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NOT FOR PUBLICATION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

5	In re:)	BAP No.	CC-15-1220-TaKuKi
6	CHRISTOPHER J. BOYCE,)	Bk. No.	8:14-bk-11571-CB
7	Debtor.)	Adv. No.	8:14-ap-01134-CB
8	_____)		
9	CHRISTOPHER J. BOYCE,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	LISA HAMILTON,)		
13	Appellee.)		
	_____)		

Argued and Submitted on September 22, 2016
at Pasadena, California

Filed - October 25, 2016

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

Honorable Catherine E. Bauer, Bankruptcy Judge, Presiding

Appearances: Fritz J. Firman argued for appellant;
Jonathan Alvanos argued for appellee.

Before: TAYLOR, KURTZ, and KIRSCHER, 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(c)(2).

1 **INTRODUCTION**

2 Chapter 7¹ debtor Christopher J. Boyce appeals from an
3 order granting summary judgment in favor of Lisa Hamilton and
4 determining that a stipulated state court judgment against him
5 was nondischargeable under § 523(a)(2)(A). We conclude the
6 bankruptcy court erred when it relied on a subsequent, stay
7 violative, state court order in applying issue preclusion to the
8 stipulated judgment. As a result, we REVERSE and REMAND to the
9 bankruptcy court for further proceedings consistent with this
10 decision.

11 **FACTS**

12 The Debtor and Hamilton were married for 14 years. During
13 their marriage, they entered into a joint venture agreement for
14 the express purpose of trading currencies. By the terms of
15 their agreement, Hamilton agreed to invest \$3,125,000 into a
16 corporation owned and controlled by the Debtor. Of that amount,
17 some was eventually returned to Hamilton, and some was properly
18 invested. The Debtor, however, made the unilateral decision to
19 invest \$727,538.69 in another one of his companies, BIN
20 International, without Hamilton's knowledge or consent. This
21 investment is the source of the underlying litigation that led
22 to this appeal. The currencies trading venture involved
23 participation in a Ponzi scheme.

24 Hamilton sued the Debtor in California state court; the

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

1 complaint alleged breach of contract, common counts, and fraud.
2 The Debtor did not answer the complaint.

3 The parties eventually stipulated to entry of a judgment
4 against the Debtor and his corporations, jointly and severally,
5 in the amount of \$730,038.69. The parties now dispute the
6 circumstances culminating in the judgment.

7 After the Debtor filed for bankruptcy, Hamilton initiated
8 an adversary proceeding against the Debtor, seeking to except
9 the stipulated judgment from discharge under § 523(a)(2)(a),
10 (a)(4), and (a)(6) and objecting to discharge under
11 § 727(a)(4)(A). Hamilton subsequently moved for summary
12 judgment on the § 523(a) claims based on the issue preclusive
13 effect of the stipulated judgment.

14 The Debtor opposed. He argued that, because the judgment
15 was a consensual judgment entered prior to trial, Hamilton's
16 claims were not actually tried or necessarily decided by the
17 state court as required for issue preclusion. He also argued
18 that the stipulated judgment was subject to rescission and was
19 not the result of voluntary consent based on Hamilton's
20 "coercion, menace, and misrepresentation" in obtaining the
21 judgment.

22 The Debtor alleged that Hamilton threatened him, both
23 verbally and in writing, by stating that she would pursue the
24 matter in criminal court and that he would go to jail if he did
25 not cooperate in consenting to the judgment. He asserted that
26 he was fearful of Hamilton's threats, given that the currency
27 trading venture turned out to be a scam in which the principal
28 was criminally convicted and sent to prison. He also claimed

1 that Hamilton's threats extended to custody and visitation
2 rights related to their teenage daughter. According to the
3 Debtor, Hamilton and her state court counsel misrepresented to
4 him that the attorney also was representing him in that
5 proceeding. Hamilton, however, contended that the Debtor
6 initiated the discussion and was an active and willing
7 participant in the process, even submitting extensive revisions
8 to the proposed judgment.

9 Prior to Hamilton's filing of the motion for summary
10 judgment, the Debtor went on the offensive and moved in the
11 state court to rescind the stipulated judgment entered nearly
12 two and half years before. He sought stay relief from the
13 bankruptcy court to allow pursuit of his state court motion.

14 The bankruptcy court determined that the stay relief motion
15 was unnecessary; it believed that, because the Debtor's motion
16 was not tantamount to a collection action, stay relief was not
17 required. The bankruptcy court indicated that to the extent
18 there was any concern, it was willing to call the state court
19 judge and advise that there was no issue with the stay. It then
20 denied the Debtor's stay relief motion. Hamilton's counsel
21 lodged an order denying the Debtor's motion for stay relief; the
22 bankruptcy court, however, never entered the order.

23 The state court thereafter denied the Debtor's rescission
24 motion. It found that the Debtor failed to explain why he did
25 not seek to rescind or otherwise set aside the stipulated
26 judgment for over two years and determined that he did so only
27 upon discovery that he could not discharge the judgment in
28 bankruptcy. The state court also determined that the legal

1 grounds for the Debtor's motion were faulty. Among other
2 things, it found that Debtor's arguments regarding coercion
3 lacked merit and that the Debtor's declaratory evidence failed
4 to establish that he had a meritorious defense to Hamilton's
5 allegations in the complaint.

6 Having deferred its decision on Hamilton's motion for
7 summary judgment until the state court ruled, the bankruptcy
8 court thereafter determined that the stipulated judgment was
9 entitled to issue preclusive effect. It pointed out that the
10 state court judgment was based on fraud and observed that the
11 state court had rejected the Debtor's allegations of coercion
12 and fraud in connection with the stipulated judgment.

13 Following the bankruptcy court's entry of an order granting
14 summary judgment on the § 523(a) claims, the Debtor timely
15 appealed.²

16 **JURISDICTION**

17 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
18 §§ 1334 and 157(b) (2) (I). We have jurisdiction under 28 U.S.C.
19 § 158.

20 **ISSUE**

21 Whether the bankruptcy court erred in granting summary
22 judgment to Hamilton based on the issue preclusive effect of the
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24 ² Initially there was an issue relating to finality, given
25 that Hamilton's adversary complaint also asserted a claim under
26 § 727(a) (4) (A). Following an inquiry by the BAP Clerk of Court,
27 the bankruptcy court issued an order containing a Civil
28 Rule 54(b) certification. In response, the BAP issued an order
resolving the question of finality for the purposes of this
appeal.

1 stipulated judgment.

2 **STANDARDS OF REVIEW**

3 We review de novo the bankruptcy court's decisions to grant
4 summary judgment and to except a debt from discharge under
5 § 523(a). See Ghomeshi v. Sabban (In re Sabban), 600 F.3d 1219,
6 1221-22 (9th Cir. 2010); Oney v. Weinberg (In re Weinberg),
7 410 B.R. 19, 28 (9th Cir. BAP 2009); see also Carrillo v. Su
8 (In re Su), 290 F.3d 1140, 1142 (9th Cir. 2002)
9 (nondischargeability presents mixed issues of law and fact and
10 is reviewed de novo).

11 We also review de novo the bankruptcy court's determination
12 that issue preclusion was available. Black v. Bonnie Springs
13 Family Ltd. P'Ship (In re Black), 487 B.R. 202, 210 (9th Cir.
14 BAP 2013). If issue preclusion was available, we then review
15 the bankruptcy court's application of issue preclusion for an
16 abuse of discretion. Id. A bankruptcy court abuses its
17 discretion if it applies the wrong legal standard, misapplies
18 the correct legal standard, or if its factual findings are
19 illogical, implausible, or without support in inferences that
20 may be drawn from the facts in the record. See
21 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832
22 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,
23 1262 (9th Cir. 2009) (en banc)).

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1 **DISCUSSION³**

2 **Summary judgment.** Summary judgment is appropriate where
3 the movant shows that there is no genuine dispute of material
4 fact and the movant is entitled to judgment as a matter of law.
5 Fed. R. Civ. P. 56(a) (applicable in adversary proceedings under
6 Rule 7056). The bankruptcy court must view the evidence in the
7 light most favorable to the non-moving party when determining
8 whether genuine disputes of material fact exist and whether the
9 movant is entitled to judgment as a matter of law. See Fresno
10 Motors, LLC v. Mercedes Benz USA, LLC, 771 F.3d 1119, 1125
11 (9th Cir. 2014). And, it must draw all justifiable inferences
12 in favor of the non-moving party. See id. (citing Anderson v.
13 Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)).

14 **Issue preclusion in a nondischargeability proceeding.** The
15 bankruptcy court may give issue preclusive effect to a state
16 court judgment as the basis for excepting a debt from discharge.
17 Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir.
18 2001). We apply the forum state's law of issue preclusion when
19 determining if issue preclusion is appropriate. Id.

20 The party asserting preclusion bears the burden of
21 establishing the threshold requirements. In re Harmon, 250 F.3d
22 at 1245. This means providing "a record sufficient to reveal
23 the controlling facts and pinpoint the exact issues litigated in
24 the prior action." Kelly v. Okoye (In re Kelly), 182 B.R. 255,
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26 ³ While this appeal was pending, Hamilton moved in the
27 bankruptcy court to augment the record on appeal pursuant to
28 Rule 8009(e)(1). The bankruptcy court granted the motion.

Based on our review, we do not disagree with the bankruptcy
court's assessment and, thus, do not disturb its decision.

1 258 (9th Cir. BAP 1995), aff'd, 100 F.3d 110 (9th Cir. 1996).

2 Ultimately, “[a]ny reasonable doubt as to what was decided by a
3 prior judgment should be resolved against allowing the [issue
4 preclusive] effect.” Id.

5 **California issue preclusion.** California permits
6 application of issue preclusion to an existing judgment:
7 (1) after final adjudication; (2) of an identical issue;
8 (3) actually litigated in the former proceeding; (4) necessarily
9 decided in the former proceeding; and (5) asserted against a
10 party in the former proceeding or in privity with that party.

11 See DKN Holdings LLC v. Faerber, 61 Cal. 4th 813, 825 (2015).

12 In addition, the court must determine that issue preclusion
13 “furthers the public policies underlying the doctrine.”

14 In re Harmon, 250 F.3d at 1245 (citing Lucido v. Super. Ct.,
15 51 Cal. 3d 335, 342-42 (1990)); see also Khaligh v. Hadaeqh
16 (In re Khaligh), 338 B.R. 817, 824-25 (9th Cir. BAP 2006).

17 On appeal, the Debtor addresses only the third element,
18 specifically and distinctly, and implicitly addresses the public
19 policy element. Thus, we review only those two elements here.

20 **A California stipulated judgment may be subject to issue**
21 **preclusive effect.** In California, a stipulated judgment is not
22 excluded from an application of issue preclusion, “at least when
23 the parties manifest an intent to be collaterally bound by its
24 terms.” Cal. State Auto. Ass’n Inter-Ins. Bureau v. Super. Ct.,
25 50 Cal. 3d 658, 664 (1990). This is because, under appropriate
26 circumstances, the stipulated judgment is considered akin to a
27 judgment entered after a trial on the merits of the proceeding.
28 See Needelman v. DeWolf Realty Co., 239 Cal. App. 4th 750, 759

1 (2015) (a stipulated judgment "is usually as conclusive a merger
2 or bar as a judgment rendered after trial."); Avery v. Avery,
3 10 Cal. App. 3d 525, 529 (1970) ("The judgment of a court of
4 competent jurisdiction entered upon a stipulation of the parties
5 has the same effect as if the action had been tried on the
6 merits."); see also Villacres v. ABM Indus. Inc., 189 Cal. App.
7 4th 562, 596 (2010).

8 The parties need only "manifest an intent to be
9 collaterally bound by" the terms of the stipulated judgment.⁴
10 Cal. State Auto. Ass'n Inter-Ins. Bureau, 50 Cal. 3d at 664. To
11 the extent that a party admits liability in a stipulated
12 judgment, that party "can be collaterally estopped from
13 relitigating liability" in a subsequent action. Id. By
14 specifically stipulating on an issue of liability, the parties
15 intend that "the ensuing judgment [will] collaterally estop
16 further litigation on that issue. Were their intent otherwise,
17 the parties easily could have expressly restricted the scope of
18 the agreement." Id. at n.2.

19 For purposes of issue preclusion, the California Supreme
20 Court has observed that there is a difference between stipulated
21 judgments entered under California Code of Civil Procedure
22 ("CCP") § 664.6 and compromise settlements entered under
23 CCP § 998. See Cal. State Auto. Ass'n Inter-Ins. Bureau,
24 50 Cal. 3d at 664 & n.3. Entry of the former type of judgment

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26 ⁴ Contrary to the Debtor's assertion, Berr v. Fed. Deposit
27 Ins. Corp. (In re Berr), 172 B.R. 299 (9th Cir. BAP 1994) has no
28 bearing here. Berr involved federal preclusion law, not
California's. As we apply California issue preclusion law,
federal preclusion law bears no application in this matter.

1 is subject to the discretion of the trial court, and, thus, such
2 a judgment is properly subject to issue preclusion. Id. at n.3.
3 The trial court, however, "has no discretion to refuse to enter
4 judgment in a properly accepted statutory offer to settle
5 pursuant to section 998." Id. Therefore, applying issue
6 preclusion to a CCP § 998 compromise is improper. See id.

7 In this case, the stipulated judgment expressly provided
8 that it was enforceable pursuant to CCP § 664.6. As a result,
9 the stipulated judgment was an appropriate basis for a potential
10 application of issue preclusion; it satisfied the "actually
11 litigated" requirement.

12 **The bankruptcy court's stay relief ruling is problematic.**

13 The Debtor argues that the state court's denial of his motion to
14 rescind the stipulated judgment violated the stay and, thus,
15 that the state court's ruling against him was void. The record
16 reflects that he moved for stay relief to litigate that motion
17 in the state court,⁵ which the bankruptcy court denied as
18 unnecessary. Although that decision is not directly before us
19 on appeal, there is no question that the bankruptcy court abused
20 its discretion in denying the request for stay relief.

21 Section 362(a)(1) prohibits "the continuation . . . of a[n]
22 action or proceeding against the debtor that was or could have
23 been commenced before the commencement of the case" It

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25 ⁵ While this appeal was pending, Hamilton also sought stay
26 relief to pursue collection against the Debtor. The Debtor
27 opposed the motion based on his pending appeal. The bankruptcy
28 court denied Hamilton's motion on the record, but the basis for
its decision is unknown because a transcript of the hearing is
unavailable.

1 is well established that actions taken in violation of the stay
2 are void. Schwartz v. United States (In re Schwartz), 954 F.2d
3 569, 571 (9th Cir. 1992).

4 Here, it was the Debtor who sought to rescind the
5 stipulated judgment in state court during the pendency of the
6 bankruptcy case. But, the underlying proceeding - Hamilton's
7 state court action - was an action against the Debtor. As a
8 result, for the purposes of § 362(a), the Debtor's motion was a
9 continuation of Hamilton's action against him. See Parker v.
10 Bain, 68 F.3d 1131, 1135-36 (9th Cir. 1991) (holding that, a
11 debtor's appeal from a summary judgment entered against him and
12 in favor of the plaintiff was stayed by § 362(a) because the
13 underlying proceeding was originally brought against the
14 debtor). Thus, stay relief was required to prosecute the motion
15 to rescind in state court.

16 Even more problematic for the purposes of our review on
17 appeal, the bankruptcy court never entered an order denying the
18 motion for stay relief. Hamilton's counsel lodged the order
19 following the hearing on motion; but, for whatever reason, the
20 bankruptcy court never entered the order. This calls into
21 question the finality of the bankruptcy court's ruling on stay
22 relief, both at the time that the state court rendered its
23 decision on the motion to rescind and for the purposes of this
24 appeal.

25 Pursuant to Civil Rule 58,⁶ it appears that the bankruptcy

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27 ⁶ Civil Rule 58 is incorporated into bankruptcy
28 proceedings by Rule 9021. See Advisory Committee Notes to 1987
(continued...)

1 court's ruling denying stay relief may be final. See Fed. R.
2 Civ. P. 58(c)(2)(B) (final judgment is deemed entered 150 days
3 after the trial court issues or renders its decision); see also
4 Noli v. C.I.R., 860 F.2d 1521, 1525 (9th Cir. 1988) (bankruptcy
5 court's oral order granting stay relief was deemed a final
6 judgment). Here, the bankruptcy court denied the Debtor's stay
7 relief motion on the record at the March 17, 2015 hearing.
8 Thus, its decision likely became final on August 14, 2015.

9 That said, to the extent the bankruptcy court's stay relief
10 ruling became final, finality came too late. The record shows
11 that the state court issued its ruling on the Debtor's motion to
12 rescind on May 15, 2015 - prior to the time that the stay relief
13 ruling likely became final under Civil Rule 58. Had the stay
14

15 ⁶(...continued)

16 Amendment to Rule 9021; see also Noli v. C.I.R., 860 F.2d 1521,
17 1525 (9th Cir. 1988).

18 We acknowledge, however, that the Advisory Committee on
19 Bankruptcy Rules has recently proposed a change to Rule 8002,
20 "to have a provision similar to FRAP 4(a)(7), which addresses
21 when a judgment or order is entered for purposes of [Civil]
22 Rule 4(a)." See Excerpt from the May 10, 2016 Report of the
23 Advisory Committee on Bankruptcy Rules, Action Item 7, at p. 63.
24 In its report, the Committee noted that Civil Rule 58 and its
25 separate document requirement only applies to adversary
26 proceedings and that Rule 9021 "applies to contested matters and
27 does not require a separate document." See id. The proposed
28 rule, thus, seeks to "clarify that the time for filing a notice
of appeal under [Rule 8002](a) begins to run upon docket entry
in contested matters and adversary proceedings for which [Civil]
Rule 58 does not require a separate document"; conversely, "[i]n
adversary proceedings for which [Civil] Rule 58 does require a
separate document, the time commences when the judgment, order,
or decree is entered in the civil docket and (1) it is set forth
on a separate document, or (2) 150 days have run from the entry
in the civil docket, whichever occurs first." Id. at pp. 63-64.

1 relief ruling been final at the time of the state court's order,
2 the bankruptcy court's ruling would likely constitute law of the
3 case, and the parties would be bound by the decision. But that
4 is not the case here; thus, that finality likely occurred at a
5 later point in time is of no moment. As a result, the state
6 court's order violated the stay and was void pursuant to
7 Schwartz.

8 This becomes relevant to our review in this appeal because
9 the bankruptcy court relied extensively on the state court's
10 findings in the stay violative order when applying issue
11 preclusion to the stipulated judgment - in particular, it relied
12 on the stay violative order when assessing the Debtor's
13 contentions that he was coerced into execution of the stipulated
14 judgment. These allegations could have impact on the "actually
15 litigated" element of issue preclusion as the Debtor most
16 directly argues.⁷ But as noted here they most directly relate
17 to the public policy element of California issue preclusion.

18 To the extent a California consent judgment was obtained by
19 inappropriate coercion, a court applying issue preclusion must
20 determine whether reliance on such a judgment appropriately
21 furthers the public policy underlying the issue preclusion
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25 ⁷ As stated, in California, a stipulated judgment may form
26 a proper basis for application of issue preclusion. See Cal.
27 State Auto. Ass'n Inter-Ins. Bureau, 50 Cal. 3d at 664. Thus,
28 that the state court judgment was obtained on the parties'
stipulation did not mean automatically that the matter was not
"actually litigated" for the purposes of issue preclusion.

1 doctrine.⁸ The bankruptcy court did not do this analysis. It,
2 instead, relied on the findings related to the stay violative
3 rescission motion to find there was no coercion. This was
4 error.

5 Because the bankruptcy court improperly relied on a stay
6 violative order in applying issue preclusion to the stipulated
7 judgment, we reverse the bankruptcy court's grant of summary
8 judgment in Hamilton's favor and remand for further proceedings
9 consistent with this decision. Perhaps these particular
10 circumstances warrant a retroactive annulment of the stay; we
11 cannot and do not say. Instead, we leave it to the bankruptcy
12 court to make appropriate determinations in light of our
13 analysis.

14 **CONCLUSION**

15 Based on the foregoing, we REVERSE and REMAND.
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27 ⁸ This is also an appropriate consideration in our de novo
28 review of whether issue preclusion is available in this case.