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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NOT FOR PUBLICATION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-15-1012-FKiKu
)	
KAMAL ZEEB,)	Bk. No. 8:13-bk-14883-CB
)	
Debtor.)	Adv. No. 8:13-ap-01301-CB
)	
_____)	
KAMAL ZEEB,)	
)	
Appellant,)	
)	
v.)	MEMORANDUM¹
)	
SAMUEL FARAH,)	
)	
Appellee.)	
_____)	

Argued and Submitted on October 22, 2015
at Los Angeles, California

Filed - November 3, 2015

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

Honorable Catherine E. Bauer, Bankruptcy Judge, Presiding

Appearances: Andrew Edward Smyth argued for appellant Kamal Zeeb; Jeffrey Valentine Weber of Briggs and Alexander, APC argued for appellee Samuel Farah.

Before: FARIS, KIRSCHER, 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 **INTRODUCTION**

2 Appellant Kamal Zeeb appeals from the bankruptcy court's
3 judgment holding that his debt to Appellee Samuel Farah is
4 nondischargeable under 11 U.S.C. § 523(a)(6) (2010).² The
5 bankruptcy court held that a prebankruptcy judgment against
6 Mr. Zeeb for conversion and breach of contract established
7 "willful and malicious injury" such that the judgment was
8 nondischargeable. We hold that a judgment for conversion and
9 breach of contract under California law, without anything more,
10 does not necessarily determine that the debt is for "willful" and
11 "malicious" injury under § 523(a)(6). Accordingly, we VACATE the
12 bankruptcy court's order and REMAND this case to the bankruptcy
13 court.

14 **FACTS**

15 Mr. Farah and Mr. Zeeb worked together in two businesses:
16 Storm Distribution, Inc. ("Storm Distribution") and JSSA
17 Enterprises, Inc. ("JSSA"). Mr. Farah managed the sales and
18 accounts, while Mr. Zeeb managed the facilities and employees.

19 On or around March 1, 2012, Mr. Farah filed his First
20 Amended Complaint in the Superior Court of Orange County,
21 California, alleging thirteen causes of action against Mr. Zeeb,
22 Ahmed Shamekh, JSSA, Zeeb Brothers, Inc., and Hookah and More.
23 Four of the causes of action stated in the complaint are relevant
24 to this proceeding. All four causes of action were based on the
25

26 ² Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 factual allegations that, while Mr. Farah was out of the country
2 in 2010, Mr. Zeeb misappropriated inventory, cash, and other
3 assets from the two businesses. Based on these factual
4 allegations, Mr. Farah stated two causes of action for conversion
5 (one relating to Storm Distribution and the other to JSSA) and
6 two corresponding causes of action for breach of contract.

7 Commencing on May 15, 2013, the superior court held a jury
8 trial on Mr. Farah's claims. The jury rendered a special verdict
9 in which it found that:

10 (1) Mr. Zeeb breached his contract relating to Storm
11 Distribution, causing Mr. Farah to suffer damages of \$330,514.25;

12 (2) Mr. Zeeb "intentionally and substantially" interfered
13 with Mr. Farah's property by taking possession of the funds and
14 inventory of Storm Distribution, but Mr. Farah's damages were
15 zero;

16 (3) Mr. Zeeb engaged in the conduct relating to Storm
17 Distribution "with malice, oppression, or fraud," and Mr. Farah
18 was entitled to punitive damages of \$50,000;

19 (4) Mr. Zeeb breached his contract relating to JSSA,
20 causing Mr. Farah to suffer damages of \$101,091.45;

21 (5) Mr. Zeeb "intentionally and substantially" interfered
22 with Mr. Farah's property by taking possession of the funds and
23 inventory of JSSA, but Mr. Farah's damages were zero; and

24 (6) Mr. Zeeb engaged in the conduct relating to JSSA "with
25 malice, oppression, or fraud," and Mr. Farah was entitled to
26 punitive damages of \$50,000.

27 Before the superior court entered judgment on the special
28 verdict, Mr. Zeeb filed for chapter 7 bankruptcy protection on

1 June 7, 2013. In August 2013, Mr. Farah sought and received
2 relief from the automatic stay so that the superior court could
3 enter final judgment on the jury verdict.

4 On September 9, 2013, the superior court issued a minute
5 order wherein it struck the punitive damages:

6 **Ruling: The Court will execute the proposed Judgment**
7 **that Defendant submitted.** The Special Verdict and the
8 evidence do not support an award for punitive damages.
9 CC 3294(a) provides for punitive damages "In an action
10 for the breach of an obligation not arising from
11 contract." Plaintiff's success on the breach of
12 contract action does not support punitive damages.
13 Plaintiff must prove compensatory tort damages to
14 support tort damages. Additionally, Plaintiff did not
15 introduce evidence of defendant's financial condition.
16 See Simon v san Paolo U.S. Holding Co., Inc. (2009)
17 35 Cal 4th 1159, 1185. Without this evidence the jury
18 cannot calculate a proper award of punitive damages.

19 On February 18, 2014, the superior court signed its Amended
20 Judgment on Jury Verdict ("Amended Judgment"), which provided:

21 1. On the cause of action for breach of contract
22 regarding Storm Distribution by Samuel Farah against
23 Kamal Zeeb judgment is awarded in favor of Samuel Farah
24 against Kamal Zeeb in the amount of \$330,514.24[.]

25

26 3. On the cause of action for conversion
27 regarding Storm Distribution by Samuel Farah against
28 Kamal Zeeb, including a prayer for punitive damages,
judgment is awarded in favor of Samuel Fareh against
Kamal Zeeb in the amount of \$0.00 in compensatory
damages and \$0.00 in punitive damages.

4. On the cause of action for breach of contract
regarding JSSA Enterprises, Inc. by Samuel Farah
against Kamal Zeeb and against Zeeb Brothers, Inc.
judgment is awarded in favor of Samuel Farah jointly
and severally against Kamal Zeeb and against Zeeb
Brothers, Inc. in the amount of \$101,091.45[.]

.

6. On the cause of action for conversion
regarding JSSA Enterprises, Inc. by Samuel Farah
against Kamal Zeeb and against Zeeb Brothers, Inc.,
including a prayer for punitive damages, judgment is

1 awarded in favor of Samuel Farah jointly and severally
2 against Kamal Zeeb and against Zeeb Brothers, Inc. in
3 the amount of \$0.00 in compensatory damages and \$0.00
4 in punitive damages.

5 7. Pursuant to the election of remedies, Samuel
6 Farah has elected to take the remedies awarded under
7 breach of contract. The aggregate judgment award to
8 Samuel Farah, therefore, is \$431,605.69, of which the
9 entire amount is enforceable against Kamal Zeeb and of
10 which \$101,091.45 is enforceable against Zeeb Brothers,
11 Inc.

12 On September 16, 2013, Mr. Farah initiated an adversary
13 proceeding challenging the dischargeability of the judgment.³ On
14 May 20, 2014, he filed his Motion for Summary Judgment or Summary
15 Adjudication ("Motion for Summary Judgment"), arguing that
16 collateral estoppel (modernly called "issue preclusion")
17 precluded relitigation of the issues decided by the superior
18 court jury. He contended that the superior court judgment
19 determined that Mr. Zeeb caused "willful and malicious injury" to
20 him under § 523(a)(6).

21 On July 8, 2014, the bankruptcy court held a hearing on
22 Mr. Farah's Motion for Summary Judgment. Essentially, Mr. Farah
23 argued that, even if the jury concluded that he was not harmed as
24 a result of the conversion, "it's still enough to show that the
25 facts show the malicious intent, show the ill will, show the bad
26 acts, which under Jerich [sic] and Lockerby support finding even
27 a breach of contract claim non-dischargeable." Conversely,
28 Mr. Zeeb argued that the jury's award of zero compensatory

³ The complaint in the adversary proceeding requested that the bankruptcy court determine nondischargeability under § 523(a)(2) and (6) and for denial of discharge under § 727(a)(2) and (7). However, this appeal only concerns nondischargeability of the superior court judgment under § 523(a)(6).

1 damages shows that it would be inappropriate to apply issue
2 preclusion to the superior court's judgment.

3 The bankruptcy court took the matter under submission. On
4 July 25, it issued its Order Granting Plaintiff's Motion for
5 Summary Judgment or Summary Adjudication⁴ and held, in relevant
6 part:

7 The Court reviewed the record and the pleadings,
8 and in particular, reviewed the Amended Judgment on
9 Jury Verdict dated February 18, 2014 entered by the
10 Superior Court of the State of California, County of
11 Orange, Central Justice Center, in case no.
12 30-2011-00529564 ("Amended Judgment").

13 Since it is indisputable that both paragraphs 3
14 and 4 [sic] of the Amended Judgment state that the
15 Plaintiff prevailed on his conversion claims against
16 Defendant,

17 IT IS ORDERED:

18 The Motion is granted.

19 The court entered its judgment in Mr. Farah's favor on or
20 around August 6, 2014. Following the parties' agreement to
21 dismiss all remaining claims, Mr. Zeeb timely filed his notice of
22 appeal on January 14, 2015.

23 JURISDICTION

24 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
25 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.
26 § 158.
27

28 ⁴ Appellant did not include a copy of the bankruptcy court's
order in his excerpts of record. However, we exercised our
discretion to review the bankruptcy court's docket, see Woods &
Erickson, LLP v. Leonard (In re AVI, Inc.), 389 B.R. 721, 725 n.2
(9th Cir. BAP 2008), and we located the order in the bankruptcy
court's docket at document number 20.

1 **ISSUE**

2 Whether the bankruptcy court erred in holding that the state
3 court judgment against Appellant precludes Appellant from
4 relitigating the issues of willfulness and malice under
5 § 523(a) (6).

6 **STANDARD OF REVIEW**

7 We review "the bankruptcy court's interpretation of the
8 Bankruptcy Code de novo and its factual findings for clear
9 error[.]" Hedlund v. Educ. Res. Inst. Inc., 718 F.3d 848, 854
10 (9th Cir. 2013) (quoting Miller v. Cardinale (In re DeVille),
11 361 F.3d 539, 547 (9th Cir. 2004)).

12 "We review rulings regarding rules of res judicata,
13 including claim and issue preclusion, de novo as mixed questions
14 of law and fact in which legal questions predominate." Khaligh
15 v. Hadaegh (In re Khaligh), 338 B.R. 817, 823 (9th Cir. BAP
16 2006), aff'd, 506 F.3d 956 (9th Cir. 2007) (citing Robi v. Five
17 Platters, Inc., 838 F.2d 318, 321 (9th Cir. 1988); Alary Corp. v.
18 Sims (In re Associated Vintage Grp., Inc.), 283 B.R. 549, 554
19 (9th Cir. BAP 2002)). "Once it is determined that preclusion
20 doctrines are available to be applied, the actual decision to
21 apply them is left to the trial court's discretion." Id.
22 (citations omitted).

23 **DISCUSSION**

24 **A. A judgment cannot be discharged under § 523(a) (6) if it**
25 **resulted from "willful and malicious injury."**

26 Section 523(a) (6) provides:

27 (a) A discharge under section 727 . . . of this title
28 does not discharge an individual debtor from any debt -

. . . .

1 (6) for willful and malicious injury by the debtor
2 to another entity or to the property of another
entity[.]

3 § 523(a)(6). "Under Ninth Circuit law, willfulness and malice
4 are two distinct elements that must not be conflated." Comcast
5 of L.A., Inc. v. Sandoval (In re Sandoval), 341 B.R. 282, 296
6 (Bankr. C.D. Cal. 2006).

7 The Ninth Circuit has recognized that "'a simple breach of
8 contract is not the type of injury addressed by § 523(a)(6)' and
9 held that '[a]n intentional breach of contract is excepted from
10 discharge under § 523(a)(6) only when it is accompanied by
11 malicious and willful **tortious conduct.**'" Petralia v. Jercich
12 (In re Jercich), 238 F.3d 1202, 1205 (9th Cir. 2001) (emphasis in
13 original) (quoting Snoke v. Riso (In re Riso), 978 F.2d 1151,
14 1154 (9th Cir. 1992)). "Where an intentional breach of contract
15 is accompanied by tortious conduct which results in willful and
16 malicious injury, the resulting debt is excepted from discharge
17 under § 523(a)(6). Id. (citations omitted).

18 **1. Willfulness**

19 The Ninth Circuit has held that

20 the willful injury requirement of § 523(a)(6) is met
21 when it is shown either that the debtor had a
22 subjective motive to inflict the injury **or** that the
23 debtor believed that injury was substantially certain
24 to occur as a result of his conduct. We believe that
this holding comports with the purpose [of] bankruptcy
law's fundamental policy of granting discharges only to
the honest but unfortunate debtor.

25 Id. at 1208 (emphasis in original). The "willful" analysis
26 requires an inquiry into the debtor's subjective state of mind.
27 See Carrillo v. Su (In re Su), 290 F.3d 1140, 1145-46 (9th Cir.
28 2002) ("Congress did not intend § 523(a)(6)'s willful injury

1 requirement to be applied so as to render nondischargeable any
2 debt incurred by reckless behavior, [which] reinforces
3 application of the subjective standard. The subjective standard
4 correctly focuses on the debtor's state of mind and precludes
5 application of § 523(a)(6)'s nondischargeability provision short
6 of the debtor's actual knowledge that harm to the creditor was
7 substantially certain.").

8 The touchstone of this standard is that the debtor must have
9 intended to injure the creditor or must have known that the
10 debtor's acts were substantially certain to injure the creditor.
11 It is not enough to prove that the debtor acted intentionally and
12 caused an injury. Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998).

13 **2. Malice**

14 As to the second prong, the Ninth Circuit has stated that
15 "[a] 'malicious' injury involves '(1) a wrongful act, (2) done
16 intentionally, (3) which necessarily causes injury, and (4) is
17 done without just cause or excuse.'" In re Jercich, 238 F.3d at
18 1209 (quoting Murray v. Bammer (In re Bammer), 131 F.3d 788, 791
19 (9th Cir. 1997)).

20 **B. The bankruptcy court erred in holding that the superior
21 court judgment decided the issue of "willful and malicious
injury."**

22 The main question before the Panel is whether the superior
23 court judgment precludes relitigation of the "willful and
24 malicious injury" issues before the bankruptcy court.

25 The usual rules of issue preclusion apply in
26 dischargeability litigation. Grogan v. Garner, 498 U.S. 279,
27 284-85 (1991). Under the full faith and credit statute, federal
28 courts must give state court judgments the same preclusive effect

1 that a state court would. See 28 U.S.C. § 1738; Gayden v.
2 Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 800 (9th Cir. 1995)
3 (citing Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S.
4 373, 380 (1985)). To determine the preclusive effect of a state
5 court judgment, federal courts apply the preclusion law of the
6 state in which the judgment was entered. See Marrese, 470 U.S.
7 at 380; DiRuzza v. Cty. of Tehama, 323 F.3d 1147, 1152 (9th Cir.
8 2003). Therefore, California law on issue preclusion applies.

9 **1. California law on issue preclusion**

10 In California, issue preclusion prevents parties from
11 relitigating issues already decided in prior proceedings. Lucido
12 v. Super. Ct., 51 Cal. 3d 335, 341 (1990). The party asserting
13 issue preclusion must prove five elements. First, the issues to
14 be precluded must be identical to the ones decided in the prior
15 proceeding. Second, the issues must have been actually litigated
16 in the prior proceeding. Third, the issues must have been
17 necessarily decided. Fourth, the decision must have been final
18 and on the merits. Finally, the party to be precluded must be
19 identical to or in privity with a party to the prior proceeding.
20 Id.

21 "The party seeking to apply issue preclusion has the burden
22 of proving that each element is satisfied. To sustain this
23 burden, a party must introduce a record sufficient to reveal the
24 controlling facts and the exact issues litigated in the prior
25 action. Any reasonable doubt as to what was decided in the prior
26 action will weigh against applying issue preclusion."

27 Brandstetter v. Derebery (In re Derebery), 324 B.R. 349, 353
28 (Bankr. C.D. Cal. 2005) (citing Kelly v. Okoye (In re Kelly),

1 182 B.R. 255, 258 (9th Cir. BAP 1995)).

2 The doctrine of issue preclusion is not mechanically
3 applied. Instead, the court must apply it when it advances three
4 policies: "(1) to promote judicial economy by minimizing
5 repetitive litigation; (2) to prevent inconsistent judgments
6 which undermine the integrity of the judicial system; and (3) to
7 provide repose by preventing a person from being harassed by
8 vexatious litigation." Alpha Mech., Heating & Air Conditioning,
9 Inc. v. Travelers Cas. & Sur. Co. of Am., 133 Cal. App. 4th 1319,
10 1333 (2005) (quoting Wright v. Ripley, 65 Cal. App. 4th 1189,
11 1193 (1998)).

12 **2. Preclusive effect of the state-court judgment**

13 **a. Are the issues identical?**

14 The first prong of the issue preclusion test requires
15 comparison of the issues presented in the current case with the
16 issues presented in the prior case that resulted in the judgment.

17 **i. Conversion**

18 We first compare the elements of conversion to the
19 definition of "willful and malicious injury."

20 Under California law, "[c]onversion is the wrongful exercise
21 of dominion over the property of another." Ortega v. Toyota
22 Motor Sales, USA, Inc., 572 F. Supp. 2d 1218, 1220 (S.D. Cal.
23 2008) (quoting Farmers Ins. Exch. v. Zerín, 53 Cal. App. 4th 445,
24 451 (1997)). "A claim for conversion requires the plaintiff's
25 ownership or right of possession at the time of the conversion,
26 the defendant's conversion by a wrongful act of disposition of
27
28

1 property rights and damages.”⁵ Id. (citing Burlesci v. Petersen,
2 68 Cal. App. 4th 1062, 1066 (1998)); see Farmers Ins. Exch.,
3 53 Cal. App. 4th at 451 (In California, “[t]he elements of a
4 conversion are the [creditor’s] ownership or right to possession
5 of the property at the time of the conversion; the [debtor’s]
6 conversion by a wrongful act or disposition of property rights;
7 and damages.”).

8 The three elements of conversion under California law do not
9 include the elements of the “willful” and “malicious” prongs
10 under § 523(a)(6). Conversion under California law does not
11 require a showing that the defendant subjectively intended to
12 injure the plaintiff or subjectively knew that the defendant’s
13 conduct was substantially certain to injure the plaintiff.

14 As we have previously held, conversion “establishes the
15 debtor’s ‘wrongful exercise of dominion over the personal
16 property of another,’ but it ‘does not necessarily decide the
17 type of wrongful intent on the part of the debtor that is
18 necessary for the damages to be a nondischargeable debt under
19 § 523(a)(6).’” Thiara v. Spycher Bros. (In re Thiara), 285 B.R.
20 420, 429 (9th Cir. BAP 2002) (quoting Peklar v. Ikerd
21 (In re Peklar), 260 F.3d 1035, 1037-39 (9th Cir. 2001)); see also
22

23 ⁵ Mr. Zeeb argues that the jury’s award of zero dollars
24 necessarily means that the jury did not find for Mr. Farah on the
25 conversion claims. The fact that the judgment is for zero
26 dollars on the conversion claims raises the question of whether
27 there is in fact a “debt” that could be nondischargeable.
28 However, the bankruptcy court did not address this question, and
the parties only tangentially raised this issue in their briefs.
We make no determination on this question and will leave it for
the bankruptcy court to consider on remand.

1 In re Sandoval, 341 B.R. at 295 (“Under California law, ‘a
2 conversion is not per se a willful and malicious injury to the
3 property of another’”) (quoting In re Peklar, 260 F.3d at 1037)
4 (citing id. at 1039 (“[a] judgment for conversion under
5 California substantive law decides only that the defendant has
6 engaged in the ‘wrongful exercise of dominion’ over the personal
7 property of the plaintiff. It does not necessarily decide that
8 the defendant has caused ‘willful and malicious injury’ within
9 the meaning of § 523(a)(6)”)).

10 Similarly, conversion under California law does not
11 necessarily implicate “maliciousness.” Maliciousness requires
12 (1) a wrongful act, (2) done intentionally, (3) which necessarily
13 causes injury, and (4) is done without just cause or excuse.
14 In re Jercich, 238 F.3d at 1209 (citation omitted). While one of
15 the elements of conversion encompasses a “wrongful act,” the
16 other elements do not satisfy the remaining maliciousness prongs.
17 We thus conclude that the conversion, in and of itself, is not
18 necessarily “malicious.”

19 The bankruptcy court held that the superior court judgment
20 satisfied § 523(a)(6) because the jury found against Mr. Zeeb on
21 the conversion claims. In its order, the bankruptcy court stated
22 that, “[s]ince it is indisputable that both paragraphs 3 and 4
23 [sic] of the Amended Judgment state that the Plaintiff prevailed
24 on his conversion claims against Defendant,” it would grant
25 summary judgment. The court apparently concluded that
26 conversion, in and of itself, satisfies § 523(a)(6). This is
27 incorrect as a matter of law. Absent additional, necessary
28 findings that satisfy the discrete elements of “willful” and

1 "malicious" injury, the elements of conversion are not identical
2 to the issues of "willful" and "malicious" injury.

3 **ii. Punitive damages**

4 Mr. Farah argues that the jury's award of punitive damages,
5 which the superior court later struck, is sufficient to establish
6 a "willful and malicious injury." We disagree.

7 Only judgments have preclusive effect. See Restatement
8 (Second) of Judgments § 13 (1982) ("The rules of res judicata are
9 applicable only when a final judgment is rendered."); cf.
10 Ornellas v. Oakley, 618 F.2d 1351, 1356 (9th Cir. 1980) ("A
11 reversed or dismissed judgment cannot serve as the basis for a
12 disposition on the ground of res judicata or collateral
13 estoppel." (citations omitted)). The superior court expressly
14 refused to enter judgment granting punitive damages. Despite the
15 jury's findings that Mr. Zeeb engaged in conduct with malice,
16 oppression, or fraud, the superior court held, as a matter of
17 law, that Mr. Farah was not entitled to punitive damages. The
18 jury's special verdict awarding punitive damages has no
19 preclusive effect because the court declined to enter judgment on
20 that portion of the verdict.

21 **b. Were the issues actually litigated?**

22 An issue is "actually litigated" when the issue was raised,
23 actually submitted for determination, and determined. Baker v.
24 Hull, 191 Cal. App. 3d 221, 226 (1987). In the present case,
25 Mr. Zeeb and Mr. Farah both fully litigated the causes of action
26 for breach of contract and conversion. However, we are unable to
27 discern from the record whether all of the issues concerning the
28 distinct "willful" and "malicious" tests - especially the

1 requirement of the debtor's subjective intent to injure - were
2 raised and litigated before the superior court. As such, we
3 cannot say that the second requirement has been met.

4 **c. Were the issues necessarily decided?**

5 An issue was "necessarily decided" if the issue was not
6 "entirely unnecessary" to the judgment in the prior proceeding.
7 Lucido, 51 Cal. 3d at 342. While the elements of conversion were
8 "necessarily decided," as evidenced by the jury's special verdict
9 forms, the issues concerning willful and malicious injury were
10 not before the jury and were thus not "necessarily decided." The
11 third requirement has not been met.

12 **d. Is the judgment final?**

13 A judgment is the final determination of the rights of the
14 parties in an action. Cal. Code Civ. P. § 577. In California, a
15 judgment is "final" when it terminates the litigation between the
16 parties on the merits and leaves nothing else to do except
17 enforce the judgment. Sullivan v. Delta Air Lines, Inc., 15 Cal.
18 4th 288, 304 (1997). The parties here do not dispute that the
19 Amended Judgment issued by the superior court, followed by the
20 parties' stipulation to dismiss the remaining claims, was a final
21 judgment. The fourth requirement is thus satisfied.

22 **e. Were the parties identical?**

23 The parties to this appeal, Mr. Zeeb and Mr. Farah, were
24 parties to the proceeding before the superior court. As such,
25 the fifth requirement is satisfied.

26 * * *

27 Therefore, the bankruptcy court erred by applying issue
28 preclusion to the superior court judgment with regard to "willful

1 and malicious injury" under § 523(a)(6). Conversion, in and of
2 itself, is not sufficient to establish "willful and malicious
3 injury," as the issues were not identical; the "willful and
4 malicious" issues were not fully litigated; and the "willful and
5 malicious" issues were not necessarily decided.

6 **CONCLUSION**

7 For the reasons set forth above, we VACATE the bankruptcy
8 court's ruling in favor of Mr. Farah and REMAND the case to the
9 bankruptcy court for further proceedings consistent with this
10 decision.