NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re: HYOUNGSOO KIM and MYONG S. KIM, Debtors.	BAP No. WW-25-1118-LGB Bk. No. 2:24-bk-11524-TWD
HYOUNGSOO KIM, Appellant, v. DAE HYUN KIM, Appellee.	Adv. No. 2:24-ap-01059-TWD **MEMORANDUM***

Appeal from the United States Bankruptcy Court
for the Western District of Washington
Timothy W. Dore, Bankruptcy Judge, Presiding

Before: LAFFERTY, GAN, and BRAND, Bankruptcy Judges.

INTRODUCTION

Hyoung-Soo Kim ("Debtor") appeals the bankruptcy court's order granting a motion for summary judgment filed by plaintiff Dae Hyun Kim ("Plaintiff"). Arguing that issue preclusion applied to a state court

* 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.

judgment of conversion against Debtor, Plaintiff requested summary judgment on his claims of nondischargeability under § 523(a)(4) and (a)(6).[1]

In analyzing whether the state court's judgment established claims under § 523(a)(4) and (a)(6), the bankruptcy court heavily relied on certain deemed admissions from state court. The bankruptcy court essentially treated all of the deemed admissions as issues that were actually litigated and necessarily decided by the state court, which would be required for issue preclusion to be available, and ultimately based part of its analysis of issue preclusion on these admissions.

But the state court judgment did not identify which admissions, if any, were actually litigated or necessarily decided by the state court. In addition, neither the state court's judgment of conversion nor its award of punitive damages indicated that the state court necessarily decided all issues pertinent to a claim under § 523(a)(4) or (a)(6), especially with respect to the crucial element of intent.

Accordingly, we REVERSE.

FACTS[2]

A. Plaintiff's Prepetition Litigation against Debtor

In 2015, Plaintiff filed a complaint against Debtor and Cellular Town, LLC ("Cellular Town") in California state court (the "State Court Action").

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[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

[2] We have taken judicial notice of the bankruptcy court docket and various documents filed through the electronic docketing system. *See O'Rourke v. Seaboard Sur.*

Plaintiff alleged that he was hired by Debtor and Cellular Town to sell various products and services for a commission. Plaintiff further alleged that Debtor and Cellular Town were entrusted with Plaintiff's commissions, which they wrongfully withheld. Based on these allegations, Plaintiff asserted a claim for conversion against Debtor, among other claims, and requested punitive damages.

Although the extent of Debtor's participation in the State Court Action is unclear from the record before the Panel, it is evident that Debtor generally appeared in the State Court Action.

In October 2016, Plaintiff attempted to serve Debtor with certain requests for admission of facts (the "State Court RFAs"). There appears to be no dispute that the State Court RFAs were returned as undeliverable because Plaintiff omitted the suite number from the mailing address. Accordingly, Debtor did not respond to the State Court RFAs, and Plaintiff moved for an order to deem the facts in the State Court RFAs admitted.

In March 2017, the state court granted Plaintiff's motion (the "RFA Order"). As relevant to this appeal, the RFA Order deemed all of the allegations in the state court complaint as "correct and truthful" admissions, and admitted additional facts, such as that Debtor converted money owed to Plaintiff and that such conversion was "intentional, malicious, wanton and fraudulent."

Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989); *Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

After entry of the RFA Order, the state court held a trial on Plaintiff's causes of action. Debtor did not appear. The minutes from the state court's trial reflect that the court considered admitted facts from the RFA Order, as well as additional evidence submitted by Plaintiff, but that court did not identify any specific admissions on which it relied in entering judgment.

In May 2017, the state court entered a judgment against Debtor solely on Plaintiff's conversion cause of action (the "State Court Judgment"). The state court issued no independent statement of decision. The court also awarded Plaintiff punitive damages against Debtor. The court dismissed all other counts from Plaintiff's complaint.

Debtor neither appealed the State Court Judgment nor moved to vacate the State Court Judgment.

B. Debtor's Bankruptcy Case and the Adversary Proceeding

In June 2024, Debtor filed his chapter 7 petition. Subsequently, Plaintiff filed a complaint against Debtor seeking nondischargeability of the debt owed to him under § 523(a)(4) and (a)(6).

Plaintiff later filed a motion for summary judgment against Debtor (the "MSJ"). In the MSJ, Plaintiff argued that the State Court Judgment established Debtor's liability under § 523(a)(4) and (a)(6) based on the doctrine of issue preclusion. Debtor opposed the MSJ, primarily arguing that the notice and service defects in state court rendered the State Court Judgment invalid.

In June 2025, the bankruptcy court held a hearing on the MSJ. At that time, the court issued an oral ruling granting the MSJ on the basis that the State Court Judgment precluded relitigation of the issues presented in Plaintiff's nondischargeability complaint. Specifically, the court held that it could not invalidate the State Court Judgment based on Debtor's notice and service arguments because it did not have the power to act as an appellate court reviewing a state court judgment.

The bankruptcy court then analyzed the elements of issue preclusion under California law and concluded that all of the elements were met. Pursuant to its oral ruling, the bankruptcy court entered an order granting the MSJ (the "MSJ Order"). Debtor timely appealed.

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.

ISSUES

1. Did the bankruptcy court err in applying issue preclusion to the State Court Judgment?
2. Did Debtor otherwise identify any errors by the bankruptcy court?

STANDARDS OF REVIEW

"We review de novo the bankruptcy court's decisions to grant summary judgment and to except a debt from discharge under § 523(a)(4) and (a)(6)." *Plyam v. Precision Dev., LLC (In re Plyam)*, 530 B.R. 456, 461 (9th Cir. BAP 2015) (citations omitted).

"We also review de novo the bankruptcy court's determination that issue preclusion was available." *Id.* (citation omitted). "If issue preclusion was available, we then review the bankruptcy court's application of issue preclusion for an abuse of discretion." *Id.*

Under de novo review, "we consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014). "A bankruptcy court abuses its discretion if it applies the wrong legal standard, misapplies the correct legal standard, or if its factual findings are illogical, implausible, or without support in inferences that may be drawn from the facts in the record. *In re Plyam*, 530 B.R. at 461-62 (citing *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011)).

DISCUSSION

"[S]ummary judgment is an extreme remedy, and one which is not to be granted unless the movant has established his right to a judgment with such clarity as to leave no room for controversy and that the other party is not entitled to recover under any discernible circumstances." *Robert Johnson Grain Co. v. Chem. Interchange Co.*, 541 F.2d 207, 209 (8th Cir. 1976) (citation omitted). "[T]he purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." *Poller v. Columbia Broad. Sys., Inc.*, 368 U.S. 464, 467 (1962).

As a result, obtaining summary judgment "is ordinarily a heavy burden for the plaintiff" and all inferences must be "drawn in the light

most favorable to the non-moving party." *Barnes v. Sea Haw. Rafting, LLC*, 889 F.3d 517, 538 (9th Cir. 2018) (cleaned up). And although issue preclusion "may provide a proper basis for granting summary judgment," the moving party must "pinpoint[] the exact issues litigated in the prior action and introduce[] a record establishing controlling facts." *Sangha v. Schrader (In re Sangha)*, BAP No. CC-14-1397-PaKiTa, 2015 WL 3655113, at *2 (9th Cir. BAP June 11, 2015), *aff'd*, 678 F. App'x 561 (9th Cir. 2017). As we have previously observed:

> Both summary judgment and the doctrine of issue preclusion potentially permit the entry of final orders or judgments without further proceedings. Because of their potential to foreclose further proceedings, a ruling granting summary judgment based on issue preclusion requires clarity and precision. Clarity and precision not only aid in the Panel's review but, more importantly, ensure that the bankruptcy court properly determined whether a matter was without genuine dispute and established as a matter of law.

Shayman v. Aquino (In re Shayman), BAP No. CC-23-1071-CSG, 2024 WL 1512894, at *7 (9th Cir. BAP Apr. 8, 2024).

Here, the bankruptcy court primarily relied on the doctrine of issue preclusion to enter summary judgment in favor of Plaintiff. However, as we discuss below, the court improperly treated all of the deemed admissions from state court as issues that were actually litigated and necessarily decided. Without the use of these admissions, the State Court

Judgment could not support application of issue preclusion to satisfy either § 523(a)(4) or (a)(6).

As a result, and as discussed in detail below, the court's application of issue preclusion did not provide the type of "clarity and precision" required for entry of summary judgment on a preclusion theory.

A. The bankruptcy court erred in applying issue preclusion to the State Court Judgment.

On appeal, Debtor primarily argues that the bankruptcy court should have disregarded the State Court Judgment because Plaintiff failed to properly serve Debtor with the State Court RFAs, which were later used by the state court as part of the basis for the State Court Judgment.[3] Debtor's contention amounts to a request that the bankruptcy court review the State Court Judgment in an appellate capacity, a request clearly prohibited by the *Rooker-Feldman* doctrine. *See Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2010) (federal courts "do not have jurisdiction to hear de facto appeals from state court judgments"); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (*Rooker-Feldman* doctrine bars lawsuits "brought by state-court losers complaining of injuries caused by state-court

[3] In addition to his authorized briefing on appeal, Debtor filed unauthorized supplemental briefs. On November 12, 2025, Plaintiff moved to strike Debtor's supplemental briefs. We hereby GRANT Plaintiff's motion to strike. The Panel did not rely on any of Debtor's supplemental filings in reaching the decision herein.

judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments").[4]

However, the federal court's lack of authority to invalidate a state court judgment does not mean that the judgment necessarily precludes litigation of issues before the federal court. For such preclusion to apply, a federal court must carefully apply the elements of the doctrine of issue preclusion. Under California law,[5] those elements are:

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[4] To the extent Debtor believed the State Court Judgment should be set aside because of the notice and service issues he highlighted in his briefs, Debtor's avenues of relief were in state court. Debtor could have directly appealed the State Court Judgment before a California appellate court or filed a motion to vacate the State Court Judgment before the California trial court. *People v. Am. Contractors Indem. Co.*, 33 Cal.4th 653, 661 (2004). Debtor did not appeal or move to vacate the State Court Judgment at any point in the eight years between entry of the State Court Judgment and the MSJ Order. As a result, the State Court Judgment became final. *See Kay v. City of Rancho Palos Verdes*, 504 F.3d 803, 808 (9th Cir. 2007) (holding that a California judgment is final and can be used for preclusive purposes once a party's appeal rights have been exhausted).

Debtor did not argue, and there is nothing in the record to indicate, that the State Court Judgment was otherwise void for lack of either subject matter or personal jurisdiction. It is clear the state court had subject matter jurisdiction over Plaintiff's state law causes of action. In addition, the record reflects that the state court had personal jurisdiction over Debtor. Although Debtor occasionally refers to the State Court Judgment as a "default judgment," nothing in the record indicates that a default was entered against Debtor in state court. In fact, the record includes an order relieving Debtor's attorney from representation in the State Court Action, which in turn indicates that Debtor was not only aware of the State Court Action, but appeared in the State Court Action. *JHVS Grp., LLC. v. Slate*, 107 Cal.App.5th 30, 37 (2024) ("[A] defendant may waive an objection to the court's lack of personal jurisdiction, for example, by making a general appearance . . . ." (cleaned up)). Once a general appearance is made, the court retains personal jurisdiction "throughout subsequent proceedings in the action." Cal. Code Civ. Proc. § 410.50(b).

[5] "[T]he bankruptcy court must apply the forum state's law of issue preclusion." *In re Plyam*, 530 B.R. at 462. Here, the State Court Judgment was entered in California,

> (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. Super. Ct.*, 51 Cal.3d 335, 341 (1990)). "California further places an additional limitation on issue preclusion: courts may give preclusive effect to a judgment 'only if application of preclusion furthers the public policies underlying the doctrine.'" *Id.* (quoting *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001)).

Here, there is no dispute that the State Court Judgment was final and on the merits, or that Debtor was a party in both the State Court Action and this adversary proceeding. However, as discussed in detail below, the record does not demonstrate that the issues in state court were identical to the issues before the bankruptcy court or that the issues relevant to nondischargeability under § 523(a)(4) and (a)(6) were actually litigated or necessarily decided in state court. In addition, the bankruptcy court's consideration of facts admitted via the RFA Order was improper under both the doctrine of issue preclusion and California law on admissions.

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and California law on preclusion applies.

1. Issue preclusion does not apply to the RFA Order.

To support its application of preclusion in this case, the bankruptcy court heavily relied on facts that were deemed admitted by the state court via the RFA Order. To be sure, these deemed admissions were sweeping and, if properly considered, would establish all elements required for a claim under § 523(a)(4) and (a)(6).

But consideration of the RFA Order was error for two reasons. First, California law prohibits admissions from being used against a party in any proceeding other than the one in which the admissions are made. Cal. Code. Civ. Proc. § 2033.410(b) ("[A]ny admission made by a party under this section is binding only on that party and is made for the purpose of the pending action only. It is not an admission by that party for any other purpose, and it shall not be used in any manner against that party in any other proceeding.").

As noted above, California law allows for application of preclusion only where application of the doctrine furthers public policy. Here, the fact that the use of admissions in this adversary proceeding violates California law would be hindering rather than furthering public policy.

Second, the function of the RFA Order was merely to deem facts admitted for use as evidence before the state court. However, for purposes of issue preclusion, it is not enough that facts were admitted into evidence.

Rather, the relevant inquiry is whether such admissions were used in litigating and deciding the issues relevant to the judgment.

The bankruptcy court freely employed **all** of the admissions from the RFA Order in its analysis of preclusion. But it is unclear from the record which issues the state court actually litigated at trial or which admissions it relied on in rendering its judgment.

More crucially, even if the state court considered all of the admissions from the RFA Order, "[a]n issue may actually have been litigated without its determination having been necessary to the court's decision." *In re Harmon*, 250 F.3d at 1248 n.9. Here, the State Court Judgment was based solely on conversion and included an award of punitive damages. Accordingly, the only admissions that were necessary to the state court's ultimate judgment were admissions necessary to support a claim of conversion and award of punitive damages.

A claim of conversion requires only three elements: "(1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." *L.A. Fed. Credit Union v. Madatyan*, 209 Cal.App.4th 1383, 1387 (2012). In addition, the state court awarded punitive damages, which requires a showing of "evidence that the defendant has been guilty of oppression, fraud, **or** malice." Cal. Civ. Code § 3294(a) (emphasis added).

Thus, any admissions from the RFA Order that were unnecessary to these elements were not conclusively established for purposes of this

adversary proceeding. To properly assess whether the issues before the bankruptcy court were precluded, the court was required to assess which issues were necessary to support a conversion judgment and award of punitive damages under California law, and whether those issues were identical to the issues raised by a claim under § 523(a)(4) or (a)(6). The bankruptcy court did not provide any such analysis, and any such analysis would not in any event support entry of summary judgment in this case.

2. The State Court Judgment did not establish a claim under § 523(a)(4).

To prove embezzlement for purposes of § 523(a)(4), a plaintiff must demonstrate the following: "(1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which [it] was entrusted; and (3) circumstances indicating fraud." *Transamerica Com. Fin. Corp. v. Littleton (In re Littleton)*, 942 F.2d 551, 555 (9th Cir. 1991). Although "circumstances indicating fraud, as an element of embezzlement, is not coterminous with an intent to defraud," *Newman v. Lee (In re Newman)*, BAP Nos. CC-21-1228-GTL, CC-21-1250-GTL, 2022 WL 2100905, at *7 (9th Cir. BAP June 10, 2022), the Supreme Court of the United States has held that "embezzlement requires a showing of wrongful intent." *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 274 (2013).

As noted above, the State Court Judgment was based solely on conversion, and unlike § 523(a)(4), wrongful intent is not a requirement to prove conversion under California law. For conversion claims, "[t]he **act**

must be knowingly or intentionally done, but a **wrongful intent** is not necessary." *Taylor v. Forte Hotels Int'l*, 235 Cal.App.3d 1119, 1124 (1991). Consequently, the issues pertinent to a conversion claim are not identical to the issues pertinent to an embezzlement claim under § 523(a)(4), and as a result any admissions related to intent were not necessarily decided in connection with entry of a conversion judgment.

Although intent **is** a relevant consideration for purposes of awarding punitive damages, an award of punitive damages under California law may arise from **either** malice, oppression, **or** fraud. Cal. Civ. Code § 3294; *see also In re Plyam*, 530 B.R. at 465.

Here, the state court did not specify on which basis it awarded punitive damages. Thus, it is impossible to ascertain from the record whether the state court awarded punitive damages based on the type of intent that would satisfy the "circumstances indicating fraud" element of embezzlement under § 523(a)(4).

At oral argument, Plaintiff asserted that the MSJ Order was not exclusively based on issue preclusion, but that the bankruptcy court also relied on Plaintiff's declaration submitted in support of the MSJ. Plaintiff contends that this declaration independently supported the bankruptcy court's entry of the MSJ Order.

The declaration to which Plaintiff refers does not establish intent for purposes of either § 523(a)(4) or (a)(6). First, the declaration contains

absolutely no assertions that directly relate to Debtor's intent.[6] Second, even if Plaintiff made a direct statement regarding Debtor's intent, the declaration would only serve to provide Plaintiff's opinion about Debtor's intent, which would lack probative value.

Moreover, issues of intent are generally not resolved by summary judgment. *Provenz v. Miller*, 102 F.3d 1478, 1489 (9th Cir. 1996). A finding of intent on summary judgment is only "appropriate if all reasonable inferences defeat the claims of one side." *Gertsch v. Johnson & Johnson, Fin. Corp. (In re Gertsch)*, 237 B.R. 160, 165 (9th Cir. BAP 1999). The declaration referenced by Plaintiff at oral argument recited some basic facts about Debtor's business relationship with Plaintiff and noted that Debtor failed to pay Plaintiff his due commissions. The remainder of the declaration was dedicated to recounting facts from the State Court Action in support of Plaintiff's preclusion arguments. Thus, the declaration did not contain nearly enough information for a court to conclude that "**all** reasonable inferences" would defeat Debtor's defenses.

Finally, in its ruling on Plaintiff's claim under § 523(a)(4), the bankruptcy court also appeared to have relied on the fact that Debtor

[6] The only statement in Plaintiff's declaration that may be relevant to Debtor's intent is the following: "Celltown subsequently failed to forward the Unpaid Commissions to [Plaintiff] despite the year-long, repeated requests and demands by [Plaintiff] and repeated promises to do so by Celltown." As is evident from this statement, Plaintiff did not even remark on **Debtor's** state of mind, and instead simply noted that Plaintiff had made demands on Celltown.

admitted to harboring felonious intent in his answer to Plaintiff's nondischargeability complaint. Specifically, in his answer, Debtor admitted to paragraph 24 of the nondischargeability complaint, which states: "Payment of prior commissions under the Agreement indicate the Debtors understood their responsibility to forward commissions funds earned by Plaintiff to Plaintiff which indicates a felonious intent on Debtor's part." Based on this language, at most, Debtor admitted that his failure to forward commissions **indicated** felonious intent, not that it **legally established** felonious intent.

In any event, because summary judgment is an "extreme remedy," we are not inclined to enter judgment in favor of Plaintiff based entirely on a single admission in Debtor's answer. *Robert Johnson Grain Co.*, 541 F.2d at 209. As such, the bankruptcy court's entry of summary judgment under § 523(a)(4) was not supported by the record.

3. The State Court Judgment did not establish a claim under § 523(a)(6).

Section 523(a)(6) excepts from discharge debts arising from a debtor's "willful and malicious" injury to another person or to the property of another. *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 706 (9th Cir. 2008). "The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *In re Plyam*, 530 B.R. at 463.

A "malicious" injury requires: "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without

just cause or excuse." *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1209 (9th Cir. 2001). A showing of "willful" intent is "[a]n exacting requirement" and "it is satisfied when a debtor harbors 'either a subjective intent to harm, or a subjective belief that harm is substantially certain.'" *In re Plyam*, 530 B.R. at 463 (quoting *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1144 (9th Cir. 2002)). The injury must be deliberate or intentional, "not merely a deliberate or intentional **act** that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998).

Therefore, like § 523(a)(4), § 523(a)(6) also requires a showing of intent. Moreover, the intent requirements of § 523(a)(6) are extremely specific. *See In re Plyam*, 530 B.R. at 463 (showing of willful intent is an "exacting requirement").

For the same reasons discussed in connection with our § 523(a)(4) analysis, "[a] judgment for conversion under California law . . . does not, without more, establish that a debt arising out of that judgment is nondischargeable under § 523(a)(6)." *Peklar v. Ikerd (In re Peklar)*, 260 F.3d 1035, 1039 (9th Cir. 2001); *see also Thiara v. Spycher Bros. (In re Thiara)*, 285 B.R. 420, 429 (9th Cir. BAP 2002) ("Even though a conversion occurred, [creditor] still had to prove that Debtor converted the proceeds with 'wrongful intent.'").

In addition, for the same reasons discussed in connection with the § 523(a)(4) analysis, the state court's award of punitive damages also does not establish a claim under § 523(a)(6). As thoroughly discussed by the

Panel in *Plyam*, to have any preclusive effect, an award of punitive damages under Cal. Civ. Code § 3294 must be explicitly based on intentional malice or fraud; despicable malice and oppression would not suffice. *In re Plyam*, 530 B.R. at 465. Because the State Court Judgment does not identify on which basis the state court awarded punitive damages, we cannot hold that the award of punitive damages, without more, precludes litigation of Plaintiff's § 523(a)(6) claim.

Based on the foregoing, the bankruptcy court erred in entering summary judgment in favor of Plaintiff.

B. Debtor has not articulated any other errors by the bankruptcy court.

Debtor's remaining arguments are unpersuasive. First, Debtor asserts that Plaintiff violated the automatic stay by filing a complaint in state court during the pendency of Debtor's bankruptcy case. To the extent the automatic stay barred the filing of the subject lawsuit,[7] any violation of the automatic stay by Plaintiff is irrelevant to entry of the MSJ Order. At most, such a violation would void the new complaint filed by Plaintiff, but would not have any impact on this action.

Second, Debtor argues that the bankruptcy court should have considered certain pending motions filed by Debtor prior to deciding the MSJ. Specifically, Debtor references a motion for violation of the stay and

[7] This issue is not properly before the Panel. As a result, we do not take a position on whether Plaintiff's commencement of the lawsuit to which Debtor refers violated the automatic stay.

two discovery motions he contends should have been decided prior to the court's disposal of the MSJ. For the same reasons noted above, Debtor's motion for a violation of the stay was irrelevant to the issues raised in the MSJ. As to any discovery motions, because the MSJ relied primarily on a theory of preclusion, it is unclear why additional discovery would have any bearing on the court's analysis. In any event, given the reversal of the MSJ Order, the bankruptcy court may consider the merits of any pending motions on remand.

Finally, Debtor contends that the bankruptcy court's scheduling order was prejudicial to Debtor. In light of the reversal of the MSJ Order, this issue is moot. The bankruptcy court may enter a new scheduling order on remand.[8]

CONCLUSION

For the reasons set forth above, we REVERSE the MSJ Order and REMAND this adversary for further proceedings consistent with this decision.

[8] In his reply brief on appeal, Debtor argued for the first time that his homestead exemption protects his residence from Plaintiff's efforts to use the residence to satisfy the debt owed to Plaintiff. Any issues concerning Debtor's right to an exemption, or Plaintiff's efforts to satisfy the debt owed to him, were not raised in the adversary proceeding and are not properly before the Panel. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) ("As a general rule, we will not consider arguments that are raised for the first time on appeal.").