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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

1 In re:) BAP No. SC-17-1126-FBL
2) SC-17-1223-FBL
3 CHRISTOPHER JOHN HAMILTON and) (Related)
4 ELIZABETH LEIGH TESOLIN,)
5 Debtors.) Bk. No. 14-03142-CL11
6) Adv. Pro. 14-90152-CL
7)

8 _____)
9 CHRISTOPHER JOHN HAMILTON,)
10 Appellant,)

11 v.)

OPINION

12 ELITE OF LOS ANGELES, INC.;)
13 SAN DIEGO TESTING SERVICES,)
14 INC.; ELIZABETH LEIGH TESOLIN,)
15 Appellees.)

16 _____)
17 ELITE OF LOS ANGELES, INC.;)
18 SAN DIEGO TESTING SERVICES,)
19 INC.,)
20 Appellants,)

21 v.)

22 CHRISTOPHER JOHN HAMILTON;)
23 ELIZABETH LEIGH TESOLIN,)
24 Appellees.)

Argued and Submitted on March 22, 2018
at Pasadena, California

Filed - April 17, 2018

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

Honorable Christopher B. Latham, Bankruptcy Judge, Presiding

Appearances: Paul J. Leeds of Higgs Fletcher & Mack LLP argued

1 for appellants/appellees Christopher John Hamilton
2 and Elizabeth Leigh Tesolin; Susan C. Stevenson of
3 Pyle Sums Duncan & Stevenson, APC argued for
4 appellees/appellants Elite of Los Angeles, Inc.
and San Diego Testing Services, Inc.

5 Before: FARIS, BRAND, and LAFFERTY, Bankruptcy Judges.

6
7 FARIS, Bankruptcy Judge:

8 **INTRODUCTION**

9 Appellees Elite of Los Angeles, Inc. ("Elite") and San Diego
10 Testing Services, Inc. ("SDTS") (collectively, "Elite Entities")
11 are in the business of providing educational advising and
12 tutoring services. Christopher John Hamilton was an officer and
13 part-owner of SDTS. With the help of his wife, Elizabeth Leigh
14 Tesolin, and others, he opened a competing business and absconded
15 with the Elite Entities' lesson plans, proprietary information,
16 and teachers. The Elite Entities obtained a \$2 million state
17 court judgment against Mr. Hamilton and Ms. Tesolin (collectively
18 "Debtors"), who then sought chapter 11¹ bankruptcy protection.
19 The bankruptcy court determined that the judgment was
20 nondischargeable under § 523(a)(6).

21 The Debtors appeal the nondischargeability judgment, arguing
22 that the bankruptcy court ignored Supreme Court precedent and
23 misapplied Ninth Circuit law. We AFFIRM.

24 Separately, the Elite Entities appeal from the bankruptcy
25 court's order disallowing some of the postjudgment interest on
26

27 ¹ Unless specified otherwise, all chapter and section
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 the state court judgment. The bankruptcy court should have
2 awarded the Elite Entities postjudgment interest at the state
3 rate. We REVERSE and REMAND.

4 **FACTUAL BACKGROUND**

5 **A. Prelitigation events**

6 The Elite Entities provide academic counseling, tutoring,
7 and college preparatory and standardized test prep services to
8 high school students. In 1999, Mr. Hamilton joined Elite as a
9 faculty member. In 2006, Elite formed a sister company, SDTS,
10 and Mr. Hamilton became a shareholder, officer, and director of
11 SDTS.

12 After a few years, Mr. Hamilton grew discontented with the
13 Elite Entities. In 2011, he retained a law firm to advise him on
14 separating from the Elite Entities and forming his own company.

15 In September 2011, while still an officer and director of
16 SDTS, Mr. Hamilton formed Summa Consulting, LLC ("Summa"), an
17 academic counseling and tutoring company. He also began
18 gathering the Elite Entities' proprietary information with the
19 assistance of other SDTS employees and his wife, Ms. Tesolin.
20 For example, he took employee personnel files, student records,
21 teaching materials and lesson plans, curriculum development
22 tools, and a copy of the data on SDTS's server. He also began
23 undermining SDTS's prospective business by discouraging potential
24 students from enrolling at SDTS and diverting them to Summa's
25 programs.

26 On October 6, 2011, without any prior notice, Mr. Hamilton
27 resigned from SDTS. That same day, he used the Elite Entities'
28 confidential contact list to send e-mails notifying SDTS's

1 clients of his departure and soliciting business for Summa. Over
2 the next two weeks, several other employees left SDTS to join Mr.
3 Hamilton at Summa, leaving only one employee remaining at SDTS.

4 **B. State court lawsuit**

5 Shortly thereafter, the Elite Entities filed suit in state
6 court against the Debtors, Summa, and other former SDTS
7 employees, asserting causes of action for breach of fiduciary
8 duty, breach of duty of loyalty, intentional interference with
9 prospective economic advantage, trade secret misappropriation,
10 unfair competition, aiding and abetting, violation of California
11 Penal Code § 502, and unjust enrichment. The complaint sought
12 damages totaling \$7.7 million and punitive damages against Mr.
13 Hamilton.

14 Following a trial, the jury returned two special verdicts in
15 the Elite Entities' favor. In relevant part, it found Mr.
16 Hamilton liable for \$2,070,000 for breach of fiduciary duty,
17 breach of duty of loyalty, intentional interference with
18 prospective economic advantage, trade secret misappropriation,
19 and punitive damages. It also found Ms. Tesolin jointly and
20 severally liable for \$1,855,000 under an aiding and abetting
21 theory (collectively, "State Court Judgment").

22 **C. Bankruptcy case and adversary proceeding**

23 On the day of a scheduled sheriff's sale of Mr. Hamilton's
24 stock in SDTS, the Debtors filed their chapter 11 petition. The
25 Elite Entities filed proofs of claim based on the debt arising
26 from the State Court Judgment.

27 The Elite Entities also filed an adversary complaint against
28 the Debtors, seeking a determination that the State Court

1 Judgment was nondischargeable under § 523(a)(6). They asserted
2 that each of the causes of action for which the Debtors were
3 found liable constituted a willful and malicious injury that was
4 nondischargeable.

5 The Debtors and the Elite Entities filed cross-motions for
6 summary judgment. The Elite Entities argued that the bankruptcy
7 court should apply issue preclusion to the State Court Judgment
8 and hold that the entire debt was nondischargeable. In response,
9 the Debtors agreed that the jury's factual findings had
10 preclusive effect, but contended that the unintentional torts
11 lacked the requisite element of intent and the corresponding
12 damages were dischargeable debts.

13 The bankruptcy court granted the Elite Entities summary
14 judgment on the intentional interference with prospective
15 economic advantage claim because the Debtors conceded that the
16 State Court Judgment necessarily established willful and
17 injurious intent. It thus held that the corresponding \$160,000
18 award was nondischargeable as to the Debtors jointly and
19 severally. It initially held that the jury's special verdict
20 satisfied the issue of malice on all causes of action. However,
21 the bankruptcy court later reconsidered its ruling and held that
22 the jury did not allocate punitive damages to any particular
23 cause of action, so it was improper to infer that Mr. Hamilton
24 acted with requisite malice. It also denied the Elite Entities'
25 request concerning postjudgment interest and directed them to
26 file a separate motion.

27 **D. Trial and nondischargeability judgment**

28 The bankruptcy court conducted a four-day trial to determine

1 whether the remaining debt was nondischargeable. Following
2 trial, the bankruptcy court issued its memorandum decision
3 holding that the State Court Judgment was nondischargeable under
4 § 523(a)(6). It considered whether the Elite Entities had
5 satisfied § 523(a)(6)'s "willful and malicious injury" test laid
6 out in Kawaauhau v. Geiger, 523 U.S. 57 (1998), and Petralia v.
7 Jercich (In re Jercich), 238 F.3d 1202 (9th Cir. 2001).

8 First, it ruled that Mr. Hamilton had acted willfully. It
9 noted that, under Jercich, willfulness is satisfied if the
10 defendant either (1) had a subjective motive to inflict injury
11 upon them, or (2) believed that injury was substantially certain
12 to result from his conduct. It found that the Elite Entities had
13 not shown that Mr. Hamilton had a subjective motive to injure
14 them.

15 Rather, the court ruled that the Elite Entities successfully
16 established that Mr. Hamilton believed that injury was
17 substantially certain to result from his conduct. It found that
18 "it is readily apparent that Mr. Hamilton's conduct caused
19 substantial harm. He was a central, executive-level employee and
20 departed without notice. And he took several key employees with
21 him." Mr. Hamilton also carefully orchestrated his departure
22 with his wife and other SDTS employees and took the Elite
23 Entities' best teachers, proprietary information (including e-
24 mail contact list and client database), tangible property, and
25 SDTS's hard drive. Moreover, due to Mr. Hamilton's "significant
26 premeditation," the Elite Entities' "ability to conduct business
27 was markedly impeded. And Mr. Hamilton's conduct badly disrupted
28 Elite's business. There was immediate disorder

1 Plaintiffs' upper management did not know who had the keys to the
2 building." The court concluded that Mr. Hamilton

3 knew with substantial certainty that his conduct would
4 result in harm to Plaintiffs. Aside from inference,
5 the court's conclusion is based on reason: What he was
6 doing simply **had** to be harmful. For example, in his
7 September 26, 2011 e-mail to his father, Mr. Hamilton
8 described his impending resignation as his "own
9 personal D-Day" and that he would be "pull[ing] the
10 pin" on October 1, 2011. . . . This conjures up images
11 of massive damage being inflicted. Further, there was
12 evidence concerning a "coup" - presumably against
13 Plaintiffs' leadership to harm it or deprive it of
control. And Mr. Hamilton's October 8, 2011 e-mail
discusses an upcoming meeting with attorneys in Los
Angeles to discuss "fold[ing] up the old entity." . . .
This suggests that Mr. Hamilton expected Elite or SDTS
would cease to exist, or at least to function, as a
business entity. Mr. Hamilton's efforts in testimony
to convince the court that this was just meant to
resolve his ownership in SDTS, i.e., that he would buy
out Mr. Park and Mr. Sung or vice versa, is not
credible and the court rejects it.

14 (Emphasis in original.) Accordingly, the Elite Entities
15 established that Mr. Hamilton acted willfully.

16 Second, the court ruled that Mr. Hamilton acted with malice.
17 It rejected Mr. Hamilton's argument that he established "just
18 cause or excuse" because he had sought and relied on the advice
19 of counsel in good faith to lawfully separate from the Elite
20 Entities and start Summa.

21 Third, the court found that Mr. Hamilton's conduct was
22 tortious because it implicated torts under California law.

23 Finally, the court determined that Mr. Hamilton's liability
24 to the Elite Entities was nondischargeable under § 523(a)(6).
25 But the court held that there was insufficient evidence to
26 establish the nondischargeability of Ms. Tesolin's debt, and, as
27 a result, only the \$160,000 joint and several judgment arising
28 from the intentional interference with prospective economic

1 advantage claim was nondischargeable as to Ms. Tesolin.

2 The Debtors timely filed a notice of appeal from the
3 judgment ("Nondischargeability Judgment").²

4 **E. Motion for postjudgment interest**

5 Following the entry of the Nondischargeability Judgment, the
6 Elite Entities moved for a nondischargeability determination on
7 postjudgment interest accruing on the State Court Judgment
8 ("Postjudgment Interest Motion"). They sought a determination
9 that postjudgment interest was nondischargeable and accrued at
10 the California rate of ten percent from the date of entry of the
11 State Court Judgment pursuant to California Code of Civil
12 Procedure § 685.010. They argued that it is well settled in the
13 Ninth Circuit that prepetition, nondischargeable debts accrue
14 interest postpetition.

15 In opposition, the Debtors argued that, because an adversary
16 proceeding is a federal matter brought under a federal statute
17 (and a nondischargeability claim is solely a federal question),
18 the court must apply the federal interest rate.

19 Following a hearing, the bankruptcy court entered an order
20 ("Postjudgment Interest Order") granting in part and denying in
21 part the Postjudgment Interest Motion. The court thought that
22 there were four relevant time periods: (1) between the State
23 Court Judgment and the petition date ("Period One"); (2) between
24

25 ² After the Debtors appealed from the Nondischargeability
26 Judgment, they filed a motion to dismiss Ms. Tesolin from the
27 appeal. A BAP motions panel granted the motion but designated
28 Ms. Tesolin as an appellee out of an abundance of caution, in the
event that the appellate decision affects the \$160,000 stipulated
judgment.

1 the petition date and the adversary complaint ("Period Two");
2 (3) between the adversary complaint and the Nondischargeability
3 Judgment ("Period Three"); and (4) the time after entry of the
4 Nondischargeability Judgment ("Period Four").

5 The Debtors conceded that the ten percent California rate
6 applied to Period One. The court stated that "[i]nherent in the
7 judgment was the statutory 10% interest right; it is a
8 substantive aspect of Plaintiff's prepetition claim. It is thus
9 integral to the nondischargeable State Court Judgment and is
10 likewise **nondischargeable.**" (Emphasis in original.)

11 Second, the court held that the state rate was applicable to
12 Period Two, which was the short postpetition, pre-complaint
13 period. It held that the postjudgment interest that was accruing
14 following the State Court Judgment properly continued to accrue,
15 and any interest before the adversary complaint was filed "was
16 part and parcel of the liability arising from the State Court
17 Judgment."

18 Third, the court disallowed any interest during Period
19 Three, which lasted for three years while the adversary complaint
20 was pending. It noted that "[t]he Complaint's filing vested the
21 court with sound discretion to award prejudgment interest." It
22 analyzed the "equities, fairness, and what it will take to make
23 Plaintiffs whole." It reasoned:

24 Plaintiffs earned a handsome return on the State Court
25 Judgment while it accrued interest at the state rate.
26 This amply protected the time value of the money at
27 stake. But to allow that to continue past the
28 Complaint's filing date strikes the court as punitive.
Prejudgment interest is an element of compensation, not
a penalty. To be sure, Defendants behaved badly. But
having a large nondischargeability judgment is
significant punishment already. To allow three more

1 years of state-rate interest - let alone post-judgment
2 at that rate for all time - is inequitable. How could
3 Defendants ever hope to pay off this debt if it
4 continues accruing interest at 10%? The court views
5 this is [sic] an intolerable burden, one so extreme
6 that it threatens to deny Defendants any semblance of a
7 fresh start.

8 It thus stated that the Elite Entities were not entitled to any
9 "prejudgment" interest during Period Three.

10 Finally, for the same reasons, the court exercised its
11 discretion to award the Elite Entities "postjudgment" interest at
12 the federal rate for Period Four.

13 The Elite Entities timely appealed the Postjudgment Interest
14 Order.

15 **JURISDICTION**

16 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
17 §§ 1334 and 157(b) (1) and (2) (I). We have jurisdiction under 28
18 U.S.C. § 158.

19 **ISSUES**

20 (1) Whether the bankruptcy court erred in determining that
21 the State Court Judgment was nondischargeable under § 523(a) (6).

22 (2) Whether the bankruptcy court erred in disallowing
23 postjudgment interest on the State Court Judgment.

24 **STANDARDS OF REVIEW**

25 We apply de novo review to the bankruptcy court's
26 construction of § 523(a) (6) and the law governing pre- and
27 postjudgment interest. The clear error standard applies to the
28 bankruptcy court's factual findings about the Debtors' mental
state. Carrillo v. Su (In re Su), 290 F.3d 1140, 1142 (9th Cir.
2002) ("We review the bankruptcy court's conclusions of law de
novo and its factual findings for clear error.").

1 De novo review is independent and gives no deference to the
2 trial court's conclusion. Roth v. Educ. Credit Mgmt. Agency (In
3 re Roth), 490 B.R. 908, 915 (9th Cir. BAP 2013).

4 A finding of fact is clearly erroneous if it is illogical,
5 implausible, or without support in the record. Retz v. Samson
6 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010). The
7 bankruptcy court's choice among multiple plausible views of the
8 evidence cannot be clear error. United States v. Elliott, 322
9 F.3d 710, 715 (9th Cir. 2003).

10 DISCUSSION

11 A. The bankruptcy court correctly applied § 523(a)(6).

12 1. Jercich is controlling Ninth Circuit law.

13 Mr. Hamilton argues that the bankruptcy court misconstrued
14 § 523(a)(6)'s "willful" injury requirement by ignoring the
15 Supreme Court's decision in Geiger in favor of the Ninth
16 Circuit's decision in Jercich. These two cases are not at odds,
17 and we find no error in the bankruptcy court's reliance on
18 Jercich.

19 Section 523(a)(6) excepts from discharge any debt arising
20 from "willful and malicious injury by the debtor to another
21 entity or to the property of another entity[.]" § 523(a)(6).
22 The creditor must prove both willfulness and malice. Ormsby v.
23 First Am. Title Co. of Nev. (In re Ormsby), 591 F.3d 1199, 1206
24 (9th Cir. 2010). "A 'willful' injury is a 'deliberate or
25 intentional **injury**, not merely a deliberate or intentional **act**
26 that leads to injury.'" Barboza v. New Form, Inc. (In re
27 Barboza), 545 F.3d 702, 706 (9th Cir. 2008) (quoting Geiger, 523
28 U.S. at 61) (emphases in original). The Ninth Circuit has

1 instructed that the willful injury requirement under § 523(a)(6)
2 "is met only when the debtor has a subjective motive to inflict
3 injury or when the debtor believes that injury is substantially
4 certain to result from his own conduct." In re Ormsby, 591 F.3d
5 at 1206.

6 In Geiger, the Supreme Court considered whether a debt
7 arising from a judgment attributable to negligent or reckless
8 conduct falls within the "willful and malicious injury" exception
9 to discharge. 523 U.S. at 59. It declined to expand the
10 definition of "willful" to include the negligent or reckless
11 medical care at issue in that case. Instead, it stated:

12 The word "willful" in (a)(6) modifies the word
13 "injury," indicating that nondischargeability takes a
14 deliberate or intentional **injury**, not merely a
15 deliberate or intentional **act** that leads to injury.
Had Congress meant to exempt debts resulting from
unintentionally inflicted injuries, it might have
described instead "willful acts that cause injury."

16 Id. at 61 (emphasis in original).

17 Three years after Geiger, the Ninth Circuit decided Jercich,
18 which also construed § 523(a)(6)'s "willful" injury requirement.
19 The court rejected the contention that, under Geiger, the
20 willfulness prong necessarily required a "specific intent" to
21 cause injury. 238 F.3d at 1207. It stated that Geiger
22 "clarified that it is insufficient under § 523(a)(6) to show that
23 the debtor **acted** willfully and that the injury was negligently or
24 recklessly inflicted; instead, it must be shown not only that the
25 debtor **acted** willfully, but also that the debtor inflicted the
26 **injury** willfully and maliciously rather than recklessly or
27 negligently." Id. (emphasis in original). But Geiger "did not
28 answer the question before us today – the precise state of mind

1 required to satisfy § 523(a)(6)'s 'willful' standard." Id.

2 The Ninth Circuit relied on two authorities cited in the
3 Geiger decision: McIntyre v. Kavanaugh, 242 U.S. 138 (1916), and
4 Restatement (Second) of Torts § 8A. It noted that, under
5 McIntyre, "a wrongful act that is voluntarily committed with
6 knowledge that the act is wrongful and will necessarily cause
7 injury meets the 'willful and malicious' standard of
8 § 523(a)(6)." 238 F.3d at 1208.³ Similarly, it stated that the
9 Restatement's definition of the term "intent" "requires the actor
10 either to desire the consequences of an act or to know the
11 consequences are substantially certain to result." Id.

12 Based on authority from the Fifth and Sixth Circuits and the
13 Ninth Circuit BAP, the court held that, "under Geiger, the
14 willful injury requirement of § 523(a)(6) is met when it is shown
15 either that the debtor had a subjective motive to inflict the
16 injury **or that the debtor believed that injury was substantially**
17 **certain to occur as a result of his conduct.**" Id. (emphasis
18 added). It noted that "this holding comports with the purpose
19 [of] bankruptcy law's fundamental policy of granting discharges
20 only to the honest but unfortunate debtor." Id.

21 In the present case, Mr. Hamilton argues that the bankruptcy
22 court erred by relying on Jercich because it runs afoul of
23 Geiger. We disagree.

24
25 ³ McIntyre was decided pre-Bankruptcy Code, but it construed
26 a section of the prior Bankruptcy Act which provided exceptions
27 to discharge for "liabilities . . . for wilful and malicious
28 injuries to the person or property of another"
McIntyre, 242 U.S. at 139-40. Because the relevant language of
the Bankruptcy Code and Bankruptcy Act is identical, the Supreme
Court's pre-Code decision is still instructive.

1 While Mr. Hamilton is correct that we are bound to follow
2 Supreme Court precedent, we are also bound by the Ninth Circuit's
3 decisions. See Mano-Y&M, Ltd. v. Field (In re Mortg. Store,
4 Inc.), 773 F.3d 990, 995-96 (9th Cir. 2014) ("our decisions are
5 binding precedent that the BAP must follow"); In re
6 Brooks-Hamilton, 400 B.R. 238, 257 n.27 (9th Cir. BAP 2009)
7 (Markell, J., concurring) ("we do not have the power or authority
8 to ignore binding Ninth Circuit or Supreme Court precedent").
9 The Ninth Circuit has instructed that:

10 Binding authority within this regime cannot be
11 considered and cast aside; it is not merely evidence of
12 what the law is. Rather, caselaw on point **is** the law.
13 If a court must decide an issue governed by a prior
14 opinion that constitutes binding authority, the later
15 court is bound to reach the same result, even if it
16 considers the rule unwise or incorrect. Binding
17 authority must be followed unless and until overruled
18 by a body competent to do so.

15 Hart v. Massanari, 266 F.3d 1155, 1170 (9th Cir. 2001) (emphasis
16 in original). Even if we disagreed with Jercich, the Ninth
17 Circuit's decision is binding on us until it is reversed: "Once a
18 [circuit] panel resolves an issue in a precedential opinion, the
19 matter is deemed resolved, unless overruled by the court itself
20 sitting en banc, or by the Supreme Court." Id. at 1171.

21 Moreover, Jercich does not contradict Geiger. Mr. Hamilton
22 argues that Geiger requires "actual intent" or "specific intent"
23 and that Jercich's "substantial certainty" prong does away with
24 those requirements and expands on an exception to discharge. The
25 Supreme Court determined that willfulness under § 523(a)(6)
26 requires an intent to cause harm (as opposed to harm caused
27 unintentionally), but it did not, as Jercich noted, elaborate on
28 "the precise state of mind required to satisfy § 523(a)(6)'s

1 'willful' standard." 238 F.3d at 1207. Jercich and cases from
2 other circuits with similar holdings are the natural elaboration
3 of the principles laid out in Geiger.

4 Mr. Hamilton relies extensively on the Ninth Circuit's
5 decision in Hawkins v. Franchise Tax Board of California, 769
6 F.3d 662 (9th Cir. 2014), for the proposition that willfulness
7 requires "specific intent." But Hawkins concerned only tax debts
8 under § 523(a)(1)(A), not willful and malicious injury under
9 subsection (a)(6). The Ninth Circuit only recognized the
10 "specific intent" requirement in "the bankruptcy tax context."
11 769 F.3d at 668. Although the decision mentions Geiger, it does
12 so only for the proposition that "[t]he Supreme Court analogized
13 'willful' as the mental state required for intentional torts, not
14 for negligent acts." Id. at 667. It does not explain or expand
15 on Geiger's holding, nor does it implicitly overrule Jercich, as
16 Mr. Hamilton contends.

17 Accordingly, Jercich is good law, and we must follow it.

18 **2. The bankruptcy court properly applied Jercich and**
19 **Geiger.**

20 We similarly are unpersuaded by Mr. Hamilton's alternative
21 argument that the court misapplied Jercich.

22 Mr. Hamilton argues that he "knew his departure would cause
23 some disruption - just as the lawful departure of any high-level
24 employee necessarily interrupts business as usual - but he
25 neither intended nor understood that it would injure Elite and
26 SDTS to the tune of \$2 million." In other words, he claims that
27 the injury was not willful because, although he knew that he
28 would cause the Elite Entities some harm, he did not know the

1 full extent of the final damages.

2 But the bankruptcy court found not only that Mr. Hamilton
3 knew that his conduct would result in "some harm," but also that
4 he understood with "substantial certainty" the gravity of his
5 actions. It found that he caused "substantial harms" by
6 departing with several key employees without notice, taking the
7 Elite Entities' proprietary information and tangible property,
8 and leaving SDTS in confusion and disarray, such that the Elite
9 Entities did not even have keys to the building. The court found
10 that "[w]hat he was doing simply **had** to be harmful." (Emphasis
11 in original.) It noted that Mr. Hamilton described his departure
12 as his "own personal D-Day," "pulling the pin," a "coup," and
13 "folding up the old entity." The court found that the evidence
14 suggested that "Mr. Hamilton expected Elite or SDTS would cease
15 to exist, or at least function, as a business entity."

16 Mr. Hamilton is patently wrong that the bankruptcy court
17 applied an incorrect standard and only required "some harm." As
18 the court found, Mr. Hamilton knew that his actions would cause
19 "substantial injury" - his own words conjured images of battle,
20 explosion, revolt, or the destruction of a business. Even if he
21 did not predict the exact dollar value of the damage he would
22 cause, Mr. Hamilton knew with substantial certainty that his acts
23 would cause significant damage to the Elite Entities. That is
24 sufficient.

25 Mr. Hamilton puzzlingly argues that the bankruptcy court
26 erred by deciding the Nondischargeability Judgment on the sole
27 basis of the State Court Judgment and should have consulted a
28 copy of the trial transcript. This argument is frivolous. Mr.

1 Hamilton conveniently forgets the four-day trial that the
2 bankruptcy court conducted on the issue of nondischargeability.
3 The bankruptcy court heard testimony and argument concerning the
4 causes of action asserted in the state court and came to its own
5 conclusions regarding Mr. Hamilton's knowledge and intent; its
6 decision was not based on "the jury verdict alone."

7 Accordingly, the bankruptcy court's findings met Jercich's
8 "substantial certainty" standard.

9 **3. Mr. Hamilton is not an honest but unfortunate debtor.**

10 Mr. Hamilton argues that public policy supports the
11 dischargeability of the State Court Judgment. He contends that
12 exceptions to discharge must be narrowly construed - and thus a
13 finding of "actual intent" is necessary - to "afford debtor[]
14 the 'fresh start' anticipated by Congress"

15 The fatal flaw in his argument is that he is not an "honest
16 but unfortunate debtor" for whom the bankruptcy discharge was
17 intended. As Jercich stated, not every debtor is entitled to a
18 fresh start:

19 Congress's decision to make the debts listed under
20 § 523(a) nondischargeable reflect[s] a decision by
21 Congress that the fresh start policy is not always
22 paramount. For example, some of the exceptions to
23 discharge in § 523(a) are based on a corollary of the
24 policy of giving honest debtors a fresh start, which
25 would be to deny dishonest debtors a fresh start.

26 In re Jercich, 238 F.3d at 1206 (citations and quotation marks
27 omitted); see Grogan v. Garner, 498 U.S. 279, 287 (1991) ("the
28 Act limits the opportunity for a completely unencumbered new
beginning to the 'honest but unfortunate debtor'"). The
bankruptcy court found that Mr. Hamilton secretly plotted "with
forethought aplenty" to destroy or cripple the Elite Entities.

1 Public policy does not support Mr. Hamilton's case.

2 We therefore AFFIRM the Nondischargeability Judgment.

3 **B. The Elite Entities are entitled to full postjudgment**
4 **interest at the California rate accruing from the entry of**
5 **the State Court Judgment.**

6 The Elite Entities appeal the bankruptcy court's
7 Postjudgment Interest Order, which disallowed interest during
8 Period Three (during the pendency of the adversary proceeding)
9 and awarded postjudgment interest at the federal rate rather than
10 the state rate during Period Four (following entry of the
11 Nondischargeability Judgment). The bankruptcy court erred when
12 it deprived the Elite Entities of the full benefit of
13 postjudgment interest accruing on the State Court Judgment. On
14 this issue, we REVERSE and REMAND.

15 State and federal law both provide for postjudgment
16 interest, but at dramatically different rates. California Code
17 of Civil Procedure § 685.010 provides that "[i]nterest accrues at
18 the rate of 10 percent per annum on the principal amount of a
19 money judgment remaining unsatisfied." Cal. Civ. Proc. Code
20 § 685.010(a). Under federal law, postjudgment interest "shall be
21 calculated from the date of the entry of the judgment, at a rate
22 equal to the weekly average 1-year constant maturity Treasury
23 yield, as published by the Board of Governors of the Federal
24 Reserve System, for the calendar week preceding . . . the date of
25 the judgment." 28 U.S.C. § 1961(a). Due to credit market
26 conditions, the federal rate has been far less than the state
27 rate of ten percent for many years.

28 As opposed to the statutorily-mandated postjudgment
interest, federal courts have discretion to impose prejudgment

1 interest in consideration of the equities of the case. "Awards
2 of pre-judgment interest are governed by considerations of
3 fairness and are awarded when it is necessary to make the wronged
4 party whole." Purcell v. United States, 1 F.3d 932, 943 (9th
5 Cir. 1993) (citation omitted). Prejudgment interest is intended
6 "to compensate for the loss of use of money due as damages from
7 the time the claim accrues until judgment is entered[.]" Barnard
8 v. Theobald, 721 F.3d 1069, 1078 (9th Cir. 2013) (quoting
9 Schneider v. Cty. of San Diego, 285 F.3d 784, 789 (9th Cir.
10 2002)). Whether to award prejudgment interest is in "the court's
11 sound discretion[.]" Id. (quoting Wessel v. Buhler, 437 F.2d
12 279, 284 (9th Cir. 1971)).

13 In the present case, the bankruptcy court properly awarded
14 postjudgment interest at ten percent on the State Court Judgment
15 for Periods One and Two. It did not allow any interest during
16 Period Three and awarded postjudgment interest during Period Four
17 at the federal rate rather than the state rate. This was error.

18 Section 523 requires bankruptcy courts to determine whether
19 certain "debts" are discharged in bankruptcy. This entails two
20 questions: first, the existence and amount of a debt; and second,
21 whether and to what extent the debt is dischargeable. In this
22 case, the state court had already adjudicated the debt, so the
23 only issue remaining for the bankruptcy court was whether that
24 debt was dischargeable.

25 The Supreme Court has held that interest is an "integral
26 part" of a nondischargeable debt. Bruning v. United States, 376
27 U.S. 358, 360 (1964) ("In most situations, interest is considered
28 to be the cost of the use of the amounts owing a creditor and an

1 incentive to prompt repayment and, thus, an integral part of a
2 continuing debt.”). Bruning dealt with a tax debt, but the same
3 principle applies to interest on a judgment debt. The Ninth
4 Circuit has stated that “[t]he purpose of postjudgment interest
5 ‘is to compensate the successful plaintiff for being deprived of
6 compensation for the loss of time between the ascertainment of
7 the damage and the payment by the defendant.’” United States v.
8 Bell, 602 F.3d 1074, 1083 (9th Cir. 2010), amended, 734 F.3d 1223
9 (9th Cir. 2013) (quoting Dishman v. UNUM Life Ins. Co. of Am.,
10 269 F.3d 974, 989 (9th Cir. 2001)).

11 Section 523(a)(6) permits the court to determine whether a
12 debt is dischargeable. It does not permit the court to relieve
13 the debtor of some of the interest that is an integral part of a
14 nondischargeable debt or to adjust the amount of a debt
15 determined by a valid prepetition state court judgment because
16 the bankruptcy court thinks that the state interest rate is too
17 high.

18 Our precedents indicate that interest on a nondischargeable
19 judgment debt should continue to accrue at the state rate, even
20 after the bankruptcy court determines the nondischargeability of
21 the debt. In Shoen v. Shoen (In re Shoen), BAP No.
22 AZ-96-1884-KJRy (9th Cir. BAP Oct. 22, 1997) (unreported
23 disposition), we stated in dicta that, “If the debts were held to
24 be nondischargeable, then plaintiffs would be entitled to
25 postpetition interest at the state court judgment rate.” Shoen
26 v. Shoen (In re Shoen), 176 F.3d 1150, 1159 n.7 (9th Cir. 1999),
27 cert. denied, 528 U.S. 1075 (2000) (appending and adopting the
28 BAP decision). We also stated that “interest at the state’s

1 judgment interest rate continues to accrue postpetition on
2 nondischargeable debts. . . . If the debts were to be held in
3 that litigation to be nondischargeable (and the jury's verdict
4 strongly suggests nondischargeability), then the [state's ten-
5 percent] interest that the bankruptcy court determined . . .
6 would have been calculated correctly" Id. at 1166. We
7 ultimately held that the state court judgment continued to accrue
8 postjudgment interest at the Arizona rate postpetition: "The
9 Ninth Circuit applies applicable state law interest rates absent
10 federal preemption. Several courts have held that the state
11 post-judgment interest rate applies in diversity
12 jurisdiction. . . . Bankruptcy is no different." Id. at 1165.
13 The Ninth Circuit adopted the Panel's decision in whole. Id. at
14 1152.

15 We recognize that the decisions on this issue are not
16 uniform. Compare Cty. of Sacramento v. Foross (In re Foross),
17 242 B.R. 692 (9th Cir. BAP 1999) (holding that postpetition
18 interest accruing on a nondischargeable child support judgment is
19 nondischargeable), and Great Lakes Higher Educ. Corp. v. Pardee
20 (In re Pardee), 218 B.R. 916 (9th Cir. BAP 1998), aff'd, 193 F.3d
21 1083 (9th Cir. 1999) (holding that postpetition interest on a
22 student loan debt is nondischargeable), with Diversified Funding
23 Grp., LLC v. Hendon (In re Hendon), No. 2:11-AP-01972-EWH, 2014
24 WL 3966386 (Bankr. D. Ariz. Aug. 13, 2014) (holding that, despite
25 a state court judgment, "because the nondischargeability judgment
26 is a federal judgment for fraud pursuant to § 523(a)(2)(A) and
27 not a breach of contract, it will accrue interest, post-entry, at
28 the federal rate"). We hold that the former line of decisions is

1 correct in cases like this one, where there is a valid
2 prepetition state court judgment. The Nondischargeability
3 Judgment was not a new money judgment under federal law. It
4 simply determined that the State Court Judgment was not
5 dischargeable. As such, the bankruptcy court lacked authority to
6 override the state court's award of interest.

7 This case is distinguishable from cases where there is no
8 prior state court judgment. In such a case, the bankruptcy court
9 needs to determine both the existence of a debt **and** its
10 dischargeability. The bankruptcy court may then issue a money
11 judgment for the debt, and federal law would govern pre- and
12 postjudgment interest. See, e.g., Zenovic v. Crump (In re
13 Zenovic), BAP No. SC-15-1204-FYJu, 2017 WL 431400 (9th Cir. BAP
14 Jan. 31, 2017) (awarding prejudgment interest where it entered a
15 money judgment on a disputed debt). The bankruptcy court also
16 may (but is not required to) issue a new money judgment where the
17 bankruptcy court decides that the state court's judgment is
18 invalid or that only part of the debt embodied in a state court
19 judgment is dischargeable. See Cottle v. Ariz. Corp. Comm'n (In
20 re Cottle), BAP No. AZ-16-1078-JuFL, 2016 WL 6081030 (9th Cir.
21 BAP Oct. 17, 2016). But neither of those things happened here.⁴
22 The Elite Entities did not request that the bankruptcy court
23 enter a money judgment; they only asked the bankruptcy court to

24
25 ⁴ In their brief, the Debtors quote Cowen v. Kennedy (In re
26 Kennedy), 108 F.3d 1015, 1016 (9th Cir. 1997), and argue that
27 "bankruptcy courts have 'jurisdiction to enter a monetary
28 judgment on a disputed state law claim in the course of making a
determination that a debt is nondischargeable.'" This is
correct, but the bankruptcy court here properly did not enter a
monetary judgment.

1 determine the nondischargeability of the State Court Judgment.
2 Where there is a valid state court money judgment, the bankruptcy
3 court should not issue a new money judgment. See Sasson v.
4 Sokoloff (In re Sasson), 424 F.3d 864, 874 (9th Cir. 2005)
5 (recognizing that, although a bankruptcy court has jurisdiction
6 to enter a new money judgment, “[t]he existence of a prior
7 judgment may introduce some prudential concerns, such as comity,
8 that a bankruptcy court should take into consideration in
9 fashioning relief”); Smith v. Lachter (In re Smith), 242 B.R.
10 694, 703 (9th Cir. BAP 1999) (“It follows that a separate
11 judgment is not necessary when the claim has already been reduced
12 to judgment by another court of competent jurisdiction.”).
13 Accordingly, because the bankruptcy court did not enter a new
14 money judgment, the bankruptcy court should not have eliminated
15 or reduced any of the interest that is an integral part of the
16 State Court Judgment.

17 Oregon v. Egbo (In re Egbo), 551 B.R. 869 (D. Or. 2016),
18 explains why the bankruptcy court may not change the amount of a
19 valid state court judgment in this context. The state of Oregon
20 obtained a judgment against the debtor for overpayment of
21 unemployment benefits. The judgment bore postjudgment interest
22 at the state rate. The debtor filed for bankruptcy relief, and
23 the state sought a declaratory judgment that its claim was
24 nondischargeable under § 523(a)(2). The bankruptcy court held
25 that the underlying debt was nondischargeable, but then
26 discharged the accruing interest, entered a new money judgment,
27 and held that the nondischargeable debt bore postpetition
28 interest at the federal statutory rate.

