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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re: PAMELA LACHER, Debtor.	BAP No. SC-25-1094-CNL Bk. No. 24-03882-CL
PAMELA LACHER, Appellant, v. JON M. LANE; SUE LANE, Appellees.	Adv. No. 24-90101-CL MEMORANDUM*

Appeal from the United States Bankruptcy Court
for the Southern District of California
Christopher B. Latham, Chief Bankruptcy Judge, Presiding

Before: CORBIT, NIEMANN, and LAFFERTY, Bankruptcy Judges.

INTRODUCTION

This case arises from the bankruptcy court's denial of chapter 7¹
debtor Pamela Lacher's motion to strike creditors' § 523(a)(6)

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

¹ 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, all "Civil Rule" references are to the Federal Rules of Civil Procedure, and all "CCP" references are to the California Code of Civil Procedure.

nondischargeability complaint, pursuant to California’s “Strategic Lawsuits Against Public Participation” law, commonly known as the “anti-SLAPP statute.” The Ninth Circuit recently held in *Gopher Media LLC v. Melone*, 154 F.4th 696 (9th Cir. 2025) (en banc), that an order denying a motion to strike under California’s anti-SLAPP statute is not immediately appealable under the collateral order doctrine.

Because the order appealed in this matter is not final, the collateral-order doctrine does not confer jurisdiction over this appeal, and no exceptional circumstances exist to justify an interlocutory appeal. We DISMISS this appeal for lack of appellate jurisdiction.

FACTS

A. Pre-bankruptcy litigation

Ms. Lacher has been a licensed attorney in California for over thirty years. At some point during 2001, on behalf of a client, she retained the services of East County Investigations, owned by Jon and Sue Lane (the “Lanes”). The Lanes billed Ms. Lacher \$3,830.85 for investigative work.

Ms. Lacher did not pay the Lanes as agreed. The Lanes sued and obtained a state court judgment against Ms. Lacher in the amount of \$2,793.85 plus \$235 in costs and attorney’s fees (the “Judgment”). Ms. Lacher refused to satisfy the Judgment. Instead, she engaged in years-long countersuits and appeals. Because a detailed history is thoroughly set forth in a recent published BAP decision, *Lacher v. State Bar of California (In re Lacher)*, 669 B.R. 548, 552-55 (9th Cir. BAP 2025), we recount only the facts

necessary to this disposition.

B. The Lanes' adversary complaint

In October 2024, Ms. Lacher filed a chapter 7 bankruptcy petition. By this time, the Judgment against Ms. Lacher had ballooned to \$153,670.88, with interest continuing to accrue.

The Lanes, still having been unable to collect on the Judgment, filed an adversary complaint against Ms. Lacher seeking to have the Judgment declared nondischargeable under § 523(a)(6) (the "Complaint"). The Lanes alleged five tortious conduct theories as bases of their nondischargeability claim. The first three theories were based on Ms. Lacher's alleged abuse of process. The fourth and fifth theories asserted that Ms. Lacher willfully violated various state court orders.

Ms. Lacher moved to strike the Complaint under CCP § 425.16 (California's anti-SLAPP statute) and to dismiss the Complaint pursuant to Civil Rule 12(b)(6). In support of her motion to strike, Ms. Lacher argued that "[a]ll the conduct which forms the basis for the [§] 523(a)(6) claim pertains to actions and communications by Debtor in the state court proceedings; and constitutes protected conduct under the SLAPP statute."

The Lanes opposed Ms. Lacher's motion to strike. The Lanes argued that only one cause of action was pled in the Complaint, i.e., for a determination that the Judgment was nondischargeable pursuant to § 523(a)(6). The Lanes asserted that because the Complaint did not allege any pendent state law claims, California's anti-SLAPP statute did not

apply.

C. The bankruptcy court's order

The bankruptcy court agreed with the Lanes and determined that based on Ninth Circuit case law, anti-SLAPP statutes do not apply to federal law causes of action: “[w]hen invoked in federal court, an anti-SLAPP statu[t]e may only strike ‘claims [that] are pendant [sic] state law claims and do not involve federal claims for relief.’”²

The bankruptcy court found that the Lanes had not asserted any pendent state claims. Rather, their Complaint alleged a single federal cause of action under the Bankruptcy Code pursuant to § 523(a)(6). Therefore, the bankruptcy court reasoned that the anti-SLAPP statute did not apply.

The bankruptcy court disagreed with Ms. Lacher’s contention that “§ 523(a)(6)’s reference to tortious conduct transforms the entire claim into a pendent state one.” While the bankruptcy court acknowledged that the alleged acts that would support nondischargeability were based on state law tort definitions, the bankruptcy court disagreed that this “transform[ed]” the federal nondischargeability claim into a pendent state claim. The bankruptcy court explained that “[w]hile state law may well inform what constitutes a tort, [the Lanes’] action itself remains a federal one.”

² The bankruptcy court cited *Hilton v. Hallmark Cards*, 599 F.3d 894, 901 (9th Cir. 2010) and *Dickinson v. Golden Rain Found. of Laguna Woods*, No. 8:22-CV-01397-SPG, 2023 WL 2573863, at *1 (C.D. Cal. Mar. 17, 2023).

Consequently, the bankruptcy court denied Ms. Lacher' motion to strike the Complaint under California's anti-SLAPP statute. The bankruptcy court also denied Ms. Lacher's motion to dismiss on the basis that the Lanes sufficiently pled the fourth and fifth theories and granted the Lanes leave to amend the Complaint's first and third theories of tortious conduct (the "Order Denying Dismissal").

Ms. Lacher timely appealed the Order Denying Dismissal.

D. BAP's initial acceptance of jurisdiction

On May 20, 2025, the BAP Clerk of Court issued a clerk's order indicating that the order on appeal appeared interlocutory and requiring a response from Ms. Lacher on this point. Ms. Lacher filed a response and sought an emergency stay. On June 20, 2025, relying on the holding in *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003), the BAP motions panel issued an order determining that the part of the Order Denying Dismissal which denied Ms. Lacher's motion to strike pursuant to the anti-SLAPP statute was appealable under the collateral order doctrine ("Finality Order"). The Finality Order limited the scope of this appeal "to the denial of the anti-SLAPP motion by the bankruptcy court." The Finality Order also denied Ms. Lacher's motion to stay.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(1) and (b)(2)(I). We discuss our jurisdiction below.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

STANDARD OF REVIEW

We raise the question of our appellate jurisdiction sua sponte and address it de novo. *Pizza of Hawaii, Inc. v. Shakey's, Inc. (In re Pizza of Hawaii, Inc.)*, 761 F.2d 1374, 1377 (9th Cir. 1985); *Menk v. LaPaglia (In re Menk)*, 241 B.R. 896, 903 (9th Cir. BAP 1999).

“De novo review requires that 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).

DISCUSSION

A. The Order Denying Dismissal is not a final order.

Before reaching the merits of the appeal, we address our jurisdiction. “Orders in bankruptcy cases qualify as ‘final’ when they definitively dispose of discrete disputes within the overarching bankruptcy case.” *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 37 (2020). The parties agree that the Order Denying Dismissal is not a final order. As such, to proceed with this appeal, Ms. Lacher must articulate an alternative basis for this Panel to exercise jurisdiction over an interlocutory order.

B. A denial of a motion to strike under California’s anti-SLAPP statute is not appealable under the collateral order doctrine.

Under the collateral order doctrine, courts have appellate jurisdiction “over a ‘narrow class of decisions that do not terminate the litigation, but

must, in the interest of achieving a healthy legal system, nonetheless be treated as final.” *Stanley v. Chappell*, 764 F.3d 990, 993 (9th Cir. 2014) (quoting *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1994)). To fit within this narrow class, a collateral order must (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment. *Id.* “The Supreme Court has repeatedly emphasized that these requirements are stringent and that the collateral-order doctrine must remain a narrow exception.” *SolarCity Corp. v. Salt River Project Agric. Improvement & Power Dist.*, 859 F.3d 720, 724 (9th Cir. 2017).

The motions panel determined that the denial of Ms. Lacher’s anti-SLAPP motion was a collateral order immediately reviewable based on the holding in *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003). However, after the entry of the Finality Order, while this appeal was pending, the Ninth Circuit published *Gopher Media*, holding that an order denying a special motion to strike under California’s anti-SLAPP statute is *not* appealable under the collateral order doctrine, specifically “overrul[ing] *Batzel*.”³ 154 F.4th at 699.

The *Gopher Media* court acknowledged that *Batzel* “held that a ruling under California’s anti-SLAPP statute involves a question completely

³ The decision was filed on October 9, 2025.

separate from the merits.” *Id.* at 702.⁴ However, after “two decades” of “experience with anti-SLAPP cases,” the Ninth Circuit determined that the denial of an anti-SLAPP motion is not conceptually distinct from the merits of a plaintiff’s claims. *Id.* at 702-04.

The Ninth Circuit clarified that “[a]n issue is completely separate from the merits if it is significantly different and conceptually distinct from the fact-related legal issues that likely underlie the plaintiff’s claim on the merits.” *Id.* at 701 (citation modified). The court further explained that under California’s anti-SLAPP statute, the court decides two main questions: whether a plaintiff’s claim arises from an act “in furtherance of the [defendant’s] right of petition or free speech,” and whether “the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” *Id.* at 702 (citing CCP § 425.16(b)(1)). The court recognized consideration of those questions necessarily “intertwines factual and legal questions,” and are “not neat abstract issues of law that can be decided once and will not reemerge at trial.” *Id.* at 702-03 (citation modified). Therefore, the court reasoned, “given the fact-dependent nature of the anti-SLAPP analysis, the denial of an anti-SLAPP motion is not conceptually distinct from the merits of a plaintiff’s claims.” *Id.* at 703

⁴ The Ninth Circuit explained the rationale for revisiting the issue: “[s]ince [issuing the holding in *Batzel*], several members of our court have called for reconsideration of *Batzel* due to an enduring disagreement about whether the denial of an anti-SLAPP motion meets the collateral order doctrine’s stringent requirements.” *Gopher Media*, 154 F.4th at 702.

(citation modified).

The *Gopher Media* court also explained that overruling *Batzel* was necessary because under California law anti-SLAPP motions are not “effectively unreviewable on appeal from a final judgment.” *Id.* at 703-04 (citation modified). The court explained that determining “whether an order is ‘effectively unreviewable’” requires “considering the value of the interests that would be lost through rigorous application of a final judgment requirement.” *Id.* at 701 (citation modified). “In making the effectively unreviewable determination, [the court] do[es] not engage in an individualized jurisdictional inquiry. Rather, our focus is on the entire category to which a claim belongs.” *Id.* (citation modified). The court reasoned that the “potential unfairness of having to defend a meritless action all the way through trial. . . does not render the decision effectively unreviewable for purposes of the collateral order doctrine” and was insufficient to “justify the cost of allowing immediate appeal of the entire class of relevant orders.” *Id.* at 703 (citation modified). Moreover, disallowing immediate appeals would harmonize with the Ninth Circuit’s previous determination that orders granting anti-SLAPP motions to strike are not immediately appealable. *Id.* at 703 (citing *Hyan v. Hummer*, 825 F.3d 1043, 1046-47 (9th Cir. 2016) (per curiam)).

Thus, the court concluded that the “collateral order doctrine does not extend to denials of anti-SLAPP motions under the California statute because effective appellate review can be had by other means.” *Id.* at 704

(citation modified).

Based on the holding in *Gopher Media*, the collateral order doctrine does not apply and cannot confer jurisdiction over this matter.

C. No exceptional circumstances exist to justify interlocutory appeal.

The Panel also determines that leave to appeal is not warranted. If an order is not final, a court has jurisdiction to hear an appeal of an interlocutory order of a bankruptcy court if it grants leave to appeal. *See* 28 U.S.C. § 158(a)(3); Rule 8004. Leave to appeal is appropriate when the proposed appeal involves (1) a controlling question of law, (2) about which there is substantial ground for difference of opinion, and (3) an immediate appeal may materially advance ultimate termination of the litigation. *See Arizona v. Ideal Basic Indus. (In re Cement Antitrust Litig.)*, 673 F.2d 1020, 1026 (9th Cir. 1981). The Panel grants leave to appeal interlocutory orders sparingly and only under exceptional circumstances to avoid protracted and expensive litigation. *Id.* at 1027.

Leave to appeal is not warranted here. The controlling question of law, whether the anti-SLAPP statute applies to causes of action arising under the Bankruptcy Code or only to pendent state claims, is well settled. *See Restaino v. Bah (In re Bah)*, 321 B.R. 41, 45 (9th Cir. BAP 2005) (holding that “the anti-SLAPP statute does not apply with respect to causes of action arising under the Bankruptcy Code,” but does apply to “pendent state claims”). The only claim in the Complaint arises under the Bankruptcy Code pursuant to § 523(a)(6). The Complaint does not include any pendent

state law claims. Thus, the holding in *Bah* controls and California's anti-SLAPP statute does not apply. Additionally, the interests of judicial economy would not be served. In the event the Lanes succeed in their adversary proceeding, Ms. Lacher will have the opportunity to challenge the application of California's anti-SLAPP statutes along with whether the tortious actions as alleged by the Lanes are sufficient to establish nondischargeability pursuant to § 523(a)(6) upon entry of a final judgment on the merits.

CONCLUSION

Based on the foregoing, we DISMISS this appeal for lack of appellate jurisdiction.⁵

⁵ On March 7, 2026, Ms. Lacher filed a "notice of supplemental authorities." BAP Dkt. 33. On March 25, 2026, Ms. Lacher filed "additional authorities." BAP Dkt. 36. Appellees filed a motion to strike Ms. Lacher's untimely filings to which Ms. Lacher objected. *See* BAP Dkts. 37, 38. Ms. Lacher did not file a motion to supplement the record. The Panel need not consider the untimely, unauthorized filings. However, in this instance, those filings would not change the outcome of this appeal.