

IN THE UTAH COURT OF APPEALS

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Joseph Billings,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20091000-CA
v.)	
)	
<u>Paul James Toscano; Paul</u>)	F I L E D
<u>Toscano, PC; and Does 1-50,</u>)	(December 30, 2010)
)	
Defendants and Appellees.)	2010 UT App 389

Third District, Salt Lake Department, 090907164
The Honorable Denise P. Lindberg

Attorneys: Joseph Billings, Shanghai, China, Appellant Pro Se
Peter W. Guyon, Salt Lake City, for Appellees

Before Judges Orme, Thorne, and Christiansen.

CHRISTIANSEN, Judge:

Plaintiff Joseph Billings challenges the district court's grant of summary judgment on all of his claims against defendants Paul James Toscano and Paul Toscano, PC (collectively, Toscano). We affirm.

Billings raises two issues on appeal, both concerning a chapter 7 bankruptcy proceeding (the bankruptcy action). See generally In re Antoinette Billings, No. 08-22447 (Bankr. Utah filed April 17, 2008). "We review a district court's decision to grant summary judgment for correctness, granting no deference to the district court's conclusions, and we view the facts and all reasonable inferences in the light most favorable to the nonmoving party." Bodell Constr. Co. v. Robbins, 2009 UT 52, ¶ 16, 215 P.3d 933.

Billings first contends that the district court erred in granting summary judgment to Toscano on Billings's initial abuse of process claim¹ because he raised genuine issues of material

¹Billings filed a complaint on April 30, 2009, in which he alleged a sole cause of action for abuse of process concerning Toscano's representation of the debtor in In re Antoinette
(continued...)

fact concerning Toscano's 2008 filing of the bankruptcy action. As part of the bankruptcy action, the parties entered into, and the bankruptcy court approved, a settlement agreement wherein the parties clearly and unambiguously agreed to "release each other from any and all claims . . . whether known or unknown." We agree with the district court's conclusion that, as a matter of law, Billings's initial abuse of process claim was "extinguished by the terms of the settlement agreement" and should therefore be dismissed on summary judgment. See Bakowski v. Mountain States Steel, Inc., 2002 UT 62, ¶ 16, 52 P.3d 1179 ("If the language within the four corners of the contract is unambiguous, then a court does not resort to extrinsic evidence of the contract's meaning, and a court determines the parties' intentions from the plain meaning of the contractual language as a matter of law.").

Billings also asserts on appeal that Toscano waived any res judicata or claim preclusion affirmative defenses and that, in any event, neither res judicata nor claim preclusion bars him from asserting the amended claims for abuse of process or for fraud and negligence (collectively, the amended claims).² The amended claims arise from Toscano's alleged conduct in the bankruptcy action after the bankruptcy court approved the parties' settlement agreement and after Billings filed this complaint.³ Although Billings raised, or at least attempted to raise, these issues in bankruptcy court on August 20, 2009, the bankruptcy court ultimately granted Toscano's motion to enforce the settlement agreement and entered an amended order approving the settlement agreement.⁴

The district court correctly concluded that Billings's amended claims are an improper collateral attack on the bankruptcy court's order approving the settlement agreement. The amended claims were not properly brought in state court, and only

¹(...continued)
Billings, No. 08-22447 (Bankr. Utah filed April 17, 2008).

²In his first amended complaint, filed August 31, 2009, Billings reasserted his abuse of process claim, added two counts to his abuse of process claim, and added claims for fraud and negligence.

³Underlying the amended claims is Billings's contention that Toscano fraudulently altered the settlement agreement and filed groundless motions to stay and remove the current action to the bankruptcy court.

⁴Billings argues that he raised a genuine issue of fact about whether he was given the opportunity to present his position before the bankruptcy court. Even assuming that the bankruptcy court did not hear Billings's concerns, as we state in the body of this decision, Billings must raise these arguments on appeal in the federal district court.

the bankruptcy court or the federal district court, on appeal from the bankruptcy court, could have granted any relief on these amended claims.⁵ See Maero v. Bunker, 2009 UT App 300, ¶ 3, 221 P.3d 860 (mem.) (concluding that because the defendant was challenging a bankruptcy court order, he must raise his claim in bankruptcy court or pursue it on appeal in the federal district court), cert. denied, 225 P.3d 880 (Utah 2010); see also Warner v. DMG Color, Inc., 2000 UT 102, ¶ 18, 20 P.3d 868 (stating that the plaintiff may not challenge a sale in state court but instead must "file a notice of claim in the bankruptcy court and, if not satisfied with the sale, to challenge it through appeal"); Copper State Thrift & Loan v. Bruno, 735 P.2d 387, 392 (Utah Ct. App. 1987) ("Appropriate appeal of [the plaintiff's challenges to the validity of the bankruptcy court order] would have been to the Federal District Court, and are outside the scope of our review"). We therefore determine that the district court also correctly granted Toscano summary judgment on Billings's amended claims.⁶

Affirmed.

Michele M. Christiansen, Judge

WE CONCUR:

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

⁵On September 1, 2009, Billings appealed the bankruptcy court's amended order to the United States District Court for the District of Utah. According to the civil docket for case no. 2:09-cv-00828-TC, of which we take judicial notice, the federal district court ultimately affirmed the decision of the bankruptcy court.

⁶We do not address Billings's other arguments because we deem them to be without merit. See generally State v. Carter, 776 P.2d 886, 888 (Utah 1989) ("[An appellate court] need not analyze and address in writing each and every argument, issue, or claim raised and properly before [the court] on appeal. Rather, it is a maxim of appellate review that the nature and extent of an opinion rendered by an appellate court is largely discretionary with that court.").