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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-15-1420-KiTaKu
)		
PETER EMANUEL KVASSAY,)	Bk. No.	2:12-bk-40267-DS
)		
Debtor.)		
_____)		
)		
PETER EMANUEL KVASSAY,)		
)		
Appellant,)		
)		
v.)		
)		
ROBERT V. KVASSAY, Trustee of)		
the Kvassay Family Trust dated)		
February 26, 1993; RUSSAKOW &)		
TAN, LLP; RUSSAKOW, GREENE &)		
TAN LLP; MATTHEW C. BROWN,)		
)		
Appellees.)		
_____)		

MEMORANDUM¹

Argued and Submitted on September 22, 2016,
at Pasadena, California

Filed - October 6, 2016

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

Honorable Deborah J. Saltzman, Bankruptcy Judge, Presiding

Appearances: Troy A. Stewart argued for appellant, Peter E. Kvassay; Matthew C. Brown of the Law Office of Matthew C. Brown argued for appellee, Robert V. Kvassay, Trustee of the Kvassay Family Trust dated 02/26/1993.

Before: KIRSCHER, TAYLOR and KURTZ, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Chapter 7² debtor Peter E. Kvassay³ appeals an order denying
2 his motion for an order to show cause why appellee Robert V.
3 Kvassay, Trustee of the Kvassay Family Trust dated 02/26/1993
4 ("Trust"), should not be held in contempt for violating the
5 discharge injunction. During Peter's bankruptcy case, Robert
6 obtained relief from the automatic stay to proceed to final
7 judgment in a probate action that had been filed against Peter
8 prepetition. Robert also filed a timely adversary complaint,
9 seeking to except the probate action debts from Peter's discharge
10 under § 523(a)(2), (4) and (6).

11 During the course of the probate action, but before the
12 dischargeability action had been decided, Peter received his
13 discharge. Peter contends that because Robert did not obtain the
14 probate judgments against him until after his discharge was
15 entered, the debts subject to these judgments were discharged, the
16 judgments are void and Robert's actions violated and continue to
17 violate the discharge injunction under § 524(a)(2). The
18 bankruptcy court denied Peter's motion. We AFFIRM.

19 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

20 A. Prepetition events

21 Peter and Robert are brothers. They have a third brother,
22 Richard Kvassay. The brothers each hold a one-third beneficial
23 interest in property held by the Trust established by their
24

25
26 ² Unless specified otherwise, all chapter, code and rule
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

28 ³ Since both parties have the same surname, we refer to them
by first name to avoid confusion. No disrespect is intended.

1 parents, who are now deceased. The Trust corpus consists of a
2 3.5 acre residential estate located in Los Angeles (the "Hill
3 Drive Property"), which includes a 5,400 square foot main house
4 and two guest houses. The recent relationship between Robert and
5 his two brothers has been contentious at best.

6 Upon their parents' death, Peter became the trustee of the
7 Trust in October 2006. In January 2007, Peter resigned as trustee
8 and Robert succeeded him as trustee. Peter's resignation and
9 Robert's succession as trustee was memorialized in a document
10 referred to as the "Work Plan." The Work Plan also included the
11 brothers' agreement to repair and sell the Hill Drive Property and
12 discussed how expenses related to those efforts would be handled.
13 At the time, Peter and Richard lived at the Hill Drive Property
14 and had done so since the 1980's and 1960's, respectively.

15 Robert was in charge of renovating the Hill Drive Property,
16 which had fallen into severe disrepair at the hands of his
17 brothers. The property had no running water or functioning sewer
18 pipes for approximately seven years, and all three houses on the
19 estate had severe rodent infestations, mountains of decaying paper
20 and food material, hoards of clothing and other personal items,
21 junk cars and even human waste. Robert ultimately expended
22 several hundred thousand dollars of his own money to clean and
23 renovate the Hill Drive Property. In the end, Peter and Richard
24 prevented Robert from completing the necessary cleaning and
25 repairs for sale of the property.

26 In July 2007, and unbeknownst to Robert, Peter represented
27 himself as trustee of the Trust and obtained a \$1.5 million loan
28 secured by the Hill Drive Property. Robert learned of the loan in

1 February 2008 and requested an accounting and attempted to recoup
2 the monies from Peter. Peter failed to account for approximately
3 \$800,000. When Peter refused to make payments on the loan, Robert
4 obtained a personal loan for the same amount to prevent
5 foreclosure of the Hill Drive Property.

6 In 2010, Robert, on behalf of the Trust, sued Peter and
7 Richard, seeking the following relief: (1) eviction of Peter and
8 Richard; (2) a determination that the Work Plan had no legal
9 effect; (3) a determination that the \$1.5 million loan Peter
10 obtained was Trust property; and (4) an offset against Peter's
11 distributive share of \$1.5 million, plus attorney's fees and
12 costs, based on his fraud and willful acts to thwart the repair
13 and sale of the Hill Drive Property, or, if the \$1.5 million
14 exceeded his distributive share, that Peter be personally liable
15 for the remaining amount he fraudulently obtained (the "Probate
16 Action").

17 The state court initially ordered Peter and Richard to vacate
18 the Hill Drive Property and authorized Robert to remove their
19 personal belongings in order to complete repairs and sell it.
20 Peter and Richard appealed that ruling and lost; they were also
21 denied review by the California Supreme Court. To stay the
22 eviction on appeal, Peter and Richard posted an appeal bond of
23 \$216,000, which Robert later tried to recover after his brothers
24 had exhausted their appeals with respect to the eviction (the
25 "Bond Funds").

26 Meanwhile, Robert filed his first accounting in the Probate
27 Action to report all administrative expenses for the Trust from
28 the period of January 2007 to June 2010. Robert claimed he was

1 due \$221,000 based on the Work Plan for expenses related to
2 repairs on the Hill Drive Property ("Work Plan Claim I"). Robert
3 also requested reimbursement for funds he personally expended in
4 repairing and maintaining the Hill Drive Property totaling
5 \$447,731.66 ("Work Plan Claim II").

6 In November 2011, Peter and Richard sued Robert for, among
7 other things, fraud and breach of contract (the "Civil Action").

8 **B. Postpetition events**

9 Peter filed his chapter 7 bankruptcy case on September 5,
10 2012. He listed Robert as an unsecured creditor in his Schedule F
11 with the following claims: (1) Probate Claim, May 2010,
12 \$1,500,000; (2) Probate Claim, October 2010, \$216,000; (3) Civil
13 Action Claim, August 2012, \$10,500; (4) Probate Claim, February
14 2011, \$2,100. Peter also listed the Probate Action and the Civil
15 Action in his Statement of Financial Affairs.

16 Although not mentioned in Peter's opening appeal brief or
17 included in his excerpts of the record, Robert moved for relief
18 from the automatic stay and/or annulment of the stay in September
19 2012, seeking to proceed with the pending Probate Action and
20 related Civil Action in state court, and for a determination that
21 any actions taken in those proceedings postpetition were not void.
22 A fourteen-day trial in the Probate Action was set for January 13,
23 2013. The bankruptcy court granted Robert's motion, terminating
24 the stay and annulling it retroactively to the petition date. The
25 stay relief order authorized Robert to proceed to final judgment
26 (including any appeals) in the Probate Action and Civil Action.

27 Also not mentioned in Peter's opening appeal brief or
28 included in his excerpts of the record, Robert filed a timely

1 dischargeability action against Peter, seeking to except debts
2 arising from the Probate Action from discharge under § 523(a) (2),
3 (4) and (6). Robert contended that as a result of Peter's alleged
4 fraud, conversion and waste, he and/or the Trust was damaged in
5 the amount of \$1.5 million, plus those funds Robert expended to
6 avoid foreclosure of the Hill Drive Property and attorney's fees.
7 Robert later amended his complaint, seeking relief only under
8 § 523(a) (4) and (6).

9 In December 2012, the state court entered judgment for Robert
10 with respect to the Bond Funds and awarded him \$192,660.00 jointly
11 and severally against Peter and Richard. Peter and Richard
12 appealed that decision and lost. Notably, the appellate court in
13 its decision stated that the Bond Funds judgment was not void and
14 did not violate the discharge injunction as Peter claimed.

15 **1. Post-discharge events**

16 Peter received a discharge on January 8, 2013, just days
17 before trial in the Probate Action was to begin. The discharge
18 order – Official Form B18 – states that the "debtor is granted a
19 discharge under section 727 of title 11, United States Code
20" but warns in all upper case letters, "SEE THE BACK OF
21 THIS ORDER FOR EXCEPTIONS AND OTHER IMPORTANT INFORMATION." The
22 back side of the discharge order provides a list of debts that are
23 **not** discharged in a chapter 7 case, including: "(h) Debts that
24 the bankruptcy court, under section 523 of the Bankruptcy Code or
25 other applicable law, specifically has decided or will decide in
26 this bankruptcy case are not discharged." Peter's case was closed
27 on January 29, 2013.

28 Meanwhile, trial proceeded in the Probate Action from

1 January 22, 2013, through May 23, 2013.

2 Peter moved to reopen his bankruptcy case in May 2013 to file
3 a motion alleging claims that Robert had violated the automatic
4 stay and discharge injunction by actions he had taken in the
5 Probate Action, including obtaining the Bond Funds judgment and
6 presenting a total claim for damages at the end of trial against
7 Peter for over \$3.5 million. The motion was granted and Peter's
8 case was reopened on May 28, 2013.

9 Peter's bankruptcy case and Robert's dischargeability action
10 against Peter were reassigned to the Hon. Deborah J. Saltzman on
11 May 12, 2014.

12 **a. Results of the state court proceedings**

13 After trial and Peter's discharge, the state court issued a
14 variety of minute orders and final decisions in the Probate
15 Action. Ultimately, it approved Robert's Work Plan Claim I for
16 \$221,000 and ordered that he be reimbursed for expenses of
17 \$572,772, plus attorney's fees and costs. The state court also
18 ruled that the \$1.5 million in loan funds belonged to the Trust
19 and that Peter's distributive share would be offset by the
20 \$973,520 in unaccounted funds not used for the benefit of the Hill
21 Drive Property. Peter and Richard were also held jointly and
22 severally liable for Robert's attorney's fees and costs.

23 Peter appealed the probate judgments, which were consolidated
24 for appeal. The California Court of Appeal affirmed, but ordered
25 that the Work Plan Claim I be reduced from \$221,000 to \$212,500
26 and that Robert's reimbursement claim be reduced from \$572,772 to
27 \$360,272 (which Peter refers to as the "Work Plan Claim II"),
28 based on mathematical errors made by the trial court.

1 Meanwhile, Robert filed the ordered second accounting for the
2 Trust in October 2013, which included a request that \$315,298.77
3 in attorney's fees and costs expended on behalf of the Trust in
4 litigating the Probate Action against Peter and Richard be offset
5 against their distributive shares in the Trust. Robert contended
6 that none of the fees or costs would have been incurred but for
7 Peter and Richard's malfeasance and theft against the Trust.
8 Robert further asserted that he was owed an additional \$187,200
9 based on the Work Plan ("Work Plan Claim III").

10 **2. Peter's motion for contempt**

11 On November 18, 2015, Peter moved for an order to show cause
12 why Robert (and his attorneys) should not be held in contempt for
13 violating the discharge injunction ("Contempt Motion"). In short,
14 Peter argued that the judgments Robert obtained, or attempted to
15 obtain, in the Probate Action were based on prepetition claims
16 that were discharged under § 727(b) on January 8, 2013. Thus,
17 argued Peter, Robert's actions to collect, recover or offset these
18 discharged prepetition debts against Peter or his beneficial
19 interest in the Trust violated § 524(a)(2), and therefore Robert
20 should be sanctioned for contempt under § 105(a).

21 Specifically, Peter contended Robert had violated the
22 discharge injunction by:

23 (1) obtaining a judgment on the fraud claim of \$973,520
24 (the loan funds) on the basis of a prepetition claim
 under Cal. Probate Code § 850(a)(3)(B) that was
 discharged;

25 (2) obtaining a judgment on Work Plan Claim I of \$212,500
26 (which diminished Peter's distributive share in the Trust
27 by \$70,833.33) on the basis of a prepetition contract
 claim that was discharged;

28 (3) obtaining a judgment on Work Plan Claim II of

1 \$360,272 (which diminished Peter's distributive share by
2 \$120,090.66) on the basis of a prepetition contract claim
that was discharged;

3 (4) attempting to obtain a judgment on Work Plan Claim
4 III of \$187,000 (which diminished Peter's distributive
share by \$62,400) on the basis of a prepetition contract
5 claim that was discharged;

6 (5) attempting to obtain a judgment for \$332,897.74 in
7 attorney's fees and costs (which diminished Peter's
distributive share by \$166,448.87) in connection with
these prepetition claims that were discharged;

8 (6) attempting to obtain a judgment on state law
9 statutory claims for Trust administration and other Trust
related expenses paid for personally by Robert due to
10 Peter's malfeasance totaling \$296,298.42 (which
diminished Peter's distributive share in the Trust by
11 \$148,149.21); and

12 (7) disputing that the Bond Funds judgment of \$192,660
was based on a prepetition claim that was discharged.

13 Peter further argued that the judgments at issue, which made
14 determinations as to Peter's personal liability, were void because
15 they were based on discharged debts. In addition, with respect to
16 the fraud claim judgment of \$973,520, Peter argued that only the
17 bankruptcy court had jurisdiction to adjudicate that claim because
18 it was the kind of debt specified in § 523(a)(2), (4) or (6). For
19 the alleged contempt, Peter sought damages of \$1,164,443.99 (the
20 total of the fraud judgment and Work Plan Claims I and II), plus
21 attorney's fees and costs of \$146,871.50 he incurred in defending
22 these claims.

23 Robert did not file an opposition to the Contempt Motion.
24 Without a hearing, the bankruptcy court entered an order denying
25 the Contempt Motion ("Contempt Order"). Peter timely appealed.

26 **II. JURISDICTION**

27 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
28 and 157(b)(2)(O). We have jurisdiction under 28 U.S.C. § 158.

1 A motion to determine whether a creditor should be held in
2 contempt for violating the discharge injunction is a contested
3 matter. See Rule 9020 (Contempt Proceedings – which provides that
4 Rule 9014 governs a motion for an order of contempt); Barrientos
5 v. Wells Fargo Bank, N.A., 633 F.3d 1186, 1189 (9th Cir. 2001).
6 As a contested matter, the bankruptcy court was required to make
7 findings of fact, either orally on the record or in a written
8 decision. See Rule 9014(c) (incorporating Rule 7052, which in
9 turn incorporates Civil Rule 52). The findings must be sufficient
10 to indicate the factual basis for the court's ultimate conclusion.
11 Unt v. Aerospace Corp., 765 F.2d 1440, 1444 (9th Cir. 1985).

12 "The findings must be explicit enough to give the appellate
13 court a clear understanding of the basis of the trial court's
14 decision, and to enable it to determine the ground on which the
15 trial court reached its decision." Mattel, Inc. v. Walking
16 Mountain Prods., 353 F.3d 792, 815 (9th Cir. 2003) (quoting Unt,
17 765 F.2d at 1444). In the absence of complete findings, we may
18 vacate a judgment and remand to the bankruptcy court to make the
19 required findings. See United States v. Ameline, 409 F.3d 1073
20 (9th Cir. 2005).

21 We may conduct appellate review, even when a bankruptcy court
22 does not make formal findings, however, "if a complete
23 understanding of the issues may be obtained from the record as a
24 whole or if there can be no genuine dispute about omitted
25 findings." Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal),
26 450 B.R. 897, 919-20 (9th Cir. BAP 2011).

27 In reviewing the docket from the dischargeability action,
28 Robert had filed a motion for partial summary judgment on his

1 § 523(a) (4) and (6) claims on the basis of issue preclusion. In
2 defense of that motion, Peter argued that Robert's post-discharge
3 state court judgments were void and violated the discharge
4 injunction, the same argument he raised in the Contempt Motion.

5 At a November 19, 2015 hearing on Robert's motion in the
6 adversary (which was the day after Peter had filed his Contempt
7 Motion), the bankruptcy court set forth in detail why it rejected
8 Peter's arguments. In short, it found that Peter's arguments
9 lacked merit and showed a fundamental misunderstanding of
10 bankruptcy law. Hr'g Tr. (Nov. 19, 2015) 5:24-10:14. After
11 discussing the purpose of the discharge injunction under § 524,
12 the bankruptcy court stated the following:

13 THE COURT: The key notion of Section 524 is that it
14 refers to a dischargeable debt. A non-dischargeable debt
15 is not subject to the discharge injunction. This is
16 basic Ninth Circuit law. . . .

17 Now, the language in Section 523 of the Bankruptcy Code
18 is also quite clear as to what the discharge and the
19 discharge injunction by extension applies to. Section
20 523(a) provides that a discharge under Section 727 of
21 this title does not discharge an individual debtor from
22 any debt and then goes on to enumerate the variety of
23 debts that are not discharged and that, of course,
24 includes [debts] that are not dischargeable under Section
25 523(a) (4) and 523(a) (6).

26 Now, in this case there was a timely action under Section
27 523 to determine the liability -- the dischargeability of
28 the debt owed to the plaintiff for the discharge and the
discharge injunction do not apply to those debts. So the
argument that an action in state court that was properly
brought, that was properly continued after seeking and
receiving relief from the automatic stay, that somehow
this action violates the discharge injunction again is a
basic misunderstanding of bankruptcy law.

Now, this point is made even more clear in the discharge
order for the debtor in this case. . . . The order goes
on to say in all capitals, "See the back of this order
for exception." You turn to the back of the discharge
order and we see a heading that says, "Debts that are not
discharged." And line (h):

1 "The type of debt that is not discharged includes
2 debts [that] the Bankruptcy Court under Section 523
3 of the Bankruptcy Code or other applicable law
specifically has decided or will decide in this
bankruptcy case are not discharged."

4 There is no question that the debts in this case that are
5 subject to the dischargeability proceeding were not
6 discharged by the 2013 discharge of the debtor. That's
why we're here. . . .

7 Now, I want to also make clear, as I alluded to before,
8 that the probate case is entirely proper as it relates to
9 the bankruptcy case. The plaintiff received relief from
10 the automatic stay to pursue the action and the timing of
11 the discharge before the conclusion of the state law
action is irrelevant because there was a pending Section
523 dischargeability action. The discharge did not apply
to the debt at issue in the state court proceeding and
there could be no violation of the discharge injunction.

12 Id. at 6:21-24, 7:3-22, 8:3-15, 8:20-9:4. The court then went on
13 to discuss Lakhany v. Khan (In re Lakhany), 538 B.R. 555 (9th Cir.
14 BAP 2015), which it found to be similar to the situation here.

15 The bankruptcy court also told Robert to not file an
16 opposition to Peter's Contempt Motion because it planned to enter
17 an order denying the motion "for the same reason that I stated on
18 the record at the beginning of my comments today. . . . [S]o I
19 will issue an order without any need for further briefing or
20 comment." Hr'g Tr. (Nov. 19, 2015) 15:4-15, 15:19-20.

21 Unfortunately, Peter and his counsel did not appear at that
22 hearing. However, we presume they have since reviewed the
23 transcript and are fully aware as to why the bankruptcy court
24 denied the Contempt Motion, even though Peter has made no mention
25 of that hearing or the findings made there in his appeal brief.

26 It would have been better practice for the bankruptcy court
27 to articulate the findings it announced on the record at the
28 summary judgment hearing in the dischargeability action in its

1 Contempt Order (which it apparently intended to do but for reasons
2 unknown did not), as opposed to stating only that no grounds
3 existed to grant the Contempt Motion. Nonetheless, because the
4 transcript from the November 19 hearing provides us with a clear
5 understanding of the basis for why the bankruptcy court denied the
6 Contempt Motion, which was a pure legal basis, we will review the
7 merits of that decision.

8 **B. The bankruptcy court did not abuse its discretion by not
9 finding Robert in contempt of the discharge injunction
because the debts at issue have not yet been discharged.**

10 A party who knowingly violates the discharge injunction can
11 be held in contempt under § 105(a). ZiLOG, Inc. v. Corning
12 (In re ZiLOG, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006). We begin
13 by noting what is not disputed in this case. First, Robert was
14 granted relief from stay to proceed to judgment, including any
15 appeals, in the Probate Action. Thus, while the bankruptcy court
16 retained control over the final decision regarding
17 nondischargeability, it expressly allowed liquidation of the
18 claims and determination of facts required for nondischargeability
19 to proceed in the Probate Action. Also, the state court judgments
20 at issue are based on Peter's prepetition conduct, which Robert
21 alleged consisted of nondischargeable claims of fraud, conversion
22 and waste. Finally, Robert timely filed a dischargeability action
23 against Peter in accordance with Rule 4007, seeking relief for
24 claims under § 523(a)(2), (4) and (6) in connection with the
25 Probate Action debts (but he later dismissed his (a)(2) claim).

26 When a bankruptcy petition is filed, § 362 automatically
27 provides the debtor with a temporary stay or injunction against
28 certain actions by creditors against the debtor. Upon the

1 granting of a discharge, the temporary injunction of § 362
2 dissolves and is replaced by the permanent injunction of § 524.
3 See § 362(c)(2)(C). Essentially, this permanent injunction – the
4 discharge injunction – enjoins creditors from attempting to
5 collect from the debtor or the debtor's assets debts that have
6 been discharged in bankruptcy. Section 524(a) states, in
7 pertinent part, that a discharge:

8 (1) voids any judgment at any time obtained, to the
9 extent that such judgment is a determination of the
10 personal liability of the debtor with respect to any debt
11 discharged under section 727 . . . ;

12 (2) operates as an injunction against the commencement or
13 continuation of an action, the employment of process, or
14 an act, to collect, recover or offset any **such debt** as a
15 personal liability of the debtor, or from property of the
16 debtor,

17 (emphasis added). The "such debt" language refers to "any debt
18 discharged under section 727," as stated in § 524(a)(1).

19 In re Lakhany, 538 B.R. at 562; Aldrich v. Imbrogno
20 (In re Aldrich), 34 B. R. 776, 779 n.1 (9th Cir. BAP 1983). Thus,
21 nondischargeable debts are not subject to the discharge
22 injunction. Boeing N. Am., Inc. v. Ybarra (In re Ybarra),
23 424 F.3d 1018, 1027 n.11 (9th Cir. 2005); Fla. Dep't of Revenue v.
24 Diaz (In re Diaz), 647 F.3d 1073, 1088 (11th Cir. 2011) (discharge
25 injunction prohibits collection only with respect to dischargeable
26 debts and does not apply to nondischargeable debts). Therefore,
27 Robert could not violate the discharge injunction if he was taking
28 action to recover debts that are nondischargeable.

29 The permanent injunction provided by § 524(a)(2) enjoining
30 creditor actions against debts discharged under § 727 must be read
31 in conjunction with § 727(b), which provides: **Except as provided**

1 **in section 523 of this title**, a discharge under subsection (a) of
2 this section discharges the debtor from all debts that arose
3 before the date of the order for relief under this chapter[.]"
4 (Emphasis added). Thus, the discharge injunction does not enjoin
5 actions of creditors who successfully invoke § 523, which provides
6 a list of exceptions to discharge. Ackerman v. Eber (In re Eber),
7 687 F.3d 1123, 1128 (9th Cir. 2012) (citing In re Aldrich, 34 B.R.
8 at 779).

9 In other words, upon the timely filing of a complaint
10 objecting to dischargeability of a debt under § 523, the discharge
11 injunction does not apply with respect to that debt until the
12 bankruptcy court makes a determination as to the dischargeability
13 of that debt. See In re Eber, 687 F.3d at 1128; In re Aldrich,
14 34 B.R. at 779-81; Buke, LLC v. Eastberg (In re Eastberg),
15 440 B.R. 851, 855, 857-58 (Bankr. D.N.M. 2010), aff'd on other
16 grounds, 447 B.R. 624 (10th Cir. BAP 2011) (discharge injunction
17 does not apply to a debt when a timely objection to
18 dischargeability of the debt is made under § 523(a)(2), (4) or (6)
19 unless and until the bankruptcy court determines that the debt is
20 discharged); In re Jenkins, 330 B.R. 625, 629 (Bankr. E.D. Tenn.
21 2005) (so long as it remains possible that a particular debt could
22 be declared nondischargeable under § 523, the permanent
23 applicability of § 524(a) protections to such debt cannot be
24 determined) (citing In re Schultz, 251 B.R. 823, 830 (Bankr. E.D.
25 Tex. 2000)); In re Hiles, 2002 WL 32709406, at *3 (Bankr. C.D.
26 Ill. Aug. 15, 2002) (until the bankruptcy court determines
27 dischargeability of creditor's state law claims under § 523(a)(2)
28 and (4) in a timely-filed adversary proceeding, it remains an open

1 question whether such claims against the debtor are discharged or
2 not).

3 Section 523 compels this result. Section 523(a) provides, in
4 pertinent part, that "[a] discharge under section 727 . . . does
5 not discharge an individual debtor from any debt," and then goes
6 on to list the 19 exceptions, which includes paragraphs (2), (4)
7 and (6). Section 523(c)(1) provides that, except in certain
8 circumstances not relevant here, "the debtor shall be discharged
9 from a debt of a kind specified in paragraph (2), (4), or (6) of
10 subsection (a) of this section, unless, on request of the creditor
11 to whom such debt is owed, and after notice and a hearing, the
12 court determines such debt to be excepted from discharge under
13 paragraph (2), (4), or (6), as the case may be, of subsection
14 (a)."

15 Hence, a debt is not discharged if a timely complaint is
16 filed objecting to discharge of that debt under § 523(a)(2)
17 (fraud), or (4) (fraud or defalcation while acting in fiduciary
18 capacity, larceny, or embezzlement) or (6) (willful and malicious
19 injury) unless and until the bankruptcy court denies the
20 objection. See also In re Eastberg, 440 B.R. at 857 (holding same
21 and citing string of cases). Furthermore, as the bankruptcy court
22 correctly observed, the discharge order in this case specifically
23 contemplates the possibility of a determination by the bankruptcy
24 court, after the date of discharge, that certain debts under § 523
25 may be nondischargeable. See Gray v. Berry (In re Gray), 2000 WL
26 34239244, at *5 (W.D. Wis. Apr. 12, 2000) (so holding); Union
27 Nat'l Bank of Marseilles v. Leigh (In re Leigh), 165 B.R. 203, 222
28 (Bankr. N.D. Ill. 1993) (so holding).

1 Peter raises the same arguments here as he did before the
2 bankruptcy court. Each lack merit. As the court correctly noted,
3 Peter has a fundamental misunderstanding of bankruptcy law.
4 Because Robert filed a timely dischargeability action against
5 Peter seeking to except the debts at issue in the Probate Action
6 from Peter's discharge under § 523(a)(4) and (6), and because the
7 bankruptcy court has not yet determined the dischargeability of
8 these debts in the pending adversary proceeding, the debts have
9 not been discharged and the discharge injunction was and is not
10 applicable to them. The fact that Peter's discharge came before
11 the Probate Action went to trial and the judgments were entered is
12 of no moment due to the pending adversary proceeding, and the
13 bankruptcy court's agreement that the Probate Action should
14 proceed and resolve issues necessary for the bankruptcy court's
15 nondischargeability determinations. Therefore, the discharge
16 injunction did not prevent Robert from establishing Peter's
17 liability in the Probate Action. In re Lakhany, 538 B.R. at 562-
18 63. Consequently, Peter's argument that the trial in the Probate
19 Action and related state court judgments are "void" because they
20 were based on discharged debts also fails.

21 Peter also contends that the state court lacked jurisdiction
22 to decide the fraud claim of \$973,520, because it is a "debt of a
23 kind specified in § [523(a)(2), (4) or (6)]" that only the
24 bankruptcy court could consider. While he is correct that the
25 determination of whether a debt is dischargeable under
26 § 523(a)(2), (4) or (6) is exclusively within the bankruptcy
27 court's jurisdiction, Rein v. Providian Fin. Corp., 270 F.3d 895,
28 904 (9th Cir. 2001), the predicate facts which may form the basis

1 for such a determination may be litigated in state court. In re
2 Lakhany, 538 B.R. at 560 (bankruptcy courts often make
3 nondischargeability determinations via issue preclusion on facts
4 determined elsewhere) (citing Grogan v. Garner, 498 U.S. 279, 290
5 (1991)); see also Allred v. Kennerley (In re Kennerley), 995 F.2d
6 145, 148 (9th Cir. 1993) ("Had [creditor] filed a timely complaint
7 to determine dischargeability, he could have returned [to the
8 bankruptcy court] after the state court action" and had "the
9 dischargeability of the debt determined."); In re Eastberg, 440
10 B.R. at 862 (bankruptcy court can modify the automatic stay to
11 permit state court litigation to proceed to judgment for purpose
12 of establishing a debt at issue in a pending nondischargeability
13 action so that issue preclusion may be used to limit what is later
14 raised in the nondischargeability action).

15 Peter confuses the state court establishing his **liability** on
16 the debt at issue in the Probate Action, with a determination of
17 **whether that debt is dischargeable**. As to the former, the state
18 court was free to determine liability and damages given the stay
19 relief order. As to the latter, nothing in the record suggests
20 the state court has made any determinations as to whether the debt
21 at issue is "nondischargeable."

22 Necessary to a finding of contempt under § 105(a) is that the
23 offending party willfully violated the discharge injunction.
24 Because no such injunction was applicable to the debts at issue as
25 a matter of law, Robert could not have violated it. Accordingly,
26 the bankruptcy court did not abuse its discretion in denying the
27 Contempt Motion.

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VI. CONCLUSION

For the foregoing reasons, we AFFIRM.