

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-16364

IN RE ROBERT SASSON, *Debtor*.

ROBERT SASSON, *Appellant*,

v.

NORMAN F. SOKOLOFF, M.D., individually
and as Trustee for CAMELOT MEDICAL
GROUP, INC., PROFIT SHARING PLAN, *Appellee*.

Argued and Submitted Feb. 15, 2005

Filed Aug. 25, 2005

Amended Sept. 13, 2005

Appeal from the Ninth Circuit Bankruptcy
Appellate Panel; Perris, Meyers,
and Marlar, Bankruptcy Judges, Presiding

BAP No. NC-02-01410-MaMeP

[424 F.3d 864]

[866]

* * *

Before: SIDNEY R. THOMAS, SUSAN P. GRABER,
and RICHARD A. PAEZ, Circuit Judges.

THOMAS, Circuit Judge:

In this appeal, we are presented with the question of whether a bankruptcy court has subject matter jurisdiction to enter a money judgment in a nondischargeability adversary proceeding where the underlying debt has been reduced to judgment in state court. We conclude that it may

and affirm the decision of the Ninth Circuit Bankruptcy Appellate Panel (“BAP”).

I

In 1988, Sokoloff, as trustee of Camelot Medical Group, Inc., Profit Sharing Plan, obtained a judgment against Sasson on a cross-complaint for breach of a promissory note. A California Superior Court entered judgment against Sasson for \$120,000, plus accrued interest and statutory costs.

Before Sokoloff could enforce the judgment, Sasson filed a motion for reconsideration and obtained a stay of enforcement pending determination of the motion for reconsideration. The stay was granted subject to the condition that Sasson “not dissipate any assets except in the normal course of business.” While the stay was in place and without informing the court of his actions, Sasson dissipated the majority of his assets through dissolution proceedings with his wife, purchase of a new property, creation of encumbrance on that property and ultimately by payment to other creditors. The court denied Sasson’s motion for reconsideration, and Sokoloff recorded an abstract of judgment. At that point, however, the judgment was uncollectible.

Subsequently, Sasson filed a voluntary petition for relief under Chapter 7 of the [867] Bankruptcy Code, 11 U.S.C. §§ 301, 701-784 in the Northern District of California. His bankruptcy schedule did not mention Sasson’s recent transfer of assets. Sokoloff then filed a complaint seeking a determination of nondischargeability of the state court judgment under 11 U.S.C. § 523(a)(6) and a denial of discharge under 11 U.S.C. § 727(a)(2).¹ The bankruptcy court rejected

¹ Under 11 U.S.C. § 523(a)(6) of the Bankruptcy Code, any debt “for willful and malicious injury by the debtor to another entity or to the property of another entity” shall not be dischargeable in bankruptcy. Under 11 U.S.C. § 727(a)(2), a debtor may not obtain a discharge if “the debtor, with intent to hinder, delay, or defraud a creditor . . . has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed . . . property of the

the § 727(a)(2) claim, but found that Sasson's transfer of assets in violation of the state court stay constituted a willful and malicious injury under § 523(a)(6). The court entered a judgment for \$148,142.46 plus costs and accruing interest. Sasson filed an appeal of this decision, but later dismissed it. Subsequently, both Sasson's bankruptcy and the adversary proceeding were closed by the bankruptcy court.

Sokoloff continued to pursue collection remedies in bankruptcy court. Sokoloff filed a notice of the judgment lien and recorded an abstract of judgment. Sokoloff then obtained a Writ of Execution to the United States Marshal and instructed the Marshal to levy on Sasson's wages. Sasson filed a claim of exemption, which the court granted in part.

In 2001, Sokoloff renewed the 1991 Judgment. The bankruptcy court issued an Abstract of Judgment for \$239,160.42 on July 9, 2001, which was then recorded. Subsequently, the bankruptcy court granted Sasson's ex-parte motion to reopen his Chapter 7 proceedings for sixty days. Sasson then filed a motion pursuant to Federal Rule of Civil Procedure 60(b) to vacate the 1991 money judgment and to quash the 2001 abstract of judgment. In his motion, Sasson argued that the bankruptcy court lacked subject matter jurisdiction to enter a new federal money judgment and therefore the renewal of judgment and abstract of judgment were void ab initio. The bankruptcy court denied the motion after a hearing. Sasson filed a notice of appeal, which was referred to the BAP. The BAP affirmed the bankruptcy court, holding that the bankruptcy court had jurisdiction both to enter the 1991 judgment of nondischargeability and to determine the amount of damages caused by Sasson's post-judgment conduct. Sokoloff timely appealed the BAP decision.

debtor, within one year before the date of the filing of the petition.” 11 U.S.C. § 727(a)(2).

We review both the bankruptcy court's and the BAP's interpretation of the Bankruptcy Code de novo. *Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp. (In re Debbie Reynolds Hotel & Casino, Inc.)*, 255 F.3d 1061, 1065 (9th Cir. 2001). We review a ruling on a motion to set aside a judgment as void de novo "because the question of the validity of a judgment is a legal one." *Export Group v. Reef Indus.*, 54 F.3d 1466, 1469 (9th Cir. 1995). We review the scope of the exercise of equitable power de novo, *Graves v. Myrvang (In re Myrvang)*, 232 F.3d 1116, 1124 (9th Cir. 2000), and the exercise of equitable power for an abuse of discretion, *id.* at 1121.

II

The bankruptcy court had jurisdiction to enter a money judgment in the adversary proceeding. We have long held that "the Bankruptcy Court has jurisdiction to enter [868] a monetary judgment on a disputed state law claim in the course of making a determination that a debt is nondischargeable." *Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997).

A

Our holding in *Kennedy* was firmly grounded. Under the original 1898 Bankruptcy Act, Pub. L. No. 55-171, 30 Stat. 544 (repealed 1978) (as amended through date of repeal) ("1898 Bankruptcy Act"), bankruptcy courts were considered to have equitable jurisdiction to issue orders in aid of a nondischargeability determination. *Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934); *see also Pepper v. Litton*, 308 U.S. 295, 304 (1939) ("[F]or many purposes courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity." (internal quotation marks omitted)).

In 1970, Congress codified the power of bankruptcy courts, in the exercise of their power to declare debts nondischargeable, to "determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof." 1898 Bankruptcy Act § 17(c)(3). When Con-

gress enacted the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (“Bankruptcy Code” or “Code”), Congress removed specific jurisdictional language in favor of a general broad jurisdictional grant. However, in doing so, it clearly intended to incorporate the specific pre-Code jurisdiction of the bankruptcy courts.² In addition, the Bankruptcy Code specifically provides that:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a) (emphasis added). Thus, the bankruptcy court clearly has the power under the Bankruptcy Code to determine whether a debt is nondischargeable, to “determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof,” and to “issue any order, process, or judgment that is necessary or appropriate in carrying out” the order of nondischargeability

In addition to continuation of the bankruptcy court’s pre-Code jurisdiction and the specific grant of new powers, the Bankruptcy Code provided for the exercise of “original but not exclusive jurisdiction of all civil proceedings arising

² The jurisdiction of bankruptcy courts under the Bankruptcy Code was to include “items that the bankruptcy courts are now able to bear [sic] under [the 1898] Act § 2a,” including “determination of dischargeability of debts [and] liquidation of non-dischargeable debts.” H.R. Rep. No. 95-595, at 446, 49 (1977) (footnote referencing 1898 Act § 17c omitted), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6401, 6010; see also *id.* at 363 (noting that “the comprehensive grant of jurisdiction prescribed in proposed [statute] . . . is adequate to cover the full jurisdiction that the bankruptcy courts have today over dischargeability and related issues under Bankruptcy Act § 17c”), *reprinted in* 1978 U.S.C.C.A.N. at 6319; S. Rep. No. 95-989, at 77 (1978) (same), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5863.

under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). A bankruptcy court’s “related to” jurisdiction is very broad, “including nearly every matter directly or indirectly related to the bankruptcy.” *Mann v. Alexander Dawson (In re Mann)*, 907 F.2d 923, 926 n.4 (9th [869] Cir. 1990). The bankruptcy court’s “related to” jurisdiction granted by the Bankruptcy Code derives directly from the Bankruptcy Clause, which grants Congress the power “[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. Const., art. 1, § 8. Congress expanded the Bankruptcy Court’s Article I jurisdiction by granting federal district courts with “original and exclusive jurisdiction of all cases under title 11.” 28 U.S.C. § 1334(a). Thus, at present, the bankruptcy court’s “related to” jurisdiction also includes the district court’s supplemental jurisdiction pursuant to 28 U.S.C. § 1367 “over all other claims that are so related to claims in the action within [the court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” See *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1195 (9th Cir. 2005); *Sec. Farms v. Int’l Bhd. of Teamsters*, 124 F.3d 999, 1008 n.5 (9th Cir. 1997).

Even the discharge of a debtor does not automatically deprive the federal courts of jurisdiction over a claim “related to” the bankruptcy. See *Kieslich v. United States (In re Kieslich)*, 258 F.3d 968, 971 (9th Cir. 2001). Indeed, we have held that a bankruptcy court’s “related to” jurisdiction includes post-confirmation jurisdiction over state court actions such as breach of contract, breach of covenant of good faith and fair dealing, and fraud when those claims have a “close nexus” to the bankruptcy proceeding. *In re Pegasus Gold Corp.*, 394 F.3d at 1194; see also *Celotex Corp. v. Edwards*, 514 U.S. 300, 309 (1995). We have also held that bankruptcy courts have post-discharge jurisdiction to enjoin collection actions, even if those actions occur in another country. *Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991, 996 (9th Cir. 1998).

In addition, bankruptcy courts retain their traditional equitable powers under the Bankruptcy Code. *Johnson v. Home State Bank*, 501 U.S. 78, 88 (1991) (per curiam) (“[T]he bankruptcy court retains its broad equitable power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Code.”) (quotation marks omitted). As the Supreme Court has instructed, when a creditor files a claim in bankruptcy, “the creditor triggers the process of ‘allowance and disallowance of claims,’ thereby subjecting himself to the bankruptcy court’s equitable power.” *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58-59 (1989)). The bankruptcy court’s equitable power is not unfettered; it must be exercised to carry out the provisions of the Bankruptcy Code. *Saxman v. Educ. Credit Mgmt. Corp. (In re Saxman)*, 325 F.3d 1168, 1174 (9th Cir. 2003). However, we have recognized that “a bankruptcy court is a court of equity and should invoke equitable principles and doctrines, refusing to do so only where their application would be ‘inconsistent’ with the Bankruptcy Code.” *Beaty v. Selinger (In re Beaty)*, 306 F.3d 914, 922 (9th Cir. 2002) (citing *In re Myrvang*, 232 F.3d at 1124).

“Bankruptcy Courts have exclusive jurisdiction over nondischargeability actions brought pursuant to 11 U.S.C. § 523(a)(2), (4), (6) and (15).” *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 904 (9th Cir. 2001). This is a dischargeability action brought pursuant to 11 U.S.C. § 523(a)(6). As we reasoned in *Kennedy*:

“If it is acknowledged as beyond question that a complaint to determine dis-[870]chargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment in an amount certain without the assistance of a jury. This is true not merely because equitable jurisdiction attaches to the entire cause of action but more importantly because it is impossible to separate the determination of dischargeability

function from the function of fixing the amount of the nondischargeable debt.”

Kennedy, 108 F.3d at 1017-18 (quoting *Snyder v. Devitt (In re Devitt)*, 126 B.R. 212, 215 (Bankr. D. Md. 1991)). Our sister circuits have reached similar conclusions. *Porges v. Gruntal & Co. (In re Porges)*, 44 F.3d 159, 165 (2d Cir. 1995); *Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 965-66 (6th Cir. 1993); *N.I.S. Corp. v. Hallahan (In re Hallahan)*, 936 F.2d 1496, 1507-08 (7th Cir. 1991). Given the text and history of the Bankruptcy Code and the bankruptcy court’s inherent equitable powers, it is clear, as we held in *Kennedy*, that bankruptcy courts have jurisdiction and power to enter money judgments in adjudicating nondischargeability adversary proceedings.

B

Sasson attempts to distinguish *Kennedy* from this case because *Kennedy* involved an unliquidated claim. *Kennedy* made no such distinction, and there is no principled jurisdictional distinction to be drawn. There is nothing in the text of the Bankruptcy Code or its history that contains a jurisdictional exception for debts that have been liquidated to judgment. To hold otherwise would be to deprive the bankruptcy court of its exclusive jurisdiction over bankruptcy discharge pursuant to 11 U.S.C. § 523(a). As the Supreme Court has noted, “[s]ince 1970[], the issue of nondischargeability has been a matter of federal law governed by the terms of the Bankruptcy Code.” *Grogan v. Garner*, 498 U.S. 279, 284 (1991) (citing *Brown v. Felsen*, 442 U.S. 127, 129-30 (1979)). The Bankruptcy Code provides that bankruptcy courts “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105. Notably, it does not contain an additional clause stating “except when the debt has been liquidated to judgment.”

The debtor invoked bankruptcy court subject matter and *in personam* jurisdiction by filing a voluntary petition in bankruptcy. With the commencement of the case, the bank-

ruptcy court acquired exclusive *in rem* jurisdiction over all the debtor's legal or equitable interests in property wherever located and by whomever held. 28 U.S.C. § 1334(e); *Commodity Futures Trading Comm'n v. Co Petro Mktg. Group, Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983). By filing a proof of claim, the creditor in this case became subject to the bankruptcy court's *in personam* jurisdiction, and the limitations of the Bankruptcy Code. *In re Simon*, 153 F.3d at 997. The parties were clearly subject to both subject matter and *in personam* jurisdiction of the bankruptcy court.

The fact that a debt has been previously liquidated to judgment does not deprive the bankruptcy court of jurisdiction, nor of any of its statutory and equitable power. It may, as we shall discuss in Part II.D, have an effect on the form of relief that the bankruptcy court grants in nondischargeability proceedings. However, it does not alter the *Kennedy* jurisdictional analysis. The existence of a state court judgment does not deprive the bankruptcy court of the statutory power to enter a new judgment of nondischargeability.

[871] C

Sasson argues that the *Rooker-Feldman* doctrine³ alters this jurisdictional analysis. However, the *Rooker-Feldman* doctrine did not deprive the bankruptcy court of jurisdiction to enter the money judgment in the nondischargeability adversary proceeding. The *Rooker-Feldman* doctrine is based on the statutory proposition that federal district courts are courts of original, not appellate, jurisdiction. See 28 U.S.C. §§ 1331, 1332. Therefore, federal district courts have “no authority to review the final determinations

³ The doctrine takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). *Rooker* held that federal statutory jurisdiction over direct appeals from state courts lies exclusively in the Supreme Court and is beyond the original jurisdiction of federal district courts. 263 U.S. at 415-16. *Feldman* held that this jurisdictional bar extends to particular claims that are “inextricably intertwined” with those a state court has already decided. 460 U.S. at 486-87.

of a state court in judicial proceedings.” *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986). Only the Supreme Court has original jurisdiction to review “[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had.” 28 U.S.C. § 1257(a). As the Supreme Court has recently explained, the *Rooker-Feldman* doctrine “is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” *Exxon Mobil Corp. v. Saudi Basic Indus.*, 125 S.Ct. 1517, 1521-22 (2005).

Application of the *Rooker-Feldman* doctrine in bankruptcy is limited by the separate jurisdictional statutes that govern federal bankruptcy law. *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1079 (9th Cir. 2000) (en banc). The *Rooker-Feldman* doctrine has little or no application to bankruptcy proceedings that invoke substantive rights under the Bankruptcy Code or that, by their nature, could arise only in the context of a federal bankruptcy case. *Id.* at 1081. In the exercise of federal bankruptcy power, bankruptcy courts may avoid state judgments in core bankruptcy proceedings, *see, e.g.*, 11 U.S.C. §§ 544, 547, 548, 549, may modify judgments, *see, e.g.*, 11 U.S.C. §§ 1129, 1325, and, of primary importance in this context, may discharge them, *see, e.g.*, 11 U.S.C. §§ 727, 1141, 1328.

The *Rooker-Feldman* doctrine has no application here. Sasson is not seeking to have the bankruptcy court review the merits of the state court judgment; rather, he is attempting to prevent the bankruptcy court from giving effect to the state court judgment. Likewise, the creditor is not seeking modification of the state court judgment; it is attempting to save the judgment from bankruptcy discharge.

In entering judgment, the bankruptcy court was exercising its exclusive statutory power to determine whether a debt is dischargeable in a bankruptcy case. *See* 11 U.S.C. §§ 523(a)(6), 727(a)(2). Actions seeking a determination of

nondischargeability are core bankruptcy proceedings, *see* 28 U.S.C. § 157(b)(2)(I), and are not subject to the *Rooker-Feldman* doctrine. *See Gruntz*, 202 F.3d at 1081-82. The *Rooker-Feldman* doctrine did not deprive the bankruptcy court of jurisdiction to enter the money judgment in this case.

[872] D

Sasson also argues that the bankruptcy court lacked jurisdiction to enter a money judgment by operation of the full faith and credit statute, 28 U.S.C. § 1738, and the doctrines of res judicata and collateral estoppel. Unlike the *Rooker-Feldman* doctrine, these doctrines do not affect the jurisdiction of federal courts. *See, e.g., EEOC v. Children's Hosp. Med. Ctr. of N. Cal.*, 719 F.2d 1426, 1430 (9th Cir. 1983) (en banc) (“[R]es judicata is an affirmative defense under the rules of civil procedure. Fed. R. Civ. P. 8(c). It is not a jurisdictional doctrine.”). Moreover, central to the operation of the bankruptcy courts is the idea that the debtor’s debts, including debts liquidated to judgments, may be modified and discharged. *See, e.g.*, 11 U.S.C. §§ 544, 547, 548, 549, 727, 1129, 1141, 1325, 1328.

In short, “[f]inal judgments in state courts are not necessarily preclusive in United States bankruptcy courts.” *Gruntz*, 202 F.3d at 1079. Thus, we must reject Sasson’s argument that the doctrines of full faith and credit, *res judicata*, and collateral estoppel deprive the bankruptcy court of the jurisdiction to enter a money judgment in a discharge order involving liquidated debts.

This does not, of course, mean that the preclusion doctrines do not have any bearing on federal bankruptcy discharge proceedings. The Supreme Court has stated that “collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a).” *Grogan*, 498 U.S. at 284 n. 11. Further, we have held that “[t]he full faith and credit requirement of § 1738 compels a bankruptcy court in a § 523(a)(2)(A) nondischargeability proceeding to give collateral estoppel effect to a prior state court judgment.”

Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 801 (9th Cir. 1995) (per curiam).⁴

In the bankruptcy discharge context, this means that “[i]f, in the course of adjudicating a state-law question, a state court should determine factual issues using standards identical to those of [§ 523], then collateral estoppel, in the absence of countervailing statutory policy, would bar relitigation of those issues in the bankruptcy court.” *Brown*, 442 U.S. at 139 n.10. The classic example of the proper use of issue preclusion in discharge proceeding is when the amount of the debt has been determined by the state court and reduced to judgment. In that event, if there are no new issues, the bankruptcy court should ordinarily decline to allow the parties to relitigate the debt amount and should give the state court judgment as to the amount of preclusive effect. *Comer v. Comer (In re Comer)*, 723 F.2d 737, 740 (9th Cir. 1984). For the same reason, we have held that if the issue of fraud had [873] been litigated in state court, the state court judgment would preclude relitigation of the same issue by the bankruptcy court in discharge proceedings. *Nourbakhsh*, 67 F.3d at 801. Thus, the doctrines of preclusion

⁴ “In determining whether a party should be estopped from relitigating an issue decided in a prior state court action, the bankruptcy court must look to that state’s law of collateral estoppel.” *Diamond v. Kolcum (In re Diamond)*, 285 F.3d 822, 826 (citing *Nourbakhsh*, 67 F.3d at 800). Thus, we have held:

Under California law, collateral estoppel only applies if certain threshold requirements are met: ‘First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.’

Cal-Micro, Inc. v. Cantrell, (In re Cantrell), 329 F.3d 1119, 1123 (9th Cir. 2003) (quoting *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001)).

play an important part in dischargeability proceedings by preventing the relitigation of factual and legal issues already determined by other courts.

However, a preexisting judgment does not have preclusive effect on the bankruptcy court's determination of dischargeability. The Supreme Court firmly rejected such an idea in *Brown*, specifically holding that "the bankruptcy court is not confined to a review of the judgment and record in the prior state-court proceedings when considering the dischargeability of respondent's debt." *Brown*, 442 U.S. at 138-39. We explained this analytical distinction in *Comer*:

Res judicata should not be applied to bar a claim by a party in bankruptcy proceedings, nor should a bankruptcy judge rely solely on state court judgments when determining the nature of a debt for purposes of dischargeability, if doing so would prohibit the bankruptcy court from exercising its exclusive jurisdiction to determine dischargeability.

In re Comer, 723 F.2d at 740.

As we explained in *Comer*, determination of the amount of the debt by the state court did not impact the dischargeability decision:

In the present case, applying *res judicata* to bar the bankruptcy court from looking behind the default judgment to determine the actual amount of the obligation would not preclude the exercise of the bankruptcy court's exclusive jurisdiction to determine the nature of the subject debt for purposes of dischargeability.

Id. In *Comer*, because the state court judgment involved the "*extent* of [the debtor's] obligation . . . , not the *nature* of that debt," it was not relevant to the bankruptcy court's exercise of its power to determine the dischargeability of a debt; therefore, we concluded that the bankruptcy court properly gave preclusive effect to the prior judgment. *Id.*

In this case, the parties were not relitigating the merits of the state court judgment in the nondischargeability pro-

ceeding. The adversary proceeding was based on Sasson's "willful and malicious" postjudgment conduct, not on the contractual breach that formed the basis of the state court judgment. Thus, the parties were litigating a different claim in the nondischargeability proceeding in bankruptcy, which was not precluded by the state court contract claim judgment. *Id.* Indeed, the creditor was not seeking to upend the state court judgment; rather, he simply was attempting to enforce it by defending against the discharge of the debt in bankruptcy. The bankruptcy court did not redetermine the amount of the state court debt; the court relied upon the state court determination. Thus, the various preclusion doctrines did not operate to prevent the bankruptcy court from entering a judgment of nondischargeability in this case. *See Diamond*, 285 F.3d at 829. The bankruptcy court's actions throughout the adversary proceedings were entirely consistent with the law of issue preclusion as we have applied it to bankruptcy discharge.

The only remaining question, then, is whether the various doctrines of issue preclusion prevented the bankruptcy court from enforcing its dischargeability determination by including a money judgment in its resolution of the adversary proceeding. They clearly do not. As the Supreme Court has held, affording full faith and credit to a judgment does not [874] require a court to "adopt the practices of [the jurisdiction that granted the judgment] regarding the time, manner, and mechanisms for enforcing judgments." *Baker ex rel. Thomas v. General Motors Corp.*, 522 U.S. 222, 235 (1998). As the Supreme Court explained, "[e]nforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law." *Id.* (citing *McElmoyle ex rel. Bailey v. Cohen*, 13 Pet. 312, 325, 10 L.Ed. 177 (1839) (holding that judgment may be enforced only as "laws [of enforcing forum] may permit") and Restatement (Second) of Conflict of Laws § 99 (1969) ("The local law of the forum determines the methods by which a judgment of another state is enforced.")).

In sum, none of the doctrines of issue preclusion dictate how a bankruptcy court may choose to enforce its determination of nondischargeability. That is a question reserved to the bankruptcy courts in the exercise of their broad equitable powers in bankruptcy. In so doing, as we have discussed, bankruptcy courts are authorized by statute to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 28 U.S.C. § 105. In addition, the bankruptcy court may use its inherent equitable power to fashion relief, so long as the remedy is consistent with the objectives of the Bankruptcy Code. *In re Saxman*, 325 F.3d at 1174. Thus, as a matter of law, a prior judgment does not preclude a bankruptcy court from exercising its power to determine how best to enforce its own dischargeability order.

The bankruptcy court here, therefore, had the authority to enter a money judgment in conjunction with its nondischargeability order. “It does not follow, however, that the court was bound to exercise its authority. And it probably would not and should not have done so except under unusual circumstances such as here exist.” *Hunt*, 292 U.S. at 241. The existence of a prior judgment may introduce some prudential concerns, such as comity, that a bankruptcy court should take into consideration in fashioning relief. *See Smith v. Lachter (In re Smith)*, 242 B.R. 694 (B.A.P. 9th Cir. 1999) (noting that the filing of a new money judgment is not necessary when there is an existing effective state court judgment); *Gertsch v. Johnson & Johnson Fin. Corp. (In re Gertsch)*, 237 B.R. 160 (B.A.P. 9th Cir. 1999) (discussing the potential confusion and complication caused by the entry of multiple judgments).⁵ Although important considerations,

⁵ We interpret *Smith* and *Gertsch* as involving prudential considerations. To the extent that these cases may be construed as holding that bankruptcy courts have no jurisdiction or authority to enter a money judgment on a liquidated claim, we must respectfully disagree. We also disagree with the approach taken by the Fourth Circuit in *Heckert v. Dotson (In re Heckert)*, 272 F.3d 253, 257 (4th Cir. 2001). In our opinion,

these prudential concerns do not affect the jurisdiction and the power of the bankruptcy court to enter a new money judgment as part of declaring a debt nondischargeable.⁶ [875] Rather, these prudential issues are best committed to the judgment of the bankruptcy court, subject to review for abuse of discretion. *In re Myrvang*, 232 F.3d at 1121. In examining prudential considerations, we must also remember that “[t]he Supreme Court found that the overriding purpose of § 523 is to protect victims of fraud.” *Muegler v. Bening*, 413 F.3d 980, 983 (9th Cir. 2005) (citing *Cohen v. de la Cruz*, 523 U.S. 213, 222-23 (1998)). Thus, a bankruptcy court does not act outside the purposes of the Bankruptcy Code by providing victims of fraud an additional means of enforcing a nondischargeability judgment in an appropriate case.

Applying these principles to the case at hand, we conclude that the bankruptcy court acted well within its discretion in entering the new money judgment. Several circumstances rendered the bankruptcy court’s entry of a new money judgment necessary and appropriate. The creditor obtained a state court judgment, which proved uncollectible at the time. When the creditor commenced further collection proceedings, the debtor filed bankruptcy. Based on the debtor’s post-state judgment behavior, the bankruptcy court concluded that the debt was nondischargeable because the debtor had engaged in fraud. The court entered a money judgment as part of the judgment of nondischargeability. The debtor did not object, but waited until the creditor had allowed the state court judgment to lapse in favor of the dis-

Heckert did not give sufficient consideration and deference to bankruptcy court’s broad equitable powers to fashion relief.

⁶ Many of the prudential considerations involved in the entry of multiple judgments can be addressed in the original state forum. For example, in California, the rule as to multiple judgments is that, if a party receives multiple judgments on a single claim, that party can have just one satisfaction. See *Textron Financial Corp. v. National Union Fire Ins. Co. of Pittsburgh*, 118 Cal. App. 4th 1061, 1078 (Cal. Ct. App. 2004); *McCall v. Four Star Music Co.*, 51 Cal. App. 4th 1394, 1398 (Cal. Ct. App. 1996).

charge judgment. When the discharge judgment was renewed, the debtor then sought to prevent the bankruptcy court from issuing an enforcement order that would give effect to the prior state judgment, arguing that the lapsed state court judgment precluded it. However, as the BAP found, the debtor had engaged in “wilful and malicious behavior” in rendering the initial state court judgment uncollectible. The debtor in this case is clearly attempting to manipulate both the federal and state court systems to avoid paying the debt, which the bankruptcy court has found non-dischargeable. Given the history of the case, the bankruptcy court’s action in entering a new money judgment and renewing the judgment was entirely proper.

Sasson would turn the law of preclusion on its head by having us hold that the existence of a lapsed underlying state court judgment precludes enforcement of that judgment in federal court. He would have us hold that we can only uphold a creditor’s right to full faith and credit of a state court judgment by denying the creditor the right to enforce the judgment. In this context, the doctrines of full faith and credit, collateral estoppel, and res judicata do not apply to prevent a bankruptcy court from entering a money judgment when ruling on the dischargeability of the underlying debt in the exercise of its equitable power.

III

For all of these reasons, we conclude that the court did not err in declining to award relief pursuant to Rule 60(b)(4). Under Federal Rule of Civil Procedure 60(b), a court may relieve a party from judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud or other misconduct; (4) avoid judgment; (5) a satisfied or discharged judgment; or (6) any other reason justifying relief from operation of judgment. Sasson contends that he is entitled to relief because the judgment entered by the bankruptcy court was void. A “judgment is not void merely because it is erroneous.” *Ministry of Def. & Support for the Armed Forces v. Cubic Def. Sys.*, 385 [876] F.3d 1206, 1225 (9th Cir. 2004)

(quoting *United States v. Holtzman*, 762 F.2d 720, 724 (9th Cir. 1985)), petition for cert. filed, 73 U.S.L.W. 3498 (Feb. 11, 2005). We have consistently held that a “final judgment is ‘void’ for purposes of Rule 60(b)(4) *only if* the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law.” *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999) (emphasis added); *Cubic Def. Sys.*, 385 F.3d at 1226 (“A judgment is void only if the issuing court lacked subject-matter jurisdiction over the action or if the judgment was otherwise entered in violation of due process.”). Given that the bankruptcy court acted well within its jurisdiction and authority in entering the money judgment in the first instance, the judgment was not void. The court was entirely correct in declining to grant relief under Rule 60(b).

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-16364
BAP No. NC-02-01410-MaMeP
[STAMP: FILED Nov. 10, 2005
Cathy A. Catterson, Clerk
U.S. Court of Appeals]

IN RE ROBERT SASSON, *Debtor*.

ROBERT SASSON, *Appellant*,

v.

NORMAN F. SOKOLOFF, M.D., individually
and as Trustee for CAMELOT MEDICAL
GROUP, INC., PROFIT SHARING PLAN, *Appellee*.

ORDER

Before: THOMAS, GRABER, and PAEZ, Circuit Judges.

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

[STAMP: NOT FOR PUBLICATION]

UNITED STATES BANKRUPTCY APPELLATE
PANEL OF THE NINTH CIRCUIT

IN RE ROBERT SASSON, *Debtor*.

ROBERT SASSON, *Appellant*,

v.

NORMAN F. SOKOLOFF, M.D., individually
and as Trustee for CAMELOT MEDICAL
GROUP, INC., PROFIT SHARING PLAN, *Appellees*.

[STAMP: FILED May 27, 2003

Nancy B. Dickerson, Clerk

U.S. Bkcy. App. Panel of the Ninth Circuit]

BAP No. NC-02-01410-MaMeP

Bk. No. 89-52300-JRG

Adv. No. 89-5358

MEMORANDUM⁷

Argued and Submitted February 20, 2003

at San Jose, California

Filed—May 27, 2003

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

Honorable James R. Grube, Bankruptcy Judge, Presiding

Before: MARLAR, MEYERS,⁸ and PERRIS, Bankruptcy
Judges

⁷ This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, *res judicata*, or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

⁸ Hon. James W. Meyers, Bankruptcy Judge for the Southern District of California, sitting by designation.

[2] INTRODUCTION

In this appeal, we affirm the validity and preclusive effect of the bankruptcy court's money judgment, which was entered in a nondischargeability proceeding, as well as the bankruptcy court's jurisdiction to enforce its judgment.

FACTS**1. The State Court Action⁹**

In November 1988, Norman Sokoloff, M.D., individually and as Trustee of the Camelot Medical Group, Inc. Profit Sharing Plan ("Sokoloff"), obtained a \$120,000 state court summary judgment against the debtor, Robert Sasson ("Sasson"), for breach of a promissory note. Before Sokoloff could enforce the judgment, Sasson obtained a stay.

As a condition of the stay and to preserve the status quo, Sasson was ordered not to dissipate any assets. However, three days prior to the issuance of the stay, Sasson had placed a deposit on a residence. In January, 1989, while the stay was in force, Sasson closed escrow and encumbered the residence with a first priority lien for \$225,000. Then, in February 1989, while the stay was still in effect, Sasson gave his parents a second deed of trust, allegedly to secure a loan in the amount of \$28,675.33. He then used those funds to pay creditors other [3] than Sokoloff, including Sasson's attorney.

Sasson also had domestic problems, and a dissolution proceeding was pending at this same time. In violation of the state court stay, in January 1989, Sasson and his wife entered into a stipulation to divide about \$435,000 worth of community property, and Sasson transferred approximately one-half of the community property to his wife.¹⁰

⁹ See the bankruptcy court's Findings of Fact and Conclusions of Law (May 29, 1991).

¹⁰ Under California law, the wife's share was rendered exempt from Sasson's liability for the state court judgment. *See* former Cal. Civ. Code § 5120.160 (Cal. Fam. Code § 916 (West 1994)).

On March 1, 1989, Sasson's post-trial motion was denied, the stay was dissolved, and state court entered a second judgment against him in the sum of \$149,489.53¹¹ plus accruing interest. Sokoloff recorded an abstract of this judgment on April 3, 1989, but did not thereafter renew it, and it eventually lapsed.

2. Sasson's Bankruptcy

On May 15, 1989, Sasson filed a chapter 7¹² petition. His [4] bankruptcy schedules did not disclose the liens related to his residence, nor the chronology of events leading to his acquisition thereof. Instead, Sasson claimed the residence as exempt property.

Sokoloff filed a complaint to determine his judgment debt nondischargeable under § 523(a)(6)¹³ and to deny Sasson his discharge pursuant to § 727(a)(2).¹⁴

¹¹ This judgment was filed on March 3, 1989. The award included \$100,000 on the note, plus \$23,368.97 prejudgment interest, costs of \$1,020.56, and attorney's fees of \$25,000.

The state court also awarded postjudgment interest of 27.39 per day from March 4, 1989 until the judgment was satisfied.

¹² Unless otherwise indicated, chapter and section references are to the Bankruptcy Code, 11 U.S.C. § 101-1330, and rule references are to the Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr. P.") or to the Federal Rules of Civil Procedure (Fed. R. Civ. P.) incorporated therein.

¹³ Count Seven of the complaint stated, in pertinent part:

In order to avoid paying the amount due by reason of said loan and the judgment obtained thereon, and in violation of an order of the Superior Court of the State of California, and in order to hinder, delay and defraud Plaintiff, Plaintiff is informed and believes and thereupon alleges that Defendant willfully and maliciously transferred or removed, or permitted the transfer and removal, of his property, thereby willfully and maliciously injuring Plaintiff and the property of Plaintiff. Consequently, Defendant is indebted, to Plaintiff in the amount of said judgment, and such debt should be declared to be a nondischargeable debt as provided in 11 U.S.C. § 523.

Complaint (Sept. 11, 1989), at 8.

The bankruptcy court found that by transferring and encumbering his assets in violation of the state court stay, Sasson had effectively changed an otherwise collectible [5] judgment, absent the stay, into an uncollectible claim. The court determined that these acts constituted a willful and malicious injury under § 523(a)(6), and entered judgment for \$148,142.46, plus costs of \$1,020.56 and accruing interest. “1991 Judgment”).

Although Sasson appealed the 1991 Judgment, he voluntarily dismissed the appeal, and the 1991 Judgment became final. In the 1990s, Sokoloff utilized various collection procedures in bankruptcy court, but apparently was unsuccessful in collecting the judgment. Sokoloff renewed the 1991 Judgment on April 19, 2001, and recorded an Abstract of Judgment in the amount of \$239,160.42 with the Santa Clara County Recorder, on July 9, 2001.¹⁵

Sasson’s bankruptcy case was administratively closed in due course.

3. Sasson’s Motion to Vacate 1991 Judgment—Rule 60(b)

In April 2002, Sasson motion to reopen his bankruptcy case so that he could attempt to vacate the 1991 Judgment and quash “certain post-judgment processes,” presumably

¹⁴ The bankruptcy court subsequently resolved the § 727(a)(2) claim in Sasson’s favor, finding that Sokoloff failed to establish that Sasson had transferred the assets with actual intent to hinder, delay or defraud creditors. 11 U.S.C. 727(a)(2).

In 1991, the “willful and malicious” standard of § 523(a)(6) did not require subjective intent to injure, as it does now. *See Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). Therefore, the court could, without legal inconsistency, find Sasson’s conduct to be “willful and malicious” under § 523(a)(6) yet not find “actual intent” to hinder, delay, or defraud Sokoloff under § 727(a)(2).

¹⁵ A space was provided for the renewal of judgment in Sasson’s excerpts of record, although it was omitted. Nevertheless, it is undisputed that the renewal was obtained because the Abstract of Judgment, which was provided, refers to the April 19, 2001 renewal of judgment.

Sokoloff's ongoing collection activities. Sasson moved pursuant to Fed. R. Civ. P. 60(b), incorporated by Fed. R. Bankr. P. 9024 ("Rule 60(b)"). [6] Presumably moving under Rule 60(b)(4),¹⁶ he contended that the money judgment portion of the 1991 Judgment and the subsequent collection activities were void for lack of subject matter jurisdiction.

At a hearing on the Rule 60(b) motion, Sasson argued that it was unlawful to have both state and federal judgments arising from the same transaction. The bankruptcy court then explained that the 1991 Judgment was a separate federal judgment. The bankruptcy court further explained that, in 1991, it had given the state court judgment *res judicata* effect only to "fix[] the amount of the claim . . ." Tr. of Proceedings (June 27, 2002), at 1. The bankruptcy court concluded, in disposing of the Rule 60(b) motion, that the 1991 Judgment was being enforced properly in bankruptcy court pursuant to Fed. R. Civ. P. 69, incorporated by Fed. R. Bankr. P. 7069 ("Rule 69").

The court's order denying Sasson's Rule 60(b) motion was entered on July 31, 2002, and Sasson timely appealed the order.

ISSUES

1. Whether the bankruptcy court had jurisdiction to enter a money judgment in the 1991 nondischargeability [7] proceeding.
2. Whether the 1991 Judgment was otherwise void.

¹⁶ Rule 60(b) provides, in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; . . . The motion shall be made within a reasonable time

Fed. R. Civ. P. 60 (b)

3. Whether the bankruptcy court had jurisdiction to entertain enforcement proceedings of its 1991 Judgment. years after the bankruptcy case was closed.

STANDARDS OF REVIEW

The bankruptcy court's subject matter jurisdiction is a question of law, reviewed de novo. See *Ferm v. UST (In re Crowe)*, 243 B.R. 43, 47 (9th Cir. BAP), *aff'd mem.*, 246 F.3d 673 (9th Cir. 2000). Similarly, we review de novo the bankruptcy court's interpretation of the Bankruptcy Code and Rules. *Temecula v. LPM Corp. (In re LPM Corp.)*, 300 F.3d 1134, 1136 (9th Cir. 2002).

While a bankruptcy court's decision on a Rule 60(b) motion is generally reviewed for an abuse of discretion, *Wilson v. City of San Jose*, 111 F.3d 688, 691 (9th Cir. 1997), a denial of a Rule 60(b)(4) motion, which seeks to set aside a judgment as void, is a question of law reviewed de novo. See *Virtual Vision, Inc. v. Praegitzer Indus., Inc.*, 124 F.3d 1140, 1143 (9th Cir. 1997); *Cossio v. Cate (In re Cossio)*, 163 B.R. 150, 154 (9th Cir. BAP 1994), *aff'd mem.*, 56 F.3d 70 (9th Cir. 1995).

[8] DISCUSSION

A. THE BANKRUPTCY COURT'S JURISDICTION TO ENTER A MONEY JUDGMENT IN 1991

Sasson contends that the bankruptcy court lacked subject matter jurisdiction to enter the 1991 Judgment because the state court had already adjudicated the debt. Because nondischargeability is a core matter pursuant to 28 U.S.C. § 157(b)(2)(I), we need address only the aspect of whether the bankruptcy court had jurisdiction to enter the monetary portion of the judgment.

In the Ninth Circuit, a bankruptcy court has the authority to enter a money judgment as part of its exclusive jurisdiction to determine the dischargeability of debts. See *Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997). There, the Ninth Circuit stated:

If it is acknowledged as beyond question that a complaint to determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment in an amount certain without the assistance of a jury. This is true not merely because equitable jurisdiction attaches to the entire cause of action but more importantly because it is impossible to separate the determination of dischargeability function from the function of fixing the amount of the non-dischargeable debt.

Id. at 1017-18 (quoting *Snyder v. Devitt (In re Devitt)*, 126 B.R. 212, 215 (Bankr. D. Md. 1991)).

In *Kennedy*, the creditor's claim was unliquidated. Sasson argues, therefore, that a bankruptcy court's authority to enter a money judgment is limited to situations where the claim has [9] *not* already been liquidated in state court.

While the Bankruptcy Code does not require a debt to have been reduced to a prepetition judgment in order for a bankruptcy court to determine whether it is nondischargeable, *Banks v. Gill Distrib. Cents., Inc. (In re Banks)*, 263 F.3d 862, 868 (9th Cir. 2001), when a party's liability and the resultant damages have previously been reduced to judgment in another court, such judgment must be given full faith and credit. See 28 U.S.C. § 1738 (Full Faith and Credit statute). Generally, a federal court is precluded from entering a new monetary judgment based on a cause of action that has already been fully litigated in a California state court.¹⁷

¹⁷ Once a liquidated debt is determined to be nondischargeable, then the state court judgment, which is a complete adjudication of the debtor's liability for, including the amount of, such debt, is given res judicata effect. See *Cohen v. de la Cruz*, 523 U.S. 213, 218 (1998) (stating that damages recoverable under applicable state law are nondischargeable debt under § 523(a)(2)); *Roussos v. Michaelides (In re Roussos)*, 251 B.R. 86, 93-94 (9th Cir. BAP 2000), *aff'd*, 33 Fed. Appx. 365 (9th Cir. 2002) (final state court judgment was res judicata on amount of nondischargeable debt). Cf. *Comer v. Comer (In re Comer)*, 27 B.R. 1018, 1021 (9th Cir. BAP 1983),

Smith v. Lachter (In re Smith), 242 F.3d 694, 703-04 (9th Cir. BAP 1999).

[10] Sasson relies for support on *Gertsch v. Johnson & Johnson Fin. Corp. (In re Gertsch)*, 237 B.R. 160 (9th Cir. BAP 1999). In *Gertsch*, lender Johnson & Johnson Finance Corp. (“JJFC”) obtained a prepetition state court judgment against Dr. Gertsch for breach of contract. When Dr. Gertsch filed for bankruptcy, JJFC sought a declaration that the entire debt was nondischargeable under § 523(a)(2)(B) (fraudulent financial statement), and also prayed for the court to find Dr. Gertsch liable for damages. *Id.* at 164. The bankruptcy court granted summary judgment in favor of JJFC.¹⁸ It then entered a money judgment against Dr.

aff’d, 723 F.2d 737 (9th Cir. 1984) (“As a general proposition, bankruptcy courts are *not* free to disregard the prior judgments of other state and federal tribunals where the doctrines of res judicata or collateral estoppel would otherwise apply.”) (emphasis added).

Here, the bankruptcy court was not asked to apply collateral estoppel to the state court’s factual findings, because the breach of contract judgment was indisputably dischargeable debt. Instead, the court was asked to find the judgment debt nondischargeable based on Sasson’s post-judgment conduct, which was “willful and malicious” and by which he had, by violation of a court order, rendered the debt uncollectible. Thus, the bankruptcy court gave the state court judgment res judicata effect only with regard to the amount of the judgment.

¹⁸ The court thus determined the nondischargeability of the liquidated breach of contract debt by determining its nature. See *Archer v. Warner*, ___ U.S. ___, 123 S. Ct. 1462, 1466 (2003) (holding that claim preclusion did not prevent the bankruptcy court from looking behind a settlement agreement in order to decide whether the debt at issue was one for money obtained by fraud); *Brown v. Felsen*, 442 U.S. 127, 136 (1979) where a stipulation and consent decree settling a collection suit did not mention fraud, the bankruptcy court was not precluded from hearing evidence on the fraud claim); *Banks*, 263 F.3d at 869 (“While an action may seem to be non-fraud-based for state purposes, this does not foreclose a later determination by the bankruptcy court that what occurred was fraudulent and therefore nondischargeable”); *Comer v. Comer (In re Comer)*, 723 F.2d 737, 740 (9th Cir. 1984) (stating that res judicata does not apply to the bankruptcy court’s determination of the nature of the debt in a nondischargeability proceeding).

Gertsch, which included the base amount of the state court judgment plus accrued postjudgment interest.

On appeal, the BAP vacated and remanded for a clarification that the bankruptcy court had not entered an independent money judgment, but had merely determined the debt that was already established by the state court to be nondischargeable. *Id.* at 172. The BAP reasoned that two judgments for the same debt was [11] improper, and stated:

The judgment, prepared by JJFC, should have been more artfully worded to reflect that it was not creating a separate money judgment. The problems are more than merely theoretical. The state court has entered a judgment for \$1,157,574.96 according to proof acceptable to it. The bankruptcy court merely accepted that sum and added post-judgment interest through the date of its judgment, entering a judgment for \$1,373,867.02. In principle, the judgment debtor could return to the state court for relief from that judgment for reasons permitted by state law, and the state court could reduce the judgment debt. Were such reasons to exist, the separate federal money judgment, *not based upon any independent determination*, adds nothing but confusion. Moreover, it might give the plaintiff a windfall, by rolling post-judgment interest into the principal of the new federal money judgment, on which post-judgment interest runs, transmuting the state court post-judgment simple interest into compound interest. Where the debt at issue has been reduced to judgment, the bankruptcy court's judgment in a nondischargeability action should merely declare the prior judgment nondischargeable (or not) in whole or in part.

Id. at 172 (emphasis added).

The facts of our case merely require a common-sense application of existing law. Unlike *Gertsch*, the court here made an “independent determination” that a *new* claim arose, created by Sasson's prepetition, *postjudgment*, ma-

nipulative conduct. That conduct was willful and malicious under § 523(a)(6). In addition, like *Gertsch*, the *amount*, of the debt that the court then determined to be nondischargeable had already been determined by the state court judgment.¹⁹

Sasson also relies on *Smith*. In *Smith*, the creditors sought to have their claim, which was a lapsed Arizona state- [12] court judgment for breach of contract, declared nondischargeable under § 523(a)(2)(B). As in *Gertsch*, the bankruptcy court entered a new money judgment in favor of the creditors, which it calculated by taking the Arizona judgment principal amount, adding postjudgment interest at the state law rate, and deducting the debtor’s interest payments to date. *Smith*, 242 B.R. at 702. On appeal, the BAP held that the bankruptcy court was barred by the doctrine of res judicata from entering a new money judgment when there was already a fully litigated state court judgment. *Id.* at 703-04.

The *Smith* panel consistently emphasized that there were also prudential reasons for declining to enter a separate federal money judgment where the underlying state court judgment had not been renewed. The BAP stated: “The efficacy of Arizona judgments under these circumstances is a matter better left to the Arizona courts, without the added complication of a parallel federal judgment.” *Id.* at 704.

In *Smith*, the claim had previously been reduced to judgment in a proceeding in the Arizona Superior Court. In contrast, here, the underlying claim was Sasson’s *postjudgment* tortious conduct consisting of dissipating his assets and rendering the state court judgment uncollectible.

¹⁹ Federal law governs the dischargeability of debts, but, generally, nonbankruptcy law is applied to determine the existence, amount, and validity of a “claim” in bankruptcy. See *Cohen*, 523 U.S. at 218; *Roussos*, 251 B.R. at 92.

In the instant case, the bankruptcy court clearly had jurisdiction both to enter the 1991 Judgment of nondischargeability and to determine the amount of damages caused by Sasson's postjudgment conduct. Thus, we conclude that the bankruptcy court had complete jurisdiction to enter the 1991 judgment as to both § 523(a)(6) liability and the monetary [13] amount by which Sokoloff was harmed.

B. SASSON'S RULE 60(B)(4) ATTACK ON THE 1991 JUDGMENT

Sasson also maintains that, because the judgment debt had already been liquidated in state court, therefore the separate 1991 Judgment is void and should be vacated. Fed. R. Civ. P. 60(b)(4). In addition to the reasons for rejecting this argument previously set forth, we note this was a direct attack on the 1991 Judgment.²⁰ See *Watts v. Pinckney*, 752 F.2d 406, 410 (9th Cir. 1985). We conclude, based on the following analysis, that the 1991 Judgment was not void.

A "void" judgment is one "which from its inception was a complete nullity and without legal effect." *Audre, Inc. v. Casey (In re Audre, Inc.)*, 216 B.R. 19, 29 (9th Cir. BAP 1997). Thus, it is commonly acknowledged that a judgment is void if the rendering court lacked subject matter jurisdiction. *Watts*, 752 F.2d at 410; *Owens-Corning Fiberglas Corp. v. Cent. Wholesale, Inc. (In re Cent. Wholesale, Inc.)*, 759 F.2d 1440, 1448 (9th Cir. 1985). Nonetheless, the concept of "voidness" is subject to qualification "in light of every court's jurisdiction to determine its own jurisdiction." *Wetherbee v. Willow Lane, Inc. [14] (In re Bestway Prods., Inc.)*, 151 B.R. 530, 538 (Bankr. E.D. Cal. 1993), *aff'd mem.*, 165

²⁰ Moreover a Rule 60(b)(4) motion is an exception to the collateral attack doctrine to the extent it provides that a void judgment may be set aside at any time. See *United States v. Tittjung*, 235 F.3d 330, 335 (7th Cir. 2000). A Rule 60(b)(4) motion, grounded upon a void judgment, may be brought at any time and is not constrained by the "reasonableness" requirement. *Meadows v. Dom. Rep.*, 817 F.2d 517, 521 (9th Cir. 1987) (citing 11 C. Wright & A. Miller, *Federal Practice and Procedure*, § 2862 (1973) and *Bookout v. Beck*, 354 F.2d 823, 825 (9th Cir. 1965)).

B.R. 339 (9th Cir. BAP 1994). As noted in one prominent treatise:

[A] court has jurisdiction to determine its own jurisdiction. . . . a court's determination that it has jurisdiction of the subject matter is binding on that issue, if the jurisdictional question actually was litigated and decided, or if a party had an opportunity to contest subject-matter jurisdiction and failed to do so.

11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure: Civ. 2d* § 2862 (1992).

The Ninth Circuit recognizes that only an egregious jurisdictional error, not mere error, will render a final judgment void. *See Watts*, 752 F.2d at 409 (merely “erroneous” judgment is not void); *Tsafaroff v. Taylor (In re Taylor)*, 884 F.2d 478, 482 (9th Cir. 1989) (stay lift order entered after dismissal of both the bankruptcy case and the adversary proceeding was a “legal nullity”); *Center Wholesale*, 759 F.2d at 448 (to render a judgment void, a due process violation must be constitutional, “not merely statutory”).

This policy is rooted in the finality of judgments and the preclusive doctrine of *res judicata*. *See Stoll v. Gottlieb*, 305 U.S. 165, 171 (1938) (ruling that a federal judgment must be honored even “assuming that the Bankruptcy Court did not have jurisdiction of the subject matter”). “*Res judicata*” forecloses the “relitigation of matters that have once been litigated and decided.” 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure: Juris. 2d*, § 4402, at 7-8 (West Group 2002). “A lack of subject-matter jurisdiction does not of itself depreciate any of the central values of judicial [15] finality.” 18A C. Wright et al., *supra*, § 4428, at 10.

In our determination whether a court committed an actionable miscarriage of its jurisdiction, we are guided by the *Restatement (Second) of Judgments*:

In very limited circumstances a judgment in a contested action may be subsequently attacked for lack

of subject matter jurisdiction. As stated in § 12, it must appear that:

- (1) The subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority; or
- (2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or other agency of government; or
- (3) The judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have opportunity belatedly to attack the court's subject matter jurisdiction.

Id., § 69, comment (a) (1982).

Here, it is abundantly clear that the bankruptcy court had exclusive jurisdiction over the nondischargeability proceeding, and also had the authority to determine its own jurisdiction. See *Cal., State Bd. of Equalization v. Harleston (In re Harleston)*, 275 B.R. 546, 549 (9th Cir. BAP 2002); *Senoda v. Cabrera*, 189 F.3d 1047, 1050 (9th Cir. 1999) (federal courts have power and duty to examine their own jurisdiction).

Sasson had the opportunity to contest the court's subject matter jurisdiction in the proceeding leading to the entry of the 1991 Judgment. Therefore, any alleged erroneous determination by the bankruptcy court that it had jurisdiction to enter the monetary judgment did not render the 1991 Judgment [16] a nullity, because the bankruptcy court still had general subject matter jurisdiction of the proceeding. See 18 Wright et al., *supra*, § 4403 ("courts have repeatedly recognized that *res judicata* is not defeated by error in the initial judgment"). As a general rule, "a judgment entered by a federal court acting beyond its subject matter jurisdic-

tion remains eligible for res judicata effects if there is no other defect.” 18A Wright et al., *supra*, § 4427, at 5.

Because the bankruptcy court had core jurisdiction to determine a § 523(a)(6) challenge to the dischargeability of Sokoloff’s debt, its judgment was not “void” merely because of the method by which it calculated damages. It is well established law that “[i]f a second action is pursued to entry of a final judgment inconsistent with a prior judgment, the second judgment ordinarily prevails whether the res judicata effects of the first judgment were ignored by the parties or expressly rejected by the court in the second action.” 18 *Wright et al.*, *supra*, § 4404, at 60.

The policy against vacating final judgments for mere error” in the exercise of a court’s subject matter jurisdiction was illustrated in *Watts*. In that case, the district court had entered a judgment against an individual defendant even though the claim fell under exclusive admiralty jurisdiction and the remedy was solely against the United States. *Watts*, 752 F.2d at 407. After the district court granted the defendant’s motion to vacate the judgment against him, the plaintiff appealed, but the Ninth Circuit affirmed. It distinguished between an “error” in the exercise of jurisdiction which would *not* render a judgment [17] “void” versus “total want of jurisdiction over the claim,” which was the case there and which rendered the judgment void for purposes of Rule 60(b)(4). *Id.* at 409.

Another example is *Bestway Prods.*, 151 B.R. at 538, where the bankruptcy court determined that a chapter 7 discharge order, which had been entered in the corporate debtor’s previous bankruptcy case should be vacated. The court determined such error to be “egregious” because “no court has the power to grant such a discharge to a corporation under § 727(a)(1), and thus, jurisdiction was completely lacking. *Id.*

Here, even if one accepts Sassons argument that the bankruptcy court may have erred by entering a judgment that it was barred from entering, this fact did not divest the bankruptcy court of its jurisdiction to enter a money judg-

ment in such nondischargeability proceeding. Any perceived error was not so egregious as to render the 1991 Judgment void. The 1991 Judgment was therefore a valid and final judgment and was entitled to res judicata effect. See *Robertson v. Isomedix, Inc. (In re Intl'l Nutronics, Inc.)*, 28 F.3d 965, 969 (9th Cir. 1994) (res judicata requires a valid, final judgment on the merits).

In this respect, Sasson argues that this appeal should be governed by *Heckert v. Dotson (In re Heckert)*, 272 F.3d 253 (4th Cir. 2001), a Fourth Circuit case with similar facts. In *Heckert*, in 1983, the creditor obtained a wrongful termination judgment for \$7,000 against the debtor. In 1987, the debtor filed a chapter 7 bankruptcy. In 1988, on the creditor's complaint, the bankruptcy court entered an order which held that [18] the state court judgment was nondischargeable. The bankruptcy court also entered a money judgment for \$7,000 plus accrued interest at both the state and federal rate (accruing postpetition). *Heckert*, 272 F.3d at 256.

In 1996, after the state's ten-year period for executing on the state court's 1983 judgment had expired, the creditor attempted to execute on the 1988 federal judgment. As in the case at bar, the debtor in *Heckert* sought the bankruptcy court's protection by reopening the adversary proceeding and filing a motion to vacate the bankruptcy court's judgment as void and to quash the enforcement process. The bankruptcy court denied the motions, and its decision was affirmed by the district court.

The Fourth Circuit, however, reversed, holding that the bankruptcy court had initially exceeded its jurisdiction by entering its own money judgment to replace the state court judgment. *Heckert*, 272 F.3d at 257. The Court of Appeals concluded that such an act was barred by the doctrine of res judicata, because a "federal court, as a matter of full faith and credit, under 28 U.S.C. § 1738, must give a state court judgment the same preclusive effect as the courts of such State' would give." *Heckert*, 272 F.3d at 257. It explained that the bankruptcy court's error consisted both in its *de*

facto extension of the deadline for execution on the judgment from 1993 to 1998 (10 years after the federal judgment) and in allowing the debt to include the federal, rather than the state, interest rate.

We disagree with the result in *Heckert*. The Fourth Circuit did not appear to consider fully authority which would prohibit [19] a collateral attack on an original determination of subject matter jurisdiction, since the facts in *Heckert* concerned a direct attack on an order in a reopened case. *Heckert*, 272 F.3d at 256 (declining to apply *Chicot Co. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940)).

We do not believe the particular manner of challenge affects the validity of a judgment. A judgment can always be attacked directly; the law also allows a collateral attack when other factors outweigh the policy which traditionally favors finality. 13A Wright et al. *supra*, § 3536. However, the analysis of whether a judgment is void is the same in either type of challenge:

A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.

It must be noted, however, that a court has jurisdiction to determine its own jurisdiction. . . . a court's determination that it has jurisdiction of the subject matter is binding on that issue, if the jurisdictional question actually was litigated and decided, or if a party had an opportunity to contest subject-matter jurisdiction and failed to do so.

11 Wright et al., *supra*, § 2862 (footnotes omitted).

Additionally, although *Heckert* distinguished between direct and collateral attacks, and thus gave the bankruptcy court's judgment no res judicata effect, it nonetheless applied res judicata principles to vacate the bankruptcy court's judgment. It held that the bankruptcy court violated the Full Faith and Credit statute, 28 U.S.C. § 1738, by allowing

relitigation of the underlying claim. *Heckert*, 272 F.3d at 258-60.

The legal authorities, however, maintain that even errors [20] concerning the applicability of res judicata do not prevent the application of the finality doctrine. *See* 18 Wright et al., *supra*, § 4404, at 72. Thus, in the instant case, the 1991 judgment, wherein the bankruptcy court settled damages based upon the amount of the state court judgment, was itself entitled to res judicata effect, and such determination of damages stemming from Sasson's manipulative postjudgment conduct did not render the judgment void.

We therefore conclude that the bankruptcy court's entry of the 1991 monetary judgment, even if one accepts the argument that it was erroneous (which we do not), was not so egregious an error that it rendered the 1991 Judgment void. The bankruptcy court was correct, therefore, in holding that the 1991 Judgment was not subject to vacatur under Rule 60(b)(4).

C. BANKRUPTCY COURT CAN ENFORCE ITS JUDGMENT

Sasson also maintains that even if the bankruptcy court's judgment was valid, the bankruptcy court lacked jurisdiction to enforce the judgment since the case was closed years ago. Sasson argues that the enforcement proceedings must come within the court's "related to" jurisdiction in order for the court to entertain Sokoloff's collection activities, but that it cannot do so, since there is no longer an estate. *See* 28 U.S.C. § 1334(b).

The bankruptcy court determined that the enforcement of the 1991 Judgment proceeded properly under Rule 69. Rule 69 provides that the

[21] [p]rocess to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice

and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

Fed. R. Civ. P. 69(a)/Fed. R. Bankr. P. 7069.

Rule 69 is not jurisdictional, but merely incorporates the state law procedures for the enforcement of judgments entered in bankruptcy court. *See generally*, 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure: Civil 2d* § 3011 (1997). Therefore, the only issue before us is whether a judgment can be enforced once the underlying case has been administratively closed.

In our Circuit, we have held that a bankruptcy court has continuing jurisdiction to enforce its orders because such matters are “ancillary” to the judgment.²¹ *See Lawson v. Tilem (In re Lawson)*, 156 B.R. 43, 46 (9th Cir. BAP 1993). In *Lawson*, we explained that “[a]ctions are said to be ancillary to the original suit when brought in aid of an execution or to effectuate a judgment entered in the prior suit.” *Id.* Thus, given though, in *Lawson*, the bankruptcy case had been dismissed [22] and there was no longer a bankruptcy estate, we affirmed the bankruptcy court’s imposition of a lien to enforce its fee award.²²

²¹ Congress codified much of the common-law doctrine of ancillary jurisdiction as part of “supplemental jurisdiction” in 28 U.S.C. § 1367.

²² We are not bound by the following contrary case authority from other circuits, relied upon by Sasson: *Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1024 (5th Cir. 1999) (collection of a money judgment emanating

Lawson makes sense, regarding dischargeability judgments, from both legal and practical perspectives. Ancillary matters are “in effect a continuance of the original suit.” *Jones v. Nat’l Bank of Commerce of El Dorado*, 157 F.2d 214, 215 (8th Cir. 946) (relied upon by *Lawson*). A court having subject matter jurisdiction over the primary lawsuit will also have ancillary jurisdiction over dependent claims or enforcement proceedings subsequent to judgment. *See Peacock v. Thomas*, 516 U.S. 349, 355 (1996) (ancillary jurisdiction extends to claims that are dependent on the primary lawsuit, but there must be an independent basis for federal jurisdiction over the primary lawsuit); *Hamilton v. Nakai*, 453 F.2d 152, 156 (9th Cir. 1971) (a court’s subject matter jurisdiction includes the power to enforce its judgment).

Procedurally, Rule 69 governs all judgment enforcement activity during the life of the bankruptcy case so that it “remains under the supervision and control of the bankruptcy [23] court.” *Arneson v. Farmers Ins. Exchange (In re Arneson)*, 282 B.R. 883, 893 (9th Cir. BAP 2002). Rule 69 would be meaningless if it did not have application after administrative case dismissal or closure. *See* 12 Wright, Miller & Marcus, *supra*, § 3013 (stating in discussion of Rule 69 that “[t]he federal court has ancillary or supplemental jurisdiction for supplementary proceedings to enforce its judgment.”) *See also Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 905 (9th Cir. BAP 1999) (a bankruptcy court’s “arising under” jurisdiction to determine if a debt is excepted from discharge survives the dismissal or closing of the bankruptcy case).

from a bankruptcy case did not fall under the court’s ancillary jurisdiction because it was a “new and independent action”); *HOC, Inc. v. McAllister (In re McAllister)*, 216 B.R. 957, 965-66 (Bankr. N.D. Ala. 1998) (no jurisdiction to entertain a garnishment brought against a nonparty in a no-asset chapter 7 case); *Edwards v. Sieger (In re Sieger)*, 200 B.R. 636, 639 (Bankr. N.D. Ind. 1996) (bankruptcy court’s purpose and, thus, jurisdiction ends with the judgment declaring a debt to be nondischargeable).

Ancillary enforcement jurisdiction is a “creature of necessity.” *Peacock*, 516 U.S. at 359. Since there is no uniform body of federal law that deals with how a party can collect upon a federal judgment, Rule 69 simply engrafts a state court’s supplementary proceedings into the federal jurisdiction, providing a “fast and effective mechanism[] for execution.” *Id.* Thus, state procedures, such as debtors’ examinations, garnishment and execution can proceed via the Bankruptcy Clerk’s office and the U.S. Marshal in order for a litigant to enforce a federal judgment.

Practically, the enforcement system governed by Rule 69 also makes sense. A party is not required to take a federal judgment through a state court’s clerk, sheriff, or judicial bodies. Enforcement stays with the federal court that entered the judgment. Rule 69’s application is simple and easy in practice. Fewer technical problems manifest themselves in the enforcement arena, allowing courts familiar with the parties and [24] the reasons behind the judgment to more expeditiously deal with the details of a collection or procedural problem.

Therefore, we conclude that the bankruptcy court had ancillary jurisdiction to enforce the 1991 Judgment.

CONCLUSION

The bankruptcy court had jurisdiction to determine its jurisdiction and enter the monetary judgment, and any error in its analysis, or failure to give full faith and credit to the state court judgment, did not render the 1991 Judgment nonfinal or void. The bankruptcy court also had supplemental jurisdiction to enforce the 1991 Judgment through Rule 69 collection proceedings. The order denying Sasson’s motion to vacate the 1991 Judgment is therefore AFFIRMED.

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit
125 South Grand Avenue, Pasadena, California 91105
Appeals from Central California (626) 229-7220
Appeals from all other Districts (626) 229-7225

NOTICE OF ENTRY OF JUDGMENT

BAP No. NC-02-1410-MaMeP

RE: ROBERT SASSON

A separate Judgment was entered in this case on 5/27/03.

BILL OF COSTS:

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken.

9th Cir. BAP Rule 8014-1

ISSUANCE OF THE MANDATE:

The mandate, a certified copy of the judgment sent to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. See Federal Rule of Appellate Procedure 41.

APPEAL TO COURT OF APPEALS:

An Appeal to the Ninth Circuit Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. The Notice of Appeal should be accompanied by payment of the \$105 filing fee and a copy of the order or decision on appeal. Checks may be made payable to the U.S. Court of Appeals for the Ninth Circuit. See Federal Rules of Appellate Procedure 6 and the corresponding Rules of the United States Court of Appeals for the Ninth Circuit for specific time requirements.

42a

CERTIFICATE OF MAILING

The undersigned, deputy clerk of the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, hereby certifies that a copy of the document on which this stamp appears was mailed this date to all parties in interest as designated by the Appellant in the Notice of Appeal.

By: Edwina Clay

Deputy Clerk: May 27, 2003

APPENDIX D

[STAMP: FILED July 09 2002 Clerk
United States Bankruptcy Court
San Jose, California]

UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE JAMES R. GRUBE,
JUDGE

In Re :	)	Case No. 89-52300-JRG
)	
ROBERT SASSON,)	
)	
Debtor.)	
_____)	
SOKOLOFF,	)	A. P. No. 89-0358
)	
Plaintiff,)	
)	
v.	)	<u>DEFENDANT'S MOTION</u>
	)	<u>for VACATING JUDG-</u>
SASSON,	)	<u>MENT</u>
)	
Defendant.	)	Thursday, June 27, 2002
_____	)	San Jose, California

Appearances:

For the Movant:	Roberts & Elliott
	By: James Roberts, Attorney at
	Law
	10 Almaden Boulevard

44a

Suite 500
San Jose, California 95113
(408) 275-9800

Electronic Court Recorder: United States Bankruptcy Court
Clerk of the Court
Liz Armendariz
280 South First Street, Room 3035
San Jose, California 95113
(408) 535-5003

Certified Electronic Transcriber: Palmer Reporting Services
P. O. Box 30727
Stockton, California 95213-0727

Proceedings recorded by digital recording; transcript produced by federally-approved transcription service.

[2] Thursday, June 27, 2002

10:46 o'clock a.m.

PROCEEDINGS

THE: COURT: All right. Let' s take number 4.

THE CLERK: Number 4, Sokoloff versus Sasson.

MR. ROBERTS: Good morning, Your Honor. James Roberts for the movant.

THE COURT: Mr. Roberts, I do not agree with you. The difference is that what we have here is not a state court judgment. I don't think the state court judgment has anything to do with this. There was a state court judgment. The state court judgment was *res judicata* really as to only one thing, I believe, at the time. And that is the amount of the claim.

In other words, the claim could not be higher than that, and nobody could argue that the claim was lower because the judgment fixed the amount of the claim as a general proposition.

But absent a lawsuit brought in this Court, that obligation would have been discharged in the bankruptcy. And the lawsuit in this Court is to determine whether or not the judgment is discharged by the bankruptcy. It is not a related-to judgment; it's an arising-under judgment. It's arising under a specific provision of Title 11.

MR. ROBERTS: I agree with parts of what you're saying, and not with other parts, Your Honor.

THE COURT: Okay.

[3] MR. ROBERTS: Okay. The part—

THE COURT: You're free to disagree.

MR. ROBERTS: The part that I agree with is that the judgment that was rendered was as to the issue of dischargeability. And the dischargeability is as to the existing judgment. There cannot be—

THE COURT: No, it's not as to the existing judgment because, in a dischargeability action, I mean—most of the time it is, but it doesn't have to be—because, at least hypothetically, if you had a judgment in a state court that resulted out of two parts of a transaction or something, and I decided hypothetically, again, that one part was fraudulent and the other part was negligence or something that is dischargeable, then the dischargeability judgment could be different from the state court judgment. It couldn't be more, but it could be less if you had two different kinds of conduct and one was dischargeable and the other was not.

MR. ROBERTS: The reason that that fails, Your Honor, is that results in two judgments, and that is not possible. You cannot have a state court judgment and a federal court judgment arising from the same transaction.

Either—one of two things happens—either the—federal court has the ability to the charge—to determine the dischargeability as the existing state court judgment, or the state court judgment is merged into the federal judgment.

[4] There is no process to allow for merger of the state court judgment in the federal judgment.

THE COURT: See, I—

MR. ROBERTS: So there's only one possible result because you cannot have two judgments for the same dollar amounts.

THE COURT: My view is that this is a federal judgment, that the state court judgment just doesn't matter. I mean, it has some applicability *res judicata* as to the amount of the claim, for example. Since the Supreme Court decision in *Grogan versus Garner*, I can granted summary judgment on a dischargeability case—

MR. ROBERTS: Yes.

THE COURT: —on a state court judgment. Before the Supreme Court decided that case I could not, because the standard of proof in the state court was preponderance of the evidence, and the standard proof for dischargeability was clear and convincing evidence, so I had to retry everything.

MR. ROBERTS: Well, again,—

THE COURT: And a lot of these cases I try have no state court judgment. I mean, they're just—

MR. ROBERTS: Well, there's a huge difference, that they're—

THE COURT: There's a pending claim.

MR. ROBERTS: As the cases make it a huge distinction, [5] as I'm sure you went through them, if there is no state court judgment the federal court here has the right to liquidate a dollar amount for the transaction.

THE COURT: That's true.

MR. ROBERTS: If there—if there's an existing state court judgment, the only issue is dischargeability of the existing state court judgment.

THE COURT: I—No, I disagree with that—

MR. ROBERTS: Okay.

THE COURT: —under the example I just gave you. If you had somehow in the state court sort of two damage

claims that that judgment covered and one was negligence, part of it was negligence, that would be dischargeable. And if the other part of it was, say, hypothetically fraud, that could be nondischargeable. So I don't think, as a matter of law, the whole state court judgment goes up or down together.

MR. ROBERTS: Okay. Again, Your Honor, the failure of that is it results in two enforceable judgment at the same time, and that is not possible.

THE COURT: No, because a state court judgment, I don't believe, is enforceable.

MR. ROBERTS: And what makes it unenforceable?

THE COURT: The debtor's discharge in bankruptcy.

MR. ROBERTS: "The debtor's discharge in bankruptcy." All right. Well, we can disagree.

[6] THE COURT: In other words, when a debtor gets a discharge, every single state court judgment out there, whatever it is for—well, that's probably too broad. If it's some kind of a judgment for taxes, taxes pass through bankruptcy under 523 automatically. And so that's probably too broad a statement.

But other than some kind of judgment that is automatically nondischargeable, it would be like taxes, or support, or something like that, it would automatically pass through. They're all discharged. If you have a fraud judgment in the state court, if you have a willful and malicious injury in the state court, it's discharged unless I find under 523 that it's not.

MR. ROBERTS: Well, except that that's what happened here, is that the issue was the dischargeability of that judgment.

THE COURT: No. The interest was—was the dischargeability of what underlay that judgment of the debtor's conduct. In other words, the debtor's conduct has to make it nondischargeable.

MR. ROBERTS: Well, actually Your Honor, as you recall, the findings of fact in this case it was a conduct that came after the judgment that resulted in the nondischargeability.

THE COURT: Well, I'm not here to retry it, because—

MR. ROBERTS: But—but—

[7] THE COURT: —that's a final judgment.

MR. ROBERTS: No, but your finding of facts that's in this, case, the one that we've reopened, were that the conduct that resulted in nondischargeability took place after the judgment. That's what the findings of fact were in this matter.

THE COURT: Okay. I don't—

MR. ROBERTS: Because of the fact —

THE COURT: I'm not here to debate that,—

MR. ROBERTS: Okay.

THE COURT: —because that's a final judgment, and it's what—it is what is. You and I disagree about what is.

MR. ROBERTS: Okay.

THE COURT: I think it is a federal judgment. It is enforceable as a federal judgment. Rule 69 says you can use any federal tools that are available to you to enforce that judgment.

You can also use any enforcement tools that exist in the state in which the federal court is located to enforce that judgment. And that's the judgment that's being enforced, my judgment, not the judgment out of state court.

MR. ROBERTS: Well, I understood that part. On that we have no disagreement. They're currently enforcing this judgment.

THE COURT: He's enforcing this judgment. I don't have any authority that this judgment has expired. As far as I [8] know it is still a good judgment and they're free to enforce it.

MR. ROBERTS: Okay.

THE COURT: Okay?

MR. ROBERTS: Thank you.

THE COURT: Thank you very much. For that reason
the motion is denied.

MR. ROBERTS: Thank you.

THE COURT: Thank you.

(The hearing concluded at 10:53 a.m.)

State of California)
) SS.
County of San Joaquin)

I, Nancy Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify I am not a party to nor in any way interested in the outcome of this matter.

I am a Certified Electronic Reporter and Transcriber through the American Association of Electronic Reporters and Transcribers, Certificate No. 00121. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.

/s/ _____
Nancy Palmer
Palmer Reporting Services
Dated July 2, 2002

State of California)
) SS.
County of San Joaquin)

I, George Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I am a Certified Electronic Reporter through the American Association of Electronic Reporters and Transcribers, Certificate No. 00222. I further certify I am not a party to nor in any way interested in the outcome of this matter. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.

/s/ _____
George Palmer
Palmer Reporting Services
Dated July 2, 2002

APPENDIX E

[STAMP: FILED 02 JUL 29 PM 2:39
U.S. BANKRUPTCY COURT NORTHERN DIST. OF CA.
SAN JOSE]

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JAMES K. ROBERTS, ABN 98804
Attorneys for Debtor/Defendant

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re)	
	)	CHAPTER 7
ROBERT SASSON,	)	CASE NO. 89-52300 JRG
	)	(Original number
Debtor.	)	5-89-02300 JRG)
)	
<hr/> NORMAN F. SOKOLOFF,	)	A.P. NO. 890358
M.D., individually and as)	
Trustee for CAMELOT	)	ORDER DENYING
MEDICAL GROUP, INC.,	)	MOTION FOR ORDER
PROFIT SHARING PLAN,	)	VACATING JUDG-
	)	MENT, ETC.
Plaintiff,)	
<i>v.</i>)	
)	
ROBERT SASSON,)	
)	
Defendant.)	
<hr/>)	

The motion of debtor ROBERT SASSON for order vacating judgment, etc. came on regularly for hearing on June 27, 2002. Appearing for the debtor was JAMES K. ROBERTS. There was no appearance by NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN.

[2] The papers having been considered, and argument made, good cause appearing,

THE MOTION IS DENIED.

DATED: July 29, 2002

/s/ _____

JAMES R. GRUBE

Judge of the Bankruptcy
Court