NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: GERALD N. REED; BEATRICE J. REED, Debtors, ------------------------------ GERALD N. REED; BEATRICE J. REED, Appellants, v. HENRIK NIELSEN, Appellee.	No. 22-60021 BAP No. 21-1181 MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Faris, Lafferty III, and Taylor, Bankruptcy Judges, Presiding

Submitted February 8, 2023**
San Francisco, California

Before: McKEOWN, BYBEE, and BUMATAY, Circuit Judges.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Debtors-Appellants Gerald and Beatrice Reed, appearing pro se, appeal the decision of the Bankruptcy Appellate Panel ("BAP") affirming the bankruptcy court's order determining that creditor Henrik Nielsen did not violate a discharge injunction. We have jurisdiction under 28 U.S.C. § 158(d). We review the bankruptcy court's interpretation of the Bankruptcy Code *de novo* and its factual findings for clear error. *In re DeVille*, 361 F.3d 539, 547 (9th Cir. 2004). We affirm in part and dismiss in part.

1. The Reeds first argue that Nielsen should have been sanctioned for his alleged violation of a discharge injunction. The Bankruptcy Code provides that a discharge "operates as an injunction against the commencement or continuation of an action . . . to collect, recover or offset any [discharged] debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). A party who knowingly violates a discharge injunction can be held in contempt under § 105(a) of the Bankruptcy Code. *See In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002).

This litigation started in 2008 when the Reeds defaulted on a promissory note held by Nielsen. The note was secured by a deed of trust encumbering the Reeds' real property in San Miguel, California. After the Reeds defaulted, Nielsen filed a complaint to foreclose on the deed of trust and the superior court entered a default judgment in his favor. Shortly after, in November 2009, the Reeds commenced their first bankruptcy petition (the "2009 bankruptcy petition"). The Reeds received a discharge in March 2010, and the bankruptcy court closed the Reeds' case. Nielsen continued his collection efforts against the property, and, after further litigation, the superior court issued a writ of sale, and the sheriff's office recorded a notice of levy and sale.

A few days before the scheduled foreclosure sale, in October 2018, the Reeds filed another bankruptcy petition (the "2018 bankruptcy petition"). Nielsen sought—and the Reeds opposed—relief from the automatic stay, and after the bankruptcy court granted Nielsen's motion, the sheriff's office successfully sold the property in April 2019. The Reeds received their discharge, and the bankruptcy court closed the case.

In April 2020, the Reeds filed a motion in their 2009 bankruptcy petition for an order to show cause why Nielsen should not be held in contempt for alleged violations of the discharge injunction. The bankruptcy court denied the motion without prejudice. The Reeds filed a second motion for sanctions, which the bankruptcy court also denied. The Reeds appealed the bankruptcy court's denial of the second motion, and the BAP affirmed.

The Reeds argue that Nielsen's interest in the property was discharged in the 2009 bankruptcy case and that he violated the discharge injunction by levying and selling the property. We disagree. A discharge only voids judgments "to the extent that such judgment is a determination of the personal liability of the debtor." 11

U.S.C. § 524(a)(1). The discharge thus did not affect Nielsen's right to foreclose on a lien secured by a deed to real property. *See Johnson v. Home State Bank*, 501 U.S. 78, 82–83 (1991); *In re Garske*, 287 B.R. 537, 542 (B.A.P. 9th Cir. 2002) (concluding that "where the creditor holds a secured interest in property subject to a scheduled debt, a discharge extinguishes only the personal liability of the debtor"). This is in accord with California law. *See In re Marriage of Walker*, 240 Cal. App. 4th 986, 996 (Cal. 2015) ("A bankruptcy law discharge does not actually eliminate the underlying secured debt. Instead, the secured portion of the debt survives, but creditors are enjoined against enforcing it against the debtor personally." (simplified)).

And while the Reeds argue that "in California a judicial foreclosure judgment is an *in personam* judgment," they offer no authority to support that proposition. *Cf. In re Cortez*, 191 B.R. 174, 177–78 (B.A.P. 9th Cir. 1995) (holding that a valid lien under a deed of trust survives a bankruptcy discharge). Thus, the bankruptcy court did not err by determining that Nielsen's efforts to foreclose on the property were outside the scope of the discharge injunction.[1]

2. The Reeds also argue that Nielsen failed to provide sufficient evidence to support his motion for relief from the automatic stay in the 2018 bankruptcy

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[1] The Reeds' motion (Dkt. No. 8) also seeks reversal of the Bankruptcy Appellate Panel based on the failure to find that the judicial foreclosure judgment was an *in personam* judgment and is therefore **DENIED.**

petition. But under the Federal Rules of Appellate Procedure ("FRAP"), an appeal may only be taken "as of right . . . by filing a notice of appeal." FRAP 3(a)(1). This same rule applies when appealing the decision of a bankruptcy appellate panel. FRAP 6(b)(1).

The Reeds did not file a notice of appeal in the 2018 bankruptcy petition. Accordingly, we lack jurisdiction to review any matters, including the motion for relief from the automatic stay, from the 2018 bankruptcy petition. *See In re Wiersma*, 483 F.3d 933, 938 (9th Cir. 2007) ("[T]he failure to timely file a notice of appeal is a jurisdictional defect barring appellate review." (internal quotation marks omitted)).

AFFIRMED in part and **DISMISSED** in part.