

NOT FOR PUBLICATION

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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-17-1031-LKuF
6	REZA FATEH MANESH,)	Bk. No.	1:15-bk-12563-VK
7	Debtor.)	Adv. No.	1:15-ap-01237-VK
8	_____)		
9	HOSSEIN FATEHMANESH,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	DAVID SEROR, Chapter 7)		
13	Trustee,)		
14	Appellee.)		
	_____)		

Argued and Submitted on January 25, 2018
at Pasadena, California

Filed - February 6, 2018

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

Honorable Victoria Kaufman, Bankruptcy Judge, Presiding

Appearances: Appellant Hossein Fatehmanesh argued pro se;
Richard D. Burstein of Brutzkus Gubner Rozansky
Seror Weber LLP argued for Appellee David Seror.

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 The issue in this appeal is the ownership of commercial real
2 property located in Van Nuys, California (the "Delano Property")
3 as of July 31, 2015, the date Debtor filed his bankruptcy
4 petition. After Appellant Hossein Fatehmanesh ("Hossein"),
5 Debtor's brother, purchased the Delano Property in 1998, he
6 conveyed the property via quitclaim deed to the Debtor's future
7 wife, Shahla Tehrani Broomand ("Shahla"). Later, as part of a
8 settlement of litigation brought by Hossein against Debtor and
9 Shahla, the parties agreed that Debtor and Shahla owned the
10 Delano Property. In 2014, Shahla quitclaimed 79.4 percent of her
11 interest in the Delano Property to Hossein, but the quitclaim
12 deed was not immediately recorded. Next, in March 2015, the Los
13 Angeles County Superior Court entered a default judgment in an
14 action brought by a creditor of the Debtor against Debtor and
15 Shahla; that judgment declared that the property had been held by
16 Shahla since 2006 as trustee of a resulting trust for Debtor's
17 benefit and that Debtor was the equitable owner (the "Resulting
18 Trust Judgment"). Shortly after entry of the Resulting Trust
19 Judgment, Hossein recorded the quitclaim deed from Shahla. Thus,
20 as of the petition date, record title to the Delano Property was
21 in the names of Hossein and Shahla.

22 After Debtor filed for chapter 7¹ relief, the trustee,
23 Appellee David Seror ("Trustee"), filed an adversary proceeding
24 against Hossein seeking turnover of the Delano Property as an

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

1 asset of the estate. Hossein argued that he owned the Delano
2 Property, pointing out that it was titled in his name, that he
3 had, for at least some period of time, paid the mortgage,
4 property taxes, and insurance, and that he had held himself out
5 as an owner. He contended he was not bound by the Resulting
6 Trust Judgment because he was not a party to that litigation.
7 The bankruptcy court disagreed, finding that Hossein was in
8 privity with Shahla and was thus bound by the superior court
9 judgment under principles of issue preclusion. The bankruptcy
10 court thus found that the property was property of the estate
11 subject to turnover.

12 After trial, the bankruptcy court entered judgment for the
13 Trustee and against Hossein, ordering turnover of the property
14 and postpetition rents collected and held by Debtor or Hossein.
15 The court also awarded the Trustee his attorney's fees as a
16 sanction for Hossein's violation of the automatic stay. We find
17 no error of fact or law or abuse of discretion in the bankruptcy
18 court's rulings. Accordingly, we AFFIRM.

19 **FACTS**

20 **A. Pre-petition events**

21 Hossein purchased the Delano Property in 1998. On August 6,
22 1999, Hossein executed a quitclaim deed conveying his interest in
23 the Delano Property to Shahla, who married Debtor in 2012. The
24 quitclaim deed was recorded on August 13, 1999.

25 In April 2001, even though the Delano Property was titled in
26 Shahla's name, Debtor and Hossein entered into an agreement for
27 Debtor to purchase from Hossein the Delano Property and the
28 business located thereon for \$90,000. The agreement called for a

1 \$10,000 down payment, with the balance due by August 31, 2001 and
2 monthly interest to be paid in the interim. The agreement
3 provided that if the buyer could not pay the purchase price, the
4 "seller [Hossein] has the full right to the ownership of the
5 business and [the Delano Property]."

6 Debtor defaulted on the payments due under the agreement,
7 and on March 2, 2005, Hossein filed a complaint against Debtor,
8 Shahla, and others² in Los Angeles County Superior Court seeking
9 specific performance of the purchase agreement and to quiet
10 title, as well as damages for breach of contract, fraud, and
11 forgery (the "Specific Performance Litigation"). The complaint
12 alleged, among other things, that Debtor and Shahla had forged
13 Hossein's signature on quitclaim deeds, including the August 1999
14 quitclaim deed conveying the Delano Property to Shahla.³

15 The parties settled the Specific Performance Litigation.⁴
16 They agreed that Debtor and Shahla would pay \$175,000 to Hossein;
17 the partnership would be severed; and defendants would keep the
18 partnership business and the Delano Property. It was originally
19 intended that the settlement funds would be paid out of a pending
20 escrow for the sale of the Delano Property, but that sale fell

21
22 ²The other named defendants were Abdolreza Ilkhani and
23 United Escrow. The record does not indicate how the claims
24 against those parties were resolved.

25 ³The complaint also alleged that Debtor and Shahla were
26 married at the time of the alleged forgery. At trial, however,
27 Hossein testified that the couple were not married until 2012.

28 ⁴Although other defendants were named in the complaint, the
Specific Performance Judgment indicates that the only defendants
who participated in the settlement conference were Debtor and
Shahla.

1 through. The superior court entered a judgment (the "Specific
2 Performance Judgment") on June 1, 2007, which ordered:

3 that judgment be entered for the sum of \$175,000.00
4 pursuant to the terms of the settlement stipulated to
5 by defendants and plaintiff as follows: Defendants
6 jointly and severally shall pay to plaintiff the sum of
7 \$175,000.00. If not paid sooner, the judgment shall be
8 paid directly from escrow from the sale of the property
9 and/or business located at 14520 Delano Street, Van
10 Nuys, CA. The parties' partnership is severed.
11 Defendants[] shall keep the partnership business and
12 real property located at 14520 Delano Street, Van Nuys,
13 CA, legally described as Lot 13, Block 37, Tract 1200,
14 Book 10, Page 35 of the records of the Los Angeles
15 County Recorder, subject to all encumbrances thereto.
16 The parties shall each bear their own costs.

17 Several years later, in September 2014, Shahla executed a
18 quitclaim deed purporting to transfer 79.4 percent of the Delano
19 Property to Hossein (the "2014 Quitclaim Deed").⁵ The 2014
20 Quitclaim Deed was not recorded until July 21, 2015, shortly
21 before Debtor filed the instant chapter 7 case.

22 Soon after the execution of the 2014 Quitclaim Deed, Reza
23 Pour, one of Debtor's judgment creditors, filed a complaint in
24 superior court against Debtor and Shahla seeking a judgment
25 declaring Debtor the sole owner of the Delano Property (the
26 "Resulting Trust Complaint"). Pour recorded a lis pendens
27 against the Delano Property on October 7, 2014 and served it on
28 Debtor and Shahla at several addresses, including the Delano
Property.

On March 19, 2015, the superior court entered a default

⁵The 2014 Quitclaim Deed included a notation that no
documentary transfer tax was due because the conveyance was to
secure a debt. At trial, Hossein testified that he had inserted
that language, but it was not clear from the record what debt was
intended to be "secured" by the 2014 Quitclaim Deed.

1 judgment based on the Resulting Trust Complaint (the "Resulting
2 Trust Judgment"). The Resulting Trust Judgment states:

3 With regard to the [Delano Property] . . . as of
4 April 19, 2006 when plaintiff's Amended Abstract of
5 Judgment ("Judgment Lien") arising out of a legal
6 action filed in Los Angeles County Superior Court
7 entitled Reza Pour v. Reza Fatehmanesh, Los Angeles
8 Superior Court Case No. BC075569, was recorded:
9 (a) defendant [Shahla] held title to the Delano
10 Property as trustee of a resulting trust for the
11 benefit of defendant [Debtor], (b) that defendant
12 [Debtor] was the equitable owner of the Delano
13 Property, (c) defendant [Shahla] had no valid right,
14 title, or interest in the Delano Property and (d) the
15 Delano Property was and is thereby subject to
16 plaintiff's Judgment Lien against defendant [Debtor] as
17 of said date (April 19, 2006).

11 At trial in the adversary proceeding, Debtor testified that
12 he was not personally served with the Resulting Trust Complaint
13 because he was in Iran. Debtor testified, however, that he
14 returned to the United States in December 2014 and learned about
15 the Resulting Trust Complaint, months before entry of the
16 Resulting Trust Judgment, and that he had received a copy of the
17 Resulting Trust Complaint from Hossein. Debtor also testified
18 that on July 29, 2015, he and Shahla, through counsel,
19 unsuccessfully moved to vacate the Resulting Trust Judgment.

20 On July 21, 2015, after entry of the Resulting Trust
21 Judgment and shortly before Debtor and Shahla moved to vacate it,
22 Hossein recorded the 2014 Quitclaim Deed.

23 **B. Post-Petition Events**

24 On July 31, 2015, Debtor filed the instant chapter 7 case,
25 and Trustee was appointed. Debtor initially listed the Delano
26 Property on Schedule A with the notation that Shahla owned a 20
27 percent separate interest but that he did not own any interest.
28 Debtor listed on Schedule D a debt to First Bank secured by the

1 Delano Property, indicating that Shahla owed this debt. Debtor
2 claimed an exemption in the Delano Property on Schedule C.
3 Debtor listed no income on Schedule I; the only income listed in
4 Debtor's Statement of Financial Affairs ("SOFA") was rental
5 income attributed to Shahla.

6 Debtor filed an amended Schedule D and amended SOFA on
7 October 30, 2015. In the amended Schedule D, Debtor indicated he
8 did not have any secured creditors; in the amended SOFA he
9 omitted the rental income attributed to Shahla and stated that he
10 had not received any year-to-date income or any income in the
11 preceding two years.

12 A few days later, Debtor appeared at his § 341 meeting.
13 Hossein was also present. Debtor testified that the Delano
14 Property was rented to an automobile repair shop, was generating
15 rental income, and had generated \$15,000 of postpetition rent and
16 security deposits. According to the parties' Joint Pretrial
17 Stipulation, Debtor and Hossein agreed to meet with the Trustee
18 and bring a cashier's check for \$15,000. According to the
19 Trustee's testimony at trial, when they appeared at the Trustee's
20 office the next day, they told the Trustee that they had decided
21 not to bring a check because Debtor did not have any interest in
22 the Delano Property.

23 On November 5, 2015, the Trustee filed a motion for turnover
24 in the main bankruptcy case requesting that the court order
25 Debtor to turn over the Delano Property and its related income
26 and security deposits. On the same day, the Trustee filed the
27 adversary proceeding against Hossein (discussed below) that is
28 the subject of this appeal.

1 Approximately two weeks after the Trustee filed the motion
2 for turnover and the adversary proceeding, Debtor again amended
3 his schedules. Amended Schedule A indicated that he owned the
4 Delano Property in fee simple; amended Schedule C claimed an
5 exemption in the Delano Property, and amended Schedule D listed
6 First Bank and Pour as secured creditors with liens against the
7 Delano Property and no longer attributed these debts to Shahla.
8 Debtor's amended Schedule I showed \$4,425.11 in monthly net
9 rental income, and the amended SOFA listed \$26,167.05 in year-to-
10 date rental income for 2015, \$10,326 in rental income for 2014,
11 and \$4,399 in rental income for 2013; again, the SOFA no longer
12 attributed the rental income to Shahla. The same day, Debtor
13 filed a motion to convert the bankruptcy case to chapter 13.

14 On December 21, 2015, the bankruptcy court granted the
15 Trustee's motion for turnover as to Debtor. The order granting
16 the motion instructed Debtor to turn over the Delano Property and
17 all related security deposits and postpetition rent. A few weeks
18 later, on January 15, 2016, the bankruptcy court denied Debtor's
19 motion to convert.⁶

21 ⁶The Trustee objected to conversion on grounds of bad faith,
22 and the bankruptcy court held a hearing on the motion on
23 January 7, 2016. The bankruptcy court agreed with the Trustee
24 that Debtor had acted in bad faith in concealing his interest in
25 the Delano Property and related income and not amending his
schedules and SOFA until after the Trustee had moved for
turnover. The order denying conversion was not appealed.

26 In addition, on February 23, 2016, the United States Trustee
27 filed an adversary proceeding seeking revocation of Debtor's
28 discharge on grounds of false oath, knowing and fraudulent
failure to deliver property to the trustee, and refusal to obey a
(continued...)

1 About six months later, Debtor again amended Schedule A/B.
2 Although he listed the Delano Property, Debtor stated, "Debtor
3 disputes any ownership in the [Delano] property. Debtor believes
4 prior attorney . . . mischaracterized the [Delano] property.
5 Debtor [is] aware of the Courts [sic] position on turnover."

6 **C. The Trustee's Adversary Proceeding against Hossein**

7 The Trustee's complaint against Hossein sought turnover of
8 the Delano Property and the associated postpetition rents and an
9 accounting. The Trustee also sought contempt sanctions under
10 § 105(a) for Hossein's intentional refusal to turn over the
11 postpetition rents in violation of the automatic stay. Hossein
12 took the position that he was the rightful owner of the Delano
13 Property and its income based on the 2014 Quitclaim Deed and the
14 fact that Hossein was not a party to Pour's state court action
15 which lead to the Resulting Trust Judgment.

16 A one-day trial was held on November 29, 2016. Hossein,
17 Debtor, and the Trustee each testified. Thereafter, the
18 bankruptcy court issued its findings and conclusions and a
19 judgment in favor of the Trustee. Hossein timely appealed.⁷

20 **JURISDICTION**

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

24 ⁶(...continued)
25 lawful order of the court. The matter was resolved by entry of a
26 stipulated judgment on June 2, 2016, under which Debtor agreed to
revocation of his discharge.

27 ⁷After this appeal was filed, on March 31, 2017, the
28 bankruptcy court awarded the Trustee \$92,811.50 in attorney's
fees and \$3,015.25 in costs. Hossein did not appeal that order.

1 § 158.

2 **ISSUES**

3 Whether the bankruptcy court erred in concluding that the
4 Delano Property was property of the estate.

5 Whether the bankruptcy court abused its discretion in
6 awarding the Trustee his attorney's fees under § 105(a) for
7 Hossein's violation of the automatic stay.

8 **STANDARDS OF REVIEW**

9 We review the bankruptcy court's legal conclusions de novo
10 and its factual determinations for clear error. Banks v. Gill
11 Distrib. Centers, Inc. (In re Banks), 263 F.3d 862, 867 (9th Cir.
12 2001).

13 We review de novo the bankruptcy court's determination that
14 issue preclusion was available. Plyam v. Precision Dev., LLC (In
15 re Plyam), 530 B.R. 456, 461 (9th Cir. BAP 2015). If issue
16 preclusion was available, we review the bankruptcy court's
17 application of the doctrine for abuse of discretion. Id.
18 Whether property is property of the bankruptcy estate is also a
19 question of law that we review de novo. Mwangi v. Wells Fargo
20 Bank, N.A. (In re Mwangi), 432 B.R. 812, 818 (9th Cir. BAP 2010).

21 A court's factual determination is clearly erroneous if it
22 is illogical, implausible, or without support in the record.
23 United States v. Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir.
24 2009) (en banc) (quoting Anderson v. City of Bessemer City, 470
25 U.S. 564, 577 (1985)). Where there are two permissible views of
26 the evidence, the factfinder's choice between them cannot be
27 clearly erroneous. Anderson, 470 U.S. at 574; see also Hinkson,
28 585 F.3d at 1260 (recognizing the rule that a trial court's

1 choice between two permissible views of the weight of evidence is
2 not clearly erroneous where the evidence would support a
3 conclusion either way, citing United States v. Yellow Cab Co.,
4 338 U.S. 338, 342 (1949)). When factual findings are based on
5 determinations regarding the credibility of witnesses, we give
6 great deference to the bankruptcy court's findings, because the
7 bankruptcy court, as the trier of fact, had the opportunity to
8 note "variations in demeanor and tone of voice that bear so
9 heavily on the listener's understanding of and belief in what is
10 said." Retz v. Samson (In re Retz), 606 F.3d 1189, 1196 (9th
11 Cir. 2010) (quoting Anderson, 470 U.S. at 575).

12 We review a bankruptcy court's imposition of civil contempt
13 sanctions under § 105 for violation of the automatic stay for an
14 abuse of discretion. Knupfer v. Lindblade (In re Dyer), 322 F.3d
15 1178, 1191 (9th Cir. 2003). A bankruptcy court abuses its
16 discretion if it applies the wrong legal standard, misapplies the
17 correct legal standard, or if its factual findings are clearly
18 erroneous. TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d
19 820, 832 (9th Cir. 2011).

20 DISCUSSION

21 **A. The bankruptcy court did not err in concluding that the
22 Delano Property was property of the estate.**

23 The bankruptcy court ruled that the Delano Property and its
24 postpetition proceeds were property of the estate based on its
25 conclusions that (1) the Specific Performance Judgment terminated
26 any interest Hossein may have had in the Delano Property; (2) the
27 Resulting Trust Judgment conclusively established that Debtor was
28 the equitable owner of the Delano Property as of the petition

1 date, and under full faith and credit and the Rooker-Feldman
2 doctrine, the court could not reconsider or look behind the
3 Resulting Trust Judgment; and (3) Hossein was bound by the
4 Resulting Trust Judgment under the doctrine of issue preclusion.

5 On appeal, Hossein argues that the bankruptcy court erred in
6 all of these conclusions. Hossein contends that he owns the
7 Property because he is on title, is obligated on the note and
8 deed of trust encumbering the Delano Property, has paid the
9 property taxes and insurance, and has held himself out as the
10 owner. He argues that there was no evidence presented at trial
11 to support the conclusion that Debtor was the equitable owner of
12 the Delano Property, and that the Resulting Trust Judgment was
13 inadmissible at trial on relevance grounds.⁸ Hossein also lists
14 several disputed factual findings in his statement of issues
15 (discussed below) but does not substantively address those
16 findings in his brief.

17 **1. Burden of Proof**

18 In the bankruptcy court, the parties disputed which burden
19 of proof should apply to the issue of ownership of the Delano
20 Property. The Trustee contended that the preponderance of the
21 evidence standard under California Evidence Code § 115 applied.⁹
22 Hossein argued that under California Evidence Code § 662, the
23

24
25 ⁸The bankruptcy court overruled counsel's relevance
26 objection at trial. On appeal, Hossein has asserted no
substantive argument as to why that ruling was in error.

27 ⁹That statute provides: "Except as otherwise provided by
28 law, the burden of proof requires proof by a preponderance of the
evidence."

1 clear and convincing standard was appropriate.¹⁰ The bankruptcy
2 court agreed with Hossein and concluded that California Evidence
3 Code § 662 applied but found that the Trustee had shown by clear
4 and convincing evidence that Debtor held equitable title to the
5 Delano Property on the petition date.

6 On appeal, Hossein argues that the bankruptcy court erred in
7 applying the preponderance of the evidence standard of California
8 Evidence Code § 115, but this argument misconstrues the
9 bankruptcy court's ruling. In any event, we need not decide
10 whether the bankruptcy court correctly chose to apply the clear
11 and convincing standard because the Trustee's evidence satisfied
12 that standard. See FreecycleSunnyvale v. The Freecycle Network,
13 626 F.3d 509, 515 (9th Cir. 2010).

14 **2. The bankruptcy court did not err in finding that the**
15 **Specific Performance Judgment terminated Hossein's**
16 **interest in the Delano Property.**

17 Hossein lists as an issue on appeal whether the court
18 committed reversible error in determining that the Specific
19 Performance Judgment terminated Hossein's interest in the Delano
20 Property. He does not, however, address this issue in his
21 opening brief and has thus waived the argument. See Smith v.
22 Marsh, 194 F.3d 1045, 1052 (9th Cir. 1999). In any event, the
23 record reflects no error in the bankruptcy court's conclusion.
24 The evidence showed that at the time the Specific Performance
25 Complaint was filed, record title was in Shahla's name. Hossein

26 ¹⁰That statute provides: "The owner of the legal title to
27 property is presumed to be the owner of the full beneficial
28 title. This presumption may be rebutted only by clear and
convincing proof."

1 alleged in that complaint that the 2001 purchase agreement
2 conveyed the Delano Property to Debtor, and the Specific
3 Performance Judgment provided that "defendants," which included
4 Debtor, would keep the Delano Property. Nothing in the Specific
5 Performance Judgment stated or implied that Hossein had any
6 interest, and no evidence was presented at trial that Hossein
7 thereafter held any interest in the Delano Property until the
8 2014 Quitclaim Deed was executed.

9 **3. The bankruptcy court did not err in giving issue**
10 **preclusive effect to the Resulting Trust Judgment.**

11 The bankruptcy court found that the Resulting Trust Judgment
12 was entitled to issue preclusive effect in the adversary
13 proceeding, barring Hossein from disputing that Shahla held the
14 Delano Property in a resulting trust for Debtor's benefit. In
15 its analysis, the bankruptcy court correctly applied California
16 preclusion law. See In re Plyam, 530 B.R. at 462 (bankruptcy
17 court must apply the forum state's law of issue preclusion in
18 relying on the preclusive effect of a state court judgment).

19 The requirements for issue preclusion in California are:

20 (1) the issue sought to be precluded from relitigation is
21 identical to that decided in a former proceeding;

22 (2) the issue was actually litigated in the former
23 proceeding;

24 (3) the issue was necessarily decided in the former
25 proceeding;

26 (4) the decision in the former proceeding is final and on
27 the merits;

28 (5) the party against whom preclusion is sought was the same

1 as, or in privity with, the party to the former proceeding; and

2 (6) application of preclusion furthers the public policies
3 underlying the doctrine. Harmon v. Kobrin (In re Harmon), 250
4 F.3d 1240, 1245 (9th Cir. 2001) (citing Lucido v. Superior Court,
5 51 Cal. 3d 335, 341 (1990)).

6 In California, issue preclusion may apply to a default
7 judgment so long as (1) the defendant had actual notice of the
8 proceedings and a full and fair opportunity to litigate; and
9 (2) the material factual issues were raised in the pleadings,
10 submitted to the court for determination, and the court actually
11 determined the issues. Id. at 1247.

12 Examining each element in turn, we agree with the bankruptcy
13 court that the Resulting Trust Judgment was entitled to issue
14 preclusive effect in the adversary proceeding.

15 **Identical issue.** The issue decided by the Resulting Trust
16 Judgment was the ownership of the Delano Property, which was also
17 the salient issue in the adversary proceeding. Hossein
18 nevertheless argues that the issues are not identical. This
19 argument seems to be premised upon the fact that the Trustee sued
20 for turnover under § 542, which was not a claim in the resulting
21 trust litigation. While that fact might matter for purposes of
22 claim preclusion, it is irrelevant for purposes of issue
23 preclusion. See DKN Holdings LLC v. Faerber, 61 Cal. 4th 813,
24 824 (2015) (“Issue preclusion prohibits the relitigation of
25 issues argued and decided in a previous case, even if the second
26 suit raises different causes of action.”). This element was met.

27 **Actually litigated.** Hossein does not dispute that the
28 ownership issue was actually litigated in the resulting trust

1 litigation. Nevertheless, because the Resulting Trust Judgment
2 was a default judgment, we must examine whether the defendant
3 (1) had actual notice of the proceedings and a full and fair
4 opportunity to litigate; and (2) the material factual issues were
5 raised in the pleadings, submitted to the court for
6 determination, and the court actually determined the issues.

7 In connection with its privity analysis, the bankruptcy
8 court found that Debtor had actual notice of the resulting trust
9 complaint. Although the pleadings underlying the Resulting Trust
10 Judgment are not in the record, that judgment contains sufficient
11 detail for the bankruptcy court to have concluded that the
12 material factual issues were presented and decided by the state
13 court, and Hossein does not argue otherwise.

14 **Necessarily decided.** It is undisputed that the ownership of
15 the Delano Property was necessarily decided by the Resulting
16 Trust Judgment.

17 **Final and on the merits.** It is undisputed that the
18 Resulting Trust Judgment was final and on the merits.

19 **Identical parties or parties in privity.** Hossein argues
20 that issue preclusion does not apply to the Resulting Trust
21 Judgment because neither the Trustee nor Hossein were parties to
22 that litigation. However, as the bankruptcy court noted, the
23 party or privity requirement applies only to the party **against**
24 whom preclusion is sought, which in this case was Hossein. Thus,
25 the fact that the Trustee was not a party in the state court was
26 irrelevant.

27 Hossein also disagrees with the bankruptcy court's
28 conclusions that (i) he was in privity with Shahla and

1 (ii) application of issue preclusion based on privity was fair.
2 We find no error in the bankruptcy court's conclusion that
3 Hossein was in privity with Shahla.

4 The concept of privity for the purposes of . . .
5 collateral estoppel refers to a mutual or successive
6 relationship to the same rights of property, or to such
7 an identification in interest of one person with
8 another as to represent the same legal rights and . . .
9 to a relationship between the party to be estopped and
the unsuccessful party in the prior litigation which is
sufficiently close so as to justify application of the
doctrine of collateral estoppel. . . . This
requirement of identity of parties or privity is a
requirement of due process of law.

10 Rodgers v. Sargent Controls & Aerospace, 136 Cal. App. 4th 82,
11 90-91 (2006) (citations omitted). "In the final analysis, the
12 determination of privity depends upon the fairness of binding a
13 party to the present proceeding with the result obtained in
14 earlier proceedings in which it did not participate." Gottlieb
15 v. Kest, 141 Cal. App. 4th 110, 150 (2006). See also Bailey v.
16 Safeway, Inc., 199 Cal. App. 4th 206, 213 (2011) (collateral
17 estoppel is an equitable concept based on fundamental principles
18 of fairness; even if a party is in privity with another,
19 application of the doctrine is not warranted unless the
20 fundamental principle of fairness underlying the doctrine will be
21 served by its application).

22 Legal relationships that may result in a finding of privity
23 include grantor and grantee. See Bailey, 199 Cal. App. 4th at
24 212-13. The parties do not dispute that Shahla and Hossein had a
25 grantor-grantee relationship arising out of the 2014 Quitclaim
26 Deed, and Hossein does not dispute the bankruptcy court's finding
27 that his and Shahla's interests were mutual and successive based
28 on the 2014 Quitclaim Deed.

1 As for fairness and due process, the bankruptcy court
2 considered the relevant standard:

3 Due process requires that the nonparty have had an
4 identity or community of interest with, and adequate
5 representation by, the . . . party in the first action.
6 The circumstances must also have been such that the
7 nonparty should reasonably have expected to be bound by
8 the prior adjudication.

9 Citizens for Open Access to Sand & Tide, Inc. v. Seadrift Ass'n,
10 60 Cal. App. 4th 1053, 1070 (1998) (citations omitted). Adequate
11 representation means that the interests of the party against whom
12 issue preclusion is sought "are so similar to a party's interest
13 that the latter was the former's virtual representative in the
14 earlier action." Gottlieb, 141 Cal. App. 4th at 150. The trial
15 court must examine "whether the . . . party in the suit which is
16 asserted to have a preclusive effect had the same interest as the
17 party to be precluded, and whether that . . . party had a strong
18 motive to assert that interest." Id. If the interests of those
19 parties are likely to have been divergent, or if a party's motive
20 for asserting a common interest is relatively weak, adequate
21 representation should not be inferred. Id.

22 The bankruptcy court correctly found that Hossein's and
23 Shahla's interests were similar enough for Shahla to have been
24 Hossein's "virtual representative" in the state court litigation:
25 both parties had the incentive to defend their title to the
26 Delano Property, as losing that litigation would (and did) reduce
27 the equity in the Delano Property by subjecting it to the Pour
28 judgment lien.

29 The bankruptcy court also concluded that the evidence showed
30 Shahla had had a full and fair opportunity to represent her

1 interests in the resulting trust litigation. Although Debtor
2 testified that he was not served with the Resulting Trust
3 Complaint, he testified that he received a copy of that complaint
4 from Hossein in December 2014, three months before the state
5 court entered the Resulting Trust Judgment.¹¹ The bankruptcy
6 court also found that Hossein was aware of the Resulting Trust
7 Complaint. More importantly, Shahla and Debtor, through counsel,
8 eventually participated in the litigation by filing a motion to
9 vacate the Resulting Trust Judgment, which was denied.¹²

10 Based on these findings, the bankruptcy court concluded that
11 applying issue preclusion would not infringe on Hossein's due
12 process rights, and it was fair to find that he was in privity
13 with Shahla. Although Hossein protests this conclusion as
14 unsupported by the evidence, he points to no specific factual or
15 legal error in the court's conclusion, and we have found none.

16 **Public policy.** Finally, the bankruptcy court determined
17 that application of issue preclusion would further the public
18 policies behind the doctrine. It determined that relitigating
19 the issues already decided by the state court would reward a

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21 ¹¹The bankruptcy court found Debtor's testimony not
22 credible, given the inconsistencies in his testimony and his
23 history of multiple inconsistent amendments to his bankruptcy
24 schedules to suit the circumstances. The court did not
25 specifically state which testimony it found not credible, but it
26 is clear from its ruling that it generally did not find either
27 Debtor or Hossein credible.

28 ¹²The court stated in its findings and conclusions that
Debtor testified that he and Shahla received the complaint.
Debtor testified he received it, but he did not mention whether
Shahla knew about it. Nevertheless, both Debtor and Shahla had
an opportunity to defend the lawsuit when they moved to vacate
the Resulting Trust Judgment.

1 party (Hossein) who (i) had secretly obtained the Delano Property
2 from Shahla; (ii) was aware of the Resulting Trust Complaint but
3 failed to take any action in state court; (iii) had recorded the
4 2014 Quitclaim Deed only when Debtor and Shahla were attempting
5 to vacate the Resulting Trust Judgment; and (iv) had sought
6 through Debtor's bankruptcy filing to stake a claim in the Delano
7 Property in contravention of the Resulting Trust Judgment. The
8 record supports these findings. We therefore find no abuse of
9 discretion in the bankruptcy court's application of issue
10 preclusion.

11 As the bankruptcy court found, giving issue preclusive
12 effect to the Resulting Trust Judgment meant that the 2014
13 Quitclaim Deed conveyed to Hossein 79.4 percent of the interest
14 Shahla held at the time - bare legal title as trustee for
15 Debtor's benefit. Thus, as of the petition date, Shahla and
16 Hossein held only bare legal title to the Delano Property, and
17 Debtor held the equitable interest, which became property of the
18 estate. Accordingly, turnover of the Delano Property and its
19 postpetition proceeds was appropriate.

20 **4. The bankruptcy court's application of the Rooker-**
21 **Feldman doctrine was harmless error.**

22 The bankruptcy court recognized that it must give full faith
23 and credit to the Resulting Trust Judgment. 28 U.S.C. § 1738.
24 But the bankruptcy court took the additional step of applying the
25 Rooker-Feldman doctrine in determining that it could not question
26 the validity of the Resulting Trust Judgment. Hossein argues
27 that the doctrine has no application here because neither party
28 to the adversary proceeding was a party to the resulting trust

1 litigation. Hossein is correct.

2 Under the Rooker-Feldman doctrine, federal district courts
3 lack jurisdiction to review or reverse state court judgments.
4 See Rooker v. Fidelity Tr. Co., 263 U.S. 413 (1923); District of
5 Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). More
6 recently, the Supreme Court has clarified that the Rooker-Feldman
7 doctrine is a narrow, jurisdictional doctrine that does not
8 supplant preclusion doctrines, which are not jurisdictional. See
9 Lance v. Dennis, 546 U.S. 459, 466 (2006) ("Whatever the impact
10 of privity principles on preclusion rules, Rooker-Feldman is not
11 simply preclusion by another name."); Exxon Mobil Corp. v. Saudi
12 Basic Indus. Corp., 544 U.S. 280, 284 (2005) (holding that the
13 Rooker-Feldman doctrine is limited to "cases brought by state-
14 court losers complaining of injuries caused by state-court
15 judgments rendered before the district court proceedings
16 commenced and inviting district court review and rejection of
17 those judgments"). See also Lopez v. Emergency Serv.
18 Restoration, Inc. (In re Lopez), 367 B.R. 99, 103-04 (9th Cir.
19 BAP 2007) (vacating and remanding summary judgment for plaintiff
20 in part because bankruptcy court erroneously applied Rooker-
21 Feldman in giving preclusive effect to a state court
22 misappropriation judgment in a dischargeability proceeding).
23 Here, no party to the state court litigation was attempting to
24 reverse the state court judgment; accordingly, Rooker-Feldman did
25 not apply.

26 Despite this error, the bankruptcy court correctly found
27 that it must give full faith and credit to the Resulting Trust
28 Judgment and that issue preclusion barred relitigation of the

1 ownership issue. Therefore, the erroneous application of the
2 Rooker-Feldman doctrine did not affect the outcome and was thus
3 harmless error, which we ignore. Van Zandt v. Mbunda (In re
4 Mbunda), 484 B.R. 344, 355 (9th Cir. BAP 2012). See also Civil
5 Rule 61, applicable via Rule 9005 ("At every stage of the
6 proceeding, the court must disregard all errors and defects that
7 do not affect any party's substantial rights.")

8 **5. Hossein's evidence did not have any bearing on the**
9 **issue of ownership of the Delano Property as of the**
10 **petition date.**

11 At trial, Hossein presented evidence that he originally
12 borrowed the funds to purchase the Delano Property and, from time
13 to time, had paid the mortgage, taxes, and insurance, collected
14 rents from tenants and deposited them into an account in his
15 name; he also testified that he held himself out as the owner of
16 the Delano Property in negotiating some leases. In his reply
17 brief, Hossein focuses almost exclusively on this evidence, which
18 might be relevant were the court deciding the ownership issue on
19 a clean slate. But in light of the Resulting Trust Judgment,
20 none of that evidence had any bearing on the issue of ownership
21 of the Delano Property as of the petition date.

22 **6. The factual findings disputed by Hossein are either**
23 **nonexistent or are supported by the record.**

24 Hossein listed in his statement of issues several disputed
25 factual findings. As noted, Hossein did not elaborate on how
26 these findings were in error and, for the most part, the disputed
27 findings discussed below would have no bearing on the outcome of
28 this appeal. In any event, Hossein assigns error to nonexistent
findings, findings that he misinterpreted, and findings that were

1 supported by evidence.

2 Hossein purports to dispute the bankruptcy court's findings
3 that (1) Hossein purchased the Property from Shahla through her
4 agent, the Debtor; (2) Hossein sold the Property to Shahla in
5 2001; (3) Debtor paid the mortgage; and (4) the August 2014
6 transfer by Shahla to Hossein was fraudulent. The record,
7 however, does not reflect that the bankruptcy court made any such
8 findings.

9 Hossein also disputes the following findings for which there
10 is evidence in the record: (1) Debtor was aware of the Resulting
11 Trust Complaint three months before the Resulting Trust Judgment
12 was entered; and (2) Debtor attended the 341 meeting and stated
13 he was receiving rental income from the Property. The first of
14 these findings was supported by Debtor's own testimony, and the
15 second by Stipulated Fact No. 12 in the parties' Joint Pre-Trial
16 Stipulation and Order, and the Trustee's testimony.

17 Additionally, Hossein disputes the bankruptcy court's
18 findings that (1) Shahla secretly transferred 79.4 percent of her
19 interest in the Property to Hossein; and (2) Hossein demanded
20 payment (on the sales contract) from Debtor but not Shahla.
21 Hossein seems to misinterpret these findings. The finding that
22 Shahla "secretly" transferred a portion of her interest referred
23 to the fact that the 2014 Quitclaim Deed was not recorded until
24 several months after it was executed; during that time the
25 transfer would have been "secret" to anyone searching title. As
26 to the second "finding," it was not a finding but a statement of
27 the allegations of the Specific Performance Complaint.

28 Finally, Hossein assigns error to the court's "failing to

1 recognize" that: (1) Hossein bought 79.4 percent of the Property
2 in August 2014 from Shahla for valuable consideration; and
3 (2) Hossein held a valid, enforceable lien on the Property when
4 he sold it to Shahla. Hossein points to no evidence in the
5 record to support these assertions.

6 Importantly, the bankruptcy court found Hossein's and
7 Debtor's testimony not credible. Therefore, to the extent any of
8 Hossein's arguments are based on that testimony, we must defer to
9 the bankruptcy court. See In re Retz, 606 F.3d at 1196.

10 **B. The bankruptcy court did not abuse its discretion in**
11 **awarding the Trustee his attorney's fees and costs under**
12 **§ 105(a).**

13 In his complaint, the Trustee requested contempt sanctions
14 under § 105(a) for Hossein's violation of the automatic stay in
15 failing to turn over the postpetition rents.¹³

16 For the bankruptcy court to make a finding of contempt, the
17 moving party must show "by clear and convincing evidence that the
18 contemnors violated a specific and definite order of the court."
19 In re Dyer, 322 F.3d at 1190-91. The automatic stay qualifies as
20 a specific and definite court order. Id. at 1191. Before
21 imposing civil contempt sanctions for a violation of the
22 automatic stay, the court must find that the defendant knew of

23 ¹³Although § 362(h) authorizes compensatory and, where
24 appropriate, punitive damages for violation of the automatic
25 stay, such relief is available only to an "individual." The
26 Trustee, however, is not an "individual" entitled to damages
27 under that code section. In re Dyer, 322 F.3d at 1189 (citing
28 Havelock v. Taxel (In re Pace), 67 F.3d 187, 192 (9th Cir.
1995)). Nevertheless, the Trustee may recover damages for a stay
violation under § 105(a) as a sanction for ordinary civil
contempt. Id.

1 the automatic stay and that his actions which violated the stay
2 were intentional. Id. No finding of bad faith or a subjective
3 intent to violate the stay is required. Id. Alternatively,
4 civil contempt sanctions may be imposed where the defendant
5 failed to remedy his stay violation after he learned of the stay.
6 See Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.), 98
7 F.3d 1147, 1151-52 (9th Cir. 1996).

8 In finding that Hossein knew about the automatic stay, the
9 bankruptcy court relied upon the complaint filed in the adversary
10 proceeding, which included an allegation that "Debtor and
11 Defendant knew of the automatic stay when they came to the
12 Trustee's office and refused to turn over the Postpetition Rent."
13 Because the complaint was served on Hossein and he filed an
14 answer, the bankruptcy court found that he knew of the automatic
15 stay and failed to remedy it thereafter. Although the bankruptcy
16 court did not cite it, the parties' Joint Pre-Trial Stipulation
17 and Order includes as an admitted fact that on October 29, 2015,
18 the Trustee sent Hossein and Debtor, through counsel, a letter
19 informing them that they were undertaking actions that were
20 "unlawful attempts to exercise control over property of the
21 Estate in violation of the automatic stay, and demanding
22 immediate turnover" Hossein does not dispute that he
23 thereafter refused to turn over the Delano Property and its
24 postpetition proceeds. Accordingly, the bankruptcy court did not
25 err in finding that Hossein willfully violated the automatic stay
26 and in awarding the Trustee his attorney's fees and costs.

27 Hossein argues that there was no basis for the sanctions and
28 that the Trustee should seek compensation from the estate. He

1 further argues that the court may not use its inherent power to
2 take action otherwise prohibited by the Bankruptcy Code, but he
3 does not elaborate or explain why the Ninth Circuit authority
4 relied upon by the bankruptcy court and cited above does not
5 control the outcome. We find no abuse of discretion in the
6 bankruptcy court's awarding of compensatory civil contempt
7 sanctions under the facts presented here.

8 **CONCLUSION**

9 For the reasons explained above, we AFFIRM.

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