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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NOT FOR PUBLICATION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-17-1253-SKuF
NOAM BOUZAGLOU,	Bk. No. 2:14-bk-25055-DS
Debtor.	Adv. No. 2:14-ap-01645-DS
NOAM BOUZAGLOU,	
Appellant,	
v.	**MEMORANDUM**[*]
JEANNE HAWORTH, Successor Trustee to McGinty Family Trust; KATHLEEN McGINTY,	
Appellees.	

Argued and Submitted on July 27, 2018
in Pasadena, California

Filed – August 13, 2018

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

Honorable Deborah J. Saltzman, Bankruptcy Judge, Presiding

[*] 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.

Appearances: Shai S. Oved argued for appellant; John P. Byrne argued for appellees.

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

INTRODUCTION

Creditors Kathleen McGinty and Jeanne Haworth, successor trustee of the McGinty Family Trust, obtained a fraud judgment after trial in California state court against debtor Noam Bouzaglou. After Bouzaglou commenced his chapter 7[1] bankruptcy case, Haworth and Kathleen[2] sued him to determine the nondischargeability of the judgment debt. The bankruptcy court granted the creditors' summary judgment motion, determining that there was no genuine issue of material fact because of the preclusive effect of the state court judgment. We agree, and we AFFIRM.

FACTS

The McGinty family built their family home in the 1940s in Santa Monica, California, using a home building kit bought from Sears Roebuck

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

[2] We refer to various members of the McGinty family by their first name for ease of reference. No disrespect is intended.

Co. Kathleen lived in the home for over 50 years. She has been diagnosed with autism and never has been able to financially support herself. She currently lives independently with the continued support of family and friends.

Her brother Timothy at one time lived independently, but he moved back into the family home with Kathleen after the death of their mother Delores in 2009. Timothy was Kathleen's sole surviving immediate relative, and he ostensibly moved back into the family home to help care for her, but he battled his own mental health problems, including bipolar disorder, severe depression, schizophrenia, and substance abuse. He attempted suicide in April 2012, and died after suffering a stroke in October 2012.[3]

The family home was held in a special needs trust for Kathleen's benefit established by Delores in 2006. After Delores died, Timothy became the successor trustee of the trust. By that time, the home and its detached garage were in need of repair. In 2010, Timothy contracted with Triangle Construction, Inc. to make repairs to both the home and the garage and

[3] We have derived a number of the background facts set forth in this factual discussion from the February 1, 2017 California Court of Appeal decision affirming the judgment against Bouzaglou's wholly-owned construction company, Ness Adams, Inc. (Cal. Ct. App. Dkt. No. B260148). Bouzaglou has not disputed these background facts, nor has he provided us with a record that would have been sufficient to support a challenge to these facts. As a result, we are entitled to presume that his failure to do so means he does not believe these actions would have been helpful to his appeal. *See Hsu v. Bank of Taiwan (In re Hsu)*, BAP No. CC-09-1242-BMoPa, 2010 WL 6259986, at *4 (9th Cir. BAP Mar. 24, 2010) (citing *McCarthy v. Prince (In re McCarthy)*, 230 B.R. 414, 416–417 (9th Cir. BAP 1999)).

later entered into an amended contract to include designs and permits for a complete rebuild of the garage. Bouzaglou worked as a salesman for Triangle, and he first met Timothy and Kathleen in late 2010. At that time, the home was unencumbered and appraised for $755,000. Triangle never performed any actual construction work on the home.

In April 2011, Timothy again met with Bouzaglou. This time, Bouzaglou acted in his capacity as owner and operator of his own wholly-owned construction company: Ness Adams, Inc. After meeting with Bouzaglou in April 2011, Timothy contracted with Ness in June 2011 to remodel the house, including a new 650 square foot guesthouse for $397,000. This new contract with Bouzaglou also included the rebuilding of the garage.

With Bouzaglou's help, Timothy obtained a $400,000 home loan, and Bouzaglou's attorney Andrew Stern took control of the loan proceeds. In August 2011, Stern paid $270,000 of the loan proceeds to Ness. Over the course of 2011 and 2012, Timothy signed a series of work orders. The work orders increased Ness's construction fees by hundreds of thousands of dollars. Much of the work described in the work orders was duplicative. The fourth and final work order cancelled the construction of the guesthouse but did not reflect any credit for the cancelled work. Timothy supposedly signed this fourth work order one day after he attempted to commit suicide and while hospitalized under a psychiatric hold.

Timothy was released from the hospital in early May 2012. One week later, Bouzaglou induced Timothy to sign an agreement and a quitclaim deed transferring title to the home to Bouzaglou. Timothy died in October 2012. Haworth, Timothy's cousin, replaced him as trustee of the McGinty trust.

Thereafter, Kathleen and Haworth sued Bouzaglou, Ness, and Stern in state court. Their first amended complaint contained multiple causes of action, including rescission, fraud, breach of fiduciary duty, constructive trust and cancellation of deed. Among other things, Kathleen and Haworth alleged that Bouzaglou fraudulently induced Timothy to transfer title to the home by making numerous misrepresentations, including the following:

> That MCGINTY needed to fire his existing contractor, Triangle Construction, and hire BOUZAGLOU's construction company, NESS ADAM, INC., instead (Aug 2011);
>
> That the McGinty Family Home needed much more construction work and needed to be fully rebuilt and an addition built (Aug 2011);
>
> That if the McGinty Family Home was remodeled according to BOUZAGLOU's advice, it could be sold for a huge profit that would repay all loans and costs, leaving MCGINTY with money with which to support himself and his disabled sister (Aug 2011);
>
> That the cost of the construction work would be $270,000.00

(Aug 2011);

That MCGINTY needed to take out a $400,000.00 mortgage in order to pay for the construction work (Aug 2011);

That BOUZAGLOU was entitled to a $270,000.00 advance payment for the work (Aug 2011);

That the profits from the sale of the house would repay the loan and leave MCGINTY with a profit (Aug 2011 —May 16, 2012);

That in order to complete the remodel of the house, an additional $450,000.00 in funds was needed (May 2012);

That MCGINTY could not obtain the necessary financing so he needed to quitclaim the house to BOUZAGLOU (May 2012);

That McGinty would receive $550,000.00 from the proceeds of the sale of the house (May 2012).

After trial, the jury returned a verdict finding that Bouzaglou had committed fraud and, as a result, had caused compensatory damages in the amount of $803,280.00 and should be held liable for exemplary damages of ten times that amount, or $8,032,800.00.

In the process of holding Bouzaglou liable for fraud, the jury specifically and affirmatively found that the following fraud elements were present:

- that "Bouzaglou made a false representation of an important fact to Timothy";

- that "Bouzaglou knew that the representation was false, or that he made the representation recklessly and without regard for the truth";
- that "Bouzaglou intended that Timothy . . . as Trustee rely on the representation";
- that "Timothy . . . as Trustee reasonably relied on the representation";
- that Timothy's reliance on Bouzaglou's representation "was a substantial factor" in inducing Timothy as Trustee to mortgage and to transfer title to the home;
- that the trust or Kathleen were harmed by the mortgaging and transfer of title to the family home;
- that Bouzaglou acted recklessly, with malice and with fraud; and
- that Bouzaglou's fraud caused the trust to suffer $803,280.00 in damages.

After the jury returned its verdict, the state court held a bench trial on Haworth's and Kathleen's equitable claims. In relevant part, those claims sought rescission of the title transfer agreement and cancellation of the quitclaim deed transferring the home from the trust to Bouzaglou. The state court, on April 28, 2014, referenced with approval the jury's fraud findings and also specifically found itself that "fraud has been proven" and that Bouzaglou and Ness "engaged in fraud." The state court further found that the property transfer agreement was "induced by fraud."

Bouzaglou commenced a chapter 13 case on May 6, 2014, which was dismissed on August 8, 2014, because Bouzaglou's debt exceeded the eligibility limits for chapter 13 debtors. Bouzaglou filed the instant bankruptcy case – a chapter 7 case - on August 5, 2014. Bouzaglou then moved to extend the automatic stay beyond the thirty-day limit imposed for successive bankruptcy filings under § 362(c)(3)(A). On September 12, 2014, the bankruptcy court granted that motion, except the court excluded Haworth's and Kathleen's prosecution of the state court action from the stay's coverage.

The state court entered judgment against Bouzaglou, Ness and Stern on September 18, 2014. Pursuant to an election of remedies, the trust opted for its equitable remedies over compensatory damages against Bouzaglou, so the judgment awarded the trust no compensatory damages against him, but instead provided for cancellation of the quitclaim deed and rescission of the property transfer agreement. Nonetheless, the judgment still awarded $8,032,800.00 in exemplary damages against Bouzaglou and in favor of the trust. The judgment also awarded Kathleen $17,000 in compensatory damages as against Bouzaglou. Meanwhile, the judgment awarded the trust $1,331,608.77 in compensatory damages and $13,316,087.70 in exemplary damages as against Ness.

Both Bouzaglou and Ness appealed the state court judgment. The California court of appeal affirmed the judgment against Ness. As for

Bouzaglou's appeal, the state appellate court dismissed it for lack of standing. As the state appellate court explained, Bouzaglou's defensive appeal rights were property of his bankruptcy estate, and he had not provided any evidence that the bankruptcy trustee had abandoned the estate's interest in the appeal rights.[4]

On October 8, 2014, Haworth and Kathleen commenced their nondischargeability adversary proceeding, stating causes of action under § 523(a)(2)(A) and (a)(4). After the California court of appeal issued its decision disposing of the appeal from the state court fraud judgment, Haworth and Kathleen filed their summary judgment motion, asserting that they were entitled to judgment as a matter of law in light of the preclusive effect of the state court judgment.

In opposition to the summary judgment motion, Bouzaglou argued that the bankruptcy court should not give preclusive effect to the state court judgment because he had been prevented from pursuing his appeal. Bouzaglou had sought to compel the abandonment of his appeal rights so that he could continue the appeal. By this time, Kathleen had filed her own bankruptcy petition under chapter 11, and a chapter 11 trustee had been appointed. Kathleen's chapter 11 trustee objected to abandonment of the

[4] Bouzaglou moved to compel the chapter 7 trustee to abandon the appeal rights, but the bankruptcy court denied that motion. Bouzaglou never appealed the denial of his abandonment motion.

appeal rights.[5] As Bouzaglou put it, Kathleen's chapter 11 trustee made an offer to purchase the appeal rights, which he later withdrew. Ultimately, the bankruptcy court denied the motion to compel Bouzaglou's trustee to abandon the appeal rights, concluding that the motion was vague, lacked evidence of value, and failed to present a prima facie case for abandonment. According to Bouzaglou, the purchase offer had the effect of preventing him from prosecuting his appeal because, as Bouzaglou explained, the state appeals court dismissed his appeal for lack of standing. As a result, he argued that the judgment was not final for issue preclusion purposes because he was denied the opportunity to make his arguments on appeal.

Bouzaglou also argued in his summary judgment opposition that the state court judgment and findings were insufficient to support issue preclusion on Kathleen's claim for an exception to discharge under § 523(a)(2)(A). Bouzaglou maintained that one could not tell from the findings and judgment whether the elements of fraud were specifically found because a number of the causes of action alleged in Haworth's and Kathleen's first amended complaint did not sound in fraud. He further claimed that the findings and judgment were not detailed enough for issue preclusion because the jury verdict did not identify the specific

[5] Kathleen's chapter 11 case was later converted to chapter 7 and eventually dismissed.

misrepresentations that Bouzaglou allegedly made. Bouzaglou also assailed the compensatory damages award as incorrect and the exemplary damages award as excessive.

At the hearing on the summary judgment motion, the bankruptcy court rejected Bouzaglou's arguments. The court concluded that all five threshold elements for applying issue preclusion were present. In relevant part, the court ruled that the jury verdict contained findings on each element necessary for nondischargeable fraud. The court also ruled that the fact that Bouzaglou did not get to prosecute his state court appeal did not render the judgment non-final under issue preclusion doctrine. Based on these rulings, the bankruptcy court granted summary judgment on the § 523(a)(2)(A) claim.

On August 16, 2017, the bankruptcy court entered judgment in favor of Haworth and Kathleen on the § 523(a)(2)(A) claim for the outstanding amount of the punitive damages previously awarded and dismissed their § 523(a)(4) claim. Bouzaglou timely appealed the judgment.

JURISDICTION

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

ISSUE

Did the bankruptcy court commit reversible error when it granted summary judgment against Bouzaglou based on the preclusive effect of the

state court fraud judgment?

STANDARDS OF REVIEW

We review de novo the bankruptcy court's grant of summary judgment. *Plyam v. Precision Dev., LLC (In re Plyam)*, 530 B.R. 456, 461 (9th Cir. BAP 2015). We also review de novo the bankruptcy court's determination that issue preclusion is available. *Lopez v. Emerg. Serv. Restoration, Inc. (In re Lopez)*, 367 B.R. 99, 103 (9th Cir. BAP 2007). When we review an issue under the de novo standard of review, "we consider [the] matter anew, as if no decision had been rendered previously." *Kashikar v. Turnstile Capital Mgmt., LLC (In re Kashikar)*, 567 B.R. 160, 164 (9th Cir. BAP 2017).

If we determine that issue preclusion is available, we then review the bankruptcy court's decision to apply it for an abuse of discretion. *In re Lopez*, 367 B.R. at 103. A bankruptcy court abuses its discretion if it applies the wrong legal standard or its findings of fact are illogical, implausible or without support in the record. *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011).

DISCUSSION

A. Governing Law.

1. Legal Standards Governing Summary Judgment.

Under Civil Rule 56(a), made applicable in adversary proceedings by Rule 7056, the court shall grant summary judgment when "the movant

shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A factual dispute is genuine if, on the record presented, a reasonable trier of fact could find in favor of the non-moving party. *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986)). And a fact is "material" if it might affect the outcome of the case. *Id.* Once the moving party has met its initial burden, the non-moving party must show specific facts establishing the existence of genuine issues of fact for trial. *Anderson*, 477 U.S. at 256.

2. Legal Standards Governing Issue Preclusion.

Issue preclusion applies in nondischargeability proceedings. *Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991). Because the relevant judgment was rendered under California law, full faith and credit principles require us to apply California issue preclusion law. *See* 28 U.S.C. § 1738; *Cal–Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119, 1123 (9th Cir. 2003).

> Under California law, issue preclusion is available if:
>
> (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding; (2) the issue was actually litigated in the former proceeding; (3) the issue was necessarily decided in the former proceeding; (4) the decision in the former proceeding is final and on the merits; and (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

In re Plyam, 530 B.R. at 462 (citing *Lucido v. Sup. Ct.*, 51 Cal. 3d 335,

341(1990)).

The party asserting issue preclusion has the burden of proving all of the elements necessary to establish its availability. *Kelly v. Okoye (In re Kelly)*, 182 B.R. 255, 258 (9th Cir. BAP 1995). "To sustain this burden, the party must introduce a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." *Id.* Any *reasonable* doubt as to what was decided in the prior action should be resolved against the application of issue preclusion. *Id.*

Even when the party asserting issue preclusion establishes the five threshold factors, application of issue preclusion is discretionary rather than automatic. *In re Lopez*, 367 B.R. at 107-08. In exercising that discretion, the trial court ordinarily needs to consider the circumstances of the particular case and whether application of the doctrine in that case is fair and consistent with the policies underlying the doctrine. *Baldwin v. Kilpatrick (In re Baldwin)*, 249 F.3d 912, 919–20 (9th Cir. 2001); *In re Lopez*, 367 B.R. at 107-08; *see also* Christopher Klein et al., Principles of Preclusion & Estoppel in Bankruptcy Cases, 79 AM. BANKR. L. J. 839, 855 (2005).

B. Bouzaglou's Arguments On Appeal.

Bouzaglou makes four arguments on appeal. He challenges whether the issues in the state case were identical to the fraud necessary to except the debt from discharge under § 523(a)(2)(A). While Bouzaglou does not dispute that the parties actually litigated a fraud claim in state court, he

maintains that the record is unclear as to what was necessarily decided for purposes of issue preclusion. Bouzaglou also argues that the state court's decision was not final. He does not deny that the parties in both matters are identical, but he contends that the bankruptcy court should have exercised its discretion not to apply issue preclusion in light of his inability to proceed with the appeal in the state court. Finally, Bouzaglou argues that the state court erred in the damages awarded. We address each argument in turn.

1. Issues Decided In State Court.

Bouzaglou first argues that, on the record presented, it is impossible to tell which issues were necessarily decided in the state court. He posits that we don't really know what the jury was thinking when it returned its verdict against him because there were multiple causes of action stated in Haworth's and Kathleen's first amended complaint. Bouzaglou further maintains that the jury's findings were insufficient to support the availability of issue preclusion because they did not identify the specific misrepresentations Bouzaglou allegedly made.

Bouzaglou's argument regarding the issues decided is devoid of merit. As the bankruptcy court noted, the jury specifically and distinctly found each and every element necessary for a fraud judgment under California law. The elements for fraud under § 523(a)(2)(A) are identical. *Younie v. Gonya (In re Younie)*, 211 B.R. 367, 373–74 (9th Cir. BAP 1997); *see*

also Honkanen v. Hopper (In re Honkanen), 446 B.R. 373, 382-83 (9th Cir. BAP 2011) (identifying fraud elements under California law); *Oney v. Weinberg (In re Weinberg)*, 410 B.R. 19, 35 (9th Cir. BAP 2009) (identifying same fraud elements under § 523(a)(2)(A)).

Simply put, the jury verdict was more than sufficient to demonstrate that Bouzaglou had been found liable for fraud. The verdict not only included an affirmative finding for each element of fraud, but also identified fraud as the sole ground for the relief granted. Thus, fraud was necessarily decided by the jury. *See In re Baldwin*, 249 F.3d at 919 & n.6 (application of issue preclusion supported by the judgment because it was clear, in spite of a lack of specific findings, precisely what the state court must have found in order to render its judgment); *Choi v. Kim (In re Kim)*, Bk. No. 99-03303, 2003 WL 22939483, at *3 (Bankr. D. Haw. Jan. 10, 2003) (same); *see also Zeppinick v. Ramirez (In re Zeppinick*), BAP No. CC–16–1293–LKuF, 2017 WL 1457944, at *4 (9th Cir. BAP Apr. 24, 2017) ("there is no requirement that the entire record of the underlying proceedings be produced if the issues can be ascertained from the documents presented.") Accordingly, we reject Bouzaglou's argument that the elements of fraud were not necessarily decided in the state court action.

2. Finality of State Court Judgment & Bouzaglou's Appeal Rights.

Bouzaglou next argues that the bankruptcy court should not have applied issue preclusion because he was deprived of his right to appeal the

state court judgment. He blames Kathleen, or her chapter 11 trustee, for this so-called deprivation. Bouzaglou points to the fact that the chapter 11 trustee submitted an offer (later withdrawn) to purchase Bouzaglou's defensive appeal rights, which in turn caused the bankruptcy court to deny Bouzaglou's motion to abandon the appeal rights as property of his bankruptcy estate.

In blaming Kathleen and her chapter 11 trustee, Bouzaglou ignores the fact that he voluntarily filed a chapter 7 bankruptcy case. As a result of his decision, his appeal rights, as prepetition property, automatically became property of his bankruptcy estate. *See* § 541(a); *see also Fridman v. Anderson (In re Fridman)*, BAP No. CC-15-1151-FKiKu, 2016 WL 3961303, at *7 (9th Cir. BAP July 15, 2016). Because the appeal rights belonged to Bouzaglou's bankruptcy estate, the state appellate court correctly dismissed his appeal for lack of standing. *See Estate of Spirtos v. One San Bernardino Cty. Super. Ct. Case Numbered SPR 02211*, 443 F.3d 1172, 1175-76 (9th Cir. 2006) (holding that the Code vests chapter 7 trustee with the exclusive right to sue on behalf of the estate).

In any event, there is no factual or legal basis for Bouzaglou's contention that the state court judgment was not final because his state court appeal was dismissed on standing grounds. As a practical matter, his appeal rights were fully exhausted and there was no means left for him to directly challenge the state court judgment. Just because a state appellate

court did not hear and decide Bouzaglou's appeal on the merits does not mean the state court judgment was not final for issue preclusion purposes. *See, e.g.*, *Sabek, Inc. v. Engelhard Corp.*, 65 Cal. App. 4th 992, 999 (1998); *Stuart v. Dep't of Real Estate*, 148 Cal. App. 3d 1, 4 (1983); *Smith v. Smith*, 127 Cal. App. 3d 203, 209 (1981).

Most jurisdictions, including California, recognize an exception to issue preclusion when the party against whom issue preclusion is sought had no opportunity, as a matter of law, to appeal or otherwise obtain judicial review of the adverse ruling. *See* Restatement (Second) of Judgments § 28(1); *Anderson-Cottonwood Disposal Serv. v. Workers' Comp. Appeals Bd.*, 135 Cal. App. 3d 326, 332–33, (1982); *see also Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 787-88 (9th Cir. 2001) (citing California law). But this exception does not apply when the party against whom issue preclusion is sought *voluntarily relinquishes* the opportunity to appeal. *See, e.g.*, *Sabek, Inc.*, 65 Cal. App. 4th at 999; *Stuart*, 148 Cal. App. 3d at 4; *Smith*, 127 Cal. App. 3d at 209; *see also* Restatement (Second) of Judgments § 28(1), cmt. a ("The exception in Subsection (1) applies only when review is precluded as a matter of law. It does not apply in cases where review is available but is not sought.").

Here, Bouzaglou chose to file a chapter 7 petition and thereby voluntarily relinquished to the chapter 7 trustee the right to pursue, or not pursue, the appeal from the state court judgment. Even then, had

Bouzaglou persuaded the bankruptcy court to exercise its discretion to compel the chapter 7 trustee to abandon the appeal rights to Bouzaglou, he could have moved forward with the appeal. But the bankruptcy court was not so persuaded. Bouzaglou never appealed the order denying the abandonment motion and that denial is beyond the scope of this appeal.

In short, the fact that the state appellate court did not hear and decide the merits of Bouzaglou's appeal does not militate against the bankruptcy court's application of issue preclusion in this case.

3. Fairness And Policy Considerations.

Bouzaglou argues, for the first time on appeal, that the application of issue preclusion was not consistent with sound public policy because he was not given the opportunity to prosecute his appeal. We disagree. We already have explained, above, that Bouzaglou voluntarily relinquished his right to prosecute his appeal when he filed his chapter 7 petition and that his choice to relinquish that right does not militate against the application of issue preclusion.

More generally, the California Supreme Court has identified three fundamental policies that support the application of issue preclusion in appropriate cases: "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." *Lucido*, 51 Cal. 3d at 343. Thus, under *Lucido*, the trial court's decision to apply issue preclusion ultimately is a matter of

discretion, which turns on whether its application is consistent with these policies. *Id.* at 343-44.

Bouzaglou did not argue in the bankruptcy court that, based on the above-referenced policy concerns, the bankruptcy court should have refrained from exercising its discretion to apply issue preclusion. We typically decline to address issues raised for the first time on appeal. *See generally Mano–Y & M, Ltd. v. Field (In re Mortg. Store, Inc.)*, 773 F.3d 990, 995 (9th Cir. 2014) However, we will exercise our discretion, here, to consider the policy concerns Bouzaglou belatedly has raised. Even though the bankruptcy court made no explicit assessment of whether the application of issue preclusion was consistent with the above-referenced policies, we can do so in the first instance because the record here gives us a complete understanding of these issues. *See In re Baldwin*, 249 F.3d at 919–20; *see also Jess v. Carey (In re Jess)*, 169 F.3d 1204, 1208-09 (9th Cir. 1999); *Swanson v. Levy*, 509 F.2d 859, 860-61 (9th Cir. 1975).

Issue preclusion typically preserves the judicial system's integrity by eliminating the risk of inconsistent judgments by different courts. *In re Baldwin*, 249 F.3d at 920 (citing *Lucido*, 51 Cal. 3d at 347). Similar to *Baldwin*, the state court here was "fully capable of adjudicating the issue subsequently presented to the bankruptcy court," and thus "the public's confidence in the state judicial system would be undermined should the bankruptcy court relitigate the question" of Bouzaglou's fraud. *In re*

Baldwin, 249 F.3d at 920.[6]

As for judicial economy, *Baldwin* held that this policy "obviously" favored application of issue preclusion under the circumstances because its application would prevent the unnecessary retrial in the bankruptcy court of issues already fully and finally determined in the state court. *Id.* The same is true here. The state court already determined the fraud issues. The retrial of those exact same issues in the bankruptcy court would constitute an unjustified waste of judicial resources. In addition, retrial would be inconsistent with *Grogan*, 498 U.S. at 284-85 & n.11, which recognized that, in appropriate cases, issue preclusion should prevent wasteful relitigation of state court findings also relevant in federal exception to discharge actions.

Finally, with respect to protection of parties from vexatious litigation, this policy also favored the bankruptcy court's application of issue preclusion. Similar to the facts in *Baldwin*, Bouzaglou has not presented anything that establishes he was denied a full and fair opportunity to litigate the fraud issues in the state court. Rather, he simply disagrees with the outcome at trial and would like another chance to relitigate the matter. Consequently, it would have been unfair to Haworth and Kathleen to require them to relitigate the fraud issues in the bankruptcy court when

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[6] *Baldwin* further pointed out that relitigation in the bankruptcy court would undermine the principle of federalism that underlies the Full Faith and Credit Act, 28 U.S.C. § 1738. *In re Baldwin*, 249 F.3d at 920.

they already successfully had done so in the state court. *See In re Baldwin*, 249 F.3d at 920.

In sum, the above-referenced fairness and policy considerations supported the bankruptcy court's application of issue preclusion in this case.[7]

4. Exemplary Damages Issue.

The final argument we must address concerns the roughly $8,000,000 in exemplary damages the state court judgment awarded against Bouzaglou and the bankruptcy court's determination that those damages are nondischargeable.

It is beyond cavil that all debts arising from a debtor's fraudulent conduct, including punitive damages, are nondischargeable. *See Cohen v. de la Cruz*, 523 U.S. 213, 223 (1998). Nonetheless, Bouzaglou contends that the amount of exemplary damages awarded was so unreasonable and so disproportionate to the amount of compensatory damages incurred that the

[7] Our decision on this point is bolstered by the fact that the appeal of Bouzaglou's alter ego, Ness, was heard and decided on the merits. In rendering its decision against Ness, the California court of appeal rejected Ness's broad argument that the evidence was insufficient to support the fraud judgment against it. The state appellate court also considered and rejected Ness's argument that the large exemplary damages award was disproportionate to the harm Haworth and Kathleen incurred or was the result of juror bias. Even though we don't know exactly what Bouzaglou would have argued on his own behalf in that appeal, it is not unreasonable for us to assume that he would have made essentially the same arguments and that he would have lost on essentially the same grounds. Bouzaglou certainly has not said anything in the bankruptcy court or in his appeal briefs to this Panel indicating that the merits of his state court appeal were significantly different than Ness's.

exemplary damages award was unconstitutional. This argument needed to be addressed, if at all, in a direct challenge of the judgment in state court. Bouzaglou was not entitled to collaterally attack in the exception to discharge action the amount of the exemplary damages finally determined in the prior state court action. *See In re Lopez*, 367 B.R. at 106; *Roussos v. Michaelides (In re Roussos*), 251 B.R. 86, 95 (9th Cir. BAP 2000), *aff'd*, 33 F. App'x 365 (9th Cir. 2002).

It is worth noting that the California court of appeal *did* address and reject the same damages argument Bouzaglou attempts to raise here. While the merits determination in that appeal only involved Ness and not Bouzaglou, he has not suggested any reason why the exemplary damages award against him should or would be determined any differently than how it was determined against Ness.

In sum, Bouzaglou's damages argument does not support reversal of the bankruptcy court's application of issue preclusion or its grant of summary judgment in favor of Haworth and Kathleen.

CONCLUSION

For the reasons set forth above, we AFFIRM the bankruptcy court's summary judgment excepting from discharge Bouzaglou's fraud debt.