir. BAP 2007); Khaligh v.  
10 Hadaegh (In re Khaligh), 338 B.R. 817, 823 (9th Cir. BAP 2006).  
11 And second, if issue preclusion was available, we then review the  
12 bankruptcy court's application of it for an abuse of discretion.  
13 In re Lopez, 367 B.R. at 103; In re Khaligh, 338 B.R. at 823.

14 A bankruptcy court abuses its discretion only when it  
15 applies an incorrect legal rule or when its application of the  
16 correct legal rule is illogical, implausible, or without support  
17 in the record. United States v. Hinkson, 585 F.3d 1247, 1261-62  
18 (9th Cir. 2009) (en banc).

#### 19 **DISCUSSION**

20 Under § 523(a) (4), debts for fraud or defalcation while  
21 acting in a fiduciary capacity are nondischargeable. To  
22 establish a claim under § 523(a) (4) for fiduciary defalcation,  
23 the plaintiff must show that the defendant committed a  
24 defalcation and that the defendant was serving in a fiduciary  
25 capacity at the time of the defalcation. Honkanen v. Hopper  
26 (In re Honkanen), 446 B.R. 373, 378 (9th Cir. BAP 2011).

27 The terms "defalcation" and "fiduciary capacity" are defined  
28 narrowly for nondischargeability purposes. See, e.g., Bullock,

1 133 S.Ct. at 1759-60 (holding that defalcation under § 523(a)(4)  
2 requires a culpable state of mind); Cal-Micro, Inc. v. Cantrell  
3 (In re Cantrell), 329 F.3d 1119, 1125 (9th Cir. 2003) (holding  
4 that the broad definition of fiduciary - someone in whom a  
5 special trust and confidence has been reposed - does not apply  
6 under § 523(a)(4)). The narrow construction of these terms is  
7 consistent with the notion that exceptions to discharge must be  
8 narrowly construed. Snoke v. Riso (In re Riso), 978 F.2d 1151,  
9 1154 (9th Cir. 1992); see also Bullock, 133 S. Ct. at 1760-61  
10 (stating that exceptions to discharge "should be confined to  
11 those plainly expressed.").

12 The applicable, narrow definition of the term "fiduciary  
13 capacity" requires the creditor to demonstrate the existence of  
14 an express or technical trust that was created before and without  
15 reference to the wrongdoing from which the liability arose.  
16 In re Cantrell, 329 F.3d at 1125. Additionally, when the  
17 § 523(a)(4) claim rests on a trust imposed by statute, the  
18 statute must identify both the fiduciary's duties and the trust's  
19 property. In re Honkanen, 446 B.R. at 379; Evans v. Pollard  
20 (In re Evans), 161 B.R. 474, 477-78 (9th Cir. BAP 1993).

21 Here, there is no legitimate dispute that, under California  
22 law, Martin, as Harold's partner, owed Harold fiduciary duties  
23 with respect to the management of HMS's assets, which consisted  
24 of the real property and any rents or profits derived therefrom.  
25 In re Pemstein, 492 B.R. at 281 (citing Cal. Corp. Code  
26 § 16404(b)(1) and Ragsdale v. Haller, 780 F.2d 794, 796-97 (9th  
27 Cir. 1986)). Nor is there any genuine doubt that California law  
28 explicitly sets forth specific fiduciary duties that one partner

1 owes to another with respect to partnership assets. Cal. Corp.  
2 Code § 16404(b)(1); Ragsdale, 780 F.2d at 796-97.

3 Martin claims that, in light of the 2006 appointment of a  
4 chapter 11 trustee in HMS's bankruptcy case, at least a portion  
5 of the damages the Orange County Superior Court awarded based on  
6 his breach of his duty of care were attributable to a period when  
7 he no longer had control over the partnership or its assets and,  
8 hence, no longer was acting as a fiduciary. True, the brief in  
9 lieu of closing argument Harold filed in the state court in 2009  
10 confirms that a portion of the damages Harold sought and obtained  
11 were incurred while the chapter 11 trustee was in control of  
12 HMS's assets - between May 2006 (when the chapter 11 trustee was  
13 appointed) and September 2006 (when the chapter 11 trustee sold  
14 the HMS real property).<sup>5</sup> But the state court case included  
15 allegations that are consistent with a determination that  
16 Martin's breach of his duty to Harold made collection of an  
17 appropriate level of rent difficult and, possibly, impossible;  
18 damages flowing from his breach of fiduciary duty could have  
19 continued during the brief period that the chapter 11 trustee  
20 controlled the property. Thus, this argument falls far short of  
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22 <sup>5</sup>The 2009 brief in lieu of closing argument contained  
23 Harold's detailed calculation of damages and interest arising  
24 from rents that were or should have been collected by Martin on  
25 behalf of HMS. As pointed out by the bankruptcy court in its  
26 October 17, 2014 findings of fact and conclusions of law at  
27 paragraphs 13-17, the Orange County Superior Court adopted  
28 Harold's calculations in awarding Harold: (a) \$103,809  
attributable to Harold's 50% share of uncollected rents (referred  
to in the calculations as "rental shortfalls"); (2) \$192,062  
attributable to Harold's 50% share of collected rents; and  
(3) \$400,347.03 attributable to prejudgment interest.

1 establishing error by the state court in its damages calculation.

2 In any event, we reject Harold's argument regarding the  
3 chapter 11 trustee because the argument ignores the preclusive  
4 effect of the 2010 judgment. We must give "full faith and  
5 credit" to the 2010 judgment. Harmon v. Kobrin (In re Harmon),  
6 250 F.3d 1240, 1245 (9th Cir. 2001) (citing 28 U.S.C. § 1738).  
7 This means that we must give it the same preclusive effect as it  
8 would be afforded by state courts in California. Id. In  
9 determining to give preclusive effect to the 2010 judgment, the  
10 bankruptcy court correctly identified the five threshold factors  
11 California courts look at to decide whether issue preclusion can  
12 be applied:

13 First, the issue sought to be precluded from  
14 relitigation must be identical to that decided in a  
15 former proceeding. Second, this issue must have been  
16 actually litigated in the former proceeding. Third, it  
17 must have been necessarily decided in the former  
18 proceeding. Fourth, the decision in the former  
19 proceeding must be final and on the merits. Finally,  
20 the party against whom preclusion is sought must be the  
21 same as, or in privity with, the party to the former  
22 proceeding.

19 Lucido v. Superior Court, 51 Cal.3d 335, 341 (1990). Accord,  
20 In re Pemstein, 492 B.R. at 281.

21 Martin on appeal attacks only one aspect of the bankruptcy  
22 court's issue preclusion determination. Martin argues that the  
23 2010 judgment did not include any finding that Martin breached  
24 his fiduciary duty. According to Martin, the finding in the 2010  
25 judgment that Martin breached his duty of care in the collection  
26 of rents is not the same as finding that Martin breached his  
27 fiduciary duty. We disagree. As we explained at length in our  
28 prior decision involving the Pemsteins, when one considers

1 together the language of the 2010 judgment, the contents of  
2 Harold's operative complaint, and the other documents from the  
3 state court litigation presented to the bankruptcy court at the  
4 time of trial, we can infer (and only can infer) that the Orange  
5 County Superior Court found that Martin breached his fiduciary  
6 duty to Harold with respect to Martin's collection of rents on  
7 behalf of HMS and that this breach resulted in \$295,871.00 in  
8 damages and the accrual of \$400,347.03 in interest.<sup>6</sup>

9       Instead of arguing against the application of issue  
10 preclusion, Martin makes his own divergent preclusion arguments.  
11 He contends that the state court's 2005 statement of decision and  
12 judgment directing the dissolution of Pemma and HMS precluded the  
13 state court from later issuing the 2010 judgment for damages and  
14 interest arising from collected and uncollected rents. In  
15 support of this argument, Martin relies upon the following  
16 language in the 2005 statement of decision and judgment:

17               Pursuant to Appellate Court direction, this  
18               Statement of decision is a final equitable order as to  
19               all the proceedings and all causes of action in these  
20               consolidated proceedings.

20 Statement of Decision and Judgment (June 30, 2005) at 2:23-25.  
21 Based on this language, Martin contends that the state court  
22 should not have entered a subsequent judgment - the 2010 judgment  
23 - and should not have awarded Harold any damages in that

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25       <sup>6</sup>Our prior determination regarding the issue decided by the  
26 Orange County Superior Court is law of the case, and we are not  
27 aware of any grounds for applying any exception to the law of the  
28 case doctrine. See generally Am. Express Travel Related Servs.  
Co. v. Frascilla (In re Frascilla), 235 B.R. 449, 454 (9th Cir.  
BAP 1999), aff'd, 242 F.3d 381 (9th Cir. 2000) (table) (explaining  
doctrine and its exceptions).

1 judgment. In turn, Martin further posits that the bankruptcy  
2 court should have been bound by the 2005 statement of decision  
3 and judgment instead of the 2010 judgment.

4 Martin's preclusion argument stands established preclusion  
5 law on its head. As the Ninth Circuit has stated, as between two  
6 or more conflicting judgments, the last judgment previously  
7 entered is the one that needs to be given preclusive effect.  
8 Americana Fabrics, Inc. v. L & L Textiles, Inc., 754 F.2d 1524,  
9 1529-30 (9th Cir. 1985). Americana explained the reasoning  
10 behind this rule, as follows:

11 This is the rule of "last in time." The formal  
12 rationale behind the rule is that the implicit or  
13 explicit decision of the second court, to the effect  
14 that the first court's judgment is not res judicata, is  
15 itself res judicata and therefore binding on the third  
16 court. The decision is not binding because it is  
17 correct; it is binding because it is last. The rule  
18 furthers the purposes of res judicata because it  
19 "end[s] the chain of relitigation . . . by stopping it  
20 where it [stands]" after entry of the second court's  
21 judgment, and thereby discourages relitigation in a  
22 third court. If an aggrieved party believes that the  
23 second court erred in not giving res judicata effect to  
24 the first court's judgment, then the proper avenue of  
25 redress is appeal of the second court's judgment, not  
26 collateral attack in a third court.

20 Id. at 1530 (citations and footnote omitted). The last in time  
21 rule applies to both federal judgments as well as California  
22 judgments. See id. at 1530 n.2; see also Standard Oil Co. of  
23 Cal. v. John P. Mills Org., 3 Cal. 2d 128, 139 (1935) ("In case  
24 of two conflicting judgments the later in time controls."<sup>7</sup>)

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25  
26 <sup>7</sup>Americana further made it clear that the last in time rule  
27 applies to both issue preclusion doctrine and claim preclusion  
28 doctrine. Id. at 1530 ("It follows, therefore, [from the last in  
time rule] that the district court should have given res judicata  
(continued...)

1 Martin makes a similar preclusion argument with respect to  
2 a stipulation the bankruptcy court approved by order entered  
3 October 27, 2006, in the jointly administered bankruptcy cases of  
4 HMS and Pemma. Martin asserts that, pursuant to this stipulation  
5 and order, Harold waived his right to seek and obtain the damages  
6 award granted in the 2010 judgment. Martin particularly relies  
7 on the following language from the stipulation:

8 The only additional rent claim that HMS is reserving is  
9 the right to claim that an amount in excess of 60¢ a  
10 square foot that Pemma is or was obligated to pay to  
HMS was too low and Pemma, as a matter of law, was  
obligated to pay a greater sum.

11 Stipulation (October 27, 2007) at 4:18-22.

12 In light of this language in the stipulation, Martin urges that  
13 the state court should not have entered the 2010 judgment and the  
14 bankruptcy court should not have relied on the 2010 judgment.

15 In its January 2015 order denying Martin's reconsideration  
16 motion, the bankruptcy court rejected this argument, holding that  
17 the 2006 stipulation did not limit Harold's right to seek damages  
18 from Martin for collected and uncollected rents for the period  
19 between November 1998 and September 2006. We agree with the  
20 bankruptcy court on this point. Having reviewed the entirety of  
21 the stipulation, we perceive nothing establishing or even  
22 suggesting that the parties intended the stipulation to affect  
23 Harold's right to seek damages against Martin for breach of  
24 fiduciary duty. Regardless, even if we were to conclude that the

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26 \_\_\_\_\_  
27 <sup>7</sup>(...continued)  
28 effect to the SDNY's order. **That order has both a  
claim-preclusive and issue-preclusive effect on the action in the  
district court."**) .

1 parties intended for Harold to waive all claims against Martin  
2 for collected and uncollected rents, and even if we were to agree  
3 with Martin that the order approving the stipulation generally  
4 afforded the terms of the stipulation with preclusive effect,  
5 Americana directs us and the bankruptcy court to give preclusive  
6 effect to the 2010 judgment and not to the 2006 stipulation.

7 As for the bankruptcy court's finding made on remand that  
8 Martin intentionally deprived Harold of his share of collected  
9 and uncollected rents, Martin devotes very little of his opening  
10 appeal brief attempting to convince us that the bankruptcy  
11 court's intent finding was clearly erroneous. In fact, his  
12 argument regarding intent appears to be limited to a single  
13 conclusory sentence: "There was no creditable evidence determined  
14 during the trial that would establish that Martin intentionally  
15 failed to collect rent, let alone any evidence that there was  
16 uncollected rents at all." Aplt. Op. Br. at p. 15.

17 We disagree. In making its intent finding, the bankruptcy  
18 court cited to evidence, most of it Martin's own testimony,  
19 demonstrating the following: (1) Martin had a background and  
20 college course work in accounting and experience as a staff  
21 accountant; (2) during (most of) the relevant period of time,  
22 Martin was in charge of the operations and finances of both HMS  
23 and Pemma, and had "sole and actual control" of HMS's collection  
24 of rents; and (3) Martin knowingly and intentionally acted for  
25 the benefit of Pemma and to the detriment of HMS and Harold in  
26 the manner he collected and spent rents owed to HMS and Harold.  
27 See Findings of Fact and Conclusions of Law (Oct. 17, 2014) at  
28 ¶¶ 7-11.

1 Martin has not included in his excerpts of record a copy of  
2 the transcript containing the testimony on which the bankruptcy  
3 court relied in making these findings, but we have located the  
4 relevant transcript ourselves by accessing the bankruptcy court's  
5 docket. Martin has not pointed us to any evidence that  
6 contradicts the court's intent finding. Furthermore, even if  
7 the evidence also could have supported a finding that Martin  
8 lacked the requisite intent, we cannot hold that the bankruptcy  
9 court's inference of intent was clearly erroneous. See Anderson  
10 v. City of Bessemer City, N.C., 470 U.S. 564, 574 (1985) ("Where  
11 there are two permissible views of the evidence, the fact  
12 finder's choice between them cannot be clearly erroneous.").

13 The only other argument that Martin makes in his opening  
14 brief concerns the Rooker-Feldman doctrine. That doctrine is of  
15 extremely limited application. It prevents federal courts from  
16 exercising jurisdiction over cases brought by "state-court  
17 losers" seeking to challenge "state-court judgments rendered  
18 before the [federal] court proceedings commenced." Exxon Mobil  
19 Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). In  
20 light of the 2010 judgment and our issue preclusion analysis,  
21 supra, Harold did not lose in the state court. To the contrary,  
22 he won. Instead of challenging the 2010 state court judgment,  
23 Harold seeks to have the debt arising from it declared  
24 nondischargeable. Accordingly, the Rooker-Feldman doctrine does  
25 not aid Martin's appeal.

#### 26 CONCLUSION

27 For the reasons set forth above, we AFFIRM the bankruptcy  
28 court's nondischargeability judgment.