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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA

8  
9 DONALD BRADFORD STARK,  
10 Appellant,  
11 vs.  
12 BARBARA STARK, et al.,  
13 Appellees.  
14

1:07-cv-01366 OWW

ORDER ON BANKRUPTCY APPEAL  
(DOC. 1)

15 I. INTRODUCTION.

16 This is an appeal from a final judgment of the United States  
17 Bankruptcy Court for the Eastern District of California on August  
18 31, 2007 granting summary judgment in favor of Plaintiffs and  
19 Appellees Barbara Stark, Elizabeth Stark, and Susan Tsapanos on  
20 their nondischargeability claim. The bankruptcy court ruled that  
21 a default judgment entered by a California probate court on May  
22 3, 2006 is a nondischargeable debt under 11 U.S.C. § 523(a)(4)  
23 based on the doctrine of collateral estoppel. In so ruling, the  
24 court gave preclusive effect to the probate court's findings that  
25 Defendant and Appellant Donald Bradford Stark had fraudulently  
26 misappropriated trust funds while acting as Trustee of the  
27 Richard E. Stark, Jr. Testamentary Trust (the "Stark Trust").

28 Appellant contends that the bankruptcy court erred in

1 applying collateral estoppel to the probate court's findings of  
2 fact and conclusions of law because the probate court judgment is  
3 void under California law. Appellant argues the probate court  
4 judgment is void because the damages awarded by default judgment  
5 exceed the amount of damages originally pled in the probate  
6 petition in violation of California Code of Civil Procedure §  
7 580. He further argues the bankruptcy court improperly gave  
8 preclusive effect to the probate court's findings and conclusions  
9 without determining the validity of the probate court judgment.

10 Appellees respond that Appellant's arguments amount to an  
11 improper collateral attack and that this court lacks jurisdiction  
12 to review the validity of the probate court judgment under the  
13 *Rooker-Feldman* doctrine. In the alternative, Appellees argue the  
14 probate court judgment is valid pursuant to the California  
15 Probate Code and California Code of Civil Procedure § 580 does  
16 not apply. Appellees also contend that the bankruptcy court  
17 properly applied the doctrine of collateral estoppel to the  
18 probate court judgment.

## 19 20 II. ISSUES PRESENTED.

21 Did the bankruptcy court err in applying collateral estoppel  
22 to the probate court judgment and determining that the probate  
23 court's findings that Donald Stark committed breaches of trust  
24 and financial abuse as Trustee of the Stark Trust entitled  
25 Appellees to judgment as a matter of law on their  
26 nondischargeability claim brought under 11 U.S.C. § 523(a)(4)?

## 27 28 III. BACKGROUND.

1 Appellant Donald Bradford Stark served as Trustee of the  
2 Stark Trust from January 1984 to March 2006. On January 27,  
3 1996, Appellee Barbara Stark filed a petition to compel an  
4 accounting, to remove the Appellant as Trustee, to surcharge the  
5 Appellant, and for elder financial abuse. (Doc. 8, Appellant's  
6 Excerpts of the Record ("ER") at 10-17.) The petition, which was  
7 served on the Appellant, requested removal of the Appellant as  
8 Trustee and various forms of financial relief. The petition did  
9 not state a specific amount for any of the damages requested.  
10 The Appellant did not respond to the petition.

11 After a hearing where the Appellant did not appear, the  
12 Tulare County Superior Court issued an order removing the  
13 Appellant as Trustee, ordering him to either prepare and file an  
14 account of his trust administration or appear and show cause why  
15 he had not done so, and setting an evidentiary hearing for April  
16 5, 2006 on Petitioner's request that Donald Stark "be surcharged  
17 and for punitive and exemplary damages and costs of suit." (ER  
18 at 18-19.) The order, which was served on the Appellant, did not  
19 state a specific amount for any of the monetary damages which  
20 would be at stake at the hearing.

21 The Appellant did not file an accounting nor did he appear  
22 at the April 5 hearing. On May 3, 2006, the Tulare County  
23 Superior Court found by clear and convincing evidence that  
24 Appellant had committed: 1) breaches of trust within the meaning  
25 of Probate Code Section 16400, 2) financial abuse within the  
26 meaning of Welfare & Institutions Code Section 15610.30, and 3)  
27 was guilty of recklessness, oppression, fraud or malice in the  
28 commission of the abuse within the meaning of Welfare &

1 Institutions Code Section 15657(a). (ER at 32-37.) The probate  
2 court entered judgment in favor of the Appellees and against the  
3 Appellant on May 3, 2006, awarding the Appellees: \$1,516,000.00  
4 to redress breaches of trust the court found to have occurred,  
5 \$137,376.00 for lost income, and punitive damages of \$412,128.  
6 (ER at 32-39.)

7 On October 28, 2006, six days short of the maximum of six  
8 months permitted by applicable state law for the filing of such a  
9 motion, the Appellant filed a motion for relief from the probate  
10 court judgment based on mistake, inadvertence or excusable  
11 neglect pursuant to California Code of Civil Procedure § 473.  
12 The Superior Court denied the Appellant's motion on the dual  
13 grounds that the motion was untimely because, although filed  
14 within six months, it was not filed within a reasonable time as  
15 required by applicable state law, and the Appellant had not shown  
16 mistake, inadvertence, surprise or excusable neglect. (ER at  
17 40-41.) The Appellant filed an untimely appeal from the Probate  
18 Court order denying his motion for relief in the California Court  
19 of Appeal, Fifth Appellate District, which was dismissed on June  
20 14, 2007 "as abandoned" after failure to respond to an order of  
21 the court. (ER at 42.)

22 After Appellant filed a voluntary Chapter 11 petition in the  
23 bankruptcy court, Appellees filed a complaint in the Chapter 11  
24 proceeding seeking a determination that the probate judgment was  
25 a nondischargeable debt under 11 U.S.C. § 523(a)(4). Appellees  
26 then moved for summary judgment on the ground that the probate  
27 court's findings and conclusions determined that the Appellant  
28 had committed breaches of trust sufficient to meet the

1 requirements of § 523(a)(4) and to make the debt  
2 nondischargeable. Appellees argued the bankruptcy court was  
3 bound by the probate court's factual determinations under the  
4 doctrine of collateral estoppel.

5 Appellant opposed summary judgment on the grounds that the  
6 probate court judgment was invalid. He did not contest the  
7 application of collateral estoppel or in any way challenge the  
8 probate court findings. He conceded the facts asserted in  
9 support of the motion. The bankruptcy court granted summary  
10 judgment that the debt was nondischargeable after determining  
11 that the probate court judgment was entitled to issue preclusive  
12 effect and that the factual findings of the probate court met the  
13 requirements of 11 U.S.C. § 523(a)(4). (ER at 57-67.)

#### 14 15 IV. STANDARD OF REVIEW.

16 The bankruptcy court's decision granting summary judgment  
17 under Fed. R. Civ. P. 56, made applicable to the bankruptcy  
18 proceedings by Bankruptcy Rule 7056, is reviewed de novo. In  
19 viewing the facts in the light most favorable to the nonmoving  
20 party, the district court must determine whether there is a  
21 genuine issue of material fact and whether the moving party is  
22 entitled to judgment as a matter of law. *In re R&T Roofing*  
23 *Structures & Commercial Framing, Inc.*, 887 F.2d 981 (9th Cir.  
24 1989); *In re Cal. Cannery & Growers*, 62 B.R. 18 (Bankr. Fed. App.  
25 1986).

1 V. DISCUSSION.

2 A. The Rooker-Feldman Doctrine.

3 "The *Rooker-Feldman* doctrine is a well-established  
4 jurisdictional rule prohibiting federal courts from exercising  
5 appellate review over final state court judgments." *Reusser v.*  
6 *Wachovia Bank, N.A.*, 525 F.3d 855, 858-59 (9th Cir. 2008) (citing  
7 *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir. 2007)).  
8 Appellees argue that the *Rooker-Feldman* doctrine applies to bar  
9 Appellant's contention that the probate court judgment is void  
10 because this amounts to an improper collateral attack in a lower  
11 federal court on the validity of a final state court judgment.  
12 In *Rooker* and *Feldman*, the losing party in state court filed suit  
13 in federal court after the state proceedings ended, complaining  
14 of an injury caused by the state-court judgment and seeking  
15 review and rejection of that judgment. Plaintiffs in both cases  
16 alleged federal-question jurisdiction and called upon the  
17 district court to overturn an injurious state-court judgment.  
18 The district courts in *Rooker* and *Feldman* were found to lack  
19 subject-matter jurisdiction because 28 U.S.C. § 1257 vests  
20 authority to review a state court's judgment solely in the U.S.  
21 Supreme Court. See *Verizon Md. Inc.*, 535 U.S. at 644 ("The  
22 *Rooker-Feldman* doctrine merely recognizes that 28 U.S.C. § 1331  
23 is a grant of original jurisdiction, and does not authorize  
24 district courts to exercise appellate jurisdiction over  
25 state-court judgments, which Congress has reserved to this Court,  
26 see § 1257(a).").

27 In *Rooker*, the losing party in the state court case  
28 requested that the federal district court declare the state court

1 judgment void. The Supreme Court explained that if the state  
2 court decision was wrong, "that did not make the judgment void,  
3 but merely left it open to reversal or modification in an  
4 appropriate and timely appellate proceeding." *Id.* at 415.  
5 Federal district courts, the *Rooker* Court recognized, lacked the  
6 requisite appellate authority, for their jurisdiction was  
7 "strictly original." *Id.* at 416. Among federal courts, the  
8 *Rooker* Court clarified, Congress had empowered only the Supreme  
9 Court to exercise appellate authority "to reverse or modify" a  
10 state-court judgment. *Id.* A federal action that is a de facto  
11 appeal from a state court judgment cannot be maintained.  
12 *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004)  
13 (citing *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir.  
14 2003)). A federal action constitutes a de facto appeal where  
15 "claims raised in the federal court action are 'inextricably  
16 intertwined' with the state court's decision such that the  
17 adjudication of the federal claims would undercut the state  
18 ruling or require the district court to interpret the application  
19 of state laws or procedural rules." *Bianchi*, 334 F.3d at 898.  
20 In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544  
21 U.S. 280 (2005), the Supreme Court clarified that the *Rooker-*  
22 *Feldman* doctrine "is confined to cases of the kind from which the  
23 doctrine acquired its name: cases brought by state-court losers  
24 complaining of injuries caused by state-court judgments rendered  
25 before the district court proceedings commenced and inviting  
26 district court review and rejection of those judgments.  
27 *Rooker-Feldman* does not otherwise override or supplant preclusion  
28 doctrine or augment the circumscribed doctrines that allow

1 federal courts to stay or dismiss proceedings in deference to  
2 state-court actions."

3 The *Rooker-Feldman* doctrine is specifically applicable to  
4 the instant case. Here the federal action was initiated by the  
5 state court loser seeking to avoid responsibility for the state  
6 court judgment. The state court winners filed a complaint in the  
7 bankruptcy court to have the debt of the state court judgment  
8 declared nondischargeable. Appellant, who lost in the probate  
9 court, seeks to avoid nondischargeability by his defense in the  
10 bankruptcy adversary proceeding that the state court judgment is  
11 void. The Ninth Circuit has recognized that "[t]he clearest case  
12 for dismissal based on the *Rooker-Feldman* doctrine occurs when a  
13 federal plaintiff asserts as a legal wrong an allegedly erroneous  
14 decision by a state court, and seeks relief from a state court  
15 judgment based on that decision." *Henrichs*, 474 F.3d at 613.

16 The facts in *Reusser* are very close to this case. There,  
17 the appellant debtor was defaulted in Oregon state court and a  
18 motion to set aside the state court default judgment for  
19 insufficient notice of intent to seek default judgment and  
20 failure of the creditor to tell the state court judge the debtors  
21 contested the merits of a foreclosure was denied. The *Reusser*  
22 court further held that a jurisdictional challenge to the  
23 bankruptcy court's foreclosure judgment failed because the  
24 bankruptcy court had in rem jurisdiction based on the real  
25 property before it and was binding on the case. As a disguised  
26 de facto attack on the state court's judgment and decision,  
27 Appellant's jurisdictional claim under state law is barred. The  
28 bankruptcy court correctly applied the *Rooker-Feldman* doctrine in



1 declining to consider the validity of the state court judgment.

2  
3 B. Application of Collateral Estoppel.

4 The Supreme Court has held that "collateral estoppel  
5 principles do specifically apply in bankruptcy discharge  
6 exception proceedings pursuant to § 523(a)." *Grogan v. Garner*,  
7 498 U.S. 279, 284 (1991). In addition, 28 U.S.C. § 1738 requires  
8 federal courts, as a matter of full faith and credit, to apply  
9 the pertinent state's collateral estoppel principles. *In re*  
10 *Nourbakhsh*, 67 F.3d 798, 800 (9th Cir. 1995). Under California  
11 law, collateral estoppel only applies if certain threshold  
12 requirements are met:

13 First, the issue sought to be precluded from  
14 relitigation must be identical to that decided in a  
15 former proceeding. Second, this issue must have been  
16 actually litigated in the former proceeding. Third, it  
17 must have been necessarily decided in the former  
18 proceeding. Fourth, the decision in the former  
19 proceeding must be final and on the merits. Finally,  
20 the party against whom preclusion is sought must be the  
21 same as, or in privity with, the party to the former  
22 proceeding.

23 *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citation  
24 omitted).

25 The fact that "judgment was secured by default does not  
26 warrant the application of a special rule." *Williams v.*  
27 *Williams*, 36 Cal.2d 289, 293 (1950). California law does,  
28 however, place two limitations on this general principle. The  
first is that collateral estoppel applies only if the defendant  
"has been personally served with summons or has actual knowledge  
of the existence of the litigation." *In re Harmon*, 250 F.3d at  
1247 (quoting *Williams*, 223 P.2d at 254). Collateral estoppel,

1 therefore, only applies to a default judgment to the extent that  
2 the defendant had actual notice of the proceedings and a "full  
3 and fair opportunity to litigate." *Id.* at 1247 n. 6.

4 The second limitation, in the context of a default judgment,  
5 is that a decision has a preclusive effect in later proceedings  
6 "only where the record shows an express finding upon the  
7 allegation" for which preclusion is sought. *Williams*, 36 Cal.3d  
8 at 254. But "the express finding requirement can be waived if  
9 the court in the prior proceeding necessarily decided the issue."  
10 250 F.3d at 1248. In such circumstances, an express finding is  
11 not required because "if an issue was necessarily decided in a  
12 prior proceeding, it was actually litigated." *Id.*

13 Appellant does not argue that collateral estoppel principles  
14 do not apply; in fact, he concedes that if the probate court  
15 judgment is not void, the bankruptcy court was required to give  
16 it issue preclusive effect. The five requirements of California  
17 collateral estoppel law must be analyzed. The first issue is  
18 whether the issues in the probate court proceeding and the  
19 bankruptcy proceeding are identical. If a state court "should  
20 determine factual issues using standards identical to those in [§  
21 523], then collateral estoppel...would bar relitigation of those  
22 issues in the bankruptcy court." *Brown v. Felsen*, 442 U.S. 127,  
23 139 (1979).

24 There are two issues under § 523(a)(4): whether the debtor  
25 incurred the debt by committing fraud or defalcation and whether  
26 the fraud was in relation to the debtor's fiduciary  
27 responsibilities. *Bugna v. McArthur*, 33 F.3d 1054 (9th Cir.  
28 1994). The probate court found Appellant committed breaches of

1 trust within Probate Code section 16400 and financial abuse under  
2 Welfare & Institutions Code Section 15610.30 while acting as  
3 Trustee of the Stark Trust. This meets the two requirements  
4 under § 523(a)(4) that the debt arose out of the Trustee's breach  
5 of fiduciary duty, actual and constructive fraud and that the  
6 debts arose out of Appellant's fiduciary responsibility. The  
7 bankruptcy court correctly found these issues were identical.

8 Second, whether the judgment was actually litigated, the  
9 probate court entered a default judgment after notice Appellant  
10 failed to respond to the probate petition and failed to appear at  
11 two hearings, including an evidentiary hearing. Appellant was  
12 admittedly served with the probate petition and the notices and  
13 orders for each of the probate court hearings. It is evident he  
14 had notice of and opportunity to be heard because he filed, but  
15 later abandoned, a state court appeal from the probate court  
16 judgment. Appellant failed to pursue the appeal he filed from  
17 the probate court judgment in the California Court of Appeals for  
18 the Fifth Appellate District, which the state appeals court found  
19 was abandoned. Appellant had more than sufficient notice and  
20 numerous opportunities to be heard in the probate case. He now  
21 attempts to raise in federal court an argument about validity of  
22 the judgment based on state substantive and procedural law an  
23 argument which he had the opportunity to, should have raised, but  
24 abandoned in state appellate court.

25 Third, the issue of Appellant's fraud as Trustee was  
26 necessarily decided in the probate court judgment because his  
27 defalcations arose from his role as a trustee over which the  
28 probate court had subject matter jurisdiction. The court issued

1 specific findings and conclusions after an evidentiary hearing  
2 that determined Appellant committed breaches of trust, financial  
3 abuse and "recklessness, oppression, fraud, or malice" under  
4 relevant state law.

5 Fourth, the decision in the probate court was final and on  
6 the merits. The probate court entered judgment the same day it  
7 issued its findings and conclusions and Appellant abandoned his  
8 appeal of the judgment to the state appellate court. The probate  
9 court judgment, though entered as a default judgment, was on the  
10 merits as outlined in *Williams* because the record shows express  
11 findings upon the allegation for which preclusion is sought.  
12 After expiration of time for appeal to the California Supreme  
13 Court and United States Supreme Court, the state probate court  
14 judgment became final.

15 Fifth, the parties in the probate proceeding - Donald  
16 Bradford Stark and Barbara Stark - are identical to those in the  
17 bankruptcy proceeding, where Barbara Stark and successor  
18 co-trustees Elizabeth Stark and Susan Tsapanos are plaintiffs and  
19 Donald Stark is the named defendant.

20  
21 VI. CONCLUSION.

22 For all the foregoing reasons, the judgment of the  
23 bankruptcy court is AFFIRMED.

24  
25  
26 IT IS SO ORDERED.

27 Dated: September 28, 2009 /s/ Oliver W. Wanger  
28 UNITED STATES DISTRICT JUDGE