

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

BAP NO.: CC-06-1011-PaLB
BK NO.: LA 05-31106 VZ

In re: TINA CROSBY-SIMMONDS

Debtor

TINA CROSBY-SIMMONDS

Appellant

v.

TIMOTHY M. CAMPBELL; NANCY CURRY, Chapter 13 Trustee; KEITH
A. HIGGINBOTHAM, Esq.

Appellee

FILED

OCT 10 2006

HAROLD S. MARENUS, CLERK
U. S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

JUDGMENT

ON APPEAL from the United States Bankruptcy Court for
the Central District of California.

THIS CAUSE came on to be heard on the record and the
briefs of the parties.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this
Panel that the judgment of the Bankruptcy Court is AFFIRMED.

FOR THE PANEL,

Harold S. Marenus,
BAP Clerk

By: Vincent J. Barbato
Deputy Clerk

OCT 10 2006

NOT FOR PUBLICATION

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In re:)	BAP No.	CC-06-1011-PaLB
TINA CROSBY-SIMMONDS,)	Bk. No.	LA 05-31106-VZ
Debtor.)		
<hr/>			
TINA CROSBY-SIMMONDS,)		
Appellant,)		
v.)	MEMORANDUM ¹	
TIMOTHY M. CAMPBELL,)		
Appellee.)		

Submitted Without Oral Argument
on September 22, 2006

Filed - October 10, 2006

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

The Honorable Vincent P. Zurzolo, Bankruptcy Judge, Presiding.

Before: PAPPAS, LEE and BRANDT,² Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

² The Honorable W. Richard Lee, United States Bankruptcy Judge for the Eastern District of California, sitting by designation.

1 Appellant, Chapter 13³ debtor Tina Crosby-Simmonds, appeals
2 an order of the bankruptcy court denying her objection to the
3 proof of claim filed by Appellee Timothy Campbell. We AFFIRM.
4

5 **FACTS**

6 On February 5, 1997, Joseph Simmonds ("Joseph") commenced a
7 state civil action in Superior Court, Los Angeles County, against
8 his former business partner, Appellee. The complaint pleaded
9 various tort claims, including breach of fiduciary duty and
10 conversion of personal property (the "Fiduciary Action").
11 Approximately five weeks later, on March 14, 1997, Joseph married
12 Appellant. On November 18, 1998, judgment was entered in favor of
13 Appellee and against Joseph in the Fiduciary Action.

14 On August 12, 1999, Appellee commenced a civil action for
15 malicious prosecution against Joseph in Superior Court, Los
16 Angeles County (the "Malicious Prosecution Action"). After a jury
17 trial, on May 31, 2001, judgment was entered in the Malicious
18 Prosecution Action in favor of Appellee and against Joseph in the
19 amount of \$36,471.80.

20 On June 1, 2001, Joseph filed a chapter 7 bankruptcy
21 petition. He was granted a discharge on September 10, 2001.
22 However, in an adversary proceeding, the bankruptcy court ruled
23 that the judgment debt Joseph owed Appellee arising from the
24 Malicious Prosecution Action was excepted from discharge under
25 § 523(a)(6). No appeal was taken.

26 _____
27 ³ Unless otherwise indicated, all chapter, section, and
28 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-
1330 and to the Federal Rules of Bankruptcy Procedure, Rules
1001-9036, prior to the effective date of the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub.
L. 109-8, 119 Stat. 23 (Apr. 20, 2005).

1 On March 26, 2004, in the Malicious Prosecution Action, the
2 state court granted Appellee's motion for entry of an order
3 garnishing Appellant's wages as spouse of the judgment debtor
4 Joseph (the "Wage Garnishment Order"). The reason for the state
5 court's decision appears in its hearing minutes:

6 The court finds that Tina Crosby Simmonds was
7 married to the judgment debtor at the time the
8 debt to the judgment creditor was incurred and
9 therefore the earnings of Tina Crosby Simmonds
10 are subject to a wage garnishment pursuant to
11 Code of Civil Procedure section 706.109.
12 Family Law Code section 903 provides that in
13 the case of a tort, a debt is incurred at the
14 time the tort occurs. . . . The tort occurred
15 on 11/18/98 when the judgment was entered in
16 favor of the judgment creditor and against the
17 judgment debtor in case number BC165328. Tina
18 Crosby Simmonds is not a judgment debtor, but
19 her community property earnings are subject to
20 garnishment.

21 Appellant appealed the Wage Garnishment Order to the
22 California Court of Appeals. On April 19, 2005, the appeals court
23 affirmed the Wage Garnishment Order. In response to Appellant's
24 principal argument that the tortious conduct of her husband
25 occurred before marriage, and thus she should not be liable for
26 his debts, the appeals court ruled that:

27 A malicious prosecution action accrues at the
28 time of entry of judgment on the underlying
29 action in the trial court. . . . The prior
30 proceeding in which Joseph sued Campbell
31 terminated with a judgment in favor of
32 Campbell on November 18, 1998. As appellant
33 and Joseph were married on March 14, 1997, the
34 tort of malicious prosecution accrued after
35 their marriage. Accordingly, the court's
36 order was proper.

37 Appellant did not appeal from the California Court of Appeals'
38 order.

1 Appellant filed her own bankruptcy petition under chapter 13
2 on September 13, 2005. Her schedule F, submitted on September
3 27, 2005, lists a disputed unsecured debt of \$52,000 in favor of
4 Appellee arising from the judgment against her husband, Joseph.

5 On October 17, 2005, Appellee filed a proof of claim in
6 Appellant's bankruptcy case for \$52,043.51. The claim was in two
7 parts: \$51,931.89 for the Malicious Prosecution Action and
8 \$111.62 as a personal debt for the attorney fees awarded to
9 Appellee against Appellant in the State Appeal.

10 On November 3, 2005, Appellant objected to Appellee's proof
11 of claim, arguing that she was not responsible for her husband's
12 debt. She cited this Panel's decision in In re Tsurukawa, 258
13 B.R. 192 (9th Cir. BAP 2001), in support of her position.
14 Appellee opposed her objection.

15 The bankruptcy court conducted a hearing on Appellant's
16 objection to Appellee's claim on December 12, 2005. The court
17 overruled Appellant's objection, reasoning:

18 Under California Family Code Section 910 the
19 community estate is indeed liable for debts
20 incurred during the marriage. This debt, the
21 judgment was indeed entered and the debt was
22 accrued while the marriage was in existence
23 and it is not disputed. And under Section
24 542, property of the community estate comes
25 into the bankruptcy estate and this would
26 include the wages of the spouse who is a
27 debtor in this bankruptcy case. . . .
28 Therefore, there is not a basis under law to
disallow the claim. The motion is denied.

Tr. Hr'g 4:9-20.

26 The bankruptcy court entered an order denying Appellant's
27 objection to Appellee's Proof of Claim on December 22, 2005. A
28

1 timely appeal of that order was filed on December 29, 2005.⁴

2
3 **JURISDICTION**

4 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
5 §§ 1334 and 157(b)(2)(B). This Panel has jurisdiction pursuant to
6 28 U.S.C. § 158(b).

7
8 **ISSUE ON APPEAL**

9 Whether the bankruptcy court erred in denying the debtor's
10 objection to Appellee's proof of claim.⁵

11
12 **STANDARD OF REVIEW**

13 No factual issues are presented in this appeal. We review
14 the bankruptcy court's interpretation and application of the
15 provisions of the Bankruptcy Code de novo. In re Deville, 361
16 F.3d 539, 547 (9th Cir. 2004). The same de novo standard applies
17 to the bankruptcy court's interpretation and application of state
18 law. Rabkin v. Ore. Health Sciences Univ., 350 F.3d 967, 971 (9th
19 Cir. 2003).

20
21 ⁴ Appellant's Third Amended Chapter 13 Plan was filed on
22 February 8, 2006. It does not contain any express provision for
23 payments to Appellee. Presumably, Appellee could share in any
distributions to be made to unsecured creditors under that plan.
This plan was confirmed by the court on March 7, 2006.

24 ⁵ Appellant frames the issues on appeal as whether the
25 bankruptcy court properly applied this Panel's holding in In re
26 Tsurukawa, and whether the Supremacy Clause of the United States
27 Constitution, in effect, overruled the provisions of California
28 law relied upon by the bankruptcy court. As discussed below, we
need not reach any constitutional questions because Appellant
raises them for the first time on appeal, and her presentation of
these arguments is simply inadequate to allow us to review them.
We do, however, examine the relation of our decision in In re
Tsurukawa to the issue on appeal.

1 DISCUSSION

2 A properly filed proof of claim constitutes prima facie
3 evidence of the validity and amount of the claim. FED. R. BANKR. P.
4 3001(f). See Heath v. Am. Express Travel Related Services Co.,
5 Inc. (In re Heath), 331 B.R. 424, 437 (9th Cir. BAP 2005). A
6 claim, proof of which is properly filed, is deemed allowed unless
7 a party in interest, including the debtor, objects. § 502(a). See
8 Campbell v. Verizon Wireless S-CA (In re Campbell), 336 B.R. 430,
9 436 (9th Cir. BAP 2005). Under § 502(b)(1), upon objection, the
10 bankruptcy court shall allow the claim unless it is unenforceable
11 against the debtor or her property under applicable law. In re
12 Heath, 331 B.R. at 432. In this context, applicable law is state
13 law. Durkin v. Bendor Corp. (In re G.I. Indus., Inc.), 204 F.3d
14 1276, 1281 (9th Cir. 2000), citing Johnson v. Righetti (In re
15 Johnson), 756 F.2d 738, 741 (9th Cir. 1985) ("In proof of claim
16 litigation under 11 U.S.C. § 502(b)(1), the validity of the claim
17 is determined under state law.")

18 In the bankruptcy court and in this appeal, Appellant
19 presented no evidence to dispute the amount of Appellee's judgment
20 debt, nor its validity as against Joseph. Rather, Appellant
21 argues the judgment debt is unenforceable against her and her
22 property.

23 The bankruptcy court determined that Appellant's wages could
24 be reached to satisfy Appellee's judgment debt. As a result, it
25 allowed Appellee's proof of claim in the bankruptcy case. The
26 bankruptcy court determined that, under California law, the
27 marital community of Appellant and Joseph was liable for debts
28 incurred during their marriage; that Appellee's debt was incurred

1 upon entry of the judgment in the Malicious Prosecution Action,
2 after Appellant and Joseph were married; that Appellant's
3 bankruptcy estate included her interest in any community property,
4 such as her wages; and, therefore, Appellee's claim should be
5 allowed. In other words, the bankruptcy court concluded that
6 there was no basis to decide that Appellee's claim was
7 unenforceable against Appellant's property so as to justify
8 disallowance of Appellee's claim. § 502(b)(1). See also
9 § 102(2).

10 In her bankruptcy case, Appellant challenged Appellee's claim
11 on the basis of bankruptcy law, arguing that she was an "innocent
12 spouse" and not liable for her husband's debts under our ruling in
13 In re Tsurukawa. We examine Appellant's contention below.

14 However, Appellant also persists in arguing that Appellee's
15 claim against her is unenforceable under state law and that
16 Appellee's claim is a debt of her husband Joseph alone.⁶
17 Appellant is precluded from this approach since her argument
18 amounts to an improper collateral attack on the Wage Garnishment
19 Order.

20 Under the doctrine of issue preclusion, Appellant is
21 prohibited from arguing that the Wage Garnishment Order was
22 incorrectly entered or is invalid. Issue preclusion bars
23 relitigation of an issue of fact or law that was actually decided
24 by a court in an earlier action, in which that issue was necessary

25

26 ⁶ Appellant contends that "Debtor cannot be legally bound by
27 a State Court's order against her husband when she had no
28 participation or inkling of the transaction" and "[s]ince Tina
Crosby Simmonds was not a named defendant/new party, therefore she
could not be named as a judgment debtor and only as a judgment
debtor can she be subjected to wage garnishment."

1 to the judgment in such action, and a valid and final judgment was
2 entered.⁷ The Wage Garnishment Order was entered against the
3 Appellant (not her husband) by the California superior court. She
4 challenged the propriety of that order by appealing to the
5 California Court of Appeals, which affirmed. The Appeals Court's
6 decision was not appealed and, thus, is a "final judgment."

7 The state courts of California give preclusive effect to
8 issues decided in another court of that state under the following
9 circumstances:

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

21 Lucido v. Superior Ct., 795 P.2d 1223, 1226 (Cal., 1990).

22 All the elements of issue preclusion are present here. The
23 issue litigated by Appellant in state court was whether
24 Appellant's wages could be garnished by Appellee to satisfy the
25 judgment debt against Joseph. Appellant raises the identical
26 issue in this appeal. That issue was fully litigated in the state
27 superior court and court of appeals. That issue was necessarily
28 decided in that the state appeal, and the decision of the court of
29 appeals constitutes a final judgment. Finally, Appellant is the

30 ⁷ For an excellent discussion of the operation of this
31 doctrine in the context of bankruptcy proceedings, see Christopher
32 Klein, Lawrence Ponoroff & Sarah Borrey, Principles of Preclusion
33 and Estoppel in Bankruptcy Cases, 79 AM. BANKR. L.J. 839, 852-58
34 (2005).

1 same party as that involved in the state proceedings. Because
2 California state courts are required to give preclusive effect to
3 the Wage Garnishment Order, the Full Faith and Credit Act, 28
4 U.S.C. § 1738, imposes the same obligation on federal courts,
5 including this Panel. McDonald v. City of W. Branch, Mich., 466
6 U.S. 284, 287 (1984). Appellant is therefore precluded from
7 asserting that the Wage Garnishment Order is not valid or
8 enforceable as a claim against her in her bankruptcy case.

9 But even were Appellant not precluded from challenging the
10 validity of Appellee's claim, the bankruptcy court's decision
11 allowing the claim is amply supported by California law. The
12 courts have long held that, in California, the community estate of
13 husband and wife may be reached to satisfy community debts.
14 Hannan v. Swift, 61 F.2d 307, 310 (9th Cir. 1932). This imputed
15 liability is codified in Cal. Code Civ. P. § 910(a), which
16 provides that "[t]he community estate is liable for a debt
17 incurred by either spouse before or during marriage, regardless of
18 which spouse has the management and control of the property and
19 regardless of whether one or both spouses are parties to the debt
20 or to a judgment for the debt."

21 The debt represented by Appellee's judgment was incurred at
22 the time the tort of malicious prosecution occurred. Cal. Family
23 Code § 903(b). The tort occurred at the "time of entry of
24 judgment on the underlying action in the court trial, i.e., at the
25 time of successful termination of the prior proceeding." Ray v.
26 First Fed. Bank, 61 Cal. App.4th 315, 320 (Cal. Ct. App. 1998).
27 It is uncontroverted that Appellant and Joseph were married on
28 March 14, 1997, and that the judgment in the Malicious Prosecution

1 Action was entered on November 11, 1998. There is no evidence in
2 the record to suggest that Appellant and Joseph were not, at all
3 times relevant, husband and wife. Consequently, Cal. Code Civ. P.
4 § 910(a) dictates that the community property of Appellant and
5 Joseph is liable for Appellee's judgment debt. Because
6 Appellant's community property wages could be reached to satisfy
7 Appellee's judgment, Appellee held a claim enforceable against
8 "property of the debtor" which was subject to allowance in her
9 bankruptcy case under § 502(a).

10 Appellant argues that she is an innocent spouse, and
11 therefore, should not be liable for Appellee's judgment in her
12 bankruptcy case. For support, Appellant cites this Panel's
13 opinion in In re Tsurukawa, 258 B.R. 192 (9th Cir. BAP 2001).
14 According to Appellant, Tsurukawa holds that the existence of the
15 marital relationship alone is insufficient to impute liability to
16 her for her husband's fraud.

17 In Tsurukawa, a husband defrauded his employer by diverting
18 his employer's business to himself. The employer discovered the
19 fraud, fired the husband, sued both the husband and his wife for
20 fraud and deceit, and obtained a stipulated judgment against them
21 for approximately \$2 million. The husband and wife filed separate
22 bankruptcy cases. The bankruptcy court determined that the
23 judgment debt was nondischargeable in the husband's case, a ruling
24 which he did not appeal. However, the bankruptcy court also
25 determined the debt was excepted from discharge in the wife's
26 case, and she appealed. This Panel held that the fact that
27 debtors were married was not alone a sufficient basis to render
28 the debt nondischargeable in the "innocent" spouse's bankruptcy

1 case unless an agency relationship existed between them. Id. at
2 198. The Panel therefore remanded the wife's case to the
3 bankruptcy court to determine if the wife was an agent of the
4 husband such that the fraud of the husband could be imputed to the
5 wife for purposes of a § 523(a) exception to discharge.

6 Tsurukawa involved a determination of dischargeability of
7 debt under § 523(a). The limited basis of the holding was made
8 clear in our comments in the subsequent appeal of the order
9 entered in the remanded action: "We reversed and remanded
10 [Tsurukawa], clarifying that the wrongful conduct of one spouse
11 could not be attributed to the other spouse for purposes of
12 nondischargeability of debt under section 523(a)." Tsurukawa v.
13 Nikon Precision, Inc. (In re Tsurukawa), 287 B.R. 515, 519 (9th
14 Cir. BAP 2002) (emphasis added). The Panel, in its first opinion
15 in Tsurukawa, simply did not address the question of whether the
16 judgment creditor's debt could be allowed as a claim in the wife's
17 bankruptcy case. Consequently, the holding in Tsurukawa is of no
18 import, nor is it of value, to Appellant here.

19 In addition to her reliance upon Tsurukawa, Appellant
20 asserts a general argument that the Supremacy Clause of the United
21 States Constitution somehow invalidates those sections of the
22 California Family Code relied on by the bankruptcy judge as the
23 basis to allow Appellee's claim. Appellant's argument was not
24 raised in the bankruptcy court. This Panel and the Court of
25 Appeals have discretion whether to consider arguments raised for
26 the first time on appeal. Spurlock v. F.B.I., 69 F.3d 1010, 1017
27 (9th Cir. 1995); Alcock v. Small Bus. Admin. (In re Alcock), 157
28 B.R. 23 (9th Cir. BAP 1993). This is not "an exceptional case in

1 which review is necessary to prevent a miscarriage of justice or
2 to preserve the integrity of the judicial process," nor is this a
3 situation in which "a new issue arose because of a change in the
4 law while an appeal [was] pending[.]" Spurlock, 69 F.3d at 1017.
5 Further, Appellant presents no coherent legal analysis supported
6 by relevant case and statutory law for her constitutional
7 challenge.⁸ We are especially reluctant to consider a
8 constitutional challenge to a state family code, an area of law
9 where the federal government traditionally defers to the states.
10 "The whole subject of the domestic relations of husband and wife,
11 parent and child, belongs to the laws of the States and not to the
12 laws of the United States." Ex Parte Burrus, 136 U.S. 586, 593
13 (1890). The Panel therefore declines to consider Appellant's
14 constitutional argument raised for the first time on appeal.⁹

15 CONCLUSION

16 For these reasons, we AFFIRM the decision of the bankruptcy
17 court.

18
19 ⁸ The one case Appellant cites to support her argument is
20 Stone v. City & County of San Francisco, 968 F.2d 850, 862 (9th
21 Cir. 1992). That decision does not involve a conflict of
22 statutes, but rather holds that a federal court's remedial scheme
to cure overcrowding in state prisons will temporarily override
state prison regulations. The holding has no application to the
instant appeal.

23 ⁹ In addition to her constitutional challenge, Appellant
24 introduced three other new arguments on appeal. She argues that
25 (1) Cal. Code Civ. P. § 473 does not allow naming of a new party,
(2) Cal. Code Civ. P. § 367 requires that every action must be
26 prosecuted in the name of the real parties in interest and (3)
Cal. Code Civ. P. § 1908(2) requires that non-parties have actual
27 or constructive notice of the pendency of the action. She simply
states these arguments without legal analysis or citation to
28 authority. Indeed, she does not coherently explain their
relevance in this appeal. The Panel declines to consider these
"arguments".

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit
125 South Grand Avenue, Pasadena, California 91105
Appeals from Central California (626) 229-7220
Appeals from all other Districts (626) 229-7225

NOTICE OF ENTRY OF JUDGMENT

BAP No.: CC-06-1011-PaLB

RE: TINA CROSBY-SIMMONDS

A separate Judgment was entered in this case on OCTOBER 10, 2006.

BILL OF COSTS:

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken.
9th Cir. BAP Rule 8014-1

ISSUANCE OF THE MANDATE:

The mandate, a certified copy of the judgment sent to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. See Federal Rule of Appellate Procedure 41.

APPEAL TO COURT OF APPEALS:

An appeal to the Ninth Circuit Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. The Notice of Appeal should be accompanied by payment of the \$455 filing fee (effective November 1, 2003) and a copy of the order or decision on appeal. Checks may be made payable to the U.S. Court of Appeals for the Ninth Circuit. See Federal Rules of Appellate Procedure 6 and the corresponding Rules of the United States Court of Appeals for the Ninth Circuit for specific time requirements.

CERTIFICATE OF MAILING

The undersigned, deputy clerk of the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, hereby certifies that a copy of the document on which this certificate appears was mailed this date to all parties of record to this appeal.

By: Vincent J. Barbato
Deputy Clerk: October 10, 2006