

APR 24 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NOT FOR PUBLICATION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. CC-16-1293-LKuF
	)	
PAUL CHARLES ZEPPINICK,	)	Bk. No. 1:14-bk-13168-VK
	)	
Debtor.	)	Adv. No. 1:14-ap-01168-VK
	)	
PAUL CHARLES ZEPPINICK,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>MEMORANDUM*</b>
	)	
LUIS RAMIREZ,	)	
	)	
Appellee.	)	
	)	

Argued and Submitted on March 23, 2017  
at Pasadena, California

Filed - April 24, 2017

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

Honorable Victoria S. Kaufman, Bankruptcy Judge, Presiding

Appearances: Katherine Butts Warwick argued for Appellant Paul  
Charles Zeppinick; Michael John Hemming argued for  
Appellee Luis Ramirez.

Before: LAFFERTY, KURTZ, and FARIS, Bankruptcy Judges.

\* This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8024-1.

1 **INTRODUCTION**

2 In 2004, Appellee Luis Ramirez worked for Appellant Paul  
3 Zeppinick on home remodeling projects. On one of those projects,  
4 the home sustained damage after the plastic Ramirez placed on a  
5 damaged roof blew off in a storm. Thereafter, Zeppinick refused  
6 to pay Ramirez his wages, claiming an offset of \$12,000-\$14,000  
7 for the damage. Ramirez filed a claim with the Labor  
8 Commissioner of the State of California seeking payment of his  
9 wages. The Labor Commissioner found in favor of Ramirez, finding  
10 that Ramirez was an employee and not an independent contractor  
11 and that Zeppinick should have known he had not right to offset  
12 any damages against an employee's wages. The Labor Commissioner  
13 awarded Ramirez \$23,156.50. Zeppinick did not appeal the Labor  
14 Commissioner's decision, and a judgment was entered in the  
15 Superior Court (the "Judgment").

16 After Zeppinick filed his chapter 7<sup>1</sup> case, Ramirez filed an  
17 adversary proceeding seeking a declaration of nondischargeability  
18 of the sums due him under the Judgment. At trial, the bankruptcy  
19 court gave issue preclusive effect to the Labor Commissioner's  
20 findings and heard testimony from the parties. The bankruptcy  
21 court ruled in favor of Ramirez, finding the debt  
22 nondischargeable under § 523(a)(6). Zeppinick timely appealed.

23 We AFFIRM.  
24

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

1 **FACTS<sup>2</sup>**

2 Zeppinick is a California licensed general contractor with  
3 50 years' experience as a laborer, salesperson, foreman, and  
4 general contractor. Prior to 2004, Zeppinick worked for a  
5 company named Thoughtful Builders as a superintendent and project  
6 manager doing home remodeling. During his employment with  
7 Thoughtful Builders he met Ramirez, who also worked for  
8 Thoughtful Builders, and the two worked on projects together. At  
9 some point in 2004 the owner of Thoughtful Builders fell ill, and  
10 Zeppinick took over management of the company's operations.

11 Around December 2004, Zeppinick asked Ramirez to work for  
12 him. They agreed that Ramirez would supervise projects and buy  
13 materials, subject to reimbursement by Zeppinick. Ramirez would  
14 be paid \$25 per hour as compensation for his work. To be paid,  
15 Ramirez would submit a weekly work report summarizing the work he  
16 performed and detailing the number of hours he spent working and  
17 any materials he purchased out of pocket.

18 From the beginning of the parties' working relationship  
19 until September 2005, Zeppinick regularly paid Ramirez his wages  
20 and expense reimbursements; payments were made in cash.  
21 Zeppinick did not pay the employer's share of taxes, did not  
22 withhold the employee's share of taxes, and did not obtain  
23 workers' compensation insurance.

24 Around September 2005, Zeppinick was hired to repair the  
25 roof of a house belonging to Chris Bentley (the "Bentley  
26

---

27 <sup>2</sup> In this factual recitation, we borrow heavily from the  
28 bankruptcy court's findings and conclusions.

1 Property"). During the course of this project, the Bentley  
2 Property was damaged when Ramirez covered the already damaged  
3 roof with plastic sheeting and left for the weekend; the plastic  
4 blew off in a storm, resulting in water damage to the home.  
5 Zeppinick testified that he had to pay to repair those damages.  
6 From September 2005 through November 2005, Zeppinick did not pay  
7 Ramirez his wages or reimburse Ramirez for his expenses.  
8 Zeppinick testified that he withheld the funds owed to Ramirez  
9 because Ramirez's work resulted in damage to the Bentley  
10 Property. In late November 2005, Ramirez's employment with  
11 Zeppinick was terminated.

12 On December 20, 2005, Ramirez filed a claim with the Labor  
13 Commissioner of the State of California. Ramirez alleged that he  
14 was owed (1) unpaid wages earned from September 15, 2005 to  
15 November 28, 2005, a total of \$10,000; and (2) unreimbursed  
16 business expenses from July 16, 2005 to November 28, 2005, a  
17 total of \$13,459.92. To support his claim, Ramirez submitted  
18 detailed documentation of wages and expenses he had incurred at  
19 the time Zeppinick refused to pay Ramirez.

20 On July 31, 2006, the Labor Commissioner held a hearing on  
21 the matter. Both Ramirez and Zeppinick appeared at the hearing.  
22 Zeppinick appeared without an attorney and without any  
23 documentary evidence. On September 6, 2006, the Labor  
24 Commissioner issued its decision in favor of Ramirez. In  
25 relevant part, the Labor Commissioner found:

26 Plaintiff performed services as an employee not an  
27 independent contractor (sub-contractor).

28 . . . .

1 Plaintiff's wage claim contains a deduction of  
2 \$4,000.00 for damages at one of the work sites.

3 . . . .

4 Defendant's position is that Plaintiff [is] a  
5 sub-contractor, employed the crew and at least some of  
6 the work sites were fixed price wage agreements.  
7 Defendant produced no written evidence whatsoever  
8 despite admitting the records were in fact maintained.  
9 Defendant's argument is really a setoff argument as  
10 Plaintiff's leaving early caused extensive water damage  
11 at the Chris Bentley work site . . . .

12 Defendant is a licensed contractor and should know the  
13 basic labor laws including the presumption in his state  
14 that one who performs services for another is an  
15 employee. There was no explanation for the failure to  
16 produce records at the hearing. Plaintiff is awarded  
17 \$9,000.00 in wages deducting the week not worked that  
18 caused the controversy between the parties. Plaintiff  
19 is awarded \$12,495.14 based on effective evidence as  
20 produced at the hearing.

21 Absent admissions and a conviction there is no  
22 demonstrated proof of employee wrong doing or gross  
23 negligence on the part of the Plaintiff in the record  
24 although the parties are in dispute as to when  
25 Plaintiff notified Defendant he would be off the job.  
26 Plaintiff did the work and Plaintiff incurred the  
27 expenses and he has to be paid and deducted \$4,000.00  
28 off the claim for the damages to Bentley's residence.  
A majority of the evidence favors Plaintiff in this  
matter and he is awarded what he claims subject to the  
modifications noted hereinabove.

19 The Labor Commissioner awarded Ramirez a total of \$23,156.50  
20 comprised of \$9,000 in wages, \$12,495.74 in reimbursable  
21 expenses, and \$1,660.76 in interest pursuant to Cal. Lab. Code  
22 § 98.1. The Labor Commissioner's Order included the following  
23 notice of a right to appeal:

24 The parties herein are notified and advised that this  
25 Order, Decision or Award of the Labor Commissioner  
26 shall become final and enforceable as a judgment in a  
27 court of law unless either or both parties exercise  
28 their right to appeal to the appropriate court within  
ten (10) days of service of this document.

28 Zeppinick neither appealed nor sent payment. As a result, the

1 Judgment in the amount of \$23,877.96 (including post-hearing  
2 interest and filing fee) was entered in favor of the Labor  
3 Commissioner and against Zeppinick; the Labor Commissioner  
4 subsequently assigned the Judgment to Ramirez.

5 Zeppinick filed a chapter 7 bankruptcy on June 29, 2014.  
6 Ramirez filed a timely adversary proceeding seeking a declaration  
7 of nondischargeability of the amounts owed to him pursuant to the  
8 Judgment. The matter was tried on August 30, 2016. As a result  
9 of amendments to the original complaint and a stipulation to  
10 dismiss the § 523(a)(2)(B) claim, the sole claim remaining for  
11 adjudication was under § 523(a)(6).

12 As of the trial date, Zeppinick had not paid any portion of  
13 the Judgment. At trial, the bankruptcy court gave issue  
14 preclusive effect to the Labor Commissioner's findings and also  
15 heard testimony from the parties. The bankruptcy court issued  
16 its ruling the following day, finding in favor of Ramirez on the  
17 § 523(a)(6) claim. The bankruptcy court entered judgment on  
18 September 30, 2016 declaring \$47,206.56 nondischargeable under §  
19 523(a)(6). Zeppinick timely appealed.

#### 20 **JURISDICTION**

21 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
22 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.  
23 § 158.

#### 24 **ISSUES**

25 Did the bankruptcy court err in applying issue preclusion to  
26 the Labor Commissioner's findings?

27 Did the bankruptcy court err in entering judgment finding  
28 the debt Zeppinick owed to Ramirez to be nondischargeable under

1 § 523(a)(6)?

2 **STANDARDS OF REVIEW**

3 We review de novo the bankruptcy court's determination that  
4 issue preclusion was available. Plyam v. Precision Dev., LLC  
5 (In re Plyam), 530 B.R. 456, 461 (9th Cir. BAP 2015). If issue  
6 preclusion was available, we review the bankruptcy court's  
7 application of issue preclusion for an abuse of discretion. Id.  
8 A bankruptcy court abuses its discretion if it applies the wrong  
9 legal standard, misapplies the correct legal standard, or if its  
10 factual findings are illogical, implausible, or without support  
11 in inferences that may be drawn from the facts in the record.  
12 See TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832  
13 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,  
14 1262 (9th Cir. 2009) (en banc)).

15 We review the bankruptcy court's conclusions of law de novo  
16 and its factual findings for clear error. Carrillo v. Su  
17 (In re Su), 290 F.3d 1140, 1142 (9th Cir. 2002). A finding that  
18 an injury is willful is a factual finding that is reviewed for  
19 clear error, see Gee v. Hammond (In re Gee), 173 B.R. 189, 192  
20 (9th Cir. BAP 1994), as is a finding that an injury is malicious,  
21 Thiara v. Spycher Bros. (In re Thiara), 285 B.R. 420, 427 (9th  
22 Cir. BAP 2002). A finding is clearly erroneous "when although  
23 there is evidence to support it, the reviewing court on the  
24 entire evidence is left with the definite and firm conviction  
25 that a mistake has been committed." Anderson v. City of Bessemer  
26 City, 470 U.S. 564, 573 (1985) (citation omitted). Where two  
27 permissible views of the evidence exist, the factfinder's choice  
28 between them cannot be clearly erroneous. Id. at 574. We are to

1 give "due regard to the trial court's opportunity to judge the  
2 witnesses' credibility." Civil Rule 52(a)(6) (incorporated via  
3 Rule 7052). We also give deference to inferences drawn by the  
4 trial court. Beech Aircraft Corp. v. United States, 51 F.3d 834,  
5 838 (9th Cir. 1995).

## 6 DISCUSSION

### 7 **A. The bankruptcy court did not err in applying issue** 8 **preclusion to the Labor Commissioner's findings.**

9 Zeppinick contends that the bankruptcy court erred in giving  
10 issue preclusive effect to the Labor Commissioner's findings. In  
11 its findings and conclusions, the bankruptcy court stated: "The  
12 parties do not dispute the collateral estoppel effect of the  
13 Labor Commissioner's decision and the Judgment regarding the  
14 amount of unpaid wages and unreimbursed expenses owed to  
15 Plaintiff and as to the characterization of Plaintiff as an  
16 employee." In the bankruptcy court, Zeppinick's counsel did not  
17 expressly object to the application of issue preclusion to the  
18 Labor Commissioner's decision, but in the parties' Joint Pretrial  
19 Stipulation, they agreed that the issues of fact to be litigated  
20 included Ramirez's status as an employee of Zeppinick. However,  
21 at trial, the bankruptcy court cut off Zeppinick's counsel's  
22 questioning of Ramirez regarding facts relevant to whether  
23 Ramirez was an employee or an independent contractor, stating  
24 "there's no real point in arguing about being an independent  
25 contractor. It's already been determined at a hearing . . . in  
26 which the defendant participated." Although Zeppinick could have  
27 (and probably should have) explicitly raised and briefed the  
28 preclusion issue, on this record we are reluctant to conclude

1 that he waived any objection to the bankruptcy court's  
2 application of the doctrine. That said, we find no error by the  
3 bankruptcy court in applying issue preclusion to the Labor  
4 Commissioner's findings.

5 In applying issue preclusion to a state court judgment, the  
6 bankruptcy court must apply the forum state's law of issue  
7 preclusion. In re Plyam, 530 B.R. at 462. In California,  
8 application of issue preclusion requires that: (1) the issue  
9 sought to be precluded from relitigation is identical to that  
10 decided in a former proceeding; (2) the issue was actually  
11 litigated in the former proceeding; (3) the issue was necessarily  
12 decided in the former proceeding; (4) the decision in the former  
13 proceeding is final and on the merits; and (5) the party against  
14 whom preclusion is sought was the same as, or in privity with,  
15 the party to the former proceeding. Id. (citing Lucido v. Super.  
16 Ct., 51 Cal. 3d 335, 341 (1990)).

17 Zeppinick does not contest the first, fourth or fifth  
18 elements, but implicitly argues that the second element - the  
19 "actually litigated" requirement - was not met here. He argues  
20 that there was an insufficient record to determine the issues  
21 litigated before the Labor Commissioner because no record of the  
22 hearing was introduced into evidence, citing Kelly v. Okoye  
23 (In re Kelly), 182 B.R. 255, 258 (9th Cir. BAP 1995), aff'd,  
24 100 F.3d 110 (9th Cir. 1996) ("a party [seeking the application  
25 of issue preclusion] must introduce a record sufficient to reveal  
26 the controlling facts and pinpoint the exact issues litigated in  
27 the prior action"). Zeppinick misconstrues Kelly: there is no  
28 **requirement** that the entire record of the underlying proceedings

1 be produced if the issues can be ascertained from the documents  
2 presented. See Johnson v. GlaxoSmithKline, Inc., 166 Cal. App.  
3 4th 1497, 1513 n.9 (2008) (a court **may** refer to the entire record  
4 to determine the issues decided in the earlier case);  
5 In re Plyam, 530 B.R. at 470 (to the extent jury findings are  
6 clearly and solely based on the relevant elements, they may be  
7 sufficient for the application of issue preclusion). Here, the  
8 Labor Commissioner explicitly found that Ramirez was an employee  
9 and not an independent contractor, noting that Zeppinick had  
10 "produced no written evidence whatsoever despite admitting that  
11 records were in fact maintained" to support his contention that  
12 Ramirez was a subcontractor.

13 Zeppinick also cites Wehrli v. County of Orange, 175 F.3d  
14 692 (9th Cir. 1999). In that case, the Ninth Circuit Court of  
15 Appeals reversed the district court's ruling that a state  
16 administrative ruling was preclusive in a federal court action  
17 under 42 U.S.C. § 1983. Id. at 695. However, in Wehrli, the  
18 Court of Appeals' holding was based on its conclusion that the  
19 appellant did not have an adequate opportunity to litigate the  
20 issues decided in the administrative ruling because the ruling  
21 was not subject to judicial review. Id. at 694. That is not the  
22 circumstance here. It is undisputed that the Judgment based on  
23 the Labor Commissioner's Order was appealable; Zeppinick's  
24 failure to avail himself of this remedy does not change the  
25 preclusive effect of the judgment. See id. ("If an adequate  
26 opportunity for review is available, a losing party cannot  
27 obstruct the preclusive use of the state administrative decision  
28 simply by foregoing her right to appeal.") (quoting Plaine v.

1 McCabe, 797 F.2d 713, 719 n.12 (9th Cir. 1986)).

2 In his reply brief, Zeppinick argues for the first time that  
3 he was not afforded due process before the Labor Commissioner  
4 because he was not served with the Superior Court judgment and  
5 thus had no opportunity to seek judicial review, again citing  
6 Wehrli, 175 F.3d at 694. However, we do not consider arguments  
7 raised for the first time in a reply brief. Coleman v. Quaker  
8 Oats Co., 232 F.3d 1271, 1289 n.4 (9th Cir. 2000). In any event,  
9 this argument is baseless: Zeppinick does not dispute that he was  
10 served with the Labor Commissioner's Order, which informed him  
11 that the Order would become final in ten days unless a party  
12 exercised its right to appeal.

13 **B. The bankruptcy court did not err in finding that Zeppinick's**  
14 **failure to pay Ramirez was willful and malicious.**

15 Section 523(a) (6) provides in relevant part: "[a] discharge  
16 under 727 . . . does not discharge an individual debtor from any  
17 debt . . . for willful and malicious injury by the debtor to  
18 another entity or to the property of another entity." The  
19 plaintiff bears the burden of proof on these elements by a  
20 preponderance of the evidence. Grogan v. Garner, 498 U.S. 279,  
21 287 (1991). The creditor must prove that the debtor's conduct in  
22 causing the injuries was **both** willful **and** malicious. In re Su,  
23 290 F.3d at 1146-47.

24 Willfulness requires proof that the debtor deliberately or  
25 intentionally injured the creditor, and that in doing so, the  
26 debtor intended the consequences of his act, not just the act  
27 itself. Id. at 1143 (citing Kawaauhau v. Geiger, 523 U.S. 57  
28 (1998)). The debtor must act with a subjective motive to inflict

1 injury, or with a belief that injury is substantially certain to  
2 result from the conduct. Id. at 1146. And for conduct to be  
3 found malicious, the creditor must prove that the debtor:  
4 (1) committed a wrongful act; (2) that was done intentionally;  
5 (3) which necessarily causes injury; and (4) was done without  
6 just cause or excuse. Id. at 1146-47.

7 **1. Zeppinick's conduct was willful.**

8 The willful injury requirement is met "only when the debtor  
9 has a subjective motive to inflict injury or when the debtor  
10 believes that injury is substantially certain to result from his  
11 own conduct." Ormsby v. First Am. Title Co. of Nev.  
12 (In re Ormsby), 591 F.3d 1199, 1206 (9th Cir. 2010). The debtor  
13 is charged with the knowledge of the natural consequences of his  
14 actions. Id. Although this standard is subjective, the  
15 bankruptcy court need not take the debtor's word for his state of  
16 mind; rather, "[i]n addition to what a debtor may admit to  
17 knowing, the bankruptcy court may consider circumstantial  
18 evidence that tends to establish what the debtor must have  
19 actually known when taking the injury-producing action."  
20 In re Su, 290 F.3d at 1146 n.6 (citation omitted).

21 Here, it is undisputed that Zeppinick breached the parties'  
22 oral employment agreement by willfully failing to pay Ramirez his  
23 wages. A breach of contract alone, even an intentional one, will  
24 not generally give rise to a nondischargeable debt. But "where  
25 an intentional breach of contract is accompanied by tortious  
26 conduct which results in willful and malicious injury, the  
27 resulting debt is excepted from discharge under § 523(a)(6)."  
28 Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1205 (9th

1 Cir. 2001). In California, "conduct amounting to a breach of  
2 contract becomes tortious only when it also violates an  
3 independent duty arising from principles of tort law." Id. at  
4 1206 (quoting Applied Equip. Corp. v. Litton Saudi Arabia Ltd.,  
5 7 Cal. 4th 503, 515 (1994)). And tort recovery for a bad faith  
6 breach of contract is permitted only when "a defendant's conduct  
7 violates a fundamental public policy of the state." Id. (quoting  
8 Rattan v. United Servs. Auto. Assoc., 84 Cal. App. 4th 715, 722  
9 (2000)).

10 The prompt payment of wages due an employee is a fundamental  
11 public policy in California. Id. (quoting Gould v. Md. Sound  
12 Indus., Inc., 31 Cal. App. 4th 1137, 1147 (1995)). In fact, the  
13 willful failure to pay wages is a misdemeanor under the  
14 California Labor Code:

15 In addition to any other penalty imposed by this  
16 article, any person, or an agent, manager,  
17 superintendent, or officer thereof is guilty of a  
18 misdemeanor, who:

19 (a) Having the ability to pay, willfully refuses to pay  
20 wages due and payable after demand has been made.

21 (b) Falsely denies the amount or validity thereof, or  
22 that the same is due, with intent to secure for  
23 himself, his employer or other person, any discount  
24 upon such indebtedness, or with intent to annoy,  
25 harass, oppress, hinder, delay, or defraud, the person  
26 to whom such indebtedness is due.

27 Cal. Lab. Code § 216. Even where an employee owes a debt to his  
28 or her employer, the employer may not set off that debt against  
wages owed. Cal. Lab. Code § 201;<sup>3</sup> Barnhill v. Robert Saunders &

---

<sup>3</sup> That statute provides in relevant part:

(continued...)

1 Co., 125 Cal. App. 3d 1, 6 (1981).

2 Relying on these authorities, the Ninth Circuit Court of  
3 Appeals in Jercich held that the debtor-employer engaged in  
4 tortious conduct meeting the willfulness requirement of  
5 § 523(a)(6) based on state court findings that the debtor knew he  
6 owed the wages, had the ability to pay the wages, and knew that  
7 injury to the plaintiff was substantially certain to occur if the  
8 wages were not paid but chose instead to use the money for his  
9 own personal benefit. In re Jercich, 238 F.3d at 1208-09.

10 Here, Zeppinick testified that he had the ability to pay  
11 Ramirez during the pertinent times but that he did not pay the  
12 wages because he asserted a right of setoff against Ramirez. The  
13 bankruptcy court did not make an explicit finding that Zeppinick  
14 knew that harm to Ramirez was substantially certain to occur from  
15 the nonpayment of wages. However, the court cited the rule that  
16 the debtor is charged with the knowledge of the natural  
17 consequences of his actions, In re Ormsby, 591 F.3d at 1206, and  
18 concluded that denying Ramirez "\$9,000 in wages and reimbursement  
19 of \$12,495.74 paid out of pocket when one makes \$4,000 in gross  
20 wages per month is clearly injurious." Under Jercich, this  
21 finding is sufficient to support the conclusion that Zeppinick  
22 knew that harm to Ramirez was substantially certain if the wages  
23 were not paid.

24 Zeppinick argues that he had no subjective intent to harm  
25

---

26 <sup>3</sup>(...continued)

27 (a) If an employer discharges an employee, the wages  
28 earned and unpaid at the time of discharge are due and  
payable immediately. . . .

1 Ramirez but that he withheld the wages in the legitimate belief  
2 that he was entitled to an offset for the roof repairs. However,  
3 the bankruptcy court found not credible Zeppinick's testimony  
4 that he estimated the roof damage at between \$12,000 and \$14,000  
5 - noting that had produced no documentary evidence to support  
6 that estimate - and concluded that Zeppinick apparently  
7 "exaggerated the amount of damage to the Bentley Property to  
8 support his argument regarding offset and not because of any  
9 legitimate basis." We must defer to the bankruptcy court's  
10 credibility determination and the inferences it drew from the  
11 evidence. See Civil Rule 52(a)(6); Beech Aircraft Corp., 51 F.3d  
12 at 838. In any event, it is implausible that Zeppinick would not  
13 have known that harm to Ramirez would result from the nonpayment  
14 of wages. We find no error in the bankruptcy court's finding  
15 that Zeppinick's conduct was willful.

16 **2. The bankruptcy court did not err in finding that**  
17 **Zeppinick's conduct was malicious.**

18 The bankruptcy court found that Zeppinick's conduct was  
19 malicious because his failure to pay Ramirez was an intentional  
20 wrongful act done without just cause or excuse that necessarily  
21 caused injury. The evidence supporting the bankruptcy court's  
22 willfulness finding also supports the finding of malice. As  
23 noted above, the intentional failure to pay wages is a  
24 misdemeanor under California law (an intentional wrongful act),  
25 which necessarily caused injury.

26 Additionally, the bankruptcy court did not err in finding  
27 that there was no just cause or excuse for Zeppinick's  
28 withholding of Ramirez's wages. Although Zeppinick testified

1 that he withheld the wages because he believed he had an offset,  
2 as noted above, the bankruptcy court found Zeppinick's testimony  
3 regarding the amount of the offset not credible.

4 Zeppinick argues that this case is distinguishable from  
5 Jercich because there the employer had used the withheld funds  
6 for his own benefit, a factor which the state court had found to  
7 constitute substantial oppression under California Civil Code  
8 § 3294, i.e., "despicable conduct that subjects a person to cruel  
9 and unjust hardship in conscious disregard of that person's  
10 rights." However, while that fact bolstered the Court of  
11 Appeals' holding that the conduct was malicious, it was not  
12 dispositive. Therefore, what Zeppinick did with the funds is not  
13 relevant to the analysis here.

14 **CONCLUSION**

15 For the reasons explained above, the bankruptcy court did  
16 not err in applying issue preclusion to the Labor Commissioner's  
17 findings or in finding that the debt Zeppinick owed to Ramirez  
18 pursuant to the Judgment was nondischargeable under § 523(a)(6).

19 Accordingly, we AFFIRM.  
20  
21  
22  
23  
24  
25  
26  
27  
28