

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 15 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: SHMUEL ERDE,

No. 19-60063

Debtor.

BAP No. 19-1023

MEMORANDUM*

SHMUEL ERDE,

Appellant,

v.

THEODOR NICKOLAS BODNAR; et al.,

Appellees.

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Spraker, Taylor, and Lafferty, Bankruptcy Judges

Submitted December 2, 2020**

Before: WALLACE, CLIFTON, and BRESS, Circuit Judges.

Chapter 11 debtor Shmuel Erde appeals pro se from the Bankruptcy

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

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

Appellate Panel’s (“BAP”) decision affirming the bankruptcy court’s order denying his motion brought under Federal Rule of Civil Procedure 60(b)(4). We have jurisdiction under 28 U.S.C. § 158(d). We review de novo the bankruptcy court’s conclusions of law and for clear error its findings of fact. *Decker v. Tramiel (In re JTS Corp.)*, 617 F.3d 1102, 1109 (9th Cir. 2010). We affirm.

The bankruptcy court properly denied Erde’s Rule 60(b)(4) motion because the issues set forth in the motion were actually litigated and decided in prior actions among the parties that resulted in final adjudication on the merits, or could have been raised in the prior actions. *See* Fed. R. Bankr. P. 9024 (making Rule 60 applicable to bankruptcy cases); *Howard v. City of Coos Bay*, 871 F.3d 1032, 1040-42 (9th Cir. 2017) (requirements for issue preclusion under federal law); *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713-14 (9th Cir. 2001) (requirements for claim preclusion under federal law); *see also Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 745 (9th Cir. 2006) (standard of review for application of issue preclusion and claim preclusion).

We reject as without merit Erde’s contention that the BAP erred by denying his request for publication.

All pending motions and requests are denied.

AFFIRMED.