2017 WL 34515
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See Fed. Rule of Appellate Procedure 32.1
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decisions issued on or after Jan. 1, 2007.
See also U.S.Ct. of App. 9th Cir. Rule 36-3.
United States Court of Appeals,
Ninth Circuit.

In re: Cristie Tolotti, Debtor,
Seaboard Produce Distributors, Inc., Appellant,
v.
Cristie Tolotti, Appellee.

No. 14-60067
|
Argued and Submitted October
5, 2016 Pasadena, California
|
Filed January 04, 2017

Appeal from the Ninth Circuit Bankruptcy Appellate Panel, Kirscher, Pappas, and Taylor, Bankruptcy Judges, Presiding, BAP No. 14-1019

Attorneys and Law Firms

Bret Anderson, Joshua S. Hopstone, Attorney, Ferguson Case Orr Paterson LLP, Ventura, CA, for Appellant

Michael Jay Berger, The Law Offices of Michael Jay Berger, Beverly Hills, CA, for Appellee

Before: PREGERSON, KOZINSKI [*] and PAEZ, Circuit Judges.

[*] Following argument in this case, Judge Kozinski was drawn to replace Judge Noonan.

MEMORANDUM [**]

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

***1 1.** Section 523(a)(6) of the Bankruptcy Code prevents the discharge of debts arising from a debtor's "willful and malicious injury" to the property of another. 11 U.S.C. § 523(a)(6). Relying on the California Superior Court's determination that Tolotti "acted deliberately, willfully, and intended to cause injury to Plaintiff's security and impede Plaintiff from obtaining physical possession of the property," the bankruptcy court held that Tolotti's debt wasn't dischargeable. Because we are "in as good a position as the BAP to review the decision of the bankruptcy court, we review the bankruptcy court's decision independently," In re Nourbakhsh, 67 F.3d 798, 800 (9th Cir. 1995) (per curiam), and affirm.

For collateral estoppel to apply, five factors must be met: (1) the issue sought to be precluded "must be identical to that decided in a former proceeding"; (2) the issue must have been "actually litigated" in the former proceeding; (3) the issue must have been "necessarily decided" in the former proceeding; (4) the decision in the former proceeding must be "final and on the merits"; and (5) the party against whom preclusion is sought must be "the same as, or in privity with," the party to the former proceeding. Lucido v. Superior Court of Mendocino Cty., 51 Cal.3d 335, 272 Cal.Rptr. 767, 795 P.2d 1223, 1225 (1990) (citations omitted).

The bankruptcy court properly applied collateral estoppel in this case. There is no dispute that the fourth and fifth factors—whether the parties are the same and the prior decision was final and on the merits—are met here. The issues presented in state court were identical to those presented to the bankruptcy court. In fact, the parties stipulated to litigate their claims in state court "in order to avoid potentially duplicative litigation ... and/or inconsistent results that could arise should this matter be litigated in bankruptcy Court." The default judgment entered in state court satisfies the "actually litigated" requirement. See In re Harmon, 250 F.3d 1240, 1246 (9th Cir. 2001). Assuming that Tolotti hasn't waived the right to challenge whether the issue was "necessarily decided," this requirement is met so long as the issue was not "entirely unnecessary" to the judgment. Lucido, 272 Cal.Rptr. 767, 795 P.2d at 1226. This prong of the collateral estoppel test is most salient when there are no express findings. See In re Harmon, 250 F.3d at 1248 ("[T]he express finding requirement can be waived if the court in the prior proceeding necessarily decided the issue...."). But the state court expressly found that Tolotti

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"acted deliberately, willfully, and intended to cause injury to Plaintiff's security."

2. The bankruptcy court properly determined that "[a]pplication of the doctrine of collateral estoppel in this case will further the public policy interest of preserving the integrity of the judicial system, promoting judicial economy, and protecting litigants from harassment by vexatious litigation." See In re Baldwin, 249 F.3d 912, 919–20 (9th Cir. 2001) (quoting Lucido, 272 Cal.Rptr. 767, 795 P.2d at 1227).

***2** The decision of the bankruptcy court is **AFFIRMED.**

All Citations

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