

MAR 10 2017

SUSAN M. SPRAUL, CLERK
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NOT FOR PUBLICATION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. NV-16-1073-JuKuL
)
JOSEPH MICHAEL SUNDE, DBA) Bk. No. 3:14-bk-50937-BTB
Nevada Quick Divorce, AKA)
J. Michael Sunde, AKA Joseph) Adv. No. 3:14-ap-05044-BTB
Sunde, AKA Mike Sunde and)
VIKTORIYA SOKOL SUNDE, AKA)
Viktoriya Sokol,)
)
Debtors.)

JOSEPH MICHAEL SUNDE;
VIKTORIYA SOKOL SUNDE,
Appellants,

v.

MEMORANDUM¹

VICTORIA A. CROCKETT,
individually and as Trustee of)
the ERKP Family Trust; ROBERT)
D. CROCKETT; NEVADA DIVORCE &)
DOCUMENT SERVICES, INC., a)
Nevada Corporation,)
)
Appellees.)

Argued and Submitted on February 24, 2017
at Las Vegas, Nevada

Filed - March 10, 2017

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

Honorable Bruce T. Beesley, Chief Bankruptcy Judge, Presiding

Appearances: Appellant Joseph Michael Sunde argued pro se;

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 Michael Lehnars argued for appellees.

2

Before: JURY, KURTZ, and LAFFERTY, Bankruptcy Judges.
3

4 Appellees, Victoria A. Crockett, Robert D. Crockett
5 (collectively, the Crocketts), and Nevada Divorce and Document
6 Services, Inc. (NDDSI), filed an adversary complaint against
7 appellants, Joseph Michael Sunde and Victoriya Sunde
8 (collectively, the Sundes), seeking to except a state court
9 judgment debt from discharge under § 523(a)(6).² The Crocketts
10 alleged that the Sundes willfully and intentionally
11 (1) destroyed real property located on Greenwich Way in Reno,
12 Nevada (Greenwich Property) which the Crocketts owned and leased
13 to the Sundes; (2) recorded numerous documents that clouded
14 title on the Greenwich Property; and (3) transmitted false and
15 defamatory statements of fact to Mr. Crockett's employer.

16 After a twelve day trial, the bankruptcy court found that
17 the Sundes' removal of improvements and landscaping from the
18 Greenwich Property fell within the scope of § 523(a)(6). The
19 court entered a nondischargeable judgment against the Sundes
20 consisting of \$30,849.00 in damages awarded by a jury and
21 \$69,580.31 for attorney's fees and costs awarded by the state
22 court pursuant to an attorney's fee clause in the underlying
23 lease between the parties. The Sundes appealed from this
24 judgment.

25

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

1 The Sundes filed a motion to alter or amend the judgment,
2 arguing that the bankruptcy court was required to find the
3 Sundes' conduct was tortious under state law to fall within
4 § 523(a)(6). After a limited remand from this Panel, the
5 bankruptcy court denied the motion by order entered July 22,
6 2016. The Sundes filed an amended notice of appeal to include
7 the July 22, 2016 order.

8 For the reasons set forth below, we VACATE the judgment in
9 the Crocketts' favor and REMAND to the bankruptcy court to make
10 further findings as discussed in this decision.

11 I. FACTS³

12 A. Prepetition Events

13 On August 23, 1996, Mr. Sunde created NDDSI, a Nevada
14 corporation. NDDSI issued 100 shares of stock which were owned
15 by Mr. Sunde.

16 Victoria Crockett is the daughter of Mr. Sunde and also the
17 trustee of the ERKP Family Trust which was created in July 2002.
18 Mr. Sunde is the sole beneficiary of the trust, and he
19 contributed his 100 shares in NDDSI to the trust. Victoria, as
20 trustee, was to make monthly payments to Mr. Sunde for his
21 retirement, which were funded from NDDSI. Since January 20,
22 2011, Victoria has been the sole director and chief executive
23 officer of NDDSI.

24
25
26 ³ To the extent necessary, we take judicial notice of
27 pleadings filed by both parties in the adversary proceeding and
28 underlying bankruptcy case. Atwood v. Chase Manhattan Mortg. Co.
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 **1. The Greenwich Property**

2 In 2000, the Crocketts purchased the Greenwich Property for
3 \$230,000. On March 1, 2008, the Crocketts and the Sundes
4 entered into a twelve month lease agreement for the property
5 (March 2008 Lease). Paragraph 9 of the March 2008 Lease states:

6 Any and all leasehold improvements and fixtures done
7 and paid for by Lessee shall revert to Lessor. Lessee
8 shall have no ownership interest in such leasehold
improvements or fixtures.

9 The March 2008 Lease required the Sundes to maintain the
10 property in good condition and contained an attorney's fee
11 clause.

12 Mr. Sunde provided another lease dated July 15, 2008 (July
13 2008 Lease) which he maintains is the controlling lease between
14 the parties. Paragraph 8 of that lease provided that the lessor
15 agreed that any improvements and fixtures done and paid for by
16 the Sundes would be owned by the Sundes and that lessor agreed
17 to compensate them for the improvements, repairs and fixtures
18 should they vacate the home for any reason whatsoever.

19 While living in the property, Mr. Sunde made various
20 improvements to the property which he paid for.

21 **2. The Legal Proceedings**

22 **a. J. Michael Sunde & Viktoriya Kokol Sunde v.**
23 **Robert and Victoria Crockett (CV10-01187)**

24 By 2010 the relationship between the parties had soured.
25 According to Mr. Sunde, this happened because he got remarried
26 and Victoria did not want his new wife, Viktoriya, to get any of
27 his assets.

28 In April 2010, the Sundes filed a complaint against the

1 Crocketts in the Nevada state court, Case No. CV10-01187. The
2 Sundes alleged that Victoria breached her fiduciary duties as
3 trustee of the ERKP Family Trust by stealing Mr. Sunde's
4 retirement funds and refusing to pay him. They also asserted a
5 claim of elder abuse, contending that Victoria was attempting to
6 destroy NDDSI and force the Sundes to the streets. The Sundes
7 sought to replace Victoria as trustee of the ERKP Family Trust.
8 In essence, the Sundes sought to regain control of NDDSI and the
9 family trust. This case was consolidated with Nevada Divorce &
10 Document Services, Inc. v. Michael Sunde et. al., Case No. CV10-
11 0218. Although the record is sketchy, apparently the Sundes
12 lost and were not granted the relief requested.⁴ During the
13 lawsuit, Mr. Sunde filed a lis pendens against all properties
14 owned by the Crocketts in the Washoe County Recorder's Office.

15 **b. The Eviction Proceedings**

16 The Sundes lived in the Greenwich Property until the
17 Crocketts served them with a notice of eviction based on unpaid
18 rent and a no-fault end of lease, letting the Sundes know that
19 the Crocketts would not continue the lease after February 28,
20 2011.

21 On December 20, 2010, the Justice Court of Reno Township
22 issued an eviction decision and order in favor of the Crocketts.
23 The Justice Court ordered the Sundes to pay rent of \$2100
24 directly to the Crocketts rather than the mortgage company. The
25

26 ⁴ In closing argument of the bankruptcy court trial, counsel
27 for the Crocketts argued that it was reasonable to assume that
28 the Sundes were motivated to destroy the Greenwich Property after
losing the lawsuit over the business and the trust.

1 eviction proceeding was dropped after Mr. Sunde paid the rent.

2 In late January 2011, the Sundes moved from the Greenwich
3 property.⁵ Before they moved, they removed and destroyed
4 improvements made to the property, including cabinets, doors,
5 and landscaping.

6 **c. Robert and Victoria Crockett v. Michael Sunde et.**
7 **al. (CV11-00307)**

8 On January 28, 2011, the Crocketts filed a lawsuit against
9 the Sundes in the Nevada state court, Case No. CV11-00307. In
10 the background facts common to all claims for relief, the
11 Crocketts alleged that in January 2011, the Sundes began to
12 destroy the Greenwich Property by removing or destroying front
13 bushes and shrubs, back bushes and shrubs, the air conditioner
14 unit, and numerous built-in cabinets and casings. The Crocketts
15 further alleged that the Sundes returned to the home on
16 January 27, 2011, and removed, among other things, various
17 landscaping in the front of the home. According to the
18 Crocketts, these actions violated the terms of the March 2008
19 Lease, as the items removed solely belonged to the Crocketts.
20 Based on these facts, the Crocketts alleged claims for breach of
21 contract, breach of the implied covenant of good faith and fair
22 dealing, conversion, and unjust enrichment. They also requested
23 a temporary restraining order and preliminary injunction.
24 Attached to the complaint was the March 2008 Lease.

25
26 ⁵ In its findings of facts and conclusions of law, the
27 bankruptcy court noted that it was unclear whether the Sundes
28 were evicted or whether they moved out during the eviction
process.

1 On February 4, 2011, the state court heard the Crocketts'
2 request for a preliminary injunction. The initial argument
3 centered on whether the March 2008 Lease or the July 2008 Lease
4 was the enforceable lease. Later in the hearing, the judge
5 asked Mr. Sunde where the cabinets were. Mr. Sunde responded
6 that he had hired some workers and they took them to the dump.
7 Mr. Sunde stated on the record:

8 I hired them. I said do you need a truck. They came.
9 We loaded stuff up, and yeah, I tore things apart.
10 They broke. I wasn't sitting there playing with
11 things. I tore them apart quickly because I wasn't
12 going to spend careful time on stuff I was going to
13 throw in the dump. They put it in the truck. I says,
14 'Go to the dump. Get a receipt from the dump. Dump
15 it, come back get some more. . . .

16 At another point, he said:

17 Do you think I like throwing out what I put in? You
18 think I didn't cry every God damn day that I went --
19 excuse me, Your Honor -- that I tore that place apart?
20 Think I didn't cry at night when I went to sleep
21 because I was tearing my own house apart that I built?
22 It wasn't fun. But I wasn't about to give it to her
23 after she already stole from me as much as she did. I
24 was fighting for my life when she stole my retirement.
25 I was almost on the street. Now she wants me to turn
26 over \$205,000 to her? No. I won't. She signed that
27 lease. The [July 15, 2008] lease is valid. I had a
28 legal right to do what I did.

The court:

Well, is it fair to say, then, that you're contending
that the cabinetry and other elements of the house
including the landscaping are things you put into this
property that you didn't want the Crocketts to get?
Is that why you removed them?

Mr. Sunde: I didn't want them to get them.

In the end, the state court found that the operative lease
was the March 2008 Lease and, therefore, Mr. Sunde had no right
to remove the fixtures to the house.

1 So there is a big problem, and it's wrongful to remove
2 the fixtures when you are the tenant. So I am going
3 to grant the preliminary injunction. And I would also
4 say that as part of that, that if you have any of
5 these things that were removed from the house, you are
6 required to return them.

7 On October 10, 2011, the Crocketts moved to amend their
8 complaint. The Crocketts maintained that after the original
9 complaint was filed, the Sundes recorded a lis pendens against
10 the Greenwich Property on April 20, 2011, and July 18, 2011.⁶
11 They further alleged that in August 2011, the Sundes sought a
12 Writ Of Prohibition And Madamus to prevent the sale of the
13 Greenwich Property in the Nevada state court. The Sundes
14 recorded other documents as well. On August 30, 2011, they
15 recorded an Emergency Motion to Appoint a Receiver, Remove
16 Trustee, for Restraining Order and Injunctive Relief and for an
17 Accounting (Emergency Motion). On September 9, 2011, the Sundes
18 recorded an application for a default judgment. The Crocketts
19 alleged that the recording of these documents was not
20 authorized.

21 The Crocketts also alleged that in September 2011,
22 Mr. Sunde sent a document to Mr. Crockett's supervisor at his
23 employment that contained false statements that the Crocketts
24 had stolen money and property from the Sundes in an attempt to
25 render them homeless.

26 Finally, the Crocketts alleged that in July 2011, they

27 ⁶ On July 26, 2011, the state court entered an order in Case
28 Nos. CV10-01187 and CV11-00307 cancelling the lis pendens that
Mr. Sunde had filed against the Greenwich Property on July 18,
2011.

1 entered into a purchase and sale agreement to sell the Greenwich
2 Property for \$239,000. Due to the Sundes' recorded documents,
3 the sale was cancelled. Afterwards, the Nevada state court
4 denied Mr. Sunde's Emergency Motion, but then he filed an
5 improper application for default judgment with the court.

6 The amended complaint continued to assert claims for breach
7 of contract, breach of the covenant of good faith and fair
8 dealing, conversion, unjust enrichment, and temporary
9 restraining order and added claims for defamation, slander of
10 title, temporary and permanent injunction, intentional
11 interference with contractual relations, and intentional
12 interference with prospective economic advantage.

13 At a September 20, 2011 hearing, the state court authorized
14 the Crocketts to file their amended complaint and issued a
15 preliminary injunction which prohibited the Sundes from filing
16 or recording anything in the chain of title of property owned by
17 the Crocketts and prohibited Mr. Sunde from contacting
18 Mr. Crockett's employer. The state court found that the legal
19 documents Mr. Sunde filed were an "abuse of process" and "an
20 inappropriate use of the recording laws in the State of Nevada."

21 Eventually, the matter was heard by a jury. Jury
22 instructions were given for breach of contract, breach of the
23 covenant of good faith and fair dealing, and conversion. After
24 a five-day trial, the jury returned a verdict in favor of the
25 Crocketts for \$30,849.00 plus accrued interest.⁷ On

26
27 ⁷ The Sundes answered the amended complaint and asserted
28 counterclaims alleging, among other things, that the Crocketts
(continued...)

1 December 16, 2013, the state court entered a judgment against
2 the Sundes for this amount. There are no findings in the
3 judgment as to which claim the Crocketts prevailed on nor did
4 the jury answer special interrogatories pertaining to its
5 verdict.

6 The Crocketts then moved for attorney's fees and costs,
7 which were authorized by an attorney's fee clause in the March
8 2008 Lease. They sought \$64,350 in attorney's fees, \$120 in
9 paralegal fees and \$5,230.31 in costs, totaling \$69,580.31. The
10 Sundes opposed the motion on reasonableness and other grounds.
11 In its order granting the motion, the state court noted that the
12 case "arose from a contract dispute" involving a residential
13 lease.⁸ The state court noted that the March 2008 Lease
14 provided for reasonable attorney's fees to the prevailing party
15 and found that the Crocketts were the prevailing party. The
16 court also found the fees reasonable and awarded the attorney's
17 fees and costs in full as requested. On January 27, 2014, the
18 state court entered an order granting the Crocketts their fees
19 and costs.

20 **B. Bankruptcy Events**

21 On May 29, 2014, the Sundes filed a chapter 7 case.

22 **1. The Adversary Complaint**

23 On August 18, 2014, the Crocketts filed an adversary
24

25 ⁷(...continued)
26 had converted their property. The Sundes did not prevail on any
27 of their claims.

28 ⁸ This language suggests that the jury awarded damages only
for breach of contract.

1 complaint against the Sundes alleging claims under §§ 523(a)(4)
2 (breach of fiduciary duty)⁹ and (6) (willful and malicious),
3 § 727(a)(4) (denial of discharge), and § 524(a)(3) (community
4 discharge). Only the § 523(a)(6) claim is at issue in this
5 appeal. The § 523(a)(6) claim was based on the Sundes'
6 destruction of the Greenwich Property, their unlawful recording
7 of numerous documents that clouded title to the property, and
8 their false and defamatory statements to Mr. Crockett's
9 employer. Based thereon, the Crocketts sought a declaration
10 that the state court judgment debt was nondischargeable based on
11 the Sundes' willful and malicious conduct.

12 The bankruptcy court held a trial over twelve days. The
13 Sundes appeared pro se. On January 19, 2016, the bankruptcy
14 court issued an oral ruling setting forth its findings of fact
15 and conclusions of law. The court found that the Sundes had
16 removed improvements and landscaping from the Greenwich Property
17 at the time they were being moved out of the home by the
18 Crocketts. The court found that Mr. Sunde indicated he did that
19 was because he was angry, he was being moved out of the home,
20 which he thought would be his for life, and he didn't want his
21 daughter to have the benefit of any of the improvements he had
22 made. The court also found that the March 2008 Lease was the
23 operative lease. Finally, the court found the Sundes were not
24 credible and the Crocketts were credible. The bankruptcy court
25 concluded that all the damages awarded in the state court jury
26

27 ⁹ The § 523(a)(4) claim was dismissed by order entered on
28 February 13, 2015.

1 trial case, including the attorney's fees, were
2 nondischargeable.

3 On February 12, 2016, the bankruptcy court entered written
4 findings of fact and conclusions of law consistent with its
5 oral ruling.

6 On March 9, 2016, the bankruptcy court entered a judgment
7 in favor of the Crocketts, finding the state court judgment debt
8 consisting of damages and attorney's fees and costs
9 nondischargeable under § 523(a)(6). The Sundes timely appealed
10 from that judgment. The Sundes filed an amended notice of
11 appeal on March 22, 2016.

12 **2. The Motion To Alter Or Amend The Judgment**

13 On the same day that they filed the amended notice of
14 appeal, the Sundes filed a motion to alter or amend the judgment
15 or motion for new trial. There, they argued, among other
16 things, that the Crocketts failed to mention a tort in their
17 adversary complaint. They also complained that the bankruptcy
18 court failed to mention a tort in its findings of fact and
19 conclusions of law. According to the Sundes, a finding of
20 tortious conduct under Nevada law is essential to a § 523(a)(6)
21 claim. The Sundes maintained that the "'gist' of all claims,
22 testimony, and evidence prove without doubt that this is only a
23 contract claim."

24 The bankruptcy court heard the motion on June 1, 2016. On
25 the same day, the court also heard the Sundes' motion for a stay
26 pending appeal. The court first addressed the Sundes' motion
27 for stay pending appeal and considered whether they were likely
28 to succeed on appeal. In response to Mr. Sunde's argument

1 regarding the requirement of a tort, the bankruptcy court
2 stated: "Well, destruction of property is a tort. You don't
3 have to say, quote, 'tort destruction of property.'"

4 Mr. Sunde: "Well, you do, Your Honor. You have to
5 specifically argue that there's a tort, and we have the research
6 to show that if you don't specifically argue -- name the tort,
7 specifically argue it, you don't have a tort."

8 In support of his argument, Mr. Sunde relied on Spigot
9 Resources, Inv. v. Radow (In re Radow), 2013 WL 1397342 (9th
10 Cir. BAP Apr. 2, 2013); Lockerby v. Sierra, 535 F.3d 1038, 1040
11 (9th Cir. 2008), and Buenaventura v. Vinh Chau (In re Vinh
12 Chau), 2014 WL 643726 (9th Cir. BAP Feb. 19, 2014).

13 Mr. Sunde further argued that there were no damages because
14 the Sundes provided evidence that they made \$230,000 worth of
15 improvements and Victoria testified that she spent about \$15,000
16 or \$20,000 to remodel after the Sundes left. According to
17 Mr. Sunde, the Crocketts still had benefitted by the sum of
18 about \$210,000 from his efforts. After oral argument, the
19 bankruptcy court denied the motion to amend the judgment.

20 On June 13, 2016, the Sundes filed a motion for
21 reconsideration of the court's denial of their motion to amend
22 the judgment.

23 On June 24, 2016, the Panel entered an order granting a
24 limited remand so that the bankruptcy court could enter an order
25 on the Sundes' motion for reconsideration and to enter any order
26 regarding the unresolved §§ 727(a)(4) and 524(a)(3) claims in
27 the adversary.

28 On July 19, 2016, the bankruptcy court entered an order

1 denying the Sundes' request for a stay pending appeal.

2 On July 22, 2016, the bankruptcy court entered an order
3 denying the Sundes' motion to alter or amend the judgment and
4 denying their motion for reconsideration of that ruling. There,
5 the court found that it properly identified the tortious conduct
6 even though it had not mentioned the word "tort" in its findings
7 and conclusions. The court dismissed the remaining claims,
8 thereby rendering its judgment on the § 523(a)(6) claim final
9 for purposes of this appeal.¹⁰

10 On August 1, 2016, the Sundes filed a third amended notice
11 of appeal to include the bankruptcy court's July 22, 2016 order
12 denying their motion to amend the judgment and their motion for
13 reconsideration of that decision.

14 **II. JURISDICTION**

15 The bankruptcy court had jurisdiction over this proceeding
16 under 28 U.S.C. §§ 1334 and 157(b)(2)(I). We have jurisdiction
17 under 28 U.S.C. § 158.

18 **III. ISSUES**

19 Did the bankruptcy court err in determining that the state
20 court judgment was nondischargeable under § 523(a)(6)?

21 Did the bankruptcy court err in denying the Sundes' motion
22 to alter or amend the judgment?

23 **IV. STANDARDS OF REVIEW**

24 "Because the bankruptcy court entered its judgment after
25 trial, we review the bankruptcy court's findings of fact for

26
27 ¹⁰ On May 17, 2016, the § 727(a)(4) claim was dismissed. On
28 July 22, 2016, the bankruptcy court dismissed the § 524(a)(3)
claim.

1 clear error, and its conclusions of law de novo.” Thiara v.
2 Spycher Brothers (In re Thiara), 285 B.R. 420, 426 (9th Cir. BAP
3 2002) (citing Carrillo v. Su (In re Su), 290 F.3d 1140, 1142
4 (9th Cir. 2002)). A court’s factual determination is clearly
5 erroneous if it is illogical, implausible, or without support in
6 the record. United States v. Hinkson, 585 F.3d 1247, 1261-62 &
7 n.21 (9th Cir. 2009) (en banc). “The bankruptcy court’s
8 conclusions of law regarding nondischargeability, as well as its
9 interpretation of state law, are reviewed de novo.”
10 In re Thiara, 285 at 426. We also review de novo the bankruptcy
11 court’s application of the legal standard in determining whether
12 a debt resulting from a debtor’s wrongful conduct is
13 dischargeable as a willful and malicious injury. Id.

14 We review the bankruptcy court’s denial of a motion to
15 alter or amend the judgment for abuse of discretion. Ta Chong
16 Bank Ltd. v. Hitachi High Techs. Am., Inc., 610 F.3d 1063, 1066
17 (9th Cir. 2010). Under the abuse of discretion standard, we
18 first “determine de novo whether the [bankruptcy] court
19 identified the correct legal rule to apply to the relief
20 requested.” Hinkson, 585 F.3d at 1262. If the bankruptcy court
21 identified the correct legal rule, we then determine under the
22 clearly erroneous standard whether its factual findings and its
23 application of the facts to the relevant law were:
24 “(1) illogical, (2) implausible, or (3) without support in
25 inferences that may be drawn from the facts in the record.” Id.

26 V. DISCUSSION

27 A. Section 523(a) (6): Legal Standards

28 Section 523(a) (6) excepts from discharge any debt “for

1 willful and malicious injury by the debtor to another entity or
2 to the property of another entity." The willful and malicious
3 requirements are analyzed separately, and both elements must be
4 met. In re Su, 290 F.3d at 1146-47; Ormsby v. First Am. Title
5 Co. of Nev. (In re Ormsby), 591 F.3d 1199, 1206 (9th Cir. 2010).

6 Whether a debtor acted willfully is a subjective inquiry:
7 the "willful injury requirement is met only when the debtor has
8 a subjective motive to inflict injury or when the debtor
9 believes that injury is substantially certain to result from his
10 own conduct." In re Ormsby, 591 F.3d at 1206. Further, when
11 determining the debtor's intent under § 523(a)(6), there is a
12 presumption that the debtor knows the natural consequences of
13 his actions. Id.

14 "'A malicious injury involves (1) a wrongful act, (2) done
15 intentionally, (3) which necessarily causes injury, and (4) is
16 done without just cause or excuse.'" In re Su, 290 F.3d at
17 1146-47. "Malice may be inferred based on the nature of the
18 wrongful act." In re Ormsby, 591 F.3d at 1206.

19 When the debt in question arises out of a contract, in
20 addition to willfulness and maliciousness, a plaintiff must also
21 show that the injury was caused by intentional tortious conduct.
22 Lockerby v. Sierra, 535 F.3d 1038, 1040-42 (9th Cir. 2008)
23 (citing Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1205
24 (9th Cir. 2001) ("[a]n intentional breach of contract is
25 excepted from discharge under § 523(a)(6) only when it is
26 accompanied by malicious and willful tortious conduct.")).
27 Conduct is tortious if it constitutes a tort under state law.
28 Lockerby, 535 F.3d at 1041. A state court judgment debt based

1 solely on a simple breach of contract is dischargeable as a
2 matter of law. Snoke v. Riso (In re Riso), 978 F.2d 1151 (9th
3 Cir. 1992).

4 **B. Analysis**

5 Applying these standards, we conclude that the bankruptcy
6 court's findings of fact and conclusions of law are inadequate
7 for our review. The court summarily concluded that the willful
8 and malicious elements were met without connecting the Sundes'
9 conduct or the Crocketts' damages to any tort recognized by
10 Nevada law. In the absence of such findings, we cannot tell
11 whether the Sundes' conduct fell within the scope of one or more
12 of the numerous torts mentioned throughout this proceeding or
13 whether the Crocketts' damages arose out of that tort as opposed
14 to breach of contract. Indeed, the link between a tort under
15 Nevada law and the Sundes' conduct has been a moving target
16 throughout these proceedings.

17 In the adversary complaint, the Crocketts alleged
18 destruction of property, defamation, and wrongful recording of
19 documents (abuse of process) as the basis of their § 523(a)(6)
20 claim. During closing argument, Crocketts' counsel argued that
21 the tort of conversion applied to the Sundes' conduct and cited
22 the definition for conversion under Nevada law:

23 [A] distinct act of dominion wrongfully exerted over
24 another's personal property in denial of, or
25 inconsistent with his title or rights therein or in
26 derogation, exclusion, or defiance of such title or
rights. Additionally, conversion is an act of general
intent, which does not require wrongful intent and is
not excused by care, good faith, or lack of knowledge.

27 Evans v. Dean Witter Reynolds, Inc., 5 P.3d 1043, 1048 (Nev.
28 2000). This definition does not require the subjective intent

1 for willful conduct under § 523(a)(6). Compare In re Jercich,
2 283 F.3d at 1207 (“The conversion of another’s property without
3 his knowledge or consent, done intentionally and without
4 justification and excuse, to the other’s injury, constitutes a
5 willful and malicious injury within the meaning of
6 § 523(a)(6).”). In any event, nowhere does the bankruptcy court
7 mention whether the tort of conversion was the basis for its
8 decision.

9 Counsel next argued that in addition to damaging the
10 Greenwich Property, there was evidence that the Sundes slandered
11 the title¹¹ and committed abuse of process. Counsel explained
12 the elements for slander of title and abuse of process, but
13 nowhere does the bankruptcy court mention whether the Sundes’
14 recording of the lis pendens or other documents fell within the
15 scope of those torts under Nevada law or whether any of the
16 damages awarded by the state court were as a result of these
17 acts.

18 Later, at the hearing on the Sundes’ motion to alter or
19 amend the judgment and motion for a stay pending appeal, the
20 Sundes argued that the Crocketts failed to mention, much less
21 prove, that their conduct was tortious under Nevada law, a
22

23 ¹¹ Slander of title is a tort under Nevada law and involves
24 false and malicious communications that disparage a person’s
25 title in land and causes special damages. See Summa Corp. v.
26 Greenspun, 655 P.2d 513, 514 (Nev. 1982) and Higgins v. Higgins,
27 744 P.2d 530, 531 (Nev. 1987). Slander of title has been found
28 to be a basis for a § 523(a)(6) claim. See Gambino v. Koonce,
757 F.3d 604 (7th Cir. 2014) (Illinois judgment for slander of
title for use of forged deeds and other fraudulent documents to
improperly gain title held non-dischargeable).

1 requirement under Ninth Circuit law. The requirement of
2 tortious conduct was therefore squarely before the bankruptcy
3 court. During that hearing, the bankruptcy court found that the
4 tort was the destruction of property, thus implying that the
5 tort requirement had been met. However, nowhere did the
6 Crocketts argue that Nevada recognized a tort for the
7 destruction of property, and we cannot determine whether such a
8 tort exists for the first time on appeal.¹²

9 Finally, we cannot tell whether the state court awarded
10 damages or attorney's fees based on the Sundes' tortious conduct
11 or whether those awards were based solely on breach of contract.
12 Accordingly, the bankruptcy court erred by giving preclusive
13 effect to the amount of the damages and award of attorney's fees
14

15 ¹² The closest we could find to a tort for destruction of
16 property in Nevada is embodied in a criminal statute. Nevada
17 Revised Statutes 206.310, entitled "Injury to other property,"
18 provides:

19 1. Every person who shall willfully or maliciously
20 destroy or injure any real or personal property of
21 another, for the destruction or injury of which no
22 special punishment is otherwise specially prescribed,
23 shall be guilty of a public offense proportionate to
24 the value of the property affected or the loss
25 resulting from such offense.

26 2. It is not a defense that the person engaging in the
27 conduct prohibited by subsection 1 holds a leasehold
28 interest in the real property that was destroyed or
injured.

29 The statute does not expressly recognize a civil cause of action,
30 but we need not decide whether there is one for the first time on
31 appeal. The bankruptcy court should decide whether a civil cause
32 of action exists for destruction of property in the first
33 instance if it allows the Crocketts to pursue this tort theory.

1 without connecting those awards to damages caused by the Sundes'
2 tortious conduct.

3 In sum, it is impossible for us to determine whether the
4 bankruptcy court properly applied the law to the facts in this
5 case. Therefore, on remand, the bankruptcy court should address
6 whether the Sundes' conduct was tortious under Nevada law based
7 on the evidence presented at trial and determine whether the
8 damages awarded by the state court are recoverable based on that
9 tort. In light of our decision, it is unnecessary to address
10 the other issues raised by the Sundes on appeal.

11 **VI. CONCLUSION**

12 For the reasons stated, we VACATE the judgment in the
13 Crocketts' favor and REMAND to the bankruptcy court to make
14 further findings as discussed in this decision.