

Dated: April 22, 2019



Brenda Moody
Brenda Moody Whinery, Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:
TRENT M. DURAN and CHRISTINE M.
DURAN,

Debtors.

Chapter 13 Proceeding
Case No. 4:17-bk-04461-BMW

PACIFIC OFFICE AUTOMATION, INC.,

Plaintiff,

Adv. Case No. 4:17-ap-00523-BMW

v.
TRENT M. DURAN and CHRISTINE M.
DURAN,

Defendants.

**RULING AND ORDER REGARDING
MOTIONS FOR SUMMARY JUDGMENT**

This matter came before the Court pursuant to the *Debtors' Motion for Summary Judgment* (the "Motion") (Dkt. 29) and the *Debtors' Separate Statement of Facts* ("Debtors' SOF") (Dkt. 30), filed by Trent M. Duran and Christine M. Duran (collectively, the "Debtors" and/or "Defendants") on September 25, 2018, and the *Response to Debtors' Motion for Summary Judgment and Cross-Motion for Summary Judgment* (the "Cross-Motion") (Dkt. 35) and the *Response to Debtors' Separate Statement of Facts on Their Motion for Summary Judgment and Controverting Statement of Facts on POA's Cross-Motion for Summary Judgment* ("Plaintiff's SOF") (Dkt. 36), filed by Pacific Office Automation, Inc. (the "Plaintiff")

1 and/or “POA”) on November 1, 2018, and all related pleadings thereto.

2 Oral argument was presented at a hearing conducted on April 18, 2019. Upon
3 consideration of the entire record in this matter, the Court issues the following Ruling and
4 Order.

5
6 **I. Facts and Procedural Background**

7 This matter arises from an employment arrangement between Mr. Duran and POA. POA
8 brought an action against the Debtors in the Superior Court of Arizona, Pima County (the
9 “State Court”), alleging that Mr. Duran had breached his contractual employment agreement
10 with POA, breached the implied duty of good faith and fair dealing owed to POA, fraudulently
11 induced POA to enter into the employment relationship, and committed tortious interference
12 with POA’s contractual relationships (the “State Court Action”).

13 The State Court Action was tried to a jury. Before the case was submitted to the jury, the
14 Defendants filed a motion pursuant to Rule 50 of the Arizona Rules of Civil Procedure (the
15 “Rule 50 Motion”). The State Court granted such motion as to POA’s fraud and punitive
16 damages claims, finding that there was “no legal and sufficient evidentiary evidence for a
17 reasonable jury to find for [POA] on the issue of fraud or punitive damages.” The jury
18 ultimately found for POA on its claims for breach of contract, breach of the covenant of good
19 faith and fair dealing, and tortious interference with business relationships. A judgment was
20 entered in which POA was awarded damages against the Debtors in the sum of \$193,337.32,
21 together with accruing interest (the “State Court Judgment”). The State Court Judgment did not
22 include any findings of fact. On appeal, the judgment was affirmed by Division Two of the
23 Arizona Court of Appeals (the “Arizona Court of Appeals”) and additional fees were awarded
24 to POA.

25 The Debtors filed their Chapter 13 bankruptcy case on April 25, 2017. POA filed this
26 adversary action on August 7, 2017, asserting that the claims arising from the State Court
27 Judgment are non-dischargeable pursuant to §§ 523(a)(2)(A), (a)(4) and (a)(6) of the
28 Bankruptcy Code.

1 The Debtors have moved for summary judgment requesting the Court to enter judgment
2 in their favor on all counts on the basis that POA's claims are barred by the doctrine of
3 collateral estoppel because the State Court granted their Rule 50 Motion dismissing POA's
4 fraud and punitive damage claims.

5 POA responded to the Debtors' Motion asserting that although the Debtors' Rule 50
6 Motion was granted, the burden of proof that applies to fraud and punitive damages claims
7 under Arizona state law is the clear and convincing evidence standard, which is a higher burden
8 of proof than the preponderance of the evidence standard applicable to claims brought under
9 § 523 of the Code. Thus, POA argues that the doctrine of collateral estoppel does not apply to
10 bar its § 523 claims.

11 POA argues in its Cross-Motion that although the State Court granted the Debtors' Rule
12 50 motion with respect to its fraud and punitive damages claims, the State Court Judgment, as
13 affirmed by the Arizona Court of Appeals, with respect to its other state court claims of breach
14 of the implied covenant of good faith and fair dealing, tortious interference with contractual
15 relations, and breach of contract are entitled to collateral estoppel effect and establish the
16 elements of POA's §§ 523(a)(2)(A) and (a)(6) claims.

17 Both parties submitted statements of fact and controverting statements of fact. POA
18 disputes certain of the Debtors' statements of fact on the basis that evidence produced during
19 the State Court Action contradicts such statements of fact. The Debtors generally object to
20 POA's statements that rely on: (1) the State Court ruling regarding the motion for summary
21 judgment filed by the Debtors in the State Court Action (the "State Court Summary Judgment
22 Ruling"); (2) the State Court ruling on the Debtors' motion for judgment as a matter of law
23 (the "State Court JMOL Ruling"); (3) the answering and opening brief filed by POA in the
24 context of the State Court appeal which cites to the State Court trial transcript (the "Appellate
25 Brief"); and (4) the Arizona Court of Appeals' decision affirming the State Court Judgment
26 (the "Appellate Decision").

27 The parties have not submitted or stipulated to the use of the State Court trial transcript
28 in lieu of testimony for purposes of these proceedings. The Court will not accept POA's

1 Appellate Brief or the citations to the State Court record therein as providing this Court with a
2 basis to make independent findings of fact or conclusions of law. For purposes of this ruling,
3 the Court will consider only the State Court Summary Judgment Ruling, State Court JMOL
4 Ruling, the State Court Judgment and the Appellate Decision, as well as the undisputed facts.
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6 **Legal Analysis and Discussion**

7 **A. Summary Judgment Standard**

8 Pursuant to Federal Rule of Civil Procedure 56(a), which is incorporated by Federal
9 Rule of Bankruptcy Procedure 7056, “[t]he court shall grant summary judgment if the movant
10 shows that there is no genuine dispute as to any material fact and the movant is entitled to
11 judgment as a matter of law.”

12 The facts submitted are viewed most favorably to the non-moving party. *Tolan v.*
13 *Cotton*, 572 U.S. 650, 656-57, 134 S. Ct. 1861, 1866, 188 L. Ed. 2d 895 (2014). “Summary
14 judgment is inappropriate if reasonable jurors, drawing all inferences in favor of the nonmoving
15 party, could return a verdict in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd.*
16 *P’ship*, 521 F.3d 1201, 1207 (9th Cir. 2008). At the summary judgment stage, the court’s role is
17 to determine whether there is a genuine issue for trial, not to weigh the evidence and determine
18 the truth of the matter. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505,
19 2510-11, 91 L. Ed. 2d 202 (1986).
20

21 **B. Doctrine of Collateral Estoppel**

22 1. Law

23 a. *Applicability of the Doctrine*

24 “The preclusive effect of a judgment is defined by claim preclusion and issue preclusion,
25 which are collectively referred to as ‘res judicata.’” *Taylor v. Sturgell*, 553 U.S. 880, 892, 128
26 S. Ct. 2161, 2171, 171 L. Ed. 155 (2008). “These terms have replaced a more confusing
27 lexicon. Claim preclusion describes the rules formerly known as ‘merger’ and ‘bar,’
28 while issue preclusion encompasses the doctrines once known as ‘collateral estoppel’ and

1 ‘direct estoppel.’” *Id.* 553 U.S. at 892 n.5, 128 S. Ct. 2161 n.5.

2 Generally speaking, “[t]he doctrine of issue preclusion forecloses relitigation of those
3 issues of fact or law that were actually litigated and necessarily decided by a valid and final
4 judgment in a prior action between the parties” and applies to both findings of fact and
5 determinations of law. *In re Duncan*, 713 F.2d 538, 541 (9th Cir. 1983); *In re Hagele*, No. AP
6 14-02200, 2016 WL 3965899, at *4 (B.A.P. 9th Cir. July 18, 2016).

7 Under the full faith and credit statute, “a federal court generally is required to consider
8 first the law of the State in which the judgment was rendered to determine its preclusive effect.”
9 *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 375, 105 S. Ct. 1327, 1329, 84
10 L. Ed. 2d 274 (1985). Under Arizona law, issue preclusion is applicable if: (1) “the issue or fact
11 to be litigated was actually litigated in a previous suit[;]” (2) “a final judgment was entered[;]”
12 (3) “the party against whom the doctrine is to be invoked had a full opportunity to litigate the
13 matter[;]” (4) the party against whom the doctrine is to be invoked actually litigated the matter;
14 and (5) the “issue or fact was essential to the prior judgment.” *Chaney Bldg. Co. v. City of*
15 *Tucson*, 148 Ariz. 571, 573, 716 P.2d 28, 30 (Ariz. 1986).

16 “Even when the technical requirements for preclusion based on a former adjudication
17 are met, the court should not apply preclusion principles where there is some
18 overriding consideration of fairness to a litigant, as determined by the particular case’s
19 circumstances.” *In re Marriage of Gibbs*, 227 Ariz. 403, 407, 258 P.3d 221, 225 (Ariz. Ct. App.
20 2011) (internal quotations omitted).

21 In order to determine whether a prior judgment is entitled to preclusive effect for
22 purposes of § 523 of the Code, courts compare the elements of the § 523 claims at issue with
23 the findings of fact and conclusions of law made in the prior proceeding. *See In re Anderson*,
24 No. 14-AP-00927-GBN, 2017 WL 5163443, at *7 (B.A.P. 9th Cir. Nov. 7, 2017) (comparing
25 the elements of § 523(a)(6) with the state court’s prior rulings in response to a party’s request
26 that it give preclusive effect to a state court’s judgment in order to avoid relitigation of its
27 § 523(a)(6) claim).

1 *b. Differing Burdens of Proof*

2 “As a general rule, issue preclusion . . . ‘may be defeated by shifts in the burden of
3 persuasion or by changes in the degree of persuasion required.’” *Dias v. Elique*, 436 F.3d 1125,
4 1129 (9th Cir. 2006) (quoting 18 Charles Alan Wright, Arthur R. Miller & Edward H.
5 Cooper, *Federal Practice & Procedure* § 4422 (2d ed. 2002)); *see also Cameron v. Arizona Bd.*
6 *of Regents*, No. CV 08-01490-PHX-ROS, 2011 WL 13137863, at *1 (D. Ariz. Apr. 13, 2011)
7 (noting that those seeking to invoke the doctrine of issue preclusion should explain whether
8 Arizona law prevents application of the doctrine when the burden of proof in the prior case was
9 different).

10 The preponderance of the evidence standard applies in all non-dischargeability
11 proceedings. *In re Branam*, 226 B.R. 45, 52 (B.A.P. 9th Cir. 1998), *aff’d*, 205 F.3d 1350 (9th
12 Cir. 1999). Under Arizona law, the heightened clear and convincing standard applies to fraud
13 and punitive damages claims. *Hopper v. Indus. Comm’n*, 27 Ariz. App. 732, 734, 558 P.2d 927,
14 929 (Ariz. Ct. App. 1976) (“It is beyond question in this jurisdiction that a claim of fraud must
15 be established by clear and convincing evidence.”); *Thompson v. Better-Bilt Aluminum Prod.*
16 *Co.*, 171 Ariz. 550, 557, 832 P.2d 203, 210 (Ariz. Ct. App. 1992) (“To recover punitive
17 damages, the plaintiff must prove that defendant acted with the requisite evil mind ‘by clear
18 and convincing evidence.’”).

19 2. Analysis

20 The State Court granted the Debtors’ Rule 50 motion with respect to POA’s fraud and
21 punitive damages claims. However, given that a lower burden of proof applies in
22 dischargeability proceedings brought under the Code, application of the doctrine of issue
23 preclusion is not appropriate on the basis requested by Debtors. Therefore, the Court denies the
24 Debtors’ Motion.

25 POA, on the other hand, may be entitled to summary judgment if the elements of the
26 claims determined in the State Court Action are the same as the elements of POA’s
27 §§ 523(a)(2)(A) or (a)(6) claim and/or if the undisputed facts establish the elements of either
28

1 claim.¹

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3 **C. Exceptions to Discharge**

4 1. Law

5 Exceptions to discharge “should be confined to those plainly expressed”
6 *Kawaauhau v. Geiger*, 523 U.S. 57, 58, 118 S. Ct. 974, 975, 140 L. Ed. 2d 90 (1998) (quoting
7 *Gleason v. Thaw*, 236 U.S. 558, 562, 35 S. Ct. 287, 289, 59 L. Ed. 717 (1915)).

8 a. *Section 523(a)(2)(A)*

9 Section 523(a)(2)(A) excepts from discharge a debt “for money, property, [or] services
10 . . . to the extent obtained by false pretenses, a false representation, or actual fraud, other than a
11 statement respecting the debtor’s or an insider’s financial condition”

12 In order to prevail on a § 523(a)(2)(A) claim, the moving party must generally establish:

- 13 a) The defendant made a misrepresentation or fraudulent omission, or engaged in
14 deceptive conduct;
- 15 b) The defendant knew of the falsity or deceptiveness of his statement or conduct;
- 16 c) The defendant had an intent to deceive;
- 17 d) The plaintiff justifiably relied on the defendant’s statement or conduct; and
- 18 e) The damage to the plaintiff was proximately caused by its reliance on the
19 defendant’s statement or conduct.

20 *See In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000).

21 b. *Section 523(a)(6)*

22 Section 523(a)(6) excepts from discharge a debt “for willful and malicious injury by the
23 debtor to another entity or to the property of another entity[.]”

24 “The ‘willful’ requirement is separate and distinct from the ‘malicious’ requirement.” *In*
25 *re Bane*, No. ADV.LA 08-1006-BB, 2010 WL 6451886, at *5 (B.A.P. 9th Cir. Jan. 15, 2010).
26 The willful injury requirement must be evaluated using a subjective framework, and “is met
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¹ Although POA has also asserted a § 523(a)(4) claim, POA has only moved for summary judgment with respect to the §§ 523(a)(2) and (a)(6) claims.

1 when it is shown either that the debtor had a subjective motive to inflict the injury *or* that the
2 debtor believed that injury was substantially certain to occur as a result of his conduct.” *In re*
3 *Jercich*, 238 F.3d 1202, 1208 (9th Cir. 2001); *see also In re Su*, 290 F.3d 1140, 1145 (9th Cir.
4 2002). The malicious injury requirement is met where there is: “(1) a wrongful act, (2) done
5 intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.”
6 *Jercich*, 238 F.3d at 1208-09.

7 2. Analysis

8 As the Court of Appeals noted, “POA’s claim of breach of the implied covenant of good
9 faith and fair dealing required proof of a contract with [Mr. Duran], an act by Duran that
10 deprived POA of a reasonably expected benefit of that contract, and resulting damages to
11 POA.” *Pac. Office Automation, Inc. v. Duran*, No. 2 CA-CV 2016-0052, 2017 WL 629245, at
12 *3 (Ariz. Ct. App. Feb. 15, 2017).

13 “The tortious interference claim required proof that Duran had intentionally interfered
14 with what he knew were POA’s contractual relationships, causing a breach or termination of
15 those relationships and resulting damages[,]” and proof “that the interference was ‘improper as
16 to motive or means.’” *Id.*

17 The breach of contract claim required proof of the existence of a contract between the
18 parties, Duran’s breach of that contract, and resulting damages. *See Graham v. Asbury*, 112
19 Ariz. 184, 185, 540 P.2d 656, 657 (Ariz. 1975).

20 Section 523(a)(2)(A) requires POA to establish that Mr. Duran acted with an intent to
21 deceive. The State Court did not make any findings of fact or conclusions of law and none of
22 the three state court claims for which the State Court jury found in POA’s favor necessitated
23 inquiry into Mr. Duran’s intent. There is no intent element of a state law breach of contract
24 claim or a state law breach of implied covenant of good faith and fair dealing claim.
25 Furthermore, in order to establish tortious interference under state law, POA only needed to
26 prove that there was interference by Mr. Duran that was improper as to motive or means. It is
27 not clear which prong the jury relied upon. Interference by an improper means is not the
28 equivalent of interference with an intent to deceive. The Court does not have any additional

1 findings of fact, conclusions of law, or undisputed facts before it that would allow the Court to
2 find that Mr. Duran acted with an intent to deceive.

3 Section 523(a)(6) requires a malicious injury. In order to establish the malicious injury
4 requirement, POA must prove, among other things, that Mr. Duran committed a wrongful act
5 without just cause or excuse.

6 None of the three state court claims for which the State Court jury found in POA's favor
7 necessitated inquiry into why Mr. Duran took the actions he did or whether such actions were
8 taken without just cause or excuse. The Court does not have any findings of fact, conclusions of
9 law, or undisputed facts before it that would allow the Court to find that the Debtor took the
10 actions he did without just cause or excuse.

11 POA cites the Court to *In re Bane*, No. ADV.LA 08-1006-BB, 2010 WL 6451886
12 (B.A.P. 9th Cir. Jan. 15, 2010) for the proposition that because the jury found for POA on its
13 intentional interference claim, the elements of § 523(a)(6) are met. However, in *Bane*, the
14 bankruptcy court was asked to give preclusive effect to a district court opinion that included
15 detailed findings of fact and conclusions of law, which included a finding that the debtor
16 caused "willful and malicious injury" to the plaintiff. *Bane*, 2010 WL 6451886, at *1. The
17 Ninth Circuit B.A.P. affirmed the bankruptcy court's grant of summary judgment of the
18 plaintiff's § 523(a)(6) claim given the district court's factual findings and the bankruptcy
19 court's proper grant of preclusive effect with respect to those findings. *See id.* at *6, 8. The
20 *Bane* case is distinguishable from the present case in that in this case, the State Court Judgment
21 contains no findings of fact upon which this Court can rely.

22 Based upon the record and undisputed facts submitted to this Court, this Court is not
23 able to determine that all of the necessary elements of § 523(a)(2)(A), specifically intent to
24 deceive, and § 523(a)(6), specifically the malicious injury requirement, were considered and
25 determined in the underlying State Court Action. POA has therefore failed to demonstrate that
26 it is entitled to judgment as a matter of law on its § 523(a)(2)(A) or § 523(a)(6) claim.

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1 **II. Conclusion**

2 Wherefore, based upon the foregoing it is the determination of this Court that neither the
3 Debtors nor the Plaintiff are entitled to judgment as a matter of law, and the Motion and Cross-
4 Motion are therefore denied.

5 Wherefore, for good cause shown;

6 IT IS HEREBY ORDERED denying the Motion and the Cross-Motion.

7 **DATED AND SIGNED ABOVE.**

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